

Expropriation in India's Investment Treaties: The Sector Under Pressure, and What's New

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Introduction

To understand why expropriation has become a contested issue in India's investment treaties, it is important to understand the purpose of these agreements. A Bilateral Investment Treaty (BIT) assures foreign investors that their investments will be treated fairly, protected from discrimination, and compensated if taken away or significantly harmed by government actions. To strengthen these protections, BITs allow investors to directly bring claims against the host government through international arbitration instead of relying only on domestic courts.¹

Over the next two decades, India entered 89² Bilateral Investment Treaties (BITs). However, following a review of its investment treaty regime after a series of investor-state disputes, India terminated most of its older treaties and shifted to a new treaty model.³ As of 2026, India has a much smaller network of renewed-generation BITs, including treaties with the UAE (2024), Uzbekistan (2024), Kyrgyzstan (2019, in force 2025), Brazil (2020, in force 2025), Israel (2025), Belarus, Bangladesh, Colombia, Lithuania, and Senegal, among others.⁴

Facing the risk of costly arbitration claims, India concluded that its older investment treaties provided excessively broad protections to foreign investors. In response, it introduced the 2016 Model BIT, which seeks to balance investor protection with the State's right to regulate. The most significant change was the revision of the expropriation clause, making it more difficult for investors to challenge government measures as expropriatory.⁵

Understanding Expropriation: Why This Clause Matters Most

Expropriation is often thought of as a situation where a government directly takes over a company or property. This is known as direct expropriation. However, disputes today more commonly involve indirect expropriation⁶, where the government does not take ownership of the investment but takes actions such as cancelling licences, withdrawing permits, or ending important contracts. As a result, the investor still legally owns the investment, but it loses much of its value because it can no longer operate effectively.

¹Nishith Desai Associates, Bilateral Investment Treaty Arbitration and India (Research Paper), available at: https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Bilateral_Investment_Treaty_Arbitration_and_India-PRINT-2.pdf.

² United Nations Conference on Trade and Development (UNCTAD), International Investment Agreements Navigator: India, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/countries/96/india>

³ Shreyas Jayasimha & Abhimanyu George Jain, The 2015 Indian Model BIT, SSRN (June 24, 2021), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3853343.

⁴ United Nations Conference on Trade and Development (UNCTAD), International Investment Agreements Navigator: India, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/countries/96/india>

⁵ Nishith Desai Associates, Bilateral Investment Treaty Arbitration and India (Research Paper), available at: https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Bilateral_Investment_Treaty_Arbitration_and_India-PRINT-2.pdf.

⁶ Nishith Desai Associates, Bilateral Investment Treaty Arbitration and India (Research Paper), available at: https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Bilateral_Investment_Treaty_Arbitration_and_India-PRINT-2.pdf, P. 21

This is exactly the kind of dispute where the terms of an expropriation clause matter. A tribunal must decide whether the government's action was a legitimate step to protect public interests or whether it effectively took the investor's property and should be compensated. Older Indian treaties, such as the 1998 India-Mauritius BIT, gave tribunals broad discretion to make this decision on a case-by-case basis, with only general requirements such as public purpose, due process, non-discrimination, and fair compensation.⁷

The 2016 Model BIT changed this in a way that consistently favours the government's side of that question.⁸

- First, the treaty makes it clear that a government measure does not become expropriation simply because it causes financial loss to an investor. A tribunal must also consider the nature, purpose, and intent of the measure, meaning what the government was trying to achieve and why.
- Second, the treaty states outright that non-discriminatory regulatory measures taken to protect public health, safety, the environment, or other public-welfare goals do not count as expropriation at all, no matter how much value they destroy for the investor. This gives the government a wide, pre-approved category of actions that are simply excluded from the expropriation analysis from the start.
- Third, before bringing an expropriation claim to international arbitration, an investor must first seek relief through Indian courts and, under the original Model BIT, wait for at least five years before initiating arbitration proceedings.

A legal review of the Model BIT observed that it places greater emphasis on the State's right to regulate than on investor protection. As a result, investors face a higher threshold in proving that a government measure amounts to expropriation.

Which sector actually gets caught in this net

Businesses such as mining, telecom, and oil & gas depend on licences and rights granted by the government. If these licences are cancelled, investors may lose the value of their investment even though their property has not been physically taken away, giving rise to claims of indirect expropriation. In India, this issue came to the forefront when the Supreme Court cancelled 122 telecom spectrum licences⁹ and mining allocations, leading to significant losses for investors and a number of treaty-based claims against the

⁷ Nishith Desai Associates, *Bilateral Investment Treaty Arbitration and India* (Research Paper), available at: https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Bilateral_Investment_Treaty_Arbitration_and_India-PRINT-2.pdf, P. 7

⁸ Nishith Desai Associates, *Bilateral Investment Treaty Arbitration and India* (Research Paper), available at: https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Bilateral_Investment_Treaty_Arbitration_and_India-PRINT-2.pdf, P. 23-25

⁹ BBC News, *India court cancels 122 telecom licences in 2G case* (2 February 2012), available at: <https://www.bbc.com/news/world-asia-india-16848844>

government. These disputes were one of the key factors behind India's decision to revise its investment treaty framework and adopt the 2016 Model BIT.

Cases in India shows the same pattern

- **CC/Devas and DT v. India.**¹⁰ In this case, the government cancelled a satellite spectrum allocation that had already been granted to a private telecom venture, stating that the spectrum was required for public and national security purposes.¹¹ However, the arbitral tribunal found that the government had failed to properly communicate its decision to the investors and had left them uncertain for several months. As a result, the tribunal held that India had treated the investors unfairly and awarded compensation.
- **Cairn Energy v. India and Vodafone v. India:** These cases arose from retrospective tax demands that significantly affected the value of investors holdings, even though the cases were not framed as traditional expropriation claims.¹² Similarly, a major dispute involving bauxite mining rights in Andhra Pradesh¹³ illustrates how government actions affecting resource-based investments can give rise to investor-state claims. Together, these cases highlight the continuing tension between the State's regulatory powers and the protection of foreign investments.

What's new: a USD 273 million mining dispute has just come back to life

In 2007, the Andhra Pradesh government and the Ras Al Khaimah Investment Authority (RAKIA) partnered on a bauxite mining and aluminium refinery project. RAKIA invested more than USD 42 million in the venture, which eventually led to the construction of a USD 2 billion aluminium refinery. However, in 2015 and 2016, following public opposition to the mining project, the Andhra Pradesh government cancelled the approvals supporting the arrangement, leaving the refinery without a guaranteed supply of bauxite, its key raw material.

¹⁰ Deutsche Telekom AG v. The Republic of India, Memorandum Opinion, United States District Court for the District of Columbia (March 27, 2024), available at: <https://jusmundi.com/en/document/decision/en-deutsche-telekom-ag-v-the-republic-of-india-memorandum-opinion-of-the-united-states-district-court-for-the-district-of-columbia-wednesday-27th-march-2024>

¹¹ Prabhash Ranjan, *India and Investor-State Dispute Settlement: Affronting Sovereignty or Indicting Capriciousness?* (1st ed., Routledge, London, 2024), p.64

CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited, and Telcom Devas Mauritius Limited v. Republic of India, [2026] EWCA Civ 797 (England and Wales Court of Appeal, June 24, 2026), available at: <https://jusmundi.com/en/document/decision/en-cc-devas-mauritius-ltd-devas-employees-mauritius-private-limited-and-telcom-devas-mauritius-limited-v-republic-of-india-judgment-of-the-court-of-appeal-of-england-and-wales-2026-ewca-civ-797-wednesday-24th-june-2026>

¹² Prabhash Ranjan, *India and Investor-State Dispute Settlement: Affronting Sovereignty or Indicting Capriciousness?* (1st ed., Routledge, London, 2024), p. 103

Union of India v. Vodafone Group PLC United Kingdom & Anr., CS(OS) 383/2017 (Delhi High Court, 22 August 2017), available at: <https://www.italaw.com/sites/default/files/case-documents/italaw9452.pdf>.

¹³ Prabhash Ranjan, *India and Investor-State Dispute Settlement: Affronting Sovereignty or Indicting Capriciousness?* (1st ed., Routledge, London, 2024), p. 128)

In 2016, RAKIA brought a USD 273 million claim against India under the India-UAE investment treaty. Although the arbitral tribunal dismissed the claim in 2022 on jurisdictional grounds, the English High Court revived the case in June 2025 and held that it should be heard on its merits. The central issue is whether the cancellation of the bauxite supply arrangement effectively deprived the investor of the value of its investment and therefore amounted to indirect expropriation.¹⁴

Two other threads reinforce that this sector remains the pressure point:

- The **India-UAE BIT of 2024**: the first treaty concluded after India's Model BIT reforms, retains the same approach to expropriation, including protection against both direct and indirect expropriation and an emphasis on the nature, purpose, and intent of government measures. However, it broadens investor protection by extending coverage to portfolio investments and removing the requirement that an investment must contribute to economic development. As a result, it may be easier for investors to establish that their investments qualify for protection under the treaty.¹⁵
- The **Devas-Antrix dispute**: This case arose after the Indian government cancelled a satellite spectrum agreement between Antrix and Devas Multimedia, citing public and strategic needs. Devas and its foreign investors argued that the cancellation destroyed the value of their investment and obtained arbitration awards against India. The dispute has continued in courts across multiple countries, with enforcement proceedings moving forward in the Netherlands, the United States, and other jurisdictions.¹⁶

Current Status of Expropriation in India (2026)

As of 2026, expropriation remains a central issue in India's investment treaty regime. India has faced around 30 known investor-State arbitration claims under its BITs, including landmark disputes brought by White Industries, Vodafone, Cairn Energy, Devas, and Deutsche Telekom. More recent claims, such as Vedanta Resources Limited v. Republic of India (II) (2024) and Indo Gold Pty Limited v. Republic of India (2024), demonstrate that investor challenges against governmental measures continue despite India's treaty reforms.¹⁷ These disputes have significantly shaped India's approach to expropriation,

¹⁴ Ras Al Khaimah Investment Authority v. Republic of India [2025] EWHC 1553 (Comm) (England and Wales High Court (Commercial Court), June 25, 2025), available at: <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2025/1553>.

¹⁵ Prabhaskar Ranjan & Pushkar Anand, India-UAE Bilateral Investment Treaty 2024: Breaking New Ground or Following Old Paths?, Columbia Center on Sustainable Investment Arbitration Lab (ARIA), available at: <https://aria.law.columbia.edu/india-uae-bilateral-investment-treaty-2024-breaking-new-ground-or-following-old-paths/>.
<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2062692®=48&lang=2>

¹⁶ Aceris Law LLC, Devas v. Antrix: Dutch Enforcement and the Limits of Seat-Based Annulment (July 9, 2025), available at: <https://www.acerislaw.com/devas-v-antrix-dutch-enforcement-and-the-limits-of-seat-based-annulment/>.

¹⁷ United Nations Conference on Trade and Development (UNCTAD), Investment Dispute Settlement Navigator: India, available at: <https://investmentpolicy.unctad.org/investment-dispute-settlement/country/96/india>

leading to the termination of many older BITs and the adoption of a more restrictive treaty framework under the 2016 Model BIT and subsequent agreements, which continue to protect against direct and indirect expropriation while granting greater regulatory space to the State.

Conclusion

Expropriation continues to be one of the most important issues in India's investment treaties because it determines when a government's actions go beyond regulation and effectively deprive an investor of the value of its investment. In practice, most disputes do not involve the government physically taking property. Instead, they arise when licences are cancelled, approvals are withdrawn, or contracts are terminated, making it difficult or impossible for an investment to operate. This is why disputes involving Devas, Deutsche Telekom, and the Andhra Pradesh bauxite mining project became important examples of indirect expropriation claims.

India's newer investment treaties continue to protect investors against expropriation, but they also give the government greater freedom to regulate in the public interest. Recent developments, including the revival of the Ras Al Khaimah Investment Authority v. India dispute and the continuing litigation arising from the Devas-Antrix dispute, show that expropriation remains a live issue, particularly in sectors such as mining, telecom, and natural resources. As India expands its new generation of BITs, the key challenge will be finding the right balance between protecting foreign investments and allowing the government to pursue legitimate public policy objectives without facing compensation claims.