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INDIA'S MODEL BIT AND ITS IMPACT ON FOREIGN INVESTMENT

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Abstract:

This paper effectively evaluates India's 2016 Model BIT, which aimed primarily at the host state's right to regulate its own rules. This very reform has changed a lot since 2016, narrowing the possible inflow of FDI and creating a barrier to investor protection. The key reforms were the mandatory exhaustion of local remedies in 5 years, and reforms regarding ISDS led by the UNCITRAL in a global context. This paper further examines the effect the treaty clauses have on FDI inflow and the relation between treaty rules and investor confidence. This study highlights that India's 2016 Model BIT restricts certain achievements of FDI inflow by imposing procedural barriers, and hence, this model should be re-evaluated with a deeper look.

Literature review:

From this literature, it is clear that there are two opinions: the first one favors India's Model BIT of 2016 as a measure to ensure regulatory sovereignty, while the second opinion believes that its restrictive nature could scare off investors, which might affect foreign direct investment.

Research questions:

1. The Model BIT aims to protect India's interests and balance FDI inflows following the 2016 reforms. Is it effective, or will it backfire? Now that the rules have become stricter? Has this reform brought in enough FDI, comparatively speaking?
2. Will India's Model BIT 2016 ISDS chapter push forward to a new Global Model?

Keywords: Model BIT, ISDS, Local Remedies, FDI

1. Investor -State Dispute Settlement (ISDS) Reform:

India's approach to the ISDS took a turn in the 2016 Model BIT, where it was reformed and characterised by the international arbitration that may be accessed by investors investing in India. This reform did not intentionally reject the system of arbitration but rather incorporated

it into its BIT Model, with certain restructuring.¹

1.1 Mandatory exhaustion of local remedies:

One of the main features of global ISDS, which was reformed by India in its 2016 Model BIT, was to exhaust all its local remedies in India and then approach international benches.² This basically was a rule to emphasise the shift from Investor Protection to state sovereignty and made sure that there exists a balance between the rights of foreign investors and India's right to regulate.³

The prior said the exhaustion of local remedies requirement was strictly bound by timelines. In case an investor is faced with a dispute, he must submit the dispute to domestic courts within 1 year of the time he gained knowledge of the dispute. From then on, spend 5 years in domestic proceedings, then finally issue a notice of dispute backed by a 6-month time limit for amicable settlement. After all these, the investor shall submit a formal notice of arbitration to the state. These reforms have created a serious concern about the procedural barrier that has been created, which may not work for the investors as their claims are often time-barred.⁴

1.2 ISDS reform on Global Plate:

India's reforms on ISDS have been a topic for global debate as the tide of this reform is very well under the broader global debate on ISDS reforms, which was laid down by the UNCITRAL working group since 2017.⁵ The UNCITRAL working group proposed reform options that included various significant parts of ISDS, such as transparency rules, an appellate court mechanism or the Multilateral Investment Court proposed by the EU.⁶ EU's court system mainly aimed in arbitrator's equity and variance while maintaining an investor-state verdict

¹ Analysis: India's New Investment Treaty with the United Arab Emirates Indicates Shift Towards Increased Regulation of ISDS Process and Safeguard of States' Regulatory Powers, IAREporter, 2024, available at: <<https://www.iareporter.com/articles/analysis-indias-new-investment-treaty-with-the-united-arab-emirates-indicates-shift-towards-increased-regulation-of-isds-process-and-safeguard-of-states-regulatory-powers/>> (last visited on Apr. 23, 2026).

² Cairn Energy v India: Retroactive Taxation, Fair and Equitable Treatment and the General Principles Method, EJIL: Talk!, 2021, available at: <<https://www.ejiltalk.org/cairn-energy-v-india-retroactive-taxation-fair-and-equitable-treatment-and-the-general-principles-method/>> (last visited on Apr. 23, 2026).

³ India Moves to Revise Its Model Bilateral Investment Treaty, IISD Investment Treaty News, 2026, available at: <<https://www.iisd.org/itn/2026/01/19/india-moves-to-revise-its-model-bilateral-investment-treaty/>> (last visited on Apr. 23, 2026).

⁴ India Takes Steps to Reform Its Investment Policy Framework After Approving New Model BIT, IISD Investment Treaty News, 2016, available at: <<https://www.iisd.org/itn/2016/08/10/india-takes-steps-to-reform-its-investment-policy-framework-after-approving-new-model-bit/>> (last visited on Apr. 23, 2026).

⁵ N. Jalan and A. R., "The Cairn Arbitration Award: Retrospective Taxation of Indirect Share Transfers in India Breaches Bilateral Investment Treaty" 75 Bulletin for International Taxation (2021).

⁶ P. Ranjan and P. Anand, "Chapter 19: Investor State Dispute Settlement in the 2016 Indian Model Bilateral Investment Treaty: Does It Go Too Far?" (2017).

with appointed judges and a binding rule. On the other hand, India's 2016 Model BIT follows the UNCITRAL rules while preserving its right to regulate and establishing conditions for procedures which is disadvantageous to the investors.

1.3 India's stance:

Unlike some American states and South Africa, India has maintained the ISDS system. In 2024, India even negotiated new BITs with the UAE, Belarus and Taiwan, keeping the Model BIT as the base for its negotiability. India was never a part of the ICSID Convention, and its decision not to join still stands. India faced several criticisms and resistance to its 5-year exhaustion clause, especially from the EU. The EU once warned in 2016 that India's current treaty may create gaps in investment protection and discourage EU enterprises from further investing in India. Despite all these, early this year of 2026, the Govt of India announced its plans to revise the Model BIT to boost investor confidence.⁷

2. Impact on Foreign Direct Investment inflows: Do BITs actually influence FDI decisions in India?

Bilateral investment treaties (BITs) are those treaties that are signed by the host state with different countries to protect and secure the investments made by foreign companies in the host state. These BITs ensure that everyone plays fair and knows the rules by which they are playing. There still exists a hollow part in this concept that is the relation between BITs and FDI.⁸

2.1. Do BITs actually influence FDI decisions?

This question raises tension in the ongoing debate, especially in India. The opinion varies from person to person, nation to nation. There have been studies that proved BITs do help in the inflow of FDIs in India. For reference, the instance of a study from 2001 to 2012 by Bhasin and Manocha⁹ found that the BITs surely help with the increase of FDI, giving investors a sense of protection.

Another study found that for a developing country like India, BITs play a crucial role in

⁷ P. Ranjan and P. Anand, "The 2016 Model Indian Bilateral Investment Treaty: A Critical Deconstruction" (2017).

⁸ A. Kamila and M. Chinara, "What Worth Is a BIT? Impact of BITs on FDI Inflows into India" 4 Focus Journal of International Business (2018).

⁹ N. Bhasin and R. Manocha, "Do Bilateral Investment Treaties Promote FDI Inflows? Evidence from India" 41 Vikalpa: The Journal for Decision Makers 275 (2016).

attracting FDI for economic growth.¹⁰ However, the 2016 Model BIT reform changed the flow and led to a whole other set of opinions from researchers. A 2021 study by Singh, Sreeti, and Urdhwareshe¹¹ suggested that what matters is that India is part of the group that protects investments, rather than just concentrating on individual BITs. There seems to have been a shock for investors when India reformed its BIT, and then came the 2016 Model BIT. Another study by Kotyrlo and Kalachyhin¹² highlighted that, at the end of the day, BITs are indeed necessary for attracting FDI, as there have been reports of a decline in FDI from many countries. A global organisation, UNCTAD, reviewed many studies and concluded that it's the clauses of the agreement that matter the most. If the treaties have favourable conditions towards the investor, there is a high possibility that they attract FDI.¹³

2.2. Future Outlook:

The 2016 Model BIT primarily aimed to give the host state the power to regulate its own rules, but some saw this as a concern over the impact on investors. This model imposed stricter rules, such as the requirement for investors to go through the local remedies for a minimum of 5 years before moving to an international bench.¹⁴ It also redefined certain terms, such as investment and what amounts to investment, from then on, which cancelled out or made many investments less powerful. This model also removed the 'Most Favoured Nation' (MFN) clause, which was earlier used to give investors the best treatment from India. Through this model, the investor confidence was brought down to a step, as these reforms take too long to resolve time-bound disputes, and also, the protection of the investor was compromised, making foreign investors invest less. The very substance of investor protection is crucial for the inflow of FDI.

At this very time in 2026, these challenges have been analysed, and India plans to revise the 2016 Model BIT after a decade. There has been evidence that suggests this revision of the Model BIT is crucial to receive foreign investment, and altogether, the BIT regime plays a vital role in the inflow. Above all, this is a balanced BIT regime which helps a host state to improve investors' perception of doing business in India and protect investors' rights, ensuring to fill

¹⁰ GLC Mumbai, Anoushka and JGLS Sonipat, Michelle D'Souza, "Host Centered to Mutual Compromise: A Comparative Analysis of the Indian Model BIT and India-Brazil Investment Cooperation and Facilitation Treaty" (2024), available at: <<https://works.hcommons.org/doi/10.17613/jky8z-22g54>> (last visited on Apr. 23, 2026).

¹¹ J. Singh, V. Shreeti and P. Urdhwareshe, "The Impact of Bilateral Investment Treaties on FDI Inflows Into India: Some Empirical Results" 57 *Foreign Trade Review* 310 (2021).

¹² E. Kotyrlo and H. M. Kalachyhin, "The Effects of India's Bilateral Investment Treaties Termination on Foreign Direct Investment Inflows" 31 *Economics of Transition and Institutional Change* 1007 (2023).

¹³ R. Swathi and M. Sharmila, *Arbitration Under Bilateral Investment Treaties: An Indian Perspective* (Taylor & Francis, 2024).

¹⁴ T. L., "Bilateral Investment Treaty and Foreign Direct Investment in India" 1 *International Journal of Business Management and Economics* 53 (2021).

the gap that has been created previously.

Conclusion:

India's 2016 Model BIT refers to a treaty that is state sovereignty centric over investor protection. Through these reforms India has limited its access to international arbitration. However, these reforms have created a procedural and substantive barrier for the investors. The exhaustion of local remedies was a huge hit for the investors as their disputes are often time-bound and the investor protection was on a low scale in comparison weakening investor confidence. Although the impact of BITs on FDI is still debated, the treaty clauses definitely influence the FDI inflow.

India's reform need more consideration to gain acceptance globally as even though it follows the UNCITRAL broader, still with its preconditions limit its acceptance. Therefore, to conclude with eventually, the Model BIT is to be revised and a balanced framework that reduces barriers are to be brought up to ensure an eternity of FDI inflow.

