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TRACING THE DEVELOPMENT OF ARBITRATION REGIME IN NEPAL TO PRESENT MODERN ARBITRATION PRACTICE: A GLIMPSE

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ABSTRACT

Arbitration in Nepal can be traced back to informal practices that existed long before the formal recognition of arbitration through statutory measures. The roots of arbitration in Nepal are embedded in scattered provisions related to arbitration found in various statutes. To fully grasp the current arbitration landscape in Nepal, it is essential to appreciate the gradual evolution of arbitration within the country's legal system. This study aims to provide a comprehensive exploration of the historical development of commercial arbitration in Nepal. It employs a qualitative doctrinal analysis approach, primarily focusing on the legislative frameworks that have contributed to the evolution of arbitration in Nepal. It's important to note that this study does not delve into judicial rulings, or the legal precedents established by the Supreme Court of Nepal.

The recognition of arbitration in Nepal has evolved over time, with legal provisions gradually taking shape to accommodate the needs of businesses and individuals seeking alternative dispute resolution mechanisms. The journey to the formal legislative framework has been marked by changes and adaptations in response to the changing demands of Nepal's growing economy and international trade relationships. By focusing on the legislative aspects, this study sheds light on how arbitration has been integrated into the Nepali legal system, making it an indispensable tool for resolving commercial disputes. It offers insights into the key

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laws, regulations, and amendments that have shaped the arbitration landscape in Nepal, providing a solid foundation for understanding the current state of arbitration in the country.

Keywords: Arbitration, Lex Generalis, Lex Specialis, Mediation, Parties.

INTRODUCTION

The concept of arbitration has it root in the development of the commerce itself. It was prevalent even before some of the popular civilization of the word.[1] The popular story of King Solomon on true mother of a baby boy[2] is considered as the first case of arbitration in the biblical history. Two mothers had claimed the surviving baby to be theirs own while the dead one was claimed to be that of another mother. Since both the mother denied relinquishing their claims, the king as the arbitrator adjudicated to cut the baby into two halves and each mother would be handed one half of the baby. The real mother made the protest to the decision immediately. She became ready to give her baby up and surrender the claim than being able to see her baby killed into equal halves. She declared to give her baby to the other women. Thus, the woman who showed the compassion was true mother of the baby and she got the baby.[3]

Greek mythology references arbitration, too: when Juno, Pallas Athene, and Venus disputed who was the most beautiful, the parties agreed to name Paris, the royal shepherd, as arbitrator when all other methods of dispute resolution had failed.[4] Out of the dim recesses of fable and mythology, it appears that upon Mt. Ida in Greece, the royal shepherd, Paris, was also called upon to deliver a famous arbitration award. The dispute concerned the competing claims of Juno, Pallas Athene, and Venus for the prize of beauty. All other means of settlement having failed, Paris,

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1 Rob Taylor, Introduction to Arbitration, *USAID* (Nov. 4, 2023, 09:00 AM), *https://pdf.usaid.gov/pdf_docs/PA00TN4H.pdf.*

2 The King James Bible 1 Kings 3:16-28 states in the book Elkouri and Elkouri about How Arbitration Works (1960).

3 *Ibdi*.

4 Frank D. Emerson, History of Arbitration Practice and Law, 19 Clev. St. L. Rev. 155–56 (1970) (Nov. 7, 2022, 09:20 AM) *https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=2726&context=clevstlrev.*

by agreement of the parties, decided the issue by arbitration. Philip the Second, the father of Alexander the Great, used arbitration to settle territorial disputes arriving from a peace treaty he had negotiated with the southern states of Greece as far back as 337 B.C.[5]

Arbitration was one of the preferred methods of settling disputes in ancient Rome and was also the common method of settling commercial disputes in the Middle Ages. Long before the white man ever arrived in what is now the United States of America, early Native American tribes used arbitration as not only a means of resolving disputes within the tribe but also between different tribes. George Washington, the first president of the United States of America, provided that any disputes concerning his intentions in his will would be resolved by a panel of three arbitrators, and that the decision of those arbitration tribunal would be 'as binding on the Parties as if it had been given in the Supreme Court of the United States. He stated that, he considered any arbitration decisions, reached to in accordance with his will, conclusive as any decision of the Supreme Court of the United States.[6] Despite these esteemed origins, arbitration has not always been treated as the "valid, irrevocable, and enforceable" proceeding that most courts consider it today.[7]

The Vedic time also has the traces of practice of Arbitration or mediation as an alternative to dispute. If the reference of Brhadranayaka Upanishad is taken, within it, the saga Yajnavalkya has referred to the various types of arbitral bodies like[8]

(a) The *Puga*: It is a body of person's belongings to the different sects and tribes but residing in the same locality,

(b) The *Sreni*: It is an assembly of tradesmen and artisans belonging to different tribes who are connected in some way with each other; and

(c) The *Kula*: It is a group of persons bound by family ties.

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[5] Bales A. Richard, Compulsory Arbitration: The Grand Experiment in Employment (Cornell University Press, 1997).

[6] Khan, Aftab Ahmed, Dispute Resolution, *The Counsel* (Jan. 9, 2024, 08:05 AM), *http://www.counselpakistan.com/vol-3/alternate_dispute/by_aftab_ahmed_khan.php*.

[7] Hanft, Genevieve, *Giving Arbitration Some Credit: The Enforceability of Arbitration Clauses under the Credit Repair Organizations Act*, (Jan. 9, 2024, 08:05 AM), *http://fordhamlawreview.org/wp-content/uploads/assets/pdfs/Vol_79/Hanft_May.pdf*.

[8] Kumar, Sumit, Historical Growth of Arbitration Law in India, (Jan. 9, 2024, 08:05 AM), *http://csjournals.com/IJITKM/PDF%2010-2/21.%20Sumit.pdf*.

The arbitral bodies referred were known as *Panchayats* and their members were known as *Panchas*. The proceeding of the bodies was of informal nature, free from cumbersome technicalities. Moreover, as the members of these bodies were drawn from the same locality and often from the same walk of the life as the parties to the dispute, the facts and events could not be concealed from them. The decision of these bodies was final and binding on the parties. An aggrieved party could, however, go in appeal against the decision of the Kula to the *Sreni*; from the decision of the *Sreni* to the *Puga* and finally to the *Pradvivaca*.[9] Though these bodies were non-governmental and the proceedings before them were of informal nature, their decisions were reviewable by the municipal courts. In the absence of some serious flaws of bias or misconduct, by and large the courts have given recognition and credence to the awards of the *Panchayats*. These arbitral bodies dealt with a variety of disputes, such as dispute of contractual, matrimonial, and even criminal nature. The power of ultimate arbiter between its subjects was vested with the Raja. However, with changing times and change in social and economic conditions these arbitral bodies became outmoded and inadequate in its functioning, albeit in some form or other, even today, some variants of such arbitral bodies are prevalent in some rural and tribal areas in the country.[10] In this way, the paper shall thoroughly discuss about the historical development of commercial arbitration of Nepal. The research paper is outcome of qualitative doctrinal study in the development of arbitration in Nepal.

ARBITRATION IN ANCIENT NEPAL

Arbitration can be traced back to the system of *'Panchayat'* in Nepal long before the codified judicial system developed. In Nepal, *Panchayat* was an informal tribunal of five men chosen from among the villagers to render an impartial decision in the settlement of disputes between the members of villages. Since early times the decisions of *Panchayats* were acceptable and binding on the parties. Panchayat as

[9] *Ibid.*
[10] *Ibid.*

private tribunal was a different system of arbitration and was subordinate to a regular court of law.[11]

In the Lichhavi era, the *Panchali* which was also known as *Pancha Sava* was empowered to decide disputes at the local level. This form of dispute settlement mechanism that was practiced for a long period should be considered as the foundation of the concept of arbitration in Nepal's context, but not the same as the modern notion of arbitration. In Nepal, the concept of arbitration in its modern sense was first found in government contracts.[12]

LEX GENERALIS STATUTORY HISTORY OF ARBITRATION IN NEPAL

Development Committee Act, 1956[13]

This Act did not have provision of the arbitration on the first hand. The provision for arbitration was added after the second amendment of the act on 2014/11/09 B.S. The enactment of Development Committee Act is considered as the origin point of modern arbitration in Nepal. The act has referred about arbitration in section 9 for the dispute settlement. According to the stated provision, in case of any dispute arising in relation to a contract or its execution with respect to a committee, the matter must be referred to arbitration as per the contract. In fact, the act provides the power to arbitrators to collect documents, examine witnesses and the evidence, like that of a court. The Act also ensures that award given by arbitrators is final and binding, expect for a few exceptional cases.

The Act also ensures that the award given by the arbitrators is final and binding, except for a few exceptional cases. However, the Act has not defined the term 'misconduct' which makes it difficult to interpret its meaning. Additionally, the Act does not specify any time frame to challenge an award in court, which means that an award can be appealed anytime, if the two conditions of appeal are met. The Act also provides

[11] Dr. Bharat Bahadur Karki, UNCITRAL Model Law on International Commercial Arbitration (1985) and Nepalese Arbitration Law, 15 NEPCA Half Yearly Bulletin 8 (2061).
[12] *Ibid*.
[13] *Development Committee Act, 2014 (1956).*

for the appointment of an arbitrator by the court if the award is annulled, along with a specific provision for the execution of the award.

Royal Nepal Airline Corporation Act, 1962[14]

According to Section 23 of the Act, if disputes arise among the Board of Directors, General Manager, or other officials, or any personal of the Corporation related to an agreement they entered or facilities provided under a contract, then such issues shall be decided by a sole arbitrator appointed by the Nepal Government. The Act explicitly states the decision of the arbitrator shall be final and binding for both parties. Another sub-section specifies that the arbitrator shall have the same rights as a court in relation to receiving testimony and evidence, issuing orders to the parties, and examining documents.

Nepal Petroleum Act, 1983[15]

Section 20 of the Nepal Petroleum Act stipulates that any dispute or claim arising between the Nepal Government and the Contractor regarding a petroleum agreement shall be settled through arbitration if it cannot be resolved through amicable means. This provision establishes the concept of pre- arbitral clause, whereby, arbitration is only considered if attempts at amicable settlement have failed. Any issues not explicitly covered by the Act will be resolved through arbitration.

Labor Act, 1991[16]

The act provisions the right for employees to collectively demand resolution of disputes with the management. If such a demand is made, the management must attempt to resolve the dispute in the presence of a representative. If this attempt fails, the Labor Office must attempt to resolve the dispute through conciliation. If conciliation also fails, the dispute must be resolved either through arbitration or by a committee comprising an equal number of representatives from the employees, management, and government.

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[14] *Royal Nepal Airline Corporation Act, 2019 (1962).*
[15] *Nepal Petroleum Act, 2040 (1983).*
[16] *Labor Act, 2048 (1992).*

Any party dissatisfied with the decision of arbitrator or committee may appeal to the Nepal Government. If the arbitrator or committee does not decide the dispute, employees may hold a strike. They may also act under Section 76 if the Nepal Government fails to deliver its decision within 60 days of the appeal filing date.

The Labor Act in Nepal does not fully embrace the concept of arbitration, as an appeal can be made to Nepal Government even after the arbitrator has decided. This goes against the main feature of arbitration, which is that the award is final and binding. To truly adopt arbitration, there should be no appeal upon the decision of arbitrator. If the Act has a purpose to adopt arbitration in real sense, an appeal upon the decision of arbitrator should not be granted. Section 78 of Labor Act prohibited workers or employees from holding strikes in an enterprise unless they work in guarding or defending the enterprise. However, they can present reasonable demands to the management. If a dispute arises between the management and the employee or workers regarding these demands, the government must constitute a tribunal to settle it. The decision of the tribunal is final and binding for both parties, and although it is not an arbitration tribunal.

If a dispute arises between the management and the employees or workers regarding these demands, the government must constitute a tribunal to settle it. The decision of the tribunal is final and binding for both parties, and although it is not an arbitration tribunal because it is constituted by the government rather than the parties themselves, it has similar characteristics to an arbitration tribunal. The provision of the Act does not require the consent of the parties to constitute the tribunal, but in practice, the tribunal is usually formed with the consent of the parties.

The newly enacted Labor Act, 2074 includes provisions for the settlement of disputes through arbitration in collective dispute settlement if amicable means of settlement fail.[17]

[17] Section 119 of the *Labor Act, 2074, (2017)*.

Foreign Investment and Transfer of Technology Act, 1992[18]

The Foreign Investment and Transfer of Technology Act, (FITTA) of 1992 has the sole objective of attracting foreign investment and technology to Nepal. To achieve this goal, the Act has implemented an easier, more comfortable and fast-track technique for settlement of disputes. This approach ensures that foreign investors feel confident in making adequate and expected investments in Nepal. If a dispute cannot be resolved through mutual consultation in the presence of concerned department, then it shall be settled by arbitration. The Act explicitly states that the rules of dispute settlement under this Act shall be the UNCITRAL Rules. The venue of arbitration shall be Kathmandu, and the applicable law shall be the Law of Nepal.

Although the Act may seem strict in this regard, it does not restrict the autonomy of the parties in in the disputes of the industries with prescribed foreign Investment. In such a dispute, the applicable rules of arbitration shall be as stated in the agreement of foreign investment. However, this autonomy only applies to prescribed industries and not to at all the industries with foreign investment. The new FITA has also made parallel provisions on arbitration.[19]

Privatization Act, 1994[20]

The statutory provisions of Privatization Act of 1994 for settling dispute through arbitration are like those of FITTA. However, FITTA allows allow parties to agree on terms in prescribed industries, granting them autonomy. But the Privatization Act does not provide such immunity.

The Act stipulates that disputes under it shall be settled by mutual consent of both the parties. If the dispute cannot be settled by mutual consent, it shall be settled by UNCITRAL rules. The venue of arbitration shall be Kathmandu, and applicable law shall be Nepali law. This provision narrows party autonomy since parties have no option to choose the rules, venue, and applicable law in arbitration. This runs counter to the very concept of commercial arbitration.

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[18] *Foreign Investment and Transfer of Technology Act, 2049 (1992).*
[19] Section 40 of the *Foreign Investment and Technology Transfer Act, 2075, (2019).*
[20] *Privatization Act, 2050 (1994).*

The Privatization Act of 1994 generally do not discriminate between national and foreign investors. However, in cases where proposals from two or more investors are identical, the government gives priority to Nepali investors.

Contract Act, 2000[21]

Section 4 of the Contract Act of 2000 provides that, subject to the Act, the parties to a contract shall be free to choose the form, subject, consideration, extent, terms and conditions of the contract, and the nature of the remedy in case of its violation. The parties may also determine measures for resolving disputes under the contract. This means that the contracting parties have the options to choose arbitration to settle their disputes that may arise in case of a breach of contract or other proceedings, subject to mutual consent.

The parties to a contract can create mutual obligations by agreeing on terms and conditions that suit their needs, provided that fall within the boundaries of the law. These types of contractual rights are distinct from constitutional and legal rights. This Act has been repealed and replaced by the Muluki Civil Code, 2074 and the chapter related to Contractual Matters.

Bank and Financial Institutions Act, 2007[22]

The Act was originally issued as an ordinance in 2004, was passed by the parliament and given the shape of law after the restoration of democracy in the country. There were different acts related to banking and financial sectors before this act, including Commercial Bank Act, 1974, Finance Company Act, 1985, and Nepal Industrial Development Corporation Act of 1990.

Under the Act, any dispute between the license holders shall be settled by the arbitration conducted by Nepal Rastra Bank (NRB), and the decision held by NRB as the arbitrator shall be final one. However, the Act does not provide any further procedural aspects of arbitration,

[21] *Contract Act, 2056 (2000).*
[22] *Bank and Financial Institutions Act, 2063 (2006).*

making it challenging to implement. In connection to section 92 of the Act, it can be inferred that the prevailing laws of Nepal related to Arbitration, other than this Act, may prevail if the Act or any orders, directions or By-laws issued under this Act do not provide provisions on arbitration. This Act has now been repealed and replaced by the Bank and Financial Institution Act, 2017 and similar provision has been made in Section 123, however, the explicit term arbitration has not been used.

Procurement Act, 2007[23]

The primary objective of enactment this act is to ensure transparent, open, trustworthy processes for procuring goods and services for the Government and its Agencies. Section 58 of the Act stipulates that dispute between Public Institutions and Contractor, Supplier, Service Provider, or Consultant should be resolved through mutual consensus. If the agreement does not specify a procedure for dispute resolution, the Act makes it mandatory to settle through arbitration under the Arbitration Act of Nepal.

The Act empowers the parties to appoint arbitrator, form of dispute settlement Committee or adjudication boards, Rights, Duties and Obligations of arbitrator and parties involved. It also specifies the procedure of dispute resolution, and the arbitral award is binding on parties. Therefore, this specific Statute related to procurement of goods and services also favor arbitration as a preferred method of dispute resolution.

Privately Financed Construction and Operation of Infrastructure Act, 2007[24]

The Act was initially introduced as an ordinance in 2004 and later passed as a law after the reinstatement of parliament followed by the Mass-Movement II. Its main objective is to regulate infrastructure development involving the private sectors, given the state's limited capital for investment. Infrastructure development requires not only capital but also expertise, effective management, and skilled human resource. The

[23] *Procurement Act, 2063 (2007).*
[24] *Privately Financed Construction and Operation of Infrastructure Act, 2063 (2007).*

involvement of multiple parties in such projects necessitates a prompt and straight forward dispute resolution mechanism. Therefore, the Act adopts arbitration as the preferred method for resolving disputes.

According to Act, any dispute between a license holder and the Government of Nepal must be settled through mutual consultation. If amicable settlement fails, the parties must refer the dispute settlement mechanism specified in their agreement. If the agreement does not contain any dispute settlement clause, then the parties must resort to arbitration, as prescribed by the Arbitration Act of Nepal. The Act specifies the right and obligations of the arbitrator and the parties and the arbitration procedure, and the arbitral award is binding on the parties. In summary, the Act provides various dispute settlement options, and arbitration is the preferred method. Its provision ensures transparent, open, and trustworthy management of infrastructure development involving private sector.[25]

LEX SPECIALIS HISTORY OF ARBITRATION IN NEPAL

The history of commercial arbitration in Nepal is relatively short. Although as presented in foregoing discussion, several acts contained scattered statutory provisions for commercial arbitration, the specific history of arbitration i.e., *lex specialis* history of arbitration began with the enactment of Arbitration Act, 2038[26], which provided a specialized framework for arbitration in Nepal. The concept of arbitration gained prominence in Nepal due to development of international relations, the involvement of foreign construction companies in development activities in Nepal, the expansion in trade, commerce, and investment.[27]

Arbitration Act, 1981[28]

This Act is the pioneer specialized law related to arbitration. According to this act, only disputes related to bilateral or multilateral agreements were eligible for arbitration.[29] The act specifies that, unless

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[25] Section 43 of the *Privately Financed Construction and Operation of Infrastructure Act, 2063 (2007)*.
[26] Upreti, Bed Prasad, Evolution of Commercial Arbitration in Nepal: Issues and Challenges, 2(1) *NJA Journal, pp.* 208-220.
[27] *Ibid*.
[28] *Arbitration Act, 2038 (1981)*
[29] Section 3 of the *Arbitration Act, 2038 (1981).*

stated in agreement, the number of arbitrators referred by the agreement should be one. Even if the arbitration agreement or multilateral or bilateral agreement specifies an even number of arbitrators, the act mandates that an additional arbitrator be added to make it an odd number.[30] Regarding the chief arbitrator, the arbitrator shall choose the chief arbitrator amongst himself or herself if anything otherwise is not mentioned in the agreement.[31] While the act accepts any number of arbitrators, it stipulates that the number must be odd. However, this provision can be problematic from the perspective of part autonomy, which is fundamental in contracts and agreement. The act's requirement for an odd number of arbitrators, despite parties choosing it to be even number could infringe on the parties' right to make decisions in private dispute settlement mechanisms. Although the parties may face the problem of not reaching a majority in practice, the act should have left the choice of the number of arbitrators to the parties, as they are the sole decision-makers in such disputes.

The Act is based on the principle of default rules,[32] which allow contracting parties to create their own rules for settling disputes that are not contrary to the law. If the Contract does not cover any aspect, then the default rules or general rule will apply.

However, the Act has provisions that limit party autonomy. For example, if parties fail to appoint an arbitrator as per the agreement, or there is a deadlock due to the silence of arbitration the agreement, the party can resort to the district court for the appointment of the arbitrator.[33] The court has discretion to appoint an arbitrator when there is lack of unanimity between the parties, or when the position is vacant for several reasons.[34] This provisions can cause delays and defeat the purpose of dispute resolution. Moreover, if the arbitrators have no consensus or majority, the parties may have to resort to litigation or take issue to a

[30] Section 4 of the *Arbitration Act, 2038 (1981).*
[31] Section 4 of the *Arbitration Act, 2038 (1981).*
[32] Riley, C A, Designing Default Rules in Contract Law: Consent, Conventionalism, and Efficiency, 20 (3) Oxford Journal of Legal Studies, AUTUMN, pp. 367–390.
[33] Section 5 of the *Arbitration Act, 2038 (1981).*
[34] Section 7 of the *Arbitration Act, 2038 (1981).*

judge specified by the chief judge of the if the arbitrators have no consensus or majority. The last resort was to take the issue to the judge specified by the chief judge of the Appellate Court (now High Court)[35] which further undermines the efficiency of the arbitration process.

According to the experts in arbitration, the Act had major shortcomings that made it inadequate and ineffective.[36] Loopholes within the act also enabled defaulters to delay the process, and interference from the court increased. Additionally, lack of expertise in the field of arbitration, absence of practices of institutional arbitration, non-recognition from the act, paucity of literature on arbitration, defective arbitration clauses in contracts, and inadequate knowledges of arbitration among the judges, arbitrators and lawyers[37] were major reasons for the failure to establish arbitration as prominent dispute settlement mechanism during the 18 years tenure of the act.[38] While the Act was a good start in practice of *lex specialis* arbitration, it lacked mandatory ideal law on the subjects[39] which was repealed and replaced by the present Arbitration Act, 2055.

EMERGENCE OF NEW ARBITRATION REGIME: ARBITRATION ACT, 2055

The implementation and exercise of the previous Act revealed inadequacies, loopholes and lacunas which led to the enactment of the Arbitration Act, 1999.[40] This law was largely reflects the Model UNCITRAL Law at a local level.[41] The table below demonstrates the borrowing of the provision by the present Nepali Arbitration Act. [42]

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[35] Section 18 of the *Arbitration Act, 2038 (1981).*

[36] Om Nepali Subedi, Experience and Experiment with Arbitration on Commercial Disputes, 1(1) NJA Journal, pp. 91-108.

[37] *Ibid.*

[38] Kumar, Sumit, Historical Growth of Arbitration Law in India (Dec. 23, 2023, 10:30 AM), *http://csjournals.com/IJITKM/PDF%2010-2/21.%20Sumit.pdf.*

[39] *Ibid.*

[40] *Arbitration Act, 2055 (1999).*

[41] Anjan Dahal, In brief: arbitration formalities in Nepal, (Dec. 24, 2023, 10:30 AM), *https://www.lexology.com/library/detail.aspx?g=2c60ba10-9dcd-4ed8-b210-5ad4bfa0ca00.*

[42] *Supra* Note no. 38.

Provisions	UNCITRAL Model Law (Articles)	Arbitration Act, 1999
Special procedural regime for international commercial arbitration	International scope	Sec. 21.1
Arbitration agreement and settlement of disputes	Art. 7/8/9	Sec. 3.1/2(ka)/3.2/4
Composition of the arbitral tribunal	Art. 10/11/12(1)15/13	Sec. 5/6/7/9.1/9.2/10/11
Jurisdiction of the arbitral tribunal	Art. 16	Sec. 16
Conduct of arbitral proceedings	Art. 18/19/20/21/22/ 24/24(3)/25/26 and 27	Sec. 22/21/17//17.1/12/ 13/14/ 20/19/21.1ga/15 and 23
Making of award and termination of proceeding	Art. 28 to 32	Sec. 17.1/17.7/18.1/17.7/ 26/ 24/25/26.4/26.3/27/ 28/29
Recourse against the award	Art. 34.5	Sec. 30 and 39
Recognition and enforcement of foreign arbitral awards	Art. 35 and 36	Sec. 34

The main features of the act are as follows:

- The act upholds the principle of party autonomy.[43]
- The act aims for faster completion of arbitral proceedings as compared to the previous act.
- The act includes provisions for disqualifying arbitrators with a history of misconduct, whereas the previous act did not provide grounds for action against wrongdoings by arbitrators.[44]
- The act has comparatively less judicial intervention than the previous Act, but it can still make the arbitration process somewhat litigious.
- The act grants supervisory jurisdiction to the High Court over the arbitral process, including the appointment of the arbitrator if necessary.

[43] Section 3 of the *Arbitration Act, 2055 (1999).*
[44] Section 10 of the *Arbitration Act, 2055 (1999).*

- The act has improved the arbitral proceedings by providing clear guidelines for the arbitration procedure. For instance, it has set a time limit to avoid delays in appointing arbitrators and submitting claims and counterclaims.
- The arbitral tribunal has been granted the authority to determine its jurisdiction based on the arbitration agreement.
- According to experts, the act is committed to adopting international trade usages and incorporating new trends in the arbitral proceedings.[45]
- The Act makes has made it mandatory to submit the disputes to arbitration if the agreement stipulates it.[46] The provision has significantly broadened the scope of arbitration in Nepal.[47]
- The Act incorporates the principle of severability.[48] This principle allows an arbitration clause or agreement to be separated from the original subject of the contract, even if an arbitrator or court invalidates the original one.[49]

In addition to the improvements based mainly on the UNCITRAL Model Law, certain new provisions have been incorporated to accommodate the judicial culture and make the arbitration law more focused on justice and time efficiency. These two aspects had been severely criticized during the implementation of previous Act. If grouped together point wise, they are:

- The award must be enforced within 45 days, as per the time frame set by the Act.[50]
- The Act mandates that defaulting parties must pay interest on the amount specified in the award[51]
- The cost of arbitration proceedings, including fees and expenses must be borne by the parties involved.[52]

[45] *Supra* Note no. 38.
[46] Section 3 (1) of the *Arbitration Act, 2055 (1999)*.
[47] A. Bales Richard, Compulsory Arbitration: The Grand Experiment in Employment, (Cornell University Press, 1997).
[48] Section 16 of the *Arbitration Act, 2055 (1999)*.
[49] Bryan A. Garner, BLACK'S LAW DICTIONARY, Thomson West (2005).
[50] Section 31 of the *Arbitration Act, 2055 (1999)*.
[51] Section 32 of the *Arbitration Act, 2055 (1999)*.
[52] Section 35 of the *Arbitration Act, 2055 (1999)*.

- The Act applies to the devolution of rights and liabilities even in case of death, insanity, or disappearance of any party.[53]
- The act specifies a fee of 0.5% of the total amount to be received by the party for the execution of award.[54]
- The case file of the arbitration must be submitted to the district court for the execution award.[55]
- The Act empowers the Supreme Court to establish rules for arbitration.[56]
- The Act incorporates and enforces several fundamental principles of arbitration, including *Kompetenz-Kompetenz*[57], arbitral confidentiality[58], a pro-enforcement approach to domestic and foreign arbitral awards[59], limited grounds for setting aside awards[60], and review of awards by the High Court on the ground of public policy.[61]
- The Provisions of the Act regarding the recovery of costs are unclear. This matter must be agreed upon by the parties or, if an agreement cannot be reached, ruled upon by the tribunal. While sections 35 and 36 provide for the recovery of arbitration costs and of arbitrator fees, it is generally understood that legal costs incurred by the parties during the proceedings are not covered. However, the language of section 35 of the 1999 Act is not definitive, and there may be room for debate regarding the recovery of legal costs depending on the circumstances.

There are few additional unique features in the Arbitration Act, 1999 of Nepal as following.

a. The Act specifies that the appointment of an arbitrator must be within 30 days from the date of the dispute.[62]

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[53] Section 38 of the *Arbitration Act, 2055 (1999).*
[54] Section 41 of the *Arbitration Act, 2055 (1999).*
[55] Section 42 of the *Arbitration Act, 2055 (1999).*
[56] Section 43 of the *Arbitration Act, 2055 (1999).*
[57] Section 16 of the *Arbitration Act, 2055 (1999).*
[58] Section 9 of the *Arbitration Act, 2055 (1999).*
[59] Section 32 of the *Arbitration Act, 2055 (1999).*
[60] Section 34 of the *Arbitration Act, 2055 (1999).*
[61] Section 30 of the *Arbitration Act, 2055 (1999).*
[62] Section 6 of the *Arbitration Act, 2055 (1999).*

b. According to the Act, the arbitrator must sign an oath and submit it to the High Court.[63]

c. The Act outlines the qualification for an arbitrator.[64]

d. The Act also sets a timeframe for reaching a decision[65], requiring that the decision be made within 120 days.

e. The Act specifies a list of elements that must be included in the award and requires that the award be in written form.[66]

f. The Act mandates that the arbitrator read the decision in the presence of parties and provide them with a copy of the award.[67]

g. The Act outlines the rights and duties of the arbitrator, including the obligation to maintain a chronological case file which must be submitted to the district court for record keeping. The Act also confirms the confidentiality of the documents and prohibits the arbitrator from providing copies of any documents to anyone other than the parties without their approval.[68]

CONCLUSION

The paper discusses the history of arbitration in Nepal, referencing scattered statutory provisions found in various Nepali legislation, before delving into the concept of *lex specialis* of Arbitration. The previous milestone in the Country's arbitral history, the Arbitration Act, 1981 was repealed and replaced by the more effective Arbitration Act of 1999, due to significant and shortcomings in the prior law.

The Arbitration Act of 1999 is widely viewed as a resilient and effective framework for arbitration, appreciation to its reduced court involvement and facilitation of effective enforcement of arbitral awards. It has also created a platform for Nepal-seated international arbitration and helps resolve disputes involving foreign investment, which was the primary purpose behind the introduction of arbitration clause in multiple Nepali Statutes.

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[63] Section 9 of the *Arbitration Act, 2055 (1999).*
[64] Section 10 of the *Arbitration Act, 2055 (1999).*
[65] Section 24 of the *Arbitration Act, 2055 (1999).*
[66] Section 27 of the *Arbitration Act, 2055 (1999).*
[67] Section 28 of the *Arbitration Act, 2055 (1999).*
[68] Section 42 of the *Arbitration Act, 2055 (1999).*

The Arbitration Act of 1999, which is based on the UNCITRAL Model Rules, has been in effect for a considerable period. However, the Act has certain shortcomings, and its age highlights the need for it to align with international best practices. In particular, the Act does not differentiate between domestic and international arbitration specifically and does not include provisions for institutional arbitration. The UNCITRAL Model Rules have undergone revisions, but Nepal's Act has not acknowledged them. Furthermore, given that hybrid ADR is already in use in Nepal, there is a need to regulate them appropriately.

The High Courts and Supreme Court have a crucial role to play in the development of Nepal's arbitration regime. By upholding fundamental arbitration principles, they act as guardians and overseers of arbitrators and lower courts. Through their judgments and legal precedents which have not been discussed here in the paper, they guide arbitrators on the correct path and insist that they adhere to established procedure and laws. While the Court's intervention is occasionally necessary, its role should be primarily be positive, with less interference and more support for the arbitration process.

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