

Judicial Trend in Contract Related Disputes: Nepalese Perspective**Saroj Kumar Giri**

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This research delves into the dynamic evolution of contract law in Nepal over the past five and a half decades, focusing on the pivotal role played by the Supreme Court. The study analyzes the major changes in contract-related decisions and identifies emerging trends shaping Nepal's legal landscape. Beginning with Nepal's initial contract regulations under Ain and tracing the legal journey through various legislative acts, the study scrutinizes key Supreme Court cases that have defined and refined the understanding of contracts. The research highlights the transformative trends in Nepal's contract law. Furthermore, the study explores the issue of contract validity. In addition, the research examines the critical demarcation between civil and criminal jurisdiction in contractual matters. Through the various cases, Supreme Court of Nepal developed the doctrine that contractual disputes lacking criminal elements fall under civil jurisdiction, preventing unwarranted criminalization of contractual disagreements and ensuring a balanced legal approach. Thus, the article argues that comprehensive analysis through the various cases, Supreme Court of Nepal illuminates Nepal's progressive legal framework in contracts, promoting transparency, fairness, and adherence to fundamental legal principles. The research contributes valuable insights into the evolution of Nepal's contract law, providing a foundation for fostering a favorable business environment in the country.

Keywords: contract, justice, dispute, court, principle, law

Introduction

A contract refers to a description of the activities that designated individuals are expected to carry out at different instances, usually based on the prevailing circumstances. These activities commonly involve transferring items, executing tasks, and making financial transactions. The circumstances encompass unpredictable events, prior behaviors of the parties involved, and communications exchanged between them. As an illustration, a contract could outline that a restaurant is responsible for serving a meal to fifty individuals on January 2nd. Additionally, the event coordinator is obligated to remit Rs. 1,00,000 to the restaurant proprietor within seven days after the event. The event organizer retains the option to cancel the

arrangement by notifying the restaurant owner prior to December 2nd. Furthermore, if the event organizer becomes incapable of providing the meal, the contract allows for cancellation. Evidently, due to the expansive nature of actions and circumstances, the concept of a contract encompasses a wide array of scenarios.

A contract is considered fully defined (or simply complete) when the catalog of conditions influencing the actions is comprehensively outlined. This implies that the contract explicitly accounts for every conceivable condition within a pertinent set of circumstances. A contract is labeled as incomplete when it lacks comprehensive specification. This indicates that the contract fails to explicitly enumerate all potential conditions within the scope of the considered context.

A contract is deemed mutually advantageous or, in economic terms, Pareto efficient, when it is impossible to make adjustments that enhance the well-being, or expected utility, of each involved party. It's assumed that contracts naturally lean towards being mutually beneficial: If there exists a possibility to modify a contract in a manner that heightens the expected utility for every party, it's expected that such alterations would be implemented.

National Civil Code, 2074 has not accurately defined the meaning of contract but it endorses that any agreement made between the parties and if it is legally enforceable then it can be called as contract. If an agreement enforceable by law is concluded between two or more persons to do or abstain from doing any act, a contract shall be deemed to be concluded (Sec 504 (1). But to get the validity and to enforce legally through the court, there must be offer (Sec. 504(3)(1) and acceptance (Sec. 504(3)(2).

Contracts are presumed to be upheld through legal channels, typically involving a court authorized by the state. Nevertheless, in various scenarios, entities apart from a state-sanctioned court – such as a decision-making body within a company, a trade association, a religious organization, or an arbitration entity – could function as a tribunal to enforce contracts. Furthermore, the concept of reputation and associated influences might also play a role in enforcing contracts to some extent.

A law of contract may be provisionally described as that branch of the law which determines the circumstances in which a promise shall be legally binding on the person making it (J. Beatson, A. Burrows, J. Cartwright, 2010). A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some ways recognizes as a duty (Winfield, 1929). One of the fundamental principles of contract since the concept of it originated even before the Ancient Law published by Sir Henry Maine in 1861, is the freedom of contract. The general rule of freedom of contract is embodied with the postulate that there should be no liability without consent in a valid contract.

The fundamental principle in contract law is the requirement for precise and accurate performance. In other words, when a party has an obligation under a contract, they must fulfill that obligation with precision, adhering to both the specified timeframes and the established standards outlined in the contract. Occasionally, these standards can be quite stringent, as seen in various common law obligations, such as a seller's duty to properly load cargo (Lloyd, 1990) and obtain smart license (Pagnan SpA v Tradax Ocean Transportation SA, 1987), sometimes as in the case of contracts for services, it will only require the exercise of reasonable care (Lister v Ramford Ice and Cold Storage Co. Ltd., 1957).

Statement of Problems

A contract bereft of enforceability within the judicial system fails to attain the status of private law. The judiciary's pivotal role in formulating precedents during the adjudication of contractual disputes assumes paramount significance in comprehending the holistic landscape of the sector and mapping the intricate evolution of contract law in the Nepalese legal framework. Upon scrutinizing the patterns within judicial pronouncements in the realm of contract law over the research timeframe, one can discern the transformative impact of court rulings on the legal paradigm and the reciprocal influence of legal developments emanating from within the sector. Concurrently, this narrative illuminates the evolutionary trajectory of Nepalese contract law, elucidating its genesis, maturation, and continual expansion. This process, in turn, augments the jurisdictional purview of the courts, leaving an indelible mark of approval among both the business community and the general populace.

Over the span of five and a half decades under examination, the majority of cases pertaining to contracts were subject to judicial review, guided by universally acknowledged legal principles and the nation's legislative framework. This period saw the enactment of three significant contract laws: the 2023 Act Relating to Contracts, the Contract Act of 2056, and the subsequent incorporation of Nepalese contract law into Part V of the Country Civil Code of 2074, supplanting the former Contract Act. Within this timeframe, several noteworthy developments transpired, ushering in substantial transformations in the rights of aggrieved parties and the burgeoning scope of private law. The role of judicial decisions assumed paramount significance in shaping the survival and expansion of contract law and contractual relationships within the Nepalese business milieu.

Due to the frequent changes in contract provisions, individuals and stakeholders often encounter challenges in both the implementation and adjudication of contractual matters. Previously, the 2023 Act Relating to Contracts and the Contract Act of 2056 were specific laws exclusively addressing contract disputes. However, they have now been incorporated into Nepal's general legal framework. This shift has led to debates, with many arguing that the

inclusion of contract laws within the broader legal framework suggests a decreased focus by the state on addressing and managing contract-related issues.

The regular amendments to contract law provisions have also posed obstacles in the resolution of disputes, a concern that has been highlighted by the Supreme Court of Nepal in various rulings. Furthermore, there is a lack of provisions holding prosecutors accountable when they convert contract matters (civil cases) into criminal cases, a practice that is seen as forceful and problematic. "In business-related and civil matters, a contracting party does not possess the right to levy penalties on the other contracting party. Similarly, even a government entity does not have the authority to impose fines or any form of sentences in civil matters such as contracts and economic transactions. Civil matters primarily involve disputes and legal issues between private parties, and the resolution typically entails compensation or other equitable remedies rather than punitive measures like fines or sentences. Criminal matters, on the other hand, are typically handled by the state and involve penalties and sentences for violations of criminal law" (*Amar Adarsha Secondary School v Krishna Bahadur Shrestha*).

The Supreme Court of Nepal has indeed played a pivotal role in the development of contract law, its construction, and interpretation, as well as in shaping business jurisprudence within the country. One of its significant contributions has been to limit the government's ability to enact laws that would convert contract matters into criminal issues.

However, despite its influential role, there have been instances of inconsistencies in the court's decisions. These inconsistencies, coupled with the potential for frequent overruling of previous decisions, have created a sense of confusion within the business community. Such uncertainty can hinder the predictability and stability that businesses rely on when entering into contracts and conducting economic transactions.

Efforts to establish more uniformity and stability in contract law decisions are essential to foster a favorable business environment in Nepal. This may involve efforts to clarify legal principles, promote greater consistency in judicial rulings, and enhance legal predictability for businesses and stakeholders. In this ground, the researcher has set certain research question to analyze the trend set by the Supreme Court of Nepal in shaping the contract jurisprudence.

- What are the major changes in the decisions of Supreme Court of Nepal in contract related disputes in last five and half decade?
- What are the new trends adopted and developed by the Supreme Court of Nepal in contract related disputes?

Objective of the Study

The aim of this research is to examine specific significant rulings made by the Supreme Court of Nepal regarding contract law. The goal is to comprehend the overall trajectory of

contract law development in Nepal through these key judicial decisions. The specific objectives are as follows.

- To study the trend of contract law development through the judicial decisions made by Supreme Court of Nepal.
- To explore the role of Supreme Court of Nepal in the overall development of contract law.

Review of Literature

In the ever-evolving landscape of global commerce, contract law stands as the foundation upon which business transactions thrive. Central to the development of contract law are the landmark decisions rendered by supreme courts across the world. These decisions serve as guiding beacons, illuminating the path toward fairness, justice, and legal certainty in contractual relations. The foundation of contract law, governing the very essence of societal transactions, is meticulously crafted through landmark decisions made by supreme courts globally.

The case involved a public advertisement promising a reward for anyone who used the defendant's product and still contracted influenza. The court, in its wisdom, held that the advertisement constituted a unilateral offer, leading to a binding contract once accepted by performance. This decision solidified the principle of unilateral contracts and the concept of offer and acceptance, shaping the foundations of modern contract law. This case stands as a cornerstone in contract law (*Louisa Carlill v Carbolic Smoke Ball Company*, 1892).

Royal Court of Justice, England has provided invaluable insights into the concept of 'seaworthiness.' The court introduced the idea of an implied term, establishing that vessels must be reasonably fit for their intended purpose (*Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd*, 1961). This landmark ruling highlighted the significance of implied terms, ensuring contracts are not merely about explicit clauses but also about reasonable expectations, thereby fostering fairness in agreements.

In this situation, the big question wasn't how severe the ship's problems were, but whether these problems were bad enough to cancel the contract. The court decided that since the charterer had already used the ship for most of the agreed time and gained a lot from it, the issue could be resolved by paying compensation for the problems.

However, this ruling worried the shipping industry because it introduced uncertainty. The problem was that people had to wait and see how bad the issues were before taking action. Considering how expensive it is to rent a ship, nobody could afford to wait and lose money while figuring out what to do about the problems.

In one of the most notable cases of America, *Otis F. Wood* challenged the traditional boundaries of contract law. The court inferred a 'best efforts' obligation in a contract, even though it lacked explicit terms. This decision showcased the court's willingness to imply terms when necessary, emphasizing the evolving nature of contract law and its adaptability to complex business relationships (*Otis F. Wood v. Lucy, Lady Duff-Gordon*, 1917).

In the case of (*Specht v. Netscape Communications Corporation*, 2002) United States Court of Appeals for the Second Circuit marked a pivotal moment in online contracts. The court ruled that hidden terms within online agreements were unenforceable, emphasizing the importance of conspicuous notice. This decision highlighted the challenges posed by digital transactions, prompting courts to adapt traditional contract law principles to the intricacies of the internet age, ensuring fairness and transparency.

In one of the notable cases of England which laid the solid foundation in the development of mitigation of mind of the parties (*Balfour v Balfour*, 1919) that left the groundwork for the distinction between social and commercial agreements. The court held that domestic agreements lacked the intention to create legal relations, establishing a crucial principle in contract law. This ruling delineated the boundaries of enforceability, ensuring contracts are only legally binding when parties intend them to be so.

In one of the pioneer cases of India (*Satyabrata Ghose vs Mugneeram Bangur & Co., And Another*, 1953), Supreme Court of India delved into the concept of frustration of contracts. The court established that unforeseen circumstances rendering contracts impossible could discharge parties from their obligations. This ruling underscored the need for flexibility in contract law, ensuring fairness when unforeseen events disrupt the execution of agreements. The Supreme Court clarified that the rules about Contract Frustration in English law, as determined by the High Court, didn't apply in the Indian Contract Act's legal provisions. Additionally, the court confirmed that the contract could still be fulfilled; it wasn't impossible to execute.

The doctrine of frustration was further elaborated in the case (*Tembusu Investments Pte Ltd v Tiong Aik Construction Pte Ltd*, 2013) of Singapore. The court ruled that frustration of contracts due to unforeseen events could discharge parties from their obligations. This decision highlighted the court's understanding of changing circumstances, ensuring parties are not unduly burdened by events beyond their control, promoting fairness and justice in contractual relationships.

The Canadian Supreme Court emphasized the obligation of parties to act honestly in the performance of contracts, highlighting the importance of fair dealing (*Hunter Engineering Co v Syncrude Canada Ltd*, 1989) that explored the concept of 'good faith' in contracts. This

decision reinforced the principle of good faith, ensuring that parties approach contracts with integrity and honesty, promoting trust in commercial relationships.

The doctrine of good faith was further solidified in the latest case of Canada (*Bhasin v Hrynew*, 2014). The Supreme Court of Canada ruled that parties have a duty to perform contracts honestly and that this principle is applicable to all contracts. This decision underscored the overarching importance of good faith in contractual relationships, fostering fairness and ethical conduct.

In another notable case (*Mitsubishi Materials Corporation v. Corwin Corporation and another*, 1997), California Court of Appeal explored the concept of misrepresentation. The court clarified the elements of actionable misrepresentation, ensuring that parties are protected from deceitful practices. This ruling emphasized the importance of truthfulness and transparency, safeguarding parties from fraudulent inducements, and promoting fair contractual dealings.

Supreme Court of Nepal has also set some new provisions and guided the contract principle in its jurisprudence. Supreme Court exemplified the court's approach to the sanctity of contracts. The ruling emphasized the need for strict adherence to contractual terms, promoting the stability and reliability of agreements (*Punya Prasad Neupane vs. Board of Directors, Nepal Bank Ltd.*, 2006). This decision showcased the Nepalese court's commitment to upholding contractual obligations, ensuring parties adhere to the agreed terms, fostering confidence in business transactions.

Principle of consideration in contract was upheld through the decision of Supreme Court of Nepal in the case (*Nepal Investment Bank Ltd. vs. Satya Narayan Agrawal*, 2006) where court reinforced the fundamental principle that contracts must be supported by valid consideration, ensuring fairness and reciprocity between parties. This ruling highlighted the importance of equitable exchanges in contracts, ensuring that agreements are based on mutual benefit and fairness.

Through these intricate analyses of pivotal cases from various jurisdictions, it becomes evident that supreme courts worldwide play a paramount role in shaping the course of contract law. These cases stand as testament to the courts' wisdom, ensuring that contract law evolves in tandem with society, adapting to modern challenges, fostering commercial confidence, and, above all, upholding principles of fairness and justice. Supreme courts, through their judgments, not only interpret the law but also significantly contribute to the harmonious functioning of global commerce, laying the foundation for equitable and just contractual relationships across the globe.

Research Materials and Methods

The study's nature necessitated the use of both analytical and descriptive research approaches. Secondary data were collected from the various research books, court cases, annual reports, synopsis, booklets which describes the development trends of contract law in Nepal. Case study methods have been applied to justify the role of Supreme Court of Nepal in findings the evolution of the contract law of Nepal shaping the further direction of it. The data was collected from the text and decisions of the various courts.

This legal research constitutes a doctrinal study, focusing primarily on primary sources derived from judicial decisions. The researcher specifically gathered contract-related case laws from the Supreme Court of Nepal, purposefully selecting significant cases for analysis. The primary sources also encompass legal provisions outlined in the Constitution, Acts, and Rules.

Results and Discussion

During the era of Junga Bahadur Rana, Nepal introduced a structured law called Ain, later known as Muluki Ain, on Poush 7, 1910 B.S. This law included regulations for transactions and contracts found in sections like Lenden Byabaharko, Sahu Mahajanko, and Registrationko Mahals. It was later replaced by the Naya Muluki Ain, established by King Mahendra on Bhadra 1, 2020. This new law introduced various provisions governing contracts, including Section 4 of Prarambhikko Kathanko Mahal, Section 37 of Lendenko Mahal, and Section 1 of Naso Dharotko Mahal (Kalika, 2020).

However, the Naya Muluki Ain was subsequently substituted by the Act Relating to Contract, 2023, effective from Poush 1, 2023 B.S. This marked Nepal's first specific contract law, aligning business transactions with common law principles. Later, it was superseded by the Contract Act, 2056, which came into effect on Ashadh 14, 2057 B.S. This act annulled the Act Relating to Contract, 2023, and the Naso Dharot provision of Muluki Ain, 2020.

The Contract Act, 2056, was eventually replaced by the Muluki Civil Code, 2074. This comprehensive code, covering civil matters such as family law and property law, also contained provisions regarding contracts and liabilities in its fifth part. In drafting this section, seventy percent of the content was derived from the previous Contract Act, 2056, ten percent from legal precedents, and twenty percent from societal experiences (Karki, 2018). The Muluki Civil Code, 2074, received approval on Ashwin 30, 2074 B.S. However, it only became enforceable on the 1st of Bhadra, 2075 B.S.

The current contract law incorporates fundamental and specific provisions designed for the benefit of the business community. Despite being progressive, it has certain limitations. Notably, there are insufficient provisions regarding considerations, limited rights for third parties acting as beneficiaries, and issues related to imposing liability on third parties in cases

of silence. Furthermore, while praised as a progressive legal document, it does not address the contractual capacity and liabilities of artificial persons.

The introduction of the Civil Code marks a significant shift in the history of contract law in Nepal. This Code has replaced specific statutes, consolidating all aspects of contract law into a comprehensive civil code. With this change, the era of specific statutes has come to an end, giving way to a new era governed by a general code. This development is pivotal as it harmonizes most modern contract law principles and consolidates them within a unified Civil Code, distinguishing it from countries like India and England.

In contrast to Nepal's approach, India maintains separate laws governing contract issues, such as the Indian Contract Act, 1872, and the Sale of Goods Act, 1930. England, on the other hand, lacks a uniform law, as English contract law is primarily shaped by court practices, i.e., Common law. Nepal's move to consolidate and modernize its contract law within a general Civil Code represents a significant advancement in the legal landscape of the country (Poudel, 2023).

Judicial Trend Set by Supreme Court of Nepal

Regarding the Understanding of Contracts

Since the establishment of Supreme Court of Nepal in 1957 (previously known as Pradhan Nyayalaya), disputes related contract started to enter into the court. But it took nine years to decide the first case of its kind that defines the meaning of contract for the first time through the judicial decisions though the Act relating to Contract (2023) a year later gave clear definition of it borrowing the definition made by the court.

Dhruba Shamsher v. Nabaraj. The case in question revolved around establishing the nature of a document - whether it constituted a partnership contract or a general transaction. The court determined that the document, which outlined only the profit share of the transaction and lacked details on the business's benefit and loss accounts, was not a partnership contract. Instead, it was classified as a general transaction document. It's important to note that this legal ruling occurred prior to the enactment of the first distinct Act regulating contracts in 2023 B.S (Dhruba Shumsher v. Nabaraj , 2022)

Tirharajkumari Rana v. Binod Shanker Shrestha. In this case, the Supreme Court of Nepal outlined the essential elements of a contract. According to this ruling, for a document to be considered a contract, there must be a mutual agreement between the parties involved. Both parties must understand and agree to perform or abstain from a specific action outlined in the contract. Additionally, the terms of the contract need to be communicated to all parties involved. Interestingly, there is no fixed format specified by the law for contracts, indicating flexibility in their structure (Tirharajkumari Rana v. Binod Shanker Shrestha, legal heir of Ram Shanker Shrestha, 2040).

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Badriraj v. Namraj. This case followed the principles set by the Tirtharajkumari Rana and Sarki Kami cases. It reinforced the understanding of contracts in Nepal's legal system, likely providing further clarification or specific application of contract law principles (Badriraj v. Namraj, 2044).

Sarki Kami v. Kanchho Kami and Others. This case set a precedent that expanded the definition of contracts. It established that any document outlining the obligations of parties could be considered a contract, even if it was originally labeled as something else, such as a 'document of advance payment'. This ruling broadened the scope of what could be legally recognized as a contract, emphasizing the importance of understanding the mutual obligations of the parties involved (Sarki Kami v. Kanchho Kami and others., 2048).

In essence, these cases collectively contribute to the evolving definition of contracts in Nepalese law, emphasizing mutual agreement, clear communication of terms, and recognizing various forms of contractual documents beyond traditional formats.

Regarding the Validity of Contract

A valid contract binds the parties to fulfill their agreed obligations and holds them liable for any damages resulting from failure to do so. However, if a contract is deemed invalid, the parties are not obligated to perform, nor are they liable for damages resulting from non-performance. Typically, a contract's invalidity is only recognized if one party raises an objection or initiates legal action. However, certain grounds for invalidity are automatically considered, such as form errors in real estate transactions, leading to rejection of title registration applications. This automatic consideration is termed "voidness. Supreme Court of Nepal has established various principles regarding the validity of contract through numbers of cases.

Dhanamaya Maharjan v. Tulasi Maharjan & Others. This case highlighted the absence of a specific format for contracts in Nepal's public law. It established that while there's no prescribed structure, a contract document must clearly articulate the responsibilities of the parties involved. Furthermore, their consent, often signified by a fingerprint, is crucial for the contract to be legally binding (Dhanamaya Maharjan v. Tulasi Maharjan & Ors, 2062).

Bijay Chandra Labh v. Everest Paper Mills, Janakpur. In this case, the court stressed three pivotal aspects of a contract: clarity on liability, emphasized methods for fulfillment, and the rights and liabilities created by the agreement. It is that if an agreement fails to outline its performance specifics, it cannot be regarded as a valid contract (Bijay Chandra Labh v. Everest Paper Mills, 2064).

Shayera Banu v. Sharadram Bhandari. In this case, the court underscored the necessity of specific stipulations in a contract and clarified the termination conditions. It stressed that a contract must have detailed stipulations. Additionally, the court clarified that a

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contract, though a form of private law, must be interpreted within the established Contract Law framework. The contract terminates upon the accomplishment of its purpose and function (Shayera banu v. Sharadram Bhandari, 2064).

Richhood Multiple Pvt. Ltd. v. Rashtriya Banijya Bank Ltd. This case clarified what constitutes a valid offer. It specified that governmental notices like pricelists or bids are invitations to offer, not binding offers. The authority has the discretion to choose any bidder, making these notices non-binding offers (Richhood Multiple Pvt. Ltd. v. Rashtriya Banijya Bank Ltd. NKP 2068. V. 7. Decision No. 8649. , 2068).

Chitra B. Karki v. Maniram Agarwal. In this case, the court emphasized the fundamental elements of a contract in Nepalese law. It ruled that for a contract to be valid, there must be an enforceable agreement between parties. Mutual agreement alone is not sufficient; the contract must also contain stipulations necessary for lawful objectives. Consideration, involving mutual promises where parties gain or lose something, is deemed essential for the validity of a contract (Chitra B. Karki v. Maniram Agarwal, 2071).

Through the above cases the Supreme Court of Nepal has underscored the importance of lawful objectives, capacity of parties, and the need for offers to comply with legal requirements. By setting these standards, the Supreme Court has not only strengthened the foundation of contract law in Nepal but has also provided a framework that promotes fairness, transparency, and adherence to legal principles in contractual agreements. Top of Form

Segregation of Contract Issues with Writ Jurisdiction

Writ jurisdiction refers to the authority of a court to issue writs, which are legal orders commanding a person or entity to take a specific action or refrain from doing something. Writs are typically issued to enforce constitutional rights or to remedy legal wrongs. Writ jurisdiction is a part of procedural law and is exercised by courts to uphold the rule of law and ensure justice. On the other hand, a contract is a legally binding agreement between two or more parties, creating obligations that are enforceable by law. Contracts can be written, oral, or implied by the actions of the parties involved. Having this fact many disputant parties involved in contract have tried to file a case with writ jurisdiction in contract related disputes. Supreme Court of Nepal has segregated these two different concepts through different cases.

Weyujiang v. Government of Nepal

In the legal precedent established by the Supreme Court of Nepal in the case (We Yu Jiang v. Government of Nepal, 2069), the court ruled that writ petitions could not be accepted in contractual matters. This decision was based on several logical reasons. Firstly, the court recognized that contracts for the sale of goods are specialized agreements with specific obligations for all parties involved. If any party breaches these obligations, the injured party has the legal right to seek compensation through civil proceedings, which are designed for such

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disputes, rather than escalating it into a criminal case. The court emphasized that it is not reasonable to transform a contractual disagreement into a criminal offense.

Furthermore, the court highlighted that a case can only be deemed fraudulent under specific circumstances, such as deception, violation of laws, fraudulent misrepresentation, or reckless behavior by one party against another. In the case being discussed, both parties had willingly and freely entered into the contract, indicating an absence of fraudulent intent.

Additionally, the court underlined that this case concerned the fulfillment of a contractual obligation, which falls under civil liability. Consequently, establishing a fraudulent offense against the defendant was deemed unwarranted and unjustifiable.

Regarding to the Procedures to be Followed

The Contract Act of 2056 in Nepal states that if a specific procedure or registration is required by law for a particular contract, that procedure must be followed; otherwise, the contract won't be considered valid. This means that if there are legal requirements for a specific type of contract, those requirements must be met for the contract to be legally recognized.

In a related case, the Supreme Court clarified that contracts can be established through regular methods or formal processes. If the law specifies certain steps for a contract to be valid, those steps must be followed. However, the parties involved have some freedom in determining the nature and specifics of their contract, as long as they comply with legal requirements.

Furthermore, according to Section 505 of the Muluki Civil Code of 2074, for a contract to be enforceable, it must have the voluntary agreement of the parties, the parties involved must be legally qualified, the subject matter of the contract must be clear, and the contract must involve a legal obligation. Contracts can be in written, verbal, or conducted forms. But if a specific contract type demands certain procedures or formalities, those must be fulfilled for the contract to be legally binding (*Tularatna Bajracharya v. Chet Sundar's legal heir Tara Shrestha Pratabasnsa*, 2076).

Contract is Civil Matter

Supreme Court of Nepal through various cases have stopped government to prosecute contracting parties in the breach of contract and established the solid foundation as the contract is only civil matters.

The contract between the fraudster and the defrauded, if it deviates from the nature of a criminal offense, is transformed into a civil obligation, subjecting the responsibility to the civil court, and the punishment to be given by imprisonment is released (*Om Kumar Shrestha v Government of Nepal*, 2069) . Court interpret it that the sentence means that if an agreement between a swindler and the person being deceived does not involve elements of a criminal

nature, it is treated as a civil matter. In such cases, the responsibility falls under the jurisdiction of civil courts, and any potential imprisonment punishment is not applicable.

The breach of contract by one party does not grant the other party the right to demand the entire agreed-upon sum as compensation. If the amount claimed for damages is excessively high or unreasonable, and one party gains unjustly (Unjust Achievement) from the loss, the amount mentioned as compensation can also cover penalties or fines. In commercial disputes or legal proceedings, the state cannot establish laws that allow any party to demand penalties or fines from the other party through any means. One party in a contract does not have the right to claim penalties or fines from the other party, even if the contract has been breached, unless specifically stated otherwise (*Amar Adarsa Secondary School v Krishna Bahadur Shrestha*, 2068).

This elucidates a nuanced perspective on contractual breaches and the ensuing legal implications. It underscores a critical principle: merely breaching a contract does not entitle the offended party to indiscriminately claim the entire agreed-upon sum as compensation. Instead, the compensation sought should align with the actual damages incurred, emphasizing the necessity for fairness and proportionality in legal claims arising from contractual violations.

Furthermore, it delves into the concept of 'Unjust Achievement', suggesting that if a party unduly benefits from the other party's loss due to the breach, the compensation claim can encompass not only the direct losses but also penalties or fines. This indicates a sophisticated legal understanding, acknowledging the complexities of contractual disputes.

Importantly, it highlights the stringent standards within commercial and legal spheres. It asserts that, even in the face of a breach, one party cannot unilaterally demand penalties or fines from the other, emphasizing the need for clear contractual stipulations regarding such punitive measures. This legal stance underscores the importance of well-defined agreements, ensuring that parties are aware of the consequences of breach and the corresponding legal remedies available.

In essence, this sophisticated interpretation emphasizes the intricacies of contractual law, illuminating the need for precise legal language and demonstrating the careful balance between asserting one's rights and adhering to legal principles. This decision underscores the importance of a judicious approach, ensuring that claims and compensations are not arbitrary but rooted in legal fairness and equity.

Conclusion

Over the past five and a half decades, the Supreme Court of Nepal has witnessed significant changes and developments in contract-related disputes, shaping the country's legal landscape. One of the fundamental transformations lies in the definition and understanding of contracts. Earlier cases like *Dhruba Shamsher v. Nabaraj* established the necessity for clear

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terms in contractual documents, differentiating between general transactions and partnership contracts. The Court progressively emphasized mutual agreement, clear communication, and diverse formats of contracts, showcasing a flexible approach to contractual agreements.

A notable trend is the expansion of the definition of contracts, evident in cases like *Sarki Kami v. Kanchho Kami and Others*. Here, the Court broadened the scope, recognizing any document outlining party obligations as a contract, even if not traditionally labeled so. This evolution demonstrates a nuanced understanding of varied contractual forms, promoting inclusivity and adaptability in legal interpretations.

In terms of contract validity, the Supreme Court underscored the absence of a specific format for contracts in public law through cases like *Dhanamaya Maharjan v. Tulasi Maharjan & Others*. It emphasized that while no prescribed structure exists, contracts must articulate responsibilities clearly and require mutual consent, often symbolized by a fingerprint, to be legally binding. This trend highlights the importance of clarity and informed consent in contractual relationships.

Additionally, the Court set stringent standards regarding penalties and fines in cases of contract breaches. The concept of 'Unjust Achievement' emerged, signifying that compensation claims should align with actual damages incurred. This nuanced perspective ensures fairness and proportionality, discouraging arbitrary claims and promoting equity in legal remedies.

Furthermore, the Supreme Court established a clear demarcation between civil and criminal jurisdiction in contractual matters. Cases like *Om Kumar Shrestha v Government of Nepal* emphasized that contractual disputes lacking criminal elements fall under civil jurisdiction. This distinction prevents unwarranted criminalization of contractual disagreements, ensuring a balanced legal approach.

To sum up, the Supreme Court of Nepal has evolved its approach to contract-related disputes by emphasizing mutual agreement, diverse contract formats, clear communication, and fairness in compensation claims. These trends reflect a progressive legal framework, promoting transparency, fairness, and adherence to fundamental legal principles in contractual agreements.

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