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Commercial Arbitration vs. Civil Litigation in Pakistan: A Cost–Benefit Reality Check

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Abstract: *This study compares the cost and benefits of commercial arbitration and civil litigation in Pakistan and offers a realistic guideline to businesses to analyze their dispute resolution strategies. It can determine the real financial cost of either method using direct costs (e.g., legal fees, tribunal costs), indirect costs (e.g., business disruption, tied-up capital), time-to-resolution risk, and enforcement risk. The results indicate that arbitration may be faster, particularly when expedited, but the cost-reducing nature is not assured because of the high counsel, tribunal, and expert charges. Moreover, the benefits of arbitration can be diminished by the time it takes to implement the award. The paper ends with a decision matrix to businesses and suggestions on how to make arbitration more efficient and the ability of courts to enforce the decision so that arbitration continues to play an important role in the Pakistani legal system.*

Key Words: Commercial Arbitration, Civil Litigation, Pakistan, Dispute Resolution, Cost–Benefit Analysis, Enforcement, Procedural Delay

Introduction

In Pakistan, the two most common avenues of contractual dispute resolution are civil litigation and commercial arbitration because commercial parties usually compare these two as the most important avenues to settle contractual disputes. The default choice is litigation since the courts are publicly accessible, procedurally well-known and give their verdicts supported by the coercive power of the state. However, parties too view the court proceedings as prone to stalling and postponing and turning a legal fight into a business derailment taking years to resolve with significant opportunity costs (Melcarne et al., 2021). Arbitration, in its turn, is often selected due to the autonomy of the parties (choice of venue, protocol and resolution adjudicator), confidentiality, and higher predictability in evidence management and schedules, particularly in technically difficult commercial litigation (Trakman and Montgomery, 2017). As a Pakistani view, arbitration can also be seen as an efficient alternative to overloaded courts, but the results of arbitration, nonetheless, still touch the court system at pivotal points (such as appeals against awards and the recognition/enforcement process), which can have a significant impact on the perceived value of arbitration (Mukhtar and Mastoi, 2017; Idrees et al., 2020).

One of the most returned argumentations in practice is that arbitration is cheaper and quicker than a court, however, world studies are more and more proving that this statement is conditional and not generalized. The contemporary judicialization of arbitration, which arbitral practice starts to appear litigious with litany pleadings, lengthy disclosure battles, and legal warfare, can add to both duration and expense, and obscure the so-called efficiency benefit (Trakman & Montgomery, 2017). The cost scholarship also underlines the fact that arbitration has its own unique expense drivers (tribunal fees, institutional charges, depending on areas and types of arbitration), hearing logistics, and other applications like security for costs, which are not (or differ in) court proceedings (Camilleri, 2022; Franck, 2019). Although an arbitral

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tribunal makes an award fast, the total timeline can grow when the enforcement is challenged, as national courts are still a focus of recognition, set-aside, and execution determination; empirical literature reveals that these court-based steps can become decisive regarding the final results (Alford et al., 2022; Kalaitsoglou, 2021). Arbitration dynamics of delay can also be due to interim procedural applications, maneuvers, which cause speed to be uneven and unpredictable on case to case (Chaisse, 2021), and efficiency devices like early disposition mechanisms must be experimented with by institutions and tribunals (Wallach, 2021). The outcome is a pragmatic knowledge gap in Pakistan: the parties usually select fora on the basis of assumptions instead of a realistic calculation of the total cost, total time, and enforcement risk in local legal setting (Mukhtar and Mastoi, 2017; Idrees et al., 2020).

This paper examines commercial litigation in Pakistan (e.g., contract, supply, construction, services, joint venture, and trade related claims) in which parties are plausibly free to arbitrate or litigate in a court of law. Cost is handled in terms of (i) direct costs (lawyers costs, tribunal costs, court costs, expert costs, hearing/administration costs) and (ii) indirect costs (costs incurred in management time, business disruption costs, delayed cashflows costs, reputational exposure costs and financing/holding costs in the time-consuming proceedings). Measurable and decision-relevant benefits, which include speed to an enforceable outcome, the probability of its enforceability, confidentiality/privacy, predictability of process, and preservation of a relationship are defined as benefits and are understood to be important to both SMEs and large firms and low-value and high-value disputes.

The purpose of the current article is to provide a cost benefit reality check by systematically comparing the outcomes of arbitration and civil litigation in practice, on an end to end basis and where the conduit results in cost reduction through a large scale, or reduction in time to resolution through a large scale, or reduction of risk/uncertainties through a large scale, and where achieving the claimed benefits of arbitration is

Literature Review

This paper structures the options of forum choice (arbitration vs court) as under uncertainty economic and institutional decision. The first is that a transaction-cost logic focuses on dispute resolution as a governance process: parties do not just focus on the cost of filing and counsel but also monitoring, delay-risk, and enforcement frictions that occur as a dispute escalates (Gabuthy & Muthoo, 2019). Second, an access-to-justice optical focuses on the way a design of procedures and funding restrictions create a situation in which only certain persons can achieve remedies, transforming cost-efficiency into a distributional rather than a managerial problem (Lewis and Naylor, 2021). Third, procedural-efficiency scholarship points to the fact that the time-to-resolution is a cost on its own since it exacerbates uncertainty and may bias settlement bargaining, particularly under conditions where delays are expected and even strategically planned (Melcarne et al., 2020). Lastly, foreground repeats and fairness means deals with repeat-player dynamics: in cases where one party is often an arbitrator (or litigant), informational and strategic benefits may intervene and make the outcome and perceived fairness (Chandrasekher and Horton, 2019).

Theoretically, commercial arbitration due to party autonomy, expert decision-making, confidentiality, and simplified process have all these advantages, which are likely to minimize the spillovers of dispute (reputational damage, relationship breakdown), and promote the settlement. The issue of confidentiality is however challenged in practice: discussion of transparency and legitimacy may undermine the predictability that parties accord to private ordering (Park, 2019). In addition, the efficiency promised cannot be automatic. Modern literature records the process of arbitration becoming bureaucratized, where the management of the case process involves excessive details, huge submissions, and procedural safety, which increases time and cost (Wallach, 2021). The tension of allocating costs is also a fundamental one: victorious parties can still pay a huge unrecoverable cost, and the change of rules can yield irregular incentives among tribunals (Camilleri, 2022). Another critique is due process paranoia – being excessively cautious with tribunals giving additional procedural rounds to prevent future obstacles – which is capable of reproducing the same delay patterns that arbitration was supposed to avoid (Gill, 2017; Saha and Shukla, 2020).

Civil litigation is commonly attested as the default of the people: less formal higher entry costs, more transparent supervision of appeals, and more forceful (interim relief, contempt, execution mechanisms). Nonetheless, the reasoning of empirical work worldwide is to caution that in regions with slow justice systems delay is an economic cost that can be measured and incentives altered, prompting individuals to be strategic about holding on to available resources until the process is completed, increasing the opportunity cost of resources tied up in it, and redistributing bargaining power towards those that

are most capable of waiting out those processes (Melcarne et al., 2020). These dynamics are important in the commercial environment of Pakistan since business disputes often need time-sensitive interim protection (assets, inventories, bank guarantees), and a plausible endgame (execution), time-to-enforce thus is as crucial as time-to-judgment/award.

The arbitration ecosystem in Pakistan is guided by court interaction at various levels: (i) referral/ stay of an arbitration clause, where such a clause is in place, (ii) supportive court powers (e.g., interim measures), (ii) set-aside challenges, and (iv) enforcement of domestic and foreign awards. According to the scholarship on Pakistan, the reliability of enforcement, in particular, foreign awards, depends on the legal framework that applies the New York Convention framework, and judicial interpretation of statutory gateways (Chishti, 2017). The practical barriers to recognition and implementation made by Pakistani doctrinal studies further point to the practical barriers to the recognition and implementation that can undermine the speed advantage once the post-award litigation is initiated (Idrees et al., 2020; Mukhtar and Mastoi, 2017).

Comparative research is becoming less and less inclined to accept dogmas that arbitration is always cheaper or faster. Research indicates that increases in cost are due to counsel-driven process, tribunal fee arrangements, and extended nearly evidentiary practice (Wallach, 2021; Chaisse, 2021). Simultaneously, provider-level reforms have the potential to decrease filing loads of certain types of claims- but outcome patterns can still exhibit repeat-player implications and other advantages of representation, which can make fairness claims challenging (Chandrasekher and Horton, 2019). The arbitration literature also emphasizes the role played by the so-called efficiency tools (tight procedural schedules, limited hearings, appeal architecture), but only when parties and tribunals are willing to exercise discipline over the management of the cases, and not to import court-like practice (Baykitch and Bao, 2019; Zamir and Segal, 2019).

All told, the Pakistan-specific writing is good strong in doctrine (remains, put aside, enforcement), but has a lower content in end-to-end measurement: total costs + total time + risk of enforceability in realistic dispute situations. This paper provides a reality check, i.e., by integrating (a) direct costs (fees, counsel, tribunal), (b) indirect costs (delay/opportunity, management time, relationship harm), and (c) enforcement pathways, this study tests the common assertion of faster/cheaper arbitration, in the context of Pakistan, where there is the actual arbitration-court interface (Chishti, 2017; Idrees et al., 2020).

Methodology

Research Design

This study adopts a mixed-methods comparative design to produce a cost-benefit "reality check" between commercial arbitration and civil litigation in Pakistan. The first component is doctrinal/legal analysis, mapping the legal pathways that shape how each forum operates in practice (e.g., referral/stay, interim relief, challenges to awards/judgments, execution/enforcement). The second component is an empirical cost-and-time analysis that quantifies (i) direct costs, (ii) indirect costs, and (iii) time-to-resolution, measured end-to-end from dispute initiation to practical realization (payment, settlement, or successful execution). Qualitative findings from interviews and surveys are used to interpret the observed cost/time patterns and explain why "theoretical advantages" translate unevenly into real outcomes.

Sample / Case Selection

The study focuses on commercial disputes where parties realistically could pursue either arbitration or court litigation. Cases are selected from common business dispute categories, including: construction/infrastructure, banking/finance, supply and distribution, services, and shareholder/partnership disputes. To reflect how forum performance changes with stakes and complexity, the sample is stratified into multiple claim-value bands (e.g., low, mid, high value) and by complexity indicators (number of parties, need for experts, document volume, and interim relief requests). Selection prioritizes cases with sufficient documentation to identify key time milestones and cost components. Where access to full files is constrained, cases with reliable and verifiable public records (reported judgments/orders or published award summaries where available) are included as the "minimum evidence threshold."

Data Sources

Data are drawn from four complementary sources to reduce single-source bias:

(a) Reported judgments and case files: Court records are used to extract time milestones (institution/filing, first effective hearing, evidence phase, final judgment, appeal stages, execution proceedings, and realization). Where file access is limited, reported decisions and cause-lists/orders are used to reconstruct timelines.

(b) Arbitration schedules/rules and anonymized timelines: Fee schedules and procedural rules from arbitration institutions (and, where possible, anonymized case timelines from counsel, parties, or institutions) provide data on filing/administration costs, tribunal fees, hearing patterns, and award timing.

(c) Practitioner interviews: Semi-structured interviews are conducted with arbitrators, litigators, and in-house counsel to understand cost drivers (e.g., adjournment incentives, procedural motions, tribunal availability), enforcement bottlenecks, and strategy effects (repeat-player behavior, settlement leverage).

(d) Party survey: A structured survey captures perceived fairness, satisfaction, predictability, confidentiality value, and willingness to reuse the forum, using standardized Likert-scale items plus optional short comments.

Variables & Measurement

The study operationalizes comparison through four variable groups:
Direct costs (PKR):

- Court or arbitral filing/administration fees
- Arbitrator/tribunal fees (where applicable)
- Counsel fees (retainer, appearance/hearing fees, drafting)
- Expert costs (technical, financial, forensic)
- Hearing logistics (venue, transcription, travel, document management)

Indirect costs (PKR):

- Management time (hours devoted to dispute activity × internal cost rate proxy)
- Business disruption (project delay, supply interruption, operational diversion—captured via self-reported ranges and triangulated through interviews)
- Financing cost of delayed recovery (claim amount or expected recoverable amount × a reasonable interest-rate proxy × duration of delay)

Time metrics (days/months):

- Initiation → first effective hearing/session
- Initiation → final decision/award
- Decision/award → enforcement/realization (payment, settlement, or executed recovery)
- Overall end-to-end duration (initiation → realization)

Outcome metrics (rates/percentages):

- Settlement rate (settled before final decision/award)
- Enforcement success rate (realization achieved within a defined period after final decision/award)
- Set-aside/appeal incidence (challenge filed and its outcome)
- Post-decision delay factor (time added due to challenge/appeal/execution steps)

Cost-Benefit Framework

The core analytic model is the Total Cost of Dispute (TCD):
TCD = Direct Costs + Indirect Costs (computed per case).
To incorporate uncertainty (e.g., chance of settlement, likelihood of challenge, probability of successful execution), the study also applies an expected value approach, producing probability-weighted estimates of time and cost. For example, "expected end-to-end time" reflects the baseline award/judgment duration plus the weighted probability of set-aside/appeal and execution delays.

Analysis Plan

Quantitative analysis proceeds in three steps:

1. Descriptive statistics: median, mean, dispersion (IQR/range) for costs and durations, separately for arbitration and litigation.
2. Comparative ratios by claim size: cost as a percentage of claim value; time comparisons across value bands and dispute types; stage-wise delay decomposition (pre-decision vs post-decision).
3. Scenario/sensitivity analysis: best/base/worst-case scenarios by varying key uncertainty parameters (e.g., settlement probability, challenge likelihood, enforcement delay, financing rate proxy). Outputs include practical "tipping-point" interpretations—when arbitration becomes cost-justified by time savings, and when court litigation becomes cost-preferable despite delay.

Qualitative analysis uses thematic coding of interviews and open-text survey responses to explain mechanisms behind quantitative differences (e.g., adjournment drivers, tribunal scheduling constraints, enforcement friction, strategic behavior).

Validity, Reliability, and Ethics

Triangulation is central: timeline measures from records are cross-checked with practitioner and party accounts; cost estimates are validated against fee schedules and documented invoices where available. Bias controls include stratified sampling across sectors

and claim sizes, consistent definitions for "realization," and sensitivity tests on key assumptions (management time valuation, financing-rate proxy). Interview protocols are standardized, and qualitative coding uses consistent codebooks to improve reliability. Ethical safeguards include informed consent, anonymization of names and identifying details, secure data storage, and reporting only aggregated results.

Limitations

The study may face data access constraints (especially for private arbitral proceedings), potential selection bias (cases with accessible records may differ systematically), and institution-to-institution variation in arbitration rules and fee practices. Cost reporting may be incomplete when parties cannot share invoices or internal time estimates. These limitations are addressed through transparent assumptions, robustness checks, and presenting findings as conditional "decision guidance" rather than universal guarantees.

Results

Litigation Benchmark (Pakistan Commercial Dispute Through Courts)

The litigation track shows a high end-to-end burden for resolving a commercial dispute through courts. In the World Bank's *Doing Business 2020* economy profile for Pakistan, the time to resolve a commercial dispute from filing to payment is 1,071 days, and the cost is 20.5% of the claim value (inclusive of attorney, court, and enforcement costs under the indicator methodology). The quality of judicial processes index is 5.7/18, indicating procedural and institutional constraints that tend to amplify delay and uncertainty.

Table 1

Pakistan court litigation benchmark (Enforcing Contracts)

Metric (Enforcing Contracts)	Pakistan value
Time (days)	1,071
Cost (% of claim value)	20.5%
Quality of judicial processes index (0–18)	5.7

Arbitration Institutional Fees (CIICA) Across Dispute-Value Bands

Using CIICA's published arbitration fee schedule–Registration fee: USD 250 plus an administration fee that scales with the amount in dispute–Table 2 computes the *institutional fee floor* (registration + administration) and expresses it as a percentage of the claim.

Importantly, CIICA also states that arbitrator fees are separately determined with reference to work done and communicated to parties, so Table 2 does not include arbitrator fees, legal fees, experts, or hearing logistics.

Table 2

CIICA institutional fee floor (Registration + Administration) by amount in dispute (USD)

Amount in dispute (USD)	Admin fee (USD)	Registration (USD)	Total institutional fee (USD)	Total fee as % of claim
25,000	500	250	750	3.000%
50,000	500	250	750	1.500%
75,000	1,250	250	1,500	2.000%
100,000	2,000	250	2,250	2.250%
250,000	4,750	250	5,000	2.000%
500,000	11,000	250	11,250	2.250%
750,000	10,000	250	10,250	1.367%
1,000,000	15,000	250	15,250	1.525%
1,500,000	15,000	250	15,250	1.017%
2,000,000	22,500	250	22,750	1.138%
3,000,000	17,500	250	17,750	0.592%
5,000,000	32,500	250	32,750	0.655%
7,500,000	37,500	250	37,750	0.503%
10,000,000	50,000	250	50,250	0.503%
15,000,000	47,500	250	47,750	0.318%

Amount in dispute (USD)	Admin fee (USD)	Registration (USD)	Total institutional fee (USD)	Total fee as % of claim
20,000,000	60,000	250	60,250	0.301%

Pattern: institutional fees fall as a share of the claim for large disputes, meaning the main cost drivers in arbitration become counsel time, tribunal time, experts, and hearing logistics, not the administering institution's schedule.

Cost Comparison "Floor Vs All-in" (Illustrative Conversion Using Doing Business Benchmark)

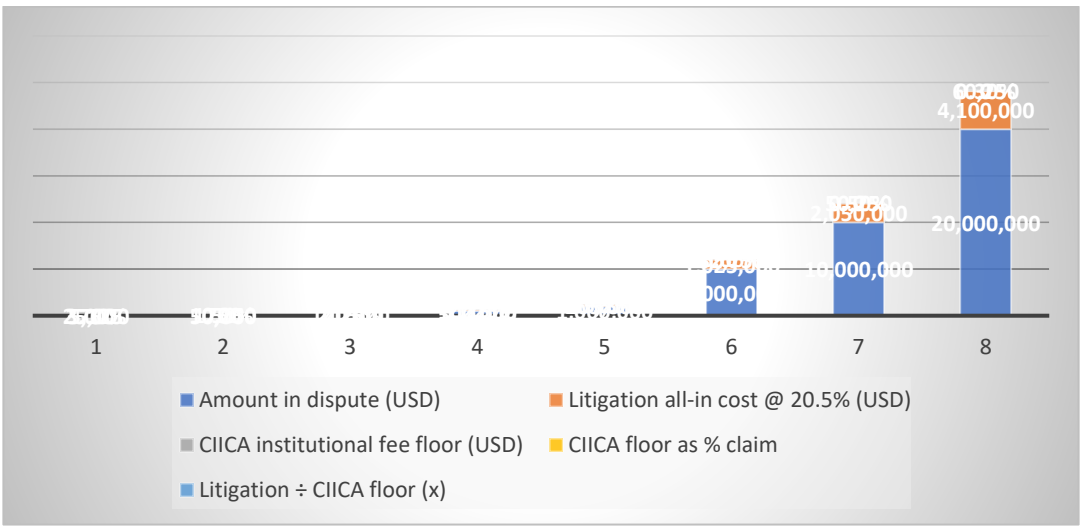
To align dispute sizes, Table 3 expresses (i) the litigation benchmark as all-in cost = 20.5% of claim value and (ii) arbitration as CIICA institutional fee floor from Table 2. This highlights a practical reality check: if litigation's all-in cost proxy is 20.5% of claim value, arbitration only stays "cheaper" when arbitrator + legal + expert + logistics + enforcement friction do not overwhelm that gap.

Table 3

Litigation all-in cost (20.5% of claim) vs CIICA institutional fee floor

Amount in dispute (USD)	Litigation all-in cost @ 20.5% (USD)	CIICA institutional fee floor (USD)	CIICA floor as % claim	Litigation ÷ CIICA floor (x)
25,000	5,125	750	3.000%	6.83×
50,000	10,250	750	1.500%	13.67×
100,000	20,500	2,250	2.250%	9.11×
500,000	102,500	11,250	2.250%	9.11×
1,000,000	205,000	15,250	1.525%	13.44×
5,000,000	1,025,000	32,750	0.655%	31.30×
10,000,000	2,050,000	50,250	0.503%	40.80×
20,000,000	4,100,000	60,250	0.301%	68.05×

Figure 1



Interpretation: The institutional component of arbitration is typically not what makes arbitration "expensive" in high-value disputes; instead, time spent by counsel/tribunal and post-award court friction are the dominant threats to the "cheaper/faster" assumption.

Speed Benchmark: Court Time-to-Payment vs Rule-Based Expedited Arbitration Timeline

CIICA's expedited arbitration rules state an objective of issuing a final and legally binding decision in less than 90 days from the arbitrator's appointment, with eligibility where the total claim + counterclaim does not exceed USD 600,000.

Table 4

CIICA Expedited Arbitration–key time/cost parameters (rule-based)

Parameter	Value
Target time to award	< 90 days from arbitrator appointment
Eligibility cap	USD 600,000 (claim + counterclaim)
Application fee	USD 1,500 per Applicant
Defence/counterclaim filing fee	USD 1,500 per Respondent
Respondent defence timeline	Within 7 days of commencement
Arbitrator timetable	Within 7 days of appointment
Award requirement	Written reasoned award within 90 days

To contextualize speed: the court benchmark is 1,071 days from filing to payment. Even assuming expedited arbitration completes (appointment + award) in roughly ~100 days (10-day appointment window + 90-day award window under the rules), the *decision stage* can be dramatically faster than the court benchmark–though real-world "time-to-money" still depends on whether the losing party pays voluntarily or enforcement is contested.

Table 5

Time comparison (secondary benchmark vs rule-based timeline)

Track	Time metric used	Days
Court litigation (benchmark)	Filing → payment (end-to-end)	1,071
Expedited arbitration (rule-based)	Appointment → award (decision stage)	≤ 90
Expedited arbitration (rule-based, approx.)	Commencement → award (decision stage)	~ 100
Implied "decision-stage" time saved vs court benchmark	1,071 - 100	971 days (~2.66 years)

Discussion

The findings upset the factuality in Pakistan that arbitration is typically considered faster and cheaper than civil litigation. On the time axis, the litigation standard (1,071 days to payment after filing) is used to demonstrate how the congestion of the courts, adjournment and multi-layer review may turn the commercial dispute into a long period of uncertainty. Conversely, arbitration (especially with expedited rules in place) may shorten the decision phase by several folds (e.g., a sub-90-day goal of arbitrator appointment of the eligible claim). The point to note is that the benefit of arbitration is most evident prior to implementation: it may reduce the distance to a judgment, but it will not be able to cease the contact with the court in the cases where the adherence to a judgment is disputed. Thus, it is not a question of award vs judgment, but time-to-money, which is whether parties voluntarily comply more often and whether post-decision challenges delay fulfillment.

The calculated institutional fee floor on arbitration is quite low in percentage of the value of claim, most particularly in dispute of higher value, indicating that institutions will seldom be the governing force in the total arbitration cost. Rather, the cost of arbitration increases due to tribunal time, intensity of counsel, expert evidence, and logistics of the hearing process, which may grow when parties transfer the court-like styles to the arbitral process. The measured cost of litigation all-in seems to be greater under the benchmark methodology, although its unique cost is the indirect cost of delay, that is, tied up capital, management distraction, operational disruption and diminished bargaining power of cash constrained claimants. Practically, the cost of litigation may appear less expensive at the filing stage and it may be more expensive when indirect costs caused by delay are added.

The main "reality check is the dynamics of enforcement. Arbitration is also most appealing when the parties can likely adhere voluntarily, or when the assets can be tracked and executed easily. In any case where enforcement attracts challenges to court or lengthy execution processes, the speed benefit associated with arbitration may be washed out and in certain situations converges with timelines akin to litigation. Fairness and bargaining-power issues are also brought up by this interface: repeat users and those with resources might be in a better position to prolong in either of those courtrooms, but the ups-front costs of arbitration are particularly off-putting to the SMEs.

To the decision-maker, this means that arbitration will generally be most effective in technical, confidentiality, cross-border, or multi-party contracting cases and where a disciplined timetable is important; litigation will be more favored where the importance of interim court, precedent/public, or appellate control. The implications of the findings to the policy makers are two-fold; enhancing the court cases management and performance, and tightening the arbitration governance and efficiency standards to ensure that the culture of delay does not reproduce in arbitration, as it was to be avoided.

Conclusion

This paper aimed to challenge one of the popular assumptions about the Pakistani business environment that arbitration is always quicker and less expensive than civil litigation by contrasting the two processes in the end-to-end cost-benefit context. The results do not indicate an absolute conclusion, but rather a conditional one. The civil litigation system is still structurally charged with long lines and unpredictability, as was seen in the commonly-used benchmark that indicates a long period between the filing and payment and a significant percentage of the claim. These features render litigation particularly expensive when indirect costs are calculated, including delays in recovery, management time, and business losses.

Arbitration, however, has the potential to provide a much faster decision-making process, especially in instances where an expedited process and case management by the firm is adopted. Nevertheless, the practical benefits of arbitration sway on the conduct of proceedings and post-award events. Institutional costs do not generally represent the primary contributor to arbitration cost, but generally cost is influenced by the intensity of counsel, time of tribunal, and evidence of experts and hearing logistics. Above all, the efficiency promised in arbitration may also be diminished in situations in which the interaction after the award is protracted by challenges, recognition, or contested enforcement. Under such circumstances, award-to-money timescales can start approaching the realities of litigation.

To the businesses, the main lesson is that forum selection is to be undertaken through a systematic decision tree: the value and complexity of the dispute, the necessity of confidentiality, the potential to obtain voluntary compliance, the location/traceability of assets, and the acceptance of procedural uncertainty should be employed to make a decision. The implication to policymakers and institutions is that they will need to follow two simultaneous reform paths: increasing the courts capacity to handle cases and execute them more effectively and efficiently, and enhancing the norms of arbitral efficiency (timelines, proportional process, and cost control) that will ensure that arbitration is always a viable commercial option. The future studies need to increase the Pakistan-specific empirical evidence, especially the anonymized arbitration timelines and enforcement results, to refine the guiding tips by industry, claim size, and type of dispute.

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