YOUTH GENERAL ASSEMBLY

ANALYZING ARBITRATION IN PAKISTAN

Written By

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Youth General Assembly (YGA) is an autonomous organization dedicated to providing a credible platform that fosters policy and strategy development, equitable administration, and non-traditional legislative activities. YGA empowers young individuals to engage in public discourse on social issues, preparing them to be future ambassadors and democratic leaders. Our mission is to inculcate the qualities of convening and engagement among the youth, expanding their perspective and knowledge of true democracy and parliamentary politics.

Printed in Pakistan

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Abstract

Arbitration has become an increasingly significant mechanism for dispute resolution in commercial and investment matters worldwide offering an alternative to traditional litigation. In Pakistan, however the evolution of arbitration reflects a mixture of progress and persistent challenges. This article explores the historical development of arbitration in Pakistan, beginning with colonial legislation and culminating in modern reforms aligned with international conventions such as the New York and ICSID Conventions. It examines the legislative framework, particularly the Arbitration Act of 1940, the Arbitration (Protocol and Convention) Act of 1937, the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act of 2011, and the ICSID Act of 2011. The article further analyzes key doctrines such as separability, competence-competence, arbitrability, and public policy and evaluates the stance of judiciary's highlighted through landmark cases like Hubco v. Wapda, SGS v, Pakistan, Hitachi v. Rupali Polyester and Maulana Abdul Haq Bloch. While Pakistan has made strides in harmonizing its arbitral regime with global standards but outdated domestic legislation, weak institutional frameworks, judicial delays and overbroad use of public policy remain major hurdles. The article concludes by emphasizing the need for comprehensive reform, institutional development and judicial consistency to establish arbitration as a credible and investor friendly dispute resolution mechanism in Pakistan.

Keywords: Arbitration in Pakistan; Arbitration Act 1940, New York Convention, ICSID Convention, Judicial intervention, Public policy, Institutional arbitration.

Introduction:

Arbitration has developed into one of the most relied upon alternative dispute resolution mechanisms worldwide especially for commercial and investment related conflicts. In Pakistan, however the evolution of arbitration has been uneven. While international commitments such as the New York Convention and the ICSID Convention have pushed Pakistan toward a pro-arbitration stance, domestic arbitration remains trapped within the framework of the Arbitration Act of 1940, a statute inherited from colonial India[1]. This law continues to dominate Pakistan's domestic arbitration landscape despite its outdated procedures and heavy judicial intervention. Consequently, Pakistan's arbitral framework presents a picture of partial modernization marked by the co-existence of antiquated laws with newer international commitments.

The objective of this article is to provide a comprehensive review of arbitration law and practice in Pakistan drawing upon legislative frameworks, judicial approaches and doctrinal principles. It will examine the historical background, key statutory developments, judicial precedents, practical challenges and proposed reforms. The article also seeks to analyze how Pakistan's arbitral regime aligns with international practices and where it falls short offering recommendations for strengthening arbitration as a credible dispute resolution tool in the country.

Historical Background:

The roots of arbitration in Pakistan can be traced back to British India. Initially, Arbitration was governed by the Indian Arbitration Act of 1899, which was confined to presidency towns and applied only to limited commercial disputes. This legislation was later replaced by the Arbitration Act of 1940, which extended its application to the entire territory of India and introduced more detailed procedures for arbitration. Upon independence in 1947, Pakistan adopted the 1940 Act, which continues to regulate domestic arbitration to this day.

[1] Shaista Anwar, International and Domestic Arbitration in Pakistan: Law and Practice: A Book Review.https://sahsold7.lums.edu.pk/sites/default/files/15._international_and_domestic_arbitration_in_pakistan-_law_and_practice-_a_book_review_0.pdf

For several decades after independence, arbitration in Pakistan remained largely underutilized. One major reason was the dominant role assigned to courts under the 1940 Act. Although arbitration was intended to provide an efficient alternative to litigation, excessive judicial oversight meant that arbitral awards often faced delays and uncertainties. Pakistani courts historically showed reluctance in granting autonomy to arbitral tribunals, preferring instead to intervene at multiple stages of the arbitral process.

The turning point in Pakistan's arbitration trajectory came when the country signed and ratified key international conventions. Pakistan became a party to the New York Convention of 1958, which deals with the recognition and enforcement of foreign arbitral awards, and the ICSID Convention, which governs settlement of investment disputes between states and foreign investors[2]. Although these steps represented Pakistan's recognition of the importance of arbitration in global commerce, the absence of implementing legislation meant that enforcement of foreign awards remained problematic until the passage of relevant statutes in the 21st century.

Legislative Framework:

The Arbitration Act, 1940:

The Arbitration Act of 1940 remains the governing law for domestic arbitration in Pakistan. It provides three types of arbitration[3]:

(i) Arbitration without court intervention (Chapter II, Section 3-19).
(ii) Arbitration with court intervention where no suit is pending (Chapter III, Section 20).
(iii) Arbitration in suits where the matter is referred to arbitration during litigation (Chapter IV, Sections 21-15).

Under the Act, arbitration agreements must be in writing, and arbitrators can be appointed either by parties or in case of failure, by the court.

[2] Zafar Kalanauri, Law of Arbitration In Pakistan (Courting the Law, 16 January 2017).https://courtingthelaw.com/2017/01/16/commentary/law-of-arbitration-in-pakistan/ - :~:text=The Act provides for arbitration,willing to resort to arbitration.
[3] Umer Akram Chaudhry, Asad Ladha, and Muhammad Ali, 'Guide to Arbitration Places (GAP) Pakistan Chapter' (Delos Dispute Resolution).https://rmaco.com.pk/delos-guide-to-arbitration-places-pakistan-chapter

One of the most criticized features of the 1940 Act is the wide discretionary power it gives to courts. For example, courts can remove arbitrators for misconduct, appoint new arbitrators and set aside awards on several grounds including misconduct, invalid proceedings, or improper procurement. Furthermore, arbitral awards under the Act have no binding force until filed in court and made a rule of the court. This judicially dominated framework has rendered the arbitral process time-consuming and unpredictable.

Despite these limitations, the 1940 Act did provide a structured framework for arbitration in Pakistan during its early years. However, with the globalization of trade and the increasing complexity of commercial transactions, it has become inadequate to meet modern needs. The lack of provisions for interim relief, emergency arbitration and minimal court intervention makes it ill-suited for contemporary arbitration practices.

Arbitration (Protocol and Convention) Act, 1937:

The Arbitration (Protocol and Convention) Act of 1937 was enacted to give effect to the Geneva Protocol (1923) and the Geneva Convention (1927). Under this law a foreign arbitral award had to be "double-exequatured" meaning that it had to be final and binding both in the country where it was made and in Pakistan[4].This requirement created significant obstacles in enforcing foreign arbitral awards and discouraged foreign parties from relying on Pakistan as an arbitral jurisdiction.

Although largely replaced by later developments under the New York Convention, the 1937 Act still technically applies to arbitration agreements concluded before Pakistan acceded to the New York Convention. This legacy continues to create confusion in certain cases involving older agreements.

[4] Zia Ullah Ranjah, 'Enforcing Foreign Arbitral Awards in Pakistan' https://sahsol.lums.edu.pk/sites/default/files/2022-09/enforcing_foreign_arbitral_awards_in_pakistan.pdf

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

To address Pakistan's obligations under the New York Convention (1958), the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 was enacted. This law represents a significant shift from the earlier discretionary framework[5]. Courts are now required to recognize arbitration agreements and enforce foreign arbitral awards, subject only to limited exceptions such as incapacity of parties, invalid arbitration agreement, denial of due process, excess of jurisdiction, or violation of public policy.

The 2011 Act thus aligns Pakistan's arbitration regime with international standards. It restricts judicial discretion and ensures that arbitral awards made in New York Convention states are directly enforceable in Pakistan. However, the interpretation of "public policy" by Pakistani courts has remained a point of contention, with some judgments taking a broad view that undermines the Convention's pro-enforcement spirit.

(Arbitration (International Investment Disputes) Act, 2011 (ICSID Act)):

The ICSID Act, 2011 was enacted to give domestic legal effect to the ICSID Convention. This step became necessary after the Supreme Court's decision in SGS v. Pakistan, where the absence of implementing legislation prevented enforcement of ICSID obligations. Under the ICSID Act, once an ICSID award is registered with a Pakistani High Court, it has the same force as a judgment of that court.

However, the Act also provides that enforcement of such awards is subject to the same immunities applicable to government property in execution of domestic judgments. This reflects Pakistan's attempt to balance international investor confidence with its sovereign rights, especially regarding sensitive assets. While the ICSID Act strengthens Pakistan's international credibility, enforcement proceedings in practice can still be delayed by judicial processes.

[5] Zafar Kalanauri, Law of Arbitration In Pakistan (Courting the Law, 16 January 2017).https://courtingthelaw.com/2017/01/16/commentary/law-of-arbitration-in-pakistan/ - :~:text=The Act provides for arbitration,willing to resort to arbitration.

Pakistan's Draft Arbitration Act, 2024:

The Draft Pakistan Arbitration Act, 2024 aims to align the country's arbitration framework with international standards, particularly those set by the UNCITRAL Model Law, to facilitate both domestic and international arbitration. It expands the scope of arbitrability, permitting disputes to be resolved via arbitration unless prohibited by Pakistan's public policy, which contrasts with the current law that restricts arbitration for certain civil matters[6]. The Draft also introduces clearer guidelines and procedures to improve efficiency, including empowering district courts with original jurisdiction over domestic arbitration matters, while high courts retain jurisdiction for international disputes. It allows for the consolidation of arbitration proceedings and concurrent hearings, promoting streamlined resolution. The Draft also emphasizes mediation, conciliation, and alternative dispute resolution (ADR) during arbitration proceedings.

Additionally, the Draft provides comprehensive rules regarding arbitrator appointments, ensuring impartiality through a detailed framework inspired by the International Bar Association's guidelines. The cost regime is well-defined, mandating that costs typically follow the event, while also preventing one-sided agreements on cost allocation. Provisions regarding the recognition and enforcement of awards largely mirror international norms but introduce the additional ground of "patent illegality" for setting aside awards. The power to grant interim measures is also conferred on both arbitrators and courts, allowing for smoother enforcement. Despite these improvements, some aspects of the Draft, such as high court control over ad-hoc tribunal fees and the rigid 18-month timeframe for rendering domestic awards, could potentially restrict the flexibility and efficiency of the arbitration process. The Draft is currently awaiting enactment in Pakistan's National Assembly.

Doctrines and Principles in Pakistan's Arbitration:

One of the foundational principles in arbitration is the doctrine of separability, which holds that an arbitration agreement is distinct from the main contract. Pakistani courts have recognized this principle, affirming that even if the main contract is void, the arbitration clause may still

[6] Ammad Manzur and Rashid Ahmad, 'Interim Relief under Pakistan's Proposed Arbitration Act: Promoting Judicial Non-Intervention?' (Kluwer Arbitration Blog, 7 December 2024).https://legalblogs.wolterskluwer.com/arbitration-blog/interim-relief-under-pakistans-proposed-arbitration-act-promoting-judicial-non-intervention/

stand[7]. For example, in LPGCL v. Karadeniz Powership Kaya Bey, the court upheld the separability of the arbitration agreement despite challenges to the main contract.

The doctrine of competence-competence allowing arbitral tribunals to rule on their own jurisdiction has seen mixed recognition in Pakistan[8]. While certain cases support the tribunal's authority, Section 31 of the 1940 Act vests jurisdictional questions in courts, creating a statutory hurdle. As a result, judicial interpretations have been inconsistent, with some courts favoring tribunal autonomy while others restrict it.

Another important principle is arbitrability of disputes. Pakistani courts distinguish between subjective arbitrability (who may arbitrate) and objective arbitrability (which disputes may be arbitrated). While individuals, corporations, and even state-owned entities can enter arbitration, certain matters such as criminal cases, rent disputes, banking matters, and constitutional challenges are excluded from arbitration. This restrictive approach limits the scope of arbitration in Pakistan.

Finally, the concept of public policy has played a central role in Pakistan's arbitration jurisprudence. Courts have often invoked public policy broadly to set aside or refuse enforcement of arbitral awards. This approach has created unpredictability, as the scope of public policy remains vaguely defined. Critics argue that Pakistan's judiciary should adopt a narrower definition, consistent with international standards, to avoid undermining arbitration.

Judicial Approach: Key Cases:

Judicial decisions have had a decisive influence on Pakistan's arbitration regime.The Supreme Court intervened to restrain arbitration proceedings, citing allegations of fraud and corruption in the underlying contract[9].This ruling was widely criticized for disregarding arbitral autonomy and damaging Pakistan's international image as an arbitration-friendly state.

[7] LPGCL v. Karadeniz Powership Kaya Bey (2014 CLD 337 KARACHI-HIGH-COURT-SINDH).
[8] Shaista Anwar, International and Domestic Arbitration in Pakistan: Law and Practice: A Book Review.https://sahsold7.lums.edu.pk/sites/default/files/15._international_and_domestic_arbitration_in_pakistan-_law_and_practice-_a_book_review_0.pdf
[9] Hub Power Company Limited (HUBCO) v. Pakistan Wapda (2000 PLD 841 SUPREME COURT)

In SGS v. Pakistan, the Supreme Court declined to stay domestic proceedings in favor of ICSID arbitration, demonstrating judicial reluctance to defer to international tribunals. The case highlighted Pakistan's early difficulties in reconciling domestic judicial sovereignty with international arbitral commitments.

The case of Hitachi v. Rupali Polyester also revealed complexities in judicial attitudes. The Supreme Court treated an ICC award made in London as a domestic award because the contract was governed by Pakistani law. This blurred the distinction between foreign and domestic awards, creating uncertainty for international investors.

Another landmark case the Reko Diq case, where the Supreme Court declared the Chagai Hills Exploration Joint Venture Agreement void ab initio [10] and extended this invalidity to the arbitration clause. The judgment limited the scope of separability and reflected judicial willingness to intervene where state interests were involved.
These cases reflect a dual judicial approach: while Pakistan's courts acknowledge the importance of arbitration for the country's economic and international standing, they remain prone to intervention, often invoking broad grounds such as public policy or illegality.

Challenges in Pakistan's Arbitration Regime:

Several challenges undermine the effectiveness of arbitration in Pakistan. The Arbitration Act of 1940 remains outdated, lacking provisions for interim relief, emergency arbitration, or expedited proceedings. This makes it unsuitable for complex modern commercial disputes.
Another issue is the absence of institutional arbitration in Pakistan. Unlike Singapore's SIAC or Dubai's DIAC, Pakistan has no well-established arbitral institution with standard rules and trained professionals. Most arbitrations are ad hoc, leading to inconsistencies and inefficiencies.

Judicial delays further compound the problem. Enforcement proceedings can take years, defeating arbitration's purpose of providing speedy dispute resolution. Courts also issue conflicting rulings, which erodes confidence in the system.

[10] Maulana Abdul Haq Bloch v. Government of Balochistan (2013 PLD 641 SUPREME COURT)

The broad interpretation of public policy remains a significant hurdle. Instead of restricting it to fundamental principles of justice, Pakistani courts often use it as a catch all ground to refuse enforcement[11]. This discourages foreign investors and reduces the predictability of arbitration outcomes.

Finally, enforcement difficulties persist even after the enactment of the 2011 Acts. Although Pakistan is formally aligned with the New York Convention, practical enforcement remains cumbersome, subject to appeals, delays and procedural hurdles.

Reform Efforts and Future Prospect:

Recognizing these shortcomings, Pakistan has made attempts at reform. The Arbitration Bill of 2009 sought to modernize arbitration by incorporating principles of the UNCITRAL Model Law. It introduced tribunal autonomy, interim measures, and reduced judicial interference. However, critics warned that the Bill closely resembled India's Arbitration Act of 1996, which led to interpretive issues in cases like Bhatia International and ONGC v. Saw Pipes.

Institutional reform is also necessary. [12]Establishing a dedicated Arbitration and Conciliation Centre with modern rules and trained arbitrators would strengthen Pakistan's arbitral culture. Judicial training is equally essential so that courts adopt a pro-enforcement approach consistent with Pakistan's international obligations.

Comparative lessons can be drawn from India, which initially struggled with judicial intervention but gradually amended its arbitration law in 2015 and 2019 to encourage autonomy and foreign investment. Pakistan can avoid India's mistakes by narrowly defining public policy and ensuring limited judicial oversight. Similarly, successful models like Singapore and Hong Kong show the benefits of developing strong arbitral institutions underpinned by supportive legal frameworks.

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[11] Mahboob Alam, 'Arbitration in Pakistan: Challenges in the Digital Era.https://ojs.ahss.org.pk/journal/article/view/986

[12] RIAA Barker Gillette, 'Pakistan's Arbitration Law: Current Framework & Reform Proposals.https://riaabarkergillette.com/pk/insight-article/pakistans-arbitration-law-current-framework-reform-proposals/

If pursued, these reforms would not only strengthen Pakistan's arbitration system but also enhance its reputation as an arbitration-friendly jurisdiction. This is critical for attracting foreign investment, resolving disputes efficiently, and reducing the backlog of cases in the judicial system.

Conclusion:

Arbitration in Pakistan presents a mixed picture. On the one hand, Pakistan has modernized its framework for international arbitration by implementing the New York Convention and the ICSID Convention through domestic legislation. On the other hand, domestic arbitration continues to suffer under the outdated Arbitration Act of 1940, which permits excessive judicial interference and undermines the efficiency of arbitral proceedings.

For arbitration to achieve its potential as a credible dispute resolution mechanism in Pakistan, comprehensive reforms are needed. These include replacing the 1940 Act with legislation modeled on the UNCITRAL Model Law, establishing arbitral institutions, narrowing the scope of public policy and ensuring judicial restraint. With such reforms, arbitration can reduce the burden on courts, provide certainty to investors, and align Pakistan with global best practices in dispute resolution.

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