Challenges of India's Investment in Bangladesh

Why in news?

The latest political crisis in Bangladesh will impact Indian companies operating in Bangladesh.

How foreign investments are protected?

- **Foreign investments** – It refers to the *investment in domestic companies and assets* of another country by a foreign investor.
- **Protection measures** - There are three basic legal frameworks broadly apply to foreign investment.
    - Domestic laws
    - Contractual agreements
    - International laws
- **Domestic laws** – Legal safeguards of the country where the investment is made.
- **Contracts** – It may have been signed *between the foreign investor and the government of the host* state, or among foreign investors and companies of the host state.
- **International Laws** – Laws contained in applicable *treaties, customs, and general legal principles* that have attained the status of international law.
    - **For example**, Bilateral Investment treaty (BIT)
- **Challenges** – The *domestic law of the host state is unreliable* as it can be changed unilaterally by the state.
- The *contracts may be of limited value* when it comes to challenging the sovereign actions of the state that adversely affect foreign investment.

What is bilateral investment treaty (BIT)?

- **Need** – *International law cannot be changed unilaterally* and can be used to hold states accountable for their sovereign actions.
- When protecting foreign investment, the *most crucial instrument* in international law is a bilateral investment treaty (BIT).
- **BIT** - A reciprocal *treaty between two countries* aimed at protecting investments made by investors of both countries.
- **Role** – It *protect investments by imposing conditions* on the regulatory behaviour of the host state, thus *preventing undue interference* with the foreign investor's rights.
- **Provisions** – It restrict the host state from unlawfully expropriating investments.
- It imposes obligations on host states to ***accord fair and equitable treatment (FET)*** to foreign investment and not to discriminate against foreign investment.
- It enable investors to *sue the host state before an international tribunal* if the host state has breached its treaty obligations which is known as ***investor-state dispute***

settlement (ISDS).
    - According to the United Nations Conference on Trade and Development (UNCTAD), by the end of 2023, the total number of known ISDS claims stands at 1,332.
- **Significance** – It promotes foreign investments, protect the investments through dispute resolution mechanisms.

How India's investment in Bangladesh can be protected?

- **India's investment** – Indian companies have invested in Bangladesh in sectors such as edible oil, power, infrastructure, fast-moving consumer goods, automobiles, and pharmaceuticals.
- **Protection means** - Indian companies can use the Bangladesh domestic laws, contracts and international laws to protect their investments from regulatory risks.
    - For instance, Bangladesh's ***Foreign Private Investment (Promotion and Protection) Act*.**
- **India-Bangladesh BIT** – It was ***signed in 2009*** that contains investment protection features
    - For instance, unqualified FET provision allows Indian companies to challenge Bangladeshi sovereign regulatory conduct.

While India has unilaterally terminated almost all its BITs, the one with Bangladesh continues to exist.

- **BIPPA -** Bilateral Investment Promotion and Protection Agreement was ***signed in 2015***, a type of BIT designed *to foster and safeguard investments* between the two nations.
- **Joint Interpretative Notes (JIN)** – It was ***adopted in 2017*** to clarify the meaning of various terms in the 2009 treaty, adopted on India's insistence.

What are the challenges for India's investments in Bangladesh?

- **Political crisis** - The interim/ new government may adopt a hostile attitude towards Indian companies.
- It might change the existing laws or adopt new regulatory measures that may adversely impact Indian capital.
- **Issues with JIN** – It was done without considering whether India has an offensive or defensive interest vis-à-vis a specific country.
- It has diluted the investment protection features of the BIT.
    - For instance, taxation measures are excluded from the ambit of the BIT.
- It has been *designed from the perspective of the capital-importing* country to safeguard its regulatory conduct from ISDS claims.
- Between India and Bangladesh, *New Delhi is the capital exporter*, and Dhaka is the importer.
- Ironically, the JIN that India developed might *work to the advantage of Bangladesh,* and not the Indian capital operating there.

What lies ahead?

- India should facilitate high-level visits from both countries to reinforce the commitment to the BIT.
- India must adapt its investment treaty practices to balance both host and home country interests, ensuring robust protection for its investments.

Reference

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