

Alternative Dispute Resolution (ADR): A Theoretical Framework in context of Nepal

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Abstract

Conflict is an inevitable facet of human interaction, permeating various facets of society, from interpersonal relationships to complex business transactions. Traditional litigation processes, often associated with protracted timelines and exorbitant costs, May not always serve as the most efficient or satisfactory means of dispute resolution. This article examines into the realm of Alternative Dispute Resolution (ADR) as a pragmatic and increasingly popular approach to resolving conflicts.

The literal meaning of ADR is the use of methods of mediation or an arbitration along with other alternative mechanism to the court to resolve a dispute without resort to the litigation. It is also known as an alternative mechanism to settle the disputes with an involvement of neutral third parties who tends to resolve the dispute neutrally.

The objective of this article is to provide a comprehensive overview of ADR, its diverse methods, principles, various legal mechanisms to ADR and their applications across

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various sectors. This article also set out some of the prominent cases concerning ADR and its application. In addition, the article examines the advantages and limitations of ADR in contrast to traditional litigation, emphasizing the potential for cost savings, quicker resolutions, and preservation of relationships.

This article reads for ADR to be a complimentary or an appropriate to the Court procedure in pacific settlement of the disputes instead of an alternative way to dispute settlement.

Keywords: Party Autonomy, Arbitration, Negotiation, Mediation, Conciliation.

Conceptual framework of ADR

Conflict is an inevitable element in the society which constitutes the following elements:

- a. Unpremeditated meeting of one or more persons in a violent or hostile manner.
- b. Arises out of contrary in interest i.e., the controversial situation.
- c. This results the violent collision or a struggle or take the form of civil disputes.¹

ADR can also be defined as the litigation because litigation as a matter of law and by default is the process of dispute resolution.² It can be defined in narrow sense as only the process in which decision is derived with the consent of the

¹ Satyanarayana, B, Court annexed alternative dispute resolution and the role of trial courts a critical study, Andhra University, [Department of Law](mailto:Shodhganga@INFLIBNET), Available at [Shodhganga@INFLIBNET: Court annexed alternative dispute resolution and the role of trial courts a critical study](mailto:Shodhganga@INFLIBNET).

² Alternative Dispute Resolution by J. K. Verma, All India Reporter, Nagpur, 1st edition 2013, p.18

parties with an engagement of negotiation, mediation, and conciliation whereby parties exercise their full discretionary choice. The facilitator role is limited to facilitate both the parties involved in the process of negotiation, mediation, and conciliation.

Similarly, ADR in a wider sense can be defined as the process of Negotiation, Mediation, Conciliation, and the process of Arbitration that retains the party's freedom to decide the outcome of the disputes. Arbitration brings the parties to the negotiating table, identifying problems, establishing facts, clarifying issues, examining evidence required, developing the option of settlement, and ultimately solving the disputes through award which is binding on the parties.³

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Five Year Strategic Plan of Judiciary 2020-2024 also focuses on the adjudication function to be prompt, speedy, and qualitative with an effective Alternative Dispute Resolution Mechanism. This has also prioritized the following:⁴

- a. To conduct feasibility study of the implementation of alternative

³ Alternate Dispute Resolution (The Arbitration and Conciliation Act, 1996) by Dr. S.R. Myneni, Asia Law House, Hyderabad, 2nd edition, P.10.

⁴ Fourth Five Year Strategic Plan of Judiciary (Summary), Supreme Court Nepal 2020, Available at [4th strategic plan of judiciary.pdf \(supremecourt.gov.np\)](https://supremecourt.gov.np/4th-strategic-plan-of-judiciary.pdf), Accessed on 17th May 2023.

dispute resolution in the ongoing cases in the Courts.

- b. To train judicial human resources about ADR methods.

Researcher Kenneth W. Thomas and Ralph H. Kilmann in 1974 introduced five style of dispute resolution which is also known as the Kilmann's five style of Dispute Resolution. This can be enlisted as⁵:

- a. Competing with an individual interest.
- b. Avoiding the conflict if there is no significant economic and physical harm. However, this leads to the worse situation.
- c. Accommodating meaning the concession and agree with an assertion forward by another party.
- d. Compromising is the win-win situation whereby both the parties agree to compromise.
- e. Collaborating approach seeks to search for the common ground to solve the disputes in consensus of both parties.

Black's Law Dictionary defines the term Alternative as 'giving an option'. Similarly, it defines the word disputes means 'conflict or controversy' and resolution means 'solving the dispute in the pacific manner'. Therefore, ADR in total is an option given to the parties to choose the mechanism to resolve their justifiable disputes beyond the jurisdiction of the court.⁶

An Emergence of Dispute Resolution Mechanism: A Vedic Concept

Historically it is said that as per the epics Ramayana and Mahabharata, the

⁵ Katie Shonk, Conflict-Management Styles: Pitfalls and Best Practices, Program on Negotiation, Harvard Law School, 6th April 2023, Available at [Conflict-Management Styles: Pitfalls and Best Practices - PON - Program on Negotiation at Harvard Law School](#), Accessed on 17th May 2023.

⁶ Sai Nirmala NV, Efficacy of arbitration and conciliation as alternative dispute resolution mechanism a critical study, Andhra University, 2018, Available at

Hanumana had tried to settle the matter of abduction by offering a proposal of *Ram* to *Ravana*, and that Krishna had tried to settle the dispute of partition in between *Kaurava* and *Pandava*.⁷ Also, in Manusmriti, Manu has emphasized on the significance of conciliation for the pacific settlement of disputes. He further has elaborated on the pedagogy for the dispute settlement that consists of *Sama* (Conciliation), *Dana* (winning by gifts), *Bedha* (creating divisions) and *Dandopayam* (war).⁸ An authority shall settle the disputes with priority of conciliation.⁹ Thus, it shows that the practise of ADR was prevalent during the Vedic era too.

Other mechanism that existed in an ancient time in form of ADR are *kulas*, *puga*, *srenis*, *parishad* and *Panchayat*.¹⁰ Whereby *kulas* refers to family or a community meeting from same family. *Puga* formed of different members from different caste and communities varying the locality too. *Srenis* used to be a guild of merchants involving similar sorts of the business. *Parishads* was an assembly of learned person having knowledge of fact and law. Similarly, *Panchayat* with group of learned and senior members used to render the decision with negotiation or mediation for dispute resolution. The decision issued by the Panchyat were also considered as the binding decision. Thus an emergence can be portrayed as below:

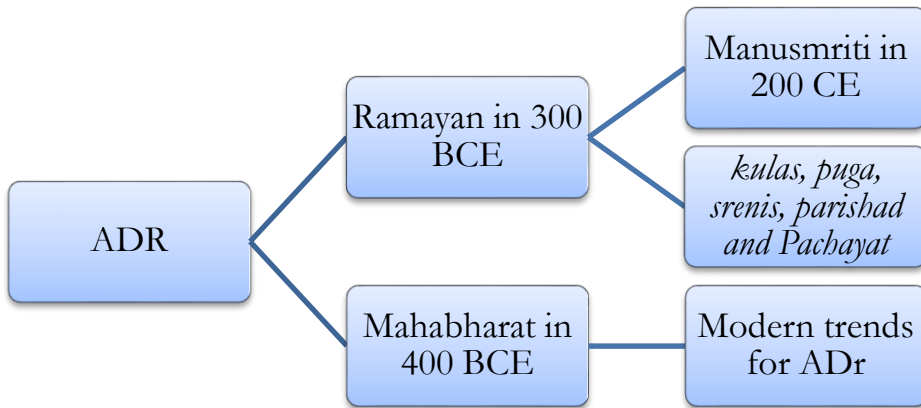
Shodhganga@INFLIBNET: Efficacy of arbitration and conciliation as alternative dispute resolution mechanism a critical study, Accessed on 17th May 2023.

⁷ Singhel Kunwarsingh, Mechanism of Alternate Dispute Resolution ADR and the Speedy Justice A Critical Study, Jaipur National University, 2022.

⁸ Ibid

⁹ Jois, M. Rama, _Ancient Indian Law (Eternal Values in Manu Smriti), (2004), p. 122

¹⁰ Singhel Kunwarsingh, Mechanism of Alternate Dispute Resolution ADR and the Speedy Justice a Critical Study, Jaipur National University, 2022.



Kinds of ADR

The kinds and mechanisms of ADR can be enlisted as:



1. Negotiation

Negotiation is the mutual discussion and agreements of the terms of a transaction or an agreement. Black's Law Dictionary defines Negotiation as a process adopted to resolve the matters within the parties before taking any legal proceedings and an action. General rule is that the negotiation is not binding upon the parties.

There are two theories of Negotiation consists of the Theory of Best

Alternative to Negotiated Agreements I.e., BATNA and the Theory of Worst Alternative to Negotiated Agreement I.e., WATNA.¹¹ These are the prominent indicators for a negotiator for the bargaining at each stage of the negotiation. BATNA is the course of action that is taken usually if the negotiation fails in between the parties and no agreement is reached. It is thus an alternative to the negotiation offered which is also known as the no deal option. WATNA is the ultimate result bout of the negotiation it is either arbitration- mediation, bankruptcy or liquidation or loss of the business.

Negotiation involves three basic elements: *process*, *behavior* and *substance*. The process refers to how the parties negotiate: the context of the negotiations, the parties to the negotiations, the tactics used by the parties, and the sequence of negotiation. Behavior is the conduct and an action of the parties towards the negotiation whether they are accepted and adopted by the parties or not. Similarly, substance is an agenda and interest forwarded by the parties. It is the major mandate for the negotiation. Thus, there is not an active participation of the third party in between the parties since they provide only with a good office upon the necessity.

2. Arbitration

Arbitration is a process of disputes resolution in which a neutral third party (arbitrator) renders a decision after hearing at which both parties have an opportunity to be heard, where arbitration is voluntary, and the disputing parties select the arbitration who has the power to render a binding decision.¹² According to the Black's, Law dictionary: Arbitration means a method of dispute resolution involving one or more neutral third parties who are usually

agreed to by the disputing parties and whose decision is binding.¹³

The concept of arbitration was first used in Jay Treaty which is also known as the Treaty of Amity, Commerce and Navigation in between His Britannic Majesty and the United States of America in 1794.¹⁴

In context of Nepal, arbitration can be traced back to the system of “Panchayat: in Nepal long before the commencement of the codified judicial system developed in Nepal. Panchayat as private tribunal was a different system of arbitration and was subordinate to a regular court of law.¹⁵ before the enactment of general legislation on commercial arbitration in 1981, statutory provisions of commercial arbitration were found in a scattered form in different legislation with different purposes. Such a provision first appeared in section 9 of the current Development Board Act, 1957, which provided for the resolution of a dispute under arbitration contract. Therefore, parties are forced to follow the rules set out in the statute. The Arbitration Act of 1981 was suspended by the Arbitration Act of 1999 and is the prevailing general law on commercial arbitration.¹¹

3. Mediation

Mediation is the method of dispute resolution with an active involvement of neutral third parties via mutually agreeable solutions. The term mediation is derived from the Latin word ‘mediare’ meaning to be in the middle of the parties.¹² Therefore, Black’s Law Dictionary defines the term mediation as a method of pacific dispute resolution whereby an involved neutral third-party issue a non-binding decision. A third party is involved to structure the meetings and to come to a final settlement based on the facts given through the

¹¹ Arbitration Act 2055, Section 44 clause of repeal and saving.

¹² Singla Naresh Lata, Speedy justice and alternative disputes redressal, Punjabi University, Department of Law, 2012.

discussions however it is a non-binding procedure, in which a neutral third party assists the disputing parties in mutually reaching an agreed settlement of the dispute.¹³

Mediation is based upon two fundamental principles i.e.:

Interest based¹⁴

Interest based mediation generally explore the focus which shifts from position based to the interest-based needs of the parties. This seeks to maintain the mutual respect, mutual interest and shared decision making along with the shared accountability. Interest based mediation consists of:¹⁵

- Establish procedural guidelines,
- Set out the ground rules for which attorneys mutually agree on an options as identified by the participants' wants and needs,
- Formulate mutual interest and solutions,
- Gather and offer information,
- Generate and develop solutions through mutual interest and bargaining.
- Agree on a mutual agreement and sign the same.

Right based.¹⁶

Right based mediation defines the principle to be adopted by both the parties and a mediator consisting of the principle of no harm. This states that in name of ensuring one's interest and right there shall not be the disbalanced

¹³ Ibid

¹⁴ INTEREST-BASED MEDIATION, Available at [SANDRA BURNS \(cadreworks.org\)](https://cadreworks.org/), Accessed on 25th May 2023.

¹⁵ Gordon, T. P.E.T. Parent Effectiveness Training. New York, NY: New American Library, 1975, p 139

¹⁶ David A. Hoffman, Ten Principles of Mediation Ethics, Available at [2005-07-mediation-ethics \(blc.law\)](https://www.blc.law/2005-07-mediation-ethics), Accessed on 25th May 2023.

mediation harming other party rights and interests. Mediation shall be fair and efficient to protect the right of the parties beyond parties.¹⁷

Mediation is thus more about the facilitation to the disputing parties than that of the imposition of the decision. Mediator thus cannot decide beyond the party autonomy principle. In context of Nepal, there shall be a Mediation Council which is responsible for conducting various programs which promote mediation to settle dispute.¹⁸

1. A sitting judge of Supreme Court designated by the chief of justice on the recommendation of the Judicial Council- Chairperson
2. Secretary, Ministry of Law, and Justice- Member
3. Secretary, Ministry of Federal Affairs, and local Development- Member
4. Deputy Attorney General, Office of the Attorney General- Member
5. Secretary General, Nepal Bar Association- Member
6. A person designated by the Board from among the representative organizations working in the field of industry and commerce- Member.
7. Two women designate by the Board from among the working as a mediator or the representatives of the agency involved in mediation or working in the field of mediation- Member.
8. Two persons with at least a women designate by the Board from among the representatives of social workers and civil society- Member.
9. Registrar of the Supreme Court- Member Secretary

4. Conciliation

The word conciliation is derived from the Latin word ‘conciliate’ which means to bring the dispute together, make friendly or to win over, to smooth the anger

¹⁷ Kazi Abdur Rahman, Mediation and Mediator Skills: A Critical Appraisal, Available at [\(PDF\) Mediation and Mediator Skills: A Critical Appraisal \(researchgate.net\)](#), Accessed on 25th May 2023.

¹⁸ Mediation Council, Available at [मेलमिलाप परिषद नेपाल \(mediationcouncil.gov.np\)](#), Accessed on 26th May 2023.

of, to pacify, to mollify, to gain esteem goodwill or to make compatible or reconcile.¹⁹

Conciliation is one of the non-binding ADR whereby an impartial third party, known as the conciliator, assists the parties for the settlement of the disputes upon the mutual agreement in an independent and impartial manner. Thus, it must be governed by the principle of objectivity (neutrality), fairness, justice, consideration and assurance of the rights and an obligation.²⁰ A conciliator does not give and impose the decision because the primary function of the conciliator is just to induce the parties themselves for the settlement of disputes. However, a conciliator holds an authority to formulate and revise the formulated terms of the dispute settlement.²¹

Laws Concerning ADR

A. National Laws

1. Constitution of Nepal

Article 51 (k) policies of the state mentioned for the policies relating to penal and justice system which reads to pursue alternative means such as mediation and arbitration for the settlement of disputes of ordinary nature. Similarly schedule 8 of the Constitution gives the power mediation and arbitration to Local Level Government as their right.

Similarly, Article 127 (2) of the Constitution reads that judicial institutions may be constituted at the local level to try cases under law

¹⁹ Singhel Kunwarsingh, Mechanism of Alternate Dispute Resolution ADR and the Speedy Justice A Critical Study, Jaipur National University, 2022.

²⁰ Article 7 (Role of Conciliator of the UNCITRAL) Rules, 1980.

²¹ Naresh Lata Singla, Speedy Justice and Alternative Disputes Redressal, Punjab University, 2012.

or other institutions as required may be formed to pursue alternative dispute resolution methods.

Article 217 reads for the provision of Judicial Committee. This mentions there shall be a three-member judicial committee to be coordinated by its Vice-Chairperson in case of a Rural Municipality and by its Deputy Mayor in case of a Municipality, to settle disputes under their respective jurisdictions in accordance with law. The judicial committee shall consist of two members elected by the members of the Rural Municipal Assembly or the Municipal Assembly from amongst themselves.

2. Mediation Act 2068

The major objective of Mediation Act 2068 is to settle dispute through mediation in a speedy and simple manner, to make the process of dispute settlement less costly, to enhance the access of public to justice and to maintain the interest and convenience of public. The Act also has referred the Local Self Governance Act, 2055 by which there shall be an adoption of arbitration to settle the disputes. The Act has defined "Mediation" means a process to be followed to settle a dispute or case with the assistance of a mediator.

This Act has divided Mediation into two broad categories i.e., Mediation in general and Community Mediation. Section 3 of the Mediation Act provides for the settlement of dispute through mediation, whereby the dispute concerned with that agreement, or a dispute arisen under that agreement shall be settled according to the procedure prescribed in the agreement. In case, parties intend to settle a dispute through mediation which is sub-judice or not filed in any adjudicating body and such dispute may be settled through compromise

(*Milapatra*). In case, parties intend to settle a case which is sub-judice in an adjudicating body through mediation, the parties may apply to the concerned adjudicating body at any time. Upon the receipt of such application the adjudicating body shall issue an order to settle the dispute through mediation whether such case is sub-judice at any level. Section 33 reads for the community mediation whereby a panel is established after the dispute creation in between the conflicting parties. The panel must facilitate for settling the disputes. The panel in mediation shall consist of:

- a. Respected persons in local community.
- b. Persons designated by community organization working at local level.
- c. Local social worker.
- d. Teacher or professor working in local school or college.
- e. While making panel the representative of women shall be insured in a suitable number as per necessity.

Similarly, section 35 reads for the training and other technical service from the concerned District Development Committee, Village Development Committee and Municipality may provide necessary technical service to community-based mediator to settle dispute through community-based mediation.

3. Local Government Operation Act 2074

Section 46 of the Act provides for the Judicial Committee that holds an authority to settle the disputes mentioned in section 47²². Similarly,

²² Wages and remuneration, senior citizens age care and maintenance, domestic animals and loss, trespass, libel, and slander, hurt, divorce and any offense having punishment of maximum one year imprisonment.

Section 49 of the Act reads to prioritize the pacific settlement of the disputes by means of mediation with mutual consensus and mediation of the parties.

4. National Civil Code 2074

Section 97 of the Act to prioritize the Mediation to be made between husband and wife and court shall give full effort to convince both the parties and to conciliate them. Afterwards if the court fails for conciliation, then only a Court shall affect the divorce in between them as mentioned in section 98.

5. Bank and Financial Institution Act 2073

Section 123 of the Act reads that in case of any dispute arising between banks or financial institutions, such a dispute shall be required to be settled in mutual consent. In cases where a dispute could not be settled through mutual consent, the Rastra Bank shall settle the dispute through mediation or other methods of disputes resolution under the prevailing laws.

6. Arbitration Act 2055

Arbitration Act 2055 enable an arbitration as one of the significant forms of ADR and it has provisioned in detail concerning the appointment of arbitrators, process of arbitration and role of the court in arbitration.

7. Development Board Act, 2013

An amendment in 2048 introduces the Section 9 reads in cases where any agreement made with the Board contains a provision that any dispute arising in connection with the agreement and with any matter relating to its implementation has to be referred to arbitration for its settlement, the arbitrator appointed in accordance with the agreement

shall settle the dispute; and no court shall have powers to try and settle such a dispute.

8. Nepal Airlines Corporation Act, 2019

Section 23 of the act provides that any disputes that arises regarding the contract between the committee, managing director or any other official of the corporation and other parties shall be decided by the sole arbitrator appointed by the GON. The section further provides that the arbitration shall have the right, equal to a court, to check the evidence, call parties and view other related documents. The decision rendered by the arbitration shall be final and binding for the party.

9. Nepal Petroleum Act, 2040

Section 20 reads any dispute, controversy or claim between Government of Nepal and a Contractor arising out of or relating to Petroleum Agreement or the interpretation, breach, or termination thereof, and which cannot be mutually resolved shall be settled by arbitration.

10. Foreign Investment and Technology Transfer Act (FITA), 2075

Section 20 (f), Section 40 (4) (5) and (6) has provisioned for the settlement of dispute adopting the process of arbitration and an agreement between the parties. This also reads for any dispute arising in connection with any foreign investment shall be settled by arbitration in accordance with the prevailing Rules or Procedures of the United Nations Commission on International Trade Law (UNCITRAL), unless otherwise agreed upon by the parties to the dispute.

Rules issued by the Court

1. Supreme Court Rules 2074

Rule 78 and Rule 79

- In the case sub judice at court, if any of the party initiate for the

mediation then they can file an application to the office of Registrar at any stage of the case proceedings.

- If the party has not applied for mediation but there lies the condition of mediation, then even a bench can use a discretionary choice to proceed for mediation.
- A bench shall give time of total three months either in total or partially for three months.
- One a bench order for the mediation then the parties shall appoint three mediators, if parties fail to do so then the court will appoint the mediator.

Rule 114

- There shall be a Mediation Committee at court to enable the mediation in a systematic manner. The committee shall consist of:
 - A Judge appointed by Chief Justice as a President.
 - Other Judge as appointed by Chief Justice for necessity as a member.
 - Chief registrar as a member.
 - Registrar as a member.
 - President of Supreme Court Bar Association as a member.
 - Deputy Registrar as appointed by Chief Registrar as member Secretary.

Rule 163

- Those people who has been punished for the case of fraud and forgery and disturb in the proceedings of mediation, the court

holds an absolute power to restrict his/her presence within the court premise.

2. High Court Rules 2073

- Rule 2 *cha* defines mediation as the process of settling disputes with an assistance of a mediator. Similarly, Rule 2 *chha* defines mediator as a person who assist and facilitate the mediation for the parties and is appointed by the legal mechanism. Rule 2 *ja* defines an institution that have an authority for mediation from the mediation committee is the institutions for the mediation.
- Rule 73 reads for the necessary arrangement of the mediation and other Alternative Dispute Resolution mechanism in the initiation of the case Proceeding.
- Rule 90 to Rule 104: provides for the procedure for mediation to be:
 - A list of a mediator shall be enlisted a Registrar amongst retired judge, legal practitioner, a learned and experienced person in mediation, university law professor, representatives from local bodies, retired or serving Government officer.
 - Mediation time shall be given for three total months and bench shall refer to the committee if finds necessary for mediation arrangements.
 - If the parties could not conclude in mediation for the first time, then a bench holds a power whether to give second chance for mediation or not with relevant assessment of the case.
 - The general rule is an appointment of one mediator.

However, if the parties made a written request for appointment of more than one mediator then the court shall perform accordingly.

- Parties has the right to choose the mediator as an individual or a mediator institution. However, if the parties choose the name of mediator which is not enlisted as a mediator previously then such mediator shall be appointed only after the fulfilment of the registration procedure.

Following details shall be enclosed to the mediator:

- Fact of the case and relevant documents.
- Details of the representative (*warish*) of the parties including name, contact number, fax details and email address.
- Venue for mediation to be decided by the court.
- Any special document upon the request of the mediator.
- **Replacement of the mediator upon following situations:**
 - Death of a mediator.
 - Vote of no confidence and an application by the parties.
 - Parties' consensus agreement to change a mediator.
 - If there lies an individual interest of the mediator upon mediation between the parties.
 - If a mediator is found to work in an unethical manner.
 - If the mediation cannot be concluded, then the mediator shall submit the report to the court

within seven days of failure of mediation.

3. District Court Rules 2075

- Rule 2 *jha* defines mediation as the process of settling disputes with an assistance of a mediator. Similarly, Rule 2 *ya* defines mediator as a person who assist and facilitate the mediation for the parties and is appointed by the legal mechanism. Rule 2 *ta* defines an institution that have an authority for mediation from the mediation committee is the institutions for the mediation.
- Rule 11 *nga* states the case shall be settled with an adoption of mediation if there is possibility of the mediation. Rule 49 to Rule 60 reads for the rules concerning mediation with the same applicable provisions as introduced and adopted by High Court Rules 2073.

B. International Laws

1. UNCITRAL Model of Arbitration

- UNICITRAL Arbitration Rules, 1976: the UN general assembly has recommended the use of these rules in the settlement of disputes arising in the context of international commercial relations, particularly by reference to the arbitration rules in commercial contracts. The rules also incorporate arbitration as the method of settlement of disputes.
- Article 1 of the model has provision that, the law applies to international commercial arbitration is subject to any agreement between states. The model has defined arbitration as, “any arbitration whether or not administered by a permanent arbitral institution”. Any written communication is deemed to have been received if it is delivered to the other party.

- The model also has the provision that in course of arbitration, no court shall intervene except provided in the model law.
- The second chapter of the Model deals with the arbitration agreement. Arbitration agreement defined by article 7 is “an agreement by the parties to submit to arbitration all or certain disputes which have arisen, or which may arise between them in respect of a defined legal relationship, whether contractual or not.”
- The third chapter of the Model deals with the composition of arbitral tribunal where the parties are free to determine the number of arbitrators, failing such determination, the number shall be three. In arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators appointed shall appoint the third arbitrator. If the parties can’t agree with arbitrator, then court shall appoint on the request of party.
- The Sixth chapter has provision regarding the jurisdiction of arbitral tribunal. The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.
- Article 17 gives authority to the arbitral tribunal to give interim order for interim measures. The model in article 17 A clearly expresses the conditions for granting the interim measures. The party seeking the interim order must satisfy the tribunal that there is irreparable harm to occur in absence of such order, there is reasonable possibility that requesting party will succeed on the merit of the claim.

2. International Chamber of Commerce Rules of Conciliation and Arbitration 1988

This Rules of Conciliation stated that court itself is not a judicial body, but it is an administrative authority for managing arbitration.²³ It has also emphasized on the proceeding of arbitration with submission of a claim.

3. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention")

This Convention highlights in the importance of international arbitration as a means of settling international commercial disputes. Additionally, this aims to provide common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards.

4. UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018

This model law is designed and formulated to facilitate the state to reform and modernize the laws concerning mediation procedure. Therefore, this Model Law provides uniform rules in regards of the mediation process which aim for encouraging the use of mediation and ensuring greater predictability and certainty in an application.

Case Laws Concerning ADR in Nepal

1. Adv. Devendra Pradhan vs. Appellate Court, Patan, 2075 Decision No. 10138

For the appointment of an arbitrator, there must be mutual agreement between the parties in the relevant contractual agreement or in a

²³ Art.1, ICC arbitration rules, 1998.

separate agreement and the decision should be made by appointing an arbitrator in accordance with the law and procedure mentioned in the same agreement itself.

2. Bikram Pandey on behalf of Kalika, Kanchanjangha JV. V. Ministry of Physical Planning and Construction, Department of Road et al., 2067, Decision No. 8437

The provisions of the UNCITRAL Rule on Arbitration do not apply automatically to the process of resolving a dispute as national law, its use and binding are obtained through an agreement, and only as a condition of the agreement, the provisions of that rule apply to the parties to the same agreement as a condition of the agreement and must be complied with and obeyed by the parties.

Since it is not as binding as the national law, the scope of the rule depends on the terms of the agreement between the parties, as none of the provisions of the rule can be curtailed by the parties.

3. Krishna Chandra Jha Vs. Dinesh Bhakta Shrestha on behalf of Sumit Prakash Asia Pvt. Ltd., 2066, Decision No. 8128

The arbitrator cannot award in a contractual dispute, beyond the terms and conditions of the agreement made by the parties to the dispute. The arbitrator has no discretionary powers beyond an agreement between the disputing parties. Thus an authority of the arbitrator is limited to the agreement. If the arbitrator awards beyond the terms and conditions of the agreement, then such arbitrator shall be deemed to have done excess of jurisdiction.

4. Shambhu Timalaina Vs. Ramechhap Sherpa Construction, Joint Commercial Bench, Appellate Court Patan, Bench Number 11, Decision Number 72

Arbitration is practised basically to ensure the disputes concerning commercial matters settlement in a just, speedy and fair manner. Arbitration is an alternative dispute resolution process that enable its proceedings with volunteer appointment of the arbitrators by the parties

itself. It is a process of settlement beyond the court but having similar sorts of proceeding like in the court. For an instance it includes proceeding of making a claim, counter claim, rejoinder, evidence examination and principle of natural justice. Therefore, arbitration is a complementary, alternative and informal part of the judicial process whereby an arbitrator derives its power and rights from the concluded contract in between the parties.

Analysis and Conclusion

ADR is a generic term that refers to manage and quickly resolve the disagreement at reasonable times and cost having as much as least adverse impacts in the business and relationship. Therefore, it is also known as the Appropriate Means of Dispute Resolution settling the disputes outside the formal court structure. Basically, there are two types of ADR which can be enlisted as RDR meaning Regular Dispute Resolution meaning settlement of the dispute via regular court and ADR means Alternative Dispute Resolution which is an alternative to the formal system of the litigation.²⁴

The concept of ADR prevails in Nepal since the very inception of time. However, this has been neglected with the term “Alternative”. It is not an alternative to Court proceedings in regard to dispute settlement of the conflicts. Instead, it is the part and partial to court proceedings since the court preliminarily order for a mediation and each court has the committee or a council for the mediation. Additionally, Nepal Law Society report reads that

²⁴ Navneet Kaur, Alternative Dispute Resolution, its impacts in the light of changing social perspective, Desh Bhagat University, 2020.

Thapa, Binda Kumari, 2025

about approximately 85 % disputes are settled via ADR mechanisms. Thus, it shall be called either as a Complimentary or an Appropriate Dispute Resolution Mechanism.

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