

The Juridical Canvas of Recognizing and Enforcing Arbitral Awards: A Deconstruction of Legal Frameworks and Contemporary Practices in Nepal

Rajesh Bastola*

Abstract

Arbitration is one of the methods of dispute resolution mechanisms where disputes are resolved outside the formal court structure by persons appointed by the disputing parties. The person so appointed renders an order generally known as an award which is binding to the parties to the dispute. In other words, it is considered one of the alternative dispute resolution methods. The importance of any legal proceedings is not limited to the rendering judgment or award. Rather the crux of any proceeding depends on the recognition and enforcement of award as well. Arbitration as a process of dispute resolution mechanism depends on the competency of the process to render the award. The mere rendering of the award does not suffice the fundamental objectives of justice. Rather the recognition and enforcement of the award is the fundamental requirement to uphold the sanctity, effectiveness and efficiency of any arbitration proceeding. Against the backdrop, the paper aims to critically examine the existing legal provisions for the recognition and enforcement of awards as well as the judicial discourse is examined via the examination of the judgment of the Supreme Court's recent trends in the recognition and enforcement of awards. Lastly, this paper presents the way out for the future but based on the best practices around the world.

Keywords: *Arbitration, Recognition and Enforcement of Award, Judicial Discourse, Dispute Resolution*

I. Background

Arbitration is a form of alternative dispute resolution which allows parties to resolve issues without going to trial. For arbitration to be legal, both parties must agree to arbitrate the decision rather than go to trial. Arbitration, that is, the submission of disputes for a final and enforceable decision before an arbitral tribunal chosen by the parties rather than a state court, has become the dispute resolution mechanism of choice in international commercial arbitration.¹ It is one of the methods of dispute resolution where disputes are resolved outside the former court structure.

* Rajesh Bastola is an Advocate, Nepal Bar Council. The author can be contacted at advrajeshbastola@gmail.com.

¹ Stephan Balthasar, *International Commercial Arbitration*, Wilhelmstrabe Germany, 2016, p. 5.

The disputing parties appoint a person for dispute resolution commonly known as arbitrator. The binding order given by the arbitrator to the disputing parties is known as an award. Arbitration as a process of dispute resolution mechanism is one of the most sought dispute resolution mechanisms in commercial and investment related disputes. Its attraction is based on the quick, prompt, effective, and efficient method of dispute resolution. Further, other characteristics are less time consuming, finality and bindingness, and less formal procedure. It is considered a supplement to the existing formal court structure system as both objectives are to uphold the law and to render justice in a proper way and proper sense. The effectiveness and efficiency of arbitration as a method of dispute resolution mechanism is due to its bindingness and finality of the award. The process of arbitration involves i) an identifiable dispute or controversy between parties ii) which by agreement of such parties iii) a referred or referable to one or more persons for final decision (award).² An arbitration is a reference to the decision of one or more persons, either with or without an umpire, of some matter or matters which has arisen because of differences between the parties.³ In general, arbitration is understood as 'a creature of the parties for the settlement of disputes along with the adopted procedures in diverse issues permitted by the law.'⁴ Arbitration as a concept is known in the large majority of legal systems, but it does not always take the same form in different countries.⁵ Arbitration requires the intervener to dictate the terms of a settlement which is binding on both sides.⁶ Arbitration is any arbitration whether or not administered by a permanent arbitral institution.⁷

The Supreme Court of Nepal in the case of *Bhanu Prasad Acharya v. Damodhar Ropeway and Construction Company et. al.*⁸ posits the nuances of arbitration:

The process of dispute resolution through arbitration is only an informal and alternative process under the judicial process. Based on the fact that it will be done outside the court, it should not be established as a process that can be used as a basis for decision based on assumptions, suspicions and hypotheticals. Even in the process of arbitration, the facts must be established to reach a decision on the disputed matter, the relevant evidence must support it (corroborate) and it must be in accordance with the relevant contract. In cases where the terms of the contract are unclear or silent, they should be interpreted on the basis

² Kenneth S. Carlston, *Theory of Arbitration Process, Law and Contemporary Problem*, Duke University School of Law, 1952, p.631.

³ *Collins v. Collins*, England & Wales, 1858, 53 E.R.

⁴ Carlston (n 3).

⁵ Mauro Rubino-Sammartano, *International Arbitration Law and Practice*, The Hague: Kluwer Law International, 2001, p.1.

⁶ Edgar L. Warren and Irving Bernstein, 'The Arbitration Process', *Southern Economic Journal*, volume. 17: No.1 1950 p. 16. Further, the article provides for the successful arbitration which requires to understand the process and participate in arbitration with skill and restraint, agreement on arbitrability, determination of the procedure, Selection of the arbitrators by the parties, properly prepared presentations and not to expect the impossible of the arbitration. Please see pg. 29 and 30 for further reference.

⁷ S.K. Chawala, *Law of Arbitration and Conciliation Practice and Procedure*, Eastern Law House, 2nd ed. 2004, p. 57. Also see, Arbitration and Conciliation Act, 1996 (Act No. 26 of 1996). 'arbitration' means any arbitration whether or not administered by permanent arbitral institutions. The UNCITRAL Model Law on International Commercial Arbitration also define in the similar manner. However, Arbitration Act 2055 is silent in relation to the definition of the term agreement. For the sake of clarity also it is fundamental to adopt the definition of the term arbitration since we are doing arbitration in the absence of the any clarity of the term arbitration. It must be subject matter of the amendment in the days to come. Prima facie there is absence of any kind of interpretation from the Hon. Supreme Court of Nepal as well in that regard. And it is a legitimate in that regard as well.

⁸ *Bhanu Prasad Acharya v. Damodhar Ropeway and Construction Company et. al.*, NKP 2067 (2011), volume 5, Decision no. 8368.

of prevailing laws, related concepts and beliefs. But the practice of reaching a conclusion directly based on assumptions rather than on the basis of such established values, beliefs and prevailing laws weakens the possibility of fair justice, such a decision is based on the hidden logic and discretion of the decision maker rather than based on facts and laws. In that way, valid principles of justice do not allow any judicial decision to be subject to speculation.

Similarly, the Supreme Court in the case of *Rakesh Kumar*⁹, stipulates that:

If there is a dispute in the contract, the parties can oust the jurisdiction of the court by making an agreement with the forum arbitrator to resolve the dispute, and in such a case the court cannot exercise jurisdiction over such a dispute between the parties to the contract. If an agreement is made to resolve the dispute through arbitration, the parties to such an agreement cannot complain to the court against the agreement they made. Complaining to the court is not only against the contract but also illegal. Filing a case in court without submitting the dispute to arbitration will be another breach of contract. The court should not file a complaint without reading the terms of the contract, it should not make a decision without looking at the law and the contract, and after a long time, if this court cancels it and sends it to the arbitral tribunal to decide again, the parties will not be able to get justice quickly, easily and promptly, but the public's trust in the court will decrease. In investment disputes, investors cannot remain entangled in the case for a long time, so when the dispute is resolved by an arbitrator, the disputes is not only resolved quickly, but the dispute is heard and awarded by people who are knowledgeable about the subject matter and the parties have chosen themselves, with the aim of giving justice. It appears that the Arbitration Act has been implemented as per the recognition.

Further, the court in *Advocate Jyoti Baniya et.al.*¹⁰ reiterates the principle of legal remedy. The court states that:

From the point of view of justice, different types of processes and methods can be established by objectively relying on people of different status or content. But once the law has determined the way to seek justice, it is not conceptually compatible to leave the path and seek justice by adopting another method.

To sum up, Arbitration is one of the alternative forms of dispute resolution where dispute is resolved outside the formal court structure. Such resolution is mandatory between the parties to the dispute. It is up to the parties to uphold the sanctity of the arbitration proceedings agreed upon by the parties for the resolution of the dispute. It plays a vital role in dispute resolution in a prompt, effective, and efficient manner.

II. Conceptual Framework of Arbitral Award

In general, the term 'award' is the judgment or decree of the arbitrator or arbitral tribunal in the subject matter of the dispute presented before. The dictionary understanding of the term

⁹ *Rakesh Kumar v. Ram Krishna Rawal*, NKP 2066 (2010), volume 2, Decision no. 8078.

¹⁰ *Advocate Jyoti Baniya et. al. v. Hotel Association Nepal et. al.*, NKP 2064 (2008), volume 11, Decision no. 7904.

'award'¹¹ is a final judgment or decision, especially one by an arbitrator or by a jury assessing damages. An award is the decision of the arbitrator based upon the submission or submission made to him in an arbitration. It can be made orally but an oral award is not covered by the provisions of law and general practices and oral awards are rare or an exceptional ad hoc measure in conditions of urgency followed by same in writings. An award must be the consequence of an arbitrator deciding between opposing contentions, having weighed the evidence and submissions.¹² The term 'arbitral award' shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.¹³ The existing 'Arbitration Act, 1999'¹⁴ is silent regarding the conceptual framework of the term award. The judicial pronouncement is also silent about the same. However, it is safe to stipulate that the decision of the arbitrator or arbitral tribunal on the dispute presented before according to existing law in general is considered as an arbitral award.

III. Rationale for the Recognition and Enforcement of Arbitral Awards

The recognition and enforcement of arbitral awards is the crux of any arbitration proceedings. The rationale for the recognition and enforcement of arbitral awards are namely:

- The principal purpose of an award is to make, and to 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.¹⁵
- Every award must give reasons for the arbitrator's decision unless the parties agree that it shall not do so (or it is an agreed award confirming a settlement between the parties.)
- It enhances the credibility of any arbitral proceedings.¹⁶
- It ensures certainty and predictability in any arbitral proceedings.
- The guarantee of recognition and enforcement of an arbitral award builds confidence amongst disputing parties to recourse arbitration as a method of dispute resolution.
- The timely recognition and enforcement of an arbitral award furthers the objective of justice dispensing which is the heart and soul of any law and any legal system.
- The guarantee of recognition and enforcement of an arbitral award compliments the existing formal justice delivery mechanism.
- The significance and relevance rest on the mere fact that initiation does not suffice rather the recognition and enforcement of the arbitral award must be the very crux of any arbitral proceeding.

¹¹ Bryan A. Garner, *Black's Law Dictionary*, Thomson West, 2004, 8th Edition, p. 147.

¹² Ray Turner, *Arbitration Awards a Practical Approach*, Blackwell Publishing, 2005, p. 3.

¹³ *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, 10 June 1958, New York, art. 1(2).

¹⁴ *Arbitration Act 1999*. However, the act consists of the provisions about the bindingness of the award, implementation of the award. The act fails to succinctly exhibit the contents and contours of the term award. See; *The Arbitration and Conciliation Act 1996 of India*, s. 2 (c) define the arbitral award includes an interim award.

¹⁵ Turner (n 13), p. 4.

¹⁶ *Ibid.*

Hence, the mere agreement to arbitrate is not enough, the mere formulation and proceeding of the arbitration do not suffice, and the mere delivery of the award does not reflect the objectives of arbitration rather the recognition and enforcement of the award is the heart of any arbitral proceedings. At the end of the day, justice is realized after recognition and enforcement in the formal sense.

IV. Implementation of the Award

Any judicial proceedings cease to exist after the implementation of the decision. It is applicable in the arbitral proceedings as well. Equal weightage is given from the formation of the tribunal, rendering award, and implementation of the award. Enforcement of foreign arbitral awards involves the very important preliminary decision of whether an arbitral award should be qualified as a foreign or a domestic award. If it qualifies as a foreign award, its recognition and enforcement are subject in various states to various conditions.¹⁷ The crux of any legal proceeding is to render justice. And Arbitration also cannot remain isolated from it. In General, the implementation of the award can be categorically divided into two headings namely Implementation of the Award Taken in Nepal and Implementation of the Award Taken in a Foreign Country. Let us briefly examine it.

A. *Implementation of Award taken in Nepal*¹⁸

The juridical canvas for the recognition and enforcement of the domestic award can be examined via the examination of existing legal instruments, judicial pronouncement, and records of the implementation of the award at the court. This paper focuses on the same.

In the Arbitration Act in principle, there is choice and autonomy of the party to invoke arbitration as the method of dispute resolution. Generally, it is presumed that the parties to the dispute on mutual understanding implement the award of the arbitrator or arbitral tribunal. However, in the case of the failure of the parties to implement the award within the prescribed time then the concerned party may apply for implementation of the award. The District Court is under obligation to award ordinarily within 30 days as if it were its judgment. Compared of Nepal's Arbitration Act, 2055, the 'Indian Arbitration Act'¹⁹ consists of clear-cut provisions relating to the enforcement of the arbitral award. It requires enforcement of domestic award in the same manner 'as if it were a decree of court'²⁰ under the Code of Civil Procedure 1980.

The court in the case of *Anil Kumar Pokbrel*²¹ stipulates that Provisions for applying to the appellate court for review of the arbitrator's decision and the provisions regarding the implementation of the arbitrator's decision are not mutually exclusive. These two provisions appear to be interconnected and interrelated. When the decision is challenged and under consideration, the implementation phase will not start and if the decision is implemented before it is final, it will

¹⁷ Istvan Szaszy, Recognition and Enforcement of Foreign Arbitral Awards, *American Journal of Comparative Law*, volume 14: no. 4, 1965 p. 658.

¹⁸ *Arbitration Act 1999*, s. 32.

¹⁹ *Arbitration and Conciliation Act of India 1996*, Section 36 for more details.

²⁰ *Ibid.*, s. 36(1).

²¹ *Anil Kumar Pokbrel v. Kathmandu District Court*, NKP 2067 (2010), volume 4, Decision no. 8437.

not be recognized. According to the principle of law of interpretation, while interpreting any section or sub-section of the Act, it cannot be interpreted in such a way as to invalidate or dilute the other section or sub-section of the same Act. The court cannot even assume that the provisions of the Act created by the legislature are inconsistent, inconsistent and impractical. Provisions in the Act should be interpreted in a harmonious and coordinated way. Section 30 of the Arbitration Act provides that the arbitrator's decision can be challenged in the appellate court and gives the appellate court the right to set aside the arbitrator's decision or order a re-decision. Any decision or final order is challenged per the provisions of the law. In such a situation, it cannot be said that the decision pending before the competent court or authority should be implemented by challenging the previous decision or challenge. When any decision or order is not final, proceeding with the execution of that decision is not compatible from the point of view of legal certainty. It is established judicial recognition that only after the finality of the decision, the implementation phase begins. If this is not the case, there may be judicial confusion and disharmony. Due to the unnecessary expenditure of limited resources and means when starting to implement a decision that is not final and has the potential to be amended or revoked, it has been established a legal tradition and belief that the implementation of any decision or order or decision will be started only after it has become final. It does not seem fair and reasonable to assume that there is a provision in the Act that after applying to the appellate court within 30 days to have the arbitrator's decision annulled, but without a decision on the same, the same party has to apply to the district court for the execution of the decision within the period mentioned in Section 32 of the Act. When the arbitrator's decision is not final and is pending, the period of implementation as per Sections 31 and 32 of the Act will start or the process of implementation of the pending arbitrator's decision should be started within the same period. It cannot be lawful and reasonable to say that the obligation of the parties to implement the pending decision can start in a situation where the decision of the arbitrator is challenged by using the right. Therefore, in the case of an application to the appellate court to set aside the arbitrator's award, the obligation to enforce the arbitrator's award will begin only from the date the arbitrator's decision becomes final after the arbitrator's decision has been decided by the appellate court. Since the obligation to implement the decision of the arbitrator will begin only after the arbitrator's decision has been finalized, in the case of an appeal against the arbitrator's decision, if the arbitrator's initial decision is upheld by that court, the date of implementation of the decision will begin from the date of receiving information about the decision.

The status of an application for the enforcement of the arbitral award in the 'Kathmandu, Lalitpur, and Bhaktapur District Court'²² for the last five fiscal years 2075/076, 2076/077, 2077/078, 2078/079, and 2079/080 recorded are as follows respectively:

Kathmandu District Court (KDC)²³

S.No.	Fiscal Year	Application	Execution	Remaining
1.	2075/076	5	0	5

²² The research paper is limited to the three-district court of Kathmandu valley namely Kathmandu, Lalitpur, and Bhaktapur respectively. Further, the data of last five fiscal year namely 2075/076, 2076/077, 2077/078, 2078/079, and 2079/080 respectively. Hence, the paper is limited to Kathmandu District Court, Lalitpur District Court, and Bhaktapur District Court respectively.

²³ Data as maintained in the Tashil Department of Kathmandu District Court.

S.No.	Fiscal Year	Application	Execution	Remaining
2.	2076/077	9	6	3
3.	2077/078	5	1	4
4.	2078/079	9	2	7
5.	2079/080	7	3	4

The record of the KDC reflects the filing of the application for the execution of the arbitral award. The application filed is in the single digits and still, the execution is not as per the application filed which is very nominal. The number of applications filed in KDC reflects the nominal use of arbitration as a method of dispute resolution.

Lalitpur District Court (LDC)²⁴

S.No.	Fiscal Year	Application	Execution	Remaining
1.	2075/076	9	3	6
2.	2076/077	16	7	9
3.	2077/078	13	8	5
4.	2078/079	21	11	10
5.	2079/080	31	11	20

The record of the LDC reflects the highest number of applications filed amongst the three of the district courts taken as a sampling. The trends of the application filed in LDC is encouraging for the last five fiscal years . However, the execution in the given fiscal year is not satisfactory for sure provided the minimal application filled for the fiscal year. The initiation and pro-active role of the judiciary is a must to uphold the charm and sanctity of arbitration as an alternative method of dispute resolution.

Bhaktapur District Court (BDC)²⁵

S.No.	Fiscal Year	Application	Execution	Remaining
1.	2075/076	0	0	0
2.	2076/077	0	0	0
3.	2077/078	0	0	0
4.	2078/079	0	0	0
5.	2079/080	0	0	0

²⁴ Data as maintained in the Tashil Department of Lalitpur District Court.

²⁵ Data as maintained in the Tashil Department of Bhaktapur District Court.

The record of the BDC reflects the absence of any applications filed in the last five fiscal years for the enforcement of the arbitral award. It reiterates the fact that arbitration as a method of dispute resolution is not in practice in Bhaktapur. In other words, it can be deciphered that institutional and human resources are absent for the arbitration on ad hoc arbitration or institutional arbitration.

b. *Implementation of the Award Taken in a Foreign Country*²⁶

The high court is competent for the implementation of the award taken in a foreign country. The parties willing to implement such an award are under obligation to file an application with *necessary documents*²⁷ before the high court for the implementation of such award.

Further, the Act states in the case where Nepal is a party to any treaty requiring the recognition and implementation of the decision of an arbitrator in foreign countries, such shall be recognized and implemented in Nepal subjected to the provisions of the treaty and the conditions mentioned at the time of entering into the treaty. Further, there are also *circumstances*²⁸ enlisted for the court with objective criteria for the recognition and enforcement of the foreign arbitral award. The court if satisfied that all the requirements are fulfilled then shall forward the award to the District Court for its implementation.

There are two prevailing grounds where the award made in the foreign country shall not be implemented provided that:

- The awarded settled dispute cannot be settled through arbitration under the laws of Nepal and
- The implementation of the award is detrimental to the public policy.

The 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards represents the culmination of efforts by many international organizations to secure a multilateral treaty providing business persons with a unified, efficient, and trustworthy method of ensuring that the manner they have chosen to resolve their transnational disputes will be effective.²⁹ The United States Supreme Court observed that “The goal of the Convention, and the principal purpose underlying American adoption and implementation of it, was to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries.”³⁰

In the Nepalese context, the supreme court postulates the conditions for the recognition of foreign arbitration in the case of *Advocate Devendra Pradhan*³¹ where the court states that:

²⁶ Arbitration Act 1999 of Nepal, s. 34.

²⁷ Ibid, s. 34 (1) for the necessary documents for the implementation of the award taken in the foreign country.

²⁸ Ibid, s. 34 (2) for the necessary circumstances in the case of the recognition and enforcement of foreign arbitral awards based on the treaty between Nepal and Other contracting parties.

²⁹ Ramona Martinez, Recognition and Enforcement of International Arbitral Awards under the United Nations Convention of 1958: The Refusal Provisions, *International Lawyer*, volume 5: no. 2, 1990, p. 488.

³⁰ *Scherk v. Alberto-Culver Co.*, US Supreme Court, 1974, 417 U.S. 506 .

³¹ *Advocate Devendra Pradhan on be behalf of Hamil Engineering and Construction Co. Ltd registered office on 832-2 Yuksan-dong Kangnam-ku, Seoul, Korea V.s. Appel Court Patan et. al.*, NKP 2075 (2019), volume 11, Decision no. 10138.

For the appointment of an arbitrator, there must be a mutual agreement between the parties in the relevant contractual agreement or in a separate agreement and the arbitrator must be appointed and decided in accordance with the law and procedures mentioned in the agreement. This will be the main condition on whether the decision of the foreign arbitration will be recognized or not.

Further, recognition and the enforcement of the foreign judgment in the Nepalese context can be drawn from the judgment by the Supreme Court in the '*Dr. Puskar Raj Pandey v. Sabeena Pandey*'³². The court in the case posits that it is an important legal question whether the decision made by the court of one country should be recognized by the court of another country. Because of sovereignty, each nation is considered sovereign within its territory. The law of that country applies to every person residing in that country and its property within its territory and assumes exclusive jurisdiction. No Country applies the laws of other countries except its laws. However such exclusive jurisdiction is not possible in today's interdependent world, even though it was possible earlier. Therefore, today's nation cannot ignore foreign laws and judgments from foreign courts in the name of territorial sovereignty. Decisions that are not contrary to public policy should be recognized and implemented based on reciprocity and comity. Today's world is interdependent and due to the effects of globalization, even Nepal cannot live in isolation from others, so the courts of one country should assume jurisdiction and decide on matrimonial disputes, contractual disputes, investment disputes, etc.

Nepal³³ for the first time faced '*International Arbitration*'³⁴ proceeding at the International Centre for Settlement of Investment Disputes (ICSID) on May 20, 2019. The case was brought by Axiata Group against the decision of the Government of Nepal to levy a capital gain tax based on the '*Bilateral Investment Treaty between Nepal and Great Britain 1993*'³⁵. Recently, the *tribunal*³⁶ rendered its award on June 9, 2023. It creates obligations on the part of Nepal for the recognition and enforcement of the award. It is yet to be seen on the responses of the Government of Nepal and the Judiciary on the recognition and enforcement of the foreign arbitral award. Nepal being party to the New York Convention creates international law obligation for the recognition and the enforcement of the arbitral award. Further, the image and credibility of Nepal in the international arena is at stake. There exists both 'national law'³⁷ and international legal obligation on Nepal for the recognition and enforcement of the arbitral award. Further, there remains the question of the image and credibility of the country in the international arena. Hence, a tactful and humble presentation on the part of Nepal is very much a fundamental requirement in this particular case.

³² *Dr. Puskar Raj Pandey v. Sabeena Pandey*, NKP 2068 (2011), volume 3, Decision no. 8572.

³³ Rajesh Bastola, *Nepal is Ignoring Necessary Arbitration at its Own Risk*, The Kathmandu Post, 11 November 2019, available at <https://kathmandupost.com/columns/2019/11/11/nepal-is-ignoring-a-necessary-international-arbitration-at-its-own-risk> accessed on 20 August 2023, Sunday .

³⁴ *Axiata Investments (UK) Limited and Ncell Private Limited v. Federal Democratic Republic of Nepal*, ICSID Case No. ARB/19/15.

³⁵ *Agreement between the Government of United Kingdom of Great Britain and Northern Ireland and His Majesty's Government of Nepal for the Promotion and Protection of Investments*, 2 March 1993, U.K-Nep, available at <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2064/download> accessed on 21 August 2023, Monday .

³⁶ International Center for Settlement of Investment Disputes World Bank Group, available at <https://icsid.worldbank.org/cases/concluded>, accessed on 20 August 2023, Sunday .

³⁷ *Treaty Act 1947*, s. 9 states treaty provisions enforceable as good as laws.

V. Analysis and Conclusion

There exists legal instruments and judicial responses for the recognition and enforcement of an arbitral award in Nepal. There is no clear legal or judicial discourse for the recognition and enforcement of domestic and international arbitral awards. The timely amendment of the existing legal provisions is a critical requirement of the present times. The nuances of the *two-tiered arbitration*,³⁸ *subject matter of arbitrability*,³⁹ and other latest developments must be taken into account and considered for the sake of guaranteeing the recognition and enforcement of the arbitral award. The certainty, predictability, and bare minimum objective standards must be there in place for the enforcement and recognition of both domestic awards and foreign arbitral awards in the Nepalese context.

As to quote “the prophecies of what the court will do in fact and nothing more pretentious is what I mean by Law.”⁴⁰ In this background, the court in the case of ‘*Chandra Kumar Golcha*’⁴¹ stipulates that the principle restricts the subject matter presented before the court. It is not up to the court to intervene in the matters not presented before the court. The court reiterated the fact that it must be limited to the subject matter presented before it rather than intervening unnecessarily. It is a fundamental requirement of the present times to have a predictable and objective standard for the recognition and enforcement of the arbitral award via legal instruments and judicial discourse. According to the above data of the three-district courts there are a very minimal number of applications filed for the execution of the award. The ‘court’⁴² must not hesitate to enforce the arbitral award. The national legal instruments and International legal standards are required for the recognition and enforcement of the arbitral award in the Nepalese context. The existing arbitration law must be timely amended and the respective district with the ultimate jurisdiction for the recognition and enforcement of the arbitral award must be sensitized, empowered, and pro-active for the recognition and the enforcement of both the domestic and international arbitral awards. The effective and timely enforcement of the arbitral award paves the way for inculcating confidence in arbitration as an alternative form of dispute resolution mechanism.⁴³

³⁸ Rajesh Bastola, Two-Tiered Arbitration in Nepal, *Nepal Bar Council Law Journal*, 2020, pp. 519-534.

³⁹ Rajesh Bastola, Subject Matter of Arbitrability with Special Reference to Nepal, *Nepal Bar Council Law Journal*, 2018, pp. 463-471.

⁴⁰ Oliver Wendell Holmes, The Path of the Law, *Harvard Law Review*, volume 10, 1897, p. 457.

⁴¹ *Chandra Kumar Golcha v. Appellate Court Patan et. al.*, 2062 (2005), volume 3, Decision no. 7516.

⁴² The recent data provided for the pending number of the fine and punishment as provided in Supreme Court Judgment Execution Directorate, available at <https://supremecourt.gov.np/scjed/>, accessed on 15 December 2023 .

⁴³ The analysis of the presented above of Kathmandu District Court, Bhaktapur District Court, and Lalitpur District Court reflects encouraging number of applications filled for execution of the award but its gloomy as far as execution part is concerned. Hence, the proactiveness of the part of the judiciary is must to uphold the sanctity and public trust in arbitration as a method of the dispute resolution.