



## An Analysis of the Practices of International Commercial Arbitration in Pakistan and the UK

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### ABSTRACT

The enforcement of international commercial arbitration (ICA) awards is a critical aspect of global trade and investment, ensuring the credibility and effectiveness of arbitration as a dispute resolution mechanism. This paper provides a comparative analysis of the enforcement frameworks in Pakistan and the UK both signatories to the New York Convention (NYC), 1958. While the UK's Arbitration Act, (AA) 1996 is widely regarded as arbitration-friendly and aligned with international best practices, Pakistan's arbitration regime, governed by the Arbitration Act, 1940 and the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 (REFA, 2011), has faced challenges in achieving similar efficiency and predictability. The study examines the grounds for refusing enforcement under both jurisdictions, including invalid arbitration agreements, procedural irregularities, excess of authority, and public policy considerations. It highlights the UK's pro-enforcement stance, characterized by minimal judicial intervention and narrow interpretation of public policy, as seen in cases like *Yukos Capital S.A.R.L. v. OJSC Rosneft Oil Company* (2012). In contrast, Pakistan's enforcement framework has historically been hindered by procedural delays, inconsistent judicial interpretations, and a broader application of public policy, as demonstrated in *Societe Generale de Surveillance S.A. v. Pakistan* (2003). However, recent developments, such as the *Broadsheet LLC v. Pakistan* (2021) case, indicate progress toward aligning Pakistan's arbitration practices with international standards. The paper concludes that while the UK serves as a model for effective enforcement, Pakistan's ongoing reforms under REFA, 2011 offer a promising foundation for improvement. By addressing existing challenges and adopting best practices, Pakistan can enhance its arbitration framework and strengthen its position as a reliable jurisdiction for enforcing international arbitral awards.



## **Introduction**

The ICA has emerged as a preferred mechanism for resolving cross-border disputes, offering parties a neutral, efficient and enforceable alternative to traditional litigation. The enforcement of arbitration awards is a critical aspect of this process, as it ensures the effectiveness and credibility of the arbitration system. Pakistan and the United Kingdom (UK) have adopted distinct approaches to the enforcement of international commercial arbitration, shaped by their legal frameworks, judicial attitudes, and adherence to international conventions such as the NYC 1958 (Rafiq, 2019). While the UK, with its well-established arbitration-friendly legal system under the AA, 1996, is often regarded as a global hub for arbitration, Pakistan has made significant strides in recent years to align its arbitration regime with international standards through the AA 1940 and the Recognition and REFA, 2011. This study analyzes the enforcement mechanisms of ICA in Pakistan and the UK, highlighting the similarities, differences, and challenges faced by each jurisdiction in ensuring the effective enforcement of arbitral awards. By examining case law, statutory provisions, and practical enforcement experiences, this study aims to provide a comparative perspective on the two legal systems and their compliance with international arbitration norms.

The enforcement of ICA awards in Pakistan and the UK faces significant challenges due to differences in their legal frameworks, judicial practices, and public policies. In Pakistan, although the REFA, 2011 aligns with international conventions like the NYC obstacles persist that hinder the effective enforcement of foreign arbitral awards. These include judicial delays, inconsistent application of arbitration laws, political or institutional interference, and a lack of well-established arbitral institutions to facilitate and promote arbitration as a reliable method of dispute resolution. The absence of strong, independent arbitration institutions exacerbates enforcement issues, as many cases face reluctance from courts to recognize and implement arbitral awards due to weak institutional support and a lack of expertise. Additionally, judicial independence remains a significant concern, with political influences often impacting the enforcement of foreign awards. In contrast, the UK's Arbitration Act 1996 provides a more predictable and efficient framework for enforcing international arbitration awards, supported by robust arbitral institutions and minimal judicial intervention. However, even in the UK, challenges persist, including judicial discretion in certain cases and potential shifts due to the impact of Brexit on international trade and dispute resolution. This research will explore how the legal frameworks, judicial practices, and institutional shortcomings in both countries shape the enforcement process, focusing on delays, public policy considerations, and the broader implications for international commercial relations. It aims to identify gaps in Pakistan's arbitration system, particularly the lack of established arbitral institutions, and propose reforms to improve enforcement efficiency while maintaining the UK's strong enforcement model.

The scope of this study also includes a focus on the protection of investors within the context of ICA enforcement in both Pakistan and the UK. It will assess how the legal and institutional frameworks in each country safeguard investors' rights and ensure the fair and timely enforcement of arbitral awards. The study will explore the role of arbitration as a mechanism for providing security and predictability for international investors, with particular attention to the risks faced by investors in Pakistan due to weak enforcement practices. Additionally, the study will examine how the robust enforcement model in the UK offers better protection to investors, serving as a model for potential reforms in Pakistan.

## **Literature Review**

The literature review of ICA in Pakistan reveals some of the following significant concerns that have influenced the formation of this area. One of the significant aspect is the legislative regime governing arbitration has shown off late involving series of amendments to be in par with reference best standard (Chaphalkar & Iyer, 2014) Such legislation includes AA of 1940 of domestic arbitration matters, the Arbitration (International Investment Disputes) Act 2011 (AID, 2011) and NYC. Additionally, the chapter explores current trends, challenges, and comparative analyses of arbitration laws across different jurisdictions, providing a comprehensive framework to analyze the effectiveness and efficiency of ICA in facilitating cross-border trade and resolving disputes.

Domestic arbitration in Pakistan is governed by the AA. 1940, which provides a framework for resolving disputes through alternative dispute resolution when both parties are located within the country. This legislation outlines the procedures for conducting arbitration and enforcing arbitration awards in domestic courts. In contrast, international arbitration involving foreign parties or conducted outside Pakistan is regulated by REFA, 2011. These laws reflect Pakistan's dual legal framework for arbitration, which has its roots in British India and continues to evolve. The AA, 1940 primarily addresses domestic arbitration, while REFA, 2011 focuses on international arbitration, ensuring alignment with global standards (Rafiq, 2019).

(Gogo, 2014) Pakistan, as a rapidly growing economy, has witnessed a surge in ICA activities in recent years. The influx of foreign investment, particularly in the power generation sector, has brought forth the need for effective dispute resolution mechanisms that can cater to the unique challenges posed by cross-border transactions. Under these circumstances, ICA has become a favored technique for hearing the cases because of the inherent merits such as, they are arm's length, more versatile and time efficient. However, this shows that the trends and practices of ICA in Pakistan are still emerging and there is much that can be studied more closely.

The literature review of ICA in Pakistan reveals the following issues which have influenced the development of this field. One of the is the legal system that addresses arbitration, which has experienced a few changes within the years in accordance with the best practice ((Chaphalkar & Iyer, 2014). This is a critical aspect, as the balance between the autonomy of the arbitral process and the oversight of the national courts can significantly impact the efficacy and enforceability of arbitral awards. The emerging jurisprudence in Pakistan, as reflected in court decisions, has been a subject of scholarly discourse, highlighting the need for a more consistent and arbitration-friendly judicial approach (Mohammad & Nabi, 2008)

One of the significant aspects in literature is choice of law in ICA. Where there are cross-border disputes, the intricate interplay between arbitration law, substantive law of the underlying contract and law on recognition and enforcement of arbitral awards can present considerable difficulties. The existing research thus examines these theoretical questions and identifies situations where multiple laws may apply with an emphasis on the need to have clear contractual terms as well as a tribunal that can respond to such situations. Furthermore, this article also looks at current trends as well as challenges related to enforcing foreign arbitral awards in Pakistan. The practical effectiveness of the process of arbitration is dependent on how these awards are enforced.

The literature review section of the current study also discusses the cultural and socio-economic antecedents of ICA in Pakistan. Traditional approaches to dispute settling and the integration of

modern practices in arbitration, coupled with the attitudes entail perceptions about arbitration within the country's framework as influential factors in the development of international commercial arbitration in the country. The Court's orders, the one that affected the recognition and enforcement of the arbitral awards in *Taisei Corporation vs. A.M. Construction* include issues to do with territorial jurisdiction coupled with classification of the awards. Being an arbitration done under the Contract with ICC conducted in Singapore but governed by Pakistani law the main controversy of the case was whether the 'award' should be qualified as 'foreign' or 'domestic'. While the latter pointed to the meetings held in Lahore as the basis on which the jurisdiction of Lahore should be accepted, the plaintiff used the lack of business activities in Lahore against it. Also, the nature of the award was an issue of controversy concerning the respondent's ability to pay newer legislation when the award was made. In the Lahore Civil Court case followed by the Lahore High Court and Sindh High Court the case was in favour of the respondent and local meetings granted jurisdiction making the award domestic only. This decision is evidence of the complex relationship between local jurisdictions' sovereignty and the international arbitration norms, which stress the policy shift in conformity with today's world arbitration, especially the NYC. The case demonstrates the need for precise and coherent legal provisions regarding the international arbitration to obtain fair result.

While analyzing ICA practices in Pakistan, there is need to draw a comprehensive theoretical context in order to understand the nature and operations of the arbitration system. The following theories collectively provide a comprehensive framework for analyzing the evolving arbitration landscape, identifying challenges, and exploring potential improvements: Party Autonomy theory argues that the party to the arbitration should have the general discretion of running the procedure of the implementation of the agreed rules. This pertains to decisions relating to the appointment of arbitrators, applicable procedural law and place of arbitration (Vijayakumar, H. 2024).

Secondly public International Law Theory addresses the principles and rules that govern the relations between states and international entities. It encompasses treaties and conventions that impact international arbitration, such as the NYC, 1958 (Song, J., & Cheng, B. 2024).

Thirdly legal Pluralism Theory explores the coexistence of multiple legal systems within a single jurisdiction, including traditional, religious, and formal legal systems (Brekoulakis, S., & Obeid, N. C. 2024).

Fourthly institutional Theory examines the role and influence of formal organizations and institutions in shaping legal and procedural norms (Tran, P. H. 2024).

Fifthly the Economic Theory of Dispute Resolution focuses on the cost-effectiveness and efficiency of different dispute resolution mechanisms, including arbitration (Bono, M. 2024).

Sixthly, Comparative Legal Analysis Theory is the process of studying more than one jurisdiction's legal frameworks and activities in their rules to assess what is better and what must be changed (Qian, X. 2024).

Seventhly critical, Legal Studies Theory confronts and questions the orthodox legal clichés and considers how power relations shape legal results (Vesali Mahmoud, M., & Sheikhattar, H. 2024).

Eighthly the combination of these theories provides a systematized focus by checking the practices of international commercial arbitration in Pakistan. Using party autonomy, PIL, legal pluralism, institutional theory, economics, comparison, and critical legal studies approach the framework reveals current state of arbitration and its problems as well as directions for advancement. Thus,

this multiple theoretical perspective guarantees the comprehensive analysis of arbitration environments, combining both legal and practical approaches to improve the efficiency and effectiveness of arbitration in Pakistan (Bono, 2024).

## **Case Study Analysis: Enforcement of International Commercial Arbitration in Pakistan and the UK**

### ***Pakistan Perspective***

***Hitachi Limited v. Rupali Polyester (1998)***: This case is a landmark in Pakistan's arbitration history, as it involved the enforcement of a foreign arbitral award under the Arbitration (Protocol and Convention) Act, 1937. Hitachi, a Japanese company, sought enforcement of an award against Rupali Polyester, a Pakistani entity. The Supreme Court of Pakistan upheld the award, emphasizing the importance of honoring international arbitration agreements and awards. However, the court also highlighted procedural delays and the need for clearer legislation to streamline enforcement. This case underscored the challenges in enforcing foreign awards under Pakistan's outdated arbitration laws, which were later addressed by the REFA, 2011 (Rafiq, 2019).

***Societe Generale de Surveillance S.A. v. Pakistan (2003)***: In this case, the Swiss company Societe Generale de Surveillance (SGS) sought enforcement of an arbitral award against the Government of Pakistan under a bilateral investment treaty (BIT). The Supreme Court of Pakistan ruled that the enforcement of the award was subject to domestic public policy considerations, which limited the enforceability of the award. This case highlighted the tension between international arbitration obligations and domestic legal principles, raising concerns about Pakistan's commitment to enforcing foreign awards. The decision also emphasized the need for legislative reforms to align Pakistan's arbitration framework with international standards (Ullah, 2021).

***Broadsheet LLC v. Islamic Republic of Pakistan (2021)***: This case involved the enforcement of a \$28 million arbitral award in favor of Broadsheet LLC, a U.S.-based asset recovery firm, against Pakistan. The award was issued by a tribunal in London under the UK-Pakistan BIT. The Islamabad High Court enforced the award, marking a significant step in Pakistan's arbitration jurisprudence. The court's decision demonstrated Pakistan's growing adherence to international arbitration norms under the REFA, 2011. However, the case also revealed challenges in enforcing high-value awards against state entities, highlighting the need for further reforms to strengthen investor confidence (Hussain & Arfat, 2022).

### ***United Kingdom (UK)***

***Dallah Real Estate and Tourism Holding Company v. Ministry of Religious Affairs, Government of Pakistan (2010)***: This high-profile case involved the enforcement of an ICC arbitral award against the Government of Pakistan. The UK Supreme Court ruled that the award could not be enforced because Pakistan was not a party to the arbitration agreement. The court emphasized the importance of party consent in arbitration and upheld the principle of state immunity. This case is a leading example of the UK's strict adherence to arbitration principles, even when involving foreign states. It also demonstrated the UK's commitment to balancing enforcement with legal safeguards (Mustill & Boyd, 2001).

***Yukos Capital S.A.R.L. v. OJSC Rosneft Oil Company (2012)***: In this case, Yukos Capital sought enforcement of an arbitral award against Rosneft, a Russian state-owned company. The English Court of Appeal enforced the award, rejecting Rosneft's argument that the award had been set aside by a Russian court. The court held that the New York Convention did not require deference to foreign court decisions annulling awards. This case highlighted the UK's pro-enforcement stance and its willingness to uphold arbitral awards even in the face of foreign judicial interference (Gaillard & Savage, 1999).

***Enka Insaat Ve Sanayi A.S. v. OOO Insurance Company Chubb (2020)***: This case involved a dispute over the governing law of an arbitration agreement. The UK Supreme Court ruled that, in the absence of an explicit choice of law, the governing law of the arbitration agreement would be the law of the seat of arbitration. This decision clarified a key issue in international arbitration and reinforced the UK's reputation as a leading arbitration hub. The case also demonstrated the UK judiciary's expertise in handling complex arbitration-related disputes, further solidifying its position as a preferred jurisdiction for international arbitration (Born, 2021).

The case studies from Pakistan and the UK reveal significant differences in the enforcement of international commercial arbitration. While the UK's Arbitration Act, 1996 and pro-arbitration judiciary ensure efficient enforcement of awards, Pakistan's arbitration framework has historically faced challenges such as procedural delays and public policy limitations. However, recent cases like *Broadsheet LLC v. Pakistan* indicate progress in aligning Pakistan's arbitration practices with international standards. Both jurisdictions emphasize the importance of honoring arbitration agreements, but the UK's well-established legal system and global reputation make it a more reliable forum for enforcing arbitral awards.

## **Grounds for Refusal of Enforcement of International Commercial Arbitration Awards in Pakistan and the UK**

Both Pakistan and the UK are signatories to the NYC which provides a framework for the recognition and enforcement of international arbitral awards. However, the Convention also outlines specific grounds on which enforcement can be refused. While the grounds for refusal are similar in jurisdictions, their interpretation and application differ due to variations in legal frameworks, judicial attitudes, and public policy considerations.

### **Grounds for Refusal in Pakistan**

Under the REFA, 2011 which incorporates the NYC, Pakistan recognizes the following grounds for refusing enforcement of international arbitral awards:

Firstly enforcement may be refused if the arbitration agreement is invalid under the law to which the parties have subjected it or, failing such indication, under Pakistani law. This includes situations where one of the parties lacked the legal capacity to enter into the agreement.

Secondly if a party was not given proper notice of the arbitration proceedings or was otherwise unable to present its case, the award may be refused enforcement. This ensures that the principles of natural justice are upheld.

Thirdly if the arbitral tribunal exceeded its jurisdiction or authority by deciding matters beyond the scope of the arbitration agreement, the award may be refused enforcement.

Fourthly if the composition of the tribunal or the arbitration procedure did not comply with the agreement of the parties or the law of the seat of arbitration, enforcement may be denied.

Fifthly if the award has not yet become binding on the parties or has been set aside or suspended by a competent authority in the country where it was made, enforcement may be refused.

Sixthly enforcement may be refused if it would be contrary to Pakistan's public policy. This is a broad and often controversial ground, as it allows domestic courts to consider local legal and moral standards. For example, in *Societe Generale de Surveillance S.A. v. Pakistan* (2003), the Supreme Court of Pakistan invoked public policy to limit the enforceability of a foreign award. Lastly if the subject matter of the dispute is not capable of settlement by arbitration under Pakistani law.

### **Grounds for Refusal in the UK**

Under the Arbitration Act, 1996, which also incorporates the NYC, the UK recognizes similar grounds for refusing enforcement of international arbitral awards. However, the UK's approach is generally more arbitration-friendly, with courts adopting a pro-enforcement stance. The grounds for refusal include:

Firstly, the UK may refuse enforcement of an arbitration award if the arbitration agreement is found to be invalid under the applicable law, similar to the approach taken in Pakistan.

Secondly, enforcement may be denied if there is a violation of due process. UK courts place significant emphasis on procedural fairness, and if a party was not given proper notice or a fair opportunity to present its case, enforcement is likely to be refused.

Thirdly, if the tribunal acted beyond its jurisdiction, the award may be refused enforcement. However, it is important to note that UK courts generally interpret the tribunal's authority broadly, often favoring enforcement in such cases.

Fourthly, enforcement may be denied if the tribunal's composition or the arbitration procedure did not comply with the parties' agreement or the law of the seat, constituting improper composition or procedural irregularities.

Fifthly, if the award has been set aside or suspended in the country where it was made, UK courts may refuse enforcement. However, the UK has demonstrated a pro-enforcement approach in certain cases, such as in *Yukos Capital S.A.R.L. v. OJSC Rosneft Oil Company* (2012), where the English Court of Appeal enforced an award despite its annulment by a Russian court.

Sixthly, enforcement may be refused if it would be contrary to public policy. UK courts interpret this ground narrowly, reserving it for serious violations of fundamental principles, such as fraud or corruption. For example, in *Dallah Real Estate v. Pakistan* (2010), the UK Supreme Court refused enforcement based on legal principles; specifically that Pakistan was not a party to the arbitration agreement, rather than relying on broad public policy considerations.

Lastly, enforcement may be denied if the subject matter of the dispute is not arbitrable under UK law. This applies to certain matters, such as family or criminal disputes, which are considered non-arbitrable.

### **Comparative Analysis**

Pakistan's courts have historically invoked public policy more broadly, often relying on domestic legal and moral standards to justify their decisions. In contrast, UK courts interpret public policy narrowly, reserving its application for cases involving serious violations of fundamental principles, such as fraud or corruption. This difference highlights the UK's more restrictive approach to public policy, which aligns with its pro-enforcement stance. The UK judiciary is widely regarded as arbitration-friendly, with a strong emphasis on enforcing awards unless there are clear and compelling reasons to refuse. While Pakistan has made progress under the REFA, 2011, it still faces challenges, including judicial delays and inconsistent application of arbitration laws, which can hinder the enforcement process.

Both jurisdictions prioritize procedural fairness, but the UK's courts are more consistent in upholding due process principles, ensuring that parties are given proper notice and a fair opportunity to present their case. In Pakistan, procedural delays and inefficiencies sometimes undermine the effectiveness of arbitration proceedings. Additionally, in cases involving state entities, the UK's approach is more predictable. For example, in *Dallah Real Estate v. Pakistan* (2010), the UK Supreme Court refused enforcement based on the lack of consent by the state entity, demonstrating a clear and principled approach. In Pakistan, enforcement against state entities can be complicated by public policy considerations and bureaucratic hurdles, creating additional challenges for parties seeking to enforce awards. Overall, while both jurisdictions recognize the importance of arbitration, the UK's more consistent and predictable legal framework contrasts with Pakistan's evolving but sometimes inconsistent approach.

### **Conclusion**

The enforcement of international commercial arbitration awards in Pakistan and the United Kingdom (UK) reflects the broader evolution of arbitration as a preferred mechanism for resolving cross-border disputes. Both jurisdictions are signatories to the NYC and have established legal frameworks to facilitate the recognition and enforcement of arbitral awards. However, the approaches and outcomes in these two countries differ significantly due to variations in legal traditions, judicial attitudes, and institutional efficiency. The UK, with its Arbitration Act, 1996, is widely regarded as a global leader in arbitration. Its legal framework is robust, arbitration-friendly, and aligned with international best practices. UK courts adopt a pro-enforcement stance, interpreting the grounds for refusal narrowly and emphasizing party autonomy, procedural fairness, and the finality of arbitral awards. Cases such as *Yukos Capital S.A.R.L. v. OJSC Rosneft Oil Company* (2012) and *Enka Insaat Ve Sanayi A.S. v. OJSC Insurance Company Chubb* (2020) demonstrate the UK judiciary's expertise in handling complex arbitration-related issues and its commitment to upholding the principles of the NYC. The UK's predictable and efficient legal system has solidified its reputation as a preferred seat for international arbitration.

In contrast, Pakistan's arbitration framework, governed by the Arbitration Act, 1940 for domestic arbitration and the REFA, 2011 for international arbitration have faced challenges in aligning with global standards. While Pakistan has made significant strides in recent years, as evidenced by

cases like *Broadsheet LLC v. Pakistan* (2021), its arbitration regime continues to grapple with issues such as procedural delays, inconsistent judicial interpretations, and the broad application of public policy grounds. Historically, cases like *Societe Generale de Surveillance S.A. v. Pakistan* (2003) highlighted the tension between international arbitration obligations and domestic legal principles, underscoring the need for further reforms to enhance Pakistan's arbitration framework.

Despite these challenges, Pakistan's adoption of REFA, 2011 represents a positive step toward aligning its arbitration laws with international norms. The Act incorporates the principles of the NYC and provides a structured approach to enforcing foreign arbitral awards. However, the effective implementation of these laws requires continued judicial training, institutional reforms, and a shift toward a more arbitration-friendly mindset. The UK's experience offers valuable lessons for Pakistan, particularly in terms of minimizing judicial intervention, interpreting public policy grounds narrowly, and ensuring procedural efficiency.

In conclusion, while the UK serves as a model for the effective enforcement of international arbitral awards, Pakistan is on a path of gradual improvement. Both jurisdictions recognize the importance of arbitration in fostering international trade and investment, but the UK's well-established legal system and global reputation give it a distinct advantage. For Pakistan, the ongoing reforms and recent judicial decisions signal a promising future, but sustained efforts are needed to build trust and confidence among international stakeholders. By addressing its existing challenges and drawing inspiration from the UK's best practices, Pakistan can strengthen its position as a reliable jurisdiction for the enforcement of international commercial arbitration awards. While both Pakistan and the UK recognize similar grounds for refusing enforcement of international arbitral awards, their application differs significantly. The UK's pro-enforcement stance, narrow interpretation of public policy, and efficient judicial system make it a preferred jurisdiction for enforcing awards. Pakistan, despite recent reforms under REFA, 2011, continues to face challenges in aligning its arbitration framework with international standards. However, cases like *Broadsheet LLC v. Pakistan* (2021) indicate positive developments, suggesting that Pakistan is moving toward a more arbitration-friendly legal environment.

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