23rd Indo-US Economic Summit

Two Democracies – One Shared Future

Celebrating America 250 & Advancing Viksit Bharat through the India-US Strategic Economic Partnership

Thursday, 19 November 2026, New Delhi

Knowledge Report

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INDO-AMERICAN CHAMBER OF COMMERCE

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FOREWORD



Dear Friends,

Kochhar & Co. is delighted to be the Knowledge Partner for the 23rd Indo-US Economic Summit, organised by the Indo-American Chamber of Commerce (IACC).

This year's theme **"Two Democracies – One Shared Future",** aptly captures the essence of the India–US relationship. It is a partnership grounded in shared democratic values and a common faith in the rule of law, and one that grows stronger each year through trade, investment, technology, services and the exchange of people and ideas. The timing is especially fitting, as the United States celebrates America 250 and India advances its vision of Viksit Bharat.

I am pleased that this year's summit will explore areas that matter deeply to our two nations, from investment and industrial growth to AI, life-sciences & healthcare, education, infrastructure and energy. These are among the strategic areas that will shape the next chapter of our partnership, and I look forward to the dialogue they will inspire.

The strength of the India-US partnership lies in how closely the needs of one economy match the capabilities of the other. American capital and technology find in India a large market, a deep pool of talent and a growing manufacturing base. Indian enterprises, in turn, are expanding into the American market encouraged by the United States' commitment to facilitating foreign investment through dedicated channels that support international businesses there. This economic complementarity extends well beyond trade and investment to AI, life-sciences, and education, where shared research and training are building lasting institutional ties.

Kochhar & Co. has had the privilege of advising numerous multinational companies, including several Global Fortune 500 corporations, in relation to their operations in India, many of which are headquartered in the United States. In our experience, US investors attach great importance to a regulatory framework that is stable, transparent and predictable. India has made commendable progress in this regard in recent years, and it is our earnest hope that the reform process will continue, particularly in the areas of taxation, exchange control and company law, to facilitate ease of doing business for all stakeholders.

This summit brings together leaders from government, industry, services, academia and civil society to deliberate candidly how Indo–US relationship can attain greater heights. Convening a forum of such breadth requires vision and meticulous effort, and I commend the IACC, its Summit Chair, Dr Lalit Bhasin, its National President, Mr. Prashant Krishnan, and its Regional President, Mr. Manoj K. Singh, for making it possible.

On behalf of Kochhar & Co., I must say we are honoured to serve as Knowledge Partner to this distinguished gathering.

Warm regards,

Rohit Kochhar
Founder, Chairman and Managing Partner
Kochhar & Co.

WELCOME NOTE



Dear Participants,

Greetings from the Indo-American Chamber of Commerce (IACC)!

It gives me great pleasure to acknowledge and express my sincere appreciation to **Kochhar & Co., our Knowledge Partner,** for their valuable contribution to the 23rd Indo-US Economic Summit, themed "Two Democracies – One Shared Future: Celebrating America 250 & Advancing Viksit Bharat through the India–US Strategic Economic Partnership," being held on 19th November 2026 at The Leela Palace, Chanakyapuri, New Delhi.

I am confident that this knowledge report will serve as a valuable resource for all participants, offering meaningful insights, sector-specific perspectives and a deeper understanding of the opportunities and emerging trends shaping the India–US economic partnership.

Initiatives such as these enrich the deliberations of the Summit and contribute towards informed dialogue, knowledge sharing and stronger business engagement between the two countries.

We look forward to continuing such meaningful collaborations and bringing forth more knowledge-driven initiatives for the benefit of our members and stakeholders.

With best regards,

Dr. Lalit Bhasin
Summit Chair



Introduction

Kochhar & Co. is one of India's leading corporate law firms. The firm is the only Indian law firm with a true pan-Indian presence, operating full-service offices in six major Indian cities: **New Delhi, Gurugram, Mumbai, Bengaluru, Chennai and Hyderabad,** as well as three international offices in **Chicago (USA), Toronto (Canada) and Dubai (UAE).**

We are the first Indian law firm to have conceived a formal client satisfaction programme and are regarded as pioneers in this field. The firm takes pride in providing high-quality, responsive, solution-oriented and business-focused legal support, upholding the global standards of professional excellence in every client engagement.

Kochhar & Co. is the preferred Indian law firm for multinational companies doing business in India and represents over 75 companies on the Fortune Global 500 list. The firm also serves as trusted counsel to prominent Indian corporations and major public sector undertakings.

Kochhar & Co.'s commitment to internationalism also draws from its foundational alliances with leading global law firm networks spread accross 250 jurisdictions, defining its ability to provide seamless cross-border advice across all practice areas.

Our UAE Presence

Kochhar & Co. is the first and the only law firm from the Indian subcontinent (and, in fact, from the continent of Asia) to have been granted a licence by the Dubai Legal Affairs Department to practise local UAE and DIFC laws.

Kochhar & Co. Inc. Dubai is a full-service office comprising partners and lawyers with several decades of rich and diverse experience in UAE, English and Indian law matters. It specialises in providing a wide range of legal services in the areas of corporate and commercial law, banking and project finance, dispute resolution and intellectual property rights (IPR).

Within a short span of time, Kochhar Dubai has established itself as one of the preferred legal counsel for numerous banks and financing corporations, as well as multinational and Indian companies doing business not only in the UAE but throughout the GCC region.

Our Practice Areas

- Agrochemicals, Seeds & Fertilisers
- Anti-Corruption & White Collar Crime
- Anti-Trust & Competition Law
- Arbitration
- Aviation
- Banking & Finance
- Capital Markets & Securities Laws
- Corporate & Commercial
- Corporate Governance
- Defense & Aerospace
- E-Commerce
- Environment
- Fintech
- Immigration
- Insolvency & Bankruptcy
- Intellectual Property Rights (IPR)
- International Trade Laws & WTO
- Labour & Employment
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- Litigation
- Mergers & Acquisitions
- Outsourcing Arrangements
- Private Equity & Venture Capital
- Project, Energy & Infrastructure

- Real Estate & Construction
- Sports & Entertainment
- Start-up Practice
- Taxation (Direct & Indirect)
- Technology, Media & Telecom (TMT)
- White Collar Crime
- Workplace Discrimination and Prevention of Sexual Harassment (PoSH)

Awards & Recognition

Over the past three decades, the firm has been recognised and felicitated with numerous awards, including the National Bar Award, the International Council of Jurists Award conferred by the Indian Prime Minister, and the Rashtriya Gaurav Award (National Pride Award).

The firm has been ranked as a top-tier, market-leading firm in the areas of aviation and defence, corporate and M&A, dispute resolution, labour and employment, intellectual property, international trade, projects, energy and infrastructure laws, real estate, technology law, data privacy, and white-collar crime by leading publications, including The Legal 500, Chambers and Partners, Benchmark Litigation, Fortune India and India Business Law Journal (IBLJ).

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DISCLAIMER

Disclaimer

The information in these articles is, to the best of our knowledge and belief, accurate as at the date of writing. The articles are for general information only, do not constitute legal advice and may not reflect subsequent developments. Readers should seek legal advice relevant to their specific matter before acting on the information.

US-INDIA TRADE AGREEMENT: ALMOST THERE

India and the US have been negotiating a Trade Agreement for more than 20 months. During this period, many Indian exports faced additional tariffs of up to 50% before the US Supreme Court held that the International Emergency Economic Powers Act (IEEPA) did not authorise the imposition of such tariffs. Despite this, the bilateral trade in goods and services has continued to grow, reaching approximately USD 240 billion in 2025, making the conclusion of a trade agreement increasingly important for both countries.

The negotiations have, however, been affected by a series of developments that have changed the negotiating positions of both countries.

In April 2025, the US imposed reciprocal tariffs on India under IEEPA. The rate was later increased to 25%, and a further 25% tariff was imposed in August 2025 in connection with India's imports of Russian crude oil.

On 6 February 2026, a framework for an Interim Agreement on reciprocal and mutually beneficial trade was announced as a step towards the US–India Bilateral Trade Agreement (BTA). Under this framework, India agreed to reduce or eliminate tariffs on certain US industrial and agricultural products, address non-tariff barriers, and provide greater market access to American businesses. India also expressed its intention to purchase USD 500 billion worth of US products over a period of five years. No consensus was, however, reached on sensitive agricultural products, including dairy, poultry, wheat, and rice.

In return, the US proposed a reduction in reciprocal tariffs on Indian exports to 18% as well as preferential treatment for certain products. The proposed arrangement appeared unbalanced, with India perhaps agreeing to substantial concessions to get relief from the high tariffs imposed on its exports.

Barely two weeks after the announcement of the Interim Agreement framework, the US Supreme Court held on 20 February 2026 that IEEPA did not authorise the imposition of tariffs. The ruling changed India's negotiating position because the high IEEPA-based tariffs from which India had sought relief were no longer authorised. India appeared to have made significant concessions to overcome tariffs, which had now been held to be invalid by the Court.

The midterm elections held on 3 November 2026 brought further uncertainty to the negotiations, with the Democrats securing control of both Houses of Congress. This changed the balance of power between the Congress and the executive, making greater Congressional scrutiny of trade policies likely. The Democrats may be less inclined to support sweeping tariff increases, particularly given their inflationary impact on US consumers, although protecting domestic industries and promoting job creation would remain priorities. Greater Congressional scrutiny could therefore make such tariff increases less likely.

The US Administration continues to have the power to impose tariffs under other laws, such as Section 301 of the Trade Act of 1974 and Section 232 of the Trade Expansion Act of 1962. Any attempt by Congress to restrict trade measures under these laws could also face a Presidential veto.

The uncertainty arising from these powers is also relevant for India, given the two Section 301 investigations initiated against it, one of which has concluded while the other remains ongoing. The possibility of additional tariffs arising from these investigations has further complicated the trade negotiations.

Section 301 empowers the US Trade Representative to impose additional tariffs or take other measures where it finds that the rights of the US under a trade agreement are being denied, or that an act, policy or practice of a foreign country violates or denies benefits under a trade agreement or is unjustifiable and burdens or restricts US commerce.

In the ongoing investigation it is alleged that India has structural excess capacity and excess production, in sectors such as petrochemicals, textiles, healthcare products, construction goods, automotive goods and steel. In the solar module sector alone, manufacturing capacity is claimed to be nearly three times the annual domestic demand. The investigation may result in additional tariffs or restrictions on Indian exports.

The other Section 301 investigation, concerning use of forced labour for production of export goods, covering 60 countries including India, has concluded. In its final measures, the US Trade Representative directed the imposition of an additional tariff of 10% on imports from India, subject to certain exceptions.

The ongoing Section 301 investigation has created further uncertainty over the final tariffs which may apply to Indian exports. Without clarity on these tariffs, it is difficult for India to assess the extent of concessions it should offer in the negotiations. This may explain why India appears to be waiting for the outcome of the investigation, before finalising the trade agreement.

While India may be waiting for greater clarity on tariffs, further delays could adversely affect US trade interests. India has been actively diversifying its export markets through trade agreements with major economies and trading blocs, including the UAE, Australia, the UK, and the European Free Trade Association, thereby reducing its dependence on the US market. These agreements not only provide India with opportunities to diversify its exports but also give businesses from partner countries preferential access to the Indian market, which could place American businesses at a disadvantage.

Both countries have much to gain from concluding the Trade Agreement at the earliest. US businesses can look forward to greater access to the Indian market,

with opportunities in sectors such as energy, aviation, technology, medical devices, and agriculture. Indian businesses, in turn could benefit from the China-plus-one strategy, particularly in electronics, engineering exports and pharmaceuticals, apart from IT and other services, including professional mobility.

India may, however, be cautious about making substantial concessions when the possibility of fresh tariffs under other US laws remains. What is needed is an agreement that strikes a fair balance between the interests of both countries and provides greater stability in their trade relationship. After more than 20 months of negotiations, the challenge is to bridge the remaining differences and bring the agreement to a conclusion.

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REVISING IT TO GETTING THE DEAL RIGHT: KEY CONSIDERATIONS FOR US AND MULTINATIONAL INVESTMENTS IN INDIA

Cross-border investments into India have evolved significantly, with US-based corporations, other multinational companies and global private equity firms increasingly viewing India as a strategic destination for acquisitions, technology capabilities and long-term growth. Transactions such as Walmart's acquisition of a majority stake in Flipkart[1] and Goldman Sachs Alternatives' acquisition of a majority stake in PeopleStrong Technologies[2] reflect the growing interest of international investors in Indian businesses. This trend is supported by India's expanding digital economy, evolving regulatory framework and growing integration with global supply chains.

For US and other multinational investors, entering the Indian market involves more than negotiating valuation and commercial terms. Differences in regulatory frameworks, corporate structures, business practices and enforcement mechanisms make transaction structuring and contractual risk allocation particularly important. While international investors often seek comprehensive due diligence and detailed contractual protections, Indian sellers typically seek to limit post-closing exposure through negotiated liability caps, disclosure qualifications and defined indemnity periods.

In transaction documents, negotiations often centre on the scope of representations and warranties, indemnification obligations, conditions precedent, and liability limitations. Buyers generally seek comprehensive warranties supported by specific indemnities for identified risks, while sellers seek to restrict liability through de minimis thresholds, baskets, aggregate caps and survival periods. Where multiple sellers are involved, buyers may also seek joint and several liability for fundamental warranties, while sellers may prefer liability proportionate to their respective shareholdings or sale proceeds. The final allocation of risk depends on the transaction structure, bargaining position of the parties and nature of the identified risks.

Leadership Continuity

In acquisitions of technology-driven businesses, the target's value often lies not only in its assets or intellectual property but also in the expertise, relationships, and institutional knowledge of its existing management team. For US and other multinational investors acquiring Indian businesses, retaining key personnel can therefore be as important as securing ownership and control of the company.

Walmart's acquisition of approximately 77% of Flipkart in 2018 illustrates this approach. Despite acquiring a controlling stake, Walmart retained Flipkart's existing management team to lead the business, while introducing its own representatives to the board alongside existing investors and independent directors. The arrangement reflected the importance of preserving the target's existing operational capabilities while introducing the acquirer's strategic and financial resources. Walmart's investment also included approximately USD 2 billion in new equity funding to support the business's growth.[3]

The transaction demonstrates that a change in ownership does not necessarily require an immediate change in operational leadership. For multinational investors, retaining existing management can help preserve institutional knowledge, customer relationships and operational stability during post-acquisition integration. Buyers may accordingly negotiate management retention arrangements, performance-linked incentives, earn-outs, rollover equity and appropriate restrictive covenants to preserve business continuity and align management interests with long-term value creation.

Integration and Governance

Integration and governance planning should begin at the negotiation stage rather than being deferred until completion. US and other multinational investors, particularly those acquiring controlling or significant minority stakes, seek clearly defined governance rights to ensure adequate oversight of the Indian business while preserving operational efficiency.

Negotiations commonly address board nomination rights, information rights, reserved matters, affirmative voting rights and restrictions on share transfers. Shareholders' agreements may also provide for exit mechanisms such as tag-along and drag-along rights, as well as put and call options, subject to applicable Indian company laws and foreign exchange laws.

Investors must also consider interim operating covenants, restrictions on material business decisions between signing and closing, and clearly defined conditions precedent. These protections become particularly important where regulatory approvals create a gap between signing and completion. In transactions involving overseas holding companies, investors should additionally assess whether an indirect change of control of an Indian subsidiary triggers Indian regulatory or approval requirements.

In addition, investors must assess whether a proposed acquisition, merger or amalgamation requires approval from the Competition Commission of India (CCI) under the Competition Act, 2002. Transactions that qualify as combinations under the prescribed asset or turnover thresholds or meet the deal value threshold of more than Rs. 2,000 crore where the target has substantial business operations in India, require prior notification to and approval from the CCI before completion. Accordingly, obtaining CCI approval may need to be included as a condition precedent in the transaction documents.[4]

Regulatory Compliance, Technology and Intellectual Property

Regulatory compliance and ownership of intellectual

[1]Walmart Inc., "Walmart and Flipkart Announce Completion of Walmart Investment in Flipkart, India's Leading Marketplace eCommerce Platform" (18 August 2018)
[2]Goldman Sachs Alternatives' acquisition of a majority stake in PeopleStrong Technologies was announced on 15 April 2025
[3]Walmart Inc., "Walmart and Flipkart Announce Completion of Walmart Investment in Flipkart, India's Leading Marketplace eCommerce Platform" (18 August 2018)

property remain central considerations in cross-border acquisitions involving Indian businesses. US and other multinational investors must assess not only the target's existing regulatory compliance but also whether the proposed acquisition structure is permissible under India's foreign investment framework.

The Foreign Exchange Management Act, 1999 (FEMA), the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, and India's Foreign Direct Investment (FDI) Policy regulate foreign investments in Indian companies. Depending on the sector and nature of the investment, certain limits, government approvals, pricing rules and reporting requirements may apply. Investors must also check who ultimately owns or controls the investing entity. The 2026 amendment[5] has relaxed certain restrictions on investment involving beneficial ownership from countries sharing land borders with India. Under the revised framework, the beneficial ownership test is applied at the level of the investor entity, allowing investments by entities with non-controlling beneficial ownership of up to 10% from such countries to proceed under the automatic route, subject to applicable sectoral caps, entry routes, other specified conditions and reporting requirements.[6]

Tax considerations also play an important role in structuring cross-border investments. Investors must consider the capital gains tax implications of a share sale, particularly where the seller is a non-resident, as well as applicable withholding tax obligations and benefits available under relevant Double Taxation Avoidance Agreements (DTAAs). Tax due diligence is equally important to identify any outstanding tax demands, pending assessments, transfer pricing issues or other historical tax liabilities of the target company. These findings may influence the transaction structure and lead to negotiations on specific tax warranties, indemnities and escrow arrangements. Investors should also consider the tax implications of future dividend distributions and exit strategies while structuring their investment.

For technology-driven acquisitions, due diligence must extend to ownership of intellectual property, software licensing arrangements, third-party technology dependencies, employee-created intellectual property and data protection practices. The Digital Personal Data Protection Act, 2023, and the Digital Personal Data Protection Rules, 2025, introduce India's framework for processing digital personal data. Their implementation is phased, with the principal data-processing obligations scheduled to commence on 13 May 2027.

Goldman Sachs Alternatives' acquisition of a majority stake in PeopleStrong Technologies in April 2025 provides a relevant illustration. The transaction involved a secondary purchase of shares from existing shareholders, including Multiples Private Equity. The legal workstreams included intellectual property and information technology due diligence, amendments to the employee stock option structure and data retention policy considerations. This demonstrates how technology ownership, employee incentives and data-related obligations can form important components of cross-border investment negotiations.

Buyers may negotiate specific warranties and indemnities covering intellectual property ownership, regulatory compliance, data protection and third-party claims. Where identified risks cannot be fully remedied before completion, parties may negotiate specific indemnities, escrow arrangements or deferred consideration to address the resulting exposure.

Practical Takeaways

For US and other multinational investors, the challenge in India is not merely identifying commercially attractive businesses but structuring transactions in a manner that adequately protects their investment while allowing the acquired business to grow.

As cross-border acquisitions, strategic investments and private equity transactions increase, negotiations will increasingly focus on the allocation of regulatory, operational and financial risks, continuity of management, corporate governance and protection of intellectual property. Investors must also account for the implications of their global corporate structures and home-country compliance obligations when structuring investments into India.

A carefully structured transaction, supported by comprehensive due diligence and clearly negotiated contractual protections, will be essential to ensuring that the commercial value identified at the investment stage is preserved and realised after completion.

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[4]The Competition Act, 2002
[5]The Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2026.
[6]https://www.pib.gov.in/PressReleasePage.aspx?PRID=2237806&lang=2&reg=3&utm

A DEEP DIVE INTO UTTAR PRADESH'S FDI AND FORTUNE 500 INVESTMENT PROMOTION POLICY

Introduction

In the Sustainable Development Goals **("SDG")** India 2020-21 Index, Uttar Pradesh was included in the performer category, while in the SDG India Index 2023-24, the state advanced to the frontrunner category. It has achieved a remarkable improvement of 25 points, moving from a score of 42 with a 29th rank in SDG India Index 1.0 (2018) to 67 with a 19th rank in the updated SDG India Index 4.0 (2023-24). This progress demonstrates that the state has not only focused on priority areas but has also implemented significant schemes and policies.

One such policy is the *"Uttar Pradesh Foreign Direct Investment (FDI), Fortune Global 500 and Fortune India 500 Companies' Investment Promotion Policy-2023"* **("UP's FDI and Fortune 500 Policy").** This is India's first dedicated state-level policy aimed exclusively at attracting foreign investment and Fortune-listed corporations. It was notified in November 2023 with a five-year operational window.

Applicability and Eligibility Conditions

UP's FDI and Fortune 500 Policy applies to greenfield and expansion projects in manufacturing and eligible service sectors with a minimum capital investment of Rs.100 crore, provided they do not fall under a restricted negative list (such as tobacco, alcohol, iron & steel, cement, beverages, logistics, etc.).

With respect to the projects with foreign capital investment **("FCI")** over Rs.100 crore, its applicability was originally limited to equity-led FDI (with at least 10% foreign equity). Thereafter, a crucial amendment in November 2024 permitted the inclusion of debt, external commercial borrowings, standby letters of credit, letters of guarantee, other debt securities or other modes approved for borrowing, trade credit, and standard obligations under foreign exchange regulations alongside equity for the calculation of FCI under this policy. Accordingly, FCI made by the foreign company, including a minimum of 10% in equity and the remaining through debt and other instruments totalling an investment of Rs.100 crore, shall be considered eligible under this policy and included in the calculation of capital investment.

Companies listed in the Fortune Global 500, or Fortune India 500 rankings (excluding public sector and government units) qualify directly for projects involving investment over Rs.100 crore.

Key Incentives of the Policy

Front-End Land Subsidies: Recognising that land acquisition is often the biggest hurdle for mega-projects, the state offers a 75% to 80% front-end subsidy on land purchased from Industrial Development Authorities such as UPSIDA, YEIDA, and BIDA. Companies receive an upfront discount of 20% to 25% at allotment, followed by a 50% to 55% reimbursement upon commercial production. Backward regions like Bundelkhand and Purvanchal receive the maximum 80% subsidy to encourage balanced regional growth.

Capital Subsidies. Investors receive a direct capital subsidy ranging from 25% to 35% of eligible capital investment, 25% in Gautam Buddha Nagar and Ghaziabad, 30% in Paschimanchal and Madhyanchal, and 35% in Bundelkhand and Purvanchal. This subsidy is disbursed in seven equal annual instalments, subject to an annual ceiling of Rs.100 crore.

Options for GST and Tax Relief. Approved projects can choose between two tax incentives: a 100% net State Goods and Services Tax (SGST) reimbursement for up to 10 years (capped at 100% to 300% of fixed capital investment depending on the region), or a 100% refund of SGST paid on capital goods in five annual instalments.

Stamp Duty and Registration Fees. Additionally, investors receive a 50% to 100% exemption on stamp duty and registration fees.

Operational, R&D, and Workforce Support. To reduce recurring overhead, the policy grants a 100% electricity duty exemption for five years. It also reimburses skill development costs at Rs.5,000 per local trainee per month for up to 500 workers over five years, subsidises 50% of Effluent Treatment Plant costs (up to Rs. 2.5 crore), and provides up to Rs.10 crore in grants for standalone R&D centres and Centres of Excellence.

Key Incentives of the Policy by Region:

Incentive Parameter	Gautam Buddha Nagar & Ghaziabad	Paschimanchal & Madhyanchal	Bundelkhand & Purvanchal
Front-End Land Subsidy	Up to 75% (20% upfront + 55% post-production)	Up to 75% (20% upfront + 55% post-production)	Up to 80% (25% upfront + 55% post-production)
Capital Subsidy Rate	25% of Eligible Investment	30% of Eligible Investment	35% of Eligible Investment
Stamp Duty Exemption	50% Exemption	75% Exemption	100% Exemption
Electricity Duty Waiver	100% for 5 Years	100% for 5 Years	100% for 5 Years
Max Net SGST Refund	Up to 100% of Fixed Capital Investment	Up to 200% of Fixed Capital Investment	Up to 300% of Fixed Capital Investment

Approved Projects of Global and US Companies

As per the Economic Survey of Uttar Pradesh 2025-26 (published in February 2026 by Economics & Statistics Division, State Planning Institute, Planning Department, UP), investment proposals worth Rs. 26,344.790 Crore have been received across 21 applications, of which 12 applications amounting to Rs. 12,142.60 Crore has been approved.

Major US Industrial Packaging Investments: American Fortune 500 packaging giants have used the policy to establish massive greenfield manufacturing bases in Uttar Pradesh. Crown Holdings, a US-based global leader in metal packaging, incorporated Crown Packaging India in 2026 to set up a Rs. 2,078 crore facility at the Integrated Manufacturing and Logistics Cluster ("IMLC") in Unnao, which will produce up to 2.2 billion aluminium beverage cans annually. Similarly, Ball Beverage Packaging India, the subsidiary of US-based Ball Corporation, secured policy incentives for a Rs. 2,913 crore aluminium cans manufacturing plant in Meerut's IMLC. For both US entities, UP's front-end land subsidies, expressway connectivity, and proximity to North India's consumer markets became decisive factors.

Broad-Based US Tech and Manufacturing Approvals: Earlier batches of letters of comfort **("LoC")** issued under this policy included three US-headquartered companies, namely, Pine Valley, Ursa Clusters, and Vision Source, which received expedited environmental clearances and fiscal incentives to set up operations in the state.

European and Asian FDI Diversification: Beyond the United States, the policy has anchored significant non-US foreign capital. Poland-based packaging manufacturer Canpack and Japan's Fuji Silvertech (precast concrete solutions) secured LoCs and environmental clearances under the framework, demonstrating its appeal across diverse heavy and light manufacturing verticals.

Fortune India 500 Domestic Expansion: The policy has catalysed major expansions by Indian conglomerates listed on the Fortune India 500. Companies including Havells India, Minda Corporation, Ashok Leyland, International Tractors (Sonalika), and TI Medicals have received formal approvals under the scheme, collectively driving over Rs.12,000 crore in committed capital expenditure across automotive, electrical equipment, and medical device manufacturing.

Recommendations for Improvement

While UP's FDI and Fortune 500 Policy is widely praised for its financial generosity and the pragmatic 2024 FCI amendment, there are certain bottlenecks that restrict its full potential. The following are the recommendations to overcome these bottlenecks:

Diluting minimum threshold: The rigid Rs.100 crore minimum investment threshold creates a significant hurdle for mid-cap but high-growth-oriented US corporations and other global entities that typically enter new markets with relatively smaller initial outlays before scaling up. Hence, the state government should consider introducing a second category of eligible investments between Rs.50 crore and Rs.100 crore.

Expansion of acceptable rankings: This policy strictly adheres to Fortune Global 500 and Fortune India 500 rankings. These Fortune rankings are based on a specific methodology (primarily focusing on top-line revenues), which could potentially exclude many other well-known corporations with large market share and global reach, and these corporations may get covered in other reliable rankings which are based on a diversified methodology. Thus, to make this policy available to a larger base of US and other global corporations, the state government should expand the criteria to include other reliable rankings as well (such as Forbes, S&P).

Easing financing burden: Under the policy's Standard Operating Procedures, investors availing of upfront stamp duty exemptions and front-end land subsidies are required to furnish an equivalent bank guarantee until commercial production is verified. For foreign subsidiaries, locking up substantial credit lines in bank guarantees over a three-to-five-year construction cycle increases financing costs and reduces the real-time liquidity benefit of the subsidy. Thus, replacing rigid bank guarantees with corporate parent guarantees or escrow-linked milestone releases would help reduce financing burden for US and other global corporations.

Mapping negative List: The negative list for foreign investments under foreign exchange laws is much smaller than the negative list contained in this policy. The rationale for having a longer negative list for this policy is unclear and hence, the state government should consider bringing the negative list in this policy at par with the foreign exchange laws.

Extending the policy's term: Lastly, the policy is available for the 5-year window ending in 2028. Since we are already at the end of 2026, the state government should consider extending it for another 5 years.

The Conclusion

Unlike the earlier policies that struggled to convert into actual projects, this policy has delivered real capital inflows from major US, other global and Indian corporations. Administered by Invest UP, it attracts large-scale enterprises by lowering upfront capital risks and protecting long-term margins. That said, implementing these proposed recommendations will be crucial to realising the full potential of this policy and helping UP to achieve its objective of becoming a trillion-dollar economy.

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HARYANA'S GCC POLICY 2026: THE NEXT CHAPTER FOR US COMPANIES IN INDIA

India is fast becoming the world's capital for global capability centres **("GCCs")** and is already home to more than 2,100 of them. India has always offered skilled talent at a lower cost, and it still does. What has changed is the focus, which has moved from volume to value. Companies are rethinking how their workforce is organised and where key work gets done. GCCs are no longer back offices for offshored tasks. They are now hubs that run a wide range of functions for multinational groups, from engineering and product development to finance, analytics and artificial intelligence **("AI").**

Between 2024 and 2026, Karnataka, Maharashtra, Uttar Pradesh, Gujarat and Andhra Pradesh, among others, released dedicated GCC policies. Each offers its own mix of incentives to attract investment, and each brings something different to the table.

Haryana's Global Capability Centre Policy, 2026 **("Policy")** is among the newest, and Haryana has a special connection to US business. India's captive-centre model largely took shape in Gurugram. In 1997, General Electric set up GE Capital International Services in what was then Gurgaon, to handle finance and back-office work for its American businesses. That centre was later spun off as Genpact. In many ways, the Genpact story laid the foundation of India's GCC industry as we know it today. Almost three decades on, the Policy invites US companies to build the next generation of these centres where the story started.

US Companies Still Lead India's GCC Market

US businesses have been the largest investors in Indian GCCs for years. By one industry estimate, they have taken close to 70% of all GCC office space in India since 2020.

Rising H-1B costs, uncertainty over US visa rules and shortage of engineering talent at home have changed how US companies hire and where they place their workforce. As a result, Indian GCCs have become a natural strategic choice for many of them. India offers lower costs, deep talent pools and mature, ready-to-use office infrastructure.

Why Gurugram?

Haryana has more than 270 GCCs, almost all of them in Gurugram. The city is home to the India operations of many well-known American companies such as Google, American Express, Oracle, Mastercard, Dell, Fidelity and HP, and more than 250 Fortune 500 companies have offices there.

Gurugram also offers a different kind of talent pool compared to the southern Indian states. Bengaluru and Hyderabad are strongest in large-scale software engineering. Gurugram's strength is senior management, finance, legal, strategy and analytics talent, much of it already used to working in global companies. Thus, for companies already operating in Haryana, this creates the possibility for a more integrated India strategy.

What Does the Policy Offer?

Notified on 27 May 2026 for a period of five years, the Policy seeks to create a competitive, predictable and investor-friendly ecosystem through targeted fiscal incentives, regulatory facilitation, improvements in ease of doing business and policy frameworks aligned with global best practices. It also aims to position GCCs as a strategic, export-oriented services sector and strengthen Haryana's contribution to India's global services exports. Notably, the Policy looks beyond Gurugram, promoting Tier-II cities such as Panchkula and Hisar as distributed GCC hubs in the interest of balanced regional development and fuller use of the State's talent base.

Who Qualifies?

The Policy applies to centres that started operations on or after 1 January 2026. Multinational companies may establish captive capability centres to provide services to entities within the same corporate group. But a qualifying GCC cannot provide services to unrelated third-party customers. GCCs operating under build-operate-transfer, joint-venture, hybrid or similar arrangements may also qualify.

Existing GCCs may also claim incentives for qualifying expansion or diversification at the same location, provided that one of the following is met: additional fixed capital investment **("FCI")** of at least 50% of the project's current FCI; additional FCI of at least 25% of current FCI, subject to a minimum expansion investment of INR 125 crore; or additional FCI exceeding the minimum threshold defined for mega or ultra-mega units at that location. Thus, an existing centre that expands or adds new functions can also claim incentives, provided the new investment crosses the thresholds set by the Policy and the expanded GCC units obtain a separate GST registration and maintain separate books of accounts for the expanded portion.

For a new entrant, the principal eligibility requirement is employment-based: a new unit must employ at least 100 people either on its payroll or under contract within 3 years of commencing commercial operations. This is significant for companies considering a phased India entry. A centre need not begin with a large campus or workforce from day one.

Fiscal Support is Structured in 3 Layers: Capital, Operating and Employment.

1. **CAPEX support:** Eligible capital expenditure includes construction, infrastructure, fit-outs, machinery and equipment, IT hardware and software, stamp duty on the purchase or lease of land or office premises, captive renewable-energy projects and green-building certification. Land costs are excluded.

2. **OPEX support:** Eligible operating expenditure includes electricity duty and lease rentals. Lease rentals are reimbursed at 75% of the rent, subject to a cap of 6% of the property value.
3. **Employment subsidies:** Employment subsidies are available for up to 10 years. The amount is calculated according to the proportion of Haryana-domiciled employees, with enhanced support for specified categories.

R&D and Innovation Centres

The Policy positions GCCs as centres of high-value work rather than support functions. Qualifying GCCs establishing R&D centres can receive a subsidy of 50% of eligible capital cost, together with reimbursement of 50% of eligible operating expenditure capped at INR 20 million (USD 209,000) per centre annually for five years.

OPEX costs are supported through the reimbursement of salaries of scientists, engineers and research personnel, participation in conferences, seminars and workshops, fees for the publication of research papers, and raw materials and consumables for research.

The R&D incentives are conditional on the centre being recognised by the Department of Scientific and Industrial Research or the Council of Scientific and Industrial Research and are limited to the first five R&D centres established.

In India, investors have often found a gap between the incentives a state promises and the money that actually arrives. Haryana has tried to close that gap in law. Under its 2026 industrial policy framework, half of an approved incentive is to be released within seven working days and the balance within 45 days. If the state misses these deadlines, it must pay the company 8% interest a year on the delayed amount. Few, if any, other states have put this kind of penalty on themselves. For a US finance team building a business case, that certainty may matter as much as the size of the incentive.

Beyond Fiscal Incentives

Alongside fiscal support, a Haryana GCC Mission with dedicated single-window desks assists GCCs with location identification, regulatory guidance and fast-tracking of approvals.

It also provides for time-bound processing of incentive claims, workforce flexibility, including three-shift operations, and self-certification for labour-related clearances and approvals under 14 acts.

Back Where it Started

For US companies, Haryana's strongest advantage is familiarity. Many of them have run their India operations from Gurugram for more than two decades. The latest Policy gives them a chance to build a new layer of capability, with long-term state support, in a place they already know well.

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RULES OF THE MACHINE: REGULATING AI, FOSTERING INNOVATION

A lot has happened in India in the past 12 months. We have released national guidelines on the governance of artificial intelligence **("AI"),**[1] notified rules under our data protection law,[2] amended our intermediary rules to address AI-generated content,[3] constituted an inter-ministerial body to coordinate AI policy[4] and launched a handbook setting out the Data Empowerment and Protection Architecture **("DEPA")** for AI Training.[5]

What we do not have is a comprehensive, cross-sector law on AI. The Government has indicated that, for the present, it does not intend to regulate AI as an underlying technology through a standalone statute. At the release of the guidelines, the Secretary, Ministry of Electronics and Information Technology **("MeitY"),** was reported as saying that the Government had made a deliberate decision not to regulate AI at this stage.[6]

This article examines how India should balance the need for regulation against the need to preserve space for innovation.

What is actually changing, and does it call for recalibration?

AI presently covers very different systems. Predictive models score loan applications and flag suspicious transactions. Generative models produce text, images, code and audio. Foundation models are general-purpose models on which others build specific applications. Agentic systems go a step further and carry out multi-step tasks with limited human intervention. A rule designed for one of these rarely works for another.

The more important shift is from tool to operator. AI has largely been used to help a professional work faster. Increasingly, it recommends, drafts, codes and underwrites, while agentic systems can initiate and execute actions. When an AI system moves beyond assisting a human and begins to take or implement consequential decisions, the legal questions change: who made the decision, who is responsible for it, and against whom does a remedy lie?

The third is the economics of it all. Building advanced models requires compute, specialised chips, data centres, energy and talent, all of which are capital-intensive. That favours firms with deep pockets, even as more openly available models widen access. For India, this makes AI a question of competition and capacity as much as one of safety.

India's response to the cost problem is the IndiaAI Mission, approved by the Union Cabinet in March 2024 with an outlay of Rs.10,371.92 crore over five years, including substantial support for compute.[7] In March 2026, MeitY stated that more than 38,000 GPUs had been onboarded through the Mission's compute portal for start-ups and academia.[8] Public data on how much of that capacity is actually used is limited.

Finally, much of this innovation happens outside government: in private labs, chipmakers, start-ups, universities and open-source communities. The state shapes the ecosystem indirectly, through procurement, research funding, compute access, export controls, data policy, taxation and standards. The governance problem is therefore broader than "how to regulate AI." It is how the state governs a fast-moving, distributed and global innovation system that it does not control, without stifling it.

The Indian framework

The India AI Governance Guidelines released by MeitY in November 2025 **("Guidelines")** are, by design, not a statute. They rest on seven guiding principles, or "sutras", among them "Innovation over Restraint." The Guidelines favour regulating AI applications through existing sectoral regulators.[9]

Acting on the Guidelines, MeitY constituted the AI Governance and Economic Group **("AIGEG")** on 16 April 2026, a high-level inter-ministerial body for AI governance policy development and coordination. The IndiaAI Safety Institute had also been announced in January 2025[10] and the work towards it is ongoing.[11]

AI in India is far from unregulated

First, the Digital Personal Data Protection Act, 2023,[12] **("DPDP Act")** provides a generally applicable framework for the processing of digital personal data, including where that processing is undertaken through AI systems. The DPDP Act and the Digital Personal Data Protection Rules, 2025[13] have staggered commencement dates, entering into force in phases by May 13, 2027.

Secondly, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026,[14] in force from 20 February 2026, introduce specific due-diligence obligations concerning "synthetically generated information" **("SGI").** Intermediaries offering computer resources that enable or facilitate the creation or dissemination of SGI must take prescribed steps to prevent specified unlawful SGI and ensure that other covered SGI is labelled and carries provenance information, to the extent technically feasible. Significant social media intermediaries have

[1]https://static.pib.gov.in/WriteReadData/specificdocs/documents/2025/nov/doc2025115685601.pdf, [2]https://www.meity.gov.in/static/uploads/2025/11/53450e6e5dc0b-fa85ebd78686cadad39.pdf, [3]https://egazette.gov.in/WriteReadData/2026/269993.pdf, [4]https://www.pib.gov.in/PressReleasePage.aspx?PRID=2252739, [5]https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2330756&lang=2&reg=48, [6]https://www.medianama.com/2025/11/223-india-ai-governance-guidelines-2025-meity/, [7]https://www.pib.gov.in/pressreleaseiframepage.aspx?lang=2&prid=2012355&reg=3, [8]https://www.pib.gov.in/PressReleasePage.aspx?PRID=2245069&lang=1&reg=1, [9]https://static.pib.gov.in/WriteReadData/specificdocs/documents/2025/nov/doc2025115685601.pdf,[10]https://indiaai.gov.in/article/india-takes-the-lead-establishing-the-indiaai-safety-institute-for-responsible-ai-innovation, [11]https://www.orfonline.org/research/india-must-urgently-build-its-own-ai-safety-institute, [12]Digital Personal Data Protection Act, 2023, [13] Digital Personal Data Protection Rules, 2025, [14] The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026

additional obligations to obtain user declarations and deploy measures to verify them. [15]

The same amendment reduces, under Rule 3(1)(d)[16] the period for removing or disabling access to specified unlawful information from 36 hours to three hours where an intermediary receives actual knowledge through an order of a competent court or a reasoned intimation from an appropriately authorised government officer or agency.[17]

Thirdly, depending on the facts, AI-related conduct may also engage consumer protection, contract, tort and negligence, criminal, intellectual property and sector-specific laws. Their application will depend on the actor, conduct and harm involved. The existence of these laws does not necessarily resolve AI-specific questions of attribution, transparency, causation, evidence and remedies. Fourthly, sectoral regulators can frame expectations for the entities they supervise, as the RBI's work on responsible and ethical enablement of AI in the financial sector illustrates.[18]

MeitY launched the Handbook on DEPA for AI Training on 31 October 2026 **("Handbook")**. It sets out a techno-legal framework for purpose-bound data collaboration, combining contractual permissions, controlled computing environments, privacy-enhancing safeguards and data provenance, while allowing data custodians to retain control over their data. This is a policy and technical framework, not a standalone statutory permission to use personal, confidential or copyright-protected material for model training. Its operation must still be assessed against applicable law and the rights of data principals, data custodians and intellectual property owners.

The courts are shaping the field too. On 24 July 2026, the Delhi High Court dismissed ANI's application for an interim injunction against OpenAI. At the interim stage, the Court held that OpenAI's storage of ANI's literary works for training its large language models prima facie fell within the fair-dealing exception in Section 52(1)(a) of the Copyright Act, 1957. It also held that ANI had not established a prima facie case of infringement through ChatGPT's outputs. These observations were expressly interim and do not determine the final outcome of the suit.[19]

Regulation to foster innovation?

There are two broad positions on whether the present architecture is sufficient. Neither should be treated as an absolute.

The first holds that the present architecture is broadly sufficient and that the priority should be to make existing law work. Rules tied too closely to present-day technology can date quickly. A statute may catch low-risk uses, such as summarisation or spell-checking, along with high-risk applications. Compliance costs can fall harder on start-ups than on large firms, and incumbents may benefit from rules that raise the cost of entry for competitors. There is also the persistent problem of limited technical capacity within regulators. India has seen the risk of overbroad controls at an early stage. On 1 March 2024, MeitY issued an advisory that required intermediaries to seek prior government permission before permitting the deployment of certain under-tested or unreliable AI models. The advisory was revised on 15 March 2024, removing that prior-permission requirement after criticism, including from start-ups. The episode illustrates the risk of imposing broad controls before their scope, rationale and implementation are sufficiently worked through. Existing law reaches many identifiable harms. On this view, the immediate deficit is enforcement, institutional capacity and coordination, rather than the absence of a general AI statute.[20]

The second position is that guidelines, however well designed, do not themselves create enforceable duties or remedies, and that the coordinating institutions currently rest on executive action rather than a dedicated statutory framework. On this view, a carefully limited framework statute for high-impact uses, such as credit, employment, healthcare and public services, could establish minimum duties, oversight arrangements and routes to redress, while leaving technical standards and sector-specific implementation to specialist regulators. The challenge would be to define the relevant risks and duties without creating a rigid licensing regime or imposing disproportionate costs.

Both positions can accommodate a number of practical measures:

1. **Risk-tiering:** obligations should be proportionate to the use and its likely impact, not simply to the technology. The same model may be relatively low-risk in a drafting tool and consequential when used to determine credit, employment or access to public services.
2. **Sectoral enforcement:** regulators with expertise in finance, health or telecommunications are better placed to assess deployment risks in their domains. But sectoral regulation needs common principles, coordination and a clear allocation of responsibility where an AI system operates across sectors.
3. **Sandboxes and controlled testing:** supervised experimentation can generate evidence for regulators and allow firms to test safeguards. Any safe harbour should be narrowly defined and should not immunise conduct that breaches statutory duties or infringes individual rights.
4. **Allocation of liability:** duties should be allocated across developers, deployers and users according to their respective roles, control over the system, ability to prevent or mitigate harm and reasonable foreseeability. Existing principles of negligence, consumer protection and contract will remain relevant, but may need clarification for complex AI supply chains.

[15] https://www.meity.gov.in/static/uploads/2025/10/065b6deb585441b5ccdf8be42502a49c.pdf
[16] https://www.meity.gov.in/static/uploads/2025/10/065b6deb585441b5ccdf8be42502a49c.pdf
[17] https://sabrangindia.in/synthetic-content-three-hour-compliance-and-the-risk-of-over-removal-analysing-the-it-rules-amendments/
[18] https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=61018
[19] Interim In Name, Final in Effect: A Critique of the Delhi High Court's Order in Ani Media V. Openai
[20] https://indiaai.gov.in/article/revised-ai-advisory-how-ai-regulation-can-impact-india

5. **Capacity:** technical expertise, testing infrastructure, access to independent evaluators and appropriately trained enforcement personnel. Neither guidelines nor a statute will work without these foundations.

Conclusion

The question is not whether India regulates AI. It already regulates aspects of AI through data protection, intermediary rules, consumer protection and sectoral frameworks. The question is whether these instruments, supported by the institutional arrangements now being developed, can be applied consistently enough to protect people and predictably enough to allow innovation.

Whether India continues with guidelines and existing law or adopts a limited statute for high-impact uses is a choice on which reasonable views differ. Neither approach can succeed without institutional capacity: the technical ability to test systems, regulators who understand them, coordination across sectors, an enforcement record that gives the principles meaning and a backstop that makes voluntary commitments count. The immediate task for the regulator is therefore clear. Build that capacity before it is needed, rather than after.

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INDIA'S DIGITAL COPYRIGHT FRAMEWORK NEEDS CLARIFYING

Consider the scenario of an Indian artificial intelligence startup developing a Large Language Model **("LLM")** trained on a multilingual dataset – including Japanese literary works, technical documentation and news articles – and deploying it across India and Japan.

Is the training of that model lawful? For Japan, the answer is clear. Japan's Copyright Act allows text and data mining **("TDM")** for AI training without the consent of rights holders. In the US, it turns on fair use.

Under Indian law, however, the position remains uncertain. The Indian Copyright Act of 1957 contains no such exemption. The uncertainty discourages bilateral technology investment and affects rights holders, developers and policymakers in both jurisdictions.

The same question arises also in reverse, as many AI developers serving Indian users are American. India is OpenAI's largest market by users, and Amazon, Microsoft and Google have pledged about USD 67.5 billion of investment in India.

Despite India and Japan's technology alliance under the Comprehensive Economic Partnership Agreement, there is no bilateral dialogue addressing this apprehension. The India-US AI Opportunity Partnership, signed in February 2026, commits both countries to a pro-innovation approach to AI, and copyright in training data would be a natural next item for it.

Comparing India and Japan's AI regimes

Japan has adopted one of the world's most progressive copyright frameworks for AI training. Article 30-4 of the Japanese Act permits reproduction of copyrighted works for information analysis and machine learning without the rights holder's consent, whether commercial or not.

The provision excludes uses that "unreasonably prejudice the interests of the copyright owner." Accordingly, an LLM trained on literary works may lawfully extract informational patterns but may not generate output that substantially reproduces their expressive character.

Section 52 of the Indian Act, by contrast, lists exceptions to infringement exhaustively, and courts cannot recognise new ones. As AI training is not among these exceptions, its legality remains uncertain under Indian copyright law. This acts as a de facto disincentive to AI training because developers cannot rely on uncertain judicial interpretation.

However, Indian law is evolving. In ANI Media v. OpenAI, the Delhi High Court recently refused interim relief to the news agency, holding prima facie that storage of copyrighted works for training LLMs may fall within fair dealing exceptions for research under section 52(1)(a), and that infringement occurs only where the original work is substantially reproduced.

That said, the interim decision does not conclusively resolve the application of section 52 to generative AI. Without a statutory exception, this asymmetry with Japan continues to create uncertainty for cross-border AI development.

The US dimension

The US has taken a third route. With no TDM exception, it relies on fair use under Section 107 of its Copyright Act, which weighs factors such as the purpose of the use and its effect on the market. Being open-ended, fair use lets US courts address new technologies without waiting for Congress.

In June 2025, two federal judges in California held that training LLMs on books was fair use on the facts before them, in *Bartz v. Anthropic* and *Kadrey v. Meta*. In September 2026, however, in the first US appellate ruling on AI training, the Third Circuit held in *Thomson Reuters v. Ross* that copying Westlaw headnotes to build a rival, non-generative legal research tool was not fair use.

ANI Media v. OpenAI is itself an India-US dispute. OpenAI argued that training took place on US servers, beyond the reach of Indian law. The court disagreed, holding that it had jurisdiction because ANI is based in Delhi and OpenAI serves Indian users. It also drew on the US fair use rulings, including *Bartz and Kadrey.*

Two practical points follow for US companies. **First,** Indian courts may assert jurisdiction over models offered to Indian users, wherever training takes place. **Second**, the answer may come from legislation: in December 2025, a DPIIT committee proposed a hybrid model letting developers train on lawfully accessed works without individual licences, in exchange for statutory royalties paid through a central collecting body.

India needs tailored TDM clarity

Rather than replicating Japan's article 30-4, India should adopt a purposive TDM exception suiting its legal and economic context. The Japanese model demonstrates the value of distinguishing informational extraction from expressive reproduction while treating copyright exceptions as instruments of innovation policy. The US experience adds that an open-ended standard can adapt to new technology, but, without statutory guidance leaves the question to long and costly litigation.

An Indian framework should also account for its diverse creative economy, commercial AI training, transparency obligations and international treaty commitments. A carefully calibrated statutory exception would provide legal certainty while balancing innovation with creators' rights.

India's continued reliance on an uncertain copyright framework is no longer sustainable. A TDM exception, tailored for the Indian copyright landscape, would reduce legal uncertainty, encourage AI investment, strengthen India's technology partnerships with Japan and the US, and promote innovation while preserving copyright

protection. It would also give US companies, among the largest investors in Indian AI, a clear basis for training models in India.

The moral here is not to copy Japan's law but to emulate its legislative clarity in addressing AI-driven technological change.

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LITTLE HUMAN TOUCH IN MODERN CAR INDUSTRY

Automotive innovation is heavily dependent on artificial intelligence **("AI"),** particularly in autonomous driving, diagnostics and infotainment. This transformation challenges existing IP frameworks, including for the many US companies developing and selling AI-driven vehicles and software in India. Three key legal issues in AI-driven automotive software are invention, patentability and licensing.

The automotive industry is shifting from hardware-driven engineering to software-centric innovation. With AI now embedded in many critical vehicle functions. Tesla's Autopilot, and Waymo's autonomous rides show how AI is redefining mobility. India is central to this shift, hosting some 70 automative capability centres, and AI is a pillar of the US-India TRUST initiative. As AI-generated content is integrated into vehicle systems, determining what constitutes protectable IP and who is the rightful inventor becomes difficult.

The most contentious issue is whether AI can be an inventor. India, the US and Europe recognise only natural persons as inventors. In November 2025, the US Patent and Trademark Office issued revised guidance treating AI as a tool, and the Indian Patent Office has recently refused the DABUS (Device for the Autonomous Bootstrapping of Unified Sentience) application, relying on Section 2(y) of the Indian Patents Act, 1970 **("Patents Act").** Deep learning tools may independently optimise driving decisions or structural design, but in law these outputs must be attributed to a human.

The global DABUS case, in which an AI system was listed as the sole inventor, sparked debate about "augmented inventorship", under which human and machine contributions are acknowledged jointly. For now, US Companies using generative AI in vehicle design must attribute innovations to the human engineers who supervise and validate AI suggestions.

This matters most when those engineers sit in India. Under Section 39 of the Patents Act a person resident in India may not apply for a patent abroad without the Controller's written permit, unless an Indian application was filed at least six weeks earlier. The US imposes a parallel foreign filing license requirement. For instance, where teams in Bengaluru and Michigan co-develop a feature, both rules may apply, and a breach of Section 39 can cost the Indian patent.

Patentability of AI-driven automotive software is limited by Section 3(k) of the Patents Act,1970 which excludes "computer programs per se." Applications must demonstrate a "technical effect" or "technical contribution" to overcome this barrier, an inquiry familiar to US applicants from the Alice framework. In appeals brought by US companies including Microsoft and Raytheon, the Delhi High Court held that novel hardware is not essential, and the Patent Office's 2025 guidelines on computer-related inventions now address AI directly. Complete technical disclosure and clearly articulated inventive steps are crucial.

Many companies adopt hybrid IP strategies. Bosch and Nvidia, for example, patent hardware-integrated AI functions while protecting core machine learning algorithms as trade secrets. US companies should note that India has no equivalent of the US Defend Trade Secrets Act, 2016, so protection rests on contract and on actions for breach of confidence, so well-drafted employment, vendor and intra-group agreements carry particular weight.

Licensing has become central to IP governance in automotive AI. Modern vehicles depend on layered software stacks, often comprising proprietary, open-source and third-party modules, each governed by its own licence, such as MIT, Apache, or GPL. If not managed competently, copyleft licences such as the GPL may force companies to disclose modified code, risking proprietary IP.

For US companies, licensing questions increasingly cross borders: who owns improvements made by an Indian subsidiary or vendor, and on what terms vehicle data may leave India. India's Digital Personal Data Protection Act, 2023, fully in force from May 2027, permits transfers abroad unless the government restricts a destination, though significant data fiduciaries may have to keep specified data in India.

Tesla's entry into India shows these issues at work. Tesla opened its first experience centre in Mumbai on 15 July, 2025, and its Indian subsidiary reported a profit in its first year of car sales. Although, Tesla pledged in 2014 not to bring patent suits against anyone using its patents in good faith, it guards its brand firmly. In November 2025, the Delhi High Court granted Tesla interim relief restraining an Indian company from using the TESLA mark for batteries for electric vehicles and related products, a reassuring signal for US brands entering India.

On AI, Tesla has moved step by step. In 2025, it began hiring vehicle operators in Delhi and Mumbai to collect Indian road data for its driving software, and in 2026 it advertised AI engineering roles in India, while full self-driving awaits regulatory approval. Each step raises the questions discussed above, from inventorship to cross-border data flows.

As India's automotive industry embraces intelligent mobility, inventor doctrines, patent eligibility criteria and licensing frameworks must evolve to reflect collaborative, data-driven innovation. Growing convergence between Indian and US practice on AI inventorship and software patentability gives US companies a firmer basis on which to plan.

US companies, working alongside Indian manufacturers such as Tata Motors, Mahindra & Mahindra and Maruti

Suzuki, can help build a forward-looking IP ecosystem that balances innovation with legal certainty. Legal professionals have a proactive role in ensuring that AI-driven automotive software is not only a technological leap, but also a legally secure one.

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SUSPEND FIRST, VERIFY LATER? A CRITICAL LOOK AT THE DRAFT RULES ON IMMEDIATE LICENCE SUSPENSION FOR NSQ DRUGS

Introduction

On 28th October 2026, the Ministry of Health and Family Welfare, Govt. of India published draft rules (G.S.R. 956(E)) proposing to amend the Drugs & Cosmetics Rules, 1945 ("Draft Rules"). By this Notification, the Government of India proposes to empower the Regulatory Authority to suspend a manufacturing licence immediately once a Government Analyst declares a drug "Not of Standard Quality" ("NSQ").

The Draft Rules come in the backdrop of the recent deaths of at least 22 children due to poor quality/contaminated paediatric cough-syrup; and the monthly drug alerts issued by the Central Drugs Standard Control Organisation ("CDSCO") which still list hundreds of NSQ samples. The number of NSQ Drugs flagged by CDSCO in September 2026 was as high as 330 as against 220 in August 2026, thereby, indicating a substantial increase in the number of NSQ samples available in the Indian market.

The goal is sound - India's reputation as the "pharmacy of the world" cannot rest on a system where a substandard product stays in production, while a show-cause notice works its way through the files. But a rule that turns a single laboratory finding into an automatic, open-ended shutdown of a product is likely to raise real questions of legality, proportionality and workability. This article sets out what the draft does, what it gets right, and where it needs to be rethought before it is finalised.

What the Draft Proposes

The Draft Rules make changes to three provisions, summarised below.

1. Rule 85 – drugs other than homeopathic medicines (new sub-rules (2A) and (2AA))

- Sub-rule (2A) – immediate suspension: The manufacturing licence for the drug is suspended immediately once a Government Analyst's report declares it NSQ on any of five parameters: assay, dissolution, related substances, impurity or sterility. The licence stays suspended until the manufacturer completes an effective root cause analysis and implements its Corrective and Preventive Action ("CAPA") "to the satisfaction of the Licensing Authority."
- Sub-rule (2AA) – revocation of suspension: The licensing authority may revoke the suspension only after the CAPA has been implemented and verified by that authority.
- Proviso to sub-rule (2AA): The Central Licensing Approving Authority ("CLAA") may call for the root cause analysis, the CAPA, the investigation report and the action taken by the State Licensing Authority, to ensure compliance with the Rule.

2. Rule 122-O – blood centres and blood products (new sub-rules (1A) and (1AA))

- These sub-rules are worded similarly to sub-rules (2A) and (2AA) of Rule 85.
- The trigger for immediate suspension, however, is an NSQ finding on any parameter, rather than the five parameters listed in Rule 85.

3. Form 13 – Government Analyst's report

- A copy of the analyst's report must be sent to the Drugs Controller General of India, the State or UT drug controller with jurisdiction over the manufacturing site, and the manufacturer and marketer named on the label.

What the Draft Gets Right

The Draft Rules address a real enforcement gap, and several of their features are sound.

- **Faster action on real risks:** At present, the show-cause steps in Rule 85 can take weeks or months, and the same process that produced a failed batch can keep producing more. Making suspension the default for failures likely to affect safety and efficacy (potency, release of the active ingredient, toxic impurities, sterility) signals that quality failures have consequences.
- **Focus on fixing the quality system:** Tying reinstatement to a verified CAPA moves enforcement away from fines and prosecution after the incident, towards correcting the underlying cause. This is aligned with the revised Schedule M (Good Manufacturing Practices), which makes quality risk management and CAPA systems mandatory.
- **Better information flow:** Today, a manufacturer in one state can learn of a sample failure in another state well after the event, and the home-state regulator may not learn of it at all. Copying the Form 13 report to the authority that licenses the site, and to the marketer, closes that gap.
- **Central oversight:** The CLAA proviso gives the Centre a way to monitor how consistently the states act, which matters in a system where licensing is mostly decentralised.

Critical Concerns

The Draft Rules raise concerns in five areas: due process, proportionality, the open-ended duration of suspensions, gaps in scope, and the effect on supply.

1. Due process, and the conflict with Section 25 of the Act

The largest legal problem is that the Draft Rules act on a Government Analyst's report before it has become final. Under Section 25(3) of the Drugs and Cosmetics Act, 1940, a manufacturer can, within 28 days, notify its intention to dispute the report. Under Section 25(4), the sample

[1] https://egazette.gov.in/WriteReadData/2026/277656.pdf
[2] https://cdsco.gov.in/opencms/opencms/en/Notifications/nsq-drugs/

can then be referred to the Central Drugs Laboratory, whose report is conclusive. The Act therefore treats the Government Analyst's opinion as open to challenge, whereas the Draft Rules treat it as a final verdict justifying an immediate and indefinite suspension.

There is also a question of hierarchy. Rules made under Sections 12 and 33 cannot override a scheme laid down in the parent Act. The "notwithstanding" clause removes the hearing before suspension that Rule 85(1) now provides, and the Draft Rules do not provide for a hearing after suspension in its place.

Courts have upheld emergency action taken without a prior hearing where public health is at stake, but they have generally required a prompt post-suspension hearing and a reasoned, time-bound decision. The Draft Rules provide for neither. High Courts have already set aside suspension orders under the existing Rules for breaches of natural justice. A rule that can suspend a product indefinitely on a disputed report, with no fixed point at which the licensee is heard, is open to challenge under Articles 14 and 19(1)(g) of the Constitution.

2. No grading of risk and lack of proportionality

CDSCO's own guidelines on action against spurious and NSQ drugs classify failures by severity. They distinguish spurious or adulterated drugs, grossly substandard drugs, and drugs with minor defects, with a graded response for each. The Draft Rules ignore this framework. They take no account of:

- how far the result is from the specification;
- whether the batch has been recalled;
- whether the drug is essential; or
- the manufacturer's compliance record.

Suspension of the licence is the strongest response available, yet under the Draft Rules it is triggered by evidence that may be the weakest available.

3. Suspensions with no end date

The suspension lasts until the CAPA is implemented "to the satisfaction of the licensing authority" and verified by the same authority. The Draft Rules:

- set no deadline for the regulator to review the CAPA or inspect;
- set no standard for what counts as an "effective" root cause analysis; and
- require no written reasons when a CAPA is rejected.

State drug control departments are frequently short of staff, and inspection backlogs are common. In practice, a suspension can therefore run for as long as the regulator takes, regardless of its merits. Unchecked discretion of this kind invites arbitrariness and abuse of power.

4. Gaps and inconsistencies in scope

- **Rule 85 and Rule 122-O are inconsistent.** Rule 85 lists five trigger parameters, but Rule 122-O applies to any NSQ finding, and the Draft Rules give no justification for the difference. As drafted, even a labelling or minor deviation in a blood product could suspend a blood centre's licence and disrupt the blood supply.
- **The relationship with recall is not addressed.** Suspending future production does not deal with stock already in the market. Industry groups have argued that a stronger, faster recall system would do more to protect patients than automatic licence suspension, yet the Draft Rules do not link the two.

5. Effects on supply and on smaller manufacturers

Small and medium manufacturers make up a large share of the country's essential and low-cost generic medicines, and many are still upgrading to the revised Schedule M. Automatic suspensions across many products could cause local shortages of essential medicines, particularly in public procurement. Large firms with spare capacity at several sites will cope more easily. The Draft Rules contain no exception or managed transition for drugs where the suspension itself could harm patients.

Conclusion

The Draft Rules rightly move enforcement from slow paperwork towards fast, quality-focused action. As drafted, however, they act on a single contestable laboratory finding, do not grade the response to the risk, and leave the length of the suspension to the regulator's discretion. That combination is legally fragile and could, in practice, harm patients as well as protect them.

A suspension power that is risk-graded, time-bound and subject to review would serve public health better and be more likely to survive court challenge. Before the Draft Rules are finalised, the Government should consider:

- providing a prompt post-suspension hearing and a reasoned order;
- aligning the trigger with CDSCO's severity classification and harmonising Rules 85 and 122-O;
- fixing timelines for CAPA review and inspection, with written reasons for any rejection; and
- linking suspension to recall and providing a managed transition for essential medicines.

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INTERNATIONALISATION AND THE FUTURE OF EDUCATION: CHALLENGES AND OPPORTUNITIES FOR INDIA IN A GLOBALISED WORLD

Introduction

The boundaries of education are increasingly extending beyond national borders, creating new opportunities for international academic collaboration and knowledge exchange. Universities all over the world are now collaborating across countries, sharing research, exchanging faculty and students, and developing programmes that respond to international academic and professional requirements. According to UNESCO[1]global higher education enrolment reached approximately 269 million in 2024, while nearly 7.3 million students were pursuing higher education outside their home countries in 2023.

For India, this presents both an opportunity and a challenge. With a large young population, an expanding higher education sector and a growing demand for skilled professionals, India has the potential to emerge as a significant global education destination. However, achieving this requires improvements in academic quality, institutional capacity, regulatory frameworks and the skills imparted to students.

Internationalisation and India's Evolving Education Landscape

Internationalisation of education extends beyond students travelling abroad to pursue higher studies. It includes academic partnerships, faculty and student exchanges, collaborative research, joint and dual degree programmes and international curricula. An important aspect of this approach is internationalisation at home, which seeks to provide students with international academic exposure without requiring them to leave their country.

India's National Education Policy (NEP) 2020[2] echoes these ideals. It envisages greater collaboration between Indian and foreign institutions, improved research opportunities, and international student mobility.

The regulatory framework has also evolved to support these objectives. The University Grants Commission (Academic Collaboration between Indian and Foreign Higher Educational Institutions to offer Twinning, Joint Degree and Dual Degree Programmes) Regulations, 2022[3] Provide a framework for academic partnerships between Indian and foreign institutions in three forms. Under the twinning model, students complete parts of their programme at both institutions, but the degree is awarded by the Indian institution. Under the joint degree model, a single qualification is awarded jointly by both institutions. Under the dual degree model, students receive two separate degrees, one from each institution.

Separately, the UGC (Setting up and Operation of Campuses of Foreign Higher Educational Institutions in India) Regulations, 2023[4] provide a framework for eligible foreign universities to establish independent campuses in India. This allows foreign institutions to operate in India and award qualifications under the name of their parent institution. The UGC's issuance of 16 Letters of Intent to several foreign institutions in 2026 indicates growing international interest in establishing a presence in India. These proposed campuses include institutions from countries such as Australia, Italy, and the UK, with programmes in areas such as business, finance, artificial intelligence, etc.[5]

An equally important issue is the recognition of foreign qualifications. The UGC (Recognition and Grant of Equivalence to Qualifications obtained from Foreign Educational Institutions) Regulations, 2025[6] establish a framework for recognising eligible foreign academic qualifications. However, professional qualifications such as law, medicine, and architecture are excluded from this general framework and remain subject to the requirements of their respective statutory regulators. For instance, the recognition of foreign law degrees for the purpose of enrolment as advocates are governed by the Advocates Act, 1961 and the Bar Council of India framework. This distinction highlights the need to ensure that international academic mobility is supported by clear and appropriate recognition mechanisms.

Opportunities and Challenges

Internationalisation offers India several opportunities. First, collaboration with reputed foreign institutions can improve academic standards by encouraging the exchange of teaching practices, research methodologies, institutional expertise and access to international curricula that may not otherwise be readily available.

Second, international research collaborations can strengthen India's position in areas such as biotechnology, climate science, healthcare and emerging technologies. Such partnerships can facilitate access to research infrastructure, funding and global academic networks.

Third, internationalisation can improve the employability of Indian graduates. Exposure to different academic systems, cultures and professional environments can help students develop the ability to work in increasingly globalised workplaces. It can also support India's ambition to become a destination for international students, research and innovation rather than primarily a source of students travelling overseas.

However, these opportunities are accompanied by significant challenges. The cost of international education remains a major barrier, particularly for students from economically weaker backgrounds.

There are also concerns relating to quality assurance and institutional accountability. Foreign institutions

[1] UNESCO, Number of Students in Higher Education More Than Doubled in 20 Years, but Inequalities Remain (12 May 2026, updated 14 October 2026)
[2] Ministry of Human Resource Development, Government of India, National Education Policy 2020, paras 12.7–12.8
[3] University Grants Commission (Academic Collaboration between Indian and Foreign Higher EducationalInstitutions to offer Twinning, Joint Degree and Dual Degree Programmes) Regulations, 2022
[4] University Grants Commission (Setting up and Operation of Campuses of Foreign Higher Educational Institutions in India) Regulations, 2023
[5] Ministry of Education, Government of India, Establishment of Foreign Universities Campuses in India, Press Information Bureau (3 August 2026)
[6] University Grants Commission (Recognition and Grant of Equivalence to Qualifications Obtained from Foreign Educational Institutions) Regulations, 2025

must satisfy prescribed eligibility requirements, and their academic standards and infrastructure must be maintained in accordance with the applicable UGC framework. In particular, the quality of education delivered at an Indian campus is expected to remain at par with that of the parent institution. Regulatory oversight is therefore essential to ensure that internationalisation does not result in inconsistent academic standards.

Beyond its academic implications, internationalisation also presents significant investment and market-entry opportunities. However, establishing a presence in India requires more than regulatory approval. Foreign institutions must assess the appropriate operating model, capital requirements, local partnerships and long-term commercial viability of their proposed ventures. The growing participation of private equity and institutional investors in the Indian education sector[7] further reflects its emergence as an important investment opportunity.

Student protection is equally important. Issues relating to admission practices, fee structures, recognition of qualifications, and credit transfers require transparent safeguards. For Indian higher education institutions, participation in such arrangements is governed by the UGC (Redressal of Grievances of Students) Regulations, 2023[8] provide an institutional framework for addressing student grievances. In collaborative programmes, clear arrangements concerning the transfer of credits and the continuation of students' education if collaboration ends are particularly important.

India must also address the risk of brain drain. While international exposure can improve the capabilities of Indian students, the education system must create sufficient opportunities for them to apply their knowledge and skills within the country by strengthening domestic research institutions, improving faculty development and encouraging industry-academia collaboration will therefore be essential.

The Future of Education and Emerging Skills

The future of education will be shaped not merely by where students study, but also by what they learn and how effectively they can apply that knowledge. This calls for a shift from conventional, discipline-specific education towards a more interdisciplinary approach. For example, the intersection of law and technology, business and data science, or healthcare and artificial intelligence demonstrates how future professional roles will increasingly require knowledge across multiple disciplines.

Internationalisation can support this transition by exposing students to diverse academic approaches, collaborative projects and international industry practices. It can also encourage institutions to develop flexible learning pathways, industry-oriented programmes and opportunities for continuous upskilling.

The Way Forward

For India to realise the full potential of internationalisation, the focus must remain on strengthening the overall quality of its education system. Regulatory reforms should be accompanied by effective implementation, transparent institutional practices and adequate mechanisms for student protection. Foreign collaborations must complement domestic institutions rather than weaken their role in the education ecosystem.

Greater investment in research, faculty development, digital infrastructure and scholarships will be necessary to make international education more accessible. Equally important is stronger collaboration between universities, industries and professional bodies so that academic programmes remain relevant to changing employment requirements.

Ultimately, the success of internationalisation should not be measured merely by the number of foreign universities establishing campuses in India or Indian students travelling abroad. It should be assessed by the quality of education, recognition of qualifications, accessibility of opportunities, strength of research and ability of graduates to contribute meaningfully to society and the economy.

India has the opportunity to move from being primarily a source of international students to becoming a global centre for education, research and knowledge exchange. Achieving this ambition will require a balanced approach that combines international exposure with domestic capacity, academic freedom with regulatory accountability, and technological advancement with inclusive access to education.

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[7]Opportunities and challenges in India's education ecosystem (25 June 2026)
[8]University Grants Commission (Redressal of Grievances of Students) Regulations, 2023

THE MISSING LINK IN INFRASTRUCTURE INVESTMENT: EFFECTIVE DISPUTE RESOLUTION

As India advances towards Viksit Bharat 2047 and the United States marks 250 years of its independence, infrastructure, connectivity and energy are sectors in which the two countries have much to offer each other.

An investor committing capital to an Indian infrastructure project for several decades will, however, also wish to know how a disagreement with the counterparty, often a government authority, will be resolved, whether the forum will be neutral and whether its decision can be enforced. Effective dispute resolution is therefore a part of the investment case itself.

The Cost of Unresolved Infrastructure Disputes

As of September 2026, the Ministry of Statistics and Programme Implementation was monitoring 1,853 ongoing central sector infrastructure projects with a combined cost of INR 37.56 lakh crore (about USD 400 billion). [1]

Projects of this size routinely give rise to questions of land acquisition, design changes, extensions of time, cost and contractual interpretation. Not every delay stems from a dispute, but an undecided claim adds to uncertainty and strains cash flows. Most contracts already provide for independent engineers, dispute boards, conciliation and arbitration. In practice, however, the decision is frequently postponed until those who managed the project have moved on.

From Dispute Resolution to Dispute Prevention

In the author's view, many of these disputes can be avoided, or at least narrowed, through better contract administration, decision-making and documentation.

The first requirement is an early decision. Claims for extension of time, variations and compensation ought to receive a prompt and reasoned response, and where a claim cannot be resolved in full, the undisputed portion can still be dealt with.

The second concerns settlement. A public official who settles even a legitimate claim may expect closer personal scrutiny than one who contests it until there is a decision from an arbitral tribunal or court. Contesting the claim thus appears safer, even where interest and legal costs make it costlier for the public exchequer. Accountability must be maintained, but it can be reconciled with settlement where each settlement rests on a documented assessment, clear approval authority and institutional support for bona fide decisions. The Ministry of Finance's guidelines of 3 June 2024[2] themselves encourage pragmatic settlement.

The third is proper documentation. In the Kamrej-Chalthan NH-48 arbitration, the National Highways Authority of India **("NHAI")** reported an award of approximately INR 54 lakh against claims of INR 174.49 crore, and pointed to the digital records and drone videography used in its defence.[3] Reliable contemporaneous records allow both parties to assess a claim realistically, and may make arbitration unnecessary.

The Case for Reforming Arbitration

Some disputes can neither be prevented nor settled, and for these arbitration remains necessary. Its advantages have, however, been eroded by excessive costs, delay and prolonged post-award proceedings.

It is in this context that the 3 June 2024 guidelines advise against routine arbitration clauses in domestic public procurement and suggest, as a norm, that arbitration be confined to disputes below INR 10 crore (about USD 1 million). The concerns merit attention, but it does not follow that a court will decide the same dispute sooner or more predictably. The better course, in the author's view, is to improve the conduct of arbitrations.

Much lies in the hands of the tribunal, which can fix a realistic timetable at the first hearing and hold the parties to it, with costs for avoidable delay. Institutional arbitration adds administrative oversight and transparent fees, and confidence requires transparent appointments, full disclosure of conflicts and arbitrators with relevant technical expertise.

Finally, an award must bring the dispute to an end. In **Ssangyong Engineering v. NHAI,** the Supreme Court reaffirmed that a court cannot review an award on its merits under Section 34 of the Arbitration and Conciliation Act, 1996. A Constitution Bench in **Gayatri Balasamy v. ISG Novasoft Technologies** has since recognised only a narrowly defined power to modify awards. As recently as January 2026, in **Jan De Nul Dredging India v. Tuticorin Port Trust,** the Court restored a claim awarded in 2014 which a port authority had contested for eleven years, cautioning that challenges at every stage defeat the purpose of arbitration. Public authorities ought to examine each proposed challenge on its merits and not file one routinely.

International Arbitration and the India-US Partnership

For cross-border contracts, arbitration offers in addition a neutral forum and an internationally recognised framework for enforcement. The New York Convention, to which India and the United States are both parties, is implemented in India through Part II of the 1996 Act. In **Vijay Karia v. Prysmian Cavi E Sistemi SRL,** the Supreme Court reaffirmed that the grounds for resisting enforcement of a foreign award are limited. More recently,

[1] Ministry of Statistics and Programme Implementation, Monthly Flash Report on Central Sector Infrastructure Projects, September 2026, Press Release dated 26 October 2026

[2] Ministry of Finance, Department of Expenditure, O.M. No. F.1/2/2024-PPD, Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement, 3 June 2024

[3] Ministry of Road Transport & Highways, NHAI Successfully Defends Arbitration Claim, Safeguards Public Funds in a National Highway Project, Press Release dated 8 May 2026

in **Nagaraj V. Mylandla v. PI Opportunities Fund-I,** the Supreme Court held that a party which has unsuccessfully challenged an award before the court at the seat cannot reargue the same issues when enforcement is sought in India. The value of these protections, however, depends on how consistently they are applied.

Conclusion

The India-US partnership in infrastructure will rest on capital and technology, but its durability will depend on whether disagreements can be resolved before they damage the commercial relationship. As stated above, this would require timely decisions on claims, a settlement process which officials can use with confidence, reliable project records and arbitration whose outcome is respected. Progress on these matters would allow the parties to devote their resources to the projects yet to be built, and not to the disputes of those already completed.

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INDIA'S GREEN HYDROGEN MISSION

The Indian government launched the National Green Hydrogen Mission (National GH2 Mission) in 2023. National GH2 Mission aims to establish a Green Hydrogen (GH2) ecosystem and catalyse a systemic response to the opportunities and challenges in this sector. Its objective is to make India the global hub for production, usage and export of GH2 and its derivatives. This will contribute to India's aim to become aatmanirbhar through clean energy and serve as an inspiration for the global clean energy transition.

On 29th October 2026, the Press Information Bureau (PIB) issued a release stating that the total GH2 offtake commitments signed by Indian companies exceed 5.5 lakh MTPA as of October 2026. This accounts for almost 11% of the National GH2 Mission target and is expected to attract total investments of around Rs. 90,000 crore (approximately USD 9.5 billion). These recent offtake deals underscore the growing commercial long-term demand for production capacities established under the strategic intervention for green hydrogen transition (SIGHT) program and acknowledge India's leading position in European and Japanese markets.

Electrolyser As a Service

Generally, GH2 projects require generous financing to cover up-front CapEx. 'Electrolyser as a Service' is an emerging commercial model to decrease the financing cost and to mitigate the high cost of GH2 production. Attuned with this, the Ministry of New and Renewable Energy (MNRE) introduced the Model Service Agreement for 'Electrolyser as a Service' (EAAS) on 23rd July 2026. This framework establishes industry standards for risk allocation, performance guarantees, and division of responsibilities broadly in the following manner:

1. Asset Ownership: The Service Provider designs, constructs, owns, operates, and maintains the electrolytic hydrogen plant on a build, own, and operate basis. It retains exclusive ownership and title over the plant and can encumber the same for financing purposes.
2. Payment & Security: The Service Recipient pays a fixed monthly consideration covering lease charges and O&M charges, which can escalate annually based on the consumer price index for industrial workers. The Service Recipient must provide milestone-based security deposits and a revolving letter of credit. Delays not caused by the Service Provider trigger "deemed commissioning," forcing payment obligations. Performance tests must be passed within 60 days of procuring a PESO license, or monthly payments are suspended.
3. Site and Utilities: The Service Recipient provides the site, manages civil works, maintains GH2 certification, and provides utilities like water, power, and storage.
4. Timeline and Contingencies: The standard contract term is 15 years from the commencement date. Force majeure events automatically extend the contract term for specific durations and payment obligation of the Service Recipient is suspended to the extent of reduction of supply/ interruption in services.

The model agreement, being non-binding in nature, offers a valuable benchmark which market participants can customize based on their risk appetite and project specific requirements. By shifting massive upfront CapEx for setting up electrolyser plants into manageable OpEx, the EAAS model can fundamentally improve GH2 project economics supporting the National GH2 Mission.

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MODERNIZING INDIAN COAL PROCUREMENT LESSONS FROM US MARKETS AND THEIR IMPLEMENTATION FEASIBILITY TO FUEL INDIA'S GROWTH

Executive Context & Strategic Value

As India operationalizes the Coal Exchange Rules, 2026 and stabilizes state mineral taxes under the MMDR Amendment Act, 2026 (Section 9D), policymakers and industry stakeholders have a timely opportunity to replace legacy public-sector asymmetry with transparent, market-driven commodity governance. Adapting proven US commercial constructs directly advances India's twin priorities of industrial energy efficiency and sustained GDP growth—eliminating hidden dead-weight transport costs, curbing unmitigated emissions, and securing predictable fuel margins for downstream power and manufacturing.

1. Standardized Master Trading Agreements (The CTA Model)

Lesson from the US: US coal trade relies on the Coal Trading Association (CTA) Master Agreement, which separates standardized legal boilerplate—such as credit support, force majeure, and reciprocal default netting—from bespoke commercial confirmations covering volume, price, and quality. Environmental warranties under the Clean Air Act and Surface Mining Control and Reclamation Act (SMCRA) are embedded directly as binding conditions precedent to delivery.

Indian Feasibility & Implementation Lever: Under Rules 8 and 10 of the Coal Exchange Rules, 2026, the Coal Controller Organisation (CCO) can mandate CTA-style master contracts backed by the Settlement Guarantee Fund (SGF) for all exchange-traded physical contracts, while aligning legacy Fuel Supply Agreements (FSAs) toward bilateral amendment parity.

2. Granular Quality Adjustments & Rejection Thresholds

US Extrapolatable Lesson: Rather than relying on wide calorific bands, US contracts establish tight, shipment-specific guarantees for calorific value, ash, moisture, and sulfur. Automated mathematical bonus and penalty formulas adjust invoices per shipment for minor variances, while strict rejection limits empower buyers to refuse off-spec unit trains before unloading rather than absorbing 'deemed delivery' losses.

Indian Feasibility & Implementation Lever: The Coal Exchange Rules, 2026 have mandated that final traded prices be adjusted against certified quality reports issued by CCO-empaneled Third-Party Agencies (empaneled in July 2026) and cleared centrally via a Settlement Guarantee Fund (SGF). In practice, however, the system remains in its institutional build-out phase—with exchange registration applications (such as MCX Coal Exchange and Indian Coal Exchange) under stakeholder consultation as of October 2026, meaning automated price-quality netting will only be tested at scale once live exchange trading commences in 2027, while legacy PSU Fuel Supply Agreements remain largely unaffected unless explicitly brought under symmetrical rules.

3. Integrated Logistics & Delivered-at-Plant (DDP) Contracting

US Extrapolatable Lesson: US buyers and sellers negotiate freight directly with competing Class I railroads or inland barge operators, routinely contracting on a Delivered-at-Plant basis. Transit risk, delivery schedules, and demurrage accountability remain aligned with the party controlling logistics, preventing suppliers from shifting rail bottlenecks onto buyers.

Indian Feasibility & Implementation Lever: While full deregulation of Indian Railways is unfeasible in the near term, introducing optional Delivered-at-Plant (DDP) contracts for private commercial miners and tripartite Service-Level Agreements (Seller–Railways–Buyer) is readily achievable through an inter-ministerial Coal–Railways working group.

4. Independent Price Reporting & Forward Hedging Strips

US Extrapolatable Lesson: Deep over-the-counter physical and financial markets anchored by independent Price Reporting Agencies (such as Argus and Platts) provide transparent daily basin benchmarks in the US. Power generators and industrial buyers use 3-month to 3-year forward strips to hedge volatility and lock in predictable fuel margins while internalizing emissions compliance costs.

Indian Feasibility & Implementation Lever: With Section 9D of the MMDR Amendment Act, 2026 curbing arbitrary state-by-state mineral tax shocks, India now has the fiscal uniformity required for a national benchmark. The CCO and SEBI can authorize standardized quarterly and annual forward delivery strips once exchange trading scales.

5. Symmetrical Take-or-Pay & Commercial Default Remedies

US Extrapolatable Lesson: US coal contracts enforce strict reciprocity: volume tolerances (typically ±5% to ±10%) and liquidated damages apply equally to buyer non-acceptance and seller non-delivery. If a seller defaults, the buyer recovers market cover damages immediately without forfeiting bank guarantees or enduring multi-year administrative appeals.

Indian Feasibility & Implementation Lever: Mandating 90% symmetrical delivery and lifting triggers alongside mutual liquidated damages is immediately actionable across all new Non-Regulated Sector (NRS) auctions, CoalSETU contracts, and Coal Exchange bye-laws under CCO oversight.

Transitioning India's coal industry into the twenty-first century requires confronting the political economy that still anchors domestic coal governance. While recent statutory milestones—the Revised SHAKTI Policy (2025), the Coal Exchange Rules, 2026, and the MMDR Amendment Act, 2026—demonstrate clear legislative

intent toward transparency and market efficiency, deeper contractual and institutional reforms frequently encounter structural resistance within the Government of India (GoI) and its public-sector enterprises.

Sources of Institutional and Policy Resistance

First, **tariff sensitivity and sovereign energy security remain overriding priorities.** Because coal fuels roughly seventy percent of India's baseload electricity, policymakers remain cautious about dismantling administered notified pricing or loosening lifting obligations out of concern that pure market price discovery could trigger retail electricity tariff spikes for state distribution utilities (DISCOMs) and households.

Second, **fiscal and cross-subsidy dependencies lock multiple arms of the state into the status quo.** Central and state treasuries rely heavily on coal royalties, dividends, GST, and District Mineral Foundation (DMF) revenues, while Indian Railways depends on coal freight surpluses to cross-subsidize passenger fares—making integrated Delivered-at-Plant (DDP) logistics and true freight competition politically difficult to execute.

Third, **public-sector seller characteristics reinforce contractual inertia.** Dominant state producers such as Coal India Limited (CIL) and Singareni Collieries Company Limited (SCCL) operate as quasi-sovereign utilities balancing commercial profitability with national employment obligations, social welfare mandates, and administered supply targets. Within this culture, standardized, seller-protective Fuel Supply Agreements (FSAs) and 'deemed delivery' rules are viewed by PSU management as essential safeguards against commercial default, audit scrutiny from the Comptroller and Auditor General (CAG), and vigilance inquiries—creating strong institutional resistance to symmetrical liquidated damages, automatic invoice deductions, or buyer rejection rights.

Transforming India's Coal Architecture into a Modern Commodities Culture

Overcoming this resistance does not require overnight privatization or destabilizing regulated power tariffs; rather, it calls for a calibrated, dual-track transition that modernizes market rules while protecting public-interest mandates:

Ring-Fence Legacy Obligations While Scaling Market Channels: Maintain administered Window-I linkages strictly for existing regulated power plants under long-term PPAs, while mandating full US-style contractual symmetry—standardized master agreements, automated GCV/ash bonus-penalty netting, and mutual take-or-pay remedies—across the new Coal Exchange, CoalSETU auctions, and private commercial mining contracts. As commercial output and exchange liquidity scale, competitive discipline will naturally push state PSUs to modernize their own contract terms to retain industrial buyers.

Depoliticize PSU Contracting Through Institutional Safe Harbors: To overcome public-sector fear of audit and vigilance scrutiny, the Ministry of Coal and the Coal Controller Organisation (CCO) should notify pre-approved standardized contract templates and automated quality-adjustment formulas. When invoice deductions and dispute settlements follow transparent, algorithmic rules verified by accredited Third-Party Sampling Agencies (TPSAs) and settled through the Exchange's Settlement Guarantee Fund (SGF), PSU executives are insulated from discretionary audit risk.

Integrate Logistics, Beneficiation, and Clean-Coal Transition: Modernizing Indian coal trade means shifting from volume maximization to energy and environmental efficiency. Pairing First Mile Connectivity (FMC) conveyor projects and coastal/inland waterway corridors with mandatory pithead coal washing will eliminate dead-weight rail haulage of high-ash waste rock, lowering delivered energy costs and particulate emissions simultaneously. Aligning coal procurement with grid flexibility—by relaxing rigid take-or-pay penalties during peak solar hours—and channeling incentives toward coal gasification and carbon capture will ensure domestic coal supports industrial GDP growth while remaining compatible with long-term decarbonization.

On balance, however, full-fledged coal procurement reform cannot succeed as an isolated administrative exercise inside the Ministry of Coal. A truly twenty-first-century commoditized coal culture requires simultaneous progress across power sector financial viability (DISCOM reform), steel supply-chain integration, industrial open-access energy freedom, and railway freight modernization.

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CONTRACT SMART: FIVE DOS AND DON'TS FOR CONTRACTORS

We sign contracts routinely, often undervaluing their significance until conflicts occur. Here are five crucial dos and don'ts every contractor must consider.

Pre-signing

Dos

- Review and understand each project element together, considering their mutual impact.
- Draft with a "what-if" mindset – anticipate worst-case scenarios, not just ideal conditions.
- Conduct due diligence, including tax structures and implications.
- Include a list of pre-approved subcontractors.

Don'ts

- Accept strict, onerous obligations and unrealistic timelines. Factor in local conditions.
- Rely on present cordial relationships or project scale to accept arbitrary terms.
- Accept unrealistic timelines or deliverables, tied to third-party actions, such as regulatory approvals.

Payment terms

Dos

- Set out payment milestones clearly. Require front-loaded payments to maintain cash flow.
- Specify supporting documents for invoices and require timely payment within the due date.
- Define indices/methodologies for variable obligations in non-fixed price contracts.
- Require bank guarantees to be reduced proportionately with milestone completion.
- Provide performance bank guarantees post-handover. Insist on deeming provisions.
- Include default interest and right to suspend or terminate for payment delays.

Don'ts

- Agree to set-off rights for outstanding amounts.
- Agree to onerous bank guarantee terms.
- Allow high retention amounts for punch list items.
- Link significant payments to uncertain regulatory or right-of-way approvals.

Scope

Dos

- Clearly delineate scope and responsibilities. Use scope matrices, setting timelines and penalties.
- Insist on flexibility for third-party obligations, like regulatory approvals.
- Detail project owner responsibilities and obligations. Avoid limiting to payment defaults alone.

Don'ts

- Agree to broad, onerous obligations. Do not commit to unrealistic goals.
- Leave key project owner obligations open-ended – set long-stop dates with penalties.

Termination

Dos

- Set absolute (not relative) termination fees covering actual losses, including vendor cancellation fees, demobilisation costs and lost profit.
- Aim for equal termination rights – grounds should mirror those for the owner, not be confined to payment default alone.
- Incorporate obligation-specific remedies for breach to compartmentalise risk. For instance, specify delay liquidated damages as the sole remedy for delays, excluding any other relief.

Don'ts

- Agree to immediate termination. Insist on a default cure period.
- Agree to reimbursement of government penalties on termination.
- Incorporate termination clauses unrelated to contractor's scope.

Limitation of liability

Dos

- Cap liability and delay damages. Include standard exceptions such as fraud, gross negligence and personal injury.
- Exclude consequential damage.
- Provide for clear, time-bound and cost-effective (institutional) arbitration clauses.

Don'ts

- Agree to liability exceeding 100% of contract value.
- Agree to delay liquidated damages for the entire scope of obligations.
- Accept overly complex, multi-tiered dispute resolution processes.

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SECONDMENT OF FOREIGN EMPLOYEES TO INDIA: UNDERSTANDING EMPLOYER STATUS, SOCIAL SECURITY AND TAX IMPLICATIONS

Global companies frequently send employees from overseas offices to India for business expansion, knowledge transfer, project support or establishing operations. These arrangements, known as secondments, raise important employment and tax considerations, particularly in determining whether the secondee continues to remain an employee of the foreign company or becomes an employee of the Indian entity, and how the services provided by the secondee are characterised for tax purposes.

The answer depends on the substance of the employment relationship, including the level of control exercised over the employee and the structure of the secondment arrangement. In a typical secondment, an employee remains employed by the foreign company but is assigned to work with an Indian entity for a specific period. While the foreign company may continue to manage aspects such as the employment contract, salary and benefits, the Indian entity generally oversees the employee's day-to-day work, responsibilities and reporting. The nature of services performed by the secondee is also relevant, including whether the employee is merely performing functions for the Indian entity or providing technical knowledge, skills or expertise that can be independently used by the recipient.

Determining the employer in a secondment arrangement

Employment law generally focuses on the actual working relationship rather than only the contractual terms. Key factors include who controls the employee's work, provides instructions, supervises performance, exercises disciplinary authority and assumes employer responsibilities.

Where the Indian entity exercises significant control and the employee is integrated into its organisation, it may be considered the employer for certain purposes. Conversely, if the foreign company retains substantial control and the employee continues to have a strong employment connection with it, the foreign company may continue to be regarded as the employer.

Social security implications

Another important consideration for secondees is social security. Social security refers to mandatory contributions made by employees and employers towards benefits such as retirement, pension, healthcare and insurance. To avoid employees contributing to the social security systems of both the home and host countries for the same period, India has entered into Social Security Agreements (SSAs) with several countries.

Under the applicable SSAs, a secondee who is temporarily deputed to India and continues to contribute to the home country's social security system may qualify as an excluded employee (detached worker), provided the conditions under the relevant SSA are satisfied. The corresponding Administrative Arrangement governing the implementation of the SSA generally requires the employee to obtain a Certificate of Coverage (COC) from the competent authority of the home country, which serves as proof of continued coverage under the home country's social security system and enables the employee to claim exemption from Indian social security contributions for the period specified under the SSA.

Tax implications for the employee

Apart from the employment arrangement, the taxability of a secondee's income in India depends on the employee's residential status under the Income-tax Act, 1961 (now Income Tax Act, 2025) and the applicable Double Taxation Avoidance Agreement (DTAA). Where an individual qualifies as a resident of both countries, the DTAA contains tie-breaker rules to determine a single country of residence by considering factors such as the availability of a permanent home, the individual's centre of vital interests, habitual abode and nationality.

The DTAA helps determine which country has the right to tax an employee's income. Generally, income from professional or independent services is taxable in the employee's country of residence. However, the source country may also have the right to tax such income if the conditions specified under the applicable DTAA are satisfied, such as the presence of a fixed base or exceeding the prescribed period of stay in that country. Therefore, companies should consider the employee's tax residential status, duration of stay in India, nature of services performed and the specific provisions of the applicable DTAA for determining the tax treatment.

The EY judgment and its relevance

Where, on the facts, it is found that during secondment the secondees continue to maintain an employer-employee relationship with the foreign entity, courts tend to hold that the foreign entity is rendering technical service to the Indian entity through the seconded employees.

Examining a case of secondment in Centrica India Offshore, the Delhi High Court held that the foreign entity was the real employer of the secondees as they continued in an employment relationship with it and were eligible for its social security benefits etc. The Court applied the 'legal form versus economic substance' test to come to this conclusion. The Court went further and held that the requirement of "make available" test in Article 12 of India-US DTAA is also satisfied as the secondees provided their specialised knowledge/skills/experience etc. to the Indian entity. Therefore, the salary cost of the secondees reimbursed by the Indian entity to the foreign entity on cost-to-cost basis was characterised as Fee for Technical Services (FTS) and taxed in India. A Special Leave Petition filed against this judgment was later dismissed by

[1]Centrica India Offshore (P.) Ltd. v. Commissioner of Income-tax [2014] 44 taxmann.com 300

the Supreme Court.

On the other hand, in Boeing India[2], Delhi High Court noting that the real employer of the secondees was the Indian entity and not the foreign entity, held that its judgment in Centrica India will have no application to the case. A Special Leave Petition filed against this judgment was also dismissed by the Supreme Court. Similarly, in Flipkart Internet , Karnataka High Court held, on facts, that there were all indicia of employer-employee relationship between the Indian company and seconded employees. It therefore rejected the Revenue's contention that the salary cost of the secondees would be taxable in India under Article 12 of India-US DTAA as FTS.

In *Commissioner of Income Tax Vs. Ernst & Young U.S. LLP,* the Hon'ble Delhi High Court examined whether salary costs of secondees reimbursed by EY India entities to EY US were taxable in India as FTS under the India–USA DTAA, and whether such payments also fulfil the "make available" test to qualify as FTS under the DTAA.

The Court held that as per the arrangement, EY India had not hired the employees directly. Instead, EY US continued to provide the services of its employees to EY India under a deputation arrangement. Therefore, the payments made by EY India were not merely a reimbursement of employee costs but were payments for services provided by EY US to EY India. This conclusion was based on the following factors:

1. EY US retained overarching control over the employment relationship with the secondees;
2. The employees continued to maintain their lien with EY US and continued to receive employment benefits from EY US; and
3. EY India could only end the deputation arrangement and could not terminate the employees' relationship with EY US.

The Court then examined whether such services qualified as FTS under Article 12 of the India–USA DTAA. For this purpose, the Court applied the "make available" test, which requires the transfer of technical knowledge, skills, know-how or processes in a manner that enables the customer to use such knowledge independently in the future and mere provision of services without a lasting transfer of technical capability is not sufficient.

The Court observed that the services provided by EY US involved sharing of technical expertise, knowledge and training. Since the Indian entities and clients were able to gain technical capability through these services, the *"make available"* test was satisfied. Accordingly, the Court, relying on its judgment in Centrica India, held that the payments were taxable as FTS under the India–USA DTAA.

Conclusion

The tax treatment of secondment arrangements depends critically on the actual nature of the arrangement. Courts tend to look through contractual form over the economic substance of the arrangement (i.e., control, supervision, who bears ultimate employment risk, return-to-origin commitment and transfer of technical capability, etc.). Factors such as whether the secondee continues to remain an employee of the foreign company, the nature of respective controls exercised by the foreign and Indian entities, the continuation of social security benefits and the nature of services provided are important in determining the tax implications.

The EY judgment shows that where the foreign company continues to remain the employer and provides services through its employees, the payments made by the Indian entity may not be treated as simple reimbursement of employee costs. Further, whether such payments are taxable as Fee for Technical Services depends on the nature of services provided and whether the "make available" test is satisfied, i.e., whether technical knowledge, skills, know-how or processes are transferred in a manner that allows the recipient to use them independently in the future.

Therefore, companies should carefully evaluate secondment arrangements by considering employment, tax, and DTAA provisions to determine the correct tax treatment and avoid potential tax issues.

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[2]Commissioner of Income-tax v. Boeing India (P.) Ltd. [2023] 146 taxmann.com131(Delhi)
[3]Commissioner of Income-tax (International Taxation) v. Flipkart Internet (P.) Ltd. [2025]171 taxmann.com 693 (Karnataka)
[4]Commissioner of Income-tax (International Taxation) v. Ernst and Young U.S. LLP [2026] 187 taxmann.com 711 (Delhi)

INDIA-US CROSS BORDER ARBITRATION: A CHANGING LANDSCAPE

The United States **("US")** is one of India's most important commercial partners. In the financial year **("FY")** 2025-26, India's merchandise exports to the US stood at approximately USD 87.3 billion while imports stood at USD 52.9 billion. During April-September 2026, exports to the US increased by 11.1 per cent and imports by 26 per cent. Investment has also increased significantly. US foreign direct investment **("FDI")** equity inflows more than doubled from USD 5.45 billion in FY 2024-25 to USD 11.17 billion in FY 2025-26 making the US India's second largest source of FDI equity inflows. Cumulative US equity investment in India between April 2000 and March 2026 stood at approximately USD 81.8 billion. The growing commercial relationship between India and US underscores the need for a reliable mechanism for resolving cross border disputes.

Arbitration and its importance

Arbitration is an alternative dispute resolution mechanism whereby parties refer their disputes to one or more independent arbitrators for a binding decision. It offers flexibility, neutrality and party autonomy in resolving disputes. India and the US are parties to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards **("New York Convention").** India has notified US as a territory to which the New York Convention applies under Section 44(b) of the Arbitration and Conciliation Act, 1996 **("Act").** Accordingly, qualifying US arbitral awards can be enforced in India under Part II of the Act subject to limited grounds for refusal.

Legal Framework

In India, Part I of the Act primarily governs arbitrations seated in India while Part II governs the recognition and enforcement of foreign awards. Section 44 defines a foreign award subject to some requirements including that it must be made in a territory notified by the Central Government. The US, Singapore and the United Kingdom are among the notified territories. In the US, Chapter 2 of the Federal Arbitration Act **("FAA")** gives effect to the New York Convention. Under Section 203 of the FAA, federal district courts have original jurisdiction over New York Convention proceedings irrespective of the amount in dispute. Section 207 of the FAA permits an application for confirmation within 3 years of the award and the court must confirm it unless a ground for refusal under the New York Convention applies.

Judicial Pronouncements

In Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (2012), the Supreme Court of India **("Supreme Court")** held that Part I of the Act applies to arbitrations seated in India. Following the 2015 amendments, the proviso to Section 2(2) of the Act permits Indian courts to grant interim relief under Section 9 and assist in taking evidence under Section 27 in foreign seated international commercial arbitrations provided the resulting award is enforceable and recognisable under Part II of the Act, unless the parties agree otherwise. In Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. (2021), the Supreme Court recognised the enforceability of an emergency arbitrator's order under the Singapore International Arbitration Centre **("SIAC")** Rules in an India seated arbitration under Section 17(2) of the Act. In PASL Wind Solutions Pvt. Ltd. v. GE Power Conversion India Pvt. Ltd. (2021), the Supreme Court held that even two Indian companies may choose a foreign seat and seek interim relief from Indian courts under Section 9 of the Act subject to the statutory framework.

Enforcement of Awards

In India, an application for enforcement of a foreign award is made under Section 47 of the Act before the competent High Court as determined by the statutory definition of **"Court".** Enforcement may be refused only on the grounds specified under Section 48 which substantially mirror the New York Convention. In *Vijay Karia v. Prysmian Cavi E Sistemi SRL (2020),* the Supreme Court reaffirmed the pro enforcement

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Recent Developments

In India, institutions such as the Delhi International Arbitration Centre and the Mumbai Centre for International Arbitration provide institutional options for India seated disputes. Parties should distinguish between the choice of institution and the juridical seat, ensuring that the chosen seat is in a territory notified under Section 44(b) where enforcement in India is contemplated. Indian courts have continued to support the enforcement of foreign awards. In *Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.* (2024), the Supreme Court upheld the enforcement of a SIAC award and held that enforcement may be refused on the ground of arbitral bias only in exceptional circumstances. In *Nagaraj V. Mylandla v. PI Opportunities Fund-I* (2026), the Supreme Court upheld the enforcement of a Singapore seated SIAC award and held that a party cannot reopen issues already determined by the seat court. Further, in May 2025, the Bar Council of

India brought into force amended rules permitting foreign lawyers and law firms to practise foreign/international law including international commercial arbitration in India subject to reciprocity and restrictions on litigious practice.

Conclusion

US companies contracting with Indian counterparts should clearly specify the seat, institution, language and the law governing the arbitration agreement. Parties choosing a foreign seat should also consider preserving access to interim relief from Indian courts under Section 9 of the Act. With trade and investment between India and the US expanding, arbitration offers businesses a reliable mechanism for resolving cross border disputes. Careful drafting, an appropriate choice of seat as well as institution and an understanding of the enforcement framework can strengthen commercial certainty and facilitate effective dispute resolution between the two countries.

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Thank You

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