

Alternative Dispute Resolution: Historical, Customary Practices & Legal Aspects of Nepal

Bishnu Prasad Khanal

Associate Professor, Central Department of History, T.U., Kirtipur

Abstract

This paper focuses on the use of ADR in Nepal based on the analysis of the historical background, cultural practices, and existing laws. The main objective of the research was to identify on how the ADR is practiced in the communities and in the judicial system of Nepal. The basic approach of research was doctrinal and in this approach primary sources regarded constitution of Nepal and Acts likewise secondary source was taken as published articles and reports. It starts with background information on showing what peaceful conflict resolution is and how are disputes settled by mediators such as the elders and village assemblies conducted in communities. These are cultural methods of solving conflicts and they have been in use before the legal structures were formulated in Nepal. The paper also discusses the different forms of traditional ADR that have been incorporated into the contemporary Legal System of Nepal. It also surveys prominent statutes such as the Arbitration Act and the Mediation Act and how these laws assimilate and police traditional practices into and within the legal process. More specifically, the study compares the various conventional techniques, viewpoints, and designs used to address the issues of compliance with customary practices and measures the extent of the effectiveness. The paper nonetheless seeks to contrast between the traditional approaches and the legal frameworks to illustrate the need to embrace cultural practices alongside access to justice. The research found that the use of ADR is in different sector of the communities and the organizations, including international trade disputes and the law of Nepal has opened to settle disputes outside of the court system.

Keywords: Mediation, Tribunal, Dispute resolution, UNCITRAL, Adjudication.

Introduction

Alternative Dispute Resolution (ADR) is defined to encompass all those processes in the resolution of disputes excluding litigation in court. ADR processes therefore are a decision-making process whereby the litigants or potential litigants may choose to resolve their disputes. "Various methods of resolving conflicts without going to trial are referred to as "alternative dispute resolution" (ADR). Neutral evaluation, arbitration, and mediation are typical ADR procedures. Compared to traditional court proceedings, these procedures are typically more private, informal, and stress-free" (Nycourts, 2024). Such procedures are often less expensive and time-consuming. Such an approach can be utilized in commercial and labor relations, in divorce suits, in relation to tax cases and other cases that would ordinarily require the intervention of a court of law.

ADR means avoiding trial and represents the process by which controversies are resolved in the form of arbitration, mediation or negotiations among others. It is the name given to the process in which the parties in dispute reach a settlement (or 'resolve' their dispute) short of approaching the courts. ADR is relatively

a developing area just beyond the territory of the court. ADR is roughly synonymous with dispute resolution where a third party (generally called an ADR practitioner such as a mediator) assists the disputing parties to resolve the matter themselves. ADR can assist in sorting out a matter before it needs to be taken to a court or tribunal to manage. ADR is very versatile and, in most cases, may be applied to any form of dispute.

ADR stands for the various methods of sorting out disputes outside the court; they include arbitration, mediation, or negotiation. The ADR procedures are normally cheaper and faster and hence can be preferred to the regular court proceedings. Resolving a dispute through ADR is different from asking a court or tribunal to resolve a dispute. Using ADR to resolve disputes can benefit everyone. It means that courts and tribunals aren't wasting time on controversies that do not require judgment by a court or tribunal. ADR processes and results center on what matters to you and the other individual or parties.

ADR is the means of settling disputes outside of the courtroom. (Kanti, 2010) It is mostly a non-judicial means or procedure for the settlement of disputes (Aggarwal, 2010). ADR is not guided by legal principles, it is guided by the procedures for settling disputes by means other than litigation, e.g., by Arbitration, Mediation, or Mini trials. These are significantly less expensive, and may ordinarily be shorter than the legal processes that are followed and hence are currently being employed in commercial matters, Labor relations Disputes, Divorce cases, Motor vehicle and Medical Malpractice Torts, and any other matters that would otherwise be taken to court.

ADR defined as "Neutral Evaluation: a neutral person with subject-matter expertise hears abbreviated arguments, reviews the strengths and weaknesses of each side's case, and offers an evaluation of likely court outcomes in an effort to promote settlement. The neutral evaluator may also provide case planning guidance and settlement assistance with the parties' consent (BLOCK, 2016/17). Some methods of dealing with disputes which are considered as other than trial include the following; some of the most typical ADR techniques are 'mediation, arbitration, as well as neutral evaluation. These processes are generally confidential, less formal, and less stressful than traditional court proceedings' (BLOCK, 2016/17).

ADR describes processes used to resolve disputes, either within or outside of the formal legal system, without formal adjudication and decision by an officer of the state. The term "appropriate dispute resolution" is used to express the idea that different kinds of disputes may require different kinds of processes – there is no one legal or dispute resolution process that serves for all kinds of human disputing (Hall, 2002).

In the case of Krishna Chandra Jha vs. Dinesh Bhakta Shrestha and Others, Full Bench of the Supreme Court of Nepal has held that the formal procedure of the court is taken or felt by the people related to finance, Trade, and commerce as time-consuming and which will have negative impact upon financial trading. They feel the court procedure is burdensome, and it will have its impact upon the goodwill of the trade and traders for this reason Arbitration has taken its position as an alternative way of dispute resolution (Bulletin, 2059)'.

Methodology

This study is based on the doctrinal research method. "Doctrinal method is normally a two-part process, because it involves first locating the sources of the law and then interpreting and analyzing the text. The laws are passed by parliament and the words are written down. It is at the next step where the law or rule is interpreted and analyzed within a specific context that the outcome becomes 'contingent' or conditional on the expertise, views and methods of the individual researcher" (T Hutchinson and N Duncan, 2012).

Both primary and secondary sources of information have been collected and the primary source of data regarded the Constitution of Nepal, Acts and Rules likewise secondary source of data taken from books, articles, reports, official websites of different concerned organizations, internet sites, brochures, journals, etc. The analysis of the data under this approach basically adopted descriptive, comparative, and analytical.

Historical Evolution of ADR

“Originally used as a key means of resolving disputes in prehistoric civilizations, arbitration is not a modern technique meant to avoid the problems associated with modern litigation. Many legal disciplines now draw from this old practice, including labor law, trusts and estates, property disputes, family law, and business transactions” (Steve Lopez & J. Swarbrick, 2023).

Alternative dispute resolution was also practiced since the Vedic time “The earliest known treatise is the *Bhradarnayaka Upanishad*, in which various types of arbitral bodies viz (i) the *Puga* (ii) the *Sreni* (iii) the *Kula* were referred to (S.C. Shashank & Kaushalya T. Madhavan, 2015) Likewise a recorded in Mullah’s Hindu Law found, according to the record “ancient India began its search for laws since Vedic times approximately 4000 to 1000 years B.C. and it is possible that some of the Vedic hymns were composed at a period earlier than 4000 B.C. The early Aryans were very vigorous and unsophisticated people full of joy for life and had behind them ages of civilized existence and thought” (Usha Tandon, Sunanda Bharti & et.al., 2022)

“First roots of alternative dispute resolution could be found in China in mediation (tiaojie). It has origins in Confucian ethics. Confucius taught that natural harmony should not be disrupted, and adversarial proceedings were the antithesis of harmony” (Stražičar, 2018)

The emphasis of the court and other traditional forum was pronouncing rights and wrong. Naming winners and losers destroys almost any pre-existing relationships between the people involved. The cost, the stresses, and the inaccessibility of ways to resolve conflict other than through the popular alternative of fight and flight caused people to drop out or to seek extreme techniques to make their points. Therefore, against back drop of formal litigation, new methods of settling disputes have been emerging both in and out of the court (Tefera Eshetu & Mulugeta Getu, 2009).

“Arbitration can be traced back to the system of ‘Panchayat’ in Nepal long before the codified judicial system developed. Panchayat was an informal tribunal of five gentlemen chosen from among the villagers to render an impartial decision in the settlement of disputes between the members of villages. Since early times the decisions of Panchayats were acceptable and binding on the parties. Panchayat as private tribunal was a different system of arbitration and was subordinate to a regular court of law. In the Lichhavi era, the Panchali which was also known as Pancha Sava, was empowered to decide disputes at the local level. This form of dispute settlement mechanism that was practiced for a long period should be considered as the foundation of the concept of arbitration in Nepal’s context, but not the same as the modern notion of arbitration. In Nepal, the concept of arbitration in its modern sense was first found in government contracts”(Kayastha, 2024).

The Arbitration Act of 1981 was superseded by the Arbitration Act of 1999 and is the prevailing general law on commercial arbitration. Furthermore, it was made in line with the UNCITRAL Model law. Based on this new act, the Supreme Court of Nepal has promulgated Arbitration (Court Procedure) Rules, 2002 relating to court procedure to promote arbitration in Nepal (Narendar R. Ghimire, Durga Khadka & Hariprasad Mainali, 2059). Despite the above legal framework promoting and facilitating ADR in Nepal, there are still many remaining challenges.

Customary Practices of ADR

We can find many examples of mediation in our ancient literature. As we talk about government organs, all three organs: executive, legislative, and judicial power were found vested in the king or the leaders of the given society. Judicial power was found vested in the king or the leader only, because the justices considered more serious matters among other duties of the state.

Ultimately, the king or the leader had to be responsible for all woes and ills. So, the rulers were conscious in order to ensure a smooth, tensionless, and harmonious society. For this purpose, the experts in the concerned fields had to be nominated for making decisions in any complicated issues. Before making a decision, they had to propose for reconciliation between disputing parties. The most trusted source of oriental literature emphasized on ‘there should not carry out any works that creates disputes’ (Athurwa, 2024)). One of the Hindus popular holy religious books Ramayana illustrates that in many events, compromise is the best way of dispute settlement. The dispute settlement mechanism is concerned with processes outside of the courts. Many disputes have been settled through alternative methods with the involvements of person famous in the society. Different countries have been practicing this system of dispute settlement.

In the era of Kirat, a dispute settlement mechanism named panting was in existence. “Implementation of traditions and customary laws was carried out through a bottom-up approach with social institutions as a mediating factor. There was a network of communities closely related to each other. Issues were presented orally before community members and witnesses, discussions, verification, facts, submissions, vows, and oaths were taken in making decisions”. In the history of Nepal, the Lichchhavi period is called the golden era. In this period a dispute settlement body named Panchali was the independent and capable body to settle disputes through mediation. At that time, each case, either civil or criminal could be settled by the local people. During the Malla period, there was a dispute settlement body named Panchasamuchhya. It was also very popular institution for the settlement of disputes in the lower as well as higher level. “Jayasthiti Malla’s code was known as Manab Nyayashastra has been thought to be one of most important landmarks in the history of Nepalese Justice and Law. It was a codified law” (Kharel, 2024). A popular saying was developed that when there is any misadministration of justice, the court of Gorkha should be approached to get fair justice.¹

‘Since ancient times, several cultures in Nepal have been using their unique types of mediation and arbitration. In the Kirat, Lichchhavi, and Malla periods, these alternate mediation methods were known as Tumyang, Panchal, and Panchayat, respectively. Many of these systems, such as the Guthi Sabha in the Newa community, the Badhghar in Tharu, the Sheer Uthaune in Rai, the Mustang Mukhiya system, the Tamudi in Gurung, and Khadayanji in Sherpa, still exist today’ (Gurung, 2022). Mukhiya was not new to the people of Nepal since long before it was established in the villages to collect tax and maintain harmony in the community.

Though the traditional mediation process had no scientific technique compared to the modern mediation system, the concept and the process of the traditional approach seem much more helpful in realizing the goal i.e. settlement of disputes through alternative disputes. Traditional dispute settlement mechanism has a great impact on Nepalese society. The modality, usages, and adaptation were different. Some of them

¹*Legal Reforms of Jayasthiti Malla in Nepalese History, Slide 1* (SlideShare, Aug. 25, 2024), available at <https://www.slideshare.net/slideshow/legal-reforms-of-javasthiti-malla-in-nepalese-history-pptx/270070829>.

can be illustrated below.

Mukhiya (Village Chieftain): The Mukhiya system is a popular system in the Nepali society. It is still in practice in some places like Mustang. In other part of Nepal it is slowly disappeared but in Thakali Community it has been practicing. 'The Mukhiya has always played an important role in Thakali society. Traditionally, he has been in charge of village development initiatives, tax collecting, and providing support to both individuals and groups in the community as the traditional head of village affairs. His primary function in the community is that of a judge. While this job is purely ceremonial at the moment, he has served as the De Jure legal authority in his community for many years. The Mukhiya also provides guidance to the community on matters of a personal and professional nature' (Svedberg, 2013)'. All disputes are heard by the Mukhiya. When a person takes a dispute to a formal court, they often face the risk of a social boycott. Cases were referred to Mukhiya and his judgment was deemed final. Moreover, the parties themselves prefer mediation though Mukhiya can reach to compromise.

Badghar: In the Tharu community, the richest person in their locality or the one who owns a big house is respected as Badghar. Somewhere, he/she is called Mahatwa, and somewhere, Kadkinar. The Badghare listens to their disputes and reaches an appropriate conclusion through mediation. There would not be a situation of winning or losing. They tell their story and narrow down the differences. They try to mediate with each other and clear their differences. It is the most popular mechanism for the settlement of dispute in the Tharu community of Bardiya, Banke, Kailali, and Kanchanpur districts. 'Suklaphat municipality of Kanchanpur has legalized Badghar by providing duties and responsibilities to them. They mentioned in the act to provide assistant, watchman to the Badghar. Their responsibilities also mentioned as coordinating with peoples representatives in discharging their duties while settling minor disputes or maintaining social and economic harmony in the society' (Sancharkarmi, 2022). These tradition has kept the society intact and in harmony, helped to save cultures throughout the history.

Khadayanji: In the Sherpa settlement of eastern Nepal, they have created their own way of settling disputes. When a dispute relating to wages, forests, and other types arises, they go to the community head; hearing the complaint of a person, the community head calls the disputing parties and hears them. Before making his opinion, he consults the witnesses, the demands of both the parties and inquiries about their necessity as well as their relations. If the wrongdoer accepts their faults, they apologize in front of another party and the society and recover their prestige back. If the wrong doer does not apologize, then they would be deprived from all social privileges and immunities of the community (Gurung, 2022). The settling of disputes can occasionally be aided by cultural features of hospitality. According to their beliefs, hospitality is "a way of being social" that is normatively guided by "etiquette" principles. They also felt that less acts of hospitality led to disorder, with rituals serving as a further means of maintaining solidarity (Dahal, 2003).

Magar Samaj: Magar is also one of the indigenous tribes of Nepal. They are very simple and live in groups. When any dispute occurs between them, they go to the SAMAJ (society). The senior people of that Magar society hear the differences of their people and resolve the disputes. Traditional practices of dispute resolution was practiced in Magar-samaj which was revitalized during the period of 1980, as B R. Uprety cited in his articles discussion paper to Bhandari B, and Pun, S. 2002 as Magar and Thakali Samaj strongly built on the earlier rich traditions of these ethnic groups which are active in settling community level conflicts (Uprety, 2014)

Mulla system in Muslim society: Muslims have been living in different parts of Nepal for a long time. They have their own culture and usages, especially in family law matters. They have a culture of

nominating the head of the society, Mulla somewhere known as Maulan. They resolve the differences themselves. They rarely bring their family disputes before the courts of the state (Khalida, 2016).

Buddhist approach to mediation: All that is seen in the world is devoid of reality because all things are like a dream, or like an image miraculously projected. The world that we see is an illusion and is like seeing one's own image reflected in water or an echo heard in a narrow gorge (Sharma, 2012). Here are some Buddhist teaching in conflict resolution, the teaching is used by different community in Nepal, the teaching is as “i) Broader perspective; ii) equanimity (or non-biased treatment and balanced response to the parties in conflict); iii) constructive speech; and iv) optimism. Mediators can also reference the above teachings to help Buddhist (and perhaps other) parties in conflict move away from entrenched positions’ (Hayward, 2017).

There are many other practices and usages in different societies of Nepal. In Dhankutta, Okhaldhunga, Bhojpur, Udayapur, Khotang and Elam districts, a Rai dominant settlement, they use their dispute resolution techniques. In their society who commits a wrong, he must beg pardon and has to pay in meat and some money which is confirmed by elder person of that society. In such a manner, they resolve the disputes. Then to now, the situation has almost changed rapidly. Now mediation centers have been established in almost all district courts.

In this way, practice of mediation has a long history in our Hindu-guided society and culture. So, we need to explore new ways and means to systematize the indigenous system of mediation developed in our oriental society. The lawgivers of the oriental societies always emphasized on duties: duties of individuals, of groups, etc.; in all aspects of life. From the very beginning of human civilization, a harmonious society has been built through the peaceful settlement of disputes based on their own method and style on the basis of values, norms, and cultures they practice, and the practice has been continuing till now (Sharma, 2012).

The Roscoe Pound Conference in Saint Raul, Minnesota, (1976) was a well-known phenomenon in the history of the growth of alternative dispute settlement mechanisms. The Conference was held to find alternatives for serious problems that came into existence due to the pitfalls of acrimonious court litigation in dispute settlement.

Legal Provision and Practices Regarding ADR in Nepal: Main legal provisions on dispute resolution some of them are explained as given below.

The National Criminal Procedural (Code) Act, 2074

According to Section 117 of NCP (Code) Act: 2074, any case related to any of the offences under Schedule-3 and Schedule-4 of criminal code may be compromised at any stage whatsoever with the consent of the parties to the case if parties want (Gov.np, 2017) in a case related to cheating or loss of or damage to any property of the public or foreign employment, both the defendant and the victim make a petition to the Government of Nepal for the execution of compromise, the Government of Nepal may, if it deems it reasonable, make an order to have such compromise executed through the government attorney in respect of such case (Gov.np, 2017).

According to Section 120 of the NCP (code) Act 2074, If the parties to any case related with any offence under Schedule-4 of criminal code agreed or the court considers appropriate to refer such case for mediation, the court may order to refer such case for mediation at any time and stage, getting the parties to choose the mediator and specifying the mediator if the parties fail to do so (Gov.np, 2017). These are the provisions of ADR on the criminal procedure code.

Arbitration Act, 2055 (1999)

Agreement means a written agreement reached between the concerned parties for a settlement through arbitration of any dispute concerning any specific legal issue that has arisen or may arise in the future under a contract or otherwise (cn.nepalembassy.gov.np, 1999). Section 3 of the Act has mentioned provisions regarding Disputes to be settled through Arbitration which are as follows:

- In case any agreement provides for the settlement of disputes through arbitration and
- In case of concerned parties to a civil suit of a commercial nature (cn.nepalembassy.gov.np, 1999). There shall be three arbitrators in case otherwise provided. If necessary, the Appointment of Arbitrators will be by Court.

Mediation Act, 2068

According to Mediation Act 2068, section 2, mediation means a process to be followed to settle a dispute or case with the assistance of a mediator (Gov.np, 2011). As per section 3 of the Act, any agreement provides for the settlement of dispute through mediation, the dispute concerned with that agreement or a dispute arising 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 (*Mila Patra*) pursuant to prevailing law (Gov.np, 2011).

According to section 5 of the Act, the number of the mediator shall be as according to the agreement, if the agreement does not specify the number of the mediator, one or three mediators shall be appointed as per the consent of the parties. (Gov.np, 2011). The Mediation Act has made provisions about the appointment of the mediator, qualification of the mediator, procedure of mediation, and mediation fund.

The Privatization Act, 1993 (2050 B.S.)

This Act is also related to liberal economic policy and it has also incorporated modern dispute settlement processes prevailing in the world. According to the Act Section 13 (1), It provides that if any dispute arises, in respect of any matter contained in the privatization agreement entered between the Government of Nepal and the parties participating in the privatization, such dispute shall be resolved through mutual consultation among concerned parties (Gov.np, Privatization Act 1993 (2050 B.S), 2066). In the section 13(2) of the act said, if the dispute is not resolved pursuant to sub-section (1) such dispute, with the consent of both parties may be referred to arbitration. The arbitration for resolving the dispute shall be conducted in accordance with the existing laws relating to arbitration or the rules of the Arbitration of the UNCITRAL (Gov.np, Privatization Act 1993 (2050 B.S), 2066).

Therefore, one can notice that the Privatization Act, 1993 (2050 BS) has not provided the means of mediation or conciliation to resolve the contractual dispute. However, the term "mutual consultation" used in the Act may include mediation too if both parties agree to adopt such a process.

Labor Act, 2074 B.S.

The Labor Act, 2074 also has incorporated these principles of mediation. Section 114 lays down procedures for mediation of cases between employer and employee. The Act has provided the procedures relating to personal claims or complaints against the employer relating to the service, which must submit in writing by the concerned worker/employee before the employer (Gov.np, 2017).

In case the employer must settle such claims within 15 days by discussing it with the claimant. It is the process of negotiation where there is no presence of a third party as in mediation. The claimant with the Labor Office may file a petition in case it is not settled by mutual discussion with the employer. (Gov.np, 2017) The Labor Office plays the role of mediator in such a situation.

According to section 116 of the Act, in case of claims of collective disputes arising out of collective interest, rights, etc., a written claim must be submitted to the employer for settlement by bilateral discussion. In the case of failure, it must be settled by bilateral discussion in the presence of the Labor Office (Gov.np, 2017). According to section 119 of The Act, if that process also fails, then the dispute may be referred to an arbitrator appointed with mutual consent of both parties or if no such arbitrator could be appointed, a tri-partite committee shall be constituted with the agreement of the parties having equal representation of the employer, employees and government of Nepal (Gov.np, 2017).

The Act makes special provisions for settling disputes. If the government feels that some conflict has arisen or is likely to arise between labors and employers, it can form a committee consisting of one or more persons or a tripartite committee consisting of the representatives of employer, employees, and Government of Nepal to resolve the conflict. Based on the report of this committee, the Government of Nepal will give a decision on the case that will be binding to both parties. The legal provision is a mixture of both mediation and arbitration.

Local Government Operation Act, 2074

According to the act section 46, it has made provision for a judicial committee under Chapter 8. Each municipality or rural municipality should have one judicial committee chaired by the deputy mayor and deputy chairperson. It consists of three members (Mofaga.gov.np, 2074). These members try to settle disputes through mediation and the decision of the members will be binding to the disputed parties but if they are not satisfied, they can appeal to the district court within a certain time.

The Foreign Investment and Technology Transfer Act, 2075

The Act has recognized modern efficient dispute settlement processes - negotiation, mediation, and arbitration (Ibn.gov.np, 2019). If any dispute arises between a foreign investor, national investor or the concerned industry, the concerned parties shall be required to settle the dispute by mutual consultations in the presence of the Department of Industry (Ibn.gov.np, 2019).

If the dispute cannot be settled through mutual consultation, then the parties of the dispute must resort to arbitration in accordance with the prevailing arbitration rules of the UNCITRAL. The arbitration shall be held in Kathmandu. The laws of Nepal are applicable in the arbitration. However, the Act prefers to settle disputes as mentioned in the foreign investment agreement.

Royal Nepal Airlines Corporation Act, 1963

Section 23 of the act provides that any dispute that arises regarding the contracts 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 (Nepalairlines, 2019).

Banking and Financial Institutions Act, 2017

The statutory requirement to consider ADR is set out in the Banking and Financial Institutions Act 2017. Under the Banking and Financial Institutions Act, any disputes between banks and financial institutions must be settled through mutual understanding among the parties. If the parties cannot settle their dispute through mutual understanding, Nepal Rastra Bank (the central bank of Nepal and the regulator of banks and financial institutions) will mediate the dispute by means of ADR (Nrb.org.np, 2019).

Similarly, under the Foreign Investment and Technology Transfer Act, any dispute between a foreign investor and its Nepalese partner must be attempted to be settled amicably under the facilitation of the Department of Industries before the dispute settlement mechanism under the agreement can be exercised. The dispute settlement mechanism set out in the agreement between the parties can be carried out only if the parties fail to settle their dispute by facilitation. If the agreement between the parties is silent as to the mechanism of dispute settlement, the dispute must be settled by arbitration.

Findings

ADR is found efficient and less time consuming and creates win-win condition to both the parties and the people of Nepal has been using it since long time, it could be said since the origin of settlement of Nepal, it could be said since ancient time and the people preferred it. It has been recognized by the law of Nepal and facilitating it where required, major findings are listed as below.

- **UNCITRAL**, Model law has a high influence over the Arbitration Law in Nepal.
- There is an absence of a designated arbitration institution to carry out arbitration activities in Nepal.
- One of the special features Nepal Arbitration Act 1999 is that it has a detailed provision regarding arbitration.
- The practice of mediation and other ADR processes can be found in Nepal since ancient times. An informal and indigenous method of settling minor social, familial, and other local disputes by a village or local headman, or local bodies has a very long practice in Nepal. Some features of such a dispute settlement system are like modern mediation. Even now, to some extent, community mediation and other indigenous dispute settlement practices like mediation can be found. However, such practices are not recognized by law.
- The Local Government Operation Act, 2074 has provided judicial power to the rural municipality and Municipalities. It is an effort towards decentralization of dispute settlement and taking justice to the doorsteps of the poor and illiterate in rural areas. It helps to promote easy access to justice and social justice. Such judicial powers have to be carried out through mediation boards. Such boards are also empowered to decide the cases through arbitration if mediation fails.
- It has been seen that it's not only today that the use of Alternative Dispute Resolution has flourished, Nepal has been using it for a long time. Through the research, the researcher found out the ways ADR has been in use in various societies like, Magar Samaj, Tharu Community, Muslim Samaj, etc.

Conclusion

Alternative Dispute Resolution is the procedure for settling disputes without litigation, such as arbitration, mediation, or negotiation. ADR procedures are usually less costly and more expeditious. They are increasingly being utilized in disputes that would otherwise result in litigation, including high-profile labor disputes, divorce actions, and personal injury claims.

ADR also allows the parties to come up with more creative solutions that a court may not be legally allowed to impose. Even though Alternative Dispute Resolution is intended to reduce the costs, stress, and formality associated with going to court, many parties still hire attorneys to represent them at ADR proceedings. Just as with any legal dispute, you should hire an attorney with experience in your legal issue who also is familiar with the collaborative process of ADR. The perception of an informal dispute settlement procedure seems to be vague; but nevertheless, it sufficiently attracts the attention of communities and societies. In this paper, it is seen that ADR has been in use since ancient times and was practiced in different societies as per their necessity. Along with that, ADR and its usage has been mentioned in the Acts of Nepal since a long time.

References

1. Aggarwal, N. (2010). *Jurisprudence Legal Theory* (Vol. 1). Central Law Publications (CLP). doi:ISBN-13 : 978-9388267236
2. Athurwa. (2024). Satru Niwaran Sukta . In S. A. Khanal), *Athurwa Veda* (p. 11). Kathmandu: Bidhyarthi Pustak Sadan.
3. Block, M. J. (2016/17). The Benefits Of Alternate Dispute Resolution For International Commercial And Intellectual Property Disputes. *The Digital Journal of Rutgers School of Law*, 44, 20. Retrieved from https://www.wipo.int/export/sites/www/amc/en/docs/2016_rutgers.pdf
4. Bulletin, S. (2059). Krishnachandra Jha Vs. Dineshchandra Shrestha & Others . *Supremecourt Bulletin* 245, 1.
5. cn.nepalembassy.gov.np. (1999, April 15). *Arbitration Act, 2055 (1999)*. Retrieved from <https://cn.nepalembassy.gov.np/wp-content/uploads/2017/11/arbitration-act-2055-1999.pdf>
6. Dahal, B. P. (2003). Ordering sherpa life through their rituals: symboliciinterpretatlve. *Api.repository*, pp. 230-241. Retrieved from <https://api.repository.cam.ac.uk/server/api/core/bitstreams/163790fc-8d11-40d3-8883-9cb>
7. Gov.np. (2011, May 9). *Mediation Act, 2068 (2011)* . Retrieved from <https://www.legal-tools.org/doc/d60b38/pdf/>: <https://www.legal-tools.org/doc/d60b38/pdf/>
8. Gov.np. (2017, September 4). *The labour act , 2017 (2074)*. Retrieved from <https://nepalindata.com/resource/The-Labour-Act--2017--2074/> (www.lawcommission.gov.np)
9. Gov.np. (2066, 10 7). *Privatization Act 1993 (2050 B.S)*. Retrieved from <https://www.brbip.gov.np/uploaded/Privatization-Act.pdf>:
10. Gov.np, M. (2017, October 16). The National Criminal Procedure (Code) Act, 2017. *Act Number 37 of the year 2017*. Kathmandu, Bagmati, Nepal: <https://www.moljpa.gov.np/en/wp-content/uploads/2018/12/Criminal-procedure-code-Revised.pdf>.
11. Gurung, N. G. (2022, April 12). Alternative justice in Dolpo. *The Reocrd*, p. 1. Retrieved from <https://www.recordnepal.com/alternative-justice-in-dolpo>
12. Hall, K. H. (2002). *Oxford Campanion to American law* (Vol. 1). Newyork, America: Oxford University Press. Retrieved from https://books.google.com.np/books?id=UXodg4rwE1IC&pg=PR3&source=gbs_selected_pages&cad=
13. Hayward, S. (2017, 6 17). *Buddhism and Mediation Resources*. Retrieved from <https://isnblog.ethz.ch/>: <https://isnblog.ethz.ch/uncategorized/buddhism-and-mediation-resources>

14. [ibn.gov.np](https://ibn.gov.np/uploads/documents/the-foreign-investment-and-technology-transfer-act-fitta-2019-2075pdf-1483-3). (2019, March 27). *The Foreign Investment and Technology Transfer Act, 2019 (2075)*. Retrieved from <https://ibn.gov.np/uploads/documents/the-foreign-investment-and-technology-transfer-act-fitta-2019-2075pdf-1483-3>:
15. Kanti, S. T. (2010). *Legal Methods, Legal System & Research*, (Vol. 1). Delhi: Universal Law Publishing Co.Pvt.ltd. Retrieved 9 14, 2024, from <https://books.google.co.ls/books?id=cOUpZcAfZWoC&lpg=PR4&pg=PR3#v=onepage&q&f=false>
16. Kayastha, G. P. (2024, February). Commercial Arbitration in Nepal:Issues and Challenges. *NEPCA INSIGHTA (Resolving Dispute Alternatives)*, 32. Retrieved September 18, 2024, from <https://www.nepca.org.np/wp-content/uploads/2021/12/NEPCA-Insights-Vol.32-Edited.pdf>
17. Khalida, S. (2016). *The muslim of Nepal: Coming out of shadow*. Aljazeera. Retrieved from <https://www.aljazeera.com/features/2016/5/18/the-muslims-of-nepal-coming-out-of-the-shadows>
18. Kharel, L. P. (2024). Administrative Role of Malla Kings of Later Medieval Period. *Nepalese Culture*, 17, 47-56. doi:<https://doi.org/10.3126/nc.v17i1.64392>
19. Khatri, N. K. (2024). Traditional Practices and Customary Laws of the. *ICIMOD - International Centre for Integrated Mountain Developm*, 7. Retrieved from [oogleg.com/search?q=Kirat+and+dispute+settlement+concept&oeq=Kirat+and+dispute+settlement+concept&gs_lcrp=](https://www.google.com/search?q=Kirat+and+dispute+settlement+concept&oeq=Kirat+and+dispute+settlement+concept&gs_lcrp=)
20. Mofaga.gov.np. (2074, 6 29). *www.brbip.gov.np*. Retrieved from <https://mofaga.gov.np/news-notice/1697>: <https://mofaga.gov.np/news-notice/1697>
21. Narendar R. Ghimire, Durga Khadka & Hariprasad Mainali. (2059). Jurisprudential Foundation of Contract Law. *Business Law*.
22. Nepalairlines. (2019, 12 30). *Nepal Airlines Corporation Act, 2019 (1963)*. Retrieved from [https://nepalairlines.com.np/storage/download/1612257417_Nepal_Airlines_Corporation_Act,_2019_\(English_Version\).pdf](https://nepalairlines.com.np/storage/download/1612257417_Nepal_Airlines_Corporation_Act,_2019_(English_Version).pdf).
23. Nrb.org.np. (2019, April 23). *Bank and Financial Institution Act, 2073 (2017)*. Retrieved from https://www.nrb.org.np/contents/uploads/2019/12/Bank_And_Financial_Instituion_Act_2017_-_English_Version_20190311-1.pdf:
24. Nycourts. (2024, 9 4). *NYCOURTS.GOV*. Retrieved from https://ww2.nycourts.gov/ip/adr/What_Is_ADR.shtml#:~:text=Alternative%20dispute%20resolution
25. S.C. Shashank & Kaushalya T. Madhavan. (2015, January 7). <https://www.lawctopus.com/academike/>. Retrieved from ADR in India: Legislations and Practices: <https://www.lawctopus.com/academike/arbitration-adr-in-india/#:~:text=Arbitration%20or>
26. Sancharkarmi. (2022, January 10). Badghar Custom Legalised In Kanchanpur. *Sanchar Karmi*, p. 1. Retrieved from <https://sancharkarmi.com/english/news-details/71930/2022-01-10#>
27. Sharma, T. P. (2012). Mediation in Eastern Culture. *ADR Commercial law journal*.
28. Steve Lopez & J. Swarbrick. (2023, 8 12). History and Evolution of Arbitration. *Research Gate*, 24. Retrieved 9 16, 2024, from https://www.researchgate.net/publication/376033152_History_and_Evolution_of_Arbitration
29. Stražišar, B. (2018, October). Alternative Dispute Resolution. . *Pravo. Zhurnal Vysshey shkoly ekonomiki, no 3, pp. 214–233 (in English)*, 3, 214-233. doi:DOI: 10.17323/2072-8166.2018.3.214.233
30. Svedberg, E. (2013). Himalayan Heritage: Local Organization and the Role of Tradition in the Community Development of the Thakali Peopl. *SIT Graduate Institute/SIT Study Abroad*, 30.

- Retrieved September 19, 2024, from https://digitalcollections.sit.edu/cgi/viewcontent.cgi?article=2731&context=isp_collection
31. T Hutchinson and N Duncan. (2012). Defining and describing what we do: doctrinal legal research. *Deakin Law Review*, 17(1), 83-119. Retrieved from <https://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/LegEdDig/2013/41.html#>
32. Tefera Eshetu & Mulugeta Getu. (2009). *Alternative dispute Resolution: Teaching Materials, Justice and Legal system*. Etheopia: Justice and Legal System Research Institute. Retrieved from https://www.lawethiopia.com/images/teaching_materials/alternative-dispute-resolution.pdf
33. Uprety, B. (2014). *Settling local conflicts in Nepal: Different mechanisms and practices*. Retrieved 9 21, 2024, from <https://www.nccr.org.np/uploads/publication/f1ebe0123ab986381bc53c284a843b37.pdf>
34. Usha Tandon, Sunanda Bharti & et.al. (2022, May). *B-602: Alternative Dispute Resolution*. Retrieved from <https://lawfaculty.du.ac.in/userfiles/downloads/LLBCM/VI:>