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## **A Critical Evaluation of Grounds of Refusal for the Recognition and Enforcement of Foreign Commercial Arbitral Awards in Pakistan and the UK**

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### **ABSTRACT**

**Background:** The introduction sets the stage for the study by highlighting the increasing importance of international commercial arbitration in resolving cross-border business disputes. It underscores the significance of analyzing the factors leading to the refusal to recognize and enforce foreign commercial arbitration rulings in Pakistan and the UK.

**Methodology:** This section details the research methodology employed in the study. It highlights the comparative approach used to examine case studies and legal frameworks in both jurisdictions. The doctrinal legal method is explained as the chosen analytical tool for scrutinizing the grounds for rejection in Pakistan and the UK. A clear explanation of the methodology ensures transparency and replicability of the study.

**Results:** The results section synthesizes the findings from the comparative analysis. It highlights commonalities and differences in the grounds for rejection in Pakistan and the UK. The section presents a comprehensive overview of the factors contributing to the efficacy or inefficacy of the recognition and enforcement processes in both nations.

**Discussion:** Building on the results, study the importance of consistency and clarity in international commercial arbitration legislation for ensuring the reliability and implementation of foreign arbitral awards.

**Keywords:** Grounds for refusal; recognition; enforcement; foreign arbitral award; foreign commercial arbitration

## 1. Introduction

Arbitration stands out as the prevailing and favored method for resolving disputes between commercial entities (Nisar, M. S. 2008). Justified by its advantages, including party autonomy, adaptability, and efficient processes, the widespread preference for arbitration is well-founded. Arbitrators render conclusive and binding awards that are immune to substantive challenges. Nevertheless, achieving a harmonious balance between party autonomy and award conclusiveness proves intricate, particularly in the context of selecting the applicable substantive and governing law (Guido.C, 2011).

International Commercial Arbitration (ICA) serves as a central approach for settling disputes related to REFCAs and agreements in general. Essentially, international arbitration operates as a contractual mechanism, where parties voluntarily agree to resolve disputes through the involvement of one or more arbitrators, selected either directly by the parties or on their behalf. This process adheres to established adjudicatory procedures, typically outlined in a distinct arbitration agreement (AA) or incorporated as a provision within their contract for handling future disputes. The practice of international arbitration grants parties the ability to resolve their disagreements without being bound by the formalities and intricacies of their domestic legal systems (Ziyad A. Alnuaimy and Ahmad T. Yaseen, 2023). International arbitration has assumed an exceedingly constructive role in the resolution of international commercial disputes, serving as an alternative approach primarily due to its inherent flexibility, practicality, and often more cost-effective nature. Parties have the autonomy to select the jurisdiction for the arbitration proceedings, the arbitration forum, and the applicable laws, providing them with substantial control over the dispute resolution process (Luca G.).

The New York Convention (NYC) specifies its scope to awards that are not domestic, and once again, there exist varying interpretations of this term. Article I of the NYC can be summarized as stating that the Convention applies to REFCAs made in a country other than the one where recognition and enforcement are sought, regardless of whether the parties involved are individuals or legal entities (Abhi Udai. A.S & Gupta. T 2023). It also covers arbitration awards that are not categorized as domestic awards in the state where recognition and enforcement are sought. The term "arbitral awards" (AW) encompasses awards made by individual arbitrators appointed for specific cases and awards issued by permanent arbitral bodies chosen by the parties. When a state signs, ratifies or joins the NYC or extends its application under Article X, it has the option, based on reciprocity, to declare that it will apply the NYC exclusively to awards made within the territory of another Contracting State.

The New York Convention (NYC) introduced the concept of a "universal approach" (Van den Berg, A. J., & Den Haag, T. M. C. 1981) concerning Foreign Arbitral Awards (FAAs) made in one state's territory but enforced in another. This approach is not confined to specific contracting states, although certain restrictions apply. The convention excludes awards made in the enforcing state itself, somewhat limiting the universal approach. However, it also extends its applicability to awards not considered domestic, thereby broadening the scope to include awards made both within a country and in another state, provided they fall under the convention's purview. The framework of the NYC strongly supports the idea of a "universal approach," aligning with a current trend seen in international conventions.

The evolution of the international arbitration framework in Pakistan and the UK differs within the ambit of historical perspective. Before 2005, Pakistan lacked a comprehensive legal framework to regulate international arbitration, except for the Arbitration Protocol and Convention Act (APC) of 1937, which specifically dealt with Foreign Arbitral Awards (FAAs). The country's approach to international arbitration was largely shaped by various court decisions, gradually establishing certain procedures. It is noteworthy that judges across different courts recognized the importance of resolving commercial disputes through arbitration, especially in cases with international dimensions. The Sindh High Court's ruling in the case of A. Meredith Janes Co. Ltd emphasized the need for Pakistan to build credibility in the global business arena and discouraged the use of legal

proceedings as a means to obstruct cross-border commercial agreements (CLC, 1999). Furthermore, instances such as the *Conticotton S* case demonstrated Pakistani courts' support for the arbitration process. However, existing enforceable arbitration statutes in Pakistan primarily focused on domestic disputes, leaving a significant gap in addressing international arbitration within the country. Recognizing the necessity for a more investor-friendly legal framework to facilitate the resolution of International Commercial Arbitration (ICA) disputes and attract foreign investment, the government of Pakistan took proactive measures. The enactment of the Recognition and Enforcement of Foreign Arbitral Awards (REFAA) in 2011 marked a significant step in empowering ICA and strengthening the REFCAAs (PLD 2000). Under section 3 of the REFAA, the High Courts were given jurisdiction to recognize or enforce arbitral awards, with the same authority over the execution of awards as if they were judgments of the High Court. Section 6 of REFAA, 2011 stipulated under section 7 that Pakistan's courts possess the authority to decline the REFCAAs if that award falls within the scope of Article V of the NYC, 1958.

In contrast, the UK plays a central role in European international trade and is instrumental in resolving commercial disputes through arbitration. Due to its close geographical proximity to Europe, effectively managing trade transactions and addressing conflicts with European nations is a crucial responsibility for the UK. The UK has a historical legacy of establishing and refining procedures for commercial arbitration dating back to merchant associations such as guilds in the 16th century. These arbitration methods have remained significant and are still in use today. However, the process of commercial arbitration in the UK has been influenced by common law principles due to the absence of dedicated legislation governing such arbitrations. Consequently, common law principles underpinned commercial arbitration practices in the UK until the early 19th century (Sung, J. H. 2021).

This evolution prompted a reevaluation of the commercial provisions of the Common Law Procedure Act (CLPA) of 1854. This reassessment led to the replacement of this Act with a new legislation in 1889 known as the Arbitration Act, of 1889. This Act marked a notable expansion in the court's framework of commercial arbitration and remains a benchmark for arbitration regulations and principles in England. The Arbitration Act remained in effect until 1934. During the period between the Arbitration Act of 1889 and the Arbitration Act of 1934, two key Acts were

enacted in England. First, the Arbitration Protocol Convention 1927 was introduced, dealing with Foreign Arbitral Awards (FAAs) and implementing the provisions of the 1923 Geneva Convention. Second, the Arbitration (Foreign Agreements) Act 1930 was framed to give effect to the 1927 Geneva Convention on the enforcement of Foreign Commercial Arbitration Agreements (FCAAs). Both these Acts laid the initial legal foundation in England for addressing non-domestic arbitration and REFAAs.

Between the Arbitration Act of 1889 and the Arbitration Act of 1934, the Mackinnon Committee in 1927 put forth recommendations for potential amendments to the rules of the 1934 Act. As a result, the Act's rules were changed within the ambit of these Committee recommendations (Andrews, N. 2015). England framed a different legal framework for the development of the arbitration regime from 1950 to 1996, beginning with the new Arbitration Act introduced in 1950. Acts made between 1889 and 1934 were replaced with the emergence of this Act in 1950. After that, the Arbitration (International Investment Disputes) Act 1966 (AIDA) was framed within the ambit of the Washington Convention of 1965 (WC). However, a new Arbitration Act was framed in 1975 to give effect to the New York Convention (NYC) of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (REFAA). The Arbitration Act of 1975 was formulated, ushering in a fresh framework for addressing appeals centered on legal matters. Nevertheless, both of these Acts have been subsequently revoked by the Arbitration Act of 1996. This new legislation effectively amalgamates various regulations drawn from the Arbitration Acts of 1950, 1975, 1979, the Consumer Arbitration Agreement of 1988, and principles from Common Law (Andrews, N. 2015).

### **3. Grounds of Refusal for REFCAAs under the NYC, 1958**

Article V of the NYC empowers the competent authority in the country where FAAs are being used to reject the R and E of that award based on seven specific conditions (Zhang, X. 2014). The seven grounds for refusal are categorized into two groups. The initial five reasons outlined in Article V (1) require the parties against whom the arbitral awards are being invoked to establish these grounds. The second category of refusal grounds can be invoked by the competent authorities of the country where the arbitral award is being relied upon, without the need for the parties to highlight them (Zhang, X. 2014)

Firstly Article V (1) (a) of the NYC permits the rejection of REFCAAs based on an invalid AA, with assessment occurring in three distinct situations (Zhang, X. 2014). The validity of an agreement is the first essential requirement regarding the REFCAAs. Resolution of the dispute through litigation is considered a fundamental right of citizens unless it is willfully substituted by arbitration. The will of the party is demonstrated in an AA which must resist any intervention through the resolution of dispute by default process, i.e., litigation. The REFCAAs may be declined if the agreement is found to be defective (Poon N, 2012). If a party demonstrates that the AA is invalid or void, the arbitral awards will not be recognized and enforced.

Secondly, the arbitration process must align with established procedural standards and rules. Specifically, it signifies that the arbitration proceedings should conform to the prescribed procedural norms and regulations (Kurkela, M. S., & Turunen, S. 2010). Article V (1) (b) of NYC addresses the issue of due process violation, stating that enforcement may be refused if the losing party did not receive adequate notice of the arbitrator's appointment or the arbitration proceedings or if they were otherwise unable to present their case. The courts have the authority to reject recognition and enforcement when there is a violation of 'due process,' which encompasses fundamental procedural principles such as ensuring a fair hearing and adversary proceedings, commonly known as 'audi et altrampartem.'

Thirdly, in the realm of ICA, arbitrators' jurisdiction is not conferred directly by national laws or other regulatory frameworks but rather by the parties themselves. A valid and, to the extent possible, flawless arbitration clause is a fundamental prerequisite and a protective measure that allows parties to initiate lawful and efficient arbitration proceedings. The arbitration agreement created by the disputing parties should unambiguously define the scope of the disputes to be considered by the arbitrators they have chosen and entrusted (Liu.X 2006) Due to the contractual nature of arbitration submissions, which encompass arbitral clauses or distinct AA, parties possess complete autonomy in determining the extent of arbitration. This bears similarity to civil litigation in domestic courts, where judges can adjudicate on matters not brought forth by the parties (Xingwei Z, 2014) Fourthly, Article V (1) (d) of the NYC stated that if the constitution of arbitral tribunal is improper, either because it does not adhere to the agreed-upon composition or it does not align with the legal requirements of the country where the arbitration occurred. Competent authorities have the

authority to decline the REFAAs if either the composition of the arbitral tribunal or the arbitral procedure deviates from what was agreed upon in the AA. Furthermore, if the AA itself did not conform to the law of the country where the arbitration occurred, this could also provide grounds for the refusal of REFAAs (William R, 2014) the issue of impropriety can arise when the arbitration process does not align with the terms specified in the agreement.

Fifthly, Article (V) (1) (e) of the NYC stated that courts have the authority to decline the REFCAs under certain circumstances. Specifically, this can occur if the party opposing REFCAs can demonstrate that either the AW is not legally binding on the parties, or that the award has been invalidated or temporarily halted. It is essential to note that any such invalidation or suspension must be carried out by the competent authority in the country where the AW was originally issued. The original provision stated that an FAA was not considered final until it had been made open to the parties, including the possibility of appeal, only once the award had achieved finality could it be enforced. However, this requirement of finality has been replaced in NYC with a mechanism involving a double exequatur. In this revised mechanism, the refusal of REFCAs can occur if the AW is deemed non-binding by the parties. This change emphasizes the award's binding nature rather than its finality (Darwazeh, N, 2010)

Sixthly, Article V (2) of the NYC stated that the Courts may decline the REFAAs on its initiative if the enforcement would violate the Public Policy of that country. Additionally, if the subject matter of the dispute is not suitable for arbitration under the law of the country where enforcement is sought, the court may also refuse enforcement. However, determining the exact meaning of arbitrability within the framework of Navigating the complexities of NYC can be quite demanding, particularly in the context of conflict of law principles. The understanding of this concept is delegated to specific regulations within individual countries, leading to potential variations and evolutionary changes in interpretations across nations. These disparities in regulations about arbitrability have had a notable impact on the validity of arbitration agreements and, consequently, the enforceability of arbitral awards. Notably, the seventh ground for refusal, initiated autonomously by domestic authorities, is linked to the violation of public policy within the International Commercial Arbitration (ICA) regime. It is crucial to highlight that the New York Convention (NYC) has imposed substantial constraints on the interpretations and practices

surrounding the public policy theory in various contracting states. Pakistan and the United Kingdom have also incorporated these limitations into their domestic legal frameworks. In Pakistan, the existing legal framework of the Recognition and Enforcement of Foreign Arbitral Awards (REFAA) Act of 2011 does not explicitly delineate separate grounds for the REFCAs. Section 7 of the REFAA Act 2011 specifies that REFCAs can only be denied under the provisions outlined in Article V of the NYC. Conversely, in the United Kingdom, to enforce an arbitral ruling under the NYC, the party seeking enforcement must adhere to additional procedural requirements imposed by the local jurisdiction, alongside the formal criteria specified in the award. An application for the recognition and enforcement of an award may encounter opposition based on various grounds. If the tribunal does not possess substantial jurisdiction to issue the award, it will not be enforced under Section 66 of the Act for awards that are not governed by the NYC. Section 103 of the Act includes an extensive compilation of reasons for denying recognition or execution of a NYC award, mirroring the wording of the NYC. The English court has the authority to reject the implementation of a judgment under section 66, based on comparable reasons that might be used as a defense to an application for recognition and enforcement of a NYC award. In the recent case of *Kabbab-Ji Sal (Lebanon) v. Kout Food Group (Kuwait)* [2021], the English Supreme Court refused to acknowledge an arbitration judgment made in a foreign country under section 103(2)(b) of the Act. The court justified its decision by pointing out that the award conflicted with a party that was not involved in the arbitration. The Supreme Court confirmed that, in appropriate situations, a summary procedure may be used in compliance with this provision. In addition, the Commercial Court has determined that it does not have the jurisdiction to allow a defendant in an enforcement action under the NYC to submit a CPR Part 20 counterclaim (*Selelevision Saudi Co v Bein Media Group LLC*, 2021).

The court may refuse on the ground of the incapacity of a party which may be raised by the losing party. In contrast, other regulatory frameworks merely use the term 'party' without specifying such differentiation and they do not clarify whether the party can be a physical or legal entity. Hence, it seems that 'party' encompasses any entity participating in the arbitration, whether it's a public or private entity (Bermann, G. A. 2017). The critical aspect regarding the issue of capacity revolves around identifying the governing law that dictates a party's capacity. The mentioned regulations do



not specify the method for determining this law, which could be the parties' choice, the law of the jurisdiction where the AA is formed, the law governing the AA, or any other relevant law. In the UK, a party's capacity is determined by the law most closely associated with the AW or the law of the party's domicile and residence. However, due to the absence of a specific rule in the UK's legal framework concerning the governing law for capacity, the enforcing court retains the discretion to decide in this regard. The ground for rejection concerns the invalidity of an AA under article V (1, a) of the NYC. An AA is deemed invalid if it fails to conform to the law selected by the parties for its validity or, in the absence of such specification, the law of the jurisdiction where the award was issued. The ground pertains to violations of due process (Bermann, G. A. 2017), which broadly covers various potential procedural issues that can be raised as a defense. It essentially revolves around the idea that, during the arbitration process, the parties were not afforded the essential standard of fairness. While the mentioned regulations do not explicitly use the term "due process," they do touch upon specific aspects related to violations of fundamental fairness. It becomes evident when the party lacks adequate information about the arbitrator's appointment or the arbitration process, impairing their ability to present their case. Typically, issues regarding proper notice and participatory rights are expected to be explicitly covered in the contract or institutional arbitration rules, but in their absence, notice is likely to be considered reasonable and adequate based on the circumstances.

The ground for rejection also pertains to situations where the court responsible for enforcement may decline to recognize and enforce the REFAAs if there is evidence suggesting that the AW was rendered outside the arbitrator's jurisdiction (Bermann, G. A. 2017). The ground for refusal pertains to situations where the composition of the tribunal or the procedure followed is not in compliance with the terms of the arbitral agreement or the applicable legal framework.

The seventh ground for rejecting REFCAAs relates to PP. Typically, in the UK, courts will refuse to REFCAAs if they run counter to PP (Serasinghe, K. 2023). However, the exact extent of what constitutes PP in the UK is well-defined. Public policy is a contentious concept, lacking a universally accepted definition to delineate its limits. Various nations have varying interpretations of PP. Consequently, if a REFCAA is declined due to PP considerations, it may still be enforceable in another jurisdiction where those same considerations do not apply within the framework of PP.

The eighth ground for rejection is rooted in the principle of reciprocity, which is commonly defined as the mutual arrangement between two nations. In this arrangement, one state offers specific benefits to the citizens of another state, with the understanding that its citizens will receive equivalent privileges in return. It is important to clarify that the reciprocity doctrine does not necessitate that the conditions for REFCAAs in a foreign state must be identical to the conditions for the REFCAAs in the UK.

#### **4. Pakistan's Dilemma to REFCAAs**

In July 2005, Pakistan formally embraced the New York Convention (NYC) by introducing the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance, 2005. Subsequently, this ordinance underwent reissues in the years 2006, 2007, 2009, and 2010 until it was ultimately enacted as the "2011 Act." The primary objective behind the 2011 Act is to align legislation with the NYC, focusing on the recognition and enforcement of two pivotal elements: (i) foreign arbitration agreements and (ii) foreign arbitral awards, as noted by Hussain N and Arfat, Y in 2022. Following the enactment of this legislation, parties seeking the Recognition and Enforcement of Foreign Arbitral Awards (REFCAAs) perceived it as a more comprehensive legal framework with reduced judicial intervention. The specialized nature of the REFA 2011 mandated a stringent interpretation, compelling the Courts within Sections 6 and 7 of the Act to "shall" not reject REFCAA applications unless they contravened the grounds specified in Article V of the NYC. However, in practice, Pakistani Courts faced challenges in adapting to this significant legal shift from the 1937 Act. This struggle resulted in delays in the REFCAAs, rendering awards ineffective and yielding inconsistent judgments that deviated from established arbitration principles, as highlighted by Raza. H in 2018.

In the (*Taisei Corporation versus A.M. Construction Company (Private) Limited* case, 2012), the court ruled that the REFA 2011 restricted its authority to REFCAAs. It was suggested that the general recourse for the R and E under Section 14 of the 1940 Act could still be used. However, this interpretation appears to be improper because the 1940 Act applies to domestic awards, not foreign ones. Another significant analysis is seen in the case of *Abdullah v. CNAN Group Spa* 2014,

wherein the Court clarified that Article V could only be raised by the award debtor when responding to actions initiated by the award creditor seeking REFAAs.

An exclusive perception emerged in the case of *Rossmere International Limited v. Sea Lion International Shipping Inc.*, 2017. In this case, the Quetta High Court recognized the legitimacy of FAA but declined to enforce it due to the award debtor's absence of assets or bank accounts within its jurisdiction. Significantly, the Court introduced two procedural principles. Firstly, it stipulated that in cases involving the award debtor's assets or location, the award creditor should initiate a civil suit for the REFCAs in the court having territorial jurisdiction over these assets or the award debtor's whereabouts, potentially leading to a re-trial. Secondly, when dealing with a monetary award, the award creditor should apply the REFCAs to the court with territorial jurisdiction over the location where the award debtor maintains their bank accounts. This procedural anomaly created confusion in Pakistan's courts over the past and undermined the objectives of ICA. While the REFA 2011 aimed to address this issue, it lacks specific guidance on the procedures for courts to follow for the REFCAs. Additionally, the Federal Government has not yet established rules under Section 9 of the REFA which is meant to outline the procedure for REFAAs. Resultantly, under section 3 of the REFA, there is a lack of clarity regarding the jurisdiction of Pakistan's courts. The provisions mentioned there remained inconsistent in determining, among other things: (i) whether an award creditor should file a civil suit (potentially resulting in a re-trial) or an application (a more summary procedure) for the REFCAs and (ii) the extent of the court's discretion and authority in recognizing and enforcing foreign awards. This lack of clarity and consistency has created challenges in effectively handling ICA cases.

In the case of *Orient Power Company (Private) Limited v. Sui Northern Gas Pipelines Limited*, 2019 which was heard in the Lahore High Court in 2019, a dispute arose regarding a gas supply agreement. The agreement stipulated that any disputes would be resolved through arbitration at the London Court of International Arbitration. After arbitration proceedings, two awards were issued and the party against whom the awards were issued challenged them in a civil court in Lahore. The party holding the awards argued that, under the 2011 Act, it was the exclusive jurisdiction of the High Court to handle matters related to foreign arbitral awards. The learned single judge at the Lahore High Court sided with the claimant, affirming that only the High Court had the authority to

address such matters. This decision was upheld by a Division Bench of the Lahore High Court and eventually by the Supreme Court of Pakistan. The Supreme Court's ruling in 2021 had significant implications for the REFAAs in Pakistan. It clarified that Pakistan's courts should not examine the quantum or the amount specified in an award under the pretext of PP, as doing so could be a means to indirectly amend awards made by international arbitrators (Hussain N and Arfat, Y, 2022).

However, it is worth noting that while this decision by the Lahore High Court and the subsequent affirmation by the Supreme Court received considerable attention in the realm of the REFAAs it had the potential to address other important aspects related to such awards. The Supreme Court could have provided a broader and more detailed interpretation of the concept of PP as a guideline for future cases. Nonetheless, the court focused primarily on the award's quantum concerning public policy, leaving other aspects relatively unexplored.

In the Orient Power Company case, the Court had the opportunity to challenge and counter the findings and arguments based on this discovery more convincingly, by drawing on principles of statutory interpretation concerning the impact of the repeal or non-repeal of relevant provisions of a statute. Additionally, the Court failed to examine and differentiate the facts of the Hitachi Case, which had indeed been cited in the Taisei Case.

The REFCAAs have been significantly simplified and the legal framework has been strengthened in favor of upholding these awards. The NYC and the current legal regime to REFCAAs demonstrated a strong bias in favor of enforcement and there is a compelling argument for applying the grounds under Article V restrictively and with a narrow interpretation. This straightforward yet essential guideline has the potential to resolve significant inconsistencies in the interpretation of the REFA 2011 and elevate the quality of legal precedents set by Pakistan's courts to align them with international standards (Raza, H, 2018)

## **5. The predicament confronting the UK's Courts in order to REFCAAs**

The UK judicial approach on the NYC may not be as extensive as in some other jurisdictions, such as the USA or Germany; this is largely because London is a preferred seat for numerous ICA. Therefore, the REFCAAs in the UK are considered a relatively straightforward and routine matter.

However, it is worth noting that there can be some instances where certain judges may attribute a primacy to English commercial law, which can constitute challenges when dealing with issues of the validity of arbitration clauses. The UK courts strive to give due consideration to international public policy and conduct thorough analyses of foreign laws applicable to the dispute. The incorporation of Article V of the NYC into the Arbitration Act, along with the utilization of domestic provisions for challenging awards on jurisdictional or procedural grounds helps and elucidates the application of the grounds. This approach ensures a balanced interpretation of the Convention while taking into account the English legal tradition and the significance of London as a center for international commercial law.

English courts generally REFCAAs issued by states that are parties to the NYC following a procedure similar to that of judgments or orders made by the courts of England and Wales. However, there are specific exceptions under which REFCAAs can be refused, as specified in Article 5 of the NYC and incorporated into English law by sections 103(2) and 103(3) of the Arbitration Act. An inconsistency is apparent in the current legal framework between section 103(1) and section 103(2). Section 103(1) suggests that the grounds for rejecting REFCAAs are exhaustive, a notion also present in section 103(2). The court shall not refuse REFCAAs unless specific conditions are met, while section 103(2) indicates that R and E "may be refused" if certain criteria are established by the party against whom it is invoked. In essence, section 103(1) implies that the court is obligated not to enforce FAAs if the grounds listed in sections 103(2, 3, 4, 5) are satisfied, whereas sections 103(2, 3, 4, 5) suggest that the court has discretionary power to decide whether or not to enforce FAAs if any of the grounds provided in those sections are met.

In the case of *AIC Limited v The Federal Airports Authority of Nigeria* the Technology and Construction Court in England postponed its decision on whether to enforce an arbitration award issued in Nigeria. This delay was prompted by the defendant's request to the Nigerian court to annul the award and at the time of consideration, the Nigerian court's decision was pending. The court's decision to adjourn was influenced by several factors. It took into account whether the defendant's application to annul the award was made in good faith and not simply as a tactic to delay enforcement. The court also determined the application's likelihood of approval. Ultimately, it

assessed the potential negative impact of delaying the judgment on the claimant's circumstances and the subsequent challenges in enforcing the award.

The disadvantage of this situation is the possibility of significant delays in the execution of FAAs. Postponing the implementation of the award while awaiting the Nigerian court's decision on its revocation might result in substantial administrative inefficiencies and uncertainty. The potential consequences of this delay include compromising the effectiveness and conclusiveness of the arbitration process, which might lead to higher expenses and prolonged conflicts. Additionally, concerns about prolonged legal disputes and challenges in implementing global judgments may discourage parties from engaging in international arbitration. These delays might undermine public trust in the international arbitration system and hinder its capacity to effectively and promptly settle complex issues that span many countries. To mitigate such disadvantages and uphold the core tenets of expeditious and efficient conflict resolution, the case underscores the need to expedite the enforcement protocols of global arbitration.

The English court had to decide whether to approve the Respondent's request to put aside its authority in order to implement the judgment in the case of *Anatolie Stati and others v. Republic of Kazakhstan*, 2017. The Swedish arbitral award, according to the respondent, was gained by deception. Interestingly, an attempt to have the decision overturned had been rejected by the Swedish courts, which presented the difficult question of whether the English court ought to do the same. Liquefied petroleum gas (LPG) plant value was at issue in the arbitration, and the claimants were granted damages over \$500 million as a consequence. This decision was mostly based on KMG's indicative offer, which established the LPG plant's value. The Respondent later sought to challenge the award's enforcement, alleging fraud, and attempted to amend its applications in the US, Sweden, and England to include this allegation.

The English court, in its decision, rejected the argument of issue estoppel, emphasizing that neither the US nor the Swedish courts had definitively determined whether fraud had occurred. Given that the evidence supporting the alleged fraud was not available during the initial arbitration and a strong prima facie case of fraud was established, the court allowed the fraud issue to proceed to trial. This case highlights the challenges of the issues regarding estoppel when REFAAs across

multiple jurisdictions, particularly when PP considerations are different in these jurisdictions. It highlights the importance of allowing fraud allegations should be thoroughly examined when credible evidence is not available at the time of the initial arbitration.

The UK Supreme Court verdict in the *Kabab-Ji*, 2021 case dealt with three substantial matters. The text emphasized that, in the absence of any specific instructions, the laws governing the primary contract would also govern the arbitration agreement. It clarified that English law applied to the arbitration agreements since the parties had selected English law for the underlying franchising agreements. In addition, the court upheld Kout Food Group's (KFG) status as a non-party in accordance with the agreements. This decision was based on the "no oral modification" (NOM) provision, which requires any changes to be made in writing and signed by the involved parties. As a result of these constraints imposed by NOM, KFG could not be included as a party unless there was an unambiguous declaration allowing such modifications. Furthermore, the court upheld the decision of the Court of Appeal to give summary judgment and dismiss the REFCAs. This ruling emphasized the need to clearly and precisely determine the applicable legislation for arbitration agreements, as well as the importance of having unambiguous arbitration conditions offered by arbitral institutions. Furthermore, it highlighted the possibility of disparate results across various legal frameworks. Parties involved in international arbitration should thoroughly examine the governing laws of an arbitration agreement to avoid confusion and protracted legal actions in many countries. It is important to additionally confirm the basic arbitration terms offered by arbitral bodies and, if needed, clarify the applicable legal framework.

The UK Supreme Court's decision in this case has limited the adaptability of contract modifications and engendered ambiguity. The rigid enforcement of the "no oral modification" (NOM) rules may impede the parties' ability to make essential modifications to their agreements, perhaps leading to unanticipated repercussions and disputes, without considering the specific circumstances and objectives of the parties involved. This stringent approach may deter parties from reaching favorable agreements via informal means and result in futile procedures that escalate the expenses of legal services and complicate the process.

## 6. Conclusion

This paper explores the legal framework and procedure for REFCAAs in Pakistan and the UK regarding the grounds for refusal. This study delved into the historical evolution of legal instruments applicable to grounds for refusal of the REFCAAs in both jurisdictions. The historical trajectory of legal frameworks has emerged as a pivotal factor in boosting industrial and economic progress in both nations. It underscores that the ultimate efficacy of ICA hinges on the enforceability of arbitral awards against the party that incurs the loss. In the UK, the legal structure for grounds of refusal of the REFCAAs is primarily governed by the AA of 1996, which not only integrates the doctrines of the NYC but also delineates the requisites and procedures for recognizing and enforcing arbitral awards within the country. In Pakistan, grounds for refusal of the REFCAAs are regulated by the REFA 2011 designed in harmony with NYC provisions to facilitate the process of REFCAAs.

The paper focused on Pakistan and the UK's perspectives regarding the several grounds available for the losing party to resist the enforcement of an arbitral award. These grounds are designed to prevent the enforcement of awards that are considered illegal against the assets of the losing party. The courts responsible for enforcing these awards have emphasized that the losing party has the burden of proving these grounds of refusal. Furthermore, it is understood that these grounds are exhaustive and exclude any additional reasons for resisting enforcement. The courts also emphasized that these grounds should be interpreted narrowly, meaning that they should be applied strictly and not expanded beyond their intended scope. This study examined and compared the complex and distinct legal systems of Pakistan and the UK. It thoroughly explored and analyzed the legal frameworks and judicial perspectives on the reasons for refusing REFCAAs. Although both countries are committed to provide support to ICA, this study reveals the need for more precise and unified rules, particularly in terms of interpreting public policy and addressing discrepancies in the procedural requirements.

The findings of this study highlight the importance of supporting arbitration and suggest that efforts to align both legal systems can enhance the reliability and enforceability of arbitration decisions. This, in turn, can promote international trade and strengthen the reputation of the global arbitration



process governed by the NYC. Moreover, this study sheds light on the intricate legal frameworks and procedural intricacies of Recognizing and Enforcing Foreign Arbitral Awards (REFCAAs) in Pakistan and the UK, emphasizing grounds for refusal.

The historical evolution of legal instruments governing REFCAAs is crucial for industrial and economic progress in both countries, highlighting the significance of enforceability in International Commercial Arbitration (ICA). In the UK, the Arbitration Act of 1996 shapes grounds for refusal, while in Pakistan, the REFA 2011 aligns with NYC provisions for streamlined REFCAA processes. Examining perspectives from both countries reveals a common emphasis on preventing enforcement of illegally deemed awards against the losing party's assets. Courts place the burden of proof on the losing party, stressing the exhaustive nature of refusal grounds and requiring a narrow interpretation.

Furthermore, this study exposes legal system complexities, advocating for more precise and unified rules, especially in interpreting public policy and addressing procedural discrepancies. Despite the commitment to supporting ICA, the findings recommend greater alignment in legal systems to enhance reliability and enforceability, crucial for promoting international trade and bolstering the credibility of the global arbitration process under the New York Convention. Looking ahead, the study implies potential future implications, suggesting that ongoing efforts to refine and harmonize legal frameworks are essential for ensuring a seamless and effective international arbitration landscape. These efforts may impact the evolution of global trade dynamics, international business practices, and the continued strengthening of arbitration mechanisms. Lastly, this study encourages continuous adaptation to meet emerging challenges and maintain the effectiveness of the arbitration process.

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