# SEBI DENIES PROBING ADANI SINCE 2016; CONG. SAYS MINISTER MISLED LOK SABHA

*Which is worse — misleading Parliament, or being fast asleep as lakhs of investors are duped by alleged money-laundering?*

The Securities and Exchange Board of India (SEBI), in the Supreme Court on Monday, denied as "factually baseless" the allegation that it had been investigating the Adani Group since 2016, triggering a war of words between the Congress and the Finance Ministry.

The SEBI's affidavit, filed on Sunday, distanced the Adani Group from any "investigations" from 2016. The affidavit was in response to submissions made by advocate Prashant Bhushan before a three-judge Bench, led by Chief Justice D.Y. Chandrachud, in a hearing in the Hindenburg-Adani case on Friday. However, Congress leader Jairam Ramesh took to Twitter to compare the market regulator's claim in its affidavit that "the allegation that SEBI is investigating Adani since 2016 is factually baseless" with a statement made by Minister of State for Finance Pankaj Chaudhary in the Lok Sabha on July 19, 2021.

"The Minister of State for Finance, Pankaj Chaudhary, had told the Lok Sabha on July 19, 2021 that SEBI had been investigating the Adani Group. Now SEBI tells the Supreme Court that they have not been investigating any of the serious allegations against Adani! Which is worse — misleading Parliament, or being fast asleep as lakhs of investors are duped by alleged money-laundering and round-tripping using offshore shell companies. Or even worse, was there a restraining hand from above?" Mr. Ramesh tweeted.

The debate in court on Friday was initially centred on a request by SEBI for a six-month extension to complete its inquiry into Hindenburg Research's report accusing the Adani Group of "brazen stock manipulation and accounting fraud schemes over the course of decades".

The court had even urged the SEBI to show "some alacrity" in its investigation. The court has adjourned the Adani-Hindenburg case to July 10.

He said the latter was referring to a "completely unconnected" investigation. The SEBI's affidavit took pains to explain that "the 'investigation' referred to by the petitioners pertained to the issuance of Global Depository Receipts by 51 Indian listed companies". "No listed company of the Adani Group was part of the aforesaid 51 companies. Pursuant to the completion of investigation [into the 51 companies], appropriate enforcement actions were taken," the SEBI maintained.

The relevant page of the Lok Sabha records posted by Mr. Ramesh on social media shows that one of the questions asked by Trinamool Congress MP Mahua Moitra was "whether the FPIs and/or Adani entities are under investigation by SEBI, IT, ED, DRI, MCA for suspicious transactions..." To this, the Minister had confirmed that "SEBI is investigating some Adani Group of companies with regard to compliance with SEBI regulations". The Ministry responded to Mr. Ramesh's tweet with a statement that "the government stands by its reply on July 19, 2021". When asked about the government's affirmation of its reply in Parliament about the SEBI's ongoing probe into the Adani Group, Mr. Ramesh told The Hindu that this was at odds with the regulator's stance.

### Unexpected turn

The May 12 hearing took an unexpected turn when Mr. Bhushan, for the petitioners, submitted orally that the SEBI had been investigating Adani since 2016. Solicitor-General Tushar Mehta vehemently denied Mr. Bhushan's submission.

# CENTRE AGAINST ANY ETHNIC DIVISION, SAYS MANIPUR CM

The Centre has ruled out dividing Manipur on ethnic lines, Chief Minister Nongthombam Biren Singh said on Monday.

"We met Home Minister Amit Shah in Delhi yesterday [Sunday] to brief him on the situation in Manipur. He said the State's territorial integrity will not be compromised," he told presspersons in Imphal.

Mr. Singh said stern action would be taken under a suspension of operations agreement against extremist groups for possessing weapons illegally. Manipur has some 30 extremist outfits belonging to Kuki-Chin-Zomi group of which 25 are party to the agreement.

In March, the State government withdrew the agreement with the Kuki National Army and the Zomi Revolutionary Army, accusing them of inciting forest encroachers against the government.

"The Centre has asked the State government to bring back normalcy irrespective of caste, religion, and community. We have been advised to conduct massive outreach programmes," Mr. Singh said, adding that the Home Minister would be sending emissaries to Manipur for reconnecting the communities. He said 500 weapons snatched from police establishments during the clashes had been recovered. "Amit Shah has assured the people of the State that as per the rules of the agreement, joint monitoring committee along with the Army and the State police jointly inspected many camps and found the weapons still intact with the group," Mr. Singh said.

Ministers Thongam Biswajit, Yumnam Khemchand, Govindas Konthoujam, and Sapam Ranjan were also present during the media briefing. They had accompanied the Chief Minister to New Delhi. 5,822 sheltered in Mizoram.

A total of 5,822 people from Manipur belonging to the Chin-Kuki-Mizo tribes are lodged at temporary relief camps across six districts of Mizoram. Officials in Mizoram said Aizawl district has the highest number of such displaced people at 2,021, followed by Kolasib (1,847), and Saitual (1,790). The rest are distributed in Champhai, Khawzawl and Serchhip districts.

# WHOLESALE PRICES SHRANK 0.9% IN APRIL ON BASE EFFECT

Wholesale prices registered a 0.92% deflation in April, with the WPI-based reading sliding to a 34-month low led by a 2.42% year-on-year contraction in manufactured products' prices and a sharp dip in fuel, power and food inflation rates. The base effect was a key contributor to the deflationary reading as April 2022 saw WPI inflation at 15.4%, which was a record high at the time.

On a month-on-month basis, the Wholesale Price Index (WPI) remained unchanged, with the fuel and power index shrinking 2.7%. This was offset by a quickening in primary articles and food inflation to 1.3% and 0.9%, respectively — both of which were the highest sequential upticks in at least six months.

"Decline in the rate of inflation in April is primarily contributed by fall in prices of basic metals, food products, mineral oils, textiles, non-food articles, chemical and chemical products, rubber and plastic products and paper and paper products," the Commerce and Industry Ministry said.

Wholesale price inflation had slowed in March to 1.34%. April's deceleration marks the 11th straight month of moderating WPI inflation since it scaled an all-time high of 16.6% in May 2022.

Vegetable prices shrank year-on-year for the sixth straight month, but rose 4.5% from March's level.

# RESURGENT ERDOGAN PAINTS VOTE AS A VICTORY, RIVAL REMAINS HOPEFUL

*Recep Tayyip Erdogan*

Turkish President Recep Tayyip Erdogan on Monday emerged from his toughest election test unbowed and in strong position to extend two decades of his Islamic-rooted rule by another five years in a historic May 28 runoff.

The 69-year-old leader defied pollsters and his country's most dire economic crisis since the 1990s to come within a fraction of a percentage point of winning Sunday's presidential ballot.

His right-wing party also retained control of Parliament through an alliance with ultra-nationalists on a drama-filled night that concluded with Mr. Erdogan delivering a victory speech from a balcony to jubilant supporters.

He even won in regions hit by a calamitous February quake that claimed more than 50,000 lives -- and where anger at the government's slow response to Turkey's worst disaster of modern times was seething.

Even as it became clear a runoff was likely, Mr. Erdogan, who has governed Turkey as either prime minister or president since 2003, painted Sunday's vote as a victory both for himself and the country.

"That the election results have not been finalized doesn't change the fact that the nation has chosen us," Mr. Erdogan, 69, told supporters in the early hours of Monday.

He said he would respect the nation's decision.

Kemal Kilicdaroglu, his main opponent, sounded hopeful, tweeting around the time the runoff was announced: "Don't lose hope.... We will get up and win this election together."

Mr. Kilicdaroglu, 74, and his party have lost all previous presidential and parliamentary elections since he took leadership in 2010.

"The people won!" the right-wing Yeni Safak newspaper proclaimed in a banner headline. The pro-government Sabah daily called Mr. Erdogan's performance a "superb success". Mr. Erdogan supporter Hamdi Kurumahmut was brimming with confidence in the morning after the night of Turkey's biggest election of its post-Ottoman era. "Erdogan is going to win. He is a real leader. The Turkish people trust him," Mr. Kurumahmut said.

Analysts feel Mr. Kilicdaroglu and his six-party opposition alliance will have a difficult time halting Mr. Erdogan's momentum.

"The President is likely to ride his strong approval rating, surprise win in Parliament, and incumbency advantages to secure re-election," said Emre Peker of the Eurasia Group consultancy.

# EXPORTS FELL TO SIX-MONTH LOW IN APRIL ON ANAEMIC DEMAND

*Goods trade deficit managed to hit a 20-month low despite a significant drop in exports, as a consequence of imports plummeting by a sharper 14% as discretionary demand shrinks*

` India's merchandise exports shrank 12.7% in April to a six-month low of $34.66 billion but imports fell by a sharper 14% to hit $49.90 billion, as per initial estimates the Commerce Ministry released on Monday.

Consequently, the monthly goods trade deficit cooled 17% in April to touch a 20 month-low of $15.24 billion, from $18.35 billion a year earlier. Sequentially, outbound shipments fell 17.3% from March's $41.9 billion, which was the highest exports level since June 2022.

Officials attributed the decline in exports to faltering demand in key markets and a decline in commodity prices. Director General of Foreign Trade and Additional Secretary Santosh Kumar Sarangi said the broader picture was that imports had declined sharply.

"Global demand is not looking good from markets like the EU and the U.S. For the next two, three months, the demand scenario doesn't look very optimistic," Mr. Sarangi told The Hindu, adding that the government would initiate inter-ministerial talks to find ways to sustain the export momentum.


# WHAT ARE THE GAPS IN THE AePS TRANSACTION MODEL?

*What is the Aadhaar-enabled Payment System? How are cybercriminals using Aadhaar for financial fraud?*

**The story so far:**

Pushpendra Singh, a popular YouTuber, in a Twitter thread, shared how his mother's bank account was drained using an Aadhaar-linked fingerprint without needing a two-factor authentication. His mother was not informed of the transactions by her bank, via message or otherwise. A quick search on Google reveals that similar incidents have been reported in different parts of the country. Cybercriminals are now using silicone thumbs to operate biometric POS devices and biometric ATMs to drain users' bank accounts.

**What is AePS?**

The Aadhaar-enabled Payment System (AePS) is a bank-led model which allows online financial transactions at Point-of-Sale (PoS) devices and micro ATMs of any bank using Aadhaar authentication. The model removes the need for OTPs, bank account and other financial details. It allows fund transfers using only the bank name, Aadhaar number, and fingerprint captured during Aadhaar enrolment, according to the National Payments Corporation of India (NPCI).

**Is AePs enabled by default?**

Neither the Unique Identification Authority of India (UIDAI) nor NPCI mentions clearly whether AePS is enabled by default. Cashless India, a website managed and run by the MeitY, says the service does not require any activation, with the only requirement being that the user's bank account should be linked with their Aadhaar number. Users who wish to receive any benefit or subsidy under schemes notified under section 7 of the Aadhaar Act, have to mandatorily submit their Aadhaar number to the banking service provider, according to the UIDAI.

**How is biometric information leaked?**

While Aadhaar data breaches have been reported in 2018, 2019, and 2022, the UIDAI has denied any breach of data. In response to media reports, the UIDAI said that the Aadhaar data, including biometric information, is fully safe and secure. However, UIDAI's database is not the only source from where data can be leaked. "Aadhaar numbers are readily available in the form of photocopies, and soft copies, and criminals are using Aadhaar-enabled payment systems to breach user information. Scammers have, in the past, made use of silicone to trick devices into initiating transactions," cybersecurity expert Rakshit Tandon, told The Hindu.

**How do you secure your Aadhaar biometric information?**

The UIDAI is proposing an amendment to the Aadhaar (Sharing of Information) Regulations, 2016, which will require entities in possession of an Aadhaar number to not share details unless the Aadhaar numbers have been redacted or blacked out through appropriate means, both in print and electronic form. The UIDAI has also implemented a new two-factor authentication mechanism that uses a machine-learning-based security system, combining finger minutiae and finger image capture to check the 'liveness' of a fingerprint. Additionally, users are also advised to ensure that they lock their Aadhaar information by visiting the UIDAI website or using the mobile app. This will ensure that their biometric information, even if compromised, cannot be used to initiate financial transactions. It can be unlocked when the need for biometric authentication arises, such as for property registration and passport renewals, after which it can again be locked.

**What can be done in case of a financial scam using Aadhaar?**

If users have not already locked their Aadhaar biometric information, they should do so immediately in case of any suspicious activity in their bank accounts. Users are also advised to inform their banks and the concerned authorities as soon as possible. Timely reporting can ensure that any money transferred using fraudulent means is returned to the victim. The RBI in a circular has stated that a customer's entitlement to zero liability arises where the unauthorised transaction occurs, and the customer notifies the bank within three working days of receiving a communication from the bank regarding such unauthorised transaction.

# SAFETY, IN LINE OF DUTY

*Doctors must be protected while they are working with patients*

Medical science is so advanced today, it has extended longevity and enhanced quality of life in ways thought impossible in the past, and yet, life must end in death. For those who lose someone dear to them, there is anger, disbelief and lack of acceptance, and this is sometimes unleashed on the hospital, doctors and nurses. This is why Kerala's move to amend the Kerala Healthcare Service Persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, to fortify defences against attacks on health-care institutions and workers is not only welcome but is also essential intervention. The death of a young house surgeon, Vandana Das, at the hands of an 'inebriated' patient during a routine medical examination in Kerala has not only shocked the community but has also revived fear among health-care workers about their own safety. Doctors have organised protests across the country, condemning this attack and urging authorities to ensure protection. While this particular incident might have been an outlier in terms of how it occurred, recent history in the country is replete with instances of co-ordinated assaults on health-care workers by irate patients or their attendees disappointed with health outcomes. The warriors in the hospitals, unlike those battling on enemy lines, do not sign up for assault in the line of duty. It is the duty of the state and the community to protect them and ensure they are shielded from assault and abuse, verbal and physical. The Kerala amendment is progressive in that it proposes to bring verbal abuse and violent acts causing simple and grievous hurt under the purview of the Act. Enhanced jail term (up to three years) and a hefty fine (up to ₹50,000) for those found guilty are also being prescribed. The government has proposed time-bound speedy disposal of such cases besides designating one court in each district as a special court to deal with these cases. Other States need to consider interventions on similar lines too. While the law itself needs to be potent, its implementation should also promote deterrence, driving home the government's commitment toward seriously handling assault on the health-care workforce. Since sagacity is unlikely to prevail in emergency and critical situations, it will be prudent to ensure that some measure of protection, security staff, for instance, is made available at private and public hospitals. It is unfortunate that a young doctor's life was snuffed out even as it had hardly begun, but it is very much in the hands of the States to ensure that no such sacrifices are demanded at the altar of patient care anymore.

# DELVING INTO THE VERDICT ON THE SHIV SENA ISSUE

*P.D.T. Achary is former Secretary General of the Lok Sabha*

The most interesting thing about the Supreme Court of India's judgment on the Shiv Sena issue is that both sides think that it is in their favour. The Chief Justice of India has apparently analysed the issues with clarity and reached conclusions with a great amount of ingenuity. However, it eludes ordinary citizens how each party can think that the statement of law contained in the judgment is in its favour. Therefore, it is necessary to analyse the judgment and find out what the top court of the land has actually said on the contentious issues brought up before it.

**Floor test was wrong in law**

The Maharashtra Governor's action in calling for a floor test has been very severely criticised by the Court, which characterised it as illegal. The judgment says, "In the present case the Governor did not have any objective material before him to indicate that the incumbent government had lost the confidence of the House and that he should call for a floor test. Hence, the exercise of discretion by the governor in this case was not in accordance with Law." The Court has said in so many words that the Governor is a constitutional authority and should not involve himself in any inner- or intra-party disputes. Well, it is logical for the Court to say that the resignation of Uddhav Thackeray as Chief Minister before the floor test has effectively prevented the Court from restoring his Chief Minister-ship and thus doing complete justice in this case. But there is no doubt that the Governor was wrong in law in calling for the floor test.

However, the Constitution Bench does not find anything wrong in the same Governor inviting Eknath Shinde to form an alternative government. It is of course the constitutional responsibility of a Governor to explore the possibility of an alternative government when the incumbent government falls. No one can fault the Governor for doing that exercise. But the action of the Governor in calling for a floor test which has been characterised as illegal by the Court, triggered the resignation of the Chief Minister. The fruit of this 'illegality' was the formation of an alternative government. It is rather naive to believe that the impact of that illegality evaporated the moment Uddhav Thackeray resigned. As it happened, the Governor had Mr. Shinde sworn in as Chief Minister, a member of the same Shiv Sena to which Mr. Thackeray belonged, with great alacrity.

As per the universally accepted convention, in all democratic countries, when a government falls, the constitutional head, Governor or President, enquires of the leader of the Opposition whether he could form a government. The Governor of Maharashtra did not ask the leader of the Opposition in the Assembly whether he was in a position to form a government. Instead, he chose another member of the Shiv Sena, whose government had just resigned, to form the government. This action of the Governor showed that he was a willing party to the ongoing inner-party conflict in the Shiv Sena.

The Court has in unambiguous terms stated that the Governors shall not enter the arena of inner- or intra-party conflicts. But that is what was

precisely happening. Therefore, when the Constitution Bench approves the Governor swearing in the Shinde government, it misses out on the continuing impact of the "illegal" act of the Governor in calling for the floor test. The Supreme Court seems to have ignored the immorality of the whole exercise. The judgment lost its moral timbre here.

Validity of whip

Now to the question of disqualification of MLAs who defied the whip; the basic issue is whose whip is valid. As it happened, both the groups issued whips to all the members of the Shiv Sena Party and each group has moved disqualification petitions against the other group. It has been rightly held by the Court that the decision on a disqualification petition should be taken in the first instance by the Speaker. So, the matter of disqualification has been referred back to the Speaker. In this context, the most basic question that should be raised is whose whip is valid. The Supreme Court has stated clearly in the judgment that it is the political party which can appoint the whip as well as the legislative party leader, and not the legislative party. However, the judgment has imported needless confusion by stating that when a split occurs in a party, two factions arise and no single faction is the party.

As a matter of fact, the Tenth Schedule contemplates an original political party and a faction which arose as a result of a split in the original party when paragraph 3 contained the split provision. After the split provision was omitted, the original political party changes only when a merger under paragraph 4 takes place. When the original political party merges with another party, either that party becomes the original political party or a new party formed after such merger. The point is that there is always an original political party, which is the point of reference for the purpose of deciding the question of disqualification.

The Tenth Schedule does not contemplate two rival factions at any time. The explanation to paragraph (2)(1) is very crucial in determining the question. It says, "An elected member of a House shall be deemed to belong to the Political Party, if any, by which he was setup as a candidate for election as such member." This explanation clarifies the party affiliation of a defecting member. According to this explanation, all members of the Shinde faction belong to the original political party, the Shiv Sena led by Uddhav Thackeray. It must be made clear that under the Tenth Schedule, Mr. Thackeray's party is not a faction; it is the original political party. Going by the judgment, it is this party which can issue a valid whip. So, all those members who defied Uddhav Thackeray's whip are liable to be disqualified. It is not clear why the judgment did not deal with the above explanation to paragraph (2)(1). So long as this paragraph is in operation, the Speaker does not have to look for other evidence to decide which party can issue a valid whip. It is the original political party which can issue the whip.

The purpose of the anti-defection law is to punish the defecting legislators and protect political parties from being destabilised. The purpose of paragraph 15 of the symbols order is to decide which faction in a political party is that party in the event of a split. The anti-defection law does not recognise any split. It disqualifies all the members who voluntarily give up the membership of the party or who defy the whip issued by the party. The Speaker is not called upon to decide which faction is the real party. The law settled that question through the paragraph (2)(1) (explanation).

The judgment lacks clarity where it says, "the effect of the deletion of Para 3 is that both factions cannot be considered to constitute the original political party". The Speaker needs to decide the question of defection on the basis of the above paragraph. The Election Commission of India (ECI) may follow its own criteria to decide which faction is the party. The Speaker has to decide which legislator has defected from the original political party on the basis of the Tenth Schedule. The ECI decides it on the basis of tests fashioned by it.

The judgment creates a certain amount of confusion by talking about factions and the need for the Speaker to decide which faction is the real party. The Supreme Court could have decisively stated that it is Uddhav Thackeray's party which is the original political party and that party alone could issue a valid whip. If it had said so, Mumbai would not have been in such a state of confusion as it finds itself in today.

# A COURT RECALL THAT IMPACTS THE RIGHTS OF THE ACCUSED

*Preeti Pratishruti Dash is an Assistant Professor of Law at the National Law School of India University where she teaches criminal law and procedure*

The Supreme Court of India's order on May 1, seeking to recall its own decision in Ritu Chhabaria vs Union of India upon the insistence of the Solicitor-General of India, Tushar Mehta, that central investigation agencies were 'facing difficulties', has caused concern among legal professionals. Besides the questionable legality of the Court 'recalling' its own decision, what is of concern too is how this order would impact the rights of the accused to be released from custody. On May 12, in its interim order, the Supreme Court clarified that courts could grant default bail independent of and without relying on the Ritu Chhabaria judgment. However, the Court's decision to suspend the rights of defendants in criminal cases would lead to further erosion of the constitutional rights of the accused and deviate from fundamental principles of criminal procedure.

**Right to default bail**

The right to statutory bail, often known as default bail, is available to accused persons in cases when the investigating agency fails to complete its investigation within the stipulated time. Under Section 167(2) of the Code of Criminal Procedure (CrPC), the maximum time available to investigators is 60 or 90 days, depending on the seriousness of the offence. If the authorities are unable to complete the investigation within this time period, the accused can seek to be released from custody by applying for default bail under the first proviso to Section 167(2) of the CrPC. Notably, the 'default' characteristic of this bail comes from the fact that the application is unrelated to the merits of the case, and is designed to prevent long-term detention of the accused.

The right to default bail has been characterised by the Court in multiple judgments as an indefeasible right, flowing from Article 21 of the Constitution which guarantees the right to life and personal liberty. Therefore, in cases where the investigating authorities attempted to circumvent this procedure, the Court rightly called out these tactics and refused to extend custodial detention of the accused. In Achpal vs State of Rajasthan (2018), the Court held that an investigation report, albeit complete, if filed by an unauthorised investigating officer, would not bar the accused from availing default bail. In S. Kasi vs State (2020), the Court further stated that even during the COVID-19 pandemic, the investigating agencies would not be allowed any relaxation towards computing the maximum stipulated period of investigation, which could lead to additional detention of the accused.

This interpretation draws from the history of Section 167 of the CrPC, which has its roots in a recommendation of the 41st Report of the Law Commission. Under the older version of the CrPC, accused persons could be detained for a maximum of 15 days. Noting the abuse of this provision by the police, who kept the accused under extended periods of custody by misusing other provisions pertaining to trial, the Law Commission recommended extending the period for which an accused could be detained in custody. This found its way into the CrPC through an amendment in 1978. To counter the powers granted to investigating authorities through extended detention, a provision for statutory bail was also introduced so as to ensure that the accused is not detained in custody for long periods of time.

**Here too, not a bar**

Unfortunately, these protections that were guaranteed to the accused were also whittled away in practice, as investigating authorities routinely filed incomplete or supplementary charge sheets within the 60/90 day period, to prevent the accused from seeking default bail. In other instances, the investigating authorities would file charge sheets, incomplete or otherwise, after the 60/90 day period, but before the default bail application could be filed by the accused. The Supreme Court's decision in Ritu Chhabaria delegitimised such illegal practices and held that incomplete charge sheets filed by the police would not bar an accused from applying for default bail. The Court emphasised that the preliminary or incomplete nature of these police reports revealed that the investigation was not complete.

Most importantly, in Ritu Chhabaria, the Court did not lay down any radically new proposition. Rather, it drew from prior judgments, such as Uday Mohanlal Acharya v. State of Maharashtra, which delineated the constitutional foundations of the right of an accused to avail statutory bail. Thus, Ritu Chhabaria did not create any additional hurdles in investigation. Rather, highlighting the indefeasible nature of the right to seek default bail, the Court in Ritu Chhabaria simply reiterated that incomplete charge sheets could not prohibit the accused from seeking to be released on default bail.

This is further seen in other judgments which have deviated from Ritu Chhabaria on questions of fact. For instance, in Jasbir Singh (2023), the Supreme Court held that a complete charge sheet filed within time could not be rejected because the investigation did not have sanction. Given these possibilities, it remains unclear as to why the Court would want to consider the possibility of recalling the judgment on legally tenuous grounds.

This decision is particularly alarming because the right to default bail,

which has been interpreted so far as flowing from the Indian Constitution, could possibly be made subservient to concerns of 'difficulties' faced by investigative authorities. What makes the matter even more serious is the Supreme Court also agreed to defer decisions on default bail for accused persons across the country which would have been decided as per Ritu Chhabaria. Given the serious implications of this judgment on the constitutional rights of the accused, it is imperative that the three-judge bench of the Supreme Court hearing this matter does not sacrifice procedural propriety at the altar of administrative convenience.

# ON SEXUAL HARASSMENT IN THE WORKPLACE

*How did the PoSH Act come into being? How does it define sexual harassment and the workplace? What does it require employers to do? What are the 'serious lapses' flagged by the Supreme Court? What have been the hurdles to the law's implementation?*

**EXPLAINER**

**The story so far:**

Ten years after the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH) came into force, the Supreme Court Bench of India has said there are "serious lapses" and "uncertainty" regarding its implementation.

**How was the PoSH Act formed?**

In 1992, Bhanwari Devi, a social worker with the Women's Development Project of the Rajasthan government was gang-raped by five men after she tried to prevent the marriage of a one-year-old girl. While hearing pleas filed by activist groups against the crime, the SC, noting the absence of any law "enacted to provide for effective enforcement of the basic human right of gender equality" guarantee against "sexual harassment at workplaces", laid down a set of guidelines in 1997, christened the Vishakha Guidelines, to fill the statutory vacuum till a law could be enacted. These were to be "strictly observed in all workplaces" and were binding and enforceable in law.

After this, the Protection of Women against Sexual Harassment at Workplace Bill was introduced by then Women and Child Development Minister, Krishna Tirath, in 2007. It was later tabled in Parliament and went through amendments. The amended Bill came into force on December 9, 2013, as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) or PoSh Act.

**What is the PoSh Act?**

The PoSH Act defines sexual harassment to include unwelcome acts such as physical contact and sexual advances, a demand or request for sexual favours, making sexually coloured remarks, showing pornography, and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature. Under the Act, an employee is defined not just in accordance with the company law. All women employees, whether employed regularly, temporarily, contractually, on an ad hoc or daily wage basis, as apprentices or interns or even employed without the knowledge of the principal employer, can seek redressal to sexual harassment in the workplace.

The law expands the definition of 'workplace' beyond traditional offices to include all kinds of organisations across sectors, even non-traditional workplaces. It applies to all public and private sector organisations throughout India.

**What are the requirements imposed on employers?**

The law requires any employer with more than 10 employees to form an Internal Complaints Committee (ICC) which can be approached by any woman employee to file a formal sexual harassment complaint. It has to be headed by a woman, have at least two women employees, another employee, and a third party such as an NGO worker with five years of experience, familiar with the challenges of sexual harassment. Besides, the Act mandates every district in the country to create a local committee to receive complaints from women working in firms with less than 10 employees and from the informal sector, including domestic workers, home-based workers, voluntary government social workers and so on. The employer has to file an annual audit report with the district officer about the number of sexual harassment complaints filed and actions taken at the end of the year.

**What are the hurdles to the Act's implementation?**

The Supreme Court in its recent judgment called out the lacunae in the constitution of ICCs, citing a newspaper report that 16 out of the 30 national sports federations in the country had not constituted an ICC to date. The judgment also flagged the improper constitution in cases where the ICCs were established — pointing out that they either had an inadequate number of members or lacked a mandatory external member. This, however, is not the only implementation-related concern when it comes to the PoSH Act. One of the concerns is that the Act does not satisfactorily address accountability, not specifying who is in charge of ensuring that workplaces comply with the Act, and who can be held responsible if its provisions are not followed. Stakeholders also point out how the law is largely inaccessible to women workers in the informal sector. Additionally, experts have noted that in workplaces sexual harassment cases are hugely underreported for a number of reasons. The framers of the law had recognised that complaints could be more effectively addressed within civil institutions (workplaces) so that women did not have to go through the daunting processes of the criminal justice system related to accessibility and timeliness. However, the inefficient functioning and the lack of clarity in the law about how to conduct such inquiries have ended up duplicating the access barriers associated with the justice system. Most importantly, the power dynamics of organisations and fear of professional repercussions also stand in the way of women for filing complaints.

**What are the SC's recent directions?**

The court directed the Union, States and UTs to undertake a time-bound exercise to verify whether Ministries, Departments, government organisations, authorities, public sector undertakings, institutions, bodies, etc. had constituted Internal Complaints Committees (ICCs), Local Committees (LCs) and Internal Committees (ICs) under the Act. These bodies have been ordered to publish the details of their respective committees in their websites.

# DEATH BY METHANOL

*There should be zero tolerance for sale of illicit liquor*

The death of 17 persons over the past few days, in two incidents in north Tamil Nadu, after consuming spurious liquor comes a month after the State government informed the Assembly that there has been no hooch tragedy for the last 14 years. As on Monday evening, 12 persons of Villupuram district and five of Chengalpattu district have died, while 50 people have been hospitalised. The development is surprising as Union Ministry of Home Affairs and National Crime Records Bureau data (2016-21) show that illicit or spurious liquor deaths have been largely contained. According to the central authorities, Tamil Nadu reported no deaths during 2016 to 2019; 20 in 2020 and six in 2021. Besides, the State has safeguards to prevent such tragedies. Since 2002, methanol, regarded as the main reason behind hooch tragedies, has been brought under the ambit of the Tamil Nadu Prohibition Act, 1937. Amendments have also been made to the Tamil Nadu Denatured Spirit, Methyl Alcohol and Varnish (French Polish) Rules, 1959, to maintain control over methanol supply. What is disturbing is that the two recent instances point to the apparent use of methanol.

While the government is expected to probe the causative factors, it is obvious that there are administrative lapses. The availability of cheaper brew than what is sold at retail outlets of the Tamil Nadu State Marketing Corporation Limited (Tasmac) is disconcerting. This could have been tackled had law-enforcing authorities, including the police, monitored the movement of methanol. It is no surprise that several police officials have been placed under suspension. Chief Minister M.K. Stalin, who visited the two districts on Monday, also announced a Crime Branch-CID probe. Apart from announcing a solatium of ₹10 lakh to every family of the deceased and ₹50,000 to each of those undergoing treatment, the Chief Minister has not provided any scope for debate whether the families concerned should get financial assistance. Perhaps, he has gone by the example set by Bihar Chief Minister Nitish Kumar, who announced last month, subsequent to the many deaths in East Champaran district, the payment of ₹4 lakh each to family members of those who had died in hooch incidents since 2016. Till then, Mr. Kumar had held the position against providing any compensation. Such a stand was in vogue once in Tamil Nadu, as administrators were of the view that financial assistance could encourage those on the wrong path. It is time States evolved a uniform and comprehensive policy to counter the problem of spurious or illicit liquor, apart from sending a strong message to the law-enforcement agencies that there would be zero tolerance to illicit liquor.


*Head Office:*
**Vedhik IAS Academy**
Mercy Estate,
MG Road, Ravipuram,
Ernakulam-682 015,

*Corporate office:*
**Vedhik IAS Academy**
Samkalp Bhawan, Plot No.15,
Sector 4, Rama Krishna Puram,
New Delhi,Delhi-110022

*Regional office*
**Vedhik IAS Academy**
202, Raheja Chambers, 12,
Museum Road. Bangalore -
560001. Karnataka, India.

*GCC Office:*
**Bobscoedu,**
Bobsco Trading & Contracting Co. W. L . L
Office 22, Dream Tower 1,
Road: 2701, Adliya, Kingdom of Bahrain
www.bobscoedu.com