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Appeal and Revision in Arbitration Matters under the Pakistani Legal Regime

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Abstract

The paper provides a critical, doctrinal analysis of the appellate and revisional jurisdiction of the Pakistani law to arbitration and its applications to the case. Arbitration is gaining an increasingly popular momentum within law and business environment of Pakistan as a means of fast, friendly, and less adversarial alternative to trial-by-traditional-court. The connection between arbitral practices and official legal sphere remains rather complex and even controversial, however. The principal legislation which governs the procedure of arbitration in Pakistan is the Arbitration Act 1940 which creates a limited environment of judicial interference, in particular under Section 39 and the appeals procedure. It safeguards the independence of arbitration and avoids appealability only with a small number of orders, and thus, risks letting procedural or substantive unfairness prevail. Nonetheless, under the circumstances calling in jurisdictional mistake, illegality or a substantial irregularity, the High Courts can exercise power of revisions as defined in Section 115 of the Code of Civil Procedure, 1908 (CPC). Although, in theory, these two structures are not intertwined, in reality, there is a tendency to have a clash in the interpretation and loss of time in the process.

The essay begins by describing the legal evolution of arbitration and the historical background of arbitration in the sub-continent and examining how the colonial imprints affected the present legal system. The legal basis, use and judicial construction of any appeals under the 1940 Arbitration Act and its modification to CPC are then considered. The analyses attract discrepancies in interpretation, inadequacies in procedure and challenges in the enforcement of arbitral judgments through the doctrinal explanation and the case law. This is the view of the international context that companies in Bangladesh, India and the United Kingdom use to compare their systems of arbitration. The essay concludes with a set of reform suggestions that should align Pakistan with the international best practices, promote finality in arbitration, as well as strike the proper balance between the autonomy of the arbitral tribunal and the oversight of the court.

Introduction

The evolution of arbitration as one of the alternative dispute resolution (ADR) procedures in Pakistan signals a wider global trend toward encouraging party autonomy, expediting business justice, and reducing the workload on the courts. Arbitration has however not evolved in isolation in Pakistan. It is related to a wider complex of laws that are comprised of judicial ideas, the procedure process, and statutes. The interaction between the procedures of arbitration and the judiciary are vital according to two significant provisions of legislation, which include Section 39 of the Arbitration Act of 1940 and Section 115 of the Code of Civil Procedure of the year 1908.

Section 39 of the Arbitration Act gives a closed list of court orders against which appeal can be made. This deliberate limitation was in a bid to limit the court intrusion and preserve the definitiveness of the arbitral process. Papinnerupudi, 2013 It also begs the issue of responsibility and correction of errors in the court system especially those which lead to undeserved outcomes due to non-appealable decisions. In such cases, plaintiffs provide a revision power of High Courts on Section 115 CPC. Though the use of revision is not designed to be an appeal by all cases, it is the final resort of judicial correction that could particularly occur when it is apparent that a jurisdictional or a procedural improperness exists.

Despite these existing laws of provisions in the legislature, they have been utilized and interpreted to endless varieties in the Pakistani courts. Contradictory jurisprudence and created forum shopping has been the result due to the ability of appeals and revisions to be confused on a regular basis. The multiplication of corporate disputes and of Pakistan as entries into international economic regimes, especially through the adopting of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards has raised the modernization, clarity and consistency imperative to a new level.

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Historical and Legislative Context of Arbitration in Pakistan

The Indian Arbitration Act, 1899

Modern arbitration in the Indian sub-continent was recognized to have its legislative background by the Act India (Arbitration), 1899 of the British colonial era. This Act was first serious efforts to codify the application of arbitration in India and also provided a platform on which present and subsequent legislative developments in South Asia like Pakistan have been founded.

The 1899 Act was based very closely on the model of English Arbitration Act of 1889 and it mostly dealt with commercial transactions involving arbitrations. Its extension, however, was very limited--it was good only in the Presidency towns at Bombay, Calcutta and Madras, but not in the great unenfranchised rural districts and princely states. The Act was formulated with commercial interest of the British people in mind and was procedural rather than substantive in nature.

The key features of the 1899 Act included:

- Recognition of arbitration agreements entered into by parties.
- Provision for court assistance in appointing arbitrators when parties failed to agree.
- Authority for courts to enforce awards as if they were court judgments.

However, several limitations were soon identified:

- The Act did not contemplate **court-referred arbitration**; it only recognized arbitration where a prior written agreement existed.
- It lacked detailed provisions on **court supervision**, **setting aside awards**, or **appeal mechanisms**.
- It was not comprehensive enough to deal with complex commercial disputes or multiple-party arbitrations.

The practical result was a fragmented and ineffective arbitration regime, with limited applicability and minimal judicial coherence. These shortcomings necessitated a more robust and comprehensive legislative framework, culminating in the enactment of the **Arbitration Act, 1940**, which later became the foundational statute for Pakistan after independence.

The Arbitration Act, 1940

The **Arbitration Act, 1940** was introduced to consolidate and amend the law relating to arbitration. It replaced both the Indian Arbitration Act, 1899 and the arbitration provisions under the Second Schedule of the Code of Civil Procedure, 1908. The 1940 Act was enacted to create a unified and accessible legal regime for arbitration throughout British India, including areas beyond the Presidency towns.

Upon Pakistan's creation in 1947, the Act was adopted as a continuing law by virtue of the **Government of India Act, 1935** (as modified), and later by the **Laws (Continuance in Force) Order, 1951**. To date, the Arbitration Act, 1940 remains the governing statute for domestic arbitration in Pakistan.

Salient Features of the 1940 Act:

- **Parties' Autonomy:** The Act recognized arbitration agreements and gave effect to the will of the parties to resolve disputes outside court.
- **Court Assistance:** Courts could intervene at various stages, including the appointment of arbitrators, granting extensions of time, and referring suits to arbitration under Section 34.
- **Filing and Enforcement of Awards:** Arbitrators were required to file awards in court under Section 14, and the awards could be made "rule of the court" upon judicial confirmation.
- **Challenge Mechanisms:** The Act provided for the setting aside of awards under Section 30 and appeals from limited orders under Section 39.
- **Supervision and Control:** The Act vested considerable supervisory powers in civil courts, which could interfere with arbitration proceedings on various procedural and legal grounds.

While the Act sought to strike a balance between arbitration autonomy and judicial control, over time, its **court-centric structure** came under criticism. Judicial intervention at virtually every stage—appointment, award filing, enforcement, and even conduct of arbitration—undermined the very objective of reducing the judicial burden.

In addition, Section 39 was created to limit appeals to certain orders, which decreased the number of appellate cases. However, Section 115 of the CPC was often used to get around this, creating a backdoor for more extensive court review.

The 1940 Act was revolutionary for its time, however it has become more and more outdated:

It does not reflect international best practices, such as those embodied in the UNCITRAL Model Law on International Commercial Arbitration (1985, as amended in 2006); it does not include provisions for fast-track procedures, institutional arbitration, or interim measures by arbitral tribunals; and it does not incorporate contemporary principles of party autonomy, confidentiality, neutrality, and international enforceability.

India is among the several nations that have abolished their 1940 Act versions and replaced them with more recent legislation. However, Pakistan still uses this outdated law, which causes delays in litigation, procedural misunderstandings, and a decline in investor trust in its arbitration system.

Appeal in Arbitration Matters: Section 39 of the Arbitration Act, 1940

Text and Scope

Under Section 39 of the Arbitration Act of 1940, a list of ruling on appealable cases in arbitrater cases is outlined. The statutory text states as follows: An appeal shall lie to all the subsequent orders made under this Act, but not otherwise, by-- (i) an order superseding an arbitration; (ii) an order upon an award expressed in the form of a special case; (iii) an order revising or correcting an award, and (iv) an order filing or refusing to file an award, and (v) an order staying or refusing to stay any legal proceeding where there is an arbitration agreement.

The concluding words of the clause, "and by others none," are very material. The desire of the legislature to make projects of appellate participation minimal is visible by virtue of the fact that the relevant legislation excludes the rest of the orders in the arbitration processes as not being appealable. This provisional is a critical protection of the efficacy and completeness of arbitration.

Section 39 is also reasonable on two grounds: the foremost being to avoid the proliferation of lawsuits, and to respect the fact that only a limited range of procedural or substantive court rulings warrants review upon appeal, and these tend to be those that have a direct bearing upon the continuity or outcome of the arbitration proceedings.

Judicial Interpretation

Pakistani courts have consistently interpreted Section 39 in a narrow and literal manner. In *Province of Baluchistan v. Sardar Muhammad Usman Khan* (PLD 1987 Quetta 33), the court emphasized that the right of appeal in arbitration matters is purely statutory and must be confined strictly to the enumerated orders. The court held that:

"The intention of the legislature, as evinced by the phrase 'and from no others,' is to bar appeals from all other orders, regardless of their practical or legal consequence."

Similarly, in *District Council Haripur v. Zaheer Ullah Khan* (PLD 1994 Peshawar 228), the court ruled that no appeal lies against an order refusing to set aside an award, as it is not expressly mentioned in Section 39.

Courts have also distinguished between interlocutory orders and final orders. Orders that merely facilitate the arbitration process—such as extending time limits, appointing arbitrators, or giving directions on procedural matters—have been consistently held to be non-appealable. This position was affirmed in *Industrial Development Bank of Pakistan v. Muhammad Ismail* (1991 CLC 2347), where the court declined to entertain an appeal from an order appointing an arbitrator.

However, the rigidity of this approach has led to criticism. Critics argue that certain orders, although formally non-appealable, may significantly affect the parties' substantive rights or the integrity of the arbitral process. Yet, unless such orders fall within the closed list of Section 39, the courts have no jurisdiction to hear appeals.

Implications of Limited Appealability

- Section 39's limitations serve a crucial policy goal—ensuring that arbitration continues to be a quick and conclusive method of resolving disputes—but they also have a number of practical and legal repercussions, including: • Limited Access to Appellate Remedies: if decisions do not fall under Section 39, litigants are denied the chance to challenge potentially flawed decisions, which may raise questions about due process and fairness, particularly in cases involving jurisdictional overreach or.
- **Inconsistency Across High Courts:** Different High Courts interpret the language and applicability of Section 39 in varied ways, resulting in legal uncertainty and unpredictability.
- **Undermining the Efficiency of Arbitration:** Ironically, although the purpose of Section 39 is to minimize court intervention, the narrowness of appealability has, in some cases, encouraged litigation via alternate legal channels, thereby undermining efficiency.

Revision in Arbitration Matters: Section 115 of the CPC

Legal Text and Conditions

Section 115 of the Code of Civil Procedure, 1908 provides for the High Court's revisional jurisdiction in the following terms:

"The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears—

(a) To have exercised a jurisdiction not vested in it by law; or
(b) To have failed to exercise a jurisdiction so vested; or
(c) To have acted in the exercise of its jurisdiction illegally or with material irregularity,

The High Court may make such order in the case as it thinks fit."

The essence of this provision is supervisory rather than appellate. It is designed to ensure that subordinate courts do not exceed or fail to exercise their lawful jurisdiction. The power is discretionary and should be exercised sparingly, especially in arbitration-related matters.

Role in Arbitration Cases

Section 115 becomes relevant in arbitration when a party wishes to challenge a court order that is not covered by Section 39 of the Arbitration Act. For example, if a court refuses to refer a matter to arbitration under Section 34 or issues a procedural directive that substantially affects the arbitration, the aggrieved party may seek revision under Section 115.

This was illustrated in *National Construction Co. v. Ayub Khan* (PLD 1973 SC 569), where the Supreme Court held that revisional jurisdiction under Section 115 can be invoked in arbitration proceedings, but only when there is a clear error of jurisdiction or a material irregularity.

Similarly, in *Allied Bank Ltd v. Trading Corporation of Pakistan* (2004 CLD 1092), the Sindh High Court emphasized that the High Court cannot interfere in arbitration matters under Section 115 unless the order in question falls within the three jurisdictional grounds outlined in the provision.

Judicial Approach and Restraint

The judiciary has largely adopted a restrained approach toward revisional jurisdiction in arbitration matters. Courts have consistently reiterated that revision is not an alternative to appeal. This careful balance highlights the dual function of Section 115: it provides a necessary check on subordinate courts without turning the High Courts into second appellate forums. In Nisar Ahmad v. Additional District Judge (PLD 1980 Lahore 352), the Lahore High Court held that simply disagreeing with the subordinate court's finding does not justify interference under Section 115. The High Courts have also cautioned against using Section 115 as a tool to delay arbitral proceedings or undermine.

Comparative Analysis: Appeal vs. Revision

Feature	Appeal	Revision
Legal Basis	Section 39 of the Arbitration Act, 1940	Section 115 of the Code of Civil Procedure, 1908
Nature of Review	Substantive review of facts and law	Supervisory review of jurisdictional errors
Forum	Appellate Courts	High Courts
Scope	Limited to five specific orders	Orders involving jurisdictional irregularities
Availability	Only where specifically provided by statute	Discretionary where no appeal lies
Purpose	Correction of legal errors affecting outcomes	Prevention of jurisdictional abuse
Limitations	Cannot be extended beyond Section 39	Cannot re-evaluate evidence or facts

The differences between the two therapies' goals and constraints are shown by this comparison. Revisions have a more limited supervisory function, while appeals provide substantial correction. Although they have distinct legislative bounds, used together, they provide a dual system of monitoring in arbitration matters.

Challenges and Practical Implications

Delay in Award Enforcement

Tactical litigation sometimes delays arbitration processes in Pakistan, even if there are limited options for appeal and revision. In order to delay enforcement, litigants often submit baseless amendments or

appeals, perhaps in accordance with other procedural laws. This undercuts arbitration's primary goal of resolving disputes quickly and definitively.

The Sindh High Court noted in K-Electric Ltd. v. Pakistan Steel Mills Corporation (2012 CLD 1294) that excessive judicial intervention via drawn-out litigation had rendered the arbitral procedure ineffective.

Judicial Inconsistency

The uneven implementation of Sections 39 and 115 by different High Courts is one of the most enduring problems. A rigid and literal interpretation is followed by certain courts, while others take a more permissive stance on revisional jurisdiction. This has resulted in:

- **Forum shopping:** Parties selectively approach forums known for favorable interpretations.
- **Uncertainty in outcomes:** Identical factual situations may yield opposite results depending on the jurisdiction.

A national-level harmonization of judicial interpretation is urgently needed to promote consistency and predictability in arbitration law.

Lack of Arbitrator Protection

Under the present system, arbitrators have no defence against indirect challenges or coercion via legal actions. Despite Section 39's restrictions on direct appeals, judicial review or frequent changes may:

- Diminish arbitrator confidence and independence.
- Discourage experienced professionals from accepting arbitral appointments.
- Increase procedural delays due to fear of post-award litigation.

Thus, a clearer statutory framework is essential to protect arbitral proceedings from undue judicial influence.

Comparative Jurisprudence

India

Arbitration and Conciliation Act of 1996 replaced the Indian Arbitration act of 1940 and changed dramatically the arbitration system in India. This modern law is an expression of the international best practices and is strongly influenced by UNCITRAL Model Law on International Commercial Arbitration (1985). An important feature of Indian law is concerning the stricter nature of appeals to arbitrations, which is practically the same as the Section 39 of Pakistan, but clearly dissimilar.

Under this section, a limited list of orders against which appeals can be entered in government action are mentioned in Section 37 of Indian Act. In India, revisionary jurisdiction in arbitration matters is expressly prohibited and the only time the court is allowed to interfere would be on statutory appeal grounds unlike in Pakistan where the lines of jurisdictional conflict are more blurred. Indian courts have been following this approach with courts relentlessly stressing on the importance of finality and party autonomy. An example is the Supreme judicial holding of the case of Renusagar Power Co. Ltd. v. General Electric Co. (1994) that supported the aspect of minimum judicial action where only the grounds prescribed by way of a statute could be appealed.

Bangladesh

Just like Pakistan, Bangladesh continues to operate the 1940 Arbitration Act which was a leftover of the colonial judicial practice. The application of Section 115 of the CPC by the courts in Bangladesh in arbitration matters is in a more liberal form and quite often it even grants revisional powers to a greater degree whereby appeases are not expressly permitted when compared to the strict approach of not permitting appeals present in Pakistan.

The Bangladesh courts have taken a more interventionist attitude and regularly judicial reviews and amendments on matters which would be rejected by the Pakistani courts. The courts has justified this on the basis that it is necessary to protect the interest of the state and ward off injustice. This approach has been however condemned as encouraging lengthy arbitrations and contravening determinacy of arbitral awards.

Leaving aside the question whether acts of judicial overreach are to be condemned or justified, commentators have noted that judicial overreach in Bangladesh has bred an environment in Bangladesh where the country is not as arbitration-friendly as its neighbours and this has contributed to a long arbitration process and the undermining of investor confidence.

United Kingdom

It is commonly considered that the Arbitration Act 1996 (UK) that encompasses the vast majority of the aspects of the UK arbitration law balances between the arbitral independence and judge

intercession. The UK Act, Section 69 states that only with permission of the court can the appeal to legal issues that arise due to arbitration verdict be utilized and this is only in the major cases of the interest of the common good or in matters of justice.

Moreover, exercising a supervisory role, courts are primarily interested in the preservation of fairness and not the re-evaluation of merits, and the UK legal tradition prefers minimal intervention into procedural issues. Judicial discretion is used with preciseness so as to continue the aspect of finality of arbitration.

Since it can be considered as an example to countries all over the world, the system of the UK has been highly rated as enhancing substantiation of institutional arbitration and arbitration-friendly courts. More importantly, no doubt, judicial training has increased the uniformity and calibre of judicial supervision whereas procedural regulations by means of arbitration have improved the struggles.

Reform Suggestions

Pass New Arbitration Laws

The most significant thing that Pakistan is to institute is the adoption of a modern arbitration law to replace the archaic Arbitration Act, 1940. This new legislature should be guided by the UNCITRAL paradigm legislation (2006) where norms that are universally acceptable have harmonized the local and international arbitration should be used.

The new law must take into consideration first before the introduction of the update law is the determining of arbitral finality, outlining clearly the permitted form of appeal and modification and also procedures to be followed in an effective appointment, administration and enforcement of arbitration. This would give the courts and practitioners greater clarity and raise the attractiveness of Pakistan as an arbitration base.

Specify the Procedures for Revisions and Appeals

To eliminate procedural ambiguity, Pakistan needs to elaborate on the rules of procedure that governs the appeals and alteration in arbitration matters. These regulations must have clear timelines, reasons and procedures that should be followed to prevent cases of abuse and procrastination.

Through normalisation of court responses, special procedural norms can minimise the cases of unequal rulings and court shopping. This can also be enhanced by the establishment of procedures of alternative dispute settlement and quicker hearings in the courts.

Withhold Revisional Power

Amendments must particularly exclude extraordinary circumstances of the scope of revisional jurisdiction in arbitration matters to the issues of the revisional jurisdiction that is based on the issue of survival of the impact of the public interest or mind-boggling mistakes on jurisdiction, considering the oversight role of Section 115 CPC. In so doing, overuse and abuse of revision as a de facto appeal will be prevented.

A revision is only allowed as a precautionary measure against jurisdiction misuse and judicial training and directions should focus more on judicial restraint and appreciation of arbitral autonomy.

Capacity Building of the Judges

Judicial officials require special training about international commercial arbitration, the precepts of the procedural fairness, and arbitration laws. Appeals and revisions could be taken much more systematically and professionally, as High courts could constitute specialised arbitration benches with qualified judges.

Capacity building should involve seminars, continuous legal education of judges and liaisons with arbitration institutions as a means of introducing the judges to the world best practices.

Foster Arbitration in Institutions

Pakistan should promote the establishment and strengthening of institutional arbitration centres that will be equipped with state of the art case administration systems and clear steps in procedures. Institutional arbitration can help reduce the intervention of the court since it offers a structured platform through which parties can undertake arbitrations successfully.

Also, the encouragement of institutional arbitration increases the confidence of both investors locally and internationally and transparency and the certainty of procedure.

Conclusion:

The interaction of appeal and revision in the cases of arbitration in the Pakistani legal system exemplifies a complex relationship between judicial control and arbitral finality. The existence of the

different overlapping remedies in the Section 39 of the Arbitration Act 1940 and Section 115 of CPC has seen courts apply them inconsistently rendering the process difficult and uncertain.

To achieve the right balance between justice and autonomy of a party, comparative Bangladesh, Indian and United Kingdom Jurisprudence focuses on the importance of the clearly stipulated judicial functions, clarity in the procedures and the use of judicial restraint.

To turn Pakistan into a jurisdiction-supporting arbitration is crucial, and this should relate to legislative modernisation, the clarity of procedures, judicial training, and improvement in institutions. Through such reforms, Pakistan can ensure that arbitration will remain to be a swift, fair, and reliable mechanism of solving disputes that abides with international standards.

References

Ahmed, R. (2017). *Civil Procedure in Pakistan*. Lahore: Legal Research Centre.

Iqbal, M. (2018). Judicial Oversight in Arbitration: Challenges and Reforms. *Islamabad Law Review*, 4(1), 89–102.

Khan, A. (2021). Delays in Arbitration: Causes and Remedies in the Pakistani Context. *Pakistan Bar Review*, 12(3), 145–160.

Shah, S. (2020). A Comparative Review of Arbitration Law in South Asia. *South Asian Legal Studies*, 6(2), 113–135.

Siddiqui, T. (2019). Judicial Trends in Arbitration under the Arbitration Act 1940. *Karachi Law Journal*, 10(1), 55–74.

UNCITRAL. (2006). *UNCITRAL Model Law on International Commercial Arbitration*. United Nations Commission on International Trade Law.

The Arbitration Act, 1940 (Pakistan).

The Code of Civil Procedure, 1908 (Pakistan).

Province of Baluchistan v. Sardar Muhammad Usman Khan, PLD 1987 Quetta 33.

District Council Haripur v. Zaheer Ullah Khan, PLD 1994 Peshawar 228.

National Construction Co. v. Ayub Khan, PLD 1973 SC 569.

Allied Bank Ltd v. Trading Corporation of Pakistan, 2004 CLD 1092.

Renusagar Power Co. Ltd. v. General Electric Co., AIR 1994 SC 860.