

Effectiveness of Arbitration in Nepal Construction Dispute Resolution

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ABSTRACT. This study looks at how arbitration works in resolving disputes related to construction contracts in Nepal. It focuses on how the procedures and the arbitration process affect whether people think it is successful. The study used a combination of methods to analyze information from 121 people involved in these disputes along with information from reports by the Nepal Council of Arbitration. The results show that the skills of the arbitration tribunal, the size of the tribunal and how evidence is presented are very important for making arbitration effective. On the other hand the value of the claim and complexity of the dispute do not seem to make a difference on effectiveness of arbitration. People do not think arbitration is an affordable way to resolve disputes. It takes an average of 430 days to reach a decision, which is much longer than the 120 days required by law as stated in the Section 24 of the Arbitration Act 2055 (1999). The study concludes that for arbitration to be really successful it depends more on the people involved being honest and working together than on the laws themselves. The study suggests that changes should be made to improve how arbitration decisions are enforced which would make arbitration more effective in resolving construction contract disputes in Nepal.

Keywords: Arbitration, Construction disputes, Dispute resolution, Construction contracts, Effectiveness, Cost effectiveness, Time effectiveness

AMS Subject Classification: 62-07 (Data analysis), 62P25 (Applications of statistics to social sciences), 91C99 (Social and behavioral sciences - other), 90B90 (Case studies and applications of operations research and management science)

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1. Introduction

The construction industry helps a country's economy and local economy a lot. It creates jobs and helps other industries grow because it needs their products and services. The construction industry is really important for overall growth of the economy [1]. However, modern projects are getting more complex. They have contract documents, limited budgets, and many stakeholders with different interests. This complexity has made the industry more likely to have disputes.

The complexity of projects is an issue due to several factors:

- Intricate contract documents are hard to understand.
- Tight financial constraints make it difficult to find solutions.
- Diverse stakeholder interests often clash.

This situation has made disputes more common in the industry. The problems in construction projects usually come from differences between owners, contractors who lack required technical skills, mistakes in the design, and other things like material prices going up. If we do not solve these problems, the construction project can go off track, the people in charge can lose their reputation, and it can cost a lot more money and take a lot more time than expected [2].

To avoid problems, people are using Alternative Dispute Resolution (ADR) to solve arguments about construction contracts. The arbitration process is a common ADR method used to resolve construction contract disputes [3]. Arbitration is considered better than going to court because it uses experts in specific areas and has flexible procedures. In Nepal, the Arbitration Act of 1999 helps make this process official. The Nepal Council of Arbitration (NEPCA) supports it. They were set up in 1991 to promote and establish ADR practices. As of September 2025, NEPCA had 72 registered panel members. In the fiscal year 2080-81, they handled 176 ongoing cases. Out of these, 48 were resolved, 42 of which were resolved through arbitration. The Public Procurement Act of 2063 also recognizes arbitration as a way to settle disputes in public construction projects.

The law is clear about arbitration in Nepal, but there is still a lot to learn about how well it actually works. The Arbitration Act 1999 says that arbitration decisions must be final and made within 120 days. However, it usually takes around 430 days to get a decision, which is a lot longer than the law says it should take. Arbitration in Nepal does not seem to be very successful in resolving disputes. Previous studies suggest a low success rate, where only 21.43% of disputes are actually resolved through arbitration. This is partly because government employers are afraid of being held accountable by groups like the Commission for the Investigation of Abuse of Authority (CIAA). So, they often do not accept the decisions made by arbitrators and instead choose to go to court post-arbitration decision. This makes the arbitration process in Nepal not very effective [4].

When we look at the research that's already out there, we see that it mostly talks about what causes disputes. There is not a lot of research on how procedural factors—such as tribunal competence, tribunal size, and evidence presentation methods—influence the perceived effectiveness of the process. There is a difference between institutional success (measured by NEPCA through the number of closed cases) and stakeholder satisfaction (measured by time-efficiency and award finality). This research addresses these gaps by looking at how the arbitration process works from the point of view of the people who are actually involved in construction disputes.

The major research questions for this study are listed as follows:

- How do procedural factors of arbitration affect the overall effectiveness of arbitration processes?
- How does the arbitral process influence the perceived effectiveness of arbitration in Nepali construction disputes?
- What is the disparity between the actual vs. expected cost and time effectiveness of Nepali construction arbitration practice?

The general objective of this study is to assess the effectiveness of dispute resolution practices within construction contracts in Nepal. To achieve this, the study identifies three specific research objectives:

- To determine how procedural factors (such as complexity and claim value) affect the overall effectiveness of the arbitration process.
- To investigate the influence of the arbitral process (including tribunal competence and size) on the perceived effectiveness of arbitration practices.
- To quantify and compare objective cost and time metrics of arbitration against subjective stakeholder perceptions and ideal legal benchmarks.

This study looks at primary survey data from 121 stakeholders with secondary case reports from NEPCA. The information from the stakeholders and past cases helps us understand what needs to be changed in the rules so that the system for solving disputes in Nepal is fair and trustworthy.

2. Methodology

2.1. Methods. This research used a combination of methods to look at construction arbitration in Nepal. It brought together quantitative numbers and qualitative opinions to evaluate the overall performance of construction arbitration.

2.2. Sampling Design and Procedure. The research looked at a group of 176 parties involved in disputes that were recorded in NEPCA reports from fiscal years 2079 to 2081 B.S. Using Cochran's formula (with a 95% confidence level and 5% margin of error), the required sample size was determined to be 121. The study utilized stratified sampling to maintain a 2:1 ratio between representatives of disputing parties (clients and contractors) and arbitrators. Additionally, convenience sampling was used to select three subject-matter experts for qualitative interviews.

2.3. Data Collection Techniques. Data were gathered from primary and secondary sources:

- **Primary Data:** Quantitative data were collected through structured questionnaires distributed electronically and in person. Qualitative data were gathered through structured written interviews and Key Informant Interviews (KII).
- **Secondary Data:** Information regarding case durations, costs, and outcomes was extracted from NEPCA annual reports, journals, and acts.

2.4. Instrument Validation and Reliability. The questionnaire was pre-tested with a panel of three experts having at least 10 years of experience in construction and arbitration. Cronbach's alpha reliability test was used, requiring a threshold score of 0.70 or higher. Responses from participants lacking ADR experience were excluded from the final analysis.

2.5. Data Analysis Methods. This research utilized SPSS and MS Excel for all analytical procedures:

- **Quantitative Analysis:** Descriptive statistics (mean, median, standard deviation) were computed. One-sample t-tests were conducted to evaluate perceived effectiveness scores against a hypothesized population mean of 2.5.
- **Qualitative Analysis:** Interview data were processed using thematic analysis to identify recurring patterns.

3. Results and Discussion

During the questionnaire survey, demographic information was gathered on gender, age, experience, academic background, province, occupation, and other factors as shown in Table 1.

As shown in Table 2, respondents generally believe that dispute complexity has a moderate to low effect on arbitration effectiveness. This implies that practitioners do not view intrinsic case characteristics as the primary obstacle to favorable arbitration outcomes.

The information in Table 3 casts doubt on the belief that low-value claims are easier to settle. Low median ratings indicate that current arbitration procedures may not be properly streamlined for smaller claims.

Table 4 indicates that tribunal size and evidence presentation methods are perceived as the most influential procedural elements.

Table 5 illustrates that perceived tribunal competence scores cluster closely around the neutral rating (2.82–2.94).

Results in Table 6 show a clear preference for multi-member tribunals ($Mdn > 3.05$) to enhance award quality and impartiality.

In Table 7, meticulous documentation emerged as the single highest scoring item ($Mdn = 3.18$).

The t-test results in Table 8 confirm that procedural factors significantly influence arbitration effectiveness ($p < 0.05$), while intrinsic case factors do not.

Tables 9 and 10 highlight dissatisfaction regarding cost and time metrics, underscoring the gap between the 120-day legal mandate and the 430-day practical average.

References

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TABLE 1. Distribution of respondents by demographics

Demographics	Categories	Frequency	Percent (%)
Gender	Male	69	98.57
	Female	1	1.43
	Total	70	100
Age Group	Below 50	25	38.46
	50–60	15	23.08
	Above 60	25	38.46
	Total	65	100
Qualification	Up to +2	0	0
	Bachelor	5	7.14
	Masters and above	65	92.86
	Total	70	100
Province	Province 1	6	8.57
	Karnali	2	2.86
	Madesh	3	4.29
	Bagmati	45	64.28
	Gandaki	9	12.86
	Lumbini	2	2.85
	Sudur Paschim	3	4.29
	Total	70	100
Position	Middle-level management	16	22.86
	Top-level management	26	37.14
	Arbitrators	28	40
	Total	70	100
Profession	Engineering	55	78.57
	Legal	10	14.29
	Both	3	4.29
	Others	2	2.85
	Total	70	100
Stakeholders	Clients	18	25.71
	Contractors	16	22.86
	Both/others	10	14.29
	Arbitrators	26	37.14
	Total	70	100
Role in Dispute	Claimants	15	21.43
	Respondents	20	28.57
	Both/others	11	15.71
	Arbitrators	24	34.29
	Total	70	100
Cases Encountered	1–2 cases	16	22.86
	3–5 cases	12	17.14
	More than 5 cases	42	60
	Total	70	100
Maximum Claim	Up to Rs. 30 million	23	32.86
	More than Rs. 30 million	47	67.14
	Total	70	100
Arbitration Type	Ad-hoc	18	25.71
	Institutional 95	34	48.58
	Both	18	25.71
	Total	70	100

TABLE 2. Analysis of Likert-type Items Used to Measure the Influence of Complexity of the Dispute

S.N.	Items for complexity of the dispute	N	Mdn
1	Complex contract documentation influences the effectiveness of arbitration.	70	2.75
2	Involvement of more parties in a dispute influences the effectiveness of arbitration.	70	2.52
3	Language barriers influence the effectiveness of arbitration.	70	2.43
4	Participants' diverse cultural backgrounds influence the effectiveness of arbitration.	70	2.31
5	The number of sittings of the tribunal influences the effectiveness of arbitration.	70	2.56

TABLE 3. Analysis of Likert-type Items Used to Measure Influence of Claim Value

S.N.	Items	N	Mdn
1	Low-value claim disputes are less complex.	68	2.40
2	Low-value claim disputes are awarded more effectively than the high-value claim disputes.	65	2.29

TABLE 4. Mean and Standard Deviation on the Influence of Dispute Factors

S.N.	Independent Variables	N	M	SD	Min	Max
1	Complexity of disputes	70	2.53	0.48	1.20	3.60
2	Competence of the tribunal	70	2.82	0.53	1.40	4.00
3	Adequacy of size of the tribunal	70	3.05	0.49	1.30	4.00
4	Approaches to the presentation of evidence	70	3.00	0.46	1.00	4.00
5	Claim value	68	2.43	0.65	1.00	4.00

TABLE 5. Analysis of Likert-type Items Used to Measure Influence of Competence of the Tribunal

S.N.	Items	N	Mdn
1	Tribunals are knowledgeable in construction disputes.	70	2.94
2	Arbitrators demonstrate strong technical and functional skills.	70	2.93
3	Arbitrators possess strong interpersonal skills.	70	2.85
4	Arbitrators have the quality to maintain fairness and impartiality.	70	2.88
5	Arbitrators have a strong ability to perform neutrally and independently.	70	2.82

TABLE 6. Analysis of Likert-type Items Used to Measure Influence of Adequacy of the Size of the Tribunal

S.N.	Items	N	Mdn
1	There is adequacy of the size of the tribunal.	70	2.97
2	Multi-member tribunals enhance impartiality and avoidance of conflicts of interest.	70	3.08
3	Multi-member tribunals enhance the quality of the award.	70	3.09
4	Multi-member tribunals produce better and stronger awards.	70	3.08
5	A multi-member tribunal bridges knowledge and skill gaps.	70	3.05

TABLE 7. Analysis of Likert-type Items Used to Measure Influence of Approaches to Presentation of Evidence

S.N.	Items	N	Mdn
1	The number of experts and fact witnesses presented produce effective arbitration.	67	3.05
2	There are enough choices of presentation techniques.	67	2.90
3	The tribunal guides the disputants in presenting evidence.	70	2.86
4	Carefulness of documentation affects the effectiveness of arbitration.	69	3.18
5	The tribunal provides equal opportunity to all the parties.	67	3.13

TABLE 8. One-sample t-test to Evaluate the Significance Level on the Influence of Dispute Factors

Test Value = 2.5 ($H_0 : \mu \leq 2.5$, one-tailed test)						
S.N.	Factor	t	df	Sig. (2-tailed)	Sig. (1-tailed)	Mean Diff.
1	Complexity of dispute	0.23	70	0.825	0.413	0.02
2	Competence of the tribunal	5.09	70	0.000	0.000	0.32
3	Adequacy of tribunal size	9.27	70	0.000	0.000	0.54
4	Evidence presentation methods	8.87	70	0.000	0.000	0.45
5	Claim value	-1.20	67	0.215	0.105	-0.11

TABLE 9. Analysis of Likert-type Items Used for Cost Effectiveness of Arbitration

S.N.	Items for cost effectiveness	N	Mdn
1	The cost of dispute resolution in Nepal is reasonable.	67	2.95
2	The total cost of resolving the dispute is within the parties' expectation.	67	2.90

TABLE 10. Analysis of Likert-type Items Used for Time Effectiveness of Arbitration

S.N.	Items for time effectiveness	N	Mdn
1	The time taken for dispute resolution in Nepal is reasonable.	68	2.50
2	The total time taken to conclude the dispute has met the parties' expectations.	68	2.50