INDIA'S EXPERIENCE WITH INVESTOR-STATE DISPUTE SETTLEMENT

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Introduction

In the present era, the influence of globalisation is so intense that the impact of a single incident can be globally sensed because of the interconnected economies. Any incident, be it financial or non-financial, touches upon the fates of majority of the nations that are linked worldwide. The breakdown of Lehman Brothers incessantly pushes us towards the reality of this world. Likewise, a single untoward decision, be it under some policy or piece of legislation, by the administration activates the concerns of the community globally comprising of investors and their host governments. To palliate concerns of such untoward decision-making, the community worldwide by means of several international as well as bilateral agreements has instituted rules in order to safeguard the capital that flows between geographies.[1]

The last decennium has faced a situation that was long unheard of. There was an unexpected rise in the practice of Investor-State arbitration. It also brings into light a number of flaws in the current settlement system with regard to the Investor-State Dispute.[2] The conception that any nation is a developed one and also possesses a firm legal system or framework does not necessarily ensure that the investors will be ensured appropriate security. There have been many instances in the recent past where even developed nations have deprived the foreign

[1] Souvik Ganguly and Shantanu Kanade, *Revisiting India's stance on Investor–State Dispute Settlement,* Indian Lawyer 250, Published on September 26, 2013, available at <http://indianlawyer250.com/features/article/223/revisiting-indias-stance-investorstate-dispute-settlement/>

[2] Sachet Singh and Sooraj Sharma, *Investor-State Dispute Settlement Mechanism: The Quest for a Workable Roadmap,* Merkourios – Utrecht Journal of International and European Law: General Issue 2013 - Vol. 29/76, available at <https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwiIoZeF067PAhVE54MKHfSfCokQFggpMAI&url=http%3A%2F%2Fwww.utrechtjournal.org%2Farticles%2F10.5334%2Fujiel.bo%2Fgalley%2F41%2Fdownload%2F&usg=AFQjCNFV_HxtDuDH1LVirZLs38_kyYUFgg&bvm=bv.133700528,d.amc>, last accessed on September 27, 2016 at 9:31 AM.

investors of their possessions and did not even compensate them and also precluded them from exhausting the local remedy by going to the courts. In such conditions, investors have no options available for bring their claim.[3] One such instance concerning investor-state dispute is the *Philip Morris case,* where the Tobacco giant suffered a great international combat to revoke the plain packaging laws of Australia with the help of *"Australia-Hong Kong Investment Promotion and Protection Agreement (IPPA)"*1993. An arbitral tribunal comprising of three members at the PCA decided that the tobacco giant lacked jurisdiction to file a suit opposed to Australia. This implies that the above mentioned packaging law of the country which prohibited all cigarette boxes from brand marking will continue to be in effect. This law which was enacted by Australia in 2011 also expected that the companies should comply with the standard trade marking and should also include pictorial health warnings.

The IPPA allowed for an ISDS mechanism wherein the investors could institute a legal proceeding against the host state where he can even claim compensation for the loss of gains due to insertion of unreasonable regulative measurements. Resultantly Philip Morris alleged the law to be a ban on the use of trademarks which was in violation of the IPPA and invoked FET provisions. The host state however claimed it to be for public purpose.[4]

The case highlights that even if in the whole process, the host state succeeds then also it has significant fiscal implications. Therefore, it is for India to revisit its treaty regimen for investment and give a second thought to the incorporation of ISDS system in upcoming investment agreements.

The Chapter further discusses various concepts associate with the investor-state dispute and also a brief introduction of the ISDS mechanism.

General Concepts

Investor

The investment law is projected to advance and safeguard the behaviour of the investors. This however does not debar the security of entities controlled by the Government so far as they

[3] *Factsheet on Investor-State Dispute Settlement,* European Commission, published on October 3, 2013, available at <http://trade.ec.europa.eu/doclib/docs/2013/october/tradoc_151791.pdf>.
[4] Kavaljit Singh, Madhyam, *ISDS arbitration upholds Australia's plain packaging laws,* published on January 15, 2016, available at <http://www.eastasiaforum.org/2016/01/15/isds-arbitration-upholds-australias-plain-packaging-laws/#more-49143>.

behave in a commercial capacity rather than governmental.[5] There is a dispute as to the status of the non-governmental organizations which will be based upon the type of the activities.

Investors comprise of persons who may be either natural or juridical. In most of the matters in dispute, the investor is the latter but sometimes it is even the former who acts as an investor. The nationality of an investor specifies the treaty from which it might gain. If the investor desires to abide by the bilateral treaty or a BIT, it is mandatory to establish that it bears the nationality of either of the contracting parties. If in case the investor desires to abide by the territorial treaties like NAFTA and ECT etc. then it is mandatory to establish that it bears the nationality of wither of the nations who are parties to the respective treaty. Similarly if the investor desires to abide by the ICSID Convention, it has to establish itself to be a national of state which is a party to the said convention.[6]

Investment

The definition of this term needs to be defined *ratione materiae.* Modern day treaty does not manifest the classical pattern 'property, interests and rights' which can be traced in the conventional treaties like FCN treaties. From an economic perspective, a direct investment consists of the following:

i. Assignment of funds
ii. Long term
iii. There should be a regular income
iv. There should be an involvement of the transferor of the funds to a level in the administration of the project
v. There should be an element of risk.

At times, the state that is party to the agreement describes the limits of the word on its own by entering into a discussion. However, in case of absence of a clear definition agreed upon by the parties, the chances of disputes regarding the subjects and the confines of the term arise. Defining the limits of this term is very important as the majority of the investment cases revolve around identifying whether the matter in dispute was an investment. Although US Model, UK Model, NAFTA and ECT have given their own definition to the term yet there is no straight

[5] CSOB vs. Slovak Republic, Decision on Jurisdiction, 24 May 1999, 14 ICSID Rev FILJ (1999) 251.
[6] Rudolf Dolzer and Christoph Schreuer, Principles of International Investment Law, Oxford University Press.

jacket definition that prevails all over. It is to be noted that even Article 25 of the ICSID Convention uses the word 'investment' without giving it a clear definition.

A paragraph of the Report that is often cited on this subject submits:

> *"No attempt was made to define the term 'investment' given the essential requirement of consent by the parties, and the mechanism through which Contracting States can make known in advance, if they so desire, the classes of disputes which they would or would not consider submitting to the Centre (Article 25(4)).*"[7]

There have been various practices that have been adopted in various case laws in order to test the notion of investment like the 'double keyhole approach'[8] and the 'double barrelled test'[9] to reach to a conclusion if at all there was an investment.

Investor-State Dispute

The meaning as to what is an "investment dispute" has not been formally defined in US Model BIT, UK Model BIT, NAFTA or even ECT; however FTAA has made an attempt to define Investor-State Disputes in its Article 24. It reads as:

> *"24.1 For the purpose of this Agreement, an investment dispute is a dispute between a Party and a national or company of the other Party arising out of or relating to investment agreement or alleged breach of any right conferred, created or recognized by this Treaty with respect to a covered investment.*
>
> *24.2 Where an investor of a large or developed economy is involved in a dispute with a smaller economy State and the matter is submitted to arbitration, at least half of the legal costs incurred by the State should be borne out of a Regional Integration Fund."*[10]

Investor State Dispute Settlement (ISDS)

One of the most classifiable characteristic of the treaties relating to investment protection is their settlement mechanism relating to investor-state dispute. This feature makes an investment

[7] ICSID Reports 28, para 27.
[8] *Supra* note 5.
[9] Malaysian Historical Salvors vs. Malaysia, Award on Jurisdiction, 17 May 2007.
[10] R. Doak Bishop, James Crawford and W. Michael Reisman, Foreign Investment Disputes Cases Materials and Commentary, Kluwer Law International, Ed. 1st, (2005).

treaty distinct from the various other treaties. It is a process as specified in the international arrangements on investment related disputes. The States enter into such agreements so as to lay down rules in cases where the investors who are foreign companies in make an investment in their dominion.[11] It facilitates the foreign investors in bringing a suit before the arbitral tribunal against the host state if it is proved that the agreement was breached. This process permits the investors to dispute varied political measures in a concluding and binding award by the tribunal.[12]

Salient characteristics and its criticism

Apart from assisting as a depoliticised forum, mechanism for international settlement of disputes was anticipated to provide other benefits for the settlement of Investor-State Disputes. The investors have an option to claim before an autonomous and qualified adjudicating authority and obtain and impartial decision. By virtue of party autonomy, parties have the power to govern the whole process by appointing arbitrators and the awards are also capable of being enforced in various jurisdictions. The factual working of ISDS however has left with worries regarding systematic inadequacies. They can be summed up as follows[13]:

a. Authenticity and Transparency.
b. Problems of uniformity and erroneous arbitral awards.
c. Issues relating to appointments and unreasonable inducement.
d. The magnitude of time and cost of the arbitrators.

FRAMEWORK REGULATING THE INVESTOR-STATE DISPUTE: INDIAN SCENARIO

In 1965, ICSID Convention was the first to provide an international forum for the settlement of disputes between the contracting parties i.e., the investors and the State by virtue of the

[11] *Supra* note 3.
[12] *Investment Dispute Settlement,* IISD, available at <https://www.iisd.org/investment/dispute/> last accessed on September 25, 2016 at 5:36 PM.
[13] *INVESTOR-STATE DISPUTE SETTLEMENT, UNCTAD Series on Issues in International Investment Agreements II,* United Nations Conference on Trade and Development, available at <http://unctad.org/en/PublicationsLibrary/diaeia2013d2_en.pdf>, last accessed on September 27, 2016 at 6:53 PM.

clause in their contracts. However, it is to be noted that India has yet not ratified the convention since it signed its first BIPA in 1994 NAFTA

Pre BIT Era

India adopted the modern form of international arbitration by following the UNCITRAL Model Law wishing that it will draw in foreign investment to a greater extent.[14] The fundamental principles of arbitration like party autonomy and minimal judicial interference are evident in the Indian arbitration law. In India, litigation has always been a time taking process due to the number of pending cases. We had our first law governing arbitration in 1940.[15]As per this law, an interference of the court was compulsory during the arbitral process right from the stage of reference till the stage of enforcement of the award. With the rise in trade and commerce across border, the Act of 1940 failed to serve the purpose and was found to be old. Hence, in 1996, Parliament of India passed the "*Arbitration & Conciliation Act, 1996"* on the basis of the Model Law by integrating provisions relating to recognition as well as enforcement of foreign awards. The 1996 Act unlike the previous Act took into consideration both domestic as well as international arbitration.

After the advancement of the New Economic Policy in 1990s, India turned out to be a captivating destination for investment to foreign investors. The government in furtherance formulated a strong model for investments agreements and hence came with its first draft model on investment treaty in 1993.[16] India signed its first BIT in 1994 with UK and since then it has entered into more than 80 such BITs.

The Old BIT Model

Before beginning with the post 1994 regime of BIT, one should know what BIT is. BITs are agreements entered into between two States in order to facilitate the mutual protection and promotion of investments made in each other's country by individual investors or companies of the respective States.

"Certain fundamental clauses that form part of a BIT are:

1. *Applicability*

[14] India followed the 1985 Model Law in the year 1996. Currently, Indian parliament was considering reviewing of the legislation considering the latest (2006) version of the Model Law.
[15] The Arbitration Act, 1940.
[16] The 1993 Model was based on the OECD Draft Convention for the Protection of Foreign Property, 1967. It is important to note that most of the initial BITs were concluded with the OECD countries only.

2. *Fair and Equitable Treatment and Full Protection & Security*
3. *National treatment and Most-favoured-nation treatment,*
4. *Expropriation,*
5. *Dispute settlement mechanisms, both between States and between an investor and a State."*[17]

In mid 90s, the BITs were signed by the Government of India in order to extend favourable considerations and security to the investors as well as the investments. For instance, India has CECA with Singapore which allows deduction on import duty for infrastructure sector related investment. BITs also give investors the facility to file suit for claims against the host state directly by disputing their independent actions.

ISSUES CONCERNING THE INVESTOR STATE DISPUTES IN INDIA

In 2015 India's released new model for bilateral investment treaty. This has drawn attention of investors all over the world. Efforts have been made in safeguarding interest of trading partners likewise; new model provides a framework where negotiation is possible.

Before analysing new model of BIT it is important to look into recent issues so that one can investigate into issue which new model seek to overcome. Also, has new model efficient enough in addressing all these issues.

Landmark cases on ISDS

The Dabhal Case

In 1990s, India was establishing new open market for trading and was encouraging foreign investment. Same time Bechtel (10%), Dabhol Power Plant Corporation (10%) and Enron through Dutch subsidiary entered into agreement with Maharashtra State Electricity Board.[18]

With USD 2 billion as secured loan it was one of the largest investment projects of that time. To support the project Indian government as well as Maharashtra government each gave the

[17] Prateek Bagaria and Vyapak Desai, *BILATERAL INVESTMENT TREATIES AND INDIA,* Nishith Desai Associates, available at <http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Bilateral_Investment_Treaties_and_India.pdf>, last accessed on September 28, 2016 at 3:13 PM.

[18] Bettauer, Ronald J., *India and International Arbitration,* The George Washington International Law Review, published on July 1, 2009, available at <https://www.questia.com/read/1P3-2200933641/india-and-international-arbitration-the-dabhol-experience>.

payment guarantees. Also Overseas Private Investment Corporation of U.S. lends about 160 million USD.

During 1995, after election new state government was introduced in Maharashtra which started campaigning against this project. The allegations were related to corruption involved in contracts, also non-competitive procedure for bidding was used.[19] Therefore, the contract was terminated and Enron took matter to arbitration tribunal under Indian – Dutch BIT.

As a result India not only paid significant amount to Enron Corporation, but also one investor received an award for invoking arbitration clause of BIT against the State Electricity Board.[20]

The Antrix-Devas Case[21]

Devas (Indian company) and Antrix (wholly owned subsidiary) entered into agreement for leasing of two satellites which were built by ISRO. Antrix terminated the agreement on the ground that S-band (used for high speed internet), is a scare resource and must be used for bigger purpose. In reality while drafting the audit report, Comptroller and auditor general of India pointed out that there were many financial irregularities.[22]

Devas was given cheque of Rs. 58.37 crores as refund, but the company returned the cheque and directly initiated arbitration at ICC. Issue was that the agreement between parties provided that in case of dispute they shall approach senior management. ICC tribunal sent letter to Antrix, inviting company to appoint arbitrator.

Antrix instead of complying itself with direction written in letter issued, filed application under "*Section 11 of Arbitration and Conciliation Act of 1996"*. The SC held that as Devas has already exercised its power to take dispute to arbitration and also has appointed an arbitrator for same, then there Antrix do not have choice to choose different forum and invoke for arbitration again.

[19] B. Choudhary & P. Kulkarni, *Bilateral Investment Treaties: Understanding New Threats to Development in a Comparative Regional Perspective* (2006) Policy Innovations, available at <www.policyinnovations.org/ideas/policy_ library/dat>, last accessed on September 27, 2016 at 8:54 PM.
[20] Shalaka Patil and Pratibha Jain, *Bilateral investment Treaties and their impact on the Global Economy,* Nishith Desai Associates, available at <http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Articles/Bilateral%20Investment%20Treaties.pdf>, last accessed on September 27, 2016 at 10:42 PM.
[21] 2013 (2) ARBLR 226 (SC).
[22] Charu Mathur, *Understanding BITs to bite into India's Antrix- Dewas FIASCO at the Hague*, Indian law watch, published on September 9, 2016, available at <http://indianlawwatch.com/understanding-bits-to-bite-into-indias-antrix-devas-fiasco-at-the-hague/>.

The White Industries Australia Vs. Coal India [23]

White industry was a mining company from Australia. Coal India Ltd. (State owned Company) and white industry entered into a contract for supply of various equipments to coal mine in Piparwar in India. While the operation of mine was running dispute aroused between Coal India and WIAL (White Industries Australia Ltd.). Dispute was regarding Coal India holding WIAL's bonus and payments of penalties on extracting low quality of coal. The case was presented before ICC tribunal. In May 2002 the tribunal awarded USD 4.08 million in favour of White industries.

On one side Coal India approached Calcutta High Court, in order to set aside the award granted by ICC, on the other hand White Industries filed application for enforcement of the ICC award in Delhi High Court. There was a stay on proceeding for enforcement as decision for set aside was pending in court. WIAL was left with no choice but to appeal in Supreme Court. Even after appeal in SC no relief was provided to WIAL for approximately 10 years.

Therefore, the issue was taken to Arbitration proceeding under Indian- Australian BIT. Claim by WIAL was that unreasonable delay by India has resulted in breach of MFN clause, fair and equitable treatment, free transfer of funds under the treaty, expropriation.

International tribunal ruled out the case in 2011. The ground resorted to by WIAL was dismissed but tribunal granted USD 4 million with interest in favour of White Industries.[24]

The 2G Scam [25]

In 2012 SC cancelled around 122 telecom licenses on the ground of corruption. Companies like Sistema Shyam teleservices Ltd. have claimed their right under the provision of expropriation by invoking BIT signed between India and Russia. The argument raised by company was that compensation received in return for cancellation was not adequate. Yet again India's conduct against foreign investor has been tested.

[23] White Industries v. Republic of India, Final Award, November 30th, 2011.
[24] Premila Nazareth Satyanand, *Once BITen, Forever Shy: Explaining India's rethink of its BIT provisions,* available at <http://documents.aib.msu.edu/publications/insights/v16n1/v16n1_Article5.pdf>, last accessed on September 28, 2016 at 10:48 PM.
[25] Centre for Public Interest Litigation v. Union of India, (2012) 3 SCC 1

The Vodafone Case [26]

Just when India was about to introduce huge policy changes in making commitments to International investment agreements, Vodafone who is one of the largest investor in sector of telecom filed a claim against India. It was a treaty based claim.

Vodafone put an obligation on government of India that, India's policy of open tax and its retrospective effect is a breach of BIT's commitments and therefore it is denial of justice. This formed doubt in the mind of other global investors who were engaged in similar kind of dispute relating to tax as to reconsider India and its International Investment Agreement.

Other issues with regard to Old Model BIT

In the old model of BIT, Art. 9(3) reads as:-

> *"Should the Parties fail to agree on a dispute settlement procedure provided under paragraph (2) of this Article or where a dispute is referred to conciliation but conciliation proceedings are terminated other than by signing of a settlement agreement, the dispute may be referred to Arbitration .."*[27]

It is quite evident from the text that there is no obligation to arbitrate in case any investment dispute comes up. Therefore, not obliging host state to bring issue before arbitration.[28] Though "*Vienna Convention on Law of the Treaties"* is often used to interpret the binding clause. But as India has neither signed nor ratified the convention therefore, it only constitutes part of customary law. Only in absence of municipal law the convention shall be looked into.

Conclusion

[26] Vodafone International Holdings B.V. v. Union of India & Anr. [S.L.P. (C) No. 26529 of 2010, dated 20 January 2012

[27] Department of Economic Affairs, *Indian model text of bilateral investment promotion and protection agreement,* pg. 5, available at <http://finmin.nic.in/the_ministry/dept_eco_affairs/icsection/Indian%20Model%20Text%20BIPA.asp?pageid=5>, last accessed on September 23, 2016 at 5.40 PM.

[28] Bhushan Satish, *Silence on investor- state dispute debate,* Economic & Political weekly, published on April 23, 2016, available at <http://epw.yodasoft.com/journal/2016/17/commentary/debate-silentinvestor-state-dispute.html>.

There has been a substantial increment of 22% in FDI inflows in the recent years.[29] Moreover, various Indian companies have shown their intention to make huge investments overseas. As we have seen in the previous chapters that India is not a signatory to many of the significant investments treaties like NAFTA, ECT and even it is not a contracting state to ICSID Convention and thus brings its claims by means of the Additional Facility rules. Taking this point into consideration, India needs to understand the fact that in the present era where there is a significant increase in the trade relations with other countries, it cannot go with relying plainly on BITs; if India has to gain the trust of already existing investors and also attract new investors, it has to tilt its policies and framework regulating the contracts a bit in order to balance the contract obligations with the treaty obligations. The BIT that India had been following since 1994 which continued for over two decades without looking into the need of the present time was recently replaced by a new Model BIT.[30]

This chapter aims at finding out the lessons that India needs to learn while discussing the various issues that we confronted in the various cases as discussed in the previous chapter.

Lessons to Learn

- ✓ One of the clauses that form part of the Indian Model BIT is MFN clause which is enshrined in its Article 4; it states that an investor has a right to claim the same favourable treatment that is being imparted to the other states that are in BIT with the host State. It also states that the investors should be allowed the returns on their investments at par with the investors of the other Contracting States. This clause was invoked in the *White Industries Case,* wherein WIAL claimed an efficient means of enforcement to the investors while referring to the *"effective means"* provision available in India-Kuwait BIT. Thus, India needs to understand the significance of every clause in the treaty before entering into it.
- ✓ Another lesson that India needs to learn is the infamous 2G Spectrum Case. As per the Expropriation clause, the State should meet certain conditions for it to be legal but in the 2G spectrum case, India cancelled 122 licenses and infringed its commitment to secure the interest of the investors in the guise of public interest.

[29] According to the recent World Investment Report 2015 by UNCTAD,
[30] *Supra* note 1

- ✓ Another issue that arose in the *Vodafone case* was relating to the India's practise of retrospectively applying any amendment in the taxation laws. This exercise turns out to be deterrent to the investors and also denies the idea of justice.

Keeping the lacunae of the old BIT in mind, a new model BIT was drafted in the year 2015. The main objective of this new model was to tilt India's vision towards being an investor friendly State rather than its image of being protectionist. The irony however is that even after the formulation of new BIT; it focuses more on protecting the sovereignty of the State rather than securing the rights of the investors. The traces of this can be found by comparing the provisions of old BIT with the new one. The provision of MFN has been completely discarded from the BIT. Keeping in mind the ruling of *White Industries case* which was a major setback for India, it is trying to eliminate all the possible chances of claims that could be made by any investor in the name of favourable treatment. India is failing to notice that the elimination of this clause will result in exposing the investors to the risk of prejudiced treatment.[31]

Also, it should not be neglected that India in the recent *Antrix-Devas Case* honoured the on-going ICC proceedings over the domestic courts; the new model BIT has introduced the *"exhaustion of local remedy"* clause". This provision according to the analysis done by the Law Commission of India *"renders the entire BIT unworkable".* Therefore, this provision seems to put a bar on the jurisdiction of the international arbitral forums. Further, instead of finding a solution for the issue relating to taxation (*Vodafone case*), the new model BIT in its Article 11 excludes the application of the treaty on taxation measures. This will lead to supremacy of host states in deciding taxation issues.

In a nutshell we can say that neither the old nor the new BIT is trying to deal with the issues that are confronted in the current investment regime. In such circumstances, the future of India will regard to the Investor-State Dispute is in the hands of judiciary. The evidence of this can be found in the case of "*The Board of Trustees of the Port of Kolkata v. Louis Dreyfus Armatures SAS*[32]*",* where the judiciary for the first time tried to draw a parallel line between domestic laws and BITs.

[31] Report No. 260, Law Commission of India, Analysis of the 2015 Draft Model Indian Bilateral Investment Treaty, Government of India, published in August 2015, available at < http://lawcommissionofindia.nic.in/reports/Report260.pdf>.

[32] 2014 SCC Online Cal 17695.

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2. Data from the Investment Dispute Settlement Navigator, Investment Policy Hub maintained by the United Nations Conference on Trade and Development (UNCTAD), available at: https://investmentpolicy.unctad.org/investment-dispute-settlement.
3. Restitution requires the re-establishment of the situation that had existed before the commission of an internationally wrongful act or the status quo ante. See https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1094?prd=OPIL&q=Restitution.
4. Masood, S. (2019, May 12,). Pakistan to accept $6 billion bailout from I.M.F. The New York Times, available at: https://www.nytimes.com/2019/05/12/world/asia/pakistan-imf-bailout.html.
5. Gus Van Harten, "TWAIL and the Dabhol Arbitration", 3 Trade L. & Dev. 131 (2011).
6. White Industries Australia Limited v The Republic of India, Final Award dated 30 November 2011, UNCITRAL Arbitration.
7. Article 4(5) of the India-Kuwait BIT provides that 'each contracting party shall…provide effective means of asserting claims and enforcing rights with respect to investments…'. Article 4(2) of the India-Australia BIT provides the MFN provision according to which, 'a contracting party shall at all times treat investments in its territory on a basis no less favourable than that accorded to investments or investors of any third country'.
8. Sebastian Perry, Logjam in Indian courts triggers BIT breach, 13 February 2012, available at: https://globalarbitrationreview.com/article/logjam-in-indian-courts-triggers-bit-breach.
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