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Dispute Adjudication method as ADR method in Fidic Suites- Comparison of Fidic 1999 and Fidic 2017 suites

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Civil Engineer
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1. **Construction disputes:**

Any construction project witnesses some degree of disputes as the Parties tend to claim to the other party for the money or time which is not clearly delineated in the Contract. The construction dispute arises if there are some loopholes in the Contract, site conditions differ significantly than depicted in the contract, the Contractor's inability to provide momentum to the works by providing sufficient resources, change in the scope of the works after commencing, payment issues, delay in the release of drawings, design and specifications and Force majeure, etc, but are not only limited to those points. Hence, timely resolution and management of construction disputes are essential for maintaining the good health of any construction project, which leads to timely completion with no cost overrun and attained the good quality of works, further, the Scope of the deliverables and incurred risks in the project are balanced to the manageable magnitude.

2. **Introduction to Fidic Rainbow Suites**

FIDIC is the French acronym for the International Federation of Consulting Engineers. It was formed in 1913 by three national associations of consulting engineers. From its base in Geneva, it now has members from more than 86 member associations worldwide. FIDIC issued three contracts for major works and one for minor works.

- The Red Book = Conditions of Contract for Construction for Building and Engineering Works Design by the Employer, also known as the Construction Contract
- The Yellow Book = Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Plant, and for Building and Engineering Works Designed by the Contractor, also known as the Plant and Design Build Contract
- The Silver Book = Conditions of Contract for EPC/Turnkey Projects, also known as the EPC/Turnkey Contract
- The fourth contract to be issued was the "Short Form of Contract" to be known as the Green Book.

FIDIC General Conditions of Contract are intended to be used unchanged for every project. The Particular Conditions are prepared for the particular project taking account of any changes or additional clauses to suit the local and project requirements. Some employers have available their own versions of the

General Conditions which incorporate some changes to suit their own requirements. Normally General Conditions include the Appendix to tender which gives essential project information some of which must be completed by the Employer before issuing the tender documents, together with some information which must be added by the tenderer upon submission of the tender. In any project in order to overcome problems it will often be necessary to carry out additional work and this will take time and money. The most common situation is that the Contractor spends money and claims it back from the Employer. It is then necessary to decide whether the Employer must pay, or whether the Contractor must bear the additional cost. The initial decision will normally be made by the Employer's Representative or Engineer. However, this can only be an interim decision and is subject to appeal to the Engineer or the Dispute Adjudication Board and ultimately to an arbitrator or the courts. The actual dispute resolution processes vary in different FIDIC forms of contract. The basis on which such decisions must be made is laid down in the Conditions of Contract. The Conditions of the Contract deal with the roles of the parties to the Contract and lays down their rights and obligations under the Contract.

The Conditions of Contract gives the rights and obligations of the parties to the contract. Other people such as the engineer, consultant or sub-contractor may also be involved in the preparation, analysis or administration of any claim but cannot be the principal who makes or receives the claim. While it may be legally possible for an outside person to claim that either the employer or the contractor has caused them damage by negligence or failure to comply with some legal obligation, any such claim is outside the scope of this presentation.

Disputes result in a substantial dilution of effort, delays, and diversion of capital. The FIDIC Conditions of Contract include provisions for the submission, consideration and resolution of claims and disputes under a number of different clauses.

3. Engineer's Role in disputes resolution in Fidic 1999

The Procedure for the Contractor's claim is mentioned in Clause 20 of Fidic 1999. This Sub-Clause imposes an obligation on the Contractor to give notice of its entitlement to a claim "as soon as practicable, and not later than 28 days after he became aware, or should have become aware, of the event or circumstance" giving rise to the claim. If the Contractor fails to maintain this time limit the text of the Contract is explicit that "the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment and the Employer shall be discharged from all liability in connection with the claim." The Contractor has the burden of proof in making and substantiating its claim. However, Engineers often ask to what standard of proof the Contractor is required to prove its claim.

Each claim will require its own collection of records each aimed at proving its different elements. For example, correspondence, meeting minutes and monthly reports that the Contractor cannot enter the Site due to delays of the Employer in acquiring land or interference by other Contractors on Site may be useful in a Sub-Clause 2.1 claim to prove cause of lack of access. Records may also be useful in demonstrating effects on time and money. Records such as properly kept daily work sheets may be useful to show that a Contractor has not had access to Site or has worked on an activity for a particular amount of time. For an extension of time claim the Contractor would also have to show that Time for Completion was delayed, i.e., that there was critical delay and records may be useful to determine criticality. Such

records may include programmes, daily record sheets and progress reports. For claims for additional payment, information about costs incurred may be necessary such as equipment purchase or rental invoices, labour time sheets and salary records, accounting schedules, etc.

The Engineer may monitor the record keeping, instruct the Contractor to keep further contemporary records, inspect the records or instruct the submission of copies by the Contractor. However, this does not necessarily imply accuracy or completeness of the records. It remains the obligation of the Contractor to prove its claim and therefore it must keep sufficient records to prove entitlement once a claim arises.

The Contractor must submit to the Engineer a fully detailed claim within 42 days after the Contractor becomes aware (or should have become aware) of the event or circumstance giving rise to the claim.66 Alternatively, the time period may be amended by agreement between the Contractor and the Engineer.

The notice of claim should have already described the event or circumstance giving rise to the claim. The fully detailed claim that follows is the main submission where the Contractor sets out its case in detail. It includes "full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed." Not only must the Contractor prove an entitlement to its claim, but it must also prove the loss and/or extension of time. Particulars, therefore, need to be provided which include calculations sufficiently detailed to justify the amounts of the relief(s) claimed. If attaching the records physically or electronically would be too onerous, making express reference to the records and inviting the Engineer to inspect them should suffice unless the Engineer instructs copies to be made

If the event or circumstance has continuing effect, the first and subsequent fully detailed claims up to the penultimate one shall be considered interim and the last one final. Each interim one shall be sent at monthly intervals and give the accumulated delay and/or amount claimed in addition to any other particulars as may be reasonably required by the Engineer.

The final fully detailed claim shall be sent within 28 days after the end of the continuing effects that result from the event or circumstance. "The Engineer shall respond with approval, or with disapproval and detailed comments … The Engineer shall proceed in accordance with Sub-Clause 3.5"

The determination for the Claim is carried out by the procedure mentioned in Sub-Clause 3.5 where, the position under the Construction Contract (Red Book) in which Sub-Clause 3.5 [Determinations] reads as follows: "Whenever these Conditions provide that the Engineer shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Engineer shall consult with each Party in an endeavor to reach agreement. If agreement is not achieved, the Engineer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances. The Engineer shall give notice to both Parties of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [Claims, Disputes and Arbitration]."

Each Party was then required to give effect to each determination unless and until the determination is revised by a DAB and only then could either Party give notice of arbitration, which process would be preceded (as always) by a period of amicable settlement.

4. Dispute Adjudication in Fidic 1999

Disputes shall be adjudicated by a DAB in accordance with Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision. The primary clause of interest here, clause 20, deals specifically with Claims, Disputes and Arbitration. It envisages the establishment of a Dispute Adjudication Board, known as the DAB.

A DAB is a panel of experienced, respected, impartial and independent reviewers. The board is normally organized before construction begins and meets at the job site periodically. The DAB members are provided with the contract documents, plans and specifications and become familiar with the project procedures and the participants and are kept abreast of job progress and developments. The DAB meets with the Employer's and Contractor's representatives during regular site visits and encourages the resolution of disputes at job level. When any dispute flowing from the contract or the work cannot be resolved by the parties it is referred to the DAB for Decision. The DAB procedure was conceived as a method of primary dispute resolution. Thus the procedures should facilitate prompt reference of disputes to the board as soon as job level negotiations have reached an impasse. Referral to the board only after multiple levels of Employer and Contractor reviews is inconsistent with the process and counter-productive in terms of time and expense.

The Disputes Adjudication Board (DAB) is an impartial and independent panel of one or three people who are ideally appointed at the start of the project and give decisions on any disputes. When the DAB requested by both the Employer and the Contractor shall be available to give advice or opinions on any matter relevant to the contract. The DAB has four main functions: • To visit the site periodically and become familiar with the details of the project • To keep up to date with activities, progress, developments and problems at the site • Encourage the resolution of disputes by the parties • When a dispute is referred to it, hold a hearing, complete its deliberations and prepare a Decision in professional and timely manner The DAB's role is to settle disputes. Settlement will not have been achieved if a party subsequently refers the dispute on to arbitration. The FIDIC guidance notes for the preparation of particular conditions include an alternative paragraph for Clause 20.4 which enables the Engineer to be appointed as the DAB. This cannot be recommended, as in practice the Engineer is an employee of the Employer and will not be perceived to be either independent or impartial. Although the contract states that the DAB shall comprise of either 1 or 3 suitably qualified persons it is often the case that on large complex projects involving a number of disciplines the tribunal may consist of 5 persons of whom any 3, selected by the chairman, will sit at any time on a particular dispute. Ideally the members of the dispute adjudication board are appointed at the beginning of the contract. FIDIC's example for the letter of tender allows the Contractor to accept or reject names proposed by the Employer and to include the Contractor's own suggestions for his nominee. If this procedure is used it is essential that the tenderer does not feel and any pressure to accept the Employer suggestions but feels free to propose his own suggestions. It is preferable but not essential for the individuals to be agreed before the letter of acceptances issued. The adjudication procedure depends for success on amongst other things and the party's confidence in the agreed individuals who will serve on the DAB, and therefore it is essential that candidates for this position and not imposed by either party on the other. FIDIC as an appointing entity will nominate individual DAB members if requested to do so. FIDIC does not administer adjudication

other than to nominate adjudicators, if the nominating authority has been delegated to it under the contract. Typically the DAB is organized at the beginning of the contract and conducts an initial meeting at the site when construction is just beginning. It meets with both parties and is supplied with copies of the contract documents and is provided with a project briefing which acquaints the DAB with the nature of the work and the Contractor's plans and proposals for executing it. At the initial meeting the timing of the board's regular site visits are established and the procedures for submitting data to the DAB by the parties are established. One of the unique features of the DAB is that it is established to promote resolution of disputes while construction is still underway. The board's ability to respond promptly and intelligently requires that it be kept informed of construction activities, progress and problems. Each board member should be provided with a complete set of contract documents and included on the distribution list of periodic progress reports and progress meeting minutes. It recommended that a joint progress report should be delivered by the parties to the DAB members on a monthly basis. The DAB normally meets on site every three months with a view to remaining acquainted with the progress of the works at any actual potential problems or claims. At the conclusion of the site visit the DAB shall prepare a short report of its activities during the visit and shall send copies to each of the parties. The very existence of a readily available mutually acceptable and impartial board tends to promote bilateral agreement on matters that have historically been referred to third party adjudication. Experience has shown that the DAB facilitates positive relations, open communications, trust and co-operation normally only associated with partnering. There are several reasons for this. Participants to the process are effectively deprived of any opportunity to posture - they do not want to lose their position.

Clause 20.2 states that disputes shall be adjudicated by a DAB. The scope of a dispute is made in Clause 20.4, which is wider than the requirements for a notice under Clause 20.1. FIDIC does not define what is meant by the word dispute. The word will therefore have its normal meaning, that is, any statement, complaint, request, allegation or claim which has been rejected and that rejection is not acceptable to the person who made the original statement or complaint. It is clearly not necessary for a complaint to have been considered by the Engineer in order to create a dispute. The wording of Clause 20.4 states that a dispute of any kind whatsoever may be referred to DAB in connection with or arising out of the contract or the execution of the works including any dispute as to any certificate, determination, instruction, opinion or valuation of the engineer. A dispute may be said to have arisen when: • A final determination has been rejected • Discussions have been terminated without agreement • When a party declines to participate in discussions to reach agreement • When so little progress is being achieved during protracted discussions that it has become clear that agreement is unlikely to be achieved

Clause 20.2 deals with the appointment of the DAB. It requires that the DAB shall be jointly appointed by the parties by the date stated in the appendix. The default date is stated to be 28 days after the Commencement Date. The DAB shall comprise of either one or three suitably qualified persons. The definition of suitably qualified persons will be discussed below. FIDIC conditions of contract state that that the DAB's decision shall be binding on both parties who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitration award. Hence the parties empower the DAB to reach decisions with which they undertake to comply. The DAB members must therefore be selected very carefully. In order to maximize the DAB's chances of success in avoiding arbitration

members must be trusted and have the confidence of both parties. It is therefore essential that the membership of the dab is mutually agreed upon by the parties and not imposes at the party.

This Clause states that in the case of a three person DAB each party shall nominate one member for the approval of the other party. Approvals, as stated elsewhere in the contract, shall not be unreasonably withheld or delayed. Each party should endeavor to nominate a truly independent expert with the ability and freedom to act impartially and develop a team spirit within the DAB and make unanimous decisions. It may therefore be reasonable to withhold approval of a proposed member if it appears unlikely that he will not endeavor to reach a unanimous decision. This reason for disapproval may be based upon reasonable grounds for anticipating that he will decline to discuss matters constructively within the DAB. Having chosen two members the parties are then required to consult both the members chosen and agree upon the third member, who shall become the chairman of DAB. The agreement on the chairman can sometimes be difficult for numerous reasons. In reality the members may find it easier to agree with each other the nomination of chairman and then propose that person to the parties for their agreement. The Clause anticipates that the nomination of a one person DAB or the chairman of a three person DAB is mutually agreed. In such cases the Employer normally provides the names of suitable persons for the tenderer to select. A party may be reluctant to choose names from a list of people who have already been contacted by the other party. Experience shows that this process becomes more difficult during the contract when the DAB has not been established at the start of the project. It is reasonable to assume that for smaller contracts a one person in DAB is sufficient. Current practice in the United States indicates a small contract to have a value of $20M or less, however in some states such as Florida, small contracts are said to be below $2M. Within the EC 3 man DABs are the norm on all contracts. On mega projects and projects with varied technical complexity it is normal to have a 5 man panel from which the chairman will choose any 3 suitable persons to hear a particular dispute. Where projects involve many layers of subcontractors or have a number of contractors then some advantage may be considered by having either a common DAB or an "Interlocking" DAB member who sits on a number of boards within the same project. Where projects involve a number of "layers" such as consultant agreements, supplier agreements and nominated sub contract agreements, in addition to the contractor's own sub contractors the a multi layer DAB may be considered to be beneficial. Procedural and administrative problems are inherent in such systems, particularly with regard to confidentiality and admissibility. However, the enhanced dispute resolution process may outweigh the difficulties in establishing and running such a system.

5. Dispute avoidance and adjudication in Fidic 2017

The Fidic suites 1999 has been revised with the newer edition in 2017, where the provision of adjudication has been further elaborated in clause 21, Dispute Avoidance/Adjudication Board.

The Dispute Avoidance/Adjudication Board and the Resolution of Disputes are covered in the Federation Internationale des Ingenieurs-Conseils (FIDIC) 2017 Contracts by the Clause 21. Under FIDIC 2017 the Parties are jointly required to appoint a Dispute Avoidance/Adjudication Board (DAAB) at the start of the Contract, which must visit the Site on a regular basis, and will remain in place for the duration of the Contract. The DAAB consists of either one or three members, the default being three members, with members' names being selected from a list within the Contract Data. Amicable Settlement could include a meeting between the Parties, or possibly

mediation/conciliation. The key is to exhaust all efforts at resolving the Dispute before it goes to arbitration if arbitration cannot be avoided altogether. At the Hearing, the parties are entitled to legal representation should they wish, though they should be made aware that the Arbitrator has the power equivalent to a judge in litigation.

Notwithstanding the recent release of the 2017 suite of contracts, FIDIC's 1999 Edition suite of construction contracts (the 1999 Editions) remain the most common form of construction contracts used in the our area. The dispute resolution terms set out in sub-clauses 20.2-20.8 of these contracts have often been criticized as a procedure that can be manipulated to bring about delays and failing to encourage the parties to actively try and resolve their dispute. Such criticism seems justified when we see circumstances arise where parties follow the FIDIC procedure for dispute resolution only to see more than 6 months pass[1] before the parties reach the point of reference of their dispute to arbitration.

Naturally the parties will always have a commercial and/ or operational incentive to settle a dispute in order to avoid the cost and uncertainty of arbitration. The 1999 Editions do see some amicable settlements reached. The urgency, however, of reaching a settlement will vary in many instances. For example, where a Contractor is seeking payment of a substantial claim, the Employer will have a significant incentive to delay the process, and the Contractor will continue to suffer each day that the matter remains unresolved bringing pressure to bear. Such pressure can be enough to force parties to settle for substantially less than may have been legally and contractually entitled to.

FIDIC seeks to address this criticism in the release of their 2017 Edition contract forms. Through a discrete but significant change, FIDIC has shifted the power balance in such disputes, and given real power to the Dispute Avoidance and Adjudication Board, otherwise referred to as the DAAB, appointed by the parties. The DAAB is an enhancement of the 1999 Editions' DAB mechanism. The DAB being an alternative dispute resolution procedure which is frequently deleted out of the contracts and replaced with mediation or expert procedures instead.

The 2017 Editions further provide that *"[i]f the decision of the DAAB requires a payment of an amount by one Party to the other Party"* such amount *"shall be immediately due and payable without any certification or Notice"**[3]***. The consequence of this inclusion by FIDIC is significant and will have major impact on how the parties deal with disputes under FIDIC contracts.

Firstly, the commencement of proceedings before the DAAB now has real significance. In the past, the procedure could be dismissed by the parties and exploited as a delay tactic. This was because they each knew that whatever the DAAB decided, a simple 'Notice of Dissatisfaction' would render the decision void and only send the parties into a 56 day negotiation period. Knowing they could rely on this grace period, or fearing their opponent was intending to rely on this, would see parties failing to invest time and resources into this initial stage of the dispute resolution proceedings.

With an increased importance now placed on the outcome of the DAAB's decision, the parties will need to give careful consideration to the members they appoint to the DAAB. They each must seek to appoint members who are genuinely technically competent and experienced. Members who they believe are likely to make the correct decision when presented with a dispute. This hopefully will lead to the parties

adhering more acceptingly to the decision delivered by the DAAB rather than immediately lodging a 'Notice of Dissatisfaction' as a strategy method.

Given that the decision of the DAAB will have an immediate impact, the parties should be more motivated to try and resolve the dispute informally. FIDIC's addition of clause 21.3 (*Dispute Avoidance*) is therefore significant, as it enables the parties to obtain informal and impartial assistance from the DAAB to try and resolve the dispute before adjudication is necessary. As noted above, where the parties appoint respected experts to the DAAB, their informal assistance may be hard to disregard and therefore invaluable.

Finally, the DAAB's adjudication must now be treated seriously by the parties. The parties are therefore more likely to present the best information possible to support their position in the dispute, building greater credibility into the adjudication process.

With greater credibility in the process, it is expected that even when the decision has not been favorable, parties are more likely to accept it rather than use it as a strategic tool. The expectation that an arbitration will produce a different result if you felt that your case was properly argued before a respected panel of experts should no longer be a legitimate concern. Furthermore, the motivation to proceed to arbitration may particularly be lessened when you have already (as required by the contract) given effect to the DAAB's decision. The procedure set out in the 2017 Contracts, whilst not quite revolutionary, is certainly a welcome enhancement to a previously much aligned procedure. Not only does it bring dispute avoidance to the fore as a driver and a priority, but it seems more likely to encourage the parties to work together to settle amicably. Where this does not occur, we expect more parties to accept the decision of the DAAB rather than electing to proceed to arbitration.

The alternative is construction contracts involving many Employers and Contractors who are not yet ready to adopt a proactive approach to claims and disputes avoidance. They will endeavor to keep any contractual upper hand they perceive themselves to have, sticking to procedures that they are more comfortable with such as amended forms of the 1999 Editions, which often involve long and unproductive periods for amicable settlement and early dispute resolution discussions.

6. **Adjudication in Nepalese context**

As the construction industry worldwide is mature enough to use different Alternative Dispute Resolution techniques like Dispute Adjudication Board, Dispute Avoidance board and Other methods like Mediation, Expert's Adjudication etc, the Public Procurement agencies have not taken seriously on these matters. As of the Eight amendment of Public Procurement Rules 2007 (latest compilation available in PPMO website), only 2 procedures are highlighted as below:

Rule 129. Dispute resolution: (1) The procurement contract shall set forth, inter alia, the matters of dispute to be resolved through mutual consent, process for making application for the settlement of a dispute, meeting to be held for mutual consent and process of making decisions, and such a dispute shall be settled accordingly

Rule 135. Resolution of dispute by arbitration: If any dispute that has arisen between the public entity and the construction entrepreneur, consultant or service provider in relation to the implementation of the procurement contract cannot be resolved through the process referred to in Rule 129, action shall be

initiated for the resolution of such a dispute by arbitration in accordance with the prevailing law.

All other ADR procedures are either not available or has been amended. The procedure of FIDIC could only be available if the Documents are used for International Competitive bidding or the Donor agency requires Fidic suites to be used in their particular procurement. The trajectory followed by Nepal in terms of ADR is very pessimistic and needs a thorough revision.

7. Conclusion and recommendation

Construction projects often encounters many claims and consequential disputes. The Fidic suite has provided some quasi arbitral role to the Engineer. But, as not being the party of the contract and being appointed by the Employer, the determination provided by the Engineer are often challenged. There is a set mechanism for Claim and dispute handling in Clause 20 of Fidic 1999 editions, which clearly delineates the procedure of Alternate dispute resolution mechanism called as Adjudication. Further, in the revision of Fidic suites in 2017 (second edition), the Dispute avoidance and Adjudication has been more focused catering the need of ADR in construction industry by introducing the new clause 21 (Dispute Avoidance and Adjudication Board, DAAB)

Although, the construction industry in the globe is giving more attention to alternate dispute resolution mechanism, the Public Procurement rules of Nepal has not incorporated such provisions in domestic bidding. Thus, I would like to recommend for the implementation of scientific ADR mechanisms in Public Procurement and Contract Management practices for Nepal.

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Cause, Effect and Minimization of Disputes in Construction Projects

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The construction industry is complex, fragmented, dynamic, and involves multiparty in an adversarial relationship. This invites disputes in many construction projects. In the construction industry, because of contrasts in perceptions among the participants of the projects, conflicts ascend. Disputes and conflicts are often unavoidable in economic production and business management (Han, 2020). The construction industry, in particular, is characterized by huge sums of capital, long project duration, and the engagement of multiple parties, and it is, as a result, a dispute-prone industry. The design problem starts from the poorly detailed engineering survey. When there is an error in the engineering survey then that is carried over to detailed engineering design. This causes disputes during construction works. Also, most of the time, the detailed designs are not reviewed by experts, and errors in designs are found during the construction works that may result in a dispute.

It has been seen that due to the lack of proper attention in the preparation of contract documents like conditions of contracts, technical specifications, bill of quantities, etc. for construction works, lots of deficiencies arise during construction works. Lots of the time, these documents are ambiguous - do not clearly speak about the work - are contrary to each other, lack necessary information, lack clear-cut roles, and responsibilities of parties, etc. All these create disputes during the execution of construction works. It is generally said that the contract language is considered difficult to comprehend and they are, therefore, a major source of disputes.

During the construction works, various factors bring disputes. They are not limited to survey, design, or contract documents but beyond. They are social, political, environmental, geological, climatic, etc. These factors create problems and become a source of disputes. Also, improper management of manpower, machines, materials, and money by the contractor during the construction hinders the quality, as well as work progress of the construction works resulting in cost and time overrun. This, finally, creates disputes during construction works.

Disputes also arise due to not evaluating the contractor's claim for extension of time fairly and application of delay damages, not certifying or payment of contractor's bills in time, indecisiveness towards problems, not releasing the construction drawings in time, late instructions by the consultant, change of designed drawings, etc.

The dispute is very common in construction projects. Nepal Council of Arbitration (NEPCA) is the body that administers services on alternative dispute resolution (ADR) through their panelists and members. As per the Annual Report of NEPCA, yearly disputes for the last six years, percentage of claim concerning contract amount, and percentage of the award concerning claim are tabulated below.

Table 1: Claim and award

Fiscal Year	Total project in dispute	% of claim wrt contract	% of award wrt claim
2077/078	30	22.56	2.90
2076/077	28	22.15	0.20
2075/076	30	25.15	7.94
2074/075	32	20.84	5.56
2073/074	43	24.91	9.89
2072/073	32	13.00	9.15

(NEPCA Annual Reports)

The data shows that the projects in dispute range from 28 to 43 in a six-year duration.

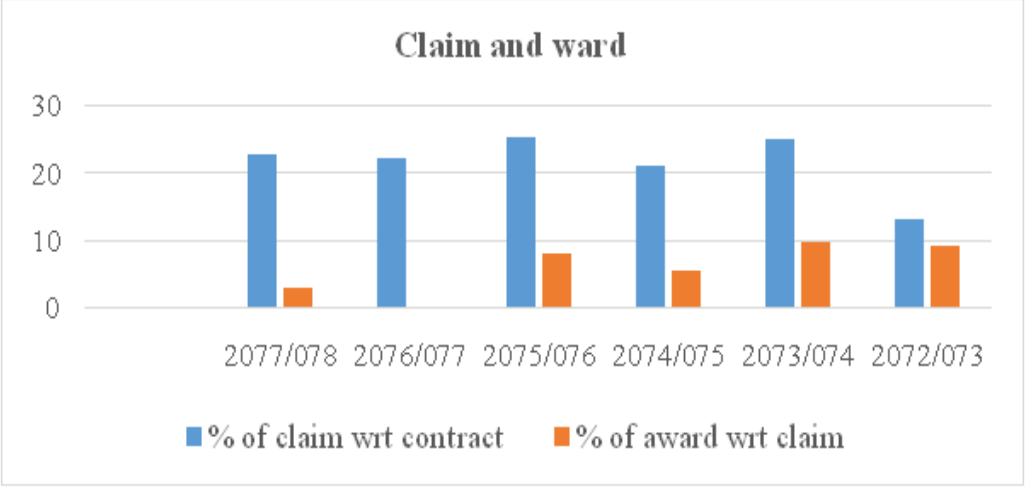

Figure 1: Claim and award

Disputes predominantly arise from complexity and magnitude of works, multiple prime contracting parties, poorly prepared contract documents, inadequate planning, financial issues, and communication problem. If disputes are not resolved promptly, it can cause project delays or abandonment of the project.

Before entering into cause and effect of dispute, it is indispensable to understand the risk, conflict, claim, and dispute in a construction project as they are closely associated with each other. A risk is any likely event that would derail the plan of the project. A construction risk can be defined as any exposure to potential loss. An uncertain event or set of circumstances that, should it occur, will affect the achievement of one or more of the project's objectives. Risk includes damage to persons or properties. Fire, storm, collapse, vibration, etc. are a few sources of risk. Risk exists in projects due to uncertainties. The response

could be one or a combination of five things, viz. remove, reduce, avoid, transfer, or accept.

The conflict happens when needs aren't met. It is a serious disagreement and argument about important issues. The construction process is rampant with uncertainties, and uncertainties create fertile ground for conflict.

A claim is an assertion of a right that requires either more time or/and payment. A claim is anything that occurs during the execution of the construction project, which falls out of the limits of the framework. It is generally a request by a contractor for additional compensation or an extension of time for occurrences beyond the contractor's control.

A dispute is a difference of opinion or disagreement between parties to the contract. It is an assertion of a right, claim, and demand on one side. The dispute exists if there is a claim or position on an issue by one party and its denial by another party. Any contract question or controversy that must be settled beyond the job site management is known as a dispute. A party believes that a change exists in the contract but the other party disagrees. Both parties agree that change exists but do not agree on the impact and cost of the change. Any situation where one party claims the other party, the other party rejects the claim in whole or part, and the first party does not accept the rejection invites a dispute in a construction project.

Risk, conflict, claim, and dispute are interrelated to each other, if one is imbalanced, the other appears. The relationship among risk, conflict, claim, and dispute is shown in the figure below.

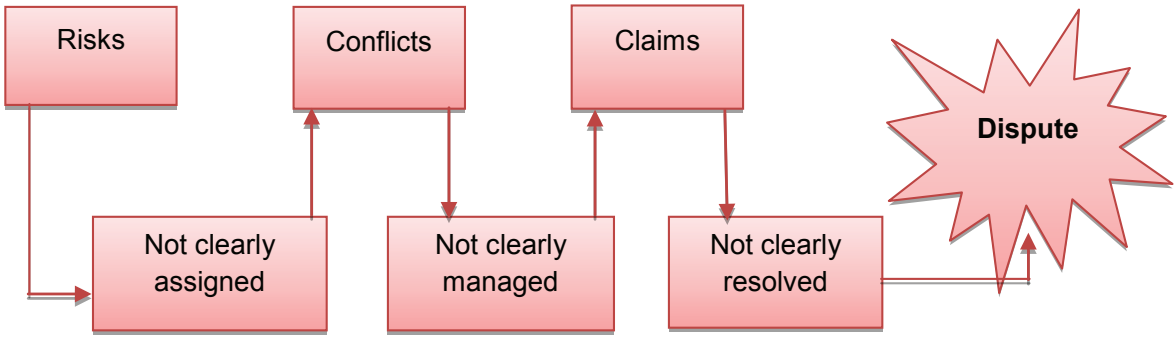

Figure 2: Risk, conflict, claim, and dispute continuum model (Acharya and Lee, 2006)

Disputes may prevent the successful completion of the project. Thus, causes of disputes are to be found, analyzed and resolved in time to complete the project in the desired time, cost, and quality.

1. **Causes of disputes**

The communication gap among parties involved in the construction of a project gives birth to several disputes. An issue that could have been solved in a single sitting of parties involved can evolve into a dispute if it is not communicated in time. Similarly, the terms and conditions of the contract must be clearly understood by the contracting parties before the signing of the contract. If a party is not able to understand the terms and conditions of the contract, it may bring a dispute during construction. Delay in site possession, delay in decisions, differing site conditions, application of liquidated damages, etc. are the other causes of disputes. The dispute is not because a claim has been submitted but because it has not been admitted. (Wesam S. Alaloul, et al., 2019).

There are many factors due to which disputes occur between the contracting parties. These factors are classified into seven groups under which different plausible causes of disputes are listed below:

1.1 Contract documents related factors

A contract document is an agreement between two or more parties that establishes each party's obligations, responsibilities, and rights enforceable by law. The purpose of a contract document is to ensure that all parties involved in a project are clear about their roles and what is expected of them. The contract document consists of an agreement, design drawings, bill of quantities, technical specifications, etc. A well-drafted and error-free contract document leads to the successful completion of a project. Most of the disputes arise from the contract documents due to the following causes:

- Incomplete design, drawings, and specifications
- Errors and omissions in design drawings
- Incomplete information in bid documents
- Discrepancies/ambiguities in the contract documents
- Contradiction in contract documents
- Poorly written contract clauses
- Different interpretations of the contract provisions
- Errors and omissions in the contract terms
- Unfair allocation of risks
- Incorrect procurement/tendering method
- Misplacement of priority

1.2 Employer-related factors

After the signing of a contract, the position of each party in the contract lies on equal footing. However, it does not happen in practice. The employers feel superior as they pay to another party in the contract. They interfere in contracts in many ways resulting in disputes. The following are the causes of disputes due to employers in the construction contract:

- Delay in the decision by the employer
- Delay in access to the site
- Interfering in the execution of the contract
- Supremacy of employer
- Unrealistic time/cost/quality targets (by employer)
- Delay in payment of contractor's bill
- Design variations initiated by the employer
- Excessive change order/ change of scope
- Non-payment of interest on late payment
- Unilateral early termination of the contract

1.3 Consultant/engineer-related factors

In principle, the consultant should be well-qualified and professional. They often propose highly qualified experts to secure jobs, however, try to complete those jobs by juniors or low-paid experts as a result poor output of services. It has also been observed in many cases that reports, design drawings, bid documents,

technical specifications, etc. are prepared by cutting and pasting from other projects. All these bring lots of disputes in construction contracts due to the consultants. The following are the consultant-related factors that arise disputes in construction contracts:

- Poor site investigation (engineering survey, soil investigation, etc.)
- Delay in decision
- Errors and omissions in design (faulty design)
- Errors and omissions in BoQ
- Change in site conditions
- Errors and omissions in technical specifications
- Delay in issuing construction drawings
- Quality control in design
- Application of liquidated damages to the contractor
- Delay in recommending IPC

1.4 Contractor-related factors

The contractor is supposed to carry out the construction works as per the contract documents within the specified time, quality, and cost. Nonetheless, they seldom complete the project within time, quality, and cost. During the bidding process, they show all of the required qualifications; equipment, human resources, financial resources, etc. but during the execution, they are very reluctant to abide by the contractual obligations resulting in disputes, which are:

- Delay in work progress (time overrun)
- Misuse of advance payment
- Low bidding
- Contractor's noncompliance with design, drawings, specifications
- Extension of time (EoT) and prolongation cost
- Technical inadequacy
- Lack of deployment of skilled workers
- Defective construction (poor quality of work)
- Use of unauthorized sub-contractor
- Non-payment to sub-contractor
- Non-submission of as-built drawings/ O & M Manual
- Inadequate contract administration
- Delays in handing over the project site
- Unrealistic/exaggerated claims for variations of works

1.5 Human behavior-related factors

Human behavior commonly refers to the way humans act and interact; the actions, thoughts, and emotions of individuals and groups. It embraces a wide range of activities, from physical movements and interactions to complex mental processes such as decision-making and problem-solving. Thus, human behavior also brings disputes in the construction contract, which are:

- Lack of communication
- Lack of team spirit
- Attitude and behavior of managers toward workers
- Personality traits
- Cultural issues

1.6 External factors

The external factors are things outside the project that will have an impact on its success. The project cannot control the external factors. All it can do is react to them and make decisions to help it remain successful. The following are external causes due to which disputes happen in a project:

- Outside people interruption
- Force majeure
- Inflation
- Adverse weather condition
- Change in acts/laws, regulations, policy
- Labor dispute/union strike
- Other factors

The causes of disputes which could not be accommodated under the above groups are depicted below:

- Differing site condition
- Cost overrun
- Sudden increases in the cost of materials and fuels
- Unclear instructions from the consultant/engineer
- Unforeseen site condition
- Price escalation
- Extra item
- Breach of contract by any party
- Fraud act of any party
- Suspension of works
- Insurance and indemnity
- Acceleration of works

2. **Effect of disputes**

The effect of disputes on a construction project is immense varying from delay to abandonment. This increases project costs and decreases the revenue of the government. It makes the human resources and equipment of the contractor idle. It also pushes the development works of the nation back. The major effects of disputes in construction projects are:

- Cost overrun
- Time overrun
- Additional expenses in management and administration
- Dissatisfaction and stress
- Loss of company reputation

- Idling of resources
- Loss of professional reputation
- Loss of profitability
- Damaged business relationship
- Loss in revenue
- Loss of productivity
- Arbitration
- Adverse impact on the overall national economy
- Litigation
- Abandonment of project

3. Measures to minimize the disputes in the construction Project

Due to the different interests of different parties in the construction projects, the disputes could not be avoided but minimized to a great extent. Most of the disputes arise from contract documents, design drawings, bills of quantities, and technical specifications. Thus, during the preparation of these documents, special attention is needed. An error-free site investigation (detailed engineering survey, soil investigation, etc.) can minimize errors in design. Similarly, the appointment of an experienced design team and peer review of the design could reduce errors in design profoundly. The appointment of skilled manpower, and qualified and experienced technical and managerial manpower at the site by the contractor helps complete the works in time with desired quality reducing disputes. Similarly, the contractual risks should be distributed fairly to the employer and contractor in the contract documents, which also minimizes disputes during construction works. The disputes in the construction projects could be minimized by taking the following measures at different three stages of the implementation of a project.

3.1 Design and documentation stage

- Detailed and thorough site investigations
- Employ proper expert/manpower during design as per ToR
- Properly (scientifically/logically) fixed project duration
- Flawless/clear-cut (without any ambiguity) contract documents
- Sufficient design time
- Thoroughly define the scope of work
- Fair allocation of risks
- Peer review of contract documents
- Freeze design

3.2 Tendering stage

- Site visit before bidding by bidders
- Understanding contractual documents before proceeding with an agreement
- Detailed information about the project to bidders
- Rejection of substantially low bid
- Pre-bid conference
- Escrow bid documents (EBD)

3.3 Construction stage

- Timely decision
- Use of quality manpower and materials by the contractor as per specification
- Close supervision of construction work by consultant/ engineer
- Adequate communication among all project participants
- Forwarding of IPC on time
- Payment within the due date
- Use of a sub-contractor with proven capacity by the contractor
- Engaging the organization-trained artisans/laborers by the contractor
- Avoid/minimize the change in scope/design during the implementation
- Preparation and implementation of 'Conflict Management Plan'
- Close contract administration
- Setting up of Dispute Board (DB)/ Adjudicator before the start of construction

4. Conclusion

Disputes are the inescapable event in many construction projects. Therefore, it is not possible to implement dispute-free construction projects. Nonetheless, it can be minimized dominantly if twenty-seven measures to minimize disputes, as identified, are followed in different stages of implementation of projects. The effect of disputes on the construction projects are mammoth. It hinders the work progress resulting in cost and time overrun. Besides, projects may be abandoned due to disputes.

A contingency plan should be executed to cater the risk presents in construction project. The purpose of the plan is to lessen the damage of the risk when it occurs. Without the plan in place, the full impact of the risk could greatly affect the project. The contingency plan is the last line of defense against the risk. Hence, preparation and implementation of the 'Risk and Contingency Plan' by the employer as well as the contractor are necessary, which would help minimizing disputes during the implementation of projects.

The Public Procurement Act, 2063 has removed the provision of Adjudication to settle disputes and provisioned directly to go for Arbitration if not settled through mutual consent. The concept of adjudication or Dispute Board (DB) is to engage adjudicator/DB at the signing of a contract. They look into the matters of disputes and provide their decision during the construction works. It is faster, saves time and additional financial burden of the parties. Therefore, it is felt necessary to reinstate the adjudication/DB in the Act.

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Dispute Resolution by Dispute Board/Arbitration in ICB Contracts in Nepal

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Abstract

Construction disputes are primarily technical in nature. They may arise during the execution of the project as a result of disagreement between the parties involved in a contract. This paper discusses about resolution of dispute through ADR Practices particularly, Dispute Board and Arbitration in ICB Contracts.

Introduction

The most common causes of disputes in construction projects are due to:

- Omission and errors in the contract documents; Differing and unexpected site conditions;
- Failure of the Owner/Contractor and/or Sub-Contractor to understand or comply with the contractual obligations;
- Poorly drafted contract documents; incomplete documents

Common types of construction disputes

Due to the nature of construction projects, there are various ways in which construction disputes can arise. Below are some of the common types of construction disputes.

1. Delays

When delays occur, the party responsible should issue a notice in writing. Delays bring about disputes as to who should bear the responsibility for delay caused. Most construction contracts deal with delays by extending the time of completion. The owner can keep the rights to recover the damages from the delays from the Contractor.

2. Design

Mistakes in design can also lead to additional costs, which become the cause of delays. Design teams may also abrogate their responsibility leaving the Contractor in harm's way to solve design problems independently. In so doing, the Contractor unknowingly assumes the risks of impending design failures

3. Quality of materials

Sometimes disputes may come up as a result of the quality of materials used. Specifications may be vague on the conflicts, and each party may have different views on whether the quality is in accordance to contract specifications. The parties may have different opinions as to whether the quality and craft

are sufficient. This can lead to additional contract costs that may lead to many costly disputes if left unresolved.

4. Risk management

The project stakeholders may need to carry out proper risk management before a project commences, and more often than not, this is not done. Projects take longer than planned if there is insufficient accounting of possible risks associated with a project's complexity. The delays and claims remove the owner's rights to claim for delays or damages.

Resolution of a dispute

Alternate Dispute Resolution (ADR) methods are typically faster and affordable means of dispute resolution as compared to the litigation process. However, it is important to know when ADR should be used for construction contract dispute and when it should not be used. Here, out of various methods of ADR, dispute resolution by Dispute Board and Arbitration in International Competitive Bidding (ICB) construction contracts is discussed as below:

Dispute Board Provisions in ICB Contracts

Dispute Board is applicable in ICB contracts under FIDIC Red Book 1999. The GCC Sub-Clause 20.2[Appointment of Dispute Board] mentions as follows:

"*Dispute shall be referred to a DB for decision in accordance with Sub-Clause 20.4[Obtaining Dispute Board's Decision]. The Parties shall appoint DB by the date stated in Contract Data".*

The GCC Sub-Clause 20.5[Amicable Settlement] mentions as follows:

"Where notice of dissatisfaction has been given under Sub-Clause 20.4[Obtaining Dispute Board's Decision, both Parties shall attempt to settle dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which a notice of dissatisfaction and intention to commence arbitration was given, even if no attempt at amicable settlement was made".

Arbitration Provisions in ICB Contracts

There is a provision of Arbitration in ICB contracts based on General Conditions of Contract (GCC) of FIDIC Red Book 1999. The GCC Sub-Clause 20.6[Arbitration] mentions as follows:

"*Unless settled amicably, any dispute in respect of which the DB decision (if any) has not become final and binding shall be finally settled buy international arbitration".*

Practice of Dispute Board being followed by the Parties

The formation of DB shall take place 28 days after the date of contract signing as per the provision of the contract. In practice, Parties have been following the formation of DB only after the dispute has arisen. Such formation of DB has been taking place in the middle of the construction period or towards the end of the construction period. If the DB is to comprise three persons, each Party nominates one member for the approval of other Party. The first two members appoint the third member who acts as Chairman of DB. In general, all the members of DB are Nepali citizens in ICB contracts being executed

under Nepal Government's funding and or Financial Institutions of Nepal. If the Contractor is from the foreign country, then the Contractor prefers to nominate a member from their country.

Practice of Arbitration being followed by the Parties

The disputes are being settled under United Nation Commission on International Trade Law (UNCITRAL) or International Chamber of Commerce (ICC) or Singapore International Arbitration Center (SIAC) Arbitration Rules. In general, the Chairman of the three arbitrators is of a nationality which is neither Nepalese not that of the Contractor. The arbitration proceeding is being conducted in Kathmandu, Nepal.

Conclusion

ADR methods are more common in the construction industry in order to resolve dispute. Each ADR methods have advantages and disadvantages. Parties to the contract should choose the particular type of ADR to find the solutions to the disputes. For ICB contracts, DB and Arbitration provisions have been followed for dispute resolution. In general, FIDIC General Conditions of Contract are being followed with amendments of few GCC Clauses which are being specified in Particular Conditions of Contract. The disputes are first resolved through the formation of DB and then international arbitration proceedings have been followed where DB decisions have not become binding and final.

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The International Court of Justice and Judicial Settlement

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Background

The idea for the creation of an international court to arbitrate international disputes first arose during the various conferences that produced the Hague Conventions in the late 19th and early 20th centuries. The body subsequently established, the Permanent Court of Arbitration, was the precursor of the Permanent Court of International Justice (PCIJ), which was established by the League of Nations. From 1921 to 1939 the PCIJ issued more than 30 decisions and delivered nearly as many advisory opinions, though none were related to the issues that threatened to engulf Europe in a second world war in 20 years[1]. The ICJ was established in 1945 by the San Francisco Conference, which also created the UN as the principal judicial organ (Art. 7, UN Charter).

The court began work in 1946 as the successor to the permanent court of international justice. The statuteof the international court of justice, similar to that of its predecessor, is the main constitutional documentconstituting and regulating the court. Its role in the fulfillment of the purposes of the UN is "to bring aboutby peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace" (Art. 1, UN Charter). Also known as the "World Court", It functions in accordance with its Statute which forms an integral part of the Charter and the primary judicial branch (Art. 92, UN Charter). The ICJ is the highest court in the world and the only one with both general and universal jurisdiction: It is open to all Member

States of the United Nations and, subject to the provisions of its Statute, may entertain any question of international law.[2] It has its seat in the Peace Palace at The Hague, The Netherlands.[3]

Structure

The ICJ is composed of fifteen judges elected to nine-year terms by the UN General Assembly and the UN Security Council from a list of people nominated by the national groups in the Permanent Court of Arbitration. The election process is set out in Articles 4-19 of the ICJ statute. The Members of the Court are elected by the Member States of the United Nations (193 in total) and other States that are parties to

1 https://www.britannica.com/topic/International-Court-of-Justice
2 www.acgmun.gr/wp-content/uploads/2016/08/ICJ-Manual-ACGMUN.pdf
3 https://www.peacepalacelibrary.nl/research-guides/settlement-of-international-disputes/international-court-of-justice/

the Statute of the ICJ on an ad hoc basis (as in the case of Switzerland, for example, prior to its accession to the United Nations in 2002). It was fixed at 15 when the revised version of the Statute of the PCIJ that came into force in 1936 was drafted, and has since remained unchanged, despite occasional suggestions that the number be increased. In order to ensure a certain measure of institutional continuity,one-third of the Court, i.e., five judges, is elected every three years. Judges are eligible for re-election.

Should a judge die or resign during his or her term of office, a special election is held to choose a judge to fill the remainder of the term.

Voting takes place both in the General Assembly and in the Security Council. Representatives of States parties to the Statute without being members of the United Nations are admitted to the Assembly for the occasion, whilst in the Security Council, for the purpose of these elections, no right of veto applies and the required majority is eight. The two bodies concerned vote simultaneously but separately. In order to be elected, a candidate must receive an absolute majority of the votes in both the General Assembly and the Security Council. This often requires multiple rounds of voting.[4]

No two judges may be nationals of the same country. According to Article 9, the membership of the court is supposed to represent the "main forms of civilization and of the principal legal systems of the world". Essentially, that has meant common law, civil law and socialist law (now post-communist law).

There is an informal understanding that the seats will be distributed by geographic regions so that there are five seats for western countries, three for African states (including one judge of Francophone civil law, one of Anglophone common law and one Arab), two for Eastern European states, three for Asian states and two for Latin American and Caribbean states. The five permanent members of the United Nations security council (France, Russia, China, The United Kingdom, and The United States) always have a judge on the court, thereby occupying three of the western seats, one of the Asian seats and oneof the Eastern European seats. The exception was China, which did not have a judge on the court from 1967 to 1985 because it did not put forward a candidate.[5]

Also, for the first time since 1946, on 2017 ICJ was without British judge. The 11 rounds of election on UNGA and UNSC between Indian and British nominee could not finalize the result, UK's nominee finally withdrew his nomination and Justice Dalveer Bhandari was re-elected for the second term. Even though, Britain proposed Joint Conference Mechanism for election of Judges, which is prescribed on thestatute of ICJ but had not been used since 1946; was rejected due to lack of clarity on process of election of member of Joint Conference Mechanism.

Article 6 of the statute provides that all judges should be "elected regardless of their nationality among persons of high moral character" who are either qualified for the highest judicial office in their home states or known as lawyers with sufficient competence in international law.

Unlike other organs of international organizations, the Court is not composed of representatives of governments. Members of the Court are independent judges whose first task, before taking up their duties, is to make a solemn declaration in open court that they will exercise their powers impartially and conscientiously. Judicial Independence is dealt with specifically in Articles 16-18. Judges of the ICJ

4 Ibid 2

5 https://www.theaudiopedia.com&event=video_description

arenot able to hold any other post or act as counsel. In practice, members of the court have their own interpretation of these rules and allow them to be involved in outside arbitration and hold professional posts as long as there is no conflict of interest. A judge can be dismissed only by a unanimous vote of the other members of the court. Despite these provisions, the Independence of ICJ judges has been questioned. For example, during the Nicaragua case, the United States issued a communiqué suggesting that it could not present sensitive material to the court because of the presence of judges from eastern bloc states[6].

There is provision of ad-hoc Judges in ICJ who are appointed by contesting parties regarding particular dispute (2 ad-hoc judges at max. 1 from each party). ICJ is assisted by a Registry**,** its administrative organ. Its official languages are English and French.

Parties to ICJ

All members of the UN are ipso-facto parties to the statute of the ICJ. Also, non-members may also become parties through separate proceeding. Only states may be parties in cases before the court, and no state can be sued before the World Court unless it consents to such an action. Hence, the Court is open to:

-Member States of the United Nations, which, by signing the Charter, accepted its obligations andthus at the same time became parties to the Statute of the ICJ, which forms an integral part of the Charter;

— those States which have become parties to the Statute of the ICJ without signing the Charter or becoming members of the United Nations (as in the case of Nauru and Switzerland, for example, before they became UN members) ; these States must satisfy certain conditions laid down by the General Assembly on the recommendation of the Security Council : acceptance of the provisions of the Statute, an undertaking to comply with the decisions of the ICJ and a regular contribution to the expenses of the Court ; — any other State which, whilst neither a member of the United Nations nor a party to the Statute of the ICJ, has deposited with the Registry of the ICJ a declaration that meets the requirements laid down by the Security Council, whereby it accepts the jurisdiction of the Court and undertakes to comply in good faith with the Court's decisions. Many States have found themselves in this situation before becoming members of the United Nations; having concluded treaties providing for the jurisdiction of the Court, they deposited with the Registry the necessary declaration.

The jurisdiction of the Court so far as concerns the parties entitled to appear before it — jurisdiction ratione personae — covers States of the kind described above. In other words, in order for a dispute tobe validly submitted to the Court it is necessary that it be between two or more such States (e.g., the cases concerning Legality of the Use of Force, brought by Yugoslavia against ten member States of NATO in 1999).[7]

However, even if you are a party to the ICJ, Jurisdiction won't apply automatically.

Jurisdiction

Jurisdiction of ICJ is divided into two categories, namely the Contentious Jurisdiction and Advisory Jurisdiction. [8]

6 https:// www.unacademy.com\daily-cu&event=video_description

7 Ibid 2

8 https://www.lawteacher.net/international-law/the-icj-and-contributions-to-peaceful-settlements-international-law- essay.php#ftn1

a) **Contentious Jurisdiction**

In contentious cases, in principle, the existence of the court's jurisdiction is conditional on the **consent of the parties** to the dispute. The ICJ's jurisdiction takes three forms: compulsory, special agreement, and treaty-based. Seventy-three UN Member States have accepted the ICJ's compulsory jurisdiction, meaning that any international legal dispute involving those States may be submitted to the Court, provided that all the States party to the dispute before the ICJ have accepted its compulsory jurisdiction. States may also submit a dispute to the ICJ by special agreement, accepting the ICJ's jurisdiction only with regard to the specific dispute at issue. Lastly, States may accept the ICJ's jurisdiction with regard to particular areas of international law when they join a treaty that specifically provides that disputes will be submitted to the ICJ for resolution, such as the Convention on the Prevention and Punishment of the Crime of Genocide.

The ICJ has taken up more than 168 disputes. [9] Hence, the Court is competent to entertain a dispute only if the States concerned have accepted its jurisdiction in one or more of the following ways:

1. By entering into a special agreement to submit the dispute to the Court;

   Under ***Art. 36, paragraph 1, of the Statute***, the Court has jurisdiction over all cases which the parties refer to it; such reference would normally be made by the notification of a bilateral agreement known as compromise. Also known as 'Special Agreement', has become more recentlythe most usual form used for bringing a case before the Court. (**Voluntary Jurisdiction**).

   North Sea Continental Shelf Case,1967: Germany, Denmark and Netherlands referred the issue of maritime delimitation on the North Sea Continental shelf Area to ICJ by special Agreement, specifically ask the court to decide on legal rules governing the delimitation and negotiated maritime boundaries on the basis of the Courts Judgement. This shows that, the scope of disputeto be settled by court can be limited through agreement among parties.

2. By virtue of a jurisdictional clause, also called Compromiser Clauses, i.e., typically, when theyare parties to a treaty containing a provision whereby, in the event of a dispute of a given type or disagreement over the interpretation or application of the treaty, one of them may refer the dispute to the Court.

   Pulp Mills on the River Uruguay case,2003: ICJ Jurisdiction Sought by Compromiser Clauseof 1975 treaty between Argentina and Uruguay.

3. Through the reciprocal effect of declarations made by them under the Statute, whereby each has accepted the jurisdiction of the Court as compulsory in the event of a dispute with another State having made a similar declaration. A number of these declarations, which must be deposited with the United Nations Secretary-General, contain reservations excluding certain categories of dispute. Whaling in the Antarctic (Australia Vs. Japan), 2010: Australia filed case against Japan onthe basis of optional clause declaration submitted by both states.[10]

States have no permanent representatives accredited to the Court. They normally communicate with the

9 https://ijrcenter.org/universal-tribunals-treaty-bodies-and-rapporteurs/international-court-of-justice/

10 https://www.icj-cij.org/en/how-the-court-works

Registrar through their Minister for Foreign Affairs or their ambassador accredited to the Netherlands. When they are parties to a case before the Court they are represented by an agent. An agent plays the same role, and has the same rights and obligations, as a solicitor in a national court. However, since international relations are at stake, the agent is also as it were the head of a special diplomatic mission with powers to commit a sovereign State.

Proceedings may be instituted in one of two ways:

- Through the notification of a special agreement: this document, which is bilateral in character, can be lodged with the Court by either or both of the States parties to the proceedings. A special agreement must indicate the subject of the dispute and the parties thereto. Since there is neither an "applicant" State nor a "respondent" State, in the Court's publications their names are separated by an oblique stroke at the end of the official title of the case, e.g., Benin/Niger.
- By means of an application: the application, which is unilateral in character, is submitted by an applicant State against a respondent State. It is intended for communication to the latter State and the Rules of Court contain stricter requirements with regard to its content. In addition to the name of the party against which the claim is brought and the subject of the dispute, the applicant State must, as far as possible, indicate briefly on what basis - a treaty or a declaration of acceptance of compulsory jurisdiction - it claims that the Court has jurisdiction, and must state the facts and grounds on which its claim is based.

A **unilateral reference of a dispute** to the court by one party, without a prior special agreement, will be sufficient if the other party or parties to the dispute consent to the reference, then or subsequently. It is enough if there is a voluntarily submission to the jurisdiction (i.e., **the principle *offorum prorogatum***), and such assent is not required to be given before the proceeding are instituted,or to be expressed in any particular form.[11]

b) Advisory **Jurisdiction**

The term Advisory Jurisdiction is defined as Power of a court to give advisory opinion on specific issues of law. Since States alone have capacity to appear before the Court, public (governmental) international organizations cannot as such be parties to any case before it. A special procedure, the advisory procedure, is, however, available to such organizations and to them alone.

Though based on contentious proceedings, the procedure in advisory proceedings has distinctive features resulting from the special nature and purpose of the advisory function. The advisory opinions of the Court nevertheless carry great legal weight and moral authority. They are often an instrument of preventive diplomacy and have peace-keeping virtues. Advisory opinions also, in their way, contribute to the elucidation and development of international law and thereby to the strengthening of peaceful relations between States.[12]

11 Ibid 10

12 lawteacher.net/international-law/the-icj-and-contributions-to-peaceful-settlements-international-law-essay.php#ftn1

Scope of Court's Advisory **Opinion**

1) For UN Political Organ
2) For UN Specialized Agencies

Advisory proceedings before the Court are only open to five organs of the United Nations and 16 specialized agencies of the United Nations family or affiliated organizations. The United Nations General Assembly and Security Council may request advisory opinions on "any legal question" (theArticle 96.1 of the Charter of the United Nations). E.g., Kosovo's Declaration of Independence case,Legal Consequence of Construction of wall in the Occupied Palestinian territory, 2004 case.

Other United Nations organs and specialized agencies which have been authorized by the General Assembly to seek advisory opinions can only do so with respect to "legal questions arising within the

scope of their activities" (Article 96.2 of the UN Charter)[13]. e.g., Case Concerning Legality of the Use bya State of nuclear weapons in Armed Conflict, 1996

General **Rules**

The g*eneral* rule established by the *Eastern carelia case* is that the court would not exercise its jurisdiction in respect of a central issue in a dispute between the parties where one of these parties refused to take part in the proceedings.

In the interpretation of the *interpretation of peace treaties case* it was stressed that the basis of the court's jurisdiction in contentious proceedings rested upon the consent of the parties to the dispute, the same did not apply with respect to advisory opinions.

Denial

1. If the opinion given is likely to amount as a decision of the Court in a Contentious Case.
2. Where legal question is likely to raise serious political question.
3. Where the Court does not have adequate information on the issue on which the opinion is sought.
4. If the Court considers that it lacks Jurisdiction.

Mainline and Incidental jurisdiction

A distinction can be made between incidental jurisdiction and mainline jurisdiction. Incidental jurisdiction relates to a series of miscellaneous and interlocutory matters; for example, the power of the Court to decide a dispute as to its own jurisdiction in a given case; its general authority to control the proceedings; its ability to deal with interim measures of protection; and the discontinuance of a case. Mainline jurisdiction, on the other hand, concerns the power of the Court to render a binding decision on the substance and merits of a case placed before it.[14]

The role of **ICJ**

There are a variety of other issues currently facing the Court. As far as access to it is concerned, it has, for example, been suggested that the power to request advisory opinions should be given to the UN

13 https://academic.oup.com/ejil/article/18/5/815/398671

14 https://unctad.org/en/Docs/edmmisc232add19_en.pdf

Secretary-General and to states and national courts, while the possibility of permitting international organizations to become parties to contentious proceedings has been raised. Perhaps more centrally, the issue of the relationship between the Court and the political organs of the UN, particularly the Security Council, has been raised anew as a consequence of the revitalization of the latter in recent years and its increasing activity. The Court possesses no express power of judicial review of UN activities, although

it is the principal judicial organ of the organization and has in that capacity dealt on a number ofoccasions with the meaning of UN resolutions and organs.

In the Lockerbie case, the Court was faced with a new issue, that of examining the relative status of treaty obligations and binding decisions adopted by the Security Council. In its decision on provisional measures, the Court accepted that by virtue of article 103 of the UN Charter obligations under the Charter (including decisions of the Security Council imposing sanctions) prevailed over obligations contained in other international agreements.

The decisions and advisory opinions of the ICJ (and PCIJ before it) have played a vital part in the evolution of international law. Further, the increasing number of applications in recent years have emphasized that the Court is now playing a more central role within the international legal system than thought possible two decades ago. Even though, many of the most serious of international conflicts maynever come before the Court, due to a large extent to the unwillingness of states to place their vital interests in the hands of binding third-party decision-making, while the growth of other means of regional and global resolution of disputes cannot be ignored.[15]

Limitation on the Functioning of **ICJ**

ICJ suffers from certain limitations, these are mainly structural, circumstantial and related to thematerial resources made available to the Court. They can be further listed as: -

- Enforcement of Judgment

It does not enjoy a full separation of powers, with permanent members of the Security Council beingable to veto enforcement of cases, even those to which they consented to be bound. i.e.

After the court ruled that the United States's covert war against Nicaragua was in violation of international law (Nicaragua v. United States), the United States withdrew from compulsory jurisdiction in 1986 to accept the court's jurisdiction only on a case-by-case basis. Chapter XIV of the United Nations charter authorizes the UN Security Council to enforce court ruling. However, such enforcement being subject to the veto power of the five permanent members of the council, which the United States used in the Nicaragua case.[16]

- It has no jurisdiction to try individuals accused of war crimes or crimes against humanity. As itis **not a criminal court,** it does not have a prosecutor able to initiate proceedings.
- It differs from the Courts which deal with allegations of violations of the human rights conventions under which they were set up, as well as applications from States at which courts can entertain applications from individuals, that is not possible for the International Court of Justice.

15 https://www.ebooks.com/en-us/book/95824833/international-law/malcolm-n-shaw/

16 https://academic.oup.com/ejil/article/18/5/815/398671

- The jurisdiction of the International Court of Justice is general and thereby differs from that of specialist international tribunals, such as the **International Tribunal for the Law of the Sea (ITLOS)**.
- The Court is not a Supreme Court to which national courts can turn; it does not act as a court of last resort for individuals. Nor is it an appeal court for any international tribunal. It can, however,rule on the validity of arbitral awards.
- The Court can only hear a dispute when requested to do so by one or more States. It cannot deal with a dispute on its own initiative. Neither is it permitted, under its Statute, to investigate and rule on acts of sovereign States as it chooses.
- The ICJ only has jurisdiction based on consent, not compulsory jurisdiction.

Conclusion

The International Court of Justice is endowed with both a privileged institutional status and procedural instruments whose potential is frequently underestimated. The International Court of Justice is a component, not only of the machinery for the peaceful settlement of disputes created by the Charter but also of the general system for the maintenance of international peace and security it established.

The United Nations and International Court of Justice's primary aim is to overcome National and International disputes between parties in a very professional manner using the available methods. These methods are more or less tend to follow similar rules and the end result is towards solving disputes. The fact that the ICJ's decisions are not effectively enforceable is a huge barrier for its contribution for the settlement of disputes.[17]

Overall, pessimism regarding the future of the Court is entirely unwarranted, so long as expectations are managed realistically. The original intention at the founding of the UN was for theICJ to be 'at the very heart of the general system for the maintenance of peace and security'[18].

Though all the international disputes are not solved, ICJ has often managed to clarify one aspect of a larger ongoing controversy, and as international disputes are often resolved incrementally, one piece at a time.

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17 https://www.drishtiias.com/important-institutions/drishti-specials-important-institutions-international-institution/international-court-of-justice-icj

18 https://academic.oup.com/ejil/article/18/5/815/398671

Parties are not Permitted to Deny Arbitration on The Context of Estoppel in Nepal: Contract

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1. Concept of Arbitration

Arbitration is an alternative mode of dispute settlement -conditional- on the context of civil dispute in Nepal, provisions are preserved in different sections of Nepalese act, statute, regulation as well- but- which may be compulsion if parties of dispute are bounded for arbitration to resolve in agreement[contract].

Consents[terms] of contract are not mutated for parties which is also the doctrine of estoppel in the law of evidence in Nepal: double standpoints or declarations are not approved in the sense of eligible for evidence; stable or certain and specific of consent[term] tends to parties are not allowed to deny arbitration on the context of estoppel in Nepal: contract.

A. Arbitration Act 2055 / Arbitration

Arbitration is not defined in Arbitration Act 2055, only arbitrator is mention that one or more than one are appointed to resolve dispute as arbitrator which is concerned to activities of Arbitrator. So it is concluded that awards, activities, tribunal of arbitrator are arbitration, Arbitration Act 2055, Section 2[h]:

"*Arbitrator means arbitrator or team of arbitrator those who are appointed to the settlement of dispute.*" [1]

B. Statute of the Nepal Council of Arbitration (NEPCA) 1991 / Arbitration

In the preamble of Statute of the Nepal Council of Arbitration (NEPCA), It is not defined the arbitration but to resolve dispute of parties regarding Development, Construction, Industrial, Business etc. have been confined the jurisdiction of arbitration:

"*...disputes of development, construction, industrial, trade and other nature which are to be resolved through arbitration.*" [2]

Besides arbitration is intended as major method of dispute resolution in the objective of Nepal Council of arbitration that Section 5[A][1] of the statute [NEPCA]- on behalf of the objective of the council- shall be :

"*To initiate, promote, protect and to institutionally develop activities relating to arbitration...methods of dispute resolution in Nepal.*" [3]

1 Gyaindra Bahadur Shrestha, Act Collection of Nepal, Part-2, Management Committee of Law Books, Putalisadak, 2074, P. 507
2 Statute of the Nepal Council of Arbitration (NEPCA)1991, (With the Third Amendment, 2020) NEPCA Publication, 2020, P.1
3 Ibid, Section 5[A][1], P. 3

C. **Arbitral Procedures Regulations of Nepal Council of Arbitration (NEPCA) 2016 / Arbitration**

Arbitral Procedures Regulations of Nepal Council of Arbitration (NEPCA) 2016 is similar to Arbitration Act 2055 on the point of view to the definition of arbitration which is concerned in the function of arbitrator for resolution of dispute [parties] is called arbitration which depends on written agreement is as per consent of parties. [4]

D. **Arbitration / Civil Case only**

Arbitration is onto civil is confined which is as follows:

"*...On the absence of Court [Jurisdiction], arbitrator- appointed by parties -is permitted to resolve disputes regarding civil matters eg. Cashes, Property, Contract etc...*" [5]

Undoubtedly, It is focused civil matter or issue in Arbitration Act 2055, Section 3[2]:

"*...If parties of in case concern of civil, it shall be under arbitration which have to request jointly to resolve dispute...*" [6]

E. **Arbitration / Exclusion of Criminal Case [Out of Contents]**

The base of Criminal Dispute is out of the content [jurisdiction] of arbitration is the fundamental logic or base of arbitration, Gyaindra Bahadur Shrestha makes simpler or asserts:

"*...Criminal Dispute is not confined in arbitration.*" [7]

2. **Compulsion of Arbitration**

It seems that arbitration is onto shunt concept because it may whether alternative or compulsory [obligatory] which depends on parties stands of agreement[contract].

A. Arbitration / Alternative Dispute Resolution [ADR]

Arbitration is decision or activities or processes or tribunal of arbitrator which is a mode or tool of dispute resolution in Nepal which is mode of ADR, on the contrary it shall be compulsion if it is termed in agreement[contract].

Birendra B. Deoja highlights ADR to settle down dispute of parties which is option of parties having depended on contact:

"*...the party autonomy to ... contract, remedies for the violation of the condition of contract and dispute settlement mechanism.*" [8]

B. Arbitration / Compulsory Dispute Resolution [CDR]

If parties planned to ensure Arbitration as the mode to resolve forthcoming disputes as the mode in

4 Arbitral Procedures Regulations of Nepal Council of Arbitration (NEPCA) 2016, NEPCA , Kathmandu, Nepal P.16
5 Gyaindra Bahadur Shrestha, Act Collection of Nepal, Part-2, Management Committee of Law Books, Putalisadak, 2074, P. 507
6 Ibid, P.511
7 Ibid, P.508
8 Birendra B. Deoja, Prospectus for Nepal as a Hub for International Arbitration of Commercial Disputes, Bulletin,Vol. 26[2020], NEPCA, Nepal, P. 4

agreement[contract], they have to follow arbitration in compulsory[mandatory].So no one party can litigates in Court.

If parties are bounded in contract having arbitration, dispute of parties should be resolve through arbitration; moreover if parties jointly petition to resolve dispute through arbitration on the pipeline of court on the context of joint petition is also compulsory[mandatory] and parties have no other option, Arbitration Act 2055 Section 3[1] makes simpler:

"*If it is provisioned arbitration in agreement to the settlement of dispute of parties, they have to resolve dispute as per arbitration …*" [9]

Furthermore, parties of case shall be subject to arbitration to obligatory as parties are in pipeline of the decision if they jointly petition in court to arbitration for the resolution of dispute- the context of civil dispute - as well relating to Arbitration Act 2055 Section 3[2][1]:

"*… If parties of in case of civil concern has prevail, it shall be under arbitration which have to request jointly to resolve dispute in court…*" [10]

It is essence "arbitration" to resolve disputes among parties if it remains in agreement[contract] because agreement is obligatory relating to Arbitration Act 2055 Section 2[A]:

"*…dispute shall be resolved among parties by arbitrator as per written agreement…*" [11]

3. **Contract**

Assumption of contract is underlined basically on Offer and Acceptance- as per existing laws and terms of parties- of parties are prevailed in agreement[contract] which is parameterized in free consent with contractual capacity as well.

A. Terms

Terms are in agreement[contract] should be provisioned is base of offer and acceptance.

B. Binding

From terms, parties are bound in each other.

Obligation

If it is bounded by terms, parties have to obligate terms.

C. Breach [Rejection] of Term

If it is not executed term, it shall be breach.

D. Remedy

If it is violated the terms, the claim of obligation shall be subject to court.

9 Gyaindra Bahadur Shrestha, Act Collection of Nepal, Part-2, Management Committee of Law Books, Kathmandu, Nepal, 2074, P.511

10 Ibid, P. 511

11 Ibid, P.506

E. Contract / Civil Code Act of State 2074

Formally, it is defined - Civil Code Act of State 2074 - contract. And agreement of parties is essence whether to do work or not which is viable to execute.

Definition of contract is mentioned in Civil Code Act of State 2074 Section 504[1]:

"*If two or more than two parties agree to do work or not as per law, it shall be contract which can be executed.*" [12]

Furthermore, contract is prepared in various forms in written or verbal or conduct etc. relating Civil Code Act of State 2074 Section 505[2]:

"*Contract shall be formed which depends written or verbal or conduct.* " [13]

The formation of contract in Nepal is not focused only on written besides verbal and conduct[behavior] are also form of contract.

Verbal and behavior may be more controversial or baseless than written so the form of written contract is more rational to avoid potential dispute which tends easy to resolve dispute of parties. Due to proof of fact is to do as it is prepared contract: irrefutable proof.

F. Contract / Arbitration

If it is provisioned arbitration in agreement [contract], it shall have the jurisdiction of arbitration relating to Arbitration Act 2055 Section 2[A]:

"*...dispute shall be resolved among parties by arbitrator as per written agreement...*" [14]

New Claim / Counter- Claim / Arbitration

Normally, neo claim[liability] or counter-claim is impossible in contract by parties because terms of contract are bound in certain and specific stand: unchangeable, so neo or alteration or prerogatives are not concerned in favour of ToR[contract]. Exceptionally, neo claim and counter-claim shall be permitted on the base of nature of neo claim and counter-claim, phase of arbitration and other relevant circumstances:

"*Once the terms of reference is signed or approved by the Council, no party can make new claims or counter-claims going beyond the bounds of such details of ToR. Provided that he Arbitration Tribunal may grant permission allowing submission of new claims and counter-claims by taking into account the nature of new claims and counter-claims, phase of arbitration and other relevant circumstances.*" [15]

4. Estoppel

Estoppel / Fact

Particularly estoppel is concerned to evidence laws which shall be executed in agreement[contact]as well.

12 Civil Code Act of State, Section 504[1] Management Committee of Law Book, Kathmandu, 2074, P.168
13 Ibid, Section 505[2] P.169
14 Gyaindra Bahadur Shrestha, Act Collection of Nepal, Part-2, Management Committee of Law Books, Putalisadak 2074, P. 506
15 Arbitral Procedures Regulations of Nepal Council of Arbitration (NEPCA), English Version Section 29[6], 2016, P. 30

Parties- Offer and Acceptance -have to stand in same consent whatever it occurs different circumstances having concerned fact or condition, so no one can deny[rejection] his aforementioned statements or agreement having related to obligation. If parties violate agreement [consent], remedies shall be confirmed or executed by arbitration or court on facts but this rule is not applied or concerned to legal points.

It is not defined estoppel in the laws of Nepal though the principle of this is pursuant to Evidence Act 2031 Section 34 [1],[2], the principle of estoppel is contained or mentioned:

As he accomplishes work or he creates situation to be the occurrence of works by someone, parties cannot reject the consent or agreement if they assert by the based on written or verbal or conduct having regarded to the subject of dispute which is obligated to parties: claim and legal responsibility, but this canon is not concerned on the context of law. [16]

Gyaindra B. Shrestha makes simpler that consent of parties to do work is concerned of fact which is condition of contract so they are to bind, they cannot refuse of their previous stand whether conduct or work:

"*Bar or impediment preventing a party from asserting a fact or a claim inconsistent with a position that party previously took, either by conduct or works....*" [17]

It is prohibited double or multi opinion onto previous terms or agreements is related to Approbate and reprobate which is called estoppel on fact:

"*Approbate and reprobate means to approve and disapprove. This principle is based on the maxim 'quod approbo non reprobo' which translates to 'that which I approve, I cannot disapprove. Therefore, an individual has to either accept the whole contract, order etc. or reject the whole thing.*" [18]

Black's Law Dictionary defines estoppel that is related multi opinion of parties is to ban onto fact:

"bar or impediment raised by the law, which precludes a man from ...from denying a certain fact or state of facts, in consequence of his previous ... denial or conduct or admission, or in consequence of a final adjudication of the matter ...." [19]

5. Interrelation between Contract / Estoppel / Arbitration

If it is provisioned arbitration in agreement[contract] to resolve forthcoming dispute of parties, it shall be mandatory. Besides agreement[fact] is not mutation is the base of estoppel which is previous statement [formal stand] is fixed to parties; if they have multi-stands, no party has the right of alteration; on the logic- henceforward- parties cannot deny arbitration: The breach of contract and estoppel.

16 Prakash Wasti, Evidence Law, 5th edition 2074, Pairavi Publication, P. 272, 273
17 Shanker Kumar Shrestha, Dictionary of Law & Justice, First Edition 2004, Reprint 2008, Pairavi Publication, Putalisadak P. 245
18 www.lawyersclubindia.com › articles › Approbate-and-Reprobate-1262
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6. Conclusion

Finding of aforesaid sections[abstract] of the Code, the Act, the Statute and the Regulation, arbitration is whether CDR or ADR which depends on circumstances or conditions. If Parties declare arbitration in their contract and the approval to joint petition of parties from the court shall be obligatory, moreover if parties violate contract -that- this subject shall be estoppel is mandatory of arbitration. Consequently, if parties of dispute are bounded for arbitration in contract, they are not permitted to deny the jurisdiction of arbitration having regarded only on civil dispute not criminal case. The joint petition of parties to the court is not formal contract that is the base or a category of contract as per Civil Code Act of State 2074 Section 505[2] P.169 -Nepal- henceforward which is mandatory.

The End

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Recognition and Enforcement of Arbitral Award in Nepal: an Overview

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Background

In Arbitration, arbitrator or panel of arbitrators render the decision on dispute after hearing the statement of both parties which is called arbitral award. Award is the final crock of arbitration, without award there is no meaning of arbitration.[1]The importance of arbitration is undeniable. However, without the enforcement, the award of arbitration becomes a paper tiger.[2] The key to successful arbitration is the enforcement of the award. Most of the award is voluntarily honored by the losing party[3] while some will refuse voluntary honor to corporate parallel to other dispute resolution mechanisms. The winning party can seek enforcement through the informal and formal methods of enforcement of the award. The informal method consists of applying commercial, diplomatic, or reputational pressure or negotiating a reduction in payment obligations. The formal method requires the winning party to rely on any international treaty to which state, where the award is to be executed, is party or domestic law. The state has no obligation to recognize the award in lack of treaty obligation.[4]

Convention on Recognition and Enforcement of Foreign Arbitral Award, 1958[5] with the ratification of more than 169 counties has become one of the highly ratified conventions for the recognition and enforcement of the foreign arbitral award. The award made in one State whose recognition and enforcement are sought in another State is a foreign award.[6] The problem of recognition and enforcement arises due to the difference in application and interpretation of provisions of the New York Convention by court or difference in implementation legislation of the convention. Arbitration Act, 1999[7]of Nepal deals with the recognition and enforcement of the arbitral award in Nepal.

Notwithstanding the adoption and enactment of the legal provisions concerning recognition and enforcement of the award in Nepal, the issue is rarely practiced compared to practices in other jurisdictions. Considering this, the very article attempts to explore the procedure required to enforce an arbitral award

1 Bishnu Prasad Upadhaya, *A Critical Study on Enforcement of Arbitral Award*, (2012) 320 NEPAL LAW REVIEW. *Nepal Law Review*, Nepal Law Campus, Kathmandu.
2 Kerin Lughaid & Cullen Anthony, 'Enforcement of foreign arbitral awards: a London perspective', (2017)388(4), INT J. DIPLOMACY AND ECONOMY.
3 CIAA International Arbitration Survey Improvement and Innovation in International Arbitration, 2015 (3).
4 Ralf Michals, 'Recognition & Enforcement of Foreign Judgments', (2009) MAX PLANK ENCYCLOPEDIA OF FOREIGN JUDGMENT, https://scholarship.law.duke.edu/faculty_scholarship/2076/ (Last visited 20 June 2022).
5 New York Convention on the Recognition and Enforcement of Foreign Arbitral Award, 10 June1958. (New York Convention).
6 Gary Born, International Arbitration Law, (2012) 453 KLUWER LAW INTERNATIONAL.
7 Madhyasta Ain, 2055, (Arbitration Act, 1999), ss. 34 ,35.

in general and specifically to the enforcement of foreign arbitral award in Nepal. The paper also examines the award recognition and enforcement provision of UNCITRAL Model Law[8]on commercial arbitration. This paper applies the comparative analysis method to seek the rooms for efficiency and effectiveness of Nepali arbitration law, taking UNCITRAL Model Law on Commercial Arbitration as reference.

Arbitral award

Arbitration is a means of settlement of dispute or conflict by a person or persons called arbitrators and appointed by the parties with written or implied consent.[9] The parties with their diverse legal, commercial, and cultural background increasingly opt for arbitration due to the flexibility of procedure, the enforceability of awards, privacy in the arbitral process, autonomy of parties to select the rules and arbitrators, and the arbitrator ability to avoid specific legal system.[10]

The arbitral award is the outcome of the arbitration. It is the final and binding decision given by the sole arbitrator or arbitration tribunal. An award is the decision of the arbitrator based upon the submission or submissions made to him in arbitration.[11] The principal purpose of an award is to make and record the arbitrator's final and binding decision on the matters in issue between the parties and, by publication of the award to the parties, to inform them of that decision. Every award must give reasons for the arbitrator's decision unless the parties agree that it shall not do so (or an agreed award confirming a settlement between the parties).[12]In other words, the award is the decision made by the arbitrator. UN considers arbitral award for determining the rule of law as provided in article 38 of the statute.[13]In the context of Nepal, Arbitration Act, 2055 has governed the provision of Arbitration. However, it has neither defined the term 'Arbitration' nor Arbitral Award. Nevertheless, an award or decision of an arbitrator is final and binding for parties unless the award is not against fairness, the law or public policy.[14]The decision made by the arbitrator is final and binding so its need to be implemented. Generally, the looser party implements award through so moto initiation, if s/he denies implementing, then winning party goes to court for its enforcement. Court shall implement the award as its own decision.[15]

Mainly, there are two types of arbitral award as per the provision of the Arbitration Act, 2055. They are: (1) Domestic arbitral award, and (2) Foreign arbitral award. Similarly, section 31, 32, and 34 is concerned with the implementation of both domestic and foreign arbitral award respectively. The decision of arbitrators that that usually takes places between the citizens or residents of the same state and the law applicable to determine the dispute between them is the law of the state is called domestic award. Similarly, an arbitral award made in the territory of a state other than the state where the recognition

8 UNCITRAL Model Law on Commercial Arbitration, 11 December 1985. (Model Law).

9 Domkev Martin, The Law and Practice of Commercial Arbitration, Britannica website, https://www.britannica.com/topic/arbitration (Last Visited August 6, 2020).

10 International Arbitration Survey Improvement and Innovation in International Arbitration, (2015) QUEEN MARRY UNIVERSITY OF LONDON, https://www.whitecase.com/publications/insight/2015-international-arbitration-survey-improvements-and-innovations (Last Visited August 6, 2020).

11 RAY TUNER, AN ARBITRAL AWARD, A PRACTICAL APPROACH, (2005) Blackwell publishing.

12 Ibid. p. 4.

13 UN, Report of international arbitral awards, vol. XXXIII.

14 ARUNA SHARMA, COMMERCIAL'S PRACTICAL APPROACH TO ARBITRATION AND CONCILIATION, 85 (2004), Commercial Law Publishers.

15 Nepal MasysthataSambandiAin, 2055, (Nepalese Arbitration Act 1998), Nepal, s.32.

and enforcement of the award is sought is a foreign arbitral award.[16] Beside these other forms of arbitral award are (i) Final award, (ii) Partial award, (iii) Consent or agreed award, and(iv) Default award.

It is not as straightforward to define a foreign award as it is to define an award. What makes an award foreign is entangled even in New York Convention. Article I of the New York Convention provides hybrid definition of a foreign award. There are two types of criteria used in Article I, viz. Territorial Criteria is easy to grasp and understand. The award made in foreign countries is foreign awards. However, as noted by Article I, Viz, non-domestic award as the foreign award, the other criteria in fact create difficulty in putting forward the exact definition of a foreign award. Van Den Burg has, however, tried to clarify the conventional definition of the foreign award as the award made in the other country or as per the laws of other countries. Thus, the researcher concludes award meeting any of the two criteria is a foreign award.

- The award made in a foreign land
- The award with other country's law is a choice of law governing the agreement and arbitration.

Recognition and enforcement of arbitral award

The two terms "recognition" and "enforcement," which are closely linked with one another, are used together most of the time. For example, conventions use 'recognition and enforcement' instead of 'recognition or enforcement.[17] The interlinkage and use of the terms together and seemingly confusing use of enforcement and recognition interchangeably without giving proper meaning, definition and differentiation to them, the need for clarification of these words at this stage guide the inquiry.

Recognition

Recognition of an award is a defensive process that secures valid defense to any party's claim to a new proceeding in the subject matter dealt in the arbitration. In recognition of the award, the party or parties to arbitration seek to produce an award to court, asking it to accept the legality and effect of the arbitral award, which bars the concerned party to bring another claim based on the same subject matter for same issue. Recognition is therefore important as the recognized award renders the issues that have been dealt with therein *res judicata,* and the same cannot be relied upon to institute another claim and thus render any such claim nugatory.[18] A party seeks recognition of an arbitral award so that he or she can rely on/ invoke the doctrine of *res judicata.* Thus, the purpose of recognition is to block any attempt to raise in fresh proceeding issues previously decided in the arbitration. Therefore, recognition is compared with a shield whose aim is protecting interest of the party holding it.

Enforcement

Enforcement is the use of legal rules, court procedures for executing the conditions of an arbitral

16 Bishnu Prasad Upadhyaya, 'A Critical Study on Enforcement of Arbitral Award', 322 (2012) NEPAL LAW REVIEW, Nepal Law Campus, Kathmandu.

17 New York Convention (n7), art IV.

18 Redfern and Hunter on International Arbitration (n 12), p. 622.

award.[19] When a court is asked to enforce an award, it is asked not merely to recognize the legal force and effect of the award but also to ensure that it is carried out using legal sanctions available in the country. Enforcement goes a step further than recognition.[20] A court that is prepared to grant enforcement of an award will do so because it recognizes the award as validly made and binding upon the parties to it, and therefore suitable for enforcement. The purpose of enforcement is to act as a sword making it mandatory for the party to comply with the award. Enforcement of award grants legal sanctions compelling another party to arbitration carry out the settlements in the award.

Difference between 'recognition' and 'enforcement'

Recognition is a defensive mechanism, whereas enforcement is the executing mechanism of the arbitral award. Enforcement is a step further than recognition. An award-creditor in a foreign arbitral award may seek only for its recognition or its recognition and enforcement.[21]

The award meeting the condition for recognition may not meet the condition for enforcement. For example, in the case of *Dallal v Bank Mellat*, the English court held that the court could recognize the arbitration award from a competent court as valid law. However, it may not be enforceable under English law.[22] Thus, recognition does not mean the arbitral award is enforceable. However, the arbitral award enforced is also recognized.

The procedural complexity of enforcement is higher than that of recognition as the party seeking enforcement must identify the properties of the losing party, which is difficult. S/he also must consult and reach whether a particular country (where a particular property is located, for example) will enforce the award. The local legal expert needs to be hired for this. This procedural complexity increases if the assets are in more than one country.[23]

Thus, the difference between 'recognition' and 'enforcement' is further summarized as follows:

"Recognition is an undertaking by a state to respect the bindingness of foreign arbitral awards. Such awards may be relied upon by way of defense or set-off in any legal proceedings concerning the subject matter of the award commenced in the courts of the state concerned, whereas enforcement is an undertaking by a state to enforce foreign arbitral awards, following its local procedural rules. [24]

Recognition and enforcement of foreign arbitral awards under the new york convention

The growing importance of international arbitration to settle international commercial disputes gave birth to New York Convention, which came into force on the June 7, 1959.[25] The Convention's main

19 Okuma Kazutake, 'Confirmation, Annulment, Recognition and Enforcement of Arbitral Awards' THE SEINAN LAW REVIEW, 37 (2005), https://researchmap.jp/read0036673?lang=en, (Last Visited August 6, 2020).

20 Ibid.

21 Ibid. at 30.

22 Dallal v. Bank Mellat, Court of Appeal, United Kingdom, 1985, England and Wales Jurisdiction.

23 Ibid .685

24 TH Bahta, Recognition and Enforcement of Foreign Arbitral Awards in Civil and Commercial Matters in Ethiopia, MIZAN LAW REVIEW, 105(2011).

25 New York Convention (n 7),

objective is to oblige contracting parties to apply the non-discrimination principle against the foreign and domestic award.[26]

The convention signed by 168 States making it a universally adopted convention, sets out the procedure and general ground of defense against the recognition and enforcement. It sought to provide the standard for recognizing and enforcing the arbitral award, both foreign and non-domestic arbitral awards, including an arbitration agreement.

The convention obliges contracting parties[27]to recognize arbitral awards as binding and enforce them in accordance with the procedural rules of the territory upon which the award is relied upon or asked for recognition and enforcement.[28]The Convention, thus, provides for a clear and uniform method of recognition and enforcement of foreign arbitral awards.[29]The Convention foresees that the contracting parties do not impose impeding conditions requirements (such as procedures and administrative requirements) to recognize or enforce the arbitral awards that are subject to the recognition or enforcement of domestic arbitral awards[30].

Thus, as much as there are two reservations that can be made to restrict its application. These are found under Article I (3) of the Convention as follows: A State can restrict the applicability of the convention or some Articles thereof to awards made only in the territory of another Contracting State; and, the entitlement to a contracting state to indicate that it will only apply the convention to difference arising out of a legal relationship whether contractual or not 'which are considered as commercial under the national laws of the country making such declaration...'

Many commentators have praised the convention as 'the single most important pillar on which the edifice of international arbitration rests,'[31] however, the convention is criticized as inadequate for the following three reasons:

1. Availability of reservation to a certain aspect of convention can be used to frustrate recognition and enforcement of an arbitral award[32];
2. Many States are yet not parties to the convention, making it difficult for the parties to arbitration and award difficult to enforce the award in such states, including the condition in which contracting states have not domesticated the convention despite ratification.[33]

http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html (Last Visited August 6, 2020).

26 New York Convention (n 7) Preamble.

27 Born (n 20), pp. 459.

28 New York Convention (n 7), Art III.

29 Redfern and Hunter (n 12) p. 634.

30 New York Convention (n 7), Art. III.

31 J. Gillis Wetter, 'The Present Status of International Court of Arbitration of the ICC: An Appraisal', THE AMERICAN REVIEW OF INTERNATIONAL ARBITRATION, 22(1990).

32 New York Convention (n 7), art. I (3).

33 Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards, https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards/status2 (Last Visited August 6, 2020).

3. The convention lacks a detailed procedure on recognizing and enforcing the award in domestic courts, leaving recognition and enforcement of arbitral awards at the mercy of the enforcing state.[34]

Procedure for recognition and enforcement under the new york convention

New York Convention states that the jurisdiction where the foreign arbitral award is sought for recognition and enforcement can refuse to recognize and enforce the award at the party's request against whom it is invoked if certain conditions are met. Born suggests that article III of the New York Convention should be studied together with article V of the Convention, which sets the list of grounds for non-recognition of the awards.[35]The procedure for securing recognition and enforcement of a foreign arbitral award under the convention is straight and to the point. The Convention provides in Article IV(1) that to obtain recognition and enforcement, the party applying shall, at the time of the application process, supply the duly authenticated original award or a certified copy and a duly authenticated original agreement referred to in Article II of the convention.[36]Where the agreement or the award is not in the country's official language in which the award is relied upon, the party applying must provide translations of the documents, and the translation must be certified by an official or sworn translator or by a diplomatic or consular agent[37]. Therefore, a party seeking recognition and enforcement of the foreign arbitral award must make an application accompanied by the arbitral agreement, which formed the basis for the arbitration and a copy of the award.

The use of 'at the request of the party against whom it is invoked' makes it evident that the jurisdiction where the recognition and enforcement only undertake the role as a judiciary of an adversarial system. In addition, the New York Convention transfer the burden of proof for non-recognition of foreign arbitral awards to the party who seeks non-recognition of the award in question, in different to the provisions made by the Geneva Convention on the Execution of Foreign Arbitral Award 1927 referred to "Geneva Convention" hereinafter. [52]

Article V of the New York Convention provides two ways to recognize the foreign award can be refused. First, it is at the request of the party seeking to block the enforcement, and second, it is by the discretion that can be exercised by the competent authority on whose behest the recognition relies.

Article V (1) of the New York Convention states the recognition and enforcement of the award may be refused at the request of the party against whom it is invoked if that party furnishes to the competent authority where the recognition and enforcement are sought the following proof:

1) Invalid arbitration agreement[38]

2) Denial of opportunity to present case[39]

34 JG Castel, 'The Enforcement of Agreements to Arbitrate and Arbitral Awards in Canada', CANADA- UNITED STATES LAW JOURNAL, 491 (2017).
35 Ibid at 459.
36 New York Convention (n 7) art. II(1)
37 Ibid.
38 New York Convention (n 7) art V (1) (a).
39 Ibid, art v (1) (b).

3) Matters out of scope of the arbitration agreement[40]

4) Non-compliance with the arbitration agreement in the composition of the arbitral tribunal and arbitration proceeding[41]

In addition to these grounds of non-enforcement based on the request of parties, Article V (2) of the New York Convention states the conditions whereby the competent authority where the enforcement is sought can deny enforcement of the foreign arbitral award:

1) Incapability of the matter

2) Public Policy Consideration

The refusal grounds can be divided into two broad categories: Procedural and substantive. The procedural grounds are those provided under Article V (1), while the substantive grounds are provided under Article V (2).[42]The parties may raise the 'procedural grounds while the substantive grounds may be raised by the parties or by the court ex officio.[43]The procedural grounds safeguard the parties against private injustice; meanwhile, the substantive grounds serve as an explicit escape route to enforce a country's inherent interests.

Moreover, the New York Convention does not state which law is applicable when determining whether the procedures during the arbitration process were flouted. It could be the law agreed upon by the parties to the arbitration, the law of the seat of the arbitration, or even the law of the enforcing state[44]

1) Invalid Arbitration Agreement

The formation of the arbitration agreement is dealt with in Article V (1) (a) of the New York Convention. Depending on that, arbitration has been administered to render the award whose recognition and enforcement is sought.

In the case of i) parties being identified incapable of agreeing to the applicable law and ii) the agreement identified as invalid under the governing law to which the parties agreed, such arbitration agreement is considered invalid.

The party shall prove an arbitration agreement as invalid if s/he seeks non-recognition of the award. Nevertheless, the invalidity of the arbitration agreement is severable and independent from the agreement where it appears[45], and it is the arbitration agreement that has to be invalid and not the agreement on which the dispute has arisen.

40 Ibid, art v (1) (c).

41 Ibid, art v (1) (d).

42 Grounds for Refusing Enforcement of Foreign Arbitral Awards under the New York Convention: A comparison of the US and Sharia Law (n 26).

43 S. I. Strong, 'Enforcing Class Arbitration in the International Sphere: Due Process and Public Policy Concerns', UNIVERSITY OF PENINSULA JOURNAL ON .INTERNATIONAL LAW, 30(2008).

44 May Lu, 'The New York Convention on the Recognition And Enforcement of Foreign Arbitral Awards: Analysis of the Seven Defences to Oppose Enforcement in the United States and England', ARIZONA JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW, 747(2006),
https://www.tblaw.com/.../mlus-journal-note-23-ariz-j-intl-l-747-466/ (Last Visited June 6, 2020).

45 Ibid.

Along with the valid arbitration agreement and conduct needed for enforcement, the capacity of the parties is another important requirement. Lack of these requirements can provide defense to the party to challenge the award and the agreement as such.

The issue of illegality of the agreement could be raised if it was made by fraud, misrepresentation, or undue influence[46] , along with the capacity of the parties.[47]

2) Denial of opportunity to present cases

Article V (1) (b) of the New York Convention reflects the principle of natural justice (*Audi alteram partem*). The parties to arbitration should be served with due notice and should be given equal and proper opportunity to present cases. However, the process shall be in accordance with the procedure agreed in the proceeding. The lack of opportunity to present the case is the most important ground for refusal under the convention. It ensures that arbitration is conducted in a just way with the fulfillment of all procedural requirements as per the party's agreement.[48]

Due process, therefore, refers to different notions with different names depending on the national laws of a particular country, including but not limited to: natural justice, procedural fairness, right of and an opportunity to be heard, the principle of *de la contradiction* (adversarial principle) [49]and equal treatment.[50] The party with the perception that he or she was not fairly treated in the course of arbitration can raise the ground of due process grounds to challenge the recognition and enforcement of the arbitral award.

This ground of non-recognition investigates multiple issues, from the credibility of arbitrators to whether the losing party had the opportunity to present its own. Etc.[51] Thus, the role of the national court at the place of enforcement is limited. Its role is simply to decide whether there was a fair hearing but not the correctness of the award or lack thereof. [52]

3) Matters Out of Scope of the Arbitration Agreement

Article V (1) (c) of the New York Convention states that the matters not contemplated by the arbitration agreement shall be denied recognition and enforcement. Furthermore, if the award consists of mixed matters, contemplated by the agreement and those not contemplated; if the award for matters contemplated in the agreement to arbitrate can be separated from those matters not contemplated for arbitration, the award for contemplated matters can be enforced. Under this ground, a party may argue that there was no valid agreement to arbitrate on the subject matter or that the tribunal has exceeded

46 Rohullah Azizi, 'Grounds for Refusing Enforcement of Foreign Arbitral Awards under the New York Convention: A comparison of the US and Sharia Law, (2010)
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1616746 (Last Visited August 6, 2020).
47 Ramona Martinez, 'Recognition and Enforcement of International Arbitral Awards under the United Nations Convention of 1958: The "Refusal" Provisions.', 507 (1990).
48 Redfern and Hunter (n 12) p. 685.
49 Definition of principle
https://www.proz.com/kudoz/french-to-english/law-general/3639691-principe-de-la-contradiction.html (Last Visited June 6, 2021).
50 Enforcing Class Arbitration in the International Sphere: Due Process and Public Policy Concerns 53(89).
51 Ibid at 55.
52 Redfern and Hunter 12.(686).

the powers given to it under the arbitral agreement. Martinez has emphasized the element when this ground can be used:[53]

"The award deals with a difference not contemplated by or not falling within the terms of the submission agreement, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced."

This ground requires the arbitral tribunal to stick to the terms of the arbitral agreement. The award rendered beyond such would make the award null and void, and the losing party can easily vacate or challenge the enforcement of the award. This convention gives authority to sever the agreement within the agreement and those rendered beyond it. When severance is possible, the court does so, and there comes the condition of partial implementation of the award. This tendency was seen in *Whittemore's case*,[54] where Court ordered partial enforcement based on this ground.

4) Non-Compliance with the Arbitration Agreement in the Composition of the Arbitral Tribunal and Arbitration Proceeding

Article 5 (1) (d) of the New York Convention states that the recognition and enforcement can be denied if the arbitral authority or the procedure was not following the agreement of the parties, or in absence of such agreement, was not following the law of the country where the arbitration took place.

Thus, the arbitral authority or composition of the arbitral tribunal and arbitration proceeding shall be done as per the arbitration agreement. Consequently, failure to comply with these stated conditions will render the award denied recognition and enforcement.

However, if such provision does not exist, it should be done as per the law of the country of venue. Another condition of non-enforcement contemplated by this article is when there exists no such agreement concerning the process. In such cases, the default process following the law of the venue should be complied with. Born comments that this is 'less straightforward and that since it only applies in absence of an arbitration agreement, it is kept with an object to ensure minimum compliance with due procedures. [55]

According to this provision, it can be the ground of defense to the losing party to challenge the recognition and enforcement of award if he or she can provide that the tribunal's composition, arbitration procedure was not according to the arbitral agreement.[56]

These grounds of denial based on a procedural aspect not according to the arbitration seems to be because arbitration is an outcome of respects the autonomy of the parties. The arbitration tribunal is under obligation to respect what the parties have agreed upon in the arbitral agreement some instances court may not justify these grounds based on the doctrine of estoppel to allow recognition

53 Ramona Martinez, 'Recognition and Enforcement of International Arbitral Awards under the United Nations Convention of 1958: The "Refusal" Provisions.', 507 (1990).

54 Parsons & Whittemore Overseas Co. v. SocieteGenerale de L'Industrie du Papier, United States Court of Appeal, 1970, https://scholar.smu.edu/cgi/viewcontent.cgi?article=4086&context=til (Last Visited June 6, 2021).

55 Ibid at 473.

56 The New York Convention of 1958: An Overview (n 22) p. 42.

and enforcement to go ahead even in the face of glaring breach of an arbitral agreement or improper composition of the tribunal. However, it is considered that this should not happen as in international arbitration. Many national courts do not have grounds for recognition, enforcement, or challenging the award until it is final.

Substatntive matter of non-enforcement under the new york convention

The enforcing court can, on its motion, refuse to recognize and or enforce an award based on substantive grounds provided for under Article V (2) of the Convention. Under this Article, two grounds are identified as discussed below.

1) Incapacity of the Matter

Article V (2) (a) of the New York Convention states that the enforcement may be denied on the ground that the issue of the award is not arbitrable in the country of enforcement. Thus, for the matter of arbitrability, the autonomy of the party is not considered. According to Born, the question of arbitrability in article II of the Convention deals with what issues can be taken for the arbitration in the first place.

As provided under Article V (2) (a), where the subject matter is not capable of settlement by arbitration under the applicable law is determined by the law of the country in which enforcement is sought. In a matter of arbitrability, 'a court may on its motion or upon being moved by a party refuse to recognize and or enforce an award on the ground of non-arbitrability.'[57]

Although it is the state's sovereign right to determine the matters of arbitrability in the country, this provision has been criticized by many. Van Den Berg argues that; this ground can be 'deemed superfluous as the question of non-arbitrable subject matter is generally regarded as forming part of the general concept of public policy.[58]

Different courts have given different interpretations to the doctrine of non- arbitrability, with others granting the defense while others are refusing. If two maters, one arbitrable and other non-arbitral, the court can implement the award on the arbitrable matter and discard the non- arbitral award

However, research suggests convention should come up with a uniform framework and checklist of criteria to determine the arbitrability of the matters to be checked by the contracting state parties to the convention.

2) Public Policy

The competent authority of the state in which enforcement is sought may deny the enforcement of any award if the enforcement of the award is against the state's public policy. Public policy is also applied in other subjects such as the enforcement of contracts and holds that the state may deny enforcing any such matters against its interest or law. The convention does not define public policy, nor does the law of Nepal.

57 New York Convention, (n 7), art. (2).
58 Ibid at 22.

Buchanan has, however, tried to define public policy. *Public Policy is the final parameter of the law that, while it is reflected in and often expressed by statutory and constitutional statements of law, also dictates either consent or constraint, permission or prohibition, when statutes and constitutions are silent*.[59]

Thus, Buchanan sees public policy beyond law and has a wider scope as it covers consent, conscience prohibition, or permission even where the law is silent on a matter.

Public policy has been termed *ordre public* as well as good morals in some states, e.g., the Arbitration Act of Nepal. A South Korean Case[60] notes that the objective of the public policy is to protect the fundamental moral beliefs and social order of the enforcing state and that the public policy consideration should be interpreted narrowly, i.e., when foreign rule applied in an arbitral award is against the national law, it does not necessarily constitute the ground of refusal to enforce.

According to the grounds contained in Article V, therefore, it seems that recognition and enforcement of foreign arbitral awards 'may be refused' 'only if substantial irregularities, mostly of a procedural nature, occurred in the arbitration proceedings.'[61] The refusal grounds contained in article V are sacrosanct so much that 'all other countries on an application for recognition and enforcement are limited to the grounds for refusal mentioned therein.[62]Where the arbitral award is contrary to the public policy of the enforcing state, recognition and enforcement of such award may be refused[63] enforcement of foreign arbitral awards may be denied on this basis only where enforcement would violate the forum state's most basic notions of morality and justice.[64]

The approach to public policy is different in different countries. Some countries, courts have given a wider and more liberal interpretation to the public policy defense even though such a generous interpretation does not augur well with and is contrary to the principle of autonomy of the parties and respect for finality of awards.[65]

Uncitral model law, 1985

UNCITRAL Model Law was adopted in 1985 to harmonize and improve the national legislation on arbitration. It reflects worldwide consensus on principles and issues of international arbitration. It helped to bridge the disparity that was existing in national arbitration statutes. It sets the perspective regime of arbitration procedure from the agreement to arbitrate, the tribunal's composition, degree

59 Mark A. Buchanan, 'Public Policy and international Commercial Arbitration,' AMERICAN BUSINESS LAW JOURNAL, 511 (1988).

60 Adviso N.V. v. Korea Overseas Construction Corp., (cited from Jack M. Graves & Joseph F. Morrissey, 'Arbitration as a Final Award: Challenges and Enforcement', in International Sales Law and Arbitration: Problems, Cases, and Commentary.)

61 Kenneth R. Davis, 'Unconventional Wisdom: A New look at Article V and VII of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards' TEXAS INTERNATIONAL LAW JOURNAL (2002),43-57.

62 Grounds for Refusing Enforcement of Foreign Arbitral Awards under the New York Convention: A comparison of the US and Sharia Law (n 26).

63 Redfern and Hunter (n 12) p. 656.

64 James M. Gaitis, 'International and Domestic Arbitration Procedure: The Need for Rule Providing a Limited Opportunity for Arbitral Reconsideration of Reasoned Awards', THE AMERICAN REVIEW OF INTERNATIONAL ARBITRATION, 15(2004).

65 Homayoon Arfazadeh, 'Report: In the Shadow of the Unruly Horse: International Arbitration and the Public Policy Exception' HANS SMITH AND JURIS PUBLISHING INC. AMERICAN REVIEW OF INTERNATIONAL ARBITRATION (2002) 43.

of court intervention, etc. [66]The eighth chapter, which is the last chapter of the model rule, deals with enforcement and recognition of the award.

Uniform Treatment of Award

Any arbitral award shall be recognized as a binding document irrespective of its country of origin.[67] This shows the place of arbitration or award is of minor importance in arbitration. The provision also shows that the same provision should do the recognition of both foreign and domestic arbitration. This shows the divergence from the New York convention, which is based on the award's principle of territoriality and nationality.

Procedural Requirement for Enforcement of Arbitration

Since there is no need to unify the modalities of a particular proceeding, the UNCITRAL model does not lay down the procedural details of recognition and enforcement. It forms an intrinsic part of the national judicial system. However, a maximum condition required for enforcement of arbitral award is as follows:- [68]

- Write an application to the competent court for enforcement.
- Submit the duly authenticated original award or a duly certified copy thereof,
- The original arbitration agreement or a duly certified copy thereof.
- If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.

With the amendment of UNCITRAL model law in 2006, parties shall submit arbitral awards for enforcement of the award. However, the arbitration agreement is no longer required. The reason behind this amendment is the non-requirement of a written arbitral agreement. [69] However, what is of controversy is the provision of Article II (1) which talks of the agreement being in writing yet does not precisely define and state the scope of that requirement. Article 7(3) of the Model Law provides an agreement in writing if its content is recorded in any form, whether the arbitration agreement or contract has been concluded orally, by contract, or by other means. Further, Article 7(4) of the model law provides that mere show or evidence of 'agreement by the parties to submit to arbitration all or certain disputes' is enough. Therefore, the model law seems to harmonize the law to bring in conformity with the modern developments in technology such that evidence of 'implied consent' seems sufficient.[70]

Grounds for Refusing Recognition or Enforcement

The grounds on which recognition or enforcement may be refused under the model law are identical to those listed in Article V of the 1958 New York Convention, which focuses on procedural irregularities and is extremely limited. Under the model law, the grounds for recognition and enforcement are relevant to all commercial arbitration, irrespective of whether it is a foreign award. The purpose of adopting such an

66 Gracious T. Dunna, 'Keeping with the times, revisiting the UNCITRAL Model Law on International Commercial Arbitration', JOURNAL OF INTERNATIONAL DISPUTE SETTLEMENT, 43(2020).

67 Model Law, (n 11) 35(1).

68 Ibid, art. 35(2).

69 Albert Jan van den Berg, The New York Arbitration Convention of 1958: Towards aUniform Judicial Interpretation, KLUWER LAW AND TAXATION PUBLISHER, (1981) 28-29.

70 Redfern & Hunter (n 12) p. 91.

approach is important and widely adhered to Convention for the sake of harmony. However, some parts of the provisions needed clarification, and the duplication would not harm the existing practice even if it is repeated.[71]

For example, the first ground on the list, "the parties to the arbitration agreement . . . were, under the law applicable to them, under some incapacity," has been viewed by some as containing an incomplete and potentially misleading conflicts rule. Similar reservations have been expressed concern the next ground. The "agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made." On the other hand, this indirect and somewhat incomplete conflicts rule could serve as a useful starting point if the Commission were to decide to include some general conflicts rules in the model law.[72]

The above grounds in summary: invalidity of arbitral awards; violation of due process; excess of arbitrator's authority; irregularity in the composition of the arbitrators; non-binding awards are same as New York Convention [73] as the model law is intended to harmonies the law on recognition and enforcement of international arbitral awards and to create uniformity much as it sets maximum standards, and the states can retain even a more stringent provision.[74]

RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARD IN NEPAL

In the context of Nepal, Arbitration Act introduced the procedure for execution of arbitral awards by the court as its own judgment. Award rendered in a foreign country, in agreements signed by a resident of Nepal that contained the provision of Arbitration in any foreign country, in accordance with the law of that foreign country, were also made executable in Nepal by this Act. According to this act, the concerning parties must perform or execute the award in time.

Specifically, Section 31 of the Arbitration Act, 2055 (1998) provides forty-five days from the date of receipt of a copy of the award to execution. In case of failure of the parties to execute the award within the time limit (45 days), the concerned party may file a petition to the district court within 30 days from the date of expiry of the time limit prescribed for the purpose for having the award executed. And on receipt such application filed in this way, the district court must execute or enforce the award ordinarily within 30 days as its own judgment.[75]

If the any party liable to execute the award refuses to execute, the other party can file a petition against

71 Michal Polkinghorne and Others, 'Grounds for Refusing Recognition or Enforcement", at UNCITRAL Model Law on International Commercial Arbitration: A Commentary', OXFORD PRESS, UK, (2020) 927-976.

72 Gerold Herrmann, 'UNCITRAL's Work towards a Model Law on International Commercial Arbitration', PACE LAW REVIEW, 537(1984).

73 Model Law (n 11) art. 36(1), 36(2)

74 UNCITRAL Secretariat, Commentaries, and explanatory Notes on the UNCITRAL Model Law, by the, UNCITRAL Model, part 2, p. 23 https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf (Last Visited June 6, 2021).

75 Nepal Masysthata Sambandi Ain, 2055, (Nepalese Arbitration Act 1998), Nepal, s.32

him in the court and the court can compel such party to perform the work according to the award. Court plays an important role in enforcement of award both domestic and foreign arbitral award. To make more explicit on the procedure on recognition and enforcement of foreign arbitral award Supreme Court has made the Arbitration (Court Procedure) Regulation, 2002 based on the section 43 of the Arbitration Act, 2055.

There are different procedures on enforcement of domestic award and enforcement of foreign arbitral award. In the case of enforcement of foreign arbitral award, it requires a recognition of award. If the parties of foreign arbitration want to execute an award made in foreign country, then certain procedure are required. To make smooth process of enforcement of foreign arbitral award, different international attempt has been made. Among them, New York Convention, 1958 and UNCITRAL Model Law on International Commercial Arbitration,1985 are most important.[76]Provisions of Article 35 and 36 of the UNCITRAL Model Law regarding recognition and enforcement of foreign arbitral awards and ground for refusing recognition or enforcement have been followed under section 34 of the Act.

Grounds on Recognition and Enforcement of Foreign Arbitral Awards in Nepal

- **The convention does not fully apply in Nepal.**

Nepal became a party to New York Convention on March 4, 1998, by accession.[77] However, Nepal has made the following reservation[78]:-

"Nepal will apply the Convention, based on reciprocity, to the recognition and enforcement of awards made only in the territory of another contracting state. The Government of Nepal further declares that Nepal will apply the Convention only to the differences arising out of the legal relationship, whether contractual or not, which are considered as commercial under the law of the Kingdom of Nepal."

Thus, the convention does not apply fully to recognition and enforcement of arbitral award due to reservation on: -

1. *Reciprocity*
2. *Commercial Matter*

The first legislative enactment concerning arbitration was the Arbitration Act, 2038(1981). This was repealed and replaced by the Arbitration Act, 2055 (1999), which was enacted in line with the UNCITRAL Model Rule.[79]

The Declaration made and not taken back till the date deviates from UNCITRAL Model on Arbitration, which sought the recognition and enforcement of award irrespective of the seat or nationality of the award. Similarly, the condition of reciprocity is not included in Model Law. Model law purposefully

76 Bishnu Prasad Upadhyaya, 'A Critical Study on Enforcement of Arbitral Award', NEPAL LAW REVIEW, Nepal Law Campus, Kathmandu, 312 (2012).

77 https://www.newyorkconvention.org/countries (Last Visited June 6, 2021).

78 Ibid.

79 Bed Prasad Uprety, 'Evolution of Commercial Arbitration in Nepal: Issues and Challenges', NEPAL LAW JOURNAL, 205 (2008).

superseded it to limit the territorial restriction in commercial arbitration and opt for recognition and enforcement of award limiting the role of place of arbitration. The place of arbitration is usually chosen for the convenience of the parties.

- **Nationality of Award**

The basis of determination of nationality of the award in Nepal is done as per the place of arbitration. The Arbitration Act does not define foreign awards. However, it could be inferred from the language of section 34 of the Arbitration Act, which governs the enforcement of the foreign arbitral award in Nepal. The award taken in a foreign country is to be understood as a foreign award.[80] The nationality of the award lies in the venue of the award. The award taken by arbitrators in a foreign country is foreign. The determination of the Nationality of the award is following New York Convention. However, it is not in conformity with UNCITRAL Model Law.

The model law distinguishes between international and non-international awards instead of relying on traditional distinctions between foreign and domestic awards. The rationale of such distinction is that the place of arbitration can be chosen for convenience. Meanwhile, the dispute may have little or no connection with the place of arbitration.

The idea of delocalized or transnational arbitral awards has not been accepted in the UNCITRAL Model Law[81] or Nepali Arbitration law, which helps to infer that delocalized arbitration is not recognized in Nepal.

- **The distinction between recognition and enforcement of the award**

As to the laws of Nepal, the issue of recognition has not been dealt with either in the laws of the country or any court ruling. Thus, if the foreign arbitral award for which 'recognition' or 'recognition and enforcement is being sought satisfies the substantive and procedural requirements enumerated under the laws of Nepal, it can have a *res judicata* effect in the country. In other words, the foreign arbitral award will have legal force and binding effect in Nepal. It cannot be subject to new litigation only after the fulfillment of criteria for enforcement. Since the recognition of the award is not separately dealt with Nepali law.Section 34 deals with the execution of the award. Thus, the law of Nepal does not differentiate between recognition and enforcement of the award, rather requires the parties to fulfill procedural and substantive requirements for execution.

PROCEDURAL REQUIRMENT FOR RECOGNITION AND ENFORCEMENT OF AWARD

- **Competent Court**

The high court of Nepal is a competent court for the recognition and enforcement of the award.[82] The arbitration law is not clear on which high court should the party to award go for the enforcement of the award.

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80 Arbitration Act, (n 10) s. 34.

81 SARCEVIC, 'The Setting Aside and Enforcement of Arbitral Awards under the UNCITRAL Model Law' at Graham & Trotman &MartinusNijhoff, (1989)181.

82 Arbitration Act (n 101).

It depends upon the location and registered address of the losing party. Also, if you are a profitable company, your location in another district that falls under another court's jurisdiction will have to be examined. It is usual for registered addresses to be in Kathmandu and run projects around Nepal with assets based in every part. True for manufacturing, energy, supply companies. Thus, personal jurisdiction is used to determine which high court of Nepal has the jurisdiction.

- **Application**

Any person willing to enforce the award made in a foreign country shall apply to the High Court of Nepal. The written application needs to include the following aspects in the application:-[83]

(a) Description including Name, surname, and address of respondent, place of transaction and of electronic communication medium of contact address like telephone, fax, email, other description subsidiaries to serve notice or correspond,

That conditions as following are already fulfilled.

- Appointment of Arbitrator and award made as per the procedure and subject matter mentioned in the agreement.
- Notification of arbitration proceeding in time.
- The award is final and binding on the parties according to the law of *Situs.*
- The country of *Situs* does not contain a provision under which arbitration awards taken in Nepal cannot be implemented.
- The application has been filed within 90 days from the date of the award.

The grounds show that Nepalese law does not show the presumption award as a valid award to be recognized. This is the point of divergence from the New York Convention and Model Law, guided by the principle of presumption of validity of the award.

- **Required Documents**

Section 34 of Arbitration Act states that parties who seek to have the award enforced must file a petition with competent court within the limited time. The time limit is 90 days from the date of award. While submitting the petition following documents should be submitted along with the petition.[84]

a) The original copy of the award or a certified copy thereof.

b) The original copy of the agreement or a certified copy thereof.

c) If the award made is not in the Nepali language, an official translation thereof in the Nepali language.

It is pertinent to note that the 2006 amendment to the Model Law only specified the submission of the original or a duly certified copy of the award, the requirement of submitting the original/certified copy of the arbitration agreement was omitted.[85]The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award

83 Madhyasthata Niyamawali, 2059, (Arbitration Court Procedure Rules, 2002), rule no. 13.

84 Nepal Madysthata Sambandi Ain, 2055, (Nepalese Arbitration Act 1998), Nepal, s.34(1)

85 Model Law (n 11) art. 35.

is not made in an official language of this State, the court may request the party to supply a translation thereof into such language.

The Act, following Nepal's declaration, while acceding to the New York Convention[86], states that Nepal will recognize and enforce the foreign award made in a country that is also the party to the treaty providing for recognition and enforcement of the foreign arbitral awards subject to the following[87]

a) If the appointment of arbitrator and arbitration proceeding has been carried out following the agreement,
b) If parties have been notified about the proceedings,
c) If an award has been given on the subject matter contemplated by the arbitration agreement,
d) If the award has been final,
e) If the laws of the country where the arbitration award has been rendered do not provide provision for non-recognition
f) If the application has been filed within 90 days from the date of the award. And non-enforcement of the award made in Nepal.

As mentioned above, this implies that the foreign arbitral award will only be implemented based on comity in case the country where the award is made is a signatory to NYC or any other convention in Nepal. This shows that doctrine of reciprocity is of utmost importance for Nepal.

Nepalese law diverts from UNCITRAL Model law on two grounds. The first being reciprocity as a mandatory element that is not recognized in Model law. Unlike Model Law, Nepalese law has specified a timeline for presenting an enforcement application within 90 days from the date of the award.

Fee for Implementing the Award[88]

A fee amounting to 0.5 percent of the amount received through the implementation of the arbitral award shall be paid to the concerned court in the form of a fee for having the award implemented. In case the award so implemented does not concern for payment of any amount, a fee amounting to 0.5 percent of the current market value or amount of the action to be taken or must be taken according to the decision if the same can be determined, and if not, a sum of five hundred rupees shall be paid by the party requesting for the implementation of the award.

Substantial reguirement for recognition and enforcement of arbitral award

1. Arbitration Agreement

As per the Arbitration Act, the arbitration agreement is the foundation of arbitration. There must be an agreement for the settlement (through arbitration) of any dispute concerning any specific legal issue arising under a contract or otherwise[89]. The existence of an arbitration agreement is one of the substantive requirements for the execution of foreign awards in Nepal. The Arbitration Act of Nepal provides a wider definition as to what constitutes an arbitration agreement. Article 2(a) of the act provides,

86 Arbitration Act, (n 10) s. 34.

87 Ibid.

88 Ibid.

89 Arbitration Act (n 10), s. 2(a).

"Agreement" means a written agreement reached between the concerned parties for a settlement through arbitration of any dispute concerning any specific legal issue that has arisen or may arise in the future under a contract or otherwise. The provision providing further explanation states: "For this clause, the concerned parties shall be deemed to have entered into a written agreement in case any of the following documents exist:

1. *Any contract containing a provision for arbitration, or any separate agreement signed in that connection.*
2. *The letter, telex, telegram or telefax message, or any other similar at time message exchanged through telecommunication media whose records can be maintained in a written form, between the concerned parties which provide for referring their disputes to arbitration.*
3. *In case any party has presented a claim for referring any dispute to arbitration and the objection to that claim submitted by the party objecting to that claim without rejecting the proposal for referring the dispute to arbitration.*

The Act avoids the vague words defined as legal relationships occurring in the UNCITRAL Model Law. It is clarified that letters, telexes, telegrams or telefax messages, or any other similar messages whose records can be maintained in a written form can form an arbitration agreement. Not objecting to the other party's claim for reference to arbitration also amounts to the arbitration agreement.[90]

Which country's law shall be used by the recognition state to establish the validity of the agreement is one of the pertinent questions to be raised. Courts of the state of recognition shall consider the validity of the arbitration agreement under the country's law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made.[91]

2. Arbitrability

Arbitration Act under Section 34(4) (a) generally mentioned that "no award made by an arbitrator in a foreign country shall be implemented … in case the awarded settled dispute cannot be settled through arbitration under the laws of Nepal". The appropriate law to determine arbitrability is the act itself. However, the Act in this respect does not establish a hard and fast rule which either enumerates or defines arbitrable matters except for a general provision of Section 3 (2) which states, "Notwithstanding anything contained in Sub-section (1), in case of concerned parties to a civil suit of a commercial nature which has been filed in a court and which may be settled through arbitration according to prevailing laws, apply to its settlement through arbitration, such dispute shall also be settled through arbitration". This is only a general stipulation that shows that civil and commercial matters are arbitrable.

3. Public Policy

As regards Nepal, public policy is mentioned as one of the substantive conditions under the arbitration act of 1999. Article 34(4) (b) of the act states, "no award made by an arbitrator in a foreign country shall be implemented in case the implementation of the award is detrimental to public policy." As can be comprehended from the foregoing provision, the law of Nepal focuses on the effect of implementing the foreign judgment rather than the subject matter of the matter on which the award was given.

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90 Dr. Abhijit Gupta, Arbitration Law in Nepal, https://abhi.com.np/arbitration-law-in-nepal/ (Last Visited June 6, 2021).

91 New York Convention (n 7) art. V (1) (a).

Role of courts in the arbitration process

As has been noted, arbitration is a legal technique for the resolution of dispute outside the court by the arbitrator and the decision given by the arbitrator have equal validity that of the decision given by the court. Speedy and effective dispute settlement is one of the beauties of arbitration. Other features of Arbitration include privacy and confidentiality, flexibility of the process and expertise in handling the dispute and the dispute resolution.

So, one of the principal advantages of arbitration over litigation is commonly stated to be that, where the dispute concerns a technical matter, such as building contract, the person chosen to arbitrate will normally be an expert in the subject matter of the dispute, where as a judge will never have any practical experience of the technicalities of the trade in question.[92]

The courts are full of litigation and pending for ages and are in no position to give priority to any litigation except of national interest. Board of Arbitration shall be constituted only for the specific purposes and the arbitrators need not investigate anything except to act within the norms of justice, equity and good conscience on the claim and counter claim submitted before them by parties.[93]

Generally, the arbitration law of several countries normally restricts the areas of the intervention by the Court following Article 5 of the UNCITRAL Model Law on International Commercial Arbitration which states,» in matters governed by this law, no court shall intervene except where so provided in this law.» The Arbitration and Conciliation Act, 1996 (India) section 5, provides «Extent of Judicial Intervention - Notwithstanding anything contained in any other law for the time being in force, in matters governed by this part, no judicial authority shall intervene except so provided in this part.»

The same has been expressed by Arbitration Act 1996 (Britain) section 1(c), which has set forth «In matters governed by part I the Court should not intervene except as provided in this part.» The same sentiment has been echoed by the section 39 of Arbitration Act, 2055 of Nepal restricting the power of the court to intervene in the matters relating to arbitration limiting to «where so provided in the Act.»

Although this may be true, in the arbitration process, court plays a crucial role. Arbitration Act,2055 of Nepal has entrusted the court of Nepal with the following limited role:

- The appointment of an arbitrator, if so, demanded by a party, or the appointment of a presiding or third arbitrator, or removal of arbitrator by acting on the petition of either party;(Section 7, 8 and 11)
- Challenging the arbitrator's determination of jurisdiction ;(Section 16)
- Challenging the issuance of preliminary orders, or interim orders, or a conditional decision; (Section 16(2) and 21(2))
- To assist to examine any evidence (Section 23)
- Setting aside the award on limited grounds; (Section 30), and,
- Execution of the award. (Section 32 and 34)

92 AVATAR SINGH, LAW OF ARBITRATION AND CONCILIATION, (2002) Eastern Book Company, 25.

93 Biswadeep Adhikari, 'Arbitration: Concept and Application', (2055) NEPCA BULLETIN, Nepal Council of Arbitration, Lalitpur.

Court is bounded with only these functions and power, beyond this court have no jurisdiction to interfere on arbitration process. Among all this power and function, the power to execute or enforce the award is the crucial one. Basically, to enforce the award rendered by the arbitrator is the voluntary role of the disputant parties. But, in case the award is not executed as per decided by the arbitrator or if parties disagree to implement such award, then court plays a supervisory or guardian role to make the award enforced.

It is necessary that the given award should be enforced properly and as per the decision without modification. The primary objective of execution of award is to provide justice to the victim, same is the goal of court too.The only difference is that the procedure of the court is lengthy while arbitration is short. Though it is assuming that arbitration would act as an alternative dispute resolution outside the domain of the court, intervention by the court resulted in more problems and delays than was ever contemplated. Most of the awards being challenged in courts, enforcement of award became no less expensive and time consuming than the ordinary litigation. Thus, the Appellate Court was entrusted to review the award, while DC was with the enforcement of an award.

In the past, Nepalese Court was attempting to minimize the role of arbitration. For example: In the case of Ramesh Basnet v. Satya Narayan Agrawal, the SC observed that arbitration will be delayed, ineffective and SC has power to resolve the dispute on violation of fundamental Rights, whether there is alternative remedy (resolve through arbitration) is available.[94]At the beginning it was felt that Courts and the Arbitrators are rivals. Afterwards it was felt that both are partners, since because of the implementation of the arbitration proceeding court is to some extent relieved from the maximum load of arrears of litigation.[95]Courts in Nepal have later insisted on compliance with a valid arbitration agreement. For instance: In *Rakesh Kumar v. Ram Krishna Rawal case* N.K.P. 2066, D.N. 8078, p. 272, the SC clearly established the principle that no court will have primary jurisdiction over a dispute arising out of a contract in which parties have agreed upon arbitration as the form of dispute resolution.[96]

Indeed, enforcement of arbitral award is a tough task, however, to receive justice it must be executed properly. So, court plays the vital role for the implementation of award. The Arbitration Act, 2055 has authorized the court to interfere in the arbitration process in certain situation. Beyond that ground court have no jurisdiction to intervene or interfere in the arbitration process.It is the matter of fact that the courts are supposed to intervene in different stages of arbitral proceedings only when it is required by law.

Conclusion

To ensure effective dispute resolution process Nepal amended its arbitration laws in 2055 in line with UNCITRAL Model Law on International Commercial Arbitration, 1985. Furthermore, Nepal ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards on 4th March 1998. All these conventions and the national law of Nepal restricts the court intervention in the arbitration process, however certain power is granted to the court in the arbitration process. Analyzing the cases above, it

94 Adhikari (n 30) p.8

95 Ibid

96 GANDHI PANDIT &ARDHES PANT, ISSUES OF JURISDICTION, CHOICE OF LAW AND ENFORCEMENT IN INTERNATIONAL COMMERCIAL ARBITRATION: A NEPAL PERSPECTIVE, (SPRINGER NATURE PUBLICATION) 352 (2017).

can be observed that in an arbitration process, parties enter the court mainly for three reasons. They are: 1) in case of appointment of arbitrator, 2) enforcement of the award, and 3) to set aside the award.

Speedy and effective dispute settlement is one of the beauties of arbitration but when the time comes of its enforcement, parties must face many difficulties, more in the case of foreign arbitral award. So, in such situation Court plays an affirmative role to provide justice to the parties. Despite this, the intervention of court is clearly found at the time of setting aside the award and enforcement of award. The above-mentioned cases also shows that Appellate court at the time of enforcement of award, intervene the procedure and act beyond its jurisdiction. However, the decision of Appellate court is not also recognized as the final decision. Even after the award given by the arbitrator, the process is still going on which make the entire arbitration process lengthy.

This is contradictory to the principle of arbitration. Principally, the beauty and advantage of arbitration lies upon the speedy, informal, expert judging panel and effective dispute resolution. But the unnecessary intervention of court has destroyed the unique attribute of arbitration. In addition to this, Arbitration Act, 2055(1998) has no clear provisions on whether the verdict of Appellate Court may be challenged in the SC by application of appeal or revision. Due to this reason, the arbitration process elongated unnecessarily, which makes the parties distrust in the arbitration. Nevertheless, the court also plays an affirmative role while enforcing the arbitral award. It acts as the guardian and supervisor to the lower court and arbitrator. It guides the arbitrator in the correct path, if any wrong is happening. It obliges the arbitrator to render the decision based on the procedure or Act, not beyond that. Hence, the role of Court in an enforcement of arbitral award is both affirmative and intervening. For the progress of arbitration process, there should be less intervention of court by limiting the court power and high positive role should be played by the court.

सार्वजनिक खरिद ऐन, २०६३ बमोजिम निर्माण व्यवसायीहरूलाई कालो सूची लागु हुने अवस्था र कर्जा सुचना केन्द्र लि.को कालोसुचि बीचको सम्बन्ध

नन्दकृष्ण श्रेष्ठ
अधिवक्ता, पूर्व प्रमुख प्रवन्धक, नेपाल मध्यस्थता परिषद (नेप्का)

खरिद प्रक्रियामा सुशासनको प्रत्याभूति गर्ने प्रस्तावना उद्देश्य बमोजिम स्थापित सार्वजनिक खरिद ऐन, २०६३ ले निर्माण व्यवसायीहरूको विरूद्ध समेत निश्चित समयावधिको लागि सार्वजनिक खरिद प्रक्रियामा सहभागी हुन नपाउने अवधि अर्थात कालो सूचीको समेत व्यवस्था गरेको छ। ऐन बमोजिम खरिद सम्बन्धी प्राधिकार निकाय सार्वजनिक खरिद अनुगमन कार्यालय, ताहचल काठमाडौंले निर्माण व्यवसायीहरूलाई कारवाही गर्ने र कालो सूचीमा राखी सूचना प्रकाशन गर्दै आएको छ। तर, हालका दिनमा सार्वजनिक खरिद अनुगमन कार्यालयले आफ्नो वेभसाईटमा बैंक तथा वित्तीय संस्थाहरूको हकमा राष्ट्र बैंकको निर्देर्शन नियम अनुसार, कम्पनी ऐन, २०६३ अन्तरगत दर्ता रही सञ्चालनमा रहेको कर्जा सूचना केन्द्र लि.को कालो सूचीलाई समेत आफ्नो कालो सूचीको सूचना प्रकाशनमा सलग्न राखेको छ। यसै कारण निर्माण व्यवसायी, सार्वजनिक निकाय तथा जनसरोकारहरूमा कर्जा सूचना केन्द्र लि. को कालो सूचीको विवरण तथा सार्वजनिक खरिद अनुगमनको कार्यालय (ppmo) को कालो सूची समेत समान असर गर्दछ भन्ने अस्पष्तता देखिएको छ। सार्वजनिक निकायहरूको बोलपत्र तथा प्रस्तावको हकमा निर्माण व्यवसायीहरूको योग्यता तथा अयोग्यता समेत यसै प्राधिकार निकाय (ppmo) को कालो सूची सूचनाको आधारहरूबाट मूल्याङ्कन गर्ने क्रम बढ्दो छ। तसर्थ वर्तमान परिप्रेक्षमा कर्जा सूचना केन्द्र लि. तथा सार्वजनिक खरिद अनुगमनको कार्यालय (ppmo) को बमोजिम कालो सूचीमा के फरक छ ? के समानता तथा सामिप्यता छ सारभूत रूपमा बुझ्नु जरूरी छ।

१. सार्वजनिक खरिद ऐन, २०६३ को दफा ६३ अन्तर्गत कालो सूचीको व्यवस्था

सार्वजनिक खरिद ऐन, २०६३ को दफा ६३ मा कालो सूचीमा परेको अवस्थामा बोलपत्रदाता, प्रस्तावदाता, परामर्शदाता, सेवाप्रदायक, आपूर्तिकर्ता, निर्माण व्यवसायी वा अन्य व्यक्ति, फर्म, संस्था वा कम्पनीले सोही अवधिसम्म सार्वजनिक निकायको खरिद कारबाही अर्थात ठेक्का पट्टाको काममा भाग लिन सक्ने छैन भन्ने व्यवस्था गरेको छ। जस अर्न्तगत :

(क) निर्णय अवधिभर (दफा ६३ (१): सार्वजनिक खरिद अनुगमन कार्यालयले निर्णय गरी तोकेको अवधिसम्म (१ देखी ३) वर्षसम्म भाग लिन नपाउने।

(ख) कायम अवधि दफा ६३(३): बैंक तथा वित्तीय संस्थाको कर्जा नतिरी कालो सूचीमा रहेको अवधिभर भाग लिन नपाउने।

(क) सार्वजनिक खरिद अनुगमन कार्यालयले निर्णय अवधिभर (दफा ६३ (१) बमोजिम निर्णय गरी तोकेको अवधिसम्म भाग लिन नपाउने व्यवस्था

सार्वजनिक खरिद ऐन, २०६३ को दफा ६३ (१) मा निर्माण व्यवसायीहरूको बोलपत्रदाता, प्रस्तावदाता, परामर्शदाता, सेवा प्रदायक, आपूर्तिकर्ता, निर्माण व्यवसायी वा अन्य व्यक्ति, फर्म, संस्था वा कम्पनीलाई निजको कार्यको गाम्भिर्यताको निम्न बमोजिमको अवस्थामा १ वर्ष देखि ३ तीन वर्षसम्म निम्न आधारमा कालो सूचीमा राख्न सक्ने व्यवस्था गरेको छ।

(क) दफा ६२ बमोजिमको आचरण विपरित काम गरेको प्रमाणित भएमा,

(ख) दफा २७ वा ३८ बमोजिम स्वीकृतिको लागि छनौट भएको बोलपत्रदाता वा प्रस्तावदाता खरिद सम्झौता गर्न नआएमा,

(ग) खरिद सम्झौता कार्यान्वयन गर्दा सारभूत त्रुटि गरेको वा सम्झौता अनुरूपको दायित्व सारभूत रूपमा पालना नगरेको वा खरिद सम्झौता बमोजिमको कार्य सो सम्झौता बमोजिमको गुणस्तरको नभएको कुरा पछि प्रमाणित भएमा,

(घ) खरिद सम्झौतामा भाग लिन अयोग्य ठहरिने कुनै फौजदारी कसूरमा अदालतबाट दोषि ठहरिएमा,

(ङ) योग्यता ढाँटी वा झुक्यानमा पारी खरिद सम्झौता गरेको कुरा प्रमाणित हुन आएमा, वा

(च) तोकिए बमोजिमको अन्य कुनै अवस्थामा।

यस दफामा उल्लेख बमोजिम कार्य गरे सार्वजनिक निकायको प्रमुखको प्रस्ताव बमोजिम सार्वजनिक खरिद अनुगमन कार्यालयलाई कालो सूचीमा राख्ने अर्धन्यायिक अधिकार दिएको छ। सार्वजनिक खरिद नियमावली, २०६४ को नियम १४१ मा यसको नियमन व्यवस्था रहेको छ। जसमा सम्बन्धित सार्वजनिक निकायले कारण सहित प्रस्ताव गर्ने र प्राधिकार निकायले कालो सूचीको व्यवस्था गर्ने गरेको छ। यस व्यवस्था बमोजिम कालो सूचीमा फुकुवा गर्न हालसम्म मापदण्डको व्यवस्था भएको छैन। खरिद सम्बन्धी काम कारवाहीमा निर्माण व्यवसायीले गरेको कानून प्रतिकूल कामका सम्बन्धमा सम्बन्धित रही प्रस्ताव गरी गरिने भएकाले यो आफैंमा सान्दर्भिक समेत देखिन्छ।

(ख) कायम अवधि दफा ६३(३): बैंक तथा वित्तीय संस्थाको कर्जा नतिरी कालो सूचीमा रहेको अवधिभर भाग लिन नपाउने:

यस व्यवस्थाल बैंक तथा वित्तीय सस्थाहरूले कर्जा नतिरी कालो सूचीमा राखेको अवस्थालाई ईंगित गरेको छ। बैंक तथा वित्तीय संस्थाको हकमा कर्जा नतिरी कालो सूचीमा रहेको अवधिभर सार्वजनिक खरिद कारबाहीमा भाग लिन नसक्ने र यो व्यवस्था विपरित व्यक्ति, फर्म, संस्था वा कम्पनीले सार्वजनिक निकायले गर्ने खरिदमा भाग लिएको पाइएमा निजको बोलपत्र वा प्रस्ताव उपर कुनै कारबाही हुने छैन भन्ने व्यवस्था छ। ऐनको प्रारम्भमै व्यवस्था गरिएका यो दफा ६३(३) को व्यवस्था बमोजिम तत्कालिन समयमा नेपाल राष्ट्र बैंकको परिधिभित्रको बैंकहरूले कालो सूचीमा राख्दै आएकोमा हाल एकीकृत निर्देशन इ.प्रा.निर्देशन नं. १२/०७९ "कर्जा सूचना तथा कालो सूची सम्बन्धी व्यवस्था" बमोजिम स्थापना गरेको कर्जा सूचना केन्द्र लि. ले बैंक तथा वित्तीय सस्थाहरूको सिफारिशको आधारमा कालो सूचीको ब्यवस्था गर्दे आएको छ। यसमा खरिद निर्माण कार्यहरू अन्तर्गत नभई बैंक तथा वित्तीय सस्थाहको कर्जासँग मात्र सम्बन्धित आफैं प्रस्ताव गर्ने तथा आफैं फुकुवा गर्ने बिषय रहेकोले यो कालो सूची आफैंमा मौलिक रहेको बुझ्न सकिन्छ।

(अ) कर्जा सूचना केन्द्र लि. र कालो सूचीमा राख्ने व्यवस्था

कम्पनी ऐन, २०६३ अन्तर्गत संस्थापना भई सञ्चालनमा रहेको कर्जा सूचना केन्द्र लि. लाई नेपाल राष्ट्र बैंक ऐन, २०५८

को दफा ८८ र नेपाल राष्ट्र बैंक कर्जा सूचना विनियमावली, २०५९ को विनियम ३ बमोजिमको कर्जा सूचना केन्द्र तोकिएको छ। जस अनुसार नेपालको बैंक तथा वित्तीय सस्थाहरूमा कर्जा ऋण व्यवस्थापन गर्न, कालो सूचीमा सिफारिश सम्बन्धित बिषयमा नियमन गर्न बनाएको सस्था हो।

यस कालो सूचीको सम्बन्धमा नियमन तथा सञ्चालन गर्ने अधिकार बैंक तथा वित्तीय सस्थाहरूको हकमा नेपाल राष्ट्र बैकको ई.प्रा. निर्देशन १२/०७९ बमोजिम सञ्चालन गरिएको छ। यस नियमन व्यवस्थाले बमोजिम कर्जा सूचना केन्द्र लिलाई 'क' 'ख' र 'ग' वर्गको इजाजत प्राप्त संस्थाको कर्जा विश्लेषणलाई प्रभावकारी बनाउन, कर्जा सम्बन्धी सूचनाको व्यवस्था र बैंकिङ्ग प्रयोजनका लागि कालो सूची तयार गर्न, कालो सूचीमा रहने व्यक्ति, फर्म, संस्थाहरूको विवरण उपलब्ध गराउने, कालो सूचीमा समावेश गर्ने, ऋणी वर्गीकरण बमोजिम कालोसुचिको ब्यवस्था गर्ने गर्दछ।

बैंक तथा वित्तीय सस्थाको सिफारिशमा कर्जा सूचना केन्द्रले कालो सूची रहने आधार विशेषत निम्न प्रकारमा विभाजन गर्न सकिन्छ।

- इजाजतपत्र प्राप्त संस्थाबाट जतिसुकै परिमाणको कर्जा, सापट तथा सुविधा रकम लिई नतिर्ने ऋणीहरूलाई कालो सूचीमा राख्ने। सार्वजनिक खरिद ऐन, २०६३ (३,४) लागू हने अवस्था
- चेक अनादर भए कालो सूचीमा राख्ने (खरिद ऐन, २०६३ (३) लागू नहने अवस्था)।

(क) इजाजतपत्र प्राप्त संस्थाबाट जतिसुकै परिमाणको कर्जा, सापट तथा सुविधा रकम लिई नतिर्ने ऋणीहरूलाई कालो सूचीमा राख्ने। सार्वजनिक खरिद ऐन, २०६३ (३,४) लागू हने अवस्था

यो व्यवस्था बमोजिम कर्जा सूचना केन्द्रको कालो सूचीमा समावेश भएका व्यक्ति, फर्म, कम्पनी वा संगठित संस्थालाई इजाजतपत्र प्राप्त संस्थाले कुनै पनि नयाँ कर्जा, सुविधा प्रदान गर्न, कर्जा, सुविधा नवीकरण गर्न, थप कर्जा, सुविधा प्रदान गर्न, किस्तावन्दीमा प्रदान भएको कर्जाको बाँकी किस्ता प्रदान गर्न वा जमानत स्वीकार गर्न समेत पाउने छैन भन्ने व्यवस्था रहेको छ। इ.प्रा. निर्देशन नं. १२/०७९ को ६ मा आधारहरू निम्न बमोजिम रहेको छ।

- कर्जाको साँवा वा साँवाको कुनै किस्ता वा व्याजको भुक्तानी मिति एक वर्ष नाघेमा
- कर्जा तथा सुविधाको दूरूपयोग गरेको प्रमाणित भएमा,
- सुरक्षणमा राखेको सामान, सम्पत्ति दूरूपयोग गरेको प्रमाणित भएमा,
- ऋणी बेपत्ता भएमा वा ९० दिनसम्म सम्पर्कमा नआएमा,
- प्रचलित कानून बमोजिम ऋणी टाट पल्टेमा,
- इजाजतपत्र प्राप्त संस्थाले ऋणी विरूद्ध अदालतमा मुद्दा दायर गरेको अवस्थामा,
- ऋण असुली न्यायाधिकरणमा उजूरी दिएको अवस्थामा,

गैर कोषमा आधारित सुविधा वा क्रेडिट कार्डबाट सिर्जना भएको कर्जा (Forced Loan) को हकमा कर्जा शीर्षकमा लेखाङ्कन भएको ९० दिन नाघेमा

(ख) चेक अनादर भए कालो सूचीमा राख्ने (सार्वर्जनिक खरिद ऐन, २०६३(३) लागू नहुने अवस्था

नेपाल राष्ट्र बैंकको इ.प्रा. निर्देशन नं. १२/०७९ को ९ मा (२) कालो सूचीमा समावेश हुने अन्य अवस्थाहरू बमोजिम कालो सूचीमा रहेका व्यक्ति, फर्म, कम्पनी वा संगठित संस्थाले त्यस्तो सूचीबाट फुकुवा नभएसम्म आफ्नो खातामा रकम जम्मा गर्ने बाहेक अन्य कुनै पनि किसिमको बैंकिङ्ग कारोबार गर्न पाउने छैन भन्ने व्यवस्था मात्र समिति छ। यस अन्तर्गतको

व्यवस्था नेपाल राष्ट्र बैंकको इ.प्रा. निर्देशन नं. १२/०७९ को ९ (२) (ग) मा रहेको छ।

- खातामा मौज्दात अपर्याप्त भएमा,
- भुक्तानी नहुँदै खाता बन्द गरेको कारणबाट कुनै चेकको भुक्तानी हुन नसकेका,
- चेक जारी गरिसकेपछि क्तयउ एबथभलतु गरेको भए,
- चेकमा गलत हस्ताक्षर गरी चेक भुक्तानी नभएमा कर्जा सूचना केन्द्रलाई सिफारिश गर्ने।
- अन्य

२. (**कर्जा सूचना केन्द्रको कालोसूची र सार्वजनिक खरिद ऐन, २०६३ को कालो सूचीको समिपता**)

सार्वजनिक खरिद ऐन, २०६३ (३) मा बैंक वा वित्तीय संस्थाको ऋण नतिरी प्रचलित कानून बमोजिम अधिकार प्राप्त निकायले कालो सूचीमा राखेको व्यक्ति, फर्म, संस्था वा कम्पनीले त्यस्तो सूचीमा कायम रहेको अवधिभर सार्वजनिक खरिद कारवाही अर्थात व्यक्ति, फर्म, संस्था वा कम्पनीले सार्वजनिक निकायले गर्ने खरिदमा भाग लिएको पाइएमा निजको बोलपत्र वा प्रस्ताव उपर भाग लिन सक्ने छैन भन्ने व्यवस्था रहेको छ।

बैंक तथा वित्तीय सस्थाहरूको कर्जा नतिरको व्यक्तिको हकमा बैंक तथा वित्तीय सस्थाहरूको अनुरोधमा केन्द्रले व्यक्ति वा फर्मलाई सूचीमा राखेको अवस्थामा सार्वजनिक निकायले जारी गरेको खरिद बमोजिमको काममा सहभागी भए स्वतः अमान्य हुने व्यवस्था समेत गरेको छ। तर यो प्रवाधानको विश्लेषणबाट अन्य कारण अर्थात चेक अनादरमा कालो सूचीमा परेको व्यक्तिको हकमा कुनै प्रकारको बाधा तथा अवरोध भएको अवस्था देखिदैन। कालो सूचीमा रहेका व्यक्ति, फर्म, कम्पनी वा संगठित संस्थाले त्यस्तो सूचीबाट फुकुवा नभएसम्म आफ्नो खातामा रकम जम्मा गर्ने बाहेक अन्य कुनै पनि किसिमको बैंकिङ्ग कारोबार सहभागि भने असहज पैदा गरेको छ। यस व्यवस्थामा सम्बन्धित बैंक तथा वित्तीय सस्थाहरूबाट फुकुवा परिपत्र भएको अवस्थामा मात्र स्वतः फुकुवा हुने अवस्था छ।

साथै सार्वजनिक खरिद ऐन दफा ६३(३) को व्यवस्था प्रारम्भमा नै विधायकी ब्यवस्था गरेको र कर्जा सुचना केन्द्रको कालो सूचीको व्यवस्था बिगतका बर्षहरूमा मात्र भएकाले समेत ६३(३)र ४ को व्यवस्था स्वत सम्बन्धित नरहेको बुझ्न सकिन्छ।

अन्तमा:

कर्जा सूचना केन्द्र लि. ले राखेको कालो सूची र सार्वजनिक खरिद ऐन, २०६३, दफा ६३ बमोजिम राखिएको कालो सूची सम्बन्धमा मौलिक भिन्नता रहेको छ। कर्जा सूचना केन्द्रमा रकम अपर्याप्त भई चेक बाउन्सको कारणले कालो सूची पर्देमा सार्वजनिक निकायको खरिद प्रक्रियामा सहभागी हुन असर परेको मान्न सकिन्न। ऋणी तथा कर्जाको हकमा बैक तथा वित्तीय सस्थाको सिफारिशमा भएको कालो सूचीको हकमा सार्वजनिक खरिद ऐन, २०६३, दफा ६३(३) बमोजिमको सार्वजनिक निकायका खरिदमा अयोग्य हुने ऐनको प्रावधनले नै स्पष्ट पारेको छ। तसर्थ चेक अनादर र कर्जा तथा ऋणको हकमा कर्जा सूचना केन्द्र लि. को कालो सूचीको हकमा छुट्टयाएर सम्बन्धित निकायले कालो सूची सूचनामा समावेश गर्दा सरोकारवालाहरूबाट सही रूपमा बुझ्न तथा गलत प्रयोग नगर्न अवश्य मद्दत सहयोग पुग्नेछ।

सार्वजनिक खरिद ऐन, २०६३ मा अन्तर्गको कालो सूचीको सम्बन्धमा फुकुवा गर्न मापदण्ड बनाउने भन्ने व्यवस्था रहेको तथा कालो सूची सम्बन्धमा पुनरावेदकीय व्यवस्था समेत नभएबाट तदकारो फुकुवा सम्बन्धमा सरोकारवाला निकाय ध्यान समेत दिन आवश्यक देखिन्छ।

Embracing Technological Innovations: Understanding the Role of Artificial Intelligence (AI) in International Arbitration

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Introduction

It is impossible to overstate the importance of artificial intelligence (AI)-based technology in modern society, particularly in our daily lives. In the wake of the global pandemic that began in 2019, technological innovation gathered steam, as can be seen in the recent ascent of AI in a number of industries. International arbitration is not an exception to how quickly artificial intelligence (AI) is changing a variety of industries. Increased efficacy, accuracy, and cost-effectiveness are all predicted benefits of integrating AI technologies into dispute resolution. Artificial intelligence (AI) techniques, such as machine learning and natural language processing, have found use in crucial activities including document analysis, legal research, and decision support in the context of international arbitration.[1]

Large volumes of data and intricate legal research are frequently involved in the traditional procedures of international arbitration. By utilizing its ability to evaluate big data sets, spot trends, and conduct predictive studies, AI has the potential to ease these difficulties. AI can greatly speed up the arbitration process by automating time-consuming processes, freeing up practitioners to concentrate on important legal matters.

Beyond simple automation, AI has a significant impact on international arbitration. It can offer insightful information and aid in case prediction, enabling decision-making that is well-informed. Additionally, AI-powered solutions can improve the efficiency and precision of document review, cutting down on the time and expenses involved in the process. These innovations have the potential to change the field of international arbitration and the function of arbitrators.

This article attempts to examine the numerous applications, advantages, difficulties, and potential futures of AI developments in international arbitration. This research helps to comprehend the revolutionary potential of AI in the field of international dispute resolution by looking at real-world examples and considering the ramifications of AI integration.

Definition of AI

Tegmark analyzes the development of humanity and the implications of artificial intelligence in his book "Life 3.0 - Being Human in the Age of Artificial Intelligence." In fact, a modern optimized computer that just costs a few hundred dollars has about the same processing power as the human brain. Does this imply that artificial intelligence will soon rule the world ? [2] In order to define AI, let's first examine what it actually entails.

John McCarthy, a late computer scientist and arguably the one who coined the term 'AI' in 1956 defined it as; 'making a machine behave in ways that would be called intelligent if a human were so behaving'. According to the Merriam-Webster dictionary, AI is defined as "the capability of a machine to imitate intelligent human behavior."

How AI Works?

1. *Data Collection:* Data is gathered from various sources such as sensors, databases, or the internet.
2. *Data Preprocessing*: The collected data is cleaned, organized, and prepared for analysis.
3. *Machine Learning Algorithms:* Machine learning algorithms are applied to the preprocessed data to train a model.
4. *Model Training:* The model learns patterns and relationships in the data through iterative processes.
5. *Model Evaluation:* The trained model is evaluated using separate data to assess its performance and accuracy.
6. *Model Deployment:* The model is deployed to process new data and generate AI-driven outputs in real-world applications.
7. *Feedback Loop:* Feedback on the model's outputs is used to refine and improve its performance over time.

This description provides a high-level perspective, and the actual implementation and complexity of AI systems can change depending on the particular methodologies and applications being employed.

Application of AI in International Arbitration

One of the most widely used artificial intelligence technologies during the past ten years is machine learning. It brings together an entire family of algorithms that share the ability to learn on their own by taking in input. These algorithms get their inspiration from a variety of sciences, particularly statistics. Making knowledgeable judgments and acquiring new information are the goals of machine learning. It is employed in numerous real-world applications, including autonomous control systems, recommendation engines, recognition systems, computer science, and data mining. [3]

The application of AI has advanced dramatically during the past 20 years. Time has shown that no profession is immune to AI taking control, not even that of an arbitrator by enabling computer programs to process material in a similar way as arbitrators. International arbitration is a document intensive field of law that requires counsel and arbitrators to spend countless hours on legal research and document review. The following highlights several applications of AI in the world of international arbitrations.

3.1. Document Review

All industries, sectors, and regions are seeing changes in how organizations operate as a result of artificial intelligence. In industries ranging from finance to law, automation software is eliminating manual labor, and a new wave of business analytics is being driven by the ever-growing volume of data.[5] Contracts, pleadings, and case law are all examples of the kind of legal documents that AI-powered algorithms can examine and classify. This facilitates the discovery of pertinent data and enhances document management throughout the arbitration process. LawGeex is an AI-powered contract review platform

designed to help law professionals and businesses streamline their contract review process.

3.2 Legal Research

In search of thorough investigation or review, counsel and arbitrators continue to pore over countless pages, much of it irrelevant text. In the near future, using AI for legal research and document review would reduce the time needed for such tasks from hours to minutes.[9] AI can assist arbitrators and legal practitioners in conducting comprehensive legal research by quickly analyzing vast databases of legal precedents, statutes, and regulations. This enables efficient identification of relevant case law and legal arguments. There are several AI tools for legal research such as LegalRobot, Casetext, LeGAI, Patentpal, etc.

3.3 Case Prediction

According to the paper (CADIET, 2017), predictive justice is described as a collection of tools created through the analysis of significant volumes of judicial data that aim to as accurately forecast a dispute's outcome as feasible. AI algorithms can be used to examine past arbitration cases and forecast potential results based on trends and variables including jurisdiction, arbitrators, and parties involved. Because of this, the judicial area has seen a considerable impact of AI techniques, leading to the development of an intelligent autonomous judgment prediction system. This aids in evaluating the merits and defects of defenses and available resolution choices.[6] Jurimetría, the legal prediction tool belonging to Wolters Kluwer, provides, based on an analysis of millions of court decisions with information on the chances of success of an appeal lodged.

Masha et al. in 2019 developed a model to predict decisions of the European Court of Human Rights using machine learning and their model were able to predict decisions correctly in about 75% of the cases, which is much higher than the chance performance of 50%. [16].

3.4 Language Processing

The field of AI known as "natural language processing" (NLP), which focuses on how computers can process language like humans do, has made the most notable advancements.[7] AI-powered natural language processing (NLP) technologies aid in the translation and interpretation of multilingual documents, facilitating effective communication between parties from different linguistic backgrounds.

3.5 Evidentiary Analysis

AI can analyze and organize large sets of evidence, such as email exchanges, financial records, and expert reports. This can assist in identifying key facts, patterns, and inconsistencies, supporting the development of legal strategies.

3.6 Data Analytics

Data analysis is a technique for studying actual data to draw conclusions or even for inspecting, cleaning, organizing, and transmitting data to highlight delicate features. This approach is used by many industries to allow managers to select the best strategic choices and support or challenge conventional theoretical paradigms.[8] AI techniques like machine learning enable the analysis of vast amounts of data to identify

trends, patterns, and insights relevant to arbitration cases. This can contribute to evidence-based decision-making and assist in evaluating potential risks and opportunities.

3.7 Online Dispute Resolution (ODR)

AI can be integrated into online platforms to facilitate efficient resolution of disputes through automated negotiation, mediation, and adjudication processes. This allows for the resolution of disputes remotely, reducing time and costs.

3.8 Arbitration Award Drafting

Arbitrators spend much of the time drafting standard sections for the arbitration award. AI can automatically capture essential data associated with the dispute to save cost and time for all parties involved.

3.9 Case Management Automation

With the help of AI-powered software, case management can be automated or greatly expedited, providing arbitrators more time to focus on what they do best: arbitrate.[10] Several startups are currently working on upending the legal sector, with some already providing case management and forecasting services to the community of international arbitration. [11]

It's important to note that while AI can enhance the efficiency and effectiveness of international arbitration, human judgment and oversight remain essential in ensuring fairness, transparency, and compliance with legal and ethical standards.

Challenges and considerations

The arbitrators, attorneys, and witnesses in arbitrations are irreplaceable by technology, according to David Saunders, Director of International and Acting Academic Director of the Master of Management in Analytics at McGill University. Even while technology can help specialists, people are still crucial to the arbitration process. Saunders does, however, accept the value of technology in the management, examination, and presentation of documents in arbitration. He expects improvements in speech recognition technology to lead to more accurate translations and transcripts. There will probably be enthusiasm, experimentation, and potential breakthroughs in the sector as new applications and technologies continue to appear. There are a number of difficulties and things to think about while implementing AI in international arbitration.

The absence of clear legal frameworks and rules that particularly address AI in arbitration is a worry, to start. The current legal system might not expressly permit or forbid the employment of AI in the sphere of arbitration.

The potential bias or lack of transparency in AI algorithms is another problem. The fairness and impartiality of arbitration processes may be impacted by biased algorithms, thus it is essential to make sure AI systems are trained on diverse and unbiased data. The humans who enter the data may be predisposed to find that outcome, whether or not it is backed by truth, if they believe the data is designed to convey them that outcome. That risk may be especially high for arbitration software that is intended to produce fair results based on concrete evidence. [14]

The use of AI presents issues with responsibility and accountability. It becomes difficult to determine who is responsible for AI system malfunctions or faults, especially if the AI is making decisions on its own. To solve these issues, precise accountability standards must be established.

Confidentiality and data protection are also difficulties. When talking about AI or any other kind of machine learning to predict outcomes, a challenge for a private process like arbitration is the need for access to both algorithms and a big enough data collection. [14] Consequently, access to a large amount of data and especially sensitive data. Implementing AI requires careful consideration of privacy regulations and safeguarding the anonymity of all parties involved.

Ethical considerations are also paramount. Maintaining human control, preserving due process, and upholding ethical standards in decision-making are critical factors to address when incorporating AI into international arbitration.

Lastly, *potential obstacle is opposition from parties and stakeholders* who are cautious to fully trust AI technologies. To overcome this resistance, it will be essential to increase faith and trust in AI's abilities and show how valuable it is for enhancing accuracy and efficiency.

Future trends

Several key trends and developments are anticipated to come about as a result of AI in international arbitration. Following are few significant trends for the future:

5.1 AI as Arbitrators or Mediators:

AI may serve as co-arbitrators or mediators, supporting human decision-makers with data analysis, case management, and legal research, even if the idea of fully autonomous AI arbitrators is still up for dispute. There may be the emergence of hybrid models fusing human expertise with AI capabilities. In order to increase efficiency, AI techniques have become more popular in dispute resolution. AI algorithms outperform humans in managing massive amounts of data properly and fast. However, despite technological advancements, it is still unclear if parties are ready to accept machines as arbitrators.

The potential for AI to significantly transform arbitration is highlighted by Cohen and Nappert. They draw attention to user complaints about the length and expense of the legal process as well as the perceived apathy of the arbitral community. They recommend a number of solutions when technology becomes more widely available, such as replacing human arbitrators with AI, merging human and AI arbitrators on the tribunal, or using AI as a check on human arbitrators' choices. [12] However, the prospect of automated arbitration presents significant legal issues. The majority of national laws do not clearly forbid or encourage the employment of automated arbitrators. The filing of a case to arbitrators without naming specific human arbitrators is often used to determine if an arbitration agreement is valid. Therefore, it may be argued that using a machine to arbitrate a disagreement and using one to form a tribunal are both viable options. However, arbitrators are specifically referred to as "humans" or are expected to act personally in the arbitration acts of Brazil, Ecuador, Peru, and Colombia. However, laws in Mexico, Chile, Colombia (international arbitration), and the Model Law do not specifically stipulate that arbitrators must be people and have civil rights. It is debatable whether this legal gap would let people to choose a computer as an arbitrator in these nations. [13]

5.2 Smart Contracts and Blockchain

AI can be integrated with smart contracts and blockchain technology to facilitate automated dispute resolution. Smart contract platforms can leverage AI algorithms to interpret contract terms, identify breaches, and propose resolution mechanisms, streamlining the arbitration process.

5.3 Increased Adoption

AI technologies will become more prevalent in international arbitration as their benefits become widely recognized. Parties, counsel, and arbitral institutions are likely to embrace AI tools for various aspects of the arbitration process.

5.4 Enhanced Decision Support:

AI systems will continue to evolve to provide more advanced decision support to arbitrators. will assist in analyzing complex legal arguments, identifying relevant precedents, and predicting case outcomes.

5.5 Ethical and Regulatory Frameworks

As AI's role in arbitration expands, there will be a growing need for ethical and regulatory frameworks to address issues like bias, transparency, accountability, and data privacy. Arbitral institutions and legal professionals will work towards developing guidelines and standards for the responsible use of AI.

Recently, the leaders on G7-summit, held on 19 May 2023, have called for international standards on AI. The G7, comprising advanced economies, recognizes the urgent need to address the impact of AI in a risk-based manner. They aim to navigate the challenges of security, privacy, data ownership, and ethics associated with generative AI. The G7 digital ministers emphasize the importance of "guardrails" that ensure AI development remains human-centric, respecting human rights and privacy. They advocate for forward-looking, risk-based approaches to maximize benefits while mitigating risks. The G7 nations are working on cross-border data flow coordination and establishing rules to govern AI use, aiming for sensible and flexible governance frameworks that align with democratic goals.[15]

5.6 Continuous Learning and Improvement

AI systems will continually learn and improve through feedback loops and iterative processes. As more arbitration data becomes available, AI algorithms can refine their predictions, enhance decision-making accuracy, and adapt to changing legal landscapes.

Conclusion

in conclusion, the application of Artificial Intelligence (AI) to international arbitration has the potential to revolutionize the discipline by enhancing its accuracy, efficiency, and cost-effectiveness. AI has been used to improve decision-making and streamline processes in a number of areas related to arbitration, including document review, legal research, and data analysis. Artificial intelligence has tremendously benefitted case handling as well. It may offer important advantages for the examination of information during discovery and enable more interactive and helpful hearing procedures. To ensure responsible implementation, nevertheless, there are issues and factors that must be taken into account, including ethical issues, legal requirements, and the necessity for human monitoring. It will also be necessary to consider AI from the perspectives of legislators, attorneys, and arbitrators. Future trends point to the introduction of artificial intelligence (AI) as arbitrators or mediators, integration with smart contracts and the blockchain, and the growth of online conflict platforms. To ensure that AI is a useful tool in the pursuit of fair and effective international arbitration in this quickly changing environment, it is critical to find a balance between technological improvements and respecting ethical standards.

Lastly, the arbitration industry will unavoidably alter in the coming decade as AI demands for regulation, particularly in arbitration, increase. Both nations and arbitral organizations develop standards and regulations for the control of AI systems.

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The role of ADR in case backlog

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Advocate

Alternative dispute resolution (ADR) techniques are frequently used as a way to solve the problem of case backlog in legal systems all over the world. ADR stands for alternative dispute resolution, which refers to ways other than traditional judicial processes. In order to alleviate the case backlog inside the legal system, Alternative Dispute Resolution (ADR) techniques can be very helpful. ADR refers to a variety of procedures, including negotiation, mediation, and arbitration, which parties may utilize to settle their disputes outside of the context of formal court proceedings. The judiciary can assist reduce the load on the courts and speed up case settlement by encouraging parties to think about ADR as a substitute for litigation. Here's how ADR can help alleviate case backlog:

Faster Resolution: In contrast to the drawn-out litigation process, ADR procedures like mediation, arbitration, or negotiation may typically produce speedier results. Instead of going to court, parties to a disagreement might directly negotiate a settlement or collaborate with an impartial third party to find a solution. In comparison to typical court action, ADR promises a quicker settlement. ADR enables parties to swiftly begin conflict settlement without the delays connected with judicial proceedings by offering a voluntary and flexible method. ADR speeds up information sharing, negotiation, and the search for original solutions through simplified processes, open communication, and the inclusion of a neutral third party. Faster resolution is also made possible by the lack of formal judicial procedures and the flexibility of scheduling sessions at the parties' convenience. Confidentiality in ADR promotes open and candid discussions, building trust and facilitating timely agreements.

Reduced Court Burden: By diverting cases to ADR mechanisms, the burden on the court system is lessened. This frees up judicial resources so that the courts can concentrate on complicated or urgent issues while less contentious conflicts are settled through ADR. Processes for Alternative Dispute Resolution (ADR) are essential in easing the load on the courts. ADR lessens the caseload and congestion in the court system by giving parties an alternate route for settling their conflicts outside of the conventional litigation system. ADR allows parties to avoid going to court and avoid trial, saving both time and money. ADR is voluntary, which encourages parties to actively engage in problem-solving and lowers the amount of cases that go to court. Furthermore, compared to the formalities and delays of court litigation, ADR proceedings frequently include shortened procedures, simpler standards of proof, and more flexible scheduling. As a result, ADR not only offers parties quick and practical ways to settle their conflicts, but also helps to lighten the overall load on the court system so that it can concentrate on more complicated and important matters.

Flexibility and Informality: ADR processes are more flexible and relaxed than typical court procedures. The method may be customized by the parties to meet their requirements and time constraints, which might speed up resolution. ADR also frequently fosters a less combative climate, encouraging cooperation and teamwork in problem-solving. ADR enables parties to customize the resolution procedure to their own requirements, preferences, and time constraints. The parties' freedom to select the venue, date, and format for their dispute resolution ensures ease and effectiveness. The casual nature of ADR promotes open dialogue and teamwork, creating a more collaborative environment where parties are free to voice their interests and concerns. This relaxed environment encourages thoughtful discussion, original problem-solving, and the search for win-win solutions. The flexibility and informality of ADR empower parties to take an active role in shaping the resolution process, resulting in a more efficient, customized, and satisfactory outcome for all involved.

Preservation of Relationships: ADR methods often emphasize preserving relationships between the parties involved in a dispute. Unlike adversarial litigation, where there is usually a winner and a loser, ADR promotes results that are agreeable to all parties, which can support preserving professional ties or resolving personal conflicts amicably. ADR offers a more cooperative and collaborative way to resolving problems than aggressive court action, which frequently escalates tension and damages relationships. ADR enables participants to participate in productive conversation, actively listen to one another, and work toward a mutually accepted solution by offering a neutral and non-confrontational setting. The parties' underlying connection is preserved thanks to the focus placed on communication, understanding, and compromise. This promotes goodwill and the possibility of future collaboration. The ability to communicate interests, worries, and feelings during ADR processes like mediation encourages empathy and increases the possibility that all parties will be taken into account in the settlement process. By prioritizing relationship preservation, ADR not only resolves the immediate dispute but also sets the foundation for continued positive interactions and collaboration in the future.

Cost Savings: ADR can be more cost-effective than going through the court system. Litigation expenses, such as attorney fees, court fees, and lengthy proceedings, can be reduced. This is especially advantageous for people or companies with minimal resources. When compared to conventional court action, ADR procedures provide considerable financial savings. The costs of litigation, including those for lawyers, the court, and expert witnesses, may add up rapidly and place a strain on the finances of the parties involved. In contrast, ADR procedures like arbitration or mediation are typically more economical. Less expensive legal representation and cheaper administrative expenses are made possible by ADR's streamlined processes, streamlined standards of proof, and shorter time frames. Additionally, parties might avoid spending money on travel and lodging needed for court appearances. ADR also lowers the indirect costs of litigation, including lost productivity as a result of court time. By providing a more efficient and cost-effective resolution process, ADR allows parties to allocate their financial resources more effectively while still achieving a fair and satisfactory resolution to their dispute.

Confidentiality: ADR processes, such as mediation or arbitration, often maintain strict confidentiality. This may be enticing to parties that want to keep the specifics of their disagreement confidential in order to prevent any reputational harm from open court proceedings. ADR methods' emphasis on confidentiality gives parties a safe and private setting in which to settle their conflicts. ADR affords secrecy safeguards, in contrast to court action, where hearings and documents are often available to the public. Without worrying that their comments may be used against them in subsequent proceedings, parties are able to freely voice their worries, disclose sensitive information, and consider alternative solutions. Because of the confidentially, it is easier to communicate honestly and openly, which makes the settlement process more efficient. Parties can discuss delicate topics without being exposed to the public, protecting their reputation and ensuring secrecy on commercial plans or other problems. The confidential nature of ADR also encourages parties to consider creative and innovative solutions without

the concern of divulging sensitive information to competitors or the public. Overall, confidentiality in ADR promotes trust-building, fosters open communication, and guarantees that the settlement process stays secret, giving parties a secure and private setting in which to settle their differences.

It's crucial to remember that while ADR can considerably reduce the backlog of cases, it might not be appropriate for all sorts of conflicts. A formal legal ruling could be necessary in some situations, and other issues might not be accessible to ADR alone. ADR mechanisms provide quick, inexpensive, and cooperative ways to settle conflicts, making them a viable alternative to traditional court litigation. Courts can reduce case backlog and foster effective access to justice by integrating ADR into the legal system. As a result, ADR (Alternative Dispute Resolution) is crucial for tackling the backlog of cases in the legal system. Courts may be overburdened by the backlog of cases, which might lead to delays and prevent timely access to justice. ADR offers a practical answer by giving parties a different means of resolving their differences than traditional court action. The judge can reduce the backlog by encouraging parties to think about ADR.

The effectiveness of ADR procedures like mediation, arbitration, and negotiation to hasten the resolution of conflicts is well acknowledged. To bypass the drawn-out legal processes, parties can negotiate directly or collaborate with impartial third parties to come to a mutually acceptable agreement. As a result, the dispute settlement procedure is sped up, freeing up important court resources and cutting down on the time and expense involved with conventional litigation. ADR also generates a cooperative and collaborative atmosphere that encourages fruitful discussion and original problem-solving. It gives the parties greater power over the dispute resolution procedure, increasing their satisfaction with the result. The judiciary resolves the case backlog by encouraging the use of ADR, which also assures timely access to justice, increases efficiency, and strengthens the overall efficacy of the legal system.

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Nepal Council of Arbitration (NEPCA) Committees

NEPCA's 12th Executive Committee: 31st Annual General Meeting of NEPCA was held on 2079/09/30 at NEPCA Conference Hall, Kupondol, Lalitpur. The AGM has elected the 12th Executive Committee members as follows:

1. Dr. Rajendra Prasad Adhikari - Chairperson
2. Mr. Dhurva Raj Bhattari - Immediate Past President
3. Mr. Lal Krishna KC - Vice – Chairman
4. Mr. Baburam Dahal - General Secretary
5. Mr. Thaneshwar Kafle - Secretary
6. Mr. Hari Kumar Silwal - Treasurer
7. Prof. Dr. Sr. Adv. Gandhi Pandit - Member
8. Mr. Manoj Kumar Sharma - Member
9. Mr. Mahendra Bahadur Gurung - Member
10. Mr. Madhab Prasad paudel - Member
11. Mr. Som Bahadur Thapa - Member

Various committees were formed in order to achieve the objective of NEPCA. The committees are as follows:

a. Membership Scrutiny Committee

i. Mr. Baburam Dahal - Cordinator
ii. Mr. Hari Kumar Silwal - Member
iii. Mr. Mahendra Bahadur Gurung - Member

b. Arbitrator/Adjudicator/DB Appointment Committee

i. Dr. Rajendra Prasad Adhikari -Cordinator
ii. Mr. Thaneshwar Kafle (Rajesh) -Member
iii. Mr. Som Bahadur Thapa -Member

c. Panelist Committee

i. Mr. Dhruva Raj Bhattarai - Cordinator
ii. Dr. Rajendra Prasad Adhikari - Member
iii. Mr. Madhab Prasad Paudel - Member

d. Training Committee

i. Prof. Dr. Sr. Adv. Gandhi Pandit -Cordinator
ii. Mr. Lal Krishna KC -Member
iii. Mr. Manoj Kumar Sharma -Member

e. Institutional Development and International Relations Committee

i. Mr. Mahendra Bahadur Gurung -Cordinator
ii. Mr. Hari Kumar Silwal -Member
iii. Mr. Naveen Mangal Joshi -Member

Activities of NEPCA/Seminars & Trainings

1. ३ चैत्र, २०७९, ललितपुर

उच्च अदालत पाटन र नेपाल मध्यस्थता परिषद (नेप्का) को संयुक्त आयोजनामा सम्मानित सर्वोच्च अदालतका माननीय न्यायाधीश श्री हरिप्रसाद फुयालज्यूको प्रमुख आतिथ्यतामा मध्यस्थता, कानुन र प्रयोग बिषयक अन्तरक्रिया कार्यक्रम उच्च अदालत पाटनको सभाहलमा सम्पन्न भएको छ। उक्त कार्यक्रममा अर्थात न्याय परिषदका मानानीय सदस्य श्री रामप्रसाद श्रेष्ठज्यू, सर्वोच्च अदालतका मानानीय पूर्व न्यायाधीश श्री बलराम के.सी.ज्यू, उच्च अदालतका मानानीय का.मु. मुख्य न्यायाधीश श्री महेशप्रसाद पुडासैनीज्यू, पूर्व कानुन मन्त्रि पूर्व कानुन सचिव तथा नेपाल मध्यस्थता परिषदका कार्यसमिति सदस्य श्री माधवप्रसाद पौडेलज्यू, नेपाल बार एसोसिएशनका अध्यक्ष श्री गोपाल कृष्ण घिमिरेज्यू तथा उच्च अदालतका माननीय न्यायाधीशज्यूहरु, श्रम अदालतका न्यायाधीशज्यूहरुको उपस्थितिमा अन्तरक्रिया कार्यक्रम भयो।

उक्त कार्यक्रमको संचालन उच्च अदालत पाटनका रजिस्टार श्री ठगिन्द्र कट्टेल र नेप्काका महासचिव श्री बाबुराम दहालले गर्नु भयो।

नेपाल मध्यस्थता परिषदका सभापति श्री डा. राजेन्द्रप्रसाद अधिकारीज्यूले नेप्काको भूमिका, संस्थागत रुपमा सुदृढिकरण गर्ने उपाय, मध्यस्थको निर्णयको विश्वशनीयता र गुणस्तरियतालाई सुनिश्चित गर्न र मध्यस्थको निर्णयको प्रभावकारी कार्यान्वयन गर्न यस अन्तरक्रिया कार्यक्रमले उल्लेखनीय रुपमा सघाउ पुऱ्याउने कुरामा प्रकाश पार्नु भयो।

पूर्व कानुन मन्त्रि पूर्व कानुन सचिव तथा नेपाल मध्यस्थता परिषदका कार्यसमिति सदस्य श्री माधवप्रसाद पौडेलज्यूले मध्यस्थता ऐन २०५५, मध्यस्थता प्रक्रियामा अदालतको भूमिका तथा अदालतले हेर्न मिल्ने र नमिल्ने विषयमा संक्षिप्त रुमपा आफ्नो प्रस्तुति गर्नु भयो।

उक्त कार्यक्रममा समानीत सबीच्च अदालतका माननीय पूर्व न्यायाधीश श्री बलराम के.सी.ज्यूले मध्यस्थता र अदालतको क्षेत्र अधिकार विषयमा प्रष्ट पार्नु भयो ।

उक्त कार्यक्रममा उच्च अदालतका माननीय न्यायधीश श्री रमेश ढकाल, माननीय न्यायधीश विपुल न्यौपाने, माननीय न्यायधीश राजेन्द्र खरेल, माननीय न्यायधीश विमल सुबेदी, श्रम अदालतका माननीय न्यायधीश निशा बानियाँ, सर्वोच्च अदालत बार एसोसिएशनका सचिव श्री श्याम कुमार खत्री तथा माननीयज्यूहरुले मध्यस्थता सम्बन्धी जिज्ञासा राख्नु भयो र सो जिज्ञासा उपर श्री सर्वोच्च अदालतका माननीय पूर्व न्यायाधीश श्री बलराम के.सी.ज्यू र पूर्व कानुन मन्त्रि पूर्व कानुन सचिव तथा नेपाल मध्यस्थता परिषदका कार्यसमिति सदस्य श्री माधवप्रसाद पौडेलज्यूले छलफल गर्नु भयो । प्रमुख अतिथि सर्वोच्च अदालतका माननीय न्यायाधीश श्री हरिप्रसाद फुयाँलज्यूले आफ्नो मन्तब्य राख्नुभयो र अन्तमा नेपाल मध्यस्थता परिषद्का महासचिव श्री बाबुराम दाहालज्यूले धन्यवाद ज्ञापन सहित सभा विसर्जन गर्नु भयो ।

2. On 2nd to 6th April, 2023,

Nepal Council of Arbitration (NEPCA) conducted 5 days training on Construction Management and Dispute Settlement at NEPCA training hall, Kupondole, Lalitpur. All together 40 participants were participated physically and Virtual on the training program. Law practitioners, Government Officials, Private Companies and Individual Professionals also took part in training. Dr. Rajendra Prasad Adhikari, Chairperson, Mr. Baburam Dahal, General Secretary and Mr. Gyanendra Prasad Kayastha, Former General Secretary distributed the certificate to the participants. Finally, training closed by group photo.

3. On 27 Bhaishakh, 2080

Nepal Council of Arbitration (NEPCA) in collaboration with Public Procurement and Monitoring Office (PPMO) organized interaction program on "सार्बजनिक खरीद कानून अन्तर्गत मध्यस्थताको भूमिका" at PPMO

Training Hall, Tahachal, Kathmandu. The Program was officially inaugurated by the Mr. Baburam Dahal, General Secretary of NEPCA with his welcome remarks. Mr. Kamal Raj Pandey, Life Member, NEPCA and Mr. Chakravartty Kanta, Director, PPMO present separate paper on "सार्बजनिक खरीद कानून अन्तर्गत मध्यस्थताको भूमिका" Mr. Madhab Prasad Paudel, Executive Member, NEPCA, Former Secretary, Govt. of Nepal and Mr. Madhusudan Burlakoti, Chief Guest, Secretary, PPMO add their remarks on both the presentation. Mr. Krishna Raj Panta, Director, PPMO add his remarks with vote of thanks. At the end Dr. Rajendra Prasad Adhikari, Chairperson, NEPCA declared the end of the program with his closing remarks. The total of 50 Participants we present from both the institution in the Interaction Program.

4. On 9th to 13th August, 2021

Nepal Council of Arbitration (NEPCA) in collaboration with Progressive and Professional Lawyer Association (PPLA) conducted 5 days training on Contract Management and Dispute Settlement at Union House, Anamnagar, Kathmandu. All together 42 participants of Law practitioners and Individual Professionals were participated physically on the training program. NEPCA's Chairperson Dr. Rajendra Prasad Adhikari and PPLA's Chairperson Advocate Bhoj Raj Acharya distributed the certificate to the participants. Finally, training closed by group.


5. ५ असार २०८०

नेपाल मध्यस्थता परिषद् 'नेप्का' र चाइनास्थित ग्वान्झाओ आर्बिट्रेसन कमिशन (Guangzhou Arbitration Commission) बीच अन्तर्राष्ट्रिय मध्यस्थताको विषयमा सहकार्य गर्नका लागि चाइनाको ग्वान्झाओमा एक कार्यक्रमबीच आपसी समझदारीपत्रमा हस्ताक्षर सम्पन्न भयो। ग्वान्झाओ आर्बिट्रेसन कमिशन (GZAC) द्वारा आयोजना गरिएको कार्यक्रममा नेप्काका अध्यक्ष डा। राजेन्द्रप्रसाद अधिकारी र ग्वान्झाओ आर्बिट्रेसन कमिशनका महानिर्देशक छेन सिमिङले समझदारीपत्रमा हस्ताक्षर गर्नु भएको हो।




उक्त कार्यक्रममा ग्वान्झाओका लागि नेपालका महावाणिज्य दूत (Consular General of Nepal) हरिशरण पुडासैनीको पनि सहभागिता रहेको थियो। उक्त कार्यक्रममा बोल्दै महावाणिज्य दूत पुडासैनीले नेपाल मध्यस्थता परिषद् र ग्वान्झाओ आर्बिट्रेसन कमिशनबीच भएको यो समझदारीपत्रले दुई देशबीचको आपसी सम्बन्धलाई थप मजबुत बनाउन महत्वपूर्ण भूमिका खेल्ने बताउनुहुँदै व्यवसायिक प्रकृतिका विवाद समाधानका लागि नेपालले गरेको प्रयास र यसका उपलब्धीहरुलाई

विश्वकै आर्थिक केन्द्रको रुपमा विकास भइरहेको ग्वान्झाओ सहरमा रहेको ग्वान्झाओ आर्विट्रेसन कमिशन मार्फत उजागर गर्नु प्रशंसनीय रहेको बताउनु भयो। नेप्काको यस कार्यले विदेशका लगानीकर्ताहरुलाई नेपालप्रति आकर्षित गर्न र नेपालमा विदेशी लगाउन भित्र्याउनका निमित्त महत्वपूर्ण भूमिका खेल्नेमा आफू विश्वस्त रहेको पनि बताउनु भयो।

ग्वान्झाओ आर्विट्रेसन कमिशनका निर्देशक छेन सिमिङले नेपाल मध्यस्थता परिषद्सँग भएको यो समझदारीले अन्तर्राष्ट्रिय मध्यस्थताको विस्तार र सुदृढीकरणका लागि थप बल पुग्ने बताउँदै दुई देशबीचको आपसी सम्बन्धलाई मजबुत बनाउन समेत यस कार्यले मद्दत पुर्याउछ भन्नु भयो। सोही कार्यक्रममा बोल्दै नेपाल मध्यस्थता परिषद्का अध्यक्ष डा। राजेन्द्रप्रसाद अधिकारीले अन्तर्राष्ट्रिय मध्यस्थताको निमित्त नेपाल र नेपाल मध्यस्थता परिषद् एक उपयुक्त स्थान हुने र आपसी सहकार्यबाट अन्तर्राष्ट्रिय मध्यस्थताको लागि दुबै संस्थाले मिलेर काम गर्न सक्छ भन्ने धारणा व्यक्त गर्नु भयो ।

उक्त समझदारीपत्रमा हस्ताक्षर गर्ने कार्यक्रममा नेपाल मध्यस्थता परिषद्का महासचिव अधिवक्ता बाबुराम दाहाल, र सचिव अधिवक्ता थानेश्वर काफ्ले, महावाणिज्य दूताबासका वाणिज्य दूत कुञ्जन शाह र ग्वान्झाओ आर्विट्रेसन कमिशनका दो योङ्याङ लगायतको उपस्थिति रहेको थियो ।

6. On 7th to 11th August, 2023

Nepal Council of Arbitration (NEPCA) conducted 5 days training on Contract Management and Dispute Settlement at NEPCA training hall, Kupondole, Lalitpur. All together 68 participants were participated physically and Virtual on the training program. Law practitioners, Government Officials, Private Companies and Individual Professionals also took part in training. Dr. Rajendra Prasad Adhikari, Chairperson distributed the certificate to the participants. Finally, training closed by group photo.

Panel List of NEPCA

S.N	Name	Profession	Address
1	Mr. Ajaya Kumar Pokharel	Engineer	New Baneshwor, Kathmandu
2	Mr. Ashish Adhikari	Advocate	Naxal, Kathmandu
3	Mr. Babu Ram Dahal	Advocate	Anamnagar, Kathmandu
4	Mr. Bhoj Raj Regmi	Engineer	Baluwatar, Kathmandu
5	Mr. Bhola Chhatkuli	Engineer	Kritipur, Kathmandu
6	Mr. Bhoop Dhoj Adhikari	Former Judge	Old Baneshwor, Kathmandu
7	Mr. Bindeshwar Yadav	Engineer	Baneshwor, Kathmandu
8	Mr. Bipulendra Chakraworty	Senior Advocate	Jahada, Biratnagar, Morang
9	Mr. Birendra Bahadur Deoja	Engineer	Baneshwor, Kathmandu
10	Mr. Birendra Mahaseth	Engineer	Chakupat, Lalitpur
11	Mr. Dev Narayan Yadav	Engineer	Baneshwor, Kathmandu
12	Mr. Dhruva Raj Bhattarai	Engineer	Gyaneswor, Kathmandu
13	Mr. Dinker Sharma	Engineer	Mandikatar, Kathmandu
14	Mr. Dipak Nath Chalise	Engineer	Maligaun, Kathmandu
15	Mr. Durga Prasad Osti	Engineer	Baneshwor, Kathmandu
16	Mr. Dwarika Nath Dhungel	Social Sciences Researcher	Baneshwor, Kathmandu
17	Dr. Gokul Prasad Burlakoti	Lawyer	Babarmahal, Kathmandu
18	Mr. Gyanendra P. Kayastha	Engineer	Sanepa, Lalitpur
19	Mr. Hari Prasad Sharma	Engineer	Anamnagar, Kathmandu
20	Mr. Hari Ram Koirala	Freelancer Consultant	Kalanki, Kathmandu
21	Mr. Indu Sharma Dhakal	Engineer	Mahankal, Kathmandu
22	Mr. Keshav B. Thapa	Engineer	Babarmahal, Kathmandu
23	Prof. Khem Nath Dallakoti	Engineer	Battisputali, Kathmandu
24	Dr. Kul Ratna Bhurtel	Advocate	Dhobighat, Lalitpur
25	Mr. Lekh Man Singh Bhandhari	Engineer	Sainbhu, Lalitpur
26	Mr. Madhab Prasad Paudel	Chief Commission	Jagritinagar, Kathmandu
27	Mr. Mahanedra Bahadur Gurung	Engineer	Hadigaun, Kathmandu
28	Mr. Mahendra Nath Sharma	Engineer	Battisputali, Kathmandu
29	Mr. Manoj Kumar Sharma	Engineer	Nagarjun, Kathmandu
30	Mr. Matrika Prasad Niraula	Sr. Advocate	Anamnagar, Kathmandu
31	Mr. Mohan Man Gurung	Engineer/ Advocate	Bagbazar, Kathmandu
32	Mr. Murali Prasad Sharma	Advocate	Baneswor, Kathmandu
33	Mr. Narayan Datt Sharma	Advocate /Engineer	Gyaneshwor, Kathmandu
34	Mr. Narayan Prasad Koirala	Advocate	Naya Baneshwor, Kathmandu
35	Mr. Narendra Kumar Shrestha	Fromer Deputy Attorney General, Advocate	Naya Baneshwor, Kathmandu
36	Mr. Naveen Mangal Joshi	Engineer	Kobahal Tole, Lalitpur

S.N	Name	Profession	Address
37	Mr. Niranjan Prasad Poudel	Structural Engineer	Baluwatar, Kathmandu
38	Mr. Poorna Das Shrestha	Civil Engineer	Balkot, Bhaktapur
39	Mr. Raghab Lal Vaidya	Advocate	Nagarjun, Kathmandu
40	Mr. Rajendra Kishore Kshatri	Lawyer	Lainchour, Kathmandu
41	Mr. Rajendra Niraula	Engineer	Balkhu kathmandu
42	Mr. Rajendra P. Kayastha	Engineer	Maharajgunj, Kathmandu
43	Dr. Rajendra Prasad Adhikari	Project Mgmt, Advocate	Bishalnagar, Kathmandu
44	Mr. Ram Kumar Lamsal	Engineer	Bhimsengola, Kathmandu
45	Mr. Rameshwar Prasad Kalwar	Engineer	Balkhu, Kathmandu
46	Dr. Rishi Kesh Wagle	Advocate	Tokha, Kathmandu
47	Mr. Sanjeev Koirala	Engineer	Balkumari, Lalitpur
48	Mr. Satya Narayan Shah	Engineer	Lalitpur, Nepal
49	Mr. Shambhu Thapa	Advocate	Tinkune, Kathmandu
50	Mr. Sharada Prasad Sharma	Engineer	Baneshwor, Kathmandu
51	Mr. Shree Prasad Pandit	Lawyer	Dillibazar, Kathmandu

S.N	Name	Profession	Address
52	Mr. Shreedhar Sapkota	Advocate	Baneshwor, Kathmandu
53	Mr. Som Bahadur Thapa	Engineer	Madhyapur, Thimi, Bhaktapur
54	Mr. Som Nath Paudel	Engineer	Teku, Kathmandu
55	Mr. Subash Chandra Verma	Engineer	Gothatar, Bhaktapur
56	Ms. Sujan Lopchan	Advocate	Kapan, Kathmandu
57	Mr. Suman Kumar Rai	Advocate	Ithari, Sunsari
58	Mr. Sunil Kumar Dhungel	Electrical Engineer	Baneshwor, Kathmandu
59	Mr. Suresh Kumar Regmi	Engineer	Maligaun, Kathmandu
60	Mr. Surya Nath Upadhyay	Advocate	Ghattekulo, Kathmandu
61	Mr. Surya Raj Kadel	Engineer/ Lawyer	Palungtar, Gorkha
62	Mr. Thaneshwar Kafle(Rajesh)	Advocate	Samakhushi, Kathmandu
63	Mr. Tul Bahadur Shrestha	Advocate	Anamnagar, Kathmandu
64	Mr. Tulasi Bhatta	Senior Advocate	Anamnagar, Kathmandu
65	Mr. Udaya Nepali Shrestha	Law Reform Commission	Satdobato, Lalitpur
66	Mr. Varun P. Shrestha	Engineer	Baneshwor, Kathmandu

NEPCA Life Member

S.N	Name	Profession
1	Mr. Ajaya Kumar Pokharel	Engineer
2	Ms. Alpana Bhandari	Advocate
3	Mr. Amar Jibi Ghimire	Advocate
4	Mr. Amber Prasad Pant	Advocate
5	Mr. Amod Kumar Adhikari	Engineer
6	Mr. Amog Ratna Tuladhar	Advocate
7	Mr. Anil Kumar Sinha	Advocate
8	Mr. Anup Kumar Upadhyay	Engineer
9	Mr. Ashish Adhikari	Advocate
10	Mr. Awatar Neupane	Lawyer
11	Mr. Babu Ram Dahal	Advocate
12	Mr. Babu Ram Pandey	Advocate
13	Mr. Badan Lal Nyachhyon	Engineer
14	Dr. Bal Bahadur Parajuli	Engineer
15	Mr. Bala Krishna Niraula	Engineer
16	Mr. Bala Ram K.C.	Former Justice, Supreme Court
17	Mr. Balaram Shrestha	Engineer
18	Mr. Bedh Kantha Yogal	Engineer
19	Mr. Bhagawan Shrestha	Engineer
20	Ms. Bhagwati Sharma Bhandari	Advocate
21	Mr. Bharat Bahadur Karki	Advocate
22	Mr. Bharat Kumar Lakai	Lawyer
23	Mr. Bharat Lal Shrestha	Civil Engineer
24	Mr. Bharat Mandal	Engineer
25	Mr. Bharat Prasad Adhikari	Lawyer
26	Mr. Bhava Nath Dahal	Auditor
27	Mr. Bhesh Raj Neupane	Advocate
28	Mr. Bhim Pd. Upadhyaya	Engineer
29	Mr. Bhoj Raj Regmi	Engineer
30	Mr. Bhola Chatkuli	Engineer
31	Mr. Bhoop Dhoj Adhikari	Former Chief Judge, High Court
32	Mr. Bhupendra Chandra Bhatta	Engineer
33	Mr. Bhupendra Gauchan	Engineer
34	Mr. Bikash Man Singh Dangol	Engineer
35	Mr. Bimal Prasad Dhungel	Advocate
36	Mr. Bimal Subedi	Advocate
37	Mr. Bindeshwar Yadav	Engineer
38	Mr. Binod Shrestha	Engineer/Advocate
39	Mr. Bipulendra Chakravartty	Senior Advocate
40	Mr. Birendra Bahadur Deoja	Engineer
41	Mr. Birendra Mahaset	Civil Engineer
42	Mr. Bishnu Mani Adhikari	Lawyer
43	Mr. Bishnu Om Baade	Engineer
44	Dr. Bishwadeep Adhikari	Advocate
45	Mr. Bodhari Raj Pandey	Former Justice, Supreme Court
46	Mr. Bolaram Pandey	Advocate
47	Mr. Buddha Kaji Shrestha	Insurance Professional
48	Mr. Chabbi Lal Ghimire	Advocate
49	Mr. Chandeshwor Shrestha	Advocate
50	Mr. Chandra Bahadur KC	Engineer
51	Mr. Daya Kant Jha	Engineer
52	Mr. Deo Narayan Yadav	Engineer
53	Mr. Deukaji Gurung	Engineer
54	Mr. Devendra Karki	Engineer
55	Mr. Dhanaraj Gnyawali	Secretary, PMO (Law)
56	Mr. Dhruba Prasad Paudyal	Engineer
57	Mr. Dhruva Raj Bhattarai	Engineer
58	Mr. Dhundi Raj Dahal	Engineer
59	Mr. Digamber Jha	Engineer
60	Mr. Dilip Bahadur Karki	Engineer

S.N	Name	Profession
61	Mr. Dilli Raman Dahal	Advocate
62	Mr. Dilli Raman Niraula	Engineer
63	Mr. Dinesh Kumar Karky	Advocate
64	Mr. Dinesh Raj Manandhar	Engineer
65	Mr. Dinker Sharma	Engineer
66	Mr. Dipak Nath Chalise	Engineer
67	Mr. Dipendra Shrestha	Engineer
68	Mr. Durga Prasad Osti	Engineer
69	Mr. Dwarika Nath Dhungel	Social Sciences Researcher
70	Mr. Fanendra Raj Joshi	Engineer
71	Mr. Gajendra Kumar Thakur	Engineer
72	Dr. Prof. Gandhi Pandit	Advocate
73	Ms. Gauri Dhakal	Former Justice, Supreme Court
74	Mr. Gaya Prasad Ulak	Engineer /Consultant
75	Mr. Ghan Shyam Gautam	Engineer
76	Mr. Girish Chand	Engineer
77	Mr. Gokarna Khanal	Civil Engineer
78	Dr. Gokul Prasad Burlakoti	Lawyer
79	Dr. Gopal Siwakoti	Law Practice
80	Mr. Govinda Kumar Shrestha	Former Judge, High Court
81	Mr. Govinda Prasad Parajuli	Former Chief Judge, High Court
82	Mr. Govinda Raj Kharel	Advocate
83	Mr. Gunanidhi Nyaupane	Lawyer
84	Mr. Gyanendra Prasad Kayastha	Civil Engineer
85	Mr. Hari Bahadur Basnet	Former Judge, High Court
86	Mr. Hari Bhakta Shrestha	Engineer
87	Mr. Hari Kumar Silwal	CA / Lawyer
88	Mr. Hari Narayan Yadav	Enginer
89	Mr. Hari Prasad Dhakal	Engineer
90	Mr. Hari Prasad Sharma	Engineer

S.N	Name	Profession
91	Mr. Hari Ram Koirala	Engineer
92	Mr. Hari Ram Koirala (2)	Ret. Chief Judge
93	Mr. Hari Ram Shrestha	Civil Engineer
94	Mr. Harihar Dahal	Advocate
95	Mr. Hariom Prasad Shrivastav	Engineer
96	Mr. Hum Nath Koirala	Construction Entrepreneur
97	Mr. I.P. Pradhan	Engineer
98	Mr. Indra Lal Pradhan	Engineer
99	Mr. Indu Sharma Dhakal	Engineer
100	Mr. Ishwar Bhatta	Engineer
101	Mr. Ishwar Prasad Tiwari	Engineer
102	Mr. Ishwori Prasad Paudyal	Engineer
103	Mr. Jagadish Dahal	Advocate
104	Mr. Janak Raj Kalakheti	CA
105	Mr. Jaya Mangal Prasad	Advocate
106	Mr. Jayandra Shrestha	Adviser/Finance
107	Mr. Jayaram Shrestha	Lawyer
108	Mr. Jivendra Jha	Engineer
109	Mr. Kamal Kumar Shrestha	Joint Secretary, PMO
110	Mr. Kamal Raj Pande	Engineer
111	Mr. Kameshwar Yadav	Engineer
112	Mr. Kedar Man Shrestha	Engineer
113	Mr. Kedar Nath Acharya	Former Justice, Supreme Court
114	Mr. Kedar Prasad Koirala	Advocate
115	Mr. Keshari Raj Pandit	Former judge, High Court
116	Mr. Keshav Bahadur Thapa	Engineer
117	Mr. Keshav Prasad Mainali	Advocate
118	Mr. Keshav Prasad Ghimire	Engineer
119	Mr. Keshav Prasad Pokharel	Engineer
120	Mr. Keshav Prasad Pulami	Engineer
121	Prof. Khem Dallakoti	Engineer

S.N	Name	Profession
122	Mr. Khem Prasad Dahal	Accountant
123	Mr. Kishor Babu Aryal	Engineer
124	Mr. Komal Natha Atreya	Engineer
125	Mr. Krishna Prasad Nepal	Civil Engineer
126	Mr. Krishna Sharan Chakhun	Engineer,
127	Mr. Kul Ratna Bhurtyal	Former Chief Justice
128	Dr. Kumar Sharma Acharya	Senior Advocate
129	Ms. Kushum Shrestha	Senior Advocate
130	Mr. Lal Krishna K.C.	Engineer
131	Mr. Lava Raj Bhattarai	Engineer
132	Mr. Laxman Krishna Malla	Engineer,
133	Mr. Laxman Prasad Mainali	Advocate
134	Mr. Lekh Man Singh Bhandhari	Engineer
135	Mr. Lok Bahadur Karki	Advocate
136	Mr. Madan Gopal Maleku	Engineer
137	Mr. Madan Shankar Shrestha	Engineer
138	Mr. Madan Timsina	Engineer
139	Mr. Madhab Prasad Paudel	Chief Commission
140	Mr. Madhav Belbase	Engineer
141	Mr. Madhav Das Shrestha	Advocate
142	Mr. Madhav Prasad Khakurel	Engineer
143	Mr. Madhusudan Pratap Malla	Engineer
144	Mr. Mahendra Bahadur Gurung	Engineer
145	Mr. Mahendra Kumar Yadav	Engineer
146	Mr. Mahendra Narayan Yadav	Engineer
147	Mr. Mahendra Nath Sharma	Engineer
148	Mr. Mahesh Bahadur Pradhan	Engineer
149	Mr. Mahesh Kumar Agrawal	Entreoreneur
150	Mr. Mahesh Kumar Thapa	Advocate
151	Mr. Manoj Kumar Sharma	Engineer
152	Mr. Manoj Kumar Yadav	Engineer/Advocate
153	Mr. Matrika Prasad Niraula	Sr. Advocate

S.N	Name	Profession
154	Mr. Meen Raj Gyawali	Engineer
155	Mr. Min Bahadur Rayamajhee	Former Chief Justice, Supreme Court
156	Mr. Mitra Baral	Civil Service
157	Mr. Mohan Man Gurung	Engineer/Advocate
158	Mr. Mohan Raj Panta	Engineer
159	Mr. Mukesh Raj Kafle	Engineer
160	Mr. Mukunda Sharma Paudel	Advocate
161	Mr. Murali Prasad Sharma	Advocate
162	Mr. Nagendra Nath Gnawali	Engineer
163	Mr. Nagendra Raj Sitoula	Consultant
164	Mr. Narayan Datt Sharma	Advocate/Engineer
165	Mr. Narayan Prasad Koirala	Engineer/Advocate
166	Mr. Narendra Bahadur Chand	Engineer
167	Mr. Narendra Kumar Baral	Engineer
168	Mr. Narendra Kumar K.C	Advocate
169	Mr. Narendra Kumar Shrestha	Former DAG, Advocate
170	Mr. Naveen Mangal Joshi	Engineer
171	Mr. Niranjan Prasad Chalise	Engineer
172	Mr. Niranjan Prasad Poudel	Engineer
173	Mr. Om Naraya Sharma	Engineer
174	Mr. Panch Dev Prasad Gupta	Advocate
175	Mr. Pawan Karki	Engineer
176	Mr. Poorna Das Shrestha	Civil Engineer
177	Mr. Prabhu Krishna Koirala	Advocate
178	Mr. Prajesh Bikram Thapa	Engineer
179	Mr. Prakash Jung Shah	Engineer
180	Mr. Prakash Poudel	Engineer
181	Mr. Pramod Krishna Adhikari	Engineer
182	Ms. Prativa Neupane	Advocate
183	Mr. Prithivi Raj Poudel	Engineer
184	Prof. Purna Man Shakya	Senior Advocate
185	Mr. Purnendu Narayan Singh	Engineer

S.N	Name	Profession
186	Mr. Purusottam Kumar Shahi	Engineer
187	Mr. Puspa Raj Pandey	Advocate
188	Mr. Radheshyam Adhikari	Advocate
189	Mr. Raghab Lal Vaidya	Senior Advocate
190	Mr. Rajan Adhikari	Advocate
191	Mr. Rajan Raj Pandey	Engineer
192	Mr. Rajendra Kishore Kshatri	Advocate
193	Mr. Rajendra Kumar Bhandhari	Former Justice, Supreme Court
194	Mr. Rajendra Niraula	Engineer
195	Mr. Rajendra Paudel	Engineer
196	Dr. Rajendra Prasad Adhikari	Project Mgmt, Advocate
197	Mr. Rajendra Prasad Kayastha	Engineer
198	Mr. Rajendra Prasad Yadav	Engineer
199	Mr. Raju Man Singh Malla	Advocate
200	Mr. Ram Krishna Sapkota	Engineer
201	Mr. Ram Kumar Lamsal	Engineer
202	Mr. Ram Prasad Acharya	Lawyer
203	Mr. Ram Prasad Gautam	Lawyer
204	Mr. Ram Prasad Shrestha	Advocate
205	Mr. Ram Prasad Silwal	Engineer
206	Mr. Ram Shanker Khadka	Lawyer
207	Mr. Ramesh Kumar Ghimrie	Advocate
208	Mr. Ramesh Prasad Rijal	Engineer
209	Mr. Ramesh Raj Satyal	Auditor
210	Mr. Rameshwar Lamichhane	Engineer
211	Mr. Rameshwar Prasad Kalwar	Engineer/Advocate
212	Mr. Ravi Sharma Aryal	Former Justice, Supreme Court
213	Mr. Resham Raj Regmi	Advocate
214	Mr. Rishi Kesh Sharma	Engineer
215	Dr. Rishi Kesh Wagle	Dean KU, Law

S.N	Name	Profession
216	Mr. Rishi Ram Sharma Neupane	Engineer (Water Mgmt)
217	Mr. Rishiram Koirala	Engineer
218	Mr. Roshan Soti	Engineer
219	Mr. Rudra Prasad Sitaula	Advocate
220	Mr. Rupak Rajbhandari	Engineer
221	Mr. Sahadev Prasad Bastola	Former Judge, District Court
222	Mr. Sajan Ram Bhandary	Advocate
223	Mr. Sanjeev Koirala	Engineer
224	Mr. Santosh Kumar Pokharel	Engineer
225	Ms. Sarala Moktan	Advocate
226	Mr. Sarb Dev Prasad	Engineer
227	Mr. Saroj Chandra Pandit	Engineer
228	Mr. Satya Narayan Shah	Engineer
229	Mr. Shailendra Kumar Dahal	Senior Advocate
230	Mr. Shaligram Parajuli	Engineer/Advocate
231	Mr. Shambhu Thapa	Senior Advocate
232	Mr. Shankar Prasad Pandey	Lawyer
233	Mr. Sharada Prasad Sharma	Engineer
234	Ms. Sharda Shrestha	Former Justice, Supreme Court
235	Mr. Sher Bahadur Karki	Advocate
236	Mr. Shishir Koirala	Engineer
237	Mr. Shital Babu Regmee	Engineer
238	Mr. Shiva Hari Sapkota	Engineer
239	Mr. Shiva Kumar Basnet	Engineer
240	Mr. Shiva Prasad Sharma Paudel	Engineer
241	Mr. Shiva Prasad Uprety	Engineer
242	Mr. Shiva Raj Adhikari	Advocate
243	Mr. Shiva Ram K.C	Engineer
244	Mr. Shree Prasad Agrahari	Engineer
245	Mr. Shree Prasad Pandit	Lawyer
246	Mr. Shreedhar Sapkota	Advocate

S.N	Name	Profession
247	Mr. Shyam Bahadur Karki	Engineer
248	Mr. Shyam Bahadur Pradhan	Former Justice, Supreme Court
249	Mr. Shyam Prasad Kharel	Engineer
250	Mr. Shyam Shrestha	Advocate
251	Mr. Siddha Prasad Lamichanne	Advocate
252	Mr. Som Bahadur Thapa	Engineer
253	Mr. Som Nath Poudel	Engineer
254	Mr. Subash Kumar Mishra	Engineer
255	Mr. Subhash Chandra Verrma	Engineer (Civil)
256	Ms. Sujan Lopchan	Senior Advocate
257	Mr. Suman Kumar Rai	Advocate
258	Mr. Suman Prasad Sharma	Engineer
259	Mr. Suman Rayamajhi	Chartered Accountant
260	Mr. Sunil Bahadur Malla	Engineer
261	Mr. Sunil Ghaju	Engineer
262	Mr. Sunil Kumar Dhungel	Electrical Engineer
263	Mr. Sunil Man Shakya	Advocate
264	Mr. Suresh Chitrakar	Engineer
265	Mr. Suresh Kumar Regmi	Engineer
266	Mr. Suresh Kumar Sharma	Engineer
267	Mr. Suresh Man Shrestha	Advocate
268	Mr. Surya Dev Thapa	Engineer
269	Mr. Surya Nath Upadhyay	Former CIAA Chief/Advocate
270	Mr. Surya Prasad Koirala	Advocate
271	Mr. Surya Raj Kadel	Engineer/Lawyer
272	Mr. Sushil Bhatta	Engineer
273	Mr. Suvod Kumar Karna	Chartered Accountant
274	Mr. Tanuk Lal Yadav	Engineer
275	Mr. Tara Bahadur Sitaula	Advocate
276	Mr. Tara Dev Joshi	Advocate
277	Mr. Tara Man Gurung	Engineer
278	Mr. Tara Nath Sapkota	Engineer
279	Mr. Tej Raj Bhatta	Advocate
280	Mr. Tek Nath Achraya	Chartered Accountant
281	Mr. Thaneshwar Kafle(Rajesh)	Advocate
282	Mr. Tilak Prasad Rijal	Advocate
283	Mr. Trilochan Gauchan	Lawyer
284	Mr. Tul Bahadur Shrestha	Advocate
285	Mr. Tulasi Bhatta	Senior Advocate
286	Mr. Udaya Nepali Shrestha	Former VC, Law Reform Commission
287	Mr. Uddhav Prasad Kadariya	Tax Counselor
288	Mr. Uma Kanta Jha	Engineer
289	Mr. Umesh Jha	Engineer
290	Mr. Upendra Dev Bhatta	Engineer
291	Mr. Upendra Rja Upreti	Advocate/Engineer
292	Mr. Varun Prasad Shrestha	Engineer
293	Mr. Vinod Prasad Dhungel	Former Judge
294	Mr. Vishnu Bahadur Singh	Engineer
295	Mr. Vishwa Nath Khanal	Engineer
296	Mr. Yadav Adhikari	Nepal Police
297	Mr. Yagya Deo Bhatt	Engineer
298	Mr. Yajna Man Tamrakar	Engineer
299	Mr. Yaksha Dhoj Karki	Construction Entrepreneur
300	Mr. Yoganand Yadav	Engineer
301	Mr. Yubaraj Snagroula	Senior Advocate

NEPCA Ordinary Members

S.N.	Name	Profession
1	Mr. Abhi Man das Mulmi	Engineer
2	Mr. Ajay Adhikari	Engineer
3	Mr. Ambika Prasad Upadhay	Engineer
4	Mr. Ananta Acharya	Engineer
5	Mr. Anil Kumar Shrestha	Advocate
6	Mr. Ashish Upadhyay	Engineer
7	Mr. Babu Lal Agrawal	Engineer
8	Mr. Bharati Prasad Sharma	Engineer
9	Mr. Bhawesh Mandal	Engineer
10	Mr. Bipin Paudel	Engineer
11	Mr. Chet Nath Ghimire	Advocate
12	Mr. Deepak Man Singh Shrestha	Engineer
13	Mr. Devendra Shrestha	Architect
14	Federation of Contractors' Association of Nepal	
15	Mr. Gouri Shankar Agrawal	Engineer
16	Mr. Guru Bhakta Niroula Sharma	Advocate
17	Mr. Kalyan Gyawali	Engineer
18	Mr. Kamala Upreti -Chhetri	Advocate
19	Mr. Kashi Raj Dahal	Chief, Administrative Court
20	Mr. Krishna Bahadur Kunal	Engineer/ Advocate
21	Mr. Laxman Prasad Adhikari	Engineer
22	Mr. Mahendra Kanta Mainali,	Advocate
23	Mr. Manaj Jyakhwo	Advocate
24	Mr. Nanda Krishna Shrestha	Advocate

S.N.	Name	Profession
25	Mr. Narendra Kumar Dahal	Advocate
26	Mr. Prabhu Krishna Koirala	Advocate
27	Mr. Prajwal Shrestha	Engineer
28	Mr. Pramesh Tripathi	Engineer
29	Mr. Puskar Pokhrel	Advocate
30	Dr. Rabindra Nath Shrestha	Engineer
31	Mr. Rabindra Shah	Engineer
32	Mr. Raj Narayan Yadav	Engineer
33	Mr. Rajeev Pradhan	Engineer
34	Dr. Ram Chandra Bhattarai	Lecturer, T.U
35	Mr. Sadhu Ram Sapkota	Lawyer
36	Mr. Santosh K.Pokharel	Engineer
37	Mr. Satyendra Sakya	Engineer
38	Mr. Semanta Dahal	Advocate
39	Mr. Shailendra Upareti	Advocate
40	Mr. Shankar Prasad Agrawal	Advocate
41	Mr. Shankar Prasad Yadav	Engineer
42	Mr. Shant Raj Sharma	Financial Analyst
43	Mr. Sita Prasad Pokharel	Advocate
44	Mr. Sital Kumar Karki	Advocate
45	Mr. Suraj Regmi	Engineer
46	Mr. Tarun Ranjan Datta	Engineer/Lawyer
47	Mr. Temba Lama Sherpa	Engineer
48	Mr. Tilak Prasad Rijal	Advocate
49	Mr. Tribhuvan Dev Bhatta	Advocate

Note:

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NEPCA Staff

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Mr. Bipin Paudel
Manager

Mr. Purnadhoj Karki
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