

# Topics



- Foreign investment
- **Buddhavanam**
- ***Nastaliq***
- Wholesale price index
- All about G7
- Mains



By saurabh Pandey





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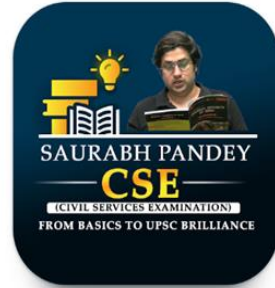
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# Target Mains -2024/25 -

**Q "Foreign investments is one of the factor to aid the government's goal of a \$5 trillion economy "**

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**प्रश्न "सरकार के 5 ट्रिलियन डॉलर की अर्थव्यवस्था के लक्ष्य में सहायता के लिए विदेशी निवेश एक कारक है" चर्चा करें**

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# India growth story has a 'beneficial ownership' hurdle



**F**oreign investments will play a crucial role in aiding the government's goal of a \$5 trillion economy by the end of the financial year 2025-26. But, in order to attract foreign investment, it is essential to remove all the bottlenecks for the Indian companies receiving this investment, and also foreign investors who are willing to bet on the India growth story.

## Amendment conundrum

The amendment to the Indian Foreign Exchange Management (Non-debt Instruments) Rules, 2019 ("FEMA NDI") through the press note number 3 of 2020, has posed a significant challenge for Indian companies, especially start-ups and smaller enterprises seeking foreign investments. This amendment stipulates that any investments in Indian companies, whether direct or indirect, originating from entities located in countries that share land borders with India ("Neighbouring Countries"), or where the "beneficial owner" of the said Indian investment is situated in, or is a citizen of any of these Neighbouring Countries would necessitate prior government approval ("PN3 Requirement").

While the aim of the amendment which was promulgated during the COVID-19 pandemic was salutatory – i.e., to curb opportunistic takeovers or acquisitions of Indian companies by Neighbouring Countries during difficult times created by a black swan event – it created vast uncertainty as the term 'beneficial owner' has not been explained or defined, and other laws that have a definition of the term are context-specific. When the PN3 requirement was first introduced, the industry in general was comfortable taking a lenient view, relying on the beneficial ownership thresholds that were legislated in other laws. But since the latter half of 2023, the Reserve Bank of India (RBI) has begun taking a more conservative view concerning issues on which the law was silent, especially under FEMA NDI.

For example, last year, numerous Foreign Owned or Controlled Companies ("FOCCs")



**Dev Jain**

is a corporate lawyer and has previously worked with AZB & Partners and TTA

The amendment to the Indian Foreign Exchange Management (Non-debt Instruments) Rules, 2019 is a challenge

began receiving notices from the RBI regarding their downstream investments. The industry has since taken the view that FOCCs will be placed under the same restrictions as non-residents on the aspects on which the law is silent. However, when this notion was challenged by the RBI recently, investors began to question other industry practices on which the FEMA NDI was silent. Even law firms that were once fine with adopting a lenient view in cases of beneficial ownership thresholds, are now advising clients that they cannot offer assurance by relying on the beneficial ownership thresholds legislated under other laws.

Further, the obstacle of navigating the prior government approval route is exacerbated by its time-consuming nature and high rejection rate. Although consolidated official data on pending or rejected applications is not published by the Government of India, some government officials have stated that proposals worth ₹50,000 crore from the Neighbouring Countries are either pending, withdrawn or rejected; and a staggering 201 applications have been rejected in the past three years.

With the PN3 Requirement, the onus of compliance is on the Indian company that receives foreign investment, with the regulatory authorities having the discretion to impose fines of up to three times the investment received. The inherent vagueness within the legislation, along with severe penalties, can cast doubts on the survivability of these companies.

Many of these start-ups receive investments far beyond their revenue or assets. So, such fines could leave them insolvent, even if they liquidate. Non-compliance would likely trigger legal battles, adding to India's already significant backlog of court cases.

## Issues and solutions

First, the indemnity challenge. Indian companies could consider having foreign investors to furnish representations backed by indemnities regarding

their compliance with the PN3 Requirement. However, this may discourage foreign investment due to potential liabilities.

Therefore, there is a pressing need to amend the PN3 Requirement to define "beneficial owners" comprehensively, including ownership thresholds and control tests.

Second, defining 'Beneficial Owners'. The definition of 'beneficial owner' should specify a precise threshold for ascertaining beneficial ownership, potentially ranging from 10% (as provided under the Indian company law) to 25% (as recommended by the Financial Action Task Force). The selection of the specific threshold can be customised to align with the government's objective of scrutinising varying levels of foreign investment across different sectors. For example, sectors such as telecom and defence, which are sensitive in nature, may warrant heightened scrutiny when compared to sectors such as manufacturing and construction, where India requires additional capital.

The definition should also specify control-conferring rights, beyond ownership thresholds, to capture entities with significant influence. For example, rights regarding board meeting quorums or veto powers over operational matters such as incurring any capital expenditure or availing any loan may confer control and should be outlined. However, investor value protection rights, such as veto powers over mergers or right of first offer, should be excluded from the definition, as they do not constitute control.

Third, consultation mechanism. Even with the clarification of control-conferring rights in the definition, some ambiguity may persist due to the skilful drafting of peculiar clauses in the charter documents. To mitigate this issue, FEMA NDI, akin to Indian competition law, could be amended to incorporate a time-bound consultation mechanism with regulatory authorities, to determine whether specific clauses are control-conferring.

# Foreign Investment

- **Foreign investments will play a crucial role in aiding the government's goal of a \$5 trillion economy by the end of the financial year 2025-26.**
- **But, in order to attract foreign investment, it is essential to remove all the bottlenecks for the Indian companies receiving this investment, and also foreign investors who are willing to bet on the India growth story.**
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# What is Foreign Investment?

## A: Foreign Direct Investment

A company buying or building a factory in another country



## B: Foreign Portfolio Investment

Buying stocks and bonds from another country



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## **What is PN3??**

- **On April 17, 2020, the Government of India (“Government”) issued Press Note No. 3 (2020 Series) (“PN3”) with an objective to limit ‘opportunistic’ foreign direct investments (“FDI”) from countries sharing land border with India (“Neighbouring Countries”).**
- **The PN3 mandated that where an investing entity is situated in a country sharing land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, FDI shall be permitted only with prior Government approval.**
- **Against the backdrop of the pandemic and concerns of Chinese consolidation of investment in Indian entities, the PN3 aims to protect vulnerable Indian companies from foreign takeovers.**



(Clockwise) The inner courtyard of Dr. Y.S. Rajasekhara Reddy State Museum. The relics of Buddha, discovered in Barikohda near Vishakhapatnam, are currently housed in the Hyderabad museum. The jade dagger with Sankar-e-Azala written on it set to be transferred to A.P. It was acquired in 2006. (100px) (100px)

# Dividing a culture

Ten years after the creation of a separate Telangana from united Andhra Pradesh, the division of antiquities, manuscripts and cultural objects between the two States remains a bone of contention. Are provenance and time of acquisition the only yardsticks for division of heritage? **Serish Nambetti** finds out

**I**nside the Dr. Y.S. Rajasekhara Reddy Museum in Hyderabad is a hallway where visitors are asked to remove their footwear. School children run inside with shoes they are called back and they look guilty at the no-foe-way sign. Occasionally, flower petals and vermilion can be spotted near the shoe way. A few steps away, inside a glass casing, are a few earthen vessels and an odd-shaped stone vessel with a cap.

These are the relics of Gautama Buddha. If this collection goes, the gem of this museum goes. People from across the world come to pay homage to the relics of the Buddha. People from Nepal have chanting sessions, offer flowers and light up gyo sticks when they come here," says an official at the museum.

**Relics of the Buddha**  
Within the four earthen vessels, arranged according to the way they were discovered in Barikohda, about 14 kilometers from Vishakhapatnam in Andhra Pradesh, are gold objects and precious beads. The gold objects have not lost the shine. Indices of the Buddha include a small golden container that shimmers nearly 2,000 years after it was created by a goldsmith's hammer in Andhra Pradesh. These were discovered during the excavation in 1951 near Barikohda by the Andhra Pradesh Department of Archaeology and Museums (DAM).

Now, these objects and relics will return to Andhra Pradesh, according to the plan of bifurcation drawn up by the Antiquities committee of the two States. Just the list of artifacts runs into 200 pages, while the list of arms and weapons to be transferred runs into eight pages. One of the objects is a cannon brought from the Yakkampati Fortification in Hyderabad and will go to Karnool State Museum.

The key for division is the provenance and time of the acquisition of the object. All pre-1956 objects remain with Telangana. The manuscripts, paintings, and artifacts acquired between 1956 and 2014 have been divided between the two States in ratio of the population with 52% going to AP and 48% to Telangana.

**A.P. loses Hyderabad**  
Hyderabad is no longer the capital of Andhra Pradesh. But, within the 400-year old city is a treasure that belongs to the State, which is yet to have a capital. Among them are the Buddha's relics, jade objects, brass statues, and manuscripts that are now housed in the State Museum, Vishakhapatnam State Archives, Oriental Manuscripts Library and other lesser known museums in Telangana. The antiquities are now at the centre of a headline match that is being played out beyond the headlines.

"Further, an earthen urn is recognised as Samudragala, large in size, was found below the stone receptacle, which contains alms deposit, burnt charcoal and copper remains of the cluster, along with silver and gold carvings and a number of precious beads," wrote N.S.V. Prasad, head of the excavation at Barikohda in 1953 that transformed the understanding about the gem of Hinduism Buddhism in the post-Independence period along the Krishna River basin.

The shadow conflict goes to the heart of the layers of history that go into the creation of Telangana and Andhra Pradesh. Inside the room, where the relics of the Buddha are housed, is a



**W**e are developing the museums that will have a new look with better showcasing of objects. We have a rich repository of objects. We will ensure that most of the antiquities identified with Telangana will remain with the State. **BHASKAR HILLARAJ** SECRETARY, ANTIQUITIES

map of spread of Buddhism in Andhra Pradesh. It lists its sites. None of them are from Telangana.

**Buddhism**  
Post division of the two States, Phraangli, Kottigala, Madalapati, Kondipudi, Uthukota and other sites have been brought to light and showcased. Telangana State has transformed Nandikonda, a village in Nandikonda district, into a heritage precinct called Buddhavanam and built a theme park.

At the same time, two statues of Buddha from Phraangli have been taken to the Metropolitan Museum of Art for its exhibition of "The Tree of Life: Early Buddhist art in India, 200 BCE-400 CE." Currently, the artifacts are in South Korea for the exhibition in National Museum which ended in April. Another brass idol that has made the journey to New York and Seoul is the Anahitawara dating from 4th century AD unearthed in Madalapati in Khannam district.

"We are developing the museums and they will have a new look with better showcasing of objects. We have a rich repository of objects. Most of the antiquities that are identified with Telangana will remain in the State. We will ensure that," says Bhaskar Hillaraj, Director, DAM. "Distribution of assets and sending them back to the places where they were created is a good development. We had a very important excavation in Vijayanagara in the 1950s. The excavated statues are now scattered all over the place. One is in the State Museum, another is in the National Museum in Karnataka and another in the Yashwantrao Chavan Museum. When these artifacts are distributed, the importance of the site declines. We need to develop it as a museum," says scholar and archaeologist M.A. Srinivasan.

If an object is found or discovered in a rural area, the other end are to be the subject from modern or contemporary art. Among the items that are to go to Andhra Pradesh is a beautiful jade dagger engraved with the 'Sankar-e-Azala' in the Telugu script. The 'Sankar-e-Azala' is a writing style of Perso-Arabic script developed by gold engravers in the hands of the dagger reads as Sankar-e-Azala. The jade handle is a hand-drawn drawing of a bird, a gift for the owner. "How does this object fit in with the other objects in Andhra. It will be a concern," says a museum curator, raising a valid concern about the nature of distribution of the objects.

A total of 15,500 books remain in Telangana State Library with 7,000 books bought after 1956, have been shifted to Vijayanagara in Andhra Pradesh. Telangana got over 100 books already had 5,400 books at the time of creation of Andhra Pradesh. "I have taken a digital list of all the books and sent the digitised version of the list that has in using the books, this has not been known through." The books were not digitised and were being stored in 2005," informs a museum staff.

"The Antiquities committees have met three times till now. The objects have been classified according to the place they are located now. The rest are of objects are in the warehouses, the second set are museum pieces on display, and the third set are acquired by gift or donation or purchase. Those acquired before 1956 stay here. The ones after 1956 will be divided," says Nagaraj Das, Director of Archaeology and Museums, Telangana.

"How can they bifurcate culture and history? It is not a property. It cannot be divided. Namamya Bharatam belongs to all. How can we say the manuscript belongs to one State?" **JAVAHARLAL TRIPATHI & KAO** MEMBERS  
Archives manuscripts written in gold on blue paper during the rule of the Qutb Shahi, letters written by Mahatma Gandhi, one of the first books in India created during the time of Subhas Chandra Bose of Galiberg. "We are putting with only documents and books that come here after May 1957 from Karnataka. The And Jaha era firms and notices are with us. They have not been touched. No one



ya Bharatam belongs to all. How can we say the manuscript belong to one State?" asks architect and manuscript specialist Tripathi Das, who has one of the biggest collections of tribal music objects.

"We find a number of Telugu manuscripts in the border region of Maharashtra. Do they belong to Maharashtra? Western coastal region is an odd concept in the modern world where boundaries are changing. Khannam and Nalgonda have expanded and contracted. The manuscripts should stay at one place. If they divide, let all the Telugu documents go to one State and let the skill to another State. That way, scholars and researchers would find it easy," he says about the collection.

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has the expertise to even read those documents and manuscripts," says the Director Zareen who has a wealth about the repository under her care.

"What we need to do is build the museums that will help people understand the importance of the objects and heritage. Important sites museums are the way to go. It is the one set up in Phraangli. It has an important context to visitors of the site and creates a sense of pride and ownership in the community," says Art historian and Curator Nagma Anjum.

**Proved assets**

It is not just the division of assets that will affect the assets of Telangana. Some of the prized assets have disappeared over the years. Among them is a painting of Akbar Shah, son of fall Sultan Shah Raju Qutub, reclining which used to be with the Andhra Pradesh repository and is now found in the

of the painting that we can see online. It matches with the image in Nizam Archaeology Department of Hyderabad that has the photograph of the painting by Robin Khanna," informs an art historian.

At a time when repatriation of cultural objects is gathering pace across the world with stolen or pillaged objects being returned to the place of their origin, the Telangana Andhra Pradesh department of exchanging artefacts, books and manuscripts according to provenance and time of acquisition, poses an interesting counterpoint. How flow the history of the two Telangana States remains a key question.

# Buddhavanam

- **Buddhavanam is a tourism project in Nagarjuna Sagar, Telangana created by the Telangana State Tourism Development Corporation.**
- **The project was sanctioned by the Government of India viz., Integrated Development of Nagarjunasagar as part of Lower Krishna valley Buddhist circuit with a view to attract large number of domestic and foreign tourists particularly from the South-East Asian countries.**



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map of spread of Buddhism in Andhra Pradesh. It lists 15 sites. None of them are from Telangana.

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If an object is of the spectrum of the Buddhist spiritual objects, then in the other end are the objects from modern or contemporary art. Among the items that are to go to Andhra Pradesh is a beautiful jade dagger engraved with the 'namah' (a writing style of Persio-Arabic script) depicting a gold engraving in the handle of the dagger reads as Sankar-e-Azala. The jade handle is a handiwork now waiting a good price for the owner. "How does this object fit in with the other objects in Andhra. It will be concerned," says a museum curator, raising a valid concern about the nature of distribution of the objects.

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"What we need to do is build the museums that will help people understand the importance of the objects and heritage. Important sites museums are the way to go. It is the one set up in Phantigi. There is an important context to visitors of the site and creates a sense of pride and ownership in the community," says Art historian and Curator Namita Anjum.

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"See the frayed edge in the right of the painting that we can see on the left. It matches with the image in Nizam Archaeology Department of the State that has the photograph of the painting by Robin Khanna," informs an art historian.

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# *Nastaliq*

- . *Nastaliq* also **romanized** as *Nasta‘līq* or *Nastaleeq*, is one of the main **calligraphic hands** used to write the **Perso-Arabic script** and it is used for some **Indo-Iranian languages**, predominantly **Classical Persian, Kashmiri, Punjabi (Shahmukhi)** and **Urdu**.
- It is often used also for **Ottoman Turkish** poetry, but rarely for **Arabic**.
- *Nastaliq* developed in **Iran** from *naskh* beginning in the 13th century and remains widely used in **Iran, Afghanistan, India, Pakistan**, and other countries for written poetry and as a form of art.



# May WPI inflation spikes to 15-month high on food prices

Food inflation surges to 10-month peak of 7.4% driven by steeper fruit, vegetable, cereal prices; manufactured products see return of price rise

**Vikas Dhoot**  
NEW DELHI

Inflation in India's wholesale prices accelerated to a 15-month high of 2.61% in May, more than double April's pace, with food inflation surging to a 10-month peak of 7.4% driven by steeper prices for vegetables, fruits, pulses and cereals, and a resurgence of price rise in manufactured products after 14 months of deflation.

Economists said the acceleration in wholesale inflation in May signals there is room for a further surge in consumer prices despite retail inflation easing to a 12-month low of 4.75% last month, especially as food and industrial input prices are spiking globally. May was the seventh month in a row that the WPI rose on a YoY basis after seven straight months of deflation, and wholesale inflation is expected to quicken more than 3% this month.

## Sequential easing

On a month-on-month basis, the Wholesale Price Index (WPI) was up 0.2% in May, easing from an upwardly revised 9-month high of 1.06% a month earlier, with food prices rising 1.14% over April levels and manufactured products' prices up 0.64%.

The heatwaves in May

## Wholesale worries

WPI inflation accelerated to a 15-month high of 2.61% in May, more than double April's pace

- Manufactured products see a resurgence of inflation after 14 months of deflation
- May was the seventh month in a row that the WPI rose on a year-on-year basis
- Sequentially, the WPI rose 0.2%, easing from April's upwardly revised 9-month high of 1.06%



helped fire up the inflation rate for vegetables to the highest level in nine months at 32.4%, and a six-month high of 5.8% for fruits.

Price rise in cereals sped to 9%, while that for pulses reversed direction to hit a six-month high of 22%.

Within vegetables, tomato prices were up 64.5% in May from 40.6% in April, while inflation in onion and potato eased slightly to a tad over 58% and 64%, respectively.

## 'Supply shortfalls'

Bank of Baroda chief economist Madan Sabnavis said the spikes in vegetable prices were partly due to supply shortfalls and that the heatwave aggravated the challenge.

"This is a major concern as it will keep up the pressure on the inflation till the next crop comes," Mr. Sabnavis told *The Hindu*.

India Ratings flagged si-

milar concerns about pulses prices remaining elevated in double digits as the new crop would be harvested only in October-November.

## 'Worrisome for retail'

"Elevated food inflation at the wholesale level is worrisome as this would keep retail food prices firm even going forward," senior director and principal economist Sunil Kumar and senior analyst Paras Jasral wrote in a note. "Retail food inflation has been above 8% for the past seven months," they added.

India Ratings expects retail food inflation to remain over 8%, with wholesale prices expected to rise further to 3.5%, in June. CareEdge Ratings' chief economist Rajani Sinha also pointed out that industrial metal prices had risen 9.3% since March-end and food prices were increasing globally.



# Wholesale price index

- **.Definition:** Wholesale Price Index (WPI) represents the price of goods at a wholesale stage i.e. goods that are sold in bulk and traded between organizations instead of consumers. WPI is used as a measure of inflation in some economies.
- **Description:** WPI is used as an important measure of inflation in India. Fiscal and monetary policy changes are greatly influenced by changes in WPI. In the United States, Producer Price Index (PPI) is used to measure inflation.
- WPI is an easy and convenient method to calculate inflation. Inflation rate is the difference between WPI calculated at the beginning and the end of a year. The percentage increase in WPI over a year gives the rate of inflation for that year

# Difference between Wholesale Price Index and Consumer Price Index

**Comparative Table: Wholesale Price Index and Consumer Price Index**

	<b>Wholesale Price Index (WPI)</b>	<b>Consumer Price Index (CPI)</b>
Meaning	It measures the average change in the price in the sale of goods in bulk quantity by the wholesaler.	CPI measures the change in the price in the sale of goods or services in retail or directly to the consumer.
Area of Focus	It focuses on the goods that are traded only between wholesalers or businesses.	It focuses on the goods that the consumer is purchasing.
Numbers of Items Covered	697	448 for rural and 460 for urban
Reference Year for Calculation	Financial year	Calendar year
Releasing Date	Every week for primary products, fuel, and power for the remaining items in monthly publishing.	Every month.
Prices Bear By	By manufacturer and wholesaler.	By consumer.
Inflation Measurement	WPI measures inflation in the first stage.	WPI measures inflation in the last stage.
Price Measurement	It is restricted to only goods.	It is for both goods and services.



# G-7 leaders say they will back Ukraine ‘as long as it takes’

The group will provide financing to Kyiv that will be serviced and repaid by flows of revenues stemming from the immobilisation of Russian sovereign assets held in the EU, says summit draft

**Agence France-Presse**

BARI

**G**-7 leaders recommitted Friday to support Ukraine “for as long as it takes”, according to a draft statement from a summit where they agreed a new \$50 billion loan for Kyiv.

“We are standing in solidarity to support Ukraine’s fight for freedom and its reconstruction for as long as it takes,” said the draft from the Italy talks.

It said the \$50 billion loan – agreed in the presence of Ukraine President Volodymyr Zelenskyy – sent “an unmistakable signal to (Russian) President Vladimir Putin”.



**Show of support:** G-7 leaders with Volodymyr Zelenskyy during the summit in Fasano, Italy, on Friday. GETTY IMAGES

The loan will be backed by profits from the interest accrued on Russian central bank assets frozen by Western powers after Moscow’s February 2022 invasion of Ukraine.

“The G-7 intends to pro-

vide financing that will be serviced and repaid by future flows of extraordinary revenues stemming from the immobilisation of Russian sovereign assets held in the European Union and other relevant jurisdic-

tions,” the draft statement said. “To enable this, we will work to obtain approval in these jurisdictions to use future flows of these extraordinary revenues to service and repay the loans.”

It said the money would be disbursed through “multiple channels that direct the funds to Ukraine’s military, budget, and reconstruction needs – within the constraints of our respective legal systems and administrative requirements”.

The leaders tasked ministers and officials to start working on the technicalities to start providing the funds to Ukraine before the end of the year.

# All about G7

## .What is the G7?

- The G7 (Group of Seven) is an organisation of the world's seven largest so-called "advanced" economies, which dominate global trade and the international financial system.
- They are Canada, France, Germany, Italy, Japan, the UK and the United States.
- Russia joined in 1998, creating the G8, but was excluded in 2014 for its takeover of Crimea.



- **China has never been a member, despite its large economy and having the world's second-largest population.**
- **Its relatively low level of wealth per person means it is not seen as an advanced economy in the way the G7 members are.**
- **Both these nations are in the G20 group of developed and developing nations.**
- **The EU is not a member of the G7, but attends the annual summits.**
- **Throughout the year, G7 ministers and officials hold meetings, form agreements and publish joint statements on global event**

## **What is Italy's agenda for the 2024 summit?**

- The 2024 G7 summit will be held from 13 to 15 June in Apulia, in Italy.
- It will be the first major international forum hosted by the Italian prime minister, Giorgia Meloni, since she took office in October 2022.
- As well as the wars in Ukraine and Gaza, Italy says it wants the summit to focus on Africa and migration, economic security, and international co-operation on artificial intelligence (AI).



Getty Images

## G7 in numbers

**7** member countries

**30%** of global GDP

**1/10** of world's population

**2014** Russia suspended for annexing Crimea

Source: BBC research

## . How could the G7 work with developing nations?

- Italy says "the relationship with developing nations and emerging economies will be central" to the G7 summit, and that it "will work to build a co-operation model based on mutually beneficial partnerships".
- It has invited leaders from 12 developing countries in Africa, South America and the Indo-Pacific region.
- Under the the Mattei Plan, Italy will give grants and loans worth 5.5bn euros (£4.6bn) to several African countries, to help develop their economies.



- . The scheme would also position Italy as an energy hub, building gas and hydrogen pipelines between Africa and Europe.
- In December 2023, [Italy pulled out of the Belt and Road Initiative](#) - a scheme to expand China's ports and transport routes worldwide to boost trade.
- Ms Meloni said that joining had been "a serious mistake". The US has called the initiative "debt-trap diplomacy" on China's part.
- It is thought that [the US is keen for G7 leaders to take further action on economic security](#) at the summit in Italy.
- The safety of AI was raised at the 2023 summit in Japan and resulted in the [Hiroshima AI Process](#), intended to promote "safe, secure, and trustworthy AI worldwide".

# Does the G7 have any power?

- The G7 cannot pass laws. However, some of its past decisions have had global effects.
- For example, the G7 played a crucial role in setting up a global fund to fight malaria and Aids in 2002.
- Ahead of the 2021 G7 summit in the UK, the group's finance ministers agreed to make multinational companies pay more tax.





# PN3 Requirement

The amendment to the Indian Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (“FEMA NDI”) through the press note number 3 of 2020, has posed a significant challenge for Indian companies, especially start-ups and smaller enterprises seeking foreign investments.

This amendment stipulates that any investments in Indian companies, whether direct or indirect, originating from entities located in countries that share land borders with India (“Neighbouring Countries”), or where the “beneficial owner” of the said Indian investment is situated in, or is a citizen of any of these Neighbouring Countries would necessitate prior government approval (“PN3 Requirement”).



While the aim of the amendment which was promulgated during the COVID-19 pandemic was salutatory — i.e., to curb opportunistic takeovers or acquisitions of Indian companies by Neighbouring Countries during difficult times created by a black swan event — it created vast incertitude as the term ‘beneficial owner’ has not been explained or defined, and other laws that have a definition of the term are context-specific.



When the PN3 requirement was first introduced, the industry in general was comfortable taking a lenient view, relying on the beneficial ownership thresholds that were legislated in other laws.

But since the latter half of 2023, the Reserve Bank of India (RBI) has begun taking a more conservative view concerning issues on which the law was silent, especially under FEMA NDI.

For example, last year, numerous Foreign Owned or Controlled Companies (“FOCCs”) began receiving notices from the RBI regarding their downstream investments.

The industry has since taken the view that FOCCs will be placed under the same restrictions as non-residents on the aspects on which the law is silent. However, when this notion was challenged by the RBI recently, investors began to question other industry practices on which the FEMA NDI was silent.

## Steps needed

**There is a pressing need to amend the PN3 Requirement to define “beneficial owners” comprehensively, including ownership thresholds and control tests. Second, defining ‘Beneficial Owners’.**

**The definition of ‘beneficial owner’ should specify a precise threshold for ascertaining beneficial ownership, potentially ranging from 10% (as provided under the Indian company law) to 25% (as recommended by the Financial Action Task Force).**



Third, consultation mechanism.

Even with the clarification of control-conferring rights in the definition, some ambiguity may persist due to the skilful drafting of peculiar clauses in the charter documents.

To mitigate this issue, FEMA NDI, akin to Indian competition law, could be amended to incorporate a time-bound consultation mechanism with regulatory authorities, to determine whether specific clauses are control-conferring.



- It is a mechanism that was constituted **to support Centre-State and Inter-State coordination and cooperation in India.**
- **Article 263:** The Inter-State Council was established under Article 263 of the Constitution, which states that **the President may constitute such a body if a need is felt for it.**
- **Objective:** The Council is basically meant to **serve as a forum for discussions among various governments.**
- **Sarkaria Commission:** In 1988, the Commission suggested the Council should exist as a permanent body, and in 1990 it came into existence through a **Presidential Order.**

## Functions:

- **To investigate and discuss subjects in which the states or the centre have a common interest.**
- **To make recommendations upon any such subject for the better coordination of policy and action on it, and**
- **To deliberate upon such other matters of general interest to the states as may be referred to it by the chairman.**
- **It also facilitates consideration of all pending and emerging issues of the Centre-State and inter-State relations by the zonal councils and inter-State council**
- **It develops a sound system of monitoring the implementation of the recommendations of the inter-State council and zonal councils.**



- The **Prime Minister** is the chairman of the Council.
- **Members** include the:
  - Chief ministers of all the states
  - Chief ministers of union territories having legislative assemblies
  - Administrators of union territories not having legislative assemblies
  - Governors of States under President's rule.
  - Six Central cabinet ministers, including the home minister, are to be nominated by the Prime Minister.
  - Ten Ministers of Cabinet rank / Minister of State (independent charge) nominated by the Chairman of the Council (i.e., Prime Minister) are permanent invitees to the Council.



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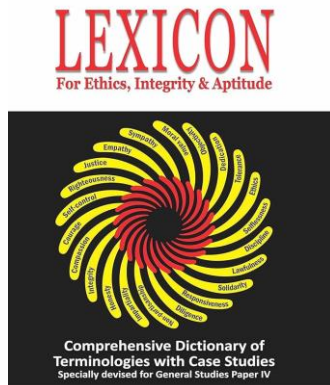
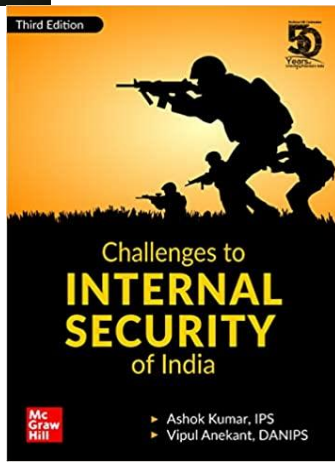
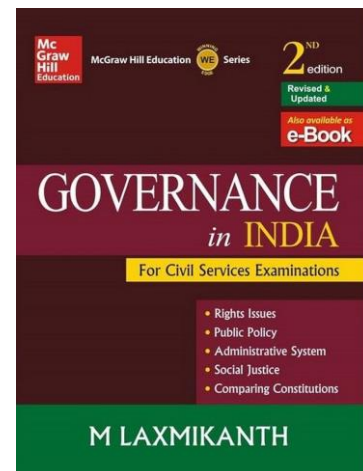
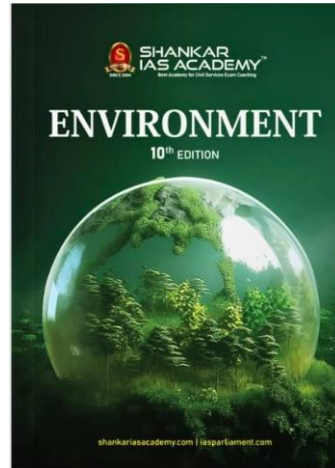
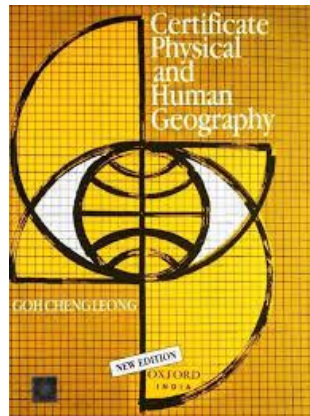
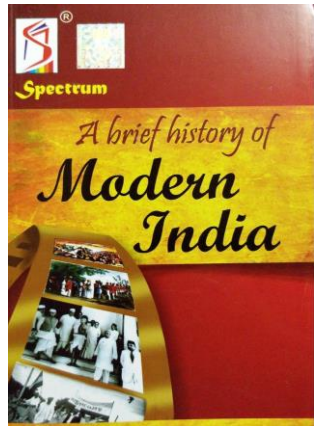
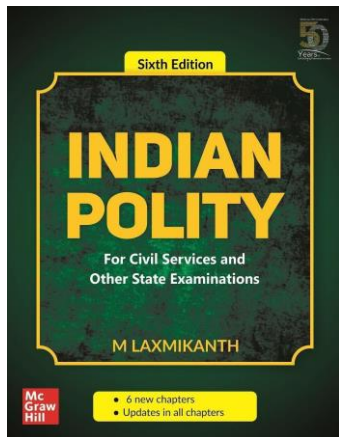
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