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Bilateral Investment Treaties and Its Impacts on Host Countries: The Case of India

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ABSTRACT
In recent years, scholars and researchers have raised questions about whether bilateral investment treaties provide the anticipated benefits and whether the costs imposed on host countries may outweigh those benefits. Evidence has shown that BITs pose challenges and a negative impact, including economic, political, sovereignty, and social impacts, for host countries. This includes suing host countries through ISDS, limiting their freedom to introduce new regulations, and preventing them from protecting labour rights, public health, and environmental protection. This study examines the dual nature of BITs by addressing the research problem: what are BITs, and how may they create potential drawbacks for host countries? This article applies a normative legal research method to analyse legal principles and regulations related to international investment law, including BITs, international legal instruments, arbitral decisions, and academic journals. Through doctrinal analysis, this study examines how the law is written and how it operates in practice, assessing whether existing legal principles strike an appropriate balance between investor protection and the regulatory agency of host countries. Under an analysis of the functions of BITs, the aim, and the structure, combined with a case study of India, this paper examines how treaties are primarily intended to create investment and advancement. It is found that BITs often undermine the host country's policy space, political and economic stability, and social welfare. To show these dynamics, this article includes a detailed case study on India's experience with the Vodafone and Cairn tax disputes, representing how BITs can affect even large economies to significant financial and sovereignty risks.

KEYWORDS: Bilateral Investment Treaty; Investor-State Dispute Settlement; Fair and Equitable Treatment; Expropriation; Regulatory Space.

1. Introduction

Bilateral Investment Treaties, also referred to as BITs, are among the most significant tools that influence the current structure of international Investment Regimes. BITs were created to enhance and protect foreign investment from expropriation by granting extensive rights and Protections to foreign investors through Fair and Equitable Treatment, Expropriation Protection, and Investor-State Dispute Settlement (ISDS).[1]

One significant development in international law has been the emergence of BITs. This treaty is an agreement between two countries that protects and encourages the investments of eligible investors of each country in the territory of the other. This treaty set out rules and standards for the protection of such investors, which the contracting states are obliged to comply with.[2] BITs are recognized as the main source of foreign investment law.[3] Typically,

1 Rudolf Dolzer and Christoph Schreuer, *Principles of International Investment Law*, Second edition (Oxford University Press, 2012).
2 David Price, "Indonesia's Bold Strategy on Bilateral Investment Treaties: Seeking an Equitable Climate for Investment?" *Asian Journal of International Law* 7, no. 1 (2017): 126.
3 Adaeze Agatha Aniodoh and Abubakri Yekini, "Prospects and Pitfalls of BITs, and the Quest for a Multilateral Framework in Africa," *African Journal of International Economic Law* 4 (2024): 40.

these agreements are concluded between capital-exporting (developed) countries and developing countries, but sometimes two developing countries or two developed countries also enter into BITs with each other.[4] A typical reason for developing countries to sign BITs is the perception that such treaties facilitate foreign investment, thereby attracting increased capital and fostering technological progress within their territories.[5]

The first BIT, designed to protect investments, was signed in 1959 between Germany and Pakistan, and soon countries such as Switzerland, France, Italy, the United Kingdom, the Netherlands, Belgium, and others followed this path.[6] Currently, there are more than 3,000 Bilateral Investment Treaties that have been established, making them among the most important and prevalent legal tools regulating international investment.[7] The process of concluding BITs typically begins with negotiations, and before their commencement, many countries prepare their own draft of BITs. These drafts help shorten the negotiation time and facilitate quicker and smoother coordination of the treaties.[8] Negotiations are usually multi-stage, and after discussing and reaching an agreement on the important and difficult issues, the parties move on to the next stage.[9] The final text of the treaty is signed once the parties reach an agreement, and the parties then ratify it. Finally, with the exchange of the necessary documents between the two countries, the BITs enter into force.[10]

BITs have important features for both parties, namely the investor country and the host country. For the investor country, these treaties include guarantees of fair and equitable treatment, protection against illegal expropriation, the right to freely transfer funds related to the investment, full protection and security of the investment, and rules that generally allow investors to bring claims directly through international arbitration. Many BITs allow for direct access, but some include clauses that require “local remedies.” This means that the investor must first seek redress in the host country’s domestic courts for a specified period of time and then refer the case to an international court.[11] For the host country, BITs help attract foreign investment, create a transparent and predictable legal environment, and enhance its international credibility.[12] Additionally, BITs help improve and organize the domestic system of the host country. These treaties encourage the host country to strengthen and reform its domestic laws to make their implementation more effective.[13] Furthermore, through interaction with international mechanisms and investment arbitration, the country can benefit from international experience and standards, and enhance its judicial and institutional system.[14]

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4 Jeswald W Salacuse, “BIT by BIT: The Growth of Bilateral Investment Treaties and Their Impact on Foreign Investment in Developing Countries,” *International Lawyer* 24, no. 3 (1990): 658–59.

5 Aniodoh and Yekini, 'Prospects and Pitfalls of BITs in Africa', *Op. Cit.*

6 Salacuse, 'Growth of BITs & Their Impact on Foreign Investment', *Op. Cit.*, p. 657.

7 Michael Edwards, “The Role of Bilateral Investment Treaties (BITs) in Facilitating Foreign Investment,” <https://michaeledwards.uk/the-role-of-bilateral-investment-treaties-bits-in-facilitating-foreign-investment/> accessed 11 November 2025.

8 Tarald Laudal Berge and Yvind Stiansen, *Negotiating BITs with Models. The Power of Expertise* (Social Science Research Network, 2016), <https://www.ssrn.com/abstract=2851454> accessed 11 January 2026, p. 6.

9 Berge and Stiansen, 'Negotiating BITs with Models', *Op. Cit.*, p. 8.

10 Yoram Z. Haftel and Alexander Thompson, “Delayed Ratification: The Domestic Fate of Bilateral Investment Treaties,” *International Organization* 67, no. 2 (2013), p. 363.

11 Ryan Nelson et al., “Investment Arbitration under Bilateral Treaties,” *Journal of International Commercial Law and Technology* 2, no. 1 (2021), p. 67.

12 Edwards, 'Role of BITs in FDI', *Op. Cit.*

13 Zhihan Yu et al., “The Effects of BITs on Contract Execution in Developing Countries: Some Implications for the COVID-19 Crisis,” *Frontiers in Public Health* 10 (2022), p. 2–4.

14 *Ibid.*

Despite the mentioned benefits of these treaties, some negative impacts also arise for the parties involved, especially for the host country, which requires special attention. Developing countries, in particular, have adopted BITs under the expectation that stronger legal protections will attract more foreign direct investment, stimulate economic growth, and facilitate technology transfer.[15] In recent years, scholars and researchers have raised questions about whether bilateral investment treaties provide the anticipated benefits and whether the costs imposed on host countries may outweigh those benefits. Evidence has shown that BITs pose challenges and a negative impact, including economic, political, sovereignty, and social impacts, for host countries.[16] This includes suing host countries through ISDS, limiting their freedom to introduce new regulations, and preventing them from protecting labour rights, public health, and environmental protection.[17]

This study examines the dual nature of BITs by addressing the research problem: what are BITs, and how may they create potential drawbacks for host countries? Under an analysis of the functions of BITs, the aim, and the structure, combined with a case study of India, this paper examines how treaties are primarily intended to create investment and advancement. However, in practice, BITs often undermine the host country's policy space, political and economic stability, and social welfare. To show these dynamics, this article includes a detailed case study on India's experience with the Vodafone and Cairn tax disputes, representing how BITs can affect even large economies to significant financial and sovereignty risks.

2. Methodology

This article applies a normative legal research method to analyse legal principles and regulations related to international investment law, including BITs, international legal instruments, arbitral decisions, academic journals, reports, books, and documents of international organizations. Through doctrinal analysis, this study examines how the law is written and how it operates in practice, assessing whether existing legal principles strike an appropriate balance between investor protection and the regulatory agency of host countries. analysis.

3. Potential Impacts of Bilateral Investment Treaties on Host Countries

BITs which are designed to create mutual benefits for investors and host countries, can also pose negative impacts, including economic, political, and sovereignty, and social impacts for the host governments, which will be presented in detail below.

3.1. Economic Impacts on Host Countries

The economy is one of the fundamental components for host countries, and BITs can have significant negative impacts on it. The negative impacts of these treaties can be observed through several aspects of the host country's economy, including the effects of bringing an international claim, the impacts on domestic small and medium-sized enterprises, and the impacts on the reduction of tax revenues. Firstly, BITs, which grant investors the right to bring

[15] Cristina Bodea et al., "Global Treaties and Domestic Politics: Do Bilateral Investment Treaties Constrain Taxation in Developing Countries?" *International Studies Quarterly* 68, no. 3 (2024): 1–14.

[16] Jeswald W Salacuse, "BIT by BIT: The Growth of Bilateral Investment Treaties and Their Impact on Foreign Investment in Developing Countries," *International Lawyer* 24, no. 3 (1990): 655–75.

[17] Mavluda Sattorova, *The Impact of Investment Treaty Law on Host States: Enabling Good Governance?* vol. 29, Studies in International Law (Oxford University Press, 2018).

international claims through the ISDS mechanism, can be costly for host countries.[18] Many host states—especially developing countries—do not have sufficient financial capacity to defend themselves in these cases, and this also affects their economy. This issue can be observed in the mid-1990s, when the number of ISDS arbitration cases increased, and some of these cases resulted in very large awards, which may had negative impacts on the economy of host countries.[19]

Moreover, BITs can pose a threat to the host country's economy through their impact on domestic small and medium-sized enterprises (SMEs). SMEs are the backbone of the economy, contributing the largest share to the gross domestic product, and a significant portion of the workforce is employed in these companies.[20] Under BITs, foreign investors often receive greater legal and financial support, while domestic SMEs benefit less from such protections. Furthermore, the presence of foreign investors in the host country's market can pose a threat to the activities of domestic SMEs, which may result in weaker growth of domestic production and even a reduction in employment.[21] All of these factors have a direct impact on the host country's economy.

The reduction of tax revenues in host countries through BITs is another potential economic drawback of these treaties on host countries. BITs can lead to a decrease in taxes on foreign investors, as many of these treaties contain umbrella clauses.[22] These clauses protect investors and, consequently, limit the government's ability to raise taxes or modify fiscal policies.[23] Since many countries, especially developing ones, derive a large portion of their revenues from taxes on major sectors and natural resources, the restriction of government discretion in setting or increasing taxes can result in reduced tax revenues.[24]

Ultimately, BITs can have drawbacks on the economies of host countries, as international claims impose high costs on the country, the presence of foreign investors limits the growth of domestic small and medium-sized enterprises and reduces employment, and these treaties also lead to a decrease in tax revenues.

3.2. Political and Sovereignty Impacts

BITs can significantly influence the authority of the host state by restricting its freedom to formulate and implement new policies and regulations. Because BITs confer strong rights and protections on foreign investors, host countries should carefully consider whether their policies could harm or violate those investors' rights. This obligation may impose restrictions on the host government and prevent policymakers from enacting rules that hurt foreign investors.[25] Furthermore, international courts resolving disputes between investors and host countries can interpret treaty principles in a broader scope than their original meaning, which may create greater responsibility and obligation for host countries. This external arbitration diminishes the role of domestic courts and parliament in controlling important policies. Thus,

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18 International Law Editorial, "Bilateral Investment Treaties and Development: A Critical Analysis," World Jurisprudence, 2024, <https://worldjurisprudence.com/bilateral-investment-treaties-and-development/> accessed 22 January 2026.

19 Alexander Thompson et al., "Once Bitten, Twice Shy? Investment Disputes, State Sovereignty, and Change in Treaty Design," *International Organization* 73, no. 4 (2019): 862.

20 Thilo Rensmann, *Small and Medium-Sized Enterprises in International Economic Law* (Oxford University Press, 2017), p. 241.

21 Rensmann, 'MEs in International Economic Law', *Op. Cit.* p. 245.

22 Bodea et al., "Global Treaties and Domestic Politics," *Op. Cit*., p. 2–3.

23 *Ibid.*

24 *Ibid.*

25 *Ibid.*

countries may be afraid to establish new policies and laws. Important areas of public policy, including environmental protection, labour, and fair taxation, may remain inadequate due to concerns on investor complaints through BITs dispute mechanisms. As a result, BITs may weaken host countries, particularly by limiting the autonomy of the legislative branch and its capacity to introduce laws that protect national relations and public benefits.[26]

Regulatory chill refers to a situation in which host countries are reluctant to implement regulations or policies due to the fear of costly arbitration by foreign investors under ISDS.[27] It is another negative effect experienced by host states through the ISDS system, which allows foreign companies to challenge host countries' laws and policies. Foreign investors can use BITs to bring an assortment of challenges against host state lawmakers, who face confusion and uncertainty while introducing new policies and frameworks, particularly in sectors where foreign investors are involved.[28] Often, host countries delay or weaken important policies and regulations out of fear of being sued by foreign companies in ISDS. Therefore, protecting foreign investors trumps domestic challenges such as workers' rights, environment, and fair taxation, and this cold constraint weakens the capacity of host countries to formulate policies as well as their ability to respond to national needs.[29]

3.2.1 Influence of Foreign Investors on Policy

Apart from regulatory chill, BITs can expand the influence of foreign investors over the policies of host states. Large corporations play an important role because of their power and influence in host countries, persuading governments to pass, repeal, or postpone important regulations that affect their profits.[30] Such influence can happen in different forms, including persuading host countries to adopt favorable policies, participating in the negotiating process, and bringing claims against host countries through the ISDS system. Therefore, policymakers often prioritize the interests of foreign investors over national goals and values. BITs can reduce host countries' autonomy on policymaking, and investors' demands take precedence over the public interest. While the purpose of a BIT is to attract investment and protect investors, it often limits the power of host countries to make decisions that prioritize national welfare. [31]

Modern investment treaties empower foreign investors as independent actors, giving them legal backing to sue host countries without relying on their home countries. Such mechanisms make investors more independent and give them more power over host country decisions. Under ISDS provision, host countries can be exposed with provisions that may lead to complex arbitration. To avoid such conflicts, the government may repeal, waive, or change laws that harm investors. Thus, foreign companies can influence the politics of host countries.[32]

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[26] Mavluda Sattorova, 'The Impact of Investment Treaty Law on Host States: Enabling Good Governance', *Op. Cit*.

[27] Kyla Tienhaara, "Regulatory Chill and the Threat of Arbitration: A View from Political Science," in *Evolution in Investment Treaty Law and Arbitration*, 1st ed., ed. Chester Brown and Kate Miles (Cambridge University Press, 2011).

[28] Bodea et al., 'Global Treaties and Domestic Politics', *Op. Cit*.

[29] Mavluda Sattorova, *The Impact of Investment Treaty Law on Host States: Enabling Good Governance, Op. Cit*.

[30] Catharine Titi, ed., *Public Actors in International Investment Law*, European Yearbook of International Economic Law (Springer International Publishing, 2021), p. 26-30.

[31] Bodea et al., 'Global Treaties and Domestic Politics', *Op. Cit*.

[32] Titi, 'Public Actors in International Investment Law', *Op. Cit.*

3.2.2 Unequal Power in BIT Negotiation

BITs negotiations are sometimes perceived as unequal power among states. Developed countries often enter negotiations with more experience and expertise, while developing countries often have limited resources and tools, which shape the negotiation outcomes. As Yackee argues, BITs are drafted by powerful states, and developing countries accept treaties that provide strong protections for foreign investors. Host countries tend to limit their regulatory freedom and autonomy when ratifying these treaties, yet host countries do not receive significant investment benefits in return. Instead, BITs often represent the interests of foreign investors through protections and access to ISDS. [33]

This power imbalance creates negative consequences for host countries, especially by limiting their ability to create public interest policies related to labour rights, environmental protection, or taxation.[34] Powerful investor protections and the risk of costly ISDS claims make host states reluctant to implement policies that may trigger disputes and lead to regulatory chill.[35] as a result, host states may lose autonomy over key political and economic decisions. Moreover, BITs can reinforce dependence on foreign capital and limit the host country's capacity to pursue its national development priorities. Thus, although BITs are intended to promote investment, unequal negotiating power often reduces the policy space of developing countries.[36]

3.3. Social Impacts of BITs on Host Countries

BITs regulate economic relations between host countries and foreign investors. Their impacts go beyond investment in many host countries; environmental protection, public services, and labour rights are affected by BITs. These treaties often restrict policy space and hurt communities, workers, and vulnerable groups.[37] This section examines the social impact of BITs on host countries, these are: public health, labour rights, and environmental impact.

3.3.1 Public Health Impacts

One of the social impacts of BITs can be seen in public health norms in host countries. Because BITs provide a strong legal protection for investors and also allow them to access ISDS, such requirements influence host countries not to create laws that impact foreign companies. Therefore, host countries often fail or are unable to implement their policies and practices on harmful products, tobacco policy control, and food safety.[38] On the other hand, regulatory chill brings a negative impact on public health because host countries are unwilling to establish policies to protect public health when it conflicts with the interests of foreign investment. Evidence shows that in many cases, investors have used BITs to challenge host countries' policies, such as Australia's Plain Packaging Act of 2011. In Philip Morris Asia Limited v Commonwealth of Australia, the investor used the Australia-Hong Kong Bilateral Investment Treaty to claim that the government's health regulations, which required plain packaging for cigarettes, had deprived them of their intellectual property and breached the

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33 Jason Webb Yackee, "Bilateral Investment Treaties, Credible Commitment, and the Rule of (International) Law: Do BITs Promote Foreign Direct Investment," *Law & Society Review* 42, no. 4 (2008): 805–32.

34 Tienhaara, 'Regulatory Chill and the Threat of Arbitration', *Op. Cit.*

35 Yackee, 'Bilateral Investment Treaties, Credible Commitment, and the Rule of (International) Law', *Op. Cit.*

36 *Ibid.*

37 Schill, 'International Investment Law and The Rule of Law', Op. Cit. p. 81–102.

38 Tienhaara, 'Regulatory Chill and the Threat of Arbitration', *Op. Cit.*

Fair and Equitable Treatment (FET) standard. Although the court ultimately dismissed the case in 2015 on legal grounds, finding that Philip Morris had committed an “abuse of rights” by changing its ownership structure specifically to bring the case – the case remains a prominent example of how the threat of widespread arbitration claims can hinder a government’s ability to maintain a healthy environmental policy, which shows how BITs affect host countries’ ability to protect the interests and welfare of their people. BITs provide strong legal protection for investors and limit the capacity of host countries to act based on their societal interests.[39]

3.3.2 Impact on Labour Rights

BITs legal protection and their access to ISDS weaken host countries to enforce labor protection; this dynamic demonstrates how investors’ regulations and frameworks can impact national laws and priorities in a way that prefers investment over labour. Host countries are unwilling to adopt regulations on labour rights due to complaints from foreign investors through the ISDS system. This situation leads to weaker labour protection and poor working conditions in many developing countries.[40] BITs create difficulties for host countries in meeting and protecting labour rights, poor working conditions, low pay, and long working hours, mainly in industries with heavy foreign investment. Rather than promoting equitable development, BITs often worsen inequality and the exploitation of workers.[41] Therefore, BITs are systematically designed in a way that focuses more on the protection of investors and their profits. However, workers’ welfare is often overlooked, and host countries focus on protecting investors’ rights rather than improving workers’ labour protections. Such conditions create a system that prioritizes investment over social justice.[42]

3.3.3 Environmental Impacts

BITs can limit host countries' capacity to implement environmental protection policies and practices. Under the ISDS system and BITs, foreign investors enjoy strong legal protection. Host countries may repeal or abandon environmental protection regulations for fear of lawsuits and costly arbitration claims. Moreover, policies related to biodiversity conservation, forest protection, and natural resources can be seen as a barrier to foreign companies, encouraging host countries to prioritize foreign investment over their own biodiversity sustainability.[43]

The ISDS system also allows investors to challenge environmental policies that appear harmful to their profits and nudges host countries to uphold investors’ interests.[44] Therefore, BITs often create challenges and prevent host countries from effectively implementing environmental policies.[45] In fact, one of the most striking examples illustrating this

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39 Yackee, 'Bilateral Investment Treaties, Credible Commitment, and the Rule of (International) Law', *Op. Cit.*

40 Schill, 'International Investment Law and The Rule of Law', *Op. Cit*.

41 Bodea et al., 'Global Treaties and Domestic Politics', *Op. Cit*.

42 Titi, 'Public Actors in International Investment Law', *Op. Cit*.

43 Tienhaara, 'Regulatory Chill and the Threat of Arbitration', *Op. Cit.*

44 Lorenzo Cotula and Nicolás M. Perrone, “Seeing Santurbán through ISDS: A Sociolegal Case Study of Eco Oro v. Colombia,” *Leiden Journal of International Law* (2024); see also: Samriddhi Guha, “Striking a Balance Between Environmental Carve-outs and Public Policy Considerations in New Generation BITs: Re-reading Eco Oro Minerals Corp v Colombia,” *Opinio Juris*, 2024.

45 Patrick Dumberry, “The Eco Oro and Red Eagle Awards: Recent Divergence on How to Interpret Fair and Equitable Treatment Clauses Linked to the Minimum Standard of Treatment,” *Kluwer Arbitration Blog*, July 23, 2024.

contradiction is the case of the mining company Eco Oro v. the Republic of Colombia concerning the protection of the Santurban Páramo, a biodiversity hotspot that supplies 70% of the drinking water for the region's inhabitants.[46] In a ruling issued in 2021, the court found that Colombia had violated the minimum treatment standard because the authorities' inconsistent project management had failed to meet the company's legitimate expectations.[47]

Most importantly, the majority decision stated that the environmental exception (Article 2201) was not a pretext for non-payment in the event of a breach of the minimum standard, thus undermining the concept of environmental "parts" and rendering the entire environmental protection provision of the treaty invalid.[48] However, in its final ruling on July 15, 2024, the panel decided not to award any damages, stating that the exercise of Colombian police power legitimately of the project, not a violation of the treaty's own procedures.[49] Prioritizing investment over environmental protection illustrates how BITs can undermine sustainable development and the broader public interest, even as they aim to encourage investment.[50]

4. India: The Vodafone and Cairn Tax Disputes and Termination of BITs

4.1. From Enthusiasm to Crisis to Early BIT Program

The case of India offers one of the most instructive and educative examples of how BITs can also turn out to be enormously costly and ruinous to the national sovereignty, even in a large and fast-growing economy. During 1994-2011, India negotiated eighty-three BITs primarily with European states using standard European templates that gave foreign investors vastly sweeping protection as well as direct access to international arbitration. Between this period, there was little notice of these treaties as India had only received one small case of an ISDS. This would change dramatically after 2012 as two European firms were able to invoke decades-old BITs in order to appeal regular tax determinations and threaten the Indian treasury with more than US$7 billion in liability. The crisis that followed compelled the government to end over seventy existing BITs, rewrite its whole policy on investment treaties, and repeal a domestic tax law retrospectively.[51]

India's BIT programme exemplifies how extensive treaty commitments can hinder a country's ability to govern effectively. After liberalizing in 1991, India quickly signed BITs that favored investors and was unaware that the broad terms, especially those related to FET and MFN, posed challenges to fundamental governance features.[52] The White Industries ruling in 2011, which held India responsible for delays in the court process and led to a surge of ISDS

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46 Sabin Center for Climate Change Law, "Eco Oro Minerals Corp. v. Colombia," *Climate Litigation Database*; see also: Cotula and Perrone, "Seeing Santurbán through ISDS."

47 *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, September 9, 2021.

48 Government of Canada and Government of Colombia, Canada–Colombia Free Trade Agreement (2008), Article 2201; see also: Khan Khalid Adnan, "Eco Oro v Colombia: How Perplexed is Determining Quantum?" *Cambridge International Law Journal*, October 14, 2024.

49 *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Final Award on Damages, July 15, 2024; McNair International, "Key Developments Update October 2024."

50 Yackee, 'Bilateral Investment Treaties, Credible Commitment, and the Rule of (International) Law', *Op. Cit*.

51 UNCTAD Investment Policy Hub, "India – International Investment Agreements," <https://investmentpolicy.unctad.org/international-investment-agreements/countries/96/india> accessed 26 November 2025.

52 Nishith Desai Associates, *Bilateral Investment Treaty Arbitration and India* (2018), p. 1–50.

claims, including cases involving retrospective taxation like Vodafone and Cairn, marked a turning point.[53]

Economic considerations suggest that BITs have not played a significant role in increasing FDI inflows to India. Although the number of foreign investments has increased dramatically, from almost nothing in 1991 to over USD 46 billion in 2011, empirical studies suggest that market growth and domestic liberalization have been more important than the protection of BITs.[54] Most businesses viewed BITs as an additional safeguard that could sometimes be obtained indirectly through the channel of third countries such as Mauritius.[55] In 2016, India finally abandoned 58 bilateral investment treaties in favour of the revised model BIT, citing significant legal risks and negligible economic benefits.[56]

4.2. The 2012 Retrospective Tax Amendment

Amendment of Section 9 of the Income Tax Act (IT Act) in Parliament in 2012 permitted taxing indirect transfers of Indian Assets. Indirect Transfers of Indian Assets are frequently utilized by foreign corporations to pursue indirect ways of restructuring the operations of their companies. The amendment took effect from 1962, thereby closing what the Finance Ministry considered a "loophole" and ensuring that the significant gain realized by foreign companies on the sale of Indian assets is taxed in India.[57]

4.2.1 The Vodafone Case (Netherlands–India BIT)

The initial case was Vodafone International Holdings BV, a Dutch branch of the British telephone company. In 2007, Vodafone acquired Indian mobile operator Hutchison Essar to the tune of USD 11 billion via a Cayman Islands holding company.[58] Vodafone commenced UNCITRAL arbitration in 2014, based on the 1995 India-Netherlands BIT. In the case, on 25 September 2020, the tribunal unanimously held the retrospective tax claim amounting to an amount of about 20,000 crores (approximately USD 2.2 billion and interest plus penalties overall) to be a violation of fair and equitable treatment and directed India to revoke the whole demand.[59] This is contrary to the FET rule, as it contravenes Vodafone's reasonable expectation of a stable regulatory framework. This was evident in India when they created uncertainty and arbitrariness with regard to the Supreme Court's decision by making a previously legal and non-taxable transaction taxable. The retrospective change violated Vodafone's legitimate expectations, undermined legal certainty, and retroactively imposed a tax burden on a previously valid transaction.

4.2.2 The Cairn Energy Case (UK–India BIT)

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[53] Kshama A. Loya and Vyapak Desai, "The Cairn Energy v. India Saga," *Kluwer Arbitration Blog*, July 2, 2021.

[54] Jaivir Singh et al., "The Impact of Bilateral Investment Treaties on FDI Inflows into India," ICRIER Working Paper 391 (June 2020).

[55] Claire Provost, "Taxes on Trial," Transnational Institute (February 2016).

[56] ForumIAS Blog, "Model Bilateral Investment Treaty (BIT) – Explained Pointwise," April 17, 2025.

[57] Finance Act, 2012 (India), <https://indiankanoon.org/doc/26112980/> accessed November 26, 2025.

[58] *Vodafone International Holdings BV v. Union of India*, <https://indiankanoon.org/doc/115852355/> accessed 26 November 2025.

[59] *Vodafone v. India (I)*, Final Award (Operative Part), 25 Sept 2020, <https://jusmundi.com/en/document/decision/en-vodafone-international-holdings-bv-v-india-i-wednesday-1st-january-2014>, accessed 26 November 2025.

The second case was that of Cairn Energy PLC. Cairn had reorganized the Indian oil and gas business in the period between 2006 and 2007 by carrying out internal holding-company deals. In 2015, the Indian tax authorities used the identical retrospective amendment and demanded 10,247 crore principal and interest, and penalties (around USD 1.4 billion).[60]

Cairn appealed to the 1994 India-United Kingdom BIT. On 21 December 2020, the tribunal directed India to pay Cairn USD 1.4 billion with interest.[61] The main reason for the ruling is that India's post-incident taxation of a corporate reorganisation scheme, which was both legal and tax-exempt at the time, violated the FET requirement under the BIT. This was because the application of a retrospective tax law to tax a transaction that was both legal and tax-exempt at the time was found to be in breach of Cairn's legitimate expectations and legal transparency. Furthermore, the means used by India to achieve compliance with the tax claim, including the seizure of Cairn's shares, non-payment of dividends and tax credits, were found to be disproportionate. India refused, and Cairn started to enforce the award by seizing Indian state assets in other countries.[62]

4.3. Impacts on India's Social, Political and Economy

In both cases, Vodafone and Cairn caused large feeds of media coverage on the issue of social justice in India, and also triggered a wave of indignation and anger towards foreign multinational companies operating in India from ordinary citizens through globalization. Newspaper media and telecasters featured the way that foreign multinational companies making billions of dollars selling goods and services in India do not pay any capital gain taxes (GST) through the use of 25-year-old treaties. This was especially so considering how domestic taxpayers were becoming increasingly burdened by the increasing cost of capital gains taxes.[63]

The revenue lost through these companies' avoidance of paying GST should belong to the public and should have been used to directly fund welfare schemes such as the National Health Mission, Mid-Day Meal program, PM Kisan farmer income support, and rural employment guarantees – all of which are programs that support hundreds of millions of poor Indians. This incident has been placed into the broader context of "corporate escape" from taxation at a time when inequality was on the rise and the Indian middle class felt increasing financial pressure from GST and tax reforms. The outrage generated from this incident created a phrase "Vodafone–Cairn shame" which became widely used in political speeches and social media campaigns against "sell-out treaties". As a result of this incident, trust in international investment agreements has been greatly diminished, and the rise of nationalism against the unchecked growth of globalization has increased.[64]

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[60] *Cairn Energy PLC & Cairn UK Holdings Limited v. Republic of India* (PCA Case No. 2016-07, Final Award),<https://jusmundi.com/fr/document/decision/en-cairn-energy-plc-and-cairn-uk-holdings-limited-v-the-republic-of-india-final-award-wednesday-23rd-december-2020> accessed 26 November 2025.

[61] Cairn Energy PLC, *Cairn Energy Begins Seizing Indian Assets Abroad to Enforce $1.4 Billion Award*, n.d., <https://www.reuters.com/world/india/cairn-wins-freeze-indias-state-owned-assets-paris-recover-tax-award-2021-07-08/> accessed 26 November 2025.

[62] Ministry of Finance, Government of India, *Economic Survey 2021–22 & Budget 2022–23* (n.d.), <https://www.indiabudget.gov.in/economicsurvey/> accessed 26 November 2025.

[63] UNCTAD Investment Policy Hub, "India – International Investment Agreements (Bilateral Investment Treaties)," 2025, <https://investmentpolicy.unctad.org/international-investment-agreements/countries/96/india> accessed 26 November 2025.

[64] The Taxation Laws (Amendment) Act, 2021, <https://prsindia.org/files/bills_acts/acts_parliament/2021/The%20Taxation%20Laws%20%28Amendment%29%20Act%2C%202021.pdf> accessed 26 November 2025.

Likewise, the profound and humiliating political and sovereignty implications for what is termed to be the world's largest democracy, and a sovereign Parliament's decision by way of full exercise of democratic "give and take" and passed through the entire bicameral houses (in India) to change its own tax laws is viewed as illegal and effectively overruled by three private arbitrators based across thousands of kilometres away in Europe and creates an unprecedented constitutional crisis;[65] that ruling by the Supreme Court of India (in January 2012) that recognized Vodafone before their revised retroactive amendment was easily dismissed by an international tribunal that imposed on Vodafone their own interpretation of "legitimate expectations" based on ambiguous BIT terminology.[66]

The actions and the interpretation of the arbitral tribunal highlight the complete asymmetry of the ISDS system, where an Indian investor had no equivalent rights to sue the Indian government in any international courts, yet a foreign investor did have super-national rights that were not accessible to Indian citizens or companies. The various "survival provisions" of 10–15 years, pursuant to previous BITs, create an arrangement in which investors may, notwithstanding the voiding of the agreements, continue to bring claims until 2030-2035 for things that occurred long before and thus effectively consign any future elected government to the preceding government's decisions made many years in the past.[67] The crisis initiated a robust political dialogue in Parliament, with oppositional parties accusing the ruling government of sacrificing their political sovereignty to a "secret foreign court", thus creating additional political polarization within India.[68]

Similarly, the long-term consequences of this economic damage were real. As a result of two major taxation disputes along with a total liability exceeding USD 7 billion, India lost all revenue that could have been generated from these claims to pay them back. During the period from 2017 until mid-2022, India had refunded or covered more than USD 1.4 billion to Cairn, while waiving the entire Vodafone claim; both of these amounts represent an unrecoverable loss to India that would have allowed for the funding of approximately 50,000 rural primary health centres or 150,000 government school teachers for an entire year.[69]

More importantly, during these two arbitration processes, the Government of India incurred legal defence costs of over ₹300 crores (approximately USD 40 million) in relation to both claims. During these same years, the retrospective taxing situation caused by the tax dispute triggered at least 17 similar tax claims against other foreign investors, creating a contingent liability that could reach up to USD 20-25 billion if enforced.[70] Furthermore, due to

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[65] UNCTAD, *Denunciation of the ICSID Convention and BITs: Impact on Investor-State Claims* (n.d.), <https://investmentpolicy.unctad.org/publications/40/iia-issues-note-denunciation-of-the-icsid-convention-and-bits> accessed 26 November 2025.

[66] PRS Legislative Research, “Lok Sabha & Rajya Sabha Debates, Monsoon Session 2021,” PRS Legislative Research, <https://prsindia.org/sessiontrack/monsoon-session-2021/vital-stats> accessed 26 November 2025.

[67] The Indian Express, “Vodafone, Cairn Verdicts: Govt Should End Retrospective Taxation,” *The Indian Express*, December 25, 2020, <https://indianexpress.com/article/opinion/editorials/vodafone-cairn-energy-arbitration-case-7118917/> accessed 26 November 2025.

[68] Model Text for the Indian Bilateral Investment Treaty (2016), <https://www.iisd.org/toolkits/sustainability-toolkit-for-trade-negotiators/wp-content/uploads/2016/06/Model-Text-for-the-Indian-Bilateral-Investment-Treaty.pdf> accessed 26 November 2025.

[69] Ministry of Finance, “Rajya Sabha Unstarred Question No. 1518,” n.d., <https://rsdebate.nic.in/bitstream/123456789/720332/1/PQ_254_02082021_U1518_p255_p255.pdf> accessed 26 November 2025.

[70] *Moody’s & Fitch Ratings – India Sovereign Commentary on Treaty Risk* (2025), <https://indianexpress.com/article/business/moodys-follows-fitch-only-affirms-indias-sovereign-rating-with-stable-outlook-10278565/> accessed 26 November 2025.

these two cases and others, foreign investors in India's economy were less confident about the security of long-term, stable tax levels and therefore slowed down on the investment of certain FDI categories. More importantly, the Government of India lost tax revenue during an important fiscal period when it was attempting to fund significant fiscal stimulus and infrastructure investment through the COVID-19 crisis.[71]

4.4. India's Policy Response (2016–2023)

In response to the above situation, India had reacted very quickly and decisively. It did so by preparing its own template for investment treaties (the 2016 Model BIT) even before the final award was made in both the Vodafone and Cairn arbitration cases in 2015.[72] The new template represented a significant departure from the more traditional "European-style" BITs. The new template excluded "fair and equitable treatment" from the list of protections as an ambiguous risk.[73] India also created a separate jurisdiction for tax disputes outside of ISDS.[74] The Model BIT required foreign investors to exhaust local remedies by using Indian courts for a minimum period of five years before being allowed to bring an international arbitration.[75] The definition of a protected investment was significantly narrowed, excluding portfolio investments and debt instruments, and also establishing clear exceptions for the protection of the environment, public health, and national defence.[76]

India's announcement of the end of BITs with the remaining partner countries has resulted in a decreased number of BITs in force between the years 2016-2023 from 83 to less than 13 by 2025, marking the largest BIT termination program ever conducted on an international basis, attributable to India as a single country.[77] Under tremendous pressure from arbitral bodies, the Parliament of India passed the Taxation Laws (Amendment) Act in January 2022, which completely nullified the Taxation Laws (Amendment) Act of January 2012 and provided for the return of the entire amount of tax paid with interest to every single entity that had invested in or owned shares in an entity in India before January 2022.[78] As of mid-2022, India had paid US$1 billion (equivalent to approximately ₹7,700 crores) to Cairn Energy and had also announced the withdrawal of its claims against Vodafone.[79]

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71 Julien Chaisse and Sarthak Gupta, "The Vodafone and Cairn Arbitrations: Implications for Tax Sovereignty," *Economic & Political Weekly* 56 (n.d.), <https://www.epw.in/journal/2021/38> accessed 26 November 2025.

72 Department of Economic Affairs, Government of India, "Model Text for the Indian Bilateral Investment Treaty," n.d., <https://dea.gov.in/other-reports/model-text-indian-bilateral-investment-treaty?utm_source=chatgpt.com> accessed 26 November 2025.

73 "The Taxation Laws (Amendment) Act, 2021," n.d., <https://prsindia.org/files/bills_acts/acts_parliament/2021/The%20Taxation%20Laws%20%28Amendment%29%20Act%2C%202021.pdf?utm_source=chatgpt.com> accessed 26 November 2025.

74 *Vodafone v. India (I)* — Investment Dispute Settlement Case Summary, <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/581/vodafone-v-india-i> accessed 26 November 2025.

75 *Vodafone International Holdings B.V. v. Republic of India* (PCA Case No. 2016-35) — Final Award (Operative Part), <https://www.italaw.com/cases/2544?utm_source=chatgpt.com> accessed 26 November 2025.

76 *Cairn Energy PLC and Cairn UK Holdings Ltd. v. Republic of India (PCA Case No. 2016-07) — Final Award*, n.d. <https://pca-cpa.org/cases/> accessed 26 November 2025.

77 Business Standard, *India Refunds Rs 7,900 Cr to Cairn to Settle Retro Tax Dispute*, February 24, 2022, <https://www.business-standard.com/article/companies/india-refunds-rs-7-900-cr-to-cairn-to-settle-retro-tax-dispute-122022401284_1.html> accessed 26 November 2025.

78 Stephanie Findlay and Nic Fildes, "Vodafone Wins Long-Running €3bn India Tax Battle," Vodafone Group PLC, *Financial Times*, September 25, 2020, <https://www.ft.com/content/be5db92a-4cb4-4b3d-8f23-64faf44e6bd0> accessed 26 November 2025.

79 Standard, *India Refunds Rs 7,900 Cr to Cairn to Settle Retro Tax Dispute*.

As mentioned above, the Indian Government has introduced stricter "joint interpretation" rules for the few BITs executed after 2021 and will, in the future, demand that any new BIT entered into between India and a country contain provisions for dispute resolution in accordance with India's restrictive model.[80] Overall, this means that, as a result of the above, India is no longer an investor-friendly BIT State as it was in the 1990s; rather, it has transitioned into being one of the most restrictive and protective BIT States in the world by 2021-2022.[81]

India's experience in the Vodafone and Cairn cases is a prime demonstration of how first-generation BITs can infringe upon the sovereignty of nations over their own taxes, even when the treaties were signed decades ago, and result in losses that exceed billions of dollars to taxpayers. As a result of India's reaction, it has become a model for the international community regarding the negative effects of treaties that were negotiated and agreed upon without proper balance in favour of developing countries.[82]

5. Conclusion

The case study of India examined in this research provides a clear example of the negative impact of BITs on the country. India initially signed 83 bilateral investment treaties, mainly with European states, but after several legal cases were brought against it, the country was forced to pay substantial amounts of money. For instance, in the Vodafone case (between the Netherlands and India) and the Cairn Energy case (between the United Kingdom and India), India had to pay 7 billion dollars and spent approximately USD 40 million on its legal defence. These instances show that, from an economic perspective, BITs caused significant financial losses for India. From a political and governance standpoint, these treaties affected India’s domestic decision-making and laws, leading to the repeal of some regulations and intensifying political disputes within the country. From a social perspective, these BITs placed additional financial pressure on the ordinary population and contributed to public anger and dissatisfaction. As a result of these negative impacts, the Government of India terminated most of its BITs and also revised and changed its policies.

To prevent the negative impacts of BITs, it is recommended that host countries conduct a thorough assessment of the economic, political, sovereignty, and social effects of such treaties before signing and accepting them. In addition, host countries should strengthen their domestic capacities, including by enacting strong domestic laws, establishing credible local arbitration centre to resolve investment disputes, and creating transparent systems to monitor investments. Furthermore, treaties should be designed in a way that does not restrict the government’s freedom in economic development, policy-making, and protection of public interests, so that a balance between investors’ rights and national interests is maintained.

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[80] PTI, *Retro Tax Arbitration: India Ordered to Pay up to \$1.4 billion to Cairn Energy*, n.d., <https://www.financialexpress.com/business/industry-cairn-energy-wins-retro-tax-arbitration-india-ordered-to-pay-1-2-billion-2155909/?utm_source=chatgpt.com> accessed 26 November 2025.

[81] Barnali Choudhury, “India’s New Model BIT: A Critical Deconstruction,” *Journal of World Investment & Trade* 19 (n.d.): 173--213, <https://www.brookings.edu/wp-content/uploads/2018/08/India%E2%80%99s-Model-Bilateral-Investment-Treaty-2018.pdf?utm_source=chatgpt.com> accessed 26 November 2025.

[82] Barnali Choudhury, 'India’s New Model BIT: A Critical Deconstruction', *Op. Cit.*

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