INTERNATIONAL JOURNAL OF SOCIAL SCIENCES BULLETIN
ISSN: (E) 3007-1917 (P) 3007-1909

Volume 4, Issue 3, 2026

THE ARBITRATION GAP: WHAT PAKISTAN CAN LEARN FROM ASTANA

Dr. Sanaullah Aman[1], **Reza Khan**[*2]

[1,*2]*(CEO Saarosh ADR Center Islamabad)*

Corresponding Author: *
Reza Khan

DOI: https://doi.org/10.5281/zenodo.22843789

Received	Accepted	Published
01 January 2026	17 March 2026	31 March 2026

ABSTRACT

This publication reflects the views of the author(s) and not necessarily those of ARS or its affiliates. ARS distinguishes between reported facts, official projections, third-party estimates and ARS analytical judgments. Where public sources conflict, competing figures are reported rather than reconciled without evidence. Pakistan has spent much of the past decade pursuing reforms to its arbitration framework without establishing the institutional infrastructure needed to give those reforms practical effect. Kazakhstan, by contrast, responded to a similar credibility challenge by establishing a dedicated international arbitration institution in Astana and subsequently incorporating it into its broader investment and financial centre proposition. This insight examines why Pakistan, despite costly investor state disputes and repeated proposals for reform, still lacks a comparable institutional forum for resolving complex international disputes.

Keywords:

INTRODUCTION

Context

Pakistan's exposure to international arbitration is neither hypothetical nor new. In July 2019, an ICSID tribunal found Pakistan liable in the Tethyan Copper Company case and awarded compensation of approximately USD 4.087 billion, with additional interest, following the dispute over the Reko Diq mining project. The original claim was approximately USD 8.5 billion. The case remained subject to post award proceedings before a negotiated resolution was reached in 2022. The World Bank later recorded the Reko Diq settlement and noted associated investment flows connected to the restructuring of the project.[1,2]

On 16 January 2026, the investors holding an indirect interest in K Electric submitted a Notice of Arbitration to the Government of Pakistan under the OIC Investment Agreement and the UNCITRAL Arbitration Rules. K Electric disclosed the notice to the Pakistan Stock Exchange and clarified that the company itself was not a party to the arbitration. The claimants allege that regulatory delays and other governmental actions affected a proposed sale of a majority stake to Shanghai Electric and contributed to financial losses.[3]

These disputes illustrate the limited role of domestic institutions in resolving some of Pakistan's most consequential international disputes. Domestic arbitration remains governed by the Arbitration Act of 1940, while the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act of 2011 provides the principal statutory framework for recognition and enforcement of foreign awards under the New York Convention.[4,5]

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In April 2023, the Chief Justice of Pakistan formed an Arbitration Law Review Committee, chaired by Justice Syed Mansoor Ali Shah, to examine the existing framework and propose comprehensive reform. On 2 May 2024, the Law and Justice Commission of Pakistan formally presented the Arbitration Bill 2024 to the Federal Minister for Law and Justice. The Federal Cabinet subsequently approved the Bill in principle and authorized consultations with the provinces on its proposed enactment. A separate initiative emerged in 2026 when the Law and Justice Commission recommended a constitutional amendment to establish an International Commercial Court of Pakistan as an independent federal superior court.[6,7] Both initiatives remain proposals rather than fully operational institutional arrangements[8].

Analysis

Kazakhstan faced a comparable credibility challenge and responded institutionally as well as legislatively. The Constitutional Statute establishing the Astana International Financial Centre was adopted in December 2015. The AIFC Court began operations on 1 January 2018, followed by the International Arbitration Centre. The AIFC framework provides for an independent court and arbitration centre, separate from the ordinary judicial system, operating through rules based on English common law and international practice. The AIFC Court was established with the involvement of Lord Woolf, former Lord Chief Justice of England and Wales.[8,9]

The results are now measurable. The AIFC Annual Report records that the AIFC Court and International Arbitration Centre had completed and enforced more than 3,400 cases by the end of 2024, including court judgments, arbitration awards and mediation settlements. The report also records a 100 per cent satisfaction rate for enforcement of judgments and awards rendered in 2024 and notes participation by lawyers from 34 countries.[10]

That record is an important indicator of institutional credibility. Astana has developed a dispute resolution platform that is available to parties beyond Kazakhstan itself, supported by a dedicated legal framework, specialised institutions and international participation. The lesson is not that Pakistan should reproduce the AIFC model in full, but that institutional credibility depends on more than legislation alone.

The objective was therefore not simply to enact a modern arbitration statute. Kazakhstan already had a developing commercial legal framework before the AIFC was established. The institutional objective was to provide investors with a specific, staffed and physically located forum that could operate at arm's length from the ordinary domestic courts, while ensuring that outcomes were enforceable domestically. Pakistan faces a structurally similar challenge, but its response has focused predominantly on legislative reform rather than on the parallel development of institutional capacity.

The 2024 Arbitration Bill would align Pakistan's law more closely with the UNCITRAL Model Law and reduce unnecessary judicial intervention in arbitral proceedings. It would also strengthen the principle that an arbitral tribunal may determine questions concerning its own jurisdiction.[6,11] These would be important reforms. But a modern statute, by itself, is unlikely to persuade an investor that a dispute lodged in Karachi or Islamabad will be resolved efficiently and impartially rather than becoming subject to prolonged court proceedings and appeals. This concern has contributed to the preference for resolving major international disputes involving Pakistan in established foreign arbitration venues.

Legislation alone also cannot resolve the deeper fragmentation between federal commitments and provincial or agency conduct. The Reko Diq dispute arose from conduct at the provincial level, while the K Electric claim identifies federal agencies and regulators among the respondents or relevant actors. Any institution designed to handle

INTERNATIONAL JOURNAL OF SOCIAL SCIENCES BULLETIN
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disputes of this nature would therefore require authority and arrangements capable of accommodating both provincial conduct and federal regulatory action. The proposed International Commercial Court points toward this missing institutional layer, but establishing it would require the proposed constitutional amendment, legislation and an operational institutional structure with clearly defined jurisdiction and enforcement arrangements.[3,8]

The contrast is therefore institutional as much as legislative. While Pakistan has spent much of the past decade developing draft legislation and reform proposals, Kazakhstan has used the same period to establish and operationalize a dedicated dispute resolution institution with a substantial record of cases and enforcement.[9,10]

Implications

The absence of a functioning domestic forum carries a direct and recurring fiscal cost. Many major international disputes involving Pakistan are resolved through arbitration seated outside the country, which can be expensive to contest, may take years to conclude and can place substantial demands on state capacity. The Reko Diq proceedings illustrate the scale of exposure that can arise in an international investment dispute, while the K Electric notice demonstrates that substantial claims can continue to emerge under existing investment protections.[1,3]

The institutional gap also means that Pakistan accumulates less domestic arbitration capacity and institutional memory. Many high value cases require substantial reliance on foreign counsel and international arbitral institutions, while the professional, training and reputational benefits associated with a mature domestic arbitration market remain limited. By comparison, the AIFC has built a substantial case record and professional ecosystem around its dispute resolution institutions.[10]

This environment can also weaken incentives for early and effective dispute management. Administrative or regulatory disputes may be deferred or inadequately addressed at an early stage because their financial consequences may only become apparent years later, when the matter is resolved through an external forum. For investors comparing Pakistan with competing jurisdictions, the absence of a mature domestic arbitration forum is likewise a disadvantage. Jurisdictions such as Kazakhstan, the UAE and Singapore can point to established dispute resolution institutions as part of their broader investment propositions.[10]

The Way Forward

Two specific steps would begin to close the gap. First, the Federal Government should prioritize enactment of the Arbitration Bill 2024 and complete the consultation and legislative process required for its passage. Alignment with the UNCITRAL Model Law would provide an important legal foundation for the development of Pakistan as a viable seat for international arbitration rather than only a respondent in cases seated abroad[6,11].

Second, the government should attach a concrete institutional design to the proposed International Commercial Court at an early stage. That design should include a physical seat; a standing roster of arbitrators and judges selected through transparent and independent processes; clearly defined enforcement powers informed by relevant international practice, including the AIFC experience; and clear arrangements covering provincial governments and regulators such as NEPRA where their conduct may give rise to disputes. The Reko Diq and K Electric disputes demonstrate why an effective framework must address conduct occurring at provincial and agency levels as well as at the federal level.[3,8,10]

Legislation without effective institutional capacity will have limited practical impact; conversely, an institution cannot operate effectively without an appropriate legal foundation. Pakistan therefore requires both. The central policy challenge is to

INTERNATIONAL JOURNAL OF SOCIAL SCIENCES BULLETIN
ISSN: (E) 3007-1917 (P) 3007-1909

move from successive reform proposals to a functioning legal and institutional framework capable of handling complex disputes with credibility, efficiency and consistency.

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About the Author

Dr. Engr. Sanaullah Aman is a dispute resolution professional, academic, and institutional leader working at the intersection of law, management, and public sector governance. His experience includes extensive public sector service as a former Member of Engineering at the Capital Development Authority (CDA), where he gained first hand experience in public administration, institutional processes and complex regulatory and dispute resolution environments.

He serves as a Member of the Selection Board of the Pakistan Engineering Council (PEC) and the

INTERNATIONAL JOURNAL OF SOCIAL SCIENCES BULLETIN
ISSN: (E) 3007-1917 (P) 3007-1909

Association of Consulting Engineers of Pakistan (ACEP). Additionally, he is a Professor of Management and author of the book "Alternative Dispute Resolution in a Globalized World: Law, Practice and Innovation."

Reza Khan is a researcher with an M.Phil in Government and Public Policy from the National Defence University, Islamabad, and an MBA in finance. His professional experience spans business strategy, international trade, economics and organizational leadership. His analytical interests include public policy, governance, strategic communication and the interaction between technology, institutions and society.

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