



Mains Practice Question

Q. Foreign companies dragging India to international arbitration not only leads to financial loss but also damages the reputation of the country as an investment destination. Discuss. (250 words)

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Approach

- Give facts related to foreign companies dragging India to international arbitration.
- Elaborate on reasons for increasing international arbitration and its impact, as well as steps taken by government to deal with the problem.
- Give conclusion.

Introduction

- India has largest number of international arbitration cases pending against it filed by more than 20 companies such as Deutsche Telekom of Germany, Vodafone etc.
- India has signed Bilateral Investment Treaties (BITs) with different countries, MNCs utilise the Investor-State Dispute Settlement (ISDS) provision in BITs to sue countries for real or perceived wrongs.

Body

Reasons for increasing International arbitration:

- **Judicial delays:** Large number of vacancies put an enormous strain on the judiciary which is one of important causes for the growing pendency of cases. Inadequate infrastructure and lack of technological innovation makes the entire process of justice delivery inefficient. Alternative and speedier forms of dispute resolution like mediation and arbitration are yet to become viable options in India.
- **Bilateral investment treaties (BITs):** India had inked BITs with 83 countries on the basis of old model text of 1993. The government decided to revise the treaties to prevent arbitration by foreign companies. The government introduced a new **Model BIT in 2015** to guide future investment agreements.

Impact of disputes International arbitration

- **Hurts Ease of Doing Business:** Foreign companies have been dragging Indian government to international arbitration courts for not enforcing contracts. For MNC's focus on disputes and arbitration process as well as loss of revenue reduces ease of doing business.
- **Future Investment:** High rate international arbitration also scares away potential investors thus reduces the attractiveness of India as investment destination.
- **Financial loss:** India faces financial loss due to prolonged litigation e.g. legal charges for arguing case.

Step taken by government

- **Local judicial remedies to be exhausted before seeking international arbitration:** Government has conveyed to 47 countries to nullify the existing bilateral investment agreements and ink fresh treaties that will make it mandatory for foreign investors to exhaust local judicial remedies before seeking arbitration. Thus MNC's have to approach domestic courts in first instance and cannot approach arbitration directly.
- **Arbitration and Conciliation (Amendment) Bill, 2018:** The Lok Sabha has passed Arbitration and Conciliation (Amendment) Bill, 2018 to help India become hub for domestic and global arbitration for settling commercial disputes by amending Arbitration and Conciliation Act, 1996.

Conclusion

- For economic growth and attracting foreign direct investment India has to tackle this issue proactively. Foreign companies dragging India to international arbitration not only leads to financial loss but also damages the reputation of the country as an investment destination.
- There is also need for a transformational change to make litigation ecosystem effective, India's ranking on Ease of Doing Business can register a dramatic improvement in the near future if enforceability of contracts is enhanced.

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