

## **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 Srikrishna 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.

- 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.
- It also mentioned the possibility of establishing a BIT appellate mechanism and a multilateral investment court.
- It recommended hiring of external lawyers and appointing counsels having expertise in BITs to boost the government's legal expertise.
- It called for the creation of designated fund to fight BIT disputes.

## What are the shortcomings?

- **Framework** - The call for appointing an 'Law Adviser' will amount to duplicating the existing arrangement.
- 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.
- It would be sensible to have a member from the Commerce Ministry in the proposed IMC as it works for investor protection but it was not recommended.

- **Narrow window** - The report named the investor-state dispute settlement (ISDS) mechanism as robust.
- But it provides for only a narrow 90 day window for filing of BIT arbitration.
- 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.
- 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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