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Evolution of Arbitration and its Impact

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ABSTRACT

Arbitration has played a decisive role in the growth of globalization by providing a means to resolve and mitigate issues between parties from two different states. Before the advent of Arbitration, there was no efficient forum for conflict resolution between a state and private parties of another nationality. They either had to raise their issues in the courts of the host state, i.e., the State where the investment was made. If the domestic courts fail to provide a remedy to the violations complained of, the foreign investor or private parties could ask their State to file a claim in diplomatic protection against the host state, which is extremely inefficient for various reasons discussed later. Also, such negotiations have a history of turning hostile and also cause politicization of the issue. Such an impotent procedure was not effective nor feasible in the future, especially in a world of ever-increasing globalization and foreign investment. Therefore, it is necessary to explore the history of Arbitration and how it evolved into its modern counterpart to understand the impact it has had on the globalization of the world and how it helped shape the world.

Keywords: Arbitration, Investment, State

I. INTRODUCTION

Before the advent of Arbitration in its earliest form, there was no effective method to satisfactorily resolve disputes wherein neither of the parties felt that the decision was unjust or that they weren't given a fair trial. These unsettled disputes led to conflicts often turning into violence and, in some extreme situations, even turned into clashes and wars. The emergence of Arbitration played a major role in preventing violence in trial disputes and provided for a forum that was relatively fair and equitable. Thus the journey of evolution of Arbitration in its modern form is necessary to understand how it evolved into a comprehensive dispute redressal mechanism.

Countries all across the globe invited foreign investment, but several investors declined from investing in certain countries with unfavourable laws and asked the states to amend the same. But amending the laws would change it for all instead of only foreign investors, which poses a disadvantage for the State. This issue was overcome by agreeing with the State to settle any

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disputes raised between the two parties by the use of people who have domain expertise in the subject matter of the dispute rather than the domestic laws of the host state. Thus the dawn of investor-state Arbitration.

II. ARBITRATION

Arbitration is a form of Alternative Dispute Resolution (ADR). It is one of the two methods to resolve disputes along with Judicial Settlement, whose decision has a binding nature on the parties to the dispute. Disputes in the Arbitration are settled by a standing tribunal, like the Permanent Court of Arbitration (PCA). The parties to the disputes design the Arbitration. They choose the arbitrators, the Procedural Law, i.e., the law governing the arbitration proceedings, and the applicable law, i.e., the law applicable to the dispute.

(A) Categories of Arbitration³

1. According to the Parties to the dispute
 - a) Interstate Arbitration, i.e., Arbitration between two states
 - b) Mixed Arbitration ie, arbitration between state and non-state actors
 - c) Arbitration between two non-state-actors
2. According to how the Arbitration is conducted
 - a) Ad-hoc Arbitration

The parties to the dispute determine and agree upon the arbitration procedure

- b) Institutional Arbitration

The procedure is chosen by the arbitration institution, and the parties are assisted by the institution during the procedure

3. According to the subject matter of the dispute
 - a) Commercial Law Dispute
 - b) Investment Disputes
 - c) Interstate Disputes, e.g. regarding the law of the Sea

(B) History and Evolution

Arbitration between states and state-like entities dates back to the Ancient Greece civilization.

³ <https://www.coursera.org/learn/arbitration-internationaldisputes/home/welcome>

Early forms of Arbitration were being used to mitigate disputes related to sovereignty and independence between allied states and cities. Arbitration was also largely used during the Medieval Times or the Middle Ages. In such arbitrations, a single arbitrator known as an Empire settled the disputes. Mostly such a role was played by the Pope, the King, or the Emperor. The principles based on which the decisions were made are in stark contrast to modern-day practices. The verdicts were based on principles of equity rather than law. Also, they weren't reasoned, and neither were the arbitrators completely independent or unbiased.

Arbitration mostly disappeared from the interstate relations in the mid 17th century with the signing of peace treaties of Westphalia which was followed by almost 3 decades of war in Europe which later resulted in the sovereignty of the states. But Arbitration re-emerged towards the latter half of the 18th and 19th centuries.

The Jay Treaty Arbitration is deemed to be marked the dawn of what we know as the modern-day International Arbitration. The United States of America and Great Britain signed a treaty mainly to settle pending issues subsequent to the American War of Independence. The treaty established three different commissions, first to settle disputes relating mainly to the boundary, and the second and third were to settle mixed disputes. The treaty not only established the modern form of Arbitration to settle disputes between states but also paved the way for the settlement of disputes between nationals of one State and other. It also set a paradigm for arbitration proceedings since the decisions were based on law rather than equity and also contained reasoning. But the commission was exclusively composed of nationals of either State.

Alabama claims Arbitration was another important landmark case that set some new precedents. Firstly, the Arbitration was able to successfully resolve interstate claims in a peaceful manner. Secondly, the arbitration tribunal, for the first time, was composed majorly of arbitrators who were not nationals of either of the parties to the dispute (a practice followed to date). It was one of the first arbitrations which closely resembles modern-day practices. Thirdly, it established that the parties to the dispute could freely determine the law applicable to the dispute, which includes soft laws, i.e., non-binding rules.

Even though Arbitration was being widely used to resolve interstate disputes in the late 19th and 20th centuries, individuals had no direct access to the commission or tribunal. The claims of individuals had to be brought by the State. This is in stark contrast to modern-day practice.

Arbitration became less popular to settle interstate disputes in the first half of the 20th century with the establishment of the Permanent Court of International Justice in 1921 and the

International Court of Justice in 1945. However, after the end of the cold war, Arbitration became increasingly popular to settle inter-state disputes.

Mixed arbitrations became popular in the last decades of the 20th century with the ever-increasing number of large concessions for the extraction of natural resources in developing countries being obtained by foreign companies. The creation of the International Centre for the Settlement of Investment Disputes in the 1960s was the result of this rapid increase in mixed arbitrations

(C) General Principles of Arbitration⁴

The parties to the Arbitration design the Arbitration. This means that they choose their arbitrators, the procedural law, the applicable law, and also the soft laws. Generally, the arbitrators are domain experts of the subject matter of the dispute.

The outcome of Arbitration is the Arbitral award and is binding on the parties to the dispute. The binding nature of the award is the result of the freedom of the parties to the dispute to choose their arbitrators, the procedural law, and the applicable law.

The tribunal only has the competence or authority to settle only the issues that are submitted by the parties.

Once a tribunal is established, it is the sole judge of its competence. Thus once established, the tribunal will itself determine whether it is competent to resolve the dispute, also known as the principle of 'Competence de la competence.'

A tribunal cannot decide a dispute based on equity, also known as the principle of 'ex aequo et bono' unless the parties have explicitly asked the tribunal to do so. Otherwise, an arbitral tribunal must decide the disputes according to the laws defined by the parties.

The parties can freely choose the number of arbitrators that will compose the tribunal. Usually, a five-member tribunal is appointed for interstate Arbitration while a three-member tribunal is appointed for investor-state arbitrations. Generally, an equal number of arbitrators are appointed by each party, preferably a domain expert on the subject matter of the dispute. The remaining last arbitrator who acts as president of the tribunal is jointly appointed by the parties or party-appointed arbitrators. In the case of strife, an appointing authority usually decides the same. The Secretary-General of the Permanent Court of Arbitration or the president of the International Court of Justice are usually the appointing authority, but in principle, it can be anyone

⁴ International Law in Action: the Arbitration of International Disputes, *Coursera*

In Arbitration, the parties are free to draft their own rules, e.g. Arbitration under the Law of the Sea Convention. The most important set of rules in the Arbitration is the UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules. UNCITRAL rules can be used in investor-state Arbitration, interstate Arbitration, and international commercial Arbitration.

There is a distinction between institutional Arbitration and ad hoc arbitration. While the choice of rules is completely free in ad hoc arbitration but in institutional Arbitration, the parties will have to follow the rules set by the institution. However, there are some institutions like the Permanent Court of Arbitration, which allows the parties to use other procedural rules.

Generally, international law is chosen as the applicable law in interstate disputes, e.g. Mox Plant Arbitration. In investor-state Arbitration, generally, international law is coupled with domestic law. This is so because usually, the application of domestic laws of the State where the investment was made is necessary along with international law.

III. ARBITRATION AND JUDICIAL REVIEW

Arbitration and Judicial review are the two main mechanisms to settle disputes in a binding manner in International Law. Both are considered to be Legal Dispute Settlement Mechanisms. They are in stark contrast with the Diplomatic Dispute Settlement Methods, which yield non-binding decisions like ADR, conciliation, and mediation.

The fundamental principle that the arbitrators are chosen by the parties to the dispute is the main distinguishing feature between Arbitration and judicial review in international courts and tribunals. The courts or tribunal are composed of judges who are not elected by the parties but by some panel for a fixed term.

While the procedural law and applicable law are decided by the parties in case of an arbitration, in the judiciary, the procedure and statutes are completely predetermined. In principle, the parties cannot change these rules.

The most important principle of international Arbitration is the principle of Party Autonomy which implies that the parties to the Arbitration design the Arbitration. This is in stark contrast to the Judicial Review System, wherein the parties have no control over the tribunal and the composition of Judges.

In Arbitration, the tribunal can only decide the issues submitted by the parties and nothing beyond them. Otherwise, it is considered as application excess of authority or 'exces de pouvoir', which can render an arbitral award null and void. There is no such limitation in

judicial review, and the judge can render any decision that he may deem fit and necessary.

(A) Why do States choose Arbitration over Adjudication?

- States often choose Arbitration over adjudication because it offers greater flexibility in comparison to other dispute settlement mechanisms with fixed rules and procedures like the International Court of Justice or The International Tribunal for the Law of the Sea.
- Arbitration proceedings are generally quick, the process is more expeditious, and decisions are rendered quicker.
- While Judicial Review is public, arbitral proceedings can be kept confidential, which might be necessary for certain situations.
- Arbitration offers a greater degree of control over the composition of the tribunal to the parties to the dispute.
- Arbitration also provides a certain degree of protection against third-party intervention.
- However, one of the limitations of Arbitration is that it is generally more expensive than adjudication due to the fact the parties have to pay the tribunal expenses and also bear their expenses.
- Sometimes states switch between Arbitration and judiciary, e.g. in a dispute between Myanmar and Bangladesh; Arbitration was later transferred to ITLOS

IV. INVESTMENT ARBITRATIONS OR MIXED ARBITRATION

Arbitration between states and non-state actors, individuals, or private companies is known as mixed Arbitration. Mixed Arbitration also implies that one of the parties is a state.

Investor-state arbitration is a much modern mechanism in comparison to interstate Arbitration. A few of the earliest examples include the Jay Treaty Arbitration, where a mixed claims tribunal was set up to resolve disputes between the national of one State and another state.

Mixed Arbitration rose in popularity during the late 19th and early 20th centuries because it protected foreign investors from unlawful expropriation. It saw a major spur in the 20th century when large multinational companies obtained concessions for the extraction of natural resources in developing nations.

Traditionally if a foreign investor or a person of another state has disputes with the State in which is investment was made, i.e., the host state, the issues have to be raised before the domestic courts since states have immunity from a foreign jurisdiction and thus the host state cannot be brought under the jurisdiction in another state's courts.

If the domestic courts of the host state are unable to provide a remedy to the violation complained, in such a case, the foreign investor can request his country to file a claim under diplomatic protection. It is a procedure wherein the home state of the foreign investor files the claim for the people of its State.

(A) Issues with Diplomatic Protection

- Diplomatic protection can be very inefficient, given that the investor has to first exhaust all the remedies offered by the host courts.
- The right of Diplomatic protection is the home state's right and not the right of the investor, which implies that the State isn't an obligation to act and thus can refuse diplomatic protection.
- Even when the home state of the foreign investor acts under diplomatic protection, it might still not come through since the consent of both the nations is necessary for the dispute to be settled utilizing adjudication or Arbitration.
- Claims in diplomatic protection are often highly politicized by the home state by using economic and military pressure on the host state.
- The domestic courts of host states are often perceived as biased and often lack complete independence.

(C) Importance and rise of Mixed Arbitration

An efficacious mechanism such as the Diplomatic Protection for the resolution of investment disputes was neither effective nor was it feasible in the future, where globalization and foreign investment started playing an ever-growing role in the economy of a nation.

Thus there was a need for the settlement of investment disputes in a neutral forum without the politicization of the disputes. Hence the recourse to arbitration and concession contracts. The arbitration clause started to be increasingly incorporated in the contracts signed between foreign investors and states.

These days investor-state arbitrations are used to settle disputes originating from bilateral and multilateral treaties signed between different states. Such treaties grant foreign investors who invest in a different nation several rights. These treaties usually give investors the right to be treated equally and fairly. The treaties also ensure that the investors are not discriminated against. They are also provided with a safeguard against direct or indirect expropriation without compensation.

If the rights given to the investor under the treaty are not respected by the host state and are

breached, the foreign investor can file a claim directly against the State but only if the treaty signed between the home state and host State contains an arbitration clause allowing the same. Currently, there are upwards of 3,000 signed investment treaties granting several rights to the investors. Most of these treaties contain an arbitration that grants the foreign investors the right to file a claim directly against the host state if the rights provided by the treaty are violated. Thus it provided security to the foreign investors against any kind of unjust decisions taken by the host state and provided an added peace of mind to the investors investing huge sums of money in a different country knowing that they have some form of remedy. Such safeguards were necessary to promote globalization and boost foreign investment.

(D) Principles of Investment Treaty Arbitration

- The consent of the parties to the dispute is usually disconnected from each other. Generally, the treaty signed between the states contains the arbitration clause, and thus by signing an investment treaty including an investor-state arbitration clause, the State in principle gives its consent to settle the dispute by Arbitration. This is seen as an offer to arbitrate. The consent of the investor is obtained in a later stage when he files his claim by requesting Arbitration. This is considered as the acceptance of the offer contained in the treaty.
- The arbitration clauses comprised in the Investment Treaties, which started off as a simple clause, has evolved into an extremely complex one. Nowadays, the states can condition their consent. For example, states can incorporate a loan or, in combination, an antecedent notification of the intention to bring a claim. It can also include a cooling-off phase between the notification of a claim and submission of a request for Arbitration, allowing the parties to settle the issues through ADR, mediation or negotiations, etc.
- Often a choice is provided between various forums or institutions of arbitrations or maybe even domestic courts in the host state. The commonly mentioned forums mentioned in the treaties are the International Centre for the Settlement of Investment Disputes (ICSID), Permanent Court of Arbitration (PCA), ATOK Arbitration under the UNCITRAL Arbitration Rules. Sometimes traditional venues for commercial Arbitration like the Institute of Stockholm Chamber of Commerce or the London Court of International Arbitration, or the International Chamber of commerce in Paris might also be used

- Few treaties also contain certain rules wherein the investor is obligated to submit disputes in the local courts of the host state. Generally, such local remedies are limited in time.
- Though an arbitration clause in a treaty doesn't mean that all the individuals or companies are allowed to submit a claim against the host state, treaties generally establish who is considered to be an investor and the types of investments that are applicable in the treaty. This implies that only those investors who meet the definition mentioned in the treaty can file claims for Arbitration under that treaty.
- Natural persons and companies (legal persons) are defined differently under the treaties. For example, the treaty between Argentina and Netherlands defines as follows⁵
- the term "investor" shall comprise with regard to either Contracting Party:
 - i. natural persons having the nationality of that Contracting Party in accordance with its law;
 - ii. without prejudice to the provisions of paragraph
 - iii. hereafter, legal persons constituted under the law of that Contracting Party and actually doing business under the laws in force in any part of the territory of that Contracting Party in which a place of effective management is situated; and
 - iv. legal persons, wherever located, controlled, directly or indirectly, by nationals of that Contracting Party.
- Argentina - Netherlands BIT (1992), Article 1 Sec-b⁶
- Treaties also define what investments are. It is usually defined broadly and mostly similar in such treaties. Although a general agreement which is a purely commercial transaction like a purchase or sale agreement, is usually not considered to be an investment. But some treaties do consider such transactions as investments.

(E) Types of Claims in Investment Arbitration⁷

The term Investment arbitration incorporates two types of Arbitration. The term implicitly incorporates the Arbitration relating to investment and that the disputes are over the investment.

⁵ <https://investmentpolicy.unctad.org/international-investmentagreements/memb/treaties/bit/142/argentina---netherlands-bit-1992->

⁶ The Government of the Kingdom of the Netherlands and the Government of the Argentine Republic, Agreement on encouragement and reciprocal protection of investments between the Kingdom of the Netherlands and the Argentine Republic, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/107/download>

⁷ International Law in Action: the Arbitration of International Disputes, *Coursera*

Arbitrations can be based on investment treaties or investment contracts.

Arbitration can also be based upon national legislation but is a scarcely used mechanism. Initially, the investment arbitration clause was included in the contract. Investment treaties between the states emerged later, around the late '60s or the early '70s. Currently, in ICSID, 74% of the arbitrations are based on treaty while 17% on based on investment contracts and only 9% on national legislation.

In practice, investors sign an investment contract with the host state or with one of its bureaus. For example in mining and oil concessions. However, there does not always exist a contract. When a contract exists in conjunction with a treaty, there should exist a distinction between the two. It has been held by several arbitration tribunals in various instances that the tribunals established under the treaty have the competence to hear claims based on the treaty. However, claims that are based on the contract should be brought before the dispute settlement forum presented in the contract. The dispute settlement form in the contract can be Arbitration, but more commonly, it is domestic courts or tribunals. Some contracts also provide for the possibility of the dispute to be settled by a tribunal set up by a treaty.

In case an arbitral tribunal based on an investment treaty is provided for resolution of disputes in the contract and the same is also competent to decide the matter, then the tribunal shall apply the law provided in the contract, which is usually the domestic law. In such a case the international law plays a very marginal role and is used to supplement and correct domestic law. Conversely, if the disputes are to be resolved according to a tribunal based on an investment treaty, it shall apply public international law, the treaty, and customary international law.

Generally, the most commonly invoked grounds for investment treaty claims are the breach of fair and equitable treatment standards and also protection from an arbitrary and discriminatory treatment like expropriation of foreign investment without any compensation. These days direct and outright expropriation is quite uncommon though indirect expropriation is conducted by the host state. Such an act, if against the investment treaty and not taken for the protection of public interest, is a ground to file claims against the host state, but it is usually difficult for the investor to successfully argue their case based on it.

(F) ICSID and PCA

The International Center for the Settlement of Investment Disputes or the ICSID was established in the year 1965 by the Convention on the Settlement of Investment Disputes between States and nationals of other states called the ICSID Convention or the Washington

Convention. The creation of the centre concurred with the rising practice of including an arbitration clause in the concession contract.

ICSID was built on the idea to provide a neutral international forum to settle investment disputes. Its purpose is to stimulate economic development by promoting foreign investment by providing a neutral forum for settling investment disputes, and the same is mentioned in its preamble. ICSID currently has 154 contracting states and 9 signatory states (Total 163).

ICSID resembles the PCA or Permanent Court of Arbitration but also has its differences. Both of them are arbitration institutions that maintain a list of arbitrators, although PCA is a standing tribunal while ICSID is not. Every time a tribunal is set up when parties submit a dispute under the ICSID Convention. ICSID also provides conciliation facilities.

Arbitration under ICSID incorporates the ICSID arbitration rules, and one cannot conduct the Arbitration under the ICSID Convention and use another set of arbitration rules. Also, ICSID has a specific provision which details the types of disputes that can be submitted to the centre. Article 25 of the ICSID Convention lists five cases in which the centre has jurisdiction.⁸ Dispute emerging directly out of an investment between a foreign investor (the nation of one contracting party) and another nation which is also a contracting party, to which the parties give consent in writing to the centre. Therefore the ICSID's jurisdiction is limited to or restricted to investment disputes. The tribunals use Salini criteria to determine whether or not the financing can be considered as an investment since investment isn't defined in ICSID Arbitration Rules.

Furthermore, ICSID's jurisdiction is limited to mixed Arbitration, i.e., a dispute between a state and a person of another state. Thus the person whose home and host State is one and the same cannot file a claim in ICSID against his own nation.

Article 25⁹ of the ICSID convention also requires written consent from both parties. Ratification by itself is not sufficient. The consent these days is mostly contained in the investment treaties. Also, the parties must meet the definitions as per the treaty of investment and investor. This is called the double-barrel test.

The awards rendered in ICSID Arbitrations are more easily enforceable. ICSID awards are automatically recognized and enforced by all the ICSID member states.¹⁰ These orders have the same status as the orders rendered by the domestic courts of the host state. While on the

⁸ Article 25 International Centre for Settlement of Investment Disputes

⁹ *ibid*

¹⁰ Database of ICSID Member States, available at: <https://icsid.worldbank.org/en/Pages/about/Database-of-Member-States.aspx>

other hand, Non-ICSID arbitration awards are regulated according to the New York Convention of 1958.

While enforcement of ICSID awards cannot be declined since the awards are fully internationalized and thus cannot be interfered with by the domestic courts, the New York Convention of 1958 provides for some grounds on which signatory nation or its courts can refuse the enforcement of an order. For example, if the order is against public policy. This is so because ICSID arbitration is detached from domestic law and is a fully international procedure, and has no relevance with the public policies of states. This characteristic makes ICSID extremely tempting to foreign investors.

(G) Enforcement and Annulment of Arbitral Awards¹¹

Mostly the failed parties voluntarily pay the compensation or the fines to the victorious party. But in certain cases, the unsuccessful party might refuse to do the same. In such cases, it is necessary to enforce the order on the defeated party.

The procedure of enforcing an order varies according to the legal system of the place where the enforcement is sought. It is also dependent on the arbitration rules followed during the proceedings. It is recommended that the party against which enforcement is sought has sufficient assets in the State where the execution proceedings are initiated.

Usually, the process of recognition of precedes enforcement proceedings. Recognition gives an arbitration award the same status and effect as a court decree. The essentials for recognition are an acknowledgement of the arbitral award as valid and binding, giving it an official status deeming it similar to a court decree. It also holds that the award cannot be re-arbitrated. After that, enforcement proceedings can be started whose main objective is to ensure the obligations in the award are properly executed, and the compensation is paid to the victorious party.

The New York Convention of 1958 pertains to all Non-ICSID Investment Treaty arbitration and also international commercial Arbitration. Its main objective was the bring uniformity in the recognition and enforcement of foreign arbitral awards. The party seeking recognition and enforcement under the 1958 New York Convention has to supply the original and certified copy of the arbitral order and also the original arbitration agreement.

If the unsuccessful party believes that the order rendered by the arbitral tribunal is unjust, they have certain remedies though they are quite limited, and none of them is concerned with the merits of the case. Grounds for annulment of an arbitral award under UNCITRAL Arbitration

¹¹ International Law in Action: the Arbitration of International Disputes, *Coursera*

Rules are given under Article 34 of the same. The list is exhaustive, meaning that no other ground for the annulment of an award is available. The grounds are

- i. The invalidity of the arbitration agreement
- ii. No proper notice of the appointment of the arbitrator or that of the arbitration proceedings
- iii. Use of excess authority by the tribunal
- iv. Composition of the tribunal not in conformity with the agreement between the parties
- v. The dispute in-arbitrable under the applicable or procedural law
- vi. The award is contrary to the public policy of the State

These grounds do not concern the merits of the decision but whether there were any procedural flaws or defects.

Similarly, the grounds for annulment of an arbitral award rendered under the aegis of ICSID rules are regulated in Article 52 of the same. Since ICSID arbitration is fully disjoint from the domestic courts, the seat of Arbitration is irrelevant and thus is not subject to the jurisdiction of the domestic court, unlike their UNCITRAL counterparts. An ad hoc three-member committee is created for hearing every annulment application. Grounds for annulment enlisted under Article 52 are:

- i. Improper constitution of the tribunal
- ii. The tribunal has exceeded its powers
- iii. Corruption by a member of the tribunal
- iv. Serious departure from a fundamental procedural rule
- v. No reasons stated on which the award was delivered

Annulment under ICSID cannot be sought on the ground that the award is contrary to public policy because ICSID is completely disconnected from domestic law, and thus public policies are irrelevant.

In UNCITRAL arbitrations, the domestic courts of the host state retain quite a bit of authority and can refuse an enforcement application. However, the situation is completely different in the case of ICSID arbitrations. According to Article 53 of the ICSID rules, every contracting State must recognize an ICSID award as binding and enforce the same. Also, an ICSID award has the same value as a final judgment of a court of that State. Therefore the request for enforcement of an arbitral award under the ICSID Rules cannot be rejected. This is one of the

biggest advantages of ICSID Arbitration.

V. CONCLUSION

Arbitration has played a very significant role in the resolution of disputes in a peaceful manner. Since its inception, it has successfully resolved several high stake matters. Its earliest forms can be dated back to the Ancient Greece civilization. It evolved from a very basic form of dispute settlement technique wherein the issues were settled by a single empire and disputes were decided on equity rather than law. Where the early form of arbitrator known as the empire might not always be completely independent and unbiased but rather saw themselves as an extension to the diplomacy to an extremely comprehensive dispute redressal which can provide relief to the affected parties in almost any situation without any 3rd party influence. In its most modern form, it is a completely independent and unbiased forum for dispute resolution, which is designed by the parties to the dispute eliminating all forms of political, economic, and military influence and pressure. At its core, it was developed to provide a neutral as well as a technically competent forum to resolve conflicts of a particular nature in a non-violent manner without any external influence. Over the years, Arbitration has gained tremendous popularity and is used more often than adjudication due to the reason illustrated earlier.

In the field of investment disputes, mixed or investor-state Arbitration has become the mainstay. Where foreign investors earlier had virtually no real rights and power to sue the host state and had to rely on inefficient methods like filing claims in the domestic courts of the host state, which were often unable to generate the confidence of neutrality and equitable relief for obvious reasons and claimants were often reluctant to go through the rigours of the legal process as per the home state, to file the claim and thereafter resort to seeking Diplomatic Protection. Such laborious and toothless methods to resolve investment dispute settlement did not suffice in a world where globalization was growing at such a fast pace, and foreign investment was starting to play an ever-increasing role in the world's economy. But due to such unreliable methods, foreign investors felt insecure while investing huge sums of money in any foreign country where their assets and investments can be illegally expropriated, or their rights could be infringed, and they might have no remedy to such actions by the host state and end up losing all their investment. Thus it resulted in a huge spur in foreign investment across the globe boosting the world's GDP.
