Pakistan's Missing Arbitration Home: Lessons from the Astana Model

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Pakistan has spent the better part of a decade drafting reforms to its arbitration law without building the institution that reform is meant to serve. Kazakhstan, by contrast, built a purpose made international arbitration centre in Astana within years of deciding it needed one, and now markets itself to global investors on the strength of it. This insight asks why Pakistan, having absorbed a series of costly investor state disputes and produced repeated proposals for reform, still has no comparable institutional address for resolving disputes on its own soil.

1. Context

Pakistan's exposure to international arbitration is not hypothetical, and it is not new. In July 2019, an ICSID tribunal awarded Tethyan Copper Company USD 5.894 billion plus daily interest, against an original claim of USD 8.5 billion, after Balochistan's Mining Authority denied the company's application for a lease to develop the Reko Diq copper gold deposit; by the time Pakistan negotiated a settlement in 2022, the award, left unpaid, had grown to roughly USD 6.5 billion, a sum that at the time of the ruling would have wiped out close to half of the country's foreign exchange reserves.

Pakistan is not finished absorbing cases of this kind. On 16 January 2026, law firms Steptoe International (UK) LLP and Omnia Strategy LLP filed a Notice of Arbitration on behalf of thirty seven Saudi and Kuwaiti entities, holding a combined 30.7 per cent stake in K-Electric, seeking roughly USD 2 billion in damages (brecorder.com). The claimants, cornerstone shareholders since the utility's 2005 privatisation, allege that regulatory delay and contradictory instructions from the Power Division and NEPRA blocked a 2016 agreement to sell a majority stake to Shanghai Electric, causing the buyer to walk away, and separately allege two decades of unpaid tariff differential subsidies and an unexplained USD 66 million diversion of funds from a related share sale. The claim invokes the OIC Investment Agreement and Pakistan's bilateral investment treaties, is administered under UNCITRAL rules, and the claimants have proposed the Permanent Court of Arbitration and nominated Professor Stephan Schill as their arbitrator (thenews.com.pk).

Both disputes were, or will be, argued far from Pakistan, because the country has never built a credible domestic seat for this kind of case. Domestic arbitration remains governed by the colonial era Arbitration Act of 1940, while a separate 2011 law only handles enforcement of foreign awards under the New York Convention. In April 2023 the Chief Justice of Pakistan formed an Arbitration Law Review Committee, chaired by Justice Syed Mansoor Ali Shah, which published a draft Arbitration Bill modelled on the UNCITRAL Model Law on 2 May 2024; the Federal Cabinet approved it roughly six weeks later (jusmundi.com), yet as of August 2026 the Bill remains pending before the National Assembly, more than two years on (dailyjus.com). A second, separate reform surfaced in July 2026, when the Law and Justice Commission of Pakistan, meeting under Chief Justice Yahya Afridi, recommended a constitutional amendment inserting a new Article 212-A to establish an International Commercial Court of Pakistan as an independent federal superior court (dawn.com). Both reforms remain, for now, on paper.

2. Analysis

Kazakhstan faced a comparable credibility problem a decade ago and answered it institutionally rather than only legislatively. Its constitutional law establishing the Astana International Financial Centre was signed in December 2015, with the AIFC Court beginning operations on 1 January 2018 and the International Arbitration Centre opening in July 2019, both built on English common law principles, with English as the language of proceedings and international judges, including former UK Lord Chief Justice Lord Woolf, advising on their design (en.wikipedia.org). The results are now measurable rather than aspirational: by 2026, the AIFC Court had delivered over two hundred judgments with a one hundred per cent enforcement rate, and the International Arbitration Centre had handled nearly five thousand cases since launch, drawing clients from thirty four countries, with roughly ninety per cent of those cases having no direct connection to Kazakhstan at all (eldwicklaw.com). That last figure is the real measure of success: Astana has become a neutral venue of choice for parties who have no other connection to Kazakhstan, in much the same way London or Singapore function for disputes with no connection to either.

The point was never simply to pass a modern arbitration statute; Kazakhstan already had reasonably modern commercial law before the AIFC existed. The point was to give investors a specific, staffed, physically located address they could trust to sit outside the ordinary domestic courts, and to make that address enforceable at home rather than only recognised abroad. Pakistan's problem is structurally similar but has been treated as though it were only a drafting problem. The 2024 Arbitration Bill would align the country's law with the Model Law and curb judicial intervention in arbitral proceedings, including introducing the kompetenz-kompetenz principle that lets a tribunal rule on its own jurisdiction, a power the 1940 Act does not recognise. That is a necessary step. But a modern statute does not by itself persuade an investor that a dispute lodged in Karachi or Islamabad will be resolved quickly and impartially rather than pulled through years of appeals in the ordinary court system, which is precisely the pattern that has driven Pakistan's most consequential disputes to be argued in Washington and London instead of at home.

Nor does legislation alone resolve the deeper fragmentation between federal commitments and provincial or agency conduct. Reko Diq originated in a decision taken by Balochistan's own Mining Authority; the K-Electric claim names the federal Power Division and NEPRA directly. A credible domestic forum has to bind provinces and federal regulators alike, which is a governance problem no statute drafted in Islamabad can resolve on its own. The International Commercial Court proposed in July 2026 gestures at the missing institutional layer, but a recommendation for a constitutional amendment, still requiring parliamentary passage, is a long way from a functioning chamber with a standing roster of arbitrators, defined enforcement powers, and a reputation investors are actually willing to test. Pakistan has, in effect, spent a decade producing draft legislation and commission recommendations while Kazakhstan spent the same decade producing a functioning institution with a caseload to show for it.

3. Implications

The absence of a credible domestic forum carries a direct and recurring fiscal cost. Every major dispute defaults to offshore arbitration, which is expensive to contest, slow to resolve over years rather than months, and structurally weighted toward large, well resourced claimants; the Reko Diq award alone approached half of Pakistan's foreign exchange reserves at the time it was issued, and the K-Electric claim, if it proceeds to a full award, would add further exposure at a moment of ongoing fiscal strain. The absence also means Pakistan accumulates no institutional memory or domestic arbitration capacity of its own: every high value case is litigated by foreign counsel before foreign tribunals, and none of the fee revenue, arbitrator training, or institutional reputation that the AIFC has captured through its near 5,000 case docket ever accrues to Pakistan. For federal ministries and provincial governments alike, the incentive this creates is perverse, since disputes are more easily deferred or mishandled at the outset when the reckoning, if it comes, will arrive years later and be adjudicated somewhere else entirely. For investors weighing Pakistan against comparable markets, the absence of a domestic forum is itself a data point, one that Kazakhstan, the UAE, or Singapore, all of which have built dedicated arbitration hubs, can now use directly against Pakistan in that comparison.

4. The Way Forward

Two specific steps would close the gap. First, the Federal Cabinet and the Ministry of Law and Justice should move the 2024 Arbitration Bill to actual passage in the National Assembly rather than leaving it pending more than two years after cabinet approval, since Model Law alignment is the legal precondition for everything else, including making Pakistan a viable seat for arbitration rather than only a respondent in cases seated abroad. Second, rather than treating the proposed International Commercial Court as a separate, longer dated constitutional project, the government should attach a concrete institutional design to Article 212-A now: a physical seat, a standing roster of arbitrators and judges independent of the ordinary judiciary, defined enforcement powers modelled on the AIFC's, and provincial governments and regulators such as NEPRA named as bound parties from the outset, given that both Reko Diq and the K-Electric claim originated in provincial or agency level conduct rather than purely federal decisions. Legislation without an institution behind it will keep producing cases like Reko Diq and K-Electric; an institution without the legislation behind it cannot exist at all. Pakistan currently has neither, and each year of delay is measured in cases, not policy papers.

About the Author

Dr. Sanaullah Aman is a dispute resolution professional, academic, and institutional leader working at the intersection of law, management, and public sector governance. He is the CEO of Saarosh ADR Centre and a Global ADR Expert, Arbitrator and Mediator, with extensive experience in arbitration, mediation, ADR system development, and public-sector governance. A former Capital Development Authority (CDA) officer and Professor of Management, he focuses on strengthening institutional dispute-resolution frameworks, improving access to justice, and advancing investor confidence. His professional work also spans international ADR forums, policy discussions, and capacity-building initiatives aimed at promoting modern and scalable dispute-resolution systems.

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