

DAILY PT POINTERS

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The Hindu-Governance(GSII)/Money Laundering(GSIII) Page 1

SC limits ED's power to arrest PMLA accused

Bench upholds right to personal liberty, says those summoned by special courts need not seek bail under PMLA's draconian norms; ED can arrest such accused only with the consent of courts

The Hindu Bureau
NEW DELHI

The Supreme Court on Thursday gave a fillip to the right to personal liberty by holding that a person summoned by a designated special court under the Prevention of Money Laundering Act (PMLA), is presumed to be not in custody and need not apply for bail under the draconian conditions posed by the anti-money laundering law.

"If the accused appears before the special court pursuant to a summons, it cannot be treated that he is in custody. Therefore, it is not necessary for the accused to apply for bail," a Bench of Justices A.S. Oka and Ujjal Bhuyan held in a judgment.

The judgment limits the

Easing conditions

The major takeaways from the Supreme Court verdict on the Prevention of Money Laundering Act are:



- An accused is presumed to be not in custody if he appears in court on summons

- The court can direct the accused to furnish bonds in terms of Section 88 of the Code of Criminal Procedure

- The ED has to apply to a special court for custody, giving specific reasons

power of arrest by the Directorate of Enforcement (ED) after a special court takes cognisance of a case.

The Bench said the ED would have to separately apply for the custody of a person once he or she appears in court. The Central agency would have to show specific grounds that necessitated custodial interrogation, said Justice Oka,

who wrote the judgment.

However, the special court can direct the accused to furnish bonds in terms of Section 88 of the Code of Criminal Procedure. "A bond... is only an undertaking. An order accepting bond under Section 88 does not amount to grant of bail and hence the twin conditions of Section 45 of the PMLA are not ap-

plicable to it," Justice Oka clarified.

The judgment was based on an appeal filed by Tarsem Lal against the ED challenging a Punjab and Haryana High Court denying him anticipatory bail.

The twin conditions of bail under Section 45 of the PMLA pose stringent thresholds for an accused. For one, the person has to prove in court that he or she is *prima facie* innocent of the offence. Secondly, the accused should be able to convince the judge he would not commit any offence while on bail. The burden of proof is entirely on the incarcerated accused, who would be often handicapped to fight the might of the state.

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- the Supreme Court of India that the Enforcement Directorate cannot arrest an accused under Section 19 of the PMLA after the Special Court has taken cognizance of the complaint.
- After cognisance is taken of the offence, the ED and its officers are powerless to exercise powers under Section 19 of the Prevention of Money Laundering Act (PMLA), to arrest the person shown as accused in the complaint,
- if the ED wants custody of an accused, then it would have to apply to the special court.
- The bench further stated that if the ED wants to conduct an additional investigation concerning the same offence, it may arrest a person not shown as an accused in the complaint already filed, provided the requirements of Section 19 are fulfilled.

The Hindu-Polity and Governance(GSII)-Page 10

Can parties be de-recognised or de-registered?

Does the Election Commission have the power to de-recognise a political party for violation of the MCC?

Rangarajan. R

The story so far:

The Election Commission of India (ECI) in its report on enforcement of Model Code of Conduct (MCC) has stated that it expects star campaigners to lead by example and not vitiate the fabric of society. This has raised a debate about ECI powers to rein in MCC violations.

What are registered parties?

Section 29A of the Representation of the People Act, 1951 (RP Act) lays down the requirements for registration of a political party with the ECI. Any political party that seeks registration should submit a copy of its memorandum/constitution. Such document should declare that the party shall bear true faith and allegiance to the Constitution of India. It should also bear allegiance to the principles of socialism, secularism and democracy, and uphold the sovereignty, unity and integrity of India. Registered political

parties enjoy the following legal benefits - (a) tax exemption for donations received under Section 13A of the Income Tax Act, 1961, (b) common symbol for contesting general elections to the Lok Sabha/State Assemblies, and (c) twenty 'star campaigners' during election campaign. As per the ECI, there are 2,790 active registered political parties in India.

What are recognised parties?

A registered party is referred to as a Registered Unrecognised Political Party (RUPP). Political parties are recognised as a 'national' or 'State' party under the provisions of The Election Symbols (Reservation and Allotment) Order, 1968 (Symbols Order) by the ECI. The criteria for recognition at the 'national' or 'State' level consists of winning requisite number of seats and/or obtaining required percentage of votes in a general election to Lok Sabha or State Assembly. At present, there are six 'national' parties, and sixty-one 'State' parties that have been recognised. These recognised

parties enjoy additional concessions of having a reserved symbol during elections and forty 'star campaigners'.

What are the issues?

It has been noticed that less than a third of RUPPs contest elections. The RP Act does not confer explicit powers on the ECI to de-register any political party if it fails to contest elections, conduct inner-party elections or lodge requisite returns. The Supreme Court in *Indian National Congress versus Institute of Social Welfare & Ors* (2002) had held that the ECI does not have power to de-register any political party under the RP Act. It may de-register only under exceptional circumstances like registration being obtained by fraud or the political party ceasing to have allegiance to the Constitution or if it is declared unlawful by the Government. The RUPPs that don't contest elections raise concerns over the possible misuse of income tax exemption and donations collected being used for money laundering.

The MCC prohibits using caste and communal feelings to secure votes, and bribing or intimidation of voters. Recognised political parties are guilty of violating the MCC on various occasions. However, it has been observed that the ECI on such occasions at best bars leaders from campaigning for a short period of two to three days.

What needs to be done?

The ECI in its memorandum for electoral reforms (2016) has suggested amendment to the law that would empower the ECI to deregister a party. The Law Commission in its 255th report (2015) on 'Electoral reforms' has also recommended amendments for de-registration of a political party if it fails to contest elections for 10 consecutive years. These recommendations should be implemented. Under Paragraph 16A of the Symbols order, the ECI has the power to suspend or withdraw recognition of a recognised political party for its failure to observe MCC or follow lawful directions of the Commission. It has probably been used only once for three weeks in 2015 when the recognition of National People's Party was suspended for failure to follow the directions of the ECI. Strict action under this provision would have a salutary effect in ensuring adherence to the MCC.

Rangarajan R is a former IAS officer and author of 'Polity Simplified'. He trains civil-service aspirants at 'Officers IAS Academy'. Views expressed are personal.

THE GIST

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- Registered political parties enjoy the following legal benefits – (a) tax exemption for donations received under Section 13A of the Income Tax Act, 1961, (b) common symbol for contesting general elections to the Lok Sabha/State Assemblies, and (c) twenty 'star campaigners' during election campaign.
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HEADLINES OF THE DAY

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State cannot acquire property without proper procedure: SC

The right to private property is protected as a constitutional right and has even been interpreted to be a human right, says Bench of Justices P.S. Narasimha and Aravind Kumar in a judgment that clarified the duties of the govt. before takeover

Krishnakumar Rajasekhar
NEW DELHI

The Supreme Court on Thursday took a significant step to protect private property from arbitrary state takeover for a "public purpose", holding that compulsory acquisition without following mandatory procedures followed by a grant of compensation to the owners, will not make the acquisition constitutional.

The right to property is protected as a constitutional right and has even been interpreted to be a human right, a Bench of Justices P.S. Narasimha and Aravind Kumar declared in a judgment.

"It is generally assumed that for a valid acquisition, all that is necessary is to possess the power of eminent domain (power of the sovereign to acquire property of an individual for public use) without consent to acquire, followed by grant of reasonable and fair compensation... Compulsory acquisition will still be unconstitutional if

Law of the land

The SC says there are seven procedural rights of citizens which constitute the 'real content of the right to property under Article 300A'

established and followed before depriving a person of his/her right to property," Justice Narasimha, who authored the verdict, observed.

The judgment, upheld a Calcutta High Court order rejecting an appeal filed by the Kolkata Municipal Corporation defending its acquisition of private land.

The court ordered the corporation to pay ₹ 1 lakh as costs within 60 days. The judgment noted that though the 44th Con-

stitutional Amendment inserted the right to property as a fundamental right, Article 300A, which was simultaneously inserted into the Constitution, provided that "no person shall be deprived of his property, save by authority of law".

A person's rights, even the history of liberty, have been safeguarded through the acquisition and other procedures and processes of law. Procedure is an integral part of the "authority of law" in Article 300A. The phrase "authority of law" is

understood as merely the power of eminent domain vested in the state. The requirement of a "law" in Article 300A does not end with the mere presence of legislation which empowers the state to deprive a person of his property, Justice Narasimha clarified.

Procedural rights
The court listed seven basic procedural rights of private citizens which constitute the "real content of the right to property under Article 300A" that the state

1. The right to notice or the duty of the state to inform a person that it intends to acquire his or her property.
2. The right of the citizen to be heard or the duty of the state to hear the objections to the acquisition.
3. The right of the citizen to a reasoned decision or the duty of the state to inform the person of its decision to acquire a property.
4. The duty of the state to demonstrate that the acquisition is exclusively for public purpose.
5. The right of the citizen to fair compensation.
6. The duty of the state to conduct the process of acquisition efficiently and within prescribed timelines.
7. The right of conclusion of the proceedings.

depriving them of their private property. They include the right to notice or the duty of the state to inform the person that it intends to acquire a property; the right of the citizen to be heard or the duty of the state to hear the objections to the acquisition; the right of the citizen to a reasoned decision or the duty of the state to inform the person of its decision to acquire property; the duty of the state to demonstrate that the acquisition is exclusively for public purpose; the right to fair compensation of the citizen; the duty of the state to conduct the process of acquisition efficiently and within prescribed timelines; and finally, the conclusion of the proceedings leading to vesting of the right of conclusion.

"The examination of an acquisition process is not in the payment of compensation to the citizen, but over the actual physical possession of the land. If possession is not taken, acquisition is not complete," Justice Narasimha said.

Law of the land

The SC says there are seven procedural rights of citizens which constitute the 'real content of the right to property under Article 300A'



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7. The right of conclusion of the proceedings

- The Supreme Court took a significant step to protect private property from arbitrary state takeover for a “public purpose”, holding that compulsory acquisition without following mandatory procedures followed by a grant of compensation to the owners will not make the accession constitutional.
- The right to property is protected as a constitutional right and has even been interpreted to be a human right
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Do no harm: conservative, non-surgical approaches advised over hysterectomy

- Hysterectomy is surgery to remove a woman's womb (uterus). The uterus is a hollow muscular organ that nourishes the developing baby during pregnancy.
- Hysterectomies are carried out to treat health problems that affect the female reproductive system.
- These include:
- heavy periods
 - long-term pelvic pain
 - non-cancerous tumours (fibroids)
 - ovarian cancer, womb cancer, cervical cancer or cancer of the fallopian tubes
- Hysterectomy comes with ramifications. This includes early menopause, risk of cardiovascular disease, urinary incontinence, obesity, endocrine and metabolic complications, and loss of sexual desire. Estrogenic decline also impacts bone density loss, vasomotor symptoms, frailty, depression, and a decline in cognitive function.

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Kerala sounds warning on West Nile Virus; neighbouring States on guard

C. Maya

Kerala's annual battle with vector-borne diseases has begun early this year, even before the South West monsoon, with West Nile Fever (WNV) being reported from several districts.

The first official alert was sounded by the Health department on May 7 and according to the HISP report till date, the State has reported 20 suspected cases (only 10 cases confirmed so far) and two deaths are also suspected. Given that Kerala has been endemic for the WN virus for at least two decades and that 80% of cases are asymptomatic, for every officially reported case, there could be several unreported and asymptomatic cases in the community.

In symptomatic cases, patients usually have fever, headache, fatigue, myalgia, nausea and vomiting, and sometimes, swollen lymph glands. As clinical symptoms of most mosquito-borne viral diseases are similar, the possibility of WN

when the patient exhibits symptoms of neuroinvasive diseases like encephalitis or meningitis, collectively known as Acute Encephalitis Syndrome (AES). Thus, because of the diagnostic difficulties in identifying WNV in its acute phase, only a few cases get recorded in the State's official surveillance mechanisms.

Diagnostic difficulties

Only 1 in 150 cases affected by the WN virus gets a severe disease, and even fewer get encephalitis. WHO states that while serious illness can occur in people of any age, people over the age of 50 and some immunocompromised persons, like transplant patients, are at the highest risk of falling severely ill when infected with WNV.

Kerala's Director of Health Services, K. J. Reena, said that WNV has been in the official surveillance records of Kerala every year since 2011 and that cases are being reported from almost all districts now. Districts that have reported



Pravashanth M

R1

cephalitis syndrome (AES) outbreak in Kerala occurred in the Kuttanad region between January and February 1996, causing 105 cases and 31 deaths.

Exceptional features

Although the Japanese Encephalitis virus was reported to be an aetiological agent associated with the outbreak, there were some exceptional features noticed during the outbreak. The seasonality of the outbreak was different from the one known for JE in Kerala, and most patients were from adult age groups, whereas JE occurs mainly in children.

Another outbreak occurred in 1997, causing 121 cases and 19 deaths. The role of WNV in AES cases was not ruled out, Dr. Anukumar says.

the northern districts of Thrissur, Malappuram, Kozhikode, and Palakkad.

The principal vectors of the disease are mosquitoes of the genus Culex, generally found breeding in stagnant, large water bodies

culation is maintained in mosquito populations through vertical transmission (adults to eggs).

In a study, published in the *Indian Journal of Medical Research* in 2017, B. Anukumar et al. say that

ic. However, NIV (National Institute of Virology, Pune) provided conclusive evidence about the major presence of the WN virus in the region in 2011 during an AES outbreak when 208 cases were reported.

Public health experts say that the fact that the northern districts too have begun reporting the presence of the WN virus frequently could be either due to improved diagnostic facilities or the fact that the WN virus itself has been spreading. Most cases of AES are still reported by the health system as AES/JE or JE-WN complex because only the plaque reduction neutralisation test (usually done only in NIV) can isolate the WN virus antibodies. The WN virus is maintained in nature in a mosquito-bird-mosquito transmission cycle. More than 250 species of birds are reservoir hosts of WNV. "In Kerala, the presence of large stagnant water bodies and migratory birds provides an ideal ecosystem for the WN virus to thrive. In the era of climate

borne diseases are emerging as major public health problems, it is important that the State establishes efficient surveillance systems on the One Health platform to identify new pockets where WN and similar arboviruses may emerge," points out T.S. Anish, a public health expert and Associate Professor of Community Medicine, Government Medical College, Manjeri.

Avian reservoir

"Members of the crow family are said to be particularly susceptible. All our information on the WN virus is based on Western literature. Have there been any studies to identify if our common crow could be spreading any viruses?" Dr. Anish wonders.

Kerala's health department, while issuing a public alert on WN fever and asking people to take protective measures to prevent

mosquito bites, perceives WN virus to be a lesser villain because of the low mortality profile of the disease, when compared to JE or dengue. WNV rarely turns fatal.

The health department also contends that unlike dengue fever, which is spread rapidly and efficiently by Aedes mosquitoes, the WN virus does not cause huge outbreaks. Viremia due to WN virus is transient in humans, and hence Culex mosquitoes cannot transmit the virus efficiently to more people.

Neurological sequelae left behind by the virus is not something that can be discounted however. Neurological sequelae reported by doctors post WN infection include cognitive dysfunction, memory loss, seizure episodes and motor deficits.

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For feedback and suggestions

for 'Science', please write to science@thehindu.co.in with the subject 'Daily page'

- West Nile Virus (WNV) can cause neurological disease and death in people. WNV is commonly found in Africa, Europe, the Middle East, North America and West Asia. WNV is maintained in nature in a cycle involving transmission between birds and mosquitoes. Humans, horses and other mammals can be infected.
- West Nile Virus (WNV) is a member of the *flavivirus* genus and belongs to the Japanese encephalitis antigenic complex of the family *Flaviviridae*.
- **Outbreaks**
- West Nile Virus (WNV) was first isolated in a woman in the West Nile district of Uganda in 1937.

HEADLINES OF THE DAY

The Hindu : GS 2/3:IR/ Defense

China shows off 'dogs of war' as it begins military drills with Cambodia

Agence France-Presse
KAMPONG CHHNANG

China's military showed off its machine gun equipped robot battle "dogs" on Thursday at the start of its biggest ever drills with Cambodian forces, as the United States frets about Beijing's growing influence in the Southeast Asian country.

Cambodia has long been a staunch ally of China, receiving billions of dollars in investments, and Washington is growing increasingly concerned Beijing will use a Cambodian naval base it is upgrading on Gulf of Thailand to expand its influence in the region.

More than 2,000 troops, including 760 Chinese military personnel, are taking part in the drills

at a remote training centre in central Kampong Chhnang province and at sea off Preah Sihanouk province.

The 15-day exercise, dubbed Golden Dragon, also involves 14 warships – three from China – two helicopters and 69 armoured vehicles and tanks, and includes live-fire, anti-terrorism and humanitarian rescue drills.

The hardware on show included the so-called "robot dogs" – remote-controlled four-legged robots with automatic rifles mounted on their backs.

Handlers kept the dogs of war on the leash, demonstrating only their walking capabilities to watching presspersons and top brass – not their shooting skills.



Chinese and Cambodian Armies during a drill in Kampong Chhnang, Cambodia on Thursday. AP

Opening the exercises, Cambodian armed forces commander-in-chief Vong Pisen said they would "enhance the capabilities" of the two armies in the fight against terrorism, while insisting that Cambodia would never allow a fo-

reign military base on its territory, echoing previous assertions by Cambodian leaders.

After Cambodia dismantled facilities at Ream naval base near the Cambodian port city of Sihanoukville, built partly with American

Washington says Ream could give Beijing a key strategic position on Gulf of Thailand near the disputed South China Sea, which China largely claims.

Last year, Cambodian officials denied that a new 363-metre pier at Ream was intended to berth aircraft carriers.

Earlier this week, Cambodian army spokesperson Thong Solimo told presspersons that the 2024 exercises were biggest ever of their kind and China would cover the cost.

The first Golden Dragon drills were held in 2016, and in early 2017 Cambodia scrapped a similar joint exercise – *Angkor Sentinel* – which had been held for the preceding seven years with U.S. forces.

Two Chinese warships docked at Ream in December for the first time after work began to expand the base.

Cambodia's Defence Ministry last week confirmed that the two Chinese warships anchored at Ream were "to help train Cambodian naval personnel and to prepare for the Golden Dragon exercises".

A spokesperson said the Chinese vessels were testing the "Ream Naval Base that China is constructing for Cambodia", and denied Chinese troops would be stationed at the base.

A third Chinese warship docked in Sihanoukville on Monday with troops and materials for the exercises, according to the Cambodian army.

The drills follow a three-day visit by China's top diplomat Wang Yi to Cambodia in April to deepen ties between the two countries.

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Draft Digital Competition Bill, and why Big Tech opposes it

SOUMYARENDRA BARIK
NEW DELHI, MAY 16

THE LAST date for public comments on the draft Digital Competition Bill, 2024 passed on Wednesday.

Taking a leaf out of the European regulatory handbook, the Bill contains provisions which could stop tech giants from self-preferencing their own services and using data gathered from one company to benefit another group company. It also sets presumptive norms to curb anti-competitive practices before they actually take place, with heavy penalties — to the tune of billions of dollars — for violations.

Key provisions

Predictive regulation

Currently, India follows an *ex post facto* antitrust framework, regulating for market abuse after it takes place, under the Competition Act, 2002. One of the biggest criticisms of this has been that regulating after the incidence of market abuse is simply too delayed — by the time the offending company has been penalised, market dynamics change to the detriment of smaller

competitors. The draft Bill contains provisions to change this with an *ex ante* framework instead, which foresees potential harms that can arise out of antitrust issues and prescribes pre-determined no-go areas. Due to the complex world of digital markets, which are ever-growing with increasing interlinkages between various offerings made by a single company, a forward-looking, preventive, and presumptive law is crucial to curb anti-competitive practices in the space.

Significant entities

The Bill proposes that for certain "core digital services" like search engines and social media sites, the Competition Commission of India (CCI) should designate companies as "Systematically Significant Digital Enterprise (SSDE)" depending on various quantitative and qualitative parameters. These include:

- If in the last three financial years, its turnover in India is not less than Rs 4,000 crore; or its global turnover is not less than \$30 billion; or,
- Its gross merchandise value in India is not less than Rs 16,000 crore; or,
- Its global market capitalisation is not less than \$75 billion; or,
- The core digital service provided by these companies should also have at least 1

core end users, or 10,000 business users.

The CCI also has discretionary powers to designate entities not falling under these parameters as SSDEs, if it believes that they have a significant presence in any given core digital service. SSDEs will be prohibited from engaging in practices such as self-preferencing, anti-steering, and restricting third party applications. If they violate these requirements, they can be fined up to 10% of their global turnover.

Associate Digital Enterprises

Understanding the role that data collected by one company of a major technology group can play in benefiting other group companies, the Bill proposes to designate associate digital enterprises (ADEs). ADEs would have the same obligations as SSDEs, depending on the level of their involvement with the core digital service offered by the main company. For instance, Google Maps or YouTube can be, in theory, designated as ADEs of Google Search depending on the level of data-sharing between these entities and Google Search.

Criticism from Big Tech

Naturally, there has been significant re-

sistance to this Bill in its current form, from big tech companies, industry bodies funded by tech companies, and boutique consultancies hoping to onboard tech clients.

For Big Tech, an *ex ante* framework with strict prescriptive norms could lead to a significant compliance burden, and shift focus from innovation and research to ensuring that companies do not presumptively engage in any anti-competitive practice. As a result, the tech giants are calling for the current competition law to be strengthened rather than moving towards an *ex ante* framework.

An industry executive told *The Indian Express* that because of the stringent requirements of the European Union's Digital Markets Act, which came into force fully earlier this year, there has been an increase of 4,000% in the time it takes to find things via Google search. India's new regulatory framework can lead to similar outcomes, tech executives fear.

Moreover, if the law were to go into effect as is, a company like Apple would have to allow iPhone users to download apps from a third-party app store, over Apple's own store — something that the company has lobbied

against vehemently. While Android has a relatively open nature 'sideloading' of apps, Google too has advocated against this, primarily citing potential security ramifications of allowing third party downloads.

Companies are also understood to be concerned about the broad definition — both quantitative and qualitative — of who an SSDE could be. Unlike the EU's DMA which specifically names the 'gatekeeper' entities, in India's case, CCI's discretion will prevail, something that companies believe could lead to arbitrary decision making that could also potentially impact start-ups. Big Tech companies are claiming that cutting down on data-sharing could also impact smaller businesses who rely on their platforms to reach a big target audience.

Need for digital competition

The law comes on the back of Big Tech's long history of anti-competitive offences. Only last year, Google was fined Rs 1,337 crore by the CCI for its anti-competitive conduct in the Android ecosystem. Moreover, in the last decade or so, most tech-related innovation has come from within the stables of a handful of American Big Tech giants like Google, Apple, Amazon, and Meta.

Officials believe that this is due to the high market barriers for new entrants in the sector. In the online space, once a company corners a significant portion of the market, their product becomes the default way to access that particular service, with rivals finding it increasingly difficult to challenge their dominance.

Take, for instance WhatsApp, which is owned by Meta. Facebook's parent company in India, it has a market share of more than 97% among messaging app users — it is pretty much the default messaging app everyone is expected to use. While there is always space for niche online products — users who care about their privacy may choose Signal over WhatsApp, and a search engine like DuckDuckGo over Google Search — they do not become the norm.

While smaller companies did benefit from the cheap advertising that Google and Facebook provided them when compared to traditional media, this has also fuelled a surveillance-based digital advertising industry which is always making inferences about users behind the scenes and across platforms they access. Government officials believe all these cons will be better addressed via the *ex ante* framework proposed by the draft Bill.

- India has proposed a new digital competition law that could stop tech giants like Google, Facebook, and Amazon from self-preferencing their own services, or using data gathered from one company to benefit another group company.
- The draft law, called the Digital Competition Bill, 2024, also has provisions to set presumptive norms to curb anti-competitive practices before they actually take place, and promises to impose heavy penalties — which could amount to billions of dollars — for violations

HEADLINES OF THE DAY

Air-IR(GSII)

3rd Session Of India-Zimbabwe Joint Trade Committee Held In New Delhi



- **3rd Session Of India-Zimbabwe Joint Trade Committee Held In New Delhi**

India and Zimbabwe have agreed to explore cooperation in digital transformation solutions, tele-medicines, rough diamonds, fast payment systems and traditional medicine

Zimbabwe is a beautiful country in Southern Africa that is known for its dramatic landscapes, its diverse wildlife and its hard working people.

- It is situated in Central Southern Africa, between the Limpopo and the Zambezi rivers.
- It is landlocked, bounded by Zambia, Mozambique, South Africa, Namibia and Botswana.

