

# Alternative Dispute Resolution (ADR) in Nepal: Legal Framework, and Practices

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## Abstract

*In Nepal, dispute resolution has typically depended on a mix of traditional methods and modern legal structures. Alternative dispute resolution (ADR) techniques, including negotiation, arbitration, conciliation, and mediation, have grown in importance throughout time alongside traditional court proceedings, providing parties with more effective and flexible options for resolving disputes outside of the courtroom. Panchayats and Panchalis, two community-based systems, served as the foundation for Nepal's conflict resolution procedures in the past. However, ADR has developed into a more organised and approachable procedure as a result of the passing of legislation like the Arbitration Act of 2055. Since ADR may provide justice in a timely and economical manner, the judiciary actively encourages it. The legislative frameworks, which include the Foreign Investment and Technology Transfer Act and the Development Board Act, offer a methodical approach to resolving issues through alternative dispute resolution (ADR), guaranteeing that parties have access to options including arbitration and mediation for effective dispute resolution. A well-known case like Rajendraman Sherchan v. Appellate Court and National Construction Company v. Appellate Court have helped to clarify ADR principles, especially in commercial disputes, supporting the legitimacy of ADR outcomes and encouraging the adoption of alternative dispute resolution practices.*

## Introduction

Since disputes are came with the society, its solution has also been taking place in various forms. According to traditional forms of dispute resolution, it is found that it is resolved through various means such as going to the elders and to the “kachahari”. But in modern society, both formal and informal means are being practiced effectively for dispute resolution. Formal and informal dispute resolution processes are defined as alternative dispute resolution systems. In terms of dispute resolution, the system organized by the state is called the formal process of dispute resolution.

Alternative dispute resolution is generally understood as a system of resolving disputes outside of court with the assistance of a neutral third party through a process different from formal judicial proceedings. The alternative method of

dispute resolution is also known as the informal process, considering the formal procedure adopted by the court for dispute resolution. In the same way, it is found that the method of dispute resolution done outside the court is considered as an alternative method based on the context provided by the prevailing law to the court, which is the main responsibility of dispute resolution. Therefore, there are different alternative forms of dispute resolution.

Alternative dispute resolution forms are classified as Adjudicative, Evaluative, Meditative and Hybrid and Combined process. Arbitration in the form of decision-making, professional and expert evaluation in the form of evaluation, meditation in the form of reconciliation and consensus building and in the mixed process of reconciliation and mediation in the form of mixed process Med-Arb, negotiation, reconciliation Mixed forms of case evaluation include Mini-Trail etc. Thus, there are

different processes within different formats for dispute resolution

## The Main Alternative Measures to Be Adopted

Alternative refers to mainstream. It means that there was a method first and then an alternative was found. Alternative Dispute Resolution (ADR) is a system for resolving disputes in a different place and way than the traditional way.

## Evolution and Adoption of ADR

ADR is not a new phenomenon, though it has been organized on more scientific lines expressed in more clear terms and employed more widely in dispute resolution in recent years than before. Long before there were Panchayat, panchali, Mukhiya, Guthi Naike were established in informal way to settle the dispute in gross-roots level.

ADR can be traced back to the system of Panchayat in Nepal.<sup>1</sup>

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 Villagers. In the lichhavi period the panchali which was also known as panch- sabha was empowered to decide disputes at the local level.

The practice of mediation/arbitration in Nepal has long history behind it. These two methods of dispute resolution were practiced in ancient Nepal which are still continuing but in an advanced form. Muluki Ain 2020, Development Board Act, 2013 B.S., Local self - governance Act 2055 B.S., Nepal petroleum Act, 2040 B.S., Foreign Investment and Technology Transfer Act 2049 B.S. Labour Act 2048 B.S., Contract Act 2056 B.S., Banks and Financial Institutions Act, 2063 B.S. are also come into force to address ADR.

<sup>1</sup> Principle and Practices of Procedural law, Advocate Ram Prasad Aryal, first edition 2020 Introduction to Procedural Law, Somkanta Bhandari

## Legal Framework of ADR in Nepal

Alternative Dispute Resolution (ADR) in Nepal is governed by a comprehensive legal framework. It is continually evolving, guided by statutory provisions. The most common methods of ADR in Nepal include mediation, arbitration, and negotiation.

## Statutory Provisions and Legislative Framework

Development Board Act, 2013: Section 9 states about settlement of disputes by Arbitration:

Any agreement made with the Board that provides that any disagreement arising out of the agreement or any issue related to its implementation must be submitted to arbitration for resolution will be resolved by the arbitrator chosen in line with the agreement; courts will not have the authority to attempt to resolve such a dispute.

In order to reach a judgement on the dispute that was referred to him or her under Subsection (1), the arbitrator must have the authority to gather and review evidence and witnesses, call witnesses, and mandate the production of documents. The arbitrator's decision is final and enforceable against both parties. With a provision that the Court of Appeal may vacate the award on a petition from the party who was damaged in the following circumstances: -

If it is evident that the arbitrator acted improperly, rendered an incorrect decision with a clear ulterior purpose, or was subjective in rendering the decision, or if the decision is obviously against the law. Should the Court of Appeal nullify such an award, the disagreement will be sent to an additional arbitrator chosen by the Chief Judge of that Court for resolution. The arbitral award shall be carried out as directed by the Bailiff (Tabashil) or the office designated by the Nepalese government to act as the Bailiff. The Nepalese government may establish regulations to implement those objectives defined in this section.<sup>2</sup>

<sup>2</sup> Om Subedi, 'Nepali Experience and experiment with Arbitration on commercial Disputes NJA Law Journal, vol11 no.1, National Judicial

Privatization Act, 2050 According to Section 13, disagreements arising on any topic covered by the privatization agreement signed by the Nepali government and the party taking part in the privatization must be settled by mutual consultation between the parties involved. If the disagreement cannot be settled, it may be submitted to arbitration with the agreement of both parties, where it will be settled in line with current arbitration legislation or UNCITRAL arbitration rules.

Foreign Investment and Technology Transfer Act, 2075: According to section 40, in the event of a disagreement between a foreign investor, a domestic investor, and the industry in question, the parties involved must resolve the issue through mutual discussions in the department's presence. In the event that this method of resolution is not possible, the matter will be arbitrated under the current United Nations Commission on International Trade Law arbitration procedures.

The National Civil Code, 2074 (Provision relating to contract law):The parties have the discretion to choose how to resolve disagreements resulting from the contract thanks to Section 4 of this Act. Any kind of alternative dispute resolution mechanism may be included by the parties in their relevant contract.

Bank and Financial Institution Act, 2073: Nepal Rastra Bank is now enabled under Section 78 to act as a mediator or arbitrator in disputes between licensed financial institutions. The judgement is final and enforceable.

Nepal Airlines Corporation Act, 2019 (1963): Arbitrators may be used to settle disputes, according to Section 23 of the legislation. If a disagreement should emerge about agreements between the Board, General Manager, or other authorities or workers of the Corporation, it will only be resolved by an arbitrator appointed by the Nepalese government. The arbitrator will have the same authority as a court of law to question witnesses, collect evidence, call parties to the dispute, and get documents relevant to the case that is brought before him or her for

resolution. The arbitrator's ruling will be final and binding against both parties.

Mines and Minerals Act, 1985: According to Section 26, if the Government of Nepal and the licensee are unable to come to a mutually agreeable resolution regarding any dispute arising out of matters related to mining operations, the dispute will be settled by arbitration in accordance with any provisions that may have been included in the agreement reached between the parties, or, in the absence of such provisions, by arbitration as specified.

Arbitration Act, 2055;The Arbitration Act of 2038 B.S. was Nepal's first effort to enact arbitration law. The 2055 Arbitration Act abolished it. The UNCITRAL Model Law on International Commercial Arbitration from 1985 serves as the foundation for the Act's promulgation. Moreover, the Arbitration Act of Nepal (2055) is sometimes presented as a hybrid of the 1959 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (also referred to as the New York Convention) and the previously stated 1985 Model Law.<sup>3</sup>

Nepal Council of Arbitration (NEPCA) is playing vital role in development of arbitration in Nepal. These days, globalization, liberalization, privatization, and sound corporate governance are all contributing factors to the fast growth of commercial activity. It also receives support from international organizations including the World Bank, International Monetary Fund, and World Trade Organization. As a result, many disagreement types are recognized in the business community. A court case is expensive and time-consuming. Thus, alternative conflict resolution is frequently employed to provide a prompt resolution and respite from the issue. ADR processes are complementary to courts since they are an addition to them. In contrast to the formal and strict methods used in the regular process of conflict settlement in courts of law, alternative dispute resolution (ADR) procedures are more flexible and informal, allowing for easier access to justice.

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Academy, Nepal, 2007, p. 95, Development Board Act 1956.

3 Nepal Airlines Corporation Act 1963, sec.23

Nepal's ADR legislative system is strong and extensive, offering a number of channels for resolving disputes. Under the direction of statutory requirements, legislative frameworks, and seminal case laws, it is always changing. In order to guarantee the impartial and effective settlement of conflicts in Nepal, this framework is essential.

### Types of ADR Mechanisms in Nepal

Arbitration is one of the most widely used alternative methods of dispute resolution, adopted worldwide. Similarly, depending on the nature of the dispute, mediation, conciliation, negotiation, etc., are also adopted.

### Mediation

The English word "mediate" comes from the Latin word "mediare." One of the different alternative dispute resolution procedures is mediation. Through this process, an impartial third party is sought out to assist in resolving the disagreement. That comes to be in the midway". As a matter of fact, given his position, the mediator stays in between the disputing sides. However, comprehending the definition of mediation as a method of resolving disputes and the mediator's function is not enough to fully comprehend negotiating peace.

A neutral third party mediates disputes on behalf of conflicting parties in order to help them come to a mutually accepted agreement. This is known as mediation, according to Black's Law Dictionary. "Mediation is a method of dispute resolution in which a neutral third party participates," claims James J. Alfini. They aid two or more disputing parties in identifying key problems and coming up with workable solutions. To resolve a problem through communication and negotiation with an unbiased third party, mediation is a voluntary, private process. In society, disagreements are normal and expected. When a disagreement can be settled amicably, both sides experience a sense of accomplishment.<sup>4</sup>

<sup>4</sup> Mukti Rijal, Mediation and Dispute Resolution in Nepal perspective and procedures (Nepal Internal ADR center), Gyanendra Shrestha, (2062) (Karyabidhi Kanoon ko Rooprekha), p. 132

### Process of Mediation

Through the process of mediation, two or more disputing parties can work with an impartial, independent a mediator to explore their choices, determine their wishes, and come to a legally binding agreement. The following is how Nepalese law defines Mediation. "Mediation" refers to the method used by the parties to resolve a dispute or issue with the help of a Mediator. According to Philippine law, mediation is defined as follows. "Mediation" refers to a mutually agreed upon procedure when the disputing parties choose a mediator who will help them communicate, deal with, and come to an independent resolution of the dispute.

The parties have the power to make decisions in mediation. The role of the mediator includes but is not limited to assisting the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives. Settlements in our traditional court matters were and are guided by judges, attorneys, or parties. The process by which qualified mediators assist the parties to the disagreement in reaching a resolution by adhering to all recognized procedures in a proper setting and fostering debate is known as Mediation.

### Mediation Practices in Nepal

It is also a cultural practice. Throughout Nepal's history, various methods of dispute resolution have been observed, such as Pantumyang during the Kirant period, Panchali during the Lichhavi period, Panchasamuchchaya during the Malla period, and Manyajan Kachahari during the Shah period. In the present day, in various regions at the local level, practices like Panchachahari and Mukhiya continue the tradition of resolving disputes through Mediation in village gatherings.

The Muluki Ain issued in 1910 B.S. included a provision pertaining to the rights of businessmen and traders to resolve local disputes at the community level. The Sanad issued on the 27th of Baisakh,

1983 B.S., established the “ManyajanKachhari” to mediate between parties regarding matters such as land acquisition, Kulopani, dams, etc. The Village Panchayat Act of 2006 and the Village Development Committee Act of 2048 empowered the Village Panchayats to address disputes at the local level, with legal provisions for reaching settlements through discussion.

In the Muluki Ain of 2020, regarding Settlement No. 182 of the Palace Court, in criminal cases where the government is the plaintiff, except for bribery cases, there was a provision that other cases could be mediated at any level. Sections 33 and 101 of the Local Self-Governance Act, 2055, granted limited judicial powers to local bodies. However, those provisions of the Act were not implemented. Mediation formally entered court proceedings in the then District Court Regulation of 2052. In 2060 B.S., it was revised, adding Rule 32A to that regulation, which provided a legal provision for mediating civil cases pending in the district court.<sup>5</sup>In 2063 B.S., this provision was added to the then-existing Appellate Court Regulations and the Supreme Court Regulations, creating a legal framework for mediating cases across the three levels of courts.

Though the traditional method of settling cases has been utilized for around twenty years in Nepal, systematic Mediation only commenced within this timeframe. After the enactment of the Mediation Act, 2068, as a separate legislation, it materialized into a concrete form. Since the implementation of this Act, informal mediation within communities has evolved into a formal process where disputes pending in court can be resolved and concluded through legal means. The purpose of the Act is to expedite dispute resolution through conciliation, simplifying the process and reducing costs, thus

enhancing access to justice for ordinary people. Additionally, the Administration of Justice Act, 2073, the National Civil Procedure Codes, and the rules of courts at all three levels contain provisions prioritizing mediation for parties involved. There is a legal arrangement allowing mediation from the stage of pending cases to the execution of decisions.

Initially, it was introduced within the court system through procedural rules. Subsequently, the Mediation Act of 2068 and the Mediation Regulations of 2070 were enacted and implemented. These Acts and Regulations primarily emphasize mediation within the judicial framework.

In accordance with the Local Self-Governance Act of 2055, the mediation was to be conducted under the auspices of the then (Ga.V.S) and municipality. However, as the related provisions were to be implemented upon the government’s notification in the Nepal Gazette, and since such notification was not issued, the act was repealed in 2074.

Non-governmental organizations such as CIVICT, CeLRRd, Pro-Public, and TAF have initiated community Mediation practices in Nepal to align with the spirit of the aforementioned Act. While the success rate of mediation centers within the court system is notably disappointing, community mediation efforts boast an impressive settlement rate of around 80 to 90 percent.

Article 51 (k) of the Constitution of Nepal clarifies that the state’s policy is to employ alternative measures such as Arbitration and mediation to settle disputes of a general nature. Additionally, Article 127(2) of the Constitution stipulates that, besides the regular courts in Nepal, judicial bodies or other entities may be established as necessary to facilitate alternative methods of dispute resolution at the local level. In Article 217 of the Constitution, it is stipulated that at each local level, a three-member judicial committee, chaired by the vice-chairman or deputy chairperson, is empowered to address

<sup>5</sup> Sanad Devkota, Viewpoint of the Supreme Court of Nepal on the Arbitration Process in the Light of Party Autonomy, Tribhuvan University Journal, vol. 2 no. 2 center for Research TU, Kathmandu (2020), Introduction to Procedural Law, Somkant Bhandari, ADR p. 273, 274,

disputes as specified by law. Additionally, Schedule 8 of the Constitution places the administration of local courts, Mediation, and Arbitration under the exclusive jurisdiction of the local level.

In the Local Government Operation Act of 2074, lists of disputes are mentioned, enabling the judicial committee to address two types of disputes.

<sup>6</sup> Section 47(1) of the Act states that the Judicial Committee shall refer registered disputes to trained mediators listed therein for mediation. If mediation is successful, the agreement reached shall be enforced; if not, the Judicial Committee may render a decision upon review, which can be appealed to the District Court. In Section 47(2) of the Act, it is stipulated that registered disputes will be referred to the Judicial Committee for mediation. If mediation fails, the cases will be forwarded to the District Court without a decision being made by the Judicial Committee.

Considering the provisions of the Constitution and the Local Government Operation Act, along with the authority granted to each local level to enact laws, it appears necessary to amend laws and regulations concerning mediation to align them with the constitutional provisions and the Local Government Act.

### **Role of Community Mediation**

It is produced by decentralization concept. Any kinds of the disputes, the community settles to use conciliation, mediation in mutual understanding within the society i.e. Mukhiya, Guthi, Jamindar, Gyalbo, Thakali. Now, Nyaya committee of Jyapu Samaj is being popular for community mediation in Kathmandu Valley.

### **Arbitration**

Alternative Dispute Resolution (ADR) is the means of settling disputes without going through legal procedures with or without the help of a third party.

It is alternative to formal court hearing and litigation. Among various modes of ADR, arbitration is the most commonly used mode.

Arbitration is a process whereby a private court, formed at the parties' discretion, is utilized to resolve any disputes arising from legal or contractual relations related to transactions not prohibited by law. Factors such as the complexity of the subject matter, the backlog of regular courts, delays in decision-making, declining public trust, the impact of open economies, increasing industrial and commercial activities, and disputes involving parties from different countries have underscored the need for mediation in Nepal's arbitration laws.

The process of using an alternative dispute resolution approach is called arbitration. It is an "out of court" settlement process where the arbitrator is usually chosen by both parties to resolve their disagreement. The arbitrator's ruling is final and binding, and the disputing parties select the arbitrator and decide on the settlement procedure, including all judicial adjudication procedures as required by arbitration law and regulations. Arbitration is a private conflict resolution process that involves the appointment of an arbitrator, a third party who is impartial and independent. The arbitrator hears both sides of the argument, evaluates their arguments, and issues a final decision known as an "award."

Arbitration gives the disputing parties the opportunity to select the arbitrators and settle their differences directly. The courts do not have the authority to replace arbitrators' wrongful rulings, even in cases where they have made mistakes, subject to specific restrictions.<sup>7</sup>

The Model Convention on International Commercial Arbitration was established by UNCITRAL, the United Nations Commission on International Trade Law, in 1985. In order to guarantee uniformity and

<sup>6</sup> Mediation Act, 2068, Administration of Justice Act, 2073, The National Civil Procedure (Code), 2074, The Constitution of Nepal

<sup>7</sup> Oriental Insurance Company Limited v Ram Krishna Rawal, NKP 2066, p.123, Ashish Adhikari and Sudeep Gautam law in Nepal, Dhulagiri Books and stationeries, first edition, p.216

consistency of the arbitration practice in a field of international trade, the UN General Assembly suggested that all nations take this model into consideration. Nepal's Arbitration Act is likewise drafted as the Arbitration Act 1999 in accordance with this. Arbitration has not been defined in this Act. Instead, it merely defines "agreement" as "a formal agreement established between the parties for arbitration to settle a dispute pertaining to a defined legal relationship, whether contractual or not, that has occurred at that time or may arise in the future,

Arbitration is the referral of an issue or dispute involving at least two parties to an individual or group of individuals other than a court with appropriate jurisdiction for resolution following a formal hearing of all sides.

Arbitration is defined as "a process of dispute resolution in which a neutral third-party render has an opportunity to be heard" in Black's Law Dictionary. When arbitration is optional, the parties in dispute choose the arbitrator who will be able to make a legally enforceable ruling."

"Arbitration" refers to a process wherein a neutral third party or panel, known as an arbitrator or arbitration panel, evaluates the facts and arguments presented by the involved parties and issues a decision, which may be binding or nonbinding as specified in this chapter.

Arbitration hearings are typically conducted in private unless otherwise requested by the parties. Its practice was initiated in Nepal under the Development Committee Act of 2013. With the enactment of the Arbitration Act in 2038, significant advancements have been made in this field. Various laws, including the Arbitration Act of 2055, the Labor Act of 2074, the Nepal Air Services Corporation Act of 2019, the Banks and Financial Institutions Act of 2063, the Foreign Investment and Technology Transfer Act of 2075, the Public

Private Partnership and Investment Act of 2075, and the Public Procurement Act of 2063, among others, govern arbitration. Presently, the Arbitration Act of 2055 is in effect, with its key provisions outlined as follows:

When discussing arbitration, primary attention should be given to the agreement reached between the disputing parties. In every instance, the terms specified in the contract are given precedence. If the agreement specifies otherwise, its terms shall govern, while matters not covered in the agreement shall be subject to the provisions of the Arbitration Act.<sup>8</sup>

The choice of mediator, venue, procedure, language, and applicable law for resolving disputes is determined by the parties involved. The decision rendered by the arbitrator is generally final, unless otherwise provided by law. Parties voluntarily adhere to the arbitration decision.

## **Conciliation and Negotiation**

### **Conciliation**

Conciliation is the process of resolving a dispute through the involvement of a third party, appointed by unanimous decision of the disputing parties, who acts as an impartial conciliator. The aim of is to alleviate tension between the parties, enhance understanding, clarify points of contention, offer technical assistance, explore potential solutions, and facilitate the parties in reaching an amicable resolution. Particularly in commercial disputes, conciliation proves effective through its participatory approach.

During conciliation, the conciliator endeavors to identify potential solutions and gain agreement from the parties to resolve the dispute through those means. They discuss the nature of the dispute, highlight the benefits of resolution, and outline the

<sup>8</sup> Arbitration Act, 1999, sec. 2(a), Avtar Singh, 'law of Arbitration and conciliation, 6th edition, Bryan A. Garner, Black's Law Dictionary, 8th edition, Thomson west

risks of non-resolution. Taking the lead in fostering consensus, the conciliator works to mitigate disagreements and animosity between the parties.

### **Negotiation**

The process wherein both parties to a dispute, either directly or through their representatives, seek a mutually acceptable resolution is termed Negotiation. Whether consciously or unconsciously, negotiation is commonly used in dispute resolution and is often characterized as a bargaining process between the involved parties. Through negotiation, the contentious issues are typically narrowed down, leading to the eventual formulation of an agreement.

Negotiations can be categorized into two main types: position-based and interest-based. Position-based negotiation, often resulting in a win-loss outcome, focuses on asserting specific stances. In contrast, interest-based negotiation aims for a win-win outcome by addressing underlying interests rather than fixed positions. The initial phase of negotiations typically involves position-based discussions before transitioning to interest-based considerations.

## **Practical Implementation of ADR in Nepal**

### **Case Studies of Successful ADR Resolutions**

The use of ADR in Nepal has been shaped by a number of significant cases. For example, the Supreme Court ruled that if a contract contains an arbitration clause, the clause is enforceable up until the point at which disagreements over the terms of the contract or its performance are settled. Parties have the liberty to select distinct substantive and procedural legislation for the arbitration provision, according to a noteworthy verdict.

Rajendraman Sherchan on behalf of Vijay Construction Pvt. Ltd. V. Appellate Court, Patan, 2064, Decision No. 7823<sup>9</sup>In the case of Rajendraman Sherchan on behalf of Vijay Construction Pvt.

<sup>9</sup> Introduction to Procedural Law, Somkat Bhandari, p. 279, 280, Rajendraman Sherchan on behalf of Vijay Construction Pvt. Ltd. V. Appellate Court, Patan, 2064, [https://nkp.gov.np/full\\_detail/3794](https://nkp.gov.np/full_detail/3794)

Ltd. v. Appellate Court, Patan, 2064, Decision No. 7823, the Hon'ble Supreme Court ruled that failure to comply with Section 6(1) of the Arbitration Act, 2055, which mandates the initiation of arbitrator appointment within three months of the arising reason to commence arbitration unless the contract states otherwise, precludes the initiation of arbitrator appointment through court under Section 7(1) of the Arbitration Act, 2055. Additionally, the court asserted that the issue of the limitation period is a legal matter, and there exists no legal provision restraining the Hon'ble Appellate Court from reviewing it.

### **National Construction Company, Nepal V. Appellate Court, Patan, 2065, Decision No. 7933**

The Hon'ble Supreme Court outlined several key points regarding arbitration clauses and dispute resolution procedures in contracts. It emphasized that when an arbitration clause is present, the contract may specify the procedure for arbitrator appointment and other relevant conditions. However, in the absence of such provisions or if parties fail to appoint arbitrators according to the contract's procedure, the Hon'ble Appellate Court can undertake the appointment process under Section 7 of the Arbitration Act, 2055. Furthermore, when parties agree to arbitration, one party cannot obstruct arbitrator appointment. Additionally, in cases involving multi-tiered dispute resolution clauses, the Hon'ble Appellate Court, acting as the appointing authority, must verify if pre-arbitration dispute resolution mechanisms have been utilized. Even after termination of an agreement, the provision for arbitration remains effective, and no party can obstruct the arbitration process for any reason.

### **Yashasvi Shamsher JBR v. Vaibers Developers Pvt. Ltd., 2074, Decision No. 9847**

Clause 12 of the agreement specifies that if a dispute arises, the parties must settle it amongst themselves.



According to Section 2(a) of the Arbitration Act, 2055, an “Agreement” refers to a written understanding between the parties to settle disputes through arbitration regarding specific legal issues that have arisen or may arise in the future under a contract or otherwise. However, if there is no such agreement between the parties, the Arbitration Act does not apply, and instead, the Contract Act, 2056, governs the resolution of disputes.

## **Enforcement and Recognition of ADR Decisions in Nepal**

### **Role of the Judiciary in Supporting ADR**

Alternative Dispute Resolution (ADR) has been integral to Nepal’s legal system for centuries, rooted in traditional community-based practices. The judiciary actively supports ADR, acknowledging its capacity to deliver efficient, cost-effective, and accessible justice. Courts frequently encourage parties, especially in civil cases, to pursue ADR methods like mediation before resorting to litigation, reducing court caseloads and empowering parties in resolving disputes. Furthermore, the judiciary aids in enforcing ADR outcomes by reviewing agreements reached through ADR to ensure compliance with the law and public policy. If deemed acceptable, the court enforces these agreements, granting them the same legal validity as court judgments, thereby bolstering their credibility and acceptance.<sup>10</sup>

## **Conclusion**

In conclusion, Nepal’s dispute resolution system is a complex patchwork of both contemporary legal frameworks and customary practices. Nepal has had a slow transition towards formalised ADR processes, with laws like the Arbitration Act of 2055 emerging from more recent institutions like Panchayats and Panchalis. ADR adoption is in line with a global trend towards more accessible and

effective legal systems, and Nepal has accepted this paradigm change with the help of the judiciary and legislative measures.

Nepal’s alternative dispute resolution (ADR) is governed by a broad legislative framework that includes, among other acts, the Arbitration Act, Development Board Act, and Foreign Investment and Technology Transfer Act. These regulations offer a methodical process for settling conflicts via conciliation, arbitration, mediation, and negotiation. ADR procedures are also being developed and implemented in the nation with additional support from non-governmental organizations and institutions such as the Nepal Council of Arbitration.

In landmark cases such as National Construction Company v. Appellate Court and Rajendraman Sherchan v. Appellate Court, the Supreme Court has offered clarification and direction about the use of ADR principles in commercial disputes. These decisions highlight how crucial it is to follow legal standards and contractual duties while using dispute resolution procedures.

The judiciary’s proactive support for alternative dispute resolution (ADR) is indicative of its dedication to improving court backlog reduction and increasing access to justice. This is demonstrated by its acceptance of mediation and enforcement of ADR rulings. The court plays a crucial role in enhancing the legitimacy and acceptability of alternative dispute resolution methods in Nepal by acknowledging the legitimacy of ADR results and working for their implementation.

When it comes to resolving disputes, Nepal’s legal system essentially supports a harmonic fusion of conventional customs and contemporary legal ideas. Its dedication to promoting accessible, affordable, and effective justice through alternative dispute resolution (ADR) processes is unwavering even as the nation changes.

<sup>10</sup> National Construction Company, Nepal V. Appellate Court, Patan, 2065, [https://nkp.gov.np/full\\_detail/2178](https://nkp.gov.np/full_detail/2178), Yashasvi Shamsheer JBR v. Vaibers Developers Pvt. Ltd., 2074, [https://nkp.gov.np/full\\_detail/8898](https://nkp.gov.np/full_detail/8898)