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The Role of Arbitrability in the Enforcement of Foreign Arbitral Awards: A Study of Legal Landscape of Pakistan

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Abstract
The enforcement of foreign arbitral awards (FAWs) in Pakistan is fraught with challenges due to ambiguities in the legal framework, inconsistent judicial interpretations and the frequent invocation of public policy (PP) exceptions. Despite Pakistan's signed of the New York Convention in 2005 and the enactment of the REFA, 2011 the enforceability of foreign awards remains uncertain. This study examined the role of arbitrability in the enforcement of foreign arbitral awards in the perspective of Pakistan. The study identifies the lack of clarity in defining arbitrability, judicial intervention, and the broad interpretation of public policy as key obstacles to enforcement. The objective of the study is to analyze legal frameworks which are complaining with FAWs and propose reforms to enhance the enforceability of FAWs. The study employed the qualitative method to documentary analysis such as case laws, legal frameworks and scholarly literature, with a focus on landmark decisions such as Hub Power Company v. Pakistan WAPDA (2000), Fauji Fertilizer Company Limited v. Societe Generale de Surveillance (2015), and Pakistan v. Broadsheet LLC (2021). The study highlighted the dispute between domestic arbitral award and FAWs which is emphasizing the judiciary approach to arbitrability. The Pakistan has made effort to align its international laws for arbitration. By implementing these reforms, Pakistan is enhancing the enforceability of FAWs, attract foreign investment, and establish itself as a pro-arbitration jurisdiction. This study contributed to the academic and practical discourse on arbitration in Pakistan, offering insights into the challenges and opportunities for improving the country's arbitration framework.

Keywords: Arbitrability, Foreign Arbitral Awards, Public Policy, New York Convention, Judicial Intervention, Legal Reforms.

Background

Arbitrability refers to the suitability of a dispute for resolution through arbitration and its critical concept in FAWs as it determined while a dispute can be settled by an arbitral tribunal and whether the resulting award is enforceable under national and international laws. The international legal frameworks' regarding the enforcement of foreign arbitral awards is the New York Convention (NYC). However, the role of arbitrability on the enforcement of FAWs is often influenced by domestic legal frameworks including PP considerations, and judicial interpretations.

In Pakistan, the foreign arbitral awards are enforced through the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 (REFA, 2011). Despite these legislative frameworks, challenges persist in the enforcement of FAWs due to some decencies in the role of arbitrability. The courts of Pakistan have occasionally refused to enforce FAWs on grounds of non-arbitrability or raising concerns about the country's commitment to international arbitration norms.

The enforcement of FAWs in Pakistan is fraught with challenges, primarily due to ambiguities in the legal framework, inconsistent judicial interpretations, and the frequent invocation of PP exceptions. A significant issue is the lack of clarity of the arbitrability disputes which is often leading to judicial intervention and delays in enforcement of FAWs. Additionally, the courts of Pakistan are occasionally refused to enforce FAWs on grounds of non-arbitrability. Therefore the gaps and inconsistencies of the legal frameworks and judicial practices are hindering the effective enforcement of FAWs in Pakistan. This study seeks to address these issues by examining the concept of arbitrability and analyzing judicial trends as well as identifying the challenges at time of enforcing FAWs in Pakistan. This study explored the role of arbitrability in the context of enforcing for enforcing FAWs in Pakistan and examined the legal framework, judicial trends and challenges regarding determining whether a dispute is arbitral regarding the enforcement of FAWs.

Literature Review

The enforcement of FAWs is a cornerstone of ICA is ensuring the parties on arbitration and an effective dispute resolution mechanism. The NYC served as the international legal framework which is governing the recognition and enforcement of FAWs. However, the enforceability of FAWs is hinging on the concept of arbitrability, which determined while a dispute is suitable for arbitration under the laws of the enforcing jurisdiction (Born, 2014). Arbitrability is a complex and jurisdiction-specific concept, influenced by domestic legal frameworks, PP considerations, and judicial interpretations (Ali, 2012). The enforcement of FAWs in Pakistan remains inconsistent, primarily due to judicial intervention and the frequent invocation of PP exceptions (Ahmed, 2018). Pakistani courts have occasionally refused to enforce FAWs on grounds of non-arbitrability is raising concerns about the country's commitment to international arbitration norms (Rehman, 2020).

According to Born (2014) the role of arbitrability regarding the enforcement of FAWs referred to the capacity of a dispute to be resolved through arbitration. The determination of the role arbitrability regarding the enforcement of FAWs varies across jurisdictions with some countries adopting a broad approach and others imposing strict limitations (Choudhry, 2019). In Pakistan, the role of the arbitrability regarding the disputes is influenced by PP considerations which are broadly interpreted by the courts of Pakistan (Hasan, 2016). This has led to uncertainty in the enforcement of FAWs as courts have the discretion to refuse enforcement on PP grounds (Zafar, 2016). Judicial trends of Pakistan reveal a mixed approach regarding the enforcement of FAWs and demonstrated a reluctance to enforce FAWs (Shah, 2019).In the case of Hub Power Company v. Pakistan WAPDA, the Supreme Court of Pakistan emphasized the importance of PP in determining the enforceability of FAWs (Siddiqui, 2018). This case highlighted the dispute between international arbitration standard and domestic legal standard which is continues to pose challenges for the enforcement of FAWs Pakistan (Bhatti, 2017).

The PP exceptions are a recurring theme in the enforcement of FAWs. Under Article V (2)(b) of the NYC enforcement can be refused if it would be contrary to the PP of the enforcing state (United Nations, 1958).The interpretation of PP in Pakistan is broad and encircles issues such as corruption, fraud as well as violations of national legal frameworks (Rehman, 2020). This overbroad interpretation has been much criticized on the front of making FAWs unenforceable and creating uncertainty for international investors (Yousaf, 2021). The role of courts of Pakistan in order to enforcing FAWs is subject to criticisms. Courts are to be expected to play a leading role in arbitration,

but they have often been charged with very high degrees of intervention, notably in matters of PP or non-arbitrability (Ahmed, 2018).

The judicial intervention is due to inexperience in ICA principles and, general tendency to give preference to domestic legal principles over international obligations (Zaman, 2020). No, not really. The judges need to be well aware of international principles concerning arbitration but more often than not, they prefer to rely on their domestic cannon rather than to shed the precious glory of our obligations.

In response to these challenges, there have been attempts made to strengthen the arbitration environment in Pakistan. The passing of the REFA, 2011 marked an important step in bringing the laws of Pakistan in consonance with the provisions of the NYC (Khan, 2015). Very good legislation is being somewhat stalled by the not-so-consistent judicial policy and the legal practitioner's group's ignorance (Malik, 2020). Wahab (2017) suggests that changes be made to clarify the concept of arbitrability, minimize PP exceptions, and enhance a judge's and lawyer's capacity in international arbitration. For example, Zubair (2018) says the analysis of the law of other jurisdictions on arbitrability could provide some guidance on how to reform the arbitration law of Pakistan. Narrowing down the scope of PP so it correlates with the international standards of interpreting the same, would cut back the judicial intervention in the issue of arbitration as well (Qureshi, 2017). The enforcement of foreign arbitral awards in Pakistan is much worse due to an almost total absence of any arbitral cooperation sentiments in the legal and judiciary community.

Zahid (2019 argues that the judiciary needs to be sensitized through greater review and training on principles of ICA. An in-depth survey of its arbitral law provision needs to be carried out to identify the loopholes that hamper the enforcement of FAWs according to Rizvi (2021). These will be reforms in enhancing Pakistan's image where it will become a pro-arbitration site for investment pledges. To sum up, ambiguities within the legal framework along with divergent judicial interpretations and a broad invocation of a PP exception camouflage the direct enforceability of foreign arbitral awards in Pakistan. So much so, indeed, there have been some attempts by Pakistan to bring its law in line with the global practice of arbitration, which did not bear fruits in clear terms.

Addressing these challenges is for an in-depth review of the arbitration framework of Pakistan, thereby introducing structural reforms that clearly settle the concepts of arbitrability and further reduce judicial intervention while fostering a pro-arbitration culture. In the process of realizing these reforms, the implement enhanced the enforceability of FAWs and make Pakistan a more favorable destination for ICA.

Analysis the Legal Frameworks Regarding the Arbitrability

The recognition and enforcement of FAWs within the system of law in Pakistan leading the process are carried out applying the bodies of rules embodied in the national legislations and multilateral conventions. The paramount of them all is NYC, followed by REFA, 2011 taking into account the aspirations of these treaties to provide a pattern of recognition and enforcement of FAWs as will put Pakistan in line with international standards in the practice of arbitration. The study has reflected some doubts to the effectiveness and regularity enlarging out of the infusion of the laws and the strength of their implementation.

The NYC happens to be the pivot source to the arbitration systems on an international platform ensuring justice and implementation of FAWs under a common approach among the subscribing nations. Article III of the NYC compels the member countries to recognize and enforce such awards respecting the domestic procedural laws, with some exceptional details in Article V. Areas of exceptions are such as the invalidity of the arbitral agreement, lack of proper notice, and violation of PP (United Nations, 1958).

Pakistan ratified the NYC in 2005, which implied the willingness and desire of Pakistan to abide by international norms on arbitration. Nevertheless, the implementation of the Convention in Pakistan at the practical level has been relatively more fractional since the country has lacunae in domestic legislation as well as judicial practices. For example, sometimes, Pakistani courts have not enforced foreign awards on the plea of PP which is widely defined under domestic law (Ali, 2012).

This has invited comments that support for the Convention from Pakistan is more notional than real, as undertaking rules of law are often put by the courts on precedence over their duties under international law (Rehman, 2020). The REFA, 2011 was legislated to bring the Pakistan arbitration framework at par with the NYC, filling the vacuum created by the previous Arbitration (Protocol and Convention) Act of 1937. This 2011 Act includes directly within its own provisions those of the NYC, thereby providing a very clear legal footing for the enforcement of foreign arbitral awards.

Section 6 of the 2011 Act is almost verbatim to Article V of the NYC listing the grounds on which enforcement of FAWs may be refused: matters relating to invalidation of the underlying agreement, insufficiency of notice, and contravention of PP (Khan, 2015). These provisions notwithstanding, other scholars criticize the 2011 Act for having a very minimal impact on making the foreign awards enforceable. It is said that this Act has failed mainly because of the inconsistent judicial decisions and lack of awareness on the part of legal practitioners in enforcing such provisions (Malik, 2020).

For instance, the Supreme Court of Pakistan in the case of Hub Power Company v. Pakistan WAPDA has held that PP is the touchstone for testing enforceability of FAWs thus, bringing out the inherent conflicts between domestic legal principles and international arbitration norms. (Siddiqui 2018). One of the critical problems relating to the enforcement of FAWs in Pakistan is the wide interpretation attributed to PP under the municipal laws. Although Article V(2)(b) of the NYC provides for refusal of enforcement based on matters contrary to the PP of the forum state, Pakistani courts have expanded their notion of PP. It typically includes issues relating to such vices as corruption, fraud, and contraventions of domestic laws and regulations (Hasan, 2016).

This overly broad reading has been used as an excuse for the ineffective enforceability of foreign awards and uncertainty for international investors (Yousaf, 2021). An illustrative case is that of the Fauji Fertilizer Company Limited versus the Société Générale de Surveillance where the Lahore High Court did not enforce a foreign arbitral award that was valid under the NYC since to them it violated the public policy of Pakistan. Rule of a narrow interpretation of PP is essential in such judgments to benchmark the same with international criteria so that judicial intervention is decreased in arbitration matters.

First, legal practitioners and judges do not have a pro-arbitration mindset in Pakistan. At its enactment, the Act was meant to encourage arbitration as a substitute for litigation, but its implementation has not been quite successful since very little attention has been paid to the principles of ICA due to a lack of educational and training opportunities (Wahab, 2017). This has led to undue interference by the judiciary in arbitral proceedings, especially when the issue pertained to the PP or non-arbitrability principle (Ahmed, 2018). For instance, the Pakistani judiciary has been widely criticized for setting aside FAWs on minor grounds, and even errors of law and fact, which are not included in the grounds listed under the NYC (Zahid, 2019). This has been explained in terms of the lack of knowledge of the principles of ICA and the inclination of the judiciary to prefer the standards of the domestic legal system over the international obligation (Zaman, 2020).

Nevertheless, challenging the potential of the 2011 Act marks a great leap for arbitration in Pakistan. Previously, only a fraction of the provisions of the NYC applied, making enforcement

more ambiguous. The Act also constitutes a clear domestic set of laws comprehensive for the enforcement of FAWs. But, its true effectiveness lies in the hands of a dynamic judicial interpretation that might ensure strict adherence to international norms, which are designed to have more practical approaches. There has been a continuously mounting call for reform to obliterate the somewhat vague concept of arbitrability, to narrow down the public policy exceptions scope, and to enhance the judge and attorney capacity in ICA (Zubair 2018).

Qureshi (2017) suggests that the enforceability factor of FAWs in Pakistan could be trailed to a more specific interpretation of the PP and higher-judicial training on the principles of ICA. In its current form, the law under which FAWs are capable of being enforced in Pakistan makes a reliable platform valuing international arbitration between contracting nations that is more than the NYC, and in addition to the Act of 2011. Its implementation, though weak due to lacunae in the domestic law of arbitration, judicial intervention, and the prevalence of the PP exception against enforcement has not been very consistent. To overcome these challenges, an in-depth overhauling of the entire arbitration landscape of Pakistan is urged, clarifying the arbitrability concept, preventing unnecessary judicial interference, and promoting a pro-arbitration practice. Only such changes can make Pakistan easier when enforcing FAWs by enhancing its image as a pro-international-arbitration venue.

Case Study Analysis Regarding Arbitrability

The arbitrability of the dispute has always been a hot issue in the legal scenario of Pakistan. So far, the Pakistani judiciary has dealt with the concept in various cases and would naturally refer to PP municipal legal theories, and principles and norms of international arbitration.

In arbitrability of state entities and PP issues, the leading case is the Hub Power Company (HUBCO) v. Pakistan WAPDA (2000) from Pakistan arbitration jurisprudence. The supposedly arbitrable dispute involved state entities besides the public policy considerations. The dispute had originated in the Power Purchase Agreement (PPA) between HUBCO, a private power producer, and WAPDA, a state entity involved in Water and Power Development and responsible for power distribution in the country. It was a disagreement regarding adjustments in the tariff and payment obligations that provoked HUBCO to initiate arbitration, and eventually led to the arbitral award in its favor.

WAPDA challenged the award on the ground of non-arbitrability based on the public involvement of the dispute in two senses to wits public utility and public policy. The case therefore dealt with two principles of law: arbitrability of disputes involving state entities and PP exceptions that determine the reach of the arbitrability of such disputes under the laws of Pakistan. In its decision, the Supreme Court of Pakistan has held that disputes on the supply of public utilities, like electricity, are arbitrable unless their subject matter is against fundamental public policy. One of the main observations by the court was that the involvement of state entities or public utilities will not automatically make disputes non-arbitrable.

It can be determined only after a thorough discussion on whether the dispute involves public policy issues; the most common ground used here is national security or sovereignty. The court has given a negative finding to WAPDA's plea on non-arbitrability — upon the express principle that being a public utility it would not render the dispute as such non-arbitrable since the arbitration agreement between HUBCO and WAPDA was indeed valid and enforceable. It has further established that public policy requires very strict interpretations so as not to tarnish the image of FAWs which also calls for very light application in order to preserve every means of dispute resolution, including arbitration, in cases involving state entities and public utilities.

The relevance of the HUBCO v. WAPDA case to the subject of arbitrability and the enforcement of foreign arbitral awards in Pakistan is high on multiple counts. First, this case set a landmark

precedent that disputes of state entities are arbitrable as long as they do not contravene the basic PP principle. The case law has referred to it since, as in Pakistan Steel Mills Corporation v. Universal Gas (2019), where the arbitral award of disputes in matters of state entities has also been upheld as being arbitrable based on this principle. Secondly, the case reflected the urge for acceptance of the narrow version of the public policy exception, something most crucial in checking on how often the Pakistani courts quote public policy to deny enforcement of awards.

For instance, the Lahore High Court did not enforce a foreign arbitral award on public policy grounds in the case of Fauji Fertilizer Company Limited v. Société Générale de Surveillance (2015), which indicates the threat of the wide reading of the notion of public policy. Thirdly, it also reasserted Pakistan's commitment to the norms of international arbitration that is such an important determinant of whether foreign investments will flow in. By upholding arbitrability on disputes that involve public utilities, it provides international investors with the much-needed assurance that their disputes can be resolved through arbitration. More critical is that this has to embrace what are considered strategic sectors, such as energy and infrastructure, mostly whenever disputes involve either state entities or public utilities.

Fourthly, it also set for itself equilibrium in public interest protection and promotion of arbitration as an effective mechanism in resolving disputes. That is, it has been, until there occurs some breach of public policy fundamental principles. Thus this serves the much-needed balance to ensure that arbitration remains a viable option for matters of public importance.

The HUBCO v. WAPDA case proves an excellent source of reference into the profundity of Pakistan's arbitration jurisprudence. It touches some of the most important issues like disputes with state entities being arbitrable or an exception to public policy. The Supreme Court in its decision upheld the arbitrability of dispute sharply constraining the exceptions under PP in FAWs to date in Pakistan. A case is highly placed on its relevance with the case on which this study relies by providing the framework for resolving such disputes with the public utilities and State entities while simultaneously respecting "public interest." It has therefore contributed significantly toward efforts by Pakistan to assert itself as a pro-arbitration jurisdiction through the reinforcement of the principles of international arbitration.

The Fauji Fertilizer Company Limited v. Societe Generale de Surveillance (2015) case presents how the Pakistani courts perceive the PP exception when considering the enforcement of FAWs. The origin of the matter lied in a contract between Fauji Fertilizer Company Limited (FFCL), a Pakistani entity, and Societe Générale de Surveillance (SGS), a Swiss corporate entity. This agreement was for alleged corrupt and fraudulent practices. An award was delivered in favor of SGS by an arbitral tribunal, after which FFCL impugned its enforcement before the Lahore High Court on the ground that such an award would be against the PP of Pakistan as there was already an alleged corrupt practice. The learned judge concurred with the company and ruled to not enforce the award, reasoning that under the Pakistani law issue disputes relating to claims of corruption and fraud cannot be arbitrated and as such its enforcement would be against the country's public policy. The outcome of the judgment from the Lahore High Court accentuates the expansive interpretation of PP typically adopted by courts in Pakistan, thus having a resultant dynamism over and above the arbitrability of disputes and enforceability of foreign arbitral awards. The rationale of the court's decision is the fact that corruption and fraud are grave criminal acts that undermine the very essence not only of contractual relations but also of a legal system at large.

Once it declined to enforce the award, the court even underscored that matters of public policy, particularly on matters relating to corruption, eclipse the question of whether foreign arbitral awards should be enforced. The finding is thus in line with Section 56(1)(c) of the Arbitration Act, which also has an overriding public policy condition precedent to enforcement. The Lahore High Court noted that such bold steps are normally fraught with uncertainty and may further erode the

enforceability of foreign awards in Pakistan. The relevance of the case of Fauji Fertilizer v. SGS to the study of arbitrability and enforcement of foreign arbitral awards in Pakistan is that it illustrates the difficulties created in the process by the invocation of public policy exceptions in so many cases. Although under the NYC public policy is a valid basis to refuse enforcement, the expansive reading given to it by the Pakistani judiciary has resulted in a frequent, even rampant, misuse of the provision to justify non-enforcement even when the alleged violation is not amply demonstrated or does not squarely contravene the fundamental principles of public policy.

This runs against the spirit of the best practices in the world, which advocate the narrow interpretation of the public policy understanding protecting arbitration as an effective and good-faith dispute resolution mechanism. The case highlights the conflict between the principles of domestic legal systems and those of international arbitration practice. The Pakistani courts often place local notions of PP ahead of the imperatives of enforcing foreign awards. The case assumes a giant proportion in the face of international investors and business concerns in Pakistan. If Courts in Pakistan are not very particular about enforcing clauses, that is a warning in neon to foreign investors as to the dependability of the arbitral mechanism as a pre-eminent method of dispute resolution in Pakistan.

An unruly public policy exception can dissuade foreign direct investment and at the same time defeat the object and purpose for which Pakistan is trying to establish itself as a pro-arbitration jurisdiction. Such boldness in international arbitration means international arbitral jurisprudence needs reforms to remove these ambiguities on the rules raised in that country the necessary alteration will bring Pakistani law in great conformity with those rules to allow enforcement of FOSFA's award. Such corrections will make improvable the enforceability of foreign arbitral awards in Pakistan while making Pakistan more hospitable to international arbitration in general. In the closing of the Fauji Fertilizer v. SGS case, the paper will prove to you how Pakistani courts applied the rubric of public policy exceptions to enforce foreign arbitral awards.

The decision of the Lahore High Court not to enforce arbitral awards on the grounds of public policy, especially where there are allegations of corruption and fraud has shown that broadening the interpretation of PP in Pakistan as a ground has challenges. The concerns of the court's decision are valid regarding corruption and fraud. However, according to critics, such an approach leads to uncertainty and discourages enforceability of foreign awards. The case indicates the need for reforms calling for a narrowed interpretation of the public policy exception so that international arbitration in Pakistan is well-steered to international best practices. Such a move would help enhance enforceability of foreign arbitral awards in Pakistan and create a conducive environment for international arbitration (Zafar, 2016).

Pakistan v. Broadsheet LLC (2021) is a decision of great precedent value in asserting the practical enforcement of FAWs in Pakistan more particularly where there is a dispute between it and entities connected to the state. In its judgment, the Islamabad High Court established its power further to enforce foreign arbitral awards made by an arbitral tribunal in London in the face of the raised defense by the Pakistani state that such an award was unenforceable due to non-arbitrability based on public policy. The Court declared that PP should be construed narrowly and applied in limited circumstances to maintain justice, good faith, and national sovereignty. The Court's ruling further reinforced the now-prevailing opinion that legislative implementation of disputes involving state entities is the norm unless it related to the breach of fundamental public policy. This judgment has shown a different approach by the Pakistani courts to their previous applications in many cases where they invoked the public policy exception to refuse to enforce the foreign award. The ruling comes as a case in point in the matter of arbitrability, as it reflects a general trend in the pro-arbitration approach and attunes the Pakistani arbitration framework with international standards. Besides, this has duly informed international investors that in Pakistan, FAWs even those in disputes involving state entities, would

be recognized and enforced provided it does not contravene fundamental public policy principles. In this sense, the decision accentuates the need for a narrow reading of public policy exceptions and all judicial consistency to enhance the credibility of the country as a pro-arbitration jurisdiction (Rehman, 2020).

The decision in the case of Packages Limited v. Nestlé Pakistan (2016) is one that definitely sets the tone regarding the arbitrability of IP rights disputes in Pakistan. In this matter, the Lahore High Court held that IP disputes are arbitrable, therefore dismissing the claim that technicalities and public interest rendered them non-arbitrable. It was held that arbitration would be applicable to IP disputes only if there was a valid arbitration agreement and the dispute does not involve issues of fundamental PP. The ruling reinstates the need for arbitration in disputes involving IP that is critical towards fostering innovation, protecting intellectual property and, consequently, economic growth. This judgment thus brings the Pakistani arbitration scenario at par with international norms where an increasing trend is being witnessed in the resolution of technically complicated commercial disputes involving the rights to intellectual property through arbitration. This case is more special for studies of arbitrability because it reveals how careful arbitration can be drawn into specialized or technical disputes, which in turn, advocates the narrow concept of the public policy exception to safeguard awards. So, apart from a simple award some of its wider impacts have touched upon the investment attitude of stakeholders in or with reference to Pakistan and the environment that prevails, particularly the strength of arbitration among areas rest on guarding intellectual property (Zubair, 2018).

The Supreme Court of Pakistan, Habibullah Coastal Power Company, and Sui Southern Gas Company (2022) set a precedent that supports the arbitrability of public utilities, gas supply agreements' disputes in particular. The Court argued, striking down an objection to the arbitrability of the matter by SSGC— the fact that it involved a public utility, that there was nothing in the Pakistani law to detract that public utilities' disputes are non-arbitrable. It made explicit that unless the public utility involves issues that go to the very public policy core — such as national security or sovereignty it does not automatically divest the subject matter of any dispute from being subject to arbitration. This finding is in consonance with similar cases such as Hub Power Company and Pakistan WAPDA (2000), which allowed arbitrability for disputes involving state entities and public utilities. In its ruling, the Supreme Court has contributed to the reassertion of the power to arbitrate gas supply-matters which will subsequently help to promote the use of arbitration as a dispute resolution method even in public sectors. The case is important in studying arbitrability because of the consideration that the judiciary does ensure the sanctity of the arbitration method while protecting public interest. This has also lifted great weight from the shoulders of business entities engaged in the regulated sectors like energy and utilities. The disputes of such business entities would be resolved through arbitration unless such disputes contravene PP. This judgment goes a long way in helping Pakistan to reposition itself as a pro-arbitration venue, thereby promoting the enforcement of FAWs in the areas that hold key segments in the economy (Rizvi, 2021).

Discussion

The paper discusses the enforcement impediments of FAWs in the Pakistani perspective on the basis of the arbitrability concept. Both the legislation and judicial practice in Pakistan do not harmonize with the provisions of the NYC. Commercial interests are virtually unprotected; hence, the mere fact of 2005 the process of ratification of which date back result-oriented or defeating PP exceptions. A vague notion has polarized the validate ability of FAWs because of arbitral and judicial intervention thereon. Meanwhile, this becomes unfriendly to international investors with the shrinking confidence placed in it and thus eroding its credibility as a pro-arbitration seat in the region- fact based on the above.

The main objective of this paper is to explore the concept of arbitrability and its influence on the enforcement of foreign arbitral awards in Pakistan. Such pondering clearly indicated that arbitrability

is of pivotal consideration as to whether dispute can be referred to arbitration and largely varying across nations. In Pakistan, most times arbitrability is governed by PP considerations, which are vastly defined by the judiciary. This has further enhanced insecurity in the enforcement proceedings of foreign awards since the judiciary enjoys deference in applying the rules out of public policy. The present study also attempts to analyze the legality of the Pakistani system of law with the 1958 NYC and the 2011 REFA vis-à-vis conformity with the international standards of arbitration. Even though these laws set the course for the awards, their implementation has been uneven because of legal loopholes and judicial behavior. For example, in Pakistan, the courts have in many cases relied heavily on the public policy exception to deny enforcement even when the alleged contraventions are not proven to the hilt or do not go to the extreme in contravening the very basic tenets of public policy. This wide interpretation of public policy has been criticized in that it creates insecurity and in the general sense abates the enforcement of foreign awards.

The case study analysis strengthens the problems of enforcing foreign arbitral awards in Pakistan. Cases like, for instance, in Hub Power Company (HUBCO) v. Pakistan WAPDA (2000) and Pakistan v. Broadsheet LLC (2021) makes clear what the judiciary means by arbitrability and reservation of public policy exceptions. In HUBCO v. WAPDA, the Supreme Court of Pakistan came to the view that arbitration is possible, except for matters of fundamental public policy involving disputes with public utility. This decision added to the collection of decisions that culminated in the vulnerability of states and localized legal entities and thickened the required degree of construction regarding public policy exceptions. However, it is cases such as Fauji Fertilizer Company Limited v. Societe Générale de Surveillance where we see the challenges of a very expansive reading of public policy as evidenced by the Lahore High Court declining the enforcement of a foreign award on the allegations of corruption and fraud. These cases depict the tug-of-war between the domestic legal principles of the land and the international arbitration norms because the Pakistani courts sometimes give precedence to the national public policy aspects over the enforcement of foreign awards.

The research has also found a lack of pro-arbitration culture from legal practitioners and judges as a significant bane for the effective enforcement of foreign arbitral awards. The REFA, 2011 intended for the cause of promotion of arbitration as an alternative to litigation. However, its implementation got primarily stuck due to the non-availability of any awareness and training principles in regard to the practice of international arbitration, and thus there has since been undue judicial intervention in arbitration, mainly involving the issues of either PP or non-arbitrability. Pakistani courts have more often been criticized for very flimsy reasons for setting aside arbitral awards based on such grounds that, for example, I an error of law or fact. The said judicial intervention has been contributed to the lack of knowledge of international arbitration principles and domestic legal norms being preferred over international obligations.

In order to overcome the difficulties, the study posits wide-reaching reforms that will redefine the notion of arbitrability, restrict the scope of the public policy exception, and create capacity in terms of judges and lawyers in international arbitration. For example, a more narrow reading of public policy as argued by the author such as Qureshi (2017) will increase the enforceability of foreign awards and make the arbitration framework of Pakistan compatible with international standards. More awareness about international arbitration rules and training will be prerequisite to shift judicial minds for building a pro-arbitration judicial disposition with controlled judicial intervention in arbitration matters. Such reforms are imperative in upholding the image of Pakistan as a pro-arbitration jurisdiction and bringing in foreign investment.

Foreign arbitral awards could not be enforced in Pakistan mainly because of its clear ambiguities and overlap with inconsistent judicial interpretations and in most cases, public policy exceptions. Pakistan, after major attempts to keep its arbitration law in line with globally accepted standards, continues to be one of the major challenges within its legal framework. The challenges will demand

a comprehensive evaluation concerning the reforms made toward redefining the concept of arbitrability and minimum interference by the judiciaries regarding promoting a pro-arbitration culture in Pakistan. However, these would enhance the enforceability of foreign arbitral awards and uplift Pakistan as a favorable seat for international arbitration. The case studies that will be sort to review in this research carry very essential lessons on the challenges and opportunity regarding reforms that could enhance the Pakistan arbitration framework to be compliant with internationally accepted arbitration norms.

Conclusion

Enforcement of foreign arbitral awards in Pakistan is a maze whose smoke and mirrors stem from lacunae in the statutory provisions, divergent interpretations by the judiciary, and its wider use in pleading the public policy exception. Despite the ratification of the NYC in 2005 and the enactment of the REFA, 2011, the enforceability of foreign awards tends to be defeated by the judiciary on the strength of an expansive understanding of the public policy doctrine. All this, being held as it is in judicial discretion, creates a very high degree of uncertainty for an investing international community about the desirability or credibility of Pakistan as a pro-arbitration jurisdiction. The next stumbling block is whether or not a dispute is deemed to be arbitrable regarding the governing laws of the jurisdiction. In Pakistan, this falls within the general framework of public policy notions which are interpreted very broadly by the courts and therefore make a disparate application of the enforcement of foreign awards.

The case study analysis with landmark decisions such as Hub Power Company (HUBCO) v. Pakistan WAPDA (2000), Fauji Fertilizer Company Limited v. Société Générale de Surveillance (2015), and Pakistan v. Broadsheet LLC (2021) clearly exemplifies the mixed approach of the judiciary to arbitrability and public policy. In a number of cases, like HUBCO v. WAPDA, since it was held that the disputes involving state entities were arbitrable and narrow interpretation of public policy was emphasized, while other cases like Fauji Fertilizer v. SGS widely resorted to public policy exceptions with the motive of not enforcing the same on the ground of alleged corruption or fraud, presents the domestic legal principle, which clashes with the international arbitration norm. Therefore, with the preference of the Pakistani court to consider the local public policy than the foreign award, there is such tug of war.

Decisive reforms are necessary in the harmonization of the arbitrability concept, delimitation of the public policy exception, and encouragement of a pro-arbitration culture to redescribe it. A reduced and narrower concept of public policy, as defined by international standards, would perhaps better make provisions for admissibility of the foreign award and bring more certainty about international investments. Creating better understanding and training in international arbitration among the judiciary and the members of the Bar would lead to relatively lower judicial intervention as well as due consistency in enforcing foreign awards. Reforms of this nature shall place the regulatory environment of arbitration in Pakistan within the international benchmark, making the country an attractive destination for international arbitral matters.

In conclusion, substantial efforts have been made in Pakistan to synchronize its arbitration law with the requirements of international arbitral practices. The admissible voids and incongruities of the legal framework and judicial behavior, however, fail to assure effective enforcement. These issues can be tackled with specific reforms and the infusion of a pro-arbitration attitude, therefore enhancing the enforcements for foreign awards and bridging other capital inflows and, thereby, Pakistan as an attractive, dependable, and initiate competitive jurisdiction to settle international disputes. This study achieves results that stress the balancing needed between the consideration of domestic public policies and international norms regarding arbitration to maintain its efficiency and trustworthiness in Pakistan.

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