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EDITORIAL ANALYSIS

FTA Plus Investment Protection: Why a Bilateral Investment Treaty Is the Missing Half of India's FDI Story

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FTA Plus Investment Protection: Why a Bilateral Investment Treaty Is the Missing Half of India's FDI Story

 **Business Standard**

25 June 2026

GS3

GS2

 Source: ujyari.com — researched, fact-checked & UPSC-mapped


INTERVIEW ANGLE

"Should a sovereign nation accept binding international arbitration that lets a private foreign investor sue the state, or does that compromise the constitutional right to regulate in the public interest?"

✓ Every fact web-verified against primary sources (<https://ujyari.com/how-we-verify/>)

WHY THIS EDITORIAL MATTERS

India is courting foreign capital harder than it has in a decade. Free-trade agreements are being signed or negotiated with the United Kingdom, the European Union, the Gulf states and the United States, and policymakers speak confidently of capturing investment that is migrating out of China. Yet the *Business Standard* editorial makes a sharp, examiner-friendly point: a free-trade agreement, on its own, is only half the story. The other half is a credible **Bilateral** (<https://ujyari.com/vocab/bilateral/>) **Investment Treaty (BIT)**, finalised early and giving investors binding legal protection. Without it, the kind of capital India most wants, the patient, capital-intensive money that builds factories, fabs and infrastructure over ten or fifteen years, will hesitate.

This is a GS3 economy question dressed in GS2 international-relations clothing. It forces an aspirant to separate two instruments that are often confused, and to weigh investor confidence against the constitutional right of a state to regulate in the public interest.

THE CORE ARGUMENT: TRADE ACCESS VERSUS INVESTMENT SECURITY

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What an FTA does, and what it does not do

A **Free Trade Agreement (FTA)** lowers tariffs and eases the cross-border movement of goods and services. It answers the question, “Can I sell into this market on competitive terms?” That is valuable, and it attracts market-seeking trade and some export-oriented manufacturing.

But an FTA does not answer the question that haunts a long-horizon investor: “If I sink a billion dollars into a plant here, what happens if the rules change against me five years from now?” Tariff schedules say nothing about expropriation, arbitrary taxation, or whether a foreign firm can get a fair hearing outside domestic courts.

What a BIT adds

A BIT is the instrument that answers exactly that question. It is a treaty between two states under which each promises a defined standard of treatment to the other’s investors. Typical protections include:

- **Fair and Equitable** (<https://ujijari.com/vocab/equitable/>) **Treatment (FET)** and protection against denial of justice;
- protection against **expropriation** without due process and fair compensation;
- **national treatment** and, historically, **Most Favoured Nation (MFN)** treatment;
- access to **Investor-State Dispute Settlement (ISDS)**, allowing the investor to bring the host state directly to international arbitration rather than relying solely on domestic courts.

The editorial’s thesis is that **FTA plus BIT** is the combination that revives FDI appeal, because the BIT supplies the legal certainty that capital-intensive, long-gestation sectors demand and that an FTA structurally cannot provide.

HOW TO THINK ABOUT IT: THE INVESTOR’S RISK LEDGER

To reason like an examiner, picture the decision through the investor’s eyes as a simple ledger.

An FTA improves the revenue side of an investor’s spreadsheet (better market access, lower input tariffs). A BIT improves the risk side (lower political and legal risk, a credible exit if the state misbehaves). A long-horizon investor in a capital-intensive sector cannot act on revenue upside alone if the risk column is blank. The two instruments together close the case.

This is why the editorial stresses **early finalisation** of the BIT. If the FTA is signed but the BIT lags by years, the investor sees the upside but not the protection, and defers the decision. Sequencing matters as much as substance.

THE CONTEXT YOU MUST CARRY: INDIA'S BIT JOURNEY

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The trigger: Vodafone and Cairn

India's modern BIT story is inseparable from two arbitration awards. After the 2012 **retrospective amendment** to the Income Tax Act, foreign investors challenged India under older investment treaties.

- In the **Vodafone** matter, the tribunal found India's retrospective tax demand inconsistent with the fair-and-equitable-treatment guarantee under the India-Netherlands treaty.
- In the **Cairn Energy** matter, the tribunal awarded the company damages of roughly 1.2 billion US dollars plus interest and costs.

Both awards went against India and were widely read as a self-inflicted wound caused by retrospective taxation. They convinced New Delhi that the older, investor-tilted treaties exposed it to expensive, sovereignty (<https://ujjiyari.com/vocab/sovereignty/>)-piercing arbitration.

The reaction: the 2016 Model BIT

India responded by adopting a new **Model BIT** (the text was finalised in December 2015 and adopted on 14 January 2016) that was deliberately state-friendly. Its defining features:

FEATURE	OLD TREATIES	2016 MODEL BIT
Definition of investment	Broad, asset-based	Narrower, enterprise-based
MFN clause	Present	Dropped
Local remedies before arbitration	Generally not required	Must exhaust for five years first
Right to regulate	Implicit	Explicit (public health, environment, safety)
Tax measures	Arbitrable	Carved out (not arbitrable)

India then **terminated treaties with 77 countries** between 2016 and 2024, relying on the new model as the template for any future negotiation. Investments made before termination usually remain covered for a sunset period of ten to fifteen years, but the protective umbrella for *new* capital thinned sharply.

The problem the editorial identifies

The 2016 model protected sovereignty effectively, perhaps too effectively. The **five-year local-remedies requirement** in particular is a serious deterrent: an investor must litigate in Indian courts for five years before reaching international arbitration, which for many is tantamount to no real protection at all. So at the very moment global capital began diversifying away from China, India's own treaty architecture was sending a cautious signal.

The proof of concept: the India-UAE BIT (2024)

The editorial points to a workable middle path. The **India-UAE BIT**, signed on 13 February 2024 and in force from 31 August 2024, replaced the lapsed 2013 BIPPA and is widely described as a “measured” treaty: it retains a closed, asset-based definition with portfolio coverage, keeps carve-outs for taxation, government procurement and subsidies, but offers workable protection and dispute resolution. It shows India can negotiate a BIT that is neither the over-generous pre-2016 model nor the over-defensive 2016 text. That is the template the editorial wants paired with the **India-UK CETA**, the **India-EU** agreement, and the Gulf and US tracks.

THE COUNTER-VIEW: SOVEREIGNTY IS NOT A BARGAINING CHIP

A rigorous answer must engage the strongest opposing case, and there is one.

- **ISDS can override democratic policy.** The Vodafone and Cairn awards are precisely the example: a tax measure enacted by Parliament was effectively second-guessed by a private arbitral tribunal. Critics argue that broad investor protection lets foreign firms escape the domestic legal order that domestic firms must obey.
- **The 2016 correction was deliberate** (<https://ujiyari.com/vocab/deliberate/>), **not accidental.** The defensive model was a considered policy response to genuine over-exposure, and rolling it back wholesale could reopen India to a wave of speculative claims.
- **Regulatory chill is real.** If every environmental or public-health regulation risks an arbitration claim, governments may hesitate to legislate in the public interest, a problem of special weight for a developing economy that must keep policy space.

The honest position is that investor protection and the right to regulate are **both legitimate**, and the task is calibration, not surrender.

THE WAY FORWARD: CALIBRATE, SYNCHRONISE, SIGNAL

A balanced reform agenda follows directly from the analysis:

- 1 **Soften the five-year local-remedies clause** to a shorter, more credible period so that ISDS access is real rather than nominal.
- 2 **Narrow and clarify, rather than abolish, the right to regulate** so that genuine public-interest measures are protected while leaving no loophole for arbitrary or discriminatory action.
- 3 **Retain a calibrated** (<https://ujiyari.com/vocab/calibrated/>) **tax carve-out** that prevents another retrospective-tax episode without spooking investors about ordinary, non-discriminatory taxation.
- 4 **Synchronise the BIT with each FTA** so that market access and legal protection arrive together, the single coherent signal the editorial calls for.

5 Use the **India-UAE BIT (2024) as the working template** for the UK, EU, Gulf and US negotiations, **adapting it rather than reinventing the model each time**

DIAGRAM IN WORDS: THE FDI CONFIDENCE LOOP

Picture two interlocking gears. The first gear is **market access**, turned by the FTA: lower tariffs, easier trade. The second gear is **legal security**, turned by the BIT: protection, arbitration, certainty. A single gear spins freely but moves nothing. Only when both mesh does the machine, **durable, high-quality FDI**, actually move. India has spent recent years spinning the FTA gear hard while the BIT gear sat disengaged. The editorial's prescription is to re-engage the second gear, calibrated so it turns without stripping the teeth of sovereignty.

PYQ LINKAGE AND EXAM MAPPING

- **GS3 (Economy):** UPSC has repeatedly asked about FDI, the investment climate, and the role of trade agreements in growth. A 2014 Mains question asked whether FDI is an essential element for economic growth and to what extent it can drive economic growth, a theme this editorial answers with **nuance** (<https://ujjiyari.com/vocab/nuance/>): capital quality, not just quantity, is the goal.
- **GS2 (International Relations):** Questions on bilateral and regional trade arrangements and on India's economic diplomacy map directly onto the FTA-plus-BIT framing.
- **GS3 / GS2 (Ethics and Governance overlap):** The sovereignty-versus-investor-rights tension is a clean "right to regulate" debate, useful for any question on balancing public interest against contractual or treaty obligations.

The line to remember in the exam: an FTA gets foreign capital to India's doorstep, but a credible bilateral investment treaty is what convinces it to walk in and build for the long term.

Source: FTA Plus Investment Protection: Why a Bilateral Investment Treaty Is the Missing Half of India's FDI Story — [Ujjiyari.com](https://ujjiyari.com) | Free UPSC & State PCS Editorial Analysis

KEY ARGUMENTS AT A GLANCE

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Tariff liberalisation through an FTA can attract market-seeking trade, but only an early-finalised, legally binding bilateral investment treaty that credibly protects investors can revive India's appeal for the capital-intensive, long-gestation FDI it most needs.

 **SUPPORTING**

- FTAs and BITs do different jobs: an FTA lowers tariffs and eases goods and services trade, whereas a BIT gives a foreign investor enforceable legal protection (fair and equitable treatment, protection against arbitrary expropriation, and recourse to international arbitration) that an FTA alone does not.
- India's defensive 2016 Model BIT and its post-2016 termination of treaties with 77 countries shrank the protective umbrella precisely when global capital began diversifying away from China, leaving long-horizon investors without binding assurance.
- The India-UAE BIT of 2024 shows the workable middle path is achievable, so finalising similar treaties alongside the India-UK CETA, the India-EU deal and Gulf and US negotiations can pair market access with investment security in a single signal to capital.

 **COUNTER**

Sceptics argue that broad investor-state dispute settlement erodes sovereignty: the Vodafone and Cairn retrospective-tax arbitration awards against India show how treaty arbitration can override domestic fiscal policy, and a defensive Model BIT was a deliberate, legitimate correction rather than a mistake to be reversed.

 **WAY FORWARD**

Revise the 2016 Model BIT to shorten the five-year local-remedies requirement, narrow and clarify rather than abolish the right to regulate, retain a calibrated tax carve-out, and synchronise BIT finalisation with each FTA so investors receive market access and legal protection together.


MAINS ANSWER FRAMEWORK

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QUESTION

"A free-trade agreement opens the door for foreign capital, but a bilateral investment treaty is what convinces it to stay." In the light of India's revision of its 2016 Model BIT and its ongoing FTA negotiations with the UK, the EU and the Gulf, examine why investment protection has become central to India's FDI strategy. Discuss the trade-offs between investor protection and the state's right to regulate, and suggest a balanced way forward. (250 words)

INTRODUCTION

India's renewed FDI push rests on a simple insight: trade agreements bring capital to the door, but investment protection is what persuades it to commit for the long term. The pairing of an FTA with a bilateral investment treaty has therefore moved to the centre of economic diplomacy.

BODY

An FTA and a BIT are complementary but distinct. An FTA reduces tariffs and liberalises trade in goods and services; a BIT grants a foreign investor binding legal protections such as fair and equitable treatment, protection from arbitrary expropriation, and access to international arbitration through investor-state dispute settlement.

After the Vodafone and Cairn retrospective-tax arbitration awards, India adopted a defensive 2016 Model BIT that required exhaustion of local remedies for five years, dropped the MFN clause, narrowed the definition of investment, and inserted a broad tax carve-out, and then terminated treaties with 77 countries. This protected sovereignty but thinned the assurance that capital-intensive, long-gestation investors seek.

As global supply chains diversify away from China, India must restore that assurance without surrendering its right to regulate. The India-UAE BIT of 2024, with its measured balance, demonstrates a workable template, and pairing such treaties with the India-UK CETA and the India-EU agreement sends one coherent signal of access plus protection.

CONCLUSION

The strategic answer is not to choose between sovereignty and investor confidence but to calibrate both. A revised, investor-friendly Model BIT, finalised in step with each FTA, can convert India's market access into durable, high-quality FDI.


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