

Gautam Adani U.S. indictment: How are summons issued under the Hague Convention?

The U.S. Securities and Exchange Commission has sought assistance from the Union Law Ministry, the central authority for India under the Hague Service Convention, to effectuate summons on Gautam Adani and his associates. What does this process entail, and what challenges does it pose?

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The U.S. Securities and Exchange Commission informed a New York court on February 18, 2025, that it has sought assistance from the Indian government under the Hague Service Convention to serve summons on billionaire Gautam Adani and his nephew Sagar Adani in a securities and wire fraud case. File. | Photo Credit: Reuters

The U.S. Securities and Exchange Commission (SEC) informed a New York court on February 18, 2025, that it has sought assistance from the Indian government under the Hague Service Convention—formally known as the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965—to serve summons on billionaire Gautam Adani and his nephew Sagar Adani in a securities and wire fraud case. The Adanis were recently charged by the U.S. Department of Justice and the SEC in criminal and civil

cases for allegedly bribing Indian government officials over \$250 million to advance the Adani Group's solar projects.

What did the SEC say?

The SEC informed the court that it had invoked Article 5(a) of the Convention to request India's Ministry of Law and Justice to facilitate the service of summons on the defendants. It further stated that it is exploring alternative service methods permitted under Rule 4(f) of the Federal Rules of Civil Procedure, which governs civil litigation in U.S. federal courts.

On February 10, 2025, the Trump administration **paused enforcement of the Foreign Corrupt Practices Act (FCPA)**—one of the laws under which the Adanis have been charged—for 180 days. The FCPA prohibits U.S. entities and individuals from bribing foreign governments, political parties, or officials to secure business.

As per the executive order, the attorney general must review “all existing FCPA investigations or enforcement actions” and take steps “to restore proper bounds on FCPA enforcement”. However, the SEC's latest court filing suggests that the order does not apply retroactively. As a result, the Agency's investigation into the Adanis is likely to continue unless the law is amended.

Following **his visit to Washington** last month, Prime Minister Narendra Modi told journalists that his meeting with U.S. President Donald Trump **did not include discussions on the Adani case**, as it was a “personal matter”.

How does the Hague Service Convention operate?

With the rise in cross-border litigation, the need for an effective and reliable mechanism to serve judicial and extrajudicial documents on parties residing in foreign jurisdictions became imperative. As a result, countries adopted the Convention at the Hague Conference on Private International Law in 1965. Building on the 1905 and 1954 Hague Conventions on Civil Procedure, this multilateral treaty ensures that defendants sued in foreign jurisdictions receive timely and actual notice of legal proceedings while also facilitating proof of service.

Eighty four states, including India and the U.S., are parties to the Convention. Its procedures apply only when both the sending and receiving countries are signatories. Each member state must also designate a central authority to process requests and facilitate the service of documents from other signatory states.

Signatory states can select the modes of transmission that apply within their jurisdiction. Under the Convention, the primary mode of service is through designated central authorities. However, alternative channels are also available, including postal service, diplomatic and consular channels, direct communication between judicial officers in both states, direct contact between an interested party and judicial authorities in the receiving state, and direct communication between government authorities.

How is service effectuated on defendants in India?

India acceded to the Convention on November 23, 2006, with certain reservations, expressly opposing all alternative service methods under Article 10. It prohibits the

service of judicial documents through diplomatic or consular channels, except when the recipient is a national of the requesting country. For instance, a U.S. court cannot serve documents in India through U.S. diplomatic or consular channels, unless the recipient is a U.S. national residing in India. Additionally, all service requests must be in English or accompanied by an English translation.

As a result, valid service can only be executed through the Ministry of Law and Justice, India's designated central authority. The Law Ministry is permitted to reject a service request but must specify the reasons for such refusal. For instance, under Article 13, a request can be denied if the state believes its sovereignty or security would be compromised.

However, a state cannot reject a service request solely because it claims exclusive jurisdiction over the subject matter under its domestic law. Similarly, under Article 29, a request cannot be refused simply because the state's internal law does not recognise a right of action.

If the central authority raises no objections, it proceeds with serving the defendant. The service is then treated as a summons issued by an Indian court under **Section 29(c) of the Code of Civil Procedure, 1908**. Once completed, the central authority issues an acknowledgement to the requesting party. The entire process typically takes six to eight months.

What do judicial precedents say?

There is ongoing debate over whether service through alternative channels such as social media and email is precluded by India's reservation under Article 10 of the Convention. This controversy arises from conflicting judicial interpretations regarding the scope of the reservation. In *Federal Trade Commission v. PCCare247 Inc.* (2013), a U.S. district court ruled that service of process in India through Facebook and email is permissible. The court reasoned that these methods do not fall within the purview of Article 10 and that India has not explicitly objected to them.

However, in *Punjab National Bank (International) Ltd. v. Boris Shipping Ltd. & Ors.* (2019), the England and Wales High Court (Queen's Bench Division) overturned a lower court ruling that had allowed the service of summons through alternative methods on defendants residing in India. The court held that such service was invalid as it did not adhere to the procedure prescribed by India under the Convention. It emphasised that deviations from this mandated process are impermissible unless exceptional circumstances are demonstrated.

To circumvent delays associated with the issuance of summons through the Law Ministry, parties often waive the Convention's provisions, opting for contractually defined terms of service instead. In *Rockefeller Technology Investments v. Changzhou SinoType Technology Company* (2020), the Supreme Court of California ruled that even if a signatory state has expressly objected to Article 10 of the Convention, service may still be deemed valid if the parties have explicitly agreed to an alternative method in their contract.

Can a default verdict be rendered?

A default judgment may be issued under the Convention if a foreign government refuses to cooperate in serving summons on a defendant residing within its jurisdiction. However, Article 15 prescribes specific conditions that must be met before such a judgment can be rendered: (a) the document must have been transmitted through one of the methods outlined in the Convention; (b) at least six months must have elapsed since the transmission, with the court determining this period to be reasonable in the given case; and (c) no certificate of service has been received despite all reasonable efforts to obtain it through the competent authorities of the recipient state.

Notably, India has expressly declared that its courts may issue a default judgment in cross-border disputes even if no certificate of service or delivery has been received, provided that all conditions under Article 15 are met.

Recently, in *Duong v. DDG BIM Services LLC* (2023), American plaintiffs sought permission to serve Indian defendants via email, citing difficulties in effectuating service through India's central authority as prescribed by the Convention. Judge Kathryn Kimball Mizelle underscored that Article 15 functions as a "safety valve," allowing default judgment to be entered if "India's central authority fails to hold up its end of the bargain."

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