



RESEARCH PAPER

Arbitration in Pakistan: Challenges in the Digital Era

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ABSTRACT

Arbitration is an active means of deciding disagreements at the grassroots level, and like other countries of the world, the scope of arbitration is quite wide in Pakistan as well. Generally, the following disagreements/clashes are resolved through arbitration. Disputes relating to the construction work, disputes relating to the business affairs and corporate disputes and family disputes. The following laws deal with meeting the requirements and resolving the above-stated disputes. The arbitration act 1940 and the recognition and enforcement (arbitration agreements and foreign arbitral awards) act, 2011. The latter is simply a ratification of the New York Convention through which foreign judgments and awards between the nationals of contracting states are liable to be enforced without questioning the validity of the same, with the exception explicitly given in the convention. To what extent will the upcoming legislative process be effective in playing a role in facilitating the arbitration, in the era of modernisation and digitalisation, and what further measures are necessary to meet the challenges ahead? This article discusses it in light of the decision of the superior courts. This has been done by following the methodologies of historical records and existing published case laws from Pakistan Legal Decisions (PLD) regarding arbitrary decisions. The article thus contributes to the crucial matter of modifications in the arbitration practices to meet the standards of modernization and digitalization.

Keywords: The Arbitration Act, Digital Era, Pakistan, Cybersecurity, Blockchain Technology

Introduction

In Pakistan, people's tendency towards arbitration has been more at the grassroots level, but there are some people against whom, if an award is issued, they resort to litigation using tricks, which have been discouraged to some extent by the higher judiciary. The existing arbitration in Pakistan will be seen in the light of the higher judicial precedent, and what innovations can be brought into it will also be highlighted.

The Arbitration Act 1940 is a colonial era legislation adopted and prevailed in Pakistan to resolve disputes for domestic arbitration, with the addition of the Alternate Dispute Resolution Act 2017, which deals with institutional arbitration. Arbitration has emerged as a preferred alternative dispute resolution (ADR) mechanism in Pakistan, offering a faster and more flexible means of resolving commercial disputes compared to traditional litigation (Arbitration Act, 1940). With the increasing globalization of trade and investment, Pakistan has taken steps to meet the arbitration framework, including the adoption of the Arbitration Act, 1940, and the subsequent recognition of the "UNCITRAL Model Law" through the "Recognition and Enforcement of Arbitration Agreements and Foreign Arbitral Awards Act, 2011" (Arbitration Agreements and Foreign Arbitral Awards Act, 2011).

Literature Review

There is an increasing trend of the internet in urban areas, while rural areas still face tough times with the internet access. This digital divide leads to a hurdle in (Online Dispute Resolution) ODR platforms, as parties remain unable to fully participate in online arbitration proceedings (Kaya, 2018 & Khan, 2019).

However, another study places reliance on digital platforms as unnecessary and very concerning, marking security and privacy as the basic reasons. For this matter, arbitrary institutions/offices need to develop standards by investing in secure video conference room, digital evidence management, protection of sensitive information, and identity verification system. These facilities being costly require technical expertise, healthy monetary funds, and thus pose challenges for digital offices with limited resources (Saleem et al., 2023).

Another research highlights the challenge in arbitrary system when judicial intervention remains a central issue. Courts often mediate that undermines the finality of the arbitral decision and therefore defeat the efficient working of dispute resolution (Mir, 2016). There is need to ensure the effectiveness and strength of arbitration process. He quotes Lord Mustill as he explained this relationship in the following words:

Arbitral disputes should ideally be handled similarly to a relay race. Since no other organization could take action to stop the arbitration contract from being indecisive at that point, the court has the upper hand in the early going, before the arbitrators are taken into the fray. The arbitrators assume responsibility and hold onto it until they have rendered a decision. Now that they have nothing left to do, the arbitrators return the baton so that the Court can use its compelled authority to carry out the reward if necessary (Mustill, 1993).

There is another angle of comparative research indicating how the arbitration practices in Pakistan are lagging behind in meeting international standards. There are valuable lessons for Pakistan in implementing this digital revolution when the UK has effectually implemented digital arbitration procedures. In order to develop reliable jurisdiction in digital and modernized arbitration frameworks, there is need to invest much energies and monetary efforts in the field (Hashmi, 2025). The present article deals with broader challenges and issues and also proposes solutions for Pakistan to meet the global standards by revolutionizing the arbitration practices.

Material and Methods

The present research uses historical data to know when and how the Arbitrary Act was framed in colonial times, and over the passage of time, how the law was not reformed. In order to know how Pakistan is dealing with these legal matters, the paper uses existing yet authentic case laws that have been reported in PLD (Pakistan Law Decisions) as reference that how alternative methods have been adopted to decide and execute the matters. Yet, the paper deals with how these shortcomings are the challenges in the way of revolutionising the legal frameworks in Pakistan. Along with presenting the challenges, the present research also discusses some implications for modernising and globalising the Arbitrary Acts frameworks in the country.

Reference to Existing Case Laws

The parties faced prolonged litigation in the process of arbitration in Pakistan due to the slow process of courts, and this might be caused by the overburden of cases pending in the courts. In a case titled "National Highway Authority through its chairman versus M/S Sambu Construction Co. Ltd". Islamabad, the judge dismissed the petition by refusing leave

for pending litigation in courts for about 10 years. The court held that “the court observed that the petitioner has dragged the award in the courts for the last 10 years, which passes for vexatious litigation; wasting the time of all courts in the district judiciary as well as the superior courts. Such frivolous litigation clogs the pipeline of justice, causing delays in deciding genuine claims pending before the court. Such litigation and frivolous petitions add to the pendency of cases, which overburdens the court dockets and slows down the process of justice. Such litigation must be dealt with firmly and strongly discouraged and impose costs on the petitioner in the sum of Rs. 300,000/-, which shall be paid to the respondent within a month, and in case it fails to pay the said costs, the same shall be recoverable as a money decree (National Highway Authority v. M/s Sambu Construction Co. Ltd., 2023).

In the case of Mian Corporation Vs Lever Brothers of Pakistan reported in PLD 2006 SC169, it held that “the arbitrator alone is the judge of the quality as well as the quantity of the evidence. He is the final arbitrator of disputes between the parties. He acts in a quasi-judicial manner, and his decision is entitled to utmost respect and weight (Mian Corporation v. Messrs Lever Brothers of Pakistan Ltd., 2006).

As the world rapidly transforms into the digital age, Pakistan’s arbitration system faces new challenges in adapting to advanced technologies. This article explores the present scenario of arbitration in Pakistan and the important challenges it faces in this era of digitalization, from the era of colonial legislation

Pakistan’s Current arbitration scheme and mechanism

Currently, Pakistan’s arbitration scheme and mechanism are primarily governed by:

1. The Arbitration Act, 1940, which deals with domestic arbitration
2. The Recognition and Enforcement of Arbitration Agreements and Foreign Arbitral Awards Act, 2011 (incorporating the UNCITRAL Model Law for international arbitration).
3. The Alternative Dispute Resolution Act, 2017, promotes institutional arbitration. It was enacted to expedite the settlement of the disputes without turning to formal litigation. The act is an alternate resolution without intermingling of other acts like mediation, arbitration, and reconciliation. The purpose of this act was to disburden the courts and to promote an efficient mechanism for dispute resolutions (Alternative Dispute Resolution Act, 2017).

The law in Pakistan is facing challenges for improvement and alignment with the international jurisdictions, though in the field of trade and commercial case dealings, the law provides concise legislation. However, in the age of digitalization, it needs amendments and revisions.

Digitalization has become a global trend, and globally it is playing an important role with the assistance of digital instruments, including through different applications.

- Online Dispute Resolution (ODR) platforms.
- Virtual hearings via Zoom, Microsoft Teams, or specialized arbitration platforms.
- E-filing and blockchain-based smart contracts for safe and transparent proceedings.
- AI-assisted legal research and document analysis to expedite case preparation with the help of natural intelligence.

The problem in Pakistan is the lack of infrastructure and therefore a delay in the implementation or using these platforms conveniently.

Challenges for the country in the Digital Era

Lack of Legal Framework for Digital Arbitration

Pakistan's existing arbitration laws do not explicitly address digital proceedings, e-signatures, or the admissibility of electronic evidence. Amendments are needed to align with global standards like the UNCITRAL Model Law on Electronic Commerce, though this model law was espoused in 1996, the official publication with how to implement guide was out only in 1999 (UNCITRAL Model Law on Electronic Commerce, 1996), and the Singapore Convention on Mediation.

Technological Infrastructure Gaps

Many courts and arbitration institutions lack:

- Reliable internet connectivity.
- Secure digital platforms for virtual hearings.
- Cybersecurity measures to protect sensitive and important arbitration data.

Enforcement and Recognition of Digital Awards

Enforcing arbitral awards based on digital proceedings may face skepticism from Pakistani courts, which traditionally prefer physical documentation and in-person testimonies.

Limited Institutional Support

While institutions like the *Chartered Institute of Arbitrators* (CIArb) Pakistan and the *Pakistan International Dispute Resolution Centre* (PIDRC) promote arbitration, they lack robust digital case management systems.

The following steps are very necessary to bring modernization in arbitration and to meet the challenges of the digital era

Legal Reforms

There is a proposition to amend arbitration laws to recognize digital proceedings, e-signatures, and electronic evidence, and now Pakistan is actively moving to bring modernization in its arbitration framework, particularly by introducing the 2024 Draft Arbitration Bill. This important step is taken with the aim to align with international standards by distinguishing the domestic arbitration from international arbitration and drawing mainly from the UNCITRAL Model Law.

Investment in Technology:

It's time to develop, secure ODR (Online Dispute Resolution) platforms and to train arbitrators in using digital tools.

Judicial Awareness:

This awareness refers to the level of understanding and familiarity that judges and judicial officers have to deal with the process of arbitration, its principles and relevant rules, and legal framework.

Public-Private Partnerships

It is very necessary to collaborate with international arbitration bodies to adopt best practices and formulate a way out to meet the challenges ahead.

Cybersecurity Measures:

The role of cybersecurity is very important in implementing data protection laws to safeguard arbitration confidentiality.

Although Pakistan is moving from colonial era legislation of arbitration towards modernization of arbitration, keeping in view the future needs and to meet the challenges ahead, and rapidly moving trends of modernization in the modern era, still, Pakistan needs to do a lot by introducing modern mechanisms to handle domestic arbitration as well as international arbitration.

Use of blockchain technology

The use of blockchain technology to resolve disputes between the parties is a very important factor and can play an important role by providing ease to the process of arbitration.

A blockchain is a digital ledger of record keeping having a history of visible, accessible, and transparent information stored in the shape of blocks in chronological order (Saeed & Sial, 2023). After the consensus of both parties, the new block is added without changing the original block. Blockchains are decentralized and secured through mathematical algorithms, and they have complete control over the parties and arbitrators. This scheme eliminates the chances of fraud and material mistakes because neither the arbitrator nor the parties can tamper with the process of blockchain. So, by using the technology of blockchain in the arbitration process, important benefits of efficiency, transparency, and confidentiality can be achieved.

The parties in the arbitration can file their claims, notices, defenses, and evidence through a blockchain-based dispute resolution process, and all these proceedings can be conducted online. After completing these proceedings, the arbitration award can be executed by way of a smart contract.

Primarily, blockchain was developed for transactions of digital currency, and this process makes the financial transactions within seconds and at a very low cost without the assistance of a third party. The world is moving and is trending towards digital currency, and arbitration is widely used to settle disputes arising out of transactions of cryptocurrency, and for this process, almost every company has included an arbitration clause in the terms and conditions of the agreement.

Conclusion

The arbitration process is a key factor in resolving disputes between the parties; however, in Pakistan, litigants face long-term litigation due to the court intervention, which has failed to provide a speedy remedy to the litigants. There is a dire need for time to move from the colonial era legislation to the present world of modernization and digitalization by introducing new laws and rules that effectively play a key role in deciding the disputes between the parties. The present legal framework of arbitration does not meet the

requirements for a speedy arbitration process in resolving conflicts between the parties. Because if the arbitrator gives an award to a party, that party has to file in court to make its award a court rule, which initiates another round of litigation. In a judgment of Supreme court authored by the justice Syed Mansoor Ali Shah the court imposed cost Rs. 300,000/- to the petitioner for delayed and continued baseless litigation. It has been a challenging task to introduce more ways of arbitration to resolve disputes like mediation and lack of proper legislation has not been enacted due to which the result has been that, it has not become good alternative to litigation. In the present scenario, it is necessary to introduce widespread reforms in arbitration by enacting effective legislation to resolve disputes and meet the current requirements of a rapidly moving towards digitalization and technology. The legal framework of arbitration should be updated to meet the upcoming challenges and to revolutionize Pakistan's legislative, especially, arbitration frameworks.

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