COMPARISON BETWEEN ARBITRATION PROCEEDINGS UNDER ARBITRATION ACT OF 1940 AND INTERNATIONAL RULES OF ARBITRATION FOR LARGE SCALE CONSTRUCTION PROJECTS OF PAKISTAN.

by

Mohsen Islam Khan

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This is to certify that the

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Submitted by

MOHSEN ISLAM KHAN

Has been accepted towards the partial fulfillment

Of the requirements for the degree

of

Master of Science in Construction Engineering and Management

_____

Dr. Hamza Farooq Gabriel
Associate Professor
Department of Water Resource Engineering and Management
NUST Institute of Civil Engineering
School of Civil and Environmental Engineering
National University of Sciences and Technology, Islamabad

DEDICATED

TO

MY PARENTS AND MY TEACHERS

ACKNOWLEDGEMENT

I am grateful to Allah Almighty for granting me the strength, energy, perseverance and opportunity needed to complete this research document. This research would have been impossible without constant support and guidance of my Project advisor Dr. Hamza Farooq Gabriel and committee members. I would also like to thank my mentors and seniors at National Highway Authority particularly Mr. Asim Khan Director (Legal) and all the imminent industry professionals who guided me during my research work; without their support I would have been completely clueless.

ABSTRACT

The construction industry around the world is labor intensive and generates huge amounts of revenue. Both public and private sectors are involved in in this industry and it produces employments and facilities across the world. In modern competitive business environment of CI the disputes are inevitable and considering the pace of works and cost involved, the industry professionals endeavor to resolve these disputes as early as possible and within minimum possible costs.

Conventionally, litigation was the only way of dispute settlement however after advent of knowledge, various alternate dispute resolution techniques have emerged out of which Arbitration has been the most prominent and favored one as it generates a legally binding decision without the hassle of conventional litigation.

Like rest of the world, CI of Pakistan also deploys Arbitration as a dispute resolution mechanism under Arbitration Act of Pakistan 1940. This is an old enactment based on British law that has posed various problems in practice. This research is focused on the problems posed by the application of Arbitration Act and compared it with internationally accepted ICC and UNCITRAL rules to suggest improvements in local Arbitration process.

In order to achieve the objectives, the differences among ICC, UNCITRAL and Arbitration Act were formulated and discussed with imminent industry professional on the basis of semi-structured interview question and in depth qualitative non-statistical textual analysis was conducted on the basis of thematic coding using advanced computer softwares like IBM SPSS Data Collection, Provalis QDA Miner and MS Excel.

As a result of this analysis and in depth literature review, cognitive results were deduced and it was proposed that in Pakistan UNCITRAL rules of Arbitration can be adopted after certain amendments and tailoring it our specific needs. It was argued in the research that the adoption of these rules will not only facilitate the Arbitration proceedings by settlement of disputes in much lesser time with reduced cost but also promote the utility of Arbitration as a dispute resolution mechanism in Pakistan.

Finally the research was concluded with the recommendations to improve the Arbitration process for CI of Pakistan and various aspects were also highlighted that could prove a corner stone for future research.

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LIST OF ABBREVIATIONS

AAA	American Association of Arbitrators
ACE	Association of Consulting Engineers United Kingdom
ACEC	American Council for Engineering Companies
ADR	Alternate Dispute Resolution
AGC	Associated General Contractors
AIA	American Institute of Architects
ASCE	American Society of Civil Engineers
C&W	Communication and Works Department
CDA	Capital Development Authority
CI	Construction Industry
CLC	Civil Law Cases
CLD	Corporate Law Decisions
CSI	Construction Specifications Institute
ECNEC	Executive Committee on National Economic Council
EJCDC	Engineering Joint Documents Committee
FIDIC	Fédération Internationale Des Ingénieurs Conseils
FWO	Frontier Works Organization
GDP	Gross Domestic Product
GoP	Government of Pakistan
ICC	International Chamber of Commerce
ICE	Institute of Civil Engineers United Kingdom
ICSID	International Center for Settlement of Investment Disputes
IMF	International Monetary Funds
JCT	Joint Contracts Tribunal UK
MoC	Ministry of Communications
NHA	National Highway Authority
NLC	National Logistic Cell
NSPE	National Society of Professional Engineers
PASW	Predictive Analytics Software, previously known as SPSS
PCA	Permanent Court of Arbitration at The Hague under UNCITRAL
PEC	Pakistan Engineering Council
PLD	Pakistan Legal Decisions

PWD	Public Works Department
QDA	Qualitative Data Analysis
SCMR	Supreme Court Monthly Review
SPSS	Statistical Package for the Social Sciences
UK	United Kingdom
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNO	United Nations Organization
USA	United States of America
WAPDA	Water and Power Development Authority
YLR	Yearly Law Review

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3. Final Award in Case No. 6611 (ICC International Court of Arbitration 1993).
4. Final Award in Case No. 7641 (ICC International Court of Arbitration 1996).
5. Final Award in Case No. 7910 (ICC International Court of Arbitration 1996).
6. M/s AM & Co. vs NHA (Local Arbitration 2007).
7. M/s CPECC vs NHA (Local Arbitration 2007).
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22. UNCITRAL: 2012 Digest of Case Law on the Model Law on International Commercial Arbitration (UNO).
23. White Industries Australia Limited vs The Republic of India (UNCITRAL November 2011).

CHAPTER 1

INTRODUCTION

1.1 Study Background

Humans are compulsive builders who have throughout demonstrated continually improving talent for construction and with the advent in the field of science and technology and exponential expansion in knowledge, the construction industry have been considerably diversified. The projects within the construction industry are expensive, complex and time taking endeavors which are mostly unique (Clough, Sears & Sears, 2005). Most of the construction projects involve the participation of the Owner also called clients or employers, Constructors also called contractors and designers also known as consultants. All the work on each project is divided among the involved parties. Owner is the party that decided what to construct, when to construct and where to construct a particular facility which is designed by the designer and built on ground by the constructors under a formal & legally enforceable contracts (Hinze, 2010). Due to complexity of any Construction job, it is not possible for Owner to develop in-house expertise in every field of Construction part. The Owner or Employer hires qualified and experienced professional teams for Design and Construction specialized in that kind of work. This arrangement has been evolved to economize the activity, with better end product in less time.

A contract is an agreement, mostly between two entities or parties, enforceable under law (Hinze, 2010). Section 2(h) of Contract Act 1872 of Pakistan defines that a convent or agreement enforceable by law is called a contract whereas Under Section 10 of the aforementioned act elaborates that, “All agreements are contracts if they are made under the free will of the parties mentally and legally competent to enter into a contract, for legal consideration and with a legal object, and are not hereby expressly declared to be void”. Contracts in construction industry are used to set out the terms and condition of agreement mandatory to fulfill for successful completion of the construction project (Yates, 2011).

It has been identified by the researchers and experts all over the world that disputes are inevitable in construction contracts. The construction industry has often

been considered as “harsh business” and is characterized as confrontational and antagonized (Cox and Thompson, 1997; Saad et al., 2002). It has been understood that no matter what efforts are done by the owners, contractors, subcontractors or suppliers, the contract disputes still occur in relation to the construction contracts (Yates, 2011). Disputes are a reality in modern construction world and without the proper means to address them they can rapidly grow with rising cost, time delay and risk of litigation in courts (Jannadia, Assaf, Bubshait, & Naji, 2000).

Conventionally the disputes were resolved by litigation. The rising cost of dispute resolution, the amount of time involved in litigation and primarily the risk of litigation in courts necessitated finding new and less cumbersome ways to resolve construction disputes (Fisk & Raynolds, 2010). In recent past, the construction industry in US has taken steps to develop various techniques to resolve disputes, at any stage, without having to involve in lengthy litigation. These techniques range from simple negotiations to binding arbitrations. Experience has proved that the resolution reached sooner rather than later and in a more un-confrontational manner can enhance the chances to avoid litigation (Jannadia, Assaf, Bubshait, & Naji, 2000).

Traditionally arbitration has been the most popular alternative to the litigation for resolution of disputes, its use can be traced back to nineteenth century, however it gained particular popularity in 1960s. Many contracts now require arbitration to be a binding means of dispute resolution particularly in private contracts (Hinze, 2010). According to UNO; Arbitration is a mechanism for the settlement of disputes, it is a consensual method, a private procedure and leads to final and binding determination of rights and obligations of the parties (UNCTAD (UNO), 2005).

Indian Sub-continent has a long tradition of Arbitration. A dispute between two parties is resolved by the third party which is the essence of arbitration has been in practice in this region for centuries and this primitive form of arbitration is still in practice in Indo Pakistan region and known as “Panchayat”, “Jirga” etc (Khan, 2013). In the British Rule no regulation was made to abolish panchayats rather the initial Bengal regulations of 1770 onwards encouraged arbitration in the form of panchayats (Khan, 2013). Interestingly it was a part of the initial regulations that no award will be challenged if the complainant cannot categorically prove that arbitrator has acted dishonestly with gross negligence and biasness (Law Commission of India, 1978). In

1859, the very first Arbitration Act was enacted and included in the code for civil procedure. This same act formed the Arbitration Act of 1940 with certain amendments and improvements (Law Commission of India, 1978).

In Pakistan all types of Arbitrations falls under the legal ambit of Arbitration Act of 1940. This same enactment is also applied over the resolution of disputed in the construction industry, and Pakistan Engineering Council enforces this Act through the standardized conditions of the contract. Internationally, however the arbitration proceedings have been revolutionized into an impeccably organized affair where each and every aspect of the arbitration has been established through set procedures in well thought out and properly framed fashion. The west has devised numerous rules to conduct arbitration such as UNCITRAL rule of arbitration; ICC rules of arbitration, ICSID rules of arbitration, AAA rules of arbitration etc to offer flexibility and adaptability to the parties to the dispute that facilitate the resolution of conflicts.

1.2 Research Significance

This research is aimed to establish the differences between proceedings of arbitration adopted internationally and locally to resolve the disputes encountered in construction industry. This research would have a profound effect on Arbitration in Construction Industry of Pakistan, as it points out the shortcomings in current arbitration scenario.

This research also suggests corrective measures that can be taken to improve the process of arbitration. During the course of this research it was established that the current practices are flawed to a great deal and parties to the dispute have to dedicate considerable time and money while resolving disputes through arbitration. On the contrary, the original object using of arbitration as a dispute resolution mechanism was to offer a quick and economical resolution of dispute. Arbitration is still cheaper and quicker than litigation, no doubt; however a great room of improvement is evident. Thus this research suggests action that could be taken to improve our procedures that could facilitate the resolution of dispute through arbitration.

This pioneering research will instigate the construction industry to have a more structured, organized and serious approach towards arbitration and will open up avenues of further research in this area.

1.3 Research Objectives

The main objectives of this research can be outlined as follows:

a. To establish differences between proceedings of arbitration adopted internationally and locally to resolve the disputes encountered in construction industry.
b. Highlight the shortcoming in current procedure being adopted in Construction Industry of Pakistan.
c. Study international procedures, rules and regulations of Arbitration and suggest improvements based on those, and what can be adopted in Pakistan
d. Highlight and promote the importance and significance of Arbitration as a dispute resolution mechanism in construction industry of Pakistan showing its benefits to society in general and CI in particular.
e. Being a pioneer research in this field, it will establish a baseline for further in depth research on the issue.

1.4 Scope and Limitation

Being the very first research on the topic, the scope of this research was limited inherently. Following postulates the scope and limitation of this research.

a. The primary objective of this research being to establish the difference between local and international arbitration proceedings thus it was heavily relied upon extensive literature review.
b. For local arbitration, this research is limited to disputes in construction industry only.
c. For international arbitration other contractual disputes related to construction and commercial affairs are also considered for the purpose of cogent elaboration.
d. Also, in Pakistan the arbitration in construction contracts is only included in relatively large projects essentially having cost of more than Rs. 25 Millions[1]. Thus a large portion of construction industry involved in small projects is not represented in this research.

[1] Standard Form Of Bidding Documents For Procurement Of Works (For Smaller Contracts) Harmonized With PPRA Rules Notified on June 11, 2007 by Pakistan Engineering Council, Islamabad

e. The comparison is strictly among Arbitration proceedings conducted under Arbitration Act of 1940 in Pakistan and International Arbitration Proceedings under ICC and UNCITRAL Rules of Arbitration.
f. Currently in Pakistan, the individuals with appropriate academic qualifications and relevant experience of the subject do not exist. All the participant involved in this research were industry professionals having hands on experience but without relevant qualification and even those individuals were in extremely small numbers. For this very reason the number of individuals whose interviews were conducted is quite small.
g. There has been no research conducted on the subject in Pakistan making this research pioneer in its own right. However due to this very fact it was extremely difficult to have basic data and analytical baseline for the research.
h. Internationally also, there has been little research on such subjects. Most of the work in dispute resolution in construction had some similarities but nowhere ideologically related to this research thus creating grave difficulties to establish analytical baseline.
i. This research has heavily relied upon extensive literature review spread across diversified fields of social sciences and construction management knowledge areas.

1.5 Organization of Thesis

This thesis is organized in five broad chapters. Chapter 1 gives a brief introduction followed by detailed and extensive Literature Review in Chapter 2. In Chapter 3 the research methodology has been discussed briefly that explains the techniques utilized to conduct this research followed by the actualization of that methodology along with data analysis and formulation of results in Chapter 4. Finally Chapter 5 concludes the research with its findings.

1.6 Summary

This chapter gave a brief introduction to comparison of arbitration proceedings being adopted locally and internationally for construction industry in Pakistan and listed the objectives of this research. The theoretical base for this study is grounded on

extensive literature review (see Chapter 2). This chapter briefly highlighted the research significance, its scope and limitations and overview of this dissertation.

CHAPTER 2

LITERATURE REVIEW

2.1 Introduction to Construction Contracts

It is quoted again that “Humans are compulsive builders who have throughout demonstrated continually improving talent for construction and with the advent in the field of science and technology and exponential expansion in knowledge, the construction industry have been considerably diversified. The projects within the construction industry are expensive, complex and time taking endeavors which are mostly unique” (Clough, Sears, & Sears, 2005). For many years Construction Industry had been the single the largest production industry in USA. It accounts of almost two third of 1 trillion USD in expenditures per year for new construction alone and constitutes about 5% of GDP (Hinze, 2010). As per the IMF’s report on GDP of countries all over the world for the year 2011 all industries including the construction industry contributes 25.3% towards the GDP of Pakistan. This figure, although insufficient to precisely pin point the exact contribution of CI towards GDP of Pakistan, is however a strong indicator that signifies the importance of CI towards the economy of our country.

Most of the construction projects involve the participation of the Owner also called clients or employers, Constructors also called contractors and designers also known as consultants. All the work on the each project is divided among the involved parties. Owner is the party that decided what to construct, when to construct and where to construct a particular facility which is designed by the designer and built on ground by the constructors under a formal & legally enforceable contracts (Hinze, 2010).

A contract is an agreement, generally between two parties, enforceable by law. There can be various forms of contract; it can be unilateral, bilateral, expressed, implied or a joint agreement. In its essence, however, the contract is a legal commitment from one party to the other. In order to be legally valid all contracts must fulfill a certain criteria which include offer, acceptance, consideration, meeting of minds, lawful subject matter and competent parties (Hinze, 2010). Section 2(h) of Contract Act 1872 of Pakistan defines that an agreement enforceable by law is called a contract whereas Under

Section 10 of the aforementioned act elaborates that, *"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void"*.

2.1.1. Use of Contracts in Construction Industry

Contracts in construction industry are used to set out the terms and condition of agreement mandatory to fulfill for successful completion of the construction project, protect whosoever party to the contract from being taken advantage of by the other party to the contract and protect the parties if other party fails to fulfill its legal and contractual obligations. Contracts are also used to prevent on party gaining undue benefit at the expense of the other party. If a contract doesn't explicitly states what is needed to be accomplished then one can end up doing more work than originally intended or vice versa. If a contract is fulfilled by the parties according to the terms of contract then the contract is just used to stipulate the requirement to the performance of the contract. However if the contract is not successfully completed then the contract is used to determine who is actually responsible for the default or breach of the contract. It is therefore imperative for the engineers working on the construction projects to have good understanding of the contracts and the applicable laws (Yates, 2011).

2.1.2. Standardization of the Contracts

In the complicated activities of today's highly complex construction industry, standard forms of contract have become a necessity of most construction projects. Most of the standard forms of the contracts have been developed by the independent engineering organizations world over to advance on the experience already gained in the field of contracts while putting them in practice but most of all to create a balance among the parties to the contract in order to optimize protection of the interests of the involved parties thus establishing and consolidating a fair, just and balanced contract. Knowledge gathered through experience and repetitive use of these standardized contracts have led to revision, modification and improvements to the standard forms of the contracts over time in order to achieve greater clarity and certainty towards the intentions of the terms and conditions of the contracts. Moreso the standard forms of contracts provide uniformity for comparison and evaluation when services or works are procured through orthodox competitive bidding and tendering process (Bunni & Loyd QC, 2001).

Following is the list of standard contract documents being used internationally for the construction projects

1. Suggested form of agreement between owner and contractor form construction contract prepared by Engineers Joint Contract Documents Committee (EJCDC) issued and published jointly by American Council of Engineering Companies (ACEC), The Associated General Contractors (AGC), American Society of Civil Engineers (ASCE) and National Society of Professional Engineers (NSPE) endorsed by Construction Specification Institute (CSI), United States of America.
2. Standard for documents between owner and contractor by American Institute of Architects (AIA), USA.
3. General Conditions of Contract and Forms of Tender, Agreement and Bond for Use in Connection with Works of Civil Engineering Construction, in short the ICE Form prepared by the Institution of Civil Engineers and the Federation of Civil Engineering Contractors for use in the United Kingdom domestically.
4. Association of Consulting Engineers in the United Kingdom, jointly with the Export Group for the Construction Industries in the United Kingdom, and with the approval of the Institution of Civil Engineers, prepared a document for use internationally that became commonly known as the Overseas (Civil) Conditions of Contract (the ACE Form).
5. Conditions of Contract for works of civil engineering construction by Fédération Internationale Des Ingénieurs Conseils (FIDIC) published in 1987 became generally known as The Red Book FIDIC – IV
6. Conditions of Contract for works of civil engineering construction by Fédération Internationale Des Ingénieurs Conseils (FIDIC) published in 1987 became generally known as The Red Book FIDIC – IV
7. Conditions of Contract for Building and Engineering Works, Designed by the Employer published in 1999 by FIDIC generally known as 1999 Red Book.
8. Standard form of Bidding Documents published in 2007 by Pakistan Engineering Council (PEC) based upon FIDIC General Conditions of Contract Part-I (1987 reprinted in 1992 with further amendments), Particular Conditions of Contract Part-II, Instructions to Bidders and sample appendices required for bidding.

2.1.3. Standard Form of Bidding Documents by PEC

Pakistan Engineering Council (PEC) as a statutory regulatory body carried out standardization of "country specific" documents for procurement of works and services as recommended by Planning Commission, Government of Pakistan in 1996 and prepared Standard Form of Bidding Documents for Civil / Construction Works. PEC anticipated that this standard contract document will deliver an impartial and fair basis of contract agreements for procurement of civil works in conjunction with the international best practices. PEC prepared this document based of FIDIC Conditions of the Contract 1987 and referred following documents for its preparation.

Pakistan Standard Conditions of Contract (Civil) 1st Edition reprinted in July 1993.

Standard Bidding Documents finalized by WAPDA in 1987 for use on medium sized contracts.

National Highway Authority Contract No. 1, Indus Highway Project (N-55).

Asian Development Bank-Sample Bidding Documents.

World Bank Standard Bidding Documents - Procurement of Works May 2005 (based on FIDIC 99 Second Edition).

Public Procurement Rules, 2004.

PEC got this document approved by Executive Committee for National Economic Council on 12th November, 2007 and was declared compulsory for all engineering and technical organizations, institutions & departments on Federal, Provincial and district level to utilize these documents for procurement of civil / construction works either funded locally and/or through donor agencies (Pakistan Engineering Council , 2007).

2.2 Dispute Resolution in Construction

It has been identified by the researchers and experts all over the world that disputes are inevitable in construction contracts. The construction industry has often been considered as "harsh business" and is characterized as confrontational and antagonized (Cox and Thompson, 1997; Saad et al., 2002). Being a part of tough and competitive business world it involves increasing level of conflicts and disputes and surprisingly there is little empirical evidence to back up the harshness of the industry (Lavers, Fenn, & Gameson, 1992).

It has been understood that no matter what efforts are done by the owners, contractors, subcontractors or suppliers, the contract dispute still occur in relation to the construction contracts. It is therefore evidently difficult, if not impossible, to draft a construction contract that address every foreseeable contractual problem that could arise during the currency of the contract (Yates, 2011). Disputes are a reality in modern construction world and without the proper means to address them they can rapidly grow with rising cost, time delay and risk of litigation in courts (Jannadia, Assaf, Bubshait, & Naji, 2000) thus in today's complex world the resolution of dispute have become an integral part of the job and it necessitates a wide range of activities to be performed, ranging from selection of dispute resolution mechanism and right to the documentation and finalization of the settlement (Cheung, 1999).

Conventionally the disputes were resolved by litigation where parties to the dispute take their matter in front of a legally empowered judge supported by their legal counsels for the resolution of their dispute. This process was lengthy, tedious, time consuming, expensive and the matter is generally adjudicated upon by the person who may or may not have the technical expertise to fully comprehend and resolve the matter. The rising cost of dispute resolution, the amount of time involved in litigation and primarily the risk of litigation in courts necessitated finding new and less cumbersome ways to resolve construction disputes (Fisk & Raynolds, 2010). In recent past, the construction industry in US has taken steps to develop various techniques to resolve disputes, at any stage, without having to involve in lengthy litigation. These techniques range from simple negotiations to binding arbitrations. Experience has proved that the resolution reached sooner rather than later and in a more un-confrontational manner can enhance the chances to avoid litigation. Waiting for the end of the project for resolution of disputes makes the process invariably expensive and harder to control. Parties to the construction dispute or any commercial contractual dispute for that matter intend to retain the control over the outcome of the dispute and maintain a business relationship with each other for future endeavors (Jannadia, Assaf, Bubshait, & Naji, 2000)

2.2.1 Dispute Resolution Techniques

Dispute resolution techniques are broadly categorized as Formalized Dispute Resolution Processes and Alternate Dispute Resolution wherein litigation and arbitration

are treated as Formalized Dispute Resolution Processes (Cheung, 1999). J. K. Yates has identified following techniques of dispute resolution:

a. Contract Negotiations
b. Contract Mediation
c. Arbitration
d. Litigation
e. Dispute Review Boards
f. Mediation / Arbitration (Med/Arb)
g. Early Neutral Evaluation
h. Minitrials
i. Rent – A – Judge
j. Court Annexed Arbitration
k. Summary Jury Trials

Out of the techniques mentioned above, last six are also categorized as Alternate Dispute Resolution or ADR Techniques (Yates, 2011). Some researchers also include mediation and arbitration in ADR and suggest that any techniques other than the traditional court based litigation can be considered as ADR as it is an alternate method than the conventional formal way of resolving of disputes. It has been established in the construction industry that nobody actually wins during litigation and the net result of the process is loss of profitability, productivity and quality therefore the industry leaders are more inclined today towards the adoption of ADR for settlement of dispute (Clough, Sears, & Sears, 2005).

Stair step chart shown in Fig 2.1 below, delineates the various dispute resolution techniques that are currently being used in the construction industry

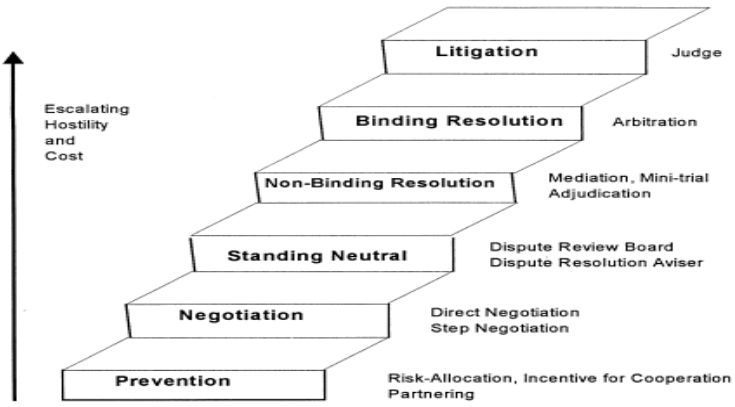


Figure 2.1 - Step Chart for Dispute Resolution Techniques

Following chart[2] (Table 2.1) impeccably explains merits and demerits of various commonly used dispute resolution techniques evaluated against involved time, cost, binding nature and right to appeal the decision.

Table2.1: Construction Dispute Resolution Alternatives

Time	Settlement Cost	Binding Nature	Appeal
Negotiation 1. Dependent on the parties' negotiators' objectives, attitudes, and other factors 2. Can be very fast.	1. Minimal. 2. Cost of compromised settlement.	1. Take it or leave it. 2. May lead to an agreement	1. Waived if agreement is reached. 2. Arbitration or litigation, if no agreement.
Mediation 1. Same as negotiations 2. There may be some limitations imposed by the mediators' schedule. 3. Usually fast.	1. Mediators' compensation if any.	1. Take it or leave it. 2. May lead to an agreement. 3. Moral pressure to reach an agreement.	1. (Same as above)
Mediation-Arbitration 1. Speed depends on the procedure used. 2. If formalities can be waived, resolution is fast.	1. Mediators' compensation if any.	1. May be agreed in advance that parties will be bound to the decision.	1. (Same as above)
Arbitration 1. Faster than litigation. 2. Rules may impose some limitations. 3. Availability and schedule of arbitrators is a problem 4. Preparation may take several months.	1. Filing fee. 2. Arbitrators compensation. 3. Attorney fee, if any.	1. May be binding or nonbinding according to the contract	1. No review of merits in court. 2. Arbitrator not required to explain the award.
Litigation 1. May take up to 5 years or more to reach a trial. 2. Preparation itself may take years.	1. Prohibitively expensive, both in terms of attorney's fee and time cost.	1. Binding	1. Full Appeal
Drop Claim/Concede 1. None.	1. Value of claim.	1. Contractual agreement by mutual accord. 2. Waivers	1. None, right waived in most cases.

[2] Reproduced from *"Construction Project Administration, 9th Ed." By Edward R. Fisk PE and Wayne D. Raynolds, PE published by Pearson Education Inc. publishing as Prentice Hall, New Jersey, USA in 2010. Refer Page No. 349.*

2.2.2. Dispute Resolution Mechanism in FIDIC Based Contracts

Most of the countries all over the world are using standardized contract forms, as mentioned earlier, in order to avoid disparity and draw balanced contracts that result is minimum number of disputes by creating balance of obligations and responsibilities among the parties to the contract. FIDIC forms of the contracts are the most significant and popular form the documents which are being extensively used in Far East, Middle East and Central Asian States after incorporating country / region specific conditions (Bunni., 2005). Pakistan has also developed its own country specific standard contract documents based on FIDIC Red Book 1991 Form of Contract.

It is therefore imperative to consider the mode of dispute resolution offered by FIDIC as it binds the parties to the contract to follow the stipulated mechanism. Although the parties are at liberty to amend the particular conditions to the FIDIC Based Contract as per their own project and region specific needs, however a quick glance over the dispute resolution mechanism offered by FIDIC will help to add further clarity to this research.

Whenever the parties to the contract have a disagreement over an issue or number of issues they are encouraged to try to resolve the dispute amicably using any of the suitable ADR techniques. If the dispute is not settled, it is then referred to an independent impartial party called “The Engineer”, who decides the matter with fairness and impartiality. If any party does not accept “The Engineer’s” decision it can take the matter to arbitration and the decision of the arbitrator becomes binding under law. Following flow diagram (Fig 2.2) explains the process (Bunni., 2005).

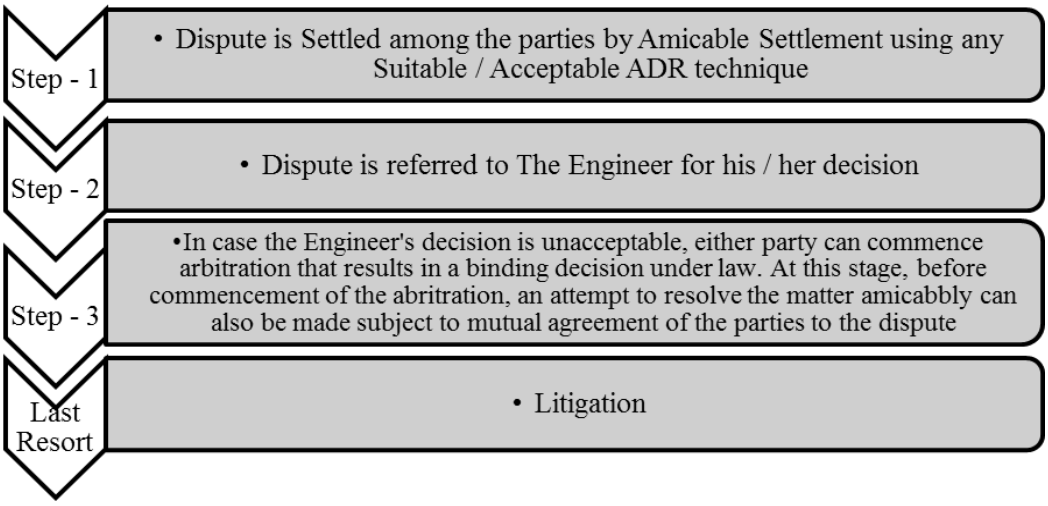


Figure 2.2: Dispute Resolution Mechanism under FIDIC Red Book 1991

Another similar mechanism is also suggested by FIDIC in later edition wherein the dispute resolution authority of "The Engineer" is transferred to a board of adjudicators called "Dispute Adjudicating Board" (DAB) or "Dispute Review Board" right from the beginning of the project to resolve / adjudicate upon the disputes arise in connection to the contract. In that particular case the above stated procedural steps remains same except that "The Engineer's" authority in dispute resolution is exercised by DAB or DRB and amicable settlement can be done before arbitration (Bunni., 2005).

2.3 Arbitration in Construction

Traditionally arbitration has been the most popular alternative to the litigation for resolution of disputes, its use can be traced back to nineteenth century however it gained particular popularity in 1960s. Many contracts now require arbitration to be a binding means of dispute resolution particularly in private contracts (Hinze, 2010). Some researchers also suggest that arbitration can be nonbinding depending upon the conditions of the contract (Yates, 2011). As a popular opinion in the construction industry, Arbitration is regarded as a type of alternate dispute resolution (ADR). In the absence of arbitration, litigation would be the only way to resolve the disputes unless the parties to dispute agree upon any other method (Hinze, 2010). Following are some of the definitions of Arbitration.

> *"Arbitration is the voluntary submission of a dispute to one or more impartial persons for final and binding determination"* (Fisk & Raynolds, 2010)
>
> *"Arbitration is the referral of a dispute to one or more impartial persons for final and binding determination* (Clough, Sears, & Sears, 2005)
>
> *"Arbitration is a process whereby a neutral third party or several people are hired to evaluate evidence, listen to the arguments of both parties and provide a binding or nonbonding decision and settlement award"* (Yates, 2011)
>
> *"Arbitration is the settlement of controversies / disputes by one or more persons chosen by parties themselves"* (Farani, 2009)
>
> *"Arbitration is the ADR technique most similar to litigation. However, instead of presenting the case to a judge or jury, summary presentations*

are made by both sides to one or a panel of neutral arbitrator(s). Many of the same procedures used in litigation, such as discovery and preliminary motions, are used in arbitration. However, arbitrators have the power to direct those processes. Arbitration decisions are considered binding, unless previously agreed upon to be non-binding" (Tucker, 2005).

All of the above effectively defines the process of arbitration, however United Nations has conceded that there is no official definition of Arbitration per se and they have come up with the a prudent elaboration and explained that the arbitration has following characteristics (UNCTAD (UNO), 2005).

a. *Arbitration is a mechanism for the settlement of disputes;*
b. *Arbitration is consensual;*
c. *Arbitration is a private procedure;*
d. *Arbitration leads to a final and binding determination of the rights and obligations of the parties.*

The characteristics mentioned above are the essence of arbitration and brief elaboration of each characteristic will add clarity to the process of arbitration.

Arbitration is a mechanism for settlement of disputes which obviously means that when there is no dispute there is no need of arbitration.

Secondly the process is consensual; this means that the parties to the dispute have mutually agreed to take their dispute to arbitration. The arbitration clause in the construction contract is generally considered as this consent that binds both parties to the take their dispute to arbitration provided that prior dispute resolution methods have been exhausted. The same arbitration clause is legally considered as arbitration agreement and in such cases the arbitration may also be treated as semi-consensual (UNCTAD (UNO), 2005).

Thirdly, arbitration does not technically fall in legal ambit of the state; the award however rendered as a result of the arbitration is enforceable by courts. In arbitration both parties consensually appoint the judge called arbitrator who can be a technical person if the parties agree and no formal court hearing procedures are mandated. It can be done formally with or without the involvement of the attorneys and the resultant award becomes the rule of law.

Finally, UNO dictates that every award of the arbitration is binding, enforceable by courts through state administration and this is consistent with the prevailing law in most of the countries, however this being a consensual process in essence, therefore if parties to the contract agree to incorporate nonbinding arbitration clause in the conditions of the contract, the award could also be rendered nonbinding.

2.3.1 Typical Arbitration Clause

Most of the construction contracts have an arbitration clause incorporated in them which essentially plays the role of arbitration agreement and without an arbitration agreement there can be no arbitration at all. It is therefore imperative to consider typical arbitration clauses.

The construction contract formulated by Pakistan Engineering Council has Clause 67.3 which allows the resolution of disputes through arbitration. This clause states that:

> ***67.3 Arbitration***[3]
>
> *Any dispute in respect of which:*
>
> *(a) the decision, if any, of the Engineer has not become final and binding pursuant to Sub-Clause 67.1, and*
>
> *(b) Amicable settlement has not been reached within the period stated in Sub-Clause 67.2,*
>
> *Shall be finally settled under the provisions of the Arbitration Act, 1940 as amended or any statutory modification or re-enactment thereof for the time being in force... The said arbitrator/s shall have full power to open up, review and revise any decision, opinion, instruction, determination, certificate or valuation of the Engineer related to the dispute.*
>
> *Neither party shall be limited in the proceedings before such arbitrator/s to the evidence nor did arguments put before the Engineer for the purpose of obtaining his said decision pursuant to Sub-Clause 67.1. No such decision shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator/s on any matter whatsoever relevant to the dispute.*

[3] Standard Form of Bidding Documents (Civil Works) June 11, 2007 Pakistan Engineering Council

Arbitration may be commenced prior to or after completion of the Works, provided that the obligations of the Employer, the Engineer and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the Works.

The place of arbitration shall be ……., Pakistan.

The above clause summarizes the mechanism of Arbitration deployed for large scale construction project in Pakistan where PEC Contract Documents is used. This clearly shows that Arbitration is an exhaustive approach and "the Engineer" or contract administrator of the project should be approached first whenever a dispute arises if the matter is not settled at that stage then effort of amicable settlement should be made and only when all avenues of resolution are exhausted then arbitration can be commenced. This clause also clarifies the rules, regulations and procedures under Arbitration Act of 1940 will apply and arbitration will be held inside Pakistan at any suitable station mutually agreed upon by the parties to the dispute. This clause also acts as an arbitration agreement whenever a dispute is referred to the arbitration and satisfies the conditions laid out under arbitration act. It also highlights the authority of the arbitrator and provides equal opportunity to both parties to present / defend their claims cogently with veracity. Finally it explains that the arbitration can be done during execution of the project and also after the completion of the works.

Similar standard clauses for Arbitration by United Nations Commission on International Trade Law (UNCITRAL) and International Chamber of Commerce (ICC) can be seen in Appendix III and IV respectively.

2.3.2 Procedure of Arbitration

Although procedure of arbitration vary depending upon the applied rules and regulations which will be discussed in detail later on however a generalized procedure[4] of arbitration is explained below.

a. **Intent of Arbitration:** Arbitration only commences when other avenues of dispute resolution as per the contract are exhausted and the aggrieved party shows its intent in writing to the other party to resolve the matter through

[4] Extracted from: (1) Yates, D. J. (2011). Engineering and Construction Law and Contracts. Prentice Hall; (2) Clough, R. H., Sears, G. A., & Sears, S. K. (2005). Construction Contracting; a Practical Guide to Company Management, 7th Ed. . . . John Wiley & Sons Inc. and (3) Hinze, J. (2010). Construction Contracts, 3rd Ed. . . . McGraw Hill.

arbitration. This intent generally includes the description / nature of dispute, involved cost effect of the dispute, remedy sought and the request to commence arbitration. This step is significant because it gives both parties a clear picture about the dispute and involved finances. It also help in "framing the issues" as the arbitrator can only decide the matters referred to him under arbitration and cannot decide *sua sponte* if any issue surfaces during the proceedings of arbitration.

b. **Selection of Arbitrator / Arbitral Tribunal:** After the intent to commence arbitration sole arbitrator or a panel of arbitrators called arbitral tribunal is selected mutually by both parties. When arbitration is being done under rules and regulations of a certain institution the process for selection of arbitrator(s) delineated by that certain organization is followed. For small disputes sole arbitrator is generally selected by mutual consent of the parties and for larger dispute, as a general practice, each party selects its arbitrator and those two arbitrators selects the third arbitrator that acts as a head of arbitral tribunal also called as referee. In case of three arbitrators, the matter is generally decided by the majority vote of arbitrators. Arbitrator(s) selected by the parties should be impartial, neutral, experienced professionals having sound knowledge of the matter under arbitration.

c. **Arbitration Proceedings:** Once the arbitrator(s) is selected he will hold a pre-referral meeting to have better understanding of the dispute and gives the date for next formal hearing. Both parties are allowed to express their views and present their evidences, arguments in support of their claim. Parties are at liberty to hire attorney if deemed necessary. The arbitration proceedings are somewhat similar to court's proceedings with an exception that it is not as formal as lawsuits. Parties have flexibility of in many ways such as presenting with a proper attorney or just with a subject matter expert, time and location of hearing can be altered and technical merits and demerits of the dispute can be discussed in a much relaxed fashion informally with greater detail.

d. **Arbitral Award:** After the hearings and formal proceedings the arbitrator(s) announce the arbitral award that states his decision with justification in detail. In most of the cases this decision becomes binding under law and it cannot be

challenged under any court of law. As a general rule, arbitration can only be challenged in court if (Yates, 2011):

i. If award is procured through fraud.
ii. Any misconduct on behalf of the arbitrator(s)
iii. Arbitrator issues award of the dispute not included in the initially framed issues under intent of arbitration.
iv. If arbitrator(s) didn't listen to an important evidence
v. Arbitrator refuse to postpone the proceeding to allow time to a party to collect evidence needed for the proceedings.

Considering above scenarios, it is quite evident that an award can only be challenged if gross negligence or irregularity on part of arbitrator or either party to the dispute can be proved in the court of law. An award cannot be challenged for its technical adequacy.

2.3.3 Advantages of Arbitration

Although the critics of Arbitration have highlighted numerous flaws with arbitration when compared with other ADR techniques in terms of time, cost and effort involved in the process but still it is the most effective method of dispute resolution that yields a binding decision enforceable under law (Borba, 2009). Due to following advantages[5] of arbitration over litigation, it has been the most preferable mode of dispute resolution in construction industry (Bhagwat Singh Sangha, 2011).

a. Arbitration is less time consuming than litigation. Considering the overcrowded situation of the courts, a lawsuit might have to wait for years in order for trial to even begin. In current competitive and harsh construction industry you cannot risk for delaying the matter.
b. Arbitration is much less expensive than litigation as it does not include court fees, attorney fee and other charges. Moreover, in today's competitive world, saving in time is also preferred over saving in money.

[5] Extracted from: (1) Yates, D. J. (2011). Engineering and Construction Law and Contracts. Prentice Hall; (2) Clough, R. H., Sears, G. A., & Sears, S. K. (2005). Construction Contracting; a Practical Guide to Company Management, 7th Ed. . . . John Wiley & Sons Inc., (3) Hinze, J. (2010). Construction Contracts, 3rd Ed. . . . McGraw Hill, (4) Bhagwat Singh Sangha, A. (2011, January - March). Arbitration as an Alternative to Court Adjudication. India Council for Arbitration and (5) Bunni, D. N. (2005). The FIDIC Forms of Contract. Oxford, UK: Blackwell Publishing Ltd.

c. The primary reason why contractors favor the arbitration is because it is private affair. A case tried in court becomes a part of public record and generates quite a bad publicity for the parties whereas in Arbitration the parties can opt to keep the arbitration confidential and both parties get a chance to keep their reputation intact.
d. Another advantage of arbitration is that the parties get to choose its location, time and arbitrators. For convenience purposes that arbitration can be conducted on the job site and depending upon the nature of dispute it could be conducted every day until the decision is reached.
e. In arbitration, rules of evidence applied in courts, does not apply. All parties are at liberty to present any evidence to support their claims. When new evidence is presented in arbitration the other party could review it and amend their claim accordingly. Thus arbitration offers greater flexibility.
f. Arbitration does not follow precedence law as it does in courts. Each case is evaluated afresh and considered for its own technical merits and demerits not considering how previous such cases were settled in court.

2.4 Domestic Arbitration under Arbitration Act of 1940

In Pakistan all arbitrations falls under the legal ambit of Arbitration Act of 1940 enacted on March 11, 1940 before the independence of sub-continent. Pakistan Engineering Council has also made its Rules for Arbitration and Conciliation in 2009 based on Conciliation and Arbitration Rules of UNCITRAL however this document is yet to be approved by ECNEC thus it is essentially ineffective. In its absence all arbitrations related to any dispute whatsoever including commercial and construction are conducted under the legal umbrella of Arbitration Act (X of 1940) the complete text of Arbitration Act 1940 is annexed as Appendix – II

Indian Sub-continent has a long tradition of Arbitration. A dispute between two parties is resolved by the third party which is the essence of arbitration has been in practice in this region for centuries and this primitive form of arbitration is still in practice in Indo Pakistan region and known as “Panchayat”, “Jirga” etc (Khan, 2013). In the British Rule no regulation was made to abolish panchayats rather the initial Bengal regulations of 1770 onwards encouraged arbitration in the form of panchayats (Khan, 2013). Interestingly it was a part of the initial regulations that no award will be

challenged if the complainant cannot categorically prove that arbitrator has acted dishonestly with gross negligence and biasness (Law Commission of India, 1978).

In 1859, the very first Arbitration Act was enacted and included in the code for civil procedure. This same act formed the Arbitration Act of 1940 with certain amendments and improvements (Law Commission of India, 1978).

The sole purpose of the Arbitration Act was to reduce litigations in court and promote the settlement of dispute through the persons having trust of the parties (Farani, 2009) [PLD 1998 Lahore 132]. Moreover as per Supreme Court of Pakistan[6] the prime objects of arbitration is to bypass lengthy procedure involved in civil cases and have a spirit of doing justice between the parties as early as possible without getting themselves unnecessarily involved in the technicalities embodies in the procedural law. However the arbitration under Arbitration Act of 1940 has become a cumbersome affair. Professionals and researchers have reported that the proceedings under this act have been costly and time consuming that the entire process of arbitration has become unattractive and ineffective so much so that in the 1981 judgment of Supreme Court's it was remarked that *"the way in which the proceedings under the (1940) Act are conducted and without an exception challenged in Courts, has made lawyers laugh and legal philosophers weep"* (Kachwaha, 1999).

2.4.1 The Scheme of the act

The scheme[7] of the Arbitration Act 1940 is to first deal with the arbitration without intervention of courts (Chapter – II) then come the arbitration with the intervention of the court when there is no suit pending (Chapter – III). Subsequently, the regulations regarding arbitration in suits (Chapter – IV) is explained. Chapter – V onwards, including the schedules deals with the provisions common to all the three cases mentioned above.

2.4.2 Procedure of Arbitration under Arbitration Act of 1940

Unfortunately no particular procedure for arbitration has been standardized in Pakistan. In fact each arbitrator or tribunal decides its own procedure, in consultation with the involved parties. This leads to quite an open arrangement for conducting

[6] M/s Waheed Brothers (Pakistan) Ltd. vs. M/s Izhar (Pvt.) Ltd. Under Division Bench of Supreme Court of Pakistan reported 2002 SCMR 336

[7] Extracted from: (1) Farani, M. (2009). Manual of Arbitration Laws. Lahore: National Law Book House and Law Commission of India. (1978). Seventy Sixth Report on Arbitration Act of 1940. New Delhi.

arbitration wherein the arbitration may be concluded in 8 month with 2 to 3 hearings or arbitrator may not frame any issues and keeps arbitration open thus such an open ended procedure is not likely to result in fairness to the parties (Qureshi, 2006).

In the absence of proper standardized procedure following two practices are followed in general (Qureshi, 2006).

a. Where Parties Rely on Documentary Evidence
b. Where Parties Rely on Oral Evidence

a. Parties Relying on Documentary Evidence

i. Nominated arbitrator(s) issues notice to appear before arbitrator(s)
ii. **Reference** or **Statement of Claim** is filed by the claimant on the first hearing generally attorneys for both parties also appear and techno-legal documents of Reference are filed.
iii. In next hearing, the Respondent submits **written reply** to the statement of the claim
iv. The Claimant is generally allowed by the arbitrator(s) to submit a **Rejoinder** against the written reply from the respondent
v. On next hearing, arbitrator(s) **frame the issues** based on arguments and documents provided on prior hearings
vi. On next hearing both parties **provide the documents** they will rely upon to defend their position. The documents are thoroughly examined for authenticity and attested by the respective parties.
vii. Thereafter, **Written Submittals** about all the framed issues and corresponding documents already submitted to the arbitration is provided followed by **Arguments** on the written submittals by both parties.
viii. Arbitrator(s) pronounce the **award** notifying both parties and mention date and venue of the award.

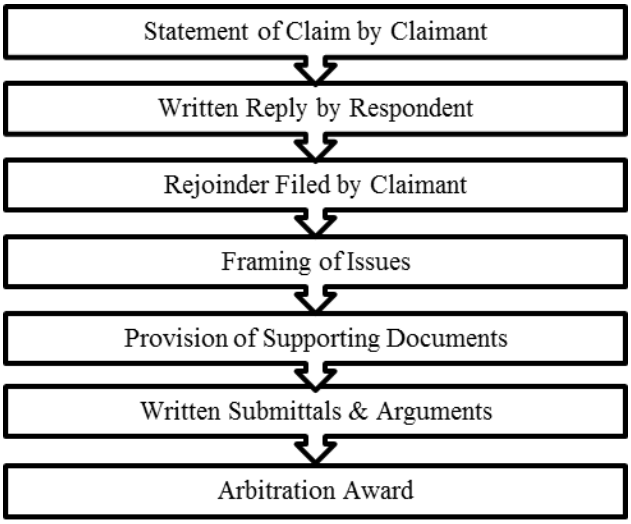


Figure 2.3: Arbitration Process under Local Law When Parties Rely on Documents

b. Parties Relying on Oral Evidence

This procedure share the same first five steps from the previous procedure and following steps are generally adopted, thereafter.

vi. On next hearing the claimant submit the written sworn statements of **Claimant Witnesses** on affidavits and the arbitrator records the evidence

vii. **Respondent's witnesses** are examined after all the witnesses from claimant are examined and their evidence is also recorded.

viii. Parties address their arguments and arbitration pleading closes after arguments on **written submittals**.

ix. Arbitrator(s) pronounce the **award** notifying both parties and mention date and venue of the award.

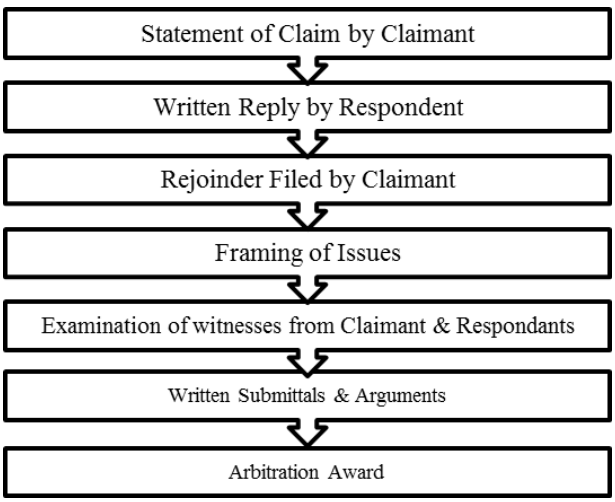


Figure 2.4: Arbitration Process under Local Law When Parties Rely on Oral Evidence

2.4.3 Time Allowed for Giving the Award

The arbitration agreement can be drawn in such a way that it clearly states the time period for giving the award. If parties feel that the arbitrator(s) cannot pronounce award by the time mentioned in the arbitration agreement or the arbitrator(s) fail to pronounce award in the stipulated time then the parties with mutual consent or the court can extend the time allowed for giving award, as the award pronounced after the expiration of time allowed by the agreement have no legal effect. The court can only extend the time if a party to the dispute approaches the court or when both parties jointly apply to the court for extension of time (Qureshi, 2006).

In case the arbitration agreement is silent about the time allowed for giving award then as per Arbitration Act of 1940 Under Section 3 Article 4 of First Schedule, time allowed for the arbitrator for giving the award is **Four (04) Months** and **Two (02) Months** for the umpire.

The Article 4 of First Schedule of the Arbitration Act of 1940 allows umpire to enter into the reference in following conditions

- ≡ If the time allowed to arbitrator(s) for giving an award has been expired without the making award.
- ≡ If the arbitrators have given notice to any party to the arbitration that they cannot agree upon the award or
- ≡ If the disagreeing arbitrator gives a written notice to the umpire that they have failed to reached a unanimous award.

Parties to the arbitration are at liberty to extend the time allowed for giving the award with mutual consent otherwise the court, on the application of any party to the dispute can also extend the time under section 28 of Arbitration Act.

2.4.4 Procedure after Arbitration

According to Arbitration Act of 1940 following procedure must be adopted to finalize the arbitration proceedings.

a. Notice of Making and Signing of Award

Section 14(1) of Arbitration Act of 1940 requires the arbitrator to notify the award and give notice to the parties that award has been made and signed thereof.

b. Filing of Award in Court

Upon receiving the aforementioned notice from the arbitrator(s) the parties have 90 days to file the award in court under section 14(2) of the Arbitration Act of 1940. This time duration is fixed under Article 178 of Limitations Act of 1908. Award can be filed in court either by requesting the arbitrator through an application to file his award in court or apply the court through petition praying to issue the directive to the arbitrator to file the award in court.

2.4.5 Contesting the Award in Court

In Pakistan as well as internationally, the arbitration award cannot be challenged in court. The philosophy behind this concept is simply the fact that the parties cannot challenge the decision of the judge of their own choice i.e. the arbitrator(s) given upon the question of law or when the decision is good prima facie. To the very same extent the jurisdiction of the court is expelled by the courts in Pakistan[8]. Alternatively it is established by courts[9] that the decision or award of arbitrator(s), which is good prima facie, cannot be challenged in court and the jurisdiction of court is banished except for establishing control over the arbitrator to prevent gross misconduct and for regulating the post award procedure.

It is therefore quite clear that courts have no jurisdiction to revisit the award or reconsider it however a party can challenge the award in court under section 15 & 16 of Arbitration Act 1940 for any of the following reasons.

- ≡ Corrections or modifications of award by the court.
- ≡ Refer the award back to the arbitrator(s) for re-consideration.
- ≡ In order to set aside the award, if sufficient, reasonable cause exists.

After filing the award in court the parties to dispute have 30 days to contest the award in court for setting it aside or referring it back to the arbitrator for making amendments if necessary. This time period is mentioned in Article 158 of the Limitations Act of 1908.

[8] PLD 1995 Lahore 205
[9] National Construction Company vs WAPDA [PLD 1987 SC 461]

a. Contesting Award under Section 15

Section 15 of Arbitration act of 1940 allows the court to amend the award sua sponte in a manner that the original decision of the arbitrator(s) remains essentially unaffected by such amendments.

- ≡ Under Section 15(a), when the award is given on an issue that was outside the purview of arbitration regarding a matter that was never referred to the arbitration in the first place or for that matter is not included in original reference to the arbitration or statement of claim.
- ≡ Under Section 15(b), when an award is imperfect or contains obvious errors and the rectification or correction of such errors does not affect the essence of award.
- ≡ Under Section 15(c), when an award contain typographical errors or a mistake due to an unintended slip or omission.

b. Contesting Award under Section 16

The court may remit the award back to the arbitrator under section 16(1) for reconsideration if:

- ≡ Under Section 16(1)(a), when the arbitrator has made the award leaving out a certain issue that was a part of original reference to arbitration or statement of claim or the award is made upon an issue that was never referred to the arbitration in original reference to the arbitration and modification of such an award by the court is not possible, keeping the essence of the award intact.
- ≡ Under Section 16(1)(b), when the award made by the arbitrator is so indefinite that it has become impracticable.
- ≡ Under Section 16(1)(c), when an objection to the legality of the award is quite apparent

When an award is remitted by the court in line with above section of the Arbitration Act, the court defines a timeline by which the arbitrator must resubmit the award incorporation all the necessary rectifications under section 16(2). This time is extendable by the courts and the award becomes null and void under section 16(3) if the arbitrator fails to resubmit the award within the stipulated time.

2.4.6 Making the Award Rule of Court

If any of the parties to the dispute fails to challenge within the requisite time frame or any of the parties fails to establish that there is sufficient reason for invalidating

or vitiating the award or remitting the award back to the arbitrator(s) or setting aside the award altogether then under section 17 of the arbitration act then the court may give its ruling for the award and declare to make it rule of the court and pass a final decree on the amount of the award.

2.4.7 Role of Courts in Arbitration

The courts are given only the supervisory role in arbitration to ensure that the arbitrator decides the matter in strict accordance with the law as defined by section 14 to 17 and Section 30 to 33 of the Act.

Section 11 of the Arbitration Act also allows the court to remove an arbitrator provided that it is ascertained that the arbitrator has failed to conduct arbitration expeditiously. While doing so the court can appoint a new arbitrator and vitiate the arbitration agreement with reference to the issues framed to the arbitration.

The role of the court increases when the arbitration is conducted with court's intervention and rules and regulations from Chapter II of Arbitration Act applies however in construction industry of Pakistan all of the arbitrations are conducted without the intervention of court therefore those particular procedures does not apply thereof.

2.5 International Arbitration

Arbitration in west is an impeccably organized affair where each and every aspect of the arbitration has been established through set procedures in well thought out and properly framed fashion. According to Model Law (UNCITRAL), arbitration is considered foreign or international arbitration if it meets following conditions (UNCITRAL (UNO), 2011).

- The parties to arbitration have their businesses in different countries at the time of conclusion of arbitration agreement
- The place of arbitration, also known as seat of arbitration, as per the arbitration agreement, is outside the country in which the parties have their business
- Any place where a substantial part of the obligation (or project) is to be performed or the place with which the subject matter of the dispute is most closely connected is outside the country in which the parties have their businesses.

- The parties have expressly agreed that the subject matter of the arbitration relates to more than one country.

The same is applicable to the construction industry particularly when a party to the contract is working in a foreign country. In current competitive business environment, hiring of services from foreign countries is a common event as it builds the capacity of local work force and provides necessary expertise to accomplish complex projects. It is however understandable that the party working in a foreign country on a complex project under foreign law is often somewhat anxious about the dispute resolution process and prevailing law in that particular country (Brower & Sharpe, July 2003). Most of the organizations working in a foreign country, explicably, insist to include the arbitration clause that allows them to resolve their dispute through international arbitration. Main reasons for favoring international arbitration are as follows (UNCTAD (UNO), 2005):

- To Avoid Litigation in Foreign Court: A party working in a foreign country is generally not familiar with their local laws hence it is in its favor to avoid litigation in a foreign court and opt for international arbitration in front of independent neutral forum.
- To Reduce Inequalities: Various organization world over provide services to arbitrate the dispute in international arbitration thus creating a competition among these organization. This also makes easier for the parties to the dispute to select a neutral third party to settle their dispute without any overshadowing sense of inequality or injustice.
- To Avoid Influence of Foreign State: In some cases, depending upon the nature of the dispute, state becomes a party to the dispute either directly or indirectly therefore the international arbitration provides the sense of security to a foreign party that the state cannot influence the process of dispute resolution and judicious decision can be reached.
- To Ensure Enforcement: Most of the countries have signed multilateral investment treaties like New York Convention which binds the signing countries to ensure implementation of international arbitration award in order to protect international investment.

Upon declaration of the award, a legal instrument is imperative to legally bind the parties to the award to implement it in true spirit and an award either local or international must fall under the ambit of courts for implementation (Cole, 2003). For local arbitration proceedings in Pakistan the Arbitration Act of 1940 itself provides this legal framework whereas for international awards various international conventions and regulations provide the desired framework (Khan, 2013).

The basic legal framework for international arbitration was established in the beginning of 20th century with Geneva Protocol in 1923 and Geneva Convention in 1927 however the current legal shape of international arbitration was formed after mid 20th century particularly based upon New York Convention of 1958.

2.5.1 New York Convention

The two basic actions contemplated by the New York Convention[10] are the recognition and enforcement of foreign arbitral awards and the referral by a court to arbitration.

The first action is the recognition and enforcement of foreign arbitral awards, i.e., arbitral awards made in other member country. The obligation of the country is to accept and enforce such arbitration award as per the laid down procedure of the convention and it is the responsibility of the party to provide the state with arbitration award and arbitration agreement.

The second action reflected by the New York Convention is the referral by a court to arbitration. The New York Convention provides that a court of a Contracting State, when approached to consider a matter in respect of which the parties have made an arbitration agreement, must, at the request of one of the parties, refer them to arbitration (unless the arbitration agreement is invalid).

This convention thereby gave strength to the international arbitration as it was signed by 135 countries of the world and it shielded the parties to the arbitration agreement from undue litigation of sorts. Pakistan signed this convention on December 30, 1958 however it was only ratified in October 12, 2005[11] almost after half a century with the promulgation of Recognition and Enforcement (Arbitration Agreements and

[10] New York Arbitration Convention. (2009). Retrieved October 02, 2013, from New York Arbitration Convention : http://www.newyorkconvention.org/

[11] List of Contracting States. (2009). Retrieved October 02, 2013, from New York Arbitration Convention : http://www.newyorkconvention.org/contracting-states/list-of-contracting-states

Foreign Arbitral) Awards Ordinance, 2005 (REAO) and the same was enacted by the parliament on July 19, 2011 as an Act to Provide for the Recognition and Enforcement of Arbitration Agreement and Foreign Arbitral Awards Act XVII of 2011 which is applicable to all foreign arbitration awards after July 14, 2005[12].

2.5.2 Procedure of International Arbitration

Arbitration can be segregated in two broad subcategories i.e. institutional arbitration and non-institutional arbitration (Nelson, 2006). In case of non-institutional arbitration the parties to the dispute decide the matter as per their own pre decided procedure rendering this method into a more informal affair. In most of the cases, international arbitration is invariably institutionalized where each institution set out its own rules, regulations and procedures to conduct arbitration. The main benefit in this case is the fact the arbitration award is recognized and enforceable through international conventions and regulations such as New York Convention. Furthermore the institutionalized arbitration acts as an instrument to protect investment overseas and when an award is pronounced the parties to the dispute can be certain that it will be enforced and implemented (Adhipathi, 2003).

Following are the popular institutes for resolution of disputes through international arbitration.

a. International Chamber of Commerce (ICC):

Shortly after the World War I a group of Industrialist, financiers and traders founded the International Chamber of Commerce and proclaimed themselves as "the merchants of peace". Since its inception, ICC has taken a fundamental role in international business. It creates international rules, procedures and standards that are utilized on routine basis throughout the world which is much more complex than the era of 1919. The organization that started out from a bunch of businessmen from just five countries has transformed into a business organization of international level having a representation of more than 120 countries (The Merchants of Peace, 2010). ICC has formulated detailed procedural rules of arbitration, the revised rules came in force on January 01, 2012 and the same will be discussed in more detail later.

[12] The Gazette of Pakistan, Extraordinary Published by Authority, Islamabad, Tuesday, July 19, 2011; No. F. 9(3)/2011-Legis.

b. United Nations Commission on International Trade Law (UNCITRAL):

The United Nations Commission on International Trade Law (UNCITRAL), established by the United Nations General Assembly by resolution 2205 (XXI) of 17 December 1966, entrusted with an important role of developing framework for harmonization and modernization of international trade law. The premise of UNCITRAL mandate included dispute resolution, international contract practices, transport, insolvency, electronic commerce, international payments, secured transactions, procurement and sale of goods. As a result of this inclusive process, a comprehensive data of rules, regulations and laws were formulated which are widely accepted as appropriate solutions to various legal norms. In the years since its establishment, UNCITRAL has been recognized as the core legal body of the United Nations system in the field of international trade law (UNCITRAL (UNO), 2013). UNCITRAL has also formulated detailed comprehensive rules and regulations to conduct arbitration, revised in 2010 which will be discussed in the subsequent sections.

c. International Centre for Settlement of Investment Dispute (ICSID):

ICSID is an autonomous institution established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID or the Washington Convention) with over one hundred and forty member States by World Bank. It was opened for signature on March 18, 1965 and entered into force on October 14, 1966. The primary purpose of ICSID is to facilitate conciliation and arbitration of international investment disputes. ICSID, as an impartial international forum, is mandated to resolve major impediments to the free international flows of private investment posed by non-commercial risks and to provide with the tailor made international methods for investment dispute settlement. ICSID facilitates the resolution of legal disputes between eligible parties, through conciliation or arbitration procedures subject to the parties' consent. Today, ICSID is considered to be the leading international arbitration institution devoted to investor-State dispute settlement (About ICSID, 2013).

ICSID does not conciliate or arbitrate disputes; it provides the institutional and procedural framework for independent conciliation commissions and arbitral tribunals constituted in each case to resolve the dispute with two sets of procedural rules that may govern the initiation and conduct of proceedings under its auspices. These are: (i) the ICSID Convention, Regulations and Rules; and (ii) the ICSID Additional Facility Rules

(About ICSID, 2013). The rules of Arbitration by ICSID are beyond the scope of this research work, it is not discussed in great detail.

2.6 ICC Rules of Arbitration

The Arbitration under ICC rules of arbitration 2012 falls under the supervisory ambit of International Court of Arbitration, called the "court" under the rules, which in essence is not a conventional court but a supervisory body. The main functions of the court is to approve the procedural steps involved in the process of Arbitration, ascertain the involved costs and review every award pronounced by the arbitrator(s). It is believed by many professionals in the industry that intervention from a certain institution can prove helpful to move along the process of Arbitration particularly when any of the parties to dispute is dragging its feet. In case of institutional arbitration there is generally an institution incharge of supervising the arbitration proceedings in addition to the arbitration tribunal itself having higher control over the administration of arbitral process, primarily to ensure that the set of procedure laid out in the rules are followed letter and spirit and achieve a certain level of quality and not to intervene or intrude into the dispute resolution proceedings handled by the arbitrator(s). Same is the case with arbitrations under ICC rules of arbitrations and International court of Arbitration as the institution is quite possibly the largest dispute resolution institute in the world and a large number of cases are referred by the construction industry around the world (Alway Associates, 2005).

2.6.1 The Scheme of ICC Rules of Arbitration

ICC Rules of arbitration are arranged in forty one (41) Articles and five (05) appendices. At the end of these rules, Standard Suggested Clauses are given that can be included in the conditions of the contract when both parties agree that all the matters referred to arbitration will be governed by the ICC Rules of Arbitration under the ambit of ICC Court. The scheme of ICC Rules of Arbitration in a tabulated form (Table 2.2) is as follows (ICC Rules of Arbitration, 2012):

Table 2.2: Scheme of ICC Rules of Arbitration

1	Introductory Provisions	Article 1	International Court of Arbitration
		Article 2	Definitions
		Article 3	Written Notifications or Communications; Time Limits
2	Commencing the Arbitration	Article 4	Request for Arbitration
		Article 5	Answer to the Request; Counterclaims
		Article 6	Effect of the Arbitration Agreement
3	Multiple Parties, Multiple Contracts and Consolidation.	Article 7	Joinder of Additional Parties
		Article 8	Claims Between Multiple Parties
		Article 9	Multiple Contracts
		Article 10	Consolidation of Arbitrations
4	Arbitral Tribunal	Article 11	General Provisions
		Article 12	Constitution of Arbitral Tribunal
		Article 13	Appointment and Confirmation of the Arbitrators
		Article 14	Challenge of Arbitrators
		Article 15	Replacement of Arbitrators
5	Arbitral Proceedings	Article 16	Transmission of the File to the Arbitral Tribunal
		Article 17	Proof of Authority
		Article 18	Place of the Arbitration
		Article 19	Rules Governing the Proceedings
		Article 20	Language of the Arbitration
		Article 21	Applicable Rules of Law
		Article 22	Conduct of the Arbitrator
		Article 23	Terms of Reference
		Article 24	Case Management Conference and Procedural Time Table
		Article 25	Establishing the Facts of the Case
		Article 26	Hearings
		Article 27	Closing of the Proceedings and Date of Submission of Draft Award
		Article 28	Conservatory and Interim Measures
		Article 29	Emergency Arbitrators
6	Award	Article 30	Time Limit for the Award
		Article 31	Making of the Award
		Article 32	Award by Consent
		Article 33	Scrutiny of the Award by the Court
		Article 34	Notification, Deposit and Enforceability of the Award
		Article 35	Correction and Interpretation of the Award
7	Costs	Article 36	Advance to Cover the Costs of the Arbitration
		Article 37	Decision as to the Costs of the Arbitration

2.6.2 Procedure of Arbitration under ICC Rules:

The arbitrations under ICC Rules of Arbitration fall under the ambit of "The International Court of Arbitration (ICC Court)" which is not at all a court (Alway Associates, 2005). Article 1 (2) of the aforementioned rules, explicitly states that the ICC court does not itself resolve the disputes however its job is to ensure that the ICC rules of arbitration are followed and implemented. The ICC court monitors the entire procedure of arbitration right from the initial request to the scrutiny of draft final award. The court also provides necessary assistance to the parties to the dispute, necessary for enforcement and recognition of the award (International Chamber of Commerce, 2010). The brief arbitration procedure[13] under ICC Rules of Arbitration[14] is outlined below:

a. Commencement of Arbitration

Under ICC Rules of Arbitration, the arbitration is considered commenced on the day when a party to the dispute files its "Request for Arbitration" in ICC Secretariat. Upon filing the request, acknowledgment of acceptance of request, submission of requisite fee and appointment of counsel, as per the arbitration agreement and ICC rules of arbitration, the request is relayed to the other party who must respond with its "Answer" along with any counterclaims within 30 days. Article 4 explains in detail the content of the Request for Arbitration to minimize ambiguities.

If other party does not respond with its answer, raises objection regarding existence and validity of the arbitration agreement or questions that all the claims are to be decided in a single arbitration then the arbitration proceedings will proceed and arbitration tribunal shall decide unless the secretary general refers the matter to the court under Article 6(3) and 6(4). Article 29 of the rules of arbitration regarding Emergency Arbitrator Provisions allows a party to the dispute to engage an arbitrator if it seeks the interim urgent and conservative relief and cannot wait the constitution of arbitral tribunal. This provision however only applies to the arbitration agreements concluded after January 01, 2012.

[13] International Chamber of Commerce. (2010). ICC Arbitration Procedure. Retrieved November 08, 2013, from International Chamber of Commerce Website: http://www.iccwbo.org/Products-and-Services/Arbitration-and-ADR/Arbitration/ICC-Arbitration-process/ICC-Arbitration-procedure/

[14] ICC Rules of Arbitration. (n.d.). Retrieved from International Chamber of Commerce : www.iccwbo.org

b. Appointment of Arbitral Tribunal

After the "Answer(s)" to the "Request" has been received or the specified time period for submission of "Answer(s)" has been lapsed, the court or Secretary General confirms the appointment of arbitrators proposed by the parties under article 13(1) and 13(2). Furthermore the court may be needed to appoint the president of the arbitral tribunal or a sole arbitrator or a co-arbitrator on behalf of the party who failed to nominate the arbitrator for itself under article 13(3) & 13(4). Arbitrator can be challenged under article 14 for alleged lack or independence or otherwise, the parties can challenge the appointment of arbitrator within 30 days of the notification of the appointment of arbitrator. The arbitrator(s) can also be replaced under Article 15 if the objection regarding their appointment is accepted by the court or if both parties mutually agree to change the arbitrator. The court may also specify the place of Arbitration also known as the seat of arbitration, if the parties have failed to decide it, under article 18. Parties are required to submit the advance amount to cover the expenses of ICC Secretariat and Fee of the Arbitrators before transmitting the case file to the arbitral tribunal.

c. Terms of Reference and other Proceedings

Once the file has been transmitted to the Arbitral Tribunal, the role of the secretariat is reduced and the parties come in direct contact with the tribunal itself. This however does not eliminate the involvement of the secretariat and the court altogether The ICC Court and Secretariat monitor the entire arbitral process closely to ensure that it is being conducted accurately and smoothly. The progress of each arbitration case is also monitored to make sure that it progresses at the right speed in line with the rules of arbitration.

As soon as the arbitration tribunal receives the case file from the secretariat or the court, it draws up a document called "Terms of Reference" based upon the recent submission of documents including, request, answers etc or in the presence of the parties to the dispute (Article 23). As per rules, the terms of reference contains complete details of the dispute including complete names and description of the parties and arbitrators, the place of arbitration, a summary of the claims by the parties, decision solicited, the applicable procedural rules, etc. and it may enlist the issues to be arbitrated upon. Under article 24 of the rules a case management meeting to be conducted soon after the

formulation of terms of reference to decide the procedural timetable of the arbitration and to come up with a mutually agreed procedure to make the arbitration most effective in terms of time and cost. Appendix – IV of the rules highlights the tools and techniques that can be used during such meeting. Further case management conferences can be held throughout the case to ensure effective management of the arbitration. Subsequently, the tribunal shall establish the facts of the case under Article 25 on the basis of documents provided by the parties and conduct hearings if necessary under Article 26 to completely comprehend the case itself and to come up with a judicious decision.

d. Award and Closing of Proceedings

Under Article 27 of the rules the tribunal shall declare the proceedings as closed in relation to the issues under dispute, as soon as possible after the last hearing of the case and establishing the facts of the case. The tribunal shall also inform the parties and the secretariat about the tentative date of submission of draft award to the court for its approval pursuant to Article 33.

As per Article 30 of the rules the time period allowed to make the final award is 6 months from the date of signing of Terms of Reference. A different time can be established by the court in accordance with the Case Management Conference proceedings as agreed by all the parties involved. The court may also extend the time if deemed necessary.

Award can be made by the majority decision in case of multiple arbitrators; in case the majority vote is not reached then the president of the tribunal shall make the final award. The tribunal is bound to seek approval of the court before rendering the award under Article 33 of the rules. The court has the authority to scrutinize the award and suggest modification if deemed necessary without affecting the tribunal's liberty of decision. Important provisions are also available in the rules under Article 34 that allows modification, rectification and correction of award in case of any errors.

Once the award is approved by the court, it is signed by all the arbitrators on indicated date and place; after which the award is formally notified to the parties to the dispute and to the ICC Secretariat.

Following flows chart (Fig 2.5) sums up the procedure of the arbitration under ICC Rules.

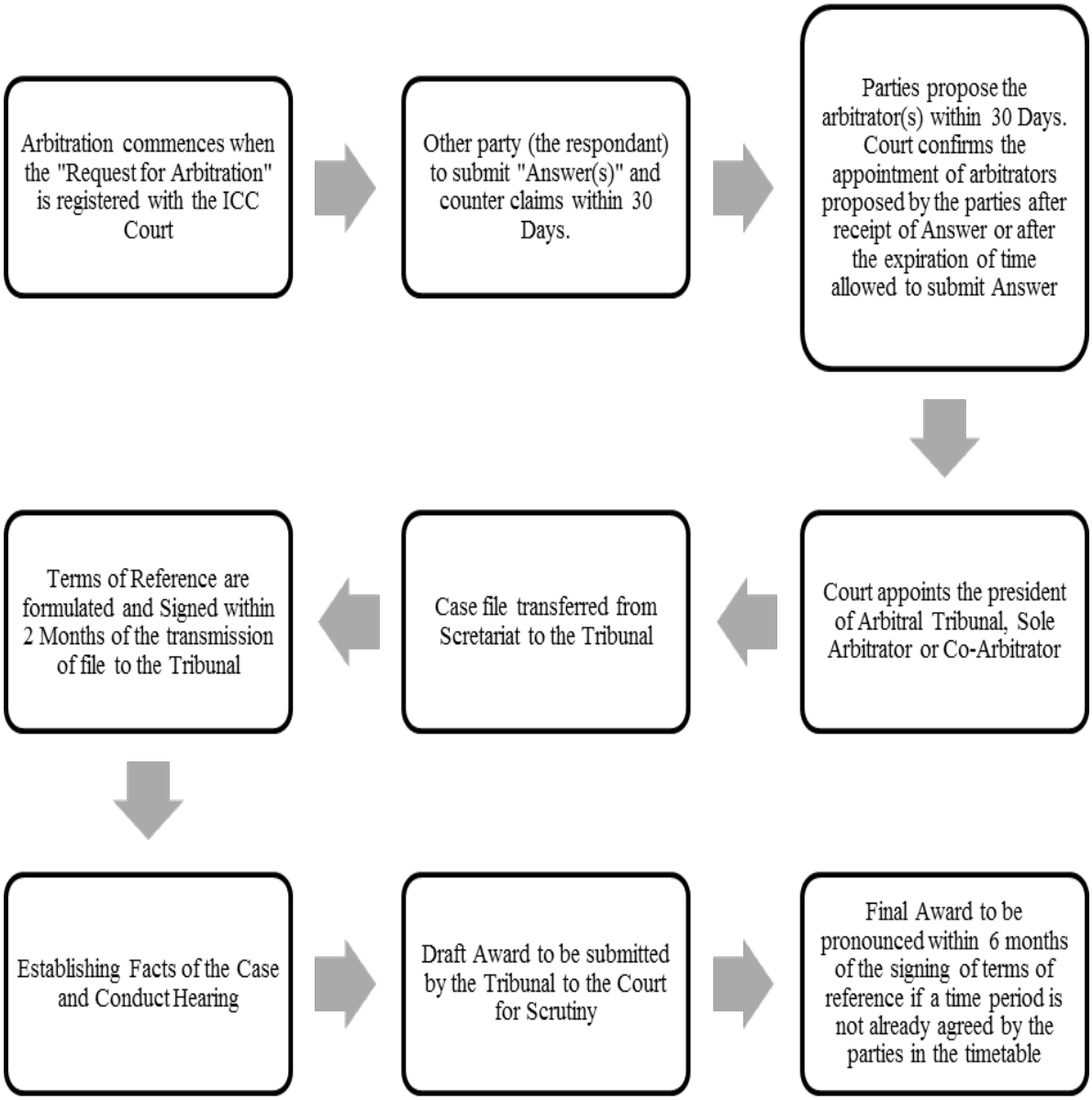


Figure 2.5: Procedure of Arbitration as per ICC Rules of Arbitration (2012)

2.7 UNCITRAL Rules of Arbitration

United Nations Commission on International Trade Law (UNCITRAL) was established as per the United Nations General Assembly resolution 2205 of (XXI) of December 17, 1966 and on December 15, 1976; the General Assembly recommended the use of Arbitration Rules, recognizing the value of arbitration as a method of resolving

disputes in international commercial relations. These rules were later revised in 2010 and implemented for all international commercial arbitration under the institution (UNCITRAL (UNO), 2011).

UNCITRAL is not an arbitral institution itself thus the rules prepared by UNCITRAL are used for ad hoc arbitration or non-institutional arbitration and designed considering the international arbitration. In case of ad-hoc arbitrations the parties draw up their own specific arrangements however it is to be noted that it is possible to deploy UNCITRAL Rules or any other rules for that matter, even when ICC is the administering authority on arbitration. Thus the UNCITRAL rules can be used for institutional arbitration as well. The Ad-hoc arbitrations are generally perceived as less expensive, and same cost effectiveness is associated with the UNCITRAL Rules. The prime reason for this perceptions is the fact that the arbitrations proceedings are executed, monitored and supervised by the tribunal itself and any additional expenses in connection to a supervisory of administrative institution is not involved. Furthermore, such Arbitration are considered more informal, less adversarial and much more flexible, however it mainly depends upon the attitude of parties to the dispute and the legal counsel representing them. However, if the parties are antagonistic and dispute arises regarding the arbitration proceedings or any aspect of the arbitration for that matter, the dispute has to be referred to the court and in that case the cost would be much higher than the institutional arbitration (Alway Associates, 2005).

2.7.1 The Scheme of UNCITRAL Rules of Arbitration

The UNCITRAL Rules of arbitration delineates in detail the procedural rules and regulation for conducting arbitration. It comprises of four (04) sections and forty three (43) articles. The rules are accompanied with one (01) annexure which provides the standard clause for arbitration to be incorporated in the contracts along with a standard waiver statement and statements of independence. Following (Table 2.3) is the scheme of UNCITRAL Rules of Arbitration in a tabulated format (UNCITRAL (UNO), 2011).

Table 2.3: Scheme of UNCITRAL Rules of Arbitration

1	Section – I Introductory Rules	Article 01	Scope of application
		Article 02	Notice and calculation of periods of time
		Article 03	Notice of arbitration
		Article 04	Response to the notice of arbitration
		Article 05	Representation and assistance
		Article 06	Designating and appointing authorities
2	Section – II Composition of Arbitral Tribunal	Article 07	Number of arbitrators
		Article 08	Appointment of arbitrators
		Article 09	
		Article 10	
		Article 11	Disclosures by and challenge of arbitrators
		Article 12	
		Article 13	
		Article 14	Replacement of an arbitrator
		Article 15	Repetition of hearings in the event of the replacement of an arbitrator
		Article 16	Exclusion of liability
3	Section – III Arbitral Proceedings	Article 17	General provisions
		Article 18	Place of arbitration
		Article 19	Language
		Article 20	Statement of claim
		Article 21	Statement of defense
		Article 22	Amendments to the claim or defense
		Article 23	Pleas as to the jurisdiction of the arbitral tribunal
		Article 24	Further written statements
		Article 25	Periods of time
		Article 26	Interim measures
		Article 27	Evidence
		Article 28	Hearings
		Article 29	Experts appointed by the arbitral tribunal
		Article 30	Default
		Article 31	Closure of hearings
		Article 32	Waiver of right to object
4	Section – IV The Award	Article 33	Decisions
		Article 34	Form and effect of the award
		Article 35	Applicable law, amiable compositeur
		Article 36	Settlement or other grounds for termination
		Article 37	Interpretation of the award
		Article 38	Correction of the award
		Article 39	Additional award
		Article 40	Definition of costs
		Article 41	Fees and expenses of arbitrators
		Article 42	Allocation of costs
		Article 43	Deposit of costs
5	Annex	Model arbitration clause for contracts	

2.7.2 Procedure of Arbitration under UNCITRAL Rules

Arbitration under UNCITRAL Rules of Arbitration revised in 2010 is considered ad-hoc and non-institutional arbitration thus offer more flexibility and liberty to the parties to decide the dispute among themselves in a fashion they consider appropriate (Bhagwat Singh Sangha, 2011). As shown in the previous section the UNCTIRAL Rules of Arbitration are well structured, organized and detailed that comprehensively explains the procedure of Arbitration (UNCITRAL, UNO, 2012). Following is the brief account of procedure of arbitration under UNCITRAL Rules of Arbitration as revised in 2010[15].

a. Commencement of Arbitration

The arbitration is considered to be commenced on the day when a Notice of Arbitration is served by the aggrieved (claimant) party to the other (respondent) party to the dispute as mentioned vide Article 3 of the rules. The rules also explain in detailed that in what scenario, a notice is considered received by the respondent and all the timelines are measured from the specific date when the respondent receives such notice. The rules also explains the mandatory contents of the notice and must include all the pertinent information including name and contact information of the legal representatives of both parties, identification of invoked arbitration agreement, identification of invoked contract or a particular clause of the contract, description and nature of claims and remedy sought through arbitration, place of arbitration, number of arbitrators, applied language of arbitration etc. The notice may also indicate the appointing authority for appointment of arbitrators, proposal for sole arbitrator or notice of appointment of arbitrator as per rules. The sufficiency of notice cannot hinder the constitution of arbitral tribunal under Article 3(5).

According to Article 4; within 30 days after receipt of notice of arbitration by the respondent, the respondent shall communicate the response to notice of arbitration to the claimant that will respond to all the items conveyed vide notice of arbitration. The response may also include any pleas regarding jurisdiction of arbitral tribunal, proposed appointing authority, proposal for appointment of sole arbitrator, notification of arbitrator from respondent side in case of three arbitrators, brief description of claims/counter claims/ involved costs/remedies sought etc. The respondent's failure to

[15] The procedure is extracted from UNCITRAL Rules of Arbitration as Revised in 2010

submit the response or providing late or incomplete response shall not hinder the constitution of arbitral tribunal.

Article 5 allows the parties to the dispute to be represented or assisted by the personnel of their choice with formal proof of authority to represent a party on its behalf. According to Article 6 both parties can nominate an institution or a person including Secretary General of Permanent Court of Arbitration (PCA) as an appointing authority for appointment of arbitrators.

b. Appointment of Arbitration Tribunal

Article 7 specifies the time limit of 30 days to decide the number of arbitrators to adjudicate the dispute and time constraints subject to agreement of both parties and fulfillment of conditions of Article 8 and 9; sole arbitrator in 30 days and three arbitrators in 60 days are appointed. Article 10 of the UNCITRAL Rules also covers the mechanism for appointment of arbitral tribunal, when multiple parties are involved as claimant or respondents.

Any party to the dispute can also challenge the appointment of arbitrator's impartiality if justifiable doubts arise under article 11, 12 & 13 and such an arbitrator can be replaced as per article 14.

c. Arbitral Proceedings

The arbitral tribunal is bound to conduct the arbitral proceedings in a fair manner with equality, giving reasonable opportunity to each party to present its case and to avoid unnecessary expenses and delay. The tribunal shall establish a provisional timetable for the proceedings soon after its constitution which is subject to extension or abridgment with the agreement of the parties. On request of the any party, at an appropriate stage, the tribunal can hold hearings for the presentation of evidences by witnesses. All the communication to the tribunal by any party will be communicated to the other party to ensure the provision of level playing field.

The claimant shall communicate the statement of claim as per the provisional timetable in conformance with the article 20 of the rules. The respondent will respond to the statement of claim with the statement of defense in accordance with article 21 and is also at liberty to make counterclaim, if any. Article 22 of UNCITRAL rules also allow amendment or supplements to the statement of claims or defense provided that such amendment or supplements does not fall outside the jurisdiction of the tribunal. The

period of time for submission of written statements should not exceed more than 45 days however this time limit can be extended if such an extension is justified to the tribunal.

An interim relief can be given to a party by the tribunal subject to the fulfillment of article 26 of the rules. According to the UNCITRAL Rules of Arbitration, each party has the burden of proving the facts of its claim. Article 27 of the rules also allows the parties to present expert witnesses to supplement their position. The tribunal may require the parties to produce documents, exhibits or other related documentary evidences to support their claims; it is however the prerogative of the tribunal to ascertain the admissibility, relevance, materiality and weight of evidence presented.

The tribunal can also conduct hearings under article 28 subject to advance notice, the hearing can be in camera if agreed by the parties and witnesses can also be examined through other means of telecommunication. Under article 29 the tribunal can appoint expert(s) to report on any specific issue if needed and the terms of reference of appointment of experts will be communicated to the both parties. Such an expert will submit to the parties and tribunal his credentials and his statement of impartiality and the parties will provide all the necessary documentation to the expert necessary to report on any specific issue. Article 30 of the rules highlights the scenario when arbitration proceedings are defaulted and the hearings are closed under article 31 of the rules.

d. Arbitral Award and Closing of Proceedings

Arbitration proceedings are closed with the announcement of award. In case of more than one arbitrator the award is pronounced with the majority decision or by the presiding arbitrator alone if authorized by the tribunal.

Under article 34, the tribunal may make separate awards on separate issues at different times. The award will be final and binding to all the parties and shall be executed immediately. The award will be signed by the arbitrator(s) indicating the place, date of the signing of the award and will contain the reasons upon which the award is based. The award can be made public with the consent of the parties involved or the parties can also decide the extent of award to be made public. The signed award will be communicated to all the parties.

Article 36 of the rules allows the parties to amicably settle the dispute before the issuance of award; in that case the tribunal can either notify the termination of arbitration or announce the amicable settlement as an award, subject to agreement of the parties.

The arbitration proceedings can also be terminated if the proceedings are considered unnecessary or impossible by the tribunal before the issuance of award and such termination for whatever reason thereof, must be communicated to the parties in writing.

Within 30 days of receipt of award, the party can request for interpretation, correction or issuance of additional award and article 37, 38 & 39 binds the tribunal to take necessary action within the specified duration.

Figure 2.6 below summarizes the arbitral procedure under UNCITRAL Rules of Arbitration 2010.

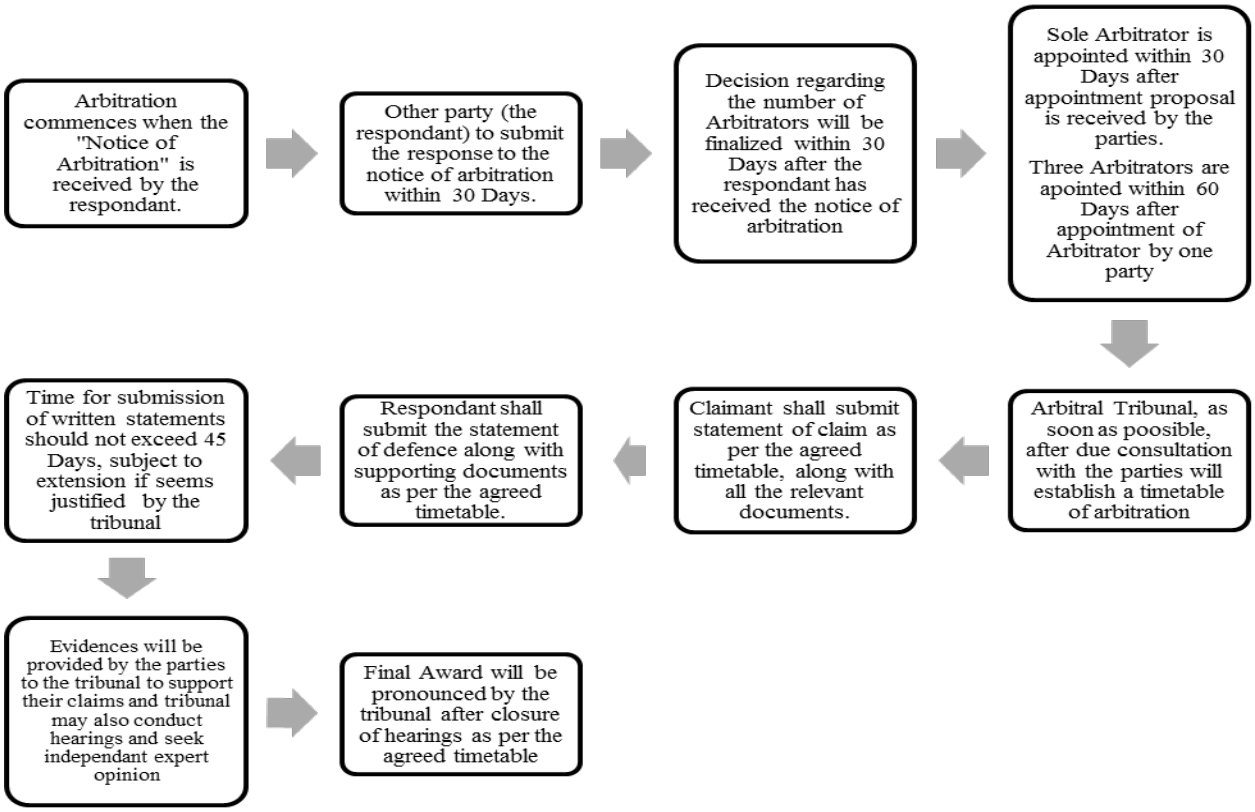


Figure 2.6: Procedure of Arbitration as per UNCITRAL Rules of Arbitration (2010)

2.8 Review of Arbitration Cases

As mentioned earlier both ICC and UNCITRAL allows the parties to keep their arbitration proceedings and award confidential thus the process of arbitration or the award itself can only be made public if the parties agree to do so. The parties involved in the arbitration can also decide the extent to which an arbitration proceeding or the award can be made public (UNCITRAL (UNO), 2011) & (ICC Rules of Arbitration, 2012). During this research work, it has been observed that most of the parties decided to keep their arbitration proceedings and award confidential, in order to maintain their anonymity

and avoid any stain to their reputation; which in itself is an advantage of arbitration over conventional litigation. In some arbitration however the proceedings or awards are made public and in some cases, an analysis of the arbitration itself is available to study. This tendency of confidentiality among parties to the dispute therefore limits the scope of study, still an effort has been made to review as much arbitration proceedings and awards available publicly. The purpose of this review is not to evaluate the arbitration awards on their merits but to analyze the proceedings itself in each case. The list of case studied for the purpose has already been annexed earlier.

In the same fashion the cases for local arbitration in construction industry of Pakistan were also reviewed and evaluated for their procedural aspects, in detail. The major road block faced in this effort was the availability of record. In most of the cases the parties to the dispute were apprehensive about sharing such information whereas in other cases the data was simply not available due to poor record keeping. However cogent efforts were made to acquire information from leading stakeholders of construction industry of Pakistan and the same was subsequently reviewed.

As a result of this study key problem areas were identified that are discussed in the forthcoming section.

2.9 Local vs International Arbitration

As a result of detailed in depth review of available books, journals, research papers and arbitration cases a broad shape of the comparison between international and local arbitration proceedings was emerged and a number of aspects of arbitration proceedings were picked up for detailed analysis in consultation with the industry professionals. Following (Table 2.4) highlights the broad aspects of arbitration proceedings selected for detailed analysis.

Table 2.4: Aspects of Arbitration Procedure

S.No.	Procedural Aspects	Discussion
1.	Provision of Standard Clause of Arbitration	It was studied that do the rules of arbitration provide for any standardized clause for arbitration or not? If there is such provision what are its merits and demerits and the significance of having a standardized arbitration clause.

2.	Sufficient Procedural Guidelines	All rules should lay down the procedural guideline about the conduct of the arbitration proceedings. It was studied that whether the guidelines provided in the rules efficiently facilitate the arbitration proceedings, moreover it is studied that whether these guidelines are practically followed.
3.	Procedure for Appointment of Arbitrator	The procedure for appointment of arbitrator was studied for its efficiency. It was probed that either this procedure is helpful and ensures the appointment of impartial, competent arbitrator that enjoys the trust of the parties to the dispute.
4.	Impartiality of Arbitrators	It was studied that how the rules ensure that the arbitrator stays impartial and how does these procedures manifest themselves in real situation.
5.	Time Allowed for Appointment of Arbitrators	For these aspects, primarily the time value has been considered and it was tried to find out that what set of rules provide most time efficient procedure for appointment of arbitrator and also for announcement of arbitral award. Thus it was discussed at length that which set of rules can conclude the arbitration proceedings more speedily.
6.	Time Allowed for Announcement of Award	
7.	Features of Arbitration Award	The arbitration awards were studied for their quality and it was studied that which set of rules facilitates the production of better quality of arbitration awards.
8.	Enforcement of Arbitration Award	The aspect of enforcement of award after the proceedings have been concluded was also considered. Each set of rule was evaluated for it capability to ensure the enforcement of decision.
9.	Role of Courts in Arbitration	The role of court and intervention of conventional legal systems into the arbitration was studied and probed into.
10.	Confidentiality of	Confidentiality of arbitration proceedings could be of

	Award	great importance to the parties to the dispute particularly when the parties involved are from private sector. This aspect of arbitration rules was considered during the literature review.

2.10 Summary

In this chapter the literature base of this research has been discussed at length. It is explained, how the contracts are formulated and whenever the dispute surfaces between the parties how it can be resolved according to agreed terms and the conditions of the contract. Various modes and means of dispute resolution were discussed and later Arbitration was comprehensively discussed in detail. It was explained how arbitration can effectively resolve disputes in construction industry and what are the opportunities and pitfalls for adopting this mode of dispute resolution in construction. Finally various rules of arbitration were discussed in detail. The local arbitration act and the two most common arbitration rules being used internationally i.e. ICC Rules and UNCITRAL rules were discussed in detail.

CHAPTER 3

RESEARCH METHODOLOGY

3.1 Introduction

In this chapter the method, tools and techniques adopted to conduct this research will be discussed in detail. No prior research work was available on this subject in Pakistan however the work of foreign researchers was studied to devise the research methodology. This will be a qualitative research based on semi-structured interview targeted to experts of Arbitration in construction industry in Pakistan.

As the objective of this research is to establish the differences between International and Local Arbitration Proceedings in Construction Industry thus the review of literature was the most significant component of the research therefore the detailed, in depth literature review was conducted under supervision of research supervisor and in consultation with external expert in the field of Arbitration in Construction Industry to chalk out the aspects of arbitration rules and regulation adopted locally and internationally that affect the arbitration proceedings.

Established principles[16] of conducting qualitative research were adopted to meet the research objectives. In consideration of the scope and limitation of the research, major emphasis was given to the literature review which was more or less a continuous activity. In conjunction to that, an eminent professional in Arbitration belonging to industry was taken on board for continuous guidance during the research work and consequently the key aspects of the arbitration procedure were identified to conduct the comparison.

Subsequently, the arbitration act of 1940, ICC Rules of arbitration and UNCITRAL rules of arbitration were categorized and sorted into certain key procedural aspects and numerous interview questions were developed in relation to each aspect. These questions were later presented to the panel of arbitration experts from construction

[16] Work consulted for research design: (a) - The SAGE Encyclopedia of Qualitative Research Methods by Lisa M. Given of Charles Sturt University, Australia © 2008 published by SAGE Publications, Inc.
(b) - The SAGE Handbook of Qualitative Research Fourth Edition by Norman K. Denzin of University of Illinois at Urbana-Champaign & Yvonna S. Lincoln of Texas A&M University © 2011 published by SAGE Publications, Inc.

industry of Pakistan and their responses were analyzed using MS Excel / SPSS / QDA Miner and the results were recorded and conveyed.

Following sections explain the research methodology in detail.

3.2 Research Design

The research design was developed with the assistance and guidance of research advisory committee and professionals from construction industry having adequate knowledge / experience in research. Moreover relevant literature about conducting qualitative research was also explored and deployed herein. Following figure (Fig 3.1) explains the research methodology in brief. Each of these steps is subsequently explained in detail.

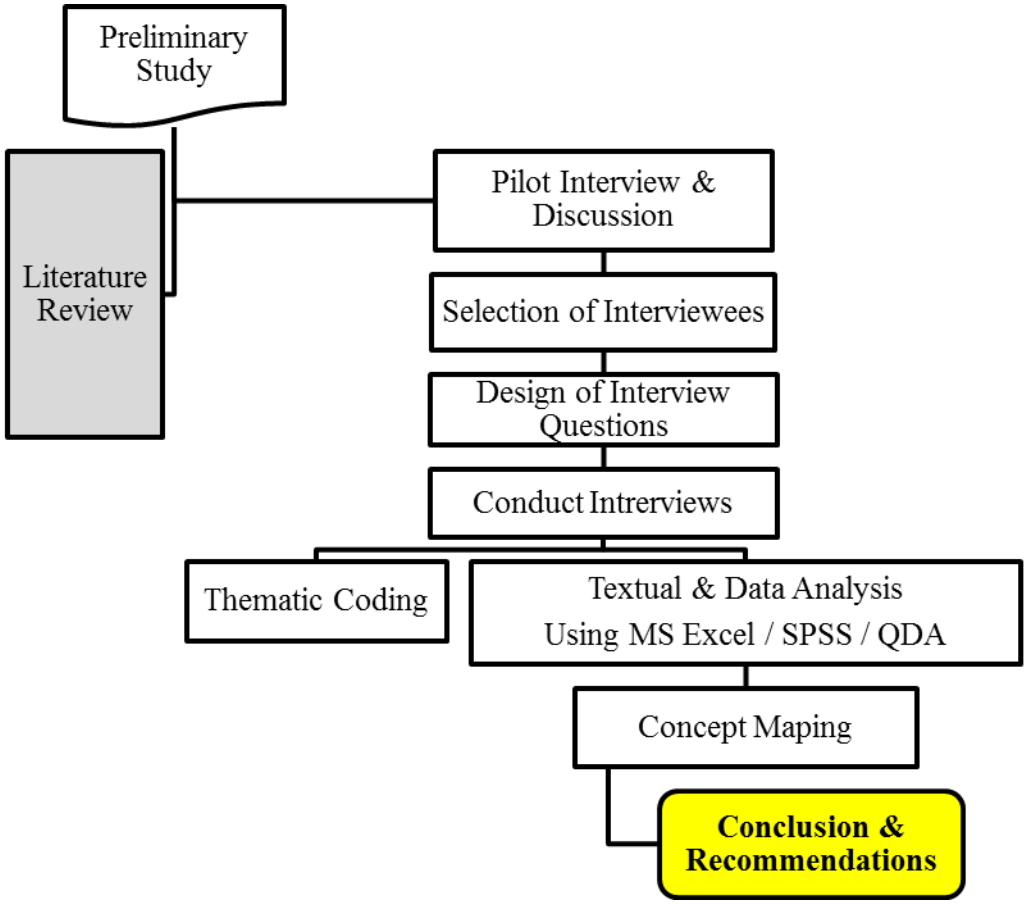


Figure 3.1: Research Methodology

3.2.1 Preliminary Study

In conjunction with the extensive literature review, a preliminary study was conducted to establish the realm of this research including its scope, limitation, objectives etc. Resultantly, the research plan was evolved and scope and objectives were

established. More importantly, the limitations of the research were identified that comprehensively marked the domain of the research project, as already highlighted in Chapter 1.

It was decided at an initial stage that the domain of the research should be restricted to the construction industry of Pakistan however later on it was observed that due to shear lack of data available in this context, certain aspects of commercial arbitration in general has to be adopted to cogently conduct the research. However, still the prime emphasis remains on Arbitration in Construction.

As a result of preliminary study and detailed discussions, in conjunction with the in depth review of literature a comparison table was formulated delineating the differences between procedural rules of arbitration under Arbitration Act of 1940, Rules of Arbitration for UNCITRAL and Rules of Arbitration for ICC.

3.2.2 Pilot Interview and Discussion

In light of preliminary study and the Table of Differences a pilot interview was conducted with an imminent industry expert on Arbitration in Construction, in order to fine tune the table of differences and develop the interview questions. Predominantly, semi-structured interview approach was used in order to conduct the research (DiCicco-Bloom & Crabtree, 2006). This approach facilitates the collection of data on a much broader spectrum and allows the researcher to articulate while gathering information (Taylor-Powell & Renner, 2003). As a result of pilot interview the table of differences were finalized and placed at **Appendix – I.**

Moreover, the semi-structured interview questions were framed regarding each category of differences for subsequent interviews.

3.2.3 Selection of Interviewees

Similarly, on the basis of preliminary study, pilot survey, detailed deliberations and extensive literature review criteria for selection of interviewees were developed. It was agreed that each interviewee has to fulfill certain qualifying conditions. Only well recognized and established industry experts of the Arbitration in Construction were selected, having extensive experience and broad knowledge base covering legal and technical aspect of the study. A total of 10 experts were selected for interviews and all had more than 20 years of experience of arbitration in public sector whereas half of the interviewee had experience in private sector also. 80% of the experts have background in

highway industry, followed by experts from buildings background and formal arbitration background at 70%. However, only one expert has the background in irrigation and water resources. Following chart (Fig 3.2) presents the core competencies of the interviewees.

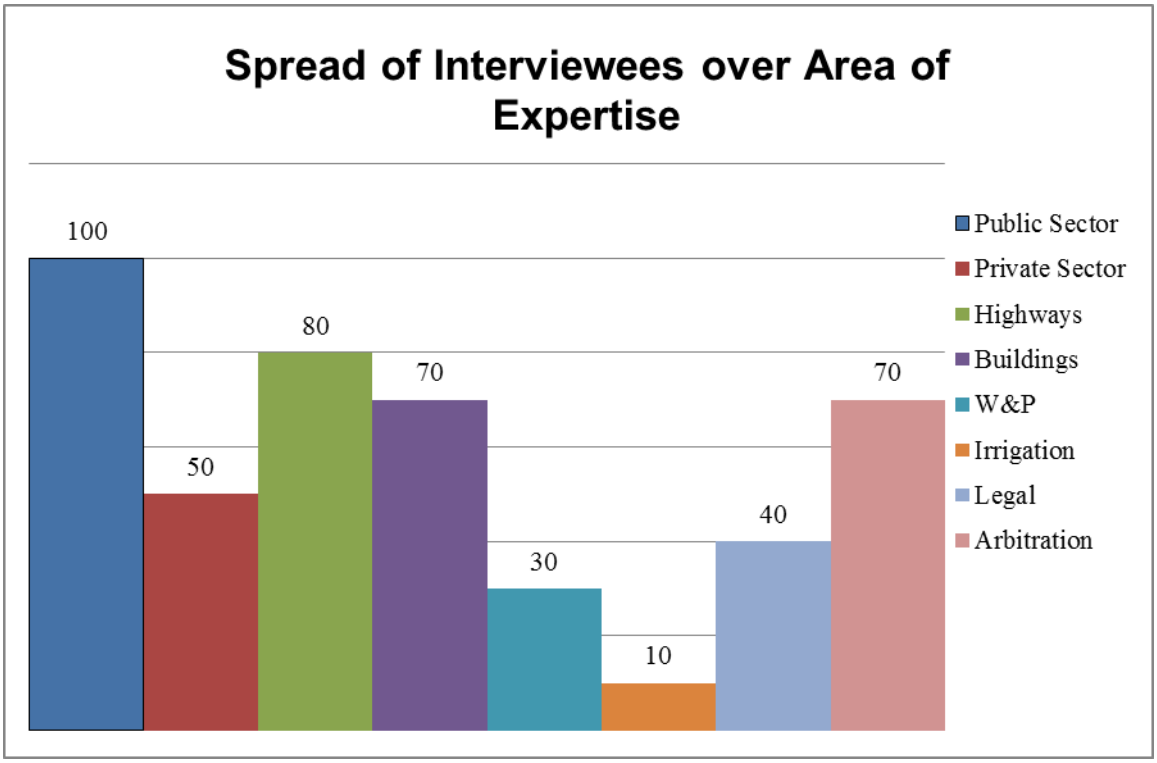


Figure 3.2: Spread of Interviews over Area of Expertise

3.2.4 Number of Interviewees

The number of interviewees for the research were determined on the basis of non-probability samples and convenience sampling is the most used procedure for the selection of non-probabilistic samples that accepts all eligible cases. In practice, almost all qualitative research rely on nonprobability samples and this dependence, most of the time is because of problems faced for identifying data sources that meet eligibility criteria. Moreover, the desire to have a detailed, in-depth data generally results in small sample size, as in this particular case where there would be no point to doing statistical analysis. Thus, the common use of nonprobability samples in qualitative research matches an approach to data collection and analysis strategy that typically relies on the careful interpretation of a small number of very rich data sources and for that matter 8 or more interviews yield rich and reliable results, depending upon the nature of interview-questions (Given, 2008)

3.2.5 Qualitative Interview Design

The qualitative research interview seeks to describe and the meanings of central themes in the life world of the subjects. The main task in interviewing is to understand the meaning of what the interviewees say. A qualitative research interview seeks to cover both a factual and a meaning level, though it is usually more difficult to interview on a meaning level. (Kvale, 1996). Moreover, interviews are particularly useful for getting the story behind a participant's experiences. The interviewer can pursue in-depth information around the topic. Interviews may be useful as follow-up to certain respondents to questionnaires, e.g., to further investigate their responses. (McNamara, 1999).

3.2.6 Semi-Structured Interviews

There are various forms of interview design that can be developed to obtain thick, rich data utilizing a qualitative investigational perspective (Creswell, 2007). As summarized by Gall, Gall, and Borg (2003) the interviews can be: (a) informal conversational interview, (b) general interview guide approach, and (c) standardized open-ended interview. However the SAGE Encyclopedia of Qualitative Research Methods, University of Alberta explains other forms of interviews also such as (a) Un-Structured (b) Semi-Structured and (c) Structured Interviews.

For the purpose of this research semi-structured interviews were conducted which is a qualitative data collection strategy in which a series of predetermined but open-ended questions were asked. This rendered more control over the topics of the interview than in case of unstructured interviews, however, contrary to the structured interviews that use closed questions, the number, range and domain of responses to each question is fixed. In order to deploy semi-structured interviewing technique for qualitative analysis, a broadly framed interview guide was developed in advance. Depending upon the type of research and the approach of the researcher the interview could either be specific with well framed questions or may be just a list of relevant topic. Moreover it is the prerogative of the experienced interviewer to either strictly follow the guide, asking same questions in the same order to just move about on the guide on the basis of responses from the respondents. In any of the stated case, the areas covered under the interview guide are based on the objectives of the research and the underlying theoretical framework of the research. Various different kind of open ended questions are used in

semi-structured interviews and such interviews are particularly helpful were the relationships and concepts between the queries and the responses is relatively clear however the unstructured interviews are of more help when the identification of the concepts, themes are theories are the objectives of the research (Turner III, 2010). It is thus quite clear that as a consequence of the degree of structuring in this type of interviewing the resulting data is a joint collaboration between the interviewer and the respondent. In order to ensure interpretive validity, leading questions were avoided. For both unstructured and semi-structured interviews, the development of rich, relevant data rests on the interviewer's ability to understand, interpret, and respond to the verbal and nonverbal information provided by the informant (Given, 2008).

3.2.7 Stages of Interview Investigation

There is a clear lack of standard practices and rules for the qualitative research interviews, therefore the veteran researchers emphasis that the interviewer should be well prepared and competent to conduct such interviews (Kvale S. , 1996). However the stages and steps that are generally followed in this connection are somewhat standard, and the same were deployed for the purpose of this research are discussed below (Kvale, p. 88):

a. Framing the theme: The objectives and purpose of the research are identified and established and the concepts to be probed into are described to before the start of the interview.
b. Designing: Complete research study is planned and designed keeping in view the all steps of the analysis as already discussed above.
c. Interviewing: In depth detailed and exhaustive interviews, based on the interview guide already formulated, were conducted wherein the knowledge researched was reflected upon.
d. Transcribing: Then the interview notes and audio recordings were written down in a coherent comprehensive manner.
e. Analyzing: Considering the objectives of the research the entire transcribed responses were thematically coded and analyzed using advance computer tools.
f. Verifying: All the data, analysis methodology and results were verified for consistency, quality, validity, coherence and reliability in order to establish that the responses are restricted to the research objectives.

g. Reporting: Finally, the results and conclusions of the analysis were compiled and before reporting it was established that they meet the quality criteria and relates to the objectives and themes of the research. The research conclusions and recommendations were then reported.

3.2.8 Ethical Issues in Interview Inquiries

Ethical issues such as informed consent, confidentiality and consequences for the interviewee were taken into account. Research subjects were informed about the purpose of the investigation and the main features of the design. However, considering the nature of the cases cited and profile of the interviewees most of the subjects desired to remain anonymous. Also as already mentioned in chapter 2, the main feature of the arbitration that attracts the parties to the dispute is also confidentiality. The parties can keep the affair private, contrary to the conventional court based litigation were each ruling becomes a precedence and subsequently gets published for future reference. Thus for the purpose of this all the critical information of the cases studied and information regarding the interviewees were remained confidential.

3.2.9 Types of Interview Questions and Quality of Interview

Researchers have explained that interview questions can be of following types such as (a) Introducing questions (b) Follow-up questions (c) Probing questions (d) Specifying questions (e) Direct questions (f) Indirect questions (g) Structuring questions (h) Silence (i) Interpreting questions (Kvale S. , 1996).

Quality Criteria for an Interview is summarized as under (Kvale S. , 1996)

a. The responses should be specific, comprehensive, pertinent and unprompted.

b. Shorter but comprehensive response is better.

c. More verifications and clarifications sought by the interviewer the better.

d. The responses should be in line with the theme of the interview and objectives of the research.

e. During the interview, interviewer should keep on validating its understanding of the concepts the respondents trying to convey.

f. The interview should be self-explanatory and it should elaborate its essence on its own without any additional interpretations or descriptions.

3.3 Summary

The above chapter explains in detail the research methodology deployed for this research. Primarily Qualitative Interview Based Research methods are deployed to probe into the objectives of the research. Interviewees were selected based on their core competencies and experience based on a non-probabilistic sampling mechanism. Semi-structured research interviews were developed and high quality interviews were conducted as per the established guidelines.

CHAPTER 4

DATA ANALYSIS AND RESULTS

4.1 Introduction

Arbitration Act of 1940 of Pakistan is an old enactment which cannot meet the needs of modern era. In both public and private sector, all stakeholders including clients, consultants and contractors face grave problems regarding manifestation of these rules. All stakeholders, naturally, prefer the set of procedures that dispenses quick, economical and less cumbersome binding resolution of disputes. Although PEC has formulated modern rules for conciliation and arbitration but they still falls under the ambit of arbitration act of 1940. Moreover, the professionals in the industry also lack knowledge in this regard and heavily rely upon legal experts for resolution of their disputes through arbitration only due to the complicated nature of arbitration rules and traditional practices of the industry. Also there is no regulatory authority that can implement arbitration rules on construction projects in true letter and spirit of the law.

Although a demand is being emerged in the construction industry of Pakistan for a better more economical arbitration procedure however the same has no legal cover. It is also to be kept in consideration that the arbitration in construction industry of Pakistan is mostly opted by the public entities that requires proper legal cover to avoid future complexities. The private industry in inching towards the utilization of alternate dispute resolution techniques adopted in the developed countries but still there is a long way to go and more and more research, knowledge and expertise are needed in the area.

For the purpose of this research the Data was collected through in-depth, nonprobability and semi-structured interviews which is then analyzed using MS Word MS Excel, IBM SPSS Data Collection Software and QDA Miner. Results of the survey are discussed in the subsequent sections.

4.2 Qualitative Analysis of Interview Data

Upon collection of interview data, the analysis began. The qualitative analysis of any text can be subjective procedure and different researchers can extract different results from the same process (Tylor-Powell & Renner, 2003). This process of

qualitative analysis of interview data is quite fluid, so moving back and forth between each step is quite common.

4.2.1 Understanding the Data

The analytical process begins with understanding the data. It is no mystery that a better understood data yields better results. Thus every single bit of text demands careful interpretation which requires frequent re-visitation of text. In case of audio recording each file has to be listened numerous times before transcribing it with precision to establish the quality of data. Occasionally, the information collected fails to add value or there is some inherent biasness to it therefore before analysis of data, its quality should be checked and established, in relation to the semi-structured questions; in order to ensure that there are no biasness. Moreso the quality of data was determined as per the criteria mentioned in Chapter 3.

For each category of differences in the three arbitration procedures following semi-structured questions were framed before the interviewees.

a. Which of the three rules in a particular section offers more suitability for dispute resolution?
b. Why any of the said procedure is better than the others.
c. How can the better provision manifest itself in the practical world for Construction Industry of Pakistan?

Furthermore, following two general questions regarding Arbitration in Construction Industry of Pakistan were also asked from the experts:

a. What is the general perception about Arbitration in Pakistan as a dispute resolution mechanism in relation to construction contracts?
b. Is there any alternative to Arbitration that is gradually being adopted in Pakistan?

4.2.2 Textual Analysis & Transcribing the Data

Each of the interviewee was asked three question in relation to 11 differences mentioned in Appendix – I and two concluding questions at the end of each interview. Also, complete freedom was offered to the expert interviewees to express their view regarding the subject to add more quality, depth and reliability to the data. This resulted in rich data and subsequently the data was transcribed from the notes and voice recordings of the interviewees and the same was textually analyzed. Textual analysis is a

method of data analysis that closely examines either the content and meaning of texts or their structure and discourse. Texts, which can range from newspapers, television programs, and blogs to architecture, fashion, and furniture, are deconstructed to examine how they operate, the manner in which they are constructed, the ways in which meanings are produced, and the nature of those meanings. Textual analysis is a term used to refer to a variety of primarily qualitative methodologies or models. Research that focuses on the analysis of textual content will adopt either content analysis; both quantitative and qualitative approaches.

For the purpose of this research the textual analysis the first step for the textual analysis was thematic coding and the same is explained in the following section. The interview text was particularly explored to find out patterns and concepts involved in the interview question in order to determine the approach of interviewees about the differences in presented arbitration rules.

4.2.3 Thematic Coding

The textual analysis was done through thematic coding & analysis and the process of textual analysis on the basis of thematic coding can be elaborated as a processes of categorizing and compartmentalizing the interview data or responses into distinct classes, themes, ideas, concepts and theories; and then the whole data is reshaped and transformed into something that highlights the whole concept of the data (Taylor-Powell & Renner, 2003). It is predominantly a descriptive analysis of the text that highlights the most important patterns and themes hidden in the data that points towards the valuable conclusions.

The thematic coding of this research was conducted in two steps. Initially the expected or known themes, identified as a result of literature review and pilot survey, were established. Subsequently when data was collected through interview responses of semi-structured interview questions, the already established preset themes were integrated with the data to align it with the research objectives and those concepts were explicitly included in the collected data.

On similar grounds the thematic codes also originate right from the literature review, pilot survey and experience. In the beginning the thematic codes were mostly based on heuristics, thus these thematic codes became an instrument to collect and

establish promising ideas and key concepts of the research. Subsequently these key concepts and promising ideas transformed into more coding categories or thematic codes after arduous analytical process that consist of case to case comparison of responses.

The process is cyclic iterative in nature; the thematic coding promotes the promulgation of themes and key concepts and the key concepts facilitate the thematic coding. For the purpose of coding the consolidated collected data is segregated from its original context and arranged under relevant thematic codes that can be retrieved and examined collectively. A list of codes were developed for the purpose of this research which will be discussed later on. Various coding categories were re-conceptualized, renamed, reorganized, merged, or separated as the analysis progressed.

Following simple steps were taken to thematically arrange the data and assign the appropriate coding.

a. Identified concepts, patterns and themes. The ideas, concepts, behaviors, interactions, incidents, terminology or phrases used.
b. Organized them into coherent categories that summarize and bring meaning to the text.

This was a fairly labor-intensive task considering the amount of data collected from the semi-structures interviews. But this is the crux of qualitative analysis. It involves reading and re-reading the text and identifying coherent categories.

During the analysis phase it was uncovered that themes of data also remain changing and consequently final thematic categories were shaped up. Preset categories, where a list of themes or categories were known in advance, and then the data was searched for these themes which provided the much needed direction for objectives of this research in the data. A few new categories emerged as a result of iterative re-visitation of the data wherein rather than preconceived themes or categories, the textual analysis further uncovered the recurring themes or issues in the data.

As a result of the continuous iterative process following themes and codes were developed with the help of IBM SPSS Data Collection Software and Provalis QDA Miner Software Suite. Consequently a large number of codes were formulated and following thematic categories were devised (Table 4.1).

Table 4.1: Thematic Categories

Thematic Categories	Description
Arbitration Act 1940	In this category the data related to Arbitration Act of 1940 was placed and then further analyzed, including the respective responses interviewees
UNCITRAL Rules	In this category the data related to UNCITRAL Arbitration Rules of 2010 was placed and then further analyzed, including the respective responses interviewees
ICC Rules	In this category the data related to ICC Rules of Arbitration (2012) was placed and then further analyzed, including the respective responses interviewees
Arbitration in Pakistan	An overall encompassing discussion about Arbitration in CI of Pakistan.
Arbitration in Modern World	An overall encompassing discussion about Arbitration in CI of the Modern World.
Efficacy of Arbitration	The discussion regarding the efficacy of Arbitration in general and current Arbitration scenario in Pakistan
The Time Factor	The timelines involved, right from the conception of dispute till its resolution through arbitration in general and particularly in Pakistan
The Cost Factor	Involved expenditures, right from the conception of dispute till its resolution through arbitration in general and particularly in Pakistan
Parties' Satisfaction	Whenever a dispute is referred to arbitration, what level of satisfaction both parties achieved from the mechanism? The acceptance and challenging the award and related discussion.
Alternative to Arbitration	Discussion regarding adoption or development of a better dispute resolution mechanism then the arbitration

Similarly the thematic codes were developed with the assistance of QDA Miner. All the interview data was fed into the software that identified all the recurring words in the text. Initially, the software indicated that there could be more than 700 codes that could be developed. However, as a result of subsequent review and analysis only the recurring themes with a frequency of more than 5% were selected. This resulted in a tables of 52 thematic codes that was later arranged as per above categories. Following table (Table 4.2) shows an example of thematic codes.

Table 4.2: Thematic Coding

Codes	Thematic Category	Model Statement From the Interviewee
Appoint	UNCITRAL Rules and Arbitration in Modern World	Appointment of arbitrator is time bound and facilitated under UNCITRAL rules

Authority	Arbitration in Pakistan & in Modern World	Arbitrator enjoys absolute authority and autonomy
Binding	Arbitration in Pakistan & in Modern World	Arbitration Awards are binding on both parties
Confidentiality	Arbitration in Modern World & Parties' Satisfaction	Arbitration is a private affair
Dispute	Alternative to Arbitration	Mediation and Conciliation can resolve disputes if utilized effectively
Enforcement	Arbitration in Modern World	Awards are enforceable under law
Evidence	Efficacy of Arbitration	Both parties are at liberty to present and defend their case
Impartial	Efficacy of Arbitration & Parties' Satisfaction	Arbitrator must act impartially
Procedural	Arbitration in Modern World	Clear guidelines are available to conduct arbitration in a standardized manner
Role	Arbitration Act 1940	Courts play a considerable role more often
Standardized	Arbitration in Modern World	Standardized Arbitration clauses facilitate the arbitration proceedings and reduce ambiguity.

With the help of 52 thematic codes and numerous thematic categories, the pattern in the interview data was identified using computer software like QDA Miner and SPSS Data Collection that later on yielded results and conclusions. The detailed procedure for computer aided data analysis is explained in the following section.

4.3 Computer Aided Data Analysis

Conclusively the most important and pivotal part of QDA is interpreting the data and bringing it all together by using themes and connections to explain the findings. It is often easy to get side tracked by the details and the rich descriptions in the data. Interpretation of data is predominantly serves to associate meaning and significance to the analysis. The analysis of data in a coherent and structured fashion yields better understanding and well-grounded results.

For the analysis part of the research the data was analyzed through IBM SPSS Data Collection Software and QDA Miner, however during the course of the research, more reliance on QDA Miner was developed due to its ease of use. The complete

procedure regarding textual data analysis conducted through QDA Miner is explained in following steps:

4.3.1 Step – 1: Data Entry

The table of differences enclosed at Appendix – I was at the foundation of the data analysis which was added as a document in the software. The software sorted the file into three variable i.e. the three set of rules being probed into namely the Arbitration Act of 1940, UNCITRAL Arbitration Rules of 2010 and ICC Rules of Arbitration 2012. The 11 main differences of all three rules were arranged as 21 cases. Following screenshot (Fig. 4.1) of the software shows the same.

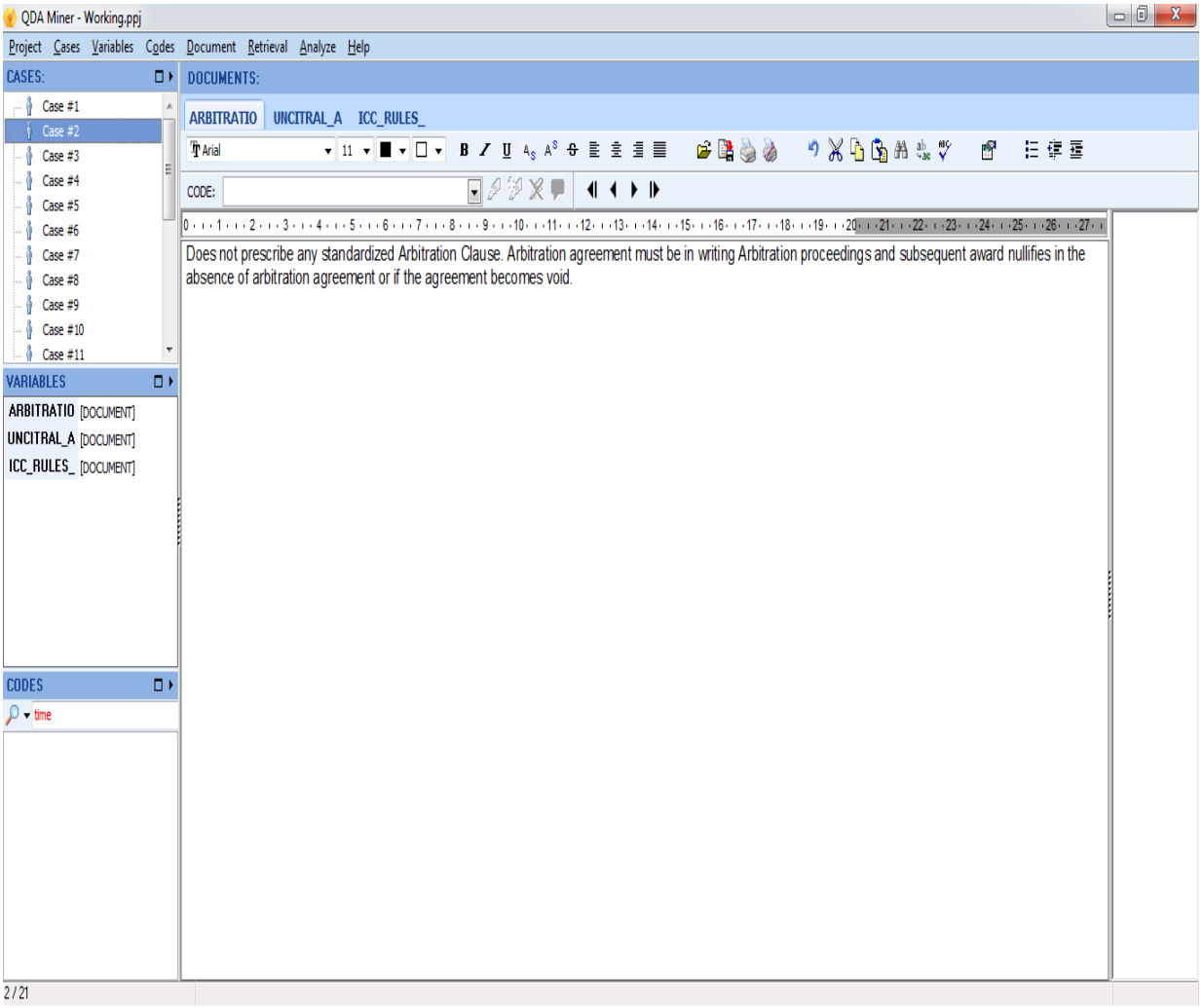
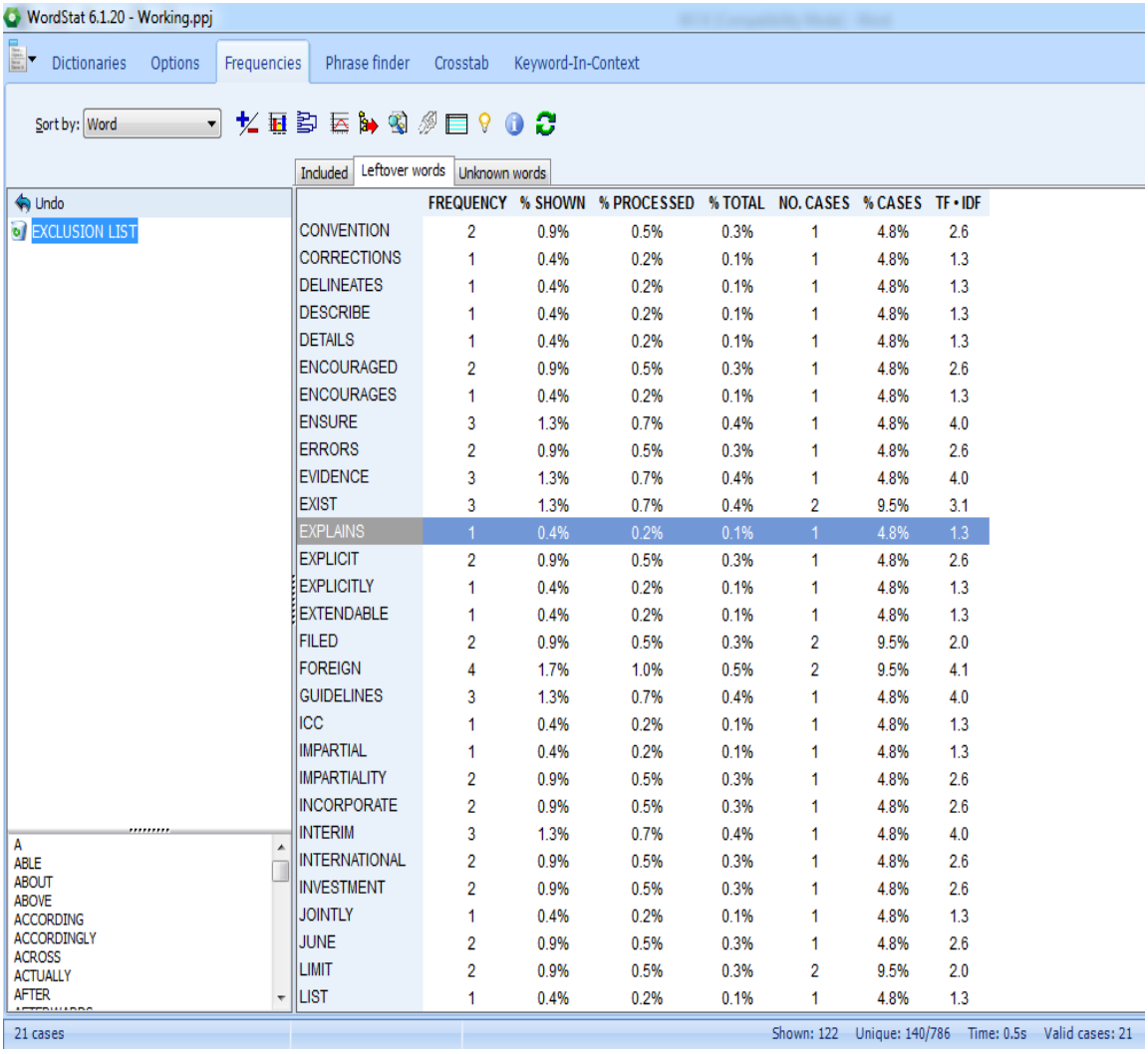


Figure 4.1: Data Entry in QDA Miner

Under each variable, the response of each interviewee was then included under each case to establish thematic coding.

4.3.2 Step – 2: Selection of Thematic Codes

All three variables, including the responses of the interviewees, were textually analyzed under textual analysis of the software. A total 786 keywords were identified by the software out of which the keywords having the frequency of less than 5% were excluded that reduced the number of keywords to 52 as already mentioned earlier. In addition to that all 786 keywords were analyzes and the words having little to no significance were also discarded. Following screenshot (Fig. 4.2) shows the excluded keywords.



	FREQUENCY	% SHOWN	% PROCESSED	% TOTAL	NO. CASES	% CASES	TF • IDF
CONVENTION	2	0.9%	0.5%	0.3%	1	4.8%	2.6
CORRECTIONS	1	0.4%	0.2%	0.1%	1	4.8%	1.3
DELINEATES	1	0.4%	0.2%	0.1%	1	4.8%	1.3
DESCRIBE	1	0.4%	0.2%	0.1%	1	4.8%	1.3
DETAILS	1	0.4%	0.2%	0.1%	1	4.8%	1.3
ENCOURAGED	2	0.9%	0.5%	0.3%	1	4.8%	2.6
ENCOURAGES	1	0.4%	0.2%	0.1%	1	4.8%	1.3
ENSURE	3	1.3%	0.7%	0.4%	1	4.8%	4.0
ERRORS	2	0.9%	0.5%	0.3%	1	4.8%	2.6
EVIDENCE	3	1.3%	0.7%	0.4%	1	4.8%	4.0
EXIST	3	1.3%	0.7%	0.4%	2	9.5%	3.1
EXPLAINS	1	0.4%	0.2%	0.1%	1	4.8%	1.3
EXPLICIT	2	0.9%	0.5%	0.3%	1	4.8%	2.6
EXPLICITLY	1	0.4%	0.2%	0.1%	1	4.8%	1.3
EXTENDABLE	1	0.4%	0.2%	0.1%	1	4.8%	1.3
FILED	2	0.9%	0.5%	0.3%	2	9.5%	2.0
FOREIGN	4	1.7%	1.0%	0.5%	2	9.5%	4.1
GUIDELINES	3	1.3%	0.7%	0.4%	1	4.8%	4.0
ICC	1	0.4%	0.2%	0.1%	1	4.8%	1.3
IMPARTIAL	1	0.4%	0.2%	0.1%	1	4.8%	1.3
IMPARTIALITY	2	0.9%	0.5%	0.3%	1	4.8%	2.6
INCORPORATE	2	0.9%	0.5%	0.3%	1	4.8%	2.6
INTERIM	3	1.3%	0.7%	0.4%	1	4.8%	4.0
INTERNATIONAL	2	0.9%	0.5%	0.3%	1	4.8%	2.6
INVESTMENT	2	0.9%	0.5%	0.3%	1	4.8%	2.6
JOINTLY	1	0.4%	0.2%	0.1%	1	4.8%	1.3
JUNE	2	0.9%	0.5%	0.3%	1	4.8%	2.6
LIMIT	2	0.9%	0.5%	0.3%	2	9.5%	2.0
LIST	1	0.4%	0.2%	0.1%	1	4.8%	1.3

Figure 4.2: List of Excluded Keywords

The software automatically correlates that selected keyword with all the text entered in the software. In consideration of the significance of the keyword it will be selected as the thematic code that can be traced back to its original text and relevant text against each variable and case. This allowed cogent evaluation of each code and further

analysis of the text, as shown in the following screenshot (Fig. 4.3). This allows the researcher to go in depth and evaluate each code individually in order to establish its coherence and relevance with the concept or theme in consideration. So much so that it becomes the very foundation of the analysis and assist in generation of further reports that help understand the objectives and leads to meaningful, comprehensible and dependable conclusions.

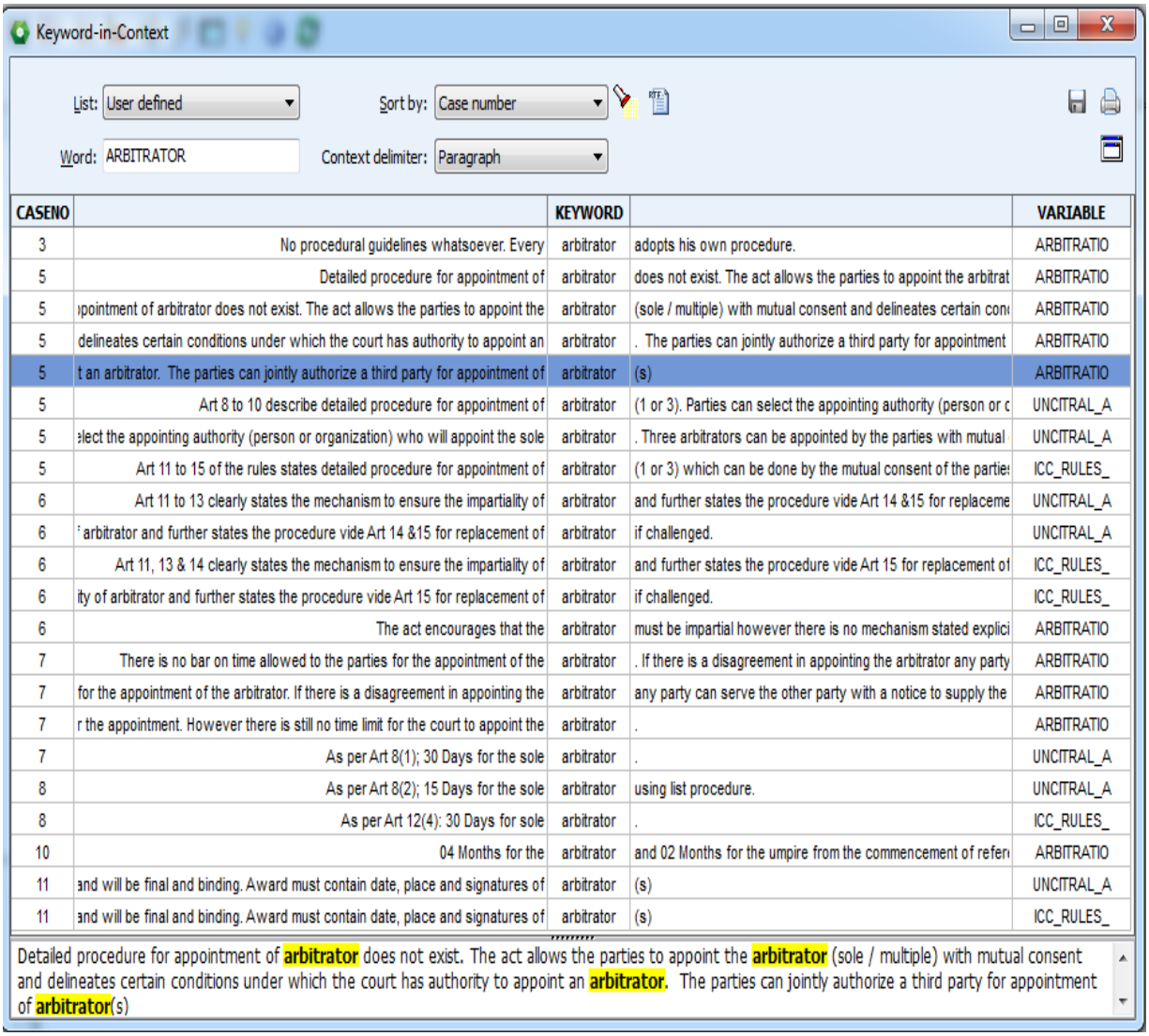


Figure 4.3: Thematic Code (Keyword) in Context

4.3.3 Step – 3: Analysis and Reports

Final step in the computer aided data analysis is the analysis itself, generation of reports, interpretation of reports and final compilation of results.

All the data that has been entered into the software is then analyzed by the software on the basis of thematic codes and reports of various forms were generated by

the software. The software graphically represents the frequency of the keywords in the form of histograms, clusters and pie charts. The frequency graphs shows the use of a certain code within a certain variable and expresses it significance across all data entered within that particular variable. Following are the few reports generated by the software explained briefly, hereunder.

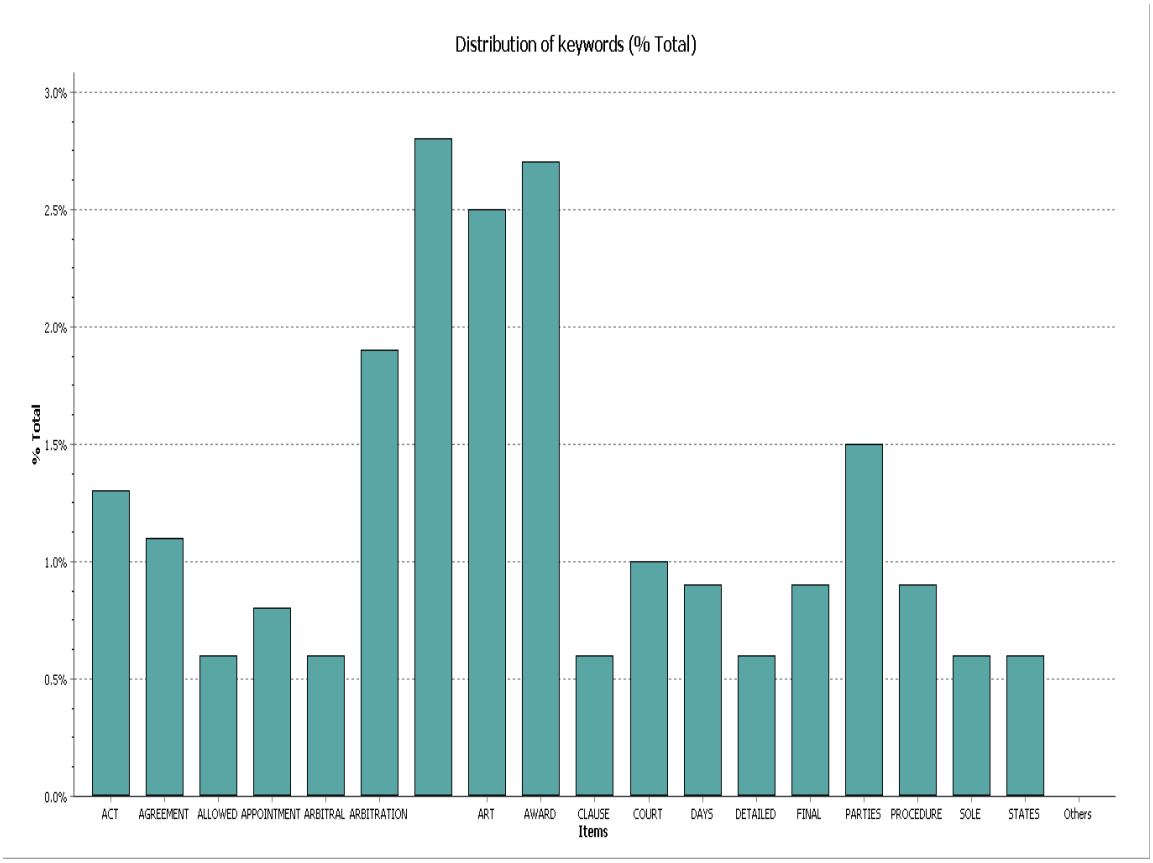


Figure 4.4: Distribution of Keywords

The graph placed at Fig. 4.4 shows the distribution of keywords or thematic codes across all variables against the total keywords in the entire text. This highlights the most keywords or thematic codes that appears the most in the entire text thus explains the significance of each code. For this particular histogram the word ART appear the most in the text however based on the heuristics, this word was excluded from the list as it is a short form of the "article" that refers to any particular rule in UNCITRAL or ICC Rules as, it has been mentioned in two variable thus it appears most in the text.

It can also be seen that the code "COURT" is at 1% that appears quite low however this graph is against the total 786 keywords identified by the software. Thus out of all the keywords the word "COURT" appears at 1% of the entire text.

This software also highlights the most used keywords and color code them. The following Fig. 4.5 shows the most important keywords with respective color codes. Maroon shows the word being most critical followed by red, indigo, blue and green. The size of the text however shows the frequency of the keyword that means the number of times a particular word appears in the text. Therefore the larger a word appears the more is the frequency

Figure 4.5: Significance of Keywords

The proximity analysis was also conducted on the text that showed how relevant a significant thematic code is with respect to other thematic codes. Following figure shows the proximity of the significant thematic codes.

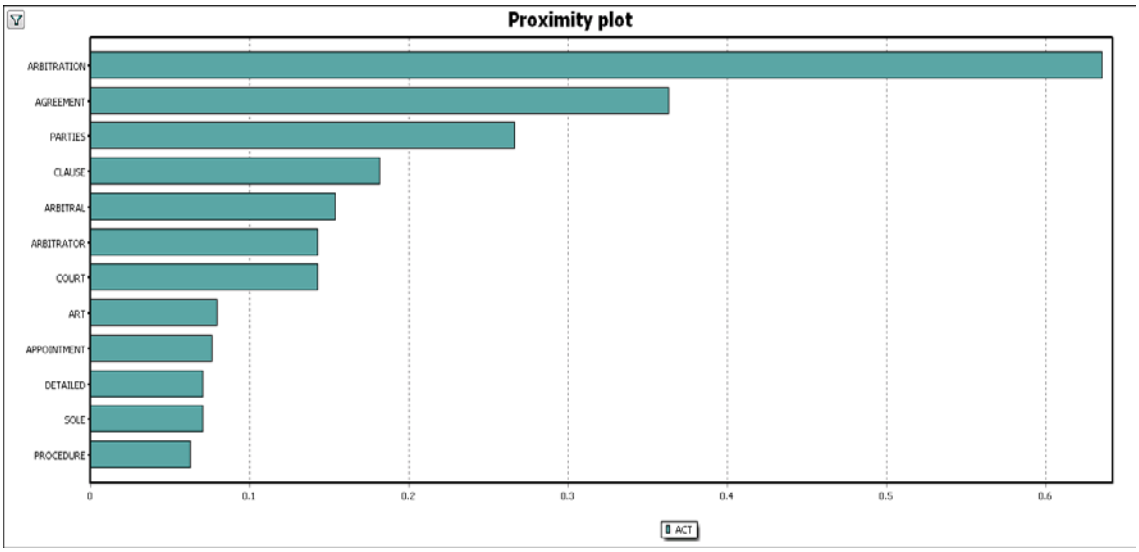


Figure 4.6: Proximity Plot

Figure 4.6 shows that the thematic code “ACT” is most related with the code “Arbitration” and least related to code “Procedure”. This means that in most of the text the code “Act” appears in relation to the code “Arbitration”.

Another tool that measures the similarity between the thematic codes through Jaccard’s Coefficient (Occurrences) was utilized to ascertain the similarity between the thematic codes. The Jaccard’s Coefficient simply proposes the similarity between two variables and higher coefficient relates to higher similarity. Following graph shows the similarities between the thematic codes of significant importance.

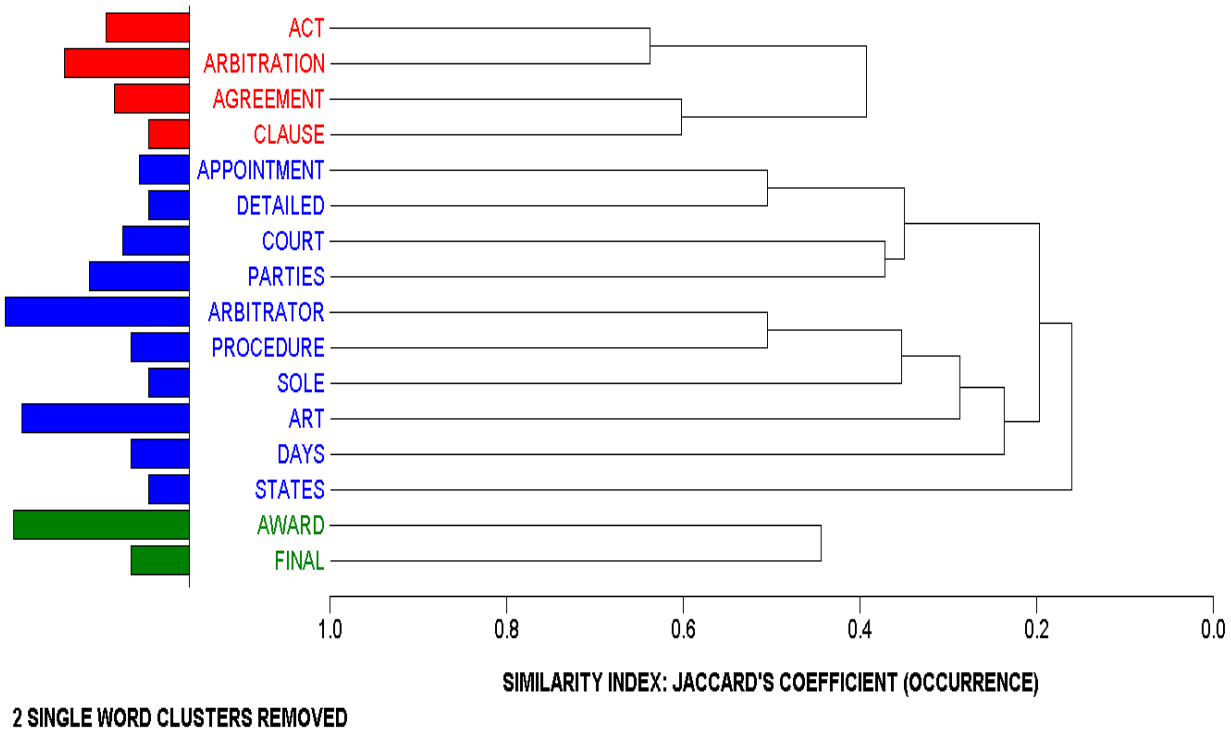


Figure 4.7: Similarity Index (Jaccard's Coefficient)

The length of the bars in Fig. 4.7 highlights the individual frequency of the thematic codes against all three variables whereas the color and sequence shows the relative significance of the codes. In addition to that following graph was also generated to show similarities where red shows highest degree of similarities and green with it lightening shade shows lesser similarity. However the key feature of Fig. 4.8 which is lacking in figure 15 is that it shows the similarity across the variables. It also uses the same Jaccard’s coefficient however the coefficient is not displayed herein. In original a table is also displayed along with this plot however the same was not generated in the

report. Also this also gives a hint between the three Arbitration rules and it can be seen clearly that both ICC and UNCITRAL are better linked and stacked closed to each other showing greater similarities. Also other reports were generated some of which are discussed below that helped the analysis and deduction of results.

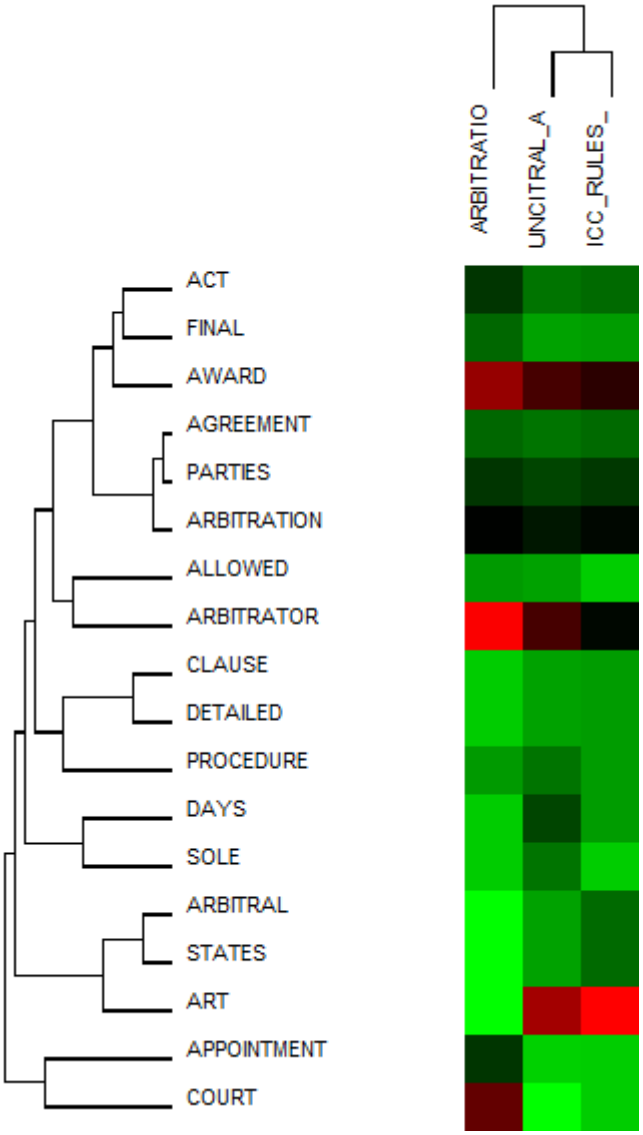


Figure 4.8: Similarities across Variables

Cluster histograms of frequency percentage of thematic codes were also generated, showing the spread of key thematic codes against each variable encompassing the entire text. It is quite clear from the following figure that which of the thematic code is significant in relation to the relative variable, for instance the appointment procedure and formalities of regarding appointment of arbitrator are most critical for arbitration act of 1940 Following chart displays the same.

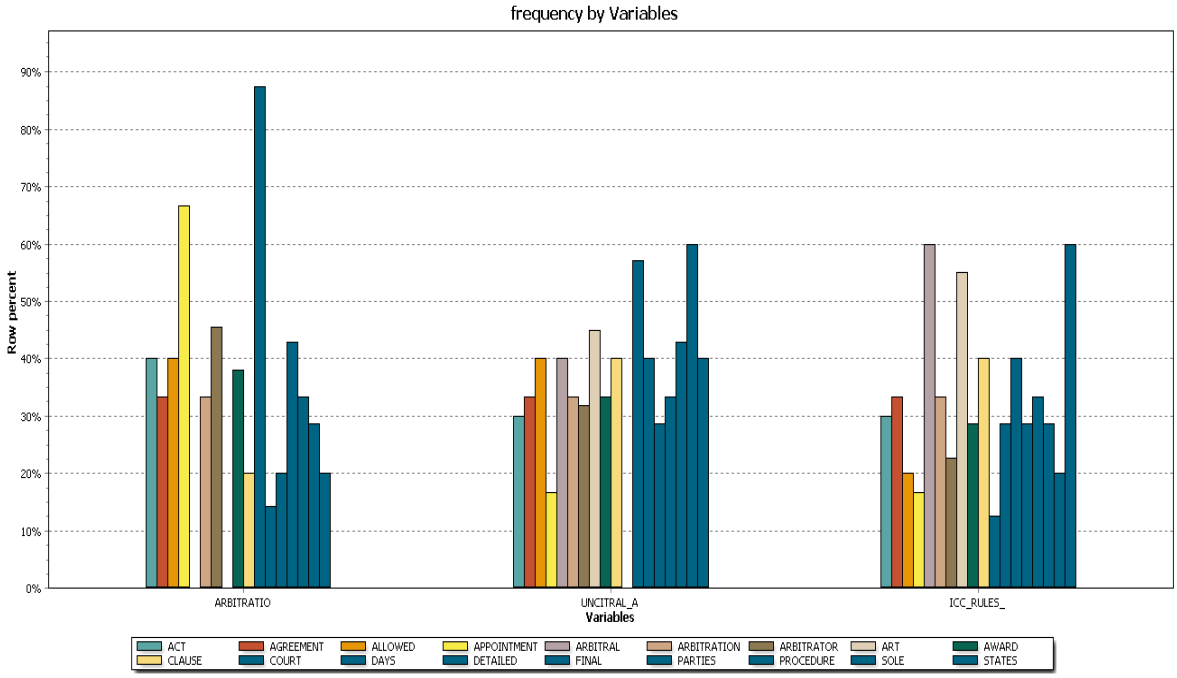


Figure 4.9: Cluster Histograms of Frequency Percentage

A similar cluster of thematic codes is also displayed by the software in the following figure.

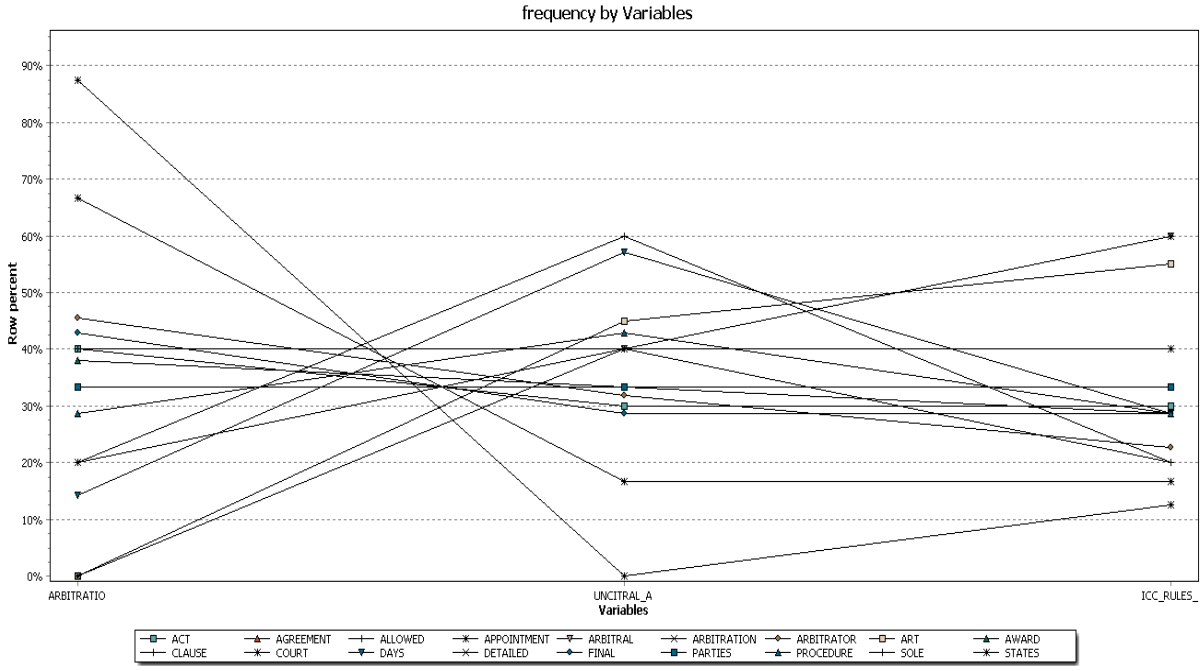


Figure 4.10: Frequency of Variables

The both figures (Fig. 4.9 & 4.10) above are of great importance. This is the instance where both the difference began to appear and it can be clearly seen that the

Arbitration Act of 1940 stands clearly apart from the other two at this point in time. From this analysis itself the remaining deduction of conclusion begins that leads to conclusions mentioned in subsequent sections. In Fig 4.9 all significant thematic codes is stacked vertically in a linear arrangement and similar thematic codes across variables are linked with a solid line; showing their relative positioning against each variable and across the entire data.

Finally the concept maps were generated ranging from simple maps regarding thematic codes to full textual analysis concept maps resulting in the cogent discussion of each point from all the interviewees compiled in a coherent data form. Following figure shows a simple concept map among thematic codes.

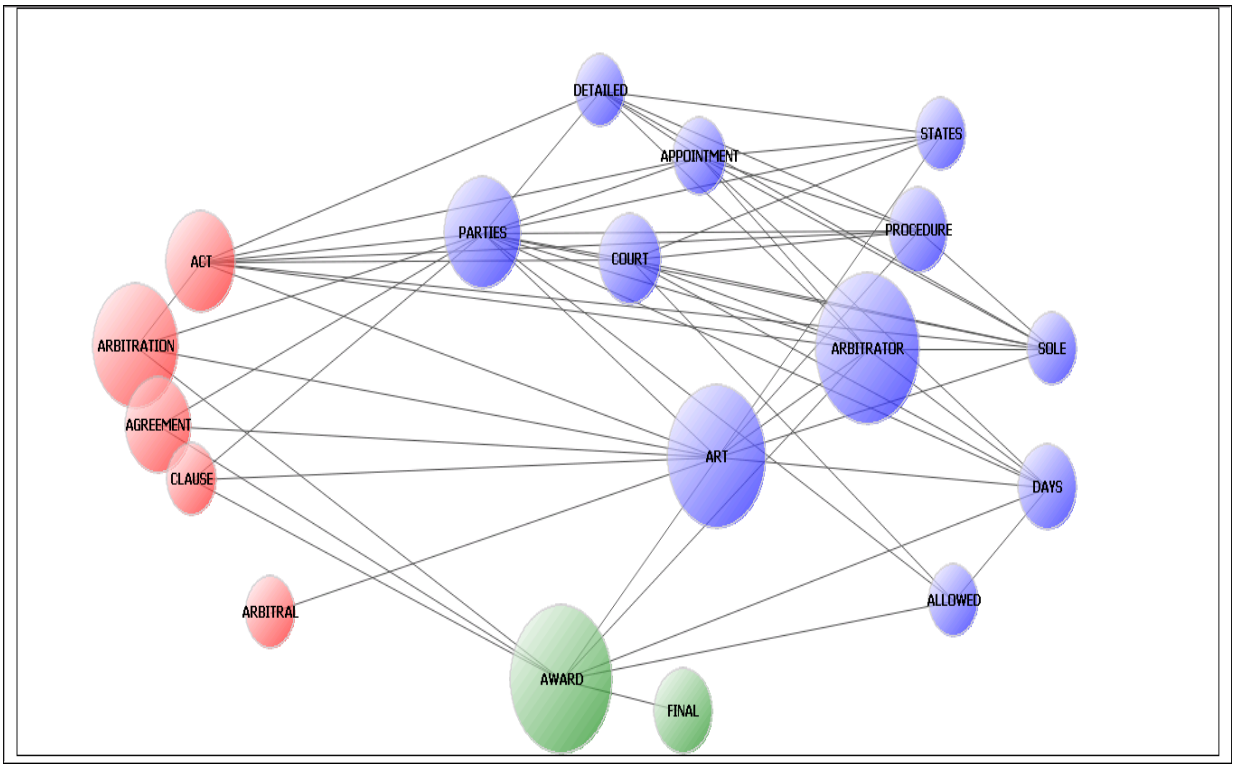


Figure 4.11: Thematic Codes Concept Map (Bubble Diagram)

The Fig. 4.11 above is also known as bubble diagram as the thematic codes are arranged in bubbles connected with each other through solid lines. From above figure it can be inferred that the “Days” are in direct relation with “Award”, “Appointment”, and “Court” and so on. This helps in understanding the concept relayed in the text that how each key element of the text is related to other main elements.

This same idea of concept maps is then expanded on to the entire research. The three Arbitration rules under consideration, all 11 classes of differences, Semi-structured

questions along with the respective responses and the related discussion was then reduced to independent elaborate concept maps for each difference to come up with conclusive results.

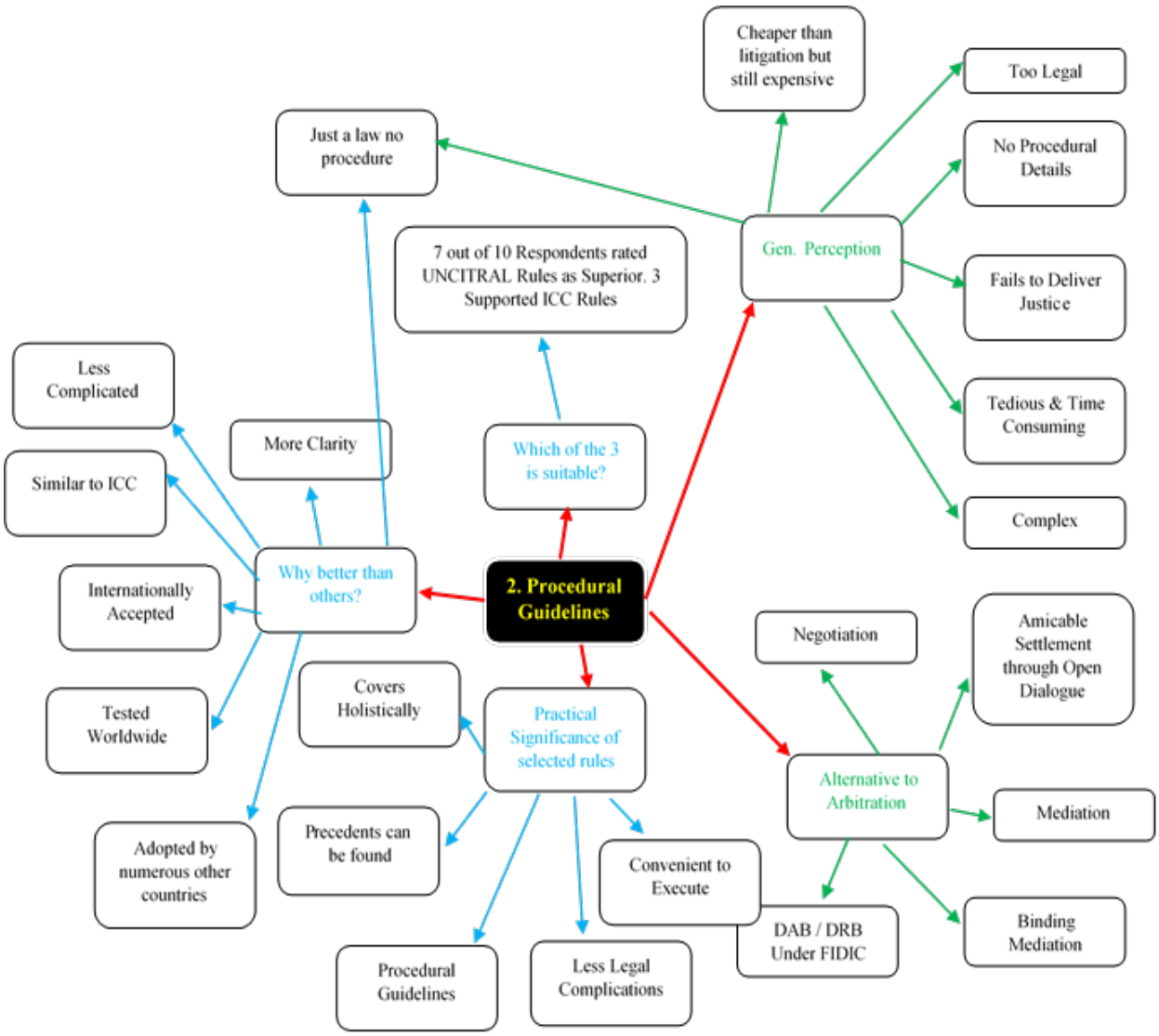


Figure 4.12: Concept Map for Procedural Guidelines

The above concept map (Fig. 4.12) was developed for 2nd major difference between the three rules termed as "Procedural Guidelines". After complete textual analysis on the basis of thematic codes the responses against "Procedural Guidelines" were then arranged in the above format connected to their relevant question. All of the respondents responded on similar lines on the same pattern containing mostly similar themes however a few changes were obvious in each of the response. The key themes and codes identified by the software were then arranged in shape of a concept map. In Fig. 4.12 above, five broad questions were presented to the respondents to shed light

over the difference between procedural guidelines available within each set of rules. The three core queries were shown in blue whereas the queries that falls under general discussion were shown as green. Subsequently the responses against each specified query were linked with the arrow of relevant color. Thus for instance, one of the conclusion that can be inferred from this mind map is that the respondents consider that the "Procedural Guidelines" are much better laid out in "UNCITRAL Rules of Arbitration 2010" as compared to the other three because of many reasons, one of which is that they are widely accepted. Thus on a similar pattern the conclusions were drawn and reported in the following sections.

4.4 Compilation of Results

Apparently the data does not appear to be much extensive however, while analysis, it was a lot to handle. Three different set of rules were taken up for comparison which were analyzed for 11 different classes. For each class five semi-structured questions were asked from 10 respondents that resulted in a total of 550 responses. Moreover there were other discussions and comments from the experts relevant to the objectives of the research which could not have been neglected. Therefore, a total number of 716 responses were collected and analyzed.

The QDA analysis reports generated by the software alone were more than 800 pages in total; having textual and graphical reports. It was therefore imperative to summarize such overwhelming amount of data in form of cognitive outputs to draw comprehensive outputs.

A great deal of assistance in this regard was taken from the QDA Miner, IBM SPSS Data Collection and MS Excel. The Concept Mapping tool, in particular, was the most helpful tool in this area that helped summarize the results as follows

4.4.1 Standard Arbitration Clause and Arbitration Agreement

a. Differences

It was unveiled as a result of literature review, review of cases and pointed out by the experts also that Arbitration Act of 1940 is a legal instrument thus offers no standard Arbitration clause or Arbitration agreement. However it does establish that Arbitration cannot commence without an Arbitration agreement. Moreover, if the Arbitration clause is present within the construction contract it can be construed as an Arbitration

agreement. The ICC and UNCITRAL rules however include a standard arbitration clause that, if included in the contract, will become and Arbitration agreement.

b. Preferred Set of Rules & Reasoning

As Arbitration Act of 1940 does not provides a standard clause therefore none of the respondent preferred to adopt it. On the other hand all the respondents rated the other two set of rules equally because both types of standard Arbitration clauses offers similar execution practically.

c. Practical Application

Practically any contract clause that allows the parties to resolve the dispute through Arbitration can constitute an Arbitration agreement under Arbitration Act of 1940 however, as there is no standard clause proposed by the Act therefore during practical execution every contractual dispute can present with a different Arbitration agreement thus the legal procedural aspect of each Arbitration could vary. Keeping this in view all experts were of the view that any of the both Arbitration clauses can be adopted as a standard Arbitration clause in construction contracts. In this particular case both ICC and UNCITRAL rules were scored equally better than the Arbitration Act.

4.4.2 Procedural Guidelines

a. Differences

In-depth literature review, expert interviews based on semi-structured interview questions and detailed textual analysis of responses has revealed that no procedural guidelines are offered by the Arbitration Act of 1940 thus it scored least in this category. On the other hand the UNCITRAL Rules and ICC Rules offered much detailed and comprehensive set of procedures to conduct Arbitration that covers all the procedural aspects of the Arbitration to its finest details.

b. Preferred Set of Rules & Reasoning

None of the experts preferred Arbitration Act whereas 70% of the expert suggested that UNCITRAL procedural guidelines are much superior to those offered by ICC. It was argued by the experts that although both ICC and UNCITRAL procedures are quite similar to each other however there because of Ad-hoc nature of UNCITRAL, its procedures offer much more flexibility and a sense of informality which is the hallmark attribute of arbitration itself. Moreover the UNCITRAL rules are formulated by UNO and being adopted in various countries across the globe therefore adoption of these

procedures will resultantly harmonize Pakistan's Arbitration procedures with global practices. UNCITRAL is much widely accepted and tested in various countries across the world particularly India has also adopted the same rules in 90's after discarding their old Arbitration Act, based on British law same as Arbitration Act of Pakistan. Thus, due to wide acceptance and availability of case law and precedent data for UNCITRAL rules (or Model Law), it received the highest rating.

c. Practical Application

The absence of procedural guidelines in Arbitration Act of 1940 presents a void during practical implementation. This allows every arbitrator to steer the proceeding in any direction and conduct the proceeding as per his/her own will thus creating a great possibility towards miscarriage of justice and even creates chances of pilferage and the same deficiency is considered as the main shortcoming of Arbitration Act. Preference were given to UNCITRAL rules because as stated earlier it has been tested worldwide and relevant precedence and case law is available, it is less complicated, much easier to adopt in field and covers the Arbitration proceedings holistically.

4.4.3 Reliance on Written / Oral Evidences

a. Differences

In-depth literature review, expert interviews based on semi-structured interview questions and detailed textual analysis of responses has revealed that all three set of rules are quite similar in this area and that allow each part to support their point of view with oral/written/documentary evidences.

b. Preferred Set of Rules & Reasoning

Again like previous case, majority of the experts preferred UNCITRAL rules. However, a split choice was observed between Arbitration Act and ICC rules. Contrary to others, the experts from legal background supported Arbitration act. The main reason for dejecting Arbitration Act of Pakistan was the complicated application of Qanoon e Shahadat Order 1984 for oral/written evidence. UNCITRAL scored highest because of its comprehensiveness and ease of understanding.

c. Practical Application

The experts with legal background were of the view that for admission of written/oral evidence during Arbitration under Arbitration Act of 1940; the Qanoon e Shahadat Order of 1984 comes into play in Pakistan; which in itself complicates the

whole process. However the application of UNCITRAL and ICC rules is much simpler. There was, however, a split opinion among the experts that the Qanoon e Shahadat Order of 1984 may also become in force if any other Arbitration procedure is adopted. Because such discussion was beyond the scope of this research, no further probing was done in this case. Simply because of comprehensiveness and convenience, UNCITRAL rules scored highest in this category.

4.4.4 Procedure for Appointment of Arbitrator

a. Differences

In-depth literature review, expert interviews based on semi-structured interview questions and detailed textual analysis of responses has revealed that the Arbitration Act of 1940 does not offers the detailed procedure to appoint an arbitrator, however it does give the freedom to the parties to the dispute to select any individual with mutual consent. In case of UNCITRAL, a detailed procedure is given wherein the parties can appoint one or three arbitrator or there could be an appointing institution, already agreed, by the parties to the dispute, which can appoint the arbitrator on their behalf. Whereas in case of ICC rules the parties to the dispute does have the freedom to appoint one or three arbitrators; failing to which the International Court of Arbitration of ICC, has the authority to appoint the arbitrator(s).

b. Preferred Set of Rules & Reasoning

For this particular case the 30% of the experts supported the Arbitration Act as it gives the necessary freedom to the parties to select their own arbitrator. Quite astonishingly, only 20% of the experts supported the ICC rules whereas again the UNCITRAL rules scored highest as 50% of the experts preferred it more than the remaining two. Experts rated UNCITRAL as highest primarily because of the fact that it does provide a complete procedure and still does not binds the party to select an arbitrator from any particular forum etc. Moreover, the lack of procedural guidelines in Arbitration Act caused it low rating.

c. Practical Application

Lack of procedural guidelines in Arbitration Act and intervention of International Court of Arbitration in case of ICC rules caused their low score when compare with the UNCITRAL rules. The essence of Arbitration is generally that the adjudicator is selected by the mutual consent of the parties and solely for that reasons the Arbitration award

cannot be challenged in any courts, on merits. Thus UNCITRAL rules scored highest in this category.

4.4.5 Impartiality of Arbitrators

a. Differences

In-depth literature review, expert interviews based on semi-structured interview questions and detailed textual analysis of responses has revealed that the Arbitration Act establishes that the arbitrator must be impartial however there is no mechanism stated explicitly to ensure impartiality. On the other hand both UNCITRAL and ICC lay down the procedure to ensure the impartiality of arbitrators by providing remedies to the party in case it is felt that the arbitrator is bias.

b. Preferred Set of Rules & Reasoning

Both UNCITRAL and ICC rules scored equally but higher than the Arbitration Act mainly because of the fact that there is no clear procedure laid out to ensure the impartiality of the arbitrator and only one recourse is available to the aggrieved party which is to challenge the biasness in the court of law.

c. Practical Application

The primary reason for the low score of Arbitration Act is the absence of any procedure to ensure impartiality of arbitrators and any remedy in case a party claims biasness of arbitrators. Arbitration award can only be challenged if the biasness of arbitrator can be proved in a court of law and practically, it is quite difficult to prove such biasness. Moreover there is added complexity that could have been resolved by providing necessary guidelines, as proposed by ICC and UNCITRAL.

4.4.6 Timelines for Appointment of Arbitrator

a. Differences

In-depth literature review, expert interviews based on semi-structured interview questions and detailed textual analysis of responses has revealed that there is no restriction for time allowed to the parties for the appointment of the arbitrator under Arbitration Act of 1940. If there is a disagreement in appointing the arbitrator any party can serve the other party with a notice to supply the vacancy and subsequently the court can appoint the arbitrator in 15 days, however there is still no time limit for the court to appoint the arbitrator. Whereas for both ICC and UNCITRAL well specified timelines are drawn for the appointment of arbitrator.

b. Preferred Set of Rules & Reasoning

For this particular case the experts rated ICC the highest and Arbitration Act at lowest, primarily because of an explicit restriction in time allowed for the appointment of arbitrator is missing. UNICTRAL scored just slightly less than ICC as it allows less time for the appointment of arbitrator.

c. Practical Application

The practical manifestation of these rules in this class is quite interesting as none of these three are without their downside. The Arbitration Act of 1940 allows court's intervention when the parties fail to decide what arbitrator to appoint and any sort of court's intervention in current legal scenario is related with the requirement of additional time and finances. UNCITRAL rules provides an additional list procedure that can be adopted in order to facilitate the appointment of arbitrator, which proves to be extremely helpful practically. ICC on the other hand allows least time among the three rules, hence it practically instigate the parties to decide the appointment of arbitrator well in time before taking the dispute to the Arbitration. However, ICC also allows courts' intervention when parties fail to decide in time. Consequently, ICC rules does score highest in this class but only marginally higher than UNCITRAL.

4.4.7 Time allowed for Giving Award

a. Differences

In-depth literature review, expert interviews based on semi-structured interview questions and detailed textual analysis of responses has revealed that the Arbitration Act allows 04 Months for the arbitrator and 02 Months for the umpire from the commencement of reference to make the award which is extendable with the mutual consent of the parties or by court under special circumstances. UNCITRAL however doesn't explicitly proposes any time duration for making the award but states that the award should be made within 45 days of the written statement; ICC on the other hand specifies that the award shall be made within 6 months of the notification of arbitral tribunal. All set of rules allow to extend the time for announcing the award with the mutual consent of the parties or if deemed necessary by the arbitrator(s).

b. Preferred Set of Rules & Reasoning

The experts preferred ICC rules marginal over UNCITRAL in this category and considerably more that the Arbitration Act. Primary reason for selecting the ICC rules in

this category is because it explicitly delineates the duration within which the award has to be announced.

c. Practical Application

When experts were asked about the practical manifestation of Arbitration rules in this section, quite interesting conclusions unveiled. The experts were of the view that the allowance of time for giving award generally become immaterial because the award can only be pronounced after both sides were given ample opportunity to present their case and all the documentary, oral and written evidences are already admitted and scrutinized. Until that process is completed the arbitrator can keep on extending the time duration. This is also a major predicament being faced by the industry professional because Arbitration is supposed to be faster and cheaper than litigation whereas it occasionally takes equally long coupled with increased expenditures. There has been cases in Pakistan where an Arbitration over a construction contract dispute of less than Rs. 30 Million took almost 14 years and even after that the award was challenged by one of the party in court. In consideration of these comments the experts ranked ICC rules highest, slightly above UNCITRAL rules.

4.4.8 Salient of Arbitration Award

a. Differences

In-depth literature review, expert interviews based on semi-structured interview questions and detailed textual analysis of responses has revealed that all three Arbitration rules under consideration are strikingly similar to each other. However the UNCITRAL and ICC rules offered much more details and encompassed the section in a more comprehensively holistic manner.

b. Preferred Set of Rules & Reasoning

The experts rated ICC and UNCITRAL equally in this category and awarded no points to Arbitration Act because of the practical application of these rules.

c. Practical Application

Although the text of all three rules appear quite similar however it was contested by the experts that the concerned section of Arbitration Act completely empowers the arbitrator to draft the kind of award they deem fit. The Act does state that the award to set out reasons in sufficient details but it is arbitrators' discretion to decide what "sufficient detail" is. Because of this very reason the quality of Arbitration awards

announced in Pakistan is questioned by the experts, the same was unveiled after perusal of cases studied. Whereas when international awards were studied and compared with the local awards the difference was quite clear. Arbitration awards resulted from international arbitrations were comprehensive, detailed and supported with all the relevant evidences which made challenging such an award even harder. On the other hand there were seldom any awards pronounced locally having such comprehensively detailed awards. Mainly, for that reason the Arbitration Act scored lowest and other two rules scored equally.

4.4.9 Enforcement of Arbitration Award

a. Differences

In-depth literature review, expert interviews based on semi-structured interview questions and detailed textual analysis of responses has revealed that although it has not been categorically specified in any of the three rules that how the Arbitration award will be enforced but it is mentioned on numerous occasions that the award is binding and both parties are legally responsible to follow the Arbitration award in letter and spirit. In this particular section all three rules are similar as far as the content of the rules is considered.

b. Preferred Set of Rules & Reasoning

Quite interestingly, this is the only section wherein the Arbitration act scored the highest and 40% of the experts were of the view that Arbitration act is the only among three that can be enforced most effectively in Pakistan and the same is also mentioned in the Arbitration Act of 1940.

c. Practical Application

The Arbitration Act managed to score highest in this category only because how it is implemented in practical. Once the award is announced, it cannot be challenged for its merits in any court and after the award has been made rule of court it becomes an unchallengeable decision of the court itself. On the other hand, until recently there wasn't any legal instrument to implement international awards except for United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on the 10th June, 1958 commonly known as New York Convention already explained above, however after the enactment of Recognition and enforcement (arbitration agreement and foreign arbitral awards) of foreign arbitral award Act of

2011and Arbitration (International Investment Dispute) Act of 2011 the international arbitral award from any international institution or under any international rules can be enforced in Pakistan. Although, it is to be noted that enforcement under these enactment is still to be observed and looked into in detail which falls beyond the scope of this research. For the stated reasons, the Arbitration Act scored highest whereas ICC and UNCITRAL rules scored equally lower that the Arbitration Act.

4.4.10 Role of Courts in Arbitration

a. Differences

In-depth literature review, expert interviews based on semi-structured interview questions and detailed textual analysis of responses has revealed that the courts play a most prominent role in local Arbitration under Arbitration Act of 1940. In case of ICC the role of court per se is minimal however the International Court of Arbitration does play a supervisory and assistive role. UNCITRAL rules being of ad-hoc nature involves minimal to no role and the courts only intervene when the arbitral award needs to be enforced in a particular country. Therefore, during the Arbitration proceedings; the courts' role is minimal in case UNCITRAL rules.

b. Preferred Set of Rules & Reasoning

In view of above, it is no surprise that 80% of the experts preferred UNCITRAL rules over other two. 20% supported ICC rules whereas none of the experts opted for Arbitration Act. Arbitration is a consensual method of dispute resolution where parties willingly selects the adjudicators to resolve the dispute and its superiority over litigation is only established when the courts play minimal role and for the same reason the UNCITRAL scored highest in this category.

c. Practical Application

The practical manifestation of UNCITRAL rules in this category is far superior to the rest of the two and offer more flexibility and liberty to the parties to decide the dispute among themselves in a fashion they consider appropriate. Furthermore UNCITRAL rules are well structured, organized and detailed that comprehensively explains the procedure of Arbitration, thus it offers the best of both world by specifying the comprehensive procedural guidelines and allowing the parties necessary liberty and informality during the Arbitration. In case of ICC the Court is not a formal court at all, that ensures the ICC Rules are applied in letter and spirit. Whereas in case of Arbitration

Act of 1940 the arbitral award hold now value until it is made rule of the court. That adds additional procedure and includes dealing with legal complications of sorts. Consequently the experts favored UNCITRAL rules over all others.

4.4.11 Disclosure of Award

a. Differences

In-depth literature review, expert interviews based on semi-structured interview questions and detailed textual analysis of responses has revealed that, because of the fact that arbitral award has to be made rule of court for its implementation, therefore it will become a court's decision and automatically made public. Whereas in case of ICC and UNCITRAL rules it is the discretion of the parties to either keep the arbitral award & proceedings confidential or made them public.

b. Preferred Set of Rules & Reasoning

In view of above, ICC and UNCITRAL rules were rated equally higher than the Arbitration Act of 1940. Theoretically speaking, one of the many reasons which make Arbitration a more desirable method of dispute resolution in construction industry all over the world the fact that the arbitral award and proceeding could be remain confidential. This confidentiality provisions in the rules allows the parties to protect and maintain their reputation, as bad reputation earned in case of litigation can cause serious loss of revenues. ICC and UNCITRAL rules allows the parties to decide whether to disclose their arbitral award or keep it confidential and it has been experienced that most of the parties prefer to keep the matter private and confidential.

c. Practical Application

Practically, in Pakistan this confidentiality arrangement is not considered to be significantly important. However the experts have suggested that as a direct result of this deficiency in Arbitration Act of 1940 few of the companies faced great deal of problems and various employers particularly in the public sector were reluctant to award contracts to such companies. It was also pointed out that a confidentiality arrangement in the Arbitration rule will revive the faith in Arbitration as a method of dispute resolution in construction industry of Pakistan.

Following bar chart (Fig. 4.13) graphically represents the scoring of each set of Arbitration rules against each category discussed above.

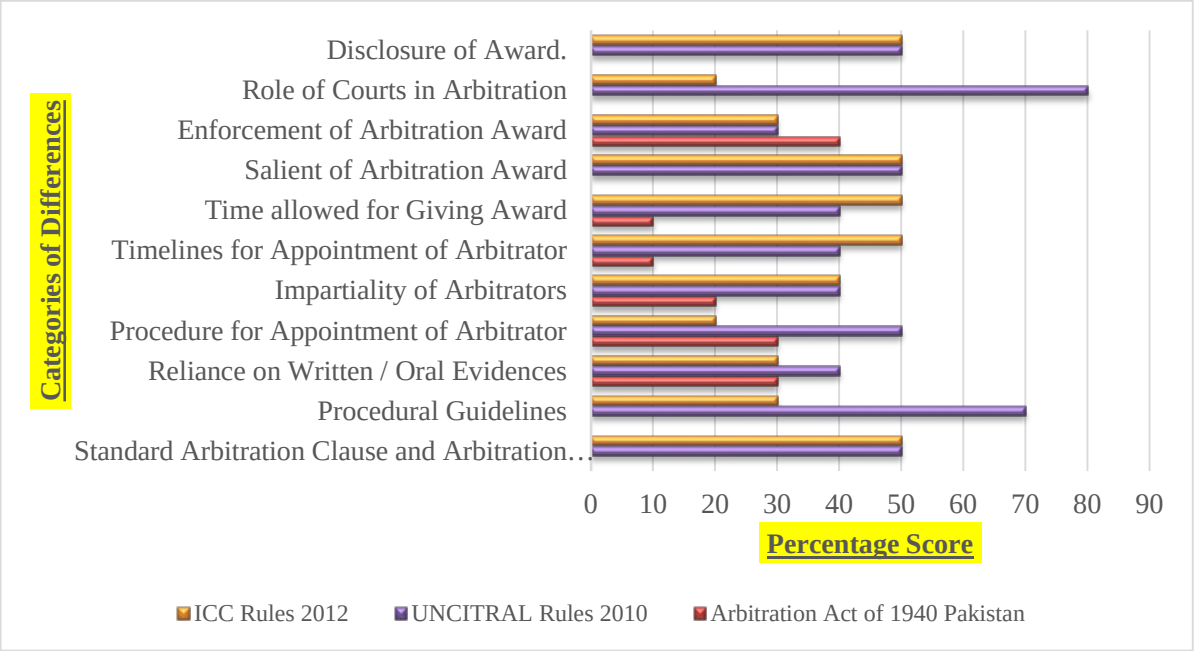


Figure 4.13: Category-wise Score of Arbitration Rules

4.4.12 General Perception about Arbitration in CI of Pakistan

As the research is designed to be based upon semi-structured interviews therefore quite a lot of discussions of the experts were out of the scope research question but totally relevant to the objectives of this research. The same discussion was also analyzed as per the procedure mentioned earlier and the results are concisely postulated below.

a. In construction industry of Pakistan, Arbitration is used as a dispute resolution mechanism mostly for the projects having cost of more than Rs. 50 Million
b. Arbitration is preferred over litigation as it is much quicker and cheaper.
c. The CI professionals in Pakistan have minimal understanding of Arbitration as a dispute resolution mechanism.
d. There is a grave deficiency of Arbitration experts in CI of Pakistan.
e. Arbitration is still expensive and time consuming hence much needs to be done to make Arbitration more economical and less time consuming.
f. Arbitration Act of 1940 is a legal document and proper legal knowledge is required to fully understand and practice it. This makes the whole Arbitration process much more complicated and cumbersome for engineers involved in construction.

g. Legal experts were of the view that standardization on modern lines is inevitable otherwise Arbitration will become obsolete in Pakistan.
h. Whenever a dispute of international nature is to be resolved, institutional Arbitration proves better as there is an authorize institution to monitor the proceedings and ensures that all rules, regulation and procedures are adhered to in letter and spirit. Therefore in large scale international disputes rules like ICSID and ICC are more popular than UNCITRAL. However, on local or small scale ad-hoc or non-institutionalized Arbitration proves to be more efficient and effective.
i. Arbitration in Pakistan needs complete makeover and should be made more informal and less antagonistic. This could be achieved by capacity building in this area. People trained in Arbitration from international institution can bring a positive change and such training should be facilitated by national institutions.
j. PEC could play an important role in implementation of Rules for Arbitration and Conciliation that could streamline the whole affair.
k. More engineers should be trained in legal side to have techno – legal experts having ability to handle such matters effectively.
l. Much informal and simple standardized Arbitration procedures can be developed for smaller disputes.
m. UNCITRAL rules should be adopted as the modern rules of Arbitration after necessary amendments and tailoring it to our need, in consultation with the legal and technical experts of Pakistan.

4.4.13 Alternative to Arbitration

The experts were also asked that what other method of dispute resolution, as discussed in chapter 2, can be used effectively instead of Arbitration to facilitate dispute resolution in construction. The discussion in this regard was enlightening and interesting, consequently some fresh ideas were offered. The crux of that discussion after necessary analysis as mentioned earlier is as follows

a. Emphasis should be given on dispute avoidance rather than dispute resolution.
b. The antagonistic relationship between employer, engineer and contractor should be normalized and non-adversarial approach in contracting should be introduced and practiced.

c. Effective contract management can minimize disputes. It should be practiced by all parties to the contract.

d. Efforts should be made to kill the issues at the earliest. “Procrastination in dispute resolution could kill the project”

e. Partnering approach should be adopted by the construction industry and it should be realized that all parties to the contract must contribute and pitch in to successfully complete the project.

f. Knowledge and skill set of CI professionals should be improved in contract management and dispute resolution.

g. Only alternative to the Arbitration could be binding mediation which is a sort of informal Arbitration.

h. The binding nature of Arbitration, enforceability of arbitral award and economical nature makes it a tool of choice for dispute resolution.

i. Standardized mediation (as in mediation under CEDR Rules) can be used prior to Arbitration in order to resolve the dispute amicably. It will surely reduce the number of Arbitration in CI of Pakistan.

j. When options were presented, the experts suggested various alternatives to the Arbitration which are shown in the Fig 4.14 below.

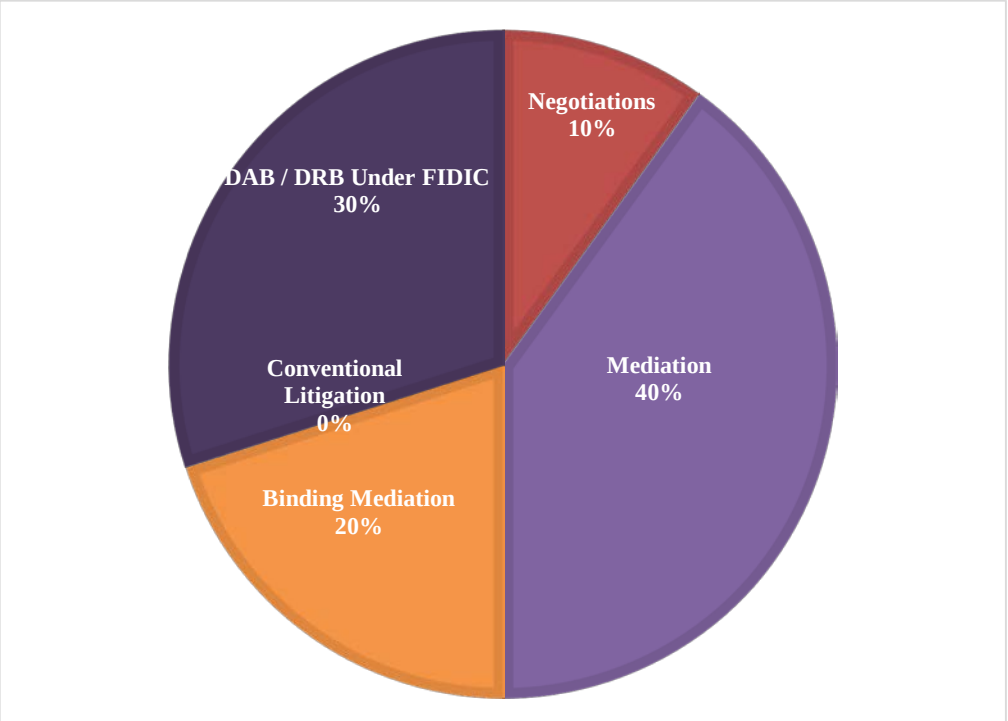


Figure 4.14: Alternatives to Arbitration

Collectively speaking considering the overall scoring of the experts the UNCITRAL rules scored the highest and was considered by the experts as the most suitable set of rule that can be adopted in Pakistan with amendments and necessary tailoring as per our need. Following pie chart Fig. 4.15 shows the overall scoring off all the Arbitration rules discussed in this research.

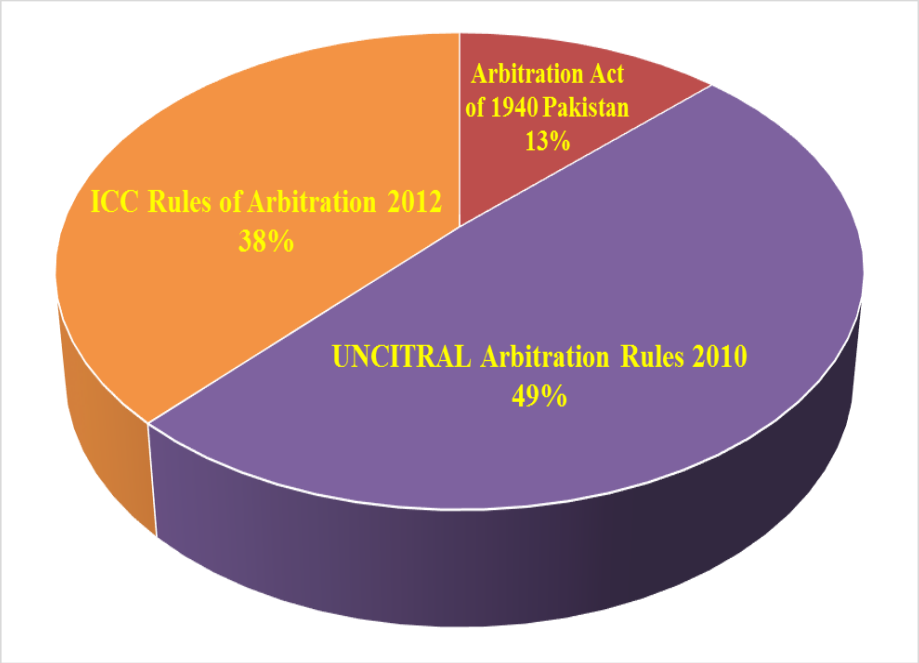


Figure 4.15: Overall Score

4.5 Summary

The complete procedure of qualitative research analysis was explained in detail in this chapter keeping in view all the discussions of previous chapters and results were presented in a coherent comprehensive fashion. Complete 716 narrative responses were analyzed with great care in order to avoid ambiguities and unexpected unrealistic results. A new software QDA Miner was used for qualitative data analysis and its complete working was explain in this chapter.

Conclusively, the research highlighted the difference between Arbitration Act of Pakistan 1940, ICC rules of Arbitration and UNCITRAL rules of Arbitration and proved that the UNCITRAL rules of Arbitration are best suited for Pakistan among the three and should be adopted after tailoring it to our needs.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.1 Review of Research Objectives

The main objectives of this research as listed in Chapter 1 are as follows:

a. To establish differences between proceedings of arbitration adopted internationally and locally to resolve the disputes encountered in construction industry.
b. Highlight the shortcoming in current procedure being adopted in Construction Industry of Pakistan.
c. Study international procedures rules and regulation of Arbitration and suggest improvements from those procedures that can be adopted in Pakistan
d. Highlight and promote the importance and significance of Arbitration as a dispute resolution mechanism in construction industry of Pakistan.
e. Being a pioneer research in this field, it will establish a baseline for further in depth research on the issue.

The research objectives were met successfully as already discussed in previous sections and the same are summarized below.

5.2 Conclusions

The major findings of the study are as follows:

1. 49% of the experts chose UNCITRAL, 38% of the experts supported ICC rules and 13% selected Arbitration Act of 1940 as the best suited set of rules to conduct Arbitration for construction disputes in Pakistan.
2. Arbitration Act of 1940 is a legal instrument thus offers no standard Arbitration clause or Arbitration agreement. Arbitration clause within the construction contract can be construed as an Arbitration agreement thus every contractual dispute can present a different Arbitration agreement thus the legal procedural aspect of each Arbitration could vary.
3. The ICC and UNCITRAL rules include a standard arbitration clause that, if included in the contract, will become and Arbitration agreement.

4. Arbitration Act of 1940 offers no procedural guidelines whereas UNCITRAL and ICC Rules offered much detailed and comprehensive set of procedures to conduct Arbitration that covers all the procedural aspects of the Arbitration to its finest details.
5. Ad-hoc nature of UNCITRAL offers much more flexibility and a sense of informality which is the hallmark attribute of arbitration itself.
6. UNCITRAL rules are formulated by UNO and being adopted in various countries across the globe therefore adoption of these procedures will resultantly harmonize Pakistan's Arbitration procedures with global practices.
7. UNCITRAL is much widely accepted and tested in various countries across the world particularly, India has also adopted the same rules in 90's after discarding their old Arbitration Act, based on British law same as Arbitration Act of Pakistan.
8. The absence of procedural guidelines in Arbitration Act of 1940 allows every arbitrator to steer the proceeding in any direction and conduct the proceeding as per his/her own will.
9. The application of Qanoon e Shahadat Order 1984 for Arbitration Act of Pakistan complicates the procedure for oral/written evidence.
10. Arbitration Act of 1940 does not offers the detailed procedure to appoint an arbitrator, however it does give the freedom to the parties to the dispute to select any individual with mutual consent.
11. In case of UNCITRAL, a detailed procedure is given wherein the parties can appoint one or three arbitrator or there could be an appointing institution, already agreed, by the parties to the dispute, which can appoint the arbitrator on their behalf.
12. In case of ICC rules the parties to the dispute does have the freedom to appoint one or three arbitrators; failing to which the International Court of Arbitration of ICC, has the authority to appoint the arbitrator(s).
13. The essence of Arbitration is generally that the adjudicator is selected by the mutual consent of the parties and solely for that reasons the Arbitration award cannot be challenged in any courts, on merits.

14. Arbitration Act establishes that the arbitrator must be impartial however there is no mechanism stated explicitly to ensure impartiality.
15. UNCITRAL and ICC both, lay down the procedure to ensure the impartiality of arbitrators by providing remedies to the party in case it is felt that the arbitrator is bias.
16. Arbitration award can only be challenged if the biasness of arbitrator can be proved in a court of law and practically, it is quite difficult to prove such biasness.
17. There is no restriction for time allowed to the parties for the appointment of the arbitrator under Arbitration Act of 1940. If there is a disagreement in appointing the arbitrator any party can serve the other party with a notice to supply the vacancy and subsequently the court can appoint the arbitrator in 15 days, however there is still no time limit for the court to appoint the arbitrator. Whereas both ICC and UNCITRAL well specified timelines are drawn for the appointment of arbitrator.
18. The Arbitration Act of 1940 allows court's intervention when the parties fail to decide what arbitrator to appoint and any sort of court's intervention in current legal scenario is related with the requirement of additional time and finances.
19. UNCITRAL rules provides an additional list procedure that can be adopted in order to facilitate the appointment of arbitrator, which proves to be extremely helpful practically. ICC on the other hand allows least time and practically instigate the parties to decide the appointment of arbitrator well in time before taking the dispute to the Arbitration. However, ICC also allows courts' intervention when parties fail to decide in time.
20. Arbitration Act allows 04 Months for the arbitrator and 02 Months for the umpire from the commencement of reference to make the award which is extendable with the mutual consent of the parties or by court under special circumstances. UNCITRAL however doesn't explicitly proposes any time duration for making the award but states that the award should be made within 45 days of the written statement; ICC on the other hand specifies that the award shall be made within 6 months of the notification of arbitral tribunal.

21. All set of rules allow to extend the time for announcing the award with the mutual consent of the parties or if deemed necessary by the arbitrator(s).
22. The experts were of the view that the allowance of time for giving award generally becomes immaterial because the award can only be pronounced after both sides were given ample opportunity to present their case and all the documentary, oral and written evidences are already admitted and scrutinized. Until that process is completed the arbitrator can keep on extending the time duration. This is also a major predicament being faced by the industry and profession because Arbitration is supposed to be faster and cheaper than litigation whereas it occasionally takes equally long coupled with increased expenditures.
23. Arbitration Act completely empowers the arbitrator to draft the kind of award they deem fit. The Act does state that the award to set out reasons in sufficient details but it is arbitrators' discretion to decide what "sufficient detail" is.
24. The quality of Arbitration awards announced in Pakistan is questioned by the experts.
25. Arbitration awards resulted from international arbitrations were comprehensive, detailed and supported with all the relevant evidences which made challenging such an award even harder.
26. Arbitration award is binding and both parties are legally responsible to follow the Arbitration award in letter and spirit.
27. Once the award is announced, it cannot be challenged for its merits in any court and after the award has been made rule of court it becomes an unchallengeable decision of the court itself.
28. On the other hand, until recently there wasn't any legal instrument to implement international awards except for United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on the 10th June, 1958 commonly known as New York Convention, however after the enactment of Recognition and enforcement (arbitration agreement and foreign arbitral awards) of foreign arbitral award Act of 2011and Arbitration (International Investment Dispute) Act of 2011 the international arbitral award from any international institution or under any international rules can be enforced in Pakistan.

29. The courts play a most prominent role in local Arbitration under Arbitration Act of 1940.
30. In case of ICC the role of court per se is minimal however the International Court of Arbitration does play a supervisory and assistive role.
31. UNCITRAL rules being of ad-hoc nature involves minimal to no role and the courts only intervene when the arbitral award needs to be enforced in a particular country.
32. UNCITRAL rules are well structured, organized and detailed that comprehensively explains the procedure of Arbitration, thus it offers the best of both world by specifying the comprehensive procedural guidelines and allowing the parties necessary liberty and informality during the Arbitration with least intervention of the court.
33. In case of ICC the Court is not a formal court at all, that ensures the ICC Rules are applied in letter and spirit.
34. For Arbitration Act of 1940 the arbitral award hold now value until it is made rule of the court. That adds additional procedure and includes dealing with legal complications of sorts.
35. In case of ICC and UNCITRAL rules it is the discretion of the parties to either keep the arbitral award & proceedings confidential or made them public.
36. One of the many reasons which make Arbitration a more desirable method of dispute resolution in construction industry all over the world the fact that the arbitral award and proceeding could remain confidential.
37. Confidentiality provisions in the rules allow the parties to protect and maintain their reputation, as bad reputation earned in case of litigation can cause serious loss of revenues.
38. ICC and UNCITRAL rules allows the parties to decide whether to disclose their arbitral award or keep it confidential and it has been experienced that most of the parties prefer to keep the matter private and confidential.
39. In Pakistan this confidentiality arrangement is not considered to be significantly important.
40. Confidentiality arrangement in the Arbitration rules will revive the faith in Arbitration as a method of dispute resolution in construction industry of Pakistan.

41. In construction industry of Pakistan, Arbitration is used as a dispute resolution mechanism mostly for the projects having cost of more than Rs. 50 Million
42. Arbitration is preferred over litigation as it is much quicker and cheaper.
43. The CI professionals in Pakistan has minimal understanding of Arbitration as a dispute resolution mechanism.
44. There is a grave deficiency of Arbitration experts in CI of Pakistan.
45. Arbitration Act of 1940 is a legal document and proper legal knowledge is required to fully understand and practice it. This makes the whole Arbitration process much more complicated and cumbersome for engineers involved in construction.
46. Legal experts were of the view that standardization on modern lines is inevitable otherwise Arbitration will become obsolete in Pakistan.
47. Whenever a dispute of international nature is to be resolved, institutional Arbitration proves better as there is an authorize institution to monitor the proceedings and ensures that all rules, regulation and procedures are adhered to in letter and spirit. Therefore in large scale international disputes rules like ICSID and ICC are more popular than UNCITRAL. However, on local or small scale ad-hoc or non-institutionalized Arbitration proves to be more efficient and effective.
48. Only alternative to the Arbitration could be binding mediation which is a sort of informal Arbitration.
49. The binding nature of Arbitration, enforceability of arbitral award and economical nature makes it a tool of choice for dispute resolution.

5.3 General Recommendations

In light of above conclusions following recommendations are proposed:

The Government of Pakistan could:

a. A centre of excellence for dispute resolution should be established under GoP that facilitate ADR in every walk of life, especially in CI. That will reduce the load on judicial system of Pakistan and many of the disputes can be resolved through arbitration, mediation, conciliation etc.

b. Arbitration is still expensive and time consuming hence Government of Pakistan should develop modern rules of arbitration in the basis of UNCITRAL rules in order to make Arbitration more economical and less time consuming.
c. UNCITRAL rules should be adopted as the modern rules of Arbitration after necessary amendments and tailoring it to our need, in consultation with the legal and technical experts of Pakistan.

The National Institutions could:

a. Arbitration in Pakistan needs complete makeover and should be made more informal and less antagonistic. This could be achieved by capacity building in this area. People trained in Arbitration from international institution can bring a positive change and such training should be facilitated by national institutions.
b. PEC could play an important role in implementation of Rules for Arbitration and Conciliation that could streamline the whole affair.
c. Much informal and simple standardized Arbitration procedures can be developed by PEC for smaller disputes.
d. Standardized mediation (as in mediation under CEDR Rules) can be used prior to Arbitration in order to resolve the dispute amicably. It will surely reduce the number of Arbitration in CI of Pakistan.

The Construction Industry Professional could:

a. More engineers should be trained in legal side to have techno – legal experts having ability to handle such matters effectively.
b. Effective contract management can minimize disputes. It should be practiced by all parties to the contract.
c. Efforts should be made to address the issues at the earliest.
d. Knowledge and skill set of CI professionals should be improved in contract management and dispute resolution.
e. Rising of disputes can be reasonably curtailed, if true understanding of the Contract is made mandatory for implementing engineers / professionals.

5.4 Knowledge Contribution

This was a pioneer research effort in Pakistan that truly related to techno – legal side of CI of Pakistan. It postulated the differences between international and local Arbitration practices thus highlighted the difficulties and deficiencies that are faced in

this connection. The research also suggested that UNCITRAL rules are far superior that the current Arbitration Act. It is therefore an indigenous effort in Pakistan that contributed in the knowledge and comprehension of techno – legal aspects of CI. Moreover the use of software for qualitative data analysis was also introduced in this research which will aid the future researchers to conduct their own research using similar techniques. It could be cognitively deployed for capacity building and introducing arbitration and ADR to the professionals in CI of Pakistan and eventually will have a far reaching impact.

5.5 Recommendations for Future Research

This research could function as a stepping stone for any future techno – legal research on Dispute Resolution in Pakistan. Numerous aspects of Arbitration and ADR have been discussed in this research which could encourage future researchers to further probe into the topic and develop indigenous, cogent set of procedures for Arbitration.

Mediation was suggested as an alternative to Arbitration in this research and in future the practical difference between mediation and Arbitration can be probed in detail. It could also open avenues for deploying techniques of qualitative data analysis in Construction Industry of Pakistan using modern and state of the computer software that could build a new field of knowledge founded on this research.

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APPENDIX – I

COMPARISON BETWEEN ARBITRATION PROCEEDINGS UNDER ARBITRATION ACT OF 1940 AND INTERNATIONAL ARBITRATION RULES FOR LARGE SCALE CONSTRUCTION PROJECTS IN PAKISTAN.

		Arbitration Act of 1940 Pakistan	UNCITRAL Arbitration Rules 2010	ICC Rules of Arbitration 2012
	No. of Articles / Rules / Sections	07 Ch & 49 Sec	04 Sec & 43 Art	41 Art (5x Appendices)
1	**Standard Arbitration Clause and Arbitration Agreement**	Does not prescribe any standardized Arbitration Clause. Arbitration agreement must be in writing Arbitration proceedings and subsequent award nullifies in the absence of arbitration agreement or if the agreement becomes void.	Provides standardized arbitration clause to incorporate in the contracts. The same clause can act as the arbitration agreement between the parties and a separate explicit arbitration agreement is also encouraged. (Art 3 to 6)	Provides standardized arbitration clause to incorporate in the contracts. The same clause can act as the arbitration agreement between the parties and a separate explicit arbitration agreement is also encouraged. (Art 4 to 6)
2	**Procedural Guidelines**	No procedural guidelines whatsoever. Every arbitrator adopts his own procedure.	Detailed & comprehensive procedural guidelines exist.	Detailed & comprehensive procedural guidelines exist.
3	**Reliance on Written / Oral Evidences**	Written, oral or both modes of evidence are allowed.	Written, oral or both modes of evidence are allowed.	Written, oral or both modes of evidence are allowed.
4	**Procedure for Appointment of Arbitrator**	Detailed procedure for appointment of arbitrator does not exist. The act allows the parties to appoint the arbitrator (sole / multiple) with mutual	Art 8 to 10 describe detailed procedure for appointment of arbitrator (1 or 3). Parties can select the appointing authority (person or	Art 11 to 15 of the rules states detailed procedure for appointment of arbitrator (1 or 3) which can be done by the mutual consent of the parties or

		consent and delineates certain conditions under which the court has authority to appoint an arbitrator. The parties can jointly authorize a third party for appointment of arbitrator(s)	organization) who will appoint the sole arbitrator. Three arbitrators can be appointed by the parties with mutual consent.	by the ICC court if there is disagreement between parties.
5	**Impartiality of Arbitrators**	The act encourages that the arbitrator must be impartial however there is no mechanism stated explicitly to ensure this.	Art 11 to 13 clearly states the mechanism to ensure the impartiality of arbitrator and further states the procedure vide Art 14 &15 for replacement of arbitrator if challenged.	Art 11, 13 & 14 clearly states the mechanism to ensure the impartiality of arbitrator and further states the procedure vide Art 15 for replacement of arbitrator if challenged.
6	**Timelines for Appointment of Arbitrator**	There is no bar on time allowed to the parties for the appointment of the arbitrator. If there is a disagreement in appointing the arbitrator any party can serve the other party with a notice to supply the vacancy. After 15 days of serving of such notice the party can approach the court for the appointment. However there is still no time limit for the court to appoint the arbitrator.	As per Art 8(1); 30 Days for the sole arbitrator. As per Art 8(2); 15 Days for the sole arbitrator using list procedure. As per Art 9; 60 Days for 3 Arbitrators.	As per Art 12(3): 30 Days for 3 arbitrators. As per Art 12(4): 30 Days for sole arbitrator.
7	**Time allowed for Giving Award**	04 Months for the arbitrator and 02 Months for the umpire from the commencement of reference under section 3 first schedule of the act. This is extendable with the mutual consent of the parties or by court under special circumstances.	There is no time limit to give the award, however a maximum time period of 45 days is allowed for written statements.	Six months from the date of notification of arbitral tribunal. Art 30

8	**Salient of Arbitration Award**	Under Sec 26-A the award to set out reasons in sufficient details. Award can be reviewed to make corrections if any. Interim Award can be announced before final award. Award will be final and binding.	U/s IV: Award to state reasons, in writing and will be final and binding. Award must contain date, place and signatures of arbitrator(s) Award can be reviewed for mistakes / errors Interim award can be announced before final award.	Art 31 to 35: Award to state reasons, in writing and will be final and binding. Award must contain date, place and signatures of arbitrator(s) Award can be reviewed for mistakes / errors Interim award can be announced before final award.
9	**Enforcement of Arbitration Award**	Enforced under Arbitration Act X of 1940	Recognition and enforcement (arbitration agreement and foreign arbitral awards) Act of 2011 Arbitration (International Investment Dispute) Act of 2011 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on the 10th June, 1958	Recognition and enforcement (arbitration agreement and foreign arbitral awards) Act of 2011 Arbitration (International Investment Dispute) Act of 2011 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on the 10th June, 1958
10	**Role of Courts in Arbitration**	Supervisory Role Final Award must be filed in court to make it rule of court and binding.	Minimal to no role.	Minimal to no role.
11	**Disclosure of Award.**	Award becomes public when filed in court.	It is the discretion of the parties to the dispute to make the award public or not. Art 34 (5)	It is the discretion of the parties to the dispute to make the award public or not. Appendix I Art 6 & Appendix – II Art 1 explains the confidentiality procedures also

- ***UNCITRAL: United Nations Commission on International Trade Law***
- ***ICC: International Chamber of Commerce***

SEMI – STRUCTURED QUESTIONS AGAINST EACH DIFFERENCE:

a. Which of the three rules in a particular section offers more suitability for dispute resolution?
b. Why any of the said procedure is better than the other three?
c. How can a better provision manifest itself in the practical world for Construction Industry of Pakistan?

General Questions for Discussion:

a. What is the general perception about Arbitration in Pakistan as a dispute resolution mechanism in relation to construction contracts?
b. Is there any alternative to Arbitration that is gradually being adopted in Pakistan?

Appendix – II

Arbitration Act of Pakistan (1940)

Appendix – III

United National Commission on International Trade Law (UNCITRAL) Rules of Arbitration 2010

Appendix – IV

International Chamber of Commerce (ICC) Rules of Arbitration and Conciliation (2012)