PUBLIC POLICY AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN PAKISTAN

Taimoor Raza Sultan*

Rana Hassan Ali**

Abstract

The enforcement of foreign arbitral awards is foundational to international arbitration, with the public policy exception under the New York Convention serving as a limited safeguard designed to prevent enforcement in exceptional cases that would fundamentally violate the enforcing state's substantive legal principles. Historically, the judicial decisions in Pakistan have diverged from global arbitration norms by expansively construing public policy, thereby impeding the enforcement of awards. This expansive interpretation has generated anti-enforcement decisions, resulting in legal uncertainty that discourages foreign investment and hinders Pakistan's integration with the global arbitration order. By examining landmark cases, this article illustrates the adverse impact of Pakistan's deviation from the international standard of restrictive public policy interpretation. While the Supreme Court's 2024 ruling in *Taisei Corporation* and the Draft Arbitration Act 2024's introduction of a statutory definition of public policy indicate an emerging shift toward a more internationalist approach, substantial reforms are still required for Pakistan to establish itself as a reliable forum for the enforcement of arbitral awards.

Keywords: arbitration, enforcement, public policy, awards,

* Taimoor Raza Sultan is an arbitration practitioner having an LL.M. in International Commercial Arbitration from Stockholm University.

** Rana Hassan Ali is an LL.M. candidate in International Economic Law at Punjab University.

Introduction

The public policy exception under Article V(2)(b) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards occupies a contentious position in international commercial arbitration. It empowers national courts to refuse enforcement of foreign arbitral awards where enforcement would contravene the forum state's fundamental legal principles.[1] This provision embodies a balance between the Convention's pro-enforcement mandate and the sovereign prerogative to safeguard core legal and constitutional values.[2]

The drafters intentionally left 'public policy' undefined, recognizing its variable meaning across jurisdictions.[3] This omission, however, was not intended to confer unfettered discretion on national courts[4]. International jurisprudence has consistently held that the exception must be narrowly construed, operating only as an exceptional remedy where enforcement would compel a legal system to compromise its foundational principles[5]. To justify non-enforcement, a public policy violation must be blatant, flagrant, particularly offensive, or intolerable under the enforcing state's legal order[6]. Common examples include contracts tainted by illegality[7], gross violations of due process[8], or awards that threaten constitutional integrity[9] or national sovereignty[10] or international obligations of state.[11] The exception is thus confined to prevent its misuse for merit review or mere disagreement with an arbitral tribunal's reasoning, aligning with global norms that protect the sanctity and finality of arbitration.[12]

---

[1] Joel R. Junker, "The Public Policy Defense to Recognition and Enforcement of Foreign Arbitral Awards," California Western International Law Journal 7, no. 1 (1977): 230.
[2] Ibid., 234; See also, John Wires, The Public Policy Sword and the New York Convention: A Quest for Uniformity (January 4, 2009), 6.
[3] Denise Jansen, "New York Convention: Public Policy Exception," Jus Mundi, updated June 25, 2025.
[4] Ibid.
[5] ieter Sanders, "A Twenty Years' Review of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards," International Lawyer 13 (1979): 269–70.
[6] IBA Subcommittee on Recognition and Enforcement of Arbitral Awards, Report on the Public Policy Exception in the New York Convention (October 2015), 11.
[7] Anil Changaroth, "International Arbitration – A Consensus on Public Policy Defences?" Asian International Arbitration Journal 4, no. 2 (2008): 143.
[8] Excelsior Film TV srl v. UGC-PH, (1999) XXIV Y.B. Com. Arb. 643 (Paris Court of Cassation)
[9] BCB Holdings Limited and The Belize Bank Limited v. The Attorney General of Belize, (2013) CCJ 5 (Caribbean Court of Justice Appellate Jurisdiction)
[10] United World v. Krasny Yakor, Case No. A43-10716/02-27-10 (2003) (Court of the Volgo-Vyatsky Region).
[11] Reinmar Wolff, ed., New York Convention – Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 – Commentary (Munich: C.H. Beck; Oxford: Hart; Baden-Baden: Nomos, 2012), 437.
[12] Darius Chan and Elias Ngai Hum Khong, "Re-Calibration of Curial Intervention in Public Policy Challenges against Arbitral Awards," Journal of International Arbitration 41, no. 3 (2024): 5.

In contrast, the courts in Pakistan have adopted an expansive interpretation of public policy, departing from the restrictive approach entrenched in international practice[13]. This trend, evident in cases such as *HUBCO* and *Reko Diq*, has been used to invalidate arbitration agreements or deny enforcement on unsustainable legal grounds, falling short of the recognized international threshold. Such judicial intervention undermines predictability, finality, and confidence in the arbitral process, raising broader concerns about Pakistan's adherence to international arbitration norms.

This paper examines the anti-arbitration stance of Pakistan's courts, outlines the doctrinal framework of public policy in comparative perspective, and analyses selected domestic decisions that exemplify judicial overreach in interpreting the doctrine of public policy. It further evaluates recent judicial and legislative developments, examining their potential impact on the domestic interpretation of public policy and the anticipated course of judicial decision-making.

Examining Judicial Resistance to International Arbitration in Pakistan

The superior courts of Pakistan have rendered decisions that reflect a protectionist and interventionist approach towards international arbitration, often in stark contrast to modern arbitral practice and pro-enforcement ethos embodied in the New York Convention. The court decisions have consistently favored domestic parties, prioritized national interests, and disregarded contractual commitments under international agreements, undermining the finality of awards and neglecting the internationally recognized principle of party autonomy.[14] Such tendencies have significantly influenced the judicial landscape concerning international arbitration.

In *Messrs Eckhardt & Co.*[15], despite an explicit arbitration clause designating London as the seat, the Sindh High Court refused to stay domestic proceedings on grounds that it would be 'inconvenient to the parties to go to London with evidence for the resolution of dispute by way of arbitration.'[16] This ruling subordinated the parties' contractual choice of forum to considerations of convenience, contravening the cardinal principle of party autonomy.

---

[13] Farah Deeba, "Public Policy as a Defining Force: Examining its Role as a Ground for Nullification of Awards in Arbitration," Pakistan Journal of Society, Education and Language 9, no. 2 (June 2023): 634.
[14] Syed Zaheer Hussain Shah, Sadia Tanveer, and Ahmad Iqbal, "Exploring Notions of Public Policy and Arbitrability in Commercial Arbitration: Insights from Pakistan, the UK, US and India," Pakistan Journal of Law, Analysis and Wisdom 4, no. 4 (April 2025): 24.
[15] Messrs Eckhardt & Co, Marine GmbH v. Muhammad Hanif (PLD 1993 SC 42)
[16] Ibid. para 17

Similarly, in *M/s Uzin Export & Import Enterprises*[17] case, the Supreme Court declined to enforce an arbitration agreement specifying Paris as the seat, reasoning that such recourse 'would be inconvenient to the parties and also would prove to be expensive'[18], thus further evidencing judicial resistance to arbitration agreements.

In *Rupali Polyester*[19] case, the Supreme Court held that an award rendered in London could be treated as 'domestic' solely because the underlying contract was governed by the law of Pakistan.[20] This conflation of the contract's governing law with the seat of arbitration disregarded the settled international principle that the seat determines an award's nationality, thereby permitting concurrent jurisdiction of Pakistani and English courts and inviting judicial interference in foreign-seated arbitrations.

Moreover, in *Societe Generale de Surveillance (SGS) v. Pakistan*[21], the Supreme Court restrained a party from pursuing ICSID arbitration against the government of Pakistan, holding that the party had waived its right to arbitration under the ICSID framework, because the company elected to resolve disputes through domestic arbitration in Pakistan under PSI agreement, and thereby cannot simultaneously initiate ICSID arbitration under the Switzerland-Pakistan BIT[22]. This ruling further entrenched judicial resistance to international arbitration norms.

Collectively, these rulings reveal a pattern of judicial hostility that runs counter to global trends favoring minimal court interference in the process of arbitration. A similar judicial attitude has been followed in the interpretation of public policy, which shall be discussed in a later section of the article.

Doctrine of Public Policy

Public policy refers to the fundamental principles and standards that a state considers essential to its legal, moral, and constitutional order, serving as a benchmark to determine whether certain

[17] M/s Uzin Export & Import Enterprises for Foreign Trade v. M/s M Iftikhar & Co. (1993 SCMR 866
[18] Ibid. para 18
[19] Hitachi Limited and another v. Rupali Polyester and others, 1998 SCMR 1618 (Supreme Court of Pakistan).
[20] Ibid. para 8
[21] Societe Generale De Surveillance SA v Pakistan through Secretary, Ministry of Finance Revenue Division, Islamabad (2002 SCMR 1694)
[22] Ibid. para 10

laws, actions, or agreements are acceptable within its jurisdiction[23]. In the context of international arbitration, it serves as a fundamental exception permitting national courts to refuse recognition and enforcement of foreign arbitral awards that fundamentally violate a country's core legal, constitutional, or moral principles.[24] It functions as a safeguard that balances respect for international arbitration with the protection of essential state interests. Legal scholarship identifies a few conceptions of public policy relevant to arbitration, including *domestic* public policy[25], which covers mandatory rules and principles within a jurisdiction's legal system; *international* public policy[26], a narrower concept focusing on principles deemed essential in a state's international legal relations; and *transnational* public policy[27], the most restrictive, encompassing universally accepted norms such as natural justice and jus cogens principles.

Different jurisdictions have defined and applied public policy according to their distinct legal traditions. For instance, Swiss courts consider the enforcement of an award involving punitive damages contrary to public policy.[28] German courts deny enforcement if an award conflicts intolerably with core principles, such as imposing punitive damages[29], requiring illegal actions, violating antitrust laws[30], or involving unlawful gambling debts. The French courts have applied a strict standard, rejecting enforcement solely in cases of 'flagrant, actual and concrete' breaches of international public policy, typically involving corruption, money laundering, or serious criminal offenses.[31]

Pakistan's approach to public policy in arbitration is shaped by an amalgam of inherited colonial legislation, constitutional Islamic provisions, and judicial interpretation that significantly deviates

[23] Nivedita Chandrakanth Shenoy, "Public Policy under Article V(2)(b) of the New York Convention: Is There a Transnational Standard?" Cardozo Journal of Conflict Resolution 20, no. 1 (2018): 78
[24] Ibid. 79
[25] James D. Fry, "Désordre Public International under the New York Convention: Wither Truly International Public Policy," Chinese Journal of International Law 8 (2009): 81–134, 86.
[26] Pierre Mayer and Audley Sheppard, "Final Report on Public Policy as a Bar to Enforcement of International Arbitral Awards," Arbitration International 19 (2003): 253.
[27] Hossein Fazilatfar, "Transnational Public Policy: Does it Function from Arbitrability to Enforcement?," City University of Hong Kong Law Review 3 (2012): 292.
[28] The Enforcement of Punitive Damages Awards Between United States and Europe: An Introduction for U.S. Practitioners, 52 Int'l L. 469, 487 (2019).
[29] Landgericht Berlin, Decision of June 13, 1989, 35 Recht der Internationalen Wirtschaft 988 (1989) [hereinafter Decision of June 13, 1989].
[30] Markus Altenkirch and Tim Robben, "German Federal Court of Justice on the Level of Scrutiny of an Arbitral Award in Case of an Alleged Violation of Public Policy," Global Arbitration News, January 4, 2023.
[31] Belokon v. Kirghizstan, No. 15/01650, Rev. arb., vol. 2017, Paris, February 21, 2017, 915; See also,

from international restrictive standards.[32] Section 23 of the Contract Act, 1872 invalidates agreements 'opposed to public policy' while Section 7 of the Recognition and Enforcement (Arbitration Agreement and Foreign Arbitral Awards) Act, 2011 bars the enforcement of foreign awards 'contrary to public policy of the country [Pakistan]', and Article 227 of the Constitution of Islamic Republic of Pakistan further mandates legal and regulatory conformity with Islamic injunctions. The early jurisprudence established that public policy should be applied restrictively, with courts duty-bound to 'expound and not expand' the doctrine[33], invoking it 'only in clear cases, in which harm to the public is indisputable'.[34]

However, subsequent judicial development has significantly broadened this approach, encompassing diverse grounds including Islamic law violations (particularly gambling and interest-related activities)[35], criminal law matters, competition law breaches, and agreements affecting family life or economic interests. The courts held that criminal matters cannot be subject to arbitration and that agreements facilitating withdrawal of criminal proceedings contravene public policy, positions that sharply contrast with international practice, where only non-compoundable offences are typically excluded from arbitrable matters[36]. In another case[37], court expansively interpreted public policy by emphasizing that it does not have an immutable meaning but must remain flexible and evolve to reflect changing societal values and norms. This viewpoint, treating the definition of public policy as inherently fluid and undefined, stands in contrast to the current approach advocating for a precise and express categorization of its constituent elements.

This judicial interpretation in Pakistan has created a legal environment where public policy functions not merely as an exceptional safeguard but as a broad review mechanism, fundamentally undermining the predictability and finality essential to effective enforcement of international arbitral awards.

---

[32] A. F. M. Maniruzzaman and Ijaz Ali Chishti, "International Arbitration and Public Policy Issues in the Indian Subcontinent: A Look Through the English Common Law and International Lenses," Manchester Journal of International Economic Law, forthcoming, 200.

[33] The Official Assignee of the High Court of West Pakistan and others V/S The Lloyds Bank Ltd., Karachi and others, PLD 1969 Supreme Court 301

[34] See also, Sultan Textile Mills (Karachi) Ltd. v. Muhammad Yousuf Shamsi (PLD 1972 Kar. 226

[35] Grosvenor Casino (1998); Ali Muhammad v Bashir Ahmad (1991)

[36] Ali Muhammad and others v Bashir Ahmad through his legal heirs, 1991 SCMR 1928

[37] Nan Fung Textiles Ltd. v Sadiq Traders Ltd (PLD 1982 Karachi 619)

Structural Constraints under the New York Convention

The framework of the convention reveals a deliberate pro-enforcement bias that strictly circumscribes the public policy exception under Article V (2) (b). The exception only allows the courts to refuse the enforcement of an award rather than invalidating or annulling it altogether. The power to annul the arbitral award only belongs to the courts of the country where the seat of arbitration is located. Furthermore, the use of permissive language, particularly stating that the courts 'may' rather than 'shall' refuse enforcement, indicates that the application of the public policy exception is discretionary, not mandatory, allowing courts to proceed with enforcement despite the presence of public policy concerns.[38] It encourages judicial restraint and ensures that the public policy exception is invoked only in exceptional cases, consistent with the Convention's overarching pro-enforcement objective.[39]

The provision not only deals with the refusal to enforce an existing award, but also bars the court from preemptively refusing the enforcement of a yet-to-be-issued award based on an anticipated infringement of public policy[40]. It also does not prevent the court from severally enforcing the award, by refusing to enforce the part that offends the public policy[41].

However, the travaux préparatoires provide further guidance, illustrating the drafters' intent to restrict the application of public policy to cases where enforcement would be distinctly contrary to the fundamental principles of the legal system of the country where the award is invoked.[42] The Convention further places a significant evidentiary burden of proof on the party resisting enforcement, thereby narrowing the practical scope of this defense. Furthermore, the support for a narrow judicial review can also be found in the International Law Association's (ILA) 2002 Final Report, which emphatically stressed the finality of the arbitral award and strongly emphasized that

---

[38] UNCITRAL Secretariat, Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York: United Nations, 2016), 125

[39] Zena Prodromou, "Chapter 6: The Public Policy Exception in International Commercial Arbitration," in The Public Order Exception in International Trade, Investment, Human Rights and Commercial Disputes, International Arbitration Law Library, Volume 56 (The Hague: Kluwer Law International, 2020), 155.

[40] D Otto and O Elwan, 'Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention' in H Kronke and others (eds), Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention (Kluwer Law International, 2011) § IV.

[41] J.J. Agro Industries (P) Ltd v Texuna International Ltd [1992] HKCU 0184 751 (High Court of Hong Kong); See also, Laminoirs-Trefileries-Cableries de Lens SA v Southwire Co. [1981] Arb. 247, 248 (US District Court for the Northern District of Georgia).

[42] UNCITRAL Secretariat (n 38), 239–40.

the power of courts to refuse the enforcement should only be confined to cases where an intense or incurable infringement of public policy occurred.[43] The overall structure of the convention indicates that drafters had intended to create a law that facilitates the enforcement of awards in a streamlined manner with restricted judicial oversight.

Divergence from International Norms: Comparative Analysis with Global Arbitration Standards

The following discussion includes the restrictive interpretation of public policy as adopted by leading jurisdictions such as the United States, the United Kingdom, and others, highlighting how their approaches align with or diverge from broader international arbitration standards.

a. United States Jurisprudence and the Parsons Standard

In the majority of states, courts have restrictively interpreted the doctrine of public policy and allowed the enforcement to proceed.[44] Furthermore, in another decision, a United States court determined that the prevailing law casts a 'substantial' or 'heavy' burden of proof on the award-debtor, making the non-enforcement virtually impossible.[45]

The American courts have developed the most influential restrictive approach to the interpretation of public policy under the New York Convention. The foundational decision in Parsons & Whittemore Overseas Co. case[46] established that the public policy is violated when the award contravenes 'the forum state's [United States] fundamental concepts of morality and justice'. The Second Circuit Court of Appeals explicitly rejected arguments that diplomatic tensions, political disagreements, or adverse economic consequences could constitute public policy grounds for refusing enforcement.

The Parsons standard has been consistently applied and refined by subsequent American jurisprudence, creating a robust framework for restrictive public policy interpretation. In another

[43] International Law Association, "Resolution 2/2002," 70th Conference, New Delhi, India, April 2002, Arbitration International 19, no. 2 (2003): 213–15.
[44] Vantage Deepwater Co v Petrobras Am., Inc. [2020] 966 F.3d 361, 370 (US Court of Appeals for the Fifth Circuit): See also, Pagaduan v Carnival Corp. [2020] 830 F. App'x 61, 63 (US Court of Appeals for the Second Circuit): See also, Brostrom Tankers AB v Factorias Vulcano SA [2004] IEHC 198 (High Court of Ireland).
[45] BCB Holdings Ltd. v. Belize, 110 F. Supp. 3d 233, 250 (D.D.C. 2015)
[46] Parsons & Whittemore Overseas Co. v Société Générale de l'Industrie du Papier (RAKTA) [1974] 508 F.2d 969 (US Court of Appeals for the Second Circuit).

landmark case titled Mitsubishi Motors Corp.[47], the Supreme Court confirmed that disputes involving antitrust law remain arbitrable under the domestic laws of the United States, and broadly that disputes involving statutory rights and public regulatory schemes do not raise public policy concerns and can be arbitrated. The Court's reasoning also emphasized that arbitral tribunals possess competence to address public policy concerns within the arbitral process itself, thereby reducing the need for post-award judicial intervention.

b. English Restraint and International Commercial Policy

English courts have developed a sophisticated analytical framework that balances respect for international arbitration with protection of fundamental domestic values. The courts have invariably interpreted the doctrine of public policy in a restrictive manner and set a significantly high standard for the violation of public policy. In the Lesotho Highlands Development Authority[48] case, the court remarked:

'The public policy exception in Article V(2)(b) of the New York Convention must be applied restrictively. It is not enough that the enforcement of the award might be contrary to the forum's domestic law or policy in a broad sense. The breach must be fundamental and capable of shocking the conscience of the court. Public policy grounds are reserved for violations of the most basic notions of morality and justice'.

In addition to this, the court in Westacre Investments Inc.[49] enforced the award despite the allegations that the underlying agreement of consultancy was illegally procured by bribing Kuwaiti officials. The tribunal had already decided against the allegation of corruption, so the court did not conduct a deeper investigation of facts and simply deferred to the tribunal's determination. The Court of Appeal also rejected the allegations of bribery or corruption, without clear proof and direct connection to England, which could justify refusing enforcement. The English courts require clear evidence of public policy violations and reject attempts to invoke public policy based on speculation, unproven allegations, or theoretical concerns

[47] Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614 (1985).
[48] Lesotho Highlands Development Authority v Impregilo SpA [2005] UKHL 43
[49] Westacre Investments Inc v Jugoimport-SDPR Holding Co. Ltd [1999] EWCA Civ 1401; [2000] QB 288 (England and Wales Court of Appeal)

c. Other States

The Hong Kong Court of Final Appeal, in a landmark case[50], upheld enforcement of a China-seated arbitral award despite the award-debtor's claim of procedural unfairness. The court emphasized a narrow interpretation of the public policy exception under the New York Convention, affirming that allegations of procedural irregularities do not, per se, constitute a breach of fundamental justice or morality sufficient to deny enforcement. The decision underscored the principle of finality in arbitral awards and limited judicial intervention in enforcement proceedings.

Similarly, the Indian Supreme Court has consistently adopted an enforcement-friendly approach toward public policy challenges[51], aligning with the U.S. Supreme Court's stance in Mitsubishi and Hong Kong's jurisprudence. In Renusagar Power Co.[52], the Court rejected the award-debtor's argument that enforcement would adversely affect India's economic interests, reiterating that enforcement may only be refused where the award violates 'fundamental notions of justice and morality'. Economic harm, the Court held, is an insufficient basis to deny enforcement.

Comparative Analysis of Restrictive Standards

The cross-jurisdictional analysis reveals several common elements in the global approach to narrow public policy interpretation. First, all major arbitration jurisdictions require that public policy violations reach a minimum threshold of severity, typically described through identifiable words such as 'flagrant', 'manifest', or 'intolerable'. Second, courts consistently distinguish between judicial review for compliance with the standards of public policy and the impermissible review of arbitral awards' merits.

Third, successful public policy challenges typically involve clear violations of fundamental legal principles rather than complex interpretive disputes. Examples of successful challenges include awards mandating criminal conduct, violating basic due process rights, or contradicting fundamental constitutional principles. Conversely, unsuccessful challenges typically involve

[50] Hebei Import & Export Corp. v. Polytek Engineering Co. Ltd.,
[51] Sumitomo Heavy Industries Ltd v Oil & Natural Gas Commission of India [2010] 9 S.C.R. 176 (Supreme Court of India).
[52] Renusagar Power Co. Ltd v General Electric Co. (1984) 2 SCC 679 (Supreme Court of India).

disagreement with arbitral reasoning, application of foreign law principles, or concerns about economic consequences.

The empirical evidence supports the effectiveness of this restrictive approach. Research indicates that public policy objections succeed in only approximately 19% of enforcement proceedings and 21% of setting-aside proceedings.[53] This low success rate reflects the demanding standards applied by courts and demonstrates the practical effectiveness of the narrow interpretation approach.

Pakistan's Judicial Approach towards Public Policy in Arbitration: Case Analysis

The HUBCO Paradigm and Judicial Overreach

The Supreme Court of Pakistan's decision in HUBCO[54] case, represents a paradigmatic example of expansive public policy interpretation that fundamentally deviates from international norms. The case arose from a Power Purchase Agreement between HUBCO and the Water and Power Development Authority containing an explicit arbitration clause providing for ICC arbitration in London. When disputes emerged regarding amendments to the agreement, WAPDA alleged corruption and fraud, arguing that these circumstances precluded arbitration.

The Supreme Court's majority decision adopted an extraordinarily broad construction of public policy that conflated unproven allegations with established facts. The Court held that allegations involving fraud, mala fide, and corruption could not be arbitrated because they concerned criminal matters and implicated public policy.[55] This reasoning fundamentally mischaracterized the nature of contractual disputes and failed to distinguish between the existence of corruption allegations and the arbitrability of related civil claims.

Most significantly, the HUBCO decision completely disregarded the doctrine of separability, which constitutes a cornerstone of modern international arbitration law. International arbitration law recognizes that arbitration clauses are autonomous agreements that survive challenges to the

[53] Monique Sasson, "Public Policy: Is This Catch-All Provision Relevant to the Legitimacy of International Commercial Arbitration?" Kluwer Arbitration.
[54] The Hub Power Company Ltd. v. Pakistan WAPDA through Chairman, PLD 2000 SC 841 (Pakistan).
[55] Ibid. Justice Sheikh Riaz Ahmed's judgment part (e)

main contract, remaining enforceable unless illegality is specifically attributed to the arbitration agreement itself.[56] The Supreme Court's willingness to invalidate the arbitration clause based on allegations concerning the underlying contract violated this fundamental principle and created unprecedented uncertainty regarding the enforceability of arbitration agreements in Pakistan.

The Court's approach to public policy in HUBCO reveals several methodological flaws characteristic of Pakistan's expansive interpretation. First, the Court failed to distinguish between proven facts and mere allegations, treating unsubstantiated corruption claims as sufficient grounds for judicial intervention. Second, the Court expanded the concept of 'criminality' to encompass ordinary commercial disputes, reflecting a fundamental misunderstanding of the distinction between civil and criminal law. Third, the Court demonstrated complete disregard for internationally recognized arbitration principles, positioning Pakistan as an outlier within the international commercial community.

The Reko Diq Constitutional Crisis

The Maulana Abdul Haque Baloch v. Government of Baluchistan[57] case, known as the Reko Diq dispute, represents the most extreme example of Pakistan's judicial overreach in international arbitration matters. The Supreme Court's decision to declare the Chagai Hills Exploration Joint Venture Agreement void *ab initio* directly contravened Pakistan's obligations under the Australia-Pakistan Bilateral Investment Treaty. The case demonstrates how expansive public policy interpretation can create conflicts between domestic law and international legal obligations.

The Supreme Court's reasoning in Reko Diq revealed fundamental misunderstandings of the relationship between domestic contract law and international investment protection. The Court treated the dispute as a purely domestic contractual matter while ignoring Pakistan's international legal obligations under the BIT. This approach conflated private law contractual disputes with public international law obligations and failed to recognize that BIT protections operate independently of domestic contract validity.

[56] Fiona Trust & Holding Corporation v. Privalov, [2007] UKHL 40 (UK).
[57] Maulana Abdul Haque Baloch et al. v. Government of Balochistan through Secretary Industries and Mineral Development and others (PLD 2013 SC 641)

The Court's declaration that the agreement was void *ab initio* based on public policy grounds created a direct conflict with Pakistan's treaty obligations. The Court reasoned that since the dispute involved natural resources, it constituted a matter of public interest because states possess complete sovereignty over natural resources within their territorial jurisdiction. However, this reasoning ignored the fact that Pakistan had voluntarily constrained its sovereignty through the BIT, creating binding international obligations regarding investor treatment.

The ICSID tribunal's eventual award of nearly USD 6 billion against Pakistan, equivalent to the country's entire IMF bailout package, starkly demonstrates the financial consequences of Pakistan's expansive public policy approach.[58] The tribunal found that Pakistan had breached its international obligations regarding fair and equitable treatment, protection against indirect expropriation, and investor protection. The award's magnitude forced Pakistan to negotiate a settlement that essentially restored the original mining arrangements, proving the futility of the Supreme Court's intervention.

Analytical Framework of Pakistani Public Policy Interpretation

Pakistan's judicial approach to public policy in international arbitration reveals several systemic deficiencies that distinguish it from international best practices. First, Pakistani courts consistently fail to apply the high evidentiary standards required for public policy determinations. Courts treat unproven allegations as sufficient grounds for intervention, a practice that contrasts sharply with international standards, which require clear proof of fundamental violations.

Second, Pakistani courts demonstrate a troubling tendency to conflate different categories of legal disputes. The classification of commercial disagreements as criminal matters reflects a fundamental misunderstanding of legal categorization that undermines commercial predictability. This approach creates an environment where virtually any allegation of impropriety can be used to escape arbitration obligations.

Third, Pakistani courts systematically disregard foundational principles of international arbitration law. The rejection of separability, *kompetenz-kompetenz*, and award finality reflects not merely legal error but a fundamental rejection of the international legal framework governing modern

[58] Ahmed, Amin. "Pakistan Told to Pay $5.9bn to Mining Firm in Reko Diq Case." Dawn, July 14, 2019

commercial arbitration. Such rejection inevitably positions Pakistan as an outlier within the international commercial community.

The cumulative effect of these methodological flaws is to create an arbitration environment characterized by unpredictability and judicial hostility toward international commercial arrangements. This environment not only frustrates individual enforcement proceedings but also undermines Pakistan's broader economic interests by deterring foreign investment and limiting integration into global commercial networks.

Recent Developments and Path Forward

The arbitral jurisprudence is gradually shifting from an expansive to a restrictive interpretation, yet the trend lacks consistency. In the Orient Power Company case[59], the court marked a notable shift regarding the issue of public policy in the enforcement of international arbitral awards. The court held that the enforcement of the award can only be refused on the basis of public policy if the illegality is so grave that its non-enforcement remains the only viable choice. It was a decisive moment in the development of the arbitral jurisprudence of the country.

There are two most notable developments on the issue of public policy, which are discussed as under;

The Taisei Corporation Corrective Judgment

The Supreme Court judgment in the Taisei Corporation[60] case accomplished a fundamental realignment of Pakistan's public policy interpretation with international restrictive standards. The court decision explicitly adopted the Parsons standard, requiring public policy violations to contravene ‘the most basic notions of morality and justice’.[61] The court further held that public policy should be ‘narrowly interpreted to promote certainty and predictability’[62] and cannot be made the basis ‘to examine the merits of an award’.[63] The court further determined that ‘an expansive interpretation would vitiate the Convention's basic effort to remove preexisting

[59] Orient Power Co. (Pvt) Ltd v. Sui Northern Gas Pipelines Ltd, (2021) SCMR 1728 (Supreme Court of Pakistan)
[60] Taisei Corporation v. A.M. Construction Company (Pvt.) Ltd., 2024 SCMR 640
[61] Ibid. page 24
[62] Ibid. page 11
[63] Ibid. page 24-25

obstacles to enforcement' and thus erroneous application of law is not covered even by the liberal reading of the doctrine of public policy.

This formulation directly repudiates the expansive approach that had enabled judicial overreach in cases such as HUBCO and Reko Diq, where unproven allegations of corruption were deemed sufficient for public policy intervention.

The Taisei judgment established clear interpretive boundaries by emphasizing the New York Convention's pro-enforcement bias and rejecting attempts to create additional grounds for challenging foreign awards beyond those specified in the Convention.[64] The Court explicitly stated that public policy should be limited to fundamental violations rather than encompassing broad policy preferences or disagreements with arbitral reasoning. This represents a decisive break from the methodology that had characterized earlier Pakistani decisions, where courts routinely conflated technical legal disputes with fundamental public policy concerns.

Draft Arbitration Act 2024: Legislative Codification

The proposed Arbitration Act 2024 provides a statutory definition of public policy for the first time in Pakistan's arbitration framework. Section 39 of the Draft Act specifies that an award may be set aside if it would be in 'conflict with the public policy of Pakistan', and specifically in subsection 3 defines such a conflicting situation, by stating if;

(a) The making of the award was induced or affected by fraud or corruption; or

(b) A material breach of the rules of natural justice occurred

(i) During the arbitral proceedings;

(ii) In connection with the making of the award; or,

(c) It conflicts with the most fundamental norms of morality and justice.

The provision also clarifies that the ground of public policy would not justify the examination of the merits of an award, addressing a fundamental flaw in Pakistan's historical approach. It is a

[64] Ibid. page 10-11

crucial development as it constrains the public policy exception through restrictive criteria that mirror international best practices.

The Draft Act's definitional approach serves as a legislative backstop against judicial overreach by providing clear guidance regarding the appropriate threshold for public policy challenges. Unlike the current regime's definitional vacuum, which has enabled expansive interpretation, the proposed legislation establishes bright-line rules that enhance predictability and certainty for commercial parties, enabling uniform judicial application. Secondly, it is likely to inspire confidence in investors as the violation of public policy shall only be confined to the fundamental norms, and assure parties that awards will not be reopened on the merits or for minor procedural defects. Thirdly, it restricts and streamlines judicial involvement by restricting court review to limited instances of fraud, corruption, or serious procedural unfairness, thereby advancing minimal interference, expediting enforcement, and reducing pressure on civil court dockets.

Future Implications for Public Policy Interpretation

Firstly, the draft act's reference to 'the most fundamental norms of morality and justice' is susceptible to expansive Islamic interpretation. The courts have historically read morality in Islamic terms, and may continue to interpret the provision through principles of Islamic jurisprudence, such as *ẓulm* (injustice), *riba* (usury), or *gharar* (excessive uncertainty). It could invite subjective, unpredictable ruling, particularly influenced by moral, religious, and political considerations. The award may be commercially valid but Islamic unenforceable, creating incompatibility with prevailing international commercial practice.

Secondly, the undefined phrase 'material breach of the rules of natural justice' may risk being construed expansively to cover any perceived procedural or substantive irregularity, rather than being limited to fundamental due process violations.[65] However, it can also prove to be problematic in another aspect, as minor but significant due process violations, e.g., inadequate

[65] Ali Shouzab, "From Fluidity to Clarity? Pakistan's Arbitration Act of 2024 and the Future of Public Policy," Kluwer Arbitration Blog, May 15, 2025

notice of hearings, limited cross-examination, may not qualify as a material breach and thus be invalid for judicial consideration.

Thirdly, the fact of fraud or corruption requires clear, high threshold and often hard-to-obtain evidence, which may, in the absence of clear guidelines as to the assessment of evidence, deter genuine claims.

The stated objective of narrowing the public policy exception is potentially undermined by the vague and expansive language adopted in the Draft Act, which risks reintroducing the very uncertainties the reform seeks to eliminate. For instance, the precise distinction between the concepts of ‘natural justice’ in clause b and ‘justice’ as employed in clause c remains unclear, creating interpretative ambiguities that may invite subjectivity and thus inconsistent judicial application. Furthermore, the judicial restraint without adequate safeguards cannot be expected, particularly in the light of Pakistan’s chequered history of judicial intervention. It is therefore imperative that the provision be refined to provide clearer meaning and interpretative guidance, while retaining sufficient flexibility to accommodate the evolving contours of public policy.

Conclusion

In sum, Pakistan’s long history of heavy judicial intervention in foreign awards gave way to a sweeping public-policy exception that discouraged arbitration and rattled investors. The Supreme Court’s 2024 reforms, narrowing public-policy challenges to fraud, denial of justice, or fundamental moral outrage and enshrining that definition in statute, signal a decisive shift toward pro-enforcement. By balancing minimal court interference with essential safeguards, Pakistan can finally offer the predictability investors demand. The real test will be whether courts consistently honor this new framework or revert to old habits—and in that choice lies Pakistan’s chance to rebuild trust and attract capital.