



INTERPRETATION AND CONSTRUCTION OF NEW YORK CONVENTION IN PAKISTAN: A CRITICAL STUDY

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Abstract:

Convention on the recognition and enforcement of foreign arbitral awards 1958 (New York Convention) aims to promote and regulate the out of the court settlement i.e. Arbitration and other methods of alternative dispute resolution. It regulates the relations between two parties when they are specifically involved in a contractual relationship and working transnationally and across the borders. The convention has undoubtedly created a great opportunity for multinational companies and international bodies including investors and enterprises to go for international agreements with a piece of mind that their rights will be taken care of and an award received by an overseas authority will be honored in all signatory states of the convention. Considering it an international opportunity Pakistan became signatory to the convention in 2005 and hence it became international obligation for the state of Pakistan to give effect the spirit and scope of convention in the legal system. It was initially incorporated through an ordinance in 2005 which after multiple renewals became act of the parliament in 2011. As convention is complete and exhaustive in nature and scope and it clearly states the grounds which can be used by competent authority of signatory states to refuse its implementation in a specific jurisdiction. The grounds provided by the convention have been construed and interpreted since ratification of the convention and this study critically analyzes the instances that how and when provisions of the convention have been interpreted by the courts of the land including apex court of the Land I.e. Supreme Court of Pakistan.

Key words: New York Convention, Arbitration, Interpretation, International Law, Foreign Arbitral awards



Introduction:

This paper aims to discuss that how the methods of alternative dispute resolution and specifically arbitration was chosen by nations of international community as an effective dispute resolution. Furthermore, it has been seen that how international business and agreements welcomed this method and ultimately that resulted into creation of an international law that Convention on recognition and enforcement of foreign arbitral awards 1958 (New York Convention, hereinafter called convention). This newly introduced piece of legislation was welcomed by many states and it created a new hope for businesses and enterprises dealing with international transactions. A major portion of the research includes a critical analysis of Pakistan's ratification to the convention and subsequently judicial attitude towards interpretation of different articles of the convention.

Stern rules of justice and common law have always been a debatable issue and historically it led to creation of equitable remedies as well as people thought of many other unusual remedies as practically and humanly sometimes it becomes very hard to cope with the formalities of any organized system. Apart from human desire to be little comfortable sometimes these stern formalities result into wastage of time and results in bearing of extra or excessive cost. Same was felt about litigation and people started thinking about out of court settlement. These efforts resulted in looking for different dispute resolution methods among which Arbitration is considered to be one of the best methods. Parties in an agreement are at liberty to choose their sole or more arbitrators as per their best assessment and wishes. Arbitration has been as a method of dispute resolution for many decades. It has also gained a significant importance in international and specifically in the field of international commercial transactions. In the start of 20th century countries across the globe started incorporating the law of arbitration in their legal system and courts were made bound to enforce the decisions rendered by arbitrators. Courts were also empowered to review the decisions(Awards) rendered by the arbitrators to ensure that same were awarded not in contravention of principles of natural justice and some basic norms of the legal system. Apparently it seemed that powers of the courts in this context were of supervisory nature and the main focus was to go with the will of the parties as later on developments were seen that parties were at liberty to even choose the law of their choice meaning thereby that if they wish their transaction to be regulated by a specific and certain law there wouldn't be any hindrance. There is unanimous agreement that process of arbitration is efficient, cost effective, confidential and it saves the parties from long lasting litigation process both in terms of finance and time. Therefore, in the last century a strong proarbitration policy has developed among many nations around the globe and arbitration has become a favorite method of dispute resolution in commercial transactions, consumer protection, and even in sports disputes although it can be seriously argued that it has some resemblance with the traditional methods of dispute resolution.

History and development of Arbitration:

Arbitration has not been introduced as a method of dispute resolution to avoid certain disadvantages of other system but it has made its space in legal systems of the world because of its significant



advantages and attractions. Undoubtedly it is a system in which parties want settlement of their disputes without going into the complications of litigation process (Sohaib, 2016). The roots of this method can be seen in different areas of law as set forth below:

Family Law:

Deep roots of this method have been seen in classical Islamic and Christian text. As per Christian literature the initial case of Arbitration was decided by King Solomon. Two females approached King Solomon with a child and each of them claimed that the child belongs to her and she wants to raise the child in her custody. King was left with no option but to offer them the child can be cut by sword in two equal pieces and one piece to be given to each of them. Upon this one of the two females preferred this method while the other preferred the child to be live irrespective of the fact that it comes in her possession or otherwise. King decided in the favor of the female who was in the best interest of the child and who supported the child to be alive. The decision was made by following an out of the box solution instead of applying stern principles of evidence as well as an absolute equality in case of being claimants being exactly at equal footing. This was one of the best example that shows that to achieve the ends of justice an absolute equality is not required all the time (Emerson, 1970). various references are also found in Greek mythology with respect to arbitration. There was a dispute between Juno, Pallas Athene and Venus that among them who is the most beautiful person and ultimately they picked up Royal's shepherd as their arbitrator when all other methods of dispute resolution had failed (Emerson, 1970).

Property Law:

There are reliable reports that Phillip II of Macedonia (Father of Alexander the Great) often resorted to arbitration for settlement of disputes in ancient Greek and different territorial disputes were resolved through this effective method of dispute resolution (Bales, 1997). Existence of such an evidences clearly depict that this method was explored much earlier and it was refined or molded as per needs of modern time. (issue to be discussed in detail in later part of this study).

Commercial Transactions:

Arbitration used to be a method of dispute resolution in commercial transaction for many decades and in many nations of the world. Merchants used to travel through different locations and towns and they wanted rapid and expeditious solutions of their commercial problems. Arbitration was resorted to early commercial disputes in Marco Polo's Desert as well as between Greek and Phoenician Traders (Emerson, 1970). In England during the Middle Ages Arbitral tribunals were considered to be best forums for resolving disputes of traders. Arbitral tribunals were preferred over the Royal Courts. There are evidences that arbitration agreements in commercial transactions were preferred method then courts as early as 1224 (Marvin, 1991). The Royal Courts were focused more to resolve land disputes instead of focusing over the disputes among traders or merchants (Kyriaki, 2010).



Trust and Estates

Arbitration has been used as a method of dispute resolution in cases of trusts and estates since long as on December 14, 1799 arbitration was referred in Gorge Washington's will prior to his death in the given terms.

“But having endeavored to be plain and explicit in all devises even at the expense of prolixity, perhaps of tautology, I hope, and trust, that no disputes will arise concerning them; but if, contrary to expectation, the case should be otherwise from the want of legal expression, or the usual technical terms, or because too much or too little has been said on any of the Devises to be consonant with law, My Will and direction expressly is, that all disputes (if unhappily any should arise) shall be decided by three impartial and intelligent men, known for their probity and good understanding; two to be chosen by the disputants- each having the choice of one- and the third by those two. Which three men thus chosen, shall unfettered by Law, or legal constructions, declare their sense of the Testator's intention; and such decision is, to all intents and purposes to be as binding on the Parties as if it had been given in the Supreme Court of United States (Washington, 1799).”

It is clearly depicted from the will of Washington that he foresaw the evident advantages of this method of dispute resolution in terms of avoiding expenses and expediting the process of wills in the realm of estates management.

Labor Law

In eighteenth Century chamber of commerce in the city of New York resorted to arbitration to resolve a dispute related to wages to seamen. There are also evidences that labor class of America was familiar with the arbitration even prior to the industrial revolution and when they were given a choice to embrace a specific methods of disputes resolution they chose arbitration as one of the most suitable methods for resolving their industrial disputes (Emerson,1970) a report was issued by Beaurou of Labor of statistics that arbitration is one of the attractive methods in various cities including New York, Boston and Chicago (Oliver, 1934). Labor market was completely changed after the industrial revolution that gives right to the use of collective bargaining agents on behalf of the workers to insure and secure proper working conditions. A legislation namely National Labor Relation Act was introduced by Congress in 1935 to protect the rights of employers and employees and to encourage collective bargaining. This also led to the smooth developments and enhancement of arbitration processes (Winograd, 2010).

The Rise of International Arbitration

It is clearly depicted from the foregoing discussion that arbitration had remained an attractive method of dispute resolution out of many other possible methods in which parties desire to go for out of court settlement. Because of these undeniable advantages it was strongly needed that there must be some



benefits of this methods at international level. Organizations, companies, and other multinational legal persons were in dire need of legislation or some international law which could be helpful while entering into international commercial transactions. Admittedly, it was very hard for multinational companies to choose any forum as well as law for their international disputes and even after that the enforcement of decisions obtained from international courts or tribunals was not less than a challenge. International arbitration has gained popularity because of an obvious advantage that it can be bilaterally enforced with the help of an international instrument. With this background Convention on the recognition and enforcement of foreign awards was introduced on June 10, 1958 at New York which is also known as New York Convention. Apart from the earlier mentioned advantages parties are also at liberty that they can select the forum of their choice. Furthermore, arbitration awards are final and not subject to time consuming legal formalities like subject to many appeals at different forums. Once a dispute between the parties is decided by arbitration, the winning party needs to only collect the award and if the loser abide by terms of the award they both don't need to seek the assistance of proper court of law. In case the loser does not abide by terms of the award, the winning party can take the award to enforce against loser where assets of the debtor are located. On the other hand, in case of court judgements there is no such scope of judgements rendered or delivered by courts of law unless there is treaty between the states that they would honor the judgments of each other, a judgment cannot be enforced. Undoubtedly scope of treaty cannot be compared with the scope of convention. It is also worthy to mention that a judgment means judgment or verdict of ultimate court of a specific jurisdiction that means if we take an example of Pakistan that would mean judgment of Supreme Court or at least High Court and to reach these forums it requires a substantial amount of resources as well as plenty of time. In this scenario it is of utmost importance that companies or enterprises working across the borders require an immediate and effective solution that can be achieved through only by seeking a remedy in terms of enforcement under convention. Apart from ongoing discussion international arbitration has become a widely adopted method for dispute resolution as it is chosen in many contracts which are among two or more sovereign states (Khaleeq, 2017).

Convention on the recognition and enforcement of foreign arbitral awards 1958

It is a key instrument in international arbitration that applies to the foreign arbitral awards. It is commonly known as New York Convention and it was adopted in a United Nations Diplomatic Conference on 10 June 1958 and came into force on 7 June 1959. It required that courts of contracting states should give effect to private agreements to arbitrate and to recognize and enforce awards which were passed in other territories. Any award passed in a contracting state that is party to the convention will be considered a foreign award. Foreign award being the main subject matter of the convention and desired object was to seek the enforcement so that contracting parties can have an ease of mind in international transactions generally and international commercial transactions specifically that if they get their dispute resolved by arbitration that will be honored and the newly introduced law would enable them to get the award enforced against the award debtor. It is also pertinent to mention that enforcement of foreign arbitral awards was the supreme consideration and convention had nothing to



do with the domestic awards. As per recent data available there are 169 states that have ratified the convention which means that if a state becomes a party to the convention that can be benefitted in terms of having enforcement of its awards in other 168 states on bilateral which would not be termed as a bad deal looked through any mirror or aspect.

Historically the initial draft of the convention was produced by international chamber of commerce (ICC) IN 1953 and it was a project of United Nations Economic and Social Council. Subsequently after many considerations and deliberations the final draft of the convention was presented later on in 1958.

Enforcement of Foreign Arbitral awards:

Convention has itself defined foreign arbitral award in terms of an award which has been passed in a territory other than where recognition and enforcement is sought. It implies that if recognition and enforcement is desired in one state it must not be rendered within the territorial jurisdiction of the state but it must be passed in a contracting state that is foreign state (Convention, 1958). It has been further mandated by the convention that award does not mean to be a decision that has been given by an arbitrator placed overseas but it also includes decisions of international organizations who were chosen to be arbitrators meaning thereby that it acknowledges personal as well institutional arbitration. It has also been emphasized by the convention that contracting states are not supposed to refuse recognition and enforcement unless refusal is justified by the Article V of the convention. Article V deals with the grounds that can be used in case a foreign arbitral award is not going to be recognized and enforced.

Recognition and enforcement of Foreign Arbitral award in Pakistan:

The convention was ratified by Pakistan on 14 July 2005 and to give effect it was enacted through an ordinance in Pakistan namely Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance 2005. The ordinance was renewed multiple times respectively in year 2006, 2007, 2009 and 2010 and it was finally given the form of an act in 2011 through act of the Parliament (hereinafter called the act of 2011) and hence the spirit of the convention was permanently made part of the legal system. Its sole purpose was to enforce the foreign arbitration agreements which was codified in section 3 and 4 of the act and it also contained provisions with respect to recognition and enforcement of foreign arbitral awards under section 6 and 7 of the act. Act further clarified that the scope of judicial interpretation was restricted and narrow as the word “shall” was used for recognition and enforcement of foreign arbitral awards. Undoubtedly act of 2011 came with a pro-enforcement policy which was actual spirit of the convention. Enactment of 2011 act was considered a big hope by the award holders and Pakistani Courts were approached to seek recognition and enforcement of foreign arbitral awards. This act being a special having very narrow scope of judicial intervention was to be dealt in such a way that courts shall not refuse to recognize and enforce a foreign award unless ground for refusal is well justified under Article V of the convention. However,



on the ground, Pakistani legal system and Courts could not pace up in such a way the spirit of all this legal regime change could actively adopted rather recognition of foreign awards was delayed or confused on different technical grounds which practically made the foreign awards redundant for the award holders. Interpretation of the act became a challenge and consequently inconsistent judgments were passed by constitutional courts and these judgments were contrary to the established principles of arbitration. This interpretation consisted of decisions given over a short span of time hence that can easily be considered recent approach of courts over the subject. Some case laws have been selected that have been given by either High Courts of provinces or Honorable Supreme Court of Pakistan. Few cases have been selected for this academic study and research which have been given below:

TAISEI CORPORATION VS A.M. CONSTRUCTION COMPANY (PVT.) LTD.

In this case (Lahore High Court, 2012) there was a contract between two parties relating to a construction matter and the parties agreed to resolve their any disputes through arbitration. The authority to appoint arbitrator was delegated to international chamber of commerce (ICC). It was further agreed that place or arbitration will be Singapore. Rest of affairs were made subject to the detailed terms and conditions agreed between the parties and in these terms it was contemplated that in all these proceedings the governing law will be the law of the Pakistan. Disputes arose between the parties and could not be resolved amicably. Matter was referred to the ICC by the respondent of the present case and a sole arbitrator was appointed by the ICC. Proceedings were attended by both the parties and on 09-09-2011 arbitrator delivered an award at Singapore. Intimation of the award was delivered to the respondent through a letter to his registered address at Lahore by the Institution. Many claims of the present respondent were not honored by the Arbitrator except one and on the other hand in counter claim by the present petitioner it was directed to respondent to pay a sum of Rs. 158,135,576. Respondent also held liable to pay the Cost of Arbitration 23,073,952 along with administrative expense of ICC amounting US\$ 42500.

Upon receiving the copy of award respondent moved an application to civil court in Lahore claiming that as the award has been received in Lahore so the Civil Court at Lahore has territorial jurisdiction to entertain the matters pertaining to award in question. It was further contended that there are serious objections over the award so the Arbitrator be directed to file a signed copy of the award along with but not limited to all depositions, statements of the witnesses, reports given by experts, and documents filed or produced before the arbitrator and any relevant orders or directions passed by the arbitrator from time to time during the proceedings.

The suit was contested by the petitioner and 2 main objections were raised i.e. one with respect to territorial jurisdiction of the court and other with respect to the foreign award. It was objected that neither of the parties i.e. Petitioner, Respondent or Arbitrator ordinarily resides in Lahore nor any one of them carries on business in Lahore. Agreement was not executed in Lahore. The Court at Lahore has no territorial nexus with the award or proceedings thereof except the fact that the award was



delivered to respondent at Lahore at one of its offices, Hence Court at Lahore does not have territorial jurisdiction to entertain the suit. Secondly it was a foreign award and as per Section 3 of 2011 act High Court has exclusive jurisdiction to deal with such awards and then further enforce the award or refuse the enforcement. Admittedly no party had taken any legal action with respect to award in hand prior to these proceedings at Civil Court at Lahore. The matter reasserted by the respondent that many meetings had held at Lahore so there is no question about territorial jurisdiction. Furthermore, respondent denied that this award does not fall within the ambit of foreign award as agreement between the parties was concluded back in 2008 and act of 2011 could not be invoked retrospectively. Civil Court did not agree with the present petitioner and admitted the jurisdiction of the court as well as declared that award could not be safely presumed or considered to be a foreign award. The matter ultimately raised before the Lahore High Court. It is also interesting and pertinent to mention that Civil Court in Lahore placed reliance for obtaining ratio on a judgement reported as 1981 SCMR 494 (Supreme Court, 1981) which could not have been considered a binding law as at the time of decision neither Pakistan was a contracting state to the convention nor the act of 2011 was in force in any form i.e. either act or ordinance. Lahore High Court after hearing both the parties and perusal of all the relevant record that included all the detailed correspondence between the parties and their executed agreements reached to the conclusion that Court at Lahore has territorial jurisdiction. It also held that award could not be considered as foreign award because in the sub contracts it was agreed between the parties that governing law will be of the Pakistan so how an award can be a foreign award. Ultimately revision was dismissed and decision of Civil Court was reaffirmed by the Lahore High Court. This matter was taken before the Honorable Supreme Court and leave was granted to see the matter. Apex Court also opined that the matter to be stayed at their end as award holder also tried to get the award enforced and executed in the province of Sindh as contract between the parties was concluded there and major portion of appellant's business was also there. But this series of deprivation and struggle for due did not come to an end. As initially matter was taken before the single bench of the Sindh High Court which despite the fact that Supreme Court also pointed out that let the matter be decided. But learned single judge of Sindh High Court dismissed the suit on a technical ground that as the matter was already decided by the Lahore High Court hence that is to be hit by principle of Res-Judicata. The decision was challenged through an intra court appeal and the same was entertained by a division bench (Sindh High Court, 2018) learned division bench decided that Sindh High Court can proceed with the award by presuming that award being a foreign award. Though it is not a grave bad luck that ultimately some favorable response was seen by the creditor of foreign award but it is also pertinent to mention that it took almost a decade to determine that whether the award is foreign or domestic award. The pertinent dates in this regard are that Lahore High Court gave its decision on 14-05-2012, Supreme Court granted leave on 08-08-2012 and decision of division bench of Sindh High Court was delivered on 7-10-2016.

Abdullah vs CNAN Group Spa:

Another interpretation with respect to enforcement of foreign arbitral awards was given in this judgment by Sindh High Court in this case (Sindh High Court, 2014). The matter was regarding



interpretation of Article V of the convention which primarily deals with the situations that when enforcement of foreign arbitral award can be denied. In this case court saw the provision in another perspective and held that the person against whom award is delivered can only seek the benefit provided by Article V of the convention if proceedings for enforcement are initiated against him by the award holder meaning thereby that if some wrong has been committed to him and he vigilantly tries to get rid of complications or future uncertainty, he will not be permitted to do so or in other words he must wait for the award holder that once he comes in the field then he can produce his defense.

Rossmere International Limited versus Sea Lion International Shipping Inc.

This case has been decided and reported by Quetta High Court Balochistan (Quetta High Court, 2017). In this case a new doctrine was introduced and adopted that an award was recognized and it was admitted that award deserves enforcement because of being a foreign arbitral award. But its enforcement was denied on the ground that award debtor does not have any assets in the territorial limits of the court. The Court further suggested that award holder can file a civil suit in the civil court where assets of debtor are located or alternatively where debtor holds an account and funds are available in the account.

Orient Power Company (Private) Limited v Sui Northern Gas Pipelines Limited

In this case (Lahore High Court, 2019) decided a case between Orient Power Company and Sui Northern Gas Pipelines Limited. Both parties entered into a gas supply agreement and it was agreed that in case of any dispute matter will be referred to London Court of International arbitration. Dispute arose between the parties and matter was referred to arbitration. Consequently, two awards were rendered and debtor of awards challenged the awards in a civil court at Lahore. Award holder raised objections before the Lahore High Court and contended that it is the exclusive jurisdiction of High Court under the 2011 act that Only High Court can deal with foreign arbitral awards. Learned single judge of Lahore High Court agreed with the claimant that only High Court has the power and jurisdiction to deal with such matters. Same decision was upheld by Honorable Division Bench of Lahore High Court and then Apex Court of the land. Many other important aspects pertaining to foreign arbitral awards were considered and it was held by the Apex Court (Supreme Court, 2021) that courts in Pakistan are not supposed to check the quantum of award or decretal amount fixed by award on the pretext of public policy as it may become a backdoor to affect or amend award rendered by international arbitrators. Undoubtedly this decision initially by Lahore High Court and ultimately by Supreme Court was not less than a lime light in the field of enforcement of foreign arbitral awards. But as a model decision and landmark judgment some other measures and deeper appreciation of different terms involved in enforcement of foreign arbitral awards was possible as it was before the Supreme Court but same was not discussed at length. As it is obvious in many jurisdictions of the world that a restrictive approach is adopted while dealing with such cases but Supreme Court restricted itself only to the quantum of award with reference to public policy. In my humble opinion



that court could have properly define the scope of disputed ground of public policy as a future guideline but the court restricted itself only to the extent of quantum of award and its relation with the public policy.

Recommendations and Suggestions:

In pursuance to the foregoing discussion throughout the research it can be safely concluded that following suggestions can be adhered to in order to smoothly get benefit of this useful piece of international law i.e. Convention. It can also be added that adhering to these recommendations will not only be justifiable but also it will ensure to earn a good name for the state in international community.

1. The way Pakistani Courts have interpreted the convention and connected matters is vague and unclear. It is clear that courts have adopted various methods for interpretation purpose i.e. sometimes courts have resorted to the discretion and applied their legal approach and sometimes they have referred to international commentaries for the purpose. It shown that the legal system lacks a proper legislation to meet the international obligation. Proper mechanism of enforcement could possibly be added to the legislation so remove uncertainties and ambiguities.
2. A former chief justice of Pakistan Mian Saqib Nisar has shown a concern in one of his articles that enforcement of 2011 has brought Pakistan close to the achieve the spirit of international law (Nisar, 2018). But in my humble opinion being close or closer to the objective does not necessarily mean that a mature approach has been adopted by the state or the legal system. For fulfillment of international obligations, a very clear and mature approach has to be adopted primarily by the state and subsequently by all the stake holders of legal system. This clear approach must yield definite results instead of relying on the speculations like closer etc.
3. Courts are there to fill the gaps and intervene only in case of apparent irregularity or miscarriage of justice. Therefore, it can be recommended that while dealing with the cases of foreign arbitral awards the role of courts is not at par with normal appellate proceedings rather the nature of proceedings is entirely different and that must be taken into consideration. This also attracts behavior on reciprocal basis that if same behavior is adopted by the courts of all contracting states, this useful piece of international law would become redundant.
4. In *Rossmere* case court did not adopt the pro-enforcement approach which means that jurisdiction will lose its attraction for foreign businesses and investors which can be a big and vital threat to the developing economy like Pakistan. Hence courts are supposed to adopt a pro-enforcement approach if necessary intervention is not necessarily required or warranted.
5. Interpretation by the courts have somehow defeated that purpose of international arbitration generally and international commercial arbitration specifically in last 15 years. Act of 2011 aimed to address all the issues related to enforcement of foreign arbitral awards but that could not be achieved because of many procedural hurdles (Raza, 2018). Ambiguities about procedure has led to inconsistency that whether holder of an award is required to file a civil



- suit with request of summary disposal or what parameters are to be adopted by the court while using its discretion. Legislative measures must be taken to remove such inconsistencies.
6. In Teisei case civil court of Lahore relied upon a judgment reported as 1981 SCMR 494 which was reported at least two decades ago before the implementation of 2011 act which is not expected from courts as courts are believed to act in such a way that maximum level of prudence is expected from them. Relying on a judgment which was passed when there was a different scheme for implementation of foreign arbitral will not lead to anything except miscarriage of justice. Similarly, in the same case Lahore High Court relied on a judgement reported as 1998 SCMR 1618 which does not seem to be logical and rational. It can be safely recommended that while the courts must deal with utmost care when dealing with the matters on international importance. Though negligence cannot be expected from a court of law even in domestic cases but it requires an extra layer of protection when the matter is pertaining to international law. In the same spirit Constitutional Courts are also expected to act in a way that shows maximum care and prudence.
 7. Lahore High Court required in its judgement (Lahore High Court, 2012) that if a matter has been decided at international forum then why the judgment has not been sent by that specific forum to the court that award could be safely presumed a foreign award and it can be enforced against the debtor. On the other hand, this is the least application of juristic mind by making such a requirement. How it is expected from an international forum that the forum known minute details about our system and the award will be accurately dispatched to the court which is supposed to implement the award. Such kind of extraordinary expectation cannot be even thought of within the legal system. As when a judgment in a civil case is passed by supreme court then that judgment is not sent by supreme Court for execution but that is taken up by the judgment or decree holder for execution. Same is the case of holder of an award by means of foreign arbitration so such a requirement by a constitutional court is does not seem to be just, fair and reasonable. High Court can frame such rules for special proceedings that a procedural demand, which is not part of the High Court Rules or any other law should not be made to the parties as it is well settled principle of law that the vigilant person has to be honored and rewarded by the courts and the person who holds the decree or award has to be vigilant and seek its enforcement from the relevant judicial forums.
 8. In the same case the person who took the matter for international arbitration but could not get the award in his favor. Facts of the case suggest that the ICC when proceeded with the matter and gave the award, award was actually not given to the initiator of the proceedings but it was given to respondent in counter claim. When the claimant failed to get the award from an international forum then he took another attempt to deceive the domestic legal system and to some extent he found support by the courts as it took almost a decade to award holder that he received some relief from courts. It is humbly suggested that courts were not supposed to extend any favor to the debtor that prima facie it was much clear that he was not approaching the court with clean hands but he was trying to avoid the liability. There are well settled principles of equity and good conscience that sometimes rigid principles of law are not



- sufficient to address the grievance of the aggrieved then it becomes mandatory for the system to come with an out of the box solution and address the matter in a justifiable manner.
9. In the Orient Power Company Case the Court could have refuted this finding and the arguments built on this finding more effectively relying upon the principles of interpretation relating to the effect of repeal or non-repeal of pertinent provisions of a statute. Further, the Court omitted to discuss and distinguish facts of the *Hitachi Case*, which was, in fact, relied upon in the *Taisei Case*.
 10. None of the laws or case laws have exhaustively defined the scope of public policy so further rejection of foreign arbitral awards can be stopped but it has been seen in many cases that courts have opted to discuss only specific grounds pertaining to public policy and it has never been discussed at length.
 11. Federal Government has not legislated any rules that are also a big hurdle in interpretation of different complex prepositions. It is strongly recommended that rules may be legislated on urgent basis.
 12. It has been seen at many instances that debtors of awards try to initiate proceedings in the civil courts as in the civil courts different delaying and defaulting tactics can easily be used, this is because of the reason that Legislature has not repealed Sections 14, 30, and 33 of the 1940 Act, therefore, the remedies under these provisions remain available to a party affected by an award before the civil court was not thoroughly debated by the Court. If it is properly addressed by the Court, then the future door to litigate in the civil courts would have been closed resulting in saving the time of litigants who at the very outset of the contract opted to go for the arbitration and tried to avoid the time consuming and expensive litigation.
 13. Conclusively it is recommended that while keeping in mind the economic situation of the country and developing global economic practices Pakistan is supposed to come up with very clear and intelligible rules as well as interpretations which would attract a favorable international opinion about the jurisdiction and legal system. In such circumstances it is not only violation of international law but it will make Pakistan an unattractive and unappealing state for the international investors and other stake holders of international financial projects which could never be an attractive or favorable option for a developing state like Pakistan.



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