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INVESTMENT ARBITRATION IN INDIA: CHALLENGES AND PROSPECTS UNDER THE REVISED MODEL BIT FRAMEWORK

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Abstract: *This research explores both the opportunities and challenges of investment arbitration in India, with a focus on the revised Model Bilateral Investment Treaty (BIT). The updated BIT introduces significant legal reforms aimed at balancing state sovereignty with investor protection. The study analyses key provisions of the framework, reviews recent arbitral decisions under the new model, and compares India's approach with BIT frameworks of other major countries. It also evaluates how effectively the revised BIT addresses earlier criticisms and aligns with international best practices.*

The paper further examines how these reforms attempt to reduce disputes and influence investor–state dispute settlement (ISDS). It highlights the potential benefits of the revised framework while identifying areas that require further improvement. The study aims to suggest measures to enhance investor protection and improve the efficiency of dispute resolution mechanisms in India.

Overall, the research provides a critical perspective on the evolving landscape of investment arbitration in India, assessing the practical impact of recent legal changes on both investors and the state. It also underscores progress in aligning India's BIT framework with global standards, while pointing out ongoing challenges that may affect the country's investment climate.

Keywords: *Investment arbitration, OECD, ISDS, international transactions, BIT Framework, Dispute resolution systems*

ISSN: 2582-6433

CHAPTER 1:

INTRODUCTION:

Foreign investment refers to the flow of capital from one country into another with the intention of establishing a lasting interest in an enterprise. According to the Organization for Economic Co-operation and Development (OECD), such investment involves a long-term relationship and a significant degree of influence, typically indicated by ownership of at least 10% of an enterprise's voting power. Over the past few decades, India's economic reforms have attracted substantial foreign investment. The government has introduced more transparent and robust policies to safeguard investor rights and improve the overall investment climate, leading to significant growth in foreign direct investment (FDI).

Arbitration, as a form of alternative dispute resolution, is a private mechanism in which disputing parties mutually agree to appoint a neutral arbitrator to resolve their conflict. The decision rendered by the arbitrator is final and binding on both parties.

The arbitration process can take different forms. Institutional or procedure-based arbitration is conducted under established rules and institutions, while ad hoc arbitration occurs when parties agree to resolve their dispute independently without involving any administering body, following procedures they determine themselves. Arbitration can be conducted at domestic as well as international levels.

ARBITRATION BASED ON JURISPRUDENCE:

1. Domestic Arbitration: This type of arbitration requires that the substantive law of the nation in which the parties to the dispute are both citizens be used to decide the conflict. The dispute must have its roots in that nation, and it must also be settled there.
2. International Arbitration: International arbitration is a type of arbitration that involves parties or conflicts from other nations and takes happen both inside and outside of a country. International arbitration may be governed by domestic or foreign law, depending on the contract requirements. Arbitration only becomes international when one of the parties is a national of another state. [1]
3. Foreign Arbitration: If the parties to a case agree to a foreign arbitration or ad hoc arbitration, foreign arbitration is used. In light of this fact, the prize is now considered

ISSN: 2582-6433

to be a foreign honour.

4. Statutory Arbitration: The courts may order parties to a dispute to participate in this type of legally binding arbitration. The arbitral procedure may not be avoided by the parties, who must adhere by local laws.[2] Additionally, the parties' approval is not needed. If the parties do not follow the court's ruling, severe penalties may be levied.

Arbitration can only be utilised if both parties have agreed to it in writing or if their original contract has an arbitration clause. Two or more parties must enter into a formal agreement or arbitration clause, and both parties must intend to sign it.

- The arbitrator's place of residence;
- the system for appointments;
- The quantity and expertise of the arbitrators;
- Terms related to arbitration;
- Type of arbitration;
- The arbitration institution's name and location;

An arbitration system has been in place in India for many years. In the past, disputes were resolved by the panchayat, or council of wise men. Several Indian statutes refer to the Panchayati raj system.

During British administration in India, Bengal Regulations created the foundation for modern arbitration law in 1772 Courts were allowed to arbitrate property and partnership agreements under Bengal Regulations if the parties agreed.

Before 1996, the three main pieces of arbitration legislation in India were ;

(i) The Arbitration Act of 1937,

(ii) The Indian Arbitration Act of 1940, and the Indian Arbitration Act of 1946.

[1] D.M. Popat, Article ' Law of Arbitration and Alternative Dispute resolution', chartered Secretary, July 2002, pp. A 293, 996 .

[2] Singh, S.D., 'Law of Arbitration, 7th ed., Eastern Book Company, Lucknow

ISSN: 2582-6433

(iii) However, despite the fact that the 1937 and 1961 Amendments sought to make foreign arbitral awards binding on Indian courts, the 1940 Act remained India's primary arbitration statute (the 1961 Act incorporated the 1958 New York Convention). An attempt was made in 1996 to update the dated Arbitration and Conciliation Act of 1940, but it failed. In 1996, a law was passed that repealed the prior three laws (the Act of 1937, the Act of 1961 and the Act of 1940). The main goal was to make arbitration a more widely available option for resolving commercial disputes because it is both inexpensive and quick. The Act of 1996 is the most recent.

Foreign investors in India have two options under Indian law:

1. Automatic Route
2. FIPB Route

a) Automatic Route:

An NRI or foreign investor doesn't need authorization from the government or the Reserve Bank of India to invest in the country where they are currently living (RBI). Using this strategy, Indian companies can sell up to 100 percent of their paid-up capital in domestic operations to foreign investors With regard to areas such as power, manufacturing, venture capital funds, and non-banking financing, the government has permitted foreign investments of up to 100% necessary capital (subject to particular conditions). [3] Minimum capitalization requirements have been established across a wide range of businesses, including financial services. It is only permitted to invest a certain amount of money from outside the country in specified places (SECTORAL CAPS). There are two possible outcomes to excessive investment in the sectoral cap: either it is illegal or the RBI must approve it. According to the RBI regulations, only 74 percent of the capital required for an airport development or improvement can be invested without approval. Within 30 days of issuing shares and receiving inbound payment via the automatic channel, investors need only notify the relevant RBI regional office and submit the requisite paperwork.

b) FIPB Route:

An NRI or foreign investor does not require approval from the government or the Reserve Bank of India to invest in the host nation (RBI). This process enables Indian enterprises to sell up to

ISSN: 2582-6433

[3] International Economics and Trade Law by Schimithoff and Simond

ISSN: 2582-6433

100% of the paid-up capital in their domestic operations to foreign investors.[4] The government has permitted foreign investments up to 100% of required capital in sectors like manufacturing, venture capital funds, non-banking finance companies, building and development projects, and power (subject to particular conditions). Minimum capitalization requirements have been established in a number of businesses, including financial services. In some places, foreign investments are restricted to a certain amount or are subject to liberal caps (SECTORAL CAPS). A RBI authorization is required for excessive sectoral investment, which is also illegal. For example, investment in airport improvement or expansion is limited to 74 percent of capital requirements; anything above that requires RBI approval. Investors should to inform the relevant RBI regional office and submit the required paperwork within 30 days of the issuance of shares and receipt of inbound payment through the automatic channel.

India has developed a comprehensive legal framework to regulate and facilitate foreign investment, aiming to balance investor protection with national interests. The primary legislation governing foreign exchange and investment is the Foreign Exchange Management Act, 1999 (FEMA), [5] which provides the foundation for regulating cross-border transactions. FEMA is supplemented by rules and regulations issued by the Reserve Bank of India (RBI), which oversees foreign exchange inflows and ensures compliance with sectoral caps and investment conditions.

Foreign Direct Investment (FDI) in India is further governed by the Consolidated FDI Policy issued by the Department for Promotion of Industry and Internal Trade (DPIIT). This policy outlines sector-specific limits, entry routes (automatic and government approval), and conditions for foreign investment. Under the automatic route, foreign investors do not require prior approval from the government, while investments under the government route must be approved by the relevant ministry or department.

India also enforces various sectoral laws and regulations that impact foreign investments, such as the Companies Act, 2013, which governs corporate entities, and the Competition Act, 2002, which ensures fair market practices and prevents anti-competitive behavior. Additionally,

ISSN: 2582-6433

[4] Mittal D.P., ' Law of Arbitration ADR and Contract'.
[5] Fali S Nariman, Articles 'The spirit of Arbitration' presented on Feb. 17,200 in Hong Kong, president International Council for Commercial Arbitration (ICCA).

ISSN: 2582-6433

taxation laws, including the Income Tax Act, 1961, play a crucial role in determining the fiscal obligations of foreign investors.

To further protect investments and promote investor confidence, India has entered into Bilateral Investment Treaties (BITs) with several countries. These treaties provide safeguards such as protection against expropriation, fair and equitable treatment, and mechanisms for dispute resolution, including investor-state arbitration.

Recent reforms have aimed at simplifying procedures, improving transparency, and enhancing ease of doing business in India. Measures such as digitization of approval processes, liberalization of FDI norms in key sectors, and the introduction of the Insolvency and Bankruptcy Code, 2016, have strengthened the investment climate. At the same time, India has revised its Model BIT to address concerns related to excessive investor claims and to preserve regulatory autonomy[6].

Overall, India's legal regime for foreign investment reflects a dynamic and evolving framework that seeks to attract global capital while maintaining regulatory control and ensuring sustainable economic development.

International transactions in the context of foreign investment refer to financial, commercial, and legal dealings that take place across national borders. These transactions are central to global trade and investment, involving the movement of capital, goods, services, and technology between countries [7] . In India, such transactions are primarily regulated to ensure economic stability, transparency, and compliance with international standards.

[6] Gerffrey, M. Beresford Hartwell, Articles ' Arbitration – A Commercial Man's Way to justice'. Chartered Secretary, July 2002. pp, A 278, 981

[7] The UNCITRAL MODEL LAW: A Good Example of a Model Law, Herrman Gerold, ICCA Conference, March 2000 New.

ISSN: 2582-6433

CHAPTER 2:

INTERNATIONAL TRANSACTIONS UNDER THE CONTEXT OF FEMA 1999:

Under the Foreign Exchange Management Act, 1999 (FEMA), international transactions are broadly categorized into current account transactions and capital account transactions. Current account transactions include payments related to trade in goods and services, interest payments, remittances, and travel expenses. These are generally permitted with minimal restrictions. In contrast, capital account transactions involve the transfer of capital assets, such as foreign direct investment (FDI), external commercial borrowings (ECBs), and investments in securities, and are subject to stricter regulation.

The Reserve Bank of India (RBI) plays a key role in monitoring and regulating international transactions. It issues guidelines on foreign exchange management, ensures compliance with exchange control norms, and maintains stability in the foreign exchange market. Authorized dealers, such as banks, act as intermediaries in facilitating these transactions. International transactions also involve compliance with taxation laws. Cross-border transactions are subject to provisions of the Income Tax Act, 1961, including rules on transfer pricing, which ensure that transactions between related entities in different countries are conducted at arm's length prices. Additionally, Double Taxation Avoidance Agreements (DTAAs) [8] entered into by India with other countries help prevent the same income from being taxed in both jurisdictions.

Another important aspect is the role of international agreements and institutions. Trade and investment transactions are influenced by frameworks established by organizations such as the World Trade Organization (WTO), which promotes fair trade practices, and Bilateral Investment Treaties (BITs), which provide protection and dispute resolution mechanisms for investors.

With increasing globalization, India has taken steps to simplify and digitize international transaction processes, making cross-border investments and payments more efficient. However, challenges such as regulatory compliance, currency fluctuations, and legal complexities continue to affect international transactions. Overall, a well-regulated system

ISSN: 2582-6433

ensures that such

[8] The UNCITRAL MODEL LAW: A Good Example of a Model Law, Herrman Gerold, ICCA Conference, March 2002 New.

ISSN: 2582-6433

transactions contribute positively to India's economic growth while safeguarding national interests.

As global integration deepens, cross-border trade and investment have expanded significantly, increasing the relevance of investment arbitration. Although it remains a relatively recent area of law, the past decade has witnessed a substantial rise in the number of arbitration cases. This growth reflects a greater awareness among investors of the protections available, especially compared to the early 2000s when foreign investments were less widespread.

According to the 2016 UNCTAD World Investment Report, investment arbitration recorded the highest number of cases ever filed in a single year, highlighting its growing importance. At the same time, the system has faced criticism from politicians across different ideological perspectives, drawing global attention. Countries such as Venezuela and Australia have expressed concerns, often due to conflicting national and investor interests.

Despite these criticisms, investment arbitration continues to serve as an important mechanism for resolving disputes. It remains valuable both for governments seeking to attract foreign investment and for investors aiming to safeguard their interests against state interference. Over time, it has developed a reputation as a modern and effective forum for settling international investment disputes. Furthermore, as developing nations continue to seek foreign capital and resources, the demand for investment arbitration is likely to grow alongside their economic development.

Investment arbitration constitutes a distinct area of law. While it is rooted in international law, it differs from commercial arbitration. It forms part of Public International Law, as it deals with disputes arising between parties under public treaties rather than private commercial agreements. Investment arbitration may be initiated under bilateral investment treaties (BITs) between two countries or multilateral agreements such as the Energy Charter Treaty or the North American Free Trade Agreement (NAFTA). [9] These treaties provide extensive protections to foreign investors and allow disputes to be resolved before international arbitral tribunals, rather than domestic courts, ensuring quicker and more neutral enforcement against host states in case of

ISSN: 2582-6433

[9] Arbitration Conciliation and Alternate Dispute Resolution System," Dr. Tripathi, S.C., Central Law Publications, Allahabad, 2002, 2nd ed.

ISSN: 2582-6433

violations. Some countries also enter into broader free trade agreements that include similar provisions.

In India, the availability of investment arbitration stems from the Bilateral Investment Treaties it has entered into with various countries. These treaties obligate the state to provide certain protections and rights to foreign investors. They cover key principles such as fair and equitable treatment, protection against expropriation, national treatment, and most-favoured-nation status. The specific rights and obligations are negotiated between the contracting states.

A significant milestone in India's investment arbitration history occurred in November 2011, when the country faced its first publicly known adverse award in an international investment arbitration. This arose from the case of White Industries Australia Limited v. Republic of India, initiated under the Australia–India BIT.[10] Following this case, several other foreign investors issued notices to the Indian government, invoking arbitration provisions under various BITs. The White Industries case marked a turning point, highlighting the growing importance and impact of investment arbitration in India.

Bilateral Investment Treaties (BITs) are agreements between two countries designed to promote and protect investments made by investors of one country in the territory of the other. These treaties play a crucial role in encouraging foreign direct investment (FDI) by providing a stable and predictable legal framework for investors.

The primary objective of BITs is to ensure that foreign investors are treated fairly and are protected against arbitrary or discriminatory actions by the host state. To achieve this, BITs typically include several core standards of protection. One of the most important is fair and equitable treatment (FET), which requires the host state to act transparently, consistently, and in good faith. Another key provision is protection against expropriation, ensuring that investments are not nationalized or taken over without prompt, adequate, and effective compensation. BITs also provide for national treatment and most-favoured-nation (MFN) treatment, which guarantee that foreign investors are treated no less favorably than domestic investors or investors from third countries.

[10] Evidence and procedure in arbitration, Gill H. Williams

ISSN: 2582-6433

A defining feature of BITs is the inclusion of Investor-State Dispute Settlement (ISDS) mechanisms. These allow investors to bring claims directly against the host state before an international arbitral tribunal, bypassing domestic courts. This mechanism enhances investor confidence by offering a neutral forum for dispute resolution. India has entered into numerous BITs since the 1990s as part of its strategy to attract foreign investment. However, following several investor-state disputes, including notable cases like White Industries v. Republic of India, concerns arose regarding the broad interpretation of treaty provisions and potential constraints on regulatory autonomy.[11] In response, India introduced a revised Model BIT in 2016, which seeks to strike a balance between protecting investors and preserving the state's right to regulate in the public interest.

The revised framework narrows certain protections, clarifies key terms, and places greater emphasis on exhausting local remedies before initiating international arbitration. It also refines the scope of ISDS to reduce frivolous claims and enhance transparency.

In conclusion, BITs remain a vital instrument in international investment law, offering protection and confidence to investors while enabling host states like India to attract foreign capital. At the same time, evolving treaty models reflect the need to balance investor rights with sovereign regulatory powers.

[11] The New Arbitration and Conciliation Law of India: A Study by G.K. Kwatra, The Indian Council of Arbitration Publication

ISSN: 2582-6433

CHAPTER 3:

CURRENT STATE OF INVESTMENT ARBITRATION IN INDIA

India is already ranked among the top 10 destinations for inward foreign direct investment (FDI) and is gradually emerging as one of the leading sources of outbound investment as well. The growth of cross-border investment has naturally contributed to the increasing relevance of investment arbitration in the country. Overall, the Indian economy is viewed as relatively FDI-friendly, with rising investor participation and evolving regulatory frameworks.

In recent years, there have been significant developments in state regulatory practices and investor–state relations. Both inflows and outflows of FDI have increased over the last five years, registering a combined growth of approximately 11.5%. In the financial year 2018–2019, FDI inflows reached around USD 62 billion, reflecting strong investor confidence in the Indian market.[12]

There has also been a noticeable shift in the countries investing in India. Singapore surpassed Mauritius to become the largest source of FDI in 2018–2019, followed by Japan, the Netherlands, and the United Kingdom. This change reflects evolving global investment patterns and India's growing appeal as a destination for foreign capital.

The service sector continues to attract the highest level of foreign investment in India. At the same time, Indian companies are increasingly expanding their presence in international markets, with outbound FDI reaching approximately USD 11 billion. Over the past few years, India has also taken steps to simplify business operations and reduce regulatory barriers, thereby improving the overall investment climate.

Policy reforms have emphasized the principle of "Maximum Governance, Minimum Government," leading to greater liberalization in FDI regulations. For instance, certain sectors such as telecom and defence now allow foreign companies to establish operations in India with fewer regulatory approvals, including reduced dependence on RBI clearance. However, restrictions still remain in sensitive sectors like e-commerce to ensure regulatory balance.

[12] Hill Nonathan, Article, Some private International Law Aspects of the Arbitration Act 1996. International and Comparative Law Quarterly Vol. 46 p . 305-306 .

ISSN: 2582-6433

Alongside these economic developments, India is also working towards strengthening dispute resolution mechanisms. While arbitration remains the primary method for resolving major investment disputes, alternative systems such as online dispute resolution (ODR) are gaining importance. Institutional frameworks are expected to enhance accessibility, efficiency, and consistency in dispute resolution processes.

Future trends suggest increasing transparency in arbitration proceedings, greater corporate collaboration in sharing technological and administrative resources, and ongoing reforms in commercial courts worldwide. Additionally, diversity—particularly gender representation among international arbitrators—is expected to become a more important consideration in the coming years.

Most significantly, technological advancement is likely to reshape investment arbitration. States and investors are increasingly seeking data-driven tools that can quickly process and analyse complex dispute-related information. [13] The integration of artificial intelligence and digital technologies with human expertise may define the future of investment arbitration, improving accuracy, efficiency, and reliability in decision-making.

VALIDITY AND ENFORCEABILITY OF ARBITRAL AWARDS IN INDIA

Most of the limitations in arbitration are enabling in nature rather than restrictive, as they are designed to make arbitration agreements more effective, accessible, and enforceable. It is essential that the parties not only agree to resolve their disputes through arbitration, but also commit to accepting and implementing the arbitral award once it is delivered. Party autonomy plays a central role in arbitration, as it determines the entire structure, procedure, and functioning of the process.

Arbitration was initially introduced as a practical alternative to traditional court litigation because it allows disputes to be resolved fairly by a neutral authority without unnecessary delays or court involvement[14]. However, in practice, arbitration has sometimes become lengthy and

[13] The Arbitration and Conciliation Act, 1996, by Justice J.K. Mehra, Chartered Secretary, July 2002, pp. A

ISSN: 2582-6433

286, 989.
[14] Legal Services India article 2196: International Commercial Arbitration

ISSN: 2582-6433

costly, contrary to its original objective of being a quicker and more economical dispute resolution method.

A key feature of arbitration is that the decisions of arbitral tribunals are final and binding on the parties, with no right of appeal to domestic courts. This finality ensures certainty and consistency in outcomes, while also promoting fairness by ensuring that disputes are resolved conclusively.

INDIA'S POWER TO ENFORCE JUDGMENTS:

The Arbitration and Conciliation Act, 1996 governs arbitration proceedings in India, while the enforcement of arbitral awards is carried out under the Code of Civil Procedure, 1908. An arbitral award becomes enforceable as a decree of a civil court once the time limit for challenging it has expired, or if a challenge has been filed under Section 34 but has been rejected. The Act also provides that arbitral awards are final and binding on the parties and on anyone claiming through them.[15]

However, the award attains finality only when either no application for setting it aside is filed within the prescribed period, or such an application has been dismissed. Therefore, compliance with procedural timelines is crucial. Under Section 34 of the Act, an application to set aside an award must be made within three months from the date of receipt of the award, with a possible extension of 30 days at the court's discretion. Such an application can only succeed on limited grounds specified under Section 34(2)(a), including incapacity of parties, invalid arbitration agreement, lack of proper notice, or issues relating to public policy[16]. Courts may also intervene if the dispute is not arbitrable or if the award violates Indian public policy.

Judicial interpretation of these provisions has played a significant role in shaping arbitration law in India. In ONGC v. Saw Pipes (2003) 5 SCC 705 [17]Ltd., the Supreme Court held that an award could be set aside if it violated the Arbitration Act or any other substantive law, significantly expanding the scope of "public policy." This decision has been criticized for allowing courts to review arbitral awards on merits, which arguably weakens the principle of finality in arbitration.

ISSN: 2582-6433

[15] Claire Sheridan, What Lies Ahead for Hague Rules on Business and Human Rights Arbitration, American Review of International Arbitration, Columbia Law School, September 28, 2020
[16] R. Bradgate, F. White, Commercial Law, 2007, Oxford University Press
[17] ONGC v. Saw Pipes (2003) 5 SCC 705

ISSN: 2582-6433

The judgment also broadened the concept of public policy to include awards that are "patently illegal."

Subsequently, courts have also emphasized a pro-arbitration approach. For instance, in cases involving ambiguous arbitration clauses, the judiciary has attempted to interpret agreements in a manner that supports arbitration rather than defeating it. The Supreme Court has also applied tests such as the "closest connection" principle to determine the seat of arbitration, particularly in Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. Even where parties choose Indian law to govern the contract and arbitration, courts have sometimes adopted interpretative approaches to uphold the effectiveness of arbitration proceedings.

In terms of reform, the concept of two-tier arbitration—allowing an appellate stage within arbitration to correct legal and factual errors—has gained attention. The Supreme Court has recognized that the Arbitration and Conciliation Act, 1996 is based on two key principles: ensuring a fair, speedy, and cost-effective dispute resolution process, and respecting party autonomy in procedural matters. Since parties have significant freedom to structure arbitration proceedings, a two-tier system is considered permissible if mutually agreed upon and consistent with Indian law.

This position was supported in Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd., where the Supreme Court held that two-tier arbitration is not prohibited under the 1996 Act. However, the Court also acknowledged that the absence of clear statutory provisions creates uncertainty regarding its application in India, and the lack of detailed judicial guidance leaves several procedural aspects unresolved.

CHAPTER 4:

SUGGESTIONS AND RECOMMENDATIONS

Investment arbitration, also known as Investor–State Dispute Settlement (ISDS), is a mechanism used to resolve disputes between foreign investors and host states. It allows investors to bring claims against a host country only when such rights are specifically granted under a Bilateral Investment Treaty (BIT) or a multilateral investment agreement. Although it operates under international law, investment arbitration is distinct from commercial arbitration, as it primarily deals with disputes arising from public treaties rather than private contracts.

ISSN: 2582-6433

With globalization, investment arbitration has evolved into a key component of international economic law. Countries across Asia, particularly China and Southeast Asia, have experienced substantial growth in foreign direct investment (FDI), which has further increased the relevance of arbitration mechanisms. Arbitration provides a neutral dispute resolution platform where decisions are binding on both parties and can operate at domestic, regional, or international levels.

India has progressively liberalized its investment regime and has entered into several BITs that include arbitration clauses. These treaties obligate states to provide foreign investors with protections such as fair and equitable treatment, protection against expropriation, national treatment, and most-favoured-nation status. However, these protections are not uniform across all treaties, as their scope is determined through negotiation between contracting states.

Historically, arbitration in India has evolved from informal community-based systems such as panchayats to a structured legal framework introduced during British rule through the Bengal Regulations of 1772. The modern arbitration regime is governed by the Arbitration and Conciliation Act, 1996, which replaced the outdated 1940 Act and aimed to make arbitration a faster and more efficient alternative to litigation. Additionally, economic reforms and legislations such as the MRTP Act contributed to shaping India's investment and competition environment.

India's investment arbitration framework has been significantly influenced by its experience with international disputes. The landmark case of *White Industries Australia Limited v. Republic of India* under the India–Australia BIT marked a turning point in India's investment treaty jurisprudence. Following this, several foreign investors invoked BIT protections, highlighting the importance of treaty-based arbitration in India's legal landscape.

Over time, investment treaty provisions have become more complex, often including procedural requirements such as notice periods and cooling-off periods before arbitration can be initiated. The structure of claims and jurisdiction of arbitral tribunals depend heavily on the specific treaty framework in place. As a result, investment arbitration now reflects a more structured and regulated dispute resolution system rather than a simple consent-based mechanism.

ISSN: 2582-6433

CHAPTER 5:

CONCLUSION

In conclusion, investment arbitration plays a crucial role in balancing the interests of foreign investors and host states. It provides a reliable legal framework for dispute resolution, thereby enhancing investor confidence and promoting cross-border investment. In the Indian context, while BITs and arbitration mechanisms have strengthened foreign investment inflows, they have also raised concerns regarding regulatory autonomy and excessive investor protection.

India's shift towards a revised Model BIT reflects an attempt to address these concerns by narrowing treaty obligations and safeguarding the state's right to regulate in public interest. Moving forward, greater clarity in treaty drafting, improved consistency in arbitral decisions, and stronger domestic dispute resolution mechanisms are essential. Additionally, enhancing transparency, promoting institutional arbitration, and adopting technology-driven dispute resolution tools can further improve efficiency.

Ultimately, a balanced approach that protects legitimate investor interests while preserving sovereign regulatory powers will be key to ensuring a sustainable and credible investment arbitration framework in India.

The future of investment arbitration in India must evolve in alignment with the Revised Model Bilateral Investment Treaty (BIT), which reflects a clear shift towards balancing investor protection with the State's sovereign right to regulate. The pathway forward should focus on a more calibrated and transparent treaty framework that limits vague obligations and clearly defines standards such as fair and equitable treatment and indirect expropriation, thereby reducing interpretative uncertainty in arbitral proceedings.

India should continue strengthening the Model BIT approach by ensuring that Investor–State Dispute Settlement (ISDS) is not overly expansive and is triggered only after the exhaustion of effective domestic remedies. This would reinforce confidence in domestic legal institutions while preserving international arbitration as a last resort mechanism. At the same time, treaty drafting should prioritize precision, consistency, and policy space for the State, particularly in areas involving public health, environment, taxation, and regulatory reforms.

ISSN: 2582-6433

Further, India's investment arbitration framework should move towards greater institutionalization and transparency, including clearer procedural rules, publication of awards, and mechanisms to prevent frivolous claims. The integration of appellate or review mechanisms within ISDS, where mutually agreed in treaties, may also enhance consistency and legitimacy of arbitral outcomes.

Going forward, India's pathway should aim at harmonizing its BIT regime with global best practices while retaining regulatory sovereignty. A balanced framework that encourages sustainable foreign investment, ensures fair treatment of investors, and protects the State's right to regulate in public interest will be essential. Ultimately, the revised Model BIT should serve as a foundation for a more predictable, efficient, and development-oriented investment arbitration system in India.

CHAPTER 6:

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