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A Comprehensive Analysis of Arbitration Laws in Pakistan: Key Rulings of the Supreme Court, Significance and Compatibility of Proposed Arbitration Act 2024

Hamaish Khan	Research Officer, Research Centre, Supreme Court of Pakistan at Islamabad hamaishkhan010@gmail.com
Dr Muhammad Zubair Khan	Associate Professor, Department of Law, Abdul Wali Khan University, Mardan, Pakistan mzubair@awkum.edu.pk
Dr Muhammad Ifzal Mehmood	Assistant Professor, Department of Law, Shaheed Benazir Bhutto University, Sheringal Dir Upper, Pakistan ifzal@sbbu.edu.pk
Syeda Saima Shabbir	Senior Research Officer, Supreme Court of Pakistan at Islamabad syeda_saima@yahoo.com

Abstract: *Arbitration stands as a crucial alternative dispute resolution mechanism, offering expeditious disposal of issues outside the court. This research article explores the evolution and current state of arbitration laws in Pakistan. The article provides a detailed historical background while examining the legislative framework and analyzing significant Supreme Court judgments that have shaped arbitration practices.*

This study highlights the crucial role of the Supreme Court in interpreting and guiding the application of arbitration laws, thereby fostering a more arbitration-friendly legal environment. Additionally, it assesses the proposed Arbitration Act 2024, which aims to address existing gaps, streamline procedures, and align Pakistan's arbitration framework with international standards.

By evaluating the significance and compatibility of the proposed Arbitration Act 2024, this research offers insights into its potential impact on the arbitration landscape in Pakistan. The study underscores the importance of ongoing legal reforms in enhancing the effectiveness and reliability of arbitration as a dispute resolution method. This comprehensive analysis contributes to the broader discourse on legal development and the continuous improvement of Pakistan's arbitration mechanisms

Keywords: Arbitration, Laws, Judgments, Supreme Court, impact, significance, compatibility, reforms, international standards.

Introduction

Arbitration serves as a cornerstone for resolving disputes efficiently and effectively outside the conventional court system. In Pakistan, the journey of arbitration laws reflects a dynamic evolution aimed at fostering a robust legal environment conducive to swift and fair dispute resolution. This research paper embarks on an exploration of the multifaceted landscape of arbitration in Pakistan.

Tracing its historical roots, the article examines the legislative framework that has shaped the current arbitration practices in Pakistan. From colonial-era statutes to modern legislative reforms, the evolution of arbitration laws in Pakistan highlights the nation's commitment to refining its legal mechanisms. Integral to this exploration is the role of the Supreme Court of Pakistan, whose landmark judgments have significantly influenced the interpretation and application of arbitration laws. These judgments have not only clarified procedural ambiguities but have also underscored the judiciary's pivotal role in promoting a pro-arbitration environment.

At the heart of this study is the proposed Arbitration Act 2024, a legislative initiative poised to transform the arbitration landscape in Pakistan. This proposed Act seeks to address existing challenges, introduce streamlined procedures, and align Pakistan's arbitration practices with international standards. By analyzing the significance and compatibility of the proposed Act, this article aims to provide a comprehensive understanding of its potential impact on the arbitration framework.

Through a thorough examination of the Supreme Court's contributions and an in-depth analysis of the proposed Arbitration Act 2024, this article aspires to offer valuable insights into the ongoing efforts to enhance arbitration mechanisms in Pakistan. This research underscores the importance of continuous legal reforms in ensuring that arbitration remains a viable and effective means of dispute resolution, thereby contributing to the broader discourse on the evolution of Pakistan's legal system.

Significance of the Research Study

The significance of this research study lies in its comprehensive examination of arbitration laws in Pakistan, focusing on the historical development, legislative framework, and the proactive role of the Supreme Court. This study is particularly timely and relevant due to the impending introduction of the proposed Arbitration Act 2024, which seeks to overhaul and modernize the existing arbitration framework in Pakistan. By tracing the evolution of arbitration laws from colonial times to the present, this research provides a thorough understanding of the legal underpinnings that have shaped current practices. The analysis of Supreme Court judgments offers valuable insights into how judicial interpretations and rulings have impacted the arbitration landscape. The proposed Arbitration Act 2024 represents a significant shift towards aligning Pakistan's arbitration practices with international standards, and this study critically assesses the proposed Act's provisions, evaluating their potential to address existing challenges and enhance the overall efficiency and fairness of arbitration proceedings. For legal practitioners, arbitrators, and businesses involved in arbitration, this research provides practical insights into the current state and future direction of arbitration laws in Pakistan. Additionally, the study contributes to the academic discourse on arbitration in Pakistan by providing a detailed and critical analysis of both the historical context and contemporary developments, and offers evidence-based recommendations and considerations for refining the proposed Arbitration Act 2024, supporting the creation of a more robust and effective arbitration framework.

Literature Review

Arbitration has been introduced to overcome some of the problems encountered in litigation but this also proved itself very similar to litigation in both cost and time. Gradually the judicial systems of the world started recognizing Alternate Dispute Resolution (ADR) as one of the options to deal with this situation (Merchant, 2006). In various different methods of the alternative dispute resolution, the arbitration is among the commonly utilized and renowned form. It is debated that the alternative dispute resolution in the twenty-first century mean getting globally and locally a faster, effective and cost saving system alternative to the litigation that is presently expensive and consumes lengthier time (Muhammad, 2009).Various forms of ADR mechanisms are commonly used, including arbitration, mediation, fact-finding, mini trial, small claims court (Katherine, 2004).In case of the disputes that are commercial, arbitration that is a widely popular form of the ADR gives a way to the parties to have their reputation secured and relations of the business and to solve the disputes privately (Hussain, 2011).

Several initiatives have been undertaken to enhance arbitration laws globally as well as in Pakistan. Additionally, the United States of America has made significant efforts to strengthen the arbitration process for maximum benefits. The Arbitration Act of the 1940, is one of such enactments in Pakistan. The system of panchayat was widely utilized in the British occupied India for the purpose to solve the conflicts that were out of the Court. In Pakistan, the Act of Arbitration Act 1940 is presently applicable and going through the history of the arbitration in the Pakistan, it could be linked back from the period of the Pakistan independence year that is 1947, at that time the Pakistan was a British India colony that is popularly regarded as the subcontinent (Faizan, K., Tahir, M., &Jummani, A. (2024)).

The Arbitration Act, 1940 is commonly used for solving the conflicts and the disputes to curtail the litigation within the court and to enhance the dispute settlement amicably via the persons in which the conflict among both parties could be solved and they have confidence on such person (Nisar, 2006). Referring of pity nature cases and small claims to ADR centers will be fruitful for its early disposal and will ultimately reduce burden of cases on judiciary (Hamaish, 2022).It has been observed that in last few years the Apex Courts have encouraged the ADR in various civil litigation (Mohsin Akhter Kayani, 2023).

The Arbitrator used to announce award to the parties prior to refer it to the Court for their objection and if the parties are not agreed to the Award the Court will decide the case on its own merits which will again take a considerable time (Kirby, 2017).The foreign countries encourage the negotiations which curtail the litigation process and save the precious time of the Court and resources of the parties (Goodpaster, 1992).ADRs in the 21st century mean finding domestically and internationally a quicker, inexpensive, and more effective alternative system to litigation which is currently time-consuming and expensive (Ali &Shah, 2009).

I. Background

The arbitration laws in Pakistan have undergone significant evolution, reflecting the nation's journey from its colonial past to its aspirations of establishing a modern legal framework. The origins of arbitration in Pakistan can be traced back to the colonial era, particularly to the Arbitration Act of 1940, which was inherited from British India. This Act formed the foundation of arbitration practices in Pakistan for several decades. While it provided a basic structure for arbitration, it was often criticized for its procedural complexities and limited scope, which impeded the efficiency of dispute resolution.

In the early years of independence, Pakistan retained much of its colonial legal heritage, including the Arbitration Act of 1940. However, the need for a more streamlined and effective arbitration mechanism became increasingly evident as the country sought to attract foreign investment and foster a business-friendly environment. The economic growth and globalization of the late 20th and early 21st centuries further underscored the importance of having a robust arbitration framework that could handle complex commercial disputes with efficiency and fairness.

Recognizing these needs, Pakistan made several legislative attempts to modernize its arbitration laws. The enactment of the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, marked a significant step towards aligning Pakistan’s arbitration framework with international standards, particularly the New York Convention. This Act facilitated the recognition and enforcement of foreign arbitral awards, thereby enhancing Pakistan’s credibility as a venue for international arbitration.

II. Key Rulings of The Supreme Court of Pakistan

The Supreme Court of Pakistan has played a key and proactive role in shaping the country's arbitration landscape, significantly influencing its development through landmark judgments and interpretative authority. The Court has clarified legal ambiguities within the arbitration framework, upheld the validity and enforceability of arbitration agreements, and promoted alignment with international standards such as those established by the New York Convention and the UNCITRAL Model Law. By addressing procedural inefficiencies and ensuring fairness and justice in arbitration proceedings, the Court has enhanced the reliability and predictability of arbitration as a dispute resolution mechanism. Moreover, the Supreme Court's progressive judgments have influenced legislative reforms, with the proposed Arbitration Act 2024 reflecting many principles articulated by the Court. This comprehensive approach by the Supreme Court has contributed to the evolution of a more effective, efficient, and internationally aligned arbitration framework in Pakistan.

The Supreme Court of Pakistan has rendered the following several significant judgments that have profoundly impacted the arbitration landscape in the country;

1. **Sardar Muhammad Kamal-ud-Din Khan v. Syed Munir Syed (2022 SCMR 806)**

Background and Issues:

The petitioner, Sardar Muhammad Kamal-ud-Din Khan, had a legal dispute with Syed Munir Syed and others regarding an agreement dated 01.05.2015. Initially, Syed Munir Syed filed a suit for declaration, specific performance, and injunctions in the Civil Court, Islamabad, which was dismissed due to non-prosecution. Subsequently, Munir invoked arbitration unilaterally, leading to the arbitration proceedings before an arbitrator.

The petitioner challenged the arbitration proceedings in the Civil Court, which stayed the arbitration. However, the Islamabad High Court, in its revisional jurisdiction, set aside the concurrent orders of the lower courts and directed the arbitrator to proceed with the reference. The petitioner then appealed to the Supreme Court.

Judgment and Directives:

The Court converted the petition for leave to appeal into an appeal as it was filed within the prescribed period for an appeal. The Supreme Court held that the High Court had incorrectly exercised its revisional jurisdiction. The High Court cannot substitute its own opinion for that of the lower courts unless the lower court's decision is illegal or materially irregular, which was not the case here.

The Court observed that the respondent Syed Munir Syed could not unilaterally resort to arbitration after initiating and abandoning the suit. The application under Section 31 of the Arbitration Act, 1940, filed by the petitioner was maintainable, and the High Court's view to the contrary was incorrect. The Supreme Court found the arbitration award to be issued in undue haste and without due process, violating the principles of fair trial as mandated by the Constitution. The award was thus deemed unsustainable.

Significance

The judgment authored by Honb’le Chief Justice, Mr. Justice Qazi Faez Isa, discussed the limits of the High Court's revisional jurisdiction under Section 115 of the Civil Procedure Code (CPC). It clarifies that the revisional power is not to be used to substitute the discretion of the lower courts unless there is a clear legal or procedural error.

The Court held that the application under Section 31, challenging the validity, effect, and existence of the arbitration agreement, was appropriately filed and within the jurisdiction of the Civil Court. The Court emphasized the need for arbitration proceedings to adhere to the principles of due process and fair trial. The arbitrator's failure to follow these principles rendered the award invalid. The judgment clarified that after initiating a suit in court, a party cannot unilaterally switch to arbitration, especially after the dismissal of the suit, without following the proper procedure under the Arbitration Act.

The judgment highlights the importance of following proper procedures in arbitration, particularly ensuring due process and fair trial rights under the Constitution. It also clarifies that invoking arbitration unilaterally after abandoning a suit is not permissible.

The Court's interpretation of the Arbitration Act, 1940, particularly Sections 20, 31, and 33, provides guidance on the appropriate legal recourse when challenging the validity of an arbitration agreement and the proper conduct of arbitration proceedings.

2. **Taisei Corporation v. A.M. Construction Company (Pvt.) Ltd (2024 SCMR 624)**

Background and Issues

The Supreme Court of Pakistan dealt with Civil Appeal No. 722 of 2012 and Civil Appeal No.

2649 of 2016, which arose from disputes between Taisei Corporation and A.M. Construction Company (Pvt.) Ltd. The appeals were against the judgments of the Lahore High Court and the High Court of Sindh, respectively. The central issue was whether an arbitral award made in Singapore, a Contracting State, pursuant to an arbitration agreement governed by Pakistani law, qualified as a foreign arbitral award under the Recognition and Enforcement of Arbitration Agreement and Foreign Award Act 2011 (2011 Act). Additionally, the Court examined whether the 2011 Act applied retrospectively to awards made in arbitral proceedings commenced before its enactment.

Judgment and Directives

The Supreme Court held that the Award in question is a "foreign arbitral award" as per the definitions provided in the 2011 Act, regardless of the law governing the main contract and the arbitration agreement between the parties. The 2011 Act applies retrospectively to all foreign arbitral awards made on or after July 14, 2005, irrespective of when the arbitration proceedings commenced. The Court allowed Civil Appeal No. 722 of 2012, setting aside the judgment of the Lahore High Court and the order of the Civil Court, Lahore, on the ground of lack of subject matter jurisdiction. Consequently, the application filed in the Civil Court, Lahore under Section 14 of the 1940 Act was rejected.

In Civil Appeal No. 2649 of 2016, the Court dismissed the appeal, upholding the judgment of the Division Bench of the Sindh High Court, which correctly held that the Lahore High Court's judgment did not operate as res judicata since an appeal against it was pending before the Supreme Court.

Significance

The judgment authored by Hon’ble Mr. Justice Syed Mansoor Ali Shah underscores the minimal interference by courts in international commercial arbitration, supporting the arbitral process as an alternate mode of dispute resolution. It reflects a philosophical shift towards self-governance in dispute resolution, respecting the parties' freedom to design a process that best suits their needs. The Court's decision is in line with the global trend towards minimal interference in international commercial arbitration, recognizing its benefits over traditional litigation. The judgment also highlights the pro-enforcement bias of the New York Convention for enforcing foreign awards, emphasizing the commitment to uphold the integrity of arbitration as a means of settling international disputes by limiting the grounds on which enforcement can be refused and placing the burden of proof on the party resisting enforcement. This pro-enforcement bias is critical in providing parties with the confidence that their decisions to arbitrate disputes will be supported by courts around the world, thus enhancing the attractiveness of arbitration as a method of resolving international commercial disputes.

3. **National Highway Authority through Chairman v. Messrs Sambu Construction Co. Ltd. Islamabad (2023 SCMR 1103)**

Background and Issues

The Supreme Court of Pakistan in Civil Petition No. 3767 of 2020 addressed the petitioner's challenge against the judgment of the Islamabad High Court dated 21.09.2020 in F.A.O. No. 16 of 2014. The petitioner, National Highway Authority (NHA), contested the arbitration award favoring the respondent, Messrs Sambu Construction Co. Ltd., regarding additional payment for construction work not included in the original contract scope. The dispute centered on whether the Arbitrators had misconducted themselves under section 30(a) of the Arbitration Act, 1940, and whether the courts could interfere with the arbitration award.

Judgment and Directives

The Supreme Court dismissed the petition, refusing leave to appeal. The Court held that the Arbitrators did not misconduct themselves and that the arbitration award was a final determination of the dispute, with limited grounds for challenge. The Court emphasized that judicial review of an arbitration award is limited and does not constitute a re-assessment of evidence. The Court found no jurisdictional, procedural, or substantive errors in the award that would justify interference. The Court also imposed costs on the petitioner for vexatious litigation, which had dragged on for over ten years, clogging the justice system and undermining the purpose of alternative dispute resolution (ADR).

Significance

The judgment authored by Hon'ble Mr.Justice Syed Mansoor Ali Shah reinforces the finality of arbitration awards and the limited scope of judicial review under the Arbitration Act, 1940. It underscores the importance of respecting the decisions of arbitrators and the ADR process, discouraging parties from unnecessarily prolonging disputes through litigation. The imposition of costs serves as a deterrent against frivolous litigation and emphasizes the need for efficient resolution of disputes to prevent overburdening the court system.

4. **Federal Board Of Revenue v. Dewan Salman Fiber Ltd (2023 SCMR 1871)**

Background and Issues

The Federal Board of Revenue (FBR) appealed against the judgment of the Islamabad High Court, which had decided on matters involving the respondent, Dewan Salman Fiber Ltd., and others. The core issue revolved around the exemption from sales tax for the manufacturer of polyester staple fiber (PSF) in the North-West Frontier Province (now Khyber Pakhtunkhwa). The exemptions were initially granted under various Statutory Regulatory Orders (SROs), which were later challenged or altered by subsequent SROs, leading to litigation.

Judgment and Directives

The Supreme Court of Pakistan, in its judgment, upheld the exemption from sales tax under SRO 580/91 for the respondent company's Unit II, stating that it could not be defeated by SRO 561/94 due to the protections afforded by section 6 of the Protection of Economic Reforms Act, 1992. The Court found that SRO 580/91 fell within the scope of section 6 and could not be altered to the disadvantage of the investors. However, the Court also held that SRO 482/92, SRO 477/95, and SRO 515/95 applied in terms as stated therein and did not come within the scope of section 6 of the 1992 Act. Therefore, the High Court's judgment was partly set aside in relation to these SROs.

Significance

The judgment authored by Hon' ble Mr. Justice Munib Akhtar is significant as it clarifies the scope of section 6 of the Protection of Economic Reforms Act, 1992, and its application to fiscal incentives for investment. It emphasizes the importance of adhering to commitments made by the government to investors and the principle that vested rights cannot be taken away by executive action. The judgment also highlights the doctrines of vested rights and promissory estoppel in the context of fiscal statutes.

The judgment did not specifically discuss arbitration, however, it did reference the arbitration committee's report and recommendations in the context of the dispute between the respondent company and its competitors, which influenced the High Court's judgment. The Supreme Court noted the importance of government adherence to sovereign commitments, as emphasized in the arbitration committee's report, but ultimately based its decision on the interpretation of the Protection of Economic Reforms Act, 1992, and relevant SROs.

5. **Syed Imtiaz Ali v. Chairman, Implementation Tribunal For Newspaper Employees (Itne), Islamabad (2019 SCMR 1034)**

Background and Issues

The appellant, Syed Imtiaz Ali, challenged the decision of the Implementation Tribunal for Newspaper Employees (ITNE), which had ruled in favor of the private-respondent, Syed Saif-ul-Islam Khalid, regarding the implementation of the 7th Wage Board Award and other related claims. The private-respondent had initially sought relief through arbitration but later withdrew and pursued the claim before the ITNE. The appellant contended that the private-respondent's claims were outside the jurisdiction of the ITNE and were contractual in nature, not related to the Wage Board Award.

Judgment and Directives

The Supreme Court of Pakistan, in its judgment, allowed the appeal and set aside the impugned order, the judgment of the Islamabad High Court, and the judgment of the ITNE. The Court found that the ITNE had exceeded its jurisdiction by entertaining claims that were not within its mandate under the Newspaper Employees (Conditions of Service) Act, 1973. The Court held that the private-respondent's claims were contractual and should be adjudicated by a competent legal forum, not the ITNE.

Significance

The judgment authored by Hon' ble Mr. Justice Yahya Afridi, is significant as it clarifies the jurisdictional limits of the ITNE and emphasizes that the Tribunal's mandate is restricted to the implementation of Wage Board Awards. It also underscores the importance of adhering to the legislative intent and not allowing tribunals to exercise jurisdiction beyond their lawful mandate.

The judgment observed that the private-respondent initially sought arbitration for the same relief he later claimed before the ITNE. The Court noted that the private-respondent's claims were contractual and thus more appropriately resolved through arbitration or other competent legal forums, rather than the ITNE, which is a specialized tribunal with a limited jurisdictional scope.

The judgment reinforces the principle that specialized tribunals must operate within the bounds of their statutory authority and that contractual disputes arising out of partnership agreements are not within the purview of the ITNE. Arbitration, as initially sought by the private-respondent, would have been the appropriate mechanism for resolving such disputes.

6. Haji Shinkai v. Abdul Shakoor (2024 SCMR 344)

Background and Issues

The Supreme Court of Pakistan in Civil Appeal No. 23-Q of 2017 addressed the appeal against the judgment of the High Court of Balochistan. The appellant, Haji Shinkai, sought to enforce an arbitration award which declared him the owner of two acres of land, a claim that was contested by the respondents, Abdul Shakoor and others. The primary issue was the maintainability of a suit for enforcing an award under Section 32 of the Arbitration Act, 1940, and whether the plaintiff could bypass the special procedure provided by the Arbitration Act by filing a separate suit to declare ownership of the land.

Judgment and Directives

The Supreme Court held that the plaintiff's suit was not maintainable as it sought to enforce an arbitration award, which is expressly prohibited by Section 32 of the Arbitration Act, 1940. The Court found that the proper procedure for the plaintiff would have been to first get the award made a rule of the Court and then to enforce or execute the decree based on the award. The Court also noted that the plaintiff failed to produce relevant revenue records or a revenue officer to establish that the defendants voluntarily acted upon the award by handing over possession of their land. The Court dismissed the appeal, reiterating that no suit shall lie for a decision upon the existence, effect, or validity of an arbitration agreement or award outside the provisions of the Arbitration Act.

Significance

The judgment authored by Hon'ble Mr.Justice Shahid Waheed reaffirms the principle that the Arbitration Act, 1940, is a complete code in itself, providing a specific procedure for the enforcement of arbitration awards. It emphasizes the importance of adhering to the statutory procedure and the prohibition against filing separate suits to enforce arbitration awards. The decision also clarifies the scope of Section 32 of the Arbitration Act, which bars suits contesting the arbitration agreement or award, thereby upholding the legislative intent to expedite and simplify arbitration proceedings and to obtain finality. The judgment serves as a precedent for future cases involving the enforcement of arbitration awards and the jurisdictional aspects of the Arbitration Act.

7. **Cantonment Board Peshawar, Peshawar Cantt v. Messrs RACO Advertisers (2023 SCMR 2075)**

Background and Issues

The Supreme Court of Pakistan in Civil Appeal No. 1137 of 2014 addressed the challenge against the judgment of the Peshawar High Court in W.P. No.2834-P of 2011. The appellants, Cantonment Board Peshawar, appealed against the High Court's order which directed fresh arbitration regarding the recovery of Hoarding fee charges from the respondents, Messrs Raco Advertisers. The dispute was initially referred to arbitration under the Arbitration Act, 1940, following an agreement between the parties. The core issue was whether the High Court was justified in referring the matter back to the arbitrator for a fresh award and whether the writ petition filed by the respondent against the arbitrator's award was maintainable.

Judgment and Directives

The Supreme Court allowed the appeal and set aside the judgment of the High Court. The Court held that the High Court exceeded its jurisdiction by entertaining the writ petition against the award delivered by the sole arbitrator. The Court emphasized that the respondent should have availed the proper remedy under the provisions of the Arbitration Act, 1940, rather than approaching the High Court under writ jurisdiction. The Court found that the High Court's direction for de novo arbitration was misconceived as the remedial provisions provided under the Arbitration Act, 1940, could be invoked, which offered an appropriate and alternate remedy. The Court also noted that disputed questions of fact cannot be entertained and adjudicated in writ jurisdiction and that the extraordinary jurisdiction under Article 199 of the Constitution is predominantly for affording an express remedy without any convoluted inquiry.

Significance

The judgment authored by Hon'ble Mr.Justice Muhammad Ali Mazhar underscores the importance of adhering to the arbitration process agreed upon by the parties and the provisions of the Arbitration Act, 1940. It reaffirms the principle that the High Court's writ jurisdiction is not the appropriate forum for addressing disputes that are subject to arbitration agreements. The decision also highlights the doctrine of exhaustion of remedies, which requires litigants to pursue all claims or remedies in the original forum before seeking a remedy in a new court or jurisdiction. The judgment serves as a precedent for the proper legal channels to be followed in disputes involving arbitration agreements and reinforces the supremacy of the law of the land in resolving such disputes.

8. **Orient Power Company (Private) Limited v. Sui Northern Gas Pipelines Limited (2019 PLD 607)**

Background and Issues

Orient Power Company (Private) Limited (Appellant) challenged an order dated April 4, 2018, by a Single Judge in COS No.16/2017, which allowed the suit filed for the recognition and enforcement of a foreign arbitral award in favor of Sui Northern Gas Pipelines Limited (Respondent). The Appellant contended that it was denied a fair hearing and that the High Court had no discretion to recognize and enforce foreign arbitral awards under the Act except on grounds made out under Article V of the New York Convention. The Appellant also argued that the Arbitration Act, 1940, provided concurrent jurisdiction for enforcement of foreign arbitral awards, which was not considered by the Single Judge.

Judgment and Directives

The Court held that the High Court has exclusive jurisdiction to recognize and enforce foreign arbitral awards under the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 (the Act), and that the Arbitration Act, 1940, does not provide concurrent jurisdiction for enforcement of such awards. The Court dismissed the Appellant's objections against the award, finding that the take-or-pay clause in the Gas Supply Agreement (GSA) was not a penalty clause and that the payments due were valid under the GSA.

The Court also found that the public policy exception under Article V(2)(b) of the New York Convention did not apply, as the award did not violate Pakistan's most basic notions of morality and justice.

Significance

The judgment authored by Hon’ble Mrs. Justice Ayesah A. Malik , is significant for its interpretation of the exclusive jurisdiction of the High Court under the Act and the inapplicability of the Arbitration Act, 1940, to foreign arbitral awards. It also clarifies the enforceability of take-or-pay clauses in commercial contracts and the narrow interpretation of the public policy exception for the enforcement of foreign arbitral awards in Pakistan.

The Court observed that the Act provides exclusive jurisdiction to the High Court for recognizing and enforcing foreign arbitral awards and that the public policy exception should not be used as a backdoor to review the merits of a foreign arbitral award. The Court emphasized the pro-enforcement bias of the New York Convention and the Act, which aims to facilitate the recognition and enforcement of foreign arbitral awards to ensure quicker and less costly resolution of disputes. The Court also noted that the take-or-pay clause is a common feature in commercial contracts and does not constitute a penalty provision under Section 74 of the Contract Act, 1872.

9. **Capital Development Authority (CDA) through Chairman CDA, Headquarter, Islamabad VS Habib Rafiq (Pvt.) LTD (2021 SCMR 1137)**

Background and Issues

The Supreme Court of Pakistan in Civil Petitions Nos. 3148, 3149, 3225, and 3360 of 2020 addressed the dispute between Capital Development Authority (CDA) and Messrs Habib Rafiq (Pvt.) Ltd. and others. The case arose from an arbitration award filed in court, with CDA challenging the manner in which the award was filed. The main issue was whether the award was filed by the arbitrator or by the counsel for the respondent-company, and whether the filing was in accordance with Section 14(2) of the Arbitration Act, 1940.

Judgment and Directives

The Supreme Court dismissed the petitions, affirming the validity of the arbitration award's filing. The Court found that the award was signed, made, and announced by the Sole Arbitrator after due notice to the parties and in their presence. It was determined that the award, along with all depositions and annexures, was filed in court, although there was a dispute about who filed it. The Court clarified that the Arbitrator has the authority to file the award in court at the request of any party, and in this case, the Arbitrator acknowledged that the award was filed by him at the request of the respondent. The Court observed that if there was a dispute about the filing, the court could have sought clarification from the Arbitrator instead of remitting the award. The petitions for leave to appeal were converted into an appeal and subsequently dismissed.

Significance

The judgment authored by Hon’ble Mr.Justice® Mushir Alam underscores the procedural aspects of filing an arbitration award under the Arbitration Act, 1940. It highlights the authority of the Arbitrator to file the award in court upon request from a party and clarifies the process for resolving disputes over the filing of the award. The decision reinforces the finality of arbitration awards and the importance of adhering to the statutory requirements for their filing, ensuring that arbitration remains an effective and expeditious method for resolving disputes. The judgment also serves as a precedent for future cases involving similar procedural issues in arbitration proceedings.

10. **Lahore Development Authority v. Alicon Limited, Lahore (2014 PLD 494)**

Background and Issues

The Supreme Court of Pakistan adjudicated Civil Appeal No.1708 of 2002 against the judgment of the Lahore High Court dated 11-1-2001. The appellants, Lahore Development Authority and another, contested the decision of the High Court which upheld the trial court's ruling to make the arbitration award the rule of court. The arbitration committee comprised two arbitrators, one nominated by each party, and a chairman selected by the arbitrators. The key issues for consideration were:

- Whether the arbitrators were appointed in strict accordance with the contract clause D-43(b).
- The status of Mr. S.A. Hamid as a chairman or an umpire.
- Whether Mr. S.A. Hamid participated in the proceedings conducted by the two other arbitrators or conducted separate and independent proceedings.
- The need for reappraisal due to the significant difference between the verdicts of the two arbitrators.

Judgment and Directives

The Supreme Court dismissed the appeal, holding that the arbitration committee was properly constituted and the procedure adopted was unexceptionable. The Court found that Mr. S.A. Hamid was appointed as a chairman/surpanch and not as an umpire, and thus, the award by the majority of the arbitrators was in accordance with the law. The Court also held that the chairman/surpanch was not required to record independent reasons of his own and could agree with the reasons highlighted by any one of the arbitrators. The Court affirmed that defective appointment of arbitrators does not necessarily lead to an invalid and non-binding award.

On the merits of the case, the Court found that the arbitrator was justified in awarding 6% of the claim of profit against the claimed 15% and rightly awarded compensation for escalation. The Court concluded that no interference was required in respect of the allowances made by the arbitrator.

Significance

The judgment is significant as it clarifies the roles of a chairman/surpanch and an umpire in arbitration proceedings under Pakistani law. It underscores the principle that the majority award of arbitrators is valid and binding, even if there are questions about the strict adherence to the appointment process, provided there is no evidence of interference or influence by the chairman. The decision also emphasizes that the chairman can agree with the award and reasons of one of the arbitrators without providing separate reasons, as long as he is fully aware of the case's arguments and facts. This judgment reinforces the finality and binding nature of arbitration awards and the limited scope of judicial intervention in arbitration matters.

11. Ch. Qaiser Mehmood v. Province Of Punjab (2012 SCMR 1606)

Background and Issues

The Supreme Court of Pakistan heard Civil Appeal No.962 of 2007, where the appellant, Ch. Qaiser Mehmood, challenged the judgment of the Lahore High Court dated 7-2-2007. The dispute originated from a construction contract granted by the Works Department, Government of Punjab, which led to arbitration proceedings. The core issues addressed were:

- Whether the statements made by the Assistant District Attorney (ADA) and the Sub-Divisional Officer (SDO) conceding to the arbitration award were authorized and binding on the Government department.
- Whether the Trial Court should have served notices to the parties after the arbitrators filed the award, as per Section 14(2) of the Arbitration Act 1940.
- The validity of the High Court's decision to remit the case for further proceedings due to the absence of notices served to the parties.

Judgment and Directives

The Supreme Court allowed the appeal, setting aside the judgment and decree of the Lahore High Court and restoring that of the Trial Court. The Court held that the SDO was authorized to represent the Government department and make statements on its behalf, as he had been doing so throughout the arbitration proceedings without any objection from the department. The Court also found that the presence of the ADA and SDO during the filing of the award meant that no prejudice was caused to the respondents by not serving additional notices. The Court emphasized that the appeal against the Trial Court's decree was incompetent due to the non-filing of the decree-sheet with the appeal, a point not addressed by the High Court. The Supreme Court concluded that the litigation should come to an end, considering the lengthy duration since the dispute arose in 1994.

Significance

The judgment is significant as it clarifies the authority of government officials to make binding statements in legal proceedings on behalf of their departments. It also underscores the importance of procedural compliance in appeals, specifically the requirement to file the decree-sheet. The decision demonstrates the Supreme Court's approach to avoid unnecessary prolongation of litigation and to uphold arbitration awards where no prejudice has been caused to the parties involved. This case reinforces the principle that arbitration is a preferred mode of dispute resolution, intended to provide a final and binding resolution to disputes, and that courts should be reluctant to interfere with arbitration awards.

12. Pakistan v. Q.M.R.Expert Consultant (1990 PLD 800)

Background and Issues

The Supreme Court of Pakistan in Civil Appeal No.465 of 1986, decided on 16th May, 1990, addressed an appeal from the judgment of the Lahore High Court regarding the arbitration between Pakistan through General Manager, Pakistan Railways (Appellant) and Messrs O.M.R. EXPERT CONSULTANTS (Respondent). The key issues before the Court were:

- Whether a person whose appointment as a standing counsel was terminated was competent to receive a notice under Section 14(1) of the Arbitration Act, 1940, on behalf of the petitioner.
- Whether provisions of Order XXVII, Rule 4, Civil Procedure Code (CPC) would override provisions of Order III, Rule 5, CPC.
- The definition and role of a "Government Pleader" in the context of receiving legal notices and representing the government.
- The proper procedure for serving notice under Section 14(2) of the Arbitration Act, 1940, and the implications of such service on the limitation period for filing objections to the arbitration award.

Judgment and Directives

The Supreme Court upheld the High Court's decision that the service of notice under Section 14(2) of the Arbitration Act on Mr. Said Ali Shah, Advocate, was legal and binding on the appellant, Pakistan Railways. The Court found that the termination of Mr. Shah's appointment as standing counsel did not affect his capacity to receive the notice on behalf of the appellant, as the memo of appearance had not been withdrawn with the permission of the Court as required by Order III, Rule 4(2) of the CPC. The Court dismissed the appeal, holding that the objections to the arbitration award filed by Pakistan Railways were time-barred.

Significance

The judgment is significant for clarifying the legal position regarding the service of notice under the Arbitration Act and the role of standing counsels and government pleaders in receiving such notices. It underscores the importance of adhering to procedural requirements in arbitration proceedings and the implications of such adherence on the limitation period for raising objections to arbitration awards. The decision also highlights the Court's power under Section 17 of the Arbitration Act to examine the award for any reason to modify or set it aside, even if objections are time-barred or if there is a suspicion of collusion between the parties.

13. Chief Engineer, Building Department v. Pakistan National Construction (1988 SCMR 723)

Background and Issues

The Supreme Court of Pakistan in Civil Appeal No.124-K of 1981, decided on January 17, 1988, addressed an appeal by the Chief Engineer, Building Department against the judgment of the High Court of Sind. The primary issue was whether an aggrieved party, after raising an objection to the jurisdiction of an Arbitrator, loses the right to object to the award on the same ground by mere participation in the proceedings. The case also examined the validity of the appointment of an arbitrator and the implications of acquiescence, waiver, and estoppel on such appointments.

Judgment and Directives

The Supreme Court dismissed the appeal, upholding the High Court's judgment. The Court found that the appellant, after initially objecting to the jurisdiction of the Arbitrator, participated in the proceedings without further protest and consented to the extension of time for the award. This conduct amounted to acquiescence, and the appellant was therefore estopped from objecting to the jurisdiction of the Arbitrator. The Court also clarified that the appointment of an arbitrator is normally governed by the agreement of parties, and deviations from the method of appointment can be waived by the parties through acquiescence. The Court distinguished between inherent lack of jurisdiction and irregular exercise or assumption of jurisdiction, noting that the latter is subject to waiver.

Significance

The judgment is significant for its clarification on the principles of acquiescence, waiver, and estoppel in the context of arbitration proceedings. It establishes that participation in arbitration proceedings after raising an objection to the jurisdiction of an Arbitrator does not necessarily confer validity upon the award if the objection is based on a defect that can be waived. The decision also underscores the importance of the distinction between inherent lack of jurisdiction, which is incurable, and irregular assumption of jurisdiction, which can be cured by waiver. This case reinforces the legal framework governing the appointment of arbitrators and the binding nature of arbitration agreements, emphasizing the need for parties to be aware of their conduct during arbitration proceedings.

14. Abdul Hamid v. H. M. Qureshi (PLD 1957 SC 145)

Background and Issues

The Supreme Court of Pakistan in Civil Appeal No. 17 of 1956, decided on 28th March 1957, dealt with an appeal from the judgment and decree of the High Court of Judicature at Lahore in a partnership dispute involving an arbitration clause. The key issue was the interpretation of the arbitration agreement and whether the case fell within Section 9 of the Arbitration Act, 1940, or any other provision of law relating to the enforcement of such agreements. The arbitration agreement provided for each party to appoint an arbitrator and, with mutual consent, a "Surpanch" who would act as a chairman, rather than an "Umpire" as understood in arbitration law.

Judgment and Directives

The Supreme Court, in its judgment, clarified that the arbitration agreement intended for three arbitrators to be appointed, one of whom would act as the Surpanch or chairman. The Court held that Section 9 of the Arbitration Act, which pertains to references to two arbitrators, was inapplicable to the case at hand. Consequently, the award given by a sole arbitrator, appointed by one party, was invalid as it did not comply with the agreed arbitration procedure. The Court allowed the appeal, set aside the judgments of the lower courts, and dismissed the petition for filing the award and pronouncing judgment thereon.

Significance

The judgment is significant for its interpretation of arbitration agreements and the role of a Surpanch in such agreements. It emphasizes the importance of adhering to the specific terms of an arbitration agreement and the distinction between a Surpanch and an Umpire in arbitration proceedings. The decision also underscores the necessity for an arbitration tribunal to be validly invested with authority as per the agreement and relevant law before its award can be enforced through a court decree. This case serves as a precedent for the interpretation of arbitration clauses and the conditions under which an arbitrator's award can be considered binding and enforceable.

15. Oil & Gas Development Corporation Vs Karachi Builders (1978 SCMR 278)

Background and Issues

In the case of Messrs Oil & Gas Development Corporation v. Messrs Karachi Builders (1978 SCMR 278), the Supreme Court of Pakistan dealt with a civil petition for special leave to appeal against the order of the High Court of Sind at Karachi. The dispute arose from a contract between the parties, which included an arbitration clause stipulating that any disputes would be referred to the arbitration of the Chief Engineer of the petitioner Corporation. However, a special condition in the tender form indicated that the term "Chief Engineer" should be read as "Production Manager." The central issue was whether the Deputy Chief Engineer of the Corporation, who was performing additional duties as Production Manager, was competent to arbitrate the dispute.

Judgment and Directives

The Supreme Court upheld the decisions of the lower courts, which had concluded that the intention of the parties was to appoint the Production Manager as the arbitrator, not any other officer performing the functions of the Production Manager in addition to his own duties. The Deputy Chief Engineer, therefore, was not competent to arbitrate. The award given by the Deputy Chief Engineer was set aside under Section 30 of the Arbitration Act on the grounds of incompetence to arbitrate. The Supreme Court dismissed the petition, affirming the High Court's judgment that the arbitration had to be conducted by the Production Manager of the Corporation and not by any other officer.

Significance

The significance of this judgment lies in its strict adherence to the terms of the arbitration agreement between the parties. The Supreme Court's decision reinforces the principle that the specific terms of an arbitration agreement must be followed, and only the person or position explicitly designated as the arbitrator in the agreement is competent to arbitrate disputes. This case serves as a precedent for the interpretation of arbitration clauses and emphasizes the importance of the precise language used in such clauses to determine the parties' intentions. It also highlights the judiciary's role in ensuring that arbitration proceedings are conducted in accordance with the agreed terms, thereby upholding the sanctity of contractual agreements.

III. Salient Features of the Proposed Arbitration Act 2024

The proposed Arbitration Act 2024 seeks to modernize and streamline the arbitration process in Pakistan, ensuring efficient resolution of disputes through clear guidelines on appeals, deposits, jurisdiction, and confidentiality. This Act introduces provisions to enhance the enforceability of arbitration agreements, even in cases of death or insolvency, and to protect good faith actions by arbitrators and related parties. By integrating the Limitation Act and exempting arbitration agreements and awards from stamp duties, the Act aims to facilitate a more accessible and effective arbitration framework. It also empowers the High Courts and the Federal Government to establish regulations and rules that align with contemporary arbitration practices, repealing the outdated Arbitration Act of 1940 to bring Pakistan's arbitration law in line with international standards. Following is salient features of the proposed Act;

Preamble

The Arbitration Act, 2024 aims to modernize and consolidate laws relating to domestic and international commercial arbitration in Pakistan, in line with the UNCITRAL Model Law. It seeks to reduce judicial intervention, promote institutional arbitration, and uphold party autonomy.

1. Short Title, Extent, and Commencement

i. The Act is named the Arbitration Act, 2024.

ii. It applies to the whole of Pakistan.

iii. It is effective immediately upon enactment.

CHAPTER I: General Provisions

2. Definitions

a. **Arbitration:** Any arbitration, administered by an arbitral institution or not.

b. **Arbitration Agreement:** An agreement as per section 8.

c. **Arbitral Award:** Decision of the arbitral tribunal on the dispute's substance, including final, interim, or partial awards, and awards on costs or interest.

d. **Arbitral Institution:** A permanent organization with its own arbitration rules recognized by the Ministry of Law and Justice.

e. **Arbitral Tribunal:** A sole arbitrator or a panel of arbitrators, including an emergency arbitrator if applicable.

f. **Commercial:** Matters arising from commercial relationships, whether contractual or not, covering a broad range of business activities.

g. **Competent Court:** Defined based on the nature and location of arbitration.

h. **District Court:** As defined by the Code of Civil Procedure, 1908, excluding courts of grades lower than Additional District Judge.

i. **Foreign Arbitral Institution:** An institution headquartered outside Pakistan.

j. **International Commercial Arbitration:** Arbitration involving at least one party from outside Pakistan, governed by foreign laws, or as per parties' agreement.

k. **Legal Representative:** A person representing a deceased person's estate.

l. **Party:** A party to an arbitration agreement.

m. **Seat of Arbitration:** The juridical seat as designated by parties, an institution, or the arbitral tribunal.

3. Scope of Application of Provisions

i. Specifies the applicability of the Act to arbitrations seated in Pakistan and outlines exceptions.

ii. Details the powers conferred by the Act even if the seat of arbitration is outside Pakistan.

iii. Clarifies the application of certain sections to international arbitrations and other laws.

4. Receipt of Written Communications

- Establishes the rules for the deemed receipt of written communications in arbitration proceedings.

5. Waiver of Right to Object

- Describes the conditions under which a party is considered to have waived their right to object to non-compliance with the Act or arbitration agreement.

6. Extent of Judicial Intervention

- Limits court intervention in matters governed by the Act to those expressly provided within it.

7. Administrative Assistance

- Allows for administrative assistance in arbitral proceedings by agreement of the parties or the arbitral tribunal.

CHAPTER II: Arbitration Agreement

8. Arbitration Agreement

- Defines an arbitration agreement and sets out the requirements for such an agreement to be considered valid and in writing.

9. Stay of Legal Proceedings

- Provides for the stay of legal proceedings in favor of arbitration under certain conditions.

10. Interim Measures by Competent Court

- Outlines the powers of the Competent Court to issue interim measures before or during arbitral proceedings.

11. Public Policy and Arbitrability

- States that disputes agreed to be submitted to arbitration are arbitrable unless contrary to public policy.

CHAPTER III: Composition of Arbitral Tribunal

12. Number of Arbitrators

- Allows parties to determine the number of arbitrators, which must not be even, and outlines the default number in the absence of agreement.

13. Appointment of Arbitrators

- Details the procedure for appointing arbitrators, including the appointment of a sole or third arbitrator by the High Court or designated institution if parties cannot agree.

14. Disclosure by Arbitrator and Grounds for Challenge

- Requires prospective arbitrators to disclose any circumstances that may raise justifiable doubts about their impartiality or independence.

15. Challenge Procedure

- Sets out the procedure for challenging an arbitrator, including the timeline and process for deciding on the challenge.

16. Failure or Impossibility to Act

- Describes the circumstances under which an arbitrator's mandate terminates due to their inability to perform their functions.

17. Termination of Mandate and Substitution of Arbitrator

- Explains the process for replacing an arbitrator and the implications for prior hearings and rulings.

CHAPTER IV: Jurisdiction of Arbitral Tribunals

18. Competence of Arbitral Tribunal to Rule on Its Jurisdiction

i. The arbitral tribunal has the authority to rule on its own jurisdiction, including any objections regarding the arbitration agreement's existence or validity.

ii. An arbitration clause is considered independent of the contract's other terms, and a tribunal's decision that the contract is null does not invalidate the arbitration clause.

iii. Objections to the tribunal's jurisdiction must be raised no later than the submission of the statement of defense, but participation in the appointment of an arbitrator does not preclude raising such objections.

iv. The tribunal may admit a later plea if the delay is justified and may decide on jurisdictional pleas as a preliminary question or within an award on the merits.

v. If a jurisdictional plea is rejected, the tribunal continues proceedings and makes an award, which can be challenged under section 39 by the aggrieved party.

19. Interim Measures Ordered by Arbitral Tribunal

i. Parties may request interim measures from the tribunal for various matters, including preservation of goods, securing the amount in dispute, and maintaining the status quo.

ii. The tribunal's powers mirror those of the Competent Court, and orders are enforceable as if issued by the court.

iii. Interim measures are generally ordered after notice and a hearing, except in urgent cases.

iv. In international arbitrations, the tribunal may require security for costs, with certain limitations based on the claimant's residence or incorporation.

CHAPTER V: Conduct of Arbitral Proceedings

20. General Duty of Arbitral Tribunal

i. The tribunal must act fairly and impartially, giving each party a reasonable opportunity to present their case.

ii. Procedures should be suitable to the case, avoiding unnecessary delay or expense, and the tribunal must adhere to this duty throughout the proceedings.

21. Determination of Rules of Procedure

i. The tribunal is not bound by the Code of Civil Procedure or other specified laws.

ii. Parties may agree on the procedure, or in the absence of agreement, the tribunal decides the appropriate procedure, including matters of evidence and document disclosure.

22. Seat and Venue of Arbitration

i. Parties may agree on the seat of arbitration; otherwise, the tribunal decides, considering the parties' convenience.

ii. The tribunal may meet at any venue it deems appropriate for various purposes, and a reference to a place of arbitration in an agreement is deemed to refer to the seat.

23. Commencement and Consolidation of Arbitral Proceedings

- Proceedings commence when a request for arbitration is received by the respondent, and parties may agree on consolidation or concurrent hearings.

24. Language

- The language of the proceedings is agreed upon by the parties or determined by the tribunal and applies to all aspects of the proceedings, including any necessary translations.

25. Statements of Claim and Defense

- Claimants and respondents must submit their claims and defenses within agreed or tribunal-determined timeframes, with provisions for amending claims and the possibility of counter-claims or set-offs.

26. Hearings and Written Proceedings

- The tribunal decides on holding oral hearings or conducting proceedings based on documents, with provisions for party requests for hearings and notice requirements.

27. Default of a Party

- The tribunal may terminate proceedings or continue without treating a party's failure to act as an admission, and may dismiss claims if there is inordinate and inexcusable delay.

28. Expert Appointed by Arbitral Tribunal

- The tribunal may appoint experts and require parties to cooperate with them, with provisions for cross-examination and access to information used by the expert.

29. Court Assistance in Taking Evidence

- The tribunal or a party with tribunal approval may seek court assistance in taking evidence, with the court having the same powers as in its own proceedings.

CHAPTER VI: Making of Arbitral Award and Termination of Proceedings

Section 30: Law Applicable to Substance of Dispute

i. Arbitral tribunal decides the dispute according to Pakistani substantive law.

ii. In international commercial arbitrations:
    - Tribunal applies law designated by parties.
    - Designation of a country's law refers to its substantive law, not conflict of laws rules.
    - Absent party designation, tribunal applies rules it deems appropriate.

iii. Tribunal decides ex aequo et bono or as amiable compositeur only if authorized by parties.

iv. Tribunal's decisions are based on contract terms and relevant trade usages.

Section 31: Decision Making by Panel of Arbitrators

i. Decisions made by a majority unless

parties agree otherwise.

ii. Presiding arbitrator may decide procedural questions if authorized.

Section 32: Time Limit for Arbitral Award

i. Does not apply to international commercial arbitrations.

ii. For other matters:

- Award made within 18 months from pleadings completion.
- Parties may consent to extend for 12 more months.
- Court may extend the period upon party application.
- Court may reduce arbitrator fees for delays attributable to the tribunal.

Section 33: Settlement

i. Tribunal may encourage settlement and use mediation or conciliation.

ii. If parties settle, tribunal terminates proceedings and may record settlement as an award.

Section 34: Final Relief in Award

i. Parties agree on tribunal's powers regarding final relief.

ii. Tribunal may make declarations, order payments, and grant other typical court reliefs.

Section 35: Form and Contents of Arbitral Award

i. Award in writing and signed by tribunal members.

ii. Majority signature suffices; reasons for omitted signatures must be stated.

iii. Award states reasons unless parties waive this requirement or it's an agreed award.

iv. Award states date and seat of arbitration.

v. Signed copy delivered to each party.

Section 36: Regime for Costs

i. "Costs" include fees for arbitrators, courts, witnesses, legal expenses, and other related expenses.

ii. Tribunal determines amount and timing of costs in international commercial arbitrations.

iii. In other matters, tribunal has discretion on whether and how much costs are payable.

Section 37: Termination of Proceedings

i. Proceedings end with final award or tribunal order.

ii. Tribunal orders termination if claim withdrawn, parties agree, or continuation is unnecessary.

Section 38: Correction and Interpretation of Award; Additional Award

i. Parties may request corrections or interpretations within 30 days of award receipt.

ii. Tribunal may correct errors on its own initiative.

iii. Parties may request an additional award for omitted claims.

Section 39: Application for Setting Aside Arbitral Award

i. Award may be challenged on grounds of incapacity, invalidity, improper notice, or matters beyond scope.

ii. Court may set aside if the subject matter is non-arbitrable or award conflicts with public policy.

Section 40: Finality of Arbitral Awards

1. Award is final and enforceable unless set aside or stayed by the court.

Section 41: Enforcement and Stay of Award

i. Award enforced like a court decree unless stayed or set aside.

ii. Court may stay award operation on application.

Section 42: Appealable Orders

1. Appeals allowed from certain orders, including setting aside an award.

Section 43: Deposits

i. Tribunal may require deposits for costs.

ii. Parties share deposit costs; proceedings may be suspended for non-payment.

Section 44: Lien on Arbitral Award and Deposits as to Costs

1. Tribunal has a lien on the award for unpaid costs.

Section 45: Arbitration Agreement Not to be Discharged by Death of Party

i. Arbitration agreements remain valid despite the death of a party.

ii. Arbitration can be enforced by or against the deceased's legal representatives.

iii. Arbitrator's mandate is not terminated by the death of the appointing party.

iv. This does not affect laws where the right of action is extinguished by death.

Section 46: Provisions in Case of Insolvency

i. Arbitration agreements are enforceable in insolvency if the administrator adopts the agreement.

ii. The court may refer insolvency-related matters to arbitration under certain conditions.

iii. Applications for such referrals can be made by other parties to the arbitration agreement or the administrator.

Section 47: Jurisdiction

i. The seat of arbitration determines the competent court's jurisdiction.

ii. If the seat is not determined, jurisdiction is based on parties' residence, business location, or where the cause of action arises.

iii. The court with initial jurisdiction retains it for all related arbitration matters.

iv. For foreign arbitrations, jurisdiction is based on parties' residence, business location, or where the subject matter is located.

v. Exceptions to this section include applications for stay of proceedings, enforcement of orders, and enforcement of awards.

Section 48: Confidentiality and Protection for Good Faith Actions

i. Arbitration proceedings and awards are confidential unless disclosure is legally required.

ii. Courts may order the maintenance of confidentiality.

iii. No legal action against arbitrators or institutions for good faith actions under the Act.

Section 49: Limitations

i. The Limitation Act applies to arbitrations as it does to court proceedings.

ii. Arbitration is deemed to commence on the date specified in Section 23.

iii. The court may extend time limits for commencing arbitration in cases of undue hardship.

iv. Time spent in arbitration before an award is set aside is excluded from limitation periods.

Section 50: Exclusion of Stamp Laws

1. Arbitration agreements and awards are exempt from stamp duties.

Section 51: Procedure and Powers of Court

i. Courts follow civil procedure and have the same powers as in civil cases for arbitration matters.

ii. District Courts have powers for enforcement of orders and awards.

Section 52: Power of a High Court to Make Regulations

i. High Courts may make regulations for arbitration proceedings.

ii. Regulations may cover appointments, costs applications, procedures, forms, administration, and general court proceedings under the Act.

Section 53: Power to Make Rules

1. The Federal Government may make rules for implementing the Act.

Section 54: Repeal and Savings

i. The Arbitration Act, 1940, is repealed.

ii. The 1940 Act still applies to proceedings that began before this Act's enforcement unless parties agree otherwise.

iii. This Act applies to all arbitrations commencing after its enforcement, overriding any contrary provisions or agreements.

IV. Significance and Compatibility of Propose Arbitration Act 2024

The revised draft legislation for the Arbitration Act, 2024, aims to modernize the legal framework for both domestic and international commercial arbitration in Pakistan. It seeks to replace the outdated Arbitration Act of 1940 with a new statute that aligns with the UNCITRAL Model Law on International Commercial Arbitration, which was adopted in 1985 and amended in 2006. Following are different points highlighting significance and compatibility of the proposed Act:

1. **Alignment with International Standards**

The proposed Arbitration Act 2024 aligns with international arbitration standards, ensuring compatibility with global practices and conventions. By incorporating principles from the UNCITRAL Model Law on International Commercial Arbitration and recognizing foreign arbitral awards in line with the New York Convention, the Act positions Pakistan as a jurisdiction that adheres to widely accepted international norms. This alignment facilitates cross-border arbitration and enhances the attractiveness of Pakistan as a venue for international arbitration.

2. **Modernization and Efficiency**

The proposed Arbitration Act 2024 represents a significant step towards modernizing Pakistan's arbitration framework. By providing clear guidelines and structured procedures for appeals, deposits, and jurisdiction, the Act aims to streamline arbitration processes. This modernization ensures faster and more efficient dispute resolution, reducing the burden on the judiciary and promoting a more robust alternative dispute resolution mechanism. This efficiency is expected to attract more businesses and investors to resolve their disputes through arbitration in Pakistan, thus enhancing the country's attractiveness as a hub for arbitration in the region.

3. **Enhanced Enforceability and Stability**

The Act enhances the enforceability of arbitration agreements, even in cases involving the death or insolvency of a party. This stability is crucial for maintaining confidence in arbitration as a reliable means of resolving disputes. By allowing arbitration agreements to be enforced by or against legal representatives or insolvency administrators, the Act ensures that arbitration remains a viable option regardless of changes in the parties' circumstances. This provision is especially significant in maintaining the continuity of arbitration proceedings, providing certainty to the parties involved, and ensuring that arbitration remains a preferred method of dispute resolution.

4. **Comprehensive Jurisdictional Provisions**

The jurisdictional provisions in the proposed Act clarify the roles of High Courts and District Courts in arbitration matters. By defining the competent courts based on the seat of arbitration or the parties' locations, the Act provides certainty and reduces jurisdictional conflicts. This clarity is vital for both domestic and international parties seeking arbitration in Pakistan, as it helps to ensure consistent and predictable outcomes. The Act’s provision that the High Court within whose jurisdiction the seat of arbitration is located has exclusive jurisdiction will likely reduce conflicting judgments and provide a clear path for enforcement and challenges of arbitration awards.

5. **Confidentiality and Good Faith Protections**

The Act underscores the importance of confidentiality in arbitration proceedings, protecting sensitive information and promoting trust in the arbitration process. Additionally, it provides immunity for arbitrators and related parties acting in good faith, safeguarding them from legal repercussions and encouraging impartial and diligent conduct. These provisions are crucial for maintaining the integrity and attractiveness of arbitration as a dispute resolution method. The assurance of confidentiality and protection for arbitrators and arbitral institutions is likely to encourage more entities to choose arbitration, knowing that their interests and the integrity of the process are safeguarded.

6. **Integration with Existing Legal Framework**

By integrating the Limitation Act, 1908, and exempting arbitration agreements and awards from stamp duties, the proposed Act aligns arbitration procedures with existing legal standards while removing financial barriers. This integration simplifies the arbitration process and makes it more accessible to parties, fostering a more arbitration-friendly environment in Pakistan. The clear alignment with existing legal frameworks ensures that arbitration processes are not seen as alien or disconnected from the traditional legal practices, thus promoting greater acceptance and smoother implementation.

7. **Empowerment of High Courts and Federal Government**

The proposed Act empowers High Courts to establish regulations and the Federal Government to make rules for carrying out its provisions. This decentralized approach allows for the development of tailored regulations that reflect the unique needs and circumstances of different regions within Pakistan. It also facilitates the adoption of best practices and the continuous improvement of arbitration procedures. The ability of High Courts to make regulations related to arbitration within their jurisdiction ensures that local nuances are considered, making the arbitration process more effective and efficient.

8. **Promotion of Party Autonomy**

The proposed Arbitration Act 2024 emphasizes party autonomy, allowing parties to shape their arbitration process according to their preferences. This includes the ability to select arbitrators, define procedural rules, and determine the seat of arbitration. By fostering party autonomy, the Act ensures that arbitration remains a flexible and adaptable dispute resolution mechanism, capable of meeting the diverse needs of parties involved. This approach not only respects the parties' agreements but also enhances the attractiveness of arbitration as a method that can be tailored to the specific requirements of different disputes.

9. **Encouragement of International Arbitration**

With explicit provisions for dealing with arbitration agreements involving foreign elements and ensuring the enforceability of awards made outside Pakistan, the Act promotes international arbitration. This is crucial for attracting foreign investment and ensuring that Pakistan is seen as a reliable jurisdiction for resolving cross-border disputes. The Act's alignment with international arbitration standards and practices enhances Pakistan's ability to host international arbitration proceedings and boosts confidence among international parties considering arbitration in Pakistan.

10. **Simplified Arbitration Procedures**

The Act aims to simplify arbitration procedures, making them more accessible and understandable for parties. By providing clear guidelines and reducing procedural complexities, the Act encourages more parties to opt for arbitration over traditional litigation. Simplified procedures also help in reducing the time and costs associated with arbitration, making it a more efficient and attractive option for dispute resolution. This simplification is particularly beneficial for small and medium-sized enterprises (SMEs) that may lack the resources to engage in lengthy and complicated litigation.

11. **Enhanced Interim Relief Mechanisms**

The proposed Act strengthens interim relief mechanisms, allowing arbitral tribunals and courts to grant interim measures that preserve the status quo and protect the interests of parties during the arbitration process. This includes the power to grant measures such as injunctions, preservation of assets, and other interim reliefs that are essential for ensuring that the arbitration process remains fair and effective. Enhanced interim relief mechanisms provide parties with the necessary tools to safeguard their interests while the arbitration is ongoing, thus maintaining the integrity of the arbitration process.

12. **Comprehensive Cost Management**

The Act introduces detailed provisions for the management and allocation of arbitration costs, including deposits and supplementary deposits. By clearly defining the responsibilities of parties regarding cost payments and providing mechanisms for the return of unexpended balances, the Act ensures transparent and fair cost management. This transparency is crucial for maintaining trust in the arbitration process and ensuring that costs do not become a barrier to accessing arbitration. Proper cost management also helps in preventing disputes over costs, which can delay the resolution process and increase the overall expenses for parties.

13. **Strengthened Role of Arbitral Institutions**

The Act recognizes the role of arbitral institutions in administering arbitrations and provides a framework for their functioning. This includes guidelines for the appointment of arbitrators, handling of deposits, and ensuring the confidentiality of proceedings. Strengthening the role of arbitral institutions enhances the overall quality and reliability of arbitration services available in Pakistan. By providing institutional support and oversight, the Act ensures that arbitrations are conducted efficiently and in accordance with best practices, thereby enhancing the credibility of the arbitration process.

14. **Encouragement of Ethical Practices**

The proposed Act promotes ethical practices in arbitration by providing protections for good faith actions taken by arbitrators, arbitral institutions, and parties. By shielding these stakeholders from legal repercussions for actions taken in good faith, the Act encourages ethical behavior and diligent conduct throughout the arbitration process. This focus on ethics is essential for maintaining the integrity and fairness of arbitration, ensuring that all parties can trust the process and its outcomes. Ethical practices also help in building a positive reputation for arbitration in Pakistan, encouraging more parties to choose arbitration for their disputes.

15. **Increased Access to Justice**

By providing a clear and efficient framework for arbitration, the proposed Act increases access to justice for parties seeking an alternative to traditional litigation. Arbitration offers a less formal, more flexible, and often faster means of resolving disputes, making it an attractive option for many parties. The Act's provisions for streamlined procedures, effective cost management, and enhanced interim relief mechanisms ensure that arbitration remains accessible and effective for a wide range of disputes. Increased access to justice through arbitration helps in reducing the caseload of courts and ensures timely resolution of disputes.

16. **Streamlined Enforcement Mechanisms**

The Act streamlines enforcement mechanisms for arbitral awards, ensuring that they can be readily implemented. By providing clear procedures for the recognition and enforcement of both domestic and foreign awards, the Act facilitates the finality and effectiveness of arbitration outcomes. This streamlined enforcement is essential for ensuring that arbitration remains a viable and efficient alternative to litigation.

17. **Support for Arbitrator Independence**

The proposed Act supports the independence of arbitrators by providing clear guidelines for their appointment, fees, and protection from undue influence. By ensuring that arbitrators can operate independently and without fear of repercussions, the Act promotes impartial and fair decision-making. This independence is crucial for maintaining the credibility and legitimacy of the arbitration process, ensuring that parties receive fair and unbiased resolutions to their disputes. Support for arbitrator independence also helps in attracting experienced and reputable arbitrators to conduct arbitrations in Pakistan.

18. **Promotion of Transparency and Accountability**

The Act promotes transparency and accountability in the arbitration process by providing clear guidelines for the conduct of arbitrators, management of costs, and handling of confidential information. By ensuring that all stakeholders are held accountable for their actions and that the arbitration process is transparent, the Act enhances trust and confidence in arbitration. Transparency and accountability are essential for ensuring that the arbitration process is fair and that parties can have confidence in the outcomes. This promotion of transparency and accountability helps in building a positive reputation for arbitration in Pakistan and encourages more parties to choose arbitration for their disputes.

19. **Adaptability to Technological Advancements**

The proposed Act is designed to be adaptable to technological advancements in arbitration, including the use of virtual hearings and electronic submissions. By recognizing the evolving nature of arbitration practices and incorporating provisions that accommodate technological innovations, the Act ensures that it remains relevant and effective in a rapidly changing landscape. This adaptability is crucial for keeping pace with modern arbitration practices and ensuring that the arbitration framework in Pakistan is forward-looking.

20. **Improved Appeal Mechanisms**

The proposed Act introduces clear appeal mechanisms for arbitration-related orders, ensuring that parties have a structured path to challenge decisions. This provision enhances the credibility of the arbitration process by ensuring that there is a higher level of scrutiny and fairness. Appeals are limited to specific instances, such as refusing to refer parties to arbitration, granting or refusing measures, and setting aside arbitral awards, thus preventing frivolous appeals and ensuring that only substantial matters are considered. This balance between allowing appeals and preventing abuse of the appeal process is crucial for maintaining the efficiency and integrity of arbitration.

21. **Financial and Procedural Flexibility**

The Act provides for financial and procedural flexibility in handling deposits and costs associated with arbitration. By allowing arbitral tribunals to fix deposits and manage them efficiently, the Act ensures that financial constraints do not impede the arbitration process. Provisions for dealing with non-payment by parties and the ability to terminate proceedings in such cases provide a practical approach to managing arbitration costs. Additionally, the lien on arbitral awards for unpaid costs and the mechanisms for addressing such issues through the Competent Court ensure that arbitrators are compensated for their services, thereby maintaining the sustainability of the arbitration framework.

22. **Repeal of Outdated Legislation**

The repeal of the Arbitration Act, 1940, marks a significant shift towards a more contemporary legal framework for arbitration. The proposed Act addresses the limitations of the old legislation and incorporates modern principles and practices, making Pakistan's arbitration law more competitive on the global stage. This repeal and replacement demonstrate Pakistan's commitment to evolving its legal infrastructure to support efficient and fair dispute resolution. The new Act is expected to align Pakistan's arbitration practices with international standards, thereby enhancing its reputation and reliability in the global arbitration community.

Thus, the Arbitration Act, 2024, if enacted, would represent a significant step forward in reforming Pakistan's arbitration landscape. Its compatibility with international standards, support for institutional arbitration, recognition of party autonomy, reduced judicial intervention, emphasis on speedy dispute resolution, and clear enforcement mechanisms are all indicative of a modern and effective arbitration regime. This can enhance Pakistan's position as a favorable destination for international commercial activities and dispute resolution.

CONCLUSION

The landscape of arbitration laws in Pakistan has been profoundly shaped by landmark rulings of the Supreme Court, which have established a robust framework for resolving disputes outside traditional court systems. This paper has traced the evolution of arbitration in Pakistan, highlighting key judgments that have clarified the role and scope of arbitration in the country's legal system. These decisions have underscored the judiciary's commitment to promoting arbitration as a viable and effective alternative dispute resolution mechanism.

The proposed Arbitration Act 2024 represents a significant milestone in this ongoing evolution. By addressing the shortcomings of existing legislation and incorporating international best practices, the Act aims to enhance the efficiency, transparency, and fairness of arbitration proceedings in Pakistan. The proposed reforms include streamlined procedures, greater autonomy for arbitrators, and improved enforcement mechanisms, aligning Pakistan's arbitration framework with global standards.

The compatibility of the proposed Arbitration Act 2024 with existing judicial principles and international conventions further underscores its potential to bolster investor confidence and facilitate economic growth. The Act's emphasis on party autonomy, procedural flexibility, and judicial support for arbitration aligns with the principles established by the Supreme Court, ensuring that the new legal regime will be both progressive and consistent with established jurisprudence.

Thus, the proposed Arbitration Act 2024 is poised to play a transformative role in Pakistan's legal landscape. By building on the foundations laid by the Supreme Court's key rulings, it promises to make arbitration a more attractive, efficient, and reliable means of dispute resolution. This legislative advancement not only reflects Pakistan's commitment to modernizing its legal framework but also its aspiration to become a competitive player in the global arena of dispute resolution. As Pakistan continues to refine its arbitration laws, the synergy between judicial oversight and legislative innovation will be crucial in achieving a balanced and effective arbitration regime that meets the needs of all stakeholders.

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