V. TREATY SUPREMACY ON TRIAL: THE NESTLÉ RULING AND ITS AFTERMATH

Mahi Agrawal[*]

ABSTRACT

This article examines the doctrine of treaty supremacy in India's international taxation law through the evolving interpretation of the Most-Favored-Nation (MFN) clauses. While Indian jurisprudence historically recognized that treaty provisions prevail over inconsistent domestic law where they are more beneficial to the assessee, several High Court decisions extended this principle to treat MFN clauses as self-operational, permitting the automatic importation of favorable terms from third-country treaties without further executive action. This approach was disrupted by the Supreme Court's decision in *Assessing Officer v. Nestlé SA* (2023) and its reaffirmation in *Income Tax Officer v. Deccan Holdings B.V.* (2025), which clarified that MFN clauses are not self-executing and become enforceable only upon an express notification under Section 90(1) of the Income-tax Act. The shift to a notification-based framework has introduced significant uncertainty for investors and treaty partners, leading to diplomatic and fiscal repercussions. The most notable fallout is Switzerland's suspension of the MFN clause from the Switzerland-India DTAAs in late 2024. This article argues that India's rigid dualist framework undermines the predictability essential for cross-border investment. It recommends legislative clarification of Section 90 of the Act, time-bound notifications regarding the operation of the MFN clause, and transparent administrative guidance to reconcile sovereignty with predictability and certainty, which are vital for sustaining investor confidence and preserving India's credibility as a reliable participant in global tax governance.

Keywords: MFN, DTAA, Taxes, Nestle Conflict and Policies.

[*] Mahi Agrawal is a Third-year student of B.A.LL.B (Hons.) at Hidayatullah National Law University, Raipur. The views stated in this paper are personal.

I. INTRODUCTION

Double Tax Avoidance Agreements **("DTAAs")** are bilateral treaties between nations that prevent the same income from being taxed twice, once in the source country and again in the residence country.[1] They ensure clarity and fairness in cross-border taxation by allocating rights over various categories of income, including dividends, interest, royalties, and fees for technical services. For foreign investors, particularly in emerging markets like India, consistency in the application and interpretation of DTAAs is of paramount importance.[2] Stability in the tax regime promotes predictability in investment structuring, accurate calculation of tax liabilities, and avoidance of disputes. Any inconsistency, whether arising from judicial divergence or policy shifts, carries the potential to weaken investor confidence by creating uncertainty in withholding tax outcomes and increasing compliance burdens, which may in turn influence investors' willingness to commit capital.

In India, the statutory foundation for DTAAs is found in Section 90 of the Income Tax Act, 1961 **("IT Act"),** which empowers the Central Government to enter into agreements with foreign countries to avoid double taxation and promote the exchange of information.[3] This provision also establishes a key principle that where a conflict exists between domestic law and a DTAA, provisions more beneficial to the assessee shall prevail, effectively granting DTAAs an overriding status over domestic tax laws. This ensures that India's

---

[1] Parthasarathi Shome, *Taxation History, Theory, Law and Administration* (Springer International Publishing 2021) 321–328.

[2] Evert-jan Quak and Hannah Timmis, *Double Taxation Agreements and Developing Countries* (Institute of Development Studies, K4D Helpdesk Report, 2018).

[3] Income Tax Act 1961, s 90; Annapurna Chakraborty, 'Double Taxation Avoidance Agreements in India' (2014) SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2404797>.

international commitments are honored irrespective of domestic laws, boosting investor confidence and global credibility.

However, this position has been contested in recent years in the context of the interpretation and application of the MFN clause. Several of India's DTAAs, especially those with Organization for Economic Cooperation and Development **("OECD")** member countries, contain an MFN clause to ensure parity among treaty partners.[4] This clause allows a contracting state to claim the same favorable tax treatment that has been extended to another OECD member state. The controversy arises over whether MFN clauses are triggered automatically once a more beneficial third-country treaty comes to existence, or whether they require an explicit governmental notification under Section 90(1) of the IT Act before becoming applicable.[5]

Earlier judicial interpretations have leaned toward the automatic operation of MFN clauses.[6] Investors and tax professionals alike widely welcomed these rulings, as they reinforced the perception of India's commitment to treaty stability and predictability. This clarity was unsettled by the Supreme Court's 2023 decision in *Assessing Officer v. Nestlé SA*, which held that MFN benefits require explicit notification under Section 90(1) of the IT Act rather than operating automatically.[7] This marked a significant departure from earlier understandings, effectively conditioning the application of treaty-based benefits on domestic executive action. While the Court emphasized statutory compliance, the ruling introduced an element of uncertainty into the doctrine of treaty supremacy, which, in the Indian context, holds that once a DTAA is

[4] Ines Hofbauer, 'Most-Favoured-Nation Clauses in Double Taxation Conventions – A Worldwide Overview' (2005) 33 *Intertax* 445.
[5] Manoj Kumar Sharma, Shiva Gaur and Namrata Rawat, *Most Favoured Nation Clauses in Double Taxation Agreements: Identifying Problems and Recommending Policy Solutions for the Global South* (Institute of Development Studies, ICTD Research in Brief 159, 2025).
[6] *Steria India Ltd v CIT* (2016) 386 ITR 390 (Del); *Concentrix Services Netherlands BV v ITO* (2021) 434 ITR 516 (Del).
[7] *Assessing Officer v Nestlé SA* (2023) 458 ITR 756.

duly notified under Section 90, its provisions prevail over conflicting provisions of domestic law to the extent they are more beneficial to the taxpayer.[8] This principle has traditionally ensured stability and predictability in cross-border tax arrangements, but the Court's insistence on additional notifications for MFN-triggered benefits has complicated its practical operation.

From an international law perspective, conditioning treaty operation on domestic notification risks being viewed as a form of treaty override.[9] While India is not a signatory to the Vienna Convention on the Law of Treaties **('VCLT'),** Article 26 of the Convention, pacta sunt servanda, and Article 27, which provides that a state may not invoke its internal law as justification for failing to perform its treaty obligations, are widely regarded as reflecting customary international law.[10] Applied to DTAAs, which operate as bilateral treaties under public international law, these principles require that India adhere to its commitments in good faith and not subject treaty-based rights to excessive procedural barriers. Heightened insistence on domestic notifications before giving effect to MFN clauses may therefore erode confidence in India's treaty performance. Switzerland's recent suspension of its MFN clause in 2025 exemplifies the diplomatic unease this has generated.[11]

---

[8] *Union of India v. Azadi Bachao Andolan* (2003) 263 ITR 706 (SC).

[9] A Kumar, 'Incoherence in Applying International Tax Law: Hemorrhaging Development' (2016) 56 *Indian Journal of International Law* 59; Vik Kanwar, 'Treaty Interpretation in Indian Courts: Adherence, Coherence, and Convergence' in Helmut Philipp Aust and Georg Nolte (eds), *Domestic Courts and the Interpretation of International Law: Converging Approaches* (OUP 2015); Reuven Avi-Yonah and Ajitesh Kir, 'The Meaning of "Is": Reflections on Nestle' (2024) 52(4) *Intertax 258.*

[10] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, arts 26–27.

[11] Département fédéral des finances (DFF), 'Suspension of the Application of the Most Favoured Nation Clause of the Protocol to the Agreement between the Swiss Confederation and the Republic of India for the Avoidance of Double Taxation with respect to Taxes on Income' (*ESTV*, 11 December 2024)

Against this backdrop, this article attempts to address the central question regarding the stability of India's doctrine on tax supremacy and MFN application in the aftermath of Nestlé SA ruling... Section II of the article examines the evolution of India's doctrine on treaty supremacy and MFN interpretation. Section III analyses the post-Nestlé SA conflict and its impact on taxpayers and treaty partners. Section IV provides a comparative perspective with other jurisdictions, and Section V advances policy recommendations and concluding remarks.

II. THE EVOLUTION OF INDIA'S TREATY SUPREMACY DOCTRINE

India's international tax framework in relation to the application of DTAAs and MFN clauses has evolved dynamically through judicial interpretations. The foundation for this evolution lies in the IT Act, which explicitly empowers the Central Government to negotiate and enter into DTAAs with foreign countries. Section 90 of the Act grants the government the authority to execute such treaties, and Section 90(2) states that where a DTAA exists, the provisions of the treaty or the domestic law may apply, with precedence given to whichever is more beneficial to the taxpayer.[12] This provision effectively enshrines the principle of treaty supremacy for the benefit of taxpayers. Complementary provisions, including Section 90A and 91, extend this power to treaties with associations of countries or other foreign jurisdictions, thereby broadening India's ability to mitigate double taxation for residents and non-residents alike.

<https://www.estv.admin.ch/dam/estv/en/dokumente/international/laender/int-laender-indien-suspension-mfn-en.pdf.download.pdf/int-laender-indien-suspension-mfn-en.pdf>.

[12] The Income Tax 1960, ss 90, 92.

The Supreme Court first addressed the practical implications of these statutory provisions in the landmark *Azadi Bachao Andolan* case of 2003.[13] The litigation arose in the context of tax benefits claimed by Indian subsidiaries of foreign companies under the India-Mauritius DTAA. The Supreme Court affirmed that the treaty provisions take precedence over inconsistent domestic law. It emphasized that even fundamental charging sections of the IT Act, which ordinarily determine tax liability, are subordinate to the provisions of Section 90(2) in situations where they conflict with treaty obligations. The Court upheld a Central Board of Direct Taxes **("CBDT")** circular granting Mauritius treaty benefits on the DTAA, highlighting that the notification of the treaty itself was sufficient to confer enforceability. This decision effectively cemented the principle that once a DTAA is formally notified, its terms automatically override less favorable domestic provisions.[14]

A decade later, judicial attention shifted to the interpretation of MFN clauses. In 2016, the Delhi High Court addressed the first major MFN controversy in *Steria (India) Ltd. v. CIT*, concerning the India-France DTAA.[15] The treaty included a protocol containing an MFN clause promising that if India subsequently agreed to more favorable terms with another OECD country, France would enjoy the same benefits. The Court confronted the question of whether Clause 7 of the Protocol required additional legislative action to become operational. It held that no such further notification was necessary because Clause 7 was drafted as an integral and self-executing component of the DTAA. The Court interpreted its phrasing to mean that once India granted a more favorable rate or narrower scope in another Convention,

---

[13] *Union of India v Azadi Bachao Andolan* (2004) 10 SCC 1.

[14] Mohak Thukral, 'Treaty Shopping: Abuse of Double Taxation Avoidance Agreement (DTAA): Special Focus on the Case Study of India's DTAA with Mauritius and the MLI Framework' (2022) 1 *DNLU Student Law Journal* 40.

[15] Steria India Ltd (n 6).

Agreement, or Protocol, the beneficial treatment automatically extended to the present Convention without requiring any distinct or subsequent notification. This interpretation allowed the beneficial definition of "Fees for Technical Services" in the India-UK treaty, which excluded managerial services, to be imported into the India-France treaty. Practically, this meant that Steria could avoid taxation on certain managerial service fees that would have otherwise been included. This ruling thus provided an expansive understanding of MFN clauses, holding them as self-executing instruments capable of automatically conferring the most favorable tax treatment available under comparable treaties.

The principles laid down in *Steria* were further tested in *Concentrix Services (India) B.V. v. ITO* in 2021.[16] The dispute arose under the India-Netherlands DTAA, which prescribed a default dividend withholding rate of 10 percent. India had subsequently entered into treaties with Slovenia, Lithuania, and Colombia, each providing a reduced 5 percent dividend rate. The assessees contended that the MFN clause should entitle them to a lower 5 percent rate. Drawing upon the reasoning in *Steria*, the Delhi High Court affirmed that the MFN clause operates as a self-trigger provision, meaning that its applicability depends on the occurrence of specified triggering events rather than operating automatically in all circumstances.[17] The Court emphasized that two conditions must be satisfied for the clause to be triggered: first, the third-country treaty relied upon must be with a State that was an OECD member at the time of signing the India–Netherlands DTAA; and second, that treaty must in fact extend a lower rate or a more restricted scope of taxation.

[16] Concentrix (n 6).

[17] Saurabh Sharma and Mukesh Rawat, 'MFN Dilemma in India's DTAAs Post Concentrix Ruling: A Ticking Time Bomb' in Mariela de Amstalden, Niall Moran, and Henok Asmelash (edts), International Economic Law: New Approaches and Issues (Springer Nature Switzerland 2023) 259.

The Court concluded that the MFN clause did not require a separate gazette notification under Section 90 to take effect.[18]

In Nestlé SA (2023), the Supreme Court departed from the earlier High Court approach, including Steria and Concentrix, and clarified the enforceability of MFN clauses.[19] The Court held that such clauses are not self-executing and require explicit notification under Section 90(1) to be operative. It clarified that India's entry into a treaty or protocol does not make it automatically enforceable before courts or tribunals. The provisions of such instruments confer rights only once the Central Government issues the necessary notification under Section 90(1). On the issue of OECD membership, the Court affirmed that the same treatment benefit under an MFN clause is only applicable if the third country was an OECD member at the time of entering into the treaty with India. Therefore, countries that joined the OECD after concluding their DTAA with India, such as Slovenia, Lithuania, and Colombia, do not trigger MFN benefits for older treaties. By imposing these conditions, the Supreme Court signaled a more restrictive approach, prioritizing procedural compliance alongside the realization of treaty benefits. This marked a departure from the expansive interpretations of the Delhi High Court and introduced two-fold procedural rigidity in claiming MFN benefits.

Alongside the MFN jurisprudence, the Gujarat High Court's ruling in *CIT v. Adani Wilmar Ltd. (2025)* examined treaty supremacy in the context of domestic withholding provisions.[20] Unlike the Supreme Court's decision in Nestlé SA, which held that treaty-based benefits, particularly those derived through MFN clauses, do not apply unless separately notified under Section 90(1), the Gujarat High Court treated the DTAA rate as immediately

[18] Concentrix (n 6).
[19] Nestlé SA (n 7).
[20] *CIT v Adani Wilmar Ltd* 2025 Latest Caselaw 5064 (Guj).

enforceable and held that Section 206AA could not override it.[21] The Court reasoned that once a treaty is notified, Section 90(2) gives it primacy over domestic law, including procedural TDS provisions, without requiring any further executive action. This approach effectively diverges from the notification-centric framework adopted in Nestlé SA, as it applies treaty benefits directly even in the absence of subsequent notifications.

More recently, in *Income Tax Officer v. Deccan Holdings B.V.* (2025), the Supreme Court reaffirmed the reasoning adopted in Nestlé SA, reiterating that MFN clauses contained in DTAAs are not self-executing and cannot operate in the absence of a specific notification under Section 90(1) of the Income-tax Act .[22] The Court expressly overruled the Delhi High Court's stance in *Deccan Holdings B.V. v. ITO* (2021), which had treated the MFN clause as automatically applicable, and instead aligned itself with the notification-based framework laid down in Nestlé.[23]

The journey from Azadi Bachao Andolan through Steria, Concentrix, and later the Gujarat High Court's approach in Adani Wilmar, reflects an earlier judicial tendency to treat treaties and their Protocols as self-operational instruments capable of directly overriding domestic law. MFN clauses, in particular, were interpreted to permit the automatic importation of favourable rates from third-country treaties without further executive action. This approach has now been decisively recalibrated. With Nestlé SA, and its reaffirmation in Deccan Holdings B.V., the Supreme Court has clarified that treaty-derived benefits, especially those expanding through MFN clauses, do not become enforceable unless expressly incorporated through a Section 90(1)

[21] Section 206AA, inserted by the Finance (No. 2) Act, 2009, obligates the deductor to apply a withholding rate of 20 percent where the deductee does not furnish a Permanent Account Number (PAN), thereby functioning as a statutory deterrent against non-compliance with the PAN regime.
[22] *Income Tax Officer v Deccan Holdings B.V.* (2025) SCC OnLine SC 332.
[23] *Deccan Holdings B.V. v ITO* (2022) 445 ITR 486.

notification. The contemporary position therefore places procedural incorporation, rather than automatic operation, at the center of India's treaty-supremacy framework. The following section discusses the fallout from Nestlé SA in detail and examines the current conflict it has generated within India's international tax regime.

III. THE FALLOUT FROM NESTLÉ SA RULING

In the aftermath of Nestlé SA, multinational corporations and Indian subsidiaries are now facing reassessments of tax positions that were previously settled. For years, companies had structured their cross-border payments, whether in the form of dividends, royalties, interest, or fees for technical services, on the assumption that MFN clauses embedded in their treaties automatically entitled them to reduced withholding tax rates. With the Supreme Court's ruling, tax authorities are empowered to issue revisional notices seeking higher withholding tax payments, along with interest and penalties. Dutch companies that had invoked the MFN clause under the India-Netherlands treaty to benefit from a 5% rate on dividends now face reassessment at 10%.[24] Indian companies that withheld tax at 5% in line with these interpretations must now pay the differential, along with potential penalties. What had been treated as a stable element of India's tax landscape has become uncertain, as both taxpayers and authorities revisit years of transactions executed under a different understanding of treaty law.

This reversion to higher withholding rates also creates the risk of double taxation. The problem is especially acute for investors from jurisdictions like Switzerland. When Colombia and Lithuania acceded to the OECD,

[24] Pavan Burugula, 'Dutch FPIs face tax concerns following apex court ruling' (*LiveMint*, 22 October 2023) <https://www.livemint.com/market/dutch-fpis-face-tax-concerns-following-apex-court-ruling-11697997684414.html>.

Switzerland retrospectively applied the lower 5% dividend rate under the MFN clause, rather than the 10% rate in the India–Switzerland agreement, and Indian companies correspondingly withheld tax at that rate.[25] Swiss investors were thus credited for only 5% tax in their home jurisdiction, consistent with their domestic laws on foreign tax credits. Following Nestlé, if Indian authorities now demand 10% withholding, those investors cannot claim an additional credit in Switzerland, since their tax authority has already treated the lower rate as final. The result is a double burden without relief.[26] Recognizing this asymmetry, the Swiss Federal Tax Administration announced that it would suspend its unilateral application of the MFN clause and revert to a 10% withholding tax on dividends from January 1, 2025.[27] By doing so, Switzerland sought to restore reciprocity and parity in treatment between the two countries' investors, albeit at the cost of higher taxes for both. This development demonstrates the cascading impact of a judicial interpretation that, while doctrinally sound within India's dualist framework, disrupts the balance of expectations underpinning international agreements.

Beyond the diplomatic fallout, there are practical economic consequences. The uncertainty surrounding MFN application may drive companies to reconsider their investment structures and treaty routes. Jurisdictions like Mauritius and Singapore, long regarded as more stable due to clear treaty terms and limited reliance on MFN clauses, could become the preferred vehicles for routing investment into India. The India-Mauritius DTAA, despite

---

[25] P. Sunil, 'Switzerland scraps MFN status to India; dividend income to face higher tax' (*Moneycontrol,* 3 December 2024), <https://www.moneycontrol.com/news/world/switzerland-scraps-mfn-status-to-india-dividend-income-to-face-higher-tax-12889570.html>.

[26] Dhruv Janssen-Sanghavi and Anirudh Srinivasan 'Some Reflections on the Swiss Response to the Indian MFN Position in Nestlé' (*Wolters Kluwer International Tax Law Blog*, 30 December 2024) <https://legalblogs.wolterskluwer.com/international-tax-law-blog/some-reflections-on-the-swiss-response-to-the-indian-mfn-position-in-nestle/>.

[27] DFF (n 11).

being revised, continues to be viewed as predictable compared to those involving European countries.[28] Similarly, the India–Singapore DTAA explicitly defines its benefits without the interpretive ambiguities attached to MFN clauses. Consequently, India's stance could unintentionally encourage treaty shopping, as investors gravitate toward jurisdictions where benefits are more straightforward and less susceptible to retroactive reinterpretation.

The broader conflict revealed by Nestlé also raises constitutional questions about the interaction between international obligations and domestic legislative authority. Article 253 of the Constitution empowers Parliament to enact laws implementing any treaty or international agreement.[29] However, in the absence of parliamentary legislation or a specific executive notification under Section 90(1), no treaty provision, including an MFN clause, automatically becomes part of Indian law. Thus, the Supreme Court effectively upheld the Parliament's exclusive power to legislate upon such conventions and mandated that international obligations must pass through a domestic filter before affecting taxpayers or citizens. However, the price of this constitutional fidelity is the perception of inconsistency and administrative rigidity. When taxpayers perceive treaty benefits as contingent on bureaucratic discretion rather than clear legal entitlements, it weakens India's treaty network as a reliable framework for cross-border investment.

The fallout of Nestlé thus brings into light a deeper structural conflict between India's constitutional dualism and the functional expectations of global commerce. While India is moving toward a procedurally strict framework, investors seek stability and predictability. The result is a system

[28] Satabdee Banerjee and Verena Tandrayen-Ragoobur, 'Indo–Mauritian Investment Trends Post-amendment of the Double Taxation Avoidance Agreement (DTAA)' (2025) 16(2) *IIMS Journal of Management Science* <https://journal.iimshillong.ac.in/pages/table-of-contents/fulltext/?id=392>.
[29] The Constitution of India, art 253.

where neither side achieves complete satisfaction. As Switzerland's response demonstrates, unilateral actions taken in reaction to such decisions can lead to a tit-for-tat adjustment in treaty benefits, raising doubts about mutual trust essential for the global tax order.

IV. LESSONS FROM ABROAD: UK, NETHERLANDS, AND FRANCE

Most developed nations adopt a smoother and more automatic approach to the interpretation and application of MFN and non-discrimination clauses. In contrast to India's approach, these clauses are treated as self-executory once the treaty comes into force. This section examines how countries such as the United Kingdom, the Netherlands, and France implement MFN clauses as an integral part of their DTAAs, prioritizing reciprocity, investor certainty, and the seamless operation of international law over sovereign control.

A. United Kingdom

In the United Kingdom, MFN clauses in DTAAs do not become automatically operative merely because the treaty has entered into force. Under the UK's dualist constitutional framework, treaties ratified by the executive bind the UK internationally but acquire domestic legal effect only when incorporated by Parliament through primary or delegated legislation.[30] For tax treaties, For tax treaties, incorporation is ordinarily effected by a statutory instrument made pursuant to the Taxation (International and Other Provisions) Act 2010.[31] However, once a DTAA is duly incorporated, no further notification or administrative endorsement is required for the MFN

[30] *R (Miller) v. Secretary of State for Exiting the European Union* [2017] UKSC 5 (UK); Charley Coleman, '*Parliamentary Scrutiny of Treaties*' (*House of Lords Library*, 16 May 2023) <https://lordslibrary.parliament.uk/parliamentary-scrutiny-of-treaties/>.
[31] Taxation (International and Other Provisions) Act 2010, s 2 (UK).

provision to operate; it applies by virtue of the treaty instrument itself.[32] The UK-Chile DTAA, for instance, includes an MFN clause relating to tax rates, and this provision became effective immediately after ratification without any need for supplementary action by the tax authorities.[33] Guidance from HM Revenue and Customs (HMRC), the United Kingdom's tax, payments, and customs authority, confirms this approach, emphasizing that DTAAs "usually override domestic law" and that treaty-based exemptions or credits are available to taxpayers upon claim.[34] Even though the UK Treasury retains the authority to enact domestic amendments, in practice, such amendments are unnecessary, as treaty ratification itself suffices to operationalize all provisions, including MFN benefits.

B. Netherlands

The Netherlands follows an even stronger model of automaticity, with Dutch courts affirming that MFN clauses operate without any need for government intervention once the relevant conditions are triggered.[35] A notable illustration is the India–Netherlands DTAA, whose protocol contained an MFN clause linked to OECD membership.[36] Dutch courts considered the clause immediately effective once India concluded a more beneficial treaty with another OECD member. However, from the Indian perspective, this

---

[32] HM Revenue & Customs, '*Double Taxation Agreements: Introduction – Domestic Law* (INTM152060)' (*GOV.UK*, 24 November 2025) <https://www.gov.uk/hmrc-internal-manuals/international-manual/intm152060>.

[33] UK/Chile Double Taxation Convention, signed in London on 12 July 2003, art 22(2); Double Taxation Relief (Taxes on Income) (India) Order, SI 1993/1801.

[34] Ibid.

[35] Netherlands Ministry of Finance, Decree of 22 June 1998; Netherlands Ministry of Finance, Decree of 28 February 2012.

[36] Convention between the Republic of India and the Kingdom of Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, arts 10–12.

interpretation has not been adopted, as India requires a formal domestic act of recognition before an MFN clause can take effect.[37]

C. France

France occupies a middle ground between full automaticity and procedural confirmation. French constitutional practice, under Article 55 of the Constitution, gives treaties a status superior to domestic law once ratified and published in the Journal Officiel.[38] In principle, this makes MFN clauses self-executing upon entry into force. However, the French tax administration occasionally issues decrees or notices to clarify the implementation of treaty provisions.[39] The France–Latvia DTAA illustrates this self-executing approach. In binding comments issued on 16 October 2024, the French authorities confirmed that the MFN clause had been triggered following the entry in force of Latvia's treaty with Japan on July 5, 2017.[40] The notice merely affirmed these effects for administrative clarity, as the MFN clause operated automatically once its conditions were met.

Overall, the comparison with other jurisdictions underscores that India's post-Nestlé interpretation of MFN clauses stands as an outlier in international tax practice. In the United Kingdom, the Netherlands, and France, MFN provisions operate directly upon treaty ratification, either by virtue of constitutional supremacy or established administrative practice. No additional

[37] Concentrix (n 6).
[38] Constitution of October 4, 1958, art. 55 (France).
[39] Jérôme Monsenego, 'Tax Treaty Disputes in France' in Eduardo Baistrocchi (ed), *A Global Analysis of Tax Treaty Disputes* (CUP 2017) 237–89.
[40] Sophie Tardieu et al, 'Most-Favored-Nation Clause in France–Latvia Tax Treaty Is Triggered' (*Tax at Hand*, 2024) <https://www.taxathand.com/article/37107/France/2024/Most-favored-nation-clause-in-France-Latvia-tax-treaty-is-triggered>; PwC SIA – Mindlink, *France includes most-favoured-nation clause in double tax treaty with Latvia* (*Mindlink*, 3 December 2024), <https://mindlink.lv/en/news/view-pdf?id=23672>.

procedural instrument is needed to activate them. India's continued dependence on notification under Section 90 makes its framework more rigid and less aligned with the cooperative norms that define contemporary international taxation. This divergence calls for reconsideration of whether such procedural formalities truly serve India's interests or merely hinder its credibility as a reliable treaty partner in the evolving landscape of global tax governance.

V. POLICY PATHWAYS FOR A PREDICTABLE TREATY REGIME IN INDIA

India's international tax regime stands at a crossroads between maintaining fiscal sovereignty and sustaining the credibility of its treaty network. The judicial and administrative inconsistencies in interpreting the MFN clause have not only affected investor sentiment but also raised questions on India's commitment to international obligations. In this context, a coherent policy response is essential to reinforce predictability and fairness without compromising legitimate revenue interests.

Firstly, a key source of ambiguity arises from the lack of clarity in the Income Tax Act, 1961 regarding the self-executing nature of MFN clauses. While treaties are negotiated under the executive's authority, their implementation has been read as contingent upon notification under Section 90. To eliminate this uncertainty, Parliament may potentially consider amending Section 90 to explicitly provide that once the preconditions in an MFN clause are satisfied, such as a third-country treaty with an OECD member offering more favourable terms, the clause automatically becomes operative. Such statutory language would align domestic law with international best practice and ensure that the benefits contemplated by the MFN clause are realized without administrative delay.

Secondly, in the meantime, the government may adopt an administrative safeguard by setting up a fixed notification timeline. To bring procedural certainty, an order mandating that MFN-related notifications be issued within four-to-six months of the relevant third-country treaty, and clearly specifying the scope of modification to the earlier treaty and the applicable date of effect, may be brought in. Such a transparent, time-bound process would compel administrative accountability and prevent selective or retrospective notifications, which have been a source of litigation.[41] To enhance accessibility and institutionalise consistent record-keeping, the CBDT may consider establishing a *separate, clearly indexed* digital notification mechanism exclusively for MFN-related communications, in addition to the existing digital framework for circulars already hosted on the CBDT portal.[42]

Thirdly, even though the Gujarat High Court in *CIT v. Adani Wilmar Ltd.* has reaffirmed that treaty provisions under section 90(2) override domestic provisions such as section 206AA, this very judicial divergence from the Supreme Court's more text-strict approach in Nestlé SA underscores the need for administrative clarity. Pending any legislative amendment, the CBDT may still issue detailed guidance clarifying the treatment of taxpayers who have already relied on earlier judicial stance recognising automatic MFN benefits.[43] Rather than offering leniency in light of legal ambiguity, such guidance would operate to ensure nationwide uniformity in assessment practices, reduce avoidable litigation, and restore confidence in tax administration by

[41] P.R.L. Rajavenkatesan and Shanmuga Sundaram Angamuthu, '*Westminster Principles and Twin Ghosts of McDowell and Retrospective Laws*' (2024) SSRN <https://ssrn.com/abstract=4957000>; Aayushi Singh and Harsh Mahaseth, '*A Long and Winding Road—India's Tryst with Retrospective Taxation'* (2023) 26 Int'l Arb. L. Rev. 51; A. Niranjanaa, '*The Fallouts of Retrospective Amendments in Taxing Statutes: A Critical Analysis*' (2021) 6 Int'l J. L., 1221.

[42] Central Board of Direct Taxes, Circular No. 3/2022 (2022) <https://incometaxindia.gov.in/communications/circular/circular-3-2022.pdf>.

[43] Suranjali Tandon, 'Issues and Challenges with Applying Investment Agreements to Tax Matters in the Context of India's Experience' (2023) 31(1) *Asia Pacific Law Review* 235.

preventing inconsistent application of MFN-related positions across jurisdictions.

Lastly, if India intends to maintain its present interpretative position, it should adopt a clearer and more structured long-term approach to the drafting of MFN clauses in its tax treaties. It should first review its existing treaties containing MFN-clauses to identify ambiguities that have led to litigation and inconsistent administration, and use these findings to guide future treaty drafting. In upcoming treaties or renegotiations, the MFN clause should be framed in explicit terms that clarify whether the benefit applies automatically or only upon formal notification by both competent authorities. India may also adopt a standardised MFN clause that clearly defines the scope of the benefit, the point at which it becomes operative, and any safeguards such as reciprocal notifications and anti-abuse conditions. To support this approach, India should strengthen its domestic notification process through timely publication and the maintenance of a transparent public repository of all DTAA-related notifications.

A sample phrasing that could be included in future treaties is as follows: "Any benefit arising under this Most-Favoured-Nation clause shall apply only upon the issuance and publication of a notification by both Contracting States. The extended benefit shall take effect from the date specified in such notifications." Such clear and precise drafting would minimise interpretative disputes and provide certainty to taxpayers and treaty partners.

To sum up, India's way forward requires institutional clarity, legislative foresight, and administrative fairness. Automatic MFN application, time-bound notifications, and transparent guidance can collectively rebuild certainty in cross-border taxation. By ensuring that treaties are implemented as negotiated and that taxpayers are treated with predictability, India can reconcile its revenue objectives with the integrity of its international commitments. The overarching policy goal should be to replace ad-hoc decision-making with a structured framework that minimizes litigation, safeguards treaty credibility, and strengthens India's standing in global tax governance. Only through consistent, transparent, and balanced reforms can India transform its international tax policy from a field of dispute into a model of reliability and trust.

VI. CONCLUSION

India's jurisprudence on treaty supremacy and the interpretation of MFN clauses reflects a gradual shift from a liberal to a markedly restrained approach. Beginning with *Azadi Bachao Andolan*, where the Supreme Court affirmed that treaty obligations prevail over conflicting domestic law, the position has progressively evolved through *Nestlé SA* into a framework that makes the availability of treaty benefits contingent upon explicit executive notification.

The resulting uncertainty has tangible costs, namely retrospective reassessments, potential double taxation, and diplomatic tensions with key treaty partners. Comparative experience from jurisdictions such as the United Kingdom, France, and the Netherlands highlights that procedural flexibility and automatic MFN application can coexist with fiscal sovereignty. India's insistence on notification formalities, by contrast, risks eroding its treaty credibility.

A well-planned path forward requires aligning domestic law with international expectations. Clarifying Section 90 to recognize automatic MFN operation, or at least mandating timely notification, would restore predictability. Equally, transitional relief for taxpayers acting in good faith would uphold fairness. If the current approach is to be continued, India must clarify its interpretation within the treaty wording itself. Ultimately, India must balance the imperatives of sovereignty and certainty: only through legislative clarity and administrative transparency can it transform its unsettled doctrine into a stable and trusted international tax regime.