

Investment Protection and Regulatory Sovereignty in CPEC: A Pakistani Legal Perspective on the Belt and Road Initiative

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Abstract

Belt and Road Initiative (BRI), initiated by China, is a revolutionary economic configuration in the world, and China-Pakistan Economic Corridor (CPEC) is a major project in this plan. Although CPEC is a prospective development in terms of developing infrastructure and as an exclusive economy to Pakistan, this initiative comes along with complicated legal issues like protecting investments, right to regulation and adherence to environment and human right requirements. In this paper we will critically analyze Pakistani legal regime of foreign investment in light of CPEC including striking balance between investor protection and the ability of the state to regulate in the interest of the people. Based on the assessment of local legislation, bilateral agreements, and the frameworks of the international law, the paper identifies the loopholes and insecurities of the Pakistani legal framework that can threaten the domestic autonomy and sustainable development. It ends with tools on legislative and policy reforms to make sure that the gains of CPEC are not attained at the expense of legal sovereignty of Pakistan, environment and social justice.

Introduction

Belt and Road Initiative (BRI) a Chinese initiative since 2013 should be understood as a global development strategy to increase the connectivity of the regions and economic integration across Asia, Europe, and Africa. One of the significant nodes in it, with more than \$60 billion worth of Chinese investment in its infrastructure, energy, and industrial projects in Pakistan, is the China-Pakistan Economic Corridor (CPEC).¹ Although CPEC represents a much-needed development in Pakistan, it brings a lot of legal and governance issues especially on how to balance the protection of foreign investments and the regulatory sovereignty of the Pakistani state.

The most common legal disputes regarding the BRI have been the cases and processes of how the host nations like Pakistan address the legal commitments to the foreign investors, and at the same time uphold their national interests under the forms of public law interests such as

¹ Arif Rafiq, *The China-Pakistan Economic Corridor: Barriers and Impact* (United States Institute of Peace, 2017).

environmental planning, labor, and fiscal stability.² This is a highly sensitive legal balancing dance due to the cases of investors-state disputes, environmental degradation, and institutional weaknesses exhibited by Pakistan. Pakistan Legal system not only needs to facilitate the large-scale foreign direct investment but also needs to be assured that the investments should be under transparent and accountable and sovereign legal structures.

The paper appraises critically the legal make-up of CPEC in Pakistan addressing the tension between authentication and regulation of investor protection. It looks at national investment laws, bilateral investment treaties (BIT), and international law principles, which influence the extent to which Pakistan can control BRI projects according to the national interests.³ The paper also addresses some of the important areas of battle as far as investments are concerned, including energy, infrastructure and industry and the related legal issues. Lastly, it offers legal and institutional changes whereby Pakistan may realize the benefits of CPEC without jeopardizing its legal and policy space.

Legal Framework of CPEC and BRI in Pakistan

The Chinese legal system over the China Pak Economic Corridor (CPEC) is a combination of bilateral agreements, national law and policy tools. As much as CPEC is being promoted as a bilateral economic activity, the legal basis of the same is quite opaque, basing on memorandums of understanding (MoUs), project-specific contracts between Chinese entities and diverse instances of Pakistani institutions.⁴ Such dossiers which are usually kept close to the chest are of concern, as far as accountability, rule of law and checks and balances within the institution are concerned in Pakistan.

Domestic Legal Instruments

Pakistan does not have a specific statute governing CPEC; instead, it relies on general investment laws, such as the Foreign Private Investment (Promotion and Protection) Act, 1976 and the Board of Investment Ordinance, 2001.⁵ These laws guarantee protection against expropriation, provide repatriation rights, and offer equal treatment to foreign investors. The Pakistan Investment Policy 2023 further promises a liberal and business-friendly climate but lacks detailed provisions for managing large-scale infrastructure projects like those under CPEC.⁶

Additionally, sector-specific laws—such as the NEPRA Act for energy projects and Land Acquisition Act of 1894 for infrastructure—are invoked on a case-by-case basis. This patchwork

² “Innovation of the Social Security, Legal Risks, Sustainable Management Practices and Employee Environmental Awareness in The China–Pakistan Economic Corridor,” accessed July 1, 2024, <https://www.mdpi.com/2071-1050/15/2/1021>.

³ “Wenhua Shan, Jinyuan Su and Sheng Zhang (Eds.), China and International Dispute Resolution in the Context of the ‘Belt and Road Initiative,’” accessed July 1, 2024, https://www.researchgate.net/publication/361378703_Wenhua_Shan_Jinyuan_Su_and_Sheng_Zhang_eds_China_and_International_Dispute_Resolution_in_the_Context_of_the_'Belt_and_Road_Initiative'.

⁴ Muhammad Bilawal Khaskheli et al., “Innovation of the Social Security, Legal Risks, Sustainable Management Practices and Employee Environmental Awareness in The China–Pakistan Economic Corridor,” *Sustainability* 15, no. 2 (January 2023): 1021, <https://doi.org/10.3390/su15021021>.

⁵ “Foreign Private Investment (Promotion and Protection) Act, 1976,” accessed July 1, 2024, <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-bpuUZWRv-sg-jjjjjjjjjjjj>.

⁶ “Investment Regime & Sector Policies | Board Of Investment,” accessed July 1, 2024, <https://invest.gov.pk/investment-regime>.

approach leads to inconsistencies and discretionary enforcement, especially in areas involving land rights, environmental clearances, and project monitoring.⁷

Bilateral and International Legal Commitments

Pakistan and China are parties to a Bilateral Investment Treaty (BIT) signed in 1989, which provides standard protections such as fair and equitable treatment, full protection and security, and access to international arbitration.⁸ However, the BIT was not designed to accommodate the massive scale and complexity of projects envisioned under BRI. Many new CPEC agreements are negotiated by the Special Investment Facilitation Council (SIFC) or other executive bodies, often without parliamentary oversight or judicial review.⁹

Pakistan is also a signatory to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), which allows foreign investors to bring disputes before the ICSID tribunal. This creates tension between investor rights and Pakistan's regulatory powers, especially when tribunals impose heavy liabilities for state actions taken in public interest.¹⁰

The Role of the Special Economic Zones (SEZs)

The Special Economic Zones Act, 2012 plays a crucial role in the CPEC legal ecosystem. SEZs are designed to provide regulatory and fiscal incentives to attract investment, but they often operate under exemptions from labor, environmental, and tax laws¹¹. This selective regulatory vacuum benefits foreign investors at the expense of local communities, workers, and environmental sustainability, raising questions about the equitable application of Pakistani law.

Regulatory Sovereignty vs. Investor Protection: The Legal Dilemma

The legal tension between regulatory sovereignty and investor protection lies at the heart of the Belt and Road Initiative (BRI) projects in Pakistan. While investment protection regimes, through domestic laws and international treaties, aim to create a stable and attractive environment for foreign capital, they can also restrict the host state's ability to regulate in the public interest. This section explores how Pakistan's legal obligations under CPEC-related agreements may constrain its sovereign functions, particularly in areas such as environmental governance, taxation, and labor regulation.

⁷ "LEGAL IMPLICATIONS OF CPEC FOR PAKISTAN | Journal of Media Horizons," accessed July 1, 2024, <https://jmh.com.pk/index.php/journal/article/view/67>.

⁸ "Chapter 10 The International Investment Agreement Network under the 'Belt and Road' Initiative in: The Belt and Road Initiative," accessed July 1, 2024, https://brill.com/display/book/edcoll/9789004373792/BP000012.xml?language=en&srsId=AfmBOortF-Qmc-pNs29F8n_tWr2K8-cAlb_VIZ5AcLVJPJFVKz42gc3WB.

⁹ "THE CPEC-SOVEREIGNTY DILEMMA BETWEEN PROSPERITY AND AUTONOMY: AN EXPLORATORY STUDY | PAKISTAN ISLAMICUS (An International Journal of Islamic & Social Sciences)," accessed July 1, 2024, <https://pakistanislamicus.com/index.php/home/article/view/75>.

¹⁰ "Investor-State Arbitration: Between Private and Public Interests 13 Manchester Journal of International Economic Law 2016," accessed July 1, 2024, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/mjil13&div=20&id=&page=>.

¹¹ Karim Khan, Krim Khan, and Saba Anwar, "Special Economic Zones (SEZs) and CPEC: Background, Challenges and Strategies," *The Pakistan Development Review*, 2016, 203–16.

The Rise of Investor-State Dispute Settlement (ISDS)

Pakistan's commitment to investor protection is manifested in its Bilateral Investment Treaties (BITs), including the 1989 BIT with China, which grants investors the right to initiate arbitration in international forums such as ICSID.¹² While this mechanism ensures investor confidence, it also subjects Pakistan to legal and financial risks, especially when foreign investors challenge regulatory decisions. The Reko Diq case "where Pakistan was penalized over \$5.8 billion by an ICSID tribunal for denying a mining lease" illustrates the profound implications of such dispute resolution mechanisms¹³.

Under CPEC, the fear of similar claims may deter Pakistani regulators from taking necessary but politically sensitive decisions, such as environmental enforcement, tax audits, or labor inspections. This "regulatory chill" undermines democratic accountability and erodes the state's ability to protect public interest.¹⁴

Fair and Equitable Treatment vs. Policy Space

The principle of **Fair and Equitable Treatment (FET)**, a standard found in most BITs, is often interpreted broadly by arbitral tribunals to include protection of legitimate expectations and stable regulatory frameworks.¹⁵ In Pakistan's context, this creates difficulties, as regulatory shifts or policy reforms, such as tax restructuring, subsidy removal, or minimum wage laws, may be construed as violations of investor expectations.

Given that many CPEC contracts are negotiated without full parliamentary scrutiny and lack transparency, the state is often left vulnerable to legal interpretation favoring investors.¹⁶ As a result, legitimate changes in law, especially those aimed at social or environmental reform, may be challenged as breaches of international commitments.

Asymmetry in Legal Capacity and Bargaining Power

Another core issue is the **asymmetry** in bargaining power and legal capacity between Pakistan and Chinese state-backed investors. Many contracts are concluded under opaque conditions, with little input from civil society or independent oversight institutions.¹⁷ Moreover, Pakistani

¹² "Chapter 10 The International Investment Agreement Network under the 'Belt and Road' Initiative in: The Belt and Road Initiative," accessed July 1, 2024, <https://brill.com/display/book/edcoll/9789004373792/BP000012.xml?language=en&srsid=AfmBOopGXg4K440ru nAZE4ME8XGIZB4Wsy7B8vaRC5a4bM-p5XAMUGVC>.

¹³ Gul Hasan et al., "Natural Resource Management: Legal and Governance Issues of Reko Diq Project," *Bulletin of Business and Economics (BBE)* 12, no. 4 (December 25, 2023): 493–501, <https://doi.org/10.61506/01.00157>.

¹⁴ "Analyzing the Laws and Practices of Disputes Resolutions in Bilateral Investments: A Case Study of China Pakistan Economic Corridor (CPEC) | Journal of Development and Social Sciences," accessed July 1, 2024, <https://ojs.jdss.org.pk/journal/article/view/1398>.

¹⁵ "Kate Miles, The Origins of International Investment Law: Empire, Environment and the Safeguarding of Capital, Cambridge: Cambridge University Press, 2013. Pp. 464. \$125.00 Cloth (ISBN: 9781107039391).," accessed July 1, 2024, https://www.researchgate.net/publication/283445158_Kate_Miles_The_Origins_of_International_Investment_Law_Empire_Environment_and_the_Safeguarding_of_Capital_Cambridge_Cambridge_University_Press_2013_Pp_464_12500_cloth_ISBN_9781107039391.

¹⁶ "(PDF) THE CPEC-SOVEREIGNTY DILEMMA BETWEEN PROSPERITY AND AUTONOMY: AN EXPLORATORY STUDY," ResearchGate, accessed July 1, 2024, https://www.researchgate.net/publication/375372788_THE_CPEC-SOVEREIGNTY_DILEMMA_BETWEEN_PROSPERITY_AND_AUTONOMY_AN_EXPLORATORY_STUDY.

¹⁷ Khan, Khan, and Anwar, "Special Economic Zones (SEZs) and CPEC."

regulatory bodies often lack the technical capacity to negotiate or enforce complex investment agreements, leading to legal loopholes that benefit investors.

This imbalance not only weakens Pakistan's sovereignty but also increases its exposure to exploitative contractual terms, including stabilization clauses that freeze regulations and restrict future legislative action.¹⁸ These challenges underline the need for comprehensive legal reform and capacity-building within Pakistan's investment governance framework.

Environmental and Human Rights Concerns under CPEC Projects

While CPEC offers substantial economic and infrastructural development for Pakistan, it also brings with it significant environmental and human rights concerns. The legal frameworks in place have often proven inadequate to ensure compliance with Pakistan's constitutional guarantees, environmental statutes, and international human rights obligations. The lack of robust regulatory oversight and transparency in project execution has raised serious questions about environmental degradation, forced displacement, and labor rights violations linked to BRI projects.

Environmental Oversight and Compliance Gaps

Many CPEC-related projects, especially in the energy and transport sectors, pose direct threats to Pakistan's fragile ecosystems. Coal-based power plants, road networks, and industrial zones have been linked to increased air and water pollution, deforestation, and habitat destruction¹⁹. While Pakistan has enacted environmental laws such as the Pakistan Environmental Protection Act, 1997, implementation remains weak due to lack of institutional capacity, political will, and influence of powerful investors.²⁰

Environmental Impact Assessments (EIAs), although legally required for major infrastructure projects, are often either conducted superficially or bypassed altogether under the guise of national urgency.²¹ Chinese companies, operating under bilateral agreements, have sometimes resisted submitting to local environmental audits, citing protections under investment treaties.²² This regulatory weakness compromises Pakistan's ability to meet both its constitutional obligation under Article 9 (Right to Life) and international commitments such as the Paris Agreement.

Displacement and Land Rights

Another pressing issue is the forced displacement of local communities due to land acquisition for CPEC projects, especially in Baluchistan and Sindh²³. "The Land Acquisition Act of 1894" (a

¹⁸ "Investor-State Arbitration: Between Private and Public Interests 13 Manchester Journal of International Economic Law 2016," accessed July 1, 2024, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/mjiel13&div=20&id=&page=>.

¹⁹ "A Comparative Analysis of the Environmental Policies in China and Pakistan: Developing a Legal Regime for Sustainable China-Pakistan Economic Corridor (CPEC) under the Belt and Road Initiative (BRI) by M Jahanzeb Butt :: SSRN," accessed July 1, 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3928027.

²⁰ "Pakistan Environmental Protection Act, 1997," accessed July 1, 2024, <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apqaZQ%3D%3D-sg-jjjjjjjjjjjj>.

²¹ Massarrat Abid and Ayesha Ashfaq, "CPEC: Challenges and Opportunities for Pakistan," n.d.

²² "Innovation of the Social Security, Legal Risks, Sustainable Management Practices and Employee Environmental Awareness in The China-Pakistan Economic Corridor."

²³ "GWADAR'S DISPLACEMENT CRISIS: A CALL FOR INCLUSIVE AND EQUITABLE DEVELOPMENT POLICIES | `,"

accessed July 1, 2024, <https://www.assajournal.com/index.php/36/article/view/251>.

colonial-era law) continues to govern such processes and fails to ensure fair compensation, resettlement, or legal remedies for affected populations. Indigenous groups, fisherfolk, and rural landowners are particularly vulnerable, often lacking formal land titles and facing eviction without prior notice or adequate compensation.²⁴

This situation raises not only human rights concerns but also legal challenges, as affected communities increasingly contest land takeovers through public interest litigation. However, courts are often reluctant to intervene in what are seen as “strategic national interests,” giving CPEC projects a near-immunity from judicial scrutiny.²⁵

Labor Rights and Occupational Hazards

Reports from civil society organizations and labor unions have highlighted multiple violations of labor rights on CPEC sites, including unsafe working conditions, wage disparities, absence of labor contracts, and exclusion of local workers in favor of imported Chinese labor.²⁶ “The Factories Act, 1934” and “Labor Protection Policies” are seldom enforced at CPEC sites, particularly within Special Economic Zones (SEZs), where labor laws are frequently relaxed or suspended to attract foreign investment.²⁷

This legal vacuum undermines Article 11 and 37(e) of Pakistan’s Constitution, which guarantee protection against forced labor and ensure humane working conditions. The state’s failure to extend legal protections to laborers not only violates domestic law but also Pakistan’s obligations under ILO Conventions, including Convention No. 87 on Freedom of Association and Convention No. 98 on Collective Bargaining.²⁸

Dispute Resolution Mechanisms in BRI and Pakistan's Legal Preparedness

An essential component of any large-scale foreign investment framework is an effective dispute resolution mechanism that balances the rights of investors with the sovereign authority of the host state. In the context of the Belt and Road Initiative (BRI), particularly CPEC, the resolution of investment disputes has become a contentious issue for Pakistan due to its limited institutional preparedness, asymmetrical bargaining power, and reliance on international arbitration forums that often favor investors.

Investor-State Dispute Settlement (ISDS) and Its Implications

Most CPEC investments are protected under the Pakistan-China Bilateral Investment Treaty (BIT) of 1989, which provides for Investor-State Dispute Settlement (ISDS) through international arbitration forums such as ICSID and UNCITRAL.²⁹ While these mechanisms are designed to protect investors from arbitrary or discriminatory state conduct, they have increasingly come under criticism for undermining state sovereignty, especially in developing countries like Pakistan.

²⁴ “Combating Land Grabbing in Pakistan: Legal Challenges and Reforms | Qlantic Journal of Social Sciences,” accessed July 1, 2024, <https://qjss.com.pk/index.php/qjss/article/view/81>.

²⁵ “THE CPEC-SOVEREIGNTY DILEMMA BETWEEN PROSPERITY AND AUTONOMY: AN EXPLORATORY STUDY | PAKISTAN ISLAMICUS (An International Journal of Islamic & Social Sciences).”

²⁶ “Research Reports – Zeenat Hisam,” accessed July 1, 2024, <https://zeenathisam.com/category/research-reports/>.

²⁷ Khan, Khan, and Anwar, “Special Economic Zones (SEZs) and CPEC.”

²⁸ “Ratifications of ILO Conventions: Ratifications for Pakistan,” accessed July 1, 2024, https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103166.

²⁹ “Download (2),” n.d.

Pakistan's legal and financial vulnerability under ISDS has already been exposed in cases like Reko Diq and Karkey Karadeniz, where arbitral awards have imposed multi-billion-dollar liabilities.³⁰ Although these disputes were not directly linked to CPEC, they illustrate the potentially devastating consequences of arbitration under investment treaties. As CPEC expands, the risk of similar legal challenges under ISDS mechanisms increases, especially when projects are affected by changes in law, public protests, or regulatory interventions.³¹

Pakistan's Domestic Arbitration Framework

Pakistan's domestic arbitration system is governed by the "Arbitration Act, 1940", an outdated colonial-era law that lacks modern safeguards, enforceability standards, and procedural flexibility³². Attempts to reform this law have faced bureaucratic delays, leaving Pakistan ill-equipped to handle complex commercial and investor disputes arising from BRI projects.

"The Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011", which implements the New York Convention, allows for the enforcement of foreign arbitral awards in Pakistan³³. However, Pakistani courts have often been slow in enforcing such awards due to procedural delays and jurisdictional ambiguities. This inefficiency undermines investor confidence and increases Pakistan's reliance on external dispute resolution mechanisms.

Lack of Institutional Capacity and Transparency

A major weakness in Pakistan's dispute resolution regime is the lack of institutional capacity and transparency in handling large-scale infrastructure and investment-related arbitration. Most CPEC agreements are negotiated behind closed doors by executive bodies, such as the "Special Investment Facilitation Council (SIFC)", with minimal input from Parliament or independent legal advisors.³⁴ This opacity not only undermines public trust but also increases the risk of entering into contracts with vague dispute resolution clauses that favor foreign investors.

Moreover, there is an absence of dedicated arbitration centers with specialized knowledge of infrastructure and investment law in Pakistan. As a result, Pakistan is often forced to defend its legal positions in international forums where the costs, language, and procedural bias can place the state at a disadvantage.³⁵

The Case for Localizing Dispute Resolution

Given these challenges, legal scholars and policymakers have increasingly advocated for localizing dispute resolution by establishing regional arbitration centers with specialized CPEC

³⁰ "Natural Resource Management: Legal and Governance Issues of Reko Diq Project," accessed July 1, 2024, <http://ouci.dntb.gov.ua/en/works/4wBwOLm7/>.

³¹ "Innovation of the Social Security, Legal Risks, Sustainable Management Practices and Employee Environmental Awareness in The China–Pakistan Economic Corridor," accessed July 1, 2024, <https://www.mdpi.com/2071-1050/15/2/1021>.

³² "Arbitration Act, 1940," accessed July 1, 2024, <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-cJab-sg-jjjjjjjjjjjj>.

³³ "The Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 (Act No. XVII of 2011), Pakistan, WIPO Lex," accessed July 1, 2024, <https://www.wipo.int/wipolex/en/legislation/details/15832>.

³⁴ "THE CPEC-SOVEREIGNTY DILEMMA BETWEEN PROSPERITY AND AUTONOMY: AN EXPLORATORY STUDY | PAKISTAN ISLAMICUS (An International Journal of Islamic & Social Sciences)."

³⁵ "Investor-State Arbitration: Between Private and Public Interests 13 Manchester Journal of International Economic Law 2016," accessed July 1, 2024, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/mjiel13&div=20&id=&page=>.

divisions, ensuring that investor disputes are resolved in accordance with Pakistani law and under the oversight of local institutions.³⁶ This would reduce dependency on international tribunals, retain regulatory autonomy, and develop Pakistan's own legal expertise in commercial arbitration.

However, for such localization to succeed, Pakistan must urgently reform its arbitration laws, build institutional capacity, and incorporate mandatory dispute resolution clauses in all CPEC agreements that favor domestic forums over international ones, particularly for regulatory and constitutional disputes.

Comparative Insights: BRI's Legal Impact in Sri Lanka and Kenya

Studying how other BRI host countries have navigated legal challenges related to foreign investment, regulatory autonomy, and sovereignty can offer valuable lessons for Pakistan. Among the most cited cases are Sri Lanka and Kenya, where large-scale Chinese infrastructure investments have led to significant legal, economic, and political repercussions. These examples underscore the importance of maintaining legal transparency, institutional preparedness, and sovereign control over critical assets.

Sri Lanka: The Hambantota Port Lease and Sovereign Debt Concerns

Sri Lanka's experience with BRI investments, particularly the Hambantota Port project, has become emblematic of the risks associated with opaque agreements and sovereign debt dependency. The port was financed largely through Chinese loans but failed to generate expected revenues. As a result, Sri Lanka was forced to lease the port to a Chinese state-owned company for 99 years.³⁷

This transfer raised concerns about debt-trap diplomacy, a term increasingly used to describe how excessive Chinese loans may result in strategic asset takeovers.³⁸ Legally, Sri Lanka's domestic laws provided little oversight or review mechanisms over such large-scale transfers, as most decisions were executed through executive agreements with minimal parliamentary input.³⁹ The absence of robust legal checks highlights the need for countries like Pakistan to develop parliamentary oversight, public disclosure laws, and constitutional protections to prevent the transfer of strategic assets under BRI.

Kenya: Judicial Oversight and BRI Contract Transparency

Kenya's experience reflects a more engaged legal response to BRI-related challenges. The construction of the Standard Gauge Railway (SGR), funded by Chinese loans and executed by

³⁶ Bushra Aziz and Mehwish Batool, "01 - China-Pakistan Economic Corridor - The Quest for a Dispute Resolution Mechanism," n.d.

³⁷ "(PDF) A Critical Look at Chinese 'Debt-Trap Diplomacy': The Rise of a Meme," accessed July 1, 2024, https://www.researchgate.net/publication/337816614_A_critical_look_at_Chinese_'debt-trap_diplomacy'_the_rise_of_a_meme.

³⁸ "Debunking the Myth of 'Debt-Trap Diplomacy' | Chatham House – International Affairs Think Tank," accessed July 1, 2024, <https://www.chathamhouse.org/2020/08/debunking-myth-debt-trap-diplomacy>.

³⁹ "(PDF) Belt and Road Initiative (BRI) and Sri Lanka: A Review of Literature," accessed July 1, 2024, https://www.researchgate.net/publication/365805044_Belt_and_Road_Initiative_BRI_and_Sri_Lanka_A_Review_of_Literature.

Chinese companies, led to a series of legal disputes. Concerns included lack of public procurement compliance, environmental damage, and displacement of communities.⁴⁰

In contrast to Sri Lanka, Kenya's judiciary played an active role. In *Kenya National Highways Authority v. African Centre for Open Governance* (2022), the Kenyan High Court invalidated a BRI-related contract for failing to meet transparency and constitutional requirements.⁴¹ The ruling emphasized the need for public participation, competitive bidding, and environmental due diligence, reaffirming the role of courts in safeguarding national interests.

Pakistan can draw valuable lessons from Kenya's judicial assertiveness, particularly in ensuring that all BRI contracts undergo constitutional scrutiny, environmental assessments, and procurement compliance. Strengthening judicial independence and empowering public interest litigation can help Pakistan avoid the pitfalls seen in other BRI host countries.

Lessons for Pakistan

- **Transparency and Public Accountability:** Pakistan must ensure that all CPEC-related agreements are subject to **parliamentary oversight**, transparent procurement procedures, and judicial review.
- **Limiting Strategic Asset Transfer:** Legal frameworks should restrict the transfer or leasing of critical infrastructure to foreign entities without constitutional or parliamentary safeguards.
- **Environmental and Social Compliance:** As in Kenya, Pakistani courts must play a proactive role in reviewing environmental clearances and protecting displaced communities through effective legal remedies.
- **Debt and Sovereignty Management:** Legislative caps on sovereign borrowing and loan disclosures can help avoid Sri Lanka-type debt spirals that jeopardize national autonomy.⁴²

Reform Proposals: Strengthening Pakistan's Legal Response to BRI

As Pakistan continues to host large-scale projects under the Belt and Road Initiative (BRI), particularly the China-Pakistan Economic Corridor (CPEC), it must undertake comprehensive legal and institutional reforms to safeguard its regulatory sovereignty, public interest, and long-term developmental goals. This section outlines concrete reform proposals aimed at enhancing transparency, legal accountability, and institutional resilience in managing foreign investments.

Enactment of a CPEC-Specific Legal Framework

Pakistan currently lacks a unified legal framework tailored to govern CPEC. The reliance on scattered sectoral laws, bilateral agreements, and executive discretion has led to regulatory

⁴⁰ "(PDF) China's Belt and Road Initiative (BRI) and Its Role in Developing Africa's Economies. Case Study: Kenya's Standard Gauge Railway (SGR), Kenya," accessed July 1, 2024, https://www.researchgate.net/publication/377807071_China's_Belt_and_Road_Initiative_BRI_and_its_role_in_developing_Africa's_economies_Case_study_Kenya's_Standard_Gauge_Railway_SGR_Kenya.

⁴¹ "In Kenya, Court of Appeal Affirms High Court Judgment Invalidating Constitutional Amendment Bill | ConstitutionNet," accessed July 1, 2024, <https://constitutionnet.org/news/kenya-court-appeal-affirms-high-court-judgment-invalidating-constitutional-amendment-bill>.

⁴² "7 Conclusion from Defying Beijing: Societal Resistance to the Belt and Road in Myanmar on JSTOR," accessed July 1, 2024, <https://www.jstor.org/stable/jj.16487860.11>.

uncertainty and weak enforcement.⁴³ A comprehensive CPEC Regulation Act should be enacted, clearly defining:

- The legal status of CPEC projects;
- Procedures for project approval and oversight;
- Public participation requirements;
- Environmental and social safeguards;
- Dispute resolution mechanisms.

Such legislation would bring transparency and uniformity, while allowing parliamentary scrutiny and judicial review of strategic investment decisions.

Strengthening Environmental and Labor Laws

Pakistan's environmental governance remains fragmented and underfunded. The Pakistan Environmental Protection Act (1997) should be amended to introduce CPEC-specific environmental standards, enforce mandatory and independent Environmental Impact Assessments (EIAs), and penalize non-compliance by foreign investors.⁴⁴

Similarly, labor protections must be codified in a way that prevents exemptions for Special Economic Zones (SEZs). Labor laws should require:

- Written contracts for all workers;
- Health and safety standards at project sites;
- Quotas for local hiring;
- Right to unionize and collective bargaining.

These reforms will ensure that economic growth does not come at the cost of social and environmental degradation.

Arbitration Reform and Institutional Capacity-Building

Pakistan's outdated "Arbitration Act of 1940" must be replaced with a modern law modeled on the "UNCITRAL Model Law on International Commercial Arbitration".⁴⁵ The new law should provide:

- Swift enforcement of domestic and foreign awards;
- Clear procedures for public-private investment disputes;
- Protection of regulatory actions taken in good faith.

In parallel, Pakistan should invest in specialized commercial courts and establish a National Arbitration Centre with capacity to handle CPEC-related disputes. Training judges, lawyers, and regulators in investment law is crucial to reducing reliance on costly foreign arbitration.

Transparency and Oversight Mechanisms

Most CPEC agreements are shrouded in secrecy, undermining public trust. Legal reforms must mandate:

⁴³ "THE CPEC-SOVEREIGNTY DILEMMA BETWEEN PROSPERITY AND AUTONOMY: AN EXPLORATORY STUDY | PAKISTAN ISLAMICUS (An International Journal of Islamic & Social Sciences)."

⁴⁴ M. Jahanzeb Butt, "A Comparative Analysis of the Environmental Policies in China and Pakistan: Developing a Legal Regime for Sustainable China-Pakistan Economic Corridor (CPEC) under the Belt and Road Initiative (BRI)," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, July 1, 2021), <https://doi.org/10.2139/ssrn.3928027>.

⁴⁵ Michael F. Hoellering, "The UNCITRAL Model Law on International Commercial Arbitration," *The International Lawyer* 20, no. 1 (1986): 327–39.

- **Public disclosure of all CPEC contracts**, subject to redaction only on strict national security grounds;
- **Mandatory parliamentary approval** for all strategic infrastructure leases and sovereign guarantees;
- **Regular audits by the Auditor General of Pakistan and civil society monitoring** of project execution.⁴⁶

These measures would deter corruption, promote accountability, and ensure that CPEC operates within Pakistan's democratic and legal framework.

Debt Sustainability and Legal Risk Assessment

A Debt Sustainability Act should be introduced to cap Pakistan's sovereign borrowing tied to BRI projects, requiring risk assessments before entering into large-scale infrastructure contracts.⁴⁷ This law should also establish a Legal Risk Assessment Unit within the Ministry of Law to vet all BRI-related agreements for compliance with domestic and international obligations.

Conclusion

Under the Belt and Road Initiative (BRI), Pakistan will have a great chance of economic development, infrastructure construction, and connectivity with the rest of the region as promised by the China- Pakistan Economic Corridor (CPEC). Nonetheless, this possibility has come along with an array of legal issues which when not addressed may be a major complicating factor to Pakistan regulatory sovereignty, constitutional responsibility and development sustainability.

This paper has explored legal principles of CPEC that it has been found that this framework is characterized by obscurity, executive excess, and institutional protection deficiency. The existing investment regime in Pakistan largely applies in favor of investor protection- especially under the bilateral agreements to international arbitration with few options where they can be held liable to serve the greater good, safeguard the environment or uphold human labor in general. The inconsistency between the protection of the investments and the sovereign regulation of decision-making is already complicated by the fact that, due to the lack of transparency of the negotiations and signing of contracts, old legal framework, poor enforcement systems, and lack of transparency, Pakistan has a rather inefficient legal infrastructure to support the implementation of the ISDS policy.

The comparative experience of Sri Lanka and Kenya has demonstrated that BRI can cause economic dividends as well as open the way to the loss of strategic assets, environmental destruction, and a popular revolt unless it is highly controlled. Such lessons make it clear that Pakistan needs to consider the implementation of strong legal reform depending on the context.

In that regard, the following paper will offer a set of thorough measures, such as:

- Adoption of a regulatory law with specifications on CPEC;
- Raising environmental and labor standards;
- The modernization of arbitration and dispute resolution mechanism;

⁴⁶ "The Role of CPEC in Pakistan's Progression. Pakistan's Mechanism to Resolve the Disputes under the ADR System | International Research Journal of Education and Innovation," accessed July 1, 2024, <https://www.irjei.com/index.php/irjei/article/view/112>.

⁴⁷ "China and Aid Norms. A Case Study on Ethiopia, Pakistan, and Sri Lanka," accessed July 1, 2024, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003299387-2/china-aid-norms-case-study-ethiopia-pakistan-sri-lanka-mario-esteban-iliana-olivi%C3%A9>.

- Improving the transparency of contracts and their democratic control;
- The establishment of legislative restrictions on sovereign borrowings upon BRI.

Pakistan can only safeguard its alliance on the BRI to the greater interest of the population, the rule of law, and economic and political independence of the nation when a powerful, transparent and accountable legal system is in place. The future of CPEC and by extension the developmental history of Pakistan will not only be regulated by investments in concrete and steel, but also in the institutions of law that will oversee them.