International Journal of Scientific Research and Modern Education (IJSRME)
Impact Factor: 7.137, ISSN (Online): 2455 – 5630
(www.rdmodernresearch.com) Volume 4, Issue 2, 2019

EVOLUTION OF INTERNATIONAL INVESTMENT LAWS

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Cite This Article: Darshna Garg, "Evolution of International Investment Laws", International Journal of Scientific Research and Modern Education, Volume 4, Issue 2, Page Number 15-17, 2019.

Introduction:

In 21st century, International trade is emerges as the one of the major source for the development of the countries. In the current scenario investments made by one country to another country has became the major source for the increase in capital money of the countries which are indulge in such practices. It is much obvious to understand that for every undeveloped country and developing countries, it is very much necessary to have link with the developed countries as well as trade between them or trade between with such countries from which particular countries are gaining some mutual interest. But, main question arises here is that whether there is zero probability of unfair practices in trade? Whether investments made by one particular country to another particular country will execute in the same manner for which purpose the investment was made? The answer to such questions is 'No', but can be possible when there are authorized laws for governing such practices is present. In the era of innovations, high-tech technologies and rising of new trends, countries are mostly indulge in international trading across the country by remaining in the purview of legal framework set for such practices of investment so that fair and equitable trade can be maintained as well as each and every investment can be secured. But again the question comes here is that how such investments laws are framed? How such investment laws come in the purview of particular countries belief? Or how such investment laws which are set in a same legal framework are accepted by different countries? The answer to such questions are that not just in particular time any law can be framed which can regulate different countries investment practices, but It took centuries to evolve themselves and are also in ongoing process.

Early Stage of Evolution:

In the present regime of international trade framework, International investment law has emerged as a most essential discipline of public as well as private international law, but has taken many centuries to stabilize themselves. The initial beginning for the evolution of the international law has marked its presence in the 17th century. In the 17th century there was no set principle as the law of nations regarding international investment and trade of any country. In the year 1796, John Adams a prolific writer and actor have negotiated for the treaty of Friendship, Commerce and Navigation in the Unites states for the first time against France for the protection of the alien property under the ambit of International Investment. Adams offered the model treaty from the side of United States presented in the form of commercial treaty with France with the principle of "no use of military alliance and duty- bound France to recognize United States as the heir to all France and British territory in North America. John Adams through this treaty has stated that [1]"There is no principle of the law of nations more firmly established than that which entitles the property of strangers within the jurisdiction of another country in friendship with their own to the protection of its sovereign by all efforts in his power". The same assumption was later on lead by the famous Argentina jurist, Carlos Calvo with some additional principles as Carlos also stated with the help of the famous study of International Law of European, Carlos Calvo had affirmed that government of any country or nation should not be entitled to use armed forces to collect debts owned by them to other nation or foreign investors. Further it was also settle down through Carlos doctrine that, the disputes related to the aliens or foreign investors should govern by the jurisdiction of the host state only regardless of diplomatic intervention. He asserts that if there is any foreigners who claims his/her property in other country or want to claim against the government of another country then that alien or foreign investor should apply to the Courts of same Country against whom the claim is, for the redressal, instead of pursuing the option of diplomatic intervention. Carlos calvo also stated that the rules governing the jurisdiction purview over the aliens and the collection of indemnities should be applicable in equal manner to all the nations, regardless with their development speed, structure or nation size. Carlos Calvo Doctrine was initially adopted in the Drago porter Convention by the Argentina foreign Minister Luis Maria Drago which basically aims to prevent the use of armed forces for collecting the debts. The essentials of Calvo Doctrine was revived in U.S and Soviet Union after the end of Russian revolution in 1917 to perpetualize the conceptual reorientation in the practical level. From decades to decades many attacks were made on the approach of International Investment laws. In 1938 after the nationalisation of the U.S interest in oil businesses and Mexican agrarian, the subsequent attacks on the standards of International Investment Law was mounted by the Mexico. The dispute was aided on across level and hence resulted in a diplomatic exchange in which the secretor of U.S wrote a famous letter to his Mexican

1 Cited in J B Moore, A digest of International Law, Vol. 4 (1906) 5.

counterparts. [2]The letter spells out that the rules of International Law allowed expropriation of foreign property, but required prompt, adequate and effective compensation. After some time Mexican position eventually made them to revive the Calvo's doctrine and also prefigure the upcoming harsh disputes between industrialized and developing countries in subsequent decades of post-decolonization.

Development after Second World War:

The journey of evolving international laws from the ancient time period to the second world war has presented many principles on which rules should be set in regard of investment laws. Friendship, Commerce and Navigation Treaty, Russian Revolution, Calvo doctrine and Mexican position illustrated much about investment rules and status of aliens during such disputes. The sum of these rules and interpretations eventually came to be known as International Minimum Standards or Customary rules. In simple words minimum standards are the set of rules and regulations or principles or the criteria on which any treaty regarding international investment can be govern. Every dispute will be govern by such set of rules which comes under the purview of International minimum standards. It basically implies expressly or impliedly obligations on the parties to the dispute. Even after Mexican position to second world war and from second world war to present scenario there was also Made many interpretations for the approach of investment laws in minimum standards and also many principles which thinks reliable to be fit are included in the International minimum standards. Basically Minimum standards are formed because of the concern for the status of the aliens or foreign investors in the host state, to govern the procedure that how aliens can apply to diverse procedural rights in criminal law, rights gauranteed to aliens in civil law, in general rights before the tribunal or Courts as well as rights in regard to private property held by the alien. In the case of [3]Neer v. Mexico, Mixed Claims commission has stated that "the treatment of the foreign investors or alien in order to maintain international delinquency, should amount to an outrage, to bad faith, to wilful neglect of duty, or to an unacceptable reason or insufficiency of the governmental actions far short of International standards that every reasonable and impartial man would readily recognise its insufficiency". In the era of 1945 to 1990 decolonized countries and developing countries were running in the race to become capital exporting states rather than to become capital importing states. In these conditions many disputes arise between the countries result in new approach known as 'International Economic Order'. During the phase of New Economic order, the period of contest led to insecurity about the customary rules or minimum standards governing foreign investment. At that time, after the year of 1990 it was analysed that soon the countries can face financial crisis on which Latin America started taking actions in regard to it. To safe people of its country by financial crisis, Latin America started to conclude the the bilateral Investment treaties with the adherence of Calvo Doctrine. In meanwhile time, International foreign institutes has analysed the role of private international laws and had revised the position of private investments and summarised that private investments are also becoming the dominant approach to development and would give a very positive influence on foreign investments. Finally in 1992, new principles regarding investment laws and specially, on foreign Direct Investment were added to the preamble of World bank's Guidelines. [4]It was stated in the guidelines that "that a greater flow of foreign Direct Investment brings substantial benefits to bear on the world economy and on the economies of developing countries in particulars, in terms of improving the long term efficiency of the host country through greater competition, transfer of capital, technology and managerial skills and enhancement of market access and in terms of the expansion of International trade". By such rules International investment laws had find new climate to survive and all old or irrelevant principles were become inattentive.

Present Era:

In the upcoming decades many new treaties were formed bilateral and multilateral both such as North American Free Trade Agreement (NAFTA) and Energy Charter Treaty (ECT). Developing countries had started to sign investment treaties among themselves for making their Capitals. International trade was basically get influenced by the new significant trend of the Bilateral Investment Treaty practices (BIT). The trend of BIT became very successful as BIT is always concluded between two countries but many problems were stemed up, when the initiative was taken to form the Multilateral agreement or treaty. To overcome this problem finally World bank, general counsel, Aron Broches come up with the plan. Aron has introduced the concept of 'Procedure before Substance' and concluded that the best measure the we can take to prevent such problems is to make a framework of effective procedures for the impartial settlement of the international disputes, with an attempt to form agreements in the purview of substantive standards. Lastly Broches, designed a new framework in 1965, was known as the International Centre for settlement of Investment dispute (ICSID), which was the most incredible innovation and a step ahead towards the modern climate of International Investment Laws in concern with the protection of foreign Investment. In year 1966, ICSID came into force and marked its presence all around the world. In present scenario, ICSID is the only multilateral treaty which covers the rules and procedures related to international investment disputes. ICSID gets successful because it is designed to promote

2 Correspondence G Hackworth, Digest of International Law, Vol. 3 (1942), Vol. 5 (1943).
3 L.F.H Neer & Pauline Neer v. United Mexican States, IV RIAA 60 (1951).
4 World Bank Group, Guidelines on the treatment of Foreign Direct Investment, Legal framework for the treatment of Foreign Investment, Volume II: Guidelines (1992) 35-44.

the settlement disputes between states, foreign investors and private foreign investors by not only providing international Court or tribunal for settling disputes but by facilitating the institutional framework of conciliation and arbitration to the parties of the dispute.

Conclusion:

In a precise time frame of hundred years, mainly in 19th century, the laws related to international trade and investment, has not only mark their presence but also had became one of the major source for the development of the countries. The Current principles of investment laws are evolved from the foremost treaties like Friendship, Commerce and Navigation or Carlos's principle or norms of minimum standard etc with the addition of few dimensions in it but also needed more improvisations and additions in principles of investment law to form more clarity and transparency in regulating the functioning and jurisdiction related issues of investment. Many meetings and discussions are going all around the world for the stabilization of the investment laws in a uniform manner but the essential point to be consider here is that whether such laws or provisions are in accordance with the demand of the international trade and investment evolutionary provisions, as well as for formulating the pathway for fair and equitable justice to deal with the jurisdiction issues and to promote the economic as well as sustainable growth of the countries.

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2. Correspondence G Hackworth, Digest of International Law, Vol. 3 (1942), Vol. 5 (1943).
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