India-Israel Bilateral Investment treaty

What is the issue?

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India-Israel trade relations need to be strengthen through a bilateral investment treaty.

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What is the trade potential of Indo Israeli trade?

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- Foreign direct investment (FDI) inflows from Israel, in 17 years is $122 million.
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- There is enormous potential for Israeli investment in fields such as renewable energy and water management (drip irrigation and desalination).
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- Israel is the third largest supplier of arms to India after Russia and the U.S.
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- Defence production, which is at the heart of the 'Make in India' campaign, is area with significant potential for Israeli investment.
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What is bilateral investment treaty?

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- A bilateral investment treaty (BIT) 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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- This type of investment is called foreign direct investment (FDI).
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- BITs are established through trade pacts.
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- This typically include fair and equitable treatment, protection from expropriation, free transfer of means and full protection and security.
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- The distinctive feature of many BITs is that they allow for an alternative dispute resolution mechanism, through aninvestor-state dispute settlement.
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- In 1996, India and Israel signed a BIT, However this was reportedly terminated by India.
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What is the stand of Israel on BIT?

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- The investor-state dispute settlement (ISDS) allows foreign investors to bring claims against a host state for alleged treaty breaches at international arbitral forums.
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- Israel investors prefer international arbitration which is faster and independent over litigating in domestic courts.
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- Israel's model provides a broad asset-based definition of foreign investment that covers both FDI and portfolio investment.
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- The taxation-related measures are recognised as an exception only to MFN and national treatment provisions.
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What is the stand of India on BIT?

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- The Indian model imposes many procedural and jurisdictional restrictions on an investor's right to bring an ISDS claim.
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- The Indian model of 2016 defines investment narrowly as an enterprise (with its assets) that has to possess certain characteristics of investment.
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- The Indian model excludes taxation altogether from the purview of the BIT.
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- India’s recent record in administering its taxation laws has made foreign investors nervous.
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What are the issues with BIT?

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- India’s requirements make it very difficult for Israel investors to make efficient use of the ISDS provision.
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- Israeli model contains a most favoured nation (MFN) provision which is missing in the Indian model.
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- The investment terminologies are not well understood in the Indian side.
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- The foreign investor cannot bring an ISDS claim even if taxes imposed are discriminatory.
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- Israeli investors will not be comfortable if taxation is completely outside BIT’s purview.
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Quick fact:

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What is MFN?

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- In international economic relations "Most Favoured Nation" (MFN) is a level of treatment accorded by one state to another in international trade.
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- The term means the country which is the recipient of this treatment must nominally receive equal trade advantages as the "most favoured nation" by the country granting such treatment. (Trade advantages include low tariffs or high import quotas.)

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- In effect, a country that has been accorded MFN status may not be treated less advantageously than any other country with MFN status by the promising country.
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- The members of the World Trade Organization (WTO) agree to accord MFN status to each other.
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Source: The Hindu

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