Srikrishna Committee - BIT Disputes Resolution

Why in news?

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The Srikrishna committee's report was recently released, with a focus on recalibration of the Indian BIT regime.

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What is a BIT?

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- It is an agreement establishing the terms and conditions for private investment by nationals and companies of one state in another state.
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- Government of India has signed BITs with 83 countries.
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- They are based on a model BIT formulated by India in 2016.
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- The model BIT provides the framework for new negotiations with its trading partners.
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- The distinctive feature of model BIT is that they allow for an alternative dispute resolution mechanism called 'Investor-state dispute settlement'.
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What were the key recommendations of the Srikirishna Committee?

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- Justice B.N. Srikrishna committee was constituted to prepare a road map to make India a hub of international arbitration.
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- It recommended the creation of the post of an 'international law adviser' (ILA) to advise the government on international legal disputes, particularly BIT disputes.

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- Creation of an inter-ministerial committee (IMC), with officials from the Ministries of Finance, External Affairs and Law for better managing BIT disputes was also called for.
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- It also mentioned the possibility of establishing a BIT appellate mechanism and a multilateral investment court.
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- It recommended hiring of external lawyers and appointing counsels having expertise in BITs to boost the government's legal expertise.
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- It called for the creationg of designated fund to fight BIT disputes.
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What are the shortcomings?

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- **Framework -** The call for appointing an 'Law Adviser' will amount to duplicating the existing arrangement.
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- Presently, the Legal and Treaties (L&T) division of the External Affairs Ministry is mandated to offer legal advice to the government on all international law.
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- It would be sensible to have the a member from the Commerce Ministry in the proposed IMC as it works for invester protection but it was not recommended.
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- **Narrow window -** The report named the investor-state dispute settlement (ISDS) mechanism as robust.
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- But it provides for only a narrow 90 day window for filing of BIT arbitration.
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- The report is also silent on many other jurisdictional limitations given in Article 13 in the 'Indian model BIT' that also limit the usefulness of ISDS.
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- Critical issues such as appointment of arbitrators, transparency

provisions, enforcement of awards, standard of review were also overlooked.
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- The commission’s mandate was to focus on on all the three parts of BIT arbitration namely –
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- BIT arbitration has three aspects namely:\n
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1. Jurisdictional (such as definition of investment)
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2. Substantive (such as provision on expropriation)
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3. Procedural (ISDS mechanism).
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- But it focussed only on the procedural aspect.
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Source: The Hindu

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