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MECHANISM FOR ENFORCEMENT OF ARBITRAL AWARDS IN PAKISTAN

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Abstract
The execution of the awards in Pakistan remains a contentious subject especially on international arbitration. Thus, despite the Pakistan's adherence to New York Convention according to which the foreign arbitral awards should be recognized and enforced, several issues remain problematic because of the legal, procedural as well as interpretational uncertainties. This paper examines the process of the enforcement of domestic and foreign arbitral awards in Pakistan with reference to the judiciary and the Arbitration Act of 1940 and Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act of 2011. That is why a critical evaluation of references reveals systemic problems like over centralization of decision making, an ambiguous definition of "public policy", and numerous tactics to slow down the process. This paper also analyses how BITs and ISDS contracts of Pakistan affect the arbitration results regarding its international investments. Based on a comparative analysis of Pakistan's practices with international benchmarks, this research places forward recommendations that seek to increase the effectiveness of the enforcement of arbitral awards and facilitate Pakistan's development as an arbitration-friendly jurisdiction.

Key Words: Arbitral Awards, Enforcement, Judicial Intervention, Public Policy, Investor-State Dispute Settlement (ISDS).

1. Introduction

Arbitration is a process by which an individual or a business hires a third party who makes decisions for the parties involved and then giving an award. This process can be with one arbitrator or with a group, usually, three members are involved in it. Arbitration is also mainly applied in trade related disputes and does not include mediation or conciliation processes which are predominantly used in trade disputes between employers and employees. In mediation, the parties turn to the intervention of a third party to suggest the solution or help introduce the solution of the dispute. Mediation refers to the use of a third party in disputes, particularly the diplomatic mediation whereby an independent person wades into state disputes. Mediation is not similar to arbitration or any other form of ADR in that it does not mandate decisions on the parties. In its core sense, mediation is an approach that is employed primarily for conflict solving. On the other hand, Arbitration is a form of private settlement of disputes with a third-party settlement. Mediation can be done by one mediator or more than one but is usually referred as panel. That

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said, not all legal systems permit multiple judges in a single trial: where they do, there must be an odd number of them; the options are between one or three. In arbitration, the parties give up their ability to select the decision-maker to the arbitrator(s) on their own. Arbitration is basically alike legal action, but it's not considered legal action, while mediation is non-binding and more open compared to arbitration.

2. Literature Review

As literature review of the current state of laws that govern enforcement of domestic and foreign arbitral awards in Pakistan this paper seeks to discuss the current laws, judicial precedents and effects of bilateral investment treaties on the awards made by arbitrators.

Despite being party to the New York Convention (1958), which requires the member countries to accept and enforce the foreign arbitral awards, Pakistan aims at a commitment to conform to modern arbitration norms. That said, researchers and jurists have noted a massive divergence between Pakistan's legal policies and its implementation process. This gap mainly stems from a tension between domestic laws that need updating and the nature of international arbitration.

The legal foundation of arbitration in Pakistan goes back to the Arbitration Act of 1940 that regulates domestic arbitration and which has an impact on existing general tendencies in judicial practice in the country. As noted by Yasin (2020), this Act was derived from the pre-independence British laws, and though amended, is still incapable of meeting the requirements of international arbitration.

To fill this gap the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act of 2011 was passed to bring Pakistan nearer to the New York convention. But the critics opine that the structural ambiguities still exist and the relationship between the 1940 Act and the 2011 Act in most cases poses legal questions (Khan, 2021).

Interference by the judiciary remains an ever-recurring issue in arbitration in Pakistan which is considered a core problem in realization of enforcement. Comparative studies showed that the Pakistan judiciary tends to give broader meaning to 'public policy' while deciding on the enforcement of foreign awards. The author notes that this often culminates in over emitting judicial intervention, which is contradictory to the principle of the finality of arbitration.

There are clear procedural delays that have a great impact on the efficiency of the enforcement of the award in Pakistan too. As Khan and Raza (2020) pointed out, the conventional argument with such delays goes down the drain not only the effectiveness of arbitration as an ADR mechanism but also foreign investors discourage. They point out that procedural delays are made worse by the practice of having the courts adjourn and the problems of case backlog, questions which have a direct bearing on Pakistan's capacity to create a favorable legal regime for arbitration.

There are several recommendations made by academics to improve the unique context of arbitration in Pakistan. Arbitration Act of 1940 should be revised, Malik (2020) proposed that it should follow the UNCITRAL Model Law on International Commercial Arbitration to minimize judicial interferences. According to Hussain (2019) legal academics also add that reduction of delay, clarification of circumstances under public policy and increase in independence of judiciary in arbitration cases could make Pakistan a more desirable arbitration destination.

Regarded literature reveals that everyone is in confirmation of the need for a change in the arbitration legislation of Pakistan. Insufficient judicial enforcement, distortion of public policy, and procedural hazards are deemed as the prominent hurdles to enforcing the awards. Although

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Pakistan has tried to implement the Act of 2011, specialists argue that certain shifts closer to international standards may lead to a more predictable arbitration position, to the integration of foreign investments and to the improvement of the effectiveness of the judiciary.

3. Research Methodology

The effectiveness of award enforcement in Pakistan is the subject of this research, which uses a qualitative research approach and focuses on international arbitration. The objective of the research is to analyze how the legal framework, court processes, and process concerns typical for enforcement of arbitral awards domestic and international.

A comparison was done with the global legal policies and standards obtaining to the process of arbitration with a view to highlighting the situation in Pakistan. This meant consideration of how other governments enforce arbitral awards as employing similar legal provisions particularly those that conform to the UNCITRAL Model Law on International Commercial Arbitration. Thus, the scope of the comparison method was to identify potential adjustments for adding value to the arbitration system of Pakistan.

This paper also encompasses an objective analysis of the legal structure of arbitration in Pakistan through analysis of the 1940 Arbitration Act and the 2011 Act. This examination evaluates how these laws may enhance or hamper the enforcement of arbitral awards and pinpointed legal gaps that need to be addressed in order to conform to the most recent transnational trends and best practices.

4. Function and Scope

They use it to achieve various discourses involving the persons in the securities and commodities related markets, and/or sectors. There is usually a general clause contained in the framework agreements that refers to specific mediation rules. The various Trade and business association also help in the mediation of the discussions resultant out of agreements concerning the supply of manufactured products, business control terms, developmental and designing projects, financial activities, working and distributing rules, and other countless business combines. The importance and usefulness of mediation are evident by the increased utilization of mediation in the business society and among lawyers in many nations. Another strength of mediation is the ability to address the dispute through intervention and; as compared to conventional court system, speedy intervention is normally achieved. A mediator's knowledge of the workings of a given profession might do away with the need for hearing from experts or the production of paperwork obviating some of the costs that come with litigation. Also, the confidentiality of mediation is cherished by the parties to a dispute; unlike in trials, where matters of reputations or even product defects elicited in discovery are aired by lawyers, in mediation, such matters remain private between the parties.

Referee on the other hand is supposed to call for decision the matters that the parties have chosen to refer to arbitration. The decisions made by the referee must include a practice that appears documented with specific provisions referred to as the arbitral award. The character and substance of an arbitral award, as well as the parties and referees have legal ability to fix such an award.

An arbitral award may be in response to a request for either annulment or recognition and enforcement. In other words, to qualify as an arbitral award there is no special definition or language that needs to be used; the character of the award it for what it is.

5. Arbitration and its importance

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Arbitration is among the most known and often applied ADR procedure that allows the parties to select a rather operative, original, and confidential way to decide the conflict outside of the judicial system. It has become more important in recent decades especially in international commercial disputes because of enforceability under international conventions, flexibility of specialized adjudication that may meet the need of dispute parties.

Arbitration is a procedure whereby the parties to a dispute willingly present their claim before a third party (the arbitrator) with the genuine verdict of the former being enforceable. Unlike litigation which goes in public court, arbitration is private affair based own agreement of the parties but it also follows institution's rules like ICC or LCIA.

6. Key features of arbitration include:

Party Autonomy: Arbitration agreements give the parties substantial latitude with regard to the arbitrators to be appointed, the substantive and procedural laws to be applied, rules governing the arbitration procedure, and place of arbitrations (Born, 2021).

Binding Decisions: The award, like a judgment of a court, is conclusive and final as between the parties and only on the few and limited ground can it be challenged.

Flexibility and Informality: Arbitration is more relaxed than litigation processes, and the parties can choose methods to gain a suitable resolution for their situation (Redfern & Hunter, 2022).

7. Advantages of Arbitration Over Litigation

7.1.Speed and Efficiency

Arbitration tends to be faster than litigation in most or all instances and especially where the facility of courts is congested. It is therefore possible for the parties and arbitrators to arrange proceedings more casually and this is unlike court docket which usually take so long (Gaillard and Banifatemi, 2011).

7.2.Cost-Effectiveness

Even where the arbitration process, particularly international arbitration, may be costly, they would still be cheaper than lengthy legal proceeding. Costs are also contained by procedures which are relatively simpler and quicker than those involved in court litigation (Lew, Mistelis & Kröll, 2016).

7.3.Confidentiality

In this case, arbitration differs from litigation because the proceedings and awards made during and at the end of arbitration are usually private. The chief advantage of this anonymity is especially beneficial for cases where the conflict is based on violating trade secrets and commercial reputation as well as other confidential commercial information (Park, 2021).

7.4.Specialized Expertise

Arbitrators are usually chosen based with knowledge in that particular field or the law governing that industry. For example, construction disputes could likely involve the roster of engineers or architects capable of understanding the issues in their circumstances (Harris, 2017).

7.5.Enforceability of Awards

Arbitral awards are recognized and can be enforced in more than 170 countries through the New York convention of 1958. Such broad enforceability is one of the remarkable aspects of arbitration more so owing to the cross-border nature of most international disputes.

7.6.Neutrality

International arbitration is any solution that gives each party an equal chance without having the case heard in their own jurisdiction. Such impartiality makes the parties to have confidence in the process of the dispute resolution (Redfern & Hunter, 2022).

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8. Arbitration in the Global Context

International commercial and investment dispute resolution has shifted, from other means of dispute resolution to arbitration. Its growth stems from globalization and the evolution of the nature of cross-border transactions, which require a stable and neutral resolution mechanism. Mortgages such as the ICC, LCIA, and Singapore International Arbitration Centre (SIAC) have been key in vitalize arbitration as a universally standard.

The ICC is known for its international presence as well as the quality of its arbitration bringing parties the option to resolve their disputes under different legal systems (Gaillard & Savage, 1999). The conventional systems of dispute settlement include the bilateral investment treaties and such newer forms of international investment agreements as the Energy Charter Treaty contain ISDS mechanisms which afford the foreign investors an opportunity to select from different forms of arbitration to solve the existing disputes with the host states (Titi, 2019).

9. Arbitration's Role in Pakistan

Arbitration as a means of dispute resolution has not been widely popular in the past as litigation in Pakistan. However, the advanced and complicate features of business buy/as well as increased and sophisticated tendency towards international and global business deals have made it an invaluable tool. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards was ratified in Pakistan in 2005, while Pakistan passed the Recognition and Enforcement Act in 2011 – the latter has certainly opened the door and paved the road to creating a positive environment in the country for arbitration sitting.

10. Key advantages of arbitration in Pakistan include:

a) Reducing the burden on an overburdened judiciary.
b) Offering confidentiality in disputes involving sensitive matters.
c) Providing enforceable outcomes in international trade and investment disputes.

11. Importance of Arbitration in Modern Legal Systems

Arbitration is critical in modern legal systems for several reasons:

11.1. **Economic Growth:** Adequate measures in the resolution of disputes attracts foreign investment by showing that business related conflicts can be resolved in a stable and efficient manner (Brower & Schill, 2009).

11.2. **Globalization:** International trade and investment need mechanisms beyond the national law, and thus, arbitration is a crucial device functioning in globalization (Born, 2021).

11.3. **Legal Development:** Arbitration promotes the growth of the commercial law due to the capacity to solve a number of emergent problems that in turn affects the legislative and civil changes (Gaillard & Banifatemi, 2011).

12. Legislative Framework for Arbitration in Pakistan

The laws governing arbitration in Pakistan can be traced down to national laws as well as international laws. They prescribe legal regulation on arbitration, award enforcement and Pakistan's conventional commitments. Domestic arbitration is governed by the Arbitration Act of 1940 On the hand, International arbitration awards are governed by the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act of 2011. However, several of legal challenges related with the arbitration process are as follows the following are the several problems related with the enforcement of arbitral awards Irrespective of these legal

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instruments, numerous flaws including outdated provisions and procedure complications emanate from the enforcement of arbitral awards.

13. The Arbitration Act of 1940

There is a main statute governing arbitration in Pakistan known as The Arbitration Act, 1940. This was passed during the British colonialism and has not been substantially amended, and governs domestic arbitration process and awards. The Act regulate the matters relating to arbitration only for the disputes arising out of and in connection with arbitration agreement of the parties of Pakistan. The Act has assigned broad jurisdictions to courts: the right to the appointment of arbitrators, the right to annul awards, and the consideration of issues of procedure. The Act describes the steps of starting the arbitration, holding the hearings and making the awards. The Act does not take into consideration modern arbitration practices, which include expedited arbitration, or institutional arbitration. Prolific judicial activity in respect of an arbitration process eclipses the party autonomy, which is sacrosanct to arbitration.

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

This work was intended to put in place the provisions of the New York Convention to which Pakistan became a party in 2005. It deals with the enforcement and recognition of foreign arbitral awards and guarantees the Pakistani courts' enforceability of the awards. It is the duty of the courts to, where the existence of an arbitration agreement has been ascertained and the arbitration agreement is not under-prohibited under the law of that jurisdiction to do so. In Pakistan, the New York Convention on enforcement of foreign arbitral awards operates such that, every such award is regarded as binding and enforceable until grounds sufficient enough for refusal are established. A court may decline enforcement on certain bases, concerning either the law under which the award was granted or the capacity of the party to carry out the award. The Act brings Pakistan into line with international arbitration practices, thus providing confidence to the foreign investors. It gives a framework for the enforcement of foreign arbitral awards that conforms to best practices in the international league (Qureshi, 2019).

15. Judicial Role in Arbitration Enforcement

The judiciary has an important function in the enforcement of arbitration agreements and arbitration awards particularly those, which are international. Courts are umpires and supervision agents, the implementation of arbitration is guided by legal processes, while the required assistance required for proper processing is provided. In Pakistan the judicial role in arbitration is regulated through the Arbitration Act of 1940, the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act of 2011 and Pakistan's obligations in the international level conventions such as the New York Convention (1958).

Nonetheless, these frameworks remain largely unhelpful in Pakistan, as judicial interference pragmatically ignores party autonomy and Arbitration's effectiveness causing further delays and uncertainty in enforcement. It is in this section before drawing conclusions and recommendations that the authors review the judiciary and its facilitative as well as constraining aspects.

16. Supportive Role of Judiciary in Arbitration

16.1. Appointment of Arbitrators

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The courts have another important function of appointing arbitrators whenever parties are unable to agree on the manner of doing so. This implies that under the Arbitration Act of 1940, courts do have a role play in sorting out the selection of the arbitrator so that the process is not brought to a standstill.

16.2. Enforcement of Arbitration Agreements

Such courts are supposed to enforce valid arbitration clauses by sending parties to arbitration whenever there is a dispute. The 2011 Act also requires the Courts and other authorities to give effect to the arbitration clause contained in contracts and enforce them unless such clauses are considered by the law as null, void or incapable of being performed.

16.3. Enforcement of Awards

The judiciary recognizes and enforces both domestic and foreign arbitral awards whereby the rendition of the award is in writing and states the reasons upon which the award was made. Domestic awards are accredited under the 1940 Act and overseas award are inspected and implemented under 2011 Act concomitant with New York convention. This two-fold facility is effective in resolving the grievances among the parties, either domestically and internationally in Pakistan.

16.4. Supervisory Function

Admittedly, the concept of arbitration is to minimize the participation of the courts, but at the same time, their supervision guarantees the legal admissibility of arbitration. Courts also confirm that awards meet the procedural and-substantive standards of law to prevent fraud or arbitral misconduct to the parties (Born, 2021).

17. Hubco Power Case: A Landmark Arbitration Dispute

The Hub Power Company Limited (Hubco) case is one of the most important arbitration related disputes in Pakistan legal diary ancshows concerning problems related to enforcement of the arbitral awards and judicial intervention. This paper underlines and elaborates the issues arising out of the enforcement of international arbitration agreements in Pakistan especially in the confines of public policy and judicial interference.

17.1. Background of the Dispute

The conflict can be outlined between Hubco, power generation company and WAPDA, the major electrical utility company of Pakistan. The principal issue of disagreement was corruption, inefficiency, and contractual noncompliance in a power purchase agreement that was affected under the provisions of the PCA (Dolzer and Schreuer, 2012).

17.2. Core Issues

The agreement between Hubco and WAPDA provided ICC international arbitration clause. Nonetheless, WAPDA amended the violation of the law on the grounds that the said arbitration clause was contrary to the Pakistani public policy based on corruption and in the best interest of the nation (Kaufmann-Kohler & Potestà, 2020).

18. Key Legal Developments

18.1. Arbitration Proceedings:

Later on, the ICC tribunal decided the case in favor of Hubco while blaming WAPDA for breaching of the power purchase agreement.

18.2. Litigation in Pakistani Courts:

To this end WAPDA sought to challenge the enforcement of the arbitration agreement and the ICC award before the domestic courts under section 46 of the Arbitration Act 1940. The reactionary

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law caused new confusion about the differences between domestic and international arbitration in Pakistan (UNCTAD, 2022).

18.3. Supreme Court Ruling:

The Supreme Court of Pakistan affirmed the enforceability of the arbitration clause by holding paramount Pakistani's international arbitration commitments. Nevertheless, the examination of arbitration proceedings showed that the judiciary is eager to interfere (Schreuer, 2020).

19. Karkey Karadeniz v. Pakistan: A Landmark Investor-State Arbitration Case

The present analysis focuses on the Second Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan case as an example of an ICSID arbitration dispute that shows the difficulties of sharing sovereignty and protecting the interests of investors as well as enforcing awards.

19.1. Background

As stated in previously, the Rental Power Policy was signed by Pakistan with the Turkish electricity producing firm Karkey Karadeniz Elektrik Uretim A.S. (Karkey) in 2009 to supply electricity with the help of floating power plant. But due to corruption charges the project was abandoned, and the assets of Karkey were confiscated (UNCTAD, 2023).

19.2. Core Dispute

a) Allegations of Corruption:

The Pakistani Supreme Court led by Chief Justice, Iftikhar Muhammad Chaudhry declared Rental Power Projects (RPPs) unconstitutional in 2012. It led to Karkey's contract cancellation and asset freezing.

b) Arbitration under ICSID:

In year 2013, Karkey began an arbitration proceeding under the ICSID due to violation of Pakistan-Turkey BIT and unfair and inequitable treatment as prescribed by the treaty (Dolzer & Schreuer, 2012).

19.3. ICSID Proceedings

a) Claim by Karkey:

Karkey claimed for $1.6 billion for expropriation and treaty breach.

b) Award by ICSID:

In 2017 the International Centre for Settlement of Investment Disputes or ICSID awarded $ 760 million in favour of Karkey. The tribunal stated that on the grounds of failure to accord fair and equitable treatment as well as unlawful expropriation of investment Pakistan was guilty (ICSID, 2023).

19.4. Challenges in Enforcement

a) Pakistan's Response:

Pakistan contested the award on the grounds that the contract was corrupt and the contract was given because of corruption. As an initial plea, the government has stated that to conform to the meaning of the award would be against public policy (Kaufmann-Kohler & Potestà, 2020).

b) Settlement Negotiations:

However, due to tireless diplomacy intervention by Turkey the two countries agreed and resolved the issue in 2019. To the same effect as in the contract with DP World, Karkey also dismissed damages, and its details were not disclosed (UNCTAD, 2023).

20. Challenges in Enforcing Arbitral Awards in Pakistan

This paper aims to identify the legal, procedural and institutional imperatives in enforcing the arbitral awards in Pakistan which impact both domestic and international cases. Some of these problems impact on investor confidence and the efficiency of arbitration procedures.

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20.1. Outdated Legislative Framework

Domestic arbitration is regulated by the Arbitration Act of 1940 of Pakistan and it is not sufficient to meet the modern arbitration requirements. By and large, the Act has loopholes that do not fit with international standards such as the UNCITRAL Model Law (Dolzer & Schreuer, 2012).

However, the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act of 2011 has adopted the New York Convention, but its interpretation is not clear and there are some uncertainties with special reference to procedural matters (UNCTAD, 2022).

20.2. Judicial Overreach

Rather than being mere procedural players, Pakistani courts get involved in arbitrations, retry merits of cases.

For instance, cases like Hubco Power Case where the courts were found to have overruled the clauses for international arbitration even though they were expressive, going by the reports in Kaufmann-Kohler & Potestà (2020).

20.3. Broad Interpretation of Public Policy

A study conducted on case laws of Pakistan reveals that the judiciary of Pakistan is still uncertain regarding the enforcement of the foreign arbitral award due to broader meaning of 'public policy." In the Karkey Karadenizcase, some breach defenses based upon public policy were implemented. Nevertheless, these defenses were not accepted in international arbitration environments (ICSID, 2023).

20.4. Procedural Delays

Pakistani courts are slow to enforce awards and arbitration proceedings mainly because of bureaucratic structures and case indents, and these slow proceedings discourage parties in commercial disputes from using arbitration in matters that require timely resolutions (UNCTAD, 2023).

20.5. Lack of Specialized Arbitration Courts

Arbitration in Pakistan is not equipped with arbitration-specific courts and had limited access to professionally skilled judges being familiar with international arbitration laws and regulations. Therefore, decisions may be arbitrary and lenient thus complicating arbitral awards (Schreuer, 2020).

20.6. Limited Awareness of International Standards

It was found that many legal practitioners and judges are not well acquainted with international arbitration frameworks in reservations, such as the New York Convention as well as the ICSID Convention, and thus there are some contradictions in the enforcement proceedings (UNCTAD, 2022).

20.7. Challenges with Investor-State Disputes

Cases like Karkey Karadeniz v. Pakistan avail the challenges faced by Pakistan in defending the claims launched by investors. These challenges stem from bad and highly negotiated bilateral investment treaties (BITs) and inadequate arbitration readiness (ICSID, 2023).

20.8. Perceived Corruption and Lack of Transparency

Claims of corruption usually become a challenge in the process of enforcement. Courts and tribunals may abstain from enforcing the awarded due to some issues with corruption in the underpinning contract (Kaufmann-Kohler & Potestà, 2020). Litigation by state actors including WAPDA and ministries of government results to sovereign immunity on enforcement in cases involving state enterprises (Schreuer, 2020).

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20.9. Weak Institutional Support

The arbitration institutions are limited and often not well developed mainly Karachi Centre for Dispute Resolution (KCDR) which are not fully equipped to handle complicated arbitration matters actively (UNCTAD, 2023).

20.10. International Obligations and Investor-State Arbitration

Investor–State Arbitration (ISA), which has steadily grown into an influential framework of the international investment system, enables foreign investors to resolve contractual disputes with the host state within the framework of an international treaty. Based on BITs, MIAs and FTAs, this mechanism guarantees investors an access to neutral arbitrations if the conflict occurs with the host state. International obligations play a central role in any formulation of ISA as it necessarily champions the protection of foreign investments within the sovereignty of nations.

20.11. Bilateral Investment Treaties (BITs)

BITs are thus far the most frequently used instruments within ISA. These treaties require member states to accord foreign investors FET, the prohibition of indirect expropriation, and guaranteed direct access to mechanisms of international arbitration such as ICSID. For instance, Pakistan has more than 50 BITs that state the obligations of the country to foreign investors, according to UNCTAD 2023.

20.12. ICSID Convention

ICSID Convention was adopted by the World Bank under the name of Convention on the Settlement of Investment Disputers Between States and Nationals of Other States in 1966. It binds the contracting states to give effect to and enforce the awards made under the ICSID jurisdiction thereby controlling domestic court intervention (Schreuer, 2020). Through this mechanism, ISA is protected and conditioned to be fair and the decision made is a final verdict that can instill confidence among the investors.

20.13. Multilateral Trade Agreements

Arguably, every modern trade agreement contains an investment chapter with an arbitration clause such as NAFTA and the recently signed CPTPP. These obligations are designed to harmonise the mechanisms of the settling of disputes while preserving the ability of the state to regulate (UNCTAD, 2022).

20.14. Public International Law and Customary Norms

Other concepts of international law like promissory obligation like ‘Pacta sunt Servanda,’ therefore, validate state commitment in ISA frameworks. It is expected that states will perform their treaty obligations in a manner that is consistent with good international practice hence creating a stable and predictable environment for international investment. (Dolzer & Schreuer, 2012).

21. Challenges in Balancing International Obligations and Sovereignty

21.1. Regulatory Sovereignty

Among the many issues which arise, the primary issue is to define a relationship between international human rights obligations and the right of the host state to regulate in the public interest. Cases like Philip Morris v. As observed in the Australia case, investor claims can thus undermine public health interventions, and there is problem with excess of ISA mechanisms (UNCTAD, 2023).

21.2. Broad Interpretation of Treaties

With ISA, one characteristic is that varied interpretations for provisions that are, a priori, clear and univocal will arise, for example, using the treaty provision of ‘fair and equitable treatment’.

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Tribunals at times take the interests of investors above the interest of the state, for instance, Karkey Karadeniz v. Pakistan (Registry No. ICSID Case No. ARB/13/1).

21.3. Public Policy Concerns

It is common for host states to raise public policy defense when called upon to execute and enforce arbitral awards. However, these defenses are rarely persuasive in international forums, as deduced in Rousch Power v. Pakistan (ICSID, 2018). This illustrates the two major dilemmas: the domestic-internal interests versus the domestic-international concerns.

22. Reforming International Obligations for Balanced ISA

22.1. Treaty Redesign

Legal changes that are now underling are such that states are using new language and formulations in new and amended BITs that provide for more specific provisions on FET, Public Policy exceptions, and Investor Obligations. For example, climates of newer BITs Pakistan include raising factors of sustainable development and state sovereignty.

22.2. Alternative Dispute Resolution (ADR)

Mediation and conciliation as practiced are easing themselves into ISA frameworks in order to minimize adversarial processes while maximizing cooperative solutions (UNCITRAL, 2022).

22.3. Multilateral Frameworks

Initiatives are made to harmonize ISA activities and apprehensions over process fairness, clarity, and legal consistency in awards are scrutinized in Working Group III of the United Nations on Investment-Claiming Systems Reformation (UNCTAD, 2023).

23. Comparative Analysis with International Best Practices

To enhance the processes of the enforcement of the arbitral awards and boost Pakistan to be recognized as the potential candidate for the hub of the arbitration Pakistan can learn from the international standards. To further understand the effectiveness of the current arbitration structure in Pakistan this section compares the Pakistan's arbitration laws to arbitration regimes of Singapore and United Kingdom (UK), which are two well-known pro-arbitration jurisdictions. The paper ends with a list of recommendations for Pakistan for reforming the system of arbitration.

23.1. Singapore

Singapore has developed into an arbitration friendly nation through its progressive legislation, strong infrastructure and judiciary that backs arbitration. The Aviation industry refers to domestic arbitration by the Arbitration Act (2001) and the international arbitration as provided for by the International Arbitration Act (IAA, 1994) with reference to the UNCITRAL Model Law as observed By Born (2021).

23.2. Key Features

a. Alignment with International Standards:

The IAA is specifically derived from the UNCITRAL Model Law, and incorporates the New York Convention which allows for the enforcement of a foreign arbitral award without much of the involvement of the courts (Hunt, 2022).

b. Specialized Arbitration Institutions:

Singapore boasts of the SIAC that offers excellent amenities and timely provisional of case administration services. SIAC's procedures are clear and efficient compared to its counterparts around the world, and its success contributed to Singapore's favorable reputation (Hale, 2022).

c. Judicial Minimalism:

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Plaintiff and defendant courts in Singapore are pro-arbitration and as such, give little intervention in such proceedings. They exercise strict consistent regard to enforcement of awards unless such awards are against public policy and the definition of which is beyond broad (Tan, 2022).

d. Supportive Infrastructure:

As it has been noted by UNCTAD (2022), Singapore provides the most modern facilities and contains attractive financial conditions for arbitration professionals.

23.3. Kingdom

The UK is well recognized as the leading arbitration hub, mainly because of the Arbitration Act 1996 that applies to domestic and international arbitration. London is a preferred seat of arbitration being endorsed by institutions including the London Court of International Arbitration (LCIA), and Chartered Institute of Arbitrators (CIArb) (Redfern & Hunter, n. d.).

23.4. Key Features

a. Arbitration Act 1996:

This Act gives a general regulation of the arbitration with a view of harmonizing it in line with the internationally accepted legal provisions. This leaves freedom to parties and restricts the role of judiciary in arbitration processes (Redfern & Hunter, 2021).

b. Pro-Enforcement Framework:

The UK is also a party to the New York Convention, and its courts have generally demonstrated a very good standard in enforcing international awards provided that these awards meet formalities (Born, 2021).

c. Specialized Judiciary:

The UK courts are filled with competent and experienced judges in arbitration law and therefore the ruling they offer are free biased and consistent. The Commercial Court in London deals with arbitration related matters; that enhances efficiency and specialization (Tan, 2022).

d. Public Policy Interpretation:

Like the Singaporean courts, the UK courts have limited the construction of ‘public policy’ so as not to allow awards to be set aside on thin grounds (Redfern & Hunter, 2021).

24. Role of Institutions

The LCIA has an excellent reputation with regards to independence and efficiency, and has the benefit of offering procedural autonomy while aiming to achieve the expedition of the disputes (UNCTAD, 2022).

25. Lessons for Pakistan

As a result, Pakistan could promote its arbitration climate by learning concerning successes of Singapore and UK:

25.1. Legislative Reforms

a. Adopt UNCITRAL Model Law: In Pakistan arbitration laws and many legal system regulations are not well defined especially the Arbitration Act 1940. If this act is supplanted by legislation that follows the UNCITRAL Model Law, the legal regimes can be overhauled and investor optimism can increase (UNCTAD, 2022).

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b. Strengthen BIT Negotiations: Pakistan should revisit its BITs for enhancing certainty of arbitration clauses, with much of the BITs meaning that the Pakistan government should revise it appropriately (Schreuer, 2020).

c. Develop Robust Arbitration Centers: Therefore, it is advisable for Pakistan to improve such institutions as the established Karachi Centre for Dispute Resolution (KCDR). The creation of a national arbitration center on the pattern of SIAC or LCIA would help concentrate expertise and offer efficient case administration solutions (Tan, 2022).

25.2. Promote Training and Awareness

Awareness of international arbitration and the training of the judges, arbitrators and practitioner concerning the set standards necessary so as to arrive at a just and reasonable decision (Born, 2021).

25.3. Narrow Interpretation of Public Policy

In this paper it has been suggested that the courts in Pakistan should give a strict meaning to the phrase 'public policy' with a view to restricting the ability of the courts to intervene into matters falling under the purview of arbitration. This approach reflects the legal practice in Singapore and UK where policy shelters are claimed with a rational and limited manner (Swafford & Tan, 2018; Redfern & Hunter, 2021).

25.4. Judicial Minimalism

a) Limit Judicial Intervention

As seen in Singapore and the UK there is a need for Pakistani courts to honor the autonomy of the parties and just oversee the process. This can help in carving out delays and getting confidence in the arbitration system of Pakistan (Schreuer, 2020).

b) Procedural Efficiency

Issues of delay can be solved through the simplification of court procedures relating to enforcement of arbitral awards. As with the example of the UK's Commercial Court, specialized arbitration courts can help accelerate the enforcement (Tan, 2022).

c) International Engagement

Leverage International Networks: For technical support and enhancement of legal structure in effective operation of arbitration, Pakistan can seek cooperation with world famous arbitration centers. Internationalization of courts is possible with help of closer cooperation with international institutions such as the International Chamber of Commerce (ICC) or the United Nations Commission on International Trade Law (UNCITRAL), which can give practical recommendations (UNCTAD, 2023).

26. Proposed Reforms to Improve Arbitration in Pakistan

Taking into consideration the article findings and in order to improve the overall structure of arbitration in Pakistan it has to be reformed as follows. These reforms provide emphasis on the modernization of legislations, on the development of institutions and on enhancement of capacities.

27. Legislative Modernization

27.1. Replace the Arbitration Act of 1940:

New legislation on arbitration should be introduced based on the Model Law of UNCITRAL to suit the current generation of arbitration. It was noted that the new law should implement clear

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outstanding rules for domestic and cross-border arbitration, simplify the enforcement procedures, and eliminate rather vague interpretations.

27.2. Harmonize Domestic and International Arbitration Frameworks:

Domestic arbitration laws should be harmonized with the Recognition and Enforcement of (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, containing the provisions of the New York Convention.

27.3. Incorporate Specific Provisions on Public Policy:

Narrow the definition of "public policy" in order to prevent it from being employed as a further means of non-enforcement of awards. Provide directions to demarcate between violation of process and violation of principles.

28. Institutional Development

28.1. Strengthen Arbitration Centers:

Develop and promote existing institutions like the Karachi Centre for Dispute Resolution (KCDR). Provide financial and technical support to establish a national arbitration center similar to the Singapore International Arbitration Centre (SIAC).

28.2. Introduce Specialized Arbitration Courts:

Set up specialized arbitration courts within the jurisdiction of arbitration related affairs so as to enhance the enforcement processes. Leave the staffing of a courtroom with specific judges who are conversant with arbitration law.

28.3. Digitalization of Arbitration Processes:

Technology should be deployed to minimize critical handling time in arbitration to prevent any unnecessary hold-up of cases hence increasing clarity in the arbitration process.

29. Capacity Building

29.1. Judicial Training:

Educate senior and subordinate judges as well as lawyers in the basic concepts of the international arbitration system, the New York Convention, ICSID rules, and BITs.

29.2. Awareness Campaigns:

Organize lectures and conferences to familiarize the targeted audience including business people, legal advisors and judicial officers about this method.

29.3. Arbitrator Accreditation:

Bring in certification program for arbitrators in order to register prospective and efficient arbitrators for handling arbitration cases.

30. Conclusion and Key Recommendations

Prevalent perception of arbitrations in Pakistan can be captured from the facts that its arbitration structure is at cross roads. Even as the country continues to make strides in developing the legal framework that is necessary to support fully functional modern arbitration, several problems remain ingrained. Legal activism, excessive formalism, and an old legal environment discourage investors and hinder the viable settlement of disputes.

a) Modernize Arbitration Laws

Abolish all those earlier enactments and enact a new legislation that effectively and substantially follows the provisions of the UNCITRAL Model Law.

b) Strengthen Institutions:

Set up professionally staffed and adequately endowed arbitration centers and special courts dealing with arbitration matters.

c) Promote Judicial Minimalism:

Cultivate the judges into adopting one overriding principle to always respect the autonomy of the parties and intervene only when invited to do so on procedural issues. Restrict the meaning of public policy to accord with the international definitions.

d) Enhance Capacity Building:

The enforcement of the arbitration law requires enhancement of training programs for, judges, arbitrators and legal practitioners.

e) Leverage International Collaboration:

As external measure, cooperate with international arbitration centers and interface with international organizations to enhance perceptions of arbitration in Pakistan.

The key changes presented in this work will allow Pakistan shaping the arbitration system, minimizing the use of litigation and positioning the country as a competitive platform for resolving disputes. Proposition two will not only increase investors' confidence but also foster sustainable development and integration to the global economy.

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