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Arbitration Reimagined: Analyzing Pakistan's New Draft Bill on Arbitration Act 2024

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Abstract
The study reviews the existing conditions in Pakistan concerning arbitration legislation and the existing Arbitration Act 1940 and the Draught Bill for Arbitration Act 2024 has been proposed based on the United Nations Commission on International Trade Law Model Law. The objective is to evaluate how the new framework could address existing problems plaguing the courts such as inefficiencies and outcomes that have caused judge interference and hindered party autonomy on claim resolution. The research adopts doctrinal method, comparing provisions of the statutes with trend in International arbitration. Based on the findings, the Draught Law expands the powers of the arbitral tribunal, reduces the role of courts, and increases power of the parties, and makes the system more reliable and effective. Finally the study recommends measures to enhance the possibility of the Draught Law such as development of ADR infrastructure, training of arbitrators, and enhancing the overall legal practitioners' understanding of the Draught in order to ensure the success of the Draught Law.

Keywords: Arbitration; Draft Bill, UNICTRAL Model Law; International Commercial Arbitration; Legal Framework

1. Background of the Study

Pakistan's arbitration system under section 242 the Arbitration Act of 1940 has been suffering from perennial problems and inefficiencies that hinder it from being an effective viable, genuine SAC from the system of litigation. There are several different drawbacks that are imputable to the Act, including; over reliance on the courts, limitation of powers of the arbitrators, and constraint on the discretion of the parties. Such problems have resulted in many arbitration matters being promoted to the courts when they do not need be hence increasing the number of cases in the country (Mukhtar S. 2016). Recognising the necessity of the change, the Arbitration Law Review Committee in cooperation with the Law & Justice Commission initiated a process of review leading to the development of a new arbitration regime that would reflect the changing global environment, particularly following the 1986 UNCITRAL Model Law. These changes led to the production of the Draught Bill for the Arbitration Act 2024 with the purpose of overcoming the drawbacks of the existing legalkode and bringing the Pakistani arbitration mechanism into conformity with the international standards (Law and Justice Commission of Pakistan, 2024).

The Arbitration Act of 1940 has not been able to secure an effective and more importantly an independent arbitration in Pakistan. The over-emphasis of the courts, lack of directions on party autonomy and the qualifications of arbitrators, as causes of erosion of arbitration. This has resulted to a large number of 'stayed' court cases and has generally discouraged local and international investors from pursuing arbitration. It is high time that the existing legal frameworks were reformed to popularized the arbitration process, reduce burdens on courts and make the environment in relation to the disposal of disputes more favourable (Khan, A. 2024).

2. Literature Review

The arbitration laws and practices in Pakistan are limited to the Arbitration Act of 1940 and have been criticised for their inefficiency and for catering excessive reliance on judicial support. The different research works undertaken have noted all these drawbacks of this outmoded legal regime emphasising that reform measures ought to conform to international arbitration benchmarks. This paper aims to identify academic discourse on the advancement of arbitration law, Pakistan's current framework, and potential consequences of a Draught Bill of the Arbitration Act 2024.

2.1. Historical evolution of arbitration in Pakistan

Pakistan's arbitration law is mainly derived from the Arbitration Act of 1940 which has its roots in colonial British law. The 1940 Act, as mentioned by Choudhary (2015), was expected to facilitate arbitration to fit a pre-modern economy, and arbitration was utilized mainly for intra-business conflicts. However, the procedural and substantively aspects of this law are rather procedural and have not been able to fit the modern world characterised by global commerce and international arbitration. Siddique (2016) notes that because of the Act's shortcomings which the courts' interventionism, efficiency of arbitration as a means for settlement of disputes has been hampered. The failure of the Act in responding to the modern standards of international arbitration has led to the arbitration counter being regarded more as a continuation of litigation than an actual option.

2.2. Pros and Cons in the Current System of Arbitration

Literature review reveals that a large number of studies identify failures of the Arbitration Act of 1940. Haider (2017) pointed out that one of the problems is that the Act permits extensive interference by the judiciary, which jeopardizes the sovereignty of arbitration. In Pakistan, contests go to the courts not only for interim directions but also for a review of the merits of the arbitration award. This practise is contrary to the nature of arbitration as a speedy and final means of resolving disputes. According to Zahid (2018), such excessive intervention has led to sharper inclined legal formalisms accompanied by the increased period in legal procedures whereby most of the arbitration cases are dragged to the court in Pakistan where there is a record backlog overall more than 2.26 million. Yet one more severe 1940 Act's vulnerability is that the parties that act under its provisions are bound by a relatively small degree of freedom. According to Naeem & Malik (2019), it is rationalised that present Act bars the parties to appoint their arbitrators, decide on the procedure to be followed in arbitration and, more importantly, retain control on the arbitration process. This makes awards unpredictable and far from the favourable business environment that contemporary arbitration structures like the UNCITRAL Model Law provide.

2.3. Trends and Legal Reforms of International Arbitration

Over the past few decades, arbitration law has attracted significant attention of legal fraternity and number of countries has amended their arbitration laws to cater to newer demands and expectations of users seeking for more effective and acceptable ways of resolving disputes. Many of these updates have been driven by the UNCITRAL Model Law on International Commercial Arbitration that was developed in 1985 and was amended in 2006, to meet the current commercial need. The UNCITRAL Model Law has been helpful in describing legal structures and frameworks of arbitration throughout the world and restricting opportunities for interference from judges, as well as encouraging party autonomy (Tahir, M. I. 2023). Born (2020) mentioned, one of the key features of the Model Law is the decrease in court interference, except in cases of award enforcement, interim relief or arbitrability. This strategy has made the Model Law appealing to a diverse range of countries that seek to improve their arbitration legislations push for certainty and predictability on cross border arbitration.

3. Enactment of the UNCITRAL Model Law

Foreign investor outstanding players shaping the contemporary arbitration process Leading organizations and states playing the overwhelming role on practice of arbitration include Singapore, Hong Kong, and United Kingdom. Since the enactment of arbitration laws, which are based on provisions of UNCITRAL these regions as noted above have witnessed growth in their arbitration

business. According to Leung (2019) such nations have turned into international arbitration hubs because business and global investors trust domestic legal systems. These include policies on arbitration, which make minimal allowance for intervening court procedures, more relaxed procedures surrounding the mode of arbitrating disputes, and strong instruments for executing the awards made by an arbitration tribunal; all these have seen the practice of cross-border commercial arbitration skyrocket. For example, since 1994 Singapore has had the Arbitration Act that has been followed by its amendments reinforcing finality and efficiency of the arbitration processes, which reduced the burden on the commercial courts as well as relying the positioning of Singapore as the main dispute resolution hub. Similarly, because of the Model Law, arbitration has become an achievable option in Hong Kong clearly attracting multinational corporations to resolve their issues within its jurisdiction. In the United Kingdom, the Arbitration Act 1996 has adopted the main provision of the Model Law to foster arbitration as a viable, accessible mechanism to bypass court cases since it lays down acceptable rules for arbitration and the recognition of awards.

4. Legal Reforms in Developing Jurisdictions

Over the past few years, many developing countries have realized the significance of sound arbitration laws to promote the FDI and international business. Through restructuring their laws on arbitration, these nations have developed themselves into promising magnet for the parties in search of successful, impartial and conclusive means to resolving disputes other than through legal proceedings-commercial litigation (B Born, G. 2021). Some of these reforms as can be seen have recently been made in India, Brazil, South Africa as well as, the United Kingdom, all of which sought to bring their arbitration systems to par with those of other countries.

4.1. India Perspective

India is a developing country that has realised the need to have a solid and relevant arbitration infrastructure. In the past, India's arbitration law has always had problems with interference from domestic courts and this threatened the effectiveness and autonomy of arbitral forums. However, this state of affairs was changed after the Arbitration and Conciliation (Amendment) Act 2015 and further in the year 2019. These changed were intended to minimise the role of courts, make arbitration easier and encourage use of arbitration in domestic as well as international cases.

Some of the provisions included in the 2015 changes were time limit for arbitrations; powers of arbitral tribunal to order interim measures without having to approach the court, and stringent provisions on the selection of arbitrators. As indicated by Khan (2021), these shifts have pronounced India as a more attractive venue for arbitration demonstrating the country's commitment to improving the effectiveness and credibility of its ADR processes. Since the above reforms, India has experienced a rise in the numbers of international arbitrations seated in the country more especially through the MCIA. However, the modern issues remain in relation to the execution of arbitral awards' predictability and concerns due to the congested courts. However, the government of India has embarked on this process in the effort to plan the country to be a regional center of arbitration hence pulls more foreign investment through the availability of the sure shot method of dispute resolution instead of having to spend time in court.

4.2. Brazil

Brazil has recently advanced in referring the arbitration laws reforms of its country. In the past, arbitration remained an unused method in Brazil mostly on account of legal risks and resistance to adopting such forms of conflict resolution. But the situation gradually changed after passing of the Brazilian Arbitration Act in 1996 and can be considered as transition to the recognition of arbitration. This Act, which has its origin in the UNCITRAL Model Law, liberalises with respect to the contents of arbitration agreements and limits the powers of the courts to intervene in arbitration. The most significant development occurred in 2015 when Brazil revised its arbitration law to extend the area of arbitration to the disputes with public participants. It was an important development in demystifying arbitration as a genuine way of solving business related controversies especially those

that involve the state. Such changes have promoted investors' confidence particularly the foreigners in areas such as construction, energy, and infrastructure. Iqbal (2020) opines that evaluating the Brazilian arbitration reforms, it becomes apparent as in the Indian context that local laws need to be in sync with global standards to remain relevant in today's global economy. As more and more companies seek countries that offer proper and definitive dispute resolution mechanisms, Red & Curtain has improved Brazil's advantage as the leading arbitration location in the Latin American context.

4.3. South Africa

South African consumers prefer the use of arbitration especially in mining and energy industries when trying to resolve a conflict. Nevertheless, before the law introducing the International Arbitration Act of 2017 was enacted, many people saw the country's arbitration system as obsolete and unproductive. Like many other developing countries, South Africa experienced problems like over-activity of the judiciary, and unevenness in the enforcement of arbitral awards. The passing of the International Arbitration Act 2017 was a real shot in the arm for the country's development of arbitration. This Act assimilates the provisions of the UNCITRAL Model Law to bring the arbitration law of South Africa up to the international level. It provides quite specific information concerning such topics as arbitrators' selection, the degree of legal involvement, and the recognition and enforcement of awards. More importantly, the Act has improve the jurisidictional appeal of South Africa as a preferred destination for resolving international commercial disputes across vast industries ranging from construction, telecommunication to natural resource industries. The author notes that these reforms are typical of developing countries; updating arbitration laws is crucial for attracting foreign investment, to which Khan (2021) refers. Having borrowed some of the best practises from other parts of the world, South Africa has taken its position as one of the most preferred seats of arbitration in Africa, thus enhancing economic growth through the confidence investors place in arbitration.

4.4. The UK

The UK has become one of the most developed international arbitration centres mainly because of the Arbitration Act 1996. This Act, which is based on the international arbitration, principles, leaves very little room for judicial involvement and interference, recognises party autonomy and offers finality to the extent of arbitral awards. The UK has made impressive efforts in both recognition and enforcement of foreign arbitral awards showing compliance with the New York Convention 1958 and has done an outstanding job in making the country one of the most popular for arbitration. One major aspect of the UK's Arbitration Act is that the role of the courts and arbitral tribunals is neatly separated. Thus, despite the fact that the arbitral tribunals may seek help and assistance of the UK courts for procedural matters that can arise in connexion with an arbitration proceeding, the courts are powerless to steer or influence the substantive claims of the matter unless the provisions of the Act permit them to do so. This has given rise to a legal regime that favours arbitration proceedings because courts do not interrupt the process unnecessarily.

According to Leung (2019), the LCIA is one of the most preferred worldwide arbitration centres more so due to the hospitable legal structure in the United Kingdom. In light of the United Kingdom legal system the UK courts have stood very supportive of any arbitration processes but at the same time refrain from undue intervention. For instance, in the Halliburton Company v. C Reception of the International Commercial Arbitration [2020] UKSC 48 involves a consideration of Chubb Bermuda Insurance Ltd wherein the Uk Supreme Court maintains the sanctity of the arbitral process through questions of Bias while setting out the finality of awards. This ruling also evidenced the court's devotion to its impartiality in arbitration without interfering with issues that rightly belong in the tribunal's scope of work.

The UK judiciary not only approves arbitration but also strengthens the arbitration awards which have very limited progressives of appeal. Under the Arbitration Act 1996, the UK offers limited means to challenge an award – in fact, section 68 only permits to challenge on the grounds of serious

irregularity, although the courts strictly construed these grounds as well. This is quite opposite to the existing legal setting of Pakistan where the awards can be challenged on number of general grounds including public policy of the country and where litigation prolongs for years. Iqbal (2020) notes that Pakistan has an outdated arbitration regime which markedly reduces the country's attractiveness for foreign arbitration, as courts often reverse and stagger arbitral awards on the pretext of broad, discretionary grounds. As a result, by limiting the circumstances under which judicial intervention may occur in the process of arbitration the UK's Arbitration Act provides the necessary framework for business to use arbitration as the final determination regarding their disputes, which would otherwise prolong the period of uncertainty. In the case Pakistan also introduces same principles in its Arbitration Act 2024; it could greatly reduce the number of protracted proceedings as well as enhance the finality of arbitration, making the country a more favourable destination for domestic as well as international arbitration. The UK also has a strong profile in New York Convention on the basis of supportive regime relating to enforcement of foreign arbitral awards. What has been stated about UK courts, and rightly so, is that they have been shy away from interfering with the validity of arbitrations unless petitions are rife with issues of fraud or breach of natural justice. This makes several parties believe that their awards given via arbitration will be respected and hence arbitration becomes a stable process.

5. Legal Frameworks Regarding Arbitration in Pakistan

Although Pakistan potentially improved its modernization of arbitration framework with the passage of the Arbitration Agreements and Foreign Arbitral Awards Act 2011, which incorporated the provisions of New York Convention, 1958 in to its domestic law, the domestic arbitration is still governed by the Arbitration Act, 1940. The 2011 Act strengthened existing enforcement of foreign arbitral awards in Pakistan and improved Pakistan's international image necessary for greater investor confidence in the country. According to Iqbal (2020), this awareness has been augmented with the 2011 Act relevant to facilitate the qualification of Pakistan as an arbitration-friendly country for international cross-border disputes, more so in relation to international awards.

However, in Pakistan there are several weaknesses in the domestic arbitration still attributed to the provisions of the Arbitration Act 1940. These include; The 1940 Act allows extraneous intrusion of the court especially when appointing arbitrators, making interim orders and setting aside awards. Such judicial interference has led to the prolongation of the legal process and delayed the concluding aspects of arbitration in the country. On the same note, the Act does not adequately embrace the principle of party autonomy to develop their arbitration agreements; a principle that has quite recently evidenced the flexibility of modern arbitration law in the choice of arbitrators, of the applicable procedure rules, or of the arbitration place. This has discouraged many businesses from entering arbitration in Pakistan because the population prefers mechanisms that are less likely to involve the courts.

6. Pakistan's Draft Arbitration Bill 2024: A Significant Legal Reform after 84 Years

In April 2023 the Chief Justice of Pakistan in the Supreme Court of Pakistan issued a direction to formulate the Arbitration Law Review Committee (ALRC) with regard to examining the status of the arbitration laws in Pakistan and to identify its needs for reform. Bearing the credit of its establishment under the L&JCP, ALRC was tasked to draught the laws that could potentially place the Pakistani arbitration on par with the international especially with the UNCITRAL Model Law ALRC was led by Honourable Mr Justice Syed Mansoor Ali Shah .

While the substance of the Draught Arbitration Bill along with the two subsequent revisions were published last year and this earlier this year and have given direct prospects for both international and domestic inputs. In addition, members of the ALRC used inputs from domestic scholars and other scholars from around the world. Therefore due to such colleagues, the ALRC was able to complete the draught for the Bill and formally submitted it to the Federal Minister of Law and Justice on 2nd

May, 2024, for the Government to pass it as a legal Bill in the Parliament. The following is a post, which in this case is spot on,Â concerning some of the important things outlined in the Bill.

7. Salient Features of Pakistan's Draft Arbitration Bill 2024

Inspiration and Basis: The Draught Arbitration Bill 2024 mainly closely follows the provisions of the UNCITRAL Model Law and has been enacted to repeal the ineffective Arbitration Act of 1940. This was an act which was in effect when Pakistan was under the colonial rule and unfathomably allowed much judicial interferences and thereby reduces the arbitral advantages of the country against the incessant litigation. It has been found that more than half of the provisions of the Bill have borrowed heavily from the Indian Arbitration and Conciliation Act 1996, since both India and Pakistan follow the English legal system. Further, it also included features of arbitration laws of other common law countries such as United Kingdom, Singapore and Malaysia to update and strengthen up the arbitration law of Pakistan.

Pro-Enforcement Ethos: It would be recalled that the Pakistani judiciary has in recent years shifted towards a pro-enforcement stance on foreign awards – more so under the 2011 Act to implement the New York Convention. This new Bill is designed to introduce similar pro-enforcement principles for domestic arbitration to enhance the confidence of local participants in arbitration as a final and effective means of solving disputes. In so doing, the Bill precludes substantive judicial intervention so as to encourage the culture of arbitration in Pakistan.

Comprehensive Scope: Technically, Pakistan Constitution divides legislative rights between federal and provincial governments where federal government deals with international matters of arbitration and provincial governments deal with domestic matters of arbitration—But the Bill covers both. To avoid similar future conflicts, the Bill recommends that provincial legislatures delegate power over domestic arbitration to the federal government according to the provisions of Articles 144 and 147 of the Constitution. This strategy will help harmonise arbitration practises across the country as well as make the legislation reflect on domestic and international disputes appropriately.

Distinction between International and Domestic Arbitration: The Bill recognizes the difference in the requirements and capabilities of the parties to international and domestic disputes, because it draws a clear distinction between international commercial arbitration and domestic arbitration. Compared to the Model Law, it offers a more accurate specification of international arbitration by indicating such factors as the place of the parties' incorporation and the central administration of the business. Also, parties in Pakistan, another included party in the convention, can choose participate the international arbitration either by mutual consent or choosing foreign arbitration rules or governing laws. This clear differentiation enables high profile corporate players to exercise increased control over international arbitration, domestic arbitration, however, continues to have some court intervention.

Pro-Arbitration Policy: The Bill favours arbitration by removing grounds through which the parties can challenge the arbitral process. This mean, it oblige the court to stay any proceedings where there is prima face evidence of an arbitration clause, and let the arbitrator decide on jurisdictional issues. This is quite a departure from past legislation that allowed the courts to come in at earlier stages of arbitration proceedings. Further, the Bill enshrine the competence-competence principle which allows arbitral tribunals to decide on their jurisdiction including when the arbitration agreement's legal validity is at issue.

Arbitrability of Matters: The Bill increases the list of disputes which may be referred for settlement through arbitration. For example, under the 1940 Act, some conflicts were said not to be arbitrable when certain statutes granted jurisdiction to special courts or authorities. The new Bill now indicates that unless it would be against its setting of public policy, such designations cannot put these aspects beyond the jurisdiction of arbitration. This amendment broadens the range of possible disputes that can be resolved through arbitration, as well as add finance, corporate, and intellectual property issues

controversies that, in the past, could only be resolved by courts or tribunals with subject-matter jurisdiction.

Appointment and Challenges of Arbitrators: The Bill raises multiple changes in the procedure of appointing arbitrators. Unlike the 1940 Act, it prohibits the nominating of an equal number of arbitrators. Where no agreement has been made between the parties on this issue then the general rule will be to have an individual arbitrator. High Courts will also make decisions regarding the institutions or persons referred to for the appointment of arbitrators and such decisions will be final and shall not be vailable to appeal. Further, an Arbitration Council for each High Court will be set up for arbitration in case parties have not agreed to rules of arbitration.

Interim Measures: Pursuant to the Bill, both the judicial and the arbitral courts have powers to grant interim directions. However, whenever there is an established arbitral tribunal, the courts are greatly restricted in their ability to grant interim measures except where the tribunal is unable to afford adequate measures. The Bill also set a 90-days' time frame, in which any party that has commenced the arbitration process upon receipt of court ordered interim measures, cannot delay the process in order to gain an unfair advantage. Tribunals are permitted to give ex parte interim relief if notice would prejudice the process while any interim relief granted by the tribunal could be enforced through the courts.

Annulment and Enforcement of Arbitral Awards: The Bill contains provisions for the appeal of awards that are compliant with the provisions of the Model Law, although this is accompanied with very sharp restrictions on the possibilities of appealing on grounds of public policy, in order to discourage unmeritorious claims. It means that the public policy challenges are limited to cases of fraud, corruption, matter associated with natural justice and other violations of justice and equity that are of considerable magnitude. In relation to domestic arbitration, courts can set aside awards where they are made 'pur складі%%%simple illegality,' although this does not include mistakes when interpreting the law, or re-evaluating evidence for himself. Furthermore, as is stated in the Bill, there is no need for awards to be made into a "rule of the court" before enforcement is effected whereby such awards are enforceable automatically unless annulled.

8. The Need for Reform in Pakistan

Although India, Brazil, South Africa, and the UK have initiated great reforms to modernise its arbitration laws, Pakistan still lags behind with the Arbitration Act of 1940. According to Khan (2021), as there are no comparable changes, Pakistan may stay insignificant in the sphere of international arbitration, while companies turn to avoid the country for resolution of their disputes. The Arbitration Act of 1940 allows the courts to intervene in arbitration and reduce party autonomy giving rise to inefficiencies that deter business entities from choosing Pakistan as their preferred seat of arbitration (Abbas, A., Khan, M. M. A., & Lohani, A. 2022)

Furthermore, the Arbitration Agreements and Foreign Arbitral Awards Act of 2011 which is vital for mainland Pakistan to ratify the New York Convention have not amended the defects in the domestic arbitration. This has given rise to unequal treatment of domestic and foreign arbitral awards so confusing signals have been cast which undermines confidence of business and foreign investors in Pakistan's dispute resolution systems (Sarwar, K. 2023). To deal with these challenges, this paper proposes the Arbitration Act of 2024, which is inspired from the UNCITRAL Model Law, and contains several novel features intended to bring Pakistan's arbitration landscape into the present century. First, the Draught Law will sharply limit judicial interference in arbitration processes, thereby establishing the courts' constructive role rather than proscriptive one. Second, it would increase the flexibility of the parties in putting the arbitration agreements into operation, for example as to the choice of arbitrators, set of applicable rules, and the place of arbitration. Finally, the Draught Law is designed to reduce the bureaucracy by decreasing the time necessary to enforce the award and

the possibilities to appeal to the award in the desired jurisdiction on the grounds of quite vague and too broad grounds.

In the case of the subject country, Pakistan, Iqbal argues that similar reforms are needed if the country is to lure investors and market the nation as an ideal location for national and international arbitrations. If Pakistan emulates best practises from around the world particularly from countries like India, Brazil, and South Africa, it would indeed be paving way for sharper efficiency in the system of arbitration and a more efficient economic investment and development.

The dissynchronisation of Arbitration Act of 1940 with the current dispensation has created disparity in enforcing domestic as well as the foreign arbitral award in Pakistan. Thus, while foreign awards get a favourable environment in New York Convention even though they may be enforced under the 1940 Act, domestic awards receive stringent judicial scrutiny under the 1940 Act. This gap has led to delays, high costs and in some cases; the courts have declined to give effect to valid arbitration awards. Iqbal (2020) has described that, despite above provisions of the two laws, the inconsistency also demoralises the business confidence in the arbitration process in Pakistan, also it has left many legal practitioners in confusion.

However, various challenges have hindered the process of reform to modernise Pakistan's arbitration laws According to Khan (2021), the following challenges have hindered the process of this change: The most significant challenge emanates from some legal personnel and some of the judiciary who consider arbitration as a rival to the conventional litigation process. This resistance has hampered the legislation process by avoiding early passage of the Arbitration Act 2024 and thus an early reform of the arbitration framework.

Additionally, the scarcity of professional arbitrators and the absence of destinations particularly for arbitration in Pakistan have also hampered the growth of sound arbitration environment. Unlike similar countries like Singapore or Hong Kong where giant steps have been taken to establish arbitration and then develop professionals in that particular field, arbitration in Pakistan lacks the institutional support that has evolved to cater modern arbitration requirements.

9. Proposed Reforms and Their Potential Impact

The bill for the proposed new Arbitration Act 2024 has potential in solving the shortcomings and downfall of the current arbitration system in Pakistan. Therefore, like over 90% of the best global arbitration legislation, the Draught Law is based on the UNCITRAL Model Law in an effort to shorten arbitrations, restrict courts from interfering and strengthening party autonomy. Thus, when it adopts the principle of kompetenz-kompetenz according to which the arbitral tribunals can decide on their jurisdiction, the Draught Law considerably limits the prospects for court intervention, thus enhancing the effectiveness as well as the finality of the awards. These changes also set down obvious procedural guidelines for the appointment of the arbitrators and parties as well as concerning the disclosure of any interest in the case, and the issuance of interim orders that should help bring Pakistan's arbitration in line with the international standards. These reforms have the potential of making the Pakistani legal system a preferred destination for domestic and international arbitration and thereby provide efficient mechanism for redress of greivances to the business community.

10. Suggestions for Enhancing the Arbitration Bill 2024 Based on Inspiration and Scope

Incorporate Global Arbitration Best Practices: To further understand the formulation of The Bill, we can find that The Bill has its root from the Model Law, many other international systems include the Indian Arbitration and Conciliation Act, 1996. Thus, it is logical for the Bill to keep extending the reference to international experience and trends: third party funding in arbitration and e-arbitration. My expectation on this is that since concerns occasioned by the dynamism of the international arbitration environment will be adequately addressed by the Bill.

Address Judicial Intervention to Strengthen Autonomy: Thus, since the Bill is going to be voluminous than the 1940 Act, this must tone down as far as it is possible, the restrictive impacts especially on the courts in the matters proclaimed in the 1940 Act, as it has been seen in the course of this paper while addressing the procedural and jurisdictional concerns. MORE could be done to trim the court review possibility down to that of the arbitral decision, to boost the authority of arbitration even further than the process of litigation.

Promote Public Awareness of Arbitration Advantages: Consequently, a public awareness campaign could be initiated which will go a long way in informing the public and other business entities on various benefits of arbitration including cost, time and confidentiality; given the fact that local parties tend to turn to court most often due to their excruciating familiarity with the court processes. This would make arbitration a more attractive form of effective resolution of dispute in case of Pakistan.

Encourage Provincial Cooperation for Consistency: Should the Bill deal with both domestic and international arbitration, it should be possible to persuade the provincial legislatures to pass particular resolutions whereby they referred from their legislations and executives to the federal authority. It would ensure parity with regards to Pakistan's arbitration statute laws and may address SOPs' potential conflicts in between federal and provincial laws.

Strengthen Institutional Arbitration Frameworks: But it will be more beneficial to note that the Bill contains very progressive provisions in as much as formation of Arbitration Councils under each of the High Court. On this foundation, it is necessary to encourage the development of more specialised arbitration institutions in large cities: Karachi Lahore Islamabad. These institutions can be capable of providing training programmes on the development of the same and also the panels of arbitrators for appointment to the disputes and all other assistance in making the arbitration process most efficient.

Develop Specialized Arbitration Rules for Key Sectors: It is therefore appropriate to have sectorial specific rules for arbitration in Pakistan for sectors such as construction, banking and energy and technology and etc. These are the provisions of this Bill must create the intention of creating specialised procedures through sectoral associations in an endeavour to have abundant mechanisms in handling most of the specialised matters that might emerge in sectors.

Reducing Arbitrability Restrictions: On this, it might be said that it is a good thing that the Bill no longer use expressions referring to matters which are non-arbitrable under the provisions of the 1940 Act. However, in order to mitigate the uncertainty to the public policy exception one has to expand the definition of the sidelines of the arbitrable disputes in the future regulations. Namely, it is necessary to emphasise that Finance disputes, Corporate Issues as well as the ralated Intellectual Property sessons must be deemed arbitrable.

Encouraging Party Autonomy in Arbitration Procedures: Self determination of a party is crucial in the current world when it comes to arbitration. The Bill should afford parties greater latitude in selecting the procedural law of arbitration apart from recognising the desirability of enabling them select arbitrators and the possibility of inviting arbitrators from international institutions such as SIAC, ICC, LCIA among others. In addition, under the Bill there will be ad hoc arbitration in cases of unambiguous situations enabling the parties regulate many aspects of arbitration in the so long as it does not violate the legislation of Pakistan.

Restricting Judicial Review of Arbitral Awards: But it also must also have another layer in order not to have public policy issues dragged up to facilitate enforcement on an expedited basis. There is validity of an award for the court to reconsider its merits of an award is only permissible where award was obtained through corrupt means or fraud or was a blatant violation of the principle of natural justice.

Strengthening Guidelines for Arbitrator Independence and Impartiality: The Bill lays down provisions on conflict of interest in terms of the IBA Guidelines on Conflict of Interest. Besides the

support of this framework, the Bill should mandate that the arbitrators receive continuing education every so often, about conflicts of interest and ethical considerations, and a sufficient cheques and balance system by the institution in other to enhance the public confidence on the credibility of the arbitral tribunals in Pakistan.

Encourage Opting into International Arbitration: The Bill allows the option of International arbitration standards to be made either expressly or by implication. To build on this work, it is beneficial to propose some rules regarding how the involved parties choose to participate in the international regimes, and which practical scenarios of the situations where the Pakistani parties may find useful to apply the rules on international arbitration for the transition.

Develop a Streamlined Arbitrator Appointment Process: I have also realised that delay in the appointment of the above arbitrators may also be a challenge towards the arbitral process. As to the proposal of the institutions to appoint the arbitrators, it has been commended by the Bill and High Courts. To these ends these institutions should be afforded timeframes within which an appointment could be made with little concession to administrative mechanisms that may compromise arbitration.

Provide for Emergency Arbitrator Appointments: One possibility that the Bill provides is that one may find room for emergency arbitrators and many of the parties may get an interim measure from the full arbitration tribunal. This would also improve willingness to obtain immediate remedy and safeguard its interest in exceptional events.

Expand the Use of Technology in Arbitration: The Bill should also prohibit, permit or regulate the use of technology in arbitration proceeding through offer of hear; through video or tele-conference, submission of documents in electronic form and signing of awards through electronic means. This would ease arbitration and particularly international arbitration by minimising on the costs which would be incurred due to physical presence.

Impose Penalties for Frivolous Challenges to Awards: The Bill should also provide measures whereby any person who formulate or lodge uninteresting or frivolous challenge to the arbitrators' awards should be sanctioned. This would prevent the cases where awards would only be imposed after a number of years and it would uphold the arbitral proceedings.

Promote Arbitration as a First Resort in Commercial Contracts: As for the advice which may be addressed to the government it should guarantee that the parties to any commercial contract include arbitration clauses most often in the large and significant deal. The Bill should therefore be supported by legislation since the likes of this Bill can only be backed by public private partnership with a view of popularising arbitration as the method of choice for commercial disputes.

Monitor and Evaluate the Implementation of the Bill: However for the Bill to receive success there is the need to provide for a monitoring body that would monitor progress on the implementation of the Bill. This body can gather information on the arbitration case, the award challenges, and the enforcement results and therefore the legal framework will be developed in future.

Integrate Arbitration with Mediation and Other ADR Mechanisms: It should also be integrated in the Bill to accommodate the party where it can mediate while on arbitration or before arbitration. The indicated hybrid can help to accelerate the settlements and address some of the problems of the arbitral tribunal.

Educate Legal Professionals on New Arbitration Laws: Since the Bill introduces several new ideas and actions paradigms to the existing legislation to make adjudications of various kinds based on this Bill a challenge, it is imperative to establish integrated training for the judges, lawyers, and arbitrators. As regards to the above educational programmers, these should show that the former should show areas that distinguish procedure between the 1940 Act and the 2024 Bill so as to make a distinction to the new framework.

Ensure Transparency in the Appointment and Conduct of Arbitrators: The Bill should provide that the appointment of arbitrators and the decisions made by tribunals pertaining arbitration should be public and accessible as should the records of qualifications of the appointed arbitrators and of any challenge having been made against an arbitrator on the list. This will also increase the public credibility of arbitration as a fair process since the arbitrators will not be biased.

11. Conclusion

The Draft Arbitration Bill 2024 is a quite progressive attempt to reform the arbitration laws in Pakistan by replacing the over six decades old Arbitration Act of 1940. According to Danese the issues such as over eminent judicial influence, restricted party autonomy and procedural problems in the arbitration process, which have not been solved by other models, have been addressed in the Bill in connexion to the UNCITRAL Model Law, using experiences of other international frameworks. Accommodation of the pro-arbitration agenda is through the limitation of judicial involvement, the broadening of the matters susceptible for arbitration and the incorporation of more effective mechanisms for making arbitrators appointments and implementing awards. Nevertheless, the successful adoption of the Draught Bill is premised on several sensitive factors such as infrastructure for ADR, professional development of the arbitrators and harmonised cooperation between the provinces. As this study has found, some of the recommendations required to ensure the effectiveness of the application of the Bill include; public awareness, restricting the role of the Judiciary in the matter, embracing technology, and enhancing institutional arbitration systems. If enforced, the Draught Arbitration Bill 2024 could take Pakistan to a brand new level of setting up and recognition of the country as more attractive for domestic as well as foreign arbitration. It would not only help in simplifying the different procedures of dispute solve but also work positively for the economic growth since this would enhance investors' confidence, thus helping in evading judicial congestion. Significantly minimising and enhancing the arbitration laws in Pakistan gives the country the best chance to emerge as the arbitration hub in the region.

References

Abbas, A., Khan, M. M. A., & Lohani, A. (2022). The Optimization of Judicial Involvement in Commercial Arbitration in Pakistan. Pakistan Journal of Social Sciences, 42(1), 129-135.

Abbas, S., & Kasuri, M. R. (2020). PUBLIC POLICY DEFENSE TO REFUSE ENFORCEMENT OF FOREIGN ARBITRAL AWARD: A COMPARATIVE STUDY.

Ahmed, F. (2023). The Draft Bill for Arbitration Act 2024: A Step Towards Modernizing Pakistan's Arbitration Regime. Journal of Legal Reform, 15(2), 45-60.

Aslam, Z. (2022). Challenges of Arbitrator Bias in Pakistan's Arbitration Framework. Pakistan Journal of Arbitration Studies, 10(1), 30-42.

B Born, G. (2021). International Arbitration and Forum Selection Agreements, Drafting and Enforcing.

Born, G. B. (2020). International Commercial Arbitration (3rd ed.). Kluwer Law International.

Choudhary, M. (2015). The Historical Context of Arbitration in Pakistan. Asian Journal of Law and Society, 7(3), 22-37.

Cordero-Moss, G. (2024). International Commercial Contracts: Contract Terms, Applicable Law and Arbitration. Cambridge University Press.

Engholm Cardoso, M. C. (2020). Impecunious parties in international commercial arbitration.

Haider, R. (2017). Judicial Intervention and Its Impact on Arbitration in Pakistan. South Asian Law Review, 12(4), 112-130.

Iqbal, S. (2020). The Enforcement of Foreign Arbitral Awards in Pakistan: A Critical Analysis. Pakistan Business Law Review, 5(1), 95-110.

Khan, A. (2024). Arbitration in Pakistan: An overview. Available at SSRN 4779213.

Khan, M. (2021). Reforming Pakistan's Arbitration Regime: Lessons from Global Trends. International Journal of Arbitration and Dispute Resolution, 8(2), 25-39.

Leung, C. (2019). Singapore's Success as a Global Arbitration Hub: Legal and Institutional Frameworks. Asian Arbitration Journal, 6(3), 60-74.

Mukhtar, S. (2016). Settlement of Disputes by way of Arbitration in Pakistan. World Journal of Social Science Research.

Naeem, A., & Malik, T. (2019). Limitations of Party Autonomy in Pakistan's Arbitration Framework. Journal of Dispute Resolution Studies, 9(2), 101-120.

Phua, M., & Chan, M. (2020). The distinctive status of international arbitration agreements in English private international law?. Arbitration International, 36(3), 419-427.

Qutub, S. S., & Aziz, R. (2020). From Eckhardt to Orient: Transformation of the Judicial Approach to International Arbitration in Pakistan. PLR, 11, 1.

Rashid, H. (2020). Arbitration Reforms in the UAE: Adopting the UNCITRAL Model Law. Middle Eastern Arbitration Review, 14(1), 75-88.

Sarwar, K. (2023). PITFALLS IN THE DOMESTIC AND INTERNATIONAL COMMERCIAL ARBITRATION IN PAKISTAN. Pakistan Journal of International Affairs, 6(2).

Siddique, K. (2016). Arbitration Law in Pakistan: A Critical Assessment. Pakistan Law Journal, 18(4), 50-68.

Tahir, M. I. (2023). Arbitration System in Commercial Disputes in Pakistan and Enforcement of Foreign Awards. Al-NASR, 73-92.

Zahid, M. (2018). Arbitration and Case Backlogs in Pakistan: An Unresolved Dilemma. Law and Policy Review, 22(3), 135-148

Zaman, M., & Sarker, M. (2023). National Courts' Power to Set aside an International Arbitral Award: An Aberration of International Commercial Arbitration. Issue 1 Indian JL & Legal Rsch., 5, 1.