



# INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

VOLUME 3 ISSUE 1

Peer-reviewed, open-access, refereed journal

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## **Introduction**

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

## **Preface**

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

## Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

# **BRIDGING THE GAP: INTEGRATING ICSID MEDIATION RULES WITH INDIA'S MODEL BIT 2016 FRAMEWORK**

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## **ABSTRACT**

*The Alternative Dispute Resolution delivers better results than the traditional court system particularly in investment disputes. In countries like India, Mediation is an effective tool in Alternative Dispute Resolution that offers a flexible, time efficient, confidential and cost-effective method for settling disputes which also promotes mutual understanding and settlement between the parties. The historical evolution of Mediation renders institutionalised formal mechanisms which are governed under various significant conventions.*

*The Bilateral Investment Treaties (BIT) have a provision for dispute resolution between the investor and host state through international forums like UNCITRAL, ICSID; or domestic forums. India's Model BIT has been introduced in the year of 2016 to overcome the challenges posted before it. In this model BIT, India preferred arbitration for dispute resolution. However, "UNCITRAL Mediation Rules" apply to a broad spectrum of international disputes, whereas "the ICSID Mediation Rules" are specifically designed for investment disputes providing a focused framework. The Mediation Act, 2023 in India emphasis the significance of Mediation as an alternative mechanism which can also be applied in BITs.*

*The research analyzes the purpose for integrating "ICSID Mediation Rules, 2022" with India's model BIT, 2016 framework which provides for actionable insights in creating sustainable investment. In contemporary context, when investment disputes arise, there should be flexible solutions to disputes, likely Mediation that do not require a formal arbitral decision. The research concludes that it enhances India's regulatory sovereignty and protects the foreign investors.*

**Keywords:** Mediation, ICSID Rules, BIT, Sovereignty, Investors.

## INTRODUCTION

The Bilateral Investment Treaty plays a vital role in the Foreign Investment inflows into the country by which the economy will flourish. These BITs are mainly framed to protect the foreign investors against the unfair actions as well as to sovereignty of the host state. The protection which is provided under the BIT extends to the dispute resolution and there will be a separate clause in the BIT regarding it. That includes the nature of disputes, choice of forums for resolution and enforcement of the decisions given by the adjudicators of that dispute. Traditionally BIT followed Investor-State Dispute Settlement, then local remedies to be exhausted for a particular period, even State-State Dispute Settlement is also prescribed under various BITs.

India's journey in BIT dates back after one of the major reforms - LPG reforms in the 1990s. The first BIT was with the UK in 1994 which was based on the Model BIT of 1993, later it was followed by several BITs particularly with European nations. In the year of 2003 India introduced the Model BIT which also includes the clause for settlement of disputes by way of negotiation, conciliation and arbitration, between a contracting party and an investor.

After a certain period of time India faced numerous investment disputes settlement, the first unfavourable award was given in the case of "*White Industries v. Republic of India*"<sup>1</sup>. In 2015 claims against India were raised significantly, resulting in India termination of more than fifty BITs. So there came the need for the revision of BIT.

## OBJECTIVE OF THE STUDY

- 1) To examine the compatibility of ICSID Mediation Rules, 2022 with India's Model BIT, 2016 and identify areas for integration.
- 2) To assess the role of the Indian Mediation Act, 2023, in facilitating mediation for investment disputes within India's BIT framework.

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<sup>1</sup> UNCITRAL arbitration under the India–Australia BIT, Final Award (30 November 2011).

- 3) To analyze the feasibility of integrating ICSID Mediation Rules into India's investment treaty framework.

## **INDIA'S MODEL BIT, 2016 AND DISPUTE RESOLUTION FRAMEWORK**

India's revised Model BIT, outcome of the multi-year assessment process, was introduced in the year of 2016 released by "The Department of Economic Affairs" under the "Ministry of Finance of Indian Government". The revised BIT is applied for re-negotiating and for future negotiation of BITs. The BIT aims to promote and protect the investors; and further more to develop the economic cooperation between the parties to the treaty which creates the platform for sustainable development.

The BIT is considered as a shift towards balancing state sovereignty and investor protection which includes provisions that enhance protection and favour investors, and also contains provisions which increase the transparency of laws, rules and regulations of the host state.<sup>2</sup> The definition of term "Investment"<sup>3</sup> is given in the "basis of enterprise" which narrowed down the definition which means that the businesses which have real and substantial operations in India get protection under the revised Model BIT, previously it was an "asset-based" definition for the term "Investment". The intention behind this definition is that the state grants protection to those who give meaningful contributions to the economy of the host country.

The "Revised model BIT" gives the protection to the extent of "full protection and security" and it does not give the umbrella clause; or most favoured nation clause (MFN); fair and equitable treatment (FET) provision. These can be considered as the impact of the "*White Industries v. India*" case, because the FET clauses are sometimes misused by the investors. Also, under the provision of Model BIT, FET is restricted to customary international law and its interpretation is not broad enough. The Article 4 of the Model BIT, 2016 contains "National Treatment" but during the draft model protection included only the intentional discrimination and not the unintentional

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<sup>2</sup> Revised Model Indian Bilateral Investment Treaty, 2015, art. 10 & 12.

<sup>3</sup> Model Text for the Indian Bilateral Investment Treaty, Ministry of Finance, Government of India (2016) art 1.4.

discrimination. Various controversies were raised at that time,<sup>4</sup> so in 2016 Model BIT it ensured that the protection applies to both the intentional and unintentional discrimination.

In the Model BIT chapter IV deals with “settlement of disputes between an investor and a party” and Chapter V deals with “state-state dispute settlement”. The most preferred way of dispute resolution is arbitration in the Model BIT. This Investment Treaty Arbitration (ITA) proceedings are rebuilt by India in this Model BIT by giving greater control to the state which is host in nature, meanwhile to give protection to the foreign investors. In the draft Revised Model BIT only preferred UNCITRAL especially arbitration as the key mode of dispute resolution excluding the ICSID arbitration completely.<sup>5</sup> But in the Model BIT all the “UNCITRAL, ICSID, ICSID Additional Facility Arbitration” are included for the dispute resolution as a choice.

The exhaustion of all local and administrative remedies is the most important feature specified in the Model BIT as it stresses that if any dispute arises the party to the BIT have to enroll with the domestic courts for a period of five years. This makes the domestic court to be the first preferred opportunity to resolve the disputes before moving to the arbitration at global level for the settlement of disputes.<sup>6</sup> The mandatory cooling-off period is provided under the Model BIT which states that before going to arbitration the parties must undergo the period of six months and have to state the attempts taken to resolve the disputes. The primary purpose of the right to deny benefits under a BIT is to prevent treaty shopping by investors and to ensure that the foreign entity or investor has a genuine economic connection to the host state. The clause may be applied at any time or; during or after the institution of arbitration proceedings by the party which includes the host state.<sup>7</sup> The award in the Arbitral proceedings is given by majority of the arbitrators vote and that particular award is binding on parties to the proceeding. The adjudicating authority has only power to award any monetary compensation and not any moral or punitive damages or any relief like injunction in any of the circumstances.<sup>8</sup> These clauses of settlement of disputes cannot be

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<sup>4</sup> Luke Eric Petersen, ‘Analysis: India invites comments on draft model investment treaty; Text offers radical departure and calls to mind Norway’s past efforts at revision’ *Investment Arbitration Reporter* (24 March 2015).

<sup>5</sup> “Draft Revised Model BIT, art 14.7(1).”

<sup>6</sup> “Model Text for the Indian Bilateral Investment Treaty, Ministry of Fin., Gov’t of India (2016). Art. 15.”

<sup>7</sup> *ibid.* art. 35.

<sup>8</sup> *ibid.* art. 26.

claimed by investors who indulged in fraudulent misrepresentation, corruption, money laundering and so similar illegal activities.<sup>9</sup>

Between the period of 2016 to 2019, India terminated nearly sixty BITs as the reason for re-negotiating as per the revised BIT Model. To provide the balance and enhance protection of the host state and investor.

## **MEDIATION: AN EFFECTIVE MECHANISM FOR DISPUTE RESOLUTION**

Mediation is a significant alternative mechanism for Arbitration and also a non-adversarial process allowing parties for structured negotiation. In Investment disputes, Mediation serves best in preserving Investor-State relationships.<sup>10</sup> Mediation also provides other benefits, including cost efficiency and enhanced flexibility in resolving disputes. Mediation can also function before or alongside arbitration, allowing parties to explore amicable resolutions before proceeding to formal adjudication.<sup>11</sup> In International Investment Law, Mediation has been highly promoted in order to prevent disputes from escalating to full-fledged arbitration.

### **ICSID MEDIATION RULES, 2022**

The ICSID Convention, established under the World Bank, introduced an arbitration-centric model for investment disputes. However, with growing concerns, the “ICSID Mediation Rules, 2022” is notably designed for investment disputes, providing a structured and efficient framework.

“The ICSID Mediation Rules, 2022” introduced a structured framework for investment disputes. These rules primarily focus on voluntary participation, confidentiality, and party autonomy, which serves investors and host states. Confidentiality is a core feature, with

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<sup>9</sup> *ibid.* art. 13.4.

<sup>10</sup> Cecilia Olivet & Pia Eberhardt, *Profiting from Injustice: How Law Firms, Arbitrators, and Financiers are Fuelling an Investment Arbitration Boom*, TRANSNATIONAL INST. 19-25 (2012).

<sup>11</sup> “UNCITRAL Working Group III, *Reforming Investor-State Dispute Settlement*, UNITED NATIONS COMM’N ON INT’L TRADE L. (2023).”

proceedings remaining private unless parties decide otherwise.<sup>12</sup> The process is highly flexible, enabling parties to customize procedures and conduct mediation virtually, in-person, or through hybrid modes.<sup>13</sup> Unlike arbitration, ICSID mediation does not produce binding awards, but settlements become enforceable if formalized in a treaty, contract, or domestic law.<sup>14</sup> By providing institutional oversight, administrative support, and procedural clarity, the ICSID Mediation Rules enhance investor confidence and regulatory sovereignty, making them a significant development in “Investor-State Dispute Settlement (ISDS) reform.”

### ICSID v. UNCITRAL: A COMPARATIVE ANALYSIS

ICSID operates as a specialized institution under World Bank which provides a formal mediation process offering institutionalised oversight. UNCITRAL provides a flexible ad hoc framework allowing parties to design mediation processes without institutionalised framework. With regard to enforceability, UNCITRAL benefits from “the Singapore Convention on Mediation (2019)”, which ensures recognition of mediated cross-border settlements which is similar to “New York Convention on Arbitration”.<sup>15</sup> ICSID arbitration awards are automatically recognized and enforced in all ICSID member states without judicial review, as per Article 54 of the ICSID Convention, 1965.<sup>16</sup> Unlike institutionalised frameworks, UNCITRAL enables domestic courts to review and even refuse enforcement of awards on public grounds. Confidentiality is the key provision ensured in both ICSID Mediation Rules, 2022<sup>17</sup> and UNCITRAL Mediation Rules<sup>18</sup>.

Specific Confidentiality provisions have been added which ensures that mediation related information remains private unless agreed upon. UNCITRAL offers broader discretion to parties with regard to information to be disclosed. India adopted UNCITRAL Model Law in order to promote international trade and investment by providing a modern, efficient and neutral framework for resolving commercial disputes.

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<sup>12</sup> “ICSID Mediation Rules, INT’L CTR. FOR SETTLEMENT INV. DISPS. (2022).”

<sup>13</sup> *ibid.* at Rule 15.

<sup>14</sup> *ibid.* at Rule 19.

<sup>15</sup> “United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation), adopted 7 August 2019.”

<sup>16</sup> “International Centre for Settlement of Investment Disputes, *ICSID Convention* (1965) art 54.”

<sup>17</sup> “International Centre for Settlement of Investment Disputes, *ICSID Mediation Rules* (2022) art 10.”

<sup>18</sup> “UN Commission on International Trade Law, *UNCITRAL Mediation Rules* (2021) art 7.”

“The ICSID Mediation Rules, 2022”, specifically designed for “Investment disputes”, provide a structured and efficient framework. The UNCITRAL Mediation Rules apply broadly to commercial and investment disputes whereas ICSID Mediation Rules apply exclusively to investment-related conflicts. This exclusivity signifies the importance of applicability of ICSID Rules into Investment Treaty Framework.

Thus, while UNCITRAL offers greater procedural flexibility, judicial oversight, and broader applicability, ICSID ensures institutional stability, streamlined dispute resolution, and automatic enforcement of awards.

### **ROLE OF MEDIATION ACT, 2023**

“The Mediation Act, 2023” is considered as the effective shift in dispute resolving mechanism especially in resolution of investor-state disputes under Bilateral Investment Treaties (BITs). Aligning Domestic Mediation Framework with International standards is of utmost importance and “The Mediation Act, 2023” plays a significant role in India’s approach to investment disputes. The act incorporates “UNCITRAL Model Law on International Commercial Mediation, 2018”, principles which provides a structural foundation for Mediation in India. This became one of the mechanisms for resolving investor-state disputes.

The Act’s provisions on enforceability of mediated settlements could enhance investor confidence by ensuring that settlements reached through mediation are legally binding under Indian law.<sup>19</sup> “The Indian Mediation Act, 2023” aligns with “UNCITRAL Mediation Rules, 2021 and Singapore Convention on Mediation, 2019” but it doesn’t incorporate “ICSID Mediation Rules, 2022”. The Act provides for the establishment of mediation institutions, which could regulate BIT-related mediations.<sup>20</sup> The Act ensures that the mediated settlements are legally binding which aligns with the principle of “Singapore Convention on Mediation, 2019.”<sup>21</sup>

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<sup>19</sup> “The Mediation Act 2023, s 27.”

<sup>20</sup> “The Mediation Act 2023.”

<sup>21</sup> “United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation), art X, adopted 7 August 2019.”

The Act also provides for Mediation at any time before or during any arbitration or litigation process. This can also be considered that Mediation shall be the pre arbitration requirement in investment treaties.<sup>22</sup> By promoting pre-litigation mediation, the Act reduces the backlog in courts and improves access to timely dispute resolution.

The Act promotes digital dispute resolution, allowing parties to conduct mediation using video conferencing, encrypted chat rooms, and electronic documentation.<sup>23</sup> Challenges to an MSA are permitted only on limited grounds, such as fraud, corruption, or fundamental procedural irregularity.<sup>24</sup>

This approach aligns with “The Singapore Convention on Mediation, 2019”, which facilitates cross-border enforcement of mediated settlements, making India’s mediation framework more reliable and globally integrated.<sup>25</sup> By providing enforcement of mediation settlement agreements, and making them binding provide investors with a secure and reliable means of resolving disputes.

The Act also reinforces India’s stand on sovereignty which is a key component in investment disputes. The act follows a decentralized party driven approach which is also adaptable in BIT.<sup>26</sup> Indian courts have traditionally favored litigation. A shift in judicial mindset is required to promote mediation as the most significant dispute resolution mechanism.<sup>27</sup> “The Mediation Act, 2023”, is a major step toward institutionalizing mediation in India, aligning with international best practices such as UNCITRAL and the Singapore Convention. However, India continues to maintain a distinct position by not aligning with ICSID, ensuring domestic control over investor-state mediation. The successful working mechanism of Mediation can be ensured by aligning with ICSID Mediation Rules, 2022.

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<sup>22</sup> “The Mediation Act 2023, s 5.”

<sup>23</sup> Yashika Garga and Mansi Akriti Verma, ‘Navigating Dispute Resolution: A Comparative Analysis of India's Mediation Act, 2023 in the Global Context’ (2024) 4(3) *JCLJ* 891, 892.

<sup>24</sup> “The Mediation Act 2023, s 29..”

<sup>25</sup> “United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation), Aug. 7, 2019, U.N. Doc. A/RES/73/198, <https://uncitral.un.org>.”

<sup>26</sup> International Centre for Settlement of Investment Disputes, *ICSID Mediation Rules* (2022) art 2..”

<sup>27</sup> Rishabh Gandhi, ‘Indian Arbitration Laws in 2024: Key Reforms, Landmark Judgments, and Emerging Challenges’ (2025) *SCC OnLine Blog OpEd* 3.

## **HYBRID USE OF “ICSID MEDIATION RULES 2022” AND “UNCITRAL MEDIATION RULES”**

A hybrid dispute resolution system integrating “ICSID Mediation Rules, 2022” and “UNCITRAL Mediation Rules, 2021” into India’s Model BIT, 2016 can create a balanced, efficient, and internationally recognized investment dispute mechanism. ICSID does not have an automatic enforcement mechanism for settlements through mediation. UNCITRAL mediation settlements are enforceable under “The Singapore Convention on Mediation, 2019”, ensuring cross-border recognition of mediated agreements.<sup>28</sup> India’s Model BIT should recognize mediated settlements as binding agreements, ensuring compliance with the Singapore Convention. A hybrid use of ICSID and UNCITRAL Mediation Rules involves recognition of ICSID Mediated Settlements under Singapore Convention in order to enforce it.

UNCITRAL Transparency Rules under Mauritius Convention on Transparency, allow greater public access for investment dispute proceedings.<sup>29</sup> The ICSID Mediation Rules emphasize confidentiality in resolving disputes.<sup>30</sup> Thus, a hybrid approach using ICSID mediations’ confidentiality framework and UNCITRAL’s transparency provisions create a balanced dispute mechanism.

ICSID Mediation is open to any parties regardless of nationality, meaning even investors and nationals of the same state can participate in Mediation. Investors from non-Member States can also use ICSID mediation for their disputes. Parties to an ICSID mediation are not required to be linked to an ICSID Convention Member State and they may proceed under the ICSID Additional Facility Rules, which allow mediation involving non-ICSID Member States.<sup>31</sup> Since ICSID Mediation allows nationals of the host state to mediate disputes, combining with UNCITRAL rules ensures more participation and recognition of settlements through mediation.

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<sup>28</sup> “United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation), art 3, adopted 7 August 2019, UN Doc A/RES/73/198..”

<sup>29</sup> Mauritius Convention on Transparency, Dec. 10, 2014, U.N. Doc. A/RES/69/116.

<sup>30</sup> ICSID Mediation Rules (2022) r 10.

<sup>31</sup> ICSID Additional Facility Rules 2022, Art. 2(1)(a).

A mandatory pre-arbitration mediation phase can be introduced requiring parties to engage in mediation for a defined period before initiating arbitration.<sup>32</sup> Additionally, the hybrid model can incorporate time-limited mediation proceedings, ensuring that disputes do not remain unresolved indefinitely. If no settlement is reached, the mediator must issue a final report confirming the termination of mediation, allowing arbitration to proceed.<sup>33</sup> The major criticisms of “Investor-state dispute settlement (ISDS)” is the exorbitant cost for arbitration, which adds burden to developing countries.<sup>34</sup> A hybrid approach integrating ICSID Mediation Rules and UNCITRAL Mediation Rules can help to manage these costs by cost efficient measures.

- 1) *ICSID COST ALLOCATION MECHANISM*- The ICSID amended rules require tribunals to allocate costs based on specific factors, such as the outcome of the proceedings, conduct of the parties, etc.
- 2) *UNCITRAL’s Third-Party Funding Disclosure*- Mandatory disclosure of third-party funding, which would require investors to disclose whether they are being funded by external entities, thus ensuring transparency and discouraging speculative claims.<sup>35</sup>

This measure, if adopted in a hybrid model, can prevent investors from engaging in high-risk arbitration without having a legitimate economic interest in the dispute. A hybrid approach of ICSID cost allocation methods with UNCITRAL’s transparency measures can reduce financial burden of arbitration while ensuring cost efficient dispute resolution through mediation.

One of the main problems in ISDS is occurrence of the same dispute in multiple forums which leads to legal uncertainty and inconsistent awards.<sup>36</sup> In “*CME Czech Republic B.V. v. Czech Republic*” and “*Ronald S. Lauder v. Czech Republic*”, two different tribunals reached contradictory conclusions leading to uncertainty.<sup>37</sup> ICSID operates within a structured and exclusive framework, meaning that once a dispute is brought before ICSID, it cannot be pursued

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<sup>32</sup> UNCITRAL Working Grp. III, , *Report on the Reform of Investor-State Dispute Settlement* U.N. Doc. A/CN.9/WG.III (2022).

<sup>33</sup> International Centre for Settlement of Investment Disputes, *Mediation Rules* (2022) r 22(1)(d).

<sup>34</sup> ‘Modern Boundaries of Investment Treaty Arbitration’ (2024) 1 *DAR* 76, 82.

<sup>35</sup> “UNCITRAL Working Grp. III, *Report on the Reform of Investor-State Dispute Settlement*, U.N. Doc. A/CN.9/WG.III (2022).”

<sup>36</sup> Modern Boundaries of Investment Treaty Arbitration, (2024) 1 *DAR* 76, 80.

<sup>37</sup> *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL Final Award (Mar. 14, 2003).

in other forums. UNCITRAL allows tribunals to apply doctrine of *lis pendens* and *res judicata* to prevent the same dispute being heard multiple times. By combining ICSID's structured approach with UNCITRAL's legal consistency measures, a hybrid model can reduce parallel proceedings and enhance the validity of the "ISDS" mechanism.

Mediation is significantly cheaper and faster than arbitration. Alternative dispute resolution (ADR) mechanisms, stating that mediation and conciliation should be used as tools for early dispute prevention, as seen in "The ICSID Additional Facility Rules", which provide for both mediation and arbitration proceedings.<sup>38</sup> By adopting hybrid models, parties can initiate mediation under ICSID and can adopt enforcement under UNCITRAL which in reality reduces the risk of prolonged arbitration.

## **FEASIBILITY OF INTEGRATING ICSID MEDIATION RULES, 2022 INTO INDIA'S BIT**

The integration of ICSID's Mediation framework into India's Model BIT, 2016 requires an assessment of its alignment with India's regulatory framework. The inclusion of ICSID's mediation mechanisms could bridge the gap between investors and states, fostering a more balanced, investor-friendly dispute resolution mechanism within India's investment treaties.

### ***1) INSTITUTIONAL NEUTRALITY***

The main advantage is integrating ICSID Mediation Rules into India's BIT is institutional neutrality which provides an impartial and independent forum for dispute resolution in mediation. The mechanism aims to foster the interests of both investors and states, ensuring trust in the system. In India's growing role in global trade and investment, integrating ICSID Mediation Rules addresses the neutrality concerns even while ensuring greater investor confidence.

### ***2) CONSISTENCY IN INVESTMENT DISPUTE ADJUDICATION***

Unlike ad hoc arbitration mechanisms that may lead to fragmented approaches, ICSID ensures a standardised legal framework that enhances certainty for both investors and states. The

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<sup>38</sup> Modern Boundaries of Investment Treaty Arbitration, (2024) 1 DAR 76, 84.

consistency is important in fostering investment as the investors more likely invest in a jurisdiction where they can predict outcome through established framework. ICSID structured dispute resolution mechanism reduces the unpredictability which makes mediation mechanism more reliable.

### 3) *COST EFFECTIVE MECHANISM*

Integrating ICSID Mediation Rules into India's BIT can provide optimal balance between cost effectiveness and investment protection. A well-structured ICSID integration could attract more foreign investors, who view ICSID membership as a signal of investment security and dispute resolution reliability.<sup>39</sup> ICSID's uniform procedure in mediation ensures the cost predictability in dissolving disputes by eliminating jurisdictional ambiguity and by reducing unnecessary legal battles.

### 4) *ENHANCED TRANSPARENCY*

Integrating ICSID into BITs ensures open and accessible dispute resolution processes, complementing India's broader governance reforms. The greater transparency in ISDS decisions leads to increased investor confidence, as they can anticipate how tribunals interpret BIT provisions.<sup>40</sup> By adopting ICSID, India could incorporate transparency while maintaining safeguards for sensitive information, balancing investor confidence and regulatory discretion.

### 5) *ALIGNING WITH GLOBAL PRACTICES*

In the present era mediation is gaining more attraction than traditional arbitration practices in settling investment disputes. The "European Union's Investment Court System" and "Singapore Convention on Mediation, 2019" stresses mediation as a mechanism to settle disputes. Several developed and developing countries are shifting to mediation as it is considered as the best practice to adopt. India shall also prioritise mediation as a dispute settlement mechanism in Model BIT, 2016 which aids in aligning with global best practices. This in turn facilitates investors' confidence and protection.

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<sup>39</sup> UNCTAD, *World Investment Report 2023: Investment Mediation as an Alternative to Arbitration*, (UNCTAD 2023)

<sup>40</sup> *Transparency in ISDS: The Growing Demand for Open Arbitration*, *World Investment Report 2023* (UNCTAD 2023).

## CONCLUSION AND WAYFORWARD

India's Model BIT, 2016 is the key framework regarding the investment treaty which brings more foreign investors to invest in our country. Even though it being the fundamental model it also faces criticism because arbitration is given the utmost importance in the BIT for the dispute resolution mechanism. Traditional arbitration and intervention of court as mode makes the legal battle process prolonged, involves time and cost. The result of which the investors hesitate to invest in India as the mechanism of dispute resolution lacks the efficiency and makes the investment platform even more unsafe. But the Mediation is recognised in every other country as it is the timely requirement for resolving investment disputes. In 2024, the existing Model BIT was directed to the "Ministry of Commerce" by the PMO to evaluate and examine it because at present hardly seven countries have accepted this particular Model so far.<sup>41</sup> Other countries' concern is with regard to the dispute resolution provisions as mentioned arbitration has given priority, local remedies have to be exhausted for the specified period and denial of benefits of the BIT.

By integrating the ICSID Mediation Rules into India's Model BIT, 2016 will enhance the investment in our country and also by adopting it, India aligns with the global trends of investment dispute resolution mechanism. The mediation infused resolution will bring balance to the interest and protection of investors and sovereignty of the host state as well. India, being an investment-friendly nation will attract more investors which in turn facilitate economic growth and sustainable investment.

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<sup>41</sup>PMO asks commerce ministry to examine model text of investment treaty' *The Economic Times* (30 January 2025) <https://economictimes.indiatimes.com/news/economy/foreign-trade/pmo-asks-commerce-ministry-to-examine-model-text-of-investment-treaty/articleshow/109101008.cms>