
INDIA'S APPROACH TO BILATERAL INVESTMENT TREATIES: A SHIFT FROM INVESTOR PROTECTION TO STATE SOVEREIGNTY

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ABSTRACT

India's redesign of its Bilateral Investment Treaty (BIT) template is a doctrinally seismic development in international investment law—one that questions the dominant orthodoxy of investor-focused treaty design. This paper questions the legal trajectory of India's BIT regime, from the embrace of liberal investment standards, such as Fair and Equitable Treatment (FET), Most-Favoured Nation (MFN) clauses, and liberal Investor-State Dispute Settlement (ISDS) clauses, to the publication of the 2016 Model BIT, reaffirming the primacy of state sovereignty and regulatory freedom. On the basis of doctrinal legal argument and jurisprudential critique, this study investigates how negative arbitral awards, most notably *White Industries v. India* motivated India's abandonment of liberal investment standards and prompted a more conservative, sovereignty-aware approach. This paper then places India's BIT approach in the wider currents of global treaty reform, providing a comparative examination identifying convergence and divergence with international practice. In so doing, it weighs the legal and policy importance of India's approach and advocates a re-imagined BIT—one that reconcile the imperatives of foreign investment protection with the legitimate public policy concerns of the host state.

INTRODUCTION

Foreign investment is especially important for any country, especially for developing countries, often being the major non-debt source of finance for the State.¹ Investors, looking for prospective profits, tend to invest in projects and ventures all across the globe. Much like any other area of human interaction, investment also ought to be governed by regulations guaranteeing protection to the parties involved, mostly to prevent the host State from interfering with the rights of the foreign investors.² In the absence of a global investment treaty, countries opt for bilateral agreements, tailored to the aims and objectives the countries wish to achieve. These investment treaties have existed for more than two centuries.³

Bilateral Investment Treaties (BITs) emerged as the first international agreements, focusing exclusively on the treatment of foreign investment. The BIT signed between the Federal Republic of Germany and Pakistan in 1959, first of its kind, consisted of provisions on the promotion and protection of investments of investors of one country in the territory of the other country. From then till 1990, the content of these treaties did not change much, apart from the introduction of provisions on national treatment and Investor-State Dispute Resolution (ISDR).⁴ However, in the post mid-1990s, BIT practice witnessed a marked shift with inclusion of investment protection provisions and growing investment disputes.⁵

Bilateral investment treaties are, in simple terms, agreements between two States for reciprocal promotion and protection of investments in each other's territories by subjects situated in either State.⁶ It was in the mid-90s that India initiated BITs on the pretext of offering favorable conditions and treaty-based protection to the foreign investors and their investments. India-Singapore Comprehensive Economic Cooperation Agreement (CECA) is an example of one of the first BITs signed by India, providing exemption on import duty for investment in the infrastructure sector, attracting investors from abroad to invest in the growing Indian economy.

¹ Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, 'Consolidated FDI Policy Circular of 2020'

² R. Dolzer & C. Schreuer, *Principles of International Investment Law*, 2012; A. Newcombe & L. Paradell, *Law and Practice of Investment Treaties*, pp 1-73, 2009; Jeswald Salacuse, *The Law of Investment Treaties*, 2015.

³ Brownlie, Ian (2003). *Principles of Public International Law*, Oxford University Press.

⁴ Investment Dispute Settlement Navigator, UNCTAD, <http://investmentpolicyhub.unctad.org/ISDS>

⁵ *Bilateral Investment Treaties and a WTO Investment Framework*, Somo, Amsterdam, 2003, Oxford NL.

⁶ M. Filbri and I. Praagman, A Sustainable Balance? November 1992.

Though it is difficult to ascertain and quantify the benefits of BITs, the BITs, yet it invariably resulted in increased investment inflows.

Traditionally, India had adopted an investor friendly approach by implementation of internationally accepted conditions. These stipulations include preventing the host nation from expropriating investments, unless it is for the public good and accompanied by appropriate compensation; mandating that host nations provide Fair and Equitable Treatment (FET) to foreign investments and refrain from discriminating against them; permitting the repatriation of profits under conditions agreed upon by both countries; and most crucially, allowing individual investors to pursue claims against host nations if the latter's regulatory actions are not aligned with the BIT, for financial restitution.⁷ However, post-2016, India has executed a shift towards state sovereignty and regulatory autonomy.

The objective of this paper is to carefully study and understand India's transition from an investor –friendly to a state-centric approach taken by the government of India. The paper will further examine the potential factors behind this aforementioned shift. The paper aims to have a doctrinal analysis of India's BITs, the 2016 Model BIT, while also examining the judicial decisions with regard to the same.

Evolution of India's BIT Framework

A. Pre-2016 BIT Model: A Pro-Investor Approach

In the 1990s and early 2000s, India embarked on its initial journey with Bilateral Investment Treaties (BITs), aligning with the country's economic liberalization and a global shift toward investment protection. During this time, India entered into numerous BITs with minimal modifications, mostly adhering to standard international frameworks that largely favored investors' interests. These early treaties reflected India's determination to attract foreign capital within a competitive global investment environment, with limited focus on potential sovereign consequences. The key features of India's early BITs were marked by a broad, investor-friendly approach. Investment definitions were extensively framed to include not only direct investments but also indirect and portfolio investments, offering wide protection to various forms of foreign capital. This broad approach allowed relatively small financial interests to

⁷ This process is collectively referred to as Investor-State Dispute Settlement (ISDS)

qualify for treaty protection, leading to significant potential liability for the state.⁸ The Fair and Equitable Treatment (FET) clauses in these treaties were notably strong, providing substantive protections without explicit limitations or qualifications. This gave Arbitral Tribunals significant interpretive freedom, frequently leading to broad interpretations that restricted India's regulatory actions in ways not originally intended by treaty negotiators.

Most-Favored Nation (MFN) clauses were another crucial aspect of India's early Bilateral Investment Treaty (BIT) framework. These clauses allowed foreign investors to "borrow" more favorable provisions from India's other investment treaties. This resulted in an unintended network effect, where the most investor-friendly provisions from any of India's BITs could potentially be applied to all protected investors, regardless of their home country.⁹ The dispute settlement mechanisms in these early treaties required minimal procedural steps, granting investors direct access to international arbitration without needing to exhaust local remedies first. This unrestricted Investor-State Dispute Settlement (ISDS) approach allowed investors to bypass domestic courts altogether, establishing a parallel legal system with significant implications for judicial sovereignty.

These investor-friendly provisions collectively created a framework that, while potentially appealing to foreign investors, ultimately subjected India to considerable litigation risk and imposed constraints on its regulatory authority. This situation eventually led to a thorough reevaluation of India's approach to investment treaties.

B. Legal Challenges and Investor-State Dispute Settlement (ISDS) Cases against India

The limitations of India's early pro-investor approach became increasingly evident as the country faced a series of high-profile investment arbitration claims that challenged essential sovereign functions. These cases played a pivotal role in prompting India's shift toward a more balanced treaty framework that would better protect its regulatory autonomy.

The **White Industries v. India (30th November 2011) case** stands out as a critical moment in India's investment treaty history. This dispute stemmed from White Industries' aggravation

⁸ SSRN Article Prabhash Ranjan, *Comparing Investment Provisions in India's FTAs with India's Stand-Alone BITs: Contributing to the Evolution of New Indian BIT Practice*, SSRN (Nov. 5, 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2728836.

⁹ Maheshwari & Co. Blog Post "Bilateral Investment Treaties (BITs): Significance, Challenges, and Impact on FDI in India," *Maheshwari & Co.* (blog), <https://www.maheshwariandco.com/blog/bilateral-investment-treaties/> (Jan. 20, 2025).

with long delays in Indian courts regarding the enforcement of a commercial arbitration award. When these enforcement proceedings dragged on for over nine years, White Industries initiated investor-state arbitration under the India-Australia BIT. While the tribunal dismissed several claims, it made a crucial determination regarding the Most-Favored Nation provision. Through creative treaty interpretation, White Industries successfully "borrowed" the "effective means" standard from the India-Kuwait BIT via the MFN clause in the India-Australia treaty.¹⁰ This expansive reading of the MFN principle allowed investors to cherry-pick the most favorable provisions across India's entire treaty network, creating an unpredictable and extensive liability that India had not anticipated when signing its individual agreements.

The cases of *Vodafone International Holdings BV v. The Republic of India (The Vodafone Case)*, *Cairn Energy Plc and another v The Republic of India (The Cairn Energy Case)*, and *Devas Employees Mauritius (P) Ltd. v. Antrix Corporation Ltd., The Antrix-Devas Case*) further highlight the tensions between India's sovereign taxation powers and its investment treaty obligations. These cases arose from India's retrospective taxation measures, which the investors claimed to have had lowered their expectations and constituted unfair treatment. These disputes were particularly contentious as they centered on India's fundamental authority to determine its tax policies – a core sovereign function. While the Indian government has since moved to withdraw the retrospective tax provision that sparked these disputes, officials have been careful to emphasize that this policy reversal was not directly influenced by the arbitration proceedings.¹¹ The Revenue Secretary explicitly stated: "We have not been influenced by arbitration matters which are going on in various courts," further adding that the goal was to "give stability and certainty on taxation rates to foreign investors," reflecting the delicate balance India seeks between sovereign authority and investor confidence.¹²

The high-stakes nature of these cases raised India's concerns about arbitral interpretations undermining state sovereignty. Arbitral Tribunals were increasingly perceived as overstepping their mandate by broadly interpreting treaty provisions in ways that limited legitimate regulatory actions. The belief that international arbitration was infringing on essential sovereign prerogatives – including taxation policy, judicial systems, and national security

¹⁰ IISD Article "The White Industries Arbitration: Implications for India's Investment Treaty Program," *Int'l Inst. for Sustainable Dev.* (Apr. 13, 2012),

¹¹ Arbitral Award *White Indus. Austl. Ltd. v. Republic of India*, UNCITRAL, Final Award ¶¶ 1-15 (Nov. 30, 2011), <https://www.italaw.com/cases/1185>.

¹² International Tax Review Article "Cairn and Vodafone Pursue Talks to Settle Indian Tax Claims," *Int'l Tax Rev.*, Aug. 12, 2021.

matters – led to growing pressure for a thorough reassessment of India's investment treaty framework. This rising unease about international arbitration's potential to override domestic policy decisions ultimately prompted India to adopt a more balanced treaty model that would better protect regulatory autonomy while still offering reasonable safeguards to genuine investments.

THE 2016 MODEL BIT: REASSERTING STATE SOVEREIGNTY

Up until 2016, India had followed a rather investor friendly approach towards drafting to BITs, reeling in foreign direct investment. The 1993 Model BIT was rooted in simplicity with regards to its content and purpose.¹³ This was followed by a widespread vociferation over the decision in the case of *White Industries Australia Ltd. V. Republic of India*¹⁴ and an increase in dispute notices. This pushed India to publish the 2016 Model BIT aimed at striking a balance between attracting investors and firmly establishing India's right to regulate.¹⁵

This new Indian Model BIT consisted of 38 Articles which were divided into seven chapters and was intended to serve as a template for future Bilateral Investment Treaties to be signed or renewed with other States. Interestingly, post issue of 2016 Model BIT, India terminated most its BITs with other states.

The primary change brought in was in terms of the definition of the term 'investment.' The new model reflects an enterprise-based approach instead of an asset-based approach. This change had two implications: a) enterprises legally constituted in India can only bring claims under BITs;¹⁶ and b) to avail protection, the enterprise needs to satisfy certain characteristics of investments. This definition is not only narrow¹⁷, but also ambiguous to the meaning of the various characteristics which are required to be complied with. Such ambiguity leaves room for interpretation to be taken up by arbitral discretion, this leads to uncertainty at the jurisdictional level, that is, what type of investment shall receive protection.

¹³ Saurabh Garg, Ishita G Tripathy, and Sudhanshu Roy, 'The Indian Model Bilateral Investment Treaty: Continuity and Change' in Kavaljit Singh and Burghard Ilge (eds), *Rethinking Bilateral Investment Treaties: Critical Issues and Policy Choices* (Both Ends, Madhyam, SOMO 2016)

¹⁴ (2010) UNCITRAL, Final Award.

¹⁵ 'Model Text for the Indian Bilateral Investment Treaty', Department of Economic Affairs, Government of India, https://dea.gov.in/sites/default/files/ModelBIT_Annex_0.pdf

¹⁶ Article 1.3, 2016 Indian Model BIT

¹⁷ Prabhash Ranjan and Pushkar Anand, 'The 2016 Model Indian Bilateral Investment Treaty: A Critical Deconstruction' (2017), 38(1), Northwestern Journal of International Law & Business 1.

India's 2016 Model BIT deviated from the international standards and reduced the substantive protections for investors. Provisions for the Most Favoured Nation (MFN), Fair and Equitable Treatment (FET) or umbrella clauses do not find a footing in the Model BIT. The nonexistence of FET is of particular concern for the investors, since it is most often invoked by investors asserting investment treaty claims¹⁸.

Another noteworthy modification brought about by the 2016 Indian Model BIT is that foreign investors must seek local remedies for a minimum of five years prior to initiating any international arbitration¹⁹. While not entirely innovative, the incorporation of an "exhaustion of local remedies" requirement is quite uncommon and is expected to raise particular concerns in India, which holds the 163rd position in the Ease of Doing Business rankings concerning the World Bank's metric for "Enforcing Contracts." Presently, it takes approximately 1,445 days (about 4 years) to resolve a contractual dispute in India²⁰, and the backlog of cases is projected to rise to around 5 crores by 2022²¹. However, an investor can bypass the local remedies exhaustion requirement if they can show that there are "no available domestic legal remedies capable of reasonably providing any relief in respect of the same measure."²² Nevertheless, the onus to prove the lack of legal remedies will likely rest on the investor, which may prove to be challenging to fulfill²³.

Post-2016 Developments in India's BIT Strategy

India has significantly reshaped its approach to international investment agreements since 2016, shifting from a framework that was based on investor-centric policies towards a framework that strongly emphasizes protecting the country's regulatory autonomy. This transformation was a calculated response to growing number of challenges faced by India in investor-state arbitrations and it reflects a broader trend among developing nations seeking to

¹⁸ UNCTAD, Fair and Equitable Treatment (UNCTAD Series on Issues in International Investment Agreements II, 2012

¹⁹ Article 15.2, 2016 Indian Model BIT

²⁰ World Bank, 'Doing Business- Enforcing Contracts',
<https://openknowledge.worldbank.org/server/api/core/bitstreams/08942fab-9080-4f37-b7be-ef61c9f9aed9/content>

²¹ Shailesh Gandhi, 'India's huge backlog of court cases is a disgrace – but Covid-19 has provided solutions', Scroll.in, 28 June 2021.

²² Article 15.1, 2016 Indian Model BIT

²³ Prabhash Ranjan and Pushkar Anand, 'The 2016 Model Indian Bilateral Investment Treaty: A Critical Deconstruction' (2017), 38(1), Northwestern Journal of International Law & Business.

rethink how they govern foreign investments.

A. Termination and Renegotiation of Bilateral Investment Treaties

To respond to the rising number of Investor-State Dispute Settlement (ISDS) claims, India developed and introduced a new Model Bilateral Investment Treaty (BIT) in 2015 that became effective in April 2017. This revised framework marked a clear departure from India's earlier approach and reflected its determination to preserve regulatory space while still offering significant protections to foreign investors. Key featured changes of the said Model BIT include a narrower definition of the term "investment," stronger safeguards for regulatory autonomy and a dire requirement for investors to go through the local remedies before initiating international arbitration.

Following the adoption of this new framework, India has brought an unprecedented reformation in its international investment agreement structure. In March 2023 the Government of India issued termination notices to 68 countries, effectively ending most of its Bilateral Investment Treaties (BITs) that dated back to the 1990s.²⁴ Alongside these notices, India proposed renegotiations based on its updated 2016 Model BIT, signaling India's commitment to reformulating its entire investment treaty network. This mass termination effectively dismantled the vast majority of old-generation Bilateral Investment Treaties that India had established since the 1990s, with only six treaties remaining in force following this sweeping action.²⁵

Finance Minister Nirmala Sitharaman explicitly highlighted this strategic pivot during her Interim Budget speech in 2024, stating: "For encouraging sustained foreign investment, we are negotiating Bilateral Investment Treaties with our foreign partners, in the spirit of 'first develop India'".²⁶ This declaration underscores the government's conviction that the revised approach,

²⁴ IISD Article "India Sends Termination Notices to 68 Countries with a Request to Renegotiate," *Investment Treaty News* (July 1, 2023), <https://www.iisd.org/itn/2023/07/01/india-sends-termination-notices-to-68-countries-with-a-request-to-renegotiate/>.

²⁵ Indian Express Article "Negotiating Bilateral Investment Treaties with Trade Partners to Boost FDI: FM Sitharaman," *Indian Express* (Feb. 2, 2024), <https://indianexpress.com/article/business/budget/negotiating-bilateral-investment-treaties-with-trade-partners-to-boost-fdi-fm-sitharaman-9139822/>

²⁶ Indian Express Article "Negotiating Bilateral Investment Treaties with Trade Partners to Boost FDI: FM Sitharaman," *Indian Express* (Feb. 2, 2024), <https://indianexpress.com/article/business/budget/negotiating-bilateral-investment-treaties-with-trade-partners-to-boost-fdi-fm-sitharaman-9139822/>

while more restrictive in certain respects, ultimately serves India's developmental interests more effectively than the previous framework.

India has been actively pursuing renegotiations with its major trading partners, with notable progress in discussions with the United Arab Emirates (UAE). The India-UAE BIT signed earlier in 2024 replaced the 2014 investment treaty and represents a significant milestone in India's treaty practice.²⁷ This agreement demonstrates both adherence to core principles of the Model BIT and strategic flexibility in addressing partner concerns. One notable modification is the reduction in the timeframe for exhausting local remedies before initiating ISDS claims from five years (as specified in the Model BIT) to three years. This adjustment acknowledges concerns about India's judicial efficiency while maintaining the fundamental principle of exhausting domestic remedies.

The India-UAE BIT also features a revised definition of "investment," eliminating the requirement that investments must significantly contribute to the host state's development. This simplification reduces arbitral discretion and offers greater clarity to investors regarding the scope of treaty protections. These targeted adjustments suggest that India is willing to adopt a pragmatic approach in negotiations while preserving its essential sovereignty concerns.

This newly concluded agreement is expected to influence India's ongoing negotiations with other key economic partners, including the United Kingdom and the European Union.²⁸ These negotiations take on particular significance as India pursues comprehensive economic integration with Western nations through both free trade agreements and investment treaties. The outcomes of these discussions will substantially shape India's investment treaty landscape in the coming years.

B. Impact on India's Investment Climate

The transformation of India's BIT regime has naturally generated concerns among foreign investors regarding the level of legal protection available to them. The requirement to exhaust local remedies before accessing international arbitration has proven especially contentious,

²⁷ Times of India Article "India Asks 68 Countries to Renegotiate Bilateral Investment Pacts: Rajya Sabha Told," *Times of India* (Mar. 16, 2023), <https://timesofindia.indiatimes.com/business/india-business/india-asks-68-countries-to-renegotiate-bilateral-investment-pacts-rajya-sabha-told/articleshow/98708530.cms>

²⁸ Times of India Article "India Asks 68 Countries to Renegotiate Bilateral Investment Pacts: Rajya Sabha Told," *Times of India* (Mar. 16, 2023), <https://timesofindia.indiatimes.com/business/india-business/india-asks-68-countries-to-renegotiate-bilateral-investment-pacts-rajya-sabha-told/articleshow/98708530.cms>

particularly given India's judicial system performance metrics. According to the World Bank's 'Ease of Doing Business 2020' report, India ranked 163rd out of 190 countries in ease of enforcing contracts, with dispute resolution requiring an average of 1,445 days and costing approximately 31% of the claim value.²⁹ These statistics raise legitimate questions about whether requiring investors to spend years navigating domestic courts before seeking international remedies may effectively undermine the very protections that Bilateral Investment Treaties are designed to provide.

Despite these concerns, empirical evidence suggests a more nuanced relationship between Bilateral Investment Treaties and foreign direct investment (FDI) flows into India. Research examining this relationship has yielded interesting insights: "while the individual signing of Bilateral Investment Treaties does not influence the inflow of FDI, the cumulative effect of signing a series of Bilateral Investment Treaties is statistically very significant".³⁰ This finding suggests that investors respond not to isolated treaty protections but rather to the comprehensive investment protection ecosystem that a network of agreements creates. The study further notes that "the cumulative effect is a positive externality or a spillover effect of a series of individual acts of signing Bilateral Investment Treaties".³¹

The impact on actual investment flows has been remarkably positive, contrary to what critics might have anticipated. According to Finance Minister Sitharaman, India attracted \$596 billion in FDI during 2014-2023, which she characterized as a "golden era," representing twice the inflow observed during 2005-2014.³² This robust performance suggests that other factors—including market size, economic growth prospects, and sector-specific reforms—may outweigh concerns about the modified investment protection framework.

India's engagement with multilateral investment frameworks has similarly evolved to reflect its changing approach to foreign investment governance. The country has adopted a more

²⁹ Indian Express Article "Negotiating Bilateral Investment Treaties with Trade Partners to Boost FDI: FM Sitharaman," *Indian Express* (Feb. 2, 2024), <https://indianexpress.com/article/business/budget/negotiating-bilateral-investment-treaties-with-trade-partners-to-boost-fdi-fm-sitharaman-9139822/>

³⁰ ICRIER Working Paper Jaivir Singh et al., *The Impact of Bilateral Investment Treaties on FDI Inflows into India: Some Empirical Results*, Working Paper No. 391, Indian Council for Research on International Economic Relations (June 2020)

³¹ ICRIER Working Paper Jaivir Singh et al., *The Impact of Bilateral Investment Treaties on FDI Inflows into India: Some Empirical Results*, Working Paper No. 391, Indian Council for Research on International Economic Relations (June 2020),

³² Indian Express Article "Negotiating Bilateral Investment Treaties with Trade Partners to Boost FDI: FM Sitharaman," *Indian Express* (Feb. 2, 2024), <https://indianexpress.com/article/business/budget/negotiating-bilateral-investment-treaties-with-trade-partners-to-boost-fdi-fm-sitharaman-9139822/>

assertive stance in international forums, as evidenced by its recent opposition to the China-led Investment Facilitation for Development Agreement (IFDA) at the World Trade Organization (WTO) ministerial meeting. India, along with South Africa and other developing nations, opposed the incorporation of this plurilateral agreement into the WTO framework, arguing that it lacked a ministerial mandate.³³

This position reflects broader concerns that such multilateral frameworks could potentially impose commitments which should be binding and limit the policy space for industrialization and development strategies.³⁴ International trade experts have characterized India's stance as consistent with its "longstanding support for multilateralism", suggesting that the country's approach to investment agreements at both bilateral and multilateral levels stems from a coherent vision of economic sovereignty rather than mere protectionism.

C. Balancing Investor Protection with Regulatory Autonomy

The evolution of India's BIT strategy represents a deliberate attempt to recalibrate the balance between investment protection along with state sovereignty. A well-designed BIT aims to achieve two competing objectives, one of which can be stated to provide strong protection to foreign investors and the other is to preserve the host - state's directive and regulatory autonomy. The India-UAE BIT exemplifies this balancing act, with modifications that acknowledge investor concerns while maintaining fundamental sovereign prerogatives.

The three-year timeframe for exhausting local remedies in the India-UAE BIT, while being shorter than the five-year period as specified in the Model BIT, proves how committed is India to its domestic Dispute Resolution Mechanisms. This adjustment upholds the inefficiency of India in its delayed judicial system, while also providing foreign investors a faster access to international arbitrations. Similarly, the simplified definition of investment reduces interpretive ambiguity while preserving the essential character of India's approach.

³³ Economic Times Article "India's Move to Block China-Led Investment Facilitation Pact in WTO Promotes Multilateralism: Experts," *Economic Times* (Oct. 18, 2024), <https://economictimes.com/news/economy/foreign-trade/indias-move-to-block-china-led-investment-facilitation-pact-in-wto-promotes-multilateralismexperts/articleshow/108182549.cms>

³⁴ Economic Times Article "India's Move to Block China-Led Investment Facilitation Pact in WTO Promotes Multilateralism: Experts," *Economic Times* (Oct. 18, 2024), <https://economictimes.com/news/economy/foreign-trade/indias-move-to-block-china-led-investment-facilitation-pact-in-wto-promotes-multilateralismexperts/articleshow/108182549.cms>

Policy Suggestions

India's changing investment environment requires a thoughtful reconsideration of its bilateral investment treaty (BIT) framework to balance the twin imperatives of investor protection and regulatory autonomy. While international investment law struggles with the legitimacy and coherence of current norms, India stands at a crossroads—though one that requires not only reform of outward commitments but also strengthening of domestic institution and governance processes. This section describes three interconnected aspects of reform: updating the BIT framework, strengthening domestic legal processes, and the implementation of strategic governance strategies attuned to India's development imperatives.

Updating the BIT Framework with Equilibrium Protections

One of the key pillars of reform is re-tuning India's Model BIT to make treaty obligations responsive to the challenges and policy priorities of the day. Instead of a total abandonment of classic investor-state dispute settlement (ISDS) mechanisms, India can take a middle path with calibrated improvements. Among them is the incorporation of an appellate review mechanism in the ISDS regime—following templates such as the EU–Canada Comprehensive Economic and Trade Agreement (CETA)—to ensure consistency, legal propriety, and legitimacy in arbitral awards. The incorporation of binding timelines for the resolution of disputes, compulsory transparency requirements, and enforceable ethical standards for arbitrators would also enhance procedural integrity³⁵.

Secondly, India's new BITs need to break away from too general and vague wording by providing more precise definitions to the underlying substantive standards. FET and indirect expropriation, for instance, could be retained but defined in a narrow manner so as not to have overly expansive interpretations that could unreasonably restrict domestic regulatory freedom. That specificity would create a better-balanced nexus between the rights of the investor and the host state's right to regulate public interest³⁶.

In addition, the incorporation of sustainable development imperatives into BITs is no longer a dream but a necessity. India must adopt the trajectory charted in agreements such as the 2019

³⁵ Max Kremer, Paschalis Paschalidis & Peter Vedev, *Article: The 2019 BLEU Model BIT: BLEU's Vision of the Future of Investment Protection* (Apr. 1, 2024),

³⁶ Prabhash Ranjan, Harsha Vardhana Singh, Kevin James, & Ramandeep Singh, *India's Model Bilateral Investment Treaty: Is India Too Risk Averse?* (Brookings India Impact Series No. 082018, 2018)

BLEU Model BIT, which incorporates sustainability as a fundamental treaty goal³⁷. Clear language must maintain the sovereign right to implement non-discriminatory measures in the pursuit of the Sustainable Development Goals (SDGs), thus harmonizing investment protection with environmental, social, and economic imperatives.

Building Domestic Legal and Institutional Capacities

Concurrent with world reform is strengthening India's domestic legal system to enhance management and adjudication of investment arbitration cases. Central to this is building judicial strength by establishing specialized commercial courts with a focus on international investment law, streamlined procedural procedures, and modern case management to accelerate resolution of disputes³⁸. This would significantly reduce dependence on foreign arbitration platforms and establish the credibility of India's domestic legal system.

There also needs to be an effective Regulatory Impact Assessment (RIA) process in place to assess the effect of new regulation on investment flows. The RIA process needs to be thorough—covering stakeholder consultations, rigorous cost-benefit analysis, and policy alternative assessment—to render regulatory interventions investor-sensitive and evidence-based.

Apart from that, India may also have an Investment Ombudsman Office, which would settle investor grievances at an early stage. It is a quasi-judicial forum that would act as an intermediary platform for redressing grievances caused due to administrative action, regulatory ambiguity, or implementation issues before such issues turn into formal disputes. By offering an informal resolution channel, the Ombudsman would be able to minimize transaction costs and give confidence to India's regulatory regime.

Strategic and Sector-Specific Investment Governance

India's investment policy strategy also needs to be distinguished by recognizing sectoral variations in investment dynamics and regulatory needs. Sectoral investment frameworks—

³⁷ Max Kremer, Paschalidis Paschalidis & Peter Vedev, *Article: The 2019 BLEU Model BIT: BLEU's Vision of the Future of Investment Protection*

³⁸ Jaspreet Kaur, *Investors' perception towards investor protection measures taken by the government of India and SEBI: an ordinal approach*, Mar 2024, (accessed on March, 2025) *Investors' perception towards investor protection measures taken by the government of India and SEBI: an ordinal approach* | Semantic Scholar

particularly for strategic sectors—would enable the Government to adjust protections and commitments in a manner that facilitates national priorities such as the "Make in India" and "Startup India" initiatives. Such frameworks would be capable of balancing the need for investor certainty and the flexibility required for evolving public policy³⁹. No less important is the promotion of transparency and predictability in investment regulation. A centralized policy coordination mechanism, with the responsibility of making investment-related laws, administrative decisions, and proposed reforms with advance notice, would contribute significantly to regulatory coherence. Institutionalization of periodic stakeholder consultations—prior to major policy changes—would make India's investment environment participatory, stable, and aligned with domestic and foreign investors' expectations⁴⁰. These steps are in conformity with the Chief Economic Adviser's vision of a BIT regime that is more responsive to the evolving contours of the global investment landscape while being firmly rooted in India's sovereign policy space.

³⁹ Ramesh Soni, Kurt Schimmel, Frederick Slack, & Jeananne Nicholls, *India's Entrepreneurial Awakening: Navigating Geopolitical Shifts and Domestic Policy Reforms* (Mar. 25, 2025), <https://www.semanticscholar.org/paper/fea9092dd6499c82fac578629c85fd2c9cab1718>

⁴⁰ Surbhi Gupta, *India to Revamp Bilateral Investment Treaty Framework: CEA*, Moneycontrol (Mar. 6, 2024), <https://www.moneycontrol.com/news/business/economy/india-to-revamp-bilateral-investment-treaty-framework-cea-12955867.html>