

The Impact of Arbitration on the Resolution of International Commercial Disputes in Pakistan

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ABSTRACT

In the age of globalization, international commercial transactions have become increasingly common, leading to a higher frequency of cross border disputes and these disputes necessitate an effective, efficient, and impartial dispute resolution mechanism moreover arbitration has emerged as the favored choice over litigation for resolving such disputes due to its procedural flexibility, confidentiality, enforcement mechanisms under international conventions, and reduced timelines. Pakistan, aiming to attract foreign investment and align its legal infrastructure with international standards, has made significant efforts in adopting arbitration, including ratification of the New York Convention of 1958. Despite these initiatives, the practical implementation of arbitration in Pakistan continues to face challenges such as outdated domestic legislation, inconsistent judicial interpretations, limited institutional capacity, and insufficient training of legal professionals in international arbitration practices. This research paper explores the role and effectiveness of arbitration in resolving international commercial disputes in Pakistan and it analyzes the existing legal framework, identifies key challenges, compares Pakistan's system with international best practices, and provides actionable recommendations to improve the arbitration environment. The study concludes that while arbitration has significant potential to improve the resolution of commercial disputes in Pakistan, substantial legal, judicial, and institutional reforms are necessary for its optimal implementation.

Keywords: Arbitration, international commercial disputes, Pakistan, New York Convention, legal framework, judicial intervention, foreign investment

INTRODUCTION

Arbitration is a dispute resolution process that involves one or more impartial third parties, typically chosen by the disputing individuals, whose decision is final and binding, as defined in Black's Law Dictionary. In Pakistan, arbitration holds strong roots in both cultural and religious traditions, making it a reliable and efficient tool for settling commercial conflicts, whether domestic or international. The Constitution of Pakistan recognizes arbitration as a legal means of settling disputes. The exponential growth of global

trade and investment has elevated the importance of effective mechanisms for resolving international commercial disputes and traditional litigation processes often fail to meet the needs of international commerce due to procedural complexity, jurisdictional challenges, and enforcement issues. Arbitration, in contrast, offers a more flexible, confidential, and enforceable means to resolve conflicts. By allowing the parties to select arbitrators with relevant expertise, choose applicable procedural rules, and have their awards enforced globally under conventions such as the New York Convention.

In Pakistan, arbitration has become increasingly significant in the context of international commercial disputes, especially following the country's ratification of the New York Convention and the enactment of laws like the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011. Despite this progress on the international front, domestic arbitration remains subject to the Arbitration Act of 1940, a law that is now considered outdated and misaligned with modern global practices. Additionally, courts in Pakistan often interfere in arbitration matters, leading to delays and uncertainty. Despite these challenges, Pakistan's geographic location, economic potential, and growing involvement in international trade make it imperative to strengthen its arbitration framework.

This research paper examines the current state of arbitration in Pakistan, focusing on its impact on international commercial dispute resolution and it targets to identify the existing legal and institutional hurdles, assess judicial attitudes, compare Pakistan's framework with global best practices, and propose strategic reforms.

Meaning and Nature of Arbitration

Arbitration is a dispute resolution mechanism in which the involved parties consent to submit their conflict to a neutral third party or a panel of arbitrators, whose decision is legally binding and enforceable. Serving as an alternative to conventional courtroom proceedings, arbitration is commonly employed in resolving both domestic and international commercial matters.

Definition of Arbitration

Arbitration is primarily a consensual and contract-based process, initiated when parties mutually agree—either prior to or after a dispute arises—to resolve their conflict through arbitration rather than traditional court proceedings. The UNCITRAL Model Law on International Commercial Arbitration describes it as a method where parties agree to submit their dispute to a tribunal whose decision holds binding authority. In the Pakistani context, the Arbitration Act of 1940, a remnant of colonial legislation, remains the main legal framework overseeing domestic arbitration. Although the Act does not offer a comprehensive definition, it lays out provisions regarding arbitration agreements, procedural conduct, and the enforcement of arbitral awards. Among the various available dispute resolution techniques, arbitration stands out as an autonomous method, involving an impartial third party acting under the terms mutually agreed upon by the disputing parties.

Arbitration is particularly favored in cross-border commercial disagreements, where parties prefer resolving issues through arbitrators rather than engaging in court litigation. It functions as an alternative to both the public judiciary and formal litigation systems. When it comes to international commercial arbitration, this mechanism generally involves disputes that are commercial in nature and contain foreign or transnational components. Its global rise in popularity is largely due to its procedural flexibility and the autonomy it offers to parties in structuring the process. Reflecting this global trend, international commercial arbitration has become a dominant mechanism for addressing disputes in international trade. Notably, the United States Supreme Court has long acknowledged arbitration's central role in resolving such disputes, stating that the rapid growth in global trade has been accompanied by an equally significant increase in the use of arbitration. Despite its confidential nature, international commercial arbitration is frequently

included in practice—statistics show that approximately 90% of international contracts or trade agreements include an arbitration clause. These clauses clearly stipulate the manner in which disputes should be resolved, further underscoring arbitration's importance in managing transnational commercial conflicts.

The enforceability of arbitral decisions plays a critical role in arbitration's appeal. The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ensures that such awards are recognized and implemented across numerous jurisdictions, provided certain conditions are met. This enforceability derives primarily from the arbitration agreement itself, which must be in written form and clearly indicate the parties' intention to resolve disputes through arbitration.

As emphasized by legal scholar Gilles, the legitimacy of an arbitrator stems from the mutual consent of the parties. By choosing arbitration, the parties not only delegate authority to arbitrators but also agree to abide by their decisions. This empowerment ensures that the resulting award carries legal weight and can be enforced. In addition to enforcing awards, the arbitration agreement allows the parties to determine crucial procedural details such as the selection of arbitrators, the language of the proceedings, the governing rules, and the applicable legal jurisdiction. Hence, it is crucial for parties to ensure that their arbitration agreement is clearly articulated and satisfies all essential legal requirements for validity. Essential Features of Arbitration

Contractual and Voluntary Nature

"The authority of arbitration stems from the mutual agreement between the parties involved. This agreement to arbitrate may be incorporated as a clause within a larger contract (commonly known as an arbitration clause) or outlined in a standalone document referred to as a submission agreement. Furthermore, the principle of party autonomy grants the parties the freedom to determine the procedural rules, location, and language that will govern the arbitration process."

Binding and Final Award

Unlike mediation or negotiation, the outcome of arbitration a decision called as an arbitral award is final and binding on the parties and this award can be enforced in domestic courts and internationally under the New York Convention, which Pakistan ratified in 2005.

Impartial and Neutral Process

Arbitrators must remain impartial and independent and an international arbitration, parties often select a neutral seat of arbitration and arbitrators from jurisdictions unrelated to the dispute to ensure fairness.

Confidentiality

Arbitration proceedings are private, and the details of the case are typically not disclosed to the public. This makes arbitration particularly attractive in commercial matters where trade secrets or sensitive financial information is involved.

Flexibility in Procedure

Arbitration offers procedural flexibility. Unlike courts, parties in arbitration are not bound by strict procedural codes and can tailor rules to suit their needs, such as expedited timelines or limits on discovery.

Limited Court Intervention

Modern arbitration systems restrict the role of courts to certain supportive and supervisory functions, such as the enforcement of arbitration agreements and awards. However, in Pakistan, courts have sometimes exceeded these boundaries, interfering with arbitration proceedings and causing uncertainty.

Research Questions

1. How effective is arbitration in resolving international commercial disputes in Pakistan?
2. What are the key legal, institutional, and practical challenges to arbitration in Pakistan?
3. How does Pakistan's arbitration framework compare with international best practices?
4. What reforms are required to enhance the role of arbitration in resolving international commercial disputes in Pakistan?

LITERATURE REVIEW

The existing body of literature on arbitration includes extensive analysis of its global development, comparative legal frameworks, and case-based studies. Redfern and Hunter (2009) provide a comprehensive overview of the principles, procedures, and practices of international commercial arbitration, highlighting its adaptability and cross-border enforcement features. Born (2014) further expands on the procedural intricacies and comparative legal traditions associated with arbitration. In the Pakistani context, academic studies and legal commentaries focus on the country's slow and inconsistent adaptation of international arbitration norms. Khan (2018) emphasizes the importance of the New York Convention and explores the legal gaps in its domestic enforcement. The Arbitration Act of 1940 has been widely criticized for being obsolete and incompatible with modern arbitration practices. Furthermore, judicial decisions, such as *Hub Power Company v. WAPDA*, highlight the inconsistent application of arbitration law by Pakistani courts.

There is also considerable discussion on the role of arbitration institutions like the Centre for International Investment and Commercial Arbitration (CIICA), which aim to develop a culture of arbitration in Pakistan. However, these institutions are still in their formative stages and lack the visibility and capacity of international arbitration centers. Bilal and Shazia's thesis on Pakistan's arbitration law offers a comprehensive examination of the country's domestic and international arbitration frameworks. They discuss how Pakistan's reliance on the outdated Arbitration Act of 1940 undermines its obligations under the New York Convention and leads to procedural inefficiencies (Bilal, 2014). In a recent paper, Sheikh and Zahoor (2023) argue that arbitration could play a transformative role in reviving Pakistan's commercial dispute resolution system, especially in attracting foreign direct investment (FDI). They identify the enforcement of foreign arbitral awards under the 2011 Act as a step forward, while also stressing the need for institutional reform.

The Centre for International Investment and Commercial Arbitration (CIICA) has released annual reports and policy briefs which point out the growing demand for arbitration in Pakistan. However, they highlight how a lack of trained arbitrators and weak institutional support continues to limit arbitration's potential.

Ali and Ahmed (2022) conducted a comparative study of Pakistan and Singapore's arbitration regimes. They concluded that Pakistan's legal framework remains significantly behind in terms of court support,

time-bound procedures, and adoption of modern international standards, such as the UNCITRAL Model Law.

Umme Aimen's research paper (2024) identifies Pakistan's judicial unpredictability as a critical hurdle. While there have been progressive judgments—such as in the Hub Power Company case—the broader trend remains one of excessive court interference, often undermining arbitration awards and discouraging foreign parties.

Another recent study by Khan (2024) explores the tension between Pakistan's Islamic legal framework and international arbitration treaties. While the study finds general compatibility, it cautions against potential ideological resistance that may affect enforcement and legislative reforms.

In sum, Pakistani literature reflects growing scholarly and institutional support for arbitration. However, empirical evaluations remain limited, and most studies call for harmonization of Pakistan's arbitration framework with global best practices. This research aims to build upon existing work by offering a practical and localized analysis.

The growing reliance on arbitration as a dispute resolution mechanism in international commerce has been widely explored by legal scholars, international institutions, and practitioners. The literature consistently highlights arbitration's advantages over traditional litigation, especially in terms of neutrality, enforceability, and procedural flexibility.

Redfern and Hunter on International Arbitration provide a foundational overview of arbitration's principles and practices. They emphasize the procedural autonomy that arbitration grants to parties and the role of major international conventions like the New York Convention in enabling enforceability of awards across jurisdictions¹. Their work is often cited for establishing arbitration as the preferred method of dispute resolution in cross-border trade.

Gary Born's treatise, *International Commercial Arbitration*, is another leading authority in the field. Born offers detailed analyses of institutional and ad hoc arbitration, discussing their legal bases, procedural frameworks, and judicial interaction². He particularly critiques inconsistencies in court support, especially in developing countries, and underscores the importance of judicial restraint to promote arbitration as an efficient mechanism.

Publications and reports by UNCITRAL (United Nations Commission on International Trade Law) advocate for harmonized legal frameworks to ensure the global effectiveness of arbitration. The UNCITRAL Model Law is widely recognized as a gold standard, promoting fairness, neutrality, and minimal court intervention³. Countries like Singapore and Canada that adopted this model have experienced a rise in arbitration activity and investor confidence.

Shahla Ali's research in *Arbitration in Asia* provides regional insights into how Asian jurisdictions have evolved. She contrasts the proactive reforms of Hong Kong and Singapore with the underdeveloped legal environments in countries like Pakistan, where outdated laws and limited institutional capacity impede progress.

In the Pakistani context, legal scholars such as Justice (R) Mian Allah Nawaz and Dr. Zubair Abbasi have discussed arbitration's structural and operational limitations. They emphasize the challenges posed by the continued application of the Arbitration Act, 1940, the lack of trained professionals, and inconsistent judicial interpretations. CIICA (Centre for International Investment and Commercial

Arbitration) publications further highlight the disconnect between international standards and domestic practices.

Despite this body of work, a gap remains in empirical studies assessing arbitration's practical use in Pakistan. Most discussions remain theoretical or comparative. This research aims to fill that gap by offering a Pakistan- focused evaluation and proposing concrete reforms.

Research Gap

Despite the growing relevance of arbitration in international commercial transactions, there is limited research focused specifically on Pakistan's arbitration landscape and most existing studies analyze arbitration from a global or regional perspective, often overlooking the unique challenges faced by Pakistan moreover there is a lack of empirical studies evaluating the effectiveness of Pakistan's arbitration framework and the practical experiences of stakeholders, including businesses, legal professionals, and arbitrators. This paper expresses this gap by offering a comprehensive, Pakistan-specific evaluation of arbitration as a dispute resolution mechanism for international commercial matters.

DISCUSSION

Historical Context of Arbitration in Pakistan

The structured use of arbitration as a formal dispute resolution method emerged prominently in the late 20th century, where it began to be clearly defined as a process through which a neutral third party would resolve conflicts, and their decision—referred to as an arbitral award—would carry binding authority (Khan, 2020) . One of the major advantages of arbitration is that arbitral awards are generally enforceable across jurisdictions (Qureshi, 2018) .

However, despite the presence of legislative instruments, Pakistan continues to face a significant gap in the modernization of its arbitration laws. There is an urgent need to reform outdated statutes to align with evolving international standards, yet meaningful progress in updating these laws remains largely absent.

The legal framework governing arbitration in Pakistan is still rooted in colonial-era law, most notably the Arbitration Act of 1940. This legislation, initially crafted for a vastly different commercial and legal context, remains the main statute for domestic arbitration, and it has seen minimal revision since the country's independence.

Legal Framework for International Arbitration

In Pakistan, the legal framework for arbitration is mainly based on two principal statutes: the Arbitration Act of 1940 and the Foreign Awards (Recognition and Enforcement) Act of 1961. These laws provide the basis for carrying out arbitration proceedings and for the recognition and enforcement of arbitral awards within the country.

The Arbitration Act 1940

The Arbitration Act of 1940 serves as the central legal instrument for domestic arbitration in Pakistan. Originating from British colonial rule, the Act has seen little to no substantial reform since its adoption. Although it offers a procedural framework for arbitration, it is not equipped to handle the complexities of modern international commercial arbitration (Khan, 2019) . The Act's outdated provisions and narrow applicability often lead to procedural inefficiencies and delays in judicial processes.

It establishes the general procedural structure for arbitration, detailing the methods for appointing arbitrators, the conduct of arbitration hearings, and the process for issuing final awards. The Act also defines the roles, duties, and rights of the parties involved. Furthermore, it outlines scenarios in which the local judiciary may intervene—such as in questions of jurisdiction or challenges to the validity of arbitration agreements. However, its reach has not been effectively extended to cover international arbitration, despite its technical inclusion (Khan, 2017).

The legislation also sets out criteria and procedures for selecting arbitrators, including the grounds on which their appointments may be contested—such as a lack of neutrality, bias, or insufficient qualifications. In addition, it ensures procedural fairness by allowing parties the opportunity to present their arguments, examine witnesses, and submit relevant evidence during the proceedings (The Arbitration Act, 1940).

Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards Act, 2011

The enactment of this legislation was aimed at fulfilling Pakistan's international commitments under the 1958 New York Convention. It established a legal framework to recognize and enforce foreign arbitral awards within Pakistan. Courts are obligated to suspend local proceedings when a valid arbitration agreement exists, thereby aligning domestic practice with global arbitration standards (Ahmed, 2020).

The Foreign Awards (Recognition and Enforcement) Act of 2011 governs the acknowledgment and enforcement of foreign arbitral awards in Pakistan. It specifically applies to awards issued under the New York Convention, to which Pakistan is a signatory. The Act outlines specific conditions for enforcement, such as ensuring that the award was not obtained through fraud or corruption and does not conflict with the public policy of Pakistan. Additionally, it describes the procedural mechanism for enforcement, requiring the filing of a petition in the appropriate court. The court is then tasked with assessing whether the award satisfies all legal requirements and whether its enforcement would violate any local laws or public interest considerations.

The Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011—often referred to as the 2011 Act—was Pakistan's legislative response to its obligations under the New York Convention (Raza, 2018). Although Pakistan signed the Convention shortly after its adoption, it was not officially ratified until 2005 through a Presidential Ordinance, which remained in effect until 2010. Eventually, the law was formally passed by Parliament and enacted in 2011 to provide a comprehensive legal structure for handling foreign arbitral awards and international commercial arbitration (Ghouri, 2013).

This legislation marked a significant move toward integrating Pakistan into the international arbitration system. Its primary purpose is to ensure the mandatory recognition and enforceability of foreign arbitral awards in the country, thereby supporting the inflow of foreign investment and promoting commercial confidence. The 2011 Act is enforcement-focused and enables the implementation of foreign arbitral decisions, while also allowing parties to contest awards under limited exceptions as outlined in Article V of the New York Convention (Mukhtar, 2016).

The Pakistani judiciary has largely taken a supportive stance toward arbitration. For example, in a notable case, the Karachi High Court upheld an international arbitration clause, and certain Supreme Court justices expressed agreement with this pro-arbitration perspective.

In recent developments, the Government of Pakistan has been actively promoting Alternative Dispute Resolution (ADR) methods, such as arbitration, mediation, and conciliation, to reduce the burden on the

court system. The Law Commission has recommended that civil courts facilitate amicable settlement of disputes wherever possible. This movement toward peaceful resolution of conflicts is deeply compatible with both Pakistan's cultural values and Islamic principles. While Pakistan ratified the New York Convention in 2005 and formally legislated it through the 2011 Act, challenges remain. Uncertainties around the law's practical implementation and its relationship with existing domestic arbitration statutes continue to hinder its full effectiveness.

Judicial Approach and Case Law Analysis

The judiciary in Pakistan has demonstrated an inconsistent approach toward arbitration matters. While there have been progressive instances—such as in the Hub Power Company case, where the judiciary upheld the arbitration process—there have also been numerous cases marked by judicial interference that disrupted arbitration proceedings, creating uncertainty for foreign stakeholders. Judicial support is a foundational element for the success of international commercial arbitration. Globally, jurisdictions with leading arbitration frameworks rely heavily on the cooperation and enforcement capacity of their domestic courts. This judicial backing is what establishes arbitration as a dependable mechanism for resolving commercial disputes across borders (Bilal, 2014). Although the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 (REA Act) —which reflects the provisions of the 1958 New York Convention—was a long-awaited step forward, it has not entirely resolved ambiguities surrounding foreign arbitration in Pakistan (Tahir, 2023). For instance, in *Malik Ali Akbar v. Metro Goldwyn Mayer India Ltd*, one of the earliest post-independence commercial arbitration cases, the District Court declined jurisdiction due to an arbitration clause referring the matter to a foreign forum. However, the court failed to specify which legal provision justified its rejection, despite the relevance of Section 34 of the Arbitration Act (AA) and Section 3 of the Arbitration Protocol and Convention Act (APC) . Neither of these provisions explicitly requires dismissal of a claim based on a foreign arbitration clause. The decision was upheld by the Lahore High Court, despite this procedural flaw (Ghouri, 2013) . In the landmark *Reko Diq* case (*Maulana Abdul Haque v. Government of Balochistan*, PLD 2013 SC 641) , the Supreme Court of Pakistan disregarded core principles of international arbitration, including the doctrine of *kompetenz-kompetenz*. Despite the existence of an international arbitration clause, the Court exercised original jurisdiction, conducted a full trial, and issued a ruling—highlighting the ongoing friction between domestic legal principles and international arbitration norms (Gujjar, 2020; Finnigan, 2019).

An unusual ruling came from the Lahore High Court in *Jess Smith and Sons Cotton LLC v. D.S. Industries* (Civil Original No. 628 of 2014) , where the court ordered issue-framing and recorded evidence before ruling on the enforcement of a foreign arbitral award—an approach that departs from global best practices (Raza, 2018) . In the case of *Messrs Eckhardt & Co, Marine GmbH v. Muhammad Hanif* (PLD 1993 SC 42) , the Supreme Court denied a stay of proceedings in favor of arbitration. The Court reasoned that expecting parties to transport evidence and attend proceedings in London, as required under the contract, would impose excessive inconvenience.

Similarly, in *M/s Uzin Export & Import Enterprises for Foreign Trade v. M/s Iftikhar & Company Limited* (1993 SCMR 866) , the Supreme Court refused to enforce an arbitration agreement where Paris was designated as the seat, citing impracticality and financial burden on the litigants.

In the *Hub Power Company Limited v. Pakistan WAPDA* (PLD 2000 SC 841) case, the High Court issued an injunction against the continuation of international arbitration in a corruption-related matter, arguing that such issues required criminal investigation rather than arbitral determination. The Supreme Court upheld this view, reinforcing judicial skepticism about arbitrating matters involving potential criminal elements (Majeed, 2023) .

Another restrictive interpretation emerged in *Taisei Corporation v. A.M. Construction Company (Pvt.) Ltd (PLD 2012 Lahore 422)* , where the Lahore High Court determined that the 2011 Act offered narrower powers for enforcing foreign arbitral awards, suggesting that enforcement was better pursued under Section 14 of the Arbitration Act, 1940.

Moreover, in *Rossmere International Ltd. v. Sea Lion International Shipping Inc (PLD 2017 Balochistan 29)* , the Balochistan High Court declined to enforce a foreign arbitral award, citing the absence of any identifiable assets or bank accounts of the award debtor within its territorial jurisdiction.

Throughout the 20th century, Pakistani courts struggled to develop a coherent and reliable approach toward international arbitration, primarily due to procedural gaps in the legal framework. Even after the REA Act of 2011, the lack of a detailed procedural mechanism for dealing with foreign awards continues to foster judicial inconsistency, which includes decisions from the country's superior courts (Raza, 2018)

The Role of Arbitration in resolving International Commercial Disputes Arbitration plays a central role in resolving international commercial disputes due to its adaptability, efficiency, and cross-border enforceability and in today's global economy, parties from different legal systems, languages, and business cultures require a neutral, private, and enforceable method of dispute resolution—arbitration provides just that.

Advantages over Litigation

Litigation, especially in developing countries, often suffers from delays, backlogs, lack of specialization, and procedural rigidity. Arbitration counters these issues through:

Party Autonomy: Parties can select arbitrators, decide procedural rules, and even choose the language of the proceedings.

Speed and Efficiency: Arbitral tribunals generally render awards faster than domestic courts.

Neutrality: Foreign investors may be reluctant to resolve disputes in the local courts of a host country. Arbitration allows for a neutral venue and panel.

Confidentiality: Arbitration proceedings and outcomes are not public, preserving business reputation and trade secrets.

Global Enforceability: Thanks to the New York Convention, arbitral awards are enforceable in over 170 countries, unlike court judgments which may face more restrictive enforcement abroad.

Use of International Arbitration Institutions

Pakistani parties often resort to international arbitration administered by institutions like:

ICC (International Chamber of Commerce), LCIA (London Court of International Arbitration) SIAC (Singapore International Arbitration Centre)

These institutions have set rules and rosters of expert arbitrators and provide support services, increasing confidence among disputing parties. These centers also provide emergency arbitrators and interim relief mechanisms that are often not effectively available in domestic litigation.

Enforcement of Foreign Arbitral Awards in Pakistan

Pakistan gave effect to the New York Convention through the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, requiring domestic courts to uphold and enforce foreign arbitral awards. Courts are obliged to recognize such awards unless one of the exceptions under Article V of the Convention applies—for example, if the arbitration agreement was deemed invalid, if a party was denied the opportunity to present its case, if the award addresses issues not covered by the arbitration agreement, or if the arbitral tribunal was improperly formed.

Nevertheless, the practical enforcement of foreign arbitral awards in Pakistan has encountered difficulties. These include conflicting judicial interpretations, instances of judicial intervention beyond permissible limits, and a broad and inconsistent application of the “public policy” exception. Despite these challenges, important rulings such as Hub Power Company Limited v. WAPDA and Orient Power Company (Private) Limited v. SNGPL have marked significant progress toward establishing a more predictable and arbitration-friendly legal landscape in the country.

Challenges Facing Arbitration in Pakistan

Despite the theoretical advantages, arbitration in Pakistan faces several practical and systemic obstacles. These challenges undermine the country's ability to fully benefit from arbitration in international commercial matters.

Outdated Domestic Legislation

The Arbitration Act, 1940 is Pakistan’s primary arbitration law for domestic disputes. It is outdated and lacks provisions dealing with institutional arbitration interim measures by arbitral tribunals’ emergency arbitrators recognition of electronic agreements and evidence limitation on court interference unlike modern arbitration laws based on the UNCITRAL Model Law, Pakistan’s law allows excessive judicial intervention and does not support efficient, modern arbitration procedures.

Judicial Attitudes and Interference

One of the biggest obstacles is the interventionist approach of the judiciary. Even in matters involving foreign arbitration agreements, some courts have and denied enforcement of valid arbitration clauses moreover delayed or set aside foreign arbitral awards citing vague “public policy” concerns. Heard matters already decided or pending before arbitral tribunals and this inconsistency discourages international parties from choosing Pakistan as a seat of arbitration. Although higher courts like the Supreme Court have generally shown a more arbitration-friendly approach, lower courts often lack the expertise or inclination to do the same.

Lack of institutional Arbitration Centers

Unlike countries like Singapore, UAE, or the UK, Pakistan has no world-class arbitration centers. Although the Center for International Investment and Commercial Arbitration (CIICA) in Lahore is a step forward, it lacks the international recognition, resources, and case volume to be competitive. Consequently, Pakistani parties often prefer to arbitrate in foreign jurisdictions, which increases costs and exclude local professionals from meaningful participation.

Lack Of awareness and Training

The arbitration culture in Pakistan is still developing. Common issues include: Poorly drafted arbitration clauses that are vague or unenforceable. Limited awareness among legal practitioners about modern arbitration practices. Inadequate training of judges and lawyers on interpreting and applying arbitration-related statutes. Without significant educational and institutional investment, arbitration will remain an underutilized tool.

FINDINGS

Pakistan's arbitration framework, particularly the Arbitration Act of 1940, is widely regarded as outdated and ill-suited to address the complexities of modern international commercial disputes. The system is further hindered by excessive judicial interference and inconsistent approaches toward the recognition and enforcement of foreign arbitral awards. In addition, many legal practitioners and members of the judiciary lack sufficient training and expertise in international arbitration principles and practices. Arbitration institutions within Pakistan are also still in the developmental stage and have yet to achieve significant global recognition. Nevertheless, recent developments, including the enactment of the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, and the establishment of the Centre for International Investment and Commercial Arbitration (CIICA), reflect an increasing acknowledgment of the importance of arbitration in Pakistan's legal and commercial landscape.

RECOMMENDATION

- 1) Enact new arbitration legislation based on the UNCITRAL Model Law to replace the Arbitration Act of 1940.
- 2) Develop training programs for judges and legal professionals focused on international arbitration.
- 3) Encourage public awareness and private sector participation in arbitration.
- 4) Strengthen existing institutions like CIICA through government and private investment.
- 5) Create a specialized arbitration bench within the judiciary to ensure consistency and expertise in arbitration matters.
- 6) Establish strict timelines for judicial proceedings related to arbitration to avoid unnecessary delays.

CONCLUSION

Arbitration offers a vital mechanism for resolving international commercial disputes, particularly in a globalized economic environment. For Pakistan, adopting a robust arbitration framework is essential to attract foreign investment, facilitate cross-border trade, and enhance its legal credibility. While significant strides have been made, including accession to the New York Convention and the establishment of arbitration institutions, systemic issues persist. These include outdated legislation, lack of judicial support, and inadequate infrastructure. The full potential of arbitration in Pakistan can only be realized through comprehensive reforms aimed at aligning domestic practices with international standards.

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