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A CALL FOR A CHANGE OF FOCUS IN INDIA'S FDI POLICIES: LESSONS FROM THE RECENT ECONOMIC CRISIS IN SRI LANKA

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ABSTRACT

Increasing neo-liberalization of national economies during the last three decades has established global interdependency as the norm of national economic success, compelling the countries to believe in foreign capital, foreign know-how and foreign markets when driving their nations forward. However, the recent economic crises, similar to what was observed in Sri Lanka, questioned the outward focus economic policies which led to the recession of almost all the national currencies against a ramping Dollar that was predicted to reach its highest growth since 1997 in 2022. Citing these developments, critics argue that the foreign direct investments (FDIs) have failed to build sustainable and resilient national economies and urge individual countries to look inward in their economic policymaking. For instance, most of the Asian countries like India and Sri Lanka who are blessed with a rich sphere of traditional knowledge and practices tend to overlook their centrality in economic development, thereby threatening the small-scale entrepreneurs and local innovators who rely on them. As critics highlight, the Indian government is flagging in supporting litigations in areas like bio-piracy as it would negatively impact the FDIs which have exploited Indians' collective intellectual property rights. Existing research concerning FDIs has primarily focused on the importance of strengthening intellectual property rights to attract foreign investors, creating a lacuna in understanding its role in safeguarding small scale businesses, as well as in controlling the adverse impacts of FDIs. In light of that, the present study has reviewed India's recent bilateral and multilateral investment treaties and policies to understand the direction of their approach towards FDIs. To that end, this study has reviewed India's Consolidated FDI Policy (2020), and recent bilateral and partnership agreements during the last decade, while drawing from recent case studies, reports and news bulletins that concern the above. It also utilised Sri Lanka's economic crisis as a case study to realise the adverse impacts of heavily relying on FDIs which makes it challenging to nurture a home-grown economic culture. Through its data analysis, the present study observes that India favours a classical approach to foreign investments which supports an outward focused FDI policy, thereby fostering an unhealthy economic environment that threatens the survival of small and traditional entrepreneurs, while opening doors for the exploitation of its traditional knowledge and practices in the hands of the foreign investors. Therefore, this study discusses how the incorporation of intellectual property rights like patents, traditional knowledge and unfair competition into the regime of FDIs may

help India, whose reliance on foreign investments has grown exponentially over the last two decades, to realise and promote a more self-reliant and home-grown economic policy. Furthermore, it also elaborates how the Sri Lankan economic crisis becomes exemplary in envisioning a sustainable economy for not only its big brother, India, but also for other countries in the South Asian region. Finally, it examines how such developments in the Indian economy become central to redefine the economic future of South Asia, considering India's overarching influence on the region and on the individual neighbouring countries who are also developing nations with fast growing economies.

Keywords: Foreign direct investments, intellectual property laws, Sri Lankan economic crisis, India

INTRODUCTION AND BACKGROUND

"India is making headlines—in both space science and economy—but to soar to its aspired heights, it must drive domestic demand through its Micro, Small and Medium Enterprises amidst global uncertainties", writes Dr. Rumki Majumdar, explaining the emerging trends in India's economy[1]. Predicted to grow as the world's third largest economy by 2047, surpassing the economies of countries like Japan and Germany, Indian economy remains a key subject of interest for not only the countries of South Asian region, but for the global community at large[2]. Therefore, studies continue to emerge, not only in the disciplines of economy, but in the fields like international relationships, legal studies and social policy, which approach this subject through different disciplinary and methodological perspectives.

Emerging in this context, the present study is an attempt to revisit India's foreign direct investment (FDI) policies through a legal perspective, engaging in a conversation about their role in promoting a sustainable economy for India. Prior to exploring the aims of such a discussion, it becomes important to gain an insight into the concept of FDI and the role it plays in developing regions like South Asia. Throughout the history, FDI has been recognised as "an integral part of an open and effective international economic system and a major catalyst to development"[3]. Defined as "cross border investment made by a resident in one economy in an enterprise in another economy", FDI today has become a key means through which foreign capital and knowhow flow through national borders[4]. For instance, Laissez-faire economic policies which characterized the neo-liberal economic developments that took place in the late 1980s, "encouraged the flow of capital across geographical boarders in the form of FDIs", as a boon

[1] *Rumki Majumdar, "India economic outlook, October 2023" (2023) https://www2.deloitte.com/us/en/insights*/economy/asia-pacific/india-economic-outlook.html

[2] *Arvind Panagariya, "Self-sufficiency held India back: Some useful economic history lessons on how we manage to handicap ourselves" (2021)*

https://timesofindia.indiatimes.com/blogs/toi-edit-page/self-sufficiency-held-india-back-some-useful-economic-history-lessons-on-how-we-manage-to-handicap-ourselves/.

[3] *Organization for Economic Co-operation and Development, "Foreign Direct Investment for Development: Maximising benefits, minimizing costs" (2002).*

[4] *B. Sudha, "Foreign Direct Investment", International Journal of Scientific Research 2(4):175-177" (2013)*

for economic growth[5]. Therefore, there has emerged a network of economic relationships that cut across national geographic boundaries upon which the countries are increasingly leveraging their economic policies.

In this study, the concept of FDI is elaborated through an inter-disciplinary perspective that draws from the fields of international investment and legal studies. As classical theorists of international investment law argue, FDIs were crucial for the developing economies, which is made evident by the "rapid increase of such investments in the developing countries from 1990 to 2010"[6]. In contrast, dependent theorists of international investment sphere contend that, such reliance on FDIs will not bring a meaningful economic development as it hinders the nurturing of a sustainable and resilient home-grown economy. This dilemma exists in the legal studies as well as in the economic policy development across the world. Responding to such contentions, host countries or the recipients of FDIs often attempt to take a middle path approach in responding to FDIs. Therefore, today a "stick and carrot" approach is favoured by the host countries where they hold out incentives to attract foreign investors while regulating their adverse impacts[7]. For instance, taking measures to provide guarantees against expropriation, favourable dispute settlement methods, and tax and non-tax incentives are used as key strategies of regulating FDIs by host countries. Moreover, establishing screening agencies, increasing and strengthening the requirements related to the protection of host environment and recognising the role of human rights in economic development have also helped host countries to resist adverse impacts of FDIs.

This theoretical development of the idea of FDI parallels its historical evolution. Since time immemorial people have gone abroad to invest and to engage in business. As the American Trading International points out, the history of international trade can be traced back to the advent of the Silk Road during the Han Dynasty (206 BC–220 AD)[8]. It goes onto argue that,

"The Silk Road was the first major trade route that connected the East and the West. It was an important trade route for over 2,000 years, connecting Asia with Europe via the Middle East. This allowed Chinese people to travel to central Asia and start businesses there. The Silk Road was also known as "the road of silk" because it transported silk from China to Rome"[9].

On the other hand, the colonial era saw the European traders travelling to Asia, Africa and Latin America to trade with local communities. Promoted by the massive economic growth that was achieved with the industrial revolution, these European nations required new markets to sell their products, in which case the newly discovered lands provided a much receptive audience. Viewed in this light, pre-colonial and colonial eras have shown considerable acceptance of foreign

[5] *United Nations, "Investor-State Dispute settlement and Impact on investment rule making", United Nations Publication (2007)*

[6] *J.H. Dunning, and Lundan S.M., Multinational Enterprises and the Global Economy (2nd edn, Edward Elgar Publishing Limited 2008)*

[7] *M. Sornarajah, The Internatıonal Law On Foreıgn Investment (5th edn, Cambridge University Press, 2020)*

[8] *American Trading International, "A Brief History of International Trade and Its Importance Today" (2022) https://www.american-trading.com/news/history-of-international-trade.*

[9] *Ibid*

trade which indeed contributed, not only to the economic growth, but also to socio-cultural and political advancements of those nations.

Following their independence, most of the South Asian countries adopted a fairly restrictive policy on foreign influence on their economies, which discouraged foreign investors from approaching these nations. Partly, this is because of their search for a national economy which relied on their local economic strengths, as a strategy of cutting themselves from the colonial ties. However, a change of policy directives could be observed towards the last decades of the twentieth century. These post-independent countries started to open their economies to global flows, making their FDI policy environments conducive to foreign investors. Such an approach contrasts with their initial stance where "FDI was allowed in a restrictive manner and on mutually advantageous terms by these countries, with the majority stake held by domestic firms"[10]. Thus, South Asian countries "tried to encourage FDI more aggressively in the nineties, by making changes in their macroeconomic policies along with trade and FDI policies"[11]. One immediate outcome of this change of policy was an excessive reliance on foreign income, resulted in countries failing to nurture a home grown economy which increasingly made them dependent on the home countries' economies and policies.

A considerable slowdown in the aggressive promotion of FDI policies started to emerge in these nations in the last decade of the 21st century, a change mostly prompted by a realisation of the fragility of their individual economies. Commenting on the early years of the last decade (2010-2019), Trade and Development Board of the United Nations makes the following observation.

"International trade has been showing signs of unusual and persistent weakness in the last few years"[12].

A close examination of the above remark reveals that, the change of attitude shown by the developing countries, especially by the South Asian countries, has had an acute influence on the international investments, as they hold the largest markets for international trade. This shift towards self-reliance has been intensified by the recent COVID-19 pandemic, Russo-Ukrainian war and the changes in geopolitical scenario in Europe and Asia, especially due to the aggressive approach adopted by China. Moreover, regional and strategic multilateralism is gaining considerable prominence in the international investment arena where new economic giants of the Asian region have started to form alliances. For instance, BRICS, QUAD nations have forged new trade and development routes, leading to the blooming of trade relationships.

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[10] *Pravakar Sahoo, "Foreign Direct Investment in South Asia: Policy, Trends, Impact and Determinants" (2006) https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwj-vMDfnfL8AhVqR2wGHZf_AcgQFnoECA0QAQ&url=https%3A%2F%2Fwww.adb.org%2Fsites%2Fdefault%2Ffiles%2Fpublication%2F156693%2Fadbi-dp56.pdf&usg=AOvVaw12UGO_COniFTmqqIODhTP0.*

[11] *Ibid*

[12] *United Nations' Trade and Development Board, "Evolution of the international trading system and its trends from a development perspective" (2017) https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiR3trY2-SCAxXRslYBHUF2CE4QFnoECA0QAQ&url=https%3A%2F%2Functad.org%2Fsystem%2Ffiles%2Fofficial-document%2Ftdb64d5_en.pdf&usg=AOvVaw0D39tUt5NYoq4JN3alwRjE&opi=89978449.*

What is evident from the above discussion is that international investment policies of the developing countries, especially in South Asia have shown less consistency over the last few decades. They have oscillated between outright rejections to classical acceptance of international investments where most of the countries are today striving to find a middle ground that helps them evade extreme stances. It is interesting to note here that, such attempts are also negotiated by the national strengths and interests of these countries which in the long run may have regional and global implications. Indian economy is no exception to this, which will be discussed in detail in the coming sections.

Justification of the Study

As India holds one of the world's largest economies, which is predicted to rank third in the global economy, its role as an economic power hub is becoming increasingly central. On one hand, how India would handle its economy in the coming years becomes largely significant for these predictions to come true. For example, FDIs play an important role in the Indian economy today. Concerns have emerged whether India has an overreliance on the foreign investors which makes them vulnerable in the face of sudden changes that may plague the global economy. Similarly, it can be detrimental to nurture a strong home economy which is essential for a sustainable economic growth. On the other hand, India remains the most influential country in the South Asian region. Thus, its economic stability, along with its international behaviour become central to the future of other South Asian countries. Without a doubt, critics identify India as the trend-setter in the region which proves its power and influence.

Thus, emerging in this context, it becomes important to understand the role India's FDI policies can play in its economic future through a legal perspective. Focusing on this aim, the present study first intends to understand how India's FDI policies have evolved over time, understanding their contribution to build Indian economy. Furthermore, it also aims to discuss what legal reformations can help India to strengthen their FDI situation and to develop a sustainable economic future. To achieve this objective, the study revisits India's intellectual property law regime which can provide a robust framework to realise such an economy. Finally, the study engages in a conversation on how these changing policies in India can impact the region and its international relationships with the other countries. Therefore, the present study aims to answer the following research questions in its discussion.

- How does India's stance on foreign direct investments have evolved over time?
- How do India's legal and policy frameworks, especially its intellectual property law regime, can be strengthened to envision a sustainable economic future for India?
- How can India's economic future impact the economies of its neighbouring countries?

When answering these research questions, this study uses Sri Lanka as a prototypical country where the mismanagement of economy over a prolonged period of time led to a massive financial collapse in 2022. Even though Sri Lanka's economy is not large or diversified as the Indian economy, it provides a sample scenario to understand the adverse impact of heavily relying on foreign capital and knowhow when managing a nation's economy. Examining the situation in Sri Lanka concurrently to the Indian policy frameworks therefore will enrich the discussion and the conclusions drawn from this study. Thus, this study aims to provide a brief understanding to the Sri Lankan economic crisis before engaging with its findings.

Recent economic crisis of Sri Lanka as a case study

In 2022, Sri Lanka faced the worst economic crisis that it had ever encountered during its history. The crisis burst into surface when the Sri Lankan government decided to float the Dollar rate, allowing its value to be decided by global market forces. Thus the value of the Sri Lankan Rupee recorded a historical depreciation, resulting in extra-ordinary hikes in all the essential goods and services. Critics point out that the years of mismanaging the economy and corruption along with the global phenomena like Covid-19 and the Ukraine and Russia war might have contributed to the economic crisis in Sri Lanka. However, what stood out among these reasons was the absence of a self-reliant economic system which could have soften the impact the economic crisis had on Sri Lankans. Ever since Sri Lanka opened its economic doors to foreign investors in 1977, there has been less focus and reliance on the local economy of the country, resulting in an economic structure that was mostly rooted in foreign investments. A key outcome of this heavy reliance on foreign capital was a massive external debt that even surpassed the country's foreign reserves. As Devapriya (2022) points out,

"Fundamentally, the crisis has to do with the island's external debt, which stands at more than USD 55 billion. Its debt-to-GDP ratio, which stood at 87 percent in 2019, has ballooned to almost 120 percent today. Sri Lanka has debt obliga-tions of USD 6 billion in 2022 alone, against a paltry USD 1.9 billion in foreign reserves, of which USD 1.5 billion is from China in the form of a swap arrange-ment, which cannot be used for dollar payments"[13]. Coupled with that was the political corruption and the economic mismanagement that aggravated the situation. The influence of corruption has been palpable in the economic development of the country, finally manifesting in the long fuel cues and the extended power cuts that the country experienced[14]. Thus, the quality and the economic contribution these foreign investments made to the Sri Lankan economy was easily outweighed, in most cases, by their negative impacts.

Viewed in this light, dependence on foreign capital, foreign know-how and foreign market created several challenges for Sri Lanka. For example, it has now been well observed that excessive dependence on foreign aid and investment to propel economic growth can create monumental external debt which is often referred to as 'debt trap'. In addition to that, those countries will also have to surrender some sovereign rights in different sectors and welcome international interference and influence in domestic policy-making as has been observed in the case of Sri Lanka. Thus, the need of striking a balance between international cooperation and establishing self-reliance is now being advocated and accepted by nations across the globe.

METHODOLOGY

The study has used literature reviewing as its main research method. In its preliminary literature search, the

[13] *Uditha Devapriya, "The Crisis in Sri Lanka: Economic and Political Dimensions" (2022) https://www.airuniversity.af.edu/JIPA/Display/Article/3125910/the-crisis-in-sri-lanka-economic-and-political-dimensions/.*

[14] *Hovan George, Shaji George and T Baskar, "Sri Lanka's Economic Crisis: A Brief Overview" (2022) https://www.researchgate.net/publication/361571361_Sri_Lanka%27s_Economic_Crisis_A_Brief_Overview.*

researcher identified that there is a substantial body of literature that focuses on international investment in India and the South Asian region that cuts across various disciplinary boundaries. Focusing on the objectives of this research, the researcher has selected recent policy documents of India that concern FDIs and IP laws such as India's Consolidated FDI Policy (2020), recent bilateral and partnership agreements entered into with countries like United Arab Emirates, Singapore, and Japan, relevant news articles and economic reports as its primary texts of analysis.

Literature reviewing has been selected as the main research method, given that it allows the researcher to bridge the "two broad traditions" of "legal scholarship", I.E. black-letter law and law in context[15]. Considered as the most traditional method of legal research, black letter analysis provides an important tool of inquiry to approach statutes and policy documents, and to identify the "internal self-sustaining set of principles" that constitute such documents[16]. On the other hand, law in context engages with the problems in the society, where the law, and other non-law solutions can be used to solve such problems[17]. In this study, the research draws from both of these doctrinal positions as it engages with an issue that cuts across disciplines like law, economics and international relationship, while using legal analysis to identify robust steps and frameworks to address it. In such an effort, engaging with different literature produced by various disciplines can provide a more nuanced and multifaceted outlook to the study. Therefore, the researcher believes that literature reviewing as a research method provides the space for such an endeavour. The researcher has also studied the recent economic crisis of Sri Lanka as a case study, and the lessons learnt from it which becomes crucial in rethinking the economic policies of India and the South Asian region. As explained before, Sri Lanka provides a classic example to the adverse outcomes of being heavily reliant on foreign investments. The economic crisis it experienced, therefore can be used as a point to renegotiate the economic and legal policies of other regional countries.

The data gathered from the above research methods has been analysed, primarily through a thematic analysis. While focusing on the objectives of the study, the researcher attempted to identify the major ideas/concerns that would emerge from the collected data. These themes underline the following discussion. The researcher also identified some limitations that are related to the study. On one hand, this study aims to approach main subject, FDI policies in India, through a legal perspective. It engages in a discussion of how Indian legal system can be strengthened to mitigate the adverse impact of FDI, while discussing the implications of such legal reformations that could infiltrate into the areas such as economics and international relationships. However, the researcher acknowledges the possibility of approaching the same subject through different socio-cultural perspectives which may yield different conclusions. On the other hand, the selected research that has been incorporated into the study have been chosen to match the objectives of the study.

RESULTS AND DISCUSSION

This section aims to answer the research questions that were raised before, by drawing on its data analysis. As its initial

[15] *Mike McConville and Wing Hong Chui, Research Methods for Law. (2nd edition, Edinburgh University Press, UK, 2017)*

[16] *Ibid*

[17] *Ibid*

step, the study aims to understand how India's current stance on FDI has evolved over time.

Evolution of the FDI policy in India

Earliest references to foreign investments in India date back to the colonial era, similar to most of the other Asian countries. Commenting on these early stages, Aditya Gautam and Indu Gautam point out,

"The historical background of FDI in India can be traced back with the establishment of East India Company of Britain. British capital came to India during the colonial era of Britain in India"[18].

Thus, the British Empire has been instrumental in exposing India to foreign investments, which, following the independence has had a tremendous impact in the way Indian economy flourished. The same could be said about the Sri Lankan economy, where 1833 Colebrooke-Cameron reformations had a massive impact in opening then Ceylon to foreign investors. Thus, it can be contended that the British presence during the colonial period has had a similar impact in the evolution of economies in India and Sri Lanka. A close examination of the India's stance on foreign investment during the post-independent era shows that it has not been consistent over the years. Since 1947, Indian government's attitude towards FDI has been influenced by the extent to which it was prepared to accept the interventions of foreign entities into its economic affairs. For instance, India has been receptive to foreign investment during the early years following its independence. One key example for this receptive attitude is India's willingness to accept investments from different foreign markets. As Aditya Gautam and Indu Gautam point out,

"After Second World War, Japanese companies entered Indian market and enhanced their trade with India, yet U.K. remained the most dominant investor in India"[19].

Statistics suggest that the total amount of FDI in the mid-1948 reached R.s 2,560 million in India[20]. Moreover, "foreign exchange crisis of 1957 to 1958 led to a further liberalization of the government's attitude towards foreign investments, creating a more conducive environment for FDI in India"[21]. However, a sizeable number of MNCs were resource-seekers engaged in the raw materials and extractive industries, because of the abundance of cheap available resources"[22]. However, such investments set out a strong foundation for foreign investments in India where foreign capital

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[18] *Aditya Gautam and Indu Gautam, "FDI in India: Past, present and future" (2014) https://www.researchgate.net/publication/308522589_FDI_in_India_Past_Present_and_Future.*

[19] *Ibid*

[20] *Arben Sahiti, Muhamet Aliu and Arbana Sahiti, "Review on Policy Developments of FDI in India" (2017) https://www.researchgate.net/publication/320585346_Review_on_Policy_Developments_of_FDI_in_India.*

[21] *Kumar, N., "Liberalisation, FDI flows and Economic Development: An Indian Experience in the 1990s" (2003) https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiNgaiIv_P8AhW4UGwGHVlaCm0QFnoECBAQAQ&url=https%3A%2F%2Fwww.researchgate.net%2Fpublication%2F332588178_FDI_in_India_and_Pakistan_Potential_Sectors_for_Bilateral_Investment&usg=AOvVaw1ElJB0QQAl8LUyjf5QGrdu*

[22] *Arben Sahiti, Muhamet Aliu and Arbana Sahiti, "Review on Policy Developments of FDI in India" (2017) https://www.researchgate.net/publication/320585346_Review_on_Policy_Developments_of_FDI_in_India*

and knowhow became crucial for the economic prosperity of the country. In contrast, the government adopted a more restrictive attitude towards FDI in the late 1960s as it aimed to develop the local industries in the country. For example, the year of 1973 saw the new Foreign Exchange Regulation Act (FERA) coming into force, requiring all foreign companies operating in India to register under Indian corporate legislation with an equity of up to 40 percent[23].

However, a change of attitudes towards FDIs could be observed in the decade of 1980. A case in point is the industrial policy resolutions which characterise the economic sphere of India during 1980s, reflecting how the government's attitude towards FDI was made more liberal over the years. Thus, through the new economic policy and the new industrial policy of 1991, a series of policy measures were announced to lift the restrictions on foreign investments, radically changing the FDI environment in the country. As a result, "India today has one of the most attractive FDI policies in the South Asian region" including guarantees against expropriation, guarantees relating to dispute settlement and tax and non-tax incentives to foreign investors[24]. Commenting on this period, The Organisation for Economic Co-operation and Development of the United Nations points out, "India has made tremendous progress in building a policy environment to encourage investment. As a result, the country's economy is growing more rapidly and FDI inflows have accelerated impressively"[25].

Despite such policy regulations, India today shows an increasing tendency to look inward in its economic policy making. Primarily, these inward focused economic policies are driven by its growing recognition of the importance of nurturing a self-reliant economy while reducing its dependency on external forces. India's journey towards a 'strategic economic autonomy' started to garner attention with the launch of 'Make in India' initiative in 2014. Aatma Nirbhar Bharat Abhiyan which was launched in May 2020 can be considered as a watershed movement in India's journey towards self-reliance in its economic policymaking. With its intentions of promoting Indian products, protecting local enterprises and traditional businesses while standardizing Indian products in the global market, this movement has substantially changed India's economic outlook and its attitudes on FDIs.

Evolution of FDI in Sri Lanka shows some similarities to the history of FDI in India. Earliest decades following independence in Sri Lanka were not known for high inflow of FDIs to the country. However, open economic policies of 1977 curved the way for foreign investors to invest in Sri Lankan lands. Establishing free economic zones and introducing policies that are conducive for the foreign investors made it attractive for those investors to start businesses in Sri Lanka. However, as Palitha Konara points out, the quality of

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[23] *Pravakar Sahoo, "Foreign Direct Investment in South Asia: Policy, Trends, Impact and Determinants" (2006) https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwj-vMDfnfL8AhVqR2wGHZf_AcgQFnoECA0QAQ&url=https%3A%2F%2Fwww.adb.org%2Fsites%2Fdefault%2Ffiles%2Fpublication%2F156693%2Fadbi-dp56.pdf&usg=AOvVaw12UGO_COniFTmqqIODhTP0.*

[24] *Ibid*

[25] *The Organisation for Economic Co-operation and Development, "Investment Policy Reviews: India" (2019) https://www.oecd.org/investment/countryreviews.htm.*

FDI that Sri Lanka could attract has always been a question of contention. He argues that[26],

"The goal of the national FDI policies are twofold. First a country should attract the right type of FDI. Second, the country should devise appropriate policies to extract benefits from it. It appears that Sri Lanka has performed poorly in both of these aspects, and this has in turn, deprived the country the much needed skills and technologies, and decelerated the development of the country"[27].

Thus, the impact of these investments on the Sri Lankan economy is a "lower level of industrialisation which is narrowly concentrated in a few sectors with little participation in technical intensive sectors"[28]. Critics contend that the end of the civil war in Sri Lanka and the subsequent focus on enhancing foreign investments in the country led to some expectations of attracting more profitable foreign investments to Sri Lanka, which in reality remains a goal that could not be fully achieved due to various reasons including corruption and poor management of international relationships[29]. Thus, what FDI resulted for Sri Lanka is an economy that was reliant on less profitable foreign investments which in turn crippled the country's economy. On the other hand, the relatively less focus that it resulted in improving local industries aggravated the situation, leading to the economic crisis that was witnessed last year. Compared to India, Sri Lanka has not been successful in reaping much benefits from their FDIs. Sri Lankan economy is struggling today to manage its internal and external debts with a paltry gross income that can hardly match up to the country's expenses. Most of the critics cite the absence of a strong home-grown economy as a key reason for this crisis. On the other hand, a close examination of the India's most recent bilateral treaties and partnership agreements that were reviewed for this study show a tendency of adhering to the classical theory of FDI, thereby opening doors wide enough to welcome FDIs. This stands a barrier to India's efforts of promoting a more self-reliant economy which has been the recent trend in the Indian economy. A similar picture is observed with regard to the India's Consolidated FDI Policy (2020), where India has provided many incentives including guarantees against expropriation, favourable dispute settlement methods, and tax and non-tax incentives. Nevertheless, to reach India's goal of self-reliance it is important to divert the current stream of laws and policies towards a middle path approach. To that end, it becomes important to realize the significant role the IP laws could play in envisioning the self-reliant, home-grown economic future of India. Therefore, it becomes important to understand the current legal framework of India in respect of IP laws, which will be the focus of the next section.

Strengthening India's Journey towards Economic Self-Reliance through Legal Reformations

What is evident from the above discussion is that India today shows a clear

[26] *Palitha Senarath Konara, "Foreign Direct Investment in Sri Lanka: Determinants and Impact" (2013) https://etheses.whiterose.ac.uk/4788/1/FDI%20in%20Sri%20Lanka.pdf.*

[27] *Ibid*

[28] *Ibid*

[29] *Economic and Social Commission for Asia and the Pacific, "Sri Lanka Changes and Developments of Foreign Direct Investment Policy 2017/2018" (2019) https://www.unescap.org/sites/default/files/Investment%20Policy%20%20Sri%20Lanka%20Recent%20Changes%20%282017%2C%202018%29.pdf.*

tendency to find a balance between the reliance on foreign investments and the promotion of national economies. However, most of its policy frameworks are still geared at giving more recognition to the foreign investors and the rights they would possess in investing in India. This is where re-assessing India's legal frameworks becomes crucial. As the researcher observes, re-orienting the intellectual property laws stands an important step in such efforts. As observed in the aftermath of the Sri Lankan economic crisis, the lack of a substantial framework on protecting intellectual rights has been cited by critics as a fundamental reason that hindered the growth of a home economy in the country. Not only it opens doors to foreign exploitation of natural riches of a country, but it also discourages local investors and innovators from engaging in new business ventures.

Viewed in this light, understanding India's intellectual property (IP) law regime becomes important for this study. Furthermore, it is also important to examine how the strengthening of such laws can assist, especially in the development of new FDI agreements and policies, wherein they protect a solid protection to realise a more balanced economy for India.

The basis for India's intellectual property (IP) laws mostly emerge from its international obligations. For instance, India has been a World Trade Organisation (WTO) member since 1995. Thus, in its adherence to the obligations as a member state to WTO, India has incorporated many IP laws to their domestic legal regime. Moreover, it remains as a signatory to a number of international IP agreements like Paris Convention, Berne Convention, Madrid Protocol and the Patent Cooperation Treaty which has further strengthen the country's IP rights protection. For instance, most of the copyright related laws in India are governed by the laws set forth in the Berne Convention to which India a part of. In the meantime, the Patents Act of 1970, 2003 Patent Rules and the 2016 Patent Amendment Rules become the main legal pillars in the laws concerning patents in India. A close study of the Designs Act 2000 and the Designs Rules 2001 help us understand India's design laws whereas its trade mark laws consist of the 1999 Trade Marks Act and the Trade Marks Rules of 2002 and 2017. However, it is important to note that most types of IP rights in India are enjoyable only when they are registered. For instance, individual registrations are required to be made to enjoy legal rights for patents in India. For trademarks, this registration process could either happen through the domestic trade mark system or under the Madrid system. In contrast, there are no registrations that are required for copyright in India but registering copyrights with the copyright authorities is advisable when obtaining legal rights. 'Priority rights' under the Paris Convention can help in the local registration of trademarks, designs and patents by allowing rights previously registered elsewhere to become effective in India, if filed within a time limit.

India's litigation process in respect to IP infringements are twofold, where it provides procedures for both civil and criminal proceedings. Criminal proceedings against infringements would require the infringers to pay fines or face sentences of imprisonments while mediation or negotiation with an infringer also exists as an alternative form of dispute resolution, as provided in the Civil Procedure Codes. However, it is important to note that criminal proceedings do not apply to patent and design infringements in India. What is evident from the above discussion is that India becomes a country which has a strong legal environment to protect IP rights. Since the early stages of India's economic journey, such IP laws however have been always observed as a means of attracting foreign investors as oppose to strategies of protecting and promoting the local entrepreneurs and businesses. Thus, critics point out that IP rights are "usually utilized as cultural straitjackets, designed solely as a sword to protect the de-culturizing acts of foreign investors" which has created a lacuna in its "recognition as a shield against the ravages of de-culturizing foreign investment"[30]. In light of that, this section will focus on the importance of rethinking the role of IP rights in India within its journey for economic self-reliance.

Indian Traditional Knowledge

Traditional Knowledge (TK) is identified as "a valuable yet vulnerable asset to indigenous and local communities who depend on it for their livelihood"[31]. Most of the South Asian countries like India and Sri Lanka are blessed with a rich sphere of traditional knowledge which expands on a broad spectrum of areas ranging from traditional medicinal plants to cultural handcrafts. As proven by recent research, "healthcare needs of more than 70% of the population and livelihood of millions of people in India are dependent on traditional medicine"[32]. In addition to that, critics point out an increasing vulnerability of India's traditional medicine of been exploited in the hands of foreign entities due to the growing attention and interest in the use of traditional medicine in the health care sector. India has been fighting 'bio piracy' to impede foreign companies from taking unfair advantage of its cultural and traditional knowledge and heritage. The grant of a US patent to wound healing properties of turmeric plant, and the Neem patent which was filed by W.R. Grace and the USA Department of Agriculture at the European Patent Office are two such instances which flag the dangers faced by the Indian traditional knowledge. In both these cases the patents were rejected for lack of novelty and/or inventive steps as such knowledge and practices have been utilized by the Indians for centuries. For instance, it was observed that in the case of Neem, the patent was claimed for a method of controlling plant fungi infections through a Neem-based oil formulation which had been used and known in India for millennia. The efforts of Indian authorities like New Delhi Research Foundation for Science, Technology and Ecology led to the revoking of the patents that were granted for these foreign entities, thereby protecting the rights of indigenous communities. However, the increasing commercialization and marketization of traditional spheres of knowledge still remain a major threat to local economies in India, requiring robust legal mechanisms to regulate the influence of foreign investors.

Over the years, India has introduced policy initiatives to limit bio-piracy cases

[30] *Doris E. Long, "The Impact of Foreign Investment on Indigenous Culture: An Intellectual Property Perspective" (1997)*

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjO8a2FnvL8AhVWXmwGHXwQBDkQFnoECBIQAQ&url=https%3A%2F%2Fscholarship.law.unc.edu%2Fcgi%2Fviewcontent.cgi%3Freferer%3D%26httpsredir%3D1%26article%3D1626%26context%3Dncilj&usg=AOvVaw0HUdRGlsav7JPBECQ5D26v.

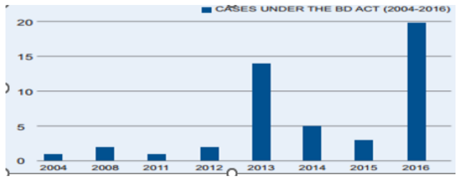
[31] *Council of Science & Industrial Research, "TRADITIONAL KNOWLEDGE DIGITAL LIBRARY (TKDL)" (2022) https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwis1KqgnPL8AhU3TmwGHcO_A1EQFnoECDAQAQ&url=https%3A%2F%2Fwww.csir.res.in%2Fdocuments%2Ftkdl&usg=AOvVaw1Wkc8yYXmNnnwqx5HqlDKC.*

[32] *Ibid*

and protect their cultural and traditional knowledge and practices. For instance, Traditional Knowledge Digital Library (TKDL) can be identified as a pioneering initiative of India to protect its traditional medicinal knowledge and prevent its misappropriation at International Patent Offices. TKDL has gain recognition globally as a "unique effort" and as an "effective deterrent" against bio-piracy[33]. It has also successfully overcome certain language and format barriers existed in India's traditional medicinal knowledge by "systematically and scientifically converting and structuring the available contents of the ancient texts on Indian Systems of Medicines i.e. Ayurveda, Siddha, Unani and Sowa Rigpa as well as Yoga, into five international languages, namely, English, Japanese, French, German and Spanish"[34]. Moreover, India has enacted separate legislature like Biological Diversity Act of 2002 to specifically cater the issues related to bio-piracy.

Despite these successful attempts of the Indian government, critics show that several practical and procedural defects with regards to litigation matters of bio-piracy claims are frequent in India. For instance, they claim that in cases like Basmati rice patent, the Agricultural and Processed Food Products Export Development Authority (APEDA) had to spend a considerable sum of money towards legal fee only for getting few claims of Basmati rice patent revoked. Furthermore, they express concerns in relation to the sharp rise of cases filed under the Biodiversity Act. Special attention has been levelled at cases of 'bio piracy' involving a foreign national or a company registered in India but with foreign shareholding where the Government of India has claimed that they "does not want to appear unduly strict on this matter, as the apprehension is that it will be a disincentive to foreign investors"[35].

The following chart summarises the cases that were filed under the Biological Diversity Act of India from 2004 to 2016.



Cases filed under Biological Diversity Act from 2004 to 2016

As made evident in the above discussion, the legal contentions in the field of bio-piracy have resulted in procedural issues that hinder the process of litigation relating to cases on the exploitation of Indian traditional knowledge, despite the substantial efforts that were taken by various governmental bodies to protect such knowledge. In the meantime, critics contend that much work needs to be done in changing the way IP laws relating to traditional knowledge are perceived by the government of India: from an incentive for foreign investors to a legal shield that promotes local entrepreneurship. Such an approach will help drive the philosophy of Aatma Nirbhar Bharat Abhiyan forward, helping Indian economy to find the delicate

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[33] *Ibid*
[34] *Ibid*
[35] *Rajiv Shah, "Bio-piracy: Govt of India lenient, doesn't support litigations, as it would affect foreign investment: Study" (2016) https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwittvS6nvL8AhUuTmwGHTtSBrIQFnoECAkQAQ&url=https%3A%2F%2Fwww.counterview.net%2F2016%2F12%2Fgovt-of-india-lenient-towards-bio.html&usg=AOvVaw098fRK9Dhhf9_p1_yn_G1_.*

balance between foreign investors and local entrepreneurs.

Protection of geographical indications in India

Another strong pillar of IP laws that India could lean on to in protecting and promoting their traditional and cultural knowledge is the geographical indications. India is a country which is recognized as "a hive of tradition and skill in all forms of art and craft for millennia"[36]. Thus, it becomes vital to understand the role such traditions and skills would play in generating a self-reliant home grown economy.

Similar to IP laws on traditional knowledge, laws on geographical indications serve as a means of protecting the traditional and cultural knowledge and practices. More specifically, geographical indications could be used to guarantee the origin of a product, which becomes of great importance to limit the unhealthy interventions and exploitations by foreign investors. For instance, geographical indications could act as a sign depicting the specific geographical origin of a certain product which possesses qualities or a reputation that is due to its origin. Following this approach will help protect knowledge and skills that are bound to specific parts of India be properly recognized within the world economy. Critics point out that the scope of protection of geographical indications in India is much wider compared to that of most of the other countries as they also include handicrafts within this protection mechanism. Over the last few years, the Indian government has intensified its efforts to strengthen its IP system with Geographical Indications being a major topic of discussion for both national legislation and international agreements. As of today, India has over 400 geographical indications that are been registered[37]. Experts show that, these IP rights aim to recognise "the quality of local productions such as the Morel mushroom, and the expertise of local artisans such as the craftsmen who produce the Channapatna toys of Bangalore, for example"[38]. Therefore, it becomes clear that IP laws related to geographical indications should be further strengthen as it could be a significant step for "proper recognition of Indian products in international trade which keeps gaining importance in international exchanges such as the last India-EU Trade and Investment Agreements"[39].

Not only do geographical indications assist in creating an international market for local handicrafts of India but it could also be utilized as a means of conserving other industries like the fashion and textile sectors, which are fundamental gears in the Indian economy. It is identified that, geographical indications can play an essential role in protecting certain fibres and textiles traditionally woven in multiple regions of India. In light of the above discussion, it is clear that the integration of IP laws to policy frameworks on FDIs becomes important in envisioning a self-reliant economy for

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[36] *European Union, "Protection of Traditional Expressions and Cultural Knowledge in India" (2022) https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjUrJuinfL8AhW6VmwGHWX9AqgQFnoECA4QAQ&url=https%3A%2F%2Fintellectual-property-helpdesk.ec.europa.eu%2Fnews-events%2Fnews%2Fprotection-traditional-expressions-and-cultural-knowledge-india-2022-09-26_en&usg=AOvVaw3oIFJI925jbqSb0HXb1RXs.*

[37] *Ibid*

[38] *Ibid*

[39] *Ibid*

India. Throughout its economic journey, India has tended to observe IP laws as a way of attracting foreign investors which in turn has helped them establish a strong reputation as a country that is conducive for FDIs. However, the other side of the coin has not been a topic of much discussion, where such laws can become a shield for the local entrepreneurs from the undue influences of the foreign investments. The protection such laws provides will help safeguard the traditional knowledge, cultures and practices in India which indeed is the heart of its local economy. Such an approach is crucial when driving forth the philosophy of Aatma Nirbhar Bharat Abhiyan which aims to promote a self-reliant economy for India. Thus, rethinking IP laws as a means of strengthening the domestic economy when drafting new policy documents and agreements concerning foreign investments may become significant in building an economy that acknowledges the important presence of local investors. Expressed provisions could be adopted in the inter-state trade related treaties and agreements to disseminate and legitimize such an approach. Moreover, it becomes important to encourage the participation of stakeholders and small-scale entrepreneurs in the policy dialogs on FDIs to better understand and cater their necessities. Such background knowledge would be vital in rethinking the existing legal provisions, as well as when drafting future laws. Furthermore, by promoting interdisciplinary research on areas like IP laws and FDIs will help merge different paradigms of research, which will assist in rethinking the present legal framework of IP rights and FDI's in India. Such efforts may create a more equitable playing field for both local and international investors which in turn is essential for a self-reliant economy. On the other hand, removing procedural barriers that have been outlined in the above discussion will not only be beneficial for the local but also for the international investors. Thus, these reformations have the power to drive forward India's efforts to build a self-sufficient economy, reducing its heavy reliance on foreign investments.

Impact of India's FDI Policies on South Asia

As observed before, India today has emerged as the big brother of the South Asian region, claiming a tremendous power to influence the other countries in the region due to its economic and political standing. In the meantime, scientific and technological breakthroughs that it has achieved in the recent past further strengthens this position, empowering India with a renowned status in the region. On one hand, such a position makes India a model country for its region where they may tend to follow its steps in achieving their own progress. On the other hand, the tremendous power it holds leaves India an increasingly influential position when compared to other nations. Thus, a change in India's outlook towards FDIs may also have an influence on international and economic relations it has with the region. Viewed in this light, it can be argued that the changes in Indian economy may also lead its neighbours to rethink their national policies as well.

In the meantime, India been the largest economy of the region, a tendency in the part of India to promote a self-reliant economy in the country may impact how the countries outside the region may interact with South Asia. One contributory factor for this would be the large population that India has, which in turn has provided a healthy market for foreign investors. All the other countries in the region may not be able to provide the consumer power that it offers as a single country to the global economy. Therefore, changes in India's FDI policies may have implications that reach far beyond the region, would therefore set out important considerations for the global market when assessing their economic interests in South Asia.

CONCLUSION AND RECOMMENDATIONS

This research aimed to revisit India's FDI policies through a legal perspective to understand the role they can play in India's economic growth. Considered as one of the fastest growing economies in the world, Indian economy holds much promise not only for its local investors but also for the international investors. Thus, it has been a topic of recent interest to the countries of Global South and Global North alike. In the recent years, India showed an interest in Therefore, it can be concluded that such an approach will help India Respond to the economic imperialism of the global north while improving its economic resilience through an inward focus economic agenda. Not only it will help India to emerge as an example for the South Asian region where economic instability has been entrenched in most of the other political, social and cultural issues that those countries experience, but also to modify its role within a changing economic landscape. In this regard, FDI situation in India becomes of importance, as it can impact not only the national growth of the country, but also its position in the regional and international affairs. Viewed in this light, the present study aimed to understand India's stance on FDI over the years. As observed above, India's attitude towards FDI has evolved over time, oscillating between a strong sense of acceptance to a measured and controlled acknowledgement over the last seven decades. However, the decades after 1990s showed a clear intent of promoting FDI in India which also accounted for its massive economic growth. However, Indian economy today aims to find a balance between foreign and domestic investments so as to strike a balanced economic policy.

However, a review of India's recent economic policies and foreign agreements shows some leniency towards a classical approach towards FDI. Thus, the present study, by adopting a legal approach, aimed to discuss how Indian legal system, especially its IP law frameworks, can be strengthened to respond to this situation. It contends that, IP law frameworks, which are usually considered as a key incentive to attract foreign investors could be rethought, so as to protect the rights of local investors and inventors. Thus, examining the laws that concern traditional knowledge systems and geographical indicators, this study argued for the importance of re-assessing India's approach to its IP law frameworks.

The study also observed the impact India's changing attitude towards FDI can have on the South Asian region. Having the most powerful economy of the region, India is seen as the trend-setter of South Asia. Changes in its economic outlook may also motivate the other countries to look inward in their economic policymaking, leading them to opt for a more self-sufficient economy. Sri Lanka's recent economic crisis, which has been studied in this study as a supplementary case study to understand the negative impact of heavily relaying on foreign capital and knowhow, also strengthens this claim. On the other hand, the study observed the implications a more inward focused economy in India can have on the global market as India is the home for a large proportion of global consumers. Thus, this study concludes that re-thinking India's legal frameworks may help the country to achieve its dreams of building a more inward focused economy, as stated in its initiatives like Aatma Nirbhar Bharat Abhiyan. Such steps will constitute an important aspect in India's economic journey in the decades to come, helping

India to become one of the most powerful countries in the world.

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