**[Courts unburdened](https://www.dawn.com/news/1833613/courts-unburdened)**

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*“The courts of this country should not be the places where the resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried.”*

— Justice Sandra Day O’Connor

AS Pakistan endeavours to attract foreign investment amidst dwindling reserves, the legal system’s ability to enforce contractual disputes and protect investors from capricious regulatory changes is under the scanner again.

While traditional pipelines of justice are clogged due to archaic procedures, paucity of judges, and capacity constraints, alternative forms of dispute resolution too have borne little fruit. With domestic arbitrations still governed by the Arbitration Act, 1940, the purpose of resorting to arbitration is often defeated, given that the Act compels parties to repeatedly approach courts through various stages of arbitration.

In the realm of international arbitration and investor disputes, the ghosts of the Chaudhry court entangling itself in investment projects continues to haunt Pakistan’s image, despite the adoption of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Still, even as political disputes have dominated the politico-legal landscape, Pakistan is also witnessing a silent revolution in the realm of dispute resolution.

The Arbitration Law Review Committee constituted by the Supreme Court (SC) under Justice Mansoor Ali Shah last week, submitted its proposed Arbitration Bill, 2024, to the federal law minister. Departing from the 1940 Act which primarily envisages ad hoc arbitrations, thus, necessitating frequent judicial intervention, the draft bill paves the way for the creation of specialised arbitral institutions. Such institutions have a designated panel of arbitrators for the parties to choose from and their own institutional rules to govern various stages of the arbitral process.

The future of dispute resolution is witnessing a change.

Second, unlike the 1940 Act, which vests courts with the discretion to stay proceedings in respect of matters that are the subject of an arbitral agreement, the draft bill mandates courts to stay such proceedings.

Third, juxtaposed with the previous Act, it dispenses with the requirement of making an award the order of the court. The draft bill, thus, obviates judicial intervention in arbitral proceedings, streamlines the arbitral process, unburdens courts from micromanaging arbitrations, and promises the swift disposal of arbitral disputes.

The draft bill follows the Lahore High Court (LHC) and the SC’s landmark judgements in the Tradhol and Taisei cases. Laying the ghosts of Reko Diq to rest, the judgements entrench the doctrine of ‘pro-enforcement bias’, assuaging investors’ concerns about Pakistani courts’ recalcitrance to enforce arbitral agreements and foreign arbitral awards.

However, while developments in the arbitral regime are likely to facilitate the resolution of commercial disputes, the expenses involved in arbitrations often mean that the fruits of such endeavours may not be availed by most litigants. Nonetheless, the judiciary’s contemporaneous focus on mediation promises to ameliorate the systemic and structural issues which contribute to delays and pendency.

The LHC and Sindh High Court’s recent pronouncements in the Faisal Zafar and Shehzad Arshad cases, where they held that the judiciary possesses the power to compel unwilling parties to participate in and share the costs of mediation, underscore the

judiciary’s awareness regarding the unviability of our existing dispute resolution framework. Such en­­deavours are supplemented by the draft bill, Sec­tion 33 of which provides that an arbitral tribunal may employ mediation or conciliation at any time during the ar­­bitral pro­­cee­d­ings.

With the propo­sed changes to the arbitral regime and recent judicial pronouncements, the future of dispute resolution particularly in the realm of commercial disputes is witnessing a sea change. However, the road to reform ought to be paved with more than good intentions. The success of mediation would ultimately depend on imparting training, revamping the legal curriculum, collaborating with bar associations, and evolving an ecosystem where alternative dispute resolution can thrive. Most importantly, the judiciary will have to spearhead a cultural shift to preclude courts from being used as tools for the abuse of process.

Just as it is the law of life, change is also the life of the law. With Pakistan standing on the edge of the precipice with more than two million cases pending in courts, will the legal community reinvent itself and embrace change, or will it continue to arrest any attempt to unburden our courts? Will we choose the forest over the trees before the flood of pending cases ravages the entire forest?

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