INVESTMENT ARBITRATION IN INDIA

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INTRODUCTION

The investment treaty for making rules to adjudicate the dispute between a FDI company and a government of a country. This type of arbitration was used to stop a continuous tussle between the FDI Company and Government, and also was made to solve and de-pressurize the relation between the two countries as respectively mentioned in the treaty. This kind of investment treaty can be originally signed at regional, national, and international levels, and this all depends upon the nature and seriousness of the treaty being signed by the parties. The people who are actively taking part in the formulation and legislation of this treaty should be having a complete and compelling knowledge about the International Investment Agreement (IIA) also they should be having the answer to, what is the effect the can be included in the economy after the introduction of this agreement[1]. International development policy always stays in coherence to the formation of good international investment relation. Though the concept of BIT was introduced in India at a very late stage, but it was in use for all the other nations that were actively welcoming FDI to invest in their country. Nevertheless, this development was made in India, after the development of LPG Scheme, asking for less restrictions and more of FDI. Before the introduction of LPG Scheme in the economy, there were three conditions which the critics think are the reasons which stopped the growth of Investment arbitration:

1. There was not minimum standard present to Support the process of foreign investment[2],
2. When there was a scope that the standard exist, there was nothing but vague provisions,
3. The laws to govern were not absolute[3].

Over the recent years there has been an exponential rise in the arbitration related to the liberal protection of the international investors. Foreign investment and investors often do face a scrutiny when they invest in a particular country. They are strictly bound by the laws and are vulnerable to the market which guides the government to make immediate effective laws. Since the coming up of and the introduction of the BITs, there has been 2500 investment arbitration agreements since 1990. The history of this kind of investment arbitration can be traced to the Colonial and the Post- Colonial Era.

Between nation business operations and the activities, is as prevalent as the postulation of the concept of Nation-State. In today's world there is huge dependency upon the international trade and investment. In the investment conflict there is a specific

[1] UNCTAD Bilateral Investment Treaties, UNCTAD/ITE/IIA/2 UN(2000), Available at: http://www. unctad.org/en/docs/poiteiiad2.en.pdf. Visited at, 8th October, 2020, 12:39 PM.

[2] *See,* Ian Brownlie, *Principles of Public International Law,* Page 527-528 (5th Edition 1998).

[3] Until and unless the state have given its explicit consent till then no party can induce a state in the arbitration, Reparation for injuries Case, 1949 I.C.J. 174, 177-78 (April 11).

involvement of two parties that are, private companies or enterprises, these companies and enterprises are generally in the form of FDI, and the other party is the government of the host nation, which is an ally of the FDI Company's country[4]. Under this settlement there is a less scope of the private company doing a case against the government at the place where the HQ of the particular company is situated. Investment adjudication and the dispute resolving process do become a hot potato and a debating point over the general established norm of international public law, also known to us as the Calvo Doctrine. Under the said head of dispute resolving process of investment treaty conflict, there haven't been so far many reason that have been acceptable to the public. Also the Calvo Doctrine haven't been nurtured which have led the parties to settle for compromise.

Jurisdiction in resolving up of an investment issue always remains to be the grey area. According to the theory of jurisdiction, as laid down under the international law requires the preliminary court of the state, against or which is doing a case against the prospect. In the Corfu Channel Case[5], it was duly postulated by the ICJ, that consent of the state which is a party to the proceeding is a necessary element to practice the operation of jurisdiction inclusive of any court or tribunal. In the investment dispute, the consent of the state is expressly vested in the Bilateral Investment Treaty (BIT). A thin line of difference between the words 'Jurisdiction' and 'admissibility' is one that, when it comes to jurisdiction, it concerns the whole case and analyzes the dispute in totality, whereas the admissibility is only limited and restricted in subject to single or few disputing interests or claims raised in the suit between the parties. States are having the authority to solemnly resolve the dispute by taking into consideration the following methods which are mentioned under Article 33(1) of the UN Charter, which presents for dispute resolution using negotiation, enquiry, mediation, arbitration, etc. ICJ have solemnly given the states to opt for the resolution of dispute out of the following methods, this act of ICJ comes under the head of freedom of choice which was applied in the cases of Congo v. Rwanda[6] and Spain v. Canada[7]. Investment arbitration is usually and generally vested under the provision of BIT and Article 25 of the convention of ICSID.

LEGAL ISSUES AND CONTENTIONS OBSERVED

In the introduction there has been a mention by the researcher about the history of investment arbitration and how did this

[4] Seymour J. Rubin, Ewell E. Murphy, Jr., Detlev F. Vagts, K. Scott Gudgeon, Gerhard Wegen, Aron Broches and Samuel K.B. Asante, *Avoidance and Settlement of International Investment Disputes*, Cambridge University Press on behalf of the American Society of International Law, Proceedings of the Annual Meeting (American Society of International Law) , APRIL 12-14, 1984, Vol. 78 (APRIL 12-14, 1984), pp. 38-58, http://www.jstor.com/stable/25658210.

[5] *Corfu Channel case (United Kingdom of Great Britain and Northern Ireland v. Albania)*, Preliminary Objections, ICJ Rep. 194815, see Michael Waibel, 'Corfu Channel Case' in Wolfrum Rüdiger (ed), *Max Planck Encyclopaedia of Public International Law* (Oxford University Press, 2010) Vol. II, pp. 792- 797, http://www.mpepil.com/ViewPdf/epil/entries/law-9780199231690-e118.pdf?stylesheet=EPIL-displayfull.
xsl).

[6] *Armed Activities on the Territory of the Congo (Congo v. Rwanda)*, Jurisdiction of the Court and Admissibility of the Application, 3 February 2006, ICJ Rep. 2006, 6, paras. 65–68.

[7] Fisheries Jurisdiction (Spain v. Canada), Preliminary Objection, ICJ Rep. 1998, 432, para. 55.

particular concept gained popularity amongst the nations. There is no opposing contention about the nature of investment a party can make, but under the provisions entered between the investor and the state should be in coherence, the investor can also sue the nation state without the approval of his nation state. Investment arbitration though is a new concept thus it bears some legal concerns, which are being discussed as follows:

1. In international law, there is concept that until and unless the nation wants it can only obey the award or decision given by the tribunal or the court depending upon its wish, but the fallacy lies when an arbitral award passed by the ICC under the provisions of UNCITRAL Rules in favor of an investor, what if the judgment debtor state doesn't pay or give the compensation to the investor in the award.
   Therefore this legal issue is in regards to the consent of the state to follow the international judgment against the preservation of the investor's interest.
2. As this concept of investment arbitration is a new concept and is currently developing its roots in India, what kind of laws shall be made or what policies other than the policies made in 2016, should be made so that there is not complete not made on the part of the government of India.
   There is no conformity in the BIT, in regards to the jurisdiction and the claims to be admitted under the tribunal established to resolve the dispute. The definition of investment and investor is also not clear.
3. Litigation in relation to BIT which concerns the Republic of India, did made certain judgement about the nature, flexibility and elasticity of the BIT, the last research question shall be dealing with Analysis of case laws, in coherence to inherent jurisdiction, SIAC Investment Rules, BIT and the NAFTA.

RESEARCH METHODOLOGY

This Research Project focuses and does critical study of this paper tries to explain the practical approach of Investment Arbitration in India and how far it has been proved to be a boon, its effects and the focus of the same in the Indian scenario. The sources of this article are cases on this subject. The method used in making the paper and the information which has been gathered are from various scattered sources such legal sites and also newspaper articles.

(A) Chapterisation

The chapterisation of the following research shall be presented in an Analytical manner by first giving a brief about the subject matter and then proceeding with analysis of research of Investment Arbitration model of UNCITRAL, NAFTA , ICSID in coherence to BIT.

(B) Research Analysis

Uniform pattern of survey has been taken into consideration that how far the practical approach is in coherence with the theoretical subject manner.

(B) Mode of Citation

Uniform mode of citation is used throughout the paper.

HISTORY OF BILATERAL INVESTMENT TREATY-AN INDIAN PERSPECTIVE

The history of BIT is not codified and is developed over a period of time in an irregular manner. One of the salient feature of the international law is the significant increment in the agreements being entered by

the nations so as to safeguard the interest of foreign investment institutions. UNCTAD have also stated a statistical data that a total of twenty five thousand agreements have been signed by the nations so as to promulgate the foreign investment and to safeguard them against the barbarian policies of the host nation (host nation is a country which have signed the BIT with other nation, and then a company from that nation starts to invest in the prospects of the host nation)this part of the research paper shall be discussing about the history of BIT and its development in three parts namely:

1. Pre-Colonization Years;
2. Post-Colonization Years;
3. Years after the introduction of the LPG Scheme.

PRE-COLONIZATION YEARS

Before the advent and starting up of the Second World War, there was as such no concept being followed amongst the nations in respect of agreement and for the regards of the investment agreements. The agreements which were signed between the countries were in regards to trade, economic promulgation and peace. Sometimes the agreements were drafted in such a manner that it looked like a proxy case of security to be provided to one nation state. In these years of pre-colonization there was no concept of BIT, but certainly there was the discussion and practice of FCN which was dominant. The FCN was to promulgate and increase the friendship, trade and commerce between the states which signed this treaty. These treatises guaranteed to the protection to the nationals. Penalty in regards to expropriation seemed to be a necessary tool to administer unity and peace amongst the nation states. MFN status to the countries provided for the increment of advent of business in respect to limited protection[8]. Safe treatment of the stocks of investment institution was the standard requirement to uplift the international law which was posed as mandatory to the host states. Critics in the domain of international investment as a subject do believe that, customary law of international relation have not provided for the ideal module for safeguard of investment institutions they believe the same for the following reason:

1. Some of the member nation state opined for the improvement of the definition of minimum standards that is the better application of the principle as bestowed under the Calvo Doctrine[9];
2. The nation states contended that though there was a discipline in the international law, but still there was a grey area where the standards guaranteed were ambiguous;
3. Upon the default which was unasked for, the states were asked to espouse their rights which was seen as a black spot in the system, and which would have also led to the instability in the relation between the parties to the agreement[10].

POST-COLONIZATION YEARS

International investment marks its presence after the end of World War two and the

[8] General Treaty of Amity, Commerce and Navigation, Art.3rd, Treaty of Commerce, US-Yugoslavia, Art.1, October 14,1881, 22 Stat. at 963.

[9] Donald R. Shea, The Calvo Clause:A Problem of Inter-American and International Law and Diplomacy, 17-20 (1995).

[10] Until and unless the state have given its explicit consent till then no party can induce a state in the arbitration, Reparation for injuries Case, 1949 I.C.J. 174, 177-78 (April 11).

agreements were being executed till the fall of USSR. There were three specific events which have molded the structure and are responsible for the development of investment agreement. The following are as follows;

The first amongst the rest was the side-effect of the economic depression which was just before the tragedy of World War, as a result of this depression in the economic ecosystem the victors of the war, the allied forces worked in for the liberalization of policies[11]. In 1947, GATT was formed which shifted the focus of international agreement from bilateral to multilateral agreement. Then, a treaty which would have been a disguised blessing for the liberal investment and the negotiations related to it, was never entered into action, the name of the treaty is the HAVANA CHARTER. After the enforcement of GATT, all the agreement that were entered into with the USA, were concluded, these agreements were basically the FCN. But after the world war which was followed in by a wave of nations which duly asked for equitable treatment from the allies, basically the USA. The post war agreements were having liberal equitable policies to conduct the due business in the agreement.

The next part of the development of investment arbitration marks its presence when there was a prevalent practice of decolonization. As this practice was boon to the states that were being decolonized but came in as a bane to the states that were promulgating liberal investment policies. The newly independent states were very protective of their freedom so they considered these FDI as a mode to colonize them again and called this type of colonization as Neo-Colonization[12]. The petty trades that were carried on by the states looked in as the step to invite foreign forces which could be interfering with the political aspiration of the country. Many developing countries in lieu of securing their national interest closed their doors to the inviting foreign investments.

The latest development in the introduction of investment and the negotiation related to it was the evolution and increase in the socialist bloc which asked the countries to utilize their national resources before indulging into an agreement with the allied powers. In 1970s, there was an assembly of UN which was met so as to pass resolution in regards to the investment and market trends. On 12/12/1975, a declaration was sought to appeal and charter of CERDS asked for the state party and the expropriation of foreign property in that state. The nation states which were developed boycotted this attempt and asked for the introduction of BIT.

YEARS AFTER THE INTRODUCTION OF LPG SCHEME

India joined the game and participated in the same after the introduction of LPG Scheme as it was considered out to be an approach thinking to utilize the liberal policies and inviting foreign investments. After India gained independence, her approach changed towards the investment portfolio which was just based upon selective advantages because India's internal policies vouched in-house

[11] Rondo Cameron, *A concise Economic History of the World,* Penguin Publication, 370-398, (3d ed. 1997).
[12] David S. Landes, M Sornarajah, *The Wealth and Poverty of the Nations*, Acharya Publication, 431(W.W. Norton and Company Limited 1999) (1998)

development of the commodities. This selective approach of India changed when the Indian economy faced a subsequent all time low in the economy. In the year of 1994, India joined ties with the United Kingdom, it was this time when one of its kind BIT was signed between the two nations. This BIT was signed by India, for the sole purpose of attracting more and more FDI. Till now there have been a rampant increment of BIT followed by cases of Dabhol Industries and White Industries case, which have truly changed the stance of India in respect to Foreign Investment Arbitration.

BILATERAL INVESTMENT TREATY- INDIAN PERSPECTIVE

GENERAL INFORMATION ABOUT THE BIT

After the implementation of BIT in India in the year of 2016, the whole outlook and view along with operation of the particular topic changed which led to the formation of 2016 BIT Agreement. This agreement was a step forward to introduce the changed Indian Foreign policies to invite a maximum number of FDI and also FII. Under this BIT, there was a total conglomeration of 38 articles, which were categorically divided into seven elucidated chapters. Under the 2003 draft of the agreement of BIT which is considered as the roadmap to all the upcoming BIT(s) was solely based upon the policies made by the state to safeguard its interests against the investors. Whereas the 2016 model of BIT is a slight different in content. Similarly, India on one hand adapting to the changing market approach and adopting the capitalist view of economy. But, this 2016 BIT approach was in a way made to better the investment regulation policies, but now it turns out that it is now backfiring upon the Investors of Indian soil as they are not able to get the protection they deserve on foreign soil. In short the insufficiency of laws in India make it easy for the FDI to get the benefit. In the period of 2001 to 2016 almost fifteen years there have been a rampant increase in the FDI and FII as now the current overseas investment stands at USD 21 Billion[13]. There indeed have been many cases wherein India and the Investment regulation policies have been proved worthy and interpreted the BIT in a crystal clear manner, following the case of Flemingo Duty Free Shop[14] where the BIT was interpreted between India and Poland and the Indian investor was awarded a sum of USD 17.9 Billion.

JURISDCITIONAL ASPECTS AND CLAIMS ADMISSIBILITY

The concept of jurisdiction in the cases of dispute of investment are categorically separated into four domains which are as follows:

1. Dispute on the topic of personal adjudication of disputes or the introduction of local forum to resolve the case between the parties;
2. Dispute on the topic of geography;
3. Dispute on the topic of time barred or time specified cases;
4. Disputes on the topic of matter and the content therein referred to.

[13] Reserve Bank of India, *Data on Overseas Investment*, Reserve Bank of India, (10th October, 2020, 9:33 AM), https://www.rbi.org.in/Scripts/Data_Overseas_Investment.aspx.

[14] Flemingo Duty Free Shop Limited (India) v. Republic of Poland, IIC 883 (2016), 12th August 2016, Award given by the Permanent Court of Arbitration, Bench ICJ, UNCITRAL.

As discussed above in an elucidated manner, that the jurisdiction of a topic or that of a case depends upon the scrutiny of the state and how they take up or entertain the case. The absence of one or all of the abovementioned conditions or types of disputes shall lead to the defaulting up of a case. The provisions described under the ICSID guarantee of jurisdiction[15] depending upon the case. Article 25 of the ICSID postulates for the following points, which are as follows:

1. The nature of the dispute should be a legal one and leading to determination of Rights;
2. The nature of the dispute shall be arising out of an Investment Agreement or BIT;
3. The dispute, the disputing party and the host state should be having a difficulty in solving the investment relating adjudication;
4. There should have been an expressed consent by the parties to the agreement of the ICSID.

Dispute On The Topic Of Personal Adjudication Of Disputes Or The Introduction Of Local Forum To Resolve The Case Between The Parties

Under this head the ICSID have asked for the host nation and the national are the parties that can in accordance to the terms and conditions or BIT[16]. There should be a special and specific designation to the union of the host nation by the other nation to the BIT. The PCA do have authority to adjudge the case where the parties are the non-investing kind of personalities and the other is the union of the host country. Under this protocol view, it is left upon the parties to decide that which agencies or parties shall be made a party to the suit[17]. As mentioned above that there should be presence of contracting nation state and sub-agency. For a state of to be a contracting nation state should be signing and certificate which ratifies the obligation of nation state[18]. But, whereas the sub-agencies are in concern, the ICSID convention have used the term sub-agency so as to generally categorize the agency and corporate personalities.

Dispute on the Topic of Geography

The ICSID Convention which governs the dispute resolving process between the countries in BIT, there is no specific mention about the territory or where the case should be adjudicated upon. This type of jurisdiction is dependant upon the affirmation of double review process of jurisdiction which is subject to all the parties of the ICSID convention[19]. The decision and type of jurisdiction lies in coherence to A.1101 of the NAFTA Agreement treaty[20]. It is only under certain specific circumstances that the jurisdiction of territory lies in the favor of the state to BIT. States of BIT cannot fight the

[15] Pierre Lalive, *On the Availability of Claims in Investment Arbitration,* Czech International Yearbook, (2011) 7 Czech Yearbook of International Law, 141-156.

[16] Article 26 of the ICSID.

[17] Antoonio R. Parra, The History of the ICSID Convention, Oxford University Press, Vol 1. , 2012.

[18] Christoph Schreuer, Loretta Malintoppi, August Reinisch and Anthony Sinclair (n. 66) para. 230; *Generation Ukraine v. Ukraine* (n. 49) paras. 10.5–10.6 (considering the hypothetical situation of a claim directly against the Kyiv City Administration).

[19] Michael Waibel, *Sovereign Defaults before International Courts and Tribunals* (Cambridge University Press, 2011) 238–242.

[20] *Deutsche Bank v. Sri Lanka*, ICSID Case No. ARB/09/02, Dissenting Opinion Arbitrator Ali Kahn, 23 October 2012, para. 37; Zachary Douglas, (n. 2) 161; Zachary Douglas, 'Property, Investment and the Scope of Investment Protection Obligations' in Zachary Douglas, Joost Pauwelyn and Jorge Viñuales (eds), *The Foundations of International Investment Law: Bringing Theory into Practice* (Oxford University Press, 2014 (forthcoming)).

case in other territory unless they have specifically mentioned it. The purpose of codification the investment law internationally is to bring the equilibrium to balance the political aspiration so that the person can fight up his case in other country too.

Dispute on the topic of time based cases

We have interpreted the Article 2 of the ICSID convention and have gotten idea that how much exact days are needed to be fulfilled by a nation to prove his conditional nationality. But, so far and so forth, there is no clear description about the temporal jurisdiction. The tribunal before categorizing the case as a case having a temporary jurisdiction shall take into consideration the conditions as put forth in the case of *Impreglio v. Pakistan*[21], the court should:

1. Differentiate between the Temporary adjudicatory jurisdiction of a tribunal established under the ICSID Convention and;
2. The application of the Temporary adjudicatory jurisdiction of a tribunal, in consonance to the provisional mandates prescribed under BIT.

As, in the purview of international law is concerned[22], the arbitration of investment related cases lies only in cases where, there is administration of a complaint by the injured party under the BIT.

Dispute in regards to the content of a case

In accordance to Article 25 of ICSID convention, it is crystal clear that there should be existence and a substantive proof thereof should be given in order to relate the investment dispute. The definition of Investment under the international scenario is a wide one, as it was connoted in the case of *Romak v. Uzbekistan*[23], it was held by the tribunal that, the investing party so as to constitute a case under the head of investment can, deem or likely to deem a set of assets in the host nation. Not only the former case, the case of Salini[24] should also be considered as a landmark case of investment arbitration, in this case, the court postulated upon that whether the normal business transactions in the long run of a foreign investor be termed as an investment, the court help in the favour of this view.

INVESTMENT RESOLVING PROCESS AS BESTOWED UNDER THE BIT, 2016

In respect to the dispute resolving process of the investment related disputes, it can be easily be resolute by the parties if they have consented to the BIT, or either they have entered into an agreement under the international law. The rights as guaranteed under the BIT and the agreement which is signed between the parties is in the same manner or fact relatively rises to the importance of being a law which is substantive in nature and plays the role of a guardian angel[25]. As mentioned that these clauses which are responsible for the resolution of the dispute do play an important

[21] *Impregilo SpA v. Pakistan*, ICSID Case No. ARB/03/3, Decision on Jurisdiction, 22 April 2005, para. 309.

[22] *Case Concerning the Arrest Warrant of 11 April 2000* (*Democratic Republic of Congo v. Belgium*), ICJ Judgment, ICJ Rep. 2002, 3, para. 26

[23] *Romak SA (Switzerland) v. Uzbekistan*, PCA Case No. AA280, Award, 26 November 2009, para. 205.

[24] *Salini Costruttori SpA and Italstrade SpA v. Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, 23 July 2001.

[25] McLachlan, Shore & Weiniger, *International Investment Arbitration* (Oxford International Arbitration Series, 2010)

and extensive role when it comes to local exhaustion of the remedies[26], the clauses of BIT or any other agreement do remove the role of the local courts in the adjudication of the claims.

Chapter IV which is one of the most important and the longest one deals with the investor-state disputes between the parties that have signed the BIT or have undergone a signing of an agreement. A gist of chapter IV is as follows:

1. A.13- Containing specific definitions about the instruments of adjudication;
2. A.14- Containing the provisions in respect of the conduction of the proceedings in disputes;
3. A.15 to A.16- Containing the provisions in respect of Claims in Arbitration Proceeding;
4. A.20-A.22- Proceedings and Arbitral Provisions.

So as to conduction of an arbitral proceeding in investment cases, there shall be first of all the exhaustion made on the remedies that are locally available[27]. The basic idea behind the setting up of the exhaustion clause is that because that there shouldn't be any hindrance that should be placed upon the party that is wanting to fight the case. India's stance and position in the ELR clause is subjected to the exhaustion of local remedies done first on the part of the investing state for a temporary period of five years. In the landmark case of *ICS Inspection v. Argentina*[28], it was held that, there was no compliance in respect to the ELR provision and the jurisdiction related aspects therefore the court agreed to not take the jurisdiction.

The other condition precedent which takes active part and is responsible for the adjudication is the submission of the claims and the issues and the recognition of the same by both the parties. The first thing that should be adhered is the knowledge and the other thing that should be adhred to is the time limit obedience. While adjudicating the issues the court should take into due consideration that the nature and the scope of the issue that are being put forward to the arbitral bench are of investment or are related to investment[29]. One peculiar feature of the BIT of India which is signed by any of the country is that, there is a careful and complete scrutiny in the choosing up of the words because the BIT is strictly applicable to investment related dispute, but in some cases the contract is also put to the knowledge of the court therefore to remove that confusion and contingency, the BIT does not consider the contractual obligation between the parties[30].

CONCLUSION

This type of arbitration was used to stop a continuous tussle between the FDI Company

[26] OECD Investment Division Sample Survey, Paris 2012

[27] Exhaustion of Local Remedies in International Investment Law, IISD Best Practices Series, 2012.

[28] ICS Inspection and Control Services Limited (United Kingdom) v. The Republic of Argentina (UNCITRAL, PCA Case No. 2010-9), Award on Jurisdiction, 10 February 2012, para. 250

[29] Aniruddha Rajput, *India's shifting treaty practice: a comparative analysis of the 2003 and 2015 India Model BITs*, 7:2 JINDAL GLOB. L. REV. 201-226 (2016) in Ranjan and Pushkar, *The 2016 Indian Model BIT* at 40.

[30] Anthony C. Sinclair, T*he Origins of the Umbrella Clause in the International Law of Investment Protection*, 20:4 ARBITR. INT'L. (2004) 411-434; Jonathan B. Potts, *Stabilizing the Role of Umbrella Clauses in Bilateral Investment Treaties: Intent, Reliance and Internationalization*, 51:4 VA. J. INT'L. L. (2011) 1005;

and Government, and also was made to solve and de-pressurize the relation between the two countries as respectively mentioned in the treaty. This kind of investment treaty can be originally signed at regional, national, and international levels, and this all depends upon the nature and seriousness of the treaty being signed by the parties. International development policy always stays in coherence to the formation of good international investment relation. Though the concept of BIT was introduced in India at a very late stage, but it was in use for all the other nations that were actively welcoming FDI to invest in their country. The BIT was molded in such a manner that this draft of BIT between India and UK is considered to be the mother of all the resembling BIT signed by India with other nations. Similarly, India on one hand adapting to the changing market approach and adopting the capitalist view of economy. India have now provided a restrictive protection to all the investors. After the implementation of BIT in India in the year of 2016, the whole outlook and view along with operation of the particular topic changed which led to the formation of 2016 BIT Agreement. This agreement was a step forward to introduce the changed Indian Foreign policies to invite a maximum number of FDI and also FII.

Till now there have been a rampant increment of BIT followed by cases of Dabhol Industries and White Industries case, which have truly changed the stance of India in respect to Foreign Investment Arbitration.

SUGGESTION

The researcher after analyzing the topic with total scrutiny is putting forth some of the suggestions which are as follows:

1. In the Indian scenario there are not many laws that are govering the adjudication of the international investment arbitration, also the courts sometimes are not having a particular say, in respect of the collision between the rights of the Investor and the State, therefore it is now really a dire need of the hour to at least postulat
2. e the law, for the smooth adjudication of the investment related disputes between parties.
3. Sometimes, the PCA or the Indian court before deciding the dispute to its full conformity, are often stuck on the point that whether they are having the jurisdiction or not, because, jurisdiction and the terms between the parties do depend upon an international agreement that they sign which is known to us as the BIT. Sometimes there are combination of issues which are specifically involved, therefore the subject of investment is indirectly present which does not attract the jurisdiction.
4. The presence of various technicalities like the conditions to be first followed like the time limit before appealing in the court of law, the arbitration of investment related cases lies only in cases where, there is administration of a complaint by the injured party under the BIT.
5. Sometimes, the petitioner often contends that the case is of pure investment matter or background but it turns out that, after the analysis of the cause of action and the dispute and its nature, the purpose and subject of the case changes, which defeats the contention of the petitioner thereby making him a huge loss.
6. The other condition precedent which takes active part and is responsible for the adjudication is the submission of the claims and the issues and the recognition of the same by both the parties. The first thing that should be adhered is the knowledge and the other

thing that should be adhred to is the time limit obedience.

7. As there are, no laws which are in India that are made to govern the Investment arbitration, therefore a need of law is a must, because the dispute between the parties just cant be resolved by interpreting a BIT, even if there is interpretation of clause in a contract but that doesn't exclude the law.

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e. A.20-A.22- Proceedings and Arbitral Provisions.

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d. Generation Ukraine v. Ukraine
e. Deutsche Bank v. Sri Lanka
f. Impregilo SpA v. Pakistan
g. Democratic Republic of Congo v. Belgium
h. Romak SA (Switzerland) v. Uzbekistan
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