

"Realigning Perspectives: India's Policy Shift and its Impact on Cross-Border Insolvency"

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Introduction

- India's foreign policy has been a dynamic and evolving aspect of its national strategy since independence in 1947.
- There has been a remarkable shift due changing geopolitical realities, economic aspirations, and its quest for a significant role in global affairs.
- This paper sheds light on the landscape of India's experience so far with international negotiations in past years especially in context of UNCITRAL Laws in general and cross border dispute mechanism in specific.
- I wish to illustrate the shift in India's approach to towards protectionism and its impact on investment realties.

Works that inspired the thinking

- *Vandavelde* has argued that a state's foreign investment policy is generally an element of its larger economic policy.
- According to the *New Haven School of international law*, the notion international law-making comprises a 'process of communication' that comprises three different streams: **'policy content', 'authority signal', and 'control intention'**.
- *John Gerad Ruggie's* idea of “Embedded Liberalism”.
- 'The Inescapable Trilemma of the World Economy'. *D. Rodrik (2011)*

Historical Context of Economic Reforms in India

- India's economic policy have moved in three different phases i.e. 1947-1980, 1980-2014 and 2014 onwards
- It has passed through the phase of 'Refusal' to 'Adoption and global integration' and finally turning towards 'Protectionism'.
- These changes in policy have impacted the flow of FDI, investor confidence and in turn India's GDP.
- Identifying patterns and trends in these economic policymaking
- Highlighting milestones and turning points in India's economic history

1951-1961: The Foundation Years

- The Nehruvian regime seeking growth based on socialistic model.
- Economic policies characterized by the principle of non-alignment and anti-colonialism.
- Panchsheel Agreement, the corner stone of India's foreign policy.
- Import substitution, investment regulations and reduced foreign dependency.
- Mixed economic approach significantly focusing on self reliance.

Impact Assessment:

(a) modest economic growth (b) low FDI inflow (c) Emergence as South Asian Leader

1961-1980: Refusals and Reluctance

- conscious shift towards protectionism based on inward-looking economic policies.
- Nationalization spree
- License Raj and restriction on FDI
- Reluctance to join regional and sub regional groups
- Policy initiative guided by ‘formalist dualism’
- Seeking new order by engaging in CERDS
- Reservation on ICID but positive approach to bi-literalism

Impact Assessment:

(a) low economic growth (b) low FDI inflow (c) control and protection

1991-2014: Economic Liberalization and Global Integration

- Dawn of new beginning focused 'on removing impediments to markets'
- Liberalization, policy reforms and open access
- Active engagement with multilateral and global institutions
- Re-integration and bridge building with Western economies
- Look east policy and signing of BITs/FTAs.

Impact Assessment:

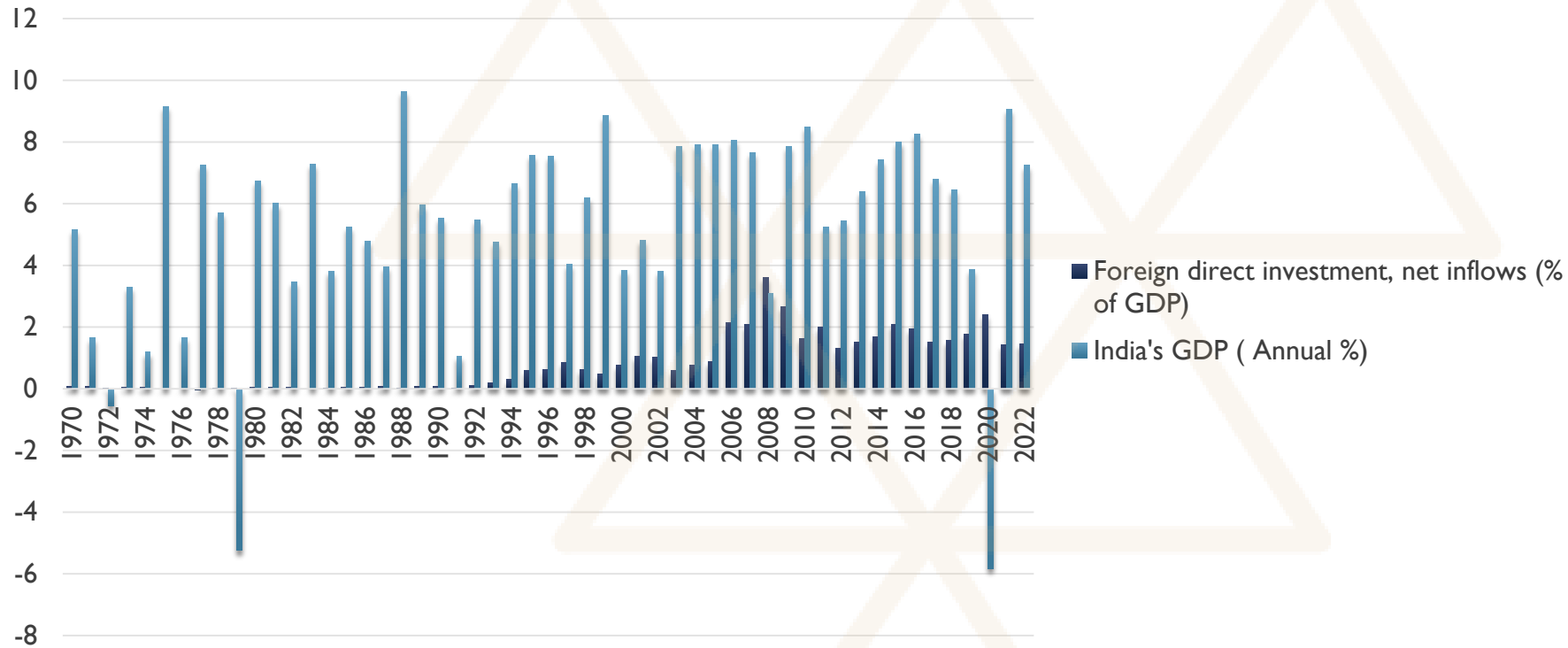
(a) stable economic growth (b) increased FDI inflow (c) economic and regulatory reforms

2014-2023: A Turn Towards Protectionism

- India's success story and growing importance in International Setting
- Decade of reforms and achievements
- A shift in approach towards becoming the leader of global south
- Vaccine diplomacy and realignment of ties
- Decade of negotiations and re-negotiations
- Focused domestic reforms coupled with strong protectionism

Mapping impact on FDI and GDP (1970-2022)

India's GDP and net FDI flow (Annual %)



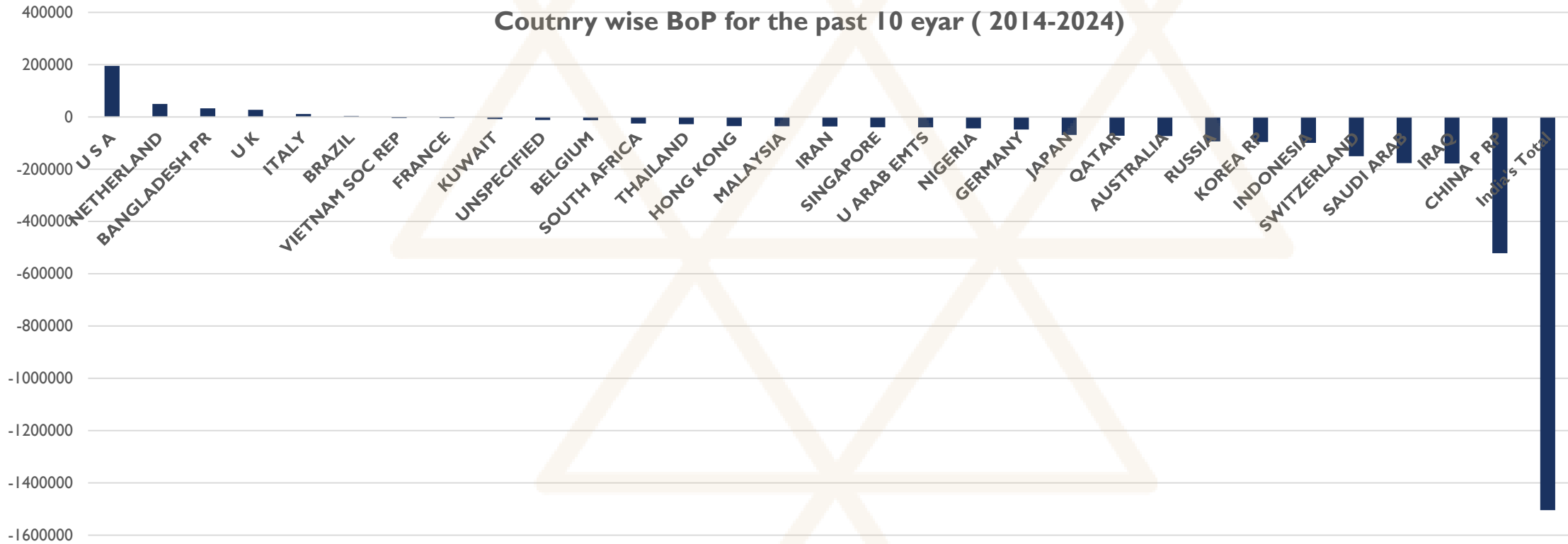
Sources: World Bank Data base

India is now a 'rule maker' or a rule taker'? Confusion!

Positive policy reforms	Protectionist measures
Regulatory reforms on market, banking and corporations	Stance on retrospective taxation
Implementation of GST	Loss of cases before ISDS and unilateral withdrawal from BITs and FTA
A new order of insolvency regime	inward-looking stance on Model BIT of 2016
Ever evolving Economic and Foreign Policy	Withdrawal from Regional Comprehensive Economic Partnership (RCEP).
A positive approach towards Make in India and PLI	Strong objection on WTO rounds and GATS
Tax reduction, Incentivization and promotion	Exclusion of experts and academia in reform committees
FDI and FII norms relaxation	No response on UNCITAL Model Law

A closer look at India's partners

Country wise BoP for the past 10 year (2014-2024)



India's experience so far in CBI : Successes and Setbacks

- India has displayed remarkable improvement of 56 ranks from 108 rank to 52 rank in 2019 improved ranking consecutive third time under Ease of Doing Business Report.
- paved the way for responsible borrowing and a resolution friendly ecosystem.
- India had set up ILC to make recommendations on adoption of the UNCITRAL Model Law on Cross Border Insolvency, 1997.
- **Setbacks** includes criticism of court's approach, uncertainty over resolution, growing speculation and guess work on India's stance.

Changing geopolitical dynamics and future negotiations

- Realignment of logistic and supply change post Covid-19
- Growing protectionism in developed countries
- Russia- Ukraine war (growing oil crisis)
- Inflation in EU and west
- China's growing presence through BRI
- Realignment of BRICS plus
- Red sea crisis on logistic cost
- A year of election ahead

Aspirations of New India

- India's ties with ASEAN countries and "Act East Policy".
- India's efforts to conduct international trade in rupee.
- Free trade agreements with EU , UK and west.
- aims to increase India's overall exports to \$2 trillion by 2030, with equal contributions from the merchandise and services sectors.
- Placing Indian economy in top three.
- Commitment to minimum governance and regulations.

Is strong reciprocity a pragmatic approach ?

- making a choice between bilateral or multilateral resolution.
- What experience suggests?
- In the deglobalizing world and growing protection should India remain nation centric?
- Can India escape trilemma?

Closing thoughts

- India must strive to build a reputation for policy stability and predictability.
- Aligning policies and reforms with targeted objectives.
- Concerted efforts in capacity building.
- Institutional re-ordering and infrastructural development.



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