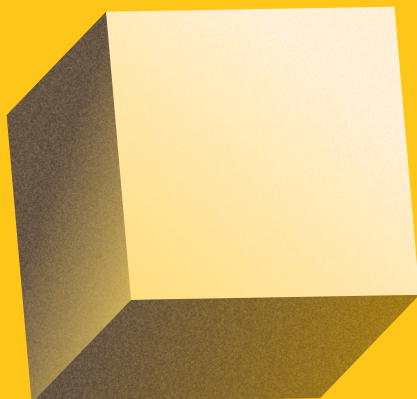


THE HINDU ANALYSIS

29th March 2024
by saurabh pandey



UPSC

SOMYA RATHI

उम्मीदवारों को इस हार्जिन में नहीं लिखना चाहिए

Candidates must not write on this margin

Mains Answer Writing Booklet

Q

"India's has its own concern on Investment Facilitation for Development Initiative in WTO"
Elaborate.

AM

WTO - established in 1995. Dealing with the rules of trade between nations. And settles trade disputes between its members and needs of developing countries.

* Investment Facilitation for Development

This launched in 2017 by WTO members. The Aim of IFD to improve the investment and business climate and make it more easier for investors and expand their development operations.

⇒ India has its own concern on IFD

○ Market access

This agreement does not contain provision on market access

Protection Dispute Settlement Investor State

○ Issues can arise

Foreign investors can claim against the State, which is not appropriate.

Only State can claims against other State as per the structure of WTO

UPSC

Mains Answer Writing Booklet

उम्मीदवारों को
इस हार्जिन में
लिखना चाहिए

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Some concern related ^{are} questions arising according to India

- 1- Whether the investment can be Part of the WTO ?
- 2- The Process followed to make the IFD agreement a Part of the WTO rulebook?
- 3- What are the limitations and Safety Security of transparency according to WTO rulebook Structure.

Conclusion - • India is concern about Open over transparency for their Safety Purposes. WTO not mentioned all the rules and Structure of IFD. Whether its under the Part of WTO or not and about the aspects.

- India and South Africa played a Crucial role in not letting the IFD Part of the WTO
- WTO requires that the agreement should be

Page no:

the Development Purpose only and ensure the Safety for nations

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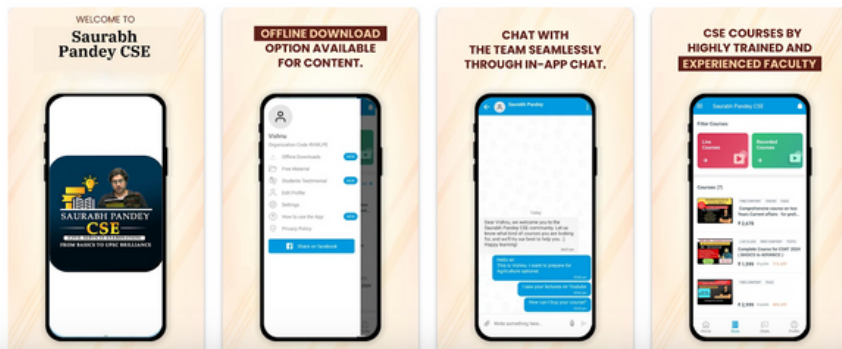
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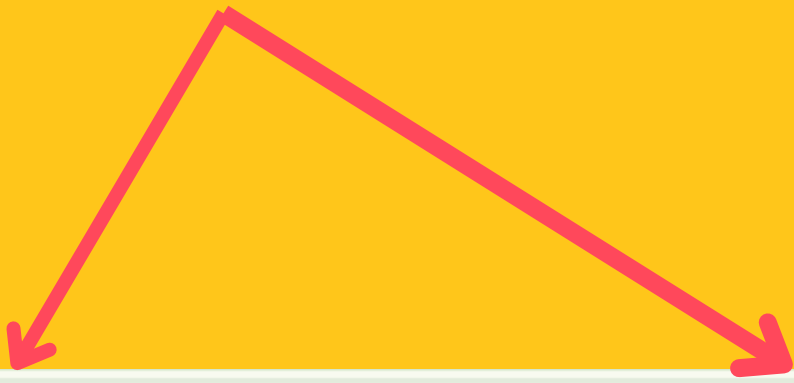


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The countdown to a pandemic treaty

In March 2021, an extraordinary call for a pandemic treaty was issued by 25 heads of government and international agencies, marking a pivotal moment in global health governance. The ninth meeting of the Intergovernmental Negotiating Body (INB), the final leg of negotiations for the 30-page World Health Organization (WHO) Pandemic Agreement, commenced last week (March 18). This is the most momentous time in global health since 1948. As we approach the World Health Assembly in late May, where the final draft will be presented for approval, the fate of the Pandemic Agreement hangs in the balance, with the risk of collapse looming large amidst contentious debates.

The key features

The WHO Pandemic Agreement aims to address the systemic failures revealed by the COVID-19 crisis, with the goal of strengthening global defences and averting future pandemics from spiralling into catastrophic human crisis. The world's first pandemic treaty aims to "strengthen pandemic prevention, preparedness and response" with "equity as the goal and outcome". It addresses the searing inequity witnessed during the COVID-19 pandemic including a lack of preparedness in countries and the lack of coordination at international levels.

The draft negotiating text covers several issues, that includes pathogen surveillance, health-care workforce capacity, supply chain and logistics, and tech transfer to support the production of vaccines, diagnostic tests and treatments, and the waivers of intellectual property (IP) rights. It seeks to strengthen surveillance for pathogens with "pandemic potential". The Agreement requires countries to also commit to better managing antimicrobial resistance, strengthening their health systems and sanitation, and making progress toward universal health coverage. Separate talks at WHO aim to amend the International Health Regulations, which compel countries to report health emergencies within their borders.

There is a significant emphasis throughout the text on equitable access to medical products. This theme shows up across provisions from language on principles, articles on preparedness, production, technology transfer, access and benefit sharing, supply and procurement.

The current negotiating texts have also proposed an establishment of the Conference of Parties (COP) to oversee the implementation of the Pandemic Agreement. The proposed establishment of a COP suggests that the Agreement could be a classic international treaty adopted under Article 19 of the WHO



Kashish Aneja

is a Delhi-based lawyer and Lead, Asia at the O'Neill Institute for National and Global Health Law, Georgetown University

Constitution as opposed to the alternative Article 21 opt-out regulations.

At the ongoing negotiations, the developing countries have largely embraced the revised negotiating text (perhaps for the first time in two years of negotiations), while the developed countries uniformly criticised it, stating that the text now contains elements that are 'redlines' for them including on financing and matters related to IP. Countries including Australia, Canada, the European Union, the United Kingdom, and the United States went to the extent of referring to the text as a 'step backwards'. Other than the few major substantive disagreements, there is also a general disagreement on the modalities for the conduct of these negotiations in this final stretch.

India, representing the South-East Asia region, has emphasised the importance of clarity on obligations *vis-à-vis* responsibilities, especially between developed and developing countries, to effectively operationalise equity within the Agreement.

The concerns

The most contentious aspect of the Agreement, essentially between developing countries, and others, mostly developed countries and some stakeholders, lies in the establishment of a global system for sharing pathogens and their genetic codes, while ensuring equitable access to the 'benefits' derived from research, including vaccines. Developing countries are hesitant to share information on pathogen spread and evolution if they perceive little in return, a situation exacerbated during the COVID-19 pandemic by "vaccine nationalism".

To address this issue, the current draft of the Agreement proposes a quid pro quo mechanism, formally titled the WHO Pathogen Access and Benefit-Sharing (PABS) System that compels countries to share genome sequence information and samples with WHO-coordinated networks and databases. In return for access to these data, manufacturers of diagnostics, therapeutics, and vaccines will be required to provide 10% of their products free of charge and 10% at not-for-profit prices. The current text of the provision aims to establish legal obligations on benefits-sharing for all users of biological materials and genetic sequence data under PABS.

A robust PABS system, particularly for low- and middle-income countries, including some African nations, seems non-negotiable for promoting equity in access to medical countermeasures. On the other hand, many developed countries and the pharmaceutical industry are not satisfied with the language on access and benefit sharing in the current negotiating text, including the perceived

trade-offs. The challenge of global governance, enforcement, and accountability is the second major sticking point of the Agreement negotiations. Without adequate accountability and enforcement mechanisms built into the Agreement, the whole endeavour is merely an exercise in symbolism. The absence of adequate enforcement capabilities also hampers coordination efforts for pandemic countermeasure stockpiles, the deployment of international medical response teams, as well as monitoring and data sharing.

The Agreement risks being rendered ineffective even if the Global North was to reach a consensus on key issues such as technology transfer, the PABS System, and intellectual property waivers, without robust enforcement mechanisms.

The existing International Health Regulations are already legally binding. However, they failed to prevent unjust travel or trade restrictions, and hoarding of vaccines and other medical countermeasures during the COVID-19 pandemic.

Proposals for a decision-making body, comprising the COP along with a secretariat, have been included in the negotiating text. However, it remains uncertain whether negotiators will reach consensus on this structure. This model mirrors the UN Framework Convention on Climate Change (UNFCCC) summits, where all nations receive equal voting rights.

One of the thorniest issues within the Agreement negotiating text is the proposed requirement for firms that received public financing to waive or reduce their intellectual property royalties.

What next?

The current round of negotiations in Geneva ends this week, with the goal of reaching a consensus decision by the World Health Assembly at the end of May. The risk of a watered-down Agreement, driven by the imperative to secure consensus, remains palpable. Although the draft Agreement touches upon most of the relevant concerns that unfolded during the recent pandemic, much of the language around contentious issues such as IP waivers is arguably watered down by referring to national circumstances and using best endeavour language.

To be sure, this is a mammoth ask. One of the potential outcomes of not reaching an Agreement is not ruled out. Failing to reach an agreement would, however, be a serious blow. The Pandemic Agreement represents a critical step towards rebuilding trust and coordination between nations, acknowledging that no single government or institution can confront the threat of future pandemics in isolation.

The World Health Organization Pandemic Agreement represents a critical step towards rebuilding trust and coordination between nations, but there are indications that it runs the risk of collapse



The hindu analysis by saurabh pandey sir



pandemic treaty

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- This is the most momentous time in global health since 1948.

The key features

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- The world's first pandemic treaty aims to “strengthen pandemic prevention, preparedness and response” with “equity as the goal and outcome”.



- It addresses the searing inequity witnessed during the COVID-19 pandemic including a lack of preparedness in countries and the lack of coordination at international levels.
- The draft negotiating text covers several issues, that includes pathogen surveillance, health-care workforce capacity, supply chain and logistics, and tech transfer to support the production of vaccines, diagnostic tests and treatments, and the waivers of intellectual property (IP) rights. It seeks to strengthen surveillance for pathogens with “pandemic potential”.
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-



- **.Separate talks at WHO aim to amend the International Health Regulations, which compel countries to report health emergencies within their borders.**
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- **The current negotiating texts have also proposed an establishment of the Conference of Parties (COP) to oversee the implementation of the Pandemic Agreement.**
- **The proposed establishment of a COP suggests that the Agreement could be a classic international treaty adopted under Article 19 of the WHO Constitution as opposed to the alternative Article 21 opt-out regulation**



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Tech giants facing EU scrutiny

What are the main reasons behind the European Commission's initiation of non-compliance investigations against tech giants like Apple, Meta, Google's parent Alphabet, and Amazon? How does the Digital Markets Act (DMA) aim to regulate 'gatekeepers' and ensure fairer competitive practices in the digital market space?

Saptaparno Ghosh

EXPLAINER

The story so far:

In a slew of measures to ensure "contestable and fair markets in the digital sector" in line with the provisions of the Digital Markets Act (DMA), the European Commission on March 25 initiated 'non-compliance investigations' against Apple, Meta and Google's parent Alphabet. It will also investigate Amazon's ranking practices in its marketplace.

Where is the context of these non-compliance investigations?

The non-compliance investigations concern Alphabet's alleged rules on steering or directing its customers to its in-house services over those of its competitors. Apple will be investigated for allegedly similar practices in its App Store, as well as the way it positions its Safari browser. Lastly, Meta will be investigated for its "pay or consent model."

The investigations fall in with the primary objective of the DMA to better regulate 'gatekeepers' and ensure fairer competitive practices in the digital market space. The idea is to mitigate paradigms that may create a "bottleneck" in the digital economy and fairness in competition and consumer access.

Alphabet, Amazon, Apple, TikTok's parent company ByteDance, and Microsoft were designated as 'gatekeepers' in September 2023. They were expected to fully comply with obligations under the DMA by March 7 this year. The Commission assessed the mandatory compliance reports submitted by these companies and gathered feedback from stakeholders, including in the context of workshops, before launching the investigation.

"We have been in discussions with gatekeepers for months to help them adapt, and we can already see changes happening in the market," Margrethe



Keeping an eye: The announcement of the investigation has not enthused participants. AFP

Vestager, Executive Vice-President in charge of competition policy at the Commission said in a press statement, adding, "But we are not convinced that the solutions by Alphabet, Apple and Meta respect their obligations for a fairer and more open digital space for European citizens and businesses".

How are the steering rules non-compliant?

DMA provisions stipulate that app developers be allowed to steer consumers to offers (and services) outside the gatekeeper's app store, free of charge.

The Commission aired its concerns about Alphabet and Apple not being fully compliant "as they impose various restrictions and limitations." Apple has maintained that the tight integration associated with its App Store is essential to provide a "uniquely secure and seamless user experience."

"It (DMA provisions) equates size with harm, and then imposes a one-list-fits-all set of regulatory obligations without providing an opportunity for the platform to explain, and the regulator to assess, whether – on balance – there are broader benefits to consumers or businesses," Apple had said in an unrelated January 2020 submission.

In a blog published this January, Spotify, however, had the following to say: "For years, even in our own app, Apple had these rules where we couldn't tell you about offers, how much something costs,

or even where to buy it." It added that with the DMA, it would be able to share details about Spotify promotions, deals and better-value payment options with consumers in the EU.

Further, the Competition Commission of India (CCI) on March 15 also ordered a detailed probe against Google for alleged discriminatory practices on its Play Store pricing policy after having discovered a prima facie violation of competition law.

What about Alphabet engaging in self-preferencing?

The Commission wants to determine whether Google search results are discriminatory; in other words, whether the search giant engages in self-preferencing for its verticals over rival services. It has stated that Alphabet's measures to comply with the DMA may not have ensured that third-party services featured on Google's search results page are treated in a "fair and non-discriminatory manner" in comparison to their own services.

In October 2020, the U.S. Department of Justice (DoJ) accused Google of "unlawfully maintaining monopolies through anti-competitive and exclusionary practices in the search and search advertising markets" and sought it "remedy the competitive harms."

According to the DoJ, the conduct harmed consumers by reducing the quality of their search, lowering choices, and impeding innovation. The case is ongoing.

Amazon too is facing heat for similarly tailoring the listings on its marketplace.

What about Apple enabling choice?

The Commission is looking to assess if Apple enables users to easily uninstall any pre-installed (or presently default) software applications on iOS, change default settings, and if prompts users with choice screens that allow them to effectively and easily select alternatives to the default service. The investigation emanates from the Commission's concern that Apple's measures may be preventing users from "truly exercising their choice of services with the Apple ecosystem." In other words, concerns over ecosystem captivity.

What are the concerns about Meta's model?

Meta introduced a subscription model that offered people in EU, EEA and Switzerland the choice to use Facebook and Instagram without any ads.

Alternatively, they could continue using these services for free while seeing ads relevant to them; in other words, consenting to personalised advertising.

The model, however, did not convince the Commission. It held that the model's "binary choice" may not provide "a real alternative in case users do not consent, thereby not attaining the objective of preventing the accumulation of personal data by gatekeepers."

How will non-compliant companies be penalised?

The companies face the prospect of being fined up to 10% of their global turnover or 20% in case of repeated infringement(s). Additionally, should the investigation come across any "systematic infringement," the companies may be asked to sell a business or parts of it. A ban from acquiring related additional services could also be possible. The announcement of the investigation has not enthused the ecosystem's participants or stakeholders. Concerns continue to exist if overlapping prerogatives can be addressed.

THE GIST

The European Commission has launched non-compliance investigations against tech giants such as Apple, Meta, Google's parent Alphabet, and Amazon to ensure fair and contestable markets in the digital sector, as per the provisions of the Digital Markets Act (DMA).

The investigations focus on alleged violations related to steering customers to in-house services, ranking practices in marketplaces, and compliance with DMA obligations.

The Commission assessed mandatory compliance reports and gathered stakeholder feedback before launching investigations, expressing concerns about compliance with DMA provisions by Alphabet, Apple, and Meta.





Digital Markets Act (DMA).

- The European Commission has launched non-compliance investigations against tech giants such as Apple, Meta, Google's parent Alphabet, and Amazon to ensure fair and contestable markets in the digital sector, as per the provisions of the Digital Markets Act (DMA). □
- The investigations focus on alleged violations related to steering customers to in-house services, ranking practices in marketplaces, and compliance with DMA obligations. □
- The Commission assessed mandatory compliance reports and gathered stakeholder feedback before launching investigations, expressing concerns about compliance with DMA provisions by Alphabet, Apple, and Meta



What is the DMA about?

- The Digital Markets Act is the EU's law to make the markets in the digital sector fairer and more contestable.
- In order to do so, the Digital Markets Act (“DMA”) establishes a set of clearly defined objective criteria to identify “gatekeepers”.
- Gatekeepers are large digital platforms providing so called core platform services, such as online search engines, app stores, messenger services. Gatekeepers will have to comply with the do's (i.e. obligations) and don'ts (i.e. prohibitions) listed in the DMA.
- The DMA is one of the first regulatory tools to comprehensively regulate the gatekeeper power of the largest digital companies.
- The DMA complements, but does not change EU competition rules, which continue to apply fully
-



Measuring internet freedom in India in the last 10 years

How do internet shutdowns affect the daily lives of citizens, particularly in regions where they are frequently imposed? What are the primary reasons cited by the Indian government for imposing internet shutdowns?

Gautam Nirmal Doshi
Saumya Kalia
Rhea Gupta

The story so far:

For five straight years, India has topped the global list of countries imposing internet bans, with about 60% of all blackouts recorded in the world, between 2016 and 2022 having been in India. State imposed shutdowns in the last decade have cited national security and threats to public order. However, rights groups have argued that these shutdowns also violate court directives.

Internet shutdowns

The Indian government imposed a total of 780 shutdowns between January 1, 2014, and December 31, 2023, according to data collected by the Software Freedom Law Centre (SFLC). Shutdowns flared up during the protests against the Citizenship Amendment Act in 2019, the abrogation of Article 370 in 2019, and the

introduction of Farm Bills in 2020. Internet disruptions in India accounted for more than 70% of the total loss to the global economy in 2020. Data shows India shut down the internet for over 7,000 hours in 2023.

Indian States and Union Territories can impose an internet shutdown only in case of a "public emergency" or in the interest of "public safety", according to the Indian Telegraph Act. However, the law does not define what qualifies as an emergency or safety issue. The Supreme Court, in the landmark *Anuradha Bhasin v. Union of India* case, reiterated that internet shutdowns violate fundamental rights to freedom of expression and shutdowns lasting indefinitely are unconstitutional. Moreover, Courts have asked governments to make shutdown orders public, a provision poorly complied with, experts have noted.

British-era law

Regionally, Jammu and Kashmir saw the highest number of shutdowns – at 433 –

in the last 12 years. The longest blackout in 2023 took place in Manipur from May to December, amid ethnic clashes.

As of February 15 this year, internet shutdowns were active in Haryana amid the farmers' protests.

The Union government invoked powers under a British-era law to suspend mobile internet as Punjab farmers are holding protests in Delhi.

Activists have pointed out that India failed to meet the 'three-part test' in imposing blackouts in J&K and Manipur. Under international law, to block any access to content or invoke coercive measures that violate people's fundamental rights, countries should check if the action is provided for by law; pursues a legitimate aim; and follows standards of necessity and proportionality. The majority of internet outages in the last decade were localised to specific districts, cities and villages.

The trends differ globally: protests are the most common reason for internet shutdowns, followed by information

control and political instability.

Between 2015 and 2022, more than 55,000 websites were blocked, according to SFLC data. The biggest share of content censored was done under section 69A of the IT Act, by the Ministry of Electronics and Information Technology and the Ministry of Information and Broadcasting. URLs were blocked due to links to organisations banned under the Unlawful Activities (Prevention) Act. Recently, the Ministry ordered news outlet *The Caravan* to take down a story which alleged abuse, torture, and murder of civilians by the Indian Army in Jammu's Poonch district.

On social media, almost 30,000 social media URLs (including accounts and posts) were blocked between 2018 and 2022, with the majority of requests sent to X.

A commonly cited reason for blocking websites is the escalating threat of cybercrime. As compared to 5,693 cases in 2013, India recorded more than 65,000 cases last year. Cases have risen by almost 434% between 2016 and 2022, according to the National Crime Records Bureau.

India and global trends

Global Internet freedom has declined for the 13th consecutive year, and the environment for human rights online has deteriorated in 29 countries, according to the latest Freedom House report. India's ranking has hovered around the same benchmark in the last three years. This is a dip from 2016 and 2017, when India scored 59 points, to 50 points in 2023.

THE GIST

India has consistently topped the global list of countries imposing internet bans, with approximately 60% of all recorded blackouts worldwide.

Shutdowns have been implemented citing reasons such as national security and threats to public order, with notable instances during protests against the Citizenship Amendment Act, the abrogation of Article 370, and the introduction of Farm Bills.

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Measuring internet freedom in India

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China sends glacier water from Tibet to climate-hit Maldives

Agence France-Presse
MALÉ

China has sent more than a million bottles of water from melting Tibetan glaciers to the Maldives, officials said on Thursday, a gift from the world's highest mountains to a low-lying archipelago threatened by rising seas.

The Indian Ocean nation of 1,192 tiny coral islands is on the frontlines of the climate crisis, with salt levels seeping into the land and corrupting potable water, leaving it dependent on desalination plants.

Scientists say glaciers in the Himalayas are melting faster than ever due to climate change.

The Maldives Foreign Ministry said the water was a gift from Yan Jinhai, the chairman of the Xizang Autonomous Region, or Tibet, lying more than 3,385-km away on the far side of the world's highest mountain range. The consignment of mineral water packed into 90 sea containers arrived last week and had been unloaded in the capital Male, a port authority official said.

"The Chairman of Xizang Autonomous Region announced his wish to donate 1,500 tonnes of drinking water... during his official visit to the country in November," the Maldives Foreign Ministry said in a statement.

'Water shortage'

The Ministry rejected allegations on social media that the imported water was for the consumption of pro-China President Mohamed Muizzu, who came to power last year on an anti-Indian platform.

"The government of

Salt levels have seeped into the land in the Maldives, corrupting potable water in its islands

Maldives has decided to utilise the water to provide assistance to islands in case of water shortage," it said.

The United Nations Intergovernmental Panel on Climate Change (IPCC) warned in 2007 that rises of 18 cm-59 cm would make the Maldives virtually uninhabitable by the end of the century.

Mr. Muizzu promises his country – 80% of which is less than a metre (three feet) above sea level – will beat back the waves through ambitious land reclamation and building islands higher.

The congested capital island of Male has already run out of groundwater for drinking and depends on expensive desalination plants to supply the local population.

A fire at the water purification plant in Male in December 2014 disrupted supplies for almost a week, causing panic.

Both India and regional rival China rushed ships to produce drinking water until the desalination plant was fixed.

Better known for its white sand beaches and luxury tourism, the Maldives also straddles strategic east-west international shipping routes.

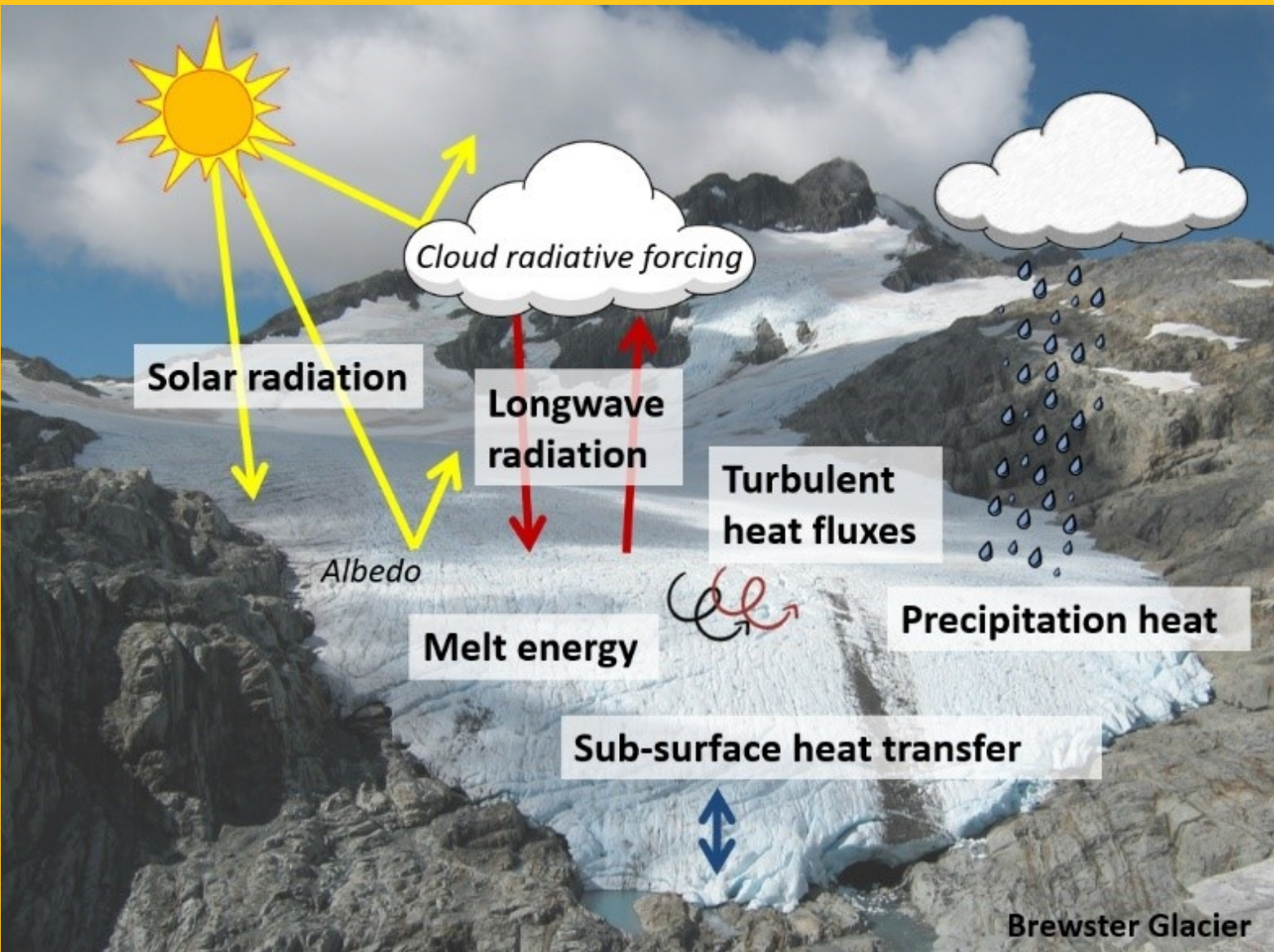
New Delhi considers the Indian Ocean archipelago to be within its sphere of influence but the Maldives has shifted into the orbit of China – its largest external creditor.





China sends glacier water from Tibet to climate-hit Maldives

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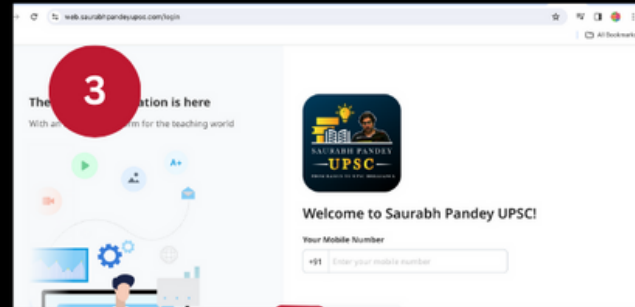
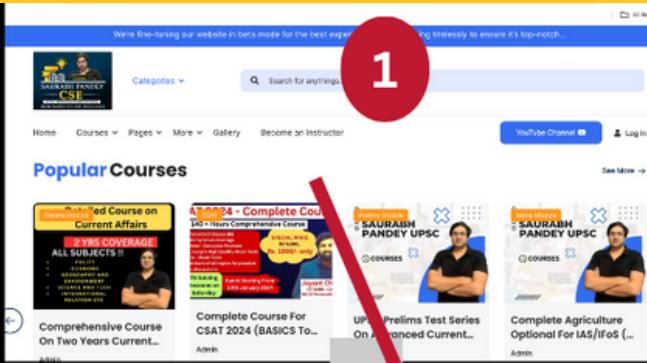
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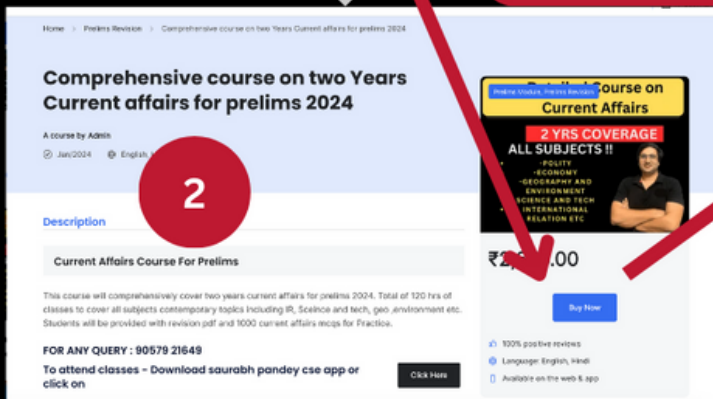
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