

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.
All rights reserved.**

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

PRIORITISING STATE SOVEREIGNTY AMIDST ISDS CHALLENGES

AUTHORED BY - MANJARI SINGH

Abstract:

Bilateral Investment Treaty stands as a line of agreement between two nations protecting there foreign investments and fostering the further encouragement for investment between and amongst them ,where the law of the land acts as a protector in protecting the companies rights through bilateral investment treaty .Bilateral Investment treaties are international agreements establishing the terms and conditions for private investment by the nationals and the companies of one nation state to another protecting the foreign and promoting foreign private investments in each others territory.

It assures security ,reliable treatment to foreign investments like:

- >NATIONAL TRATMENT
- >EQUITABLE AND IMPARTIAL TREATMENT
- >PROTECTION FROM SEIZURE
- >SAFEKEEPING OF INVESTORS RIGHT'S

Attending and managing foreign investors at par with the domestic companies in conformity with the international laws limiting and preventing each countries ability of Annexation of foreign investments in ones domestic territory. It facilitates alternative dispute resolution mechanisms through which an investor can approach INTERNATIONAL CENTER FOR SETTLEMENT OF INVESTMENT DISPUTE [ICSID] before take action of suing the host country.

There stands more than 2500 active BIT's in the world the data base of which are made and reversed by the [UNCTAD] UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT.

Research question:

1. Did the white industries case actually brought in a major change in the BIT? Did it affect the host state?

2. LPG reforms did open global access but did it actually brought in FDI?

1. Historical aspect:

India signed its first BIT with uk in the year 1994 and subsequently with 83 countries these BIT's where negotiated based on the Indian model BIT of 1993.¹

These BIT's became the major drivers of FDI inflows in INDIA in the year 1991-2012.

In 1991-INDIA faced extreme crisis for balance of payment and because of its closed economy which led to the introduction of LPG [LIBERALIZATION ,GLOBALIZATION, PRIVATIZATION] TO MAKE INDIA economically more attractive to foreign investors .

But even after the LPG reform foreign investors were hesitant because india lacked strong legal security for foreign investments.²

Therefore to support at the LPG reform INDIA used BIT entered into several BILATERAL INVESTMENTS TREATIES in the early 1990's categorically from 1994 creating and legal certainty.

1.1 [Later in 2010 -2015]

Issues with the model 2015 BIT after the receiving of several series of notices in the WHITE INDUSTRIES CASE³ brought about a knee-jerk reaction in the BIT model 2015:

Which caused a change in the definition of -:

-INVESTMENT -INDIA proposed a narrow definition of investment by which only direct investments are protected under the treaty and precluded the portfolio investment

-EXHAUSTION OF DOMESTIC REMEDY -BIT model imposed a mandate of exhaustion of domestic remedy prior to initiation of INTERNATIONAL ARBITRATION PROCEEDINGS.

-BROADER DISCRETIONARY POWER OF THE HOST STATE - Host states unilaterally excluded any disputes from the jurisdiction of a tribunal merely by contending that the conduct in question is a subject matter of taxation.

2 . The shift in BIT from investors protection to state sovereignty:

IN 2011 an INTERNATIONAL TRIBUNAL ordered INDIA to pay 4.10million AUSTRALIAN DOLLAR to WHITE INDUSTRIES UNDER 1999 INDO-AUSTRALIA BIT

¹ UNCTAD Investment Policy Hub, available at: <<https://investmentpolicy.unctad.org>> (last visited on Apr. 27, 2026).

² The Journal of International Arbitration, Vol. 29, No. 5

³ White Industries Australia Ltd. v. Republic of India: A New Lesson for India” (Kluwer Law Online)

After which INDIA then signed new BIT only with 4 countries and terminated its other previous BIT's with 77 countries.⁴

INDIA'S 2016 model BILATERAL INVESTMENT TREATY administrated a decisive attempt to reclaim regulatory sovereignty after a series of adverse arbitral award. Earlier the BIT framework was highly rigid and protective foreign investors which fostered.⁵

Enabling expansive definition of investment

Open-ended equitable and fair treatment [FET]

Provided easy access to INVESTORS -STATE DISPUTE SETTLEMENT[ISDS]

These approaches led to substantial legal exposure after the dispute in the case

-WHITE INDUSTRIES V. INDIA

-VODAFONE V. INDIA

-CAIRE ENERGY V. INDIA

3. Impact on India due to BIT treaty termination:

INDIA terminated 58 BIT's before introducing the NEW MODEL BIT 2016 with revised rules which gives adequate ability and power to the government in regulation of the foreign investors .It eroded the investors confidence, investors became cautious. New investors were prevented to reach india from the respective countries whose BIT were expired an terminated.⁶ Termination followed by the replacement with the protectionist treaty enabled increased the chances of reduced availability of protection to Indian companies aboard. Tax laws were reformed to avoid disputes

The cause of termination immediately reduced the FDI's due the shift in INDIA's investment strategy but did not stop Foreign investments.⁷

Conclusion:

The White industries case has in real time influenced India's BIT, mainly in the investment policy framework emphasizing on state sovereignty than investor protection and putting pressure on mandatory exhaustion of local remedies and cancellation of MFN. This shift

⁴ bilaterals.org, available at: <<https://www.bilaterals.org>> (last visited on Apr. 27, 2026)

⁵ Accounting for the Internal Dynamics of Bilateral Investment Treaties: Every Bit Counts" (SSRN).

⁶ Question No. 3947, Bilateral Investment Treaties, Ministry of External Affairs, Government of India, available at: <https://mea.gov.in/lok-sabha.htm?dtl/36405/QUESTION_NO3947_BILATERAL_INVESTMENT_TREATIES> (last visited on Apr. 27, 2026).

⁷ "Bilateral Investment Treaties and Foreign Direct Investment: Correlation Versus Causation" (Oxford Academic).

affected in termination of various existing BITs and eventually came the 2016 Model BIT which redefined investment and dispute resolution mechanisms. To conclude with, normally, BITs generally give a hand in the inflow of FDI and the termination of such BITs may lead to decrease in FDI from that particular nations.

