

**Challenging International Commercial Arbitral Award in  
Pakistan: Issues and Solutions**



By

**Sohaib Mukhtar**

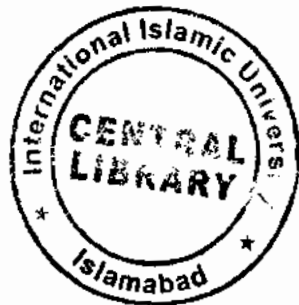
**REG NO.357-FSL/LLMCL/F12**

A thesis submitted in partial fulfillment  
of the requirements for the degree of  
MASTER OF LAWS (LLM)  
with specialization in Corporate Law  
(Faculty of Shariah & Law)  
International Islamic University Islamabad

Supervisor

**Mr. Shafqat Mahmood Khan**

2014



328  
29-1-15

Accession No TH-14557 (E) 5/15

MS  
382,905491  
SOC

- International Commercial arbitration
- World trade organization
- Foreign trade Regulation

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Researcher:

**Sohaib Mukhtar**

REG NO.357-FSL/LLMCL/F12

Supervisor:

**Mr. Shafqat Mahmood**

(Advocate High Court)

**Faculty of Shariah & Law**

**INTERNATIONAL ISLAMIC UNIVERSITY,  
ISLAMABAD**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

**(Acceptance by the Viva Voce Committee)**

Title of Thesis: Challenging International Commercial Arbitral Award in Pakistan:  
Issues and Solutions  
Name of Student Sohaib Mukhtar  
Registration No. 357-FSL/LLMCL/F12

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**Viva Voce Committee**



**Supervisor**

**Mr. Shafqat Mahmood Khan**  
**Advocate High Court**



**Internal Examiner**

**Dr. Muhammad Asim Iqbal**  
**Assistant Professor Law**



**External Examiner**

**Javed Anayat Malik**  
**Advocate High Court**

**September 8<sup>th</sup>, 2014**

## **DEDICATION**

**This research work is dedicated to my honorable parents and siblings, who supported me at every stage of my life, without their favor, wisdom and guidance; I would not have the achievements in my life.**

## **ACKNOWLEDGMENT**

I pay tremendous thanks to Al-Mighty Allah for his countless blessings showered upon me. May peace and blessings be upon the last Prophet Muhammad (Peace be upon him) and blessings be upon all the Companions of Prophet Muhammad (Peace be upon him) who are source of inspiration for all Muslims.

I acknowledge all my well wishers and friends who encouraged and supported me, especially I am grateful to my father Mr. Mukhtar Ahmad and my brother Mr. Shoaib Mukhtar and special thanks to my supervisor, Mr. Shafqat Mahmood Khan, who in-spite of their professional commitments contributed a lot to complete this treatise.

## **PREFACE**

The thesis in hand is an attempt to introduce existing laws related to International Commercial Arbitration in Islamic Republic of Pakistan. This treatise is divided into three chapters. Chapter No.1 deals with the relevant statutes of International Commercial Arbitration in Islamic Republic of Pakistan. Chapter No.2 deals with initial and important questions for an award debtor to know before challenging an arbitral award and Chapter No.3 deals with the remedies available for an award debtor, whom he can avail for challenging an award. The domestic Laws of Pakistan and International Treaties and Conventions related to International Commercial Arbitration are discussed in detail with reference to latest case laws.



## **ABSTRACT**

International Commercial Arbitration is a method through which traders resolve their disputes outside the court of law by avoiding all types of technicalities of procedural law.

The arbitrator files an award in a court of law after completion of the arbitral proceedings. Parties to an arbitration agreement may apply in a tribunal for the modification of an award, and if there is any irregularity regarding the process and procedure of the tribunal, parties to an arbitration agreement may apply against it in a court of law.

If the award is domestic and comes under the jurisdiction of the Civil Court of the competent jurisdiction, the arbitrator files an award there but in case of Foreign Arbitral Award, parties to an arbitration agreement may file an award with arbitration agreement and the translation in the official language; in case the award and the arbitration agreement both are not in the official language of the state where the recognition and enforcement of an award is sought; to the High Court for the implementation of the award.

Remedies available for the parties to an arbitration agreement are modification, remission and annulment of an award. They may also apply for the revocation of recognition and enforcement of an award.

The aggrieved party to an arbitration agreement may challenge an award for setting it aside on one of the grounds mentioned in section 30 of the Arbitration Act-1940 and may challenge the recognition and enforcement of an award on one of the grounds mentioned in article 5 of the New York Convention-1958.

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## INTRODUCTION

Alternate means proxy, an alternative to a State Judicial Forum and its procedural proceedings. Dispute means a conflict or a controversy; when one party asserts a right and the other party denies it. Resolution means a motion a settlement, adjustment and disposal.

Alternate Dispute Resolution is a settlement of a dispute by a forum other than a judicial forum by avoiding all types of technicalities of procedural law. Purpose of Alternate Dispute Resolution is to provide expedient, in-expensive and speedy justice to the parties. Alternate Dispute Resolution can be classified into Arbitration, Mediation, Conciliation, Negotiation, Collaboration, Ombudsman and Islamic Concepts **صلح** and **تحكيم**.

Arbitration is considered one of the modes of Alternate Dispute Resolution in which Arbitrator determines rights and liabilities of contracting parties; a right is known as an interest whose respect is considered a duty and whose disregard is considered a wrong. A liability is a bond of legal necessity existing between the wrong doer and the remedy of the wrong;<sup>1</sup> his decision is called an Award. Mediation is an activity wherein the Mediator facilitates the disputing parties to come to a compromise and mutual understanding. Mediator is not a decision maker and his statements are not binding. Conciliation is an activity wherein the Conciliator facilitates the disputing parties to come to a compromise to avoid a trial. The presence of the parties before an arbitrator and mediator are necessary but presence of the parties before a conciliator is not necessary.

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<sup>1</sup> Sir John Salmond, Jurisprudence, Lahore, Pakistan, PLD Publishers, 2008, at 98 & 141

Negotiation is a discussion or a dialogue between the contracting parties to reach an understanding. It can be taken as a supporting tool to mediation and conciliation. Collaboration is a voluntary dispute resolution process particularly between a husband and a wife to break their contract of marriage through Participation Agreement. Ombudsman is a Senior Executive Officer who decides a dispute between a Citizen of a State and an Official of a State. صلح is an amicable solution made after mediation, negotiation or conciliation and تحكيم is an appointment of an adjudicator by the disputing parties to adjudicate their issue.<sup>2</sup>

Contracting Parties to an arbitration agreement resolve their disputes through an arbitrator, outside the judicial proceedings of the court of law. A person who decides a dispute between the contracting parties is called an Arbitrator. Arbitrator is a person who decides a dispute between the contracting parties after an inquiry and determination keeping in view the principles of natural justice and the laws of the land by avoiding all types of technicalities of procedural law. He determines rights and liabilities of the contracting parties. He is not authorized to collect evidence, his decision is called an Award and it is binding upon the parties.

International is a term which is used when there are two states involved or when there is a state and another state's citizen is involved or when there are two citizens of two different states are involved.

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<sup>2</sup> Bryan A Garner, Black's Law Dictionary, USA, West A Thomson Business, 2004, at 112

International Law is defined as are those rules which govern sovereign states in their relation and conduct towards each other.<sup>3</sup> International Law can be divided into: Public International Law and Private International Law.

Public International Law is defined as are those rules which govern sovereign states in their relation and conduct towards each other when there is a state to state dispute, matter or thing.

Private International Law is defined as are those rules which govern sovereign states in their relation and conduct towards each other when there is a state citizen's dispute, matter or thing with another state or with another state's citizen.

Private International Law is divided into many types, among them is International Commercial Arbitration when there are two different state's citizens come into an arbitration agreement and make terms and conditions of their arbitration in case a dispute arises.

Commerce means trade. International Chamber of Commerce is an International body under which the International Arbitration Court is working in Paris, France. Arbitration is a procedure for settling a dispute by means other than litigation.<sup>4</sup>

Arbitrator is not authorized to collect evidence because arbitrators are not experts of law rather they are experts of business. An Award is an outcome of labor, skill and time of an arbitrator. He has given four months to pronounce his decision and an umpire has given two months.

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<sup>3</sup> Sir John Salmond, Jurisprudence, Lahore, Pakistan, PLD Publishers, 2008, at 17

<sup>4</sup> G.C. Cheshire, Private International Law, UK, Oxford Clarendon Press, Sixth Edition-1961, at 86

Appeal, Review, Revision and Recourse, all these terms come under the ambit of the term Challenge.<sup>5</sup> Economics is the science of wealth. Commercial activities generate a huge amount of money for the state. It has a vast importance in the economic growth of the country and it has an impact on all other areas of the life.

Traders are well reputable persons of the society. Aristotle has divided human beings into: Gold, Silver, Iron and Clay. Gold are Philosophers, they think about future, these people should be in the government. Silver are Traders, they earn wealth for the nation; these people can be in the government. Iron are Soldiers they save borders of the country. Clay is referred to unskilled persons.

International Trade parties resolve their disputes through arbitration. When it comes to challenging an arbitral award, parties face challenges, it is very important to discuss those challenges and give their possible solutions under the light of the authority that aids in finding a solution to a legal problem.

An aggrieved party must know the legal framework of International Commercial Arbitration in Islamic Republic of Pakistan, Initial things to remember before challenging an arbitral award and remedies available for challenging an arbitral award and what are the grounds for setting aside an arbitral award in Pakistan and what are the grounds of un-enforcement of an award in Pakistan. The New York Convention-1958 is applicable in Pakistan under the Recognition and Enforcement Act-2011 for the implementation of Foreign Arbitral Award in Pakistan.

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<sup>5</sup> Alan Redfern and Martin Hunter, *International Arbitration*, London, Oxford University Press London, 2009

The New York Convention-1958 states in Article seven that a party to an arbitration agreement if maintains a right under a national law of the seat of the arbitration with reference to International Commercial Arbitration; the convention will not stop him to avail any right available under that domestic legislation.

In view of article seven of the convention grounds available under section 30 of the Arbitration Act-1940 are available for the aggrieved party of International Commercial Arbitration to challenge an award.

An aggrieved party to an arbitration agreement may challenge a recognition and enforcement of an arbitral award on one of the grounds mentioned in article 5 of the New York Convention-1958.



## CHAPTER I

### INTERNATIONAL COMMERCIAL ARBITRATION IN PAKISTAN

“International Arbitration is an esteemed system for the concluding and obligatory resolution of differences or arguments, related to an agreement or contract or any other issues linked with an international factors, through an impartial or independent arbitration, in line with mechanism, infrastructure and both legal and non-legal substantive standards by the parties either or indirectly.”<sup>6</sup> In Pakistan people resolve their disputes outside the court, mostly in rural areas of FATA, Baluchistan Sind and Punjab; they follow customs and traditions of their ancestors and they do not follow modern day laws of Pakistan related to Arbitration. Alternate Dispute Resolution in Urban Areas of Pakistan is not as common as in rural areas but Arbitrators of Urban areas follow modern day laws and submit an award in the court for implementation and the court of the competent jurisdiction pass a decree upon the decision of an arbitrator if no objection is raised by the contracting parties within the time limit specified in the Limitation Act-1908. Karachi Centre for Effective Dispute Resolution<sup>7</sup> working effectively in the biggest city of Pakistan, Karachi. It is the first Dispute Resolution Institution who started working in Islamic Republic of Pakistan.

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<sup>6</sup> Julian D.M. Lew Loukas A. Mistelies Stefan M. Kroll, Comparative International Commercial Arbitration, Kulwer Law International New York 2003, at 623

<sup>7</sup> [www.kcdr.org](http://www.kcdr.org)

Most commonly used systems of Alternate Dispute Resolution by the People of Pakistan are Jirga and Panchayat.

Jirga is a dispute resolution system most commonly used by the Pashtu Speaking People of Pakistan. They live in Federally Administered Tribal Areas and in the Province of Khyber Pakhtunkhwa. In this system a dispute is presented before the elders of the area and they decide a dispute through consensus and make a decision of punishment or release.

Panchayat is the same system with a same procedure but it is used by the People of Punjab in the Province of Punjab and their head is called Chaudhry who rectify the decision of elders. This system is not completely perfect but most people of the vicinity resolve their disputes through this process.<sup>8</sup>

These traditional systems do not followed by the Arbitration Act-1940, they have their own rules and procedure, it is highly recommended that the government should do some legislation to enter their system under some legislation so that the system will run more smoothly.

In urban areas of Pakistan there are arbitrators who follow the Arbitration Act-1940 and make awards and submit them in a court of law for implementation, parties reach court of law for their enforcement normally at the place where an award was made but somewhat at the place in whose law was chosen by the parties.<sup>9</sup>

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<sup>8</sup> Why I believe the jirga system should stay, Asim Raza (Accessed at: <http://blogs.tribune.com.pk/story/16150/why-i-believe-that-the-jirga-system-should-stay/>)

<sup>9</sup> The Arbitration Act-1940, S 14

**Pakistani statutes related to Arbitration are as follows:**

- 1. The Arbitration Act-1940**
- 2. The Recognition and Enforcement Act-2011**

**Following are the main International statutes of International Commercial Arbitration**

- 1. The New York Convention-1958<sup>10</sup>**
- 2. The UNCITRAL Model Law-1985**

**The Arbitration Act-1940 is applicable on all types of Arbitration but other three laws are related to International Commercial Arbitration.**

**Pakistan has dualism system; it needs a domestic legislation to implement International Treaties and Conventions.**

**The Recognition and Enforcement Act was passed in 2011 for the implementation of the New York Convention-1958 in Pakistan. The New York Convention-1958 deals with the recognition and enforcement of an award.**

**Parties to International Commercial Arbitration Agreement have to know the limited time period for challenging an award under the law of the land. They must also know that whether they have exclusively exclude the right of challenge or not or whether they have waived their right of challenge or not.**

**It is relevant here to discuss in detail the relevant statutes of International Commercial Arbitration in Islamic Republic of Pakistan.**

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<sup>10</sup> It is also included in the schedule of the Recognition and Enforcement Act-2011

## **1.1 The Arbitration Act-1940**

The Arbitration Act-X of 1940 was passed by the British Parliament in 1940. It came into force on 1<sup>st</sup> July, 1940.<sup>11</sup> It has 48 Sections consisted in seven chapters and Two Schedules. Arbitration is conducted in Pakistan according to the Arbitration Act-1940 if the seat of the arbitration chosen by the parties is Pakistan. If anything is not mentioned in an arbitration agreement related to the procedure of arbitration, an arbitrator must follow the provisions of the Arbitration Act-1940. Arbitration agreement must be in a written form to submit to an arbitrator the present or future dispute between the contracting parties.

The arbitrator makes a decision which is known as an award. After finishing the arbitration proceedings the arbitrator files an award in a civil court of well qualified jurisdiction for making it the rule of the court of law but in the case of recognition and enforcement of an arbitral award made outside of Pakistan, parties to an arbitration agreement file an award in a High Court. Arbitration agreement is an inheritable claim it cannot be died with the party, after the death of the party his legal representative appears before an arbitrator for the purpose of arbitration and the arbitrator decides issues between the parties which are mentioned in a reference submitted by the parties.

The Sind High Court stated in a case between Messrs Crescent Steel and Allied Products Limited VS Messrs Sui Northern Gas Pipeline Limited that there is a difference between an arbitration agreement and the arbitration clause.

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<sup>11</sup> The Arbitration Act-1940, SS 1 to 3

The arbitration agreement is a complete contract on arbitration and the arbitration clause is just a provision in any contract thus it is an underlying contract.<sup>12</sup>

The purpose of an Arbitration Act X of 1940 is to consolidate and alter previous enactments and to bring it and confirm it and to enforce agreed upon stance of the parties of the written agreement and to save the time and the wealth of the parties by way of resolving a dispute through arbitration.

Arbitrations covered by the Arbitration Act-1940 are firstly the arbitration through intervention of the court when the suit of the parties is pending before the court of law and secondly the arbitration through intervention of the court when parties apply in the court for arbitration and there is no suit pending between the contracting parties and lastly the arbitration without the intervention of the court of law. Parties belong to arbitration agreement are free to enter into any type of agreement, they may make rules for an arbitral tribunal and for the arbitrators as well but if parties have not included certain things related to an arbitral proceeding, things stated in the first schedule of the Arbitration Act-1940 will be considered part of the arbitration agreement and will apply on arbitration proceedings.

Normally there is only one arbitrator but parties may appoint more than one arbitrator, when there are two arbitrators, they will appoint an umpire and in case of a contrary decision between the arbitrators, umpire's decision will be considered final. Arbitrators have four months to give an award and an umpire has two months to give his decision.

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<sup>12</sup> 2013 MLD 1499, P 1506

When an arbitration proceeding starts, the arbitrator is empowered to call anything which has an importance in the arbitral proceedings and the parties are bound to produce it. After finishing the arbitration proceedings the arbitrator announces an award which is conclusive and make obligation upon the contracting parties and the parties will give the expenses to the arbitrator and to an umpire.<sup>13</sup>

The Supreme Court of Pakistan has stated in a case between Muhammad Farooq VS Nazir Ahmed that if neither the time period of arbitration is fixed nor the notice is issued to an arbitrator to enter into a reference; the defendant denies the execution of arbitration agreement; the agreement stands revoked, and it has no authority to stay proceedings in suit. If the arbitration agreement is void the arbitration proceedings cannot be held upon a void contract and in case the award is come out of void arbitration proceedings, it will have no effect and the court will set it aside.<sup>14</sup>

An arbitrator either appointed by the contracting parties or by the court of law or by the third party which is not the party in the arbitration agreement. When an arbitrator is supposed to be appointed by the third party the contracting parties give his name or designation. An arbitrator is a judge in all matters of law and fact and his authority cannot be invoked except if the court of law feels that he has failed to do a reasonable dispatch or if he has misconduct himself or misconduct with the proceedings.<sup>15</sup>

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<sup>13</sup> The Arbitration Act-1940, S 3

<sup>14</sup> PLD 2006 SC 196, P 201

<sup>15</sup> The Arbitration Act-1940, SS 5, 11, 12, 14 & 19

When parties have failed for the appointment of an arbitrator, the court of law will appoint an arbitrator or when an arbitrator ignores the proceedings or rejects to act or he is not capable of acting or dies, the parties to an arbitration agreement may appoint a new arbitrator in his place.

As earlier mentioned that the arbitrator is a sole judge in all matters of law and fact, he has given the power to take and administer oath from the contracting parties and from other persons produced before him as witnesses, he may give a preference to the decision of the court when the question of law is raised, he can modify the award on his own or on the request of the parties and he can make interrogations where necessary.<sup>16</sup>

The Sind High Court stated in a case between Messrs Mechanized Contractors of Pakistan Limited VS Airport Development Authority Karachi that the Arbitrator is being considered a final judge on question of law and fact, his decision is entitled to utmost respect and weight. Arbitrators are bound to submit an award within four months and umpire within two months or within a time limit prescribed by the court, if they fail to do so the award will not have any effect.<sup>17</sup>

The Arbitration Act X of 1940 has a prospective effect and not a retrospective effect; it will apply on all Arbitration Proceedings taken out after 1<sup>st</sup> day of July, 1940. It is a substantive act which normally has a prospective effect except otherwise expressly mentioned.

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<sup>16</sup> The Arbitration Act-1940, SS 6, 7, 8, 9, 10, 13, & 20

<sup>17</sup> 2000 CLC 1239, PP 1241 & 1243

The High Court may make such rules as are consistent with the Arbitration Act X of 1940 and the provisions of the said Act will be binding upon the Government.

After completion of the arbitration proceedings, arbitrators, umpire and contracting parties to an arbitration agreement will sign the award before submitting it in a court of law.

The Lahore High Court stated in a case between Haji Ashraf Ali VS Haji Mushtaq Ali that the registration of an award is necessary after it has become the rule of the court and not when the arbitrator files it in a court for making it a rule of a court.<sup>18</sup>

An award debtor may challenge an award within 30 days after submission.<sup>19</sup>

The court may modify, remit or set aside an award. If award has not been challenged within a prescribed time limit, the court will pronounce a judgment.

The court may order an interim injunction for the implementation of the decree passed upon the award if any person obstructs in the execution of the decree.<sup>20</sup>

On the request of the parties or on its own the court may modify the award when some of the part of an award is consisted upon non referred issues or when an arbitral award is imperfect due to an error and that error can be modified without affecting the award or if it contains an obvious error or a clerical mistake arising out of an accidental slip or an omission.

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<sup>18</sup> 2013 CLD 604, PP 611 & 612

<sup>19</sup> The Limitation Act-1908, Art 58

<sup>20</sup> The Arbitration Act-1940, SS 15, 16, 17, 18 & 30



The Supreme Court held in a case between the National Construction Company VS WAPDA that when a question was raised before an arbitrator, that some issues addressed in arbitration are not mentioned in a reference. The court held that it will consider that the arbitrator has misconduct in this case but he has addressed those issues accidentally, the court will modify the award in this case.<sup>21</sup>

If the award cannot be modified the court will remit the award to an arbitral tribunal if the arbitrator has undetermined some of the issues referred to him and those are fundamental issues and because of the indetermination the award is incapable of execution or if the award is illegal on the face of it.

An arbitral award can be declared void by the court of law if an arbitrator misconduct himself or with the arbitral proceeding or if the award is improperly procured or if the award is made after order of the court superseding the arbitration or if the award is made after the arbitration proceeding have become void or if the award is otherwise invalid.<sup>22</sup>

Parties in a suit may apply in writing for arbitration for all or any of the matter in issue before a court of law thus arbitrator will be appointed by the parties, the court will send a reference to an arbitrator and will not discuss that issue in a court of law. An award of an arbitrator must be speaking. An arbitrator may make an interim award at any time of the arbitration proceeding.<sup>23</sup>

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<sup>21</sup> PLD 1987 SC 461, P 466

<sup>22</sup> The Arbitration Act-1940, SS 16 & 30

<sup>23</sup> Ibid, SS 21, 22 & 23

If some of the parties of the suit apply for an arbitration, the award is limited to them and other parties in suit will appear before a court of law and the award will not be applicable upon them.

The court of law may at any time declare the arbitration agreement void and oblige the parties to appear before a court of law for adjudication of all disputed issues between the contracting parties.<sup>24</sup>

The court of law may enlarge the time for making an arbitral award. If the award of an arbitrator is related to the payment of money the interest rate to be considered as per on the day of the decree of the civil court upon the award.<sup>25</sup> The competent court of the country has the jurisdiction to pass a decree upon the award for its execution and implementation; it will be considered then the determination of the court of law.

All provisions of the Arbitration Act-1940 will apply upon the arbitration agreement of every kind and no other law will override upon the arbitration agreement. Any person has an objection upon an arbitration agreement may apply in a court of law against its validity.<sup>26</sup>

Any party of an arbitration agreement may file an application for the adjournment of the legal proceeding in a court of law before filing the written statement if there is an arbitration agreement between the contracting parties, the court of law will then send the matter to an arbitrator.

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<sup>24</sup> The Arbitration Act-1940, SS 24 & 25

<sup>25</sup> Ibid, SS 26, 27, 28 & 29

<sup>26</sup> Ibid, SS 31, 32 & 33

The legal proceeding will not affect the reference to an arbitrator except if the legal proceeding is conducted on whole of the subject matter and the notice is given to an arbitrator or umpire, all future proceedings will become invalid unless the stay of the proceeding is granted. If parties have written that the arbitration agreement will not apply upon a particular difference, the court will order that the award will not apply to a particular thing.

The provisions of the Limitation Act-1908 will apply upon the proceedings of arbitration. Remuneration of an arbitrator and umpire must be given to them by the parties as written in the agreement or if not written, as directed by the court of law. An appeal can be filed before a court of law upon an order superseding the award or upon a special order on an award or upon an order modifying the award or an order filling or refusing to file an award or an order staying or refusing to stay legal proceeding or upon an order for annulment or refusing to annul is passed. The court of law has the same power as the arbitrator or an umpire for the order of appearance and commissions for the examination of witnesses and order to produce documents.<sup>27</sup> The High Court of Azad Kashmir stated in a case between Communication and Works Department VS Messrs Design and Engineering System that if there is no irregularity in respect to the evidence, the court will not disturb the decision of an arbitrator but in a case where a gross miscarriage of justice is caused, the court will play its part, either modify the award or remit it partially or wholly or set it aside.<sup>28</sup>

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<sup>27</sup> The Arbitration Act-1940, SS 34, 35, 36, 37, 38, 39 & 43

<sup>28</sup> 2013 CLD 1438, P 1447

When foreign parties to an arbitration agreement want an implementation and execution of their foreign award which was made in a contracting state, they may submit an award, an arbitration agreement and the translation in official language; if the award is in another language; in the respected High Court.

The High Court has the jurisdiction to adjudicate and settle matters related to the act and has all the powers of the civil court under the Code of Civil Procedure V of 1908.<sup>30</sup>

Once accepted the application the award shall have the same effect as a judgment or order has in Pakistan. The Recognition and Enforcement of Foreign Arbitral Award shall not be refused except on seven grounds mentioned in Article Five of the New York Convention-1958.

If there is any inconsistency between the Recognition and Enforcement Act-2011 and The New York Convention-1958, the New York convention-1958 will prevail.<sup>31</sup>

The Supreme Court of Pakistan held in a case between Maulana Abdul Haque Baloch VS the Government of Balochistan that the arbitration proceeding held at International Forum under the New York Convention-1958, there was a question raised regarding the legality of the arbitration agreement, the court held that the Pakistani law was applicable on the agreement thus the Supreme Court of Pakistan has jurisdiction to decide the legality of the contract.<sup>32</sup>

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<sup>30</sup> The Recognition and Enforcement Act-2011, S 3

<sup>31</sup> Ibid, SS 7 & 8

<sup>32</sup> PLD 2013 SC 641, P 763

Any party to an arbitration agreement after giving notice to the other party applies to the High Court for the stay of the proceeding and the court of law will refer the matter to an arbitrator.

Parties to an arbitration agreement may submit a request for the recognition and enforcement of an award with a copy of an award and its certified translation and relevant documents in a court of law.<sup>33</sup>

The stay of the proceeding is allowed when the party applies in the court for it, but the High Court has some Inherited Powers under section number 151 of the Code of Civil Procedure-1908 to deny the stay.

Application for stay of the proceeding could not be rejected unless the arbitration agreement is null and void, inoperative or incapable of being performed.<sup>34</sup>

If one of the above mentioned things exists in a contract the award will not have any effect.

If a contract is void the tribunal will not have any strength to decide a dispute between the parties and the arbitral award comes out of an illegal proceeding will be declared void by the court of law, on its own or on the application of the parties.

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<sup>33</sup> The Recognition and Enforcement Act-2011, SS 4 & 5

<sup>34</sup> 2013 CLD 291, P 320

### **1.3 The New York Convention-1958**

The New York Convention regarding the enforcement of Arbitral Award of International Commercial Arbitration was ratified on 10<sup>th</sup> June, 1958 in New York and entered into force on 7<sup>th</sup> June, 1959.

Pakistan entered into United Nations in December-1947. All most Pakistan participated in every major International Treaty of United Nations and in other Human Rights activities organized under the umbrella of United Nations.

Pakistan entered into the New York Convention in the year 2005. Pakistan has dualism system that is why it requires an ordinance from the president or an act of the parliament to implement an International Treaty at its soil.

The New York Convention-1958 is applicable in Pakistan through an act of the Parliament.<sup>35</sup> The complete convention is also mentioned in the Schedule of the Recognition and Enforcement Act-2011.

This convention is applicable when contracting parties to an arbitration agreement belong to two different states of the convention. The convention does not apply only to awards made by arbitrators or umpires but also applies to awards made by arbitral bodies.

The convention applies on commercial differences appearing out of a legal connection; contractual or not; in any contractual state.<sup>36</sup>

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<sup>35</sup> The Recognition and Enforcement Act-2011

<sup>36</sup> The New York Convention-1958, Art 1

A federal State Party to this Convention shall provide a statement of the law and practice of the federation and its electoral units with regard to any special provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.<sup>41</sup>

Any Contracting State may condemn this Convention through a written notification to the Secretary-General of the United Nations. Opting out from the convention shall take effect after expiration of one year from the date of receiving of the notification by the Secretary-General. The state who declares a denunciation does not use that denunciation against other states. The Secretary-General of the United Nations will transmit a certified copy of the Convention to States mentioned in article 8.<sup>42</sup>

The New York Convention-1958 is the world famous treatise on International Commercial Arbitration, Pakistan should have been the party earlier on but Pakistan entered into the Convention in 2005. Somehow the convention is applicable in Pakistan through an act of the Parliament. The New York Convention does not stop parties to an arbitration agreement to avail rights mentioned in the Arbitration Act-1940 thus the contractual parties to an agreement of arbitration in Pakistan may avail the remedies of modification, remission and annulment on grounds mentioned in the Arbitration Act-1940.

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<sup>41</sup> The New York Convention-1958, Art 11 & 12

<sup>42</sup> Ibid, Art 13 & 16

#### **1.4 The UNCITRAL Model Law-1985**

The UNCITRAL Model Law was adopted by the United Nations Commission on International Trade Law on 21<sup>st</sup> June, 1985. It has 36 Articles, consisted in 8 chapters. The Arbitration Bill-2009 was presented before the National Assembly of Pakistan for the extension of implementation of UNCITRAL Model Law-1985 in Islamic Republic of Pakistan. It is actually a modified version of the Indian Arbitration Act-1996, Pakistani legislature importing same problems faced by International Arbitration Community in India by clearly preventing the application of Part II of the Bill to arbitrations taking place outside of Pakistan. These are difficulties that Islamic Republic of Pakistan should seek to evade in introducing its new legislation on International Commercial Arbitration. It is hoped that these defects in the Bill should be preserved before the Bill becomes an Act of the Parliament.

Arbitration is International when parties habitually resides, carries on business or personally works for gain in two different states.<sup>43</sup>

Arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.<sup>44</sup>

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<sup>43</sup> The UNCITRAL Model Law-1985, Art 1

<sup>44</sup> Ibid, Art 7



Arbitration is either conducted by the arbitrator or by an organization. Arbitral Tribunal is consisted of one or more arbitrators. Arbitrator after completion of the proceeding files an award in a court of law. Each state will indicate the court of law or the competent authority to perform the duty of the assistantship and supervision.<sup>45</sup> Parties to an arbitration agreement are supposed to have waived their right to object if does not do so within a prescribed time limit. Unless otherwise provided, issues administered by this law shall not be intervened by any court. Parties to agreement of arbitration are free to determine the number of arbitrators, if not determined by the parties the number of arbitrators are three. Each party appoints a single arbitrator and the two arbitrators will appoint an umpire. If parties have failed to appoint an arbitrator within thirty days time period or do not come to a consensus on the appointment of the third arbitrator, the court will appoint an arbitrator.<sup>46</sup>

The Court of Quebec, Canada held in a case between The Saurus Inc VS Xpub Media Inc that a court of the competent jurisdiction does not have the special capacity to correct the faulty rule of three arbitrators on ground of cost effectiveness or proportionality.<sup>47</sup> Appointment of an arbitrator may be challenged if he does not possess qualification agreed upon by the parties in an arbitration agreement or there are clear doubts on his impartiality. The application for challenging an arbitrator should be made within fifteen days of the appointment of an arbitrator.

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<sup>45</sup> The UNCITRAL Model Law-1985, Art 4, 5 & 6

<sup>46</sup> Ibid, Art 10 & 11

<sup>47</sup> 2007 QCCQ 10436 CanL II (Accessed at: <http://www.uncitral.org/pdf/english/clout/MAL-digest-2012-e.pdf>)

The challenging party may request the decision of an arbitral tribunal before a court of law within thirty days. If an arbitrator unable to perform his functions or he is for other reasons fails to act without undue delay his mandate will be discontinued. The court of law will decide regarding the mandate of termination, which decision subject to no appeal, afterwards a substitute arbitrator will be appointed in his place.<sup>48</sup>

An arbitral tribunal has jurisdiction to start proceedings in accordance with the arbitration agreement or arbitration clause, any objection may be raised not later than the submission of the statement of defense. If it states that it has jurisdiction, any party to an agreement may challenge this statement within thirty days before a court of law which decision subject to no appeal. An arbitral tribunal may make interim orders for the protection of the parties.<sup>49</sup>

All parties are treated equally in arbitral proceedings. Parties have right to agree upon arbitral tribunal procedure, failing which the tribunal will follow an appropriate procedure. Parties have right to agree upon the place of arbitration failing which the arbitral tribunal may determine the place of the arbitration. The arbitral proceeding will start on the date on which a request is received. Parties may agree on the language of the arbitral proceeding, failing which the tribunal will decide the language of the proceeding.<sup>50</sup>

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<sup>48</sup> The UNCITRAL Model Law-1985, Art 12, 13, 14 & 15

<sup>49</sup> Ibid, Art 15 & 16

<sup>50</sup> Ibid, Art 18, 19, 20, 21 & 22

Unless otherwise provided either party may amend or supplement his claim or defense during the course of the arbitral proceedings.<sup>51</sup>

The arbitral tribunal shall decide that whether it holds an oral hearing for the presentation of evidence or for oral argument subject to any contrary agreement by the parties, or whether the proceeding shall be conducted on the basis of documents and other materials. An expert may be appointed by the tribunal to report to it on specific issues and the parties are directed to give the expert relevant information or to produce before it anything or to provide access to any relevant document. The Arbitral Tribunal may take assistance from the court of law in taking evidence.<sup>52</sup> The tribunal of arbitration shall decide the issue in accordance with such rules of law as is chosen by the contracting parties as applicable to the substance of the dispute. Unless otherwise provided the decision of the majority will prevail. If parties settle the issue outside the tribunal of arbitration, the tribunal will end the proceeding of arbitration.<sup>53</sup>

The decision of an arbitrator shall be in writing, authorized by the arbitrator and parties. It shall state reasons upon which it is established. The date and place of arbitration must be written. The copy of the decision must be given to each party after signatures of arbitrators.<sup>54</sup>

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<sup>51</sup> The UNCITRAL Model Law-1985, Art 23 & 25

<sup>52</sup> Ibid, Art 24, 26 & 27

<sup>53</sup> Ibid, Art 28, 29 & 30

<sup>54</sup> Ibid, Art 31

## 1.5 Judicial System of Pakistan

Pakistan is an Islamic State which follows the injunctions of Islam laid down in Quran and Sunnah. Islam is the state religion of Islamic Republic of Pakistan according to its Constitution.<sup>55</sup>

It has one Supreme Court situated in the capital territory of Islamabad. Five High Courts, four situated in four provinces and the fifth one is situated in Islamabad for the people of the federal capital. Lahore High Court situates in Lahore for the people of Punjab, Peshawar High Court situates in Peshawar and works for the people of the province: Khyber Pakhtunkhwa, Sindh High Court is the High Court of Sindh, which situates in Karachi and Baluchistan High Court situates in Quetta. Every District has a session judge. If a district is divided into parts, every part has one session judge; several additional/assistant session judges and several magistrates are there for resolving criminal disputes and several civil judges for resolving civil disputes.

There are three categories of a magistrate and of a civil judge as follows:

Magistrate.... 1 <sup>st</sup> Class	Jurisdiction up-to three years imprisonment and 15,000/- fine
2 <sup>nd</sup> Class	Jurisdiction up-to one year imprisonment and 5,000/- fine
3 <sup>rd</sup> Class	Jurisdiction up-to one month imprisonment and 1,000/- fine <sup>56</sup>

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<sup>55</sup> The Constitution of Islamic Republic of Pakistan, Art 2

<sup>56</sup> The Code of Criminal Procedure-1989, S 32

Civil Judge.... 1 <sup>st</sup> Class	Unlimited except three million in Karachi and Islamabad
2 <sup>nd</sup> Class	Half Million in Punjab, fifty thousand in Sindh and Khyber Pakhtunkhva and fifteen thousand in Baluchistan
3 <sup>rd</sup> Class	One Lac in Punjab, 25 thousand in Sindh, 20 thousand in Khyber Pakhtunkhva and 5 thousand in Baluchistan. <sup>57</sup>

Ex-Chief Justice Iftikhar Muhammad Choudhry took some steps for the independence of the judiciary, civil society and general public supported him in his task but still there are many deficiencies especially in lower judiciary. Corruption is the biggest issue which needs to be sort out by the government for the smooth running of the judicial system of Pakistan.

The Arbitration Act-1940 is applicable in Pakistan but there are certain laws related to Alternate Dispute Resolution which are only applicable in certain parts of Pakistan, like the Jirga laws are applicable in the province of Khyber Pakhtunkhva and not all over Pakistan.<sup>58</sup>

The Arbitration Act-1940 deals with the procedure of all kinds of arbitration whether institutional or not. The act deals with the procedure of the arbitration from the reference till the pronouncement of the award and submitting it in a court of law. The act does not deal with the recognition and enforcement of Arbitral Award made outside the country of execution.

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<sup>57</sup> Accessed at: <http://www.commonlii.org/pk/other/PKLJC/reports/36.html>

<sup>58</sup> The North West Frontier Province Civil Procedure (Special Provisions) Act-1977

Once an award becomes the judgment and the decree of the court of law it will be considered as it is the decision given by the court. The execution of an award will be dealt in accordance with Order No.21 of the Code of Civil Procedure-1908.

The New York Convention-1958 has sixteen articles; it deals with the recognition and enforcement of a decision of an arbitrator, pronounced in one of the contracting states. It gives seven grounds through which an award debtor may challenge the implementation of an award and not any other ground, but in Pakistan the domestic law of arbitration is the Arbitration Act-1940, which gives six grounds for setting aside an award. Article seven of the New York Convention-1958 suggests that the convention does not nullify any right which is available under any domestic statute of Arbitration.

The UNCITRAL Model Law-1985 differentiates between the setting aside process and the refusal of recognition and enforcement process, it gives six grounds for annulment of an award and seven grounds for the rejection of recognition and enforcement of an award.<sup>59</sup>

The Recognition and Enforcement Act-2011 suggests a party; who wants an implementation of an arbitral award made outside of Pakistan; may apply for its recognition and enforcement to the High Court.<sup>60</sup> The Arbitration Act-1940 says that a court means a civil court but the Recognition and Enforcement Act-2011 suggests that the court means a High Court.

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<sup>59</sup> The UNCITRAL Model Law-1985, Art 34 & 36

<sup>60</sup> The Recognition and Enforcement Act-2011, Art 5

A domestic arbitral award has to be submitted before a civil court of competent jurisdiction for implementation but an International Commercial Arbitral Award has to be submitted before a High Court. The Recognition and Enforcement Act-2011 is a special law and the Arbitration Act-1940 is a general law and when there is a contradiction between a special law and a general law the special law will prevail moreover the recent law has priority upon a subject than the previous enactment.

When an award is submitted before a court of law, the court of the competent jurisdiction; on the request of the parties or on its own; may modify the award, if there is any clerical mistake, or typographical error, but if that error cannot be modified, because in the case of modification, the subject matter of an award effects, the court will remit the matter to an arbitrator. The court will also remit the award if the arbitrator has not considered all the matters and issues referred to him in a reference.

If an award debtor feels that the arbitrator misconducts himself or with the arbitration proceedings, or if the other party has improperly procured the award, or if the award is taken after the order of the court that the arbitral proceeding is null and void, in all these circumstances, the award debtor may challenge an award for setting it aside through a court of law.

Modification, Remission and Setting Aside is a procedure normally done at the seat of arbitration where an award was made and in which court the award was submitted, but refusal of the recognition and enforcement may be made at the place where the parties want its implementation.

- The Arbitration Act-1940 deals with the process of arbitration and the Recognition and Enforcement Act-2011 deals with the implementation of Foreign Arbitral Awards in Islamic Republic of Pakistan.
- The Arbitration Act-1940 deals with three types of arbitration: Arbitration without intervention of the court, Arbitration with the intervention of the court when the suit is pending and Arbitration with the intervention of the court when the suit is not pending.
- The UNCITRAL Model Law-1985 is not applicable in Islamic Republic of Pakistan. There is a hope that it will be applied soon as early as the Parliament of Pakistan pass a domestic legislation for its implementation.
- When there is a contradiction between the Recognition and Enforcement Act-2011 and the New York Convention-1958, the New York Convention-1958 will prevail.
- An arbitrator files an award in a court of law for its implementation. Parties to arbitration agreement may apply before an arbitrator or before a court of law for the correction of an award. The court of law should go towards acceptance rather than rejection of an award but it has powers of modification, remission and setting aside an award.<sup>61</sup>

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<sup>61</sup> 2013 MLD 689, P 695



- The arbitrator is considered a final judge on question of law and fact, his decision is entitled to utmost respect and weight. If the award is not challenged within a specified time limit the court will issue a decree upon that award and that decree is considered a decision of a court of law and will be processed under Order 21 of the Code of Civil Procedure-1908.<sup>62</sup>
- The jurisdiction of the court of law is restricted related to an arbitral award. The court cannot disturb the award unless a gross miscarriage of justice is caused and when a gross miscarriage of justice is caused the court will play its part either modify the award or remit it wholly or partially or set it aside.<sup>63</sup>
- Parties to an arbitration agreement may apply for the stay of the proceeding in a court of law where the recognition and enforcement is sought. The application for the stay of the proceeding may not be rejected unless an award is null and void, inoperative or incapable of being performed.<sup>64</sup>
- All acts mentioned in the first chapter of this treatise are applicable on an arbitration agreement and on an arbitration clause. An arbitration agreement is a complete agreement on arbitration and an arbitration clause is an underlying contract.<sup>65</sup>

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<sup>62</sup> 2012 CLC 1239, PP 1241 to 1243

<sup>63</sup> 2013 MLD 1438, P 1447

<sup>64</sup> 2013 CLD 291, P 320

<sup>65</sup> 2013 MLD 1499, P 1506

## CHAPTER II

### INITIAL THINGS TO REMEMBER BEFORE CHALLENGING AN AWARD

When an award is made and submitted in a court of law for implementation, the aggrieved party has to honor the award or challenge the award.

Before challenging an award the aggrieved party needs to know some matters related to challenging an award, whether the arbitration proceeding was institutional or un-institutional.

An aggrieved party to an arbitration agreement may apply in a court of law for the correction of an award or for the interpretation of an award or for an additional award at the place of the arbitration where the award was made by the arbitral tribunal.

If the court feels that the modification cannot be done without affecting the award, the court will resend the matter to an arbitrator for reconsideration.<sup>66</sup>

At the seat of the arbitration, the aggrieved party may challenge an award for setting it aside and may apply against the recognition and enforcement of an arbitral award in a court of law of a country, where its execution is sought.<sup>67</sup>

An aggrieved party may not challenge an award in a court of law of another country, where the award is not submitted for execution.

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<sup>66</sup> The Arbitration Act-1940, S 16

<sup>67</sup> The UNCITRAL Model Law-1985, Art 34 & 36

Accession No. TF-1455

## CHAPTER II

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<sup>66</sup> The Arbitration Act-1940, S 16

<sup>67</sup> The UNCITRAL Model Law-1985, Art 34 & 36

If the party wants an implementation in Pakistan, the party applies in the High Court of Pakistan for implementation, the aggrieved may not apply against the recognition and enforcement in any other country, the aggrieved party may challenge an award at the place of arbitration or at the country where the recognition and enforcement of decision of arbitrator is sought and at no other place.

The contract in restraint of a legal proceeding is a void contract<sup>68</sup> but the parties to the agreement of arbitration may exclude the right to challenge an arbitral award, they may exclusively write a provision in an agreement of arbitration for the exclusion of the right of challenge.

The award will then be binding upon the parties and the aggrieved party may not challenge an award but it does not merely stop the court of law to take steps against an irregular and void awards.

Parties to an arbitration agreement have given certain time period for raising an objection against an arbitrator or an arbitral tribunal, failing which the parties will not be allowed to raise an objection against an arbitral tribunal at later stage of the proceeding. And it will then be considered as the parties have waived their right to challenge an arbitral award.

Similarly the parties are allowed to challenge an arbitral award within a specified time limit; the time limit is different in different parts of the world.

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<sup>68</sup> The Contract Act-1872, S27

In Pakistan under the Limitation Act-1908, Art 58, 30 days are given for challenging an arbitral award. In United States of America under the Federal Arbitration Act-1925, 90 days are given and in United Kingdom, under the English Arbitration Act-1996, 28 days are given for challenging an arbitral award.

In case the party does not challenge an award within a time specified in a relevant statute, it will be considered that the parties to an arbitration agreement have waived their right to challenge an award, but in certain circumstances the court of law may allow the parties to challenge an award after the expiration of the limitation time period, if they give sufficient reasons of delay, they must write a con-donation of delay while challenging a decision of arbitrator after the expiration of the limited time period, as mentioned in Order No.7, Rule No.6 of the Code of Civil Procedure-1908.

The Lahore High Court stated in *Pakistan Industries and Commercial Leasing Limited VS Haq Knitwear Private Limited* that where the parties admit a suit in a court of law after expiration of the prescribed time period, mentioned under the Limitation Act-1908, the parties must mention the grounds upon which the exemption from limitation is claimed, if there is no ground mentioned, the suit shall liable to be rejected under Order 7, Rule 11 of the Code of Civil Procedure-1908.<sup>69</sup>

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<sup>69</sup> PLD 2009 LAH 52, PP 55 & 56

## **2.1 Place of challenge**

Place of challenge is the seat of arbitration where the agreement of arbitration took place between the parties or where an arbitration proceeding took place. In case the execution of an award is sought in another state, for example the recognition and enforcement of a decision of an arbitrator is sought by the contracting parties in Islamic Republic of Pakistan under the Recognition and Enforcement Act-2011, the place of execution is Pakistan so the place of challenge is Pakistan. Normally the place of the challenge is the seat of arbitration but in case the enforcement is required in any other state the place of challenge is where the effect of the arbitral award is to be made.

The New York Convention-1958 does not assist us on the current issue; we have to look into the UNCITRAL Model Law-1985 to resolve the issue. Article Number 20 of the UNCITRAL Model Law-1985 deals with the place of arbitration.

Where the award is done after the arbitral proceeding and submitted in a court for its execution and when parties do not challenge an award and the court gives a judgment followed by a decree, the award will be perfected, it is normally the place of challenge, the court held that where the award is perfected determines where it is made.<sup>70</sup>

Challenge is a procedural act governed by chosen procedural law of the parties, subjected to mandatory obligations imposed by the seat of arbitration.

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<sup>70</sup> Hiscox v/s Outhwaite Queen's Bench Division, Commercial Court [1991] 2 Lloyd's Rep 524

If the arbitration agreement is governed by Pakistani Law, the Pakistani Court has jurisdiction to set aside an award even if it is made abroad.<sup>71</sup>

An award must be challenged within a time limit specified in a relevant statute at the seat of the arbitration which is usually 30 days in Pakistan<sup>72</sup> after making of an award, but 28 days in United Kingdom and 90 days in the United States of America.

Limitation for modification, remission and setting aside all are different, separately mentioned in relevant provisions of law.<sup>73</sup>

The UNCITRAL Model Law-1985 states regarding the seat of the arbitration that the parties to an agreement of arbitration are free to agree on the place of the arbitration.

If parties do not agree on the seat of the arbitration the arbitral tribunal will resolve the issue of the place of arbitration keeping in mind the circumstances of the decision and in accordance with the convenience of the parties.<sup>74</sup>

Place of challenge is normally the seat of arbitration; parties may go to the court of law at the place of arbitration for modification, remission or for annulment of an award or for challenging the proceedings of an arbitral tribunal.

The challenge for the rejection of recognition and enforcement of an arbitral award has to be made where the recognition and enforcement of an award is sought.

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<sup>71</sup> Hitachi Limited v/s Rupali Polyester, 1998 SCMR SC 1618

<sup>72</sup> The Limitation Act-1908, Art 158

<sup>73</sup> The UNCITRAL Model Law-1985, Art 33 & 34

<sup>74</sup> Ibid, Art 20

The Kerala High Court, India has stated in the decision of the case between Sulaikha Clay Mines VS Alpha Clays that when the tribunal decides regarding the place of the arbitration where the parties have not decided it, the tribunal must treat the parties equally and there shall not be any biasness and the tribunal acts fairly and justly while deciding the matter.<sup>75</sup>

The English High Court in a case between Dubai Islamic Bank PJSC VS Paymentech stated that the tribunal while deciding the question of the place of arbitration, it will see the circumstances in relation to the parties of an arbitration agreement, the subject matter of an agreement of arbitration, the arbitration procedure and lastly the issuance of an arbitral award.<sup>76</sup>

The Indian Supreme Court held in the Shin Satellite Public Co Ltd VS Jain Studio Limited that the place of arbitration and the place of hearing are two different things. The parties to an agreement of arbitration are free to choose their place of arbitration, they may change the arbitration place and they may choose another place for the enforcement of an arbitral award.<sup>77</sup>

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<sup>75</sup> AIR 2005 KER 3 ( Accessed at: <http://indiankanoon.in/docfragment/252644/?formInput=air%202005%20ker%203%20%20%20doctypes%3A%20kerala>)

<sup>76</sup> 2001 1 LLR 65 (Accessed at: <http://www.uncitral.org/pdf/english/clout/MAL-digest-2012-e.pdf>)

<sup>77</sup> 2006 2 SSC 628 (Accessed at: <http://www.uncitral.org/pdf/english/clout/MAL-digest-2012-e.pdf>)



## **2.2 Exclusion of challenge**

A contract is a voluntary agreement between equals for the purpose of regulating their particular interests.

All types of contracts are allowed, except there are three types of contracts which are strictly prohibited: Contract stopping parties from a marriage, Contract against trade and Contract in restraint of a legal proceeding.<sup>78</sup>

A contract or a provision of any type of a contract, which bounds the parties to an agreement, from enforcing their rights or any contract or a provision of any contract which bounds the parties, within which they can enforce their rights are void contracts.<sup>79</sup>

Exclusion of challenge provision in a contract is an exception to the general rule that the contract in restraint of a legal proceeding is a void contract.

Parties to an arbitration agreement are free to include the provision in an agreement of arbitration for the exclusive exclusion of the right of challenge.

Parties belonging to arbitration agreement have full right to exclude exclusively the right to challenge an arbitral award. Parties may write and add a clause in an agreement of arbitration with respect to the exclusion of the right of challenging an award, the award will then become a conclusive decision of the court of law and that will be binding upon the contracting parties.

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<sup>78</sup> The Contract Act-1872, SS 26, 27 & 28

<sup>79</sup> Ibid, SS 26, 27 & 28

The Annexure of the UNCITRAL Model Law Rules-1976 states that if the contractual parties to an arbitration agreement wish to withdraw from their right of challenge, which is available under the relevant law of the land, they may add a provision in an agreement to that effect, but the applicability of the exclusion is dependent upon the applicable law of the land, related to the issue. If one of the parties to an agreement of arbitration habitually resides, having a domicile or have a place of business in a country, he may exclude the right of annulment completely or limit the right of annulment to some grounds through an arbitration agreement or through a subsequent agreement.

Exclusion is Actual when parties; belonging to arbitration agreement; exclusively write in an agreement of arbitration or in an arbitration clause or in a subsequent agreement that no party shall challenge an arbitral award after it has been made, it will be conclusive and make obligation upon the contracting parties. Exclusion is Constructive when there is no such clause in an arbitration agreement, but parties voluntarily do not challenge the arbitral award within a specified time. If in Pakistan, the parties to an arbitration agreement, do not challenge an award within thirty days, it will be considered as they have waived their right to challenge an award except if there is sufficient cause to believe that there are some grounds upon which a party can apply in a court with the application of challenge, that they were outside the country or they did not have the notice of the award etc, the court of law, will then decide whether to give the parties right to challenge, after expiration of the time limit or not.<sup>80</sup>

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<sup>80</sup> The Code of Civil Procedure-1908, O 7, R 6

### **2.3 Waiver of challenge**

A right is an interest, respect of right is a duty and obligation and disregard of right is a wrong. A wrong is an act of human being contrary to the rule of right and justice.

A person who has a right over a particular thing or a matter can waive it, exchange it, give concession or give relaxation. For example Al-Mighty Allah has a right that every Muslim should pray five times a day.

He has waived his right for a girl during menstruation. He has exchanged the right of a fast with a charity if a Muslim does not have the capacity to fast in the month of Ramazan.

He has given concession to a traveler that he can offer two rakat of prayer instead of four. He has given relaxation to an ill person that if he does not find water or becomes ill in case if he uses the water, he can do Tayamum<sup>81</sup> with a pure dust.

There are two types of waiver:

1. Actual waiver &
2. Constructive waiver.

Actual waiver is a waiver when parties to an agreement of arbitration exclusively object on some points of the decision of an arbitrator and may not object on other mistakes done by the arbitrator; similar nature thing is mentioned in Order 2, Rule 2 of the Code of Civil Procedure-1908; it will be considered that they have themselves waived their right to challenge an arbitral award.

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<sup>81</sup> An act for purification from a pure dust

Constructive waiver is a waiver when parties to an arbitration agreement do not object upon the arbitral tribunal or do not challenge an arbitral award within a specified time, it will be considered as they have waived their right to challenge an arbitral award.

Article Number 4 of the UNCITRAL Model Law-1985 states that when the arbitral proceeding is carried out against any provision of an arbitration agreement or any section of the relevant statute of the place of the arbitration and parties to an agreement of arbitration continue with the arbitration proceeding without raising the objection upon the proceeding, without unreasonable delay, shall be deemed to have his right waived.

Exclusion and waiver look like a same kind of thing but there is a difference between these two things. Exclusion is mostly known for a written and clear prevention from the right and the waiver is mostly related with unwritten and constructive prevention from the right

Article Number 32 of the UNCITRAL Arbitration Rules-1976 states that if a party fails to object on non-compliance of arbitration from an agreement of arbitration or from the rules of arbitration, it will be considered as the party has waived his right to challenge that irregularity; he will not be allowed to raise that objection at the time of enforcement.

The tribunal or a court of law may allow the party to make an objection later on if the party has sufficient reasons of delay.<sup>82</sup> If sufficient reasons of delay are not given such kind of challenge is not admissible and liable to be rejected.

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<sup>82</sup> The UNCITRAL Arbitral Rule-1976, Art 32

Section Number 31 of the English Arbitration Act-1996 states that the question regarding the jurisdiction of the tribunal of arbitration has to be raised before the expiration of the prescribed time but the objection can be raised after expiration of the time if it is allowed by the tribunal. No outsider is allowed to make an objection upon the tribunal, a third person, who contributed in the appointment of an arbitrator; and who is not a party to an agreement of arbitration; is not allowed to object upon the tribunal of arbitration.

When the question on the jurisdiction of the tribunal of arbitration is raised, the question of the substantive jurisdiction is to be made thereof. Initially the preliminary points on the jurisdiction of the tribunal are to be resolved before going the tribunal into actual proceedings upon the subject matter.<sup>83</sup>

The High Court of Hong Kong held in a case between the Attorney General VS Vianini Lavori Sapa that the objection as to the jurisdiction of the tribunal of arbitration has to be raised initially in front of the tribunal before raising it in front of the court of law.

In this case the applicant applied for the security of costs and stated that the respondent has waived the right to object as they have not raised an objection within a specified time, 28 days.

The court held that the question of waiver is to be decided by the tribunal of arbitration and not by the court of law.<sup>84</sup>

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<sup>83</sup> The English Arbitration Act-1996, S 31

<sup>84</sup> 1991 HKCFI 221 (Accessed at : <http://www.uncitral.org/pdf/english/clout/MAL-digest-2012-e.pdf>)

## **2.4 Limitation on challenge**

It is a restriction of time on challenge. It is different in different statutes of the world. Normally 30 days<sup>85</sup> for the correction of an error and 90 days for setting aside an award, but in Pakistan the limitation for modification, remission or setting aside is only 30 days.<sup>86</sup>

### **1. 28 days.**

Section Number 70 of the English Arbitration Act-1996 states that any kind of application of objection or any kind of appeal against an arbitral award must come within 28 days from the date of the declaration of the decision of arbitrator, if there is no arbitral appeal available, in another case from the date of the notification of the award.

### **2. 30 days.**

Article Number 158 of the Limitation Act-1908 states that if an aggrieved party wants an award to be set aside or to be sent back to an arbitrator for reconsideration, the aggrieved party must come to the court of law within 30 days.

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<sup>85</sup> The ICC Arbitration Rules-2012, Art 35

<sup>86</sup> The Limitation Act-1908, Art 158

The Peshawar High Court held in a case between Syed Faqir Shah VS Haji Inayatullah Khan that the applicant filed an application for setting aside an arbitral award after expiration of 77 days, the applicant stated that he did not have the notice of the time, date and place of arbitration, the court held that the point of limitation would not come into the way of justice, the arbitrator misconduct himself, the arbitration award making the rule of the court is not maintainable, thus dismissed.<sup>87</sup>

The Peshawar High Court held in the case of Mian Asmat Shah VS Mian Faiq Shah that the objector objected after expiration of 30 days, took a plea that no notice has been served under section 14-2 of the Arbitration Act-1940, court referred the matter to an arbitrator with the consent of both parties, the person who objected participated in the arbitration proceeding, award filed in the court in the presence of the parties; includes an objector; there was no need of issuing a notice of the filling of an award to an objector, the objector's plea is not admissible having no force.<sup>88</sup>

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<sup>87</sup> 2013 MLD 689, PP 697 & 698

<sup>88</sup> PLD 2011 SC 181, P 182

The Lahore High Court held in the case of Messrs FABNUS Construction Private Limited VS Iftikhar Ahmad that the objection filed by the respondent after the expiration of the period of thirty days, no request for the condonation of delay is submitted; the High Court annulled the order passed by the trial court.<sup>89</sup>

Article Number 33 of the UNCITRAL Model Law-1985 states that after the receipt of the award within 30 days an aggrieved party may apply in the tribunal for the correction of any error in computation or any typographical error or a clerical fault or any kind of similar mistake, if the request is justified the tribunal will fulfill the request within 30 days. The tribunal may make above mentioned corrections on its own within 30 days from the date of the declaration of an award or may make an additional decision within 60 days.

### 3. 90 days.

Article 34 of the UNCITRAL Model Law states that a request for annulment of an award has to be made within 90 days from the date of the pronouncement of a decision of an arbitrator, section number 12 of the Federal Arbitration Act-1925 states that Notice for the modification or setting aside an award must be made to an adverse party within 90 days from the day of the delivery of an award.

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<sup>89</sup> PLD 2010 LAH 452, P 462



After discussing in detail the legal framework of International Commercial Arbitration in Pakistan, moving towards the initial questions comes in the mind of an aggrieved party that where he should file an application for annulment of an award or for the rejection of the recognition and enforcement of an award and whether the parties have excluded the right of challenge or not and whether the party has waived the right of challenge by avoiding raising objection upon the jurisdiction of arbitral tribunal and lastly the most important thing is the limitation, how many days are available for an aggrieved party for setting aside an award and for modification and remittal of an award.<sup>90</sup>

The place of challenge is normally the seat of arbitration where an arbitration proceeding took place but when the parties move to another country of the signatory of the New York Convention-1958, the aggrieved party may challenge an award there, for setting aside and for preventing its recognition and enforcement.

Parties to an agreement of arbitration may exclusively exclude the right to challenge a decision of an arbitrator through a provision of an agreement of arbitration or through a subsequent agreement; it is an exception to the general rule that a contract in restraint of a legal proceeding is a void contract.

Parties to an arbitration agreement may challenge an award within a specified time period, they may raise an objection at an early stage of the arbitration proceeding, but if they do not raise an objection at an early stage within a time specified, they are deemed to have waived their right to make an objection.

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<sup>90</sup> The Limitation Act-1908, Art 158

- When the award is perfected determines where it is made. An aggrieved party to an arbitration agreement may challenge an arbitral award at the seat of the arbitration or at the place where the recognition and enforcement of an arbitral award is sought.
- Parties to an arbitration agreement may choose the substantive law of their choice and they may choose the forum of arbitration in case if they have not chosen the substantive law of the land, the substantive law of the seat of the arbitration will apply upon the arbitration proceeding.<sup>91</sup>
- If parties to an arbitration agreement have not chosen the place of arbitration the tribunal will resolve the issue and the tribunal will treat the parties equally without biasness and it must act fairly and justly.<sup>92</sup>
- Parties to an arbitration agreement may exclude the right to challenge an arbitral award it is an exception to the general rule that contract in restraint of a legal proceeding is a void contract.<sup>93</sup>
- Parties may object upon the tribunal, upon an arbitrator or upon an award within a specified time limit otherwise it will be considered as parties have waived their right to challenge an arbitral award.

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<sup>91</sup> 1998 SCMR SC 1618

<sup>92</sup> AIR 2005 KER 3

<sup>93</sup> The Contract Act-1872, S 28

- Objection upon the jurisdiction of an arbitrator must be made before the pronouncement of an award.<sup>94</sup>
- Limitation for challenging an award in Islamic Republic of Pakistan is 30 days starting from the day of submission of an award in a court of law.
- The court of law is bound to act according to the law of the land but it has certain inherited powers given under section 151 of the Code of Civil Procedure-1908.
- The court of law may allow an aggrieved party to challenge an award after expiration of the limitation time if the aggrieved party gives sufficient reasons of delay otherwise if there is no sufficient reason given; the application is liable to be rejected under order 7 rule 11.<sup>95</sup>
- The point of limitation would not come into the way of justice in case if a party to an arbitration agreement did not have the notice of date, time and place, the limitation would not run.<sup>96</sup>
- The limitation does not run against a void arbitration agreement or an award.<sup>97</sup> &
- The limitation does not run against legal heirs as well.<sup>98</sup>

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<sup>94</sup> 2012 CLC 441

<sup>95</sup> PLD 2009 LAH 52

<sup>96</sup> 2013 MLD 689

<sup>97</sup> CLC 1999 1795

<sup>98</sup> NLR 1999 Civil 624

## **CHAPTER III**

### **REMEDIES AVAILABLE FOR CHALLENGING AN AWARD**

After discussing the legal frame work of International Commercial Arbitration in Islamic Republic of Pakistan and initial things to remember before challenging an arbitral award, now come to the most important part of the treatise, available remedies under the authority that aids in finding a solution to a legal problem.

Parties to an agreement of arbitration may apply in a court of law or before an arbitral tribunal for modification of an award,<sup>99</sup> the court will modify an award if there is an error or a typographical mistake or similar nature error, but the court cannot start the modification process if it will affect the subject matter of an award, in this case the court will send back the award to an arbitrator for reconsideration.

In some statutes, for example in the UNCITRAL Model Law-1985 the concept of an additional award and the interpretation of an award are given, parties may apply for these things.

An aggrieved party to an arbitral award or an award debtor may apply for setting aside an award in a court of law within a specified time, there are six grounds mentioned under article number 34 of the UNCITRAL Model Law-1985 for setting aside an award.

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<sup>99</sup> The Arbitration Act-1940, S 15

There are six grounds mentioned under the Arbitration Act-1940 for setting aside an arbitral award in Pakistan.<sup>100</sup>

Through The Recognition and Enforcement Act-2011 the New York Convention-1958 is applicable in Islamic Republic of Pakistan; it provides an aggrieved party seven grounds through which foreign arbitral award's recognition and enforcement be revoked in Pakistan.

When the award is annulled by the competent court that has jurisdiction to annul the award, then the decision of an arbitrator will not be enforceable in any part of the world.

When an award becomes null and void the other party may apply in the court for its refusal of enforcement or the court may itself checks the validity of an award.

If parties to an arbitration agreement do not challenge an award within a specified time, it will be considered as they have waived their right to challenge an arbitral award.

The limitation is the most important thing in challenge, limitation for the parties to an agreement of arbitration is 30 days in Islamic Republic of Pakistan to make a request in writing for the annulment of an arbitral award or for the remittal, before a court of law, in England under the Arbitration Act-1996, the time limit is 28 days and in the United States of America under the Federal Arbitration Act-1925, the time limit is 90 days.

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<sup>100</sup> The Arbitration Act-140, S 30

### **3.1 Modification**

The first remedy which the aggrieved party has is modification, the arbitrator or the court of law on the request of the parties or on its own motion may modify the award and correct any clerical mistake arisen out of a typographical error.

Modification includes removal of those things which were not referred to arbitrator for consideration, or removal of any clerical mistake, or removal of an obvious error.

After modification under some statutes for example under the UNCITRAL Model Law-1985 the arbitral tribunal on the request of the parties may issue an additional award in which the tribunal may consider those things which were initially not considered due to a mistake or an error.

The tribunal may issue an interpretation of an award if the initial award is not clear. The interpretation will be given by the tribunal on the request of the parties.

When an award contains a clerical mistake on the face of it or any kind of error arisen out of an accidental slip or omission the court may modify an award through an order of the court without sending back the award to an arbitrator.<sup>101</sup>

The court should go towards acceptance rather than rejection of an award but it has powers of modification, remission and setting aside an award under the Arbitration Act-1940.<sup>102</sup>

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<sup>101</sup> The Arbitration Act-1940, S 15

<sup>102</sup> 2013 MLD 689, P 695

### **3.1.1 Grounds of Modification**

The court of law or an arbitral tribunal has powers under the relevant statutes of International Commercial Arbitration to modify an award if an award consists any clerical mistake, a computation error or any similar kind of error. If the award is not clear, the parties may apply for the interpretation of an award and if the arbitrator did not consider all the issues referred in a reference for consideration, the court of law will resend the matter to an arbitral tribunal and the arbitrator after reconsidering the issues make an additional award and that additional decision of an arbitrator will become part of an initial award.

Section Number 13 of the Arbitration Act-1940 states that the arbitrator and the umpire both have powers to correct any clerical mistake of the award.

The Lahore High Court held in the case between Sh. Muhammad Saleem VS Saadat Enterprises that the arbitrator does not have the power to interpret an award in a way to replace his own views.<sup>103</sup>

The Sind High Court stated in a case between Al-Abdullah Contractors Private Limited VS Pakistan Water and Development Authority that the Arbitrator is a judge in all matters arising in an issue between the parties to an agreement of arbitration, it is not good for a court to scrutinize the award just for the purpose of discovering an error in an award, an award is final and binding upon the contracting parties.<sup>104</sup>

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<sup>103</sup> 2009 CLD 390, P 398

<sup>104</sup> 2008 CLC 798, P 802

The Sind High Court stated in a case between RAZO Private Limited VS Pakistan Steel Mills Corporation Private Limited that the court while examining the validity of an award does not consider being a court of appeal, the court hearing the objection against the award cannot take evidence before it which was produced before an arbitrator. Error or infirmity in the award must be clear which rendered the award invalid.<sup>105</sup>

The Islamabad High Court held in a case between the National Highway Authority VS Messrs Hakas Private Limited that the court is not allowed to enter into the merits of the case which was referred to an arbitrator. The modification does not mean the changing of the decision of an arbitrator, if a modification changes the decision of an arbitrator such modification is liable to be set aside.<sup>106</sup>

Article Number 33 of the UNCITRAL Model Law-1985 states that after the declaration of the award within 90 days, a party to an arbitration agreement after giving notice to other parties may request the tribunal of an arbitration to give an application for the correction of an error of an award in computation, or if there is any clerical error or a typographical mistake or any obvious error of a similar nature. The party may also request the tribunal for an interpretation of an award of any specific point which needs to be interpreted. The arbitral tribunal if accepts the application of the party, may give an interpretation of an award within 30 days and that interpretation will be considered part of an award.

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<sup>105</sup> 2009 MLD 1399, 1403

<sup>106</sup> 2011 PLD ISLD 43, P 47



It is not mandatory that the party may apply for the correction of the award; the court may on its own correct any error of an award within 30 days after the declaration of the decision of an arbitrator. Section Number 15 of the Arbitration Act-1940 states that the competent court of law has the jurisdiction to correct the award through its order when it seems that there is something mentioned in an arbitral award which was not referred to an arbitrator for arbitration and the arbitrator mistakenly added the non referred issues into the award, in this case the court can only modify the award if the other part of an award does not effect from this modification.

The computation error is defined by the Harare High Court, Zimbabwe in a case between Zimbabwe Electricity Supply Commission VS Genius Joel Maposa stated that the tribunal made an error based on facts in the calculation of back pay, the court held that the error in the said case is of computation under the meaning of article number 33 of the UNCITRAL Model Law-1985.<sup>107</sup>

The error of a similar nature is defined by the Singapore High Court in a case between Vanol Far East Marketing Private Limited VS Hin Leong Trading Private Limited, the court stated that mistakes made by the contracting parties which reflected in the decision of an arbitrator, one of the parties to an agreement of arbitration mistakenly forgotten to include certain expenses of costs in the bill, such kind of mistakes are considered errors.<sup>108</sup>

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<sup>107</sup> CLOUT, Case No.267 (Accessed at: <http://www.uncitral.org/pdf/english/clout/MAL-digest-2012-e.pdf>)

<sup>108</sup> CLOUT, Case No.208 (Accessed at: <http://www.uncitral.org/pdf/english/clout/MAL-digest-2012-e.pdf>)

## **1.2 Remission**

If an award does not fall under one of the grounds of modification mentioned in section No 13 and 15 of the Arbitration Act-1940 and in article 33 of the UNCTRAL Model Law-1985, the aggrieved party may submit an application in the court of law for remission of an award. When there is any kind of an error which cannot be modified without affecting the award, the court will remit the award to an arbitrator. If an arbitrator did not consider all the issues referred to him in a reference; on the request of the parties; the court will resend the matter; which was not considered; to an arbitrator for reconsideration<sup>109</sup>

Firstly the question is what the grounds of remission are and secondly what is the time limit mentioned under the relevant statute for applying in a court of law for remission of an award. There are four grounds of modification, if an award falls under one of the grounds of modification the arbitrator, the arbitral tribunal or the court of law may modify the award on the request of the parties or on its own motion, remedy of the remission can only be obtained when the remedy of the modification cannot be obtained.

The remedy of modification and remission are not mentioned in the New York Convention-1958 and in the Recognition and Enforcement Act-2011, because both acts deal with the recognition and enforcement of arbitral awards made outside the country of execution and they do not deal with the procedure of the arbitral tribunal.

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<sup>109</sup> The Arbitration Act-1940, S 16

The UNCITRAL Model Law-1985 does not deal separately with the issue of remission. Article 33 of the UNCITRAL Model Law-1985 states that if the award cannot be modified and does not fall under one of the grounds of modification the court will resend the matter to an arbitral tribunal for reconsideration, the tribunal will issue an additional award after considering all the issues mentioned in a reference, the additional award will then become part of an initial award. Where the court cannot modify the award it can send back the award to an arbitrator for reconsideration.

Section Number 16 of the Arbitration Act-1940 states that the court of law may resend the matter to an arbitrator where the award has not determined all the matters referred to an arbitrator or where the award consists any matter which was not referred to an arbitrator for consideration and when the court cannot modify the award because if the court do so it will affect the other part of the award, it can send back the award to an arbitrator for reconsideration.

The court can also resend the award to an arbitrator when the award is incapable of execution because it is indefinite or where the reservation upon the legality of an award is obvious. When the court resend the matter to an arbitrator the court will decide the time period for an additional award, failing which the award will have no effect under the law.

The Sind High Court held in a case between the Abdullah Contractors VS Water and Power Development Authority that the court has supervisory jurisdiction upon the award and not appellate jurisdiction. The court even in supervisory jurisdiction examine whether the parties had given equal opportunity before the arbitrator or not.

If there is a clear thing on the face of it by examining the record of an arbitrator that no evidence was produced before an arbitrator, the court of law will annul the award and resend the same to an arbitrator to hear the contracting parties again, provide them equal opportunities to lead evidence.<sup>110</sup>

Section Number 68 of the English Arbitration Act-1996 states that if there is any irregularity which affects the arbitral tribunal or the arbitral award or an arbitral proceeding and that irregularity is raised by an aggrieved party before a court of law; the court of law will resend the matter to the tribunal whole or in part.

When the court thinks that a modification cannot be done and a remittal is also not sufficient remedy available, the court will then set aside the award whole or in part.

There is a concept of Inter Petita Award in English Arbitration Act-1996 which means that when the arbitrator has not resolved all the issues referred to him in a reference, the award is incomplete, the court will resend the matter to an arbitrator for reconsideration.

If there is an additional thing with an award the court will modify the award before taking the remedy of remission but if the award cannot be modified the court will resend the matter to an arbitrator to modify the award in a way that the subject matter of the award must not be disturbed with the modification.

Arbitrator himself has the power to modify the award under section 13 of the Arbitration Act-1940.

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<sup>110</sup> 2006 YLR 589, P 599

### **3.2.1 Grounds of Remission**

When the court cannot modify the award, the other remedy available is remission. The Court of Law may resend the award if the decision of an arbitrator or an umpire is ambiguous and not clear or if the fundamental issues between the parties are not addressed or if there are additional things mentioned in an award which were not referred to an arbitrator for arbitration and that thing cannot be set apart from the arbitral award without affecting the other part of the award.

Moreover, when an arbitrator does not file an award in a court within four months and an umpire within two months, the court will remit the award because the decision of an arbitrator submitted in a court of law after expiration of the prescribed term is a void award. The court will resend the matter to an arbitrator for reconsideration if the arbitrator has not considered all the issues referred to him for consideration.

The Sind High Court held in a case between Falcon Enterprises VS National Refinery Limited that the court acts in a supervisory jurisdiction, examines whether the award made by an arbitrator is based upon the material placed before him and whether the parties to an arbitration agreement had given equal opportunity to prove their opinion. In the said case, the arbitrator had not decided a case upon evidence, thus the court declared the award void and resent the award to an arbitrator for reconsideration of whole issues.<sup>111</sup>

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<sup>111</sup> 2006 CLC 888, P 891

Similarly the Lahore High Court held in a case between S.M.I Brothers VS Municipal Committee Murree that the court of law has limited jurisdiction while examining the validity of an arbitral award.

If there is any clear error or disregard of law during the arbitral proceedings, the court will set aside an award and resend the matter to an arbitrator.<sup>112</sup>

In a case between Water and Power Development Authority VS Messrs Ice Pak International Consulting Engineers of Pakistan the Lahore High Court held that the arbitrator is bound to act on the terms agreed upon by the parties.

If an arbitrator has failed to fulfill the implementation of the provisions of the arbitration agreement between the contracting parties it will be considered an error on the face of it which will nullify the arbitration proceedings.<sup>113</sup>

The Sind High Court held in a case between Adamjee Construction Company Limited VS Islamic Republic of Pakistan that before making the award rule of the court it is the obligation of the court to see whether there is any cause exist to resend the award to an arbitrator and to remove any clerical mistake or typographical error.

If the aggrieved party has not been successful to file an objection within a specified time limit, it will not be precluded that the court has become *Functus Officio*.

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<sup>112</sup> 2003 CLC 419, P 428

<sup>113</sup> 2003 YLR 2494, P 2504

It is the duty of the court working as a supervisory body to see whether there is any kind of irregularity in the award or whether there is any error or omission.

It is also the duty of the court to see whether the arbitral tribunal worked under the powers given to him by the arbitration agreement or by a special law related to the matter.

After watching thoroughly all suspects of the award the court will make an order for making an award the rule of the court.

The court should thoroughly watch whether there is any ground for modification or whether there is any matter left by the arbitrator so the court may remit the award or whether the arbitration agreement is valid and the tribunal acted according to the arbitration agreement and according to the law of the land.<sup>114</sup>

The Lahore High Court held in a case between Zakaullah Khan VS the Government of Pakistan that an award is an outcome of a proceeding conducted by one or more arbitrators chosen by the parties.

The purpose behind an arbitration proceeding is decision in lesser time than through litigation in court of law.

Arbitrators are not bound to follow the rules of the Qanun-e-Shahadat Order-1984.

The court acts in an arbitration as a supervisory body for modification, remission and setting aside an award or for making an award the rule of the court. It does not act as an appellate body under the Code of Civil Procedure-1908.

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<sup>114</sup> PLD 2003 KAR 180, P 186

The applicant has to prove that there is a serious irregularity on the face of it with regard to the procedure of the arbitral tribunal and that irregularity cannot be ignored, otherwise it will cause a serious injustice.

Article Number 34 of the UNCITRAL Model Law-1985 states that an award debtor to arbitration may challenge an award for setting it aside at the place of the arbitration if one of the parties to an arbitration agreement does not have the power under the law to enter into an arbitration agreement, or if the arbitration agreement is void.

When the arbitration agreement is void, whole things which are created upon the arbitration agreement are also void.

The Lahore High Court held in a case between Muhammad Nadeem VS Additional District Judge, Bhakkar, that there was no objection raised upon the jurisdiction of an arbitrator during the proceeding of an arbitration but when an award came out as a result of arbitration proceeding the parties objected upon the jurisdiction of an arbitrator, this kind of objection is not allowed.<sup>116</sup>

The High Court of Azad Kashmir stated that an arbitral tribunal has exclusive jurisdiction under the arbitration agreement to decide issues of the contracting parties, the court of law acts as a supervisory body upon the tribunal and not as an appellate body, and the tribunal's decision is not allowed to be challenged except on grounds mentioned in the Arbitration Act-1940.

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<sup>116</sup> 2012 CLC 441, P 445



The presumption of correctness is attached with the award. It cannot be disturbed merely on technical reasons. The court of law cannot interfere in the merits of the award.<sup>117</sup>

The Singapore High Court held in a case between VV VS VW that all types of contracts are eligible to be applied for setting aside in a court of law.<sup>118</sup>

Article Number 5 of the New York Convention-1958 states that when an award is set aside by the court of law, it is unenforceable through a court of law.

There are seven grounds mentioned in Article 5 of the New York Convention-1958 and the same grounds are mentioned in Article 36 of the UNCITRAL Model Law-1985 for the refusal of recognition and enforcement of foreign arbitral awards.

The court of law follow the procedural laws of the land as in Pakistan the Arbitration is a civil matter which is procedurally governed by the Code of Civil Procedure-1908 when it comes in the hands of the court and not before.

The Supreme Court of Victoria held that the arbitral tribunal cannot bind the court of law; the court of law will act according to the procedural laws of the land.<sup>119</sup>

An aggrieved party may only challenge an arbitral award on grounds available for setting aside an arbitral award. There are six grounds mentioned under Article Number 34 of the UNCITRAL Modle-1985 and there are seven grounds mentioned for the refusal of recognition and enforcement mentioned in Article Number 36.

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<sup>117</sup> 2013 CLD 1483, P 1504

<sup>118</sup> OS 2160/2006, 2008 SGHC 11 (Accessed at: <http://www.uncitral.org/pdf/english/clout/MAL-digest-2012-e.pdf>)

<sup>119</sup> SAPCI 2011 0017 (Accessed at: <http://www.uncitral.org/pdf/english/clout/MAL-digest-2012-e.pdf>)

### 3.3.1 Grounds of setting aside

The Supreme Court of the England and Wales gave a reference in a case between Dallah Real State and Tourism Holding Company VS the Ministry of Religious Affairs, Government of Pakistan of judgment of a case of the United States between China Minerals Import and Export Co Limited VS Chi Mei Corporation,<sup>120</sup> the court stated that the court of law must make a free determination of questions, whether the arbitration agreement was valid or not.<sup>121</sup>

When a party to an arbitration agreement does not have the capacity to enter into a contract, the agreement is void, arbitral tribunal made upon that agreement is void and the award comes out after the arbitration proceeding is void.

If parties to an arbitration agreement do not have the physical or mental power and a power given by the law to enter into an arbitration agreement, the agreement is void and the tribunal may not be allowed to act upon a void contract.

All persons are competent to enter into an agreement under the contract act except a minor, lunatic and a disqualified person by law.<sup>122</sup>

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<sup>120</sup> 2003 334 F3d 274 (Accessed at: <http://www.uncitral.org/pdf/english/clout/MAL-digest-2012-e.pdf>)

<sup>121</sup> 2010 YKSC 46, 2009 EWCA CIV 755 (Accessed at: <http://www.uncitral.org/pdf/english/clout/MAL-digest-2012-e.pdf>)

<sup>122</sup> The Contract Act-1872, S 11

The Supreme Court of Pakistan held in a case between Maulana Abdul Haque Baloch VS the Government of Balochistan that when a foreign company or a foreign national enters into an agreement it will be governed by the national laws of the country unless a contrary is decided by the parties in a contract.<sup>123</sup>

An award of an arbitrator is also void when an arbitrator exceeds from his powers. An arbitrator has powers given in an arbitration agreement determined by the parties but if parties do not decide the issue, the relevant act of the country at the seat of the arbitration gives certain powers to an arbitrator. When an arbitrator exceeds his powers, the aggrieved party may apply in a court of law for setting aside an arbitral award.

An award will also become void if it is improperly procured or if the subject matter of arbitration proceeding is not valid to be arbitrated, for example the arbitration process runs in civil nature cases between the parties and in criminal matters parties avail the method of mediation for resolving their disputes outside the court of law. The aggrieved party may challenge an award on procedural grounds if the constitution of a tribunal of arbitration is not in conformity with the arbitration agreement of the contracting parties or if the arbitrator does not follow the rules of due process which is the desired process of law where both parties are given equal opportunities before the arbitrator to defend his contention. The substantial ground is also available where there is a mistake of law, the challenge is allowed in the interest of the public but if there is a mistake of fact the challenge is not allowed in the interest of the parties to an arbitration agreement.

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<sup>123</sup> PLD 2013 SC 641, P 763

When there is a mistake of fact the party may avail remedies of modification and remission. A public policy is a question which is not decided yet. Every state has its own public policy.<sup>124</sup>

The Islamabad High Court held in a case between Oil and Gas Development Company Limited VS Messrs Marathon Construction Company that when the arbitrator has framed issues during the proceeding of the arbitration, the court will not necessarily frame an issue again. The presumption of correctness is attached with the award when it is submitted in a court; only grounds for setting aside are those which are given by the law. An award cannot be disturbed just at whims of some party, when the merits of the award are not affecting, the award cannot be disturbed on mere technical reasons.<sup>125</sup>

The High Court of Azad Jammu and Kashmir stated in a case between Communication and Works Department VS Messrs Design and Engineering System that the High Court does not sit upon the award as an appellate court nor as an arbitration court. If the findings of an arbitrator are based upon documentary evidence and there is no misreading or non reading of evidence, the court will not disturb the award. The court always goes in favor of non interference rather than interference in the findings of an arbitrator, based upon documentary evidence. The court can only interfere in the award if a gross miscarriage of justice is occurred.<sup>126</sup>

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<sup>124</sup> The UNCITRAL Model Law-1985, Art 34

<sup>125</sup> 2013 CLD 1483, P 1504

<sup>126</sup> 2013 CLD AJK 1438, P 1447

If an arbitrator in an arbitration proceeding holds an inquiry, takes a documentary evidence and hears both sides of an arbitration agreement, decides the issue and submits it in a court of law with the authentication of both the parties in accordance with the provisions of the Arbitration Act-1940, the law of Estoppel<sup>127</sup> would apply upon that award and the parties to an arbitration agreement once accepted the award cannot go back and retreat from their acceptance statement.

The Lahore High Court stated in a case between Muhammad Nadeem VS Additional District Judge Bhakkar that when an award of an arbitrator is in accordance with the provisions of the Arbitration Act-1940 it cannot be set aside.

An award can only be set aside if the award is improperly procured or if the award is made after the decision of the court staying the proceeding or if the award is made superseding the proceeding or if an arbitrator misconducts himself or if he misconducts with the proceeding.<sup>128</sup>

An award is conclusive and binding upon the contracting parties it can only be challenged on the grounds mentioned in Section 30 of the Arbitration Act-1940.

The Peshawar High Court in a case between the Government of N.W.F.P. VS Jan Construction Company straightaway announced the award a rule of a court of law, without commenting upon the validity of an award.

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<sup>127</sup> The Qanun-e-Shahadat Order-1984, Art 114

<sup>128</sup> 2012 CLC 441, P 445

The Peshawar High Court stated that the court was duty bound under the law to consider all the questions of law and fact, the court of law had the power to deny the decision of an arbitrator to be made a rule of a court and the court of law had the jurisdiction under section 16 of the Arbitration Act-1940 to resend the award to an arbitrator if there are certain deficiencies in an arbitral award.

The Peshawar High Court annulled the decision of the lower court and sends the matter to a trial court to reconsider the matter and to make a decision in one month.<sup>129</sup>

International Convention on Settlement of Investment Dispute-1965 states some procedural grounds for setting aside an arbitral award.

It states that the Parties to an agreement of arbitration may request for the annulment of an arbitral award if the arbitral tribunal was not properly constituted as agreed upon between the contracting parties in an arbitration agreement or if the arbitral tribunal has exceeded from its powers or if there was a corruption on the part of its members or if the fundamental rules of the procedure were not followed or if the award does not disclose reasons.<sup>130</sup>

When the award is set aside by the court of law it will not have any force and liable to be rejected from enforcement as mentioned in Article Number 5 of the New York Convention-1958 and Article Number 36 of the UNCITRAL Model Law-1985.

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<sup>129</sup> 2012 CLD 502, P 505

<sup>130</sup> The ICSID Convention-1965, Art 52

### 3.4 Un-enforcement

Parties to an arbitration agreement may submit an award, an arbitration agreement and their translation in official language if documents are in another language in the respected High Court in Islamic Republic of Pakistan for its implementation.

Any party to an arbitration agreement may apply for the stay of the proceeding and that application cannot be rejected unless the arbitration agreement is null and void, in-operative or incapable of execution.<sup>131</sup>

The UNCITRAL Model-1985 has distinguished between setting aside an award and refusal of recognition and enforcement of an award but it has given same grounds for both things.

In Article 34 of the Model Law-1985 there are six grounds mentioned for setting aside an arbitral award and in Article 36 same grounds are mentioned for the refusal of recognition and enforcement except one ground is added that when the award is set aside by the court of law it will not be enforceable.

The Arbitration Act-1940 does not deal with recognition and enforcement process of an arbitral award. Article 5 of the New York Convention-1958 states that the convention does not stop an aggrieved party to avail a right under a domestic legislation thus he may avail the grounds for setting aside an award mentioned in section 30 of the Arbitration Act-X of 1940.

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<sup>131</sup> 2013CLD 291

### 3.4.1 Grounds of Un-enforcement

Article Number 5 of the New York Convention-1958 and Article Number 36 of the UNCITRAL Model Law-1985 state that the recognition and enforcement of International Commercial Arbitral Award may be revoked if parties to an arbitration agreement do not have the capacity to enter into an arbitration agreement or if the arbitration agreement is void or if the subject matter of an arbitration is not allowed to be arbitrated or if the parties to an arbitration agreement do not have the notice of arbitration or if the tribunal of an arbitration is not constituted as agreed upon between the contracting parties or if the award is against public policy.

All persons are competent to enter into an agreement under the Contract Act-1872 except a minor, lunatic and a disqualified person by law.<sup>132</sup>

Right of notice is a fundamental rule of due process which cannot be taken away from any party; if a party does not have a notice of date, time and place of arbitration he may challenge the recognition and enforcement of an arbitral award.<sup>133</sup>

Parties to an agreement of arbitration may avail only seven grounds for the revocation of recognition and enforcement and no other grounds.<sup>134</sup>

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<sup>132</sup> The Contract Act-1872, S 11

<sup>133</sup> 2013 MLD 689

<sup>134</sup> The New York Convention-1958, Art 5 & The UNCITRAL Model Law-1985, Art 36



### **3.4.2 Public Policy**

The recognition and enforcement of an arbitral award may be refused if it is considered and decided by the court of law that it is not in consistent with the Public Policy. It is not clear yet that what is public policy and what is its ambit. Jurists have divided public policy into Internal and External Public Policy.

Internal public policy of every state is different from the other state, for example drinking alcohol and selling it, is prohibited in Pakistan because it is against the internal public policy of Pakistan but in United States of America drinking and selling alcoholic acid is not prohibited and it is not against the public policy of the United States of America. Similarly European Countries do not follow Islamic Laws, a man's claim of inheritance is double to the inheritance claim of a woman in Islamic Law, it is according to the Public Policy of all Islamic States but it is against the public policy of non Islamic states as they think that the man and woman are equal and their inheritance claim is also equal.

International Commercial Arbitration Committee of International Law Association suggested in London Conference-2000 which was later recommended at New Delhi Conference-2002 that the International Public Policy is consisted of the followings:

- Fundamental rules of natural law
- Principles of universal justice
- Jus Cogens in public international law &
- General principles of morality.

1873 was the year when an International Law Association established at Brussels, Belgium. The purpose of the establishment of the body was to clarify and develop International Law. It works through its committees and working groups; organizing conferences and issue reports. It has various branches throughout the world but it does not have a branch in Pakistan. Its current Head Quarter is in London.<sup>135</sup>

Most of the case laws on public policy show that this has narrow scope and the term of public policy is applied in severe substantial and procedural injustice.

The Supreme Court of India stated in a dispute between Oil and Natural Gas Corporation Limited VS Saw Pipes Limited that while recognizing and enforcing the foreign Arbitral Award in India, it is not mandatory to accept the conservative interpretation of the concept.

The court states that Public Policy are those rules consisted of public, private, political, ethical and economic legal principles that are necessary for the protection of a society of a societal model for a nation at a given time.<sup>136</sup>

The High Court of Singapore stated in a case between VV VS VW that there is no need to distinguish between a domestic arbitral award and foreign arbitral award while resolving the issue of public policy.<sup>137</sup>

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<sup>135</sup> [www.ila-hq.org](http://www.ila-hq.org)

<sup>136</sup> 2003 INSC 236, 2011 INSC 1038 (Accessed at: <http://www.uncitral.org/pdf/english/clout/MAL-digest-2012-e.pdf>)

<sup>137</sup> OS 2160/2006, 2008 SCHC 11 (Accessed at: <http://www.uncitral.org/pdf/english/clout/MAL-digest-2012-e.pdf>)

Public Policy includes principles of natural justice, which includes that there should be equal treatment of the parties before the decision maker. It also includes that the right of notice to the parties must be fulfilled and the desired process of law must be adopted by the arbitrator in an arbitration proceeding. A contract which stop parties from a trade or a contract in restraint of a legal proceeding or a contract against a marriage are void contracts, they all are against the public policy. In Islamic Law public policy is consisted of the five preservations. Anything which affects one or all of these preservations will be considered against the public policy. Those preservations are: Preservation of religion, Protection of life, Safeguarding of intellect, Preservation of Progeny and the Protection of Life.

Though these principles are reputedly mentioned in Quran and Sunnah but Imam Gazali was the first person who mentioned these five principles all together in his book Ahya-ul-Uloom.

When parties; belonging to arbitration agreement; believe that the arbitrator has exceeded from its powers given to him by the arbitration agreement agreed upon by the contracting parties, they may seek the help of the court of law, the court of law will then look into the matter and if the contention of the parties are right, the court will order for the annulment of the arbitration proceeding and send a new reference to an arbitrator for starting the arbitration process again. Public Policy is the sixth ground for setting aside an award under Article 34 of the UNCITRAL Model Law-1985, if contracting parties to an arbitration agreement have not exclusively excluded the right of challenging an award.

An aggrieved party under Article 7 of the New York Convention-1958 has a right to avail any right which is given under a domestic legislation related to arbitration, thus the parties have six grounds for challenging an award mentioned in section number 30 of the Arbitration Act-1940 in Islamic Republic of Pakistan.

The party who wants to stop the recognition and enforcement of a foreign award may avail seven grounds mentioned in the New York Convention-1958 same are mentioned in Article 36 of the UNCITRAL Model Law-1985.

An award is final and binding upon the contracting parties, its enforcement may only be refused if the tribunal of arbitration wrongfully accepts or rejects the jurisdiction or if the decision of an arbitrator go beyond the claims submitted to him for arbitration or if he has failed to decide all the issues in a specified time limit which was submitted to him for consideration.

It can also be annulled if concepts of rule of law and due process are not followed by the arbitrator and the right of notice is also violated or the arbitral award is contrary to the public policy.<sup>138</sup>

The public policy of every state is different but at International Level there are some principles which are accepted by all civilized nations, those principles are considered the public policy, all laws are made in accordance with the public policy because the purpose of the law is to protect public at large.

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<sup>138</sup> The New York Convention-1958, Art 5

### **3.5 Issues & Solutions**

#### **Issue:**

The aggrieved party to an arbitration agreement does not have more grounds for setting aside an award in Pakistan except as mentioned in Section 30 of the Arbitration Act-1940.

#### **Solution:**

The Parliament should pass a domestic law for the implementation of the UNCITRAL Model Law-1985 in Islamic Republic of Pakistan so that the aggrieved party to an arbitration agreement may avail more grounds as mentioned under Article 34 of the UNCITRAL Model-1985 for setting aside an award in Pakistan.

#### **Issue:**

There is not any organized body of International Commercial Arbitration in Islamic Republic of Pakistan.

#### **Solution:**

The Government of Pakistan should make an organized body of International Commercial Arbitration in Islamic Republic of Pakistan for the effective Dispute Resolution. Karachi Centre for Effective Dispute Resolution is the only body which is working in Pakistan but it is a private body and its charges are high.

The Parliament should make a law for that body and the government should implement that law for the betterment of people generally and for traders specially.

**Issue:**

Time limit for challenging an arbitral award in Pakistan is 30 days which does not seem appropriate as normally in civil cases time limit for an appeal is 90 days.

**Solution:**

The Parliament of Pakistan should amend Article 158 of the Limitation Act-1908 and increase the time for challenging an arbitral award from 30 to 90 days. 90 days seems appropriate as it is the time limit given to all types of civil appeals comes under section 96 of the Code of Civil Procedure-1908.

**Issue:**

Arbitrator's qualification and criteria to judge their credibility is not mentioned in the Arbitration Act-1940 that is why most of the time people go for challenging an arbitral award.

**Solution:**

The Parliament of Pakistan should amend the Arbitration Act-1940 and add a clause in the said act regarding the qualification of arbitrators so that they will act more effectively and ratio of challenging an arbitral award will most probably be decreased which will be a time saving thing for the court of law and the court will take other cases for resolution in that saved time.

- An arbitrator or a court of law may modify the award if he has not considered all the issues referred to him in a reference and which can be separated without effecting the award or when an award contains a clerical mistake or an obvious error arising out of an accidental slip or omission or if an award is not perfect.<sup>139</sup>
- The court of law may resend the matter to an arbitrator for reconsideration if there are non referred issues in an award and which cannot be separated without effecting the award or when the award is in-operative and incapable of execution or if the question on the legality of the award is apparent on the face of it.<sup>140</sup>
- The court of law may also remit the award if an arbitrator did not consider all the issues referred to him for arbitration and if the award is not based upon an evidence and when there was a disregard of law during the arbitral proceeding.<sup>141</sup>
- An aggrieved party to an arbitration agreement may challenge an arbitral award if the arbitrator misconducts himself or with the proceeding or if the award has come after order of the court superseding arbitration or if the award has come after arbitration proceeding has become void or if it is improperly procured or if it is otherwise invalid.<sup>142</sup>

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<sup>139</sup> The Arbitration Act-1940, SS 13 & 15

<sup>140</sup> Ibid, S 16

<sup>141</sup> 2006 CLC 888 & 2003 CLC 419

<sup>142</sup> The Arbitration Act-1940, S 30

- The award can also be annulled if the composition of an arbitral tribunal is not in accordance with the principles agreed upon between the contracting parties or if there exists a corruption on the part of its members or if the tribunal has exceeded its powers or if parties did not have the notice of arbitration or if the award does not disclose reasons.<sup>143</sup>
- The presumption of correctness is attached with the award. It cannot be disturbed merely on technical reasons.<sup>144</sup>
- The recognition and enforcement of an International Commercial Arbitral Award can be refused if the parties to an arbitration agreement did not have the capacity to enter into an agreement or if the arbitration agreement is against the law of the land or if the parties to an arbitration agreement did not have the notice of arbitration or if the subject matter of an arbitration is not allowed to be arbitrated or if the arbitral tribunal was not constituted as agreed upon between the contracting parties or if the award is against the public policy.<sup>145</sup>
- International Commercial Arbitration Committee of International Law Association states that the International Public Policy is consisted of the fundamental rules of natural law, the principles of universal justice, jus cogens in private international law and general principles of morality.

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<sup>143</sup> The ICSID Convention-1965, Art 52

<sup>144</sup> 2013 CLD 1483

<sup>145</sup> The New York Convention-1958, Art 5



## **CONCLUSION**

The Arbitration Act-1940 only deals with the proceeding of arbitration and it does not deal with recognition and enforcement process of International Commercial Arbitral Award in Islamic Republic of Pakistan.

The New York Convention-1958 deals with the recognition and enforcement process of International Commercial Arbitral Award. It is applicable in Islamic Republic of Pakistan through the Recognition and Enforcement Act-2011. If there is any contradiction between the New York Convention-1958 and the Recognition and Enforcement Act-2011, the New York Convention-1958 will prevail.

An arbitrator files an award; in a civil court of competent jurisdiction if an award is domestic and in the High Court if the award is International; for its implementation. The court will issue a decree upon that award and that decree is considered a decision of a court of law and will be processed under Order 21 of the Code of Civil Procedure-1908

The UNCITRAL Model Law-1985 is not applicable in Islamic Republic of Pakistan. There is a hope that it will be applied soon as early as the Parliament of Pakistan passes a domestic legislation for its implementation.

An aggrieved party to an arbitration agreement may challenge an arbitral award within a specified time limit; if parties to an arbitration agreement have not excluded the right to challenge an arbitral award; at the seat of the arbitration or at the place where the recognition and enforcement of an arbitral award is sought.

Limitation for challenging an award in Pakistan is 30 days starting from the day of submission of an award in a court of law. Somehow the court of law may allow an aggrieved party to challenge an award after expiration of the limitation time if the aggrieved party gives sufficient reasons of delay otherwise if there is no sufficient reason given; the application is liable to be rejected under O-7 R-11 of the Code of Civil Procedure-1908..

An arbitrator or a court of law may modify the award if an arbitrator has not considered all the issues referred to him in a reference and which can be separated without effecting the award or when an award contains a clerical mistake or an obvious error arising out of an accidental slip or omission or if an award is not perfect in form.<sup>146</sup>

The court of law may resend the matter to an arbitrator for reconsideration if there are non referred issues in an award and which cannot be separated without effecting the award or when the award is in-operative and incapable of execution or if the question on the legality of the award is apparent on the face of it.<sup>147</sup>

An aggrieved party to an arbitration agreement may challenge an arbitral award; for setting it aside in Islamic Republic of Pakistan; if the arbitrator misconducts himself or with the proceeding or if the award has come after order of the court superseding arbitration or if the award has come after arbitration proceeding has become void or if it is improperly procured or if it is otherwise invalid.<sup>148</sup>

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<sup>146</sup> The Arbitration Act-1940, SS 13 & 15

<sup>147</sup> Ibid, S 16

<sup>148</sup> Ibid, S 30

The award can also be annulled if the composition of an arbitral tribunal is not constituted properly or if there exists a corruption on the part of its members or if the tribunal has exceeded its powers or if the parties did not have the notice of arbitration or if the award does not disclose reasons.<sup>149</sup>

The recognition and enforcement of an International Commercial Arbitral Award can be refused if the parties to an arbitration agreement did not have the capacity to enter into an agreement or if the arbitration agreement is against the law of the land or if the parties to an arbitration agreement did not have the notice of arbitration or if the subject matter of an arbitration is not allowed to be arbitrated or if the arbitral tribunal was not constituted as agreed upon between the contracting parties or if the award is against public policy.<sup>150</sup>

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<sup>149</sup> The ICSID Convention-1965, Art 52

<sup>150</sup> The New York Convention-1958, Art 5 & The UNCITRAL Model Law-1985, Art 36

## **RECOMMENDATIONS**

I would like to give some suggestions to improve the Challenging Process of International Commercial Arbitral Award in Islamic Republic of Pakistan:

1. The Parliament should pass a domestic legislation to make the UNCITRAL Model Law-1985 applicable in Islamic Republic of Pakistan so the aggrieved party may take help from more grounds; for setting aside an award; mentioned in Article Number 34 of the UUCITRAL Model Law-1985.
2. The government of Pakistan should make a recognized body or organization of International Commercial Arbitration in Islamic Republic of Pakistan for the effective Dispute Resolution of Commercial Arbitration in Pakistan. Karachi Centre for Effective Dispute Resolution is working in Karachi but it is very expensive and it is a private organization which focuses mostly on mediation. The government should make an organized body of arbitration whose offices should be in all major cities of Pakistan. The government can take help from International Chamber of Commerce which is the pioneer in the field. That body can launch a Mobile Arbitration Service which can be useful to provide expedient, in-expensive and speedy justice to the parties at their door step especially in rural areas of Pakistan

3. The Parliament of Pakistan should amend article 158 of the Limitation Act-1908 and increase the time limit for challenging an arbitral award from 30 to 90 days as 90 days seems more sufficient as it the limitation time period for all types of civil appeals under section 96 of the Code of Civil Procedure-1908.
4. There is also a need of amendment in the Arbitration Act-1940 regarding the qualification of an arbitrator to decrease the defects of an arbitral award. There should be an age limit for an arbitrator and some kind of qualification related to arbitration. In result of that people will not go for challenging an arbitral award more often and it will save the time of the people and the time of court of law for other issues.

The government of Pakistan should encourage Islamic Scholars to enter into the arbitration process and provide their services for the effective establishment of the principles of Quran and Sunnah related to the matter. Islamic Scholars may provide their services at different mosques freely or on payment of little amount or even the Government of Pakistan may provide them salaries and give them tasks to help people to resolve their disputes through arbitration.

All the above mentioned things will be useful for effective and pure arbitration proceeding which will help people to resolve their issues smoothly and an award will then most probably be clear from mistakes and that will save the time of the people and the court of law.

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