India EU Free Trade Agreement

Why in news?

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A European Court of Justice recently gave ruling regarding FTAs that might will have bearing on India-EU pacts.

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What is ISDS mechanism?

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- The European Commission negotiated an FTA with Singapore from 2010 to 2013 covering a wide range of issues including the investor-state dispute settlement (ISDS) mechanism.
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- The ISDS provision gives investors a choice between bringing a dispute against a host state before the national court of the country where the investment has been made and submitting the dispute to international arbitration.
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What is the recent case about?

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- The European Commission and the EU member states disagreed as to who had the competence to ratify the FTA.
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- European Court of Justice (ECJ) is the highest court in the EU in matters of EU.
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- It decided that EU had the exclusive competence over almost all aspects of the FTA except non-direct foreign investment and the ISDS mechanism.
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- In other words, for agreements containing non-direct foreign investment

and/or ISDS provisions, EU member states enjoy mixed competence to approve such treaties.
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- The court held that since the ISDS provision allowed the removal of the disputes from the jurisdiction of the courts of an EU member state, it could not be done without the consent of the member states.
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What are the challenges for India?

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- The 2016 Indian Model BIT requires a foreign investor to litigate in national courts for at least five years before approaching an international tribunal.
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- This would also mean that all BIT disputes would be settled by the multilateral investment court (MIC) and not through ad hoc arbitration as India currently proposes in its Model BIT.
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- Bilateral investment court system will be created with tribunal members being appointed for a five-year period and with an appellate mechanism.
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- But the method of dispute resolution in the Indian Model BIT is based on ad hoc arbitration through party-appointed arbitrators though the possibility of creating an appellate mechanism is recognised.
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- India should use the ECJ decision to rethink the best way of approaching the ISDS, such as whether it should move forward with the option of negotiating for a MIC.
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Source: The Hindu

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