

**International Investment Law and Investor-State Dispute Settlement: An Overview
of the Available Remedies for Investors in CPEC under National and International
Law**

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Abstract

This paper aims to analyze international investment dispute settlement mechanism and the available remedies for investors investing in the CPEC project under national and international law. The various principles of International investment law and dispute settlement mechanism have also been discussed in this piece of work. It briefly discusses the Pakistan-China Bilateral Investment Treaty and Free Trade Agreement. Main findings of this work are the available remedies to the foreign investors' especially Chinese investors in the regulatory framework of Pakistan and as well under international law. It also suggests a special mechanism for dispute settlement springing out from CPEC agreements. A little bit reference has also been made to the arbitration proceedings in International tribunals.

Keywords: (Investment, arbitration, disputes, Bilateral Investment Treaty, Foreign Direct Investment, CPEC)

Introduction

International investment law is a corpus of rules that provides mechanism for protection of investor rights as well as the host states. Much more progress has been made in the sphere of investment law with respect of promoting and protecting investments in foreign countries. Bilateral and multi lateral investment treaties (hereinafter BIT and MIT) concluded among the states are the sound basis for making investments by the investors in foreign states. International law of investment primarily rests on the principles of reciprocity, good faith, equality and fairness. Investment treaties bind the parties to act in good faith and ensure fairness on their parts which is crucial and intrinsic for the fulfilling of contractual obligations (Subedi, 2008, pp. 1-3).

Since the emergence of Investment law, the International arbitral tribunals and national courts has contributed to great extent in developing the jurisprudence of

International law of investment (Schreuer, 2016) . In the beginning arbitrations proceedings were mainly between state to state instead investors-state arbitrations. With the passage of time the whole scenario has been changed, the basic progression taken place so far is the investment arbitrations under BITs before investment tribunals. The investor-state arbitration is conceived as an innovation in the paradigm of international law and resembles to the individual complaint mechanism under the “*Protocol Optional to International Covenant on Civil and Political Rights of 1966*” (Subedi, 2008, p. 32).

In the last 30 years, the jurisprudence of investment law has widened very rapidly due to large number of investors-state arbitrations in international arbitral tribunals as well as in domestic courts (Behn, 2015) . On the contrary, investment law was traditionally regarded as a private commercial matter between two disputants. Eventually, investment law has now emerged as a set of uniform rules providing for adequate mechanism of foreign investments, investors’ rights, arbitration proceedings, jurisdiction of arbitration tribunals, pronouncement of arbitral awards and its implementation at national and international level. Although there is no specialized convention dealing with international law of investment but it is the BITs which reiterated the principles of customary international law of foreign investment (Parlett, 2016) . For instance, BITs mainly contain provisions for the significantly safeguarding foreign investments in order to attract and protect foreign investment. These BITs are generally based on the new generation free trade agreements designed to provide more comprehensive definition and explanation of foreign investments (Miles, 2013, p. 1) . Based on BITs, disputes are directly referred for settlement to “International Centre for the Settlement of Investment Disputes” (hereinafter ICSID) (CH Schreuer, 2001).

In recent times, number of disputes referred to international arbitration tribunals for resolution are decided at the expense of the host state sovereign rights, doctrine of necessity or human rights or environmental considerations, by extending a flexible interpretation to investment law (Subedi, 2008, p. 2). There is increasing and enormous

pressure on international tribunals to harmonize public interest with private one (Weber, 2007). Otherwise it implies that international tribunals are under pressure from the host states to compromise on private interests as against public interest or state necessity (Kingsbury & W. Schill, 2010). For example, in 2007 Bolivia withdrew from ICSID for the reason that there was lack of reconciliation between public and private interests by ICSID in its ruling in investment disputes.

Interestingly, a new practice of including provisions in BITs and other Investment treaties has begun on behalf of states regarding protection of environment and human rights, reduction of poverty and corporate social responsibility. These provisions lay down sound basis for states in international arbitration while advancing their claims (Amnesty International, 1998). On the other end of the spectrum, some scholars consider Foreign Direct Investment (hereinafter FDI) an undermining factor for host state sovereignty for the reason that the states have treaty as well as international customary law obligations to extend full protection to foreign investors (Dolzer, Impacts of Int'l Investment, 2005). In addition to, the investors' right to sue the states at international forums for investment and commercial arbitrations has bring the states and private companies at par under international law, which is alarming for states (Brower & W. Schill, 2009). The inclusion of various provisions in BITs pertaining to human rights, reduction of poverty, sustainable development and those of environmental concern have overwhelming and undermining implications for the states' sovereign prerogatives (Mann, 2008).

China Pakistan Economic Corridor (hereinafter CPEC) is a promising and profitable project of China's "One Built One Road" (OBOR) initiative that provides a large scale investment opportunities for the investors. CPEC being a game changer investment project has attracted multiple numbers of investors and companies to invest in a large scale of infrastructure development projects throughout the Pakistan (Ramay, 2016). The Chinese and other foreign companies and investors in the CPEC are entitled to treatment from the Government of Pakistan under the respective BIT. In the event of

any dispute between the host state and investor, a regulatory framework has been provided in the BIT between China and Pakistan. Various provisions in PAK-CHINA BIT and Free Trade Agreement (FTA) dealing with investment dispute settlement and the remedies available to investors are to be discussed in the coming sections.

International Investment Dispute Settlement

Generally under international law different modes of dispute settlement are available to parties. In investment related disputes, the available forums for the parties are national courts, diplomatic protection, conciliation and arbitration (*ad hoc* or institutional). The most happening dispute is that of between host states and foreign investors. To resolve the same local remedies are available for the parties, however, foreign investors opt international modes of dispute resolution such as arbitration or conciliation. Currently, arbitration is the most practiced and efficacious mean of resolving disputes between the host state and foreign investors. Arbitration related provisions either *ad hoc* or institutionalized are included and adopted by most of the states in BITs and MITs (Begic, 2005, pp. 1-2).

Most of the BITs contain provisions regarding arbitration. The “*Convention for the Settlement of Investment Disputes between States and Nationals of other States, 1966*” (ICSID Convention) provides for direct arbitration. Direct arbitration through ICSID is mostly enshrined in the BITs as well as in the investment codes of the states. Similarly, there are “*ICSID Additional Facility Arbitration Rules, 1978*” aiming at conducting arbitration between the states and nationals of other states which are not signatories of the ICSID Convention. In addition to, some modern BITs provides for arbitration under the “*Arbitration Rules of the United Nations Commission on International Trade Law*” (UNCITRAL). Likewise, arbitration in respect of contract based as well as treaty based claims are sometimes referred to “*International Chamber of Commerce*” in the BITs.

International investment arbitration is mostly provided in investment treaties and agreements concluded among the states. Similarly, domestic legislations of host states also provide for arbitration in order to attract the foreign investors. Nowadays,

reference to arbitration is mostly contained in investment agreements between host state and investors. Arbitration at international level is the most preferable modality of dispute resolution especially for investors as there is a growing lack of trust over the national mechanism (Francioni, 2009). In investment disputes the investors or private companies mostly prefer arbitration through ICSID arbitral tribunal as it is easily accessible to them (Petersmann, 1999). Apart from it, the investment agreements also provides for *ad hoc* or other forms of institutionalized arbitration (Begic, 2005, p. 3).

Besides “stabilization and choice of law clauses”, arbitration clause contained in investment treaties and agreements is regarded as contractual device for safeguarding foreign investment. These clauses serve specific purpose of extending efficacious protection and contractual guarantees to the foreign investors. The clause related to stabilization in investment agreements oust all kinds of operation of any possible change in the law of the host state that might have adverse effects over the terms of the contract. The host states being sovereign entities can adopt any legislation pertaining to its domestic matters but it is the stabilization clause that restricts the operation of the said legislation over the contracts concluded with the investors. Similarly, clause dealing with choice of law in the investment agreements seeks to exclude the application of domestic law to the investment disputes settlement and other matters. However, it subjects the investment contracts to some external or international standards or to say the general principles of law (Sornarajah, 2010, pp. 281-289).

Arbitration clause in the investment contracts aims to draw an inference that in the event of any dispute springing out of the agreement, such shall be in the manner, referred to neutral or external forum-arbitration. The rationale behind arbitration clause in the contracts is that the foreign investors have no trust on the impartiality of the domestic courts of host states (UNCTAD, 2017). Investors always opt for the settlement of disputes through arbitral tribunals in the contract because such tribunal would be constituted according to arbitration clause contained in the agreements and is anticipated to work independently outside the host state. In the past, arbitration clauses

in the agreements mostly provided for referring the disputes to the *ad hoc* tribunals, however, most of the modern BITs and investment agreements contain provisions of settling the investment disputes through a specialized forum like ICSID (Singh & Sharma, 2013).

International Arbitration Forums

International law lay down certain standards of protection for the investors within host states in order to safeguard the investment so made or going to be made more effectively. These standards includes: “fair and equitable treatment; full protection and security; access to justice and fair procedure; compensation in case of expropriation; protection from discriminatory and arbitrary measures; national treatment and most-favoured nation treatment” (Dolzer & Schreuer, Principles of International Investment Law, 2012) . The aforesaid standards enable the foreign investors to seek remedies in case any of these principles is infringed. One of a landmark developments in this arena is the investors’ or private companies’ right to initiate claims against the host states in international arbitration forums for violating the minimum standards.

The BITs and investment agreements provide for two types of arbitration: the *ad hoc* and institutionalized (Rajoo, 2010) . *Ad hoc* arbitration is mostly carried out by appointing independent arbitrators by the parties and such arbitrators have no affiliation with any particular arbitration or conciliation forum or agency. While the institutionalized arbitration refers to so many national or international arbitration forums or tribunals established for the resolution of investment and commercial disputes (Graving, 2011).

Investment treaties and agreements often provides for more than two arbitration forums for dispute resolution. Among these ICSID is the forum to which the disputes are referred frequently (Tondapu, 2010) . These forums include *inter alia* “Australian Centre for International Commercial Arbitration; London Court of International Arbitration; Hong Kong International Arbitration Centre; Arbitration Institute of the Stockholm Chamber of Commerce; International Chamber of Commerce (ICC);

International Court of Arbitration; Permanent Court of Arbitration and UNCITRAL Arbitration Rules” (Investor-State Dispute Settlement & Arbitral Institutions, n.d.) . Apart from these, there are hundreds of private arbitration and conciliation centers working around the globe. If the treaty or agreement does not provides for any specific arbitral forum, then the party may refer the dispute with mutual consent to any arbitration tribunal of their choice. Under the present work, only ICSID and its functions and jurisdiction will be discussed.

International Centre for Settlement of Investment Disputes (ICSID)

In the absence of legal certainty, the foreign investors in most of the cases are reluctant to make investments within the host states. Assuring dispute settlement through international tribunals by the states to the investors creates a sense of security among the investors to carry out their activities in the host states without any fear. Similarly, history reveals that foreign investors have always been reluctant to invest in the country where judiciary is not fully independent and political situation is unstable (Subedi, 2008, p. 30) . Only in such circumstances investors are encouraged to invest when the host states assure the resolution of disputes via international arbitration in the investment agreements. For the purpose of promoting investment throughout the globe and to secure the investors’ rights within the host states, an idea for the establishment of a specialized forum for resolution of investment disputes emerged in 1960s. Consequently, ICSID Convention was adopted in 1965 (ICSID Convention, n.d.).

Currently, 153 states have ratified the ICSID Convention. ICSID is established under the auspices of the World Bank. Article 6 of the ICSID Convention empowers the Administrative Council of the Centre to “adopt rules of procedure for arbitration and conciliation”. The preamble of the Convention states as: “...*Bearing* in mind the possibility that from time to time disputes may arise in connection with such investment between Contracting States and nationals of other Contracting States; *Recognizing* that while such disputes would usually be subject to national legal processes, international methods of settlement may be appropriate in certain cases....”

The preamble has laid down the objectives of the Convention in an ample manner by recognizing international arbitration inevitable between the states and investors especially when investors are not willing to settle the disputes through domestic forums.

Article 25(1) of the Convention provides for the jurisdiction of ICSID which states as:

“The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.”

Similarly Article 26 provides for the exclusion of all other remedies once the “consent to arbitration has been submitted by the parties”. Other remedies include diplomatic protection and national judicial proceedings. Article 27 puts a bar on the invoking of other national and international claims, when the parties have submitted its consent before the ICSID. Such claims are valid only when “contracting state shall have failed to abide by and comply with the award rendered in such dispute” by the Centre. Article 36 provides for the request of arbitration by the parties. After registration of the request so submitted in pursuance of article 36, the tribunal shall be constituted under article 37 of the Convention. Article 42 is the most important provision as it provides for the applicable law to the disputes in arbitration which is as follow:

“(1) The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable.

(2) The Tribunal may not bring in a finding of *non liquet* on the ground of silence or obscurity of the law.

(3) The provisions of paragraphs (1) and (2) shall not prejudice the power of the Tribunal to decide a dispute *ex aequo et bono* if the parties so agree.”

Under the first phrase of article 42(1), “the parties are free on the applicable law as agreed upon by them in the investment agreement”. This is called freedom of choice of law where the parties are free to choose international or domestic law or both international and domestic law for the purpose of application. The second sentence of article 42(1) provides for tribunal own “powers of applying both the host state law and international law”. Article 42(3) empowers the Centre to decide according to equity and good conscience if the parties so agree. Moreover, article 48 provides for the manner in which the award shall be announced by the tribunal. Article 53, 54 and 55 deals with the “enforcement and recognition of arbitration award” so announced by the tribunal.

ICSID Additional Facility Arbitration Rules, 1978

The “*ICSID Additional Facility Arbitration Rules 1978*” provides facility of arbitration to the states and nationals of the states not parties to the ICSID Convention. For the purpose of arbitration any state or national of state may make a request under article 2 of the rules for institution of arbitration proceedings. After acceptance and registration of the request made in pursuance of article 2, a tribunal shall be constituted under article 6. One of an important provision is article 7 which provides for “the nationality of the arbitrators, who shall be nationals of states other than the states party to the dispute and states whose nationals are parties to the dispute”. Article 19 places limitation on the choice of forum that arbitration proceedings will be held only in the states that are parties to the “*1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards*”. Article 54 stipulates the law applicable to the disputes submitted under the rules to ICSID:

“(1) The Tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Tribunal shall

apply (a) the law determined by the conflict of laws rules which it considers applicable and (b) such rules of international law as the Tribunal considers applicable.

(2) The Tribunal may decide *ex aequo et bono* if the parties have expressly authorized it to do so and if the law applicable to the arbitration so permits.”

Unlike article 42 of the Convention, article 54 of the Rules is framed on different footings. The first sentence of article 54(1) provides for the applicable law agreed by the parties. In the second sentence reference has been made to the applicable conflict of law rules and the rules of international law. Clause 2 gives discretionary powers to the tribunal to decide the matters according to equity and good conscience. In nutshell, the ICSID Additional Facility Arbitration Rules facilitates the states those not parties to the ICSID Convention in resolution of disputes.

Analysis of Pakistan-China Bilateral Investment Treaty and Free Trade Agreements

Pakistan and China has very strong political, social, economic and diplomatic ties since 1950. Initially the political relations were not as smooth, however, in 1949 after the devaluation of Indian currency when Pakistan was importing coal, the economic relations between Pakistan and China strengthened. The devaluation of Indian currency impacted the Pakistani trade and thus leaving no room for Pakistan except to engage in agreement on barter trade of coal for cotton with China. It was, however, not the end, after 1970 Pakistan and China went further for strengthening their ties in all sectors. China even extended its support to Pakistan in military affairs, nuclear programs and economic sectors. These ties led to the trust building between the Chinese and Pakistani governments and people (Chaudri, 1987).

In order to promote bilateral trade and investment and to enable the investors and companies to carry out their economic activities in both the countries, Pakistan and China concluded various investment and commercial treaties. For the purpose of promoting investment and securing investors rights a BIT has been concluded between Pakistan and China. For dispute resolution, the BIT lay down a broader framework for

settlement of the same. Similarly, to encourage trade and commercial activities among the investors and private companies, both the countries have concluded Free Trade Agreements dealing with different subject matters. Moreover, “China-Pakistan Agreement on Trade and Services, 2009” (hereinafter ATS) also exist between both the states.

Pakistan-China Bilateral Investment Treaty

To develop the investors’ confidence and protection of their investment BIT between China and Pakistan was signed on 12th February, 1989 in Beijing. The treaty consists of 13 articles. In terms of article 2 of the BIT both the states have agreed for promoting investments which states:

“Each Contracting Party shall encourage investors of the other Contracting Party to commit investments in its territory, and admit such investments in accordance with its laws and regulations.”

Similarly, article 3 sets the international standards of protection for the investors in the host states, such as “fair and equitable treatment”, the “enjoyment of full protection by the investors in the host states” and “the national treatment”. However, the treaty does not provide for the “most favoured nation treatment”. Article 3 states:

“(1)Investments and activities associated with investments of investors of either Contracting Party shall be accorded equitable treatment and shall enjoy protection in the territory of the other Contracting Party.

(2)The treatment and protection referred to in paragraph 1 of this Article shall not be less favourable than that accorded to investments and activities associated with investments of investors of any third State.

(3)The treatment and protection as mentioned in Paragraph 1 and 2 of this Article shall not include any favourable treatment accorded by the other Contracting Party to investments of investors of a third State based on customs union, free trade zone,

economic union, agreement relating to avoidance of double taxation and for facilitation of frontier trade.”

Article 4 of the treaty provides for the protection from expropriation and in case, if any, the investors shall be compensated in such a manner as agreed upon. Under article 5 the investors are guaranteed to transfer their assets and returns. Article 9 provides “for the settlement of issues concerning the interpretation or application of the treaty”. The first manner so provided is that of resolving the same through diplomatic channels. Failing to resolve any such issue through diplomatic channel within six months, then such shall be submitted to an “*ad hoc* arbitral tribunal”. Under article 9(4) “if the *ad hoc* tribunal has not been constituted within four months, then both the states, in the absence of any other agreement, may invite the President of the International Court of Justice to appoint arbitrators”.

Article 10 refers to additional remedies available to the investors if the compensation for expropriation is not adequate:

“If an investor challenges the amount of compensation for the expropriated investment assets, he may file complaint with the competent authority of the Contracting Party taking the expropriatory measures. If it is not solved within one year after the complaint is filed, the competent court of the Contracting Party taking the expropriatory measures or an international arbitral tribunal may, upon the request of the investor, review the amount of compensation.”

Article 10 establishes “the right of filing review against the amount of compensation for the expropriated investment assets in the local courts of the host states”. Article 12 provides for conditional favourable treatment to the investors by the host states. In nutshell, Pak-China BIT is the foundation for promoting and protecting investment across both the countries. International standards of protection for investment are duly embodied in the treaty. In addition to, local remedies for the investors in host states are

also provided under the treaty. Pakistan has the Board of Investment to look after all the investment related matters, and to formulate policies from time to time in order to protect the foreign investors.

Pakistan-China Trade Agreements

In order to promote and encourage trade between both the states, Pakistan and China entered into a Free Trade Agreement on 24th November, 2006. Later on, another landmark achievement was in the shape of Pakistan-China Agreement on Trade in Services was concluded on 21st February, 2009. Both the agreements were concluded with the purpose to protect and promote trade and business across both the countries. The investors and companies both public and private have guaranteed full protection in the host states under the said agreements. Apart from it, a Joint Ministerial Commission (JMC) has also been established to discuss investment and trade matters in their periodical meetings. Moreover, all national and international remedies are available to the investors under both the agreements.

Investment and Trade Regulatory Framework of Pakistan

Pakistan-China BIT and trade agreements lay down “general principles of international law” dealing with investment and trade related matters. The said agreements are concluded with the purpose to develop and enhance cooperation both in investment and trade sectors. Thus, it may be held that the BIT, FTA and ATS contain the general principles at inter-state level for investors and trading companies and corporations. Apart from it, there is a national regulatory framework for enforcing the provisions of the agreements between both the states. Notwithstanding the special treaties and agreement exists between Pakistan and China, the national regulatory framework of Pakistan is of general application which covers all other treaties and agreements concluded by Pakistan with other states.

To assure smooth and effective regulation of foreign direct investment within Pakistan, the “Pakistan Investment Board” (PIB) was established in October 1990. Later on, the same was renamed as “Board of Investment” (BOI) and declared as part of

Prime Minister's Secretariat in 1994 with the Prime Minister as its President. Thereafter, in September 1996 the BOI was declared as an attached wing of "Ministry of Industries and Production". In 2003, the same was transferred to "Ministry of Privatization and Investment". On the promulgation of the "Board of Investment Ordinance, 2001" the BOI became an autonomous body. BOI became a division in the newly formed "Ministry of Investment" in October, 2008. With the abolishing of the Ministry of Investment on 17 December, 2009 by the Prime Minister, the BOI came under the direct administrative control of the Prime Minister's Secretariat and functioning thereon till now (Board of Investment, n.d.).

Being a premier body, the BOI has a mandate to promote, encourage and facilitate both local and foreign investment in the country. BOI is a focal body to assist investors for quick materialization of their investment projects. Further, BOI is mandated to formulate investment policies from time to time for the promotion and encouragement of local and foreign investors. It works as intermediary of the government between the public and private sector. Its other functions includes: introducing policy and regulatory reforms; promotion of investment by introducing investor's friendly opportunity; facilitating and assisting investors; introducing legal framework for the protection of investment; and drafting and negotiating BITs. In addition to, the BOI also provides registration facilities for the foreign companies and investors (BOI, 2013).

Under the BOI policies, a foreigner can establish business in Pakistan or can enter into partnership with any local person under the Partnership Act, 1932. Even a foreigner can establish company within Pakistan, however, the said shall be regulated by the Companies Ordinance, 1984. Moreover, any foreign investor or company can enter into a Joint Venture with other business entities in Pakistan, but the same shall be regulated by the relevant provisions of the Contract Act, 1872 and the Partnership Act, 1932. Matters concerning foreign currencies and exchange are dealt under Foreign Exchange Regulation Act, 1947 (FERA). The scheme of FERA is to make available

foreign currencies for the foreigner doing business within Pakistan. The Ministry of Trade and Commerce has a mandate to regulate the trade related matters within and outside Pakistan. Furthermore, the Government of Pakistan has approved Preferential Visa Policy for Chinese investors that is welcomed by China.

China Pakistan Economic Corridor: A Foreign Direct Investment

Since the establishment of diplomatic relations between the Islamic Republic of Pakistan and Peoples Republic of China, the economic relations of both the states have strengthened day by day. CPEC is an integral part of China's "One Built One Road" (OBOR) initiative that provides large scale investment opportunities for the investors. Initially, China has agreed to invest US \$46 billion in infrastructure development in Pakistan. The CPEC agreement consists of 51 Memorandums of Understanding (MOU) signed on April 20, 2015 during China's President Xi Jinping's visit to Pakistan (Ghani & Sharma, 2018) . CPEC being a bilateral agreement includes "network of roads, ports, rails, infrastructure, energy projects and pipelines starting from Kashgar in Xinjiang, China, and reaching Karachi and Gwadar, southern coastal cities in Pakistan via Khunjerab Pass" (Government of Pakistan, 2017).

CPEC project is seemed as the highest foreign direct investment ever a single country has made in Pakistan. The CPEC has been a source of extraordinary increase in the FDI within Pakistan in the last three years. Country-wised listing reveals that China is the largest single net investor with \$34 million in January 2018. It has been recorded that since 2015 China is dominating the FDI in Pakistan, which is alarming for both the Western and European countries. Chinese investment in different sectors has almost crossed other states. Political and economic experts have termed CPEC as a game changer project in the terms of FDI which is likely to boost up the economy of Pakistan that was mostly shattered in the last 18 years due to terrorism which has impacted the foreign investment at large scale.

The Available Protective Remedies to Foreign Investors under CPEC

The CPEC agreements which are composed of 51 MOUs signed by China and Pakistan constitute a foreign direct investment for Pakistan. In principle, all the investment related agreements and all those future agreements likely to conclude between the foreign investors and Pakistan are to be governed under the BITs. As far the investments made or likely to be made by the Chinese investors are concerned, it falls under the purview of the BIT exists between China and Pakistan concluded in 1989. The Chinese investors are entitled to all kinds of protections enshrined in the Pak-China BIT. Pakistan is under obligations to extend full protection to the Chinese investors and companies as well as to the investors of other states with whom Pakistan has concluded BITs. Moreover, the foreign investors are also covered by the policies formulated by the BOI.

At present, there is no bilateral mechanism for resolution of investment disputes between China and Pakistan under the CPEC agreements. In the event of any dispute arising out form the investment agreements, the investors are entitled to invoke the jurisdiction of local courts, if agreed upon. Furthermore, such disputes may be settled through diplomatic channels of both the countries. Apart from it, the investors may approach the *ad hoc* arbitral tribunals. China and Pakistan both for being signatories of the ICSID Convention is a bonus opportunity for exhausting by the investors while approaching to ICSID Centre for dispute resolution. The “choice of forum” and the “choice of law” depend solely on the respective investment agreements concluded between the Government of Pakistan and the foreign investors. Moreover, for the enforcement and recognition of foreign arbitral award Pakistan has enacted “The Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011”.

A Need for Specialized Dispute Settlement Mechanism

Generally, there are different forums both national and international for investment dispute resolution. Pakistan and China both are parties to the ICSID Convention, whereas ICSID since its establishment has been proved an effective international arbitral forum in resolving investment disputes. In case of any dispute, if arises the Chinese investors and the Government of Pakistan can approach ICSID for arbitration. However, there is a need for specialized mechanism for the settlement of investment disputes arising out of CPEC agreements (Khan, 2018). In substance, CPEC is a name of multiple investment agreements and while materializing these projects there is strong probability of arising out of disputes.

In order to find an amicable and peaceful solution to the disputes arising out from CPEC agreements, there is a need for special bilateral arbitral tribunal. Special arbitral tribunal will be proved as a legal shield for the bilateral relations of both the countries in investment sector. It will be less costly as compare to other international tribunals. It is up to China and Pakistan how to establish it. A special agreement for the establishment of bilateral arbitral tribunal is required so that legal and judicial cover can be given to the CPEC agreements. China being an emerging economy is paying special attention to the foreign investment and investment dispute settlement, and to this effect China has established "China International Economic and Trade Arbitration Commission (CIETA)". Besides, investment related claims can be filed in the superior courts of Pakistan, if agreed upon by the parties. However, the national mechanism is still not a permanent solution.

In the beginning China was reluctant to accept the arbitration clause in the investment treaties and agreements through international arbitral forums. The rationale behind China's reluctance was safeguarding the state sovereign rights and thus to settle all the matters through national legal and administrative forums. In the recent past, due to increasing foreign investment in China and entering into more than a hundred BITs,

a tendency to settle the investment disputes through ICSID and other international arbitral forums has grown within the Chinese circles (Shu-dong, 2011). China Pakistan Economic Corridor being a Chinese dream has caused a rapid increase in the foreign direct investment of Pakistan in the last three years. The CPEC investment agreements have provided ground for the Chinese investors and companies to make investment in Pakistan. For enhancing bilateral commercial and economic relations and safeguarding the investors' rights, a specialized mechanism for investor-state dispute settlement is inevitable.

Conclusion

International investment law provides general principles for the protection of investment; settlement of investment disputes between investors and host states; standards of protection within the host states; promoting foreign direct investment and customary and conventional protection of the investors. Pakistan and China under the CPEC project in the near past concluded multiple investment agreements. The Chinese investment agreements caused an extraordinary increase in the FDI of Pakistan which is the highest one among the other states. Apart of local legal and judicial remedies, the investors may approach the ICSID in case of any dispute arises out of the CPEC agreements, because both the states are parties to it Convention. However, there is a need for special bilateral dispute settlement mechanism, which is a legal safeguard for the CPEC projects.

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