DISPUTES ARISING OUT OF FOREIGN DIRECT INVESTMENTS IN PAKISTAN: A NEW LOOK AT LEGAL AND POLITICAL ISSUES

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Abstract

Arbitration refers to the jurisdictional process in which an arbitrator decides to resolve a conflict and grievances between two parties as a neutral third party. The International Center for the Settlement of Investment Disputes (ICSID) is an international arbitration body for investment disputes, working under World Bank. This study evaluates the cases of arbitration carried out by ICSID in the investment disputes of Pakistan. The cases include Tethyan Copper Company Pvt Limited, Bayindir Insaat Turizm Ticaret Ve Sanayi A.S, Karkey Karadeniz Elektrik Uretim A.S., and Agility for Public Warehousing Company K.S.C. This study is designed to explore current trends regarding direct foreign investment and its regulatory framework in Pakistan. This research has also focused on the challenges and implications in direct foreign investments and the disputes arising out of these investments and subsequently effect of these disputes on economic growth. The causes of disputes arise out of investments are also tried to find which include the

feudalism in Pakistan's government, poor coordination and lack of trust between different authorities resulting in delays and failure to pay expenses or effecting Pakistan's reputation.. Lastly, this paper highlights those issues that negatively affect foreign investments in Pakistan and for that those cases are taken in consideration who reached in ICSID for arbitration arose out of foreign Investment in Pakistan. Results of this study show that Foreign Direct Investment (FDI) in the long run will bring economic growth. In a country like Pakistan, there is a need for balanced laws that will protect local and foreign investors.

Key Words: ICSID, BITS, Arbitration, Investment Disputes in Pakistan

Introduction

Since the establishment of Pakistan, the state has followed the model of free trade to stabilize the economy and promote national initiatives. All the successive democratic and totalitarian governments since 1947 have committed to this policy to protect and promote foreign investments. Pakistan according to the international economic order devised by international governing bodies like World Bank, UNO, etc. has formulated a pro-investor facilitation economic policy. Pakistan formulated its economic policy as it had to rely on private companies to attain the planned national goals. The authorities have carried out several contracts between government and international private companies to date. (Campisi, 2017)

The approach of affirmative protectionism is adopted in statuary and policy framework of Pakistan. To develop a liberal economic environment, the legislative and constitutional processes are extended. According to the protectionist approach by Pakistan's policymakers have made obligations of standard treatment to under Impartial Investor-State Disputes Settlement (ISDS). Pakistan have had executed investment treaties with more than fifty countries. The country has also affirmed the ICSID's Convention 1965 to accept an independent entity to formulate jurisdictional settlements for disputes of impartial and transnational nature.

Private companies of developed states, especially subsidiary and energy companies in Brazil and Argentina, have attracted direct foreign investment. To encourage such investment, many developing countries have adopted a legal framework that complies with the standards required by large export countries. These standards include the provision of a patent on the actions of investors against host countries through international mediation. These standards are enshrined in multiple bilateral investment agreements (BITs).BIT'S between countries, ensure investments and its disputes to be resolved by providing the settlement of investor

disputes through ICSID under ICSID Convention. At least 155 countries have ratified the ICSID Convention. These developments could potentially lead to the need for national courts in developing states to settle disputes over national interests. But at the same time there are many challenges and issues in developing states because of economic or political instability. Which have been discussed after studying different cases or disputes which arose out of investments between Pakistan and other states. These cases include, Tethyan Copper v Pakistan Tethyan Copper Company Pty Limited v the Islamic Republic of Pakistan (ICSID Case No. ARB/12/1), Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan (ICSID Case No. ARB/03/29), Karkey Karadeniz Elektrik Uretim A.S. V. Islamic Republic of Pakistan, ICSID CASE NO. ARB/13/1, Agility for Public Warehousing Company K.S.C. V. Islamic Republic of Pakistan, ICSID Case No. ARB/11/8. (Allee, 2011)

Conceptual framework

Today, without a doubt, investment interventions have become the most controversial form of international prosecution. Arbitration under the International Center for the Settlement of Investment Disputes (ICSID) or UNCITRAL (United Nations Commission on International Trade Law) allows the investor to sue at the forum of adhoc arbitral tribunal for violating investment agreements bilateral (BITs) or trade and investment agreements (e.g., North American Free Trade Agreement (NAFTA)). If successful the investor can enforce the prize money against a country that rules in common courts around the world. The state has been seen as a series of secret or "shadow" courts ruled by a group of high-ranking mediators who are not motivated by justice but to personal gain, a system in which international companies release leading law companies with a good record to some of the world's poorest countries. Globally, forcing millions of dollars in payments or getting Awards in their interest, sometimes in excess of the world's poorest annual budget for health, education, and social security. Proposals for change have included substitutions for the inclusion of an investment court system, based on bilateral agreements, or a separate international institution (as currently proposed by the EU and Canada). (Kalb, 2005)

We have attempted to create a conceptual framework or version that could tell the talk on proposals for alternate with inside the ISDS and to discover complaint and guard the present machine of investor safety in global regulation. Unlike the industrial regulation case, till lately there has been little paintings of principle or financial electricity that would reveal a robust coaching approach. Many of the reasons for the investment empire serve one or more of the following reasons:

1) The protection of the agreement provides an incentive for foreign investors to result in an increase in the FDI type which has a positive impact on the affected countries, including positive impacts on development in underdeveloped or developing countries. (Puig, 2012)

2) the protection of the treaty may serve as an incentive for countries to develop governance and the rule of law in order to meet international standards, or in place of domestic law where weakness or based on a political or economic system is unacceptable to investors and their countries of origin.

3) International justice (fair treatment with other states).

4) Contractual protection directs discriminatory restrictions that do not apply to FDI as do WTO procedures in the case of trade, thus allowing for the continuation of legal proceedings regarding the protection of all external (commercial) and internal contracts (investment) of the company. (Allee, Delegating differences: Bilateral investment treaties and bargaining over dispute resolution provisions. , 2010)

A closer look at the protection of international law by foreign investors reveals that, although such protection is controversial, over time the conflict has shifted to other ideological, institutional and geopolitical perspectives, often focusing on areas requiring strong legal proceedings or agreements, and sometimes in the right platform for resolving the conflicts or investment disputes. After reviewing the history, we, classify (often vague or indistinguishable reasons) the basis for reasons of providing special protections to foreign investors under international law in their dealings with the hosting states. (Kerner, (2018))

We have taken into the consideration the available data on economic theory and empirical research findings on foreign investment as well as political economy lines, theories about bargaining between governments and firms, and other relevant normative conceptions such as good governance, rule of law, and non-discrimination. We have tried to test the strength of different perspectives, by looking at the possible downsides noted in the literature. This paper also explores what type of conflict resolution is most appropriate based on a particular basis and the type of solid principles that can best be aligned with that definition. (Puig, Recasting ICSID's Legitimacy Debate: Towards a Goal-Based Empirical Agenda., 2013)

A few options include the existing system, assuming that its most critical features are well-maintained; conflict resolution between states and territories, which has been a leading example in the history of conflict resolution in international economic relations (and where the most advanced form is represented by the WTO conflict

resolution program); A two-way Investment Court (ICS) program as proposed by the EU and incorporated into CETA and the EU-Vietnam Agreement; or an international investment court. This paper concludes that any commonly stated reason for an investment state, and the state's strict procedures are in line with these reasons, a multi-joint investment court is a high-resolution solution for investor state, or even bilateral judgments. Moreover, for some reason, the availability of not only the claims of investors but also the representation of other stakeholders and the resolution of states disputes in the international court may be very important. (Schlemmer, 2016)

Statutory Framework in Pakistan for Foreign Investment

Parliament deals with the legislative proceeding for the promotion of free trade. The legislative authority has formed rules and regulations to protect the rights of the investor through treaties and contracts. Moreover, these statutory frameworks involve privatization, denationalization of Pakistan's owned assets, and structured reforms. Foreign Private Act developed in 1976 is one the most efficient decision to promote and encourage foreign investment in Pakistan after the promulgation of the constitution (Khan, 2020). Pakistan's policies are devised according to the parliamentary constitution. The 1973's National Constitution of Pakistan is based on the trichotomy of executives, judiciary, and legislature. The charter endows legislative and executive authorities to the parliament and federal government respectively. The parliament formulates the rules and regulations while the federal government plays the role of executioners as they execute the formulated law (Khan, 202). Executives are responsible for enforcing the law albeit the constitution doesn't allow such activities. The governing institutions formulate their legislation to develop an ecosystem for promoting international investments (Khan, 202).

Policy Framework in Pakistan for Foreign Investment

The policies for foreign investments in execution, legislation, and judiciary are devised by compliance to the international institutions. The investment policies of Pakistan's government are endorsed to facilitate, attract and protect foreign investors. The rights and obligations of foreign investors are protected by the statutory framework of Pakistan (Khan, 202). These strategies are evident of the supportive policies from the data available in the form of Memorandum of Understandings (MOU), collaborative declarations, and five-year plans. Pakistan in 2001, signed an MOU with the European organization to promote and cultivate the atmosphere of growth in science, technology, culture, economy, commerce, and investments. The state has also signed a collaborative plan to identify and promote trade and investment possibilities with the USA (Khan, 2020).

Literature Review

Economists have started gaining interest in the investment due to the changes in Foreign Direct Investment. This researched is focused on highlighting the role of FDI to attract investment from foreign investors. This paper presents the analytical reasoning behind the relationship of growth rate of foreign direct investment and the flux in GDP (Gross Domestic Product) indices. The data has been collected from the data set provided by the statistics available at the World Bank's information section. The absolute values of FDI and GDP have been compared for to different states depending upon the standards of development in these countries. The next chapter emphasizes the links and relationships between FDI influx and the accelerating or decelerating effect on the index of ease of doing business of World Bank in BRICS and OECD states. (Allee, Contingent credibility: The impact of investment treaty violations on foreign direct investment., 2011)

FDI has a favorable impact on the recipient remunerative success of the country. FDI is often focused on industrial sectors and essential institutions that have a market edge, both actual and potential. It would improve efficiency by exploiting economies of significant sizes and linking consequences in industries where there is a considerable strategic position. Whenever it comes to FDI, payback is only needed if venture capitalists generate income, and while they do, they choose to fund again rather than repatriate their profits elsewhere. Another advantage of FDI is that it boosts trust and ensures stability. Capital flows through FDI may bolster investor confidence in a nation, resulting in a positive feedback loop that impacts not just local finances and international image but also innovation and creative problem solving.

Foreign direct investment (FDI) into the Islamic Republic State of Pakistan is limited and encompasses a smaller range of industries including a few industries, namely the electricity and energy departments. This situation closely resembles the observational data of Foreign direct investment in Asia and the Pacific Region. FDI poured into the emerging technology industries and economies (Hong Kong, China; Korea; Singapore; and Taipei, Taiwan) at first, before moving to ASEAN nations. These have lately shifted their focus to India, China and Vietnam. (Allee, Delegating differences: Bilateral investment treaties and bargaining over dispute resolution provisions. , 2010)

Since the establishment of Pakistan, it has received the share of only 0.2% from the worldwide FDI, even less than 1% of FDI from newly industrializing and Asian nations, and 18% of FDI from the regions located in South Asia. Pakistan's record in recruiting FDI has been mediocre despite liberalizing its once down at the ground FDI system, reducing or removing barriers to international investment, and providing different incentives. Why hasn't

Pakistan been able to garner enough FDI notwithstanding liberalizing its finance and currency systems, as well as its inbound FDI administration? The purpose of this research is to discover the solution. Throughout 1995, a significantly large input into FDI into the power industry has had several negative consequences, the most notable of these has been a massive rise in capital merchandise trade for electricity generation systems development. Insights for emerging economies may be learned from this: they should be cautious not to offer excessively FDI to quasi industries in a brief span of time. At the outset, FDI must be encouraged in the export sector, followed by the private sector, or, at the very least, both key industries at the same time. (Campisi, 2017)

Research Questions

i. Which cases of foreign investments have been decided against Pakistan in the International Center for the Settlement of Investment Disputes (ICSID)?
ii. What are the significant reasons claimants filed those cases in ICSID?
iii. Why were those cases decided against the state by ICSID?
iv. What is legal framework for ADR system?

Alternative Options for Dispute Resolution

In this research paper, we have tried to critically analyze the reasons behind disputes in foreign investments brought to Pakistan. Our focus is to know that weather these disputes rose because of political issues in Pakistan or is it legal framework that creates issues causing the disputes between investing state and host state? we will also find that in each case the matter goes to ICSID because of the bilateral investment treaties (BITs), whereas there are many other institutional alternatives available which should be consider to gain the objectives of investment in other states. (1) market trends or mechanisms which are usually observed as an effective source; (2) mechanisms effective politically ; (3) internal dispute resolution mechanisms under domestic legal framework; (4) independent domestic special judicial mechanisms; (5) international judicial mechanisms instead of traditional domestic litigation; (6) International judicial mechanisms supplementing domestic litigation legal framework. Analysis of an agency's alternative approaches to the handling, discrimination and theft of foreign direct investment should include a variety of reasonable judicial options as well as non-judicial approaches. (Kerner, (2018))

CASE 1: Tethyan Copper v Pakistan Tethyan Copper Company Pty Limited v Islamic Republic of Pakistan, ICSID Case No. ARB/12/1

This lawsuit between the government of the Islamic Republic of Pakistan and Tethyan Copper Private Limited Company is based on breaching the Bilateral Investment Treaty (BIT) between Pakistan and Australia on the mining project of copper and gold in Reko Diq of Balochistan. The government of Pakistan had denied the rights of Australia's mining company to explore the massive gold and copper reserves in the Shanghai District in the southwest of Pakistan (Murad, 2019).

The Reko Diq mine is perceived to be the fifth largest gold deposit globally. The literal meanings of Reko Diq refer to the sandy peaks in the native language of Balochistan. These mines are housed by an arid land adjacent to the Borders of Afghanistan and Iran, 70km away from Naukundi. These mines are found on the Tethyan Belt connecting Turkey, Pakistan, and Iran. The history of this agreement dates back to 1993 when BHP Billiton, the Australian signed a concurrence to search and mine one of the world's largest gold and copper reserves under the agreement named Chagai Hills Exploration Joint Venture Agreement (CHEJVA).

The agreement stated that 75% of the interest share would be held by the Australian Company and 25% of the shares belonged to Pakistan with a 2% royalty payment upon mutual investment. The agreement suffered by the BHP's decision to hand over the Riko Diq project to an insignificant Australian Company named Mincor Resources in April 2000 which was acquired in 2006 by Tethyan Copper Company (TCC). Tethyan's website says that this project of discovery and mining would have cost about $3.3 billion. (Kalb, 2005)

An application for the Mining Lease was submitted with the provincial government of Balochistan by the Tethyan Copper Company (TCC) in 2011. It took the Balochistan government about 9 months to discard this application in November 2011 because the refining and smelting processes could not be carried out outside Pakistan's territory which was not mentioned in the CHEJVA accord. The CHEJVA accord was declared invalid by the Supreme Court for Balochistan's government exceeding its authorities in 2013 by signing the agreement and proclaimed this agreement unacceptable as it goes against the formulated public policy (Iqbal, 2021). Apprehensively, the Supreme Court of Pakistan announced that Tethyan Copper Company had no legal rights to mine and discover the Reko Diq reserves in Balochistan. (Kerner, (2018))

The two parties decided to take this case to the international arbitration service under the World Bank's International Center for Settlement of Investment Disputes. The TCC demanded compensation of $11.43 billion for their loss in the form of damage and depreciation since the Balochistan government rejected the lease application (Khan, 2019). The TTC claims that this project had already cost them $220million since the project began.

The ICSID's tribunal decided against Pakistan and declared that TCC had the legal right to expect a contract as Pakistan was assured in CHEJVA by the government officials responsible for this deal. Supreme Court also put allegations of corruption on TCC as one of the ministers Muhammad Aslam Khan Raisani as offered a bribe of $1million. But ICSID rejected those allegedly claimed corruption charges by Pakistan's Supreme Court on TCC (Khan, 2019).

ICSID compensated TCC's loss by paying them $5.967 billion and proclaimed Pakistan liable to pay the fine for breaching the standard of Fair and Equitable treatment and illegally expropriating the Bilateral Investment Treaty between Australia and Pakistan (Murad, 2019). In November 2020, the TCC connected to the British High Courts of Justice in the British Virgin Islands to award their $6 billion from the assets of Pakistan International Airlines integrated with the British Virgin Islands (Iqbal, 2020). As Pakistan applied for a stay to fulfill the orders, the ICSID gave Pakistan's government a time frame of 30 days to produce an unconditional and irreversible bank guarantee from an international highly reputable bank outside of Pakistan to get 25% of the share including interest till the date of decision (Ghumman, 2021). The current government claims to have invested $10 million on this project while most of the policymakers blame Pakistan's Nuclear Physicist Dr. Samar Mubarakmand for misstatement. He stated that Reko Diq including other gold reserves can elevate the exchequer by $131 billion in tribune which resulted in ICSID's judgment for this huge penalty. Strategists also believe that Former Chief Justice Iftikhar Chaudhary failed to comprehend the long-term consequences of this accord between Australia and Pakistan. The staggering economy of Pakistan suffered from another setback due to lack of transparency, poor connectivity between administrative authorities, lack of trust among political personnel, and failure to produce significant evidence to justify their corruption charges on the Tethyan Copper Company. (Kerner, (2018))

CASE 2: BAYINDIR INSAAT TURIZM TICARET VE SANAYI A.S. V. ISLAMIC REPUBLIC OF PAKISTAN (ICSID CASE NO. ARB/03/29),

The National Highway Authority (NHA) of Pakistan, signed a contract with the Turkish company, Bayandir Insaat Turizm for constructing a six-lane motorway from Islamabad to Peshawar (Sanayi, 2005). The disruption in the construction schedule resulted in the suspension of the project over a period of eight years. Bayandir accounted for Pakistan's National Highway Authority (NHA) for the delays in the project due to lack of land and resources which failed to invest in the equipment. The discord came to the limelight in 2001, when NHA terminated the agreement with Bayandir and the worksite as protected by the Army of Pakistan. The Bayandir company warned NHA to take this case to arbitration under Pakistan and Turkey's Bilateral Treaty for investment. But the elected officials in

2002 took the case to ICSID for breaching the responsibilities of NHA including the development of fair and equitable treatment, the Most favored Nation, and compensation for expropriation (Sanayi, 2009).

The Bayindir proclaimed that Fair and Equitable Treatment (FET) needed to be provided by Pakistan's NHA according to the Most Favored Nation obligation. The preamble of BIT states that optimum utilization of resources and the development of a stable investment framework could be assured by fair and equitable treatment. The tribunal reported that Pakistan and Turkey have discounted the importance of FET in their preamble while the evidence for Most Favored Nation (MFN) was not found. The tribunal decided that preamble along with the MFN clause attenuated Pakistan's argument that the FET clause was deliberately excluded (Sanayi, 2009). Instead of importing this clause from another BIT, it was apprehended that Pakistan has not been treated unfairly or inequitably. Bayindir also put allegation that the government officials of General Pervaiz Musharraf were not acquainted with such projects. The ICSID concluded that the Turkish Company had failed to produce sound evidence to prove the inequitable treatment by Pakistan and the NHA as not satisfied with the performance of the company (Sanayi, 2009). But the tribunal also evaluated the data of other developmental projects in Pakistan and observed a delayed pattern in most of the projects but did not terminate the contract with the local contractors which represents discrimination (Sanayi, 2005).

This case presents Pakistan's inability to foresee the consequences of a long-term plan. Moreover, after every tenure, a newly established democratic government put efficiently designed plans to negligence and the institutions fail to carry out risk assessments. Since its independence, the Islamic Republic State of Pakistan is suffering from a feudal system that undermines merit and discrimination disrupts the development ecosystem of the country. (Puig, Emergence & dynamism in international organizations: ICSID, investor-state arbitration & international investment law, 2012)

CASE 3: KARKEY KARADENIZ ELEKTRIK URETIM A.S. V. ISLAMIC REPUBLIC OF PAKISTAN, ICSID CASE NO. ARB/13/1

ICSID awarded $800 to the Turkish Company Karkey and ordered Pakistan to assure compliance with the international obligations when Pakistan failed to counterclaim the arguments against Karkey Company. This dispute dates back to 2008 when due to the extensive power crisis, Pakistan-owned Lakhra Company signed a contract with Karkey Karadeniz Elektrik Uretim (KKEU) for the project of rental power generation which was subjected to amendments in 2008. The agreement experienced a threat when the supreme court's Chief Justice of Pakistan registered a case of non-compliance with the Public Rules

of Procurement in 2009 (Proceedings, 1918). In 2012, the Turkish company KKEU produced a notice for the termination of a project because Lakhra failed to pay their due expenses. The Supreme Court declared the contract void from inception and ordered the authorities to evaluate the corruption in awarding this case to KKEU. The bank accounts of KKEU in Pakistan were frozen and the displacement of the machinery of Turkey's Company was restricted (Dost, 2013).

KKEU signed a petition for arbitration in ICSID for breaching the BIT between Pakistan and Turkey as it had restricted the movement of KKEU vessels and violated the rights of the company to transfer its investment. Some umbrella clauses, MFN and FET were also incorporated in the application to the ICSID and demanded a compensation of $1.4 billion including interest. The charges of corruption for KKEU were not well evidently supported by the data. Pakistan posed that this project was allegedly acquired by the Turkish Company KKEU (Proceedings, 1918). The only evidence produced was the indication that a prospect named Zulqarnain was retained in Pakistan to lobby with the officials and induce government representatives while KKEU posed that Zulqarnain was substantial personnel for their project and denied Pakistan's allegation. All of the 17 questions raised by Pakistan ended up not enough to justify corruption. (Schlemmer, 2016)

The EU proposed that the Pakistani Government is responsible for Lakhra's amendments in the contract and failure to pay the cost. Pakistan responded by the claim that Lakhra is an independent body but the tribunal here accepted KKEU's claim by believing that Lakhra is attributable to Pakistan. Pakistan also submitted that KKEU failed to fulfill the contract in the 180 days which was the criteria for the project to be awarded as a planned misrepresentation. But tribunal considered it a mistake instead of misrepresentation from the logistical point of view as well as expropriation from Pakistan in the form of delays. Pakistan's allegation of breaching the procurement rules was responded by Karkey's presentation of estoppel and as accepted by the ICSID (Dost, 2013).

CASE 4: AGILITY FOR PUBLIC WAREHOUSING COMPANY K.S.C. V. ISLAMIC REPUBLIC OF PAKISTAN, ICSID CASE NO. ARB/11/8

This case took place in the public administration and defense sector of compulsory social security under the BIT of and Pakistan of 1983 (Fouret & Khayat, 2012). This case is related to the IT industry of Pakistan where building new software for custom clearance was to be developed by Kuwait's software company. This technological innovation is planned to be developed at the International Terminal for Containers in Karachi Pakistan. The deal also included the plans to extend this project to other significant airports and seaports in the country upon successful completion of the project. The complainant pointed out the

outstanding payments to complete the project similar to the other projects like Karkey and Bayandir, Pakistan's government failed to pay the due amount of balance. The tribunal was chaired by Mr. Fortier and arbitration services for the claimant were brought presented by Mr. Brower and Mr. Moolan served as Pakistan's arbitrator. Kuwait's company claimed compensation rendered to be $650 million (Fouret & Khayat, 2012). The data for breaching the rights of the claimant is not available but the case was settled between the two parties. Similar to the other cases, this case was subjected to international arbitration due to outstanding payment. (Schlemmer, 2016)

Analysis & Interpretation

These cases represent the poor evidence against the charges of corruption, in both the cases of Karkey and Reko Diq the charges of corruption were imposed but failed to produce a result in it. For example, in the case of Reko Diq, the evidence of offering a bribe to Muhammad Aslam Khan Raisani was as insufficient for conquering this case as the proof for the personnel Zulqarnain. All these companies got a significant chance for building upon the poor planning of the earlier government of Pakistan. As the delay is a norm in Pakistani bureaucratic culture, most of the economic as well as energy crises fail to be solved. The administrative, judicial and executive branches breach the rights of the claimant in most of the cases.

Challenges

Pakistan is a developing country and has faced many challenges; since after its independence. Political instability, lack of good governance, bad economic policies and the efficient use of resources are the key factors that discourage international key players, in this country. However, Bad economic policies and aspects of terrorism create uncertainty about investing Pakistan. Important issues for Pakistani investors are health and property safety protection. Pakistan has made the bilateral agreement with 46 countries from 1959-2004; but because of potential threats, and the lack of economic laws as well bad governance, Pakistan has faced a crisis of trade deficit.

Further these are the challenges due to which Pakistan failed to get a verdict in the favor of Pakistan from ICSID.

i) Lack of quantifiable merit is a challenge to prove whether the selection of a company is a biased decision

ii) The agreements under bilateral investment treaties are not updated as per demands of current circumstances

iii) Delays in developmental procedures are one of the challenges which creates problems for compensation

iv) The inefficient risk assessment results in getting a charge of breaching the rights of the claimant party

v) Feudalism in Pakistan's bureaucratic system creates an atmosphere of mistrust.

vi) The required attention by the newly established government is not paid As the tenure of a government ends in Pakistan.

vii)

Recommendations

To invite more productive investments, Pakistan needs to develop investor-friendly policies, and execution must be accurate. The risk assessment will play a significant role in future investment decision-making to ensure a successful procurement in the long terms planning. Developing some stringent criteria for awarding future projects will help authorities assess and evaluate the involvement of any kind of corruption in decision-making to select a company. All the data of such projects should be transparent not only to the government officials but must be made publically available.
Here are some recommendations for successful and fair foreign direct investment system:

- To ensure successful FDI, public morals and ethics need to be protected.
- Public law and order must be maintained
- Integrity and sustainability of country's financial system and financial institutions must be ensured.
- Serious issues regarding payments balance, exchange rate difficulties and external financial difficulties must be addressed and investor must not feel threatened regarding financial insecurities.
- Ensuring that the procedures will be environment friendly for living and non-living natural resources
- Ensuring safety and public health of the human capital involved in the investment
- Ensuring improved and healthy work environment.
- Ensuring prevention of fraudulent practices
- To ensure the privacy of individuals with respect to the processing and distribution of personal information and the protection of the confidentiality
- Ensuring compliance to deal with the consequences in case of failure of contract.
- Ensuring the compliance with the legal framework and all the legal procedures including settled mechanisms of dispute resolution.
- To ensure complete support in resolving the disputes in case of any arise.

- To ensure the transparency in legal procedures and dispute resolution mechanism to avoid delays or wastage of time.

Study shows that economically it is difficult to compensating private economic actors for regulatory change. However there is a definite argument that treaty protection could attract FDI by protecting an investor against an upholding position as well as protecting the rights of holding state. Mediation or arbitration of investment disputes was originally understood for the purpose of replacing the traditional legal approaches to have the opportunity to remove politics from the conflicts between "Western" investors and their own governments and countries opposing ideologies. And for the protection of contractual and intellectual property rights for direct access to financial justice in their systems.

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