New Bilateral Investment Model

Mains: *GS-III- Economy*

Why in News?

India is considering changes to its bilateral investment treaty (BIT) framework as it seeks to attract greater foreign capital amid heightened global uncertainty and the ongoing West Asia crisis.

What are Bilateral Investment Treaties (BITs)?

- **BITs** - BITs are reciprocal agreements between two countries to promote and protect foreign private investments in each other's territories by individuals and companies situated in either State.
- **Purpose** – BITs encourage foreign investors to invest in a State and there by contributing towards overall developments and advancements of the economy.
- **Essential clauses covered under BITs**
  - Applicability
  - Fair and Equitable Treatment (in accordance with international law), and Full Protection & Security
  - National treatment (treating foreign investors at par with domestic companies) & Most-favored-nation treatment,
  - Expropriation (limiting each country's ability to take over foreign investments in its territory).
  - Dispute settlement mechanisms, both between States and between an investor and a State.
- **No Automatic Right to Invest** – One of the unique feature of the Indian BITs is that it does not give 'a right to make investments' in India.
- All rights, under the BITs to which India is a party, can be exercised only after making investments in India.

India's BITs Journey

- India's 1993 BIT model was investor-friendly but led to costly disputes.
- The 2016 model tightened rules, requiring exhaustion of domestic remedies.
- The 2026 revision seeks a middle ground like investor protection with sovereign safeguards.
- **Before the 2016 model**
- India had signed BITs with 83 countries based on the model BIT of 1993, and as amended in 2003 & out of these, 74 were ratified.

- In 2017, India sent termination notices to 68 countries, asking them to renegotiate under the stricter 2016 model BIT.
- Example - Treaties with countries like the UK, Germany, and France were terminated and put up for renegotiation.
- **After 2016**
- Since the revised 2016 model, India introduced a new model BIT in 2016 with tougher rules.
- India has signed BITs with Belarus, Kyrgyz Republic,
- Investment Cooperation and Facilitation Treaty (ICFT) with Brazil, UAE and Uzbekistan.
- **Example** – In the UAE BIT, the window for exhaustion of local remedies was reduced to three years from five years before going to international arbitration.
- Signed a Bilateral Investment Agreement with Taipei (through India Taipei Association and Taipei Economic and Cultural Centre).

What are the 3 key features of remodelled Bilateral Investment Treaties (BITs)?

- **Two-Year Local Remedy Window** – Investors must exhaust domestic legal remedies for a minimum of two years before initiating international arbitration.
- At present, the government follows the BIT model approved in December 2015 & adopted in January 2016, which mandates exhaustion of domestic remedies prior to the initiation of international arbitration proceedings.
- For some countries, India may negotiate a shorter one-year cooling-off period.
- India has pushed for dedicated commercial courts are being promoted to handle such disputes efficiently.
- **No MFN Clause** – The new model excludes the Most-Favoured Nation (MFN) clause, preventing investors from "treaty shopping" by routing investments through countries with more favorable BIT terms.
- **Taxation Excluded** – Tax-related disputes are explicitly kept outside of BIT coverage.
- This change stems from past high-profile arbitration cases like Vodafone and Cairn, which challenged India's tax policies under earlier BITs.

Why is Centre remodelling its Bilateral Investment Treaties (BITs) with countries?

- **Investor Confidence –** The 2015 Model BIT removed key protections like the MFN clause, narrowed Fair and Equitable Treatment (FET), and imposed a five-year local remedy requirement.
- **Declining FDI inflows** – India's gross FDI inflows reached a record $94.5 billion in FY26, while total FDI had previously fallen from $85 billion in FY22 before recovering to over $80 billion in FY25.
- The government sees revamped BITs as a tool to attract capital inflows.
- **Past arbitration losses** – Disputes involving Vodafone and Cairn has exposed India to costly investor-state arbitration claims, which pushed India to tighten rules.
- The 2015 Model BIT was drafted to reduce such risks but it favored more towards sovereignty, discouraging investors.
- **Balancing Sovereignty & Investor Protection** – Earlier BITs gave broad protections to investors, while the 2015 model restricted them heavily (e.g., five-year local remedy

requirement, removal of MFN clause).
- The Centre now seeks a middle ground to avoid scaring investors while retaining regulatory control.
- **Global Competitiveness** – With major partners like the US, UK, EU, and Saudi Arabia negotiating new BITs, India wants to align its treaty framework with global standards while preventing "treaty shopping" and tax avoidance.

What are the implications for investors due to the remodelling of BITs?

- **Reduced Flexibility** – The longer waiting period before arbitration may deter some investors, so India reduced it to 2 years, the mandatory 5 years was seen as a major hurdle.
- **Sovereignty Protection** – India ensures Parliament and domestic courts retain authority over disputes.
- **Investor Confidence** – While stricter, the model aims to reassure investors with dedicated commercial courts and clearer rules.
- **Global Negotiations** – India is aligning its BIT terms depending on partner countries, signaling flexibility in strategic cases.

What lies ahead?

- India's BIT revamp is part of a broader strategy to attract foreign capital, restore investor trust, and modernize treaty protections.
- The government is expected to finalize new BITs with key partners in the next few years, making India's investment environment more predictable and competitive.

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References

1. Indian Express | New bilateral investment model
2. Economic Times | India's BIT overhaul must convince a wary investor base

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