DAILY EDITORIAL ANALYSIS

TOPIC

INDIA'S TRADE TREATIES & ROAD TO A GLOBAL ARBITRATION HUB

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Context

- India's expanding network of **Bilateral Investment Treaties (BITs)** and **Free Trade Agreements (FTAs)** has renewed attention on investment protection and dispute settlement, particularly how treaty policy can strengthen commercial arbitration within India.

About India's Trade Treaties

- India has been negotiating new **Bilateral Investment Treaties (BITs)** and **Free Trade Agreements (FTAs)** with major economic partners to facilitate investment, market access and greater economic integration.
- Recent agreements include:
    - **BITs:** UAE (2024), Uzbekistan (2024) and Israel (2025).
    - **FTAs:** European Free Trade Association (March 2024), the UK (July 2025), Oman (December 2025) and New Zealand (April 2026).
- These agreements demonstrate an evolution in India's approach towards balancing **investment protection, regulatory autonomy and dispute resolution**.
- India already possesses the **basic statutory framework** for arbitration through the **Arbitration and Conciliation Act, 1996**, which covers domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards.

Need for Commercial Arbitration

- International investors assess not only taxation and market access but also **what happens when commercial relationships break down**.
    - A predictable and enforceable dispute-resolution mechanism therefore forms an important component of the investment climate.
- Commercial arbitration can provide a middle path between:
    - **Investor concerns over domestic litigation ↔ State concerns regarding international ISDS**
- Strengthening arbitration in India can consequently complement the country's expanding trade and investment relationships and support its aspiration to become a global arbitration hub.

Concerns & Issues: Beyond Market Access

- **FTAs and the Absence of Investor-State Dispute Settlement (ISDS):** India's recent FTAs have generally omitted **ISDS**.
    - Foreign investors may seek greater certainty when disputes arise while preserving greater regulatory space for the State.
    - **Future FTAs** could explain why ISDS is absent by highlighting the availability of effective **commercial arbitration remedies in India**.
- **Distinguishing Investment and Commercial Disputes:** Investment treaty arbitration and contractual commercial arbitration operate on different legal foundations.
    - For example, the **India-Uzbekistan BIT** excludes disputes arising solely from an alleged breach of contract between the State and a foreign investor from ISDS.
    - The treaty requires exhaustion of local remedies for access to ISDS.
    - Future BITs could clarify whether submitting the substance of an investment dispute to **commercial arbitration seated in India** can satisfy this requirement.
    - This would create greater coherence between treaty-based remedies and contractual dispute resolution.

- **Third-Party Funding:** India's recent BITs indicate governmental reservations regarding **third-party funding in ISDS**, partly because investment claims can involve sovereign decisions and potentially affect regulatory policymaking.
  - However, these concerns are distinct from ordinary commercial arbitration.
  - A blanket inference that prohibition of third-party funding in ISDS prohibits it in commercial arbitration could restrict access to dispute resolution.
  - India therefore needs a clear and comprehensive framework governing third-party funding in commercial arbitration, consistent with international practice.

Related India's Efforts

- India's arbitration framework rests principally on the **Arbitration and Conciliation Act, 1996**.
- **Legislative reforms** and the increasingly **pro-arbitration approach of courts in India** have sought to improve the arbitration ecosystem, and continuous evolution of Indian arbitration law, like:
  - judicial intervention and the enforcement of arbitral awards;
  - the relationship between commercial and investment arbitration;
  - third-party funding;
  - **India's Model BIT and ISDS framework**; and
  - India's role in international commercial arbitration.
- Thus, treaty reform and domestic arbitration reform should be viewed as interconnected rather than separate policy tracks.

Way Forward: Building & Strengthening India as an Arbitration Hub

- India can leverage its growing treaty network through measures like:
  - **Treaty Clarity:** Future FTAs can explain how the absence of ISDS relates to India's domestic dispute-resolution framework.
  - **Clearer BIT Drafting:** BITs should expressly distinguish treaty claims from contractual commercial disputes.
  - **Broader Local Remedies:** Commercial arbitration in India could be expressly recognised where treaties require exhaustion of local remedies.
  - **Regulated Third-party Funding:** India should develop a coherent framework addressing disclosure, conflicts of interest and procedural safeguards.
  - **Predictable Enforcement:** Courts should continue a consistent, pro-arbitration approach with limited and principled intervention.

Conclusion

- India does not need to make every BIT or FTA an arbitration treaty. The larger objective should be a **coherent dispute-resolution ecosystem**, i.e. treaties that prevent disputes where possible, arbitration that resolves them efficiently, and courts that enforce awards predictably.
- Commercial arbitration can become more than a legal mechanism if aligned with its expanding trade and investment network, and it can form part of the infrastructure that gives international businesses greater confidence to make long-term commitments in India.

Source: TH

Daily Mains Practice Question
[Q] Discuss the significance of commercial arbitration in promoting investor confidence and examine the challenges India faces in emerging as a global arbitration hub.