

**COURT INTERVENTIONS IN INTERNATIONAL COMMERCIAL  
ARBITRATION; A CASE STUDY OF KOMPETENZ-KOMPETENZ AND  
PUBLIC POLICY IN PAKISTAN**



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A thesis submitted in fulfilment of the  
requirements for the award of the degree of  
Master of Laws (General)

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**School of Law**  
**BAHRIA UNIVERSITY, ISLAMABAD**

SEPTEMBER 2023

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## **DEDICATION**

This thesis is dedicated to my family and friends for their endless love, support, and encouragement.

Thank you.

## ACKNOWLEDGMENT

### *Alhamdulillah*

I express my gratitude to Allah SWT for giving me the strength, knowledge, ability and opportunity to undertake this research and complete in satisfactorily.

I would like to express my gratitude to my supervisor, Dr. Sohaib Mukhtar, for his invaluable guidance and support.

I would like to express my heartfelt appreciation to my parents, wife, kids, aunt, brother and beloved friends who have been invaluable sources of unconditional support throughout my research journey.

**LIST OF ACRONYMS**

ADR	Alternate Dispute Resolution
C.A	Commercial Arbitration
CPC	Civil Procedure Code, 1908
FAA	Federal Arbitration Act. (USA)
HC	High Court
ICC	International Chamber of Commerce
ICSID Disputes	International Convention for the Settlement of Investment
ILA	International Law Association
LCIA	London Court of International Arbitration
NY Convention	United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958
SC	Supreme Court
SGS	Société Générale de Surveillance S.A
The 1937 Act	Arbitration (Protocol and Convention) Act 1937
The 1940 Act	Arbitration Act, 1940
The 2011 Act	Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011
The Doctrine	The Doctrine of Kompetenz-Kompetenz
UK	United Kingdom
UNCITRAL	United Nations Commission on International Trade Law
UNCITRAL ML	United Nations Commission on International Trade Model Law
USA	United States of America



## ABSTRACT

In today's dynamic and ever changing world of global business, arbitration has emerged as a preferred mechanism for resolving commercial disputes, wherein the role of national courts remains both essential and contentious. This thesis probes into the dynamics of court interventions in commercial arbitration in Pakistan, juxtaposing it with the universally recognized doctrine of Kompetenz-Kompetenz and the implications of public policy.

The objectives of this research are to discern the delicate balance between arbitral autonomy and judicial oversight, primarily within the Pakistani context. To achieve this, the study aimed to answer the following pivotal questions: How have Pakistani courts approached the principle of Kompetenz-Kompetenz? What is the scope and application of public policy in arbitration matters in Pakistan? How do court interventions impact the enforcement of domestic and foreign arbitral awards in the country? By methodically examining case law and legislative provisions, including the 1940 Act for domestic awards and the 2011 Act for foreign awards, this study identifies varying interpretations and sometimes inconsistent judicial stances. Findings underscore that while courts in Pakistan have, in instances, upheld the sanctity of arbitral awards, there have been notable digressions, driven by jurisdictional ambiguities and public policy considerations. This inconsistency potentially affects Pakistan's standing as an appealing destination for international commercial arbitration. Notably, the Supreme Court's suggestion to incorporate the UNCITRAL model law into domestic legislation highlights a potential path forward.

The thesis postulates that for commercial arbitration to gain traction and trust in Pakistan, it is imperative for the judiciary to maintain a delicate balance. While judicial oversight is necessary to safeguard fairness and the rule of law, excessive intervention risks undermining the core tenets of arbitration. The research concludes with a call for Pakistan to align its arbitration laws with global standards, fostering a harmonized approach that recognizes both the sanctity of arbitration and the pivotal role of courts.

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