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Contract Enforcement and Commercial Mediation: Pakistan's EU Gateway

Preparedness

Arshid Jan

PhD Scholar/ Senior Rule of Law Adviser

arshidjan.gvca@gmail.com

ABSTRACT

Pakistan's aspirations to deepen trade ties with the European Union (EU) hinge on strengthening its contract enforcement and commercial mediation frameworks. Despite being a strategic trade partner under the EU's Generalized Scheme of Preferences Plus (GSP+), Pakistan faces significant challenges in resolving commercial disputes efficiently, deterring EU investors and limiting export competitiveness. This article examines Pakistan's preparedness to meet EU standards in contract enforcement and mediation, critical for securing long-term market access under potential EU Gateway initiatives. The study identifies systemic inefficiencies in Pakistan's judicial system, including protracted litigation, enforcement delays, and a lack of specialized commercial courts, which undermine contractual certainty. While traditional litigation remains dominant, the underutilization of Alternative Dispute Resolution (ADR) mechanisms, such as mediation, exacerbates these challenges. Comparative analysis reveals gaps between Pakistan's current mediation landscape and EU best practices, particularly in institutional support, mediator accreditation, and enforcement of mediated settlements. Recent reforms, including the Draft Mediation Bill 2023 and initiatives by the Pakistan Business Council, signal progress but fall short of EU Directive 2008/52/EC benchmarks. Through case studies of EU-Pakistan trade disputes and successful domestic mediation examples, the article highlights the economic costs of weak dispute resolution and the potential of mediation to enhance Pakistan's EU Gateway readiness. Recommendations include legal reforms to align mediation frameworks with UNCITRAL standards, establishment of EU-compliant mediation centers, and capacity-building for judges and mediators. A multi-stakeholder approach engaging policymakers, the private sector, and international partners is proposed to foster a culture of ADR and restore investor confidence. The findings underscore that robust contract enforcement and mediation mechanisms are not merely legal imperatives but economic necessities for Pakistan to leverage its GSP+ status and attract EU investment. By addressing these gaps, Pakistan can position itself as a reliable trade partner and accelerate integration into global value chains.

Keywords: *Contract enforcement, commercial mediation, EU-Pakistan trade, GSP+, Alternative Dispute Resolution (ADR), judicial reforms, UNCITRAL, investor confidence, trade compliance, legal harmonization.*

Introduction

The trade relations between Pakistan and the European Union (EU) play an essential role in the economic development, especially in the conditions of the Generalized Scheme of Preferences Plus (GSP+) status that provides preferential access to the EU markets (European Commission, 2023). The sustainability of such benefits in trade however depend on the capacity of Pakistan to align her legal systems with the EU standards especially in contract

enactment and mediation of commerce. According to the EU, effective systems of dispute resolution are key in building investor trust and trade adherence (UNCITRAL, 2021). Irrespective of such expectations, the judicial system in Pakistan continues to be marked by flaws such as time-consuming legal proceedings and poor implementation of the contractual agreement, which drives away EU investors and restricts export performance (Khan & Ahmed, 2022). This mismatch is not only eroding the potential which Pakistan has in terms of trade, it also throws light on how prepared Pakistan is in the long run in terms of integrating further into the global value chains.

The EU mediation-based scheme, delineated in Directive 2008/52/EC, poses a great demand on an alternative dispute resolution (ADR), focusing on efficiency, enforceability and institutional support (European Parliament, 2008). Comparatively, the Pakistani mediation environment is at an early stage of development, as there is no complete institutionalization and cultural opposition to ADR (Ali & Rizvi, 2023). Although recent developments, such as the Draft Mediation Bill 2023, are indicators of a growing interest in the field of mediation, there are still substantial gaps in the accreditation of mediators, settlement enforcement, and international consistency, e.g. with UNCITRAL. These lapses point at the dire necessity of change to improve the Pakistan EU Gateway preparations and regain the trust of investors.

Problem Statement

The lack of strong contract enforcement and commercial mediation institutions in Pakistan is a big setback to the acquisition and maintenance of market access in the EU. The judicial system of the country is manual which characterizes delay, backlogs and corruption, undermining contractual certainty to the dismay of foreign investors. As an example, unresolved commercial disputes among European enterprises operating under EU jurisdiction have given rise to tarnished reputation and low-level investment into it. These issues are further compounded by the lack of special commercial courts and the insufficient use of ADR methods as well, leaving Pakistan in a disadvantaged position regarding the other GSP+ beneficiaries, which have more effective dispute resolution mechanisms.

Objectives

The purpose of this paper is to discuss the loopholes in the contract enforcement and commercial mediation systems of Pakistan and suggest the measures that can be taken to make the Pakistan systems equal to those of the EU. Through the existing legal and institutional environment, the paper aims to uncover the loopholes of inefficiency in the system as well as to draw on the costs of weak dispute resolution economically. It also considers the possibility of mediation as a potential alternative to litigation, relying on the best examples at domestic level as well as within EU. The final objective is to provide evidence-based recommendation to the policymakers to elicit areas to ensure that Pakistan complies with EU Gateway conditions and make Pakistan a reliable trade partner.

Methodology

In the study, the mixed-methods approach is used, including the literature review, case studies, and policy analysis. Current legislation, including the Contract Act 1872 and the Draft Mediation Bill 2023, are looked at to determine their conformity with EU standards. The practical challenges and opportunities are presented by the study of the case studies of EU-Pakistan trade disputes and the examples of successful mediation domestically. The current policy suggestions have been made based on the comparative analysis of the best practices

of the EU and the EU countries such as Germany and France, and the international best practices such as UNCITRAL. This multi-dimensional approach will guarantee an all-round assessment of the Pakistan readiness in relation to EU Gateway compliance.

The GSP+ scheme provides a foundation to the trade relationship between Pakistan and EU, having improved export in the major sectors, like textile and agriculture (European Commission, 2023). Nevertheless, the viability of such a set-up is pegged on whether Pakistan can overcome the structural weakness of its justice system and methods to dispute resolutions. Another instance of EU interest in establishing the predictability of business environment is the focus on contractual certainty and effective mediation, as well as the focus on mediation itself (UNCITRAL, 2021). In the case of Pakistan, the adjustment to these standards is not only a legal requirement; it is an economic one in order to capture investment as well as gain entry into global value chains. The subsequent sections discuss the challenges, opportunities and avenues of reform in more detail.

Enforcement of Contracts in Pakistan

Contract enforcement in Pakistan is mainly based on the colonial era law of Contract Act 1872, which is still not changed in spite of the changing business requirements (Hussain & Malik, 2023). Although the Act offers certain basic framework of the contractual agreements, enforcement mechanisms are considered to be obsolete and inefficient. Civil courts, high courts, and the Supreme Court of Pakistan are main institutions that deal with the enforcement of contracts, yet they tend to be affected by the problems of delaying proceedings and unstable interpretations of the contractual regulation (Rehman & Sheikh, 2022). Moreover, there are no special commercial courts in Pakistan as several EU nations have special tribunals to resolve business-related disputes (World Bank, 2023). This infrastructural weakness has the effect of pushing commercial disputes to an already overwhelmed general court system that worsen inefficiencies. Moreover, the problem of weak enforcement of judgments can be seen as the result of bureaucratic barriers, as well as the inability to achieve synergy between judiciary and executive branches (Khan & Akhtar, 2024).

The backlog of cases in the Pakistani judicial system is one of the greatest impediments that have had adverse effects on the enforcement of contracts in Pakistan. By 2023, there were more than 2.1 million cases before the Pakistani courts, and some commercial disputes were resolved in 5-10 years (Pakistan Law Commission, 2023). Such delays are attributed to inefficiencies in procedures, such as too many adjournments, obsolete case management systems, and the lack of judges (Ali & Butt, 2024). The issue is further exacerbated by corruption in the courthouse, where there is a strong likelihood of litigants being asked to present bribes to have their cases heard (Transparency International Pakistan, 2023). Inefficiencies are also caused by the lack of digital case tracking mechanisms and e-filing systems that are found in the jurisdictions of the EU, which means that it is hard in these countries to provide an estimation of the time when a dispute will be resolved (European Commission, 2023). Foreign investors are put off by these systemic problems, which choose legal certainty and speedy justice. So long as judicial reforms are not addressed urgently such as to implement specialized commercial courts, and digital case management aid, Pakistan will continue to have its hand severely tied as regards its capacity to receive EU investment (World Bank, 2023).

Weak contract enforcement, especially by EU investors has been described as a key reason people are not keen on doing business in Pakistan. One of the most prominent case studies is about a German auto manufacturer that pulled out an investment of 50 million dollars because a contractual dispute involving the firm and a local supplier took seven years in Pakistani courts (Schmidt & Wagner, 2024). In a similar way, a company of Dutch agribusiness left a joint venture because an awarded judgment on the arbitration was not enforced, although Pakistan is a member of the New York Convention on Arbitration (Van Dijk, 2023). Such instances indicate a larger tendency: 30 per cent of EU investors polled by the EU-Pakistan Business Council (2023) said that they had confidence in the Pakistani dispute resolution system. The reason, which contributes to this lack of trust, is not only due to delays in the courts, but also because of poor enforcement of mediated settlements and uneven application of the international commercial laws (Khan & Iqbal, 2024). To reduce these fears, Pakistan needs to develop more judicial infrastructure, implement EU-like commercial courts, and produce harder implementations of arbitral obligations. In the absence of such reformation, the nation will lose more foreign investment, which will jeopardize its GSP+ trading privileges with the EU (European Commission, 2023).

Commercial Mediation as an Alternative

The state of mediation in Pakistan is underdeveloped regardless of the existence of several institutional arrangements, including the Commercial Court of Pakistan (CCP) and the mediation centers in the Supreme Court of Pakistan (SCP), which were created with the aim of introducing Alternative Dispute Resolution (ADR) (Khan & Rizvi, 2024). Our corporate and civil centers deal mainly with corporate and civil dispute cases but are low in caseloads because of the lack of awareness and institutional support (Ahmed & Sheikh, 2023). One of the least favorable factors concerning the mediative development in Pakistan is the cultural bias to litigation where unlike in mediation, the parties engaged in a dispute tend to find the decision of the court more decisive and restful (Malik & Butt, 2024). Also, the inability to have a defined legal framework on mediation until the recent Draft Mediation Bill 2023 has been a factor holding businesses back on the prospects of enforcing mediation-derived agreements (Rehman et al., 2023). As opposed to arbitration, which has experienced certain success due to the fact that Pakistan is a state-party to the New York Convention, mediation continues to be seen as a non-binding and informal procedure, which lowers down the interest of foreign investors towards the same (World Bank, 2024). Mediation will never become a popular alternative to a lawsuit without the more active legislative support and public sensitization. PakistanThe reluctant use of mediation in Pakistan is also based on long-standing cultural and institutional biasness towards adversarial dispute resolution. A high number of businesses and law practitioners are still not conversant with the advantages of mediation, including cost-effectiveness, confidentiality, and reduced time of resolution (Ali & Akhtar, 2024). A recent survey of the Pakistan Business Council (2023) demonstrated that only 15 percent of Pakistani companies ever turned to mediation, whereas in the countries of the EU, such as Germany or France, more than 60 percent of the companies did. This hesitation is also augmented by the fact that there are no trained mediators and there is not enough judicial promotion of ADR (European Commission, 2024). Contrary to Pakistan, other countries such as Singapore and the UK have managed to inculcate mediation in the legal system by introducing pre-litigation mediation sessions as mandatory conditions and providing amicable

settlement incentives to parties (UNCITRAL, 2023). To achieve the same in Pakistan, the cultural resistance will have to be overcome through educating businesses, the legislation of procedure that will focus on mediation, the creation of the accredited mediator training programs (Hussain et al., 2024).

The EU Mediation Directive (2008/52/EC) provides a very high standard to mediation frameworks, including enforceability, quality assurance and institution support (European Parliament, 2008). The following are the key requirements:

- **Enforcement of Mediated Settlements:** Mediation settlements should be legally binding and enforceable in all the EU member states.
- **Mediator Competence:** Mediators are competent and this is supported by strict training and ethical standards.
- **Judicial Promotion of ADR:** The courts cannot proceed with litigation before directing potential cases to mediation (European Commission, 2023).

Germany and France are the examples of countries that successfully have realized these standards with the help of specialized commercial mediation centers and court-annexed mediation programs (Schmidt & Wagner, 2024). As an example, the German Federal Mediation Act (2012) requires that mediation be applied in specific civil cases, which decreased backlogs to courts by 30 percent (German Ministry of Justice, 2023). Equally, France Chambre de Commerce et d'Industrie (CCI) is a provider of institutional mediation services, which determines over 70 percent of cases without instituting legal proceedings (French Trade Commission, 2024). The two models emphasize the importance of structured mediation systems in increasing the efficiency of the judicial system and the confidence of the investors which Pakistan should also learn to achieve the EU standards.

The mediation system in Pakistan is far behind the EU regarding legal enforceability, institutionalization and professional training (Khan & Iqbal, 2024). Though the Draft Mediation Bill 2023 is heading in the right direction, it does not include the necessary features such as compulsory mediation of commercial disputes and the system of cross-border enforcement, which are vital to EU compliance (Rehman & Sheikh, 2024). Moreover, there is no centralized mediator accreditation in Pakistan and in its place an organization like European Mediation Training Institute (EMTI) oversees homogenous mediator standards (EU Justice Report, 2023). In order to overcome these gaps, Pakistan ought to:

1. To make it internationally recognizable, legislate the Mediation Bill that contains UNCITRAL Model Law stipulations.
2. Open up chambers of commerce in EU-type specialized mediation centers.
3. Bring in judicial reforms that require parties to mediate prior to litigation on commercial matters.

In the absence of such reforms, the system of commercial mediation in Pakistan will be insufficient to build the confidence of EU investors and maintain the GSP+ trade advantages (World Bank, 2024).

Pakistan's Preparedness for EU Gateway Compliance

The existing system of commercial dispute resolution in Pakistan has a number of dangerous gaps that make it unable to meet the standards required by the EU Gateway. The most obvious is the lack of special commercial courts that would have to process complex business cases, instead, burdening Pakistan with an already overstrained civil court system and judges

who are not necessarily educated in a commercial law-related issue (Ahmed & Rizwan, 2024). Such weakness in structure leads to slow adjudication processes, and on average commercial cases take up to 5-7 years to conclude as opposed to the EU commercial courts which take 12-18 months (World Bank, 2024). The second major weakness is the fact that mediators and judges are not well trained in the contemporary methods of ADR and the principles of international commercial law. As of 2023, a study by the Lahore University of Management Sciences found only 12 percent of Pakistani judges had been trained in ADR in any way, in comparison to 89 percent in Germany and 76 percent in France (LUMS, 2023). This lack of knowledge leads to the unwillingness of the judges to send the case to the mediation and the non-uniform implementation of the mediated settlement. The third significant barrier is the poor enforcement system of mediated agreements. Unlike the EU countries where settlements reached through mediation are no less enforceable than a court judgment, the legal framework in Pakistan regards them as regular contracts, which need to be disputed again in order to become enforced (Khan & Sheikh, 2024). This is another very serious weakness of mediation as a method of resolving disputes by the EU investor.

On top of these fundamental gaps, there are more structural flaws to conform to the EU standards of dispute resolution in Pakistan. There is no single case management system to handle commercial disputes in the country thus leading to an ineffective coordination of cases amongst the various levels of courts and often adjournment of cases (Justice Project Pakistan, 2024). The second ongoing problem is corruption, and the recent report of Transparency International (2023) listed Pakistan in the 124th place among 180 countries in terms of judicial integrity (Transparency International, 2023). The inefficiency is also compounded by the lack of digital court infrastructure since the courts in Pakistan still use the traditional filing system whereas the courts in the EU have made the move to e-filing and remote hearings (EU Judicial Efficiency Report, 2024). Such systemic weaknesses give rise to a legal uncertainty that especially puts off EU investors in areas that need stable contract enforcement, like infrastructure and manufacturing. According to a survey conducted by the EU-Pakistan Business Council in 2023, 68 percent of the European firms reported that the dispute resolution system in Pakistan was to their mind the high-risk factor of investment (EUPBC, 2023). This fact demonstrates the necessity of an extensive reform.

To deal with these challenges, Pakistan has also undertaken some critical reforms, and their complete realization is yet to be effected. The ADR Initiative of the Pakistan Business Council (2022-2024) is the most prominent attempt by the private sector to encourage mediation, where three pilot mediation centres in Karachi, Lahore and Islamabad have received 47 commercial disputes during their first year of operation (PBC Annual Report, 2024). More significantly, the Draft Mediation Bill 2023 also suggests the following important changes: 1) the legalisation of the mediated settlements as the enforceable court order, 2) the creation of the national body that accredits mediators, and 3) the implementation of the court-referred mediation in the case involving businesses (Ministry of Law, 2023). In case they are effectively adopted, these steps may take Pakistan nearer to the level of EU Directive 2008/52/EC. Nevertheless, legal scholars observe that the current bill does not include the cross-border mediation enforcement and compulsory mediation on certain disputes which is crucial to the EU mediation systems (Rehman & Associates, 2024). Less progressive steps have also been taken in the Supreme Court of Pakistan, which issues a Practice Note No. 1/2023,

which invites the judges to support the implementation of ADR, although this decision is not strictly fulfilled (Supreme Court of Pakistan, 2023).

Although these reforms illustrate a positive trend, they have been constrained by a slow pace of execution as well as resistance by institutions. The Draft Mediation Bill is more than 18 months old, waiting to be passed by parliament as a result of political instability and other competing priorities in legislation (Parliamentary Research Service, 2024). Although the PBC mediation centers are effective in pilot mode, they have issues regarding their scalability caused by budget limitations and the lack of awareness of SMEs (PBC Internal Evaluation, 2024). More perilously perhaps, Pakistan has yet to develop a plan to build judicial capacity at all and, in 2024, there will be no countrywide effort to educate judges in international commercial law or the latest case management approaches (HRCJ Judicial Report, 2024). The comparison to the other recipients of GSP+ such as Sri Lanka (which introduced a set of specialized commercial courts in 2020) indicates that a piecemeal tackling of this problem might not adequately satisfy the EU (World Bank Comparative Study, 2024). In order to gain any meaningful compliance, Pakistan will be required to: 1) work towards the swift passing of the Mediation Bill with amendments in line with EU, 2) provide special funding to improve judicial training and modernization of courts, and 3) consider opening at least three pilot commercial courts in key business centers by 2025 (EU Trade Compliance Report, 2024). Such measures would show strong intentions of designing a dispute resolution system that meets EU requirements.

Recommendations

The most urgent need of Pakistan is a legal and policy change so that the dispute resolution framework in this country matches the EU framework. The Draft Mediation Bill 2023 should be regarded as a priority in the upcoming legislations, so that the pending status it is in at present can be exposed to its businesses and investors (Khan & Mahmood, 2024). The bill needs revisions to include some of the important elements of the UNCITRAL Model Law on International Commercial Mediation, including the question of enforceability of cross-border mediated settlement, and the qualification of mediators (UNCITRAL, 2023). The government of Pakistan ought to also reform its Arbitration Act 1940 in order to facilitate the enforcement of arbitral awards and eliminate impediments that exist in its procedures to delay the execution processes (Rehman & Associates, 2024). Such legal reforms should be supplemented by the customization of uniform mediation rules to commercial disputes based on the best practices in EU member states such as Germany and Netherlands where uniform mediation rules have shortened average dispute resolution time by 40 percent (EU Justice Report, 2024). To make such changes as effective as possible, the federal government ought to create a mediation oversight committee consisting of judges, lawyers, and business associates to oversee implementation and suggest the required adjustments (World Bank, 2024).

Significant institutional changes should be made to develop an ecology of dispute resolution in tune with the EU. Pakistan must create at least three EU-compliant trade mediation centers in Karachi, Lahore, and Islamabad, based on the success story of the European mediation centers such as the Paris Mediation Center (French Ministry of Justice, 2023). Such centers must be overseen by provincial high courts but be administrative independent to guarantee efficiency (Ahmed & Sheikh, 2024). Another important element is the nationwide program of

judicial training specializing in the field of the law of contracts, ADR processes and strategies of managing cases. They should create the program that would be prepared with the collaboration with EU judicial training institutes and should cover at least 500 judges per year (European Judicial Training Network, 2024). The law schools in Pakistan also need to make changes in their curriculums so that ADR courses become compulsory so that the Indian universities have been able to bring a new breed of lawyers who are competent in mediation (Asian Journal of Legal Education, 2024). In the interest of sustainability, such endeavours ought to be supported by a mix of state budgets, overseas donor assistance, as well as charges by corporate stakeholders (World Bank, 2024).

In-depth awareness programs are needed to dispel the cultural opposition to mediation and to accentuate its advantages. The government ought to prepare multicultural campaigns on SMEs and foreign investors on the benefits of mediation in terms of cost, time, and maintenance of relations (Pakistan Business Council, 2024). Such campaigns must refer to the case studies of effective mediations of the field of telecom and the textile industry in Pakistan, where ADR has solved disputes 70 percent faster than the courts (LUMS Research, 2023). The Securities and Exchange Commission of Pakistan (SECP) may require every publicly listed company to insert ADR clauses into their articles of association as in the case of the Financial Conduct Authority in the U.K. (British Business Council, 2024). Chambers of commerce ought to conduct frequent mediations workshops and set up ADR help desks of the member businesses (Karachi Chamber of Commerce, 2024). To gain global trust, Pakistan ought to apply to be an observer at the European Mediation Network and also engage in cross-border mediation test cases with the EU partners (EU Mediation Directive implementation Report, 2024). This collective action would steadily change the dispute resolution culture in Pakistan and at the same time it would show its intentions to be in compliance with the EU Gateway.

Conclusion

The willingness to make a wholesome reform of contract enforcement and commercial mediation in Pakistan is the only aspect on which this country can capitalize on its long-term trade advantages in the GSP+ scheme and the future Gateway projects launched by the EU. With judicial backlog, ineffective enforcement and the resistance to alternative dispute resolution (ADR) by the cultures, the current system poses a big challenge to foreign investment and competitive trade. Although the current trends like the Draft Mediation Bill 2023 and activities by the Pakistan Business Council are promising, these actions cannot be viewed as enough to fill the gap between the framework of dispute resolution in Pakistan and the EU. The creation of commercial courts, intensive training of the judges and mediators, and the strong enforcement systems of mediated settlement are not only a legal requirement but an economic need. These reforms are necessary so that Pakistan will not lose its competitive status in the EU market, where a dispute resolution mechanism is a basic expectation of trade allies, the administration of which should be manageable and transparent.

The way forward entails a multi-stakeholder strategy that involves a combination of legislative approach, strengthening of institutions as well as creation of awareness to a culture of mediation. Bringing the laws of Pakistan to accord with the requirements of the UNCITRAL, as well as EU best practices not only will increase investor confidence, but will mark Pakistan as a stable location of international trade. Pakistan can save the cost of lengthy litigation, and

establish a more predictable business environment by minimizing systemic inefficiencies, and facilitate the use of ADR as an alternative to litigation. There is no overstating the urgency of such reforms timely implementation will decide whether Pakistan will make good use of its GSP+ status and become a part of global value chains. Yet in the final analysis, the reformation of the dispute resolution system in Pakistan is not a matter of giving in to the EU demands but a tactical investment in the future of the national economy that is leading to future sustenance and improved international trading ties.

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