

## **THE INTERNATIONAL INVESTMENT TREATY ARBITRATION AND ANALYSIS ON ENFORCEMENT OF ARBITRAL AWARDS**

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### **ABSTRACT:**

This paper will discuss the various issues, history and cases regarding International Investment Treaty Arbitration and the Awards that have been passed in such arbitrations and the effect of such Awards against India as a state and the enforceability of the same. The various treaties, WTO and other organizations that are involved in trade and business between one state and an investor. The paper also deeply analyses the Bilateral Investment Treaties which when disputed by the parties to the said Bilateral Investment Treaty use Arbitration to settle their disputes and the Awards passed. This paper further focuses in the various important cases that have been the headlines for the citizens and the Awards when enforced may be a bite of the tax payers money. Bilateral investment treaties (BITs) and multilateral investment treaties (MITs) are central to any consideration of investment treaty arbitration. There are thousands of Bilateral treaties entered into between major investors and states. Bilateral investment treaties when enters into a dispute these disputes are mostly settled by way of Arbitration. This study is based on the Secondary Data collected from the various research papers collected from the different Journals and also by referring various text books.

**Key Words:** *Arbitration, Bilateral Investment Treaty, World Trade Organization.*

### **Introduction:**

An International investment treaty arbitration involves the resolution of a foreign investor's claim against a respondent state, Country for alleged breaches of investor protections contained in an investment treaty concluded between either two states or a group of states pursuant to an arbitration agreement contained within the investor-state dispute settlement provisions of the relevant treaty. 'Investment treaty arbitration' is sometimes contrasted with 'international commercial arbitration', and both forms of arbitration are sometimes referred to under the common term 'international arbitration',

**Historical Background:**

Historically discussing the Arbitration and Conciliation is a newer law that is being implemented as speedy dispute resolution mechanism which is efficient and has enforceability through out the world. Bilateral Investment Treaties and the several status that come with such treaties such as Most Favoured Nations and the World Trade Union which forms as an international regulator of the trading through the world and the member nations.

India has opened up to the world economy only after 1991 after the changes in policies and as we can term it as “India is opening up to the world” In the Year 1991 Liberalization , Privatization and Globalization of Indian economy took place and the country started entering the global economy and a natural resources rich country which has all the qualities to be a influential super power in the world economy. India also opened up for foreign investors who are interested in investing in a potential and having the best demographics and all other necessary resources. Since 1991 India has entered into several Bilateral Investment Treaties and also has faced brunt of some failures in such treaties entered into during the course of time India has faced several awards against the State and will have settle Billions of dollars to reach out to a settlement in such cases.

**INDIA MODEL BILATERAL INVESTMENT TREATY, 2016:**

The India Model Bilateral Investment Treaty, 2016 (“2016 India Model BIT”) is testimony to India’s significantly changed view towards investment treaty disputes between Investor and State. It contains 38 articles divided into 7 chapters of the said Model. It is a departure from generally structured BIT’s. The 2003 India Model BIT contained broad substantive provisions offering precedence to investment protection over the State’s right to regulate. The 2016 India Model BIT is drastically different in form, structure and content and accords increased latitude to regulatory powers of the State. This is being perceived as imbalanced in terms of affording protection to foreign investment. Whilst adopting the perspective of a capital importing country, India has limited the access to, and protection of, the Bilateral Investment Treaty, to investors. The present-day approach of India towards foreign investment under the 2016 India Model Bilateral Investment Treaty, 2016 may conversely result in depriving Indian investors of protection under the Bilateral Investment Treaty they invest in a foreign State.

Settlement of Disputes India Model Bilateral Investment Treaty, 2016: Chapter IV of the 2016 India Model BIT deals with Settlement of Disputes between an Investor and a Party’. This is the longest chapter on settlement of disputes in any BIT so far and contains eighteen (18) articles. Evidently, this chapter was drafted

to safeguard India as a host State from the large number of investment treaty claims it has been facing since White Industries.

### **IMPORTANT CASES THAT HAD IMPACT ON INDIA:**

- ***VODAFONE INTERNATIONAL HOLDING BV VS UNION OF INDIA:***

This is an important case with respect to India and a foreign Investor and the permanent court of arbitration held that imposition of taxation through retrospective amendment is a breach of Article 4(1) which mentions equitable and fair treatment mentioned under the bilateral investment treaty. The claims made by the Union of India were thus rejected by the Permanent Court of arbitration.

The tribunal not only barred the state from charging taxes from Vodafone International Holdings BV but also obligated them to pay Rs 40 crores to the company as a part of partial compensation of their legal costs.

ANALYSIS: The Vodafone case on retrospection brings forth a good side and a bad side. The bad side is the obstinate nature of the legislature to pass unfair laws just to increase tax collection and the good side is the Independence of the judiciary that won't succumb to the pressure imposed by the state. Thus, in the future, it should be ensured that no unjust amendment is passed which would negatively hamper the trust of foreign companies and investors which would, in turn, reduce the growth and development of the country

### **CAIRN ENERGY PLC AND CAIRN UK HOLDINGS LIMITED V. THE REPUBLIC OF INDIA:**

Permanent Court of Arbitration at The Hague ruled unanimously against the retrospective tax and in the execution proceedings wherein Craine wanted to seize assets of Indian government in several other countries and they started the same by filing relevant applications to seize 20 assets in Paris, France. The Craine Lawyers have also tried in the New York Court to make Air India liable to the claims of the Republic of India.

The case took a dramatic turn when the Indian Government offered a 1 Billion Dollar settlement in October 2021 and the same was accepted by the Craine Industries after several heated meetings and settlement efforts

### **Conclusion:**

We have already discussed the topic in detail and we can conclude that as India strives to become the fastest-growing economy and ventures into a higher band for ease of doing business, it is quintessential that it provides a robust framework for protection of investors and investments, and an effective means for adjudication of disputes between the foreign investors and Republic of India. It is crucial to understand that foreign investment holds tremendous potential to boost economic growth and that regulation within its permissible limits is adequate to govern and control foreign investment. What India awaits is a legal and

regulatory with regards to the International Investment Treaties and various Bilateral Investment Treaties it enters into for the purpose of Development and growth its economy.

International Investment Treaty Arbitration as discussed above in depth is a dispute resolution mechanism where in the claim is against a state/Country with relation to disputes in Bilateral Investment Treaties entered into between Corporations and Countries. Above we have discussed about various important cases and the Awards passed and the resolution of the disputes between and the delivery of justice and Carine case is one of the most important cases to be discussed and the it is one of the highest claims against India and the sae was with respect to retrospective Tax Policy by the Indian Government.

### **REFERENCES:**

- Most Favoured Nation, Bilateral Investment Treaties and the effects of the same have been illustrated and dealt with in the below mentioned websites. [https://unctad.org/system/files/official-document/diaeia20101\\_en.pdf](https://unctad.org/system/files/official-document/diaeia20101_en.pdf)
- Investor-state arbitration is a form of dispute settlement where a dispute between an investor and a host state is heard by an ad hoc tribunal of arbitrators. <https://untobaccocontrol.org/kh/legal-challenges/investment/dispute-settlement/>
- This particular website was of great help for the study of Vodafone Case. <https://www.italaw.com/cases/2544>
- The below mentioned website sights the important case law referred in the present project Carine vs Union of Inida. <https://finshots.in/archive/the-cairn-arbitration-case-explained/>