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FROM UNILATERAL ADJUDICATION TO SHARED SOVEREIGNTY: RETHINKING DISPUTE RESOLUTION IN DTAAS

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Abstract

The concept of a globalised world relies on smoothening the logistics of international trade. Double Taxation Avoidance Agreements (DTAAs) are the primary tools used by sovereign nations to jump past fiscal hurdles and guarantee investment stability. However, the bilateral nature of these agreements is currently being threatened by unilateral interpretations from home courts. By analysing recent landmark judgements like Tiger Global, Binny Bansal, and Nestle, this article highlights a growing trend of judicial nationalism in India. Domestic courts are aggressively overriding the conclusiveness of Tax Residency Certificates (TRCs) and the state is tactically using notification loopholes to win tax disputes, which ultimately falters the trust of international investors. To solve this problem, this article recommends a tripartite bilateral tax tribunal. The proposed structure is simple: one adjudicating officer from each party to the agreement, and a neutral chairman decided mutually by both countries to exclusively hear DTAA interpretation disputes. Unlike the OECD's Mandatory Binding Arbitration, which states perceive as an unacceptable surrender of sovereignty to a secret "black box," the proposed tribunal exercises sovereignty jointly. It provides transparent, reasoned judgments and a strict 18-month adjudication deadline to bypass the years of delay in domestic courts. Constitutionally valid under Article 253 of the Indian Constitution and financially practical through shared costs, this mechanism ensures that foreign companies get their perceived neutrality. Ultimately, moving away from unilateral home courts to a bilaterally accepted institution is the only way to foster the trust required for India to achieve its ambition of becoming a global investment hub.

Keywords: Double Taxation Avoidance Agreements (DTAA); Treaty Override; International Tax Arbitration; Tax Residency Certificate (TRC); Judicial Nationalism; Bilateral Tax Tribunal; OECD Multilateral Instrument (MLI).

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Introduction

The concept of globalisation is fundamentally based on the assumption of various multinational corporations working to knit the countries closer. The end of the Cold War in early 1990s conclusively assured the world that an autarkic system of governance only weakens a state. If the goal of this globalised world is to smoothen the logistics of international trade bilaterally and multilaterally then fiscal hurdles are the friction point that creates contentions. A sovereign state has an obligation to work upon these contentions and align the policies to promote mutual benefit. The biggest friction point of a bilateral economic trade is taxation. Private companies would not be inclined to get their profits on international business be taxed by each state, at the same time the company's origin state would strive to get the best suited environment over its working.

Double Taxation Avoidance Agreement (DTAA) is the primary tool used by sovereign countries to allocate taxing rights and jump past the fiscal hurdles. It is not only a tax document but also a guarantee of stability, which cements the meeting of minds of two states. The meticulous nature of this agreement guarantees profits to corporations which calculate post tax return even before investing a penny. India, which took around forty-four years to liberalise its economy, was so convinced of DTAA that it signed its first agreement in 1950. Currently India has over ninety comprehensive DTAAs which signifies our ambition to be a global investment hub.

The bilateral nature of DTAAs signifies implementation regions extending across two sovereign countries, the presumption from this principle would be that the interpretation of these agreements would also be done bilaterally. But tax authorities' contentions are solved by home courts, which implies unilateral interpretation of agreements that apply to both countries. Indian Courts in cases like Azadi Bachao[1] and Tiger Global[2] have disputed the Tax Residency Certificate (TRC) which is the ultimate proof of residency issued by Mauritius Authorities even though the DTAA between India and Mauritius clearly gives this right to issue them to the origin country.[3] Courts overriding international agreements through domestic law interpretation which creates legal friction in bilateral relations.

1Union of India v. Azadi Bachao Andolan, (2003) 263 ITR 706 (SC).

2Authority for Advance Rulings v. Tiger Global International II Holdings, 2026 INSC 60 (Jan. 15, 2026)

3Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, India-Mauritius, art. 4, Aug. 24, 1982, G.S.R. 920(E).

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The state in its power after court judgments tries to manoeuvre around the complications through Mutual Agreement Procedure (MAP) but they are proven to be insufficient, non-binding and usually results in endless negotiations. The objective of this article is to highlight the judgments, their effects on international trade and recommend solutions to mitigate this problem. The primary sourcesfor this article is taken from legal journals and court judgements. News articles and reports from legal think tanks were taken to understand the practical connotations.

The Crisis of Interpretation: Recent Jurisprudential Shockwaves

The 'Look Through' Approach: Tiger Global and Binny Bansal

In 2026 Supreme Court (SC) through the Tiger Global case created shockwaves in the international market of India. Tiger Global's subsidiaries which are registered in Mauritius started investing in Flipkart Singapore from 2011 which continued until 2016. The subsidiaries sold these shares to Walmart in 2018 for $1.6 billion. Indian tax agencies had the right to tax the capital gains under section 9(1)(i) of IT Act 1961, where if a company has more than 50% of its working in India then by law it is an Indian company.[4] Flipkart Singapore came under this provision because its 100% of its operations were in India. Tiger Global requested 'Nil Withholding Certificate' under India-Mauritius DTAA, where they had Tax Residency Certificate (TRC) issued by Mauritius.[5] The Indian tax agency differed on the matter and mandated the company to pay taxes. The matter reached the courts where the Delhi High Court ruled in favour of the company and stated "India must respect its international promise to Mauritius".[6] SC on the other hand focused on the intention of the company to use the laws to bypass the taxes and ruled in the favour of the Indian tax agency.

In the same Walmart acquisition of Flipkart, Binny Bansal, group CEO sold his holdings to Walmart too.[7] At the time of selling Mr. Bansal had TRC from Singapore under Singapore-India DTAA and he presumed to pay taxes on capital gains in Singapore only.[8] This was contested by Indian tax agencies on the loose interpretation of section 6 of IT Act, which designates a resident of long time to pay taxes on his stay in India of 60 days but it can be

4Income Tax Act, 1961, § 9(1)(i), No. 43, Acts of Parliament, 1961 (India).

5Income Tax Department, Certificate of Residence for the Purposes of the Double Taxation Avoidance Agreement, Circular No. 789 (issued Apr. 13, 2000)

6Tiger Global Int'l III Holdings v. Auth. for Advance Rulings, (2024) 468 ITR 1 (Del)

7Binny Bansal v. Deputy Comm'r of Income Tax, (2026) IT(IT)A No. 571/Bang/2023 (ITAT Bengaluru)

8Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, India-Sing., art. 13, Aug. 1, 2005, G.S.R. 447(E)

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relaxed by agencies to 182 days if the person only comes to visit and is not a long term resident.[9] In the Binny Bansal case he approached the Income Tax Appellate Tribunal Bengaluru (ITAT) on the argument that a 141 days stay is lower than the threshold, which exempts him from any tax liability, he also requested the court to order implementation of the literal meaning of law instead of its interpretation. The Tribunal rejected his arguments and ordered him to pay the taxes on capital gains in India.

The Notification Paradox: Nestle and Sky High

India-Switzerland DTAA was amended in 2022 which lowered the dividend income percentage levied by non-resident country from 10% to 5%.[10] Nestle saw this development as a profitable opportunity and to get better profit in India. This evident relief was dismantled by the Indian tax agencies, which argued section 90 of IT Act.[11] The provision mandated notification by the government to implement any treaty signed with the countries. Nestle on the other hand believed that the amendment is to be enforceable as soon it is signed by the parties. The SC decided in the favour of tax agencies citing the dualist theory which makes the notification mandatory as till then it is a promise and not an enforceable right.[12] Section 90 and its precedence through this case was also used in Sky High Leasing Co V ACIT(IT) where the Indian tax agency contended in the SC that Sky High an aircraft leasing company should pay taxes in India because their earnings were considered to be royalties rather than rent income.[13] The company adduced India-Ireland DTAA that exempted rent income from non-resident countries.[14] The counsel from the company cited the Nestle case and argued that the said change in the type of income from rent to royalties was not notified. The SC was convinced to rule against the tax agencies' contention.

These four judgments are pronounced in just the last five years, which became landmark precedents in the niche sector of DTAA. This article puts forth this argument that a DTAA which is a bilateral agreement between two sovereign countries, if it has any contention then the deciding institution is a court of dispute origin country, even though that specific court does

9Income Tax Act, 1961, § 6, No. 43, Acts of Parliament, 1961 (India)

10Central Board of Direct Taxes, Clarification regarding the protocol to the Double Taxation Avoidance Agreement (DTAA) between India and various countries, Circular No. 3/2022 (issued Feb. 3, 2022).

11Income Tax Act, 1961, § 90, No. 43, Acts of Parliament, 1961 (India); Assessing Officer (Int'l Tax'n) v. M/s Nestle SA, 2023 INSC 928.

12Assessing Officer (Int'l Tax'n) v. M/s Nestle SA, (2023) 458 ITR 756 (SC)

13Sky High Appeal XLIII Leasing Co. v. Assistant Comm'r of Income Tax (Int'l Tax'n), (2025) 177 taxmann.com 579 (Mum. Trib.). , Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, art. 7, Nov. 24, 2016 [hereinafter MLI]

14Sky High Appeal XLIII Leasing Co. v. Assistant Comm'r of Income Tax (Int'l Tax'n), (2025) 177 taxmann.com 579 (Mumbai - Trib.), Income Tax Act, 1961, § 90, No. 43, Acts of Parliament, 1961 (India)

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not have jurisdiction beyond its own country. A sovereign country is not bound or inclined to follow that judgment, it also creates a ripple effect where all aspects of bilateral relations are put at stake.

The Problem with Unilateral Adjudication

Judicial Nationalism vs. International Commitments

In 1872 India got Indian Contract Act, which legally bound parties to a contract to fulfil each other's promise.[15] If there is a dispute they approach a neutral institution like court or arbitration board. No party will ever accept a relative of another party to mediate on the dispute, for a very simple reason of inherent partiality. If this logic is sustainable then how can a sovereign country accept a judgement from a court of another country they are in bilateral agreement with?

In the Tiger Global Case the court gave 'tax sovereignty first' argument, with a logic that national interest of treasury supersedes international treaties.[16] But the whole basis of DTAA is to relax taxation and promote investment. Its full form nomenclature includes the word avoidance, then how do tax agencies expect companies to ignore the treaties and pay them. It almost seems like a court sanctioned breach of international treaties. A DTAA always gives the right to issue a TRC to both countries to their respective companies, which becomes the basis of their functionality in bilateral business. In this case the court demoted TRC from conclusive proof to eligibility condition, if so then what would be the need of a DTAA. General Anti-Avoidance Rule (GAAR) was empowered to override treaties by court and morality of not paying tax on the profits were questioned. Both of the factors were taken into cognisance through domestic law, how does a domestic law and court jurisdiction apply to another sovereign nation?

After the Binny Bansal Case, the question is very simple: when Singapore-India DTAA was signed, were the authorities not aware of its contradictions with section 6 (1) of IT Act? If they were and they still agreed upon not taxing an individual which with a TRC, then why did their interpretation change for this specific case? The Tribunal also followed the judicial nationalism path and ignored a treaty the country had signed. In the Nestle case the Indian government took a nationalist approach, where they went to court knowing very well the SC will uphold a constitutional provision for notification.[17] Repercussion of the judgement was that the Swiss

15Indian Contract Act, 1861, No. 9, Acts of Parliament, 1872 (India)

16Auth. for Advance Rulings (Income Tax) v. Tiger Global Int'l II Holdings, 2026 INSC 60 (Jan. 15, 2026)

17Assessing Officer (Int'l Tax'n) v. M/s Nestle SA, (2023) 458 ITR 756 (SC), Income Tax Act, 1961, § 90, No. 43, Acts of Parliament, 1961 (India) , INDIA CONST. art. 253.

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government took Most Favoured Nation (MFN) status away from India.[18] The government of any sovereign nation is expected to be nationalist but there has to be a difference between nationalism of higher taxes and nationalism of business facilitation, in this case the government took the former path. Interestingly the same government in the Sky High case conveniently forgot about the notification provision in the constitution just to get higher taxes from a company with whose origin country we have DTAA with. This interpretation of comfort is nothing else than a nationalist elucidation of the constitution which they were only doing for international treaties before. The Indian government expects to have a cake and eat it too, by signing DTAAs with countries but at the same time goes to their court for getting the taxes. With minute exceptions like the Sky High case, major cases are won by the agencies through this nationalism.

The Subversion of Established Tie-Breakers

Countries while negotiating DTAAs understand the practical aspects that there will be instances where disputes of different nature will arise. Intercepting those contingencies these agreements always have tie breakers, to resolve these matters. In the Tiger Global Case, one of the contention was Place of Effective Management (POEM). The DTAA clearly mentions that the Board, a decision making body, should be the resident of the country to get the POEM title.[19] In this case Mauritius has given the title to the company, the SC's decision which is inconsistent with the Pacta Sunt Servanda applied head and brain test. In the Binny Bansal case the Tribunal superseded two tie breakers, first was Article 4(2) of the Singapore- India DTAA which specified that if the person's family lives there and he works in the country now than he is a resident but the court focused on the economic heart which overweighed his physical relocation.[20] Second was Section 6(1)(c) of IT Act,[21] being a domestic law with the discretion to apply rests with Indian tax agencies and courts, should that even be included in a bilateral agreement? Even if we factor the domestic law, the 182 days relaxation is a discretionary power which creates a paradox where two NRIs are taxed differently just because of their duration of being an NRI.

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*18*Switzerland Suspends MFN Status to India, Fed. *Dep't of Fin. (Switz.), Communiqué (Dec. 11, 2024)*

19Auth. for Advance Rulings (Income Tax) v. Tiger Global Int'l II Holdings, 2026 INSC 60 (Jan. 15, 2026), Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, India-Mauritius, art. 4, Aug. 24, 1982, G.S.R. 920(E)

20Binny Bansal v. Deputy Comm'r of Income Tax (Int'l Tax'n), (2026) IT(IT)A No. 571/Bang/2023, ¶¶ 142-155 (ITAT Bengaluru)

21Binny Bansal v. Deputy Comm'r of Income Tax (Int'l Tax'n), (2026) IT(IT)A No. 571/Bang/2023 (ITAT Bengaluru, Income Tax Act, 1961, § 6(1)(c), No. 43, Acts of Parliament, 1961 (India), Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, India-Sing., art. 4, Aug. 1, 2005, G.S.R. 447(E)

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In the Nestle case the court's view was seen as a grammatical anomaly which bypassed the evident tie breaker in the agreement. The title of most favoured nation is not ceremonial in nature, it comes with many economic benefits. OECD members were given the MFN title but it stated that "a country which is the member of OECD"[22] and the court interpreted it to mean that only the countries member of OECD at the time of signing would get the title and not the countries which joined the membership afterwards. In the Sky High case the court has ruled in favour of an Irish company which seems fair but does not happen often as in recent years most of the disputes regarding international taxation had judgements favouring the Indian tax agencies. In this prospect a domestic court of a sovereign country in a bilateral agreement seems like an inconsistent tie breaker. A court which has its jurisdiction in the territory of a country is deciding on matters which would need compliance from another country's government and company.

The Erosion of the Tax Residency Certificate

In the Azadi Bachao Andolan case the court designated TRC as the impregnable shield which they backtracked in the Tiger Global case as necessary eligibility condition but not sufficient evidence. The new interpretation is, you cannot get treaty benefit without TRC, but you can no longer get treaty benefit with just TRC. In 2013 the amendment of section 90(5) of IT Act mandated other documents like form 10F with the TRC to get the treaty benefits, which is a clear irregularity as per any DTAA.[23] The court even allowed the tax agencies to look through GAAR, which is highly suspicious and disrespectful to any country. Even in the Binny Bansal case the tribunal favoured the economic heart argument while aggressively rejecting the TRC issued by Singaporean authorities which was valid as per Singapore- India DTAA. The tribunal even called the TRC merely an entry ticket rather than a conclusive document. When a domestic court takes cognisance of a TRC dispute it inevitably appears that the court believes the country which has issued that certificate is either not equipped to get aware about the intended fraud or it is party to that fraud. If mere cognisance creates this perception, judgements which nullify the certificate are expected to be perceived in even harsher tone.

Imagine if two parent companies sign a contract and one of them does not inform their subsidiaries, will the contract ever be successful? In the Nestle case this happened when in

22Assessing Officer (Int'l Tax'n) v. M/s Nestle SA, (2023) 458 ITR 756, ¶¶ 54-62 (SC) (interpreting the term "is" in the MFN clause)., Binny Bansal v. Deputy Comm'r of Income Tax (Int'l Tax'n), (2026) 182 taxmann.com 226 (Bangalore - Trib.) Income Tax Act, 1961, § 6(1)(c), No. 43, Acts of Parliament, 1961 (India)

23Union of India v. Azadi Bachao Andolan, (2003) 263 ITR 706 (SC), Auth. for Advance Rulings (Income Tax) v. Tiger Global Int'l II Holdings, 2026 INSC 60 (Jan. 15, 2026), Income Tax Act, 1961, § 90(5), No. 43, Acts of Parliament, 1961 (India); Income Tax Rules, 1962, r. 21AB (specifying the particulars required in Form No. 10F)

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2016 India- Switzerland DTAA was amended to incentivise the companies 5% more but India never notified the amendments which stopped their implementation domestically. Observations in the Tiger Global case also states that when the government introduced GAAR in 2017,[24] the conclusiveness on a TRC evaporated as they never renotified CBDT circular 789 (2000) that gave impenetrable protection to TRC.[25] This consistent game of notification does not seem to be a coincidence but looks like the state tactically played their notification card to always win. Except the Sky High case where this plan flipped, the state is winning. There is no conclusive proof that these problems are intentional or not, but the opposite countries in the bilateral agreements would not have the same level of faith in us after these skirmishes.

The Bilateral Solution: Reclaiming Perceived Neutrality

The Architecture of the 1+1+1 Tripartite Tribunal

Even if we believe our state has no dubious intention, the perceived neutrality wouldn't hurt. This article recommends a tripartite tribunal to adjudicate on matters related to DTAAs, which have to be specifically mentioned in the agreements themselves. The proposed structure is simple: one officer from each party to the agreement, and a third member appointed mutually by both countries to act as the chairman. For its operation, the state would set up a tribunal where they appoint at least ten adjudicating officers, with each getting ten countries' DTAAs as their assigned portfolio. For example, if there is a dispute between Indian tax agencies and a Mauritian company on the DTAA, the officer in charge of the Mauritius agreement from India, along with an officer appointed by Mauritian authorities, and a mutually decided chairman will hear the application.

To avoid the complications of setting up a permanent seat, the proceedings of the hearing will be adjudicated in online mode. The qualification of the officer from the Indian side should be strictly equivalent to a judicial member of the Income Tax Appellate Tribunal (ITAT). This means they must have (i) held judicial office for at least 10 years; (ii) served in the Indian Legal Service (Grade II or higher) for 3 years; or (iii) practiced as an advocate for 10 years, with substantial experience in tax litigation before the ITAT, High Court, or Supreme Court.[26] The jurisdiction of the tribunal should be strictly limited to the countries party to the agreement,

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24Assessing Officer (Int'l Tax'n) v. M/s Nestle SA, (2023) 458 ITR 756 (SC), Auth. for Advance Rulings (Income Tax) v. Tiger Global Int'l II Holdings, 2026 INSC 60 (Jan. 15, 2026). Income Tax Act, 1961, § 90(2A), No. 43, Acts of Parliament, 1961 (India)

25CENTRAL BOARD OF DIRECT TAXES, https://incometaxindia.gov.in/communications/circular/circular789.htm (last visited Mar. 26, 2026).

26 Income Tax Act, 1961, § 252, No. 43, Acts of Parliament, 1961 (India).

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moving the decision away from domestic courts and into a bilaterally accepted institution.

Why Arbitration Fails: The Public Law Argument

Currently, the OECD advocates for Mandatory Binding Arbitration through the Multilateral Instrument (MLI), but developing nations have historically opted out of it.[27] The fundamental flaw in the OECD's approach is that it treats tax disputes like private contract disputes. Arbitration, by its very nature, was designed for private companies to resolve commercial issues. Taxation, on the other hand, is a sovereign power. If we apply the logic of sovereignty, why would a state delegate its right to tax to a private, ad-hoc panel of commercial arbitrators? It is perceived by states as an unacceptable surrender of judicial independence. The proposed tripartite tribunal solves this friction. Because the adjudicating officers are appointed directly by the contracting states, the tribunal does not surrender sovereignty; it exercises it jointly.

Furthermore, arbitration is notoriously secret. Arbitral awards are confidential, binding only the immediate parties, and they create no legal precedent. If another company faces the exact same tax issue under the same treaty tomorrow, the legal fight begins all over again. A formalized bilateral tribunal fixes this "black box" system by publishing reasoned judgments. Over time, this practice would build a consistent record of international tax jurisprudence, giving foreign investors and domestic tax agencies the exact interpretative clarity that unilateral domestic courts currently disrupt.

The OECD also favours "Final Offer" or "Baseball Arbitration," where the arbitrator just looks at the taxpayer's proposed tax number and the revenue authority's number, and simply picks one.[28] They do not give detailed, published legal reasoning. This method just slaps a band-aid on a single financial dispute instead of solving the actual interpretation crisis of the DTAA. A tribunal, operating on judicial logic, interprets the treaty text thoroughly and transparently. Ultimately, the establishment of this institution ensures that we are not supporting any fraud, but giving the accused his perceived neutrality through the tribunal. It replaces the opacity of a closed-door arbitration with a highly visible, procedurally sound forum.

The EU and USA- Canada corridor has one of the highest volumes of cross-border trade in the

27 ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT [OECD], https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf(last visited Mar. 26, 2026).

28 Ibid.

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world.[29] The reason seems to be the perceived neutrality when it comes to dispute resolution. It is institutions like the advisory commission in the EU[30] and mandatory binding dispute resolution clauses in America's bilateral agreements,[31] which fuels the bilateral trust. These institutions work on the same principle of participation of parties in agreement and a neutral observer to adjudicate the dispute. This success is not a coincidence but a well thought of strategy, where states which trust the parties they are in agreement with will always look to expand the arrangement.

Practical Implementation and Constitutional Validity

Statutory Timelines and Jurisdictional Filters

In the Tiger Global Case the dispute started in 2018 and the final judgement of SC came in 2026, it took eight years to finalise the contentions highlighted in the case. It was not as if there were no judgements coming in this time period, first the ITAT and then the HC gave their judgements on the matter but they became placeholder settlements till the SC gave its judgement. Similarly the Binny Bansal Case, it started in 2023 and the ITAT gave judgement in 2026, now the matter is in HC, one can just imagine the time it will take to get the decision from HC. Also looking at the trend, the losing side will approach the SC hoping for a reversal. The journey of Nestle case and the Sky High case follow the same pattern where the final judgement took 18 and 3 years respectively. It is not only time consuming but also has practical glitches like no precedent settled by the court to follow till the highest court possibly concludes the matter. A tribunal with an adjudication deadline of 18 months can surpass these problems.

A general fear of legislators wherever they are contemplating on making a new tribunal is to have some kind of restrictive entry so they do not get overburdened like courts. The restrictions are needed to achieve the legislative intent which envisioned a niche, specialised fast track adjudicatory authority to handle major complex cases with technicalities. To achieve this the proposed tribunal should have filters which clearly demarcate its jurisdiction to dispute in interpretation of DTAA. If not, then every NRI and foreign companies would approach the tribunal seeking favourable taxation, these filters should also include monetary threshold and precedent effect to narrow the cases.

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29 OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, https://ustr.gov/countries-regions (last visited Mar. 26, 2026).

30 Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC), 1990 O.J. (L 225) 10 (EU), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A41990A0436 (last visited Mar. 26, 2026).

31 UNITED STATES DEPARTMENT OF THE TREASURY, https://home.treasury.gov/system/files/131/Treaty-US-Model-2016.pdf (last visited Mar. 26, 2026).

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Constitutional Soundness Under Article 253

Article 253 of Indian Constitution gives parliament supreme power to make laws to implement any treaty or agreement signed with another country.[32] The parliament can notify the jurisdiction of this proposed tripartite tribunal under section 90 of IT Act,[33] which would make it constitutionally valid. Also article 51(c) states to foster respect for international laws and treaties as a directive principle,[34] was it implemented when the court in the Tiger Global case created contention of the TRC issued by Mauritius as per the existing DTAA. The Dualist Theory used by the court in the Nestle case is also getting fulfilled after the government notifies the tribunal formally. One could argue that the tribunal strips SC of its basic structure, but that would be a fundamentally flawed argument to begin with as the tribunal only adjudicates on the interpretation of bilateral treaties and not on the calculation and recovery. It is merely an outsourcing of treaty interpretation to a specialised, balanced and mutually agreed forum.

Financial Viability and Shared Sovereign Stakes

The cost of this tribunal would concern any rational observer, but spending a few crores is much better than the cost of litigation which goes on for years. Billions locked in escrow accounts which are blocked by domestic courts is not a good image for projecting India as a global investment hub, as this cost is exponentially higher than tribunal budget. Additionally the cost of the neutral chairperson and online infrastructure would be shared by both the countries in the agreement, with India solely only paying for their adjudicating officer and its supporting infrastructure. One of the most costly gambles in these kinds of litigation are when tax agencies demand and collect taxes whose cases they lose after ten years and now companies will be paid back that amount with hefty interest. But the proposed tribunal only interprets an agreement so no payment is required upfront and a judgement would come in just 18 months rather than years.

When it comes to the global investment sector, perception is an asset for every state, how do the companies, people and governments perceive any state would decide their inclination to invest in them. Perception is not always made on correct facts or reality but how something seems to be. Indians would not see their SC in suspecting shade but to expect other country's citizens to do the same would not be fair, for example in the Tiger Global case in the perspective

32 INDIA CONST. art. 253.

33 Income Tax Act, 1961, § 90, No. 43, Acts of Parliament, 1961 (India).

34 INDIA CONST. art. 51, cl. c.

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of a Mauritian citizen a SC of another country levied high taxes on their country's company even though there was a DTAA in place. If the same would have happened with India, the truth is many of us would have suspected unfair bias tilting towards the court's origin country. The proposed tribunal would eradicate this perception altogether with its tripartite solution.

Conclusion

Law students would remember that in initial contract classes they are taught about basic elements of agreement or contract like offer, acceptance, consideration etc. But beyond this book definition professors would without a miss always add the word 'trust' as the most important element of any agreement. Logic being though every agreement has a liability clause parties prefer to keep the promise and use the clause only as a security net. Trust on another party to keep their promise is a hopeful thought as agreements are done to achieve a specific goal in mind and even though liability clauses exist, if the matters come to them then loss has already occurred. If parties through agreements foster trust between them then they will always expand their relationship financially over time.

India has inadvertently faltered this trust when it comes to DTAAs with other countries. Its SC dictating matters like, TRC which was specifically mentioned in the agreement or the state not notifying amendments in the agreement are prime examples of faltering on its own commitments. The country's ambition to become a global investment hub is only possible through Multi-National Companies expanding their operations but companies are in the business of profit and even though they don't explicitly mention it anywhere without profits the existence of good companies is impossible. These financial juggernauts don't have the appetite to take losses in the long run, so to them trust matters the most.

The Vikisit Bharat 2047 goal is the ambitious task that the country has taken on itself, but it requires growth in every sector. To achieve this task on our own is possible but would take double the time we have chalked out right now, so help is required, not as charity but as a mutual growth agenda. The proposed tribunal has the calibre to push countries to expand their respective DTTAs with us, which not only fulfil our investment ambition but would also help in all the other sectors.