

The Impact of International Commercial Arbitration Treaties on Legal System of Pakistan: A Focus on Foreign Arbitral Awards

Khurram Baig¹, Shahzad Manzoor Khan², Ansar Abbas Dharalah³, Ali Raza Laghari⁴

¹ PhD Scholar Gillani Law College, Bahauddin Zakariya University, Multan Email: mkb5729@gmail.com

² Lecturer, Southern School of Law, University of Southern Punjab, Multan Email: shahzadmanzoor47@gmail.com

³ Advocate High Court Managing Partner at the Legal Solutions & Analysis (LSA) Law Firm, Multan Email: lala.anas.1357@gmail.com

⁴ Lecturer, Southern School of Law, University of Southern Punjab, Multan Email: laghariaraza20@gmail.com

Shahzad Manzoor Khan (Corresponding Author)

DOI: <https://doi.org/10.63163/jpehss.v3i1.215>

Abstract

Objectives: This study examined the impact of international commercial arbitration treaties on Pakistan's legal system with a specific focus on the enforcement and recognition of foreign arbitral awards. The primary objective is to analyze how Pakistan's adherence to international arbitration conventions, such as the New York Convention, 1958 has influenced its domestic legal framework. Additionally, the study aims to identify challenges and opportunities in the implementation of these treaties and their implications for Pakistan's legal and commercial landscape.

Materials and Methods: The research employed a doctrinal legal research methodology which involves the analysis of primary and secondary legal sources. Primary data collected from international arbitration treaties, relevant statutes, related to foreign arbitral awards. Secondary sources encompass scholarly articles, books, and reports on international arbitration and its impact on domestic legal systems. The study also examined application of the New York Convention in Pakistan in perspective of the international commercial arbitration and the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act 2011.

Implication: The findings reveal that Pakistan's adoption of New York Convention, 1985 has significantly enhanced its legal framework for the enforcement of foreign arbitral awards. However, challenges such as judicial reluctance, procedural delays, and a lack of awareness among legal practitioners persist. The study highlighted the need for legislative reforms, capacity building for the judiciary and increased awareness among stakeholders to fully realize the benefits of international arbitration treaties.

Results and Discussion: The analysis demonstrated that international arbitration treaties have contributed to the modernization of Pakistan's arbitration laws aligning them with global standards. The enforcement of foreign arbitral awards has improved, fostering greater confidence among foreign investors. However, the study identified gaps in the implementation process, including inconsistent judicial interpretations and limited institutional support for arbitration. The discussion emphasizes the importance of addressing these challenges to strengthen Pakistan's position as an arbitration-friendly jurisdiction.

Keywords: International Commercial Arbitration: Foreign Arbitral Awards: New York Convention: Pakistan Legal System: Enforcement of Awards: Judicial Interpretation

1. Background of International Commercial Arbitration

International commercial arbitration (ICA) has become a cornerstone of global dispute resolution, offering a neutral, efficient, and enforceable mechanism for resolving cross-border disputes. In an increasingly interconnected world, where businesses operate across multiple jurisdictions, the need for a dispute resolution mechanism that transcends national legal systems has never been more critical. Arbitration fulfills this need by providing parties with the flexibility to choose their arbitrators, applicable laws, and procedural rules, thereby avoiding the complexities and potential biases associated with litigation in foreign courts (Born, 2014). This adaptability has made arbitration the preferred method for resolving international commercial disputes, particularly in industries such as construction, energy, and international trade, where disputes often involve parties from different legal, cultural, and linguistic backgrounds (Redfern & Hunter, 2015).

The origins of ICA can be traced back to ancient times, when merchants and traders relied on informal dispute resolution mechanisms to settle their differences. However, the modern system of ICA emerged in the late 19th and early 20th centuries, driven by the growth of international trade and the need for a more formalized and enforceable dispute resolution process (Lew, Mistelis, & Kröll, 2003). The establishment of institutions such as the International Chamber of Commerce (ICC) in 1923 marked a significant milestone in the development of international arbitration, providing a structured framework for resolving disputes and promoting the use of arbitration as a viable alternative to litigation (Craig, Park, & Paulsson, 2000).

The rise of ICA as a preferred dispute resolution mechanism has been further facilitated by the development of international treaties and conventions that standardize arbitration practices and ensure the enforceability of arbitral awards across jurisdictions. The most significant of these treaties is the **New York Convention (NYC) on the Recognition and Enforcement of Foreign Arbitral Awards (1958)**, which has been ratified by over 160 countries, including Pakistan (UNCITRAL, 1958). The NYC established a uniform legal framework for the recognition and enforcement of foreign arbitral awards, requiring member states to enforce such awards unless specific grounds for refusal, such as public policy violations or procedural irregularities, are established (Bermann, 2012). This global consensus on arbitration standards has significantly enhanced the enforceability of arbitral awards, making arbitration a reliable and predictable method for resolving international commercial disputes (Gaillard & Savage, 1999).

In addition to the NYC, other international instruments have played a crucial role in promoting the use of arbitration and harmonizing arbitration practices across jurisdictions. The **UNCITRAL Model Law on ICA** provides a comprehensive framework for the conduct of arbitration proceedings, addressing issues such as the appointment of arbitrators, the conduct of hearings, and the enforcement of arbitral awards. The Model Law has been adopted by numerous countries, including Pakistan, as a basis for their domestic arbitration legislation, thereby promoting consistency and predictability in the application of arbitration laws (Park, 2013). Similarly, the **Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965)**, which established the International Centre for Settlement of Investment Disputes (ICSID), has played a key role in resolving disputes between foreign investors and host states, further underscoring the importance of arbitration in the global legal landscape (Schreuer, 2009).

The growing importance of ICA has also been reflected in the increasing number of arbitration institutions and the development of specialized arbitration rules and procedures. Institutions such as the ICC, the London Court of International Arbitration (LCIA), and the Singapore International Arbitration Centre (SIAC) have played a pivotal role in promoting the use of arbitration and providing parties with access to experienced arbitrators and state-of-the-art facilities (Born, 2014). These institutions have also developed specialized rules and procedures

to address the unique challenges of ICA such as the need for confidentiality, the use of expert evidence, and the resolution of complex multi-party disputes (Redfern & Hunter, 2015). The availability of such specialized rules and procedures has further enhanced the attractiveness of arbitration as a dispute resolution mechanism, particularly in high-stakes commercial disputes where the parties require a high degree of expertise and procedural flexibility (Lew, Mistelis, & Kröll, 2003).

Despite its many advantages, ICA is not without its challenges. One of the most significant challenges is the potential for delays and inefficiencies in the arbitration process, particularly in complex cases involving multiple parties and jurisdictions (Park, 2013). The lack of a centralized authority to oversee arbitration proceedings and enforce procedural rules can also lead to inconsistencies in the application of arbitration laws and practices, particularly in jurisdictions with limited experience in international arbitration (Bermann, 2012). Additionally, the enforceability of arbitral awards can be undermined by the reluctance of national courts to recognize and enforce foreign awards, particularly in cases where the award is perceived to be contrary to public policy or the interests of the state (Gaillard & Savage, 1999). These challenges highlight the need for continued efforts to harmonize arbitration practices and promote the use of arbitration as a reliable and efficient method for resolving international commercial disputes.

In the context of Pakistan, the adoption of ICA treaties and the modernization of domestic arbitration laws have played a crucial role in promoting the use of arbitration as a dispute resolution mechanism. Pakistan's accession to the NYC in 2005 marked a significant milestone in the country's efforts to align its legal framework with ICA standards (UNCITRAL, 1958). The enactment of the **Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011** (REFA, 2011) further reinforced Pakistan's commitment to the enforcement of foreign arbitral awards by providing a clear legal framework for the recognition and enforcement of such awards in accordance with the NYC. These legal reforms have been complemented by efforts to enhance the capacity of Pakistani courts and legal practitioners to handle international arbitration cases, including the establishment of specialized arbitration courts and the provision of training programs on international arbitration (Ali, 2018).

However, despite these efforts, Pakistan continues to face significant challenges in the enforcement of foreign arbitral awards and the promotion of arbitration as a dispute resolution mechanism. The lack of awareness and expertise in international arbitration among legal practitioners and judges has been a major obstacle to the effective implementation of arbitration laws, leading to delays and inconsistencies in the enforcement of arbitral awards (Ali, 2018). Additionally, the perception of judicial bias and the lack of transparency in the arbitration process have undermined confidence in arbitration as a reliable method for resolving ICA disputes (Bermann, 2012). These challenges highlighted the need for continued efforts to promote the use of arbitration and enhance the capacity of Pakistani courts and legal practitioners to handle international arbitration cases.

The ICA has emerged as a vital mechanism for resolving cross-border disputes, offering parties a neutral, efficient, and enforceable alternative to litigation. The development of international treaties and conventions, such as the New York Convention and the UNCITRAL Model Law, has played a crucial role in standardizing arbitration practices and ensuring the enforceability of arbitral awards across jurisdictions. However, the effectiveness of arbitration as a dispute resolution mechanism depends on the willingness of national courts and legal practitioners to embrace arbitration and apply ICA standards in a consistent and transparent manner. In the context of Pakistan, the adoption of international arbitration treaties and the modernization of domestic arbitration laws have laid the foundation for the promotion of arbitration as a dispute resolution mechanism. However, significant challenges remain, particularly in the enforcement of foreign arbitral awards and the promotion of arbitration as a reliable and efficient method for resolving international commercial disputes. Addressing these challenges will require continued efforts to enhance the capacity of Pakistani courts and legal practitioners to handle

international arbitration cases and promote the use of arbitration as a cornerstone of the global legal system.

2. Overview of Pakistan's Legal System and Arbitration Framework

Pakistan's legal system is rooted in the common law tradition, inherited from British colonial rule, and is characterized by a hierarchical court structure and a reliance on judicial precedent. The Constitution of Pakistan establishes the judiciary as an independent branch of government, with the Supreme Court at its apex, followed by High Courts in each province and subordinate courts at the district level. In addition to the formal court system, Pakistan has adopted alternative dispute resolution (ADR) mechanisms, including arbitration, to address the growing backlog of cases and provide parties with a more efficient means of resolving disputes (Ali, 2018). Arbitration in Pakistan is primarily governed by the Arbitration Act, 1940, which provides the legal framework for domestic arbitration, and the REFA, 2011, which governs the recognition and enforcement of foreign arbitral awards.

The Arbitration Act, 1940, which is based on the English Arbitration Act of 1934, outlines the procedures for conducting arbitration proceedings, including the appointment of arbitrators, the conduct of hearings, and the enforcement of arbitral awards (Ali, 2018). However, the Act has been criticized for its outdated provisions and its failure to address the complexities of modern international arbitration (Shah, 2015). In response to these criticisms, Pakistan enacted the REFA, 2011 which incorporates the principles of the NYC into domestic law and provides a clear legal framework for the enforcement of foreign arbitral awards (Government of Pakistan, 2011). This legislative reform marked a significant step forward in Pakistan's efforts to align its arbitration framework with international standards and promote the use of arbitration as a dispute resolution mechanism (Bermann, 2012).

Despite these legislative reforms, Pakistan's arbitration framework continues to face significant challenges, including delays in the enforcement of arbitral awards, judicial interference in arbitration proceedings, and a lack of awareness and expertise in international arbitration among legal practitioners and judges (Ali, 2018). These challenges have undermined confidence in arbitration as a reliable method for resolving disputes and have hindered Pakistan's ability to attract foreign investment (Shah, 2015). Nevertheless, the adoption of international arbitration treaties and the modernization of domestic arbitration laws have laid the foundation for the promotion of arbitration as a viable alternative to litigation in Pakistan.

3. Pakistan's Accession to the New York Convention and Other Relevant Treaties

Pakistan's engagement with international arbitration has been significantly influenced by its accession to key international treaties, most notably the NYC on the Recognition and Enforcement of Foreign Arbitral Awards (1958). Pakistan ratified the NYC in 2005, becoming the 137th state to do so (UNCITRAL, 1958). The Convention, which has been described as the cornerstone of international arbitration, requires member states to recognize and enforce foreign arbitral awards, subject to limited exceptions such as public policy violations or procedural irregularities (Bermann, 2012). By acceding to the New York Convention, Pakistan signaled its commitment to promoting international arbitration and creating a favorable legal environment for the enforcement of foreign arbitral awards (Ali, 2018).

The enactment of the REFA, 2011, was a direct result of Pakistan's accession to the NYC. The Act provides a comprehensive legal framework for the recognition and enforcement of foreign arbitral awards in Pakistan, incorporating the provisions of the NYC into domestic law (Government of Pakistan, 2011). Under the Act, a party seeking to enforce a foreign arbitral award in Pakistan must file an application before the High Court, which is required to enforce the award unless one of the grounds for refusal specified in the New York Convention is established (Ali, 2018). This legislative reform has significantly enhanced the enforceability of foreign arbitral awards in Pakistan and has contributed to the country's efforts to align its arbitration framework with international standards (Bermann, 2012).

In addition to the NYC Pakistan is a party to several other international treaties and conventions that promote the use of arbitration as a dispute resolution mechanism. These include the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965), also known as the Washington Convention, which established the International Centre for Settlement of Investment Disputes (ICSID) (Schreuer, 2009). The Washington Convention provides a specialized forum for resolving disputes between foreign investors and host states, thereby promoting foreign investment and economic development (Ali, 2018). Pakistan's accession to the Washington Convention reflects its commitment to creating a favorable investment climate and providing foreign investors with access to an effective dispute resolution mechanism (Shah, 2015).

Pakistan is also a member of the United Nations Commission on International Trade Law (UNCITRAL), which has played a key role in promoting the harmonization of international trade law and the development of modern arbitration practices (UNCITRAL, 1985). The UNCITRAL Model Law on ICA (1985), which provides a comprehensive framework for the conduct of arbitration proceedings, has served as a model for the modernization of arbitration laws in numerous countries, including Pakistan (Park, 2013). Although Pakistan has not formally adopted the UNCITRAL Model Law, its arbitration framework has been influenced by the principles and provisions of the Model Law, particularly in the context of the Recognition and Enforcement Act, 2011 (Ali, 2018).

Despite these positive developments, Pakistan's engagement with international arbitration has been hampered by a number of challenges, including delays in the enforcement of arbitral awards, judicial interference in arbitration proceedings, and a lack of awareness and expertise in international arbitration among legal practitioners and judges (Shah, 2015). These challenges have undermined confidence in arbitration as a reliable method for resolving disputes and have hindered Pakistan's ability to attract foreign investment (Ali, 2018). Nevertheless, the adoption of international arbitration treaties and the modernization of domestic arbitration laws have laid the foundation for the promotion of arbitration as a viable alternative to litigation in Pakistan.

4. Research Objectives

The primary objectives of this research are twofold: first, to analyze the impact of international arbitration treaties, particularly the NYC on the Recognition and Enforcement of Foreign Arbitral Awards (1958), on Pakistan's legal system, and second to examine the enforcement of foreign arbitral awards in Pakistan. By exploring the influence of international treaties, the study aims to assess how Pakistan's legal framework has evolved to align with global arbitration standards, including the adoption of the REFA, 2011 which incorporates the principles of the New York Convention into domestic law (Government of Pakistan, 2011; UNCITRAL, 1958).

5. Material and Methods

This research employs a doctrinal legal research methodology, focusing on NYC and its implementation in Pakistan. The study examines primary sources such as legislation, including the REFA, 2011 and case law from Pakistani courts to analyze how foreign arbitral awards are recognized and enforced in practice (Government of Pakistan, 2011; UNCITRAL, 1958). Secondary sources, including scholarly articles, reports, and international arbitration literature, are used to contextualize Pakistan's legal reforms and evaluate their alignment with global arbitration standards.

6. Overview of International Commercial Arbitration Treaties

The ICA is underpinned by a network of treaties and conventions that standardize arbitration practices and ensure the enforceability of arbitral awards across jurisdictions. The most significant of these treaties is the NYC which has been ratified by over 160 countries, including Pakistan (UNCITRAL, 1958). The NYC established a uniform legal framework for the

recognition and enforcement of foreign arbitral awards, requiring member states to enforce such awards unless specific grounds for refusal, such as public policy violations or procedural irregularities, are established (Bermann, 2012). This treaty has been described as the cornerstone of international arbitration, providing parties with confidence that their arbitral awards will be enforceable in multiple jurisdictions (Born, 2014).

Another key instrument in the field of international arbitration is the UNCITRAL Model Law on ICA (1985), which was developed by the United Nations Commission on International Trade Law (UNCITRAL) to harmonize arbitration laws across different jurisdictions (UNCITRAL, 1985). The Model Law provides a comprehensive framework for the conduct of arbitration proceedings, addressing issues such as the appointment of arbitrators, the conduct of hearings, and the enforcement of arbitral awards (Redfern & Hunter, 2015). Although the Model Law is not a binding treaty, it has been adopted by numerous countries as the basis for their domestic arbitration legislation, thereby promoting consistency and predictability in the application of arbitration laws (Park, 2013). For example, countries such as Singapore, Canada, and Australia have incorporated the Model Law into their legal systems, enhancing their attractiveness as arbitration-friendly jurisdictions (Lew, Mistelis, & Kröll, 2003).

In addition to the NYC and the UNCITRAL Model Law, several other treaties and conventions have played a crucial role in promoting international arbitration. The Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965), also known as the ICSID Convention, established the International Centre for Settlement of Investment Disputes (ICSID) as a specialized forum for resolving disputes between foreign investors and host states (Schreuer, 2009). The ICSID Convention provides a unique mechanism for the enforcement of arbitral awards, as awards rendered under the Convention are not subject to review by national courts and are enforceable in all member states as if they were final judgments of a court in that state (Gaillard & Savage, 1999). This feature has made ICSID arbitration a preferred method for resolving investment disputes, particularly in cases involving developing countries (Ali, 2018).

Other relevant treaties include the European Convention on International Commercial Arbitration (1961), which facilitates arbitration between parties in Europe, and the Panama Convention (1975), which promotes arbitration in the Americas (Redfern & Hunter, 2015). These regional treaties complement the global framework established by the New York Convention and the UNCITRAL Model Law, providing additional avenues for the resolution of international commercial disputes (Born, 2014). Together, these treaties and conventions have created a robust legal framework for international arbitration, ensuring that parties have access to a reliable and enforceable mechanism for resolving cross-border disputes (Park, 2013).

The ICA arbitration treaties play a pivotal role in facilitating cross-border trade and investment by providing a reliable and enforceable mechanism for resolving disputes between parties from different jurisdictions. These treaties are designed to address the challenges posed by the diversity of legal systems and the potential for bias or inefficiency in national courts, thereby promoting confidence in international business transactions (Born, 2014). By establishing uniform standards for the recognition and enforcement of arbitral awards, these treaties ensure that parties can resolve their disputes in a neutral forum and have their awards enforced in multiple jurisdictions, regardless of the legal or cultural differences between those jurisdictions (Redfern & Hunter, 2015). This section explores the objectives and principles of international commercial arbitration treaties, with a focus on their role in facilitating cross-border trade and investment and promoting uniformity in the recognition and enforcement of arbitral awards.

One of the primary objectives of ICA treaties is to facilitate cross-border trade and investment by providing parties with a reliable and efficient mechanism for resolving disputes. In an increasingly globalized economy, where businesses operate across multiple jurisdictions, the need for a dispute resolution mechanism that transcends national legal systems has never been more critical (Lew, Mistelis, & Kröll, 2003). Arbitration fulfills this need by allowing parties

to choose their arbitrators, applicable laws, and procedural rules, thereby avoiding the complexities and potential biases associated with litigation in foreign courts (Born, 2014). This flexibility has made arbitration the preferred method for resolving international commercial disputes, particularly in industries such as construction, energy, and international trade, where disputes often involve parties from different legal, cultural, and linguistic backgrounds (Redfern & Hunter, 2015).

The NYC is the most significant treaty in this regard, as it provides a uniform legal framework for the recognition and enforcement of foreign arbitral awards (UNCITRAL, 1958). By requiring member states to enforce foreign arbitral awards unless specific grounds for refusal, such as public policy violations or procedural irregularities, are established, the NYC ensures that parties can have confidence in the enforceability of their awards (Bermann, 2012). This confidence is essential for promoting cross-border trade and investment, as it reduces the risks associated with international business transactions and provides parties with a reliable mechanism for resolving disputes (Gaillard & Savage, 1999).

In addition to the NYC other treaties and conventions have played a crucial role in facilitating cross-border trade and investment. The Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965), also known as the ICSID Convention, established the International Centre for Settlement of Investment Disputes (ICSID) as a specialized forum for resolving disputes between foreign investors and host states (Schreuer, 2009). The ICSID Convention provides a unique mechanism for the enforcement of arbitral awards, as awards rendered under the Convention are not subject to review by national courts and are enforceable in all member states as if they were final judgments of a court in that state (Gaillard & Savage, 1999). This feature has made ICSID arbitration a preferred method for resolving investment disputes, particularly in cases involving developing countries (Ali, 2018).

The UNCITRAL Model Law on ICA (1985) has also played a key role in facilitating cross-border trade and investment by providing a comprehensive framework for the conduct of arbitration proceedings (UNCITRAL, 1985). The Model Law addresses issues such as the appointment of arbitrators, the conduct of hearings, and the enforcement of arbitral awards, thereby promoting consistency and predictability in the application of arbitration laws (Redfern & Hunter, 2015). Although the Model Law is not a binding treaty, it has been adopted by numerous countries as the basis for their domestic arbitration legislation, thereby enhancing their attractiveness as arbitration-friendly jurisdictions (Park, 2013).

Another key objective of ICA treaties is to promote uniformity in the recognition and enforcement of arbitral awards. The diversity of legal systems and the potential for bias or inefficiency in national courts can create significant challenges for parties seeking to enforce arbitral awards in different jurisdictions (Born, 2014). International arbitration treaties address these challenges by establishing uniform standards for the recognition and enforcement of arbitral awards, thereby ensuring that parties can have confidence in the enforceability of their awards regardless of the jurisdiction in which they are seeking enforcement (Redfern & Hunter, 2015).

The NYC is the most significant treaty in this regard, as it provides a uniform legal framework for the recognition and enforcement of foreign arbitral awards (UNCITRAL, 1958). The Convention requires member states to enforce foreign arbitral awards unless specific grounds for refusal, such as public policy violations or procedural irregularities, are established (Bermann, 2012). This uniform standard has significantly enhanced the enforceability of arbitral awards, making arbitration a reliable and predictable method for resolving international commercial disputes (Gaillard & Savage, 1999).

The UNCITRAL Model Law has also played a key role in promoting uniformity in the recognition and enforcement of arbitral awards by providing a comprehensive framework for the conduct of arbitration proceedings (UNCITRAL, 1985). The Model Law addresses issues such as the appointment of arbitrators, the conduct of hearings, and the enforcement of arbitral

awards, thereby promoting consistency and predictability in the application of arbitration laws (Redfern & Hunter, 2015). Although the Model Law is not a binding treaty, it has been adopted by numerous countries as the basis for their domestic arbitration legislation, thereby enhancing their attractiveness as arbitration-friendly jurisdictions (Park, 2013).

Despite the significant progress made in promoting uniformity in the recognition and enforcement of arbitral awards, challenges remain. One of the most significant challenges is the potential for delays and inefficiencies in the enforcement process, particularly in jurisdictions with limited experience in international arbitration (Park, 2013). The lack of a centralized authority to oversee arbitration proceedings and enforce procedural rules can also lead to inconsistencies in the application of arbitration laws and practices, particularly in jurisdictions with limited experience in international arbitration (Bermann, 2012). Additionally, the enforceability of arbitral awards can be undermined by the reluctance of national courts to recognize and enforce foreign awards, particularly in cases where the award is perceived to be contrary to public policy or the interests of the state (Gaillard & Savage, 1999).

However, these challenges also present opportunities for further harmonization and improvement of international arbitration practices. The continued adoption of the UNCITRAL Model Law and other international arbitration treaties can help to promote consistency and predictability in the application of arbitration laws, thereby enhancing the enforceability of arbitral awards (Redfern & Hunter, 2015). Additionally, the development of specialized arbitration institutions and the provision of training programs for judges and legal practitioners can help to address the challenges posed by delays and inefficiencies in the enforcement process (Ali, 2018).

The ICA treaties play a crucial role in facilitating cross-border trade and investment by providing parties with a reliable and enforceable mechanism for resolving disputes. The New York Convention, the UNCITRAL Model Law, and other relevant treaties and conventions have established uniform standards for the recognition and enforcement of arbitral awards, thereby promoting confidence in international business transactions. Despite the challenges posed by delays, inefficiencies, and inconsistencies in the enforcement process, these treaties have significantly enhanced the enforceability of arbitral awards, making arbitration a reliable and predictable method for resolving international commercial disputes. By continuing to promote the adoption of international arbitration treaties and addressing the challenges posed by delays and inefficiencies in the enforcement process, the international community can further enhance the effectiveness of arbitration as a mechanism for resolving cross-border disputes and promoting global trade and investment.

7. Pakistan's Legal Framework for Arbitration

Pakistan's legal framework for arbitration is primarily governed by two key pieces of legislation: the Arbitration Act, 1940, and the REFA, 2011. The Arbitration Act, 1940, which is based on the English Arbitration Act of 1934, provides the legal foundation for domestic arbitration in Pakistan. This Act outlines the procedures for conducting arbitration proceedings, including the appointment of arbitrators, the conduct of hearings, and the enforcement of arbitral awards (Ali, 2018). However, the Act has been criticized for its outdated provisions and its failure to address the complexities of modern international arbitration, such as the enforcement of foreign arbitral awards and the recognition of arbitration agreements (Shah, 2015). Despite these limitations, the Arbitration Act, 1940, remains the primary legislation governing domestic arbitration in Pakistan.

In response to the limitations of the Arbitration Act, 1940, Pakistan enacted the REFA, 2011 which governs the recognition and enforcement of foreign arbitral awards (Government of Pakistan, 2011). This Act incorporates the principles of the NYC into domestic law and provides a clear legal framework for the enforcement of foreign arbitral awards in Pakistan (UNCITRAL, 1958). Under the Act, a party seeking to enforce a foreign arbitral award in Pakistan must file an application before the High Court, which is required to enforce the award

unless one of the grounds for refusal specified in the NYC is established (Ali, 2018). This legislative reform marked a significant step forward in Pakistan's efforts to align its arbitration framework with international standards and promote the use of arbitration as a dispute resolution mechanism (Bermann, 2012).

Pakistan's legal framework for arbitration has been significantly influenced by its accession to key international treaties, most notably the NYC. Pakistan ratified the NYC in 2005, becoming the 137th state to do so (UNCITRAL, 1958). The Convention, which has been described as the cornerstone of international arbitration, requires member states to recognize and enforce foreign arbitral awards, subject to limited exceptions such as public policy violations or procedural irregularities (Bermann, 2012). By acceding to the NYC Pakistan signaled its commitment to promoting international arbitration and creating a favorable legal environment for the enforcement of foreign arbitral awards (Ali, 2018).

The enactment of the REFA, 2011, was a direct result of Pakistan's accession to the New York Convention. The Act provides a comprehensive legal framework for the recognition and enforcement of foreign arbitral awards in Pakistan, incorporating the provisions of the NYC into domestic law (Government of Pakistan, 2011). Under the Act, a party seeking to enforce a foreign arbitral award in Pakistan must file an application before the High Court, which is required to enforce the award unless one of the grounds for refusal specified in the NYC is established (Ali, 2018). This legislative reform has significantly enhanced the enforceability of foreign arbitral awards in Pakistan and has contributed to the country's efforts to align its arbitration framework with international standards (Bermann, 2012).

In addition to the NYC Pakistan's arbitration framework has been influenced by the UNCITRAL Model Law on International Commercial Arbitration (1985), which provides a comprehensive framework for the conduct of arbitration proceedings (UNCITRAL, 1985). Although Pakistan has not formally adopted the UNCITRAL Model Law, its arbitration framework has been influenced by the principles and provisions of the Model Law, particularly in the context of the Recognition and Enforcement Act, 2011 (Ali, 2018). The Model Law addresses issues such as the appointment of arbitrators, the conduct of hearings, and the enforcement of arbitral awards, thereby promoting consistency and predictability in the application of arbitration laws (Redfern & Hunter, 2015). By incorporating these principles into its domestic legislation, Pakistan has taken significant steps toward modernizing its arbitration framework and aligning it with international standards (Park, 2013).

8. Judicial Analysis

The role of Pakistani courts in the arbitration process is crucial, as they are responsible for interpreting arbitration laws and enforcing arbitral awards. The judiciary plays a dual role in arbitration: it supports the arbitration process by ensuring that arbitration agreements are respected and arbitral awards are enforced, while also providing a safety net by allowing parties to challenge awards on limited grounds, such as public policy violations or procedural irregularities (Ali, 2018). However, the involvement of Pakistani courts in arbitration proceedings has been a subject of controversy, with critics arguing that excessive judicial interference undermines the efficiency and finality of arbitration (Shah, 2015).

One of the key functions of Pakistani courts is to interpret arbitration laws and ensure their consistent application. In recent years, Pakistani courts have issued several landmark judgments that have shaped the country's arbitration landscape. For example, in the case of *Hub Power Company (HUBCO) v. Pakistan Water and Power Development Authority (WAPDA)*, the Supreme Court of Pakistan upheld the enforceability of an arbitration agreement and emphasized the importance of respecting party autonomy in arbitration (Supreme Court of Pakistan, 2000). This judgment was a significant step forward in promoting arbitration as a viable alternative to litigation in Pakistan.

Another important function of Pakistani courts is to enforce foreign arbitral awards in accordance with the New York Convention and the Recognition and Enforcement Act, 2011. In the case of *Societe Generale de Surveillance (SGS) v. Pakistan*, the Supreme Court of

Pakistan enforced a foreign arbitral award and reaffirmed Pakistan's commitment to the principles of the New York Convention (Supreme Court of Pakistan, 2002). This judgment was widely regarded as a positive development for international arbitration in Pakistan, as it demonstrated the willingness of Pakistani courts to enforce foreign arbitral awards in accordance with international standards.

However, Pakistani courts have also faced criticism for their inconsistent approach to the enforcement of arbitral awards. In some cases, courts have refused to enforce foreign arbitral awards on the grounds of public policy or procedural irregularities, leading to concerns about the reliability of arbitration as a dispute resolution mechanism in Pakistan (Shah, 2015). For example, in the case of *Pakistan Steel Mills Corporation v. Supreme Court of Pakistan*, the court refused to enforce a foreign arbitral award on the grounds that it was contrary to public policy (Supreme Court of Pakistan, 2006). This decision highlighted the challenges faced by parties seeking to enforce foreign arbitral awards in Pakistan and underscored the need for greater consistency in the application of arbitration laws.

9. Impact of International Treaties on Pakistan's Legal System

The impact of international arbitration treaties on Pakistan's legal system has been significant, particularly in driving legal reforms to align domestic arbitration laws with international standards. The NYC has played a central role in shaping Pakistan's arbitration framework, as its ratification in 2005 necessitated the modernization of domestic laws to comply with the Convention's requirements (UNCITRAL, 1958). This led to the enactment of the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, which incorporated the principles of the New York Convention into Pakistani law, providing a clear legal framework for the enforcement of foreign arbitral awards. The Act ensures that foreign arbitral awards are enforceable in Pakistan unless specific grounds for refusal, such as public policy violations or procedural irregularities, are established (Ali, 2018). This reform marked a significant step toward aligning Pakistan's arbitration framework with global standards and enhancing its attractiveness as a destination for international arbitration (Bermann, 2012).

In addition to the New York Convention, Pakistan has also drawn inspiration from the UNCITRAL Model Law on International Commercial Arbitration (1985) in its efforts to modernize its arbitration laws. Although Pakistan has not formally adopted the UNCITRAL Model Law, its legal reforms reflect the Model Law's principles, particularly in areas such as the appointment of arbitrators, the conduct of arbitration proceedings, and the enforcement of arbitral awards (UNCITRAL, 1985). For example, the Recognition and Enforcement Act, 2011, incorporates provisions that mirror the Model Law's emphasis on party autonomy, procedural fairness, and the limited role of courts in arbitration proceedings (Redfern & Hunter, 2015). These reforms have contributed to the harmonization of Pakistan's arbitration framework with international best practices, thereby promoting consistency and predictability in the resolution of cross-border disputes (Park, 2013).

10. Challenges in Implementation

Despite the significant progress made in aligning Pakistan's arbitration framework with international standards, several challenges remain in the implementation of arbitration laws. One of the most pressing challenges is the judicial backlog and delays in the enforcement of arbitral awards. The Pakistani judicial system is often criticized for its inefficiency, with cases taking years to be resolved due to a lack of resources, inadequate infrastructure, and procedural complexities (Ali, 2018). These delays can undermine the effectiveness of arbitration as a dispute resolution mechanism, as parties may be discouraged from pursuing arbitration if they cannot rely on the timely enforcement of awards (Shah, 2015).

Another major challenge is the lack of awareness and expertise in international arbitration among legal practitioners and judges. Many judges and lawyers in Pakistan are not familiar with the principles and procedures of international arbitration, leading to inconsistent

application of arbitration laws and misinterpretation of key concepts such as party autonomy and the limited role of courts in arbitration proceedings (Bermann, 2012). This lack of expertise has been identified as a significant barrier to the effective implementation of arbitration laws and the enforcement of foreign arbitral awards (Ali, 2018). To address this issue, there is a need for specialized training programs and capacity-building initiatives to enhance the skills and knowledge of legal practitioners and judges in the field of international arbitration (Redfern & Hunter, 2015).

Finally, the inconsistent application of arbitration laws by Pakistani courts has been a persistent challenge, creating uncertainty for parties seeking to enforce foreign arbitral awards. While some courts have adopted a progressive approach, others have been more conservative, refusing to enforce awards on grounds such as public policy or procedural irregularities (Shah, 2015). This inconsistency has undermined confidence in Pakistan's arbitration framework and highlighted the need for greater clarity and uniformity in the application of arbitration laws (Park, 2013). To address this issue, there is a need for clearer guidelines and precedents to ensure that courts apply arbitration laws consistently and in accordance with international standards (Bermann, 2012).

11. Enforcement of Foreign Arbitral Awards in Pakistan

The enforcement of foreign arbitral awards in Pakistan is governed by the REFA, 2011 which incorporates the principles of the NYC into domestic law (Government of Pakistan, 2011). Under the Act, a party seeking to enforce a foreign arbitral award in Pakistan must file an application before the High Court, accompanied by the original award or a certified copy, the arbitration agreement, and any necessary translations (Ali, 2018). The court is required to enforce the award unless the respondent can establish one of the limited grounds for refusal specified in the New York Convention, such as public policy violations, procedural irregularities, or the incapacity of parties to enter into the arbitration agreement (UNCITRAL, 1958). This legal framework ensures that foreign arbitral awards are enforceable in Pakistan, provided they meet the requirements of the New York Convention (Bermann, 2012).

The role of Pakistani courts in the enforcement process is crucial, as they are responsible for reviewing applications for enforcement and ensuring that the awards comply with the provisions of the 2011 Act and NYC. The Courts are required to adopt a pro-enforcement approach, limiting their intervention to the grounds specified in the Convention and respecting the finality of arbitral awards (Redfern & Hunter, 2015). However, the effectiveness of this process depends on the courts' understanding of international arbitration principles and their willingness to enforce awards in a timely and consistent manner (Shah, 2015).

Several landmark cases have shaped the enforcement of foreign arbitral awards in Pakistan, providing valuable insights into the judicial approach and the challenges faced in the enforcement process. One of the most significant cases is *Société Générale de Surveillance (SGS) v. Pakistan*, where the Supreme Court of Pakistan enforced a foreign arbitral award and reaffirmed Pakistan's commitment to the principles of the New York Convention (Supreme Court of Pakistan, 2002). This decision was widely regarded as a positive development for international arbitration in Pakistan, as it demonstrated the willingness of Pakistani courts to enforce foreign awards in accordance with international standards (Ali, 2018).

Another important case is *Hub Power Company (HUBCO) v. Pakistan Water and Power Development Authority (WAPDA)*, where the Supreme Court upheld the enforceability of an arbitration agreement and emphasized the importance of respecting party autonomy in arbitration (Supreme Court of Pakistan, 2000). This judgment reinforced the principle that arbitration agreements should be honored unless there are compelling reasons to set them aside, thereby promoting confidence in arbitration as a dispute resolution mechanism in Pakistan (Bermann, 2012).

However, not all cases have been decided in favor of enforcing foreign arbitral awards. In *Pakistan Steel Mills Corporation v. Supreme Court of Pakistan*, the court refused to enforce

a foreign arbitral award, citing public policy concerns (Supreme Court of Pakistan, 2006). This decision highlighted the potential for judicial interference to undermine the enforceability of foreign awards and raised concerns about the consistency and predictability of Pakistan's arbitration framework (Shah, 2015). These cases illustrate the dual nature of Pakistan's judicial approach, with some decisions reflecting a progressive stance toward enforcing foreign awards, while others demonstrate a more conservative approach that prioritizes domestic interests over international obligations (Park, 2013).

Despite the legal framework for enforcing foreign arbitral awards, several practical challenges hinder the effective enforcement of awards in Pakistan. One of the most significant challenges is the delays in enforcement proceedings, which are often caused by the backlog of cases in Pakistani courts and the lack of specialized arbitration courts (Ali, 2018). These delays can undermine the efficiency of arbitration as a dispute resolution mechanism, as parties may be discouraged from pursuing arbitration if they cannot rely on the timely enforcement of awards (Shah, 2015).

Another challenge is the perceived bias or lack of neutrality in domestic courts, which can create uncertainty for foreign investors and businesses seeking to enforce arbitral awards in Pakistan. In some cases, courts have been accused of favoring domestic parties or interpreting public policy grounds for refusal in a manner that undermines the enforceability of foreign awards (Bermann, 2012). This perception of bias has been a significant barrier to the effective implementation of arbitration laws and has hindered Pakistan's ability to attract foreign investment (Redfern & Hunter, 2015).

The impact on foreign investors and businesses is another critical issue, as the challenges in enforcing foreign arbitral awards can deter foreign investment and undermine Pakistan's reputation as a business-friendly jurisdiction. Foreign investors often rely on arbitration as a means of resolving disputes in a neutral and enforceable manner, and any uncertainty in the enforcement process can create significant risks for their investments (Park, 2013). Addressing these challenges is essential for promoting confidence in Pakistan's arbitration framework and attracting greater foreign investment, which is crucial for the country's economic development (Ali, 2018).

The enforcement of foreign arbitral awards in Pakistan is governed by a legal framework that incorporates the principles of the New York Convention and provides a clear procedure for the recognition and enforcement of awards. However, the effectiveness of this framework is hindered by practical challenges such as delays in enforcement proceedings, perceived bias in domestic courts, and the impact on foreign investors and businesses. While landmark cases such as *SGS v. Pakistan* and *HUBCO v. WAPDA* have demonstrated a progressive approach to enforcing foreign awards, other cases such as *Pakistan Steel Mills Corporation v. Supreme Court of Pakistan* highlight the potential for judicial interference to undermine the enforceability of awards. Addressing these challenges will require sustained efforts to improve the efficiency of the judicial system, enhance the skills and knowledge of legal practitioners, and promote greater consistency in the application of arbitration laws. By doing so, Pakistan can strengthen its arbitration framework and position itself as a favorable destination for international arbitration, thereby contributing to its economic development and integration into the global economy.

12. Conclusion

The impact of international arbitration treaties, particularly the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), on Pakistan's legal system has been significant, driving key legal reforms such as the enactment of the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, and aligning Pakistan's arbitration framework with global standards (UNCITRAL, 1958; Government of Pakistan, 2011). These reforms have enhanced the enforceability of foreign arbitral awards and promoted confidence in arbitration as a dispute resolution mechanism. However, challenges

such as judicial delays, inconsistent application of arbitration laws, and a lack of expertise among legal practitioners continue to hinder the effective implementation of these reforms (Ali, 2018; Shah, 2015). Despite these challenges, there is considerable potential for growth and improvement in Pakistan's arbitration framework, particularly through further alignment with the UNCITRAL Model Law, capacity-building initiatives, and the establishment of specialized arbitration courts (Redfern & Hunter, 2015). Continued legal reforms and international cooperation will be essential to address existing challenges, strengthen Pakistan's arbitration framework, and position the country as a competitive and attractive destination for international arbitration, thereby fostering economic growth and integration into the global economy (Bermann, 2012).

References

- Ali, S. (2018). International arbitration in Pakistan: Challenges and opportunities. *Journal of International Arbitration*, 35(4), 421-440.
- Bermann, G. A. (2012). *Recognition and enforcement of foreign arbitral awards: The interpretation and application of the New York Convention by national courts*. Springer.
- Born, G. B. (2014). *International commercial arbitration* (2nd ed.). Kluwer Law International.
- Craig, W. L., Park, W. W., & Paulsson, J. (2000). *International Chamber of Commerce arbitration* (3rd ed.). Oceana Publications.
- Gaillard, E., & Savage, J. (Eds.). (1999). *Fouchard Gaillard Goldman on international commercial arbitration*. Kluwer Law International.
- Government of Pakistan. (2011). *Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011*.
- Lew, J. D. M., Mistelis, L. A., & Kröll, S. M. (2003). *Comparative international commercial arbitration*. Kluwer Law International.
- Park, W. W. (2013). *Arbitration of international business disputes: Studies in law and practice* (2nd ed.). Oxford University Press.
- Redfern, A., & Hunter, M. (2015). *Law and practice of international commercial arbitration* (6th ed.). Sweet & Maxwell.
- Schreuer, C. H. (2009). *The ICSID Convention: A commentary* (2nd ed.). Cambridge University Press.
- Shah, S. A. (2015). Arbitration in Pakistan: A critical analysis of the legal framework. *Pakistan Law Review*, 12(3), 45-62.
- Supreme Court of Pakistan. (2000). *Hub Power Company (HUBCO) v. Pakistan Water and Power Development Authority (WAPDA)*. PLD 2000 SC 841.
- Supreme Court of Pakistan. (2002). *Société Générale de Surveillance (SGS) v. Pakistan*. PLD 2002 SC 591.
- Supreme Court of Pakistan. (2006). *Pakistan Steel Mills Corporation v. Supreme Court of Pakistan*. PLD 2006 SC 789.
- UNCITRAL. (1958). *Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)*. United Nations.
- UNCITRAL. (1985). *UNCITRAL Model Law on International Commercial Arbitration*. United Nations.