

Contours of Reform: Reading and Rethinking the Draft Arbitration Bill, 2024

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Abstract

This research study examines the Draft Arbitration Bill, 2024 of Pakistan by analyzing its provisions in comparison with the existing Arbitration Act, 1940 and relevant international arbitration models. It argues that the draft legislation makes a decisive departure from the existing legislative framework which adopts an interventionist approach and grants courts extensive powers, undermining arbitral autonomy. In contrast, the Bill 2024 is designed to enhance party autonomy, restrict judicial intervention, and empower arbitral tribunals with greater control over the proceedings, thereby aligning domestic arbitration law more closely with contemporary arbitral standards, such as the UNICTRAL Model Law. The Bill 2024 attempts to codify the pro-arbitration bias of New York Convention, particularly by incorporating into statutory text the progressive legal principles articulated in recent domestic judicial decisions. The study also identifies legislative gaps in the proposed bill, by underscoring potential deficiencies and aspects requiring further amendment to secure a more effective arbitral framework.

Keywords: Draft Arbitration Bill, 2024, Arbitration Act, 1940, Judicial Intervention, Arbitrability, Competence-Competence, Separability, Public Policy, Party Autonomy.

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1.1 Introduction

After independence, Pakistan adopted the Arbitration Act of 1940 (hereinafter ‘Act, 1940’) modelled on the English Arbitration Act of 1934.⁴ While English law was continuously updated and finally replaced with the Arbitration Act of 1996, Pakistan had chosen to retain the colonial laws without any meaningful reform.⁵ The reason for this pronounced delay lies not in a lack of awareness of international developments but in the marginal importance successive political governments accorded to arbitration as an instrument of economic and legal development.⁶

The legal gridlock has entailed far-reaching implications. The Act, 1940 provides for an arbitration regime that is excessively court-supervised instead of being party-driven, lacking the pro-enforcement bias that characterizes modern arbitral statutes.⁷ It gives courts the powers to intervene at virtually every step of the arbitral proceedings, thereby significantly reducing arbitral autonomy. For instance, the Act, 1940 gives courts broad powers of judicial review on merits under the pretext of public policy.⁸ The cases of *HUBCO*⁹ and *Reko Diq*¹⁰ are classic examples of

⁴ Anuja BS and AR Nair, ‘International Commercial Arbitration and Indian Law – Need for Reforms’ (2021)

<http://14.139.185.167:8080/jspui/bitstream/123456789/446/1/LLM_0220019_CAL.pdf> accessed 6 October 2025.

⁵ Ikram Ullah, ‘Chapter 1: Introduction’ in ‘Arbitration Law of Pakistan’ (2021) (Kluwer Law International), pp. 3 <<https://www.kluwerarbitration-com.ezp.sub.su.se/document/TOC-Ullah-2021>> accessed 6 October 2025.

⁶ Ibid.; A Basit Khan, ‘Is Alternate Dispute Resolution (ADR) a Valid Mechanism to Overcome Trust Deficit of Investors in Pakistan’ (2025) 3(2) Law Research Journal 41–55

<<https://lawresearchreview.com/index.php/Journal/article/view/81/78>> accessed 6 October 2025.

⁷ Hassan Raza, ‘Foreign Arbitration Laws – An Appellate Adventure of Pakistani Courts’

<<https://courtingthelaw.com/2018/03/03/commentary/foreign-arbitration-laws-an-appellate-adventure-of-pakistani-courts/>> accessed 6 October 2025.

⁸ Vesselina Shaleva, ‘The “Public Policy” Exception to the Recognition and Enforcement of Arbitral Awards in the Theory and Jurisprudence of the Central and East European States and Russia’ (2003) 19(1) Arbitration International 67–93 <<https://doi.org/10.1093/arbitration/19.1.67>> accessed 6 October 2025.

⁹ Hub Power Company Ltd. (HUBCO) v. Pakistan WAPDA, PLD 2000 SC 841, wherein the majority view was that public policy required a finding about alleged criminality; the matter was, therefore, not referable to arbitration.

¹⁰ Maulana Abdul Haque v Government of Baluchistan (PLD 2013 SC 641), wherein court declared the CHEJVA and related agreements void ab initio on grounds of illegality and public policy, rendering the arbitration clause inoperative.

how domestic courts erred by effectively re-litigating the underlying dispute, instead of confining themselves to basic questions of enforceability.

Excessive judicial interventions lead to legal uncertainty and discourage recourse to arbitration, which in turn increases domestic litigation, reduces contract enforcement and undermines the prospects of foreign investment in Pakistan.¹¹ Indeed, between 2013 and 2022, Pakistan's net foreign direct investment remained largely stagnant rising only marginally from USD 1.33 billion to USD 1.42 billion, a trend to which the unreliability of dispute resolution mechanisms was not an insignificant contributor.¹²

In pursuit of legislative overhaul, an Arbitration Law Review Committee ('ALRC') was formed in 2023 to review the Act, 1940 and propose suitable reforms. Under the aegis of Law and Justice Commission of Pakistan, the ARLC prepared the Draft Arbitration Bill of 2024 (hereinafter 'Bill 2024'), which currently awaits parliamentary approval. The Bill 2024 seeks to progressively transform the legal framework of arbitration in Pakistan by aligning it with UNCITRAL Model Law (hereinafter 'MAL') and other modern arbitral frameworks.

Interestingly, this initiative reflects a global trend of arbitration reform. Across the world, countries are revisiting their arbitration laws to meet the demands of contemporary commerce.¹³ For example, the Arbitration (Amending) Act 2025 was recently enacted in the United Kingdom to introduce rules on the governing law of arbitration agreements, reinforce arbitrator immunity, enable summary disposal, and further narrow

¹¹ José Lopez-Calix and Irum Touqeer, *Revisiting the Constraints to Pakistan's Growth* (Policy Paper Series on Pakistan PK 20/12, World Bank, June 2013) 47

<<https://documents1.worldbank.org/curated/en/991471468284107784/pdf/862570NWP0Worl0o0Pakistan0s0Growth.pdf>> accessed 6 October 2025.

¹² Ali Khizer, *Efficiency-Seeking FDI in Pakistan* (Pakistan Business Council, 2024) 7 <<https://www.pbc.org.pk/wp-content/uploads/Efficiency-Seeking-FDI-in-Pakistan.pdf>> accessed 6 October 2025.

¹³ Christian Dargham, Dylan McKimmie, Matthew H Kirtland and Katie Connolly, 'A Global Round-Up – Developments in International Arbitration Rules and Laws' (Norton Rose Fulbright, October 2018) <<https://www.nortonrosefulbright.com/en-419/knowledge/publications/b5739f47/a-global-round-up-developments-in-international-arbitration-rules-and-laws>> accessed 7 October 2025.

jurisdictional challenges.¹⁴ In India, the Draft Arbitration and Conciliation (Amendment) Bill, 2024 contemplates innovations, such as, the recognition of emergency arbitrators and digital arbitration procedures.¹⁵ Similarly, in China, the Draft Arbitration Bill, 2024 and CIETAC's 2024 reforms collectively expand online proceedings and third-party funding, albeit with a somewhat conservative approach to competence-competence and interim measures.¹⁶

It is against this backdrop of international reform that Pakistan's initiative must be understood. By finally addressing an eighty-four-year-old legislative gap, the Bill 2024 represents not simply statutory housekeeping but an attempt to recalibrate the domestic arbitration system.

1.2 Legislative Context of Bill 2024

The Bill 2024 proposes the repeal and replacement of the Act, 1940. In recent years, the superior judiciary of Pakistan has issued several pro-arbitration judgements. However, they primarily relate to the enforcement of foreign arbitral awards under the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 (hereinafter '2011 Act'). The primary objective of the Bill 2024 appears to be the extension of this pro-enforcement and arbitration-friendly approach to domestic and domestically seated foreign arbitrations.¹⁷ It is largely based on MAL but also draws inspiration from the Indian Arbitration and Conciliation Act, 1996 and arbitral statutes of the United Kingdom, Singapore and Malaysia.¹⁸

¹⁴ 'The Arbitration Act 2025 Enters into Force in the UK' <<https://www.globalarbitrationnews.com/2025/08/04/the-arbitration-act-2025-enters-into-force-in-the-uk/>> accessed 6 October 2025.

¹⁵ Shreya Jain, Mrinali Komandur & Shweta Kabra, '2024 Year in Review: Arbitration in India – Reset or Rewind?' <<https://legalblogs.wolterskluwer.com/arbitration-blog/2024-year-in-review-arbitration-in-india-reset-or-rewind/>> accessed 6 October 2025.

¹⁶ Saloni Khanderia, 'Major amendment to Chinese Arbitration Act after three decades' (18 September 2025) <<https://conflictoflaws.net/2025/major-amendment-to-chinese-arbitration-act-after-three-decades/>> accessed 6 October 2025.

¹⁷ Mian Sami ud Din and Feisal Naqvi, 'Pakistan's Draft Arbitration Bill 2024: Change After 84 Years?' (Kluwer Arbitration Blog, 31 May 2024) <<https://arbitrationblog.kluwerarbitration.com/2024/05/31/pakistans-draft-arbitration-bill-2024-change-after-84-years/?output=pdf>> accessed 6 October 2025.

¹⁸ Ibid.

1.3 Key Features of the Draft Arbitration Bill 2024

The article selectively analyzes provisions that constitute notable improvements over the Act, 1940.

1.3.1. Arbitration Agreements

The identification of an arbitration agreement is the initiation point of any arbitral process. Section 2(a) of Act, 1940 provides a formalistic and rigid definition of an arbitration agreement,

‘arbitration agreement means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.’

The definition suffers from several deficiencies when measured against contemporary developments in arbitration law. Firstly, the definition implies that arbitration can only arise out of contractual disputes and disregards the inclusion of non-contractual matters, arising not directly under the agreement but sufficiently connected to the underlying commercial relationship governed by the arbitration agreement, such as unfair enrichment, tortious claims, and statutory claims. Secondly, section 2 is textually silent regarding arbitration clauses, however section 7 recognizes their enforceability against insolvent parties. The courts have operationally remedied this omission by consistently invoking the doctrine of separability to enforce arbitration clauses.¹⁹ Thirdly, the Act, 1940 requires arbitration agreement to be in writing and does not recognize inference of such an agreement from communication between the parties, let alone electronic exchanges. Consequently, courts have again stepped in and held that the intent to arbitrate may be inferable from communications or related documents.²⁰

Section 8 of the Bill 2024 follows the pattern of Article 7 MAL to provide a comprehensive definition of an arbitration agreement.

¹⁹ Raja Muhammad Sarwar Khan v. The Federation of Pakistan, PLD 1958 (W. P.) Karachi 224; Sezai Turkes Feyzi Akkaya Construction Company v. Crescent Services, 1997 SCMR 1928; Province of Punjab v. Industrial Machine Pool, PLD 1978 Lahore 829; Hitachi Limited v. Rupali Polyester, 1998 SCMR 1618; Lakhra Power Generation Company Limited (LPGCL) v. Karadeniz Powership Kaya Bey, 2014 CLD 337.

²⁰ Shamim Akhter v. Najma Baqai, PLD 1977 SC 644; Shan Muhammad v. Nawab & 3 Others, PLD 2001 Lahore 239.

This significantly removes the deficiencies outlined above. Therein, an arbitration agreement is defined as an agreement between parties to submit all or certain disputes, present or future, arising in respect of a defined legal relationship, whether contractual or not, to arbitration.²¹ As per travaux préparatoires of MAL, the term ‘*defined legal relationship, whether contractual or not*,’ is to “*be given a wide interpretation so as to cover all non-contractual commercial cases occurring in practice (e.g. third party interfering with contractual relations; infringement of trademark or other unfair competition)*”.²² It recognizes arbitration clauses as well as submission agreements²³, allows agreements to be inferred from pleadings²⁴ or conduct²⁵ or by reference to other documents²⁶, and accepts electronic communication²⁷ as satisfying the writing requirement. The new definition sufficiently widens the scope and enforceability of arbitration agreements.

1.3.2. Law Governing Arbitration Agreement

The law of the arbitration agreement determines the scope, validity, termination and interpretation of the arbitration agreement.²⁸ It can be different from the law governing the main contract.²⁹ Section 8(9) of the Bill 2024 stipulates that the law of the arbitration agreement shall follow the law of the main contract, except where parties agree to the contrary. This amendment seeks to codify, rather than reform, the existing approach developed by courts in Pakistan.³⁰ While this provision eliminates interpretative ambiguity, it does not recognize the separability of the arbitration

²¹ Section 8(1) of Draft Arbitration Bill, 2024.

²² UNCITRAL, Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration, under Article 7, para. 4 (A/CN.9/264) <<http://www.uncitral.org/uncitral/en/commission/sessions/18th.html>> accessed 6 October 2025.

²³ Section 8(2) of Draft Arbitration Bill, 2024.

²⁴ Section 8(6) of Draft Arbitration Bill, 2024.

²⁵ Section 8(4) of Draft Arbitration Bill, 2024.

²⁶ Section 8(7) of Draft Arbitration Bill, 2024.

²⁷ Section 8(5) of Draft Arbitration Bill, 2024.

²⁸ Ikram Ullah (n 5) Chapter 2, page. 20.

²⁹ Ibid., page. 13.

³⁰ Spacecom International, LLC vs. Wateen Telecom Limited, 2025 CLD 241 Lahore-High-Court-Lahore; China International Water and Electric Corporation (CWE) P.R. China vs. National Highway Authority, 2023 CLD 1400 ISLAMABAD; Hitachi Ltd., Ors. Vs. Rupali Polyester, Ors., 1998 SCMR 1618.

agreement from the substantive contract which may potentially lead to procedural incoherence.³¹

Application of seat law to the arbitration agreement is widely considered a more appropriate approach to bring procedural certainty in the process of arbitration.³² The choice of a specific seat reflects the parties' deliberate decision to submit their disputes to a particular legal system, and it makes the law of seat more closely connected to the arbitration agreement than the law of main contract.³³ The seat is a legal construct.³⁴ It determines *lex arbitri*, which regulates the procedure of arbitration, therefore, applying the same law to the arbitration agreement creates a more coherent legal framework.³⁵ This consistency is particularly crucial because the courts at the seat exercise supervisory control over the process of arbitration, including the constitution of tribunals, anti-suit injunctions, challenges to awards and other procedural directions.³⁶ It enables the parties to rely on a single legal framework for both substantive and procedural validity of arbitration, in consistency with the seat approach adopted under the default rule of Article V(1)(a) of the New York Convention.³⁷

The Hitachi³⁸ case aptly illustrates the problems which emanate from the contract law approach. In this case the Supreme Court

³¹ Klaus Peter Berger, 'Re-examining the Arbitration Agreement: Applicable Law – Consensus or Confusion?' in Albert Jan van den Berg (ed), *International Arbitration 2006: Back to Basics?* (ICCA Congress Series No 13, Kluwer Law International 2007) 301–334, 319 <<https://www.trans-lex.org/100680>> accessed 6 October 2025.

³² Section 6A in the English Arbitration Act, 1996; Section 6 of the Scotland Arbitration Act, 2010; Section 48 of Swedish Arbitration Act, 1999.

³³ Katharina Plavec, 'The Law Applicable to the Interpretation of Arbitration Agreements Revisited' (2020) 4 *University of Vienna Law Review* 82–127, 106 <<https://doi.org/10.25365/vlr-2020-4-2-82>> accessed 6 October 2025.

³⁴ Hill J, 'Determining the Seat of an International Arbitration: Party Autonomy and the Interpretation of Arbitration Agreements' (2014) 63 *International and Comparative Law Quarterly* 517, 520 <<https://doi.org/10.1017/S0020589314000293>> accessed 10 October 2025.

³⁵ Katharina Plavec (n 33), page. 107.

³⁶ Giulia Carbone, 'Interference of the Court of the Seat with International Arbitration' (2012) *J Dispute Resolution* 2012, 218 <<https://scholarship.law.missouri.edu/jdr/vol2012/iss1/9>> accessed 10 October 2025.

³⁷ *Ibid.* pp. 108; *Article V (1)*. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked..... proof that: (a) The parties to the agreement referred to in article II were, failing any indication thereon, under the law of the country *where the award was made*.

³⁸ *Hitachi Ltd., Ors. v. Rupali Polyester, Ors.*, 1998 SCMR 1618

held that because the main contract was governed by Pakistani law, the arbitration, though seated in London under ICC Rules, was also governed by Pakistani law. Consequently, the domestic courts of Pakistan claimed concurrent jurisdiction over challenges to appointments of arbitrator, validity of award and other aspects of arbitration, even while English courts exercised curial oversight over the procedural matters. This led the parties to litigate identical issues of arbitration concurrently in Karachi or Lahore and in London, giving rise to conflicting orders and procedural uncertainty. It constituted a jurisdictional overstep by granting jurisdiction to Pakistani courts over an arbitration that is seated outside Pakistan.

Similarly, the question in Taisie Corporation³⁹ case was whether the Singapore seated ICC arbitration award was domestic or foreign. Pakistani courts followed the contract law approach and proceeded with the award as domestic, whereas the Singaporean courts preferred seat or territorial approach and decided the matter accordingly. It led to years long litigation that finally ended in 2024 when the Supreme Court of Pakistan⁴⁰ finally deferred to a territorial approach by stating that the seat determines the nationality i.e., domestic or foreign., of the award, which in the given case was Singapore, and that factors like governing law of the underlying contract or the nationality of the parties are irrelevant.⁴¹

The express codification of contract-law approach raises uncertainty as to whether courts can interpret the law governing the arbitration agreement in accordance with the seat theory without contravening the statutory text. Courts may, nonetheless, continue to adhere to the seat theory in determining the law governing the arbitration agreement, where the choice of seat or institutional rules is construed as an ‘*express agreement to the contrary*’ under section 8(9), as in English-seated⁴² or LCIA-administered⁴³ arbitrations where such choice may itself determine the law governing the arbitration agreement. Courts may also invoke the validation principle, as adopted in *Sulamérica*

³⁹ Taisei Corporation v. A.M. Construction Company (Pvt.) Ltd., PLD 2012 Lahore 455.

⁴⁰ Taisie Corporation v. A.M. Construction Company (PVT.) Ltd., 2024 SCMR 640.

⁴¹ Ibid., para 12.

⁴² Section 6A of the English Arbitration Act, 1996.

⁴³ Rule 16.4 of London Court of International Arbitration Rules, 2020.

case, to preserve the application of the seat law where following the contract-law approach would undermine the validity or effectiveness of the arbitration agreement.⁴⁴

1.3.3. Arbitrability

An essential precondition to any arbitration is that the dispute in question must be legally capable of resolution through arbitration. This is termed as arbitrability of a dispute.⁴⁵ The New York Convention and MAL refrains from defining the designated scope and meaning of the concept and leave it to the discretion of member states.⁴⁶ There are two distinct aspects of arbitrability. Subjective arbitrability (*ratione personae*) concerns the legal *ability/authority* of a party to submit a dispute to arbitration. In this context, it is distinct from the legal *capacity* of a party to enter into an arbitration agreement which is something that relates to the validity of the agreement itself.⁴⁷ The parties may have full contractual capacity yet be precluded or qualified by law from arbitration. For instance, upon filing for bankruptcy, notwithstanding the full capacity of an insolvent party his legal ability to arbitrate is suspended by operation of automatic stay until the receiver elects to adopt the arbitration agreement.⁴⁸

Moreover, objective arbitrability (*ratione materiae*) determines whether a particular category of disputes is suitable for arbitration under a given legal system.⁴⁹ The Act, 1940, unlike the proposed

⁴⁴ Sulamérica CIA Nacional de Seguros SA v. Enesa Engenharia SA [2013] 1 WLR 102, [9] (Moore-Bick LJ), para 30.

⁴⁵ Eleni Bakalarou, 'Arbitrability' (Jus Mundi, 15 May 2025) edited by Dr Andrew Willcocks <<https://jusmundi.com/en/document/publication/en-arbitrability>> accessed 9 October 2025.

⁴⁶ Bas van Zelst, 'The Concept of Arbitrability under the New York Convention: The Quest for Comprehensive Reform' in Maxi Scherer (ed), Journal of International Arbitration (2020) 345–70, at 347–8 <[https://www-kluwerarbitration-com.ezp.sub.su.se/document/kli-joia-410304](https://www.kluwerarbitration-com.ezp.sub.su.se/document/kli-joia-410304)> accessed 6th October, 2025.

⁴⁷ Traian C. Briciu, 'Chapter 3 - §3.01 The Arbitrability of Disputes' in Crenguta Leaua and Flavius-Antoniui Baias (eds), Arbitration in Romania: A Practitioner's Guide (pp. 85–96, Kluwer Arbitration 2015) 94 <https://www-kluwerarbitration-com.ezp.sub.su.se/document/KLI-KA-Leaua-2015-Ch03_1> accessed 6 October 2025.

⁴⁸ Section 7 of Arbitration Act, 1940.

⁴⁹ Florian Haugeneder, 'A 05 – Objective Arbitrability' in Vienna International Arbitral Centre of the Austrian Federal Economic Chamber (ed), VIAC Selected Arbitral Awards, Vol 1 (2015) 396–399, 396 <<https://www-kluwerarbitration-com.ezp.sub.su.se/document/kli-ka-viac-vol1-0069>> accessed 6 October 2025.

legislation⁵⁰, neither entails any substantive provision regarding arbitrability nor makes it a ground for setting aside an award. Consequently, the type of disputes that cannot serve as the subject of arbitral proceedings has been exclusively defined by the courts. For instance, family disputes⁵¹, criminal matters⁵², banking disputes⁵³, constitutional cases⁵⁴, and rent matters⁵⁵ have been declared as non-arbitrable by the domestic courts of Pakistan. An important principle which had been established through this judicial exercise was that the matters regarding which jurisdiction was granted to a special court were deemed to be non-arbitrable, because special laws prevail over general arbitration provisions.⁵⁶ However, the Supreme Court has recently chosen to depart from this principle. In *Kausar Rana Resources*⁵⁷ case, the court expansively interpreted the definition of ‘civil courts’ used in section 2(c) of Act, 1940 to include courts of special civil jurisdiction such as Banking Courts, Consumer Courts and Company Bench of a High Court whenever these courts have jurisdiction over the subject matter of an arbitration agreement.⁵⁸ It was ruled that a special law giving exclusive mandatory jurisdiction to a court or authority does not by itself mean that those disputes are not arbitrable.⁵⁹

To settle the law on this point, Section 11 of the Bill 2024 clearly states that all matters are arbitrable with two exceptions. Firstly, a dispute becomes non-arbitrable if it offends public policy as defined in section 39(3) of the bill, because such disputes involve essential state functions such as criminal prosecution, tax collection, and regulatory enforcement which require transparency, accountability, and democratic oversight that can only be ensured by public judicial forums.⁶⁰ Secondly, a matter will be non-arbitrable if it is expressly made non-arbitrable through a law.⁶¹ The silence in a statute regarding arbitration shall not imply prohibition. The legal provision in sub-section 2 is

⁵⁰ Section 39(2)(b)(i) of Draft Arbitration Bill, 2024.

⁵¹ *Nadir Khan v. Zeenat Bibi*, 1990 CLC 293.

⁵² *Sughran Bibi v. Jalla*, 1990 MLD 1455.

⁵³ *Allied Bank Ltd. v. Golden Eagle Enterprises*, 1999 MLD 64.

⁵⁴ *Ameer Khan & Co. v. Government of the Punjab*, PLD 2010 Lahore 443.

⁵⁵ *Zehra Begum v. Pakistan Burmah Shell Ltd.*, 1983 CLC 1592.

⁵⁶ *Naseer Ahmed v Rent Controller*, 2018 YLR 29.

⁵⁷ *Kausar Rana Resources v Qatar Lubricants Company*, 2025 SCMR 517.

⁵⁸ *Ibid.*, para 15.

⁵⁹ *Ibid.*, para 13.

⁶⁰ Section 11(1) of Draft Arbitration Bill, 2024.

⁶¹ Section 11(2) of Draft Arbitration Bill, 2024.

designed to expand the scope of matters in which arbitration is permissible, and which were previously declared as non-arbitrable by courts. It follows the English⁶² and Indian⁶³ approach with respect to arbitrability, making all disputes arbitrable unless expressly prohibited.

Although section 11 adopts a presumptively broad conception of arbitrability, it expressly subjects arbitrability to public policy, providing that disputes may be arbitrated unless doing so is contrary to public policy. Its practical application by Pakistani courts therefore remains uncertain. Given the judiciary's historically interventionist approach in arbitral disputes, courts may be reluctant to cede or even share adjudicatory authority with arbitral tribunals, and may continue to favor a restrictive approach to arbitrability. In practice, this may occur through an expansive use of public policy under section 39(3), enabling courts to recharacterize disputes as non-arbitrable notwithstanding their express inclusion under section 11(2).

1.3.4. Separability and Competence-Competence of Arbitral Tribunal

Separability and Competence-Competence, though distinct legal concepts, are sufficiently interconnected to require a collective discussion. The doctrine of separability considers an arbitration clause, embedded in the main contract, as a distinct and independent contract, in a manner that it remains valid regardless of the invalidity or termination of the underlying contract.⁶⁴ It seeks to preserve arbitration as an independent mechanism for dispute resolution, even when the main contract is either void or contested. The Act, 1940 lacks an express mention of the doctrine of separability therefore it is recognized only through judicial precedents.⁶⁵

Competence-Competence (also known as "**Kompetenz-Kompetenz**") empowers an arbitral tribunal, prior to any judicial

⁶² Section 81(1)(a) of the English Arbitration Act, 1996

⁶³ Section 2(3) of the Arbitration and Conciliation Act, 1996

⁶⁴ S M Schwebel, L Sobota and R Manton, 'The Severability of the Arbitration Agreement' in *International Arbitration: Three Salient Problems* (Hersch Lauterpacht Memorial Lectures, Cambridge University Press 2020) 7 <<https://doi.org/10.1017/9781139015691.003>> accessed 6 October 2025.

⁶⁵ *Pakistan Mobile Communication Ltd. Mobilink Islamabad v. Naimatullah Achakzai* (CLC 2012 12); *Crescent Steel and Allied Products Ltd. v. Sui Northern Gas Pipeline Ltd.* (2013 MLD 1499); *Sports Star International Ltd. v. Shalimar Recording and Broadcasting Company Ltd.* (2018 CLC 1892).

determination, to rule on its own jurisdiction including challenges to the existence, validity, or scope of the arbitration agreement.⁶⁶ It ensures that the tribunal is the primary judge of its own jurisdiction by preventing any undue court intervention.⁶⁷ The doctrine of competence-competence can be characterized as a natural extension of the doctrine of separability.⁶⁸ The separability principle protects the validity of an arbitration agreement which enables the tribunal to independently determine its own jurisdiction through that agreement alone without relying on the main contract.⁶⁹

Under the Act, 1940, the power to determine the competence of a tribunal is exercised by the courts.⁷⁰ However, the judicial practice is fairly inconsistent on this issue. Some courts have held that an arbitral tribunal lacks exclusive authority to determine its own jurisdiction absent parties' express consent⁷¹, yet have simultaneously ruled that parties cannot exclude the courts' supervisory jurisdiction in such matters.⁷² Such jurisprudence has contributed to unhelpful and premature court intervention, significantly undermining the autonomy of a tribunal to determine

⁶⁶ Gary B Born, 'Chapter 7: International Arbitration Agreements and Competence-Competence (Updated November 2023)' in International Commercial Arbitration (3rd edn) 1144 <<http://www.kluwerarbitration-com.ezp.sub.su.se/document/kli-ka-born-2021-ch07?q=competence/competence>> accessed 6 October 2025.

⁶⁷ Komal Anwar, 'Orient Case and the Doctrine of Competence-Competence' (CIICA, September 2021) <<https://ciica.org/orient-case-and-the-doctrine-of-competence-competence/>> accessed 6 October 2025.

⁶⁸ Laurence Shore, 'Now Virtually Complete? The Doctrines of "Separability" of the Arbitration Agreement and "Compétence de la Compétence"' (Journal of International Arbitration, 115–122) 1 <<https://www.kluwerarbitration-com.ezp.sub.su.se/document/ipn11689>> accessed 6 October 2025.

⁶⁹ Robert H Smit, 'Separability and Competence-Competence in International Arbitration: Ex Nihilo Nihil Fit? Can Something Indeed Come from Nothing?' (2002) 13 Am Rev Int'l Arb 19, 19 <https://scholarship.law.columbia.edu/faculty_scholarship/4670> accessed 10 October 2025.

⁷⁰ Section 31(2) & (3) and 33 of the Arbitration Act, 1940.

⁷¹ Water and Power Development Authority v. Abdul Razzaq Muhammad Iqbal, PLD 1955 Lahore 5; Lahore Stock Exchange Ltd. v. Federick J. Whyte Group (Pakistan) Ltd., PLD 1990 Supreme Court 48; Port Qasim Authority, Karachi v. Al-Ghurair Group of Companies, PLD 1997 Karachi 63.

⁷² Abdul Hameed v. Additional District Judge, Dera Ghazi Khan, 2014 CLC 11; Province of West Pakistan v. Fakir Spinning Mills Ltd. [1962] PLD (W.P.) Karachi 386; Avari Hotel Limited v. Hilton International Co., Karachi All Pakistan Legal Decisions 425 (1985); Karachi Development Company Limited v. IM Technologies Pakistan (Private) Limited, 2017 CLCLN 157 Sindh.

its own jurisdiction. As far as the disputes arising under foreign arbitration agreements are concerned, the tribunal's authority to rule on its own jurisdiction is well recognized.⁷³

Section 18(1) of the Bill 2024 explicitly recognizes the doctrines of separability and competence-competence. It vests tribunals with absolute power and autonomy to rule on their own jurisdiction with limited court intervention. A contesting party may bring a twofold challenge, alleging that either the tribunal lacks substantive jurisdiction⁷⁴ or that it has exceeded its authority.⁷⁵ The tribunal may decide such a matter either as a preliminary question or as part of the final award on merits.⁷⁶

If a challenge to jurisdiction is accepted then an immediate appeal to court can be filed under section 42(2)(a), and in case the challenge is rejected the aggrieved party is required to wait until the final award to raise this ground in set aside proceedings under section 39.⁷⁷ The appeal mechanism is likely to entail a de novo review of jurisdictional questions, whereas the post-award challenge is confined to the limited grounds provided for setting aside an award. In this way, section 18(6) goes a step further than section 16(3) of the MAL, which permits judicial challenges even when the tribunal upholds its jurisdiction. The draft legislation articulates a pro-arbitration legislative mandate, as it provides for an immediate judicial recourse through appeal when tribunals decline jurisdiction preventing parties being left remediless, while simultaneously precluding any such court intervention when tribunals assert jurisdiction. It also prevents parallel intervention by courts during the arbitral proceedings, which is used as dilatory tactics to fragment the arbitral process and often lead to repetitive jurisdictional challenges.⁷⁸

Nevertheless, it raises a potential concern that in case a tribunal errs in its initial determination of jurisdiction, such an error would not be subject to correction until the set-aside stage. This may lead

⁷³ *Karachi Dock Labour Board v. Messrs Quality Builders Ltd.*, PLD 2016 Supreme Court 121; *Dallah Real Estate and Tourism Holding v. Government of Pakistan*, 2010 UKSC 57; *Sui Northern Gas Pipelines Limited v. Orient Power Company (Private) Limited*, 2021 SCMR 1728.

⁷⁴ Section 18(2) of Draft Arbitration Bill, 2024.

⁷⁵ Section 18(3) of Draft Arbitration Bill, 2024.

⁷⁶ Section 18(5) of Draft Arbitration Bill, 2024.

⁷⁷ Section 18(7) of Draft Arbitration Bill, 2024.

⁷⁸ Saad Mir, 'Court Intervention in Arbitration: Pakistan's Perspective' (2016) <<https://www.pljlawsite.com/2016art8.htm>> accessed 6 October 2025.

to unnecessary delay, uncertainty and additional costs, which is likely to undermine the arbitral efficiency that the bill is intended to achieve.

1.3.5. Interim Measures

Interim measures refer to protective measures that provide provisional and immediate protection to the rights or properties of parties involved while the dispute in question is being arbitrated on its merits.⁷⁹ The purpose of such measures is to prevent the parties from frustrating the final award.⁸⁰

Interim measures preserve the efficacy of the arbitral process by ensuring that the eventual award is capable of meaningful enforcement.⁸¹ Section 41(b) read with the Second Schedule of Act, 1940 grants courts exclusive powers to issue interim measures, effectively depriving arbitrators of any such competence.⁸² There are several other shortcomings in the existing framework. Firstly, the remedy of interim measures is not available before the formal commencement of arbitral proceedings, and is usually invoked after the filing of an arbitral award in circumstances where a party tries to prevent the execution of the award.⁸³ However, judicial attitude is now evolving, as reflected in *Ovex Technologies (Private) Limited v PCM PK (Private) Limited and others*⁸⁴, where the court held that the power to grant interim measures may be exercised before the commencement of arbitral proceedings, during their pendency, and even after the arbitral award has been rendered. Secondly, even if the party tries to obtain interim relief after the initiation of proceedings, the process is highly technical, lengthy and cumbersome, offending the actual purpose of such measures, which is to provide immediate and urgent protection.⁸⁵ Thirdly, there is also a significant risk of courts delving into the merits of

⁷⁹ Ikram Ullah (n 5) Chapter 9, page. 145.

⁸⁰ Marianne Roth, 'Interim Measures' (2012) *Journal of Dispute Resolution* 2012(2) 425, 430
<<https://heinonline.org/HOL/LandingPage?handle=hein.journals/jdisres2012&div=20&id=&page=\>> accessed 7 October 2025.

⁸¹ *Ibid.*, page. 427.

⁸² *Island Textile Mills Ltd. Karachi v. Techno expert*, 1979 CLC 307 Karachi.

⁸³ Ikram Ullah, 'Interim Measures in Arbitration under the Pakistani Legal Regime' (2013) 29(4) *Arbitration International* 653, 660
<<https://doi.org/10.1093/arbitration/29.4.653>> accessed 2nd January, 2026.

⁸⁴ 2020 CLD 15 Islamabad

⁸⁵ *Shafi Corporation Ltd. v. Government of Pakistan Through Director-General of Defence Purchase, Ministry of Defence*, Karachi, PLD 1994 Karachi 127.

the dispute while adjudicating interim relief.⁸⁶ This effectively disincentivizes parties from pursuing arbitration.

The Bill 2024 broadly follows the statutory pattern of MAL with domestic adaptations to revamp the framework of interim measures in terms of scope, stage and institutional forums empowered to grant them. Article 17(2) MAL stipulates four functions of interim measures namely; maintaining status quo, protecting arbitration process, preserving assets and preserving evidence.

It is important to note that this list is non-exhaustive, however, it does clarify the scope and objective of interim measures.⁸⁷ However, the Bill 2024 prescribes a longer list of interim measures in sections 10 and 19, which not only cover the four categories of MAL but also include;

- a. preservation of status quo⁸⁸
- b. protection of arbitral process⁸⁹
- c. preservation of assets⁹⁰
- d. preservation of evidence⁹¹
- e. Additional categories, including guardianship, interrogatories, discovery, confidentiality, receivership.

The draft legislation grants both the competent court and the arbitral tribunal powers to issue interim measures, albeit at different stages. Under section 10, courts can exclusively issue interim measures *before* the constitution of the tribunal and *after* the making of an award but prior to the filing of an enforcement application under section 41, as in the former stage the tribunal is yet to be constituted, and in the latter, it has become *functus officio*, and therefore lacks the competence to grant such measures, thus requiring recourse to courts. Courts are also exclusively competent to grant interim relief in support of foreign-

⁸⁶ Khalid Rasheed Qureshi v. Institution of Engineers Pakistan, 1999 CLC 288 Karachi.

⁸⁷ Roth, Marianne, 'UNCITRAL Model Law on International Commercial Arbitration', in Frank-Bernd Weigand (ed.), Practitioner's Handbook on International Commercial Arbitration, 2nd Edition (2009; online edn, Oxford Law Pro) 1031 <<https://doi.org/10.1093/law/9780199534869.003.0014>>, accessed 9 October 2025.

⁸⁸ Section 10(b)(vi) and 19(1)(vi) of Draft Arbitration Bill, 2024.

⁸⁹ Section 10(b)(viii) and 19(1)(viii) of Draft Arbitration Bill, 2024.

⁹⁰ Section 10(b)(ii), (vii) and 19(1)(ii), (vii) of Draft Arbitration Bill, 2024.

⁹¹ Section 10(b)(iii) and 19(1)(iii) of Draft Arbitration Bill, 2024.

seated arbitration proceedings.⁹² Nevertheless, *during* the arbitral proceedings, courts and tribunals exercise concurrent jurisdiction, although the court's powers are secondary to those of the arbitral tribunal, similar to Article 17J of MAL. There are only two instances where the court intervention is permitted *during* the proceedings:

- a. If the tribunal cannot legally provide adequate interim relief⁹³
- b. For the enforcement of the tribunal's interim measures, because tribunals per se lack the compulsive power of enforcement as traditional courts.⁹⁴

Section 19 gives primary powers to the tribunal to issue interim measures *during* the arbitral proceedings, including the power to issue ex-parte preliminary orders preventing the defendant from frustrating the purpose of the measure before issuance. The provision mirrors Article 17B of MAL and Section 38 of the English Arbitration Act, 1996.

Furthermore, in order to prevent procedural misuse, arbitral proceedings must commence within ninety days if interim relief is granted before the constitution of the tribunal.⁹⁵ Once the tribunal is constituted, its order supersedes the court's granted interim measure.⁹⁶ The 90-day commencement requirement under s.10(2)(a) is difficult to enforce in practice due to the backlog of approximately 2.2 million cases as of 2024, which is why the court retains the power to extend the prescribed time period. While such extensions prevent the automatic lapse of interim relief, repeated extensions may significantly delay the initiation of arbitral proceedings. Although extensions function as a remedial stop-gap to prevent procedural lapse, they do not address the persistent problem of judicial inertia. These structural constraints are further compounded at the enforcement stage where overloaded dockets, understaffing, inadequate training, and infrastructural deficits in District Courts impede enforcement of section 19 interim measures, allowing respondents to dissipate assets or temper with evidence. An incapacitated judicial system reduces the efficacy of interim relief and jeopardizes the enforceability of final awards.

⁹² Section 3(2)(a) of Draft Arbitration Bill, 2024.

⁹³ Section 10(3) of Draft Arbitration Bill, 2024.

⁹⁴ Section 19(4) of Draft Arbitration Bill, 2024.

⁹⁵ Section 10(2)(a) of Draft Arbitration Bill, 2024.

⁹⁶ Section 10(2)(b) of Draft Arbitration Bill, 2024.

Section 2(e) of the Bill 2024 recognizes arbitral tribunal to include an emergency arbitrator under institutional rules which provide for its appointment. It can effectively substitute the court's role in granting interim relief prior to the tribunal's constitution, thereby confining the court involvement to enforcement only. It can also provide an expeditious and more flexible means of obtaining interim measures, which is essentially free from technicalities and delays inherent in traditional court processes.⁹⁷

Similarly, in a recent landmark judgement⁹⁸, the Supreme Court of India has recognized the mechanism of emergency arbitration by expansively interpreting the phrase 'arbitral tribunal' in Section 17(1) of the Arbitration and Conciliation Act 1996 to include an emergency arbitrator and held that such an order is enforceable as a court decree under subsection 2.⁹⁹ This progressive interpretation has also been included into the proposed Indian arbitration bill 2024.¹⁰⁰

1.3.6. Anti-Suit Injunctions

Section 34 of the Act, 1940 vests courts with the power to stay judicial proceedings which have been initiated in breach of an arbitration agreement.¹⁰¹ Courts have primary jurisdiction to determine the existence and validity of an arbitration agreement and the power to grant anti-suit injunctions is secondary to such jurisdiction.¹⁰² These interconnected powers are court-dominated under the Act, 1940, and the tribunal has virtually no authority to determine the existence and validity of arbitration agreement.¹⁰³ Moreover, the statutory language of the provision stipulates two

⁹⁷ Yash Raj, 'Impact of Interim Measures on the Speed and Outcome of Arbitration Proceedings' (2024) 5 *Jus Corpus LJ* 499, 505 <<https://heinonline.org/HOL/P?h=hein.journals/juscrp5&i=500>> accessed 13 October 2025.

⁹⁸ *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, 2022 1 SCC 209.

⁹⁹ *Ibid.*, para 10.

¹⁰⁰ Section 9A of Indian Draft Arbitration and Conciliation (Amendment) Bill, 2024.

¹⁰¹ David Altaras, 'The Anti-Suit Injunction: Historical Overview' (2009) 75 *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 327, 328 <<https://www.kluwerarbitration.com/document/kli-ka-amdm-75-03-004-n>> accessed 8 October 2025.

¹⁰² Section 33 of Arbitration Act, 1940; *See also*, *Hakimuddin Harmusji & Sons v. Ghafoor Textile Mills*, PLD 1978 Karachi 152.

¹⁰³ *Cotton Export Corporation of Pakistan (Pvt.) Limited Karachi v. Karim Sons Cotton Ginners and others*, 1996 CLC 796; *Farid Virani v. Feroz Virani*, 2013 CLD 1361.

sets of conditions which must be satisfied before the court is to exercise powers under section 34. Firstly, the applicant must file the application for stay either *before submitting a written statement* or *before taking any other step in the proceedings*. Second, the court must be satisfied both that there is no sufficient reason to deny arbitration and that the applicant is ready and willing to submit to arbitration. The first set of conditions are disjunctive, i.e. one must be satisfied, while the second set of conditions are conjunctive, meaning both must be fulfilled.

Furthermore, the statutory language used in Section 34 is undefined and ambiguous. The phrases such as ‘*no sufficient reason*’ and ‘*taking any other step in the proceedings*’ are open-ended, and have led to inconsistent judicial interpretations over time. The absence of settled interpretative standards has particularly enabled the courts to exercise an almost arbitrary discretion whilst defining these terms. For example, there is no set definition of ‘*sufficient reason*’ with courts even extending it to instances where the nominated arbitrator is considered incapable of acting fairly, the dispute involves a complex question of law, or the applicant is unwilling to pursue proper arbitration.¹⁰⁴

Similarly, seeking court adjournments are deemed as ‘*taking any other step in proceeding*’ but there is no certain standard as to how many adjournments amount to a step in proceedings. Courts have given varied rulings by holding that three adjournments¹⁰⁵ or six adjournments stretched over a period of six months¹⁰⁶, may constitute a step in the proceeding. Surprisingly, on another occasion the court held that three consecutive adjournments do not constitute a step in the proceedings.¹⁰⁷ Judicial efforts of constructive interpretation, while admirable, do not offer the requisite level of clarity. Courts have defined the expression ‘*step in the proceedings*’ as any ‘*step which unambiguously manifests the intention to proceed with the suit.....or doing something in aid of the progress of suit, or submitting to the jurisdiction of court for adjudication of the merits of the controversy in a suit*’.¹⁰⁸ In the same case, the appellate court specifically held that where an adjournment for filing a written statement is granted by the court

¹⁰⁴ Tradesman International (Pvt.) Ltd. v. Federation of Pakistan, 2005 MLD 541.

¹⁰⁵ Muhammad Farooq v. Nazir Ahmad, PLD 2006 SC 196., para 9.

¹⁰⁶ Infospan (Private) Limited v. Telecom foundation, 2017 CLC 131., para 17.

¹⁰⁷ Waqas Yaqub v. Adeel Yaqub, 2024 CLD 990., para 12.

¹⁰⁸ Hajvairy Associates v. PCC Ltd., 2024 CLD 1507., para 18.

suo motu, without any request from the defendant, it does not constitute a step in the proceedings¹⁰⁹, and further clarified that the filing of an application under Order VII, Rule 10 of the CPC, 1908 is merely an objection to the maintainability of the suit and likewise cannot be regarded as a step in the proceedings¹¹⁰. Moreover, a routine adjournment by the court to file a power of attorney or a written statement may also amount to a step in the proceedings ‘*if the defendant fails to take corrective steps and inform the court without any delay about their intention to seek the stay of suit*’.¹¹¹ Therefore, the court held that the objection to the court proceedings should be raised ‘*before taking any steps*’ or ‘*at earliest*’ and ‘*at first opportunity*’ particularly ‘*before seeking adjournment(s) for filing written statement*’.¹¹²

Section 9 of the Bill 2024 substantially addresses these shortcomings. Firstly, under section 9(4), a court shall grant a stay if it finds that *prima facie* a valid arbitration agreement exists. It limits the judicial inquiry to three basic considerations, specifically the determination of the existence of arbitration agreement, suit relating to the subject matter agreed to be referred to arbitration, and the dispute is covered by the arbitration agreement.¹¹³ The substantive or detailed examination of existence, validity, and scope of an arbitration agreement is left to be determined subsequently by the arbitral tribunal, by reason of competence-competence.¹¹⁴ Secondly, as discussed above in detail¹¹⁵, section 8 of the Bill 2024 provides an inclusive and expansive definition of arbitration agreement, which can make it relatively easier to identify and prove the existence of an arbitration agreement, and allow parties to resolve a broader range of disputes through arbitration. Thirdly, section 9(3) prescribes only a single condition, similar to MAL¹¹⁶, that can preclude a stay application i.e. the contending party submits the ‘*first statement on the substance of the dispute*’ before filing a stay application. The first substantive submission includes the written statements as well as all such pleadings in which a party addresses the actual issues and merits of the controversy. It excludes those ‘*pleadings*’

¹⁰⁹ Ibid., para 27.

¹¹⁰ Ibid., para 24.

¹¹¹ Government of the Punjab v. Muhammad Asad & Co., 2021 CLC 2135.

¹¹² Ibid., para 8 & 9.

¹¹³ Satellite Public Co. Case, 2016 YLR 2322., para 33.

¹¹⁴ Section 18 of Draft Arbitration Bill, 2024.

¹¹⁵ See 1.3.1 Arbitration Agreements *infra*

¹¹⁶ Section 8(1) of UNCITRAL Model Law, 2006.

that challenge the court's jurisdiction to adjudicate the matter. It also removes additional requirements such as, '*taking any other steps in the proceedings*', '*sufficient reason*', and '*reluctance of the applicant to pursue arbitration*'. Lastly, section 42(1)(a) of the proposed legislation only provides right to appeal against a court order refusing to refer the matter to arbitration, as opposed to Section 39(v) of Act, 1940 that provided right to appeal against both refusal and grant of anti-suit injunction.

The proposed law reduces interpretative ambiguities, prescribes a single condition for grant of anti-suit injunction, reinforces arbitral powers in determining existence, validity, and scope of the arbitration agreement and precludes appellate intervention.

1.3.7. Finality of Arbitral Award

Under the Bill 2024, the enforcement of arbitral awards is designed to operate in a streamlined and quasi-automatic manner. An award is enforceable as of right, unless the award has been set aside under Section 41(1)(b) or the court has stayed its operation. The award also becomes automatically enforceable, where a party has failed to file a set-aside application within the prescribed statutory period of ninety days.¹¹⁷

The enforcement of an award may only be stayed by a court order under section 41(2) and mere filing of a set-aside application does not, in itself, suspend the enforceability of the award.¹¹⁸ This can dissuade parties from filing meritless set-aside applications to prevent the enforcement of final awards. The stay order is only issued on valid grounds, such as where either an appeal has been instituted against a decision in set-aside proceedings¹¹⁹, or a set-aside application is pending before the competent court. Also, the grant of a stay is subject to an additional requirement that the applicant deposit the full amount determined by the tribunal as payable under the award.¹²⁰ Overall, these provisions reinforce finality and efficiency of the arbitral process.

The enforcement of award, under the Bill 2024, no longer requires a court judgement/decree to be entered in terms of an award as mandated by section 17 of Act, 1940. The entry of judgement on arbitral award has permitted courts to re-examine the merits of the

¹¹⁷ Section 39(5) of Arbitration Act, 1940.

¹¹⁸ Section 41(1)'s Explanation of Draft Arbitration Bill, 2024.

¹¹⁹ Section 42(c) of Draft Arbitration Bill, 2024.

¹²⁰ Section 41(2)'s proviso of Draft Arbitration Bill, 2024.

dispute¹²¹ by ‘determining the legality, maintainability and question of executability, even if no objection is filed’.¹²² In addition to it, the court cannot make a valid judgement before the expiration of the limitation period i.e. thirty days to file an application to set aside the award.¹²³ In other words, the award has no independent legal effect until the court issues a decree after the limitation period has elapsed.¹²⁴ Contrastingly, the Bill 2024 has made the enforcement largely automatic and self-executing. An award becomes immediately enforceable countrywide as a court decree, and an application for its enforcement operates as an independent execution petition before any district court with jurisdiction over the award-debtor or its assets, obviating the need for inter-court decree transfers. Importantly, the ninety days limitation period to file set aside applications does not defer enforcement but merely prescribes the time frame within which parties may challenge an award.¹²⁵

1.3.8. Public Policy Exception

The public policy exception in the proposed legislation has been formulated with due caution. It is stipulated that “*a determination as to whether an award is in conflict with the public policy of Pakistan shall not entail a review on the merits of the dispute.*”¹²⁶ In the past, the higher courts of Pakistan have adopted an expansive reading of public policy, using it as a basis to conduct de novo review of the merits of disputes already decided by arbitral tribunals.¹²⁷ This approach was evident in cases such as *HUBCO* and *Reko Diq*, where awards were set aside on allegations of corruption pertaining to the main contract, without any regard for the principle of separability.¹²⁸ A further difficulty consisted in the absence of a statutory definition of public policy

¹²¹ *Trading Corporation of Pakistan v. Amanullah Khan*, 2017 CLC 588; *National Highway Authority v. Zarghoon Enterprises (Pvt.) Ltd.*, 2015 MLD 746.

¹²² *Federal Government Employees Housing Foundation v. Javaid Iqbal*, 2020 YLR 2306

¹²³ First Schedule, Third Division, Entry no. 158 of Limitation Act, 1908.

¹²⁴ *Muhammad Siddique v. Muhammad Abdullah*, 1989 MLD 54.

¹²⁵ Section 39(5) of Draft Arbitration Bill, 2024.

¹²⁶ Section 39(3)’s Explanation of Draft Arbitration Bill, 2024.

¹²⁷ *kram Ullah* (n 5) Chapter 12, page. 209

¹²⁸ Ali Shouzab, ‘From Fluidity to Clarity? Pakistan’s Arbitration Act of 2024 and the Future of Public Policy’ (Kluwer Arbitration Blog, 6 March 2024) <<https://legalblogs.wolterskluwer.com/arbitration-blog/from-fluidity-to-clarity-pakistans-arbitration-act-of-2024-and-the-future-of-public-policy/>> accessed 8 October 2025.

in the Act, 1940, which led to inconsistent, unpredictable and disparate judicial interpretations, making the enforcement of awards challenging to predict.¹²⁹ The draft legislation in Section 39(3) has made a formidable attempt to define the contours of public policy, constituting:

- A. An award induced or affected by fraud or corruption, or
- B. Material breach of the rules of natural justice occurred
 - (i) during the arbitral proceedings; or
 - (ii) in connection with the making of the award; or,
- C. It is in conflict with the most fundamental norms of morality and justice

Admittedly, the statutory language uses broad and ambiguous terms like '*rules of natural justice*' and '*most fundamental norms of morality and justice*' which may lead to interpretative challenges. It ought to be interpreted with extreme judicial restraint because the tendency for its misuse is significant. The courts can potentially interpret the rules of natural justice to treat '*any*' rule perceived as fundamental to the rule of law or justice as a ground for annulment, for instance the right to adduce particular evidence, the form or number of hearings, tribunal's disclosure obligations, and cross-examination methods. Therefore, a balanced approach would be to strictly confine its interpretation to only material or substantial procedural irregularities. Furthermore, in Pakistan, public policy is deeply rooted in constitutional principles and Islamic injunctions, particularly Articles 2, 2A, 227 which collectively mandate that no law shall be repugnant to the injunctions of Islam and traditionally, under the influence of these provisions, '*morality*' has been interpreted in the context of the Shariah.¹³⁰ Consequently, an award could be challenged on the basis that it offends Islamic moral precepts, such as usury prohibitions or gender-based evidentiary rules, despite the legislature's intention to limit judicial review of merits.

Nevertheless, the courts in Pakistan have now begun to adopt a more restrictive interpretation of public policy. The Supreme

¹²⁹ Zafar Kalanauri, 'Law of Arbitration in Pakistan' (Courting the Law, 16 January 2017) <<https://courtingthelaw.com/2017/01/16/commentary/law-of-arbitration-in-pakistan/>> accessed 8 October 2025.

¹³⁰ Ghulam Ali v. Ghulam Sarwar Naqvi, PLD 1990 SC 1; Grosvenor Casino Limited v. Abdul Malik Badruddin, PLD 1998 Karachi 104

Court of Pakistan in *Orient Power Case*¹³¹ held that ‘*the public policy exception should not be used as a back door to review the merits of an award*’ and non-enforcement on the basis of it is only justified if content or subject matter of the award involves such a serious illegality that non-enforcement is the only viable remedy.¹³² Subsequently in *Taisei Corporation case*¹³³, the Court avoided an expansive construction of public policy because it could ‘*vitiating the Convention's basic effort to remove pre-existing obstacles to enforcement*’.¹³⁴ The court relied on an earlier precedent to remark:

*‘Public policy ground cannot be used to examine the merits of a foreign arbitral award or to create more grounds of defense that are not provided for in the Convention, such as misapplication of the law of Pakistan by the arbitrator in making the award or the arbitrator's decision being contrary to the law of Pakistan’.*¹³⁵

Similarly, when the Indian apex court affirmed that an award could be challenged if it contravened public policy, it intentionally restricted the definition of public policy by clarifying that it constitutes ‘*fundamental policy of Indian law*’, which would include factors such as: ‘*a) disregarding orders of superior courts; b) judicial approach, which is an antithesis to an arbitrary approach; c) principles of natural justice; d) decision of arbitrators cannot be perverse and irrational in so far as no reasonable person would come to the same conclusion*’.¹³⁶ It was emphasized that a court, while applying the public policy test to an award, does not act as a court of appeal and consequently ‘*errors of fact*’ cannot be corrected unless the arbitrator’s approach is ‘*arbitrary or capricious*’.¹³⁷

¹³¹ *Orient Power Company (Private) Limited v. Sui Northern Gas Pipelines Limited* (2021 SCMR 1728)

¹³² *Ibid.*, para 15.

¹³³ *Taisei Corporation v. A.M. Construction Company (PVT.) Ltd.* (2024 SCMR 640)

¹³⁴ *Ibid.*, para 41.

¹³⁵ *Parsons and Whittemore v. Societe Generale*, 508 F.2d 969 (2d Cir.1974), and *Orient v. SNGPL* 2021 SCMR 1728.

¹³⁶ *Associate Builders vs. Delhi Development Authority*, 2014 (4) ARBLR 307(SC)

¹³⁷ *Ibid.*

1.3.9. Appeal

The scope of appeal particularly under Section 42(c) of the Bill 2024 is limited to the questions of law arising only from set-aside proceedings, with no express power to alter/modify the terms of the award. Under the Act, 1940, Section 39(1)(iii) allowed courts to modify the award in appellate stage¹³⁸, but the proposed legislation has made it the exclusive competence of the arbitral tribunals¹³⁹. The judicial inquiry in appeal is restricted to the determinations of the lower court particularly on whether the court decree is in accordance with the award.

The draft act has also restricted the instances where an appeal can be filed, eliminating appeal against correction orders¹⁴⁰, filing or refusing to file an arbitration agreement¹⁴¹, interpretation of an award¹⁴², and supersession of an arbitration by court¹⁴³. However, where there is no appeal provided in the statute, a revision is maintainable on the grounds enumerated in section 115 of Civil Procedure Code (CPC), 1908.¹⁴⁴ The application of CPC is not barred by virtue of Section 51(1)(a) of the Bill 2024.

The remedy of revision is not available against an unavailed right of appeal.¹⁴⁵ The proposed legislation only bars the remedy of revision against an appellate order, but allows it by implication against all other orders of the tribunal not expressly listed in section 42.¹⁴⁶ Resultantly, parties may invoke judicial intervention indirectly through revisions. In that case the very limited grounds of revision can act as a failsafe against any misuse of this implied remedy. In contrast, the Act, 1940 permits revision both against unlisted orders of tribunal and at appellate stage.

1.3.10. Post Award Challenge

The Act, 1940 prescribes broad powers of judicial review over arbitral awards. Section 14 allows the filing of the final award before the court for parties to make objections over it, which can

¹³⁸ Ascon Engineers (Pvt.) Ltd. v. Province of Punjab, 2002 SCMR 1662.

¹³⁹ Section 38(1)(a) of Draft Act, 2024.

¹⁴⁰ Section 13(d) of Arbitration Act, 1940.

¹⁴¹ Section 20 of Arbitration Act, 1940.

¹⁴² Section 13(b) of Arbitration Act, 1940.

¹⁴³ Section 19 of Arbitration Act, 1940.

¹⁴⁴ Tribal Friends Co. v. Province of Baluchistan, 2002 SCMR 1903.

¹⁴⁵ S.H. Malik v. Additional District Judge, and others, 1990 MLD 1924.

¹⁴⁶ Section 42(3) of Draft Arbitration Bill, 2024.

either be overruled or modified by the court¹⁴⁷, set-aside¹⁴⁸, remitted to the tribunal for reconsideration¹⁴⁹. The court can also direct the tribunal to make an additional award with respect to undetermined matters and then submit it to the court within the fixed time.¹⁵⁰ Furthermore, section 13(b) authorizes arbitrator(s) to request post-award interpretation through courts, which later becomes part of the award.¹⁵¹ The Act, 1940 also specifies limited appealable orders, while prohibiting second appeals, except for recourse to the Supreme Court.¹⁵²

It is a settled principle that broad scope of judicial intervention is inimical to the process of arbitration because it dilutes party-autonomy.¹⁵³ While the Act, 1940 allows usurpatory court intervention, the courts have attempted to restrict scope of post-award challenges. For instance, it has held that the court while examining the validity of an award does not act as a court of appeal and observed, '*court hearing the objection to the award cannot undertake reappraisal of evidence recorded by the arbitrator in order to discover the error or infirmity in the award*'.¹⁵⁴ The Court has also affirmed that the arbitrator is the final judge on the law and facts and it is not open to a party to challenge the decision of the arbitrator, if it is otherwise valid.¹⁵⁵ Additionally, while considering the objections under Sections 30 and 33 of the Act, 1940, the court is not supposed to scrutinize the award and fish for latent errors in arbitration proceedings.¹⁵⁶ To reduce judicial intervention, the Supreme Court has consistently held that courts may only set aside the award if it is apparent from the award that there is no evidence to support the conclusions or if the award is based upon any legal proposition which is incorrect

¹⁴⁷ Section 15 of Arbitration Act, 1940.

¹⁴⁸ Section 30 of Arbitration Act, 1940.

¹⁴⁹ Section 16 of Arbitration Act, 1940.

¹⁵⁰ Section 16(1)(a) & (2) of Arbitration Act, 1940.

¹⁵¹ Section 14(3) of Arbitration Act, 1940.

¹⁵² Section 39 of Arbitration Act, 1940.

¹⁵³ Didas M Kayihura, John Mwemezi Rutta, et al, 'Striking a Balance Between Assistance and Interventionism: The Role of Courts in Rwanda-Seated Arbitrations' in Maxi Scherer (ed), Journal of International Arbitration 143, 156–157<<https://www.kluwerarbitration.com/document/kli-joia-370106>> accessed 8 October 2025.

¹⁵⁴ M/S Joint Venture KG/RIST vs. Federation of Pakistan, PLD 1996 SC 108.

¹⁵⁵ Pakistan Steel Mills Corporation, Karachi vs. M/s Mustafa Sons (Pvt.) Ltd., Karachi, PLD 2003 SC 301., para.17.

¹⁵⁶ Federation of Pakistan vs. M/s Joint Ventures Kocks K.G./Rist, PLD 2011 SC 506., para.3.

etc.¹⁵⁷ and that any invalidity must appear on the face of the award¹⁵⁸. Recently, in another case, instead of setting aside the award under Section 39(1)(vi), the court exercised its power under Section 26-A (2) to remit the award to the arbitrator for providing sufficient reasons or clarification on identified issues.¹⁵⁹ This approach marks a departure from earlier judicial practice, where courts would effectively assume the role of the tribunal by scrutinizing and substituting arbitral reasoning rather than remitting the matter for clarification.¹⁶⁰ These precedents emphasize the judiciary's growing reverence for arbitral finality and restrictive interpretation of setting-aside powers.

The Supreme Court of India has also ruled that Section 34 of the Indian Arbitration Act provides for highly constricted power of the civil court to interfere with an arbitral award.¹⁶¹ The reason was deemed obvious; when parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum.¹⁶² Similarly, under Section 68 of English Arbitration Act 1996, courts may intervene to set aside an award only on limited statutory grounds, requiring both a '*serious irregularity*' and '*substantial injustice*', with a high threshold to prevent re-litigation of tribunal decisions and uphold the finality of awards.¹⁶³

The Bill 2024 seeks to limit the scope of judicial review through statutory language. Firstly, unlike Section 15 of the Act, 1940, courts are no longer empowered to modify an arbitral award, instead limited post-award corrective powers are vested with arbitral tribunals under section 38(1)(a), or a court may remit the award to tribunal for rectification of its defects under section 39(8). It substitutes the court's supervisory role with the arbitral tribunal by exclusively empowering them to correct the award or

¹⁵⁷ Injum Aqeel vs. Latif Muhammad Chaudhry, 2023 SCMR 1361., para.7.

¹⁵⁸ Ibid.

¹⁵⁹ Pak Gulf Construction (Pvt) Ltd v. Godwin Austen Johnson (2024 CLD 1451-Islamabad)

¹⁶⁰ Raja Karam Dad Khan v. Faiz Ahmad, 2017 CLC 1720 LAHORE-HIGH-COURT-LAHORE

¹⁶¹ K.Sugumar and Another vs. Hindustral Petroleum Corporation Limited and Another, (2020) 12 SCC 539., at para. 2.

¹⁶² Ibid.

¹⁶³ Terna Bahrain Holding Co YJJ v. Bin Kamel Al Shamzi [2013] 1 Lloyds Rep 86.

address its defects upon remission. Secondly, the draft act consolidates post-award challenges majorly in terms of Sections 39 and 42, mirroring the approach of Article 34 MAL and Sections 34 and 37 of the Indian Arbitration Act. Section 39 affords a recourse to the competent court for setting aside an award on grounds analogous to Article V of New York Convention, whereas section 42 is an appellate remedy available in limited instances, thoroughly explained in section 1.3.9 of this article. Thirdly, the bill abandons the ‘special case procedure’ of award interpretation through courts and empowers tribunals under section 38(1)(b) to issue interpretation on specific points or parts of the award. Fourthly, whereas under the Act, 1940 courts can remit an award to the tribunal to decide undetermined issues, the draft act allows parties to directly request the tribunal to make an additional award within 30 days of the receipt of the original award.¹⁶⁴

For domestic awards, the draft legislation contains an additional ground of set-aside, i.e., *patent illegality on the face of the award*.¹⁶⁵ It fails to comprehensively adopt the mandate of MAL which limits post-award challenges to tribunal jurisdiction, narrow review of public policy and procedural irregularities.¹⁶⁶ Although courts define patent illegality as an error that is specific and apparent on the face of the award, permitting judicial interference only to the extent that it does not require scrutiny beyond the award itself, it may nonetheless enable courts to invalidate awards that are found to manifestly contravene the substantive law of the seat.¹⁶⁷ Courts may also read procedural irregularities as amounting to illegality in certain instances where award is beyond the scope of reference, arbitration agreement is void, arbitrator awarded damages on black market price, or award was given after superseding of arbitration.¹⁶⁸ In practice, dissatisfied parties can frame routine errors of law as patent and this may lead to extensive judicial second-guessing of arbitral reasoning by re-adjudication on merits of the dispute.

¹⁶⁴ Section 38(4) of Draft Arbitration Bill, 2024.

¹⁶⁵ Section 39(4) of Draft Arbitration Bill, 2024.

¹⁶⁶ Section 34 of UNICTRAL Model Law, 2006.

¹⁶⁷ Saeeda Jillani v. Malik Sheraz Zafar, 2025 CLC 181 Islamabad.

¹⁶⁸ Gerry’s International (Pvt.) Ltd. v. Aeroflot Russian International Airlines, 2018 SCMR 662 Supreme-Court.

1.3.11. Judicial Intervention

Courts have extensive supervisory powers over arbitration proceedings under the Act, 1940. Courts can appoint arbitrators¹⁶⁹, make a reference to arbitration¹⁷⁰, enlarge the time of award¹⁷¹, modify the award¹⁷², remit the award¹⁷³, pronounce judgment in accordance with the award¹⁷⁴, issue interim measures¹⁷⁵, and even set aside award on broad grounds incompatible with the pro-enforcement bias of New York Convention¹⁷⁶. Section 39 provides appeals against a wide range of court orders related to arbitration proceedings, which further expands judicial oversight.

The scope of judicial intervention is significantly limited in the Bill 2024.¹⁷⁷ Section 6 stipulates that no court or judicial authority shall intervene except where so provided in this Act in matters governed therein. This provision is in *pari materia* with Section 5 of Indian Arbitration and Conciliation Act 1996 and follows the model of Article 5 of MAL. Accordingly, Indian jurisprudence can provide a valuable interpretative guidance in terms of the scope and application of this legal provision.

The Supreme Court of India observed that the *non obstante* clause in Section 5 of the Indian Arbitration Act signifies an intentional legislative insertion to curtail judicial intervention in arbitral proceedings and, as such, other provisions of the act are required to be construed accordingly to reflect this intent.¹⁷⁸ It was held that the provisions contained in Part I of the Indian Arbitration Act ought to be given ‘*full effect and operation irrespective of any other law for the time being in force*’.¹⁷⁹ The Indian apex court bifurcated Section 5 of the Indian Arbitration Act into two facets, i.e. positive and negative, and clarified that the positive facet ‘*vests judicial authorities with jurisdiction over arbitral*

¹⁶⁹ Section 8 of Arbitration Act, 1940.

¹⁷⁰ Section 20 of Arbitration Act, 1940.

¹⁷¹ Section 28 of Arbitration Act, 1940.

¹⁷² Section 15 of Arbitration Act, 1940.

¹⁷³ Section 16 of Arbitration Act, 1940.

¹⁷⁴ Section 17 of Arbitration Act, 1940.

¹⁷⁵ Section 41(b) read with Second Schedule of the Arbitration Act, 1940.

¹⁷⁶ Section 30 of Arbitration Act, 1940.

¹⁷⁷ Mian Sami ud Din and Feisal Naqvi (n 17).

¹⁷⁸ In re Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899 [2023] INSC 1066 (SC), para 82.

¹⁷⁹ Ibid., para 75.

*proceedings in matters expressly allowed in or dealt under the Arbitration Act*¹⁸⁰, while the negative aspect prohibits judicial authorities from ‘*intervening in arbitral proceedings in situations where the Arbitral Tribunal has been bestowed with exclusive jurisdiction*’.¹⁸¹

It would not be incorrect to presume that Section 6 of the Bill 2024 should be interpreted in a similar manner as Section 5 of the Indian Arbitration and Conciliation Act 1996, given their identical wording and shared legislative intent. The draft legislation, like its Indian counterpart, restricts the role of courts to interim measures¹⁸², appointment of arbitrator¹⁸³, set aside proceedings¹⁸⁴, enforcement of awards¹⁸⁵ and appeal¹⁸⁶ and even these powers are subject to statutory limitations. For instance, arbitral tribunals have also been vested with primary rather than merely concurrent powers to issue interim orders during the proceedings.¹⁸⁷ Similarly, the power to appoint arbitrators can only be exercised in limited situations, where the parties fail to appoint.¹⁸⁸ It is also pertinent to reiterate that the power of court to modify an award has not been retained in the draft act. Courts have no authority to amend or supplement an arbitral award under any circumstances; their role is confined to remitting it to the tribunal for correction, clarification, additional award or any other appropriate remedy.¹⁸⁹

1.3.12. Party autonomy

Party autonomy is regarded as a cornerstone of international arbitration.¹⁹⁰ Under the Act, 1940, judicial oversight takes precedence over party autonomy, reflecting a litigation-oriented approach to arbitration rather than a party-driven model.

¹⁸⁰ Ibid., para 80.

¹⁸¹ Ibid

¹⁸² Section 10 of Draft Arbitration Bill, 2024.

¹⁸³ Section 13 of Draft Arbitration Bill, 2024.

¹⁸⁴ Section 39 of Draft Arbitration Bill, 2024.

¹⁸⁵ Section 41 of Draft Arbitration Bill, 2024.

¹⁸⁶ Section 42 of Draft Arbitration Bill, 2024.

¹⁸⁷ Section 19(1) & 10(3) of Draft Arbitration Bill, 2024.

¹⁸⁸ Section 13(4), (5) & (6) of Draft Arbitration Bill, 2024.

¹⁸⁹ Section 39(8) of Draft Arbitration Bill, 2024.

¹⁹⁰ Zaver Petroleum Corporation (Pvt.) Limited vs. Saif Energy Limited, PLD 2025 Islamabad 219; *See also*, Maxi Scherer, ‘The Fate of Parties’ Agreements on Judicial Review of Awards: A Comparative and Normative Analysis of Party-Autonomy at the Post-Award Stage’ in William W Park (ed), *Arbitration International* 437, 437 <<https://www.kluwerarbitration.com/document/kli-ka-ai-2016-03-003>> accessed 8 October 2025.

Nevertheless, the Bill 2024 has sought to solidify party autonomy in categorical terms. The phrases like *‘the parties have agreed’*, *‘the parties may agree’*, or refers to an *‘agreement of the parties’* ought to be interpreted to include the party designated arbitration rules.¹⁹¹ It means that the procedures and rights set out in chosen arbitration rules are legally considered to be the part of the parties’ agreement and govern the process alongside the act. Furthermore, the party is free to authorize any person, including an arbitral institution to exercise autonomy or perform obligations on its behalf.¹⁹²

The Bill 2024 provides that the seat¹⁹³ and venue¹⁹⁴ of arbitration is determined by parties to the arbitration agreement failing which, it shall be determined by an arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.¹⁹⁵ There is also no legal bar on domestic parties to select a foreign seat of arbitration.¹⁹⁶ No such provision concerning the seat of arbitration existed in the previous statute.

The Act, 1940 heavily relies on court intervention in appointing arbitrators and parties have minimal control over the process of appointment and removal.¹⁹⁷ However, the draft act seeks to ensure procedural autonomy of parties in the process of appointment and removal of arbitrators. The parties are free to agree upon the procedure for appointing¹⁹⁸ and challenging¹⁹⁹ arbitrators, without any limitation of nationality.²⁰⁰ The bill also enables the parties to delegate the function of appointment to arbitral institutions or other designated authorities.²⁰¹ The High Court acts only in absence or failure of party-agree mechanisms.²⁰²

¹⁹¹ Section 3(8) of Draft Arbitration Bill, 2024.

¹⁹² Section 3(7) of Draft Arbitration Bill, 2024.

¹⁹³ Section 2(m) & 22(1) of Draft Arbitration Bill, 2024.

¹⁹⁴ Section 22(3) of Draft Arbitration Bill, 2024.

¹⁹⁵ Section 22(2) of Draft Arbitration Bill, 2024.

¹⁹⁶ Zaver Petroleum Corporation (Pvt.) Limited vs. Saif Energy Limited, PLD 2025 Islamabad 219.

¹⁹⁷ Section 9’s proviso, 11 and 12 of Arbitration Bill, 1940.

¹⁹⁸ Section 13(2) of Draft Arbitration Bill, 2024.

¹⁹⁹ Section 15(1) of Draft Arbitration Bill, 2024.

²⁰⁰ Section 13(1) of Draft Arbitration Bill, 2024.

²⁰¹ Section 13(6) of Draft Arbitration Bill, 2024.

²⁰² Section 13(4) & (5) of Draft Arbitration Bill, 2024.

Besides this, the following provisions of the draft legislation reflect the principle of party autonomy;

- Determining and regulating the procedure of arbitration²⁰³
- Determining the language of arbitral proceedings²⁰⁴
- Consolidating related arbitrations, and convening concurrent hearings²⁰⁵
- Determining the law applicable to the substance of the dispute²⁰⁶
- Determining the law governing arbitration agreement²⁰⁷
- Determining the powers exercisable by tribunal as regards final relief²⁰⁸
- Cost-allocation in international commercial arbitration²⁰⁹
- Extending the period of award-making for another twelve months²¹⁰
- Encouraging settlement during arbitration through mediation, conciliation or any other appropriate procedure²¹¹
- Ensuring the confidentiality of arbitral proceedings²¹²

1.4 Conclusion

The enactment of the Bill 2024 will be a significant milestone in the legislative reform of arbitration law in Pakistan. The aforementioned research elucidates that the pro-arbitration jurisprudence developed by superior courts, while commendable, has ultimately been limited by the rigid confines of the Act, 1940 which is designed for judicial control rather than arbitral autonomy. Judicial decisions promoting arbitral autonomy have largely been driven by necessity and call of the times, but they are not a suitable alternative for systemic legislative reform. It is now incumbent upon Parliament to grant final approval to the draft legislation, taking into account the proposed reforms discussed above, so as to facilitate the alignment of Pakistan's arbitral

²⁰³ Section 21(2) of Draft Arbitration Bill, 2024.

²⁰⁴ Section 24(1) of Draft Arbitration Bill, 2024.

²⁰⁵ Section 23(2) & (3) of Draft Arbitration Bill, 2024.

²⁰⁶ Section 30(2)(a) of Draft Arbitration Bill, 2024.

²⁰⁷ Section 8(9) of Draft Arbitration Bill, 2024.

²⁰⁸ Section 34(1) of Draft Arbitration Bill, 2024.

²⁰⁹ Section 36(2) of Draft Arbitration Bill, 2024.

²¹⁰ Section 32(2)(b) of Draft Arbitration Bill, 2024.

²¹¹ Section 33(1) of Draft Arbitration Bill, 2024.

²¹² Section 48(1) of Draft Arbitration Bill, 2024.

framework with contemporary models and international best practices.

In concrete terms, the Bill seeks to modernize Pakistan's arbitral framework by (i) strengthening party autonomy in matters of procedure, seat, arbitrator appointment, and applicable law; (ii) reallocating primary authority over jurisdiction, interim measures, and post-award correction to arbitral tribunals; and (iii) narrowing post-award challenges and public-policy review in line with the UNCITRAL Model Law and leading arbitration statutes, including those of the UK and India. At the same time, the Bill leaves certain unresolved gaps and contradictions, including the contract-law approach to determining the law governing the arbitration agreement, the introduction of 'patent illegality' as an additional ground for setting aside domestic awards, the broad and indeterminate definition of public policy, and the risk of indirect judicial review through revision petitions over non-appealable orders under Section 42, all of which may permit expanded court intervention than ordinarily contemplated under the Model Law.

Nevertheless, legislation on paper cannot by itself guarantee the success of reform, which depends, in particular, on effective judicial and institutional implementation. Courts must exercise their powers restrictively, without supplanting the authority of the arbitral tribunal, particularly confining set-aside grounds under section 39 and public-policy review under section 39(3) strictly to procedural defects rather than the merits, guided by principles of arbitral autonomy, minimal judicial intervention, and pro-arbitration bias. It also remains to be seen whether Pakistan's legal system has the institutional capacity to absorb, adapt and apply such a radical transformation, and whether courts are adequately trained to interpret this proposed law without reverting to old habits of intervention and expansive review. In order to ensure effective implementation, judicial training on Model Law standards, systematic monitoring of post-award case law for interventionist drift, and investment in professional capacity-building for arbitrators and institutions will be indispensable to realizing the objectives of the Bill 2024.