Quarterly

Volume 15, Issue 2, 2026

Ghalib

(International Journal of Law, Political Science and International Relations)

Journal Homepage: www.ghalibqjournal.com

ISSN
P: 2788-4155
E: 2788-6441

OPEN ACCESS

Publisher: Ghalib University-Herat | https://doi.org/10.58342/ghalibqj.V.15.I.2.6

The Application of Fair and Equitable Treatment Standard in South Asian Investment Arbitration (2000-2019)

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Article Info

Article type:
Research Article

PP: 155 -182

Received:
10/02/2026

Accepted:
22/08/2026

Published:
25/ 08/2026

ABSTRACT

Background and Objective: This article critically examines the application of the Fair and Equitable Treatment (FET) standard in investment arbitration in South Asia between 2000 and 2019, with particular focus on India, Pakistan, and Sri Lanka. Drawing on an analysis of publicly available arbitral awards, the study explores how arbitral tribunals have interpreted the FET standard in relation to treaty formulation, legitimate investor expectations, and State conduct.

Method: This study employs a descriptive-analytical research methodology. Data were collected from library-based sources, authoritative reports, and reliable legal references and were subsequently analyzed using a qualitative analytical approach.

Results: The findings demonstrate that arbitral tribunals tend to interpret standalone FET clauses more broadly, thereby affording greater protection to investors. By contrast, FET clauses expressly linked to customary international law generally require a higher threshold for establishing a breach. Cases concerning India, Dawes, Pakistan, Titan Copper, Sri Lanka, and Deutsche Bank underscore the central role of legitimate expectations in the reasoning of arbitral tribunals. At the same time, other cases demonstrate that a lack of sufficient clarity or evidentiary support may lead to the dismissal of claims.

Conclusion: This article contributes to the theoretical understanding of the FET standard and provides practical guidance for States and investors navigating the evolving landscape of international investment law in South Asia. It highlights the importance of treaty language, the formulation and substantiation of legitimate expectations, and the evidentiary basis required to establish a breach of the FET standard.

Keywords: Bilateral Investment Treaties, Fair and Equitable Treatment, Investment Arbitration, Legitimate Expectations, South Asia, Arbitral Tribunal Practice.

Cite this article Emami, Mujeeb Rahman; Muhajer, Mohammad Hamid; Ansari, Sunatullah (2026). The Application of Fair and Equitable Treatment Standard in South Asian Investment Arbitration (2000-2019). *Ghalib Journal.* 15(2), 155-182. https://doi.org/10.58342/ghalibqj.V.15.I.2.6

فصل‌نامه

دورهٔ ۱۵، شمارهٔ دوم، تابستان ۱۴۰۵

غالب

(مجلهٔ بین‌المللیِ مطالعات حقوقی، سیاسی و روابط بین‌الملل)

صفحهٔ اصلی مجله: www.ghalibqjournal.com

ISSN
P: 2788-4155
E: 2788-6441

OPEN ACCESS

https://doi.org/10.58342/ghalibqj.V.15.I.2.6

ناشر: پوهنتون/ دانش‌گاه غالب – هرات

کاربرد معیار رفتار عادلانه و منصفانه در داوری سرمایه‌گذاری در جنوب آسیا (۲۰۰۰–۲۰۱۹)

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اطلاعات مقاله

نوع مقاله: علمی – پژوهشی

ص: ۱۵۵–۱۸۲

دریافت: ۱۴۰۴/ ۱۱/ ۲۱

پذیرش: ۱۴۰۵/ ۰۵/ ۳۱

نشر: ۱۴۰۵/ ۰۶/ ۰۳

چکیده

زمینه و هدف: این مقاله به بررسی انتقادی کاربرد معیار «رفتار عادلانه و منصفانه» (FET) در داوری سرمایه‌گذاری در جنوب آسیا طی سال‌های ۲۰۰۰ تا ۲۰۱۹ می‌پردازد و تمرکز ویژه‌یی بر هند، پاکستان و سریلانکا دارد. این پژوهش با تکیه بر تحلیل آرای داوریِ منتشرشده و در دسترس عموم، بررسی می‌کند که دیوان‌های داوری معیار FET را در ارتباط با نحوهٔ تدوین معاهده، انتظارات مشروع سرمایه‌گذاران و رفتار دولت چه‌گونه تفسیر کرده‌اند.

روش: این پژوهش با استفاده از روش توصیفی- تحلیلی انجام شده است. داده‌ها از منابع کتاب‌خانه‌یی، گزارش‌های معتبر و منابع حقوقی قابل اعتماد گردآوری و سپس با استفاده از رویکرد تحلیلی کیفی مورد بررسی قرار گرفته‌اند.

یافته‌ها: یافته‌ها نشان می‌دهد که دیوان‌های داوری تمایل دارند شروط مستقل مربوط به FET را به‌صورت گسترده‌تری تفسیر کنند و در نتیجه حمایت بیش‌تری از سرمایه‌گذاران به عمل آورند. در مقابل، شروط FET که صراحتاً به حقوق بین‌الملل عرفی مرتبط شده‌اند، عمومًا برای اثبات نقض، مستلزم احراز آستانهٔ بالاتری هستند. پرونده‌های مربوط به هند، داووس، پاکستان، تیتان کوپر، سریلانکا و دویچه بانک، نقش محوری انتظارات مشروع را در استدلال دیوان‌های داوری برجسته می‌سازند. در عین حال، برخی پرونده‌های دیگر نشان می‌دهند که فقدان وضوح کافی یا ادلهٔ مؤید و کافی می‌تواند به رد دعاوی منجر شود.

نتیجه‌گیری: این مقاله به درک نظری معیار FET کمک می‌کند و راه‌نمایی‌های عملی برای دولت‌ها و سرمایه‌گذاران در مواجهه با چشم‌انداز در حال تحول حقوق بین‌الملل سرمایه‌گذاری در

جنوب آسیا ارائه می‌دهد؛ هم‌چنین، بر اهمیت متن معاهده، نحوهٔ شکل‌گیری و اثبات انتظارات مشروع و مبنای ادله لازم برای اثبات نقض معیار FET تأکید می‌کند.

کلیدواژه‌ها: انتظارات مشروع، جنوب آسیا، داوری سرمایه‌گذاری، رفتار عادلانه و منصفانه، رویهٔ دیوان داوری، معاهدات دوجانبهٔ سرمایه‌گذاری.

ارجاع به این مقاله: امامی، مجیب‌الرحمن؛ مهاجر، محمد حامد؛ انصاری، سنت الله. (۱۴۰۵). کاربرد معیار رفتار عادلانه و منصفانه در داوری سرمایه‌گذاری در جنوب آسیا (۲۰۰۰–۲۰۱۹). *فصل‌نامهٔ علمی – پژوهشی غالب*. ۱۵(۲). ۱۵۵ – ۱۸۲. https://doi.org/10.58342/ghalibqj.V.15.I.2.6.

1. Introduction

Fair and equitable treatment (FET) has emerged as a cornerstone standard in international investment law, providing protection for foreign investors against arbitrary, discriminatory, or unfair treatment by host states. Embedded in most bilateral investment treaties (BITs) and multilateral investment instruments, FET reflects a shared commitment to stability, predictability, and fairness in the host state's treatment of foreign investment (Vandevelde, 2010: 45–47; Reinisch, 2008: 160–162). Its flexible and broad nature allows it to address a variety of investor grievances, including denial of justice, arbitrary administrative actions, and frustration of legitimate expectations (Muchlinski, Ortino & Schreuer, 2008: 89–91).

The interpretation of FET is particularly consequential in investor-state dispute settlement (ISDS), where arbitral tribunals assess whether host state conduct breaches treaty obligations. Because "fairness" and "equity" are inherently subjective concepts, tribunals exercise significant discretion in their application. Consequently, previous arbitral awards serve as a key source of guidance, shaping expectations for future disputes and influencing perceptions of the regulatory environment in host states (Schreuer, 2009: 130–132).

South Asia represents a region of growing economic importance and rising foreign investment, particularly in infrastructure, energy, and telecommunications. India, Pakistan, and Sri Lanka have been frequent recipients of foreign investment and, correspondingly, have faced multiple ISDS claims invoking FET. In contrast, other South Asian states, such as Afghanistan, Bhutan, and the Maldives, have limited or no experience with international arbitration, reflecting both lower investment inflows and more restricted treaty engagement (UNCTAD, 2021: 12; UNCTAD, 2019: 98–100). Understanding how tribunals interpret FET in this regional context is therefore critical for both investors and policymakers. (Büthe & Milner, 2008: 744–746).

A central question in the scholarly literature concerns the scope and content of FET, particularly its relationship with the minimum standard of treatment (MST) under customary international law. Some scholars argue that FET should be interpreted autonomously, allowing tribunals to develop flexible standards of fairness beyond MST, while others maintain that it is inherently linked to MST, imposing a higher threshold for breaches (Dolzer & Schreuer, 2012: 91–93; Newcombe & Paradell, 2009: 122; Reinisch, 2008: 165–168; Salacuse, 2010: 448–450). This debate has significant implications for both tribunal reasoning and treaty drafting.

Despite variations in interpretation, certain elements consistently feature in arbitral assessments of FET. Legitimate expectations, good faith, transparency, consistency, and due process are widely recognized as essential components (Levashova, 2020: 45–46; Zhang, 2024: 78; Hepburn, 2025: 110). Legitimate expectations, in particular, play a central role, as tribunals evaluate whether investors relied on specific representations, assurances, or regulatory frameworks at the time of investment.

Empirical evidence highlights significant divergence in tribunal practice, particularly between standalone FET clauses and clauses linked to MST. Standalone clauses often receive broader interpretation, encompassing investor expectations and host state obligations beyond those mandated under customary international law. Such variation has practical implications for investors and states alike, influencing perceptions of risk, the likelihood of successful claims, and approaches to treaty negotiation (Titi, 2014: 36; Van Harten, 2007: 51).

Although FET has been extensively studied in other regions, empirical analyses focusing specifically on South Asia remain limited. Most scholarship has centered on theoretical debates or case law from Europe, North America, and Latin America, leaving a notable gap regarding how tribunals in India, Pakistan, and Sri Lanka interpret FET. Understanding these patterns is particularly important for assessing the practical effects of treaty design and investment protection in the region.

A systematic examination of arbitral awards in South Asia can illuminate key trends in tribunal reasoning. Such analysis allows for an empirical assessment of whether FET is treated autonomously or in relation to MST, how tribunals evaluate investor claims, and the factors influencing determinations of fairness, equity, and legitimacy. This approach also clarifies the interaction between treaty language, investor expectations, and state conduct.

This study adopts a qualitative, doctrinal methodology, focusing on publicly available arbitral awards and BIT texts. It examines cases against India, Pakistan, and Sri Lanka, with particular attention to tribunals' interpretations of FET, the scope and content of the standard, and the role of key elements such as legitimate expectations, transparency, and good faith. Comparative analysis enables the identification of regional patterns and divergences in arbitral practice. The study is guided by three central research questions:

1. How do tribunals interpret the scope and content of FET in South Asian BITs?

2. What role do legitimate expectations, transparency, and good faith play in determining FET violations?
3. How does treaty formulation, including standalone versus MST-linked FET clauses, influence tribunal outcomes?

From a theoretical perspective, the study contributes to the ongoing debate on FET and MST by providing empirical evidence from South Asia. It identifies patterns in tribunal reasoning, clarifies the conditions under which key elements of FET are recognized, and assesses how tribunals balance investor protection with state regulatory discretion.

Practically, the study offers insights for treaty negotiators, policymakers, and investors. It informs the drafting of future BITs, aids in investment risk assessment, and supports strategies for dispute management. Understanding tribunal reasoning in South Asia can help states design regulatory frameworks that minimize the risk of FET breaches while maintaining investor confidence.

By addressing the empirical gap in South Asian investment arbitration, this research enhances understanding of a region of growing economic importance. The study provides both theoretical clarity and practical guidance, contributing to a more predictable and effective application of FET. Ultimately, it supports informed decision-making by investors and host states, fostering a balanced and robust investment climate (Schreuer, 2005: 112).

2. Conceptual Framework

This section establishes the conceptual foundation for analyzing Fair and Equitable Treatment (FET) in South Asian investment arbitration. It focuses on the scope, content, and interrelations of FET, the Minimum Standard of Treatment (MST), and investors' legitimate expectations, highlighting their relevance to arbitral practice in the region. Understanding these concepts is critical to interpreting tribunal decisions and the broader implications for investment protection.

2.1. Fair and Equitable Treatment (FET)

FET is widely recognized as a core standard of protection in international investment law. Its primary purpose is to safeguard investors from arbitrary, discriminatory, or unjust treatment by the host state, thereby promoting stability and predictability in the investment climate (Dolzer & Schreuer, 2012: 95–96). By establishing a minimum level of protection, FET contributes to investor confidence, which is particularly significant in developing regions where regulatory frameworks may be evolving.

The scope and application of FET, however, are not uniform across treaties or jurisdictions. While most bilateral investment treaties (BITs) include FET, tribunals have interpreted the standard differently depending on treaty language, the factual context, and historical jurisprudence (Schreuer, 2005:

360). In practice, FET encompasses a range of protections, from safeguarding legitimate expectations to ensuring due process and transparency in state conduct.

In South Asia, tribunals have confronted the question of whether FET constitutes an autonomous standard or is linked to the Minimum Standard of Treatment (MST) under customary international law (Levashova, 2020: 236–238; Zhang, 2024: 12). Autonomous interpretations allow tribunals greater flexibility to assess fairness in investor-state relations, while MST-linked interpretations impose a higher threshold, typically reserved for egregious state conduct.

2.2. Minimum Standard of Treatment (MST)

MST represents the baseline protection under customary international law, traditionally focused on preventing egregious state conduct such as denial of justice, arbitrary measures, or manifest discrimination (Dolzer & Schreuer, 2012: 98). Unlike broader FET interpretations, MST provides a relatively narrow threshold of protection, which may limit the circumstances under which an investor can claim a violation.

Tribunals often refer to MST as a benchmark when interpreting treaty-based FET clauses, particularly in cases where the treaty language is ambiguous or references customary international law (Stone, 2012: 80–81; Hepburn, 2025: 50). This approach ensures that the protection afforded aligns with internationally recognized legal standards, while constraining overly expansive readings of FET.

In South Asian arbitral practice, differences in tribunal approaches to MST are evident. For instance, in *White Industries v. India*, the tribunal applied a high threshold comparable to MST, effectively limiting claims of investor protection (UNCTAD, 2021). Conversely, in *Tethyan Copper v. Pakistan*, the tribunal interpreted FET autonomously, giving weight to investors' legitimate expectations and extending protection beyond MST. These variations illustrate the flexibility and context-dependent nature of FET adjudication in the region.

2.3. Legitimate Expectations

Legitimate expectations are widely regarded as a central component of the FET standard. They arise when a host state's specific representations, assurances, or regulatory framework lead an investor to reasonably anticipate stability, fairness, and predictability in the treatment of their investment (Newcombe & Paradell, 2009: 42–43; Xu, 2014: 130). Tribunals assess whether such expectations were reasonable and whether investors relied on them in making investment decisions.

The assessment of legitimate expectations involves both subjective and objective elements. While investors may subjectively rely on assurances or regulatory frameworks, tribunals examine whether such reliance was reasonable in light of the political, economic, and legal conditions prevailing at the time of investment (Laryea, 2020: 10–11; Zeyl, 2023: 5–6). Factors such as specificity of promises, formal government acts, and the broader regulatory environment influence the tribunal's determination.

In South Asian cases, the protection of legitimate expectations has been a decisive factor in determining FET violations. Autonomous FET clauses provide tribunals with latitude to consider investors' reliance on state conduct beyond the threshold of MST, while MST-linked FET clauses restrict protection to scenarios involving manifestly unfair or egregious treatment. Understanding how legitimate expectations interact with the standard is therefore essential to analyzing tribunal reasoning.

2.4. Interconnections and Regional Relevance

The interplay between FET, MST, and legitimate expectations is particularly significant in South Asia due to the diversity of treaty formulations and the variability in tribunal approaches (Palombino, 2018: 75–76; Newcombe & Paradell, 2009: 50). While autonomous FET clauses allow tribunals to adopt a broader perspective on fairness and investor protection, MST-linked clauses confine protection to clearly egregious conduct.

Recognizing these interconnections helps explain why arbitral outcomes vary across India, Pakistan, and Sri Lanka. Tribunals differ in their approach to the scope of FET and the weight accorded to investors' legitimate expectations, leading to mixed results even when similar factual circumstances arise. This variation underscores the importance of treaty design and clarity in drafting FET clauses, particularly in emerging markets.

3. Research Methodology

This study employs a qualitative, doctrinal research methodology to examine the practice of Fair and Equitable Treatment (FET) in South Asian investment arbitration. The methodology is designed to explore the interpretation and application of FET, the Minimum Standard of Treatment (MST), and legitimate expectations in arbitral decisions, particularly in the context of India, Pakistan, and Sri Lanka.

3.1. Research Design

A doctrinal, case-based approach is adopted, focusing on publicly available arbitral awards, decisions, and related treaty provisions. This design allows for an in-depth analysis of tribunal reasoning and identification of patterns in the interpretation of FET clauses, including the relationship with MST and the role of investors' legitimate expectations. The study examines both standalone FET clauses and those qualified by MST or other treaty language, highlighting variations in tribunal approaches across South Asian jurisdictions.

3.2. Population and Sampling

The population for analysis comprises all known investor-State arbitral cases involving India, Pakistan, and Sri Lanka where FET claims were raised. A purposive sampling strategy is applied to select cases that are publicly accessible and provide detailed reasoning on FET, MST, and legitimate expectations. Selected cases include White Industries v. India, Devas v. India, LDA v. India, Nissan v. India, Impregilo v. Pakistan, Bayindir v. Pakistan, Tethyan Copper v. Pakistan, Mihaly v. Sri Lanka, and Deutsche Bank v. Sri Lanka.

3.3. Data Collection and Analysis

Primary data are drawn from arbitral awards, tribunal decisions on jurisdiction and merits, and relevant BIT provisions. Secondary sources, including scholarly commentary and UNCTAD reports, are used to contextualize tribunal interpretations and trends in South Asian arbitration. The study applies qualitative content analysis to identify patterns in tribunal reasoning, the treatment of legitimate expectations, and the extent to which FET is interpreted autonomously or in reference to MST.

3.4. Limitations

The research is limited to publicly available cases and may not capture all arbitration proceedings in South Asia. Furthermore, differences in treaty language, domestic legal frameworks, and political conditions may influence tribunal interpretations, which are considered in the analysis but limit the generalizability of the findings.

4. Results

Building on the doctrinal case-based approach outlined in the previous section, this Results section presents the findings of the study's analysis of arbitral practice concerning Fair and Equitable Treatment (FET) in South Asian investment arbitration. This section systematically examines tribunal reasoning on FET in the most prominent publicly available investor-State disputes involving India, Pakistan, and Sri Lanka. Through this analysis, the section identifies patterns in how tribunals interpret the scope and content of FET, including the relationship between FET and the Minimum Standard of Treatment (MST) under customary international law and the role of investors' legitimate expectations. The discussion that follows reflects detailed qualitative content analysis of arbitral awards and treaty provisions, with emphasis on key elements of FET as elaborated in international investment law scholarship

(Dolzer & Schreuer, 2012: 95–96; Newcombe & Paradell, 2009: 42–43; Levashova, 2020: 236–238).

4.1. Arbitration Practice Overview in South Asia

South Asian States vary widely in their international arbitration exposure. As table 1 below shows, Afghanistan, Bhutan, and Maldives have no recorded investor-State arbitration experience, making it impossible to assess FET practices in these jurisdictions (UNCTAD, 2021). In contrast, Bangladesh and Nepal have only one known case each, with the Bangladesh dispute relating to expropriation and the Nepal case still pending with no publicly accessible data (UNCTAD, 2021).

Table 1: South Asian Arbitration Practice of Fair and Equitable Treatment (FET)

Country	Number of Arbitral Cases	Cases Settled	Cases Pending	Cases Discontinued	Cases Decided	Outcome of Decided Cases
Afghanistan	0	–	–	–	–	–
Bhutan	0	–	–	–	–	–
Maldives	0	–	–	–	–	–
Bangladesh	1	0	0	0	1	Investor-favourable (Saipem S.p.A. v. Bangladesh, ICSID ARB/05/07)
Nepal	1	0	1	0	0	Pending (Axiata Investments (UK) Ltd v. Nepal, ICSID ARB/19/15)
India	26	10	9	2	5	4 Investor-favourable, 1 State-favourable
Pakistan	10	2	1	1	6	3 State-favourable, 2 Investor-favourable, 1 No damages awarded

Sri Lanka	5	0	1	0	4	2 State-favourable, 2 Investor-favourable

India, Pakistan, and Sri Lanka, however, have substantial experience with investor-State arbitration, including FET claims. India has faced 26 cases, of which five have been decided, four in favor of investors and one favoring the State (UNCTAD, 2021). Pakistan has 10 cases, six of which were decided: three in favor of the State, two in favor of investors, and one with no damages awarded (UNCTAD, 2021). Sri Lanka has five cases, two decided in favor of the State, two in favor of investors, and one pending (UNCTAD, 2021).

The differences in case volumes across countries influence how tribunals interpret FET. Countries with limited experience, such as Bangladesh or Nepal, have no developed jurisprudence, while India, Pakistan, and Sri Lanka show more nuanced interpretations. Moreover, the formulation of FET in the respective BITs—whether standalone or linked to the minimum standard of treatment (MST)—has shaped tribunal approaches and outcomes. This section examines key cases from these three countries to highlight patterns, divergences, and the role of legitimate expectations in shaping FET jurisprudence.

4.2. FET Claims against India

The first set of findings focuses on arbitral cases involving India, which has been a frequent respondent in investment disputes involving FET claims. India's extensive experience with investor-State arbitration, as evidenced by multiple settled, pending, and decided cases, provides a valuable context for analyzing tribunal approaches to FET (UNCTAD, 2021). The following Table 1 shows how tribunals have articulated the scope and content of FET in four representative cases: *White Industries v. India*, *Devas v. India*, *Louis Dreyfus Armateurs (LDA) v. India*, and *Nissan v. India*.

Table 2: FET Claims against India in Selected Arbitral Cases

Case Name	**Year**	**Treaty / BIT**	**FET Type**	**Alleged FET Elements**	**Tribunal Findings / Outcome**	**Relation to MST / CIL**

White Industries v. India	2011	Australia-India BIT (1999)	Standalone FET	Denial of justice; frustration of legitimate expectations; arbitrary conduct; lack of due diligence; bad faith	Tribunal rejected all FET claims; India liable under other obligations (enforcement of rights)	High threshold; FET not autonomous; limited to concrete egregious conduct
Devas v. India	2016	India-Mauritius BIT (1998)	Combined FET with prohibition of unreasonable/discriminatory measures	Frustration of legitimate expectations; obligation of transparency and good faith	Tribunal found violation of FET (July 2, 2010 – Feb 17, 2011); breach of legitimate expectations	FET interpreted autonomously; not limited to MST under CIL
LDA v. India	2018	France-India BIT (1997)	Qualified FET ("in accordance with internationally established principles")	Arbitrary measures; discrimination; harassment; failure to provide protection; violation of due process; legitimate expectations	Tribunal rejected FET claims; acknowledged high threshold and that FET is no broader than MST under CIL	FET qualified; limited interpretation in line with MST under CIL

Nissan v. India	2019	Japan-India CEPA (2011)	FET referred to MST under CIL	Frustration of legitimate expectations; due process; transparency; stability; arbitrary conduct; lack of good faith	Tribunal recognized sufficient facts for jurisdiction; merits not decided yet	FET linked to MST under CIL; scope pending

In *White Industries v. India*, the tribunal examined alleged judicial delays by Indian courts in enforcing a contractual award, raising FET claims under the Australia–India BIT. The treaty contained a standalone FET clause, reflecting a broad formulation of investor protection (White Industries Australia Limited v. Republic of India, UNCITRAL, Final Award, 2011). Tribunals often treat standalone FET clauses as granting broader protection than MST-linked clauses, a point emphasized in investment law scholarship (Newcombe & Paradell, 2009: 50; Palombino, 2018: 75–76).

The claimant in *White Industries* urged that India violated FET based on a range of alleged misconduct, including denial of justice, frustration of legitimate expectations, arbitrary conduct, lack of due diligence, and bad faith. This mirrors how investors typically articulate FET claims—by combining multiple elements of purported unfair treatment (Dolzer & Schreuer, 2012: 95; Levashova, 2020: 45–46). However, the tribunal rejected these claims comprehensively.

On legitimate expectations, the *White Industries* tribunal diverged from earlier jurisprudence, notably declining to adopt the *Tecmed* approach that has been criticized for its broad scope (Schreuer, 2005: 360; Newcombe & Paradell, 2009: 42). Instead, the tribunal applied a more restrained standard: legitimate expectations must arise from specific, unambiguous, and repeated assurances made to the investor.

Applying this standard, the tribunal found that none of the claimant's alleged expectations—regarding bank guarantees, enforcement timelines, India as a destination for investment, or transparency in court proceedings—met the required criteria. This approach aligns with scholarly caution against expansive interpretations of legitimate expectations absent clear, state-specific assurances (Laryea, 2020: 10–11; Zeyl, 2023: 5–6).

On denial of justice, the tribunal acknowledged lengthy judicial delays but concluded that the conduct did not rise to a level of egregiousness required under MST or standalone FET. This emphasis on threshold reinforces that, even with a standalone FET clause, tribunals may apply a high bar for finding violations (Stone, 2012: 80; Hepburn, 2025: 50).

The *Devas v. India* award reveals a contrasting outcome. Here, the tribunal found that India had violated the FET clause in the India–Mauritius BIT by breaching investors' legitimate expectations and failing to act in good faith and transparency in relation to the termination of an agreement for satellite services (CC/Devas v. India (II), PCA Case No. 2022-34; UNCTAD, n.d.).

In *Devas*, the tribunal took an expansive view of FET's scope, avoiding the MST-linked interpretation and instead focusing on the substantive content of FET as encompassing good faith, transparency, and protection of investor expectations. This resonates with views in investment law literature that stress the centrality of legitimate expectations in FET adjudication (Newcombe & Paradell, 2009: 42–43; Xu, 2014: 130).

The *Devas* decision underscores that where treaty language does not expressly limit FET to MST, tribunals may adopt broader standards to evaluate state conduct. This pattern reflects an evolving arbitral practice that seeks to balance state regulatory autonomy and investor protections (Palombino, 2018: 75; Van Harten, 2007: 51).

In *LDA v. India*, the tribunal confronted FET claims under a BIT that expressly qualified FET to "internationally established principles," suggesting linkage to MST. The tribunal ultimately rejected all FET claims, indicating a high threshold for demonstrating a breach and acknowledging the respondent state's argument that FET was no broader than MST (Louis Dreyfus Armateurs SAS v. Republic of India, PCA Case No. 2014-26).

The *LDA* tribunal's approach highlights how treaty wording can significantly shape tribunal interpretations. When BITs explicitly reference MST, tribunals may adopt more conservative approaches to FET, limiting protection to scenarios involving egregious or internationally recognized conduct (Dolzer & Schreuer, 2012: 98; Salacuse & Sullivan, 2005: 67–130).

Nissan v. India illustrates how FET claims can influence jurisdictional determinations. The tribunal, while not resolving merits, found that the claimant's pleadings—including alleged frustrations of legitimate expectations and lack of due process—were sufficient to establish jurisdiction, even though the treaty linked FET to MST (Nissan Motor Co., Ltd. v. Republic of India, PCA Case No. 2017-37). This procedural finding signals that FET elements can be pivotal in threshold jurisdictional questions.

Collectively, the findings from India-related cases demonstrate mixed tribunal practices regarding FET. Tribunals have interpreted FET both autonomously and in relation to MST, with decisions heavily influenced by treaty language and the strength of evidence supporting investors' legitimate expectations. These patterns align with broader scholarly observations that FET's scope and application remain shaped by both doctrinal debates and treaty formulation (Titi, 2014: 36; Gaukrodger, 2017: 15–16; Salacuse, 2010: 427–473).

4.3. FET Claims against Pakistan

Pakistan has faced several investor-State arbitration cases in which FET claims were central. This section examines three publicly available cases—*Impregilo v. Pakistan*, *Bayindir v. Pakistan*, and *Tethyan Copper v. Pakistan*—to identify patterns in tribunal reasoning concerning the scope and content of FET, including the role of legitimate expectations and the influence of treaty formulation. Table 2 below describes these three cases.

Table 3: FET Claims against Pakistan in Selected Arbitral Cases

Case Name	Year	Treaty / BIT	FET Type	Alleged FET Elements	Tribunal Findings / Outcome	Relation to MST / CIL
Impregilo S.p.A. v. Pakistan	**2005**	**Italy-Pakistan BIT**	**Qualified FET (combined with prohibition of unjustified/discriminatory measures)**	**Unfair and inequitable treatment; unjustified or discriminatory measures**	**Jurisdiction stage only; case discontinued before merits; no ruling on FET standard**	**Scope/content not discussed; potential breach to be determined at merit stage**
Bayindir v. Pakistan	**2009**	**Pakistan-Turkey BIT (via MFN clause importing FET from Pakistan-UK and Pakistan-Switzerland BITs)**	**Imported FET (standalone form)**	**Transparency; due process; prohibition of arbitrary/coercive measures; reasonable and legitimate investor expectations**	**Tribunal rejected all FET claims; accepted importation via MFN clause; emphasized political volatility when assessing legitimate expectations**	**Interpreted as autonomous standard; delinked from MST under CIL**

Tethyan Copper v. Pakistan	**2017**	**Australia-Pakistan BIT (1998)**	**Standalone FET**	**Protection of legitimate, investment-backed expectations**	**Tribunal found violation of FET; Respondent's denial of mining lease breached investor's legitimate expectations**	**Interpreted as autonomous standard; not limited to MST under CIL**

The *Impregilo* case involved claims against Pakistan's Water and Power Development Authority (WAPDA) for alleged failures to provide land necessary to implement a construction contract, raising FET concerns under the Italy-Pakistan BIT. The treaty combined FET with a prohibition on discriminatory or unjustified measures (Impregilo S.p.A. v. Pakistan, ICSID Case No. ARB/03/3, Decision on Jurisdiction, 2005).

On the jurisdictional stage, the tribunal in *Impregilo* acknowledged the FET claims but did not make determinations on the merits, as the proceedings were later discontinued. The case illustrates the procedural dimension of FET claims, highlighting that even well-founded allegations may not reach substantive adjudication if arbitration is discontinued (Schreuer, 2005: 360–361).

In *Bayindir v. Pakistan*, the tribunal faced a more complex FET claim under the Pakistan-Turkey BIT, incorporating the preamble and an MFN clause to import FET standards from other BITs, including the Pakistan-UK and Pakistan-Switzerland BITs (Bayindir v. Pakistan, ICSID Case No. ARB/03/29, Final Award, 2009). This approach reflects tribunals' flexibility in interpreting treaty obligations and the influence of MFN clauses on substantive standards (Palombino, 2018: 75–76; Newcombe & Paradell, 2009: 50; Arif & Zahoor, 2021: 216–218).

The tribunal emphasized that while the preamble alone did not create an operative FET obligation, it was relevant for interpreting the MFN clause in context. This aligns with VCLT Article 31(1) principles, which underscore the relevance of treaty object and purpose in interpretation (Van Harten, 2007: 51; Gaukrodger, 2017: 15).

In *Bayindir*, the tribunal determined that the FET standard imported from other BITs was autonomous and not limited to MST under customary international law, consistent with the broad interpretation of standalone FET clauses. This decision aligns with scholarship emphasizing that the absence of MST references allows tribunals to consider wider standards of fairness, good faith, and transparency (Dolzer & Schreuer, 2012: 98; Xu, 2014: 130; Arif & Zahoor, 2021: 220–222).

On content, the *Bayindir* tribunal highlighted transparency, due process, non-discrimination, and protection of legitimate expectations as core elements of FET. However, after evaluating the evidence, the tribunal rejected the investor's claims, emphasizing that expectations must be reasonable and account for the political and economic conditions prevailing in the host state (Laryea, 2020: 10–11; Zeyl, 2023: 5–6).

The tribunal's assessment of legitimate expectations in *Bayindir* illustrates a key principle in South Asian arbitration: expectations must be based on state conduct attributable to Pakistan and assessed against the factual and regulatory context at the time of investment. This underscores the objective standard applied by tribunals in determining reasonableness (Stone, 2012: 80–81; Levashova, 2020: 236–238).

Tethyan Copper v. Pakistan further demonstrates the autonomous interpretation of FET. The dispute concerned the refusal of the Baluchistan provincial government to convert the claimant's exploration license into a mining lease, despite compliance with all procedural requirements (Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan, ICSID Case No. ARB/12/1, Decision on Jurisdiction and Liability, 2017).

The *Tethyan Copper* tribunal concluded that Article 3(2) of the Australia-Pakistan BIT, which contains a standalone FET clause without reference to MST, created an autonomous standard. This allowed the tribunal to focus on investor-backed legitimate expectations, reflecting a dominant principle in contemporary FET jurisprudence (Newcombe & Paradell, 2009: 42; Dolzer & Schreuer, 2012: 95–96; Ahmad, 2023: 459–462).

In assessing content, the tribunal emphasized that legitimate expectations must be reasonable, based on specific assurances by the state, and considered in light of all circumstances of the case. Here, Pakistan's denial of the mining lease, motivated by its own commercial interest, violated the claimant's legitimate expectations and thus breached the FET standard (UNCTAD, 2021; Palombino, 2018: 75–76; Ahmad, 2023: 468–471).

Collectively, these Pakistan-related cases reveal patterns similar to India: tribunals often distinguish between MST-linked and autonomous FET clauses, assess legitimate expectations carefully, and consider host state context. Differences in outcomes—rejection in *Bayindir* versus success in *Tethyan Copper*—highlight the significance of factual evidence, the quality of assurances, and the specific treaty language in shaping tribunal determinations (Levashova, 2020: 240; Gaukrodger, 2017: 15–16).

In sum, South Asian arbitration practice indicates that where FET is expressed in standalone form, tribunals are more likely to adopt a broad, autonomous standard emphasizing transparency, good faith, and protection of investors' expectations. Conversely, when FET is linked to MST, the standard remains narrower and more deferential to host state conduct, demonstrating the critical interplay between treaty formulation, factual circumstances, and tribunal interpretation in determining FET outcomes (Dolzer & Schreuer, 2012: 98; Titi, 2014: 36; Schreuer, 2005: 360–361).

4.4. FET Claims against Sri Lanka

Sri Lanka has faced a smaller number of investor-State arbitration claims compared to India and Pakistan, but FET claims in these cases provide insight into tribunal reasoning in the South Asian context. Two notable cases—*Mihaly v. Sri Lanka* and *Deutsche Bank v. Sri Lanka*—illustrate different approaches to FET interpretation, including the question of autonomous standards versus MST-linked clauses. Table 4 summarizes FET claims against Sri Lanka.

Table 4: FET Claims against Sri Lanka in Selected Arbitral Cases

Case Name	Year	Treaty / BIT	FET Type	Alleged FET Elements	Tribunal Findings / Outcome	Relation to MST / CIL
Mihaly International Corporation v. Sri Lanka	2002	United States-Sri Lanka BIT	Qualified FET (no less than that required by international law)	Not applicable (jurisdiction declined)	Tribunal rejected jurisdiction; no discussion on scope or content of FET	N/A
Deutsche Bank v. Sri Lanka	2000	Germany-Sri Lanka BIT	Standalone FET	Legitimate expectations; good faith; transparency; consistency; non-discrimination; due process	Tribunal found breach of FET based on due process, transparency, and bad faith in relation to Supreme Court Interim Order and Stop-Payment Order	Tribunal treated FET as autonomous; distinguished from MST under CIL but noted content is broadly similar

The *Mihaly v. Sri Lanka* case arose from the unsuccessful conclusion of a contract for the construction, ownership, and operation of a power generation facility. The claim invoked FET protection under Article II (2) of the United States-Sri Lanka BIT, which linked FET to treatment no less than required by international law (Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka, ICSID Case No. ARB/00/2, Decision on Jurisdiction, 2000).

The tribunal in *Mihaly* declined jurisdiction, holding that no qualifying investment existed under the BIT. Consequently, the case did not permit a substantive analysis of FET scope or content. Despite this, the case is relevant for understanding the procedural dimension of FET claims in South Asia and the importance of establishing jurisdiction before tribunal evaluation of substantive treaty standards (Schreuer, 2005: 360; Palombino, 2018: 75).

In contrast, *Deutsche Bank v. Sri Lanka* involved a dispute over termination of an oil hedging agreement with the Ceylon Petroleum Corporation, Sri Lanka's national oil company. The claimant alleged violations of a standalone FET clause under Article 2(2) of the Germany-Sri Lanka BIT (2000), which provided broad protection without reference to MST under customary international law (Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka, ICSID Case No. ARB/09/2, Final Award, 2012).

The tribunal first addressed the scope of FET, examining whether it should be interpreted autonomously or linked to MST. Citing Schreuer, the tribunal concluded that the contracting parties intended an autonomous standard. This reasoning reflects a broader trend in South Asian arbitration where standalone FET clauses are interpreted independently of customary international law (Schreuer, 2005: 361; Newcombe & Paradell, 2009: 42–43).

Regarding content, the *Deutsche Bank* tribunal relied on the Waste Management II framework, identifying key FET elements: legitimate expectations, good faith, transparency, consistency, due process, and non-discrimination. This demonstrates the tribunals' alignment with established international standards while applying them within the South Asian factual context (Dolzer & Schreuer, 2012: 95; Levashova, 2020: 240; Gill, 2016: 6–8). The tribunal found that Sri Lanka's actions in relation to the Supreme Court Interim Order, the Central Bank investigation, and the Stop-Payment Order of 16 December 2008 violated the FET standard. Specifically, the tribunal highlighted breaches of due process, lack of transparency, and bad faith, leading to a successful claim for the investor (UNCTAD, 2021; Hepburn, 2025: 110).

Legitimate expectations played a central role in the tribunal's analysis. The claimant's reliance on prior assurances, the regulatory framework, and procedural consistency formed the basis of its reasonable expectations. The tribunal emphasized that such expectations are legitimate only if grounded in specific, attributable state conduct and assessed against prevailing conditions (Newcombe & Paradell, 2009: 50; Zeyl, 2023: 5).

The *Deutsche Bank* tribunal also clarified the limitations of legitimate expectations. Broad or vague assurances were insufficient, and the investor's reliance must be objectively reasonable. This underscores a consistent theme across South Asian arbitration, where tribunals balance investor protection with deference to host state discretion (Levashova, 2020: 236–238; Stone, 2012: 80–81).

Comparing the two Sri Lankan cases, it is evident that the formulation of the FET clause significantly influences outcomes. While the MST-linked clause in *Mihaly* never reached substantive adjudication, the autonomous FET clause in *Deutsche Bank* enabled a broad interpretation and recognition of investor claims, similar to observations in Pakistan and India (Palombino, 2018: 76; Gaukrodger, 2017: 15–16).

These cases also illustrate that tribunal outcomes are highly fact-dependent. In *Deutsche Bank*, procedural irregularities, government interference, and evidence of bad faith were critical to establishing a breach. This highlights the interaction between factual evidence, treaty language, and tribunal reasoning in shaping FET determinations in South Asia (Dolzer & Schreuer, 2012: 98; Xu, 2014: 130).

Another pattern observed is the alignment with international practice. The tribunal referred to established FET jurisprudence while adapting principles to the South Asian investment context, confirming that regional tribunals engage in comparative reasoning while addressing local political, economic, and regulatory conditions (Titi, 2014: 36; Levashova, 2020: 240–241).

In conclusion, FET claims against Sri Lanka demonstrate that standalone clauses facilitate a broad, autonomous interpretation of the standard, emphasizing legitimate expectations, due process, and transparency. Conversely, MST-linked FET clauses are narrower, limiting tribunals to assessing egregious state conduct. The comparison across cases underscores the critical interplay between treaty formulation, factual circumstances, and tribunal reasoning in determining FET outcomes in South Asian arbitration (Schreuer, 2005: 360–361; Dolzer & Schreuer, 2012: 98; Van Harten, 2007: 51).

4.5. Comparative Observations

A comparative analysis of FET claims across India, Pakistan, and Sri Lanka reveals consistent themes as well as notable divergences in tribunal reasoning. One overarching observation is the decisive role of treaty formulation in shaping both the scope and content of FET. Standalone FET clauses, as found in the Australia-India BIT (1999), Australia-Pakistan BIT (1998), Germany-Sri Lanka BIT (2000), and similar treaties, allow tribunals to interpret FET autonomously, potentially extending protections beyond the minimum standard of treatment (Levashova, 2020: 238; Schreuer, 2005: 360–361).

By contrast, FET clauses that are explicitly linked to MST under customary international law, such as the Japan-India CEPA (2011) and the United States-Sri Lanka BIT, impose a higher threshold for demonstrating violations. In these instances, tribunals are often constrained to examining egregious state conduct, such as denial of justice, manifest arbitrariness, or conduct that shocks the sense of judicial propriety (Dolzer & Schreuer, 2012: 98; Van Harten, 2007: 51).

Legitimate expectations consistently emerge as a central element of FET across all three jurisdictions. Tribunals assess whether investors had reasonable expectations based on specific, attributable representations or assurances from the host state. Such expectations are not considered in isolation; they must be evaluated in light of the broader regulatory, political, and economic context prevailing at the time of the investment (Newcombe & Paradell, 2009: 50; Laryea, 2020: 12).

In India, cases such as *White Industries v. India* and *LDA v. India* demonstrate a cautious approach, with tribunals rejecting investor claims where assurances were vague, general, or attributable to private or state-adjacent entities. By contrast, *Devas v. India* illustrates a broader approach, recognizing a breach of legitimate expectations where procedural and substantive conduct by the state contradicted investors' reasonable reliance (Levashova, 2020: 240; Hepburn, 2025: 110).

In Pakistan, tribunals have similarly emphasized the importance of the host state context. The *Bayindir v. Pakistan* tribunal stressed political volatility as a key factor in assessing whether an investor's expectations were reasonable, while the *Tethyan Copper* tribunal recognized a violation of legitimate expectations where specific assurances were provided and fulfilled procedural requirements for investment (UNCTAD, 2021; Xu, 2014: 130).

Sri Lankan cases reinforce these observations. In *Mihaly v. Sri Lanka*, jurisdictional deficiencies prevented an assessment of legitimate expectations, whereas in *Deutsche Bank v. Sri Lanka*, the tribunal recognized that due process violations, lack of transparency, and bad faith interfered with the investor's reasonable expectations, thus constituting an FET breach (Palombino, 2018: 76; Zeyl, 2023: 5–6).

Across the three countries, tribunals demonstrate divergent approaches even under similar treaty language. For instance, MST-linked clauses in India and Sri Lanka often lead tribunals to adopt a narrow, high-threshold standard, while standalone clauses in Pakistan and Germany-Sri Lanka BITs result in broader, more investor-friendly interpretations (Dolzer & Schreuer, 2012: 95–96; Levashova, 2020: 236–238).

Evidentiary considerations also play a crucial role in shaping outcomes. Tribunals consistently analyze the specificity, clarity, and attribution of state conduct. Where representations are vague, inconsistent, or directed at a general investor group rather than an identifiable party, tribunals are reluctant to recognize a breach of legitimate expectations (Newcombe & Paradell, 2009: 42–43; Hepburn, 2025: 50).

Political and economic context further influences tribunal reasoning. In Pakistan, volatility and regulatory instability were central to assessing the reasonableness of investor reliance in *Bayindir*, illustrating that FET is not evaluated in a vacuum but in consideration of the host state environment (Waibel et al., 2010: 23–24; Gaukrodger, 2017: 15).

Procedural factors also affect FET adjudication. Delays, lack of transparency, and interference by state entities, as seen in *Deutsche Bank v. Sri Lanka* and *White Industries v. India*, were treated as relevant to both legitimate expectations and broader FET obligations. These cases suggest that procedural fairness remains an essential component of the standard, even in the absence of explicit MST linkage (Dolzer & Schreuer, 2012: 98; Levashova, 2020: 240–241).

Another important observation is the interplay between FET and other treaty provisions. MFN clauses, BIT preambles, and other treaty obligations can influence FET interpretation, as tribunals sometimes import standards from other agreements, as in *Bayindir v. Pakistan*, where FET was applied via MFN considerations (Palombino, 2018: 75–76; Schreuer, 2005: 361).

These comparative patterns underscore that tribunal discretion, treaty drafting, and investor expectations jointly shape FET outcomes. Standalone clauses allow expansive interpretations, while MST-linked clauses impose constraints. Legitimate expectations are always central, but their recognition depends on specificity, attribution, and contextual reasonableness (Zeyl, 2023: 15; Levashova, 2020: 238).

In short, South Asian arbitration demonstrates that FET's scope and application are highly contingent. Broader, autonomous FET clauses provide greater protection for investors, highlighting the need for careful treaty drafting, while MST-linked clauses restrict tribunals to egregious conduct. The consistent emphasis on legitimate expectations across India, Pakistan, and Sri Lanka illustrates their pivotal role in shaping tribunal outcomes, reflecting both international jurisprudence and region-specific contextualization (Dolzer & Schreuer, 2012: 95–96; Van Harten, 2007: 51; Hepburn, 2025: 110).

5. Discussion

This study aimed to analyze how tribunals in South Asia interpret Fair and Equitable Treatment (FET) in investment arbitration, with particular attention to the scope of FET, the role of the Minimum Standard of Treatment (MST), and the centrality of investors' legitimate expectations. The results from India, Pakistan, and Sri Lanka demonstrate that treaty language, tribunal discretion, and contextual factors jointly shape the application of FET in this region.

First, the study confirms that treaty formulation significantly affects tribunal interpretations. Standalone FET clauses, as seen in the Australia-Pakistan BIT (1998) and Germany-Sri Lanka BIT (2000), allow tribunals to adopt broader, more autonomous readings of FET, whereas MST-linked clauses, such as in the Japan-India CEPA (2011) or United States-Sri Lanka BIT, limit FET protection to egregious conduct. This supports earlier scholarship emphasizing the centrality of treaty drafting in shaping investor protection (Schreuer, 2005: 360–361; Dolzer & Schreuer, 2012: 98).

The study also highlights the consistent importance of legitimate expectations across all three jurisdictions. Tribunals examine whether investors' expectations are reasonable, specific, and attributable to state conduct, and consider contextual factors such as political volatility or regulatory instability. These findings align with prior research stressing that legitimate expectations are a core component of FET and often determinative in tribunal awards (Newcombe & Paradell, 2009: 42–43; Laryea, 2020: 12).

Divergences in tribunal reasoning, even under similar treaty language, emerge as a significant finding. For example, *Devas v. India* and *Tethyan Copper v. Pakistan* show tribunals favoring broad interpretations, whereas *White Industries v. India* and *Bayindir v. Pakistan* adopt a narrower, MST-linked approach. This variation reflects both the discretion afforded to tribunals and the influence of evidentiary and contextual factors (Waibel et al., 2010: 24; Zeyl, 2023: 15).

Unexpectedly, the study reveals that tribunals sometimes blend procedural and substantive considerations in determining FET violations. In *Deutsche Bank v. Sri Lanka*, procedural irregularities, including lack of transparency and bad faith, were decisive in establishing a breach of FET, even though the substantive investment activity was relatively routine. This underscores that FET is not solely concerned with economic outcomes but also procedural fairness.

A notable observation is the interplay between MFN clauses, BIT preambles, and FET interpretation. The *Bayindir v. Pakistan* tribunal demonstrates how tribunals may import favorable standards from other BITs through MFN provisions, expanding the protective scope of FET. This confirms prior theoretical insights on the dynamic relationship between treaty provisions in shaping investor protections (Schreuer, 2005: 361; Gaukrodger, 2017: 15–16).

The study further contributes to understanding the FET–MST relationship in South Asia. While some tribunals, such as *White Industries* and *LDA*, interpret FET through the lens of MST, emphasizing a high threshold for breach, others like *Devas* and *Tethyan Copper* adopt autonomous FET standards. This duality confirms previous findings on the contextual variability of FET application and highlights the region-specific implications of treaty drafting (Levashova, 2020: 236–238; Xu, 2014: 130).

In terms of theoretical significance, the study provides empirical evidence supporting a model where FET is a flexible standard that balances investor protection with host state regulatory autonomy. The nuanced treatment of legitimate expectations demonstrates that FET is context-sensitive, reinforcing theories that emphasize its hybrid nature combining procedural, substantive, and expectation-based protections (Newcombe & Paradell, 2009: 50; Dolzer & Schreuer, 2012: 95–96).

Practically, the results offer guidance for policymakers, investors, and treaty negotiators in South Asia. Standalone FET clauses should be drafted with clear language to delineate investor protections, while MST-linked clauses may mitigate state liability by imposing a high evidentiary threshold. The findings also suggest that tribunals will consider political, economic, and procedural context in assessing legitimacy of investor expectations, underlining the importance of careful record-keeping and state representations.

The study identifies limitations inherent in South Asian arbitration research. Only publicly available cases were analyzed, potentially omitting sensitive or confidential disputes that may reflect different tribunal reasoning. Furthermore, differences in domestic legal systems, political stability, and investor nationality may affect the generalizability of results.

Despite these limitations, the study uncovers patterns that are consistent with global trends while highlighting region-specific nuances. For instance, autonomous FET interpretations in Pakistan and Sri Lanka contrast with MST-linked interpretations in India, illustrating how South Asian tribunals apply international law principles in contextually distinct ways.

Additionally, the findings suggest that treaty reform, such as India's 2015 Model BIT, which omits standalone FET clauses and controversial elements like investor legitimate expectations, may reflect lessons learned from prior arbitration outcomes. The study therefore offers insight into the evolving interaction between arbitral practice and treaty policy in South Asia.

In sum, the Discussion confirms that FET in South Asian arbitration is highly contingent on treaty formulation, tribunal discretion, and contextual factors. Legitimate expectations are central to tribunal reasoning, procedural fairness is increasingly relevant, and MST-linked versus standalone clauses produce predictable differences in outcomes. These insights enhance both theoretical understanding and practical application of FET in South Asia, contributing to informed treaty design, investor strategy, and dispute management in a region of growing economic significance.

6. Conclusion and Recommendations

6.1. Conclusion

This study set out to examine the interpretation and application of the Fair and Equitable Treatment (FET) standard in South Asian investment arbitration, with particular focus on India, Pakistan, and Sri Lanka. By analyzing publicly available arbitral awards, the research addressed how tribunals construe the scope and content of FET, the role of the Minimum Standard of Treatment (MST), and the significance of investors' legitimate expectations within the regional context.

The findings demonstrate that treaty formulation is the single most influential factor shaping tribunal approaches to FET. Standalone FET clauses consistently enable tribunals to interpret the standard autonomously, whereas FET clauses expressly linked to MST under customary international law impose a higher threshold, limiting findings of breach to egregious state conduct.

Across all examined jurisdictions, legitimate expectations emerged as a central—though carefully constrained—component of FET. Tribunals did not treat investor expectations as subjective or absolute but assessed them against criteria of specificity, attribution, reasonableness, and the political and regulatory context of the host state at the time of investment.

The study further revealed notable divergence in tribunal reasoning even under similar treaty language. Differences in outcomes were driven not only by doctrinal interpretations but also by evidentiary quality, procedural conduct of state authorities, and the factual matrix of each dispute. This confirms that FET remains a context-sensitive and fact-intensive standard.

Importantly, the South Asian cases illustrate that procedural fairness—particularly due process, transparency, and good faith—has become increasingly influential in FET determinations. In several cases, breaches were established not because of regulatory change per se, but due to the manner in which state authorities acted.

Taken together, the findings confirm that FET in South Asian arbitration operates as a flexible standard balancing investor protection with state regulatory autonomy. While autonomous FET clauses broaden the scope of protection, tribunals remain cautious not to transform FET into a guarantee against all forms of state interference.

In light of the study's objectives and research questions, the analysis demonstrates that South Asian arbitral practice largely aligns with global investment law trends, while also reflecting regional particularities such as political volatility, evolving treaty policy, and increasing state sensitivity to expansive investor protections.

6.2. Recommendations

6.2.1. Practical Recommendations

1. Treaty Drafting and Reform: States negotiating or renegotiating investment treaties in South Asia should pay careful attention to the formulation of FET clauses. If the policy objective is to limit exposure to expansive interpretations, express linkage to MST and clear exclusions of legitimate expectations—similar to India's 2015 Model BIT—can provide greater legal certainty.
2. State Conduct and Administrative Practice: Governments should ensure consistency, transparency, and due process in dealings with foreign investors. Even where substantive regulatory change is lawful, procedural shortcomings and ambiguous assurances have proven decisive in establishing FET breaches.
3. Investor Risk Assessment: Investors should ground their expectations in clear, specific, and attributable state representations rather than general policy statements. Proper documentation of assurances and regulatory commitments is essential for sustaining FET claims in arbitration.
4. Dispute Prevention Mechanisms: States may reduce arbitration exposure by strengthening internal coordination among government entities, ensuring compliance with judicial decisions, and establishing early dispute resolution mechanisms to address investor grievances before escalation.

6.2.2. Research Recommendations

5. Expansion to Other South Asian States: Future research should extend the analysis to emerging cases involving other South Asian countries as arbitration practice develops, allowing for a more comprehensive regional assessment.
6. Quantitative and Mixed-Method Studies: Empirical studies combining doctrinal analysis with quantitative data on outcomes, damages, and procedural timelines could further illuminate patterns in FET adjudication.
7. Interaction with New-Generation IIAs: Further research should examine how newer treaty models—particularly those omitting FET or redefining it narrowly—are interpreted by tribunals and whether they successfully recalibrate the balance between investor protection and regulatory space.
8. Comparative Regional Analysis: Comparative studies between South Asia and other regions, such as Southeast Asia or Africa, could offer valuable insights into whether regional political and legal contexts systematically influence FET interpretation.

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