



Mukulika Banerjee

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## The Gautam Adani indictment shows the extent of US regulatory overreach outside its borders



*Last month, Indian billionaire Gautam Adani, along with seven others, was indicted by the United States District Court for the Eastern District of New York and the Securities and Exchange Commission for the alleged bribery of officials in India. Speaking to legal experts in the US and India, **Mukulika Banerjee**, writes that the indictment, and its use of the Foreign Corrupt Practices Act, may illustrate the regulatory overreach of the US outside its borders and to non-US citizens.*

Lex Americana has flexed its muscles again, and this time by indicting Indian billionaire and global investor Gautam Adani. On the 20th of November 2024, Gautam Adani along with seven others, including his nephew, were **indicted** by the United States District Court for the Eastern District of New York, and the US Securities and Exchange Commission (SEC).

The allegations are **complex** but, in a nutshell, they claim that bribes to the tune of \$250 million were paid to officials in India. Adani Green Energy had an agreement to sell solar energy to the public sector company, the Solar Energy Corporation of India (SECI). SECI would then in turn sell this energy to some Indian states. These Indian states however refused to buy at the price SECI had agreed to give to the Adani companies threatening the latter's purchase agreement with SECI. Bribes were allegedly given to facilitate this sale.

Adani Green Energy raised money for this project in the US and is therefore of concern to authorities there. The indictment further accuses Adani and the seven others named of misleading investors by claiming to have in place strict anti-corruption practices. It also claims that when an investigation was launched, there was obstruction of justice.

## Who is Gautam Adani?

Gautam Adani is a first-generation tycoon with business interests across the world. His businesses span oil, gas, energy, logistics, ports, infrastructure, mining, cement, airport management, food processing, and weapons. He is known to be close to the Indian PM Narendra Modi, and Mr Adani has seen his wealth climb 1,225 percent during the last 10 years while Modi has been PM.

His phenomenal rise has however been mired in damaging controversies at home and abroad. Last year after a **report** by US based short-seller Hindenburg accused the group of using offshore tax havens improperly and raised questions about the holding structure and valuation of stocks, the group **lost** more than \$150 billion in combined market value. At that point Adani was the world's second richest man. The group has recouped some of these losses and now has a combined valuation of \$141 billion, with Adani still being one of the world's richest men and Asia's second richest man.

## The Adani group denies the charges

The Adani group has denied the charges made by the US prosecutor. They have pointed out that these claims pertain solely to a specific contract under **Adani Green Energy**, which accounts for approximately 10 percent of the subsidiary's business and that none of its 11 publicly listed companies have been accused or implicated in any illegal activity.

Further, the first and fifth counts in the **indictment** by the US Department of Justice namely, conspiracy to violate the Foreign Corrupt Practices Act (FCPA) and conspiracy to obstruct justice, do not mention the three directors, the Adanis and Mr Jain. The Adani Group also **added** that "The ill-founded US action and reckless false reporting have led to significant repercussions for the Indian conglomerate, such as international project cancellations, financial market impact, and sudden examination from strategic partners, investors, and the public," has led to losses of over \$55 billion for the group.

## Claims of political motivation

Their lawyers have also added that the evidence is not substantial enough and that this is designed to stop India's growth story. This claim echoed by other sympathizers of the group who insist that Adani's challenge to competitors in the US and China has not gone down well there.

Adani supporters have argued that these charges are politically motivated by those unnerved by India's global rise and the Adani group's challenge to established US, Chinese and other global players.

My co-host, Pragya Tiwari, and I recently **spoke** to Jerry Roth for *The India Briefing* podcast. Roth is a member of the New York and California bars, and former federal prosecutor in the same court that has indicted Gautam Adani. Roth stated that did not believe that this indictment was politically motivated, commenting, "Companies that have been charged with this type of offense with bribery

and corruption range from American companies to European companies to Russian companies to Asian companies, companies you've heard of, well-known companies, Goldman Sachs, Siemens, companies that you know well that have been charged with this kind of violation. I don't believe those are politically driven and I have no reason to think this is politically driven."



*"Securities and Exchange Commission" (Public Domain) by bettrichard873*

Roth did note though that the charges are very serious, and the amounts involved are staggering. "In the scheme of indictments that I'm familiar with, with respect to bribery, these are at the top level in terms of the amounts of money that are being discussed," said Roth. But Mr Adani has himself not charged with bribery and Roth reasoned that this had to do with the Appellate Court in New York (that oversees the court in *United State vs Hoskins*) had come down against authorities using the FCPA to go after citizens of foreign countries. And the authorities are worried that if they did bring the charges they would not be able to find a way around this judgement. He also agreed with Mr Adani's lawyers that the evidence lacked specificity and that the indictment is vaguer than in most indictments he has come across.

## The wide international reach of the US FCPA

The FCPA has come under criticism around the world because it allows the US to go after those who are not US citizens and questions have been raised about whether this is overreach. Delhi-based lawyer Avi Singh, who deals with cases of international white-collar crime, **noted** that the regulatory overreach of the US outside its borders includes a range of sectors, including banking, regulations from the Food and Drug Administration regarding drugs and cosmetics, aviation and more. The recent death of the UK entrepreneur Michael Lynch drew widespread attention to this kind of overreach. It took a decade for the US to be able to get him to **appear** via the extradition process, but he was finally exonerated of the charges when he did, but **died** in a freak accident two months later.

The US president-elect, Donald Trump, however, has criticized the Act for a completely different reason. In a 2017 White House meeting, he said that the FCPA puts American companies at a **disadvantage** globally by restricting them from *paying* bribes to procure business in parts of the world where this is par for the course.

Expectations in some quarters in India are that Trump's presidency would make these charges against Adani go away given Trump's closeness to Modi. When we spoke to him, Jerry Roth pushed back against such an expectation noting that "It would be extremely unusual" for Trump to quash the charges given how the Department of Justice has typically worked. "Prior Presidents have kept their distance from prosecutions that have been brought by the DOJ and do not get involved. The norm is for them to not even discuss the prosecution with the Department of Justice, much less quash it". So, the Adani case might be one of the first tests of what his approach will be.

Developments in this high-profile story will no doubt be watched closely by many. India and the US have an extradition treaty so the US could ask for Gautam Adani to be extradited if he refuses to appear of his own accord, but the process could take years.

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## About the author



Mukulika Banerjee (@MukulikaB) is Professor in Social Anthropology at LSE and was inaugural director of the LSE South Asia Centre. Her books include *Cultivating Democracy: Politics and Citizenship in Agrarian India*, *Why India Votes?*, *The Pathan Unarmed* and *The Sari* (with Daniel Miller); and the series *Exploring the Political in South Asia*. She created the BBC R4 documentary *Sacred Election: Lessons from the biggest democracy in the world on the 2009 Indian National Elections*.

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