

**LOCAL GOVERNANCE IN NEPAL**  
**A STUDY OF LOCAL DISPUTE RESOLUTION**

**A Dissertation**

**Submitted to the Faculty of Humanities and Social Sciences of  
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POLITICAL SCIENCE**

**By**

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**June, 2013**

## LETTER OF RECOMMENDATION

We hereby recommend that this dissertation titled "**Local Governance in Nepal: A Study of Local Dispute Resolution** " prepared by Mr. Mukti Ram Rijal under our supervision be accepted by the Research Committee for the final examination in the fulfillment of the requirements for the degree of DOCTOR OF PHILOSOPHY in Political Science.

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Date: June , 2013

## **APPROVAL LETTER**

This dissertation titled "**Local Governance in Nepal: A Study of Local Dispute Resolution**" was submitted by Mr. Mukti Ram Rijal for final examination to the Research Committee of the Faculty of Humanities and Social Sciences, Tribhuvan University, for fulfillment of the requirements for the Degree of Doctor of Philosophy in Political Science. I hereby certify that the Research Committee of this Faculty has found the dissertation satisfactory in scope and quality, and has therefore been accepted for the Degree.

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Prof. Dr. Chinta Mani Pokharel  
Dean and Chairman  
Research Committee

Date: June , 2013

## DECLARATION

I hereby declare that this Ph.D. dissertation titled "**Local Governance in Nepal: A Study of Local Dispute Resolution** " submitted by me to the Office of the Dean, Faculty of Humanities and Social Sciences, Tribhuvan University (TU), is an entirely original work prepared under the supervision of my supervisor. I have made due acknowledgements to all ideas and information borrowed from different sources in the course of writing this dissertation. The results presented in this dissertation have not ever been presented or submitted anywhere else for the award of any degree or for any other purposes. No part of contents of this dissertation has ever been published in the form or a part of any book. I am solely responsible if any evidence is found against my declaration.

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Mukti Ram Rijal

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## ABSTRACT

### Introduction

Local Self Governance Act LSGA provision appertained to what is called as ‘the judicial rights (Nayayik Adhikar) of local bodies’ has not been implemented legally and effectively in the absence, inter alia, of the elected representatives and adequate capacity of local bodies to implement the same. However, this has not deterred or restrained the local bodies and communities to engage in resolving minor causes and disputes (*Bibad*) that do arise at the local level. Needless to say, the democratic local governance offers space to resolve disputes that occur in the community. The spaces for participation, institutional and democratic arena to engage in discussions and contestation tend to minimize conflicts in resource allocation and sharing which are often the sources of conflicts.

It is long established a fact that the local dispute resolution has been an inherent and inalienable function of local governance institutions in Nepal. It is exercised independently without being overtly dictated, influenced and determined by the changes in the realm of legal and constitutional framework. Needless to say, the justice delivered by the court is beyond the reach of the ordinary people. And it is expensive and cumbersome. Hence, it is inaccessible to the poor and indigent. This has lent credence to alternative dispute resolution as it is less formal, easier and affordable to the ordinary populace. As a result, this has become popular across the world. The Lok Adalats in India, the mediation boards in Sri Lanka, the Barangaya Justice System subject to the jurisdiction of the local government institutions in the Philippines and the Shalish system in Bangladesh are some of the examples in this regard.

In Nepal, dispute resolution has been embedded, among others, as an integral, inalienable and indissoluble function and competence of the local bodies especially the Village Development Committee and municipalities- the bottom tier of two tier local governance system in Nepal. Justice in the local communities is understood not as legally defined concept to enforce rights, it is taken as reparation of disruption and restoration of broken ties and nurturance of community feeling and good neighborliness. The Village Development Committees (VDCs) and Municipalities (MCs) are often found resolving community disputes without being bounded and prescribed by the limited jurisdiction provided in the law. For example, the VDCs entertain disputes of varying types and scales not necessarily limiting themselves in the jurisdiction set forth in the LSGA.

Needless to repeat, the local governance institutions in Nepal- VDCs, Municipalities and DDCs- have been run by the govt. officials for over a decade. This has not diminished or reduced the trust and confidence of people in local bodies where they brought their issues for development interventions, demanded delivery of services and sought resolution of disputes. Besides this, the informal traditional justice mechanism exist in Nepal to assist in settling disputes among the indigenous ethnic groups . The Tamudhin of the Gurung, Badghar of Tharus and the Mukhiya of the Thakalis are some of the popular traditional justice mechanisms in Nepal. The LSGA provision concerning disputes resolution constitutes a meaningful shift from government to governance. It recognizes the democratic and decentralized notion of devolution of justice to grassroots.

At this backdrop, this study discusses the local dispute resolution as part of subsidiary governance. It highlights the mechanisms and practices in Sharadanagar VDC, Chitwan , with reference to the values and principles of the interest based mediation conceptualized and elaborated by conflict experts John Paul Lederach, Ronal Kraybill, Roger Fisher and William Ury(1991). While providing a historical account of the practices and experiences of local dispute resolution from past to the contemporary times in Nepal, the study examines the provisions of LSGA and discusses through empirical data the process of dispute resolution at Sharadanagar VDC in Chitwan. In fact, from theoretical perspectives, the study offers two proposition. Firstly, it dwells at devolved mechanism enabled by transferring authorities to VDC to deliver the mediation services at the local level. Secondly, local participation ensures ownership of the people, promotes accountability and transparency in the functioning of the local institutions. Where disputants themselves participate in working out the outcome of settlement, this results into an enhanced satisfaction and legitimacy of the process. This not only contributes to resolving interpersonal disputes but also builds a supportive governance environment in which disputes are negotiated and resolved through deliberation and negotiation.

This study is conceptualized as an attempt in examining the concept of local governance with particular focus on local dispute resolution with reference to the values and principles of interest based mediation. The concept of dispute resolution as provided in LSGA is in need for reexamination and re-conceptualization in view of the prevailing social, political and governance context in the country. This study discusses the role of local institutions especially VDC in resolving interpersonal disputes caused due to incompatibility and conflict of interests. The study identifies

the areas where the legal and practical shifts in the LSGA provision are needed in order to ensure that the role of VDCs for dispute resolution is relevant in the changed social political and governance context of the country<sup>1</sup>. The study is interdisciplinary. It draws on the concept of governance, power and justice-the basic notions of politics and law. Power exists in a whole range of interpersonal situations where individuals deliberate to advance their points of view and influence the opponents.

The study aims at exploring into such questions as: do democratic local governance institutions offer space for negotiating issues and mitigating conflicts? To what extent the devolved justice system as enshrined in LSGA provision with regard to local dispute resolution does contribute to access justice and satisfies the interests of the parties to the disputes?

The overall objective of the study is to assess the state of local dispute resolution as an integral element of local governance. The specific objectives of the study are such as: to discuss the concept and relevance of democratic local governance in redressing conflicts and resolving disputes at the local level, to examine the LSGA provisions in regard to local dispute resolution in the light of growing use and efficiency of mediation as an effective methodology of local dispute resolution and to identify the ways and means in strengthening the capacity of VDC with particular focus on dispute resolution at the local level.

The study is based on descriptive analytical data relying primarily on exploration and description. A wider range of secondary literature has been consulted to discuss the importance of democratic local governance in institutionalizing space for conflict prevention and resolution. For empirical data, the case study method has been employed, and for this purpose Shardanagar VDC in Chitwan District has been selected.

The secondary sources used in this study are relevant works, studies/publications and so on. The laws and regulations promulgated by the government from time to time germane to democratic local governance and dispute resolution have been consulted to conceptualize local governance as institutional space for dispute resolution. The relevant reports/magazines and journals containing articles on local governance, mediation techniques and processes of local dispute resolution have been consulted. The VDC profiles, records and relevant papers kept and maintained by local bodies/

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<sup>1</sup> Following the end of insurgency and integration of the UCPN (Maoist) in national mainstream politics, the Jana Adalats have been dissolved.

local mediation panels have been perused and consulted as well. The primary data for the study are based on or drawn from the case of Sharadanagar VDC in Chitwan District with respect to local dispute resolution. Sharadanagar VDC is the unit of description with particular focus on local dispute resolution. Individual interview of the local stakeholders especially at the district and village and focus group discussions with mediators are employed as tools to collect responses and information about different aspects of mediation services. Survey was conducted with disputants- users of the mediation services to gauge into level of their satisfaction.

### **Findings/Conclusions**

The mediation services have become increasingly popular in the community. It serves to fulfill the needs and interests of the disputants as the disputing parties collaborate themselves together to determine the outcomes. Moreover, post -mediation relationship between disputants is found to be good and amicably restored. Interest based negotiation process and mechanism contributes to create a positive ambience for harmony and good neighborhood. Moreover, the mediation services have brought about changes at personal, relational, cultural and institutional levels.

Responses of different stakeholders interviewed reveal the fact that the community mediation services are being used by women, and the marginalized groups. They immensely benefit from it. And the they are satisfied with the outcome of the settlement .The terms of resolution are executed as well.

However, there is a need to reformulate the relevant provisions of LSGA and its bylaws in line with the principles and values of interest based mediation. A simple and flexible process for dispute resolution needs to be provided in the law to achieve the win-win outcome of the resolution Justice at the local level should be comprehended as an attainable and objective phenomenon largely controlled by people's own choice. It should be negotiated between the concerned parties themselves. Furthermore, justice at the local level where mutual cooperation, good and quality neighborhood form basis of community life should not be understood as something to be derived or handed from the court or judicial institutions .

In microcosmic terms, resource constraints and institutional problems plaguing the VDCs impede the implementation of the local dispute resolution. This needs to be

addressed. The inadequacy of technical, financial and technical resources is the daunting problem.

Undoubtedly, multiple institutions or individuals are sought by the local people to resolve the disputes. There is a need to strike harmony and uniformity in terms of approach and quality of dispute resolution services provided by different local forums and institutions. Law and authority cannot influence and dictate the dispute settlement norms practiced by indigenous communities and ethnic groups. However, their capacity for using appropriate communication and facilitation skills to arrive at win-win resolution of the disputes should be enhanced through training on the skills, values and norms of the interest based mediation.

The knowledge and awareness in regard to mediation services available at the local level is not adequate in terms of breadth and width. Social marketing or information strategy needs to be conceptualized and implemented through recourse to the use of a variety of local media. Similarly, attention needs to be provided to ensure that the composition of mediators represented the educated, experienced, credible adult citizen at the community. This can contribute to combine both rationality of neutrality and trust and confidence of the community in the mediation services. The available manpower, budget and financial resources do not seem to be enough to entrust a plethora of functions and mandates to VDC without augmenting their infrastructures and organizational capacity. This has to be addressed. This can be tackled, among others, only if democratic elections are held. Moreover, local institutions should be made organizationally strong and competent to manage and support the services of this kind.

## TABLE OF CONTENTS

|                                 |              |
|---------------------------------|--------------|
| <b>LETTER OF RECOMMENDATION</b> | <b>ii</b>    |
| <b>APPROVAL LETTER</b>          | <b>iii</b>   |
| <b>DECLARATION</b>              | <b>iv</b>    |
| <b>ACKNOWLEDGEMENTS</b>         | <b>v</b>     |
| <b>ABSTRACT</b>                 | <b>vii</b>   |
| <b>TABLE OF CONTENTS</b>        | <b>xii</b>   |
| <b>LIST OF TABLE</b>            | <b>xvi</b>   |
| <b>LIST OF FIGURE</b>           | <b>xviii</b> |
| <b>ABBREVIATION</b>             | <b>xix</b>   |

### CHAPTER - I INTRODUCTION

|      |  |    |
|------|--|----|
| 1.1  | Background and Context                   | 1  |
| 1.2  | Statement of the Problem                 | 7  |
| 1.3  | Rationale and Justification of the Study | 10 |
| 1.4  | Research Questions                       | 15 |
| 1.5  | Objective of the Study                   | 16 |
| 1.6  | Conceptual Approach                      | 17 |
| 1.7  | Operational Definition of the Key Words  | 21 |
| 1.8  | Methodology                              | 23 |
|      | 1.8.1 Sources of Data                    | 24 |
|      | 1.8.2 Reason for Selection               | 25 |
|      | 1.8.3 Research Participants              | 25 |
|      | 1.8.4 Data Collection Method             | 26 |
|      | 1.8.4.1 Data Gathering Instruments       | 26 |
|      | 1.8.5 Data Analysis                      | 27 |
| 1.9  | Literature Review                        | 27 |
| 1.10 | Organization of the Study                | 35 |
| 1.11 | Limitations of the Study                 | 35 |

## **CHAPTER - II**

### **LOCAL GOVERNANCE: A SHIFT IN PARADIGM**

|      |   |    |
|------|---|----|
| 2.1  | Government and Governance                           | 40 |
| 2.2  | The Emergent Multilevel Governance                  | 42 |
|      | 2.2.1 Global Governance                             | 42 |
|      | 2.2.2 Changing Rules of Game                        | 43 |
|      | 2.2.3 Diminishing State Autonomy                    | 44 |
|      | 2.2.4 Supranational /Regional Governance            | 46 |
|      | 2.2.5 Regional Governance Frameworks                | 47 |
|      | 2.2.6 National Governance: Sole seat of sovereignty | 48 |
| 2.3  | Local Governance                                    | 49 |
| 2.4  | Citizen-Centric Governance                          | 52 |
| 2.5  | Accountability                                      | 53 |
| 2.6  | Effective Service Delivery                          | 55 |
| 2.7  | Social Justice                                      | 55 |
| 2.8  | Greater Efficiency                                  | 57 |
| 2.9  | Making Voices Heard                                 | 60 |
| 2.10 | Social Empowerment                                  | 61 |
| 2.11 | Social Contract                                     | 62 |
| 2.12 | Conclusion  | 63 |

## **CHAPTER - III**

### **DISPUTE RESOLUTION: APPROACHES AND EXPERIENCES**

|      |                                    |    |
|------|------------------------------------|----|
| 3.1  | The Concept of Dispute             | 64 |
| 3.2  | Cause and Content of Conflict      | 65 |
| 3.3  | Stages of Dispute Escalation       | 71 |
| 3.4  | Methods of Dispute Management      | 73 |
| 3.5  | Strategies of Dispute Resolution   | 75 |
| 3.6  | Dispute Resolution Mechanisms      | 76 |
| 3.7  | Legal Pluralism                    | 76 |
|      | 3.7.1 Social Fields                | 77 |
|      | 3.7.2 Adversarial System           | 78 |
| 3.8  | Challenges to Formalistic Approach | 79 |
| 3.9  | Effective Access to Justice        | 80 |
| 3.10 | Theories of ADRM Traditions        | 81 |

|   |    |
|---|----|
| 3.10.1 Reformist Tradition                          | 81 |
| 3.10.2 Socialist Tradition                          | 82 |
| 3.10.3 Communitarian Tradition                      | 83 |
| 3.10.4 Anarchic Tradition                           | 83 |
| 3.11 ADR Devices and Tools                          | 83 |
| 3.12 Negotiation                                    | 84 |
| 3.13 Mediation/conciliation                         | 85 |
| 3.13.1 Arbitration                                  | 85 |
| 3.13.2 Medi-arbitration                             | 85 |
| 3.13.3 ADRM Practices and Experiences               | 86 |
| 3.13.4 Lok Adalats in India                         | 86 |
| 3.13.5 Shalish System in Bangladesh                 | 87 |
| 3.13.6 Community Relation Services in US            | 88 |
| 3.13.7 Mediation in UK                              | 89 |
| 3.13.8 ADR Services in Australia                    | 89 |
| 3.13.9 Mediation Boards in Sri Lanka                | 90 |
| 3.13.10 Barangaya Justice System in the Philippines | 91 |

## **CHAPTER - IV**

### **DISPUTE RESOLUTION PLURALISM IN NEPAL**

|   |     |
|---|-----|
| 4.1 Introduction  | 92  |
| 4.2 Dispute Management Practices                                    | 94  |
| 4.3 Religious Approaches to Dispute Resolution                      | 99  |
| 4.4 Business Approach to Dispute Resolution                         | 100 |
| 4.5 Dispute Resolution in Retrospect                                | 100 |
| 4.6 Rana Period   | 102 |
| 4.7 Post 1950 Period  | 105 |
| 4.8 Party less Panchayat Era (1960-1990)                            | 106 |
| 4.8.1 Formation of elected Village Pannchayat (Gaon Panchayat)      | 106 |
| 4.8.2 Village Justice Committee                                     | 107 |
| 4.9 Post 1990 Period  | 108 |
| 4.9.1 Contemporary Self-Government Arrangements at the local bodies | 108 |
| 4.9.2 Composition of VDC  | 109 |
| 4.10 Composition of DDC according to LSGA                           | 112 |

|      |                                   |     |
|------|-----------------------------------|-----|
| 4.11 | Dispute Resolution at local level | 114 |
| 4.12 | Court Referred Mediation          | 116 |
| 4.13 | Key Provisions of Mediation Act   | 117 |
| 4.14 | Code of Ethics for Mediators      | 119 |

## **CHAPTER - V**

### **LOCAL DISPUTE RESOLUTION: A CASE STUDY OF SHARADANAGAR VDC, CHITWAN DISTRICT**

|      |   |     |
|------|---|-----|
| 5.1  | Dispute Resolution Scenario at the Chitwan District | 122 |
| 5.2  | District Administration Office (DAO)                | 123 |
| 5.3  | Local Peace Committee                               | 125 |
| 5.4  | District Forest Office (DFO)                        | 126 |
| 5.5  | District Police Office                              | 126 |
| 5.6  | District Police Office, Women Cell                  | 127 |
| 5.7  | District Court                                      | 127 |
| 5.8  | Introduction to Shardanagar VDC                     | 129 |
| 5.9  | Office of the VDC                                   | 131 |
| 5.10 | Dispute Handling Forums                             | 131 |
| 5.11 | Community Mediation Services Centre in VDC          | 132 |
| 5.12 | Dispute Mediators in VDC                            | 132 |
| 5.13 | Categories of Disputes                              | 132 |
| 5.14 | Disputants Demography                               | 133 |
| 5.15 | Mediation Services Management in VDC                | 134 |
| 5.16 | Process and methodology of Dispute Resolution       | 135 |
|      | 5.16.1 Building Institutional setup                 | 135 |
|      | 5.16.2 Dispute Registration Process                 | 135 |
|      | 5.16.3 Preliminary Phase for Dispute Resolution     | 136 |
| 5.17 | Selection of Mediators                              | 137 |
|      | 5.17.1 Venue Selection and Other Logistics          | 138 |
|      | 5.17.2 Seating Arrangements                         | 138 |
|      | 5.17.3 Work Division among Mediators                | 138 |
| 5.18 | Four Stages of Dispute Resolution through Mediation | 139 |
| 5.19 | Post Mediation Phase                                | 145 |
| 5.20 | Monitoring  | 145 |
| 5.21 | Record Management                                   | 146 |

**CHAPTER – VI**  
**DISPUTE RESOLUTION AT SHARADANAGAR**  
**ANALYSIS OF PERCEPTIONS AND PERSPECTIVES**

|          |  |     |
|----------|--|-----|
| 6.1      | Conformity to Local Structures                     | 148 |
| 6.2      | Cost Effectiveness and Affordability               | 149 |
| 6.3      | Process and Duration                               | 150 |
| 6.4      | Knowledge about Service Availability               | 151 |
| 6.5      | Accessibility and Acceptance                       | 152 |
| 6.6      | Trust, Fairness and Satisfaction                   | 153 |
| 6.7      | Sustainability of Outcomes                         | 155 |
| 6.8      | Legality/Effectiveness                             | 156 |
| 6.9      | Quality and Standardization                        | 158 |
| 6.10     | Indicators of Change                               | 159 |
| 6.10.1   | Relational Change                                  | 159 |
| 6.10.2   | Institutional Changes                              | 160 |
| 6.10.3   | Level Playing Field                                | 161 |
| 6.10.4   | Users Perspective on mediation services            | 162 |
| 6.10.4.1 | Knowledge/Information of VDC Mediation Services    | 162 |
| 6.10.4.2 | Benefits of Mediation Services                     | 163 |
| 6.10.4.3 | Appropriateness of Mediation Services              | 163 |
| 6.10.4   | Cost Involved as Experienced by Disputants         | 164 |
| 6.10.5   | Time Consumed to Resolve Dispute                   | 165 |
| 6.10.6   | Facilitation and Mediation Skills                  | 165 |
| 6.10.7   | Impartiality and Neutrality                        | 166 |
| 6.10.8   | Satisfaction on the Outcome of Disputes Settlement | 166 |
| 6.10.9   | Fulfillment of Needs and Interests                 | 167 |
| 6.10.10  | Execution of Agreement                             | 168 |
| 6.10.11  | Post-Mediation Relationships                       | 168 |
| 6.11     | Role of VDC secretary                              | 169 |

**CHAPTER - VII**  
**FINDINGS AND CONCLUSION**

|                         |         |
|-------------------------|---------|
| FINDINGS AND CONCLUSION | 173-177 |
| APPENDIX                | 178     |
| REFERENCES              | 219     |

## LIST OF TABLES

|            |   |     |
|------------|---|-----|
| Table 1.1  | Schemata and logical steps of the study                                       | 20  |
| Table 5.1  | Disputes/Cases Settled in District Administration Office,<br>Chitwan District | 124 |
| Table 5.2  | Type of Cases Settled by Local Peace Committee (LPC)                          | 125 |
| Table 5.3  | Types of Cases handled by District Forest Office                              | 126 |
| Table 5.4  | No and type of cases at the District Police Office                            | 126 |
| Table 5.5  | No and type of cases at Women Cell  | 127 |
| Table 5.6  | Type of cases Adjudicated by District Court, Chitwan, 2068/2069               | 128 |
| Table 5.7  | Cases Referred to District Mediation Center by the court, 2068-69             | 129 |
| Table 5.8  | Mediators in Sharadanagar VDC   | 132 |
| Table 5.9  | Trend of the Dispute Resolution in Sharadanagar VDC                           | 133 |
| Table 5.10 | Categories of disputes resolved in VDC  | 133 |
| Table 5.11 | Disputants Composition by Gender/ethnicity                                    | 134 |
| Table 6.1  | Sources of Information about Mediation Services                               | 162 |
| Table 6.2  | Benefits of Mediation Services  | 163 |
| Table 6.3  | Appropriateness of Mediation  | 164 |
| Table 6.4  | Cost Incurred   | 164 |
| Table 6.5  | Time Taken by Mediation Services  | 165 |
| Table 6.6  | Mediators' Skills   | 165 |
| Table 6.7  | Impartiality and Neutrality of Mediators                                      | 166 |
| Table 6.8  | Satisfaction with the Outcome   | 167 |
| Table 6.9  | Fulfillment of Needs and Interests  | 167 |
| Table 6.10 | Execution of the Terms and Conditions   | 168 |
| Table 6.11 | Relationship between the Disputing Parties                                    | 169 |
| Table 6.12 | Suggestions to Enhance Competence of Mediators                                | 169 |
| Table 6.13 | Role of VDC Secretary   | 170 |
| Table 6.14 | Perception of the Disputants on Role of Political Parties                     | 171 |
| Table 6.15 | Role of Governmental Agencies   | 172 |

## LIST OF FIGURES

|   |     |
|---|-----|
| Figure 2.1 Governance Relationships: Global to local level                                    | 47  |
| Figure 2.2 Conflict mitigation through governance reform                                      | 50  |
| Figure 3.1 Source of Conflict/disputes  | 69  |
| Figure 3.2 Approaches to Handling Disputes  | 84  |
| Figure 4.1 Dispute Resolution Pluralism in Nepal at a Glance                                  | 93  |
| Figure 4.2 Composition of Village Development Committee (according to LSGA)                   | 110 |
| Figure 4.3 A sample of current arrangement at VDC (In the absence of elected representatives) | 111 |
| Figure 4.4 Composition of DDC according to LSGA provision                                     | 112 |
| Figure 4.5 A sample of Current arrangement at DDC (In the absence of elected mechanism)       | 113 |

## ABBREVIATION

|           |   |   |
|-----------|---|---|
| ADRM      | - | Alternative Dispute Resolution Mechanism            |
| VDC       | - | Village Development Committee                       |
| DDC       | - | District Development Committee                      |
| MC        | - | Municipality  |
| USA       | - | United States of America                            |
| UNDP      | - | United Nations Development Program                  |
| LSGA      | - | Local Self Governance Act                           |
| UN        | - | United Nations                                      |
| Govt      | - | Government  |
| MoLD      | - | Ministry of Local Development                       |
| LDO       | - | Local Development Officer                           |
| CDO       | - | Chief District Officer                              |
| NGOs      | - | Non-governmental Organizations                      |
| CBOs      | - | Community Based Organizations                       |
| CPN (UML) | - | Communist Party of Nepal (Unified Marxist-Leninist) |
| UDHR      | - | Universal Declaration of Human Rights               |
| CPN (M)   | - | Communist Party of Nepal (Maoist)                   |
| CA        | - | Constituent Assembly                                |
| LGCDP     | - | Local Governance and Community Development Program  |
| FGD       | - | Focus Group Discussion                              |

# CHAPTER - I

## INTRODUCTION

### 1.1 Background and Context

"Your Majesty remains at the very epicenter of governance" Disraeli, the British Prime Minister during the rule of Queen Victoria is recorded to have told Her Majesty the Queen when she complained about the diminishing ability to control and dictate churches in Ireland. If the Queen at Britain placed at the epicenter of the rule and administration during the eighteenth century- was worried over her weakening authority to enforce her writ large across the United Kingdom, this has become a fact of reality during the contemporary states. In other words, the ability of central government to give direction to society has been severely weakened and diminished without any parallels in the past. The centre is becoming hollow and limited because of the three prevailing tendencies. The tendencies are i) the core executive is losing or conceding capacities to societal actors ii) the core executive is losing or conceding its capacity to other state actors iii) the core executive is losing or conceding its capacities to supra- state entities (Kjaer:2004). The states today are less absolute in their sovereignty and independence than before. There is a process of deterritorialization of space, (Sarangi in Mitra, Pehl and Others (Eds):2010). Sovereignty was a vital concept of the west phalian system and was reinforced by the covenant of the League of Nations and Charter of the United Nations. While sovereignty implies absolute control of a territory in a legal sense, de-facto control by a government within its borders is often a question of degree (Nye:2005AD).

The first two points mentioned above refer to the state's internal weakening or hollowing out while the latter refers to the external hollowing out of the state authority. The external hollowing out refers to the loss of authority that occurs because of globalization, liberal political and economic reforms and other attendant global factors. The internal hollowing out refers to the result of institutional reform of state characterized by diffusion, differentiation, pluralization and decentralization of decision making power concentrated at the

central government. When decision making is accumulated at the level of central government, it is believed to be too remote and distantly placed from the ordinary citizen. The centre lacks knowledge of real problems, preferences and interests of ordinary citizens.

When functions and powers are transferred to lower levels, decisions can be taken so that they are more responsive and consistent to the needs of the local community. Decentralization of power, differentiation of roles and pluralization of authority has thus become an increasingly global trend during the contemporary political and social context. Both the authoritarian and totalitarian regimes have come under the onslaught of this change. The fact that so many states have chosen to move along the path of decentralization constitutes a remarkable phenomenon, the impetus for which must connect with deep underlying structural factors felt around the globe (UCLG :2008:285<sup>1</sup>). By and large, the presumed benefits of the centralized unitary government have proved illusionary and unrealistic as well. The only beneficiaries of the highly centralized states have been the rulers and their appointed bureaucrats and associates, who have been able to enrich themselves by plundering national treasuries and by extracting bribes from those seeking government services, if not favors. This brings an overall emphasis on participatory governance to guarantee the sovereign right of the citizen to oversee participate in and direct the affairs of the state on a constant and regular basis. The centralized state organization predicated on the concentration of power has failed to deliver results to meet the needs and aspirations of the people. Decentralization can help promote participation, improve responsiveness of the government, and allocate projects which better match community demands (Wendy in SDC, 1999). Conceptually, centralization breeds bureaucratization. This, in turn, stultifies the initiative of the people, curbs people's participation in development process and slows down the pace of economic growth. The world wide movement for decentralization for smaller, self-governing political units for a more responsive

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<sup>1</sup> United cities and Local Government (UCLG) represents and defends the interests of local governments on the world stage, regardless of the size of the communities they serve. It is headquartered in Barcelona. Its stated mission is: to be the united voice and world advocate of democratic local self govt. promote its values, objectives and interests through cooperation between local government and within the wider international community.

government for fulfilling the yearning for self-determination, has arisen from the inadequacies of the conventional nation-state (Bhattacharya: 2001:42).

Moreover, decentralization especially in the form of devolution of power to sub-national government institutions tends to minimize monopolizing trends and tendencies of bureaucratization by taking administration nearer to the people and central government's willingness to respond them (Chatterjee, 2007:124). The degree of devolution in a unitary system is determined by the nature and strength of local aspirations for self government.

The preference accorded to decentralized governance in Nepal especially following the restoration of multiparty democracy in 1990 could be understood and construed in the sense of lending credence to these aspects.<sup>2</sup> Democracy can be rooted in the villages only when local institutions are made stronger and responsible through recognition to their potentials and enhancement of capacity by endowing them with necessary mandates, competencies and resources. Nepal's current efforts especially at enhancing democratic decentralization from the beginning of 1990s took a new leaf when discourse on governance together with that of economic liberalization emerged as the dominant theme of international policy agenda. Decentralization was also seen as part of a wave of democratization that was sweeping across many countries towards the end of 1980s.

In fact, Nepal's contemporary history begins during the eighteenth century when Prithvi Narayan Shah- the forefather of the ex-King Gyanendra who was forced to abdicate in deference to the decision of the Constituent Assembly in 2008A.D. expanded his domain and created a new Nepali State. This country was governed by the homegrown Rana autocracy for about a century that ended in 1950AD. The Rana oligarchs ruled Nepal in an autocratic manner. The Rana regime (1846-1950) in many cases allowed the primacy of local customs over national Muluki Ain code for the settlement of disputes (Dahal & Bhatta :2008). However, they held sway over the total administration of the country and put the country into their

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<sup>2</sup> The constitution of the Kingdom of Nepal enacted in 1990 had emphasized on participation of people in governance and development of the country. Constitution, replaced by the Interim statute 2063, was based on pluralist ethos, principles and ideals.

own grip. The Interim statute issued by the King following the abolition of Rana Rule in 1951 is indeed the first constitution that was rushed with the purport of introducing democratic institutions in Nepal. Following the decade long interregnum characterized by political uncertainty and fluidity, Nepal adopted a constitution modeled along the British pattern of the cabinet government in 1959 AD. These constitutional initiatives and innovations had been aborted in 1960 A.D<sup>3</sup>. However, amidst the roughs and tumbles life in the local communities was not disturbed and disrupted. The informal local institutions had been the mainstay of the community life. The local communities governed their affairs, and conflicts and disputes were settled without bringing them to the state agencies - judicial and quasi-judicial institutions for resolution which were beyond and far removed from the access of the ordinary people.

Going farther back in the history of Nepal, be that as it may, we find that dispute settlement had been one of the premier functions of local institutions. The Bicharis and the Mukhiyas- the influential people -were called upon to settle disputes during the Lichhavi era. The Panchali was an assemblage of the local notables whose functions include tackling disputes at the local level, among others. During the Malla period too, local institutions were created to facilitate the settlement of disputes. Prithvi Narayan Shah was not able to give much attention to the internal affairs of the state because he was bogged down by stupendous task of claiming and ceding new territories to the Nepali state through war and conquest.

The Muluki Ain (National Civil Code) promulgated in 1854 A.D was the first codified comprehensive law in the Nepalese history. It was an elaborate instrument enacted during the reign of King Surendra. It was also a product delivered by the first Rana Prime minister Jung Bahadur Rana drawing inspiration from the Napoleonic code of France<sup>4</sup>. The legal code has, however, undergone several amendments and modifications over many years, and it

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<sup>3</sup> King Mahendra dissolved the elected parliament and imprisoned the elected Prime Minister in 1960 A.D. He issued fiat to prohibit political activities including the enforcement of the direct rule of the King.

<sup>4</sup> Napoleonic code was confided and promulgated by the Napoleon Bonaparte at France during the eighteen Century – a first code of the type in the civil law nations.

survives today as the sole legal instrument that prescribes provisions and procedure for application of law<sup>5</sup>. However, in regard to settling disputes at the local level, the famous Manyajan Kacharhi of Dang Deukhari (1991)<sup>6</sup> has a history of its own. It had been officially created through an official fiat as one of the principal mechanism for disposal of disputes, among others, at the local level.

The Village Panchayat Act enacted in 2006 BS was the first positive statutory attempt on the part of the government to create local bodies and entrust them with certain roles, functions and responsibilities. As mentioned in the foregoing paragraphs too, the democratic change introduced in 1950 AD had heralded a new era in the political situation of the country. After a brief spell of experimentation with parliamentary democracy, King Mahendra introduced partyless Panchayat polity in the country in 1960 AD. He had promulgated a new constitution to serve and sustain the partyless polity. This ended Nepal's first flirtation with democracy after the country become entrenched in three decades of what is popular known as Panchayat rule (Shakya: 2009:36) The partyless constitution often alleged to be based on the motives of basic or guided democracy had a separate Chapter on local bodies to lay down their roles and functions. Subservient to the spirit and provisions of the partyless constitution, the Gaon Panchayat Act 1961 for villages, Nagar Panchayat Act 1961 for towns and Zilla Panchayat Act 1961 for districts were formulated. These acts were amended several times later. These acts especially the Village Panchayat Act gave the village level entities the wide ranging powers to settle disputes at the local level.

The Village Panchayat act had also prescribed procedure for dispute settlements even for the cases falling beyond the jurisdictions prescribed in the law. This was allowed if the parties agree to resolve, and submit written applications containing the terms of settlement. Then the memorandum prepared for settlement had to be prepared and presented to the court by the parties themselves who had to appear in person. The court used to examine the parties to determine if the settlement was

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<sup>5</sup> Attempts have been made to update reframe and consolidate the code and drafts of the criminal procedure code and civil procedure code are prepared by Nepal law commission, separately in line with the common law tradition.

<sup>6</sup> Manyajana Kachari had been the local arrangement created by a fiat under the Rana regime to execute local functions including settlement of disputes, among others, the local level.

agreed upon freely and voluntarily. The final memorandum of settlement should be remanded to the Panchayat concerned.

The multiparty democracy was restored in Nepal during 1990 following the abolition of the partyless Panchayat polity. The Constitution of the Kingdom of Nepal 1990- which has been overruled by the Interim Constitution 2007, A.D. came as an outcome of the popular revolt against the partyless Panchayat regime (DWC Report 1996: 19)<sup>7</sup>. As a consequence, some efforts were put in reforming local government laws in accordance with spirit of pluralist democratic governance. The Kathmandu centric governance had long been the reality of life in Nepal but the 1990 constitution sought to reverse it by providing for representative democracy and participation of the people in order to run the country (Dixit:2011:7). The local government laws- the Village Development Committee (VDC) Act, Municipality Act and the District Development committee act-enacted in 1991 introduced new elements, among others, in the provisions relating to dispute resolution. Pursuing a clear break from the past, the new law conferred on VDCs, the competencies to mediate and resolve disputes to see them through to an amicable settlement. However, municipalities had been vested with same kind of mandate and role as had not been granted to VDCs in regard to dispute resolution.

In the bid to strengthen local governance and enhance participation of people for local democracy and development, Local Self Governance Act (LSGA) was enacted in 1999 replacing the earlier legislations<sup>8</sup>. The Act creates two tier local government institutions in the country. The District Development Committees (DDCs) that are seventy five in number is the apex tier of the local government while 3,915 village Development Committees (VDCs) and 99 Municipalities are at the lowest rung. The Act seeks to empower local communities and enhance their participation in the process of dispute resolution through formation and

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<sup>7</sup> The Report was prepared by the High Local Decentralization coordination committee, Decentralization Working Committee (DWC) in 1996. The committee was formed by the government and the Local Self-governance Act was enacted drawing more or less on the recommendations of the committee

<sup>8</sup> Village Development committee Act 1990, Municipality Act 1990, and District Development Committee Act 1990.

capacitating of Madhyatha Samiti (Medi-arbitration board). It is provided that social workers, women and persons on whom the community trust is reposed shall be enlisted in the mediation board. The supplementary rules and regulations<sup>9</sup> are also in place to clarify and establish process for resolution of disputes. However, conversely, the rules and regulations have rather added complications and complexity to the process than facilitating the implementation of the legal provision enshrined in Local Self Governance Act. The supplementary rules and regulation introduce provisions very much similar to procedures akin to adjudication going contrary to the values and principles of mediation. This has added confusions to the dispute resolution process.

## **1.2 Statement of the Problem**

Local bodies in Nepal especially VDCs have been recognized as accepted forums in resolving disputes at the local level. Their primary tasks, till some time in the past among others, were to perform the role as resolver of disputes at the local level. Oftentimes, this function has been contested with reference to the principles of separation of power and roles differentiation. But, from the decentralization perspectives, the role has been justified because it vests authority in local bodies to tackle local disputes at the sites where disputes occur and makes justice accessible and affordable to the ordinary citizens. From the perspective of judicial administration, it has been appreciated as an initiative of the state to decentralize justice delivery mechanism to lessen the burden of the court, and make justice accessible and affordable to ordinary people at the local level. Despite these positive outcomes, some questions are bound to arise to contest the premise. The mandate vested with the popularly elected local institutions voted through multiparty competitive elections in carrying out dispute resolution in communities is said to come into conflict with theory of separation of power. Local bodies as institution for self governance can execute rule making and rule application functions. The role of law adjudication and dispute settlement is assigned constitutionally to judicial and quasi-judicial institutions in the democratic nations. In a multiparty competitive political setting, the elected representatives to remain

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<sup>9</sup> Local Self- Governance Rules/Regulations 2000 A.D.

are aligned or may have their allegiance to one or other political parties. It might not be possible for the elected representative to be impartial and fair due to their partisan inclinations and orientations. Moreover, they cannot be presumed to be able to maintain neutrality and uphold credibility as agent of dispute resolution. A case was filed in the Supreme Court challenging the legality of conferring mandates upon the local bodies to resolve disputes arguing that roles and functions of dispute resolution have been exclusively vested in the judicial institutions according to the constitution of the country. But the court had rejected the plea on the ground that the relevant provision has not been formally executed because of the legal embargo<sup>10</sup>.

Needless to say, the Local Self Governance Act 1999, however, is found to be selective and cautious in this respect. It leaves to the discretion of the government to decide about when and how to allow VDCs and municipalities to execute the dispute resolution functions generally termed as judicial rights (Nyayik Adhikar)<sup>11</sup>. This is evidenced by the embargoes attached to the relevant provision especially the section 33 and 101 of the Act to defer the implementation of the provisions of law until and unless it is officially gazetted. Even during the partyless Panchayat regime, when the local bodies were created under the centrally monopolized and politically restrictive conditions, these institutions at the village level were not left free to exercise their authority in regard to dispute settlement. Similarly, the Local Self Governance Act 1999 has invoked the embargo the rights of VDCs and municipalities regarding dispute resolution. Even after the lapse of a decade long period following the promulgation of law, the condition attached in the implementation of the provision has not been lifted. However, local bodies are practically found using their inherent traditional function to resolve small causes and disputes of varying typologies even though the relevant provision of LSGA has not been officially gazetted, and legalized their role. Even though the local bodies are running without the elected representatives for over a decade beginning from 2001 AD, the former officials and secretaries are found involved or

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<sup>10</sup> The writ was quashed by the Supreme Court in 2001 as the judicial right had not been implemented.

<sup>11</sup> Nyayik Adhikari- in common parlance is the right vested in judicial institutions in regard to law adjudication. However, case of local bodies it serves to connote dispute resolution.

formally or informally in resolving minor disputes at the VDC and municipality level. Currently, the mediation law has been enacted by the national- legislature in 2010 that upholds and provides for resolution of local level disputes through recourse to process of mediation. Moreover, state and non-state actors have worked together with VDCs and municipalities in some districts to empower local communities to resolve disputes through process of mediation (Melmilap)<sup>12</sup>.

In the countries where the state structures and functions have been not differentiated and fused<sup>13</sup> (Arora: 1985) an array of mutually overlapping and universal functions are entrusted to local agents and officials. But in a democratic set up based on the principal of checks and balances, separate structures and mechanism are created for differentiated and specialized roles and functions. The principles of rule of law, separation of power and limited government constitute an important element of democratic system. Here, state powers are divided and executive power of the government is limited (Maravall and Prezworski 2003: 193). Entrusting local bodies with mandates pertaining to dispute resolution can be argued as going to conflict with principles of power, separation, democratic decentralization and checks and balances

Needless to repeat, Nepal is a nation of diversities characterized by cohabitation of multi-ethnic and multi-cultural groups of people (Gurung in IGD: 2006). Some of these groups have their own self- governing practices, they have age-old customs, traditions, processes and mechanism to settle conflicts and disputes that arise in their respective communities. The ethnic groups such as the Tharus, the Gurungs, Magars and the Thakalis have their own informal institutions and practices to tackle interpersonal and intergroup disputes. They mostly shun or avoid the involvement of the formal agencies and institutions like courts, quasi-judicial institutions and local bodies for resolving disputes. These dispute resolution process and mechanisms are labeled as traditional justice system. The dispute

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<sup>12</sup> The external development partners like the UNDP and The Asia Foundation have extended support to set up mediation services (Melmilap Sewa) in some VDCs of country.

<sup>13</sup> Fused- In the fused structures power and authorities are not differentiated. An organ of the state carries out several overlapping functions. Riggs, quoted in Arora has mentioned that social structures may be functionally diffused "Riggs has termed the functionally diffuse societies as fused.

settlement process follows the arbitral procedures in which the local community elders or chieftains allow the disputants to discuss the issues and finally give decisions hearing pleas or stories expressed by both sides <sup>14</sup>. Very few cases are brought for litigating in the court. Needless to say, the judicial institutions in Nepal are overwhelmed by the ever growing number of cases and disputes. Court procedures have been alleged to be inflexible, cumbersome and formalized. In addressing the problem, there is a need in instituting and developing alternative dispute resolution mechanism at the local level to facilitate the process of delivering access to justice in addition to maintaining peace and harmony in the local communities. Nepal is thus a case of legal pluralism where institutions and norms overlap in resolving disputes. The jurisdictions of formal state and informal institutions overlap and interact with each other as well. Even formal state instruments like LSGA and newly enacted mediation law overlap with each other. The mediation law, according to the provisions, intends implicitly to bring the local mediation services under the purview of the Mediation Council to be chaired by justice of the Supreme Court of Nepal. This may generate jurisdictional conflicts. Locating the role of local institution especially in resolving disputes amidst the new context is called for to define their role and functions.

### **1.3 Rationale and Justification of the Study**

This study is conceptualized as an attempt in examining the concept of local governance with particular focus on local dispute resolution. Mediation law has been enacted in Nepal to promote and legitimize negotiation, conciliation and mediation as an alternative mechanism for dispute resolution. The concept of dispute resolution as provided in LSGA is in for revision and re-conceptualization. The role of VDC itself in this context calls for reexamination. The conceptualization and reexamination of LSGA provision needs to be undertaken especially with focus on relevance, efficacy and appropriateness of local institutions especially the local bodies in the task of dispute resolution. The medi-

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<sup>14</sup> Traditional Justice System (TJS) – Some post conflict societies have now turned to their attention to their legacy of indigenous practices of dispute settlement and reconciliation. The argument is that traditional and informal justice system may be adapted to develop an appropriate response to a historic of war and oppression.

arbitration provision envisaged in the Local Self Governance Act 1999 reduces the decision making role of the VDC as a formal authority to hear and pass award to the disputes at the local level. This function has been, in principle, partially shifted to the medi-arbitrators to be composed of local community members. According to the LSGA provision which is yet to be legally enforced due to prevalence of embargo, the VDC will finally make decision on the dispute in case the mediators fail to help the disputants to arrive at settlement through negotiation and mutualization of each other's concerns. The VDC's role, according to LSGA, has been limited initially to provide administrative and management support to the dispute settlement process while the real dispute resolving role is being gradually shifted to community stakeholders. The Mediation Act 2010 has gone several steps further and widened the scope of mediation. It extends the scope of mediation as a mechanism in such areas as environment, commerce, trade and envisages that the disputes involving matters related to these areas can be settled through recourse to mediation. A central mechanism has been proposed to steer and oversee the implementation of mediation as alternative mechanism for dispute resolution. This new legislative instrument on mediation can be said to have substituting or the overriding effect on the LSGA provisions which is based on medi-arbitration<sup>15</sup>.

In this context, the study focuses to investigation into issues appertained to local dispute resolution with reference to role of local institutions especially VDC in particular. This is relevant as community mediation has been affirmed in the new statutory arrangement. This lends legitimization to community ownership and participation in the process of dispute resolution at the local level. The interest based mediation<sup>16</sup> has been accepted as an appropriate concept in resolving disputes at local level .The disputes are resolved to the satisfaction of the parties concerned. The three member mediation panel (Madhyastha Samiti), according to LSGA provision, is made responsible for assisting in resolving disputes by using

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<sup>15</sup> Mediation Act, 2010, enacted by national legislature (Constituent Assembly), But the supplementary by laws was not been formulated to facilitate the process of its implementation.

<sup>16</sup> Interest based mediation allows the disputing parties to create an agreement they find to be fair and subservient to their interests irrespective of what a court might decide. The mediator needs to be neutral respecting the parties to the dispute.

techniques and skills of facilitation, communication and mediation. In case mediators fail to help the parties to arrive at settlement they switch themselves into the role of arbitrators and award decision. The majority vote of the arbitrators will prevail. The LSGA provision thus constitutes a kind of hybrid mechanism generally termed as called medi-arbitration. However, this opens space for mediated voluntary settlement of disputes by capitalizing on the community resources, capacity and so on. The most important part of the LSGA provision has been that dispute resolution has been an integral part of local or subsidiary governance.

At this backdrop this study is undertaken to discuss the importance of democratic local governance in assuring space for deliberation in sorting out disagreements and conflicts. Moreover, the role of local institutions especially VDC in resolving interpersonal disputes caused due to incompatibility of goals and conflict of interests is explored with particular focus in this study. The study identifies the areas where the legal and practical shifts are needed in order to make the role of VDCs as relevant in the changed social political and governance context.<sup>17</sup> Moreover, the study intends to inform deliberation on legislating policies and instruments towards strengthening capacity and legitimacy of local governance institutions at a time when the unitary character of state structures is being reorganized and transformed into a federation. Moreover, the state reorganization is being debated to pursue the structures of federalism<sup>18</sup>. The study is interdisciplinary as it draws on the concept of governance, power and justice-the basic notions of both politics and law. Needless to say, power exists in a whole range of interpersonal situations where individuals significantly influence each other. This is the form of power that Weber recognized as occurring throughout society in the drawing room as well as in market from the resolution of a lecture hall as well as from the command post of a regiment. Power is inherent in the relations of parents to children, the relations of playmates, lovers friends and acquaintances (Weber quoted in Scott: 2001: 30). Michael Foucault saw the

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<sup>17</sup> Following the end of insurgency and integration of the UCPN (Maoist) in national man steam politics, the Jana Adalats have been dissolved.

<sup>18</sup> The process has been stalled or put on hold as the CA has braced has braced for its own demise on May28, 2012 due to political differences over the issues pertaining to state reorganization.

modern period as marked by the establishment of a particular of domination that he called government. The term government, according to Foucault, comprises a whole complex set of processes through which human behavior is systematically controlled in ever wider areas of social life (Foucault quoted in Scott:2001:93).

It has been mentioned earlier that democratic local bodies are crucial and critically important in building structural and functional local capacity to address and mitigate conflicts. Similarly, the local bodies provide alternative mechanism for interpersonal dispute resolution in the form of delivery of justice to the people. The study intends to reemphasize the importance of democratic local governance in preventing and mitigating conflicts at a time when Nepal is thrown into the whirlpool of low intensity conflicts-local and national. The LSGA provision that confer mandate upon local bodies especially the VDCs and municipalities to resolve disputes has not been enforced formally. But the local bodies especially VDCs among others, have informally carried out the dispute resolving actions. During the Maoist led armed conflict over the last decade, VDCs offices had been forced to shut and most of their functions had ceased to come into effect (NAVIN : 2008<sup>19</sup>). During the conflict, the Maoists had created their own parallel structures called Jana Adalat (people's courts), and these structures settled most of disputes at the local level especially in those places where the Maoists had maintained their base areas in accordance with the Maoist conception of popular justice. Since in most of the cases, VDCs were not functioning effectively as their offices had been shut down, VDC secretaries stayed in the district headquarters or other 'safe' places and carried out some of their functions. The role of local bodies has been diminished successively due to absence of accountable elected mechanism for over a decade. Moreover, this has resulted into further widening of the gap between formalism and realism. The formalism-realism gap is evident in the differences between the formal LSGA provision with regard to dispute resolution (yet to be officially gazetted for enforcement and implementation) and the practical realities obtaining on the ground. Even though the formal LSGA provisions have not been implemented and no local elections have taken place for

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<sup>19</sup> National Association of VDCs in Nepal (NAVIN) is the representative, umbrella organization of the VDCs in Nepal. It has been bringing out its organ 'Gaon ko Awaz' (Voice of Villages).

the last eleven years, the people in the rural areas bring disputes to VDCs for settlement without regard to legality or the legal provision.

At this backdrop, the study has been conducted in the context when the Nepali nation is undergoing major transformation. And the country is being reorganized into a federation. As a natural corollary of it, the state authority is going to be devolved and dispersed to the newly created federal units and provinces in practical terms<sup>20</sup>. The bone of contention on naming the new federal constituent units and delineation of their boundaries has stalled the process. The local government structure is going to be reshuffled and reshaped. The political uncertainties are looming around. In addition to the demarcation of intermediate tier, the question of delineation and demarcation of local bodies and their legal status has to be redefined, worked out and re-conceptualized<sup>21</sup>. This poses a tremendous challenge to the nations. The ethnic question and issue of identity has come to the forefront. The centrifugal tendencies are occupying the social and political space both at the national and local level This is bound, as the long drawn out process of constitution writing dragging on for the last four years, has indicated, to provoke intense discussion, generate controversies and create political and social stalemates when the details of the state restructuring and definition of local government institutions will be finalized.

The study has been designed to conduct a stock taking of the current issues pertaining to local governance especially with particular focus on local dispute resolution. The study refers to the major theoretical concepts and strategies of dispute resolution, and outlines the cross- national practices of alternative dispute resolution as integral to local governance function. The study reviews and revisits role of local bodies especially VDC for resolution of disputes with reference to mediation as an increasingly popular mechanism for dispute resolution in the country. This is particularly important as the new mediation law has been enacted and has been accepted as mechanism for securing amicable settlement of the

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<sup>20</sup> The demise of the Constituent Assembly has stoked suspicion over the agenda of federalism.

<sup>21</sup> National Association of VDCs in Nepal (NAVIN) and Municipality Association of Nepal (MuAN) have jointly issued their proposals on local government seeking their incorporation into a separate chapter of the new federal constituent (Kantipur Daily, May 23, 2012)

disputes. Moreover, an assessment of the process and mechanism involved in resolution of disputes is needed in terms of how community participation and shared (VDC) ownership shifts role VDC from being dispute- resolver to facilitation of dispute management. This study will be a major contribution in exploring into the role and functions of local institutions state and non-state in the context of re-conceptualizing local governance system in the country with special reference to local dispute resolution and ushering in positive peace in the society<sup>22</sup>.

As been discussed earlier, Nepal is undergoing political and social restructuring which underlies the process of reorganization of state and redistribution of power and resources. Moreover, relationships among state institutions, communities and citizens are being re-structured. It is feared that the country will experience a series of disputes and conflicts-interpersonal, inter-group, inter local bodies, inter-provincial and identity Moreover, the issues involving rights, use and distribution of resources and so on will generate conflicts in the time to come. This underlines the need for enhancing capacity of local communities and institutions to manage and resolve disputes using non-confrontational and non-adjudicative and consensus-oriented, methodologies, tools and techniques. The study is significant in the sense that it explores into how the non-adjudicative consensus oriented methods can contribute to resolve disputes and conflicts- a phenomenon likely to grow and accentuate in the context of Nepal. The study will emphasize on the need, towards building local infrastructures and capacity for this end- a critical precondition to strengthening local governance system in the country<sup>23</sup>.

#### **1.4 Research Questions**

This study discusses the growing use and relevance of alternative dispute resolution mechanism and process with particular focus on the context of Nepal where non-confrontational, non- competitive and non adjudicative participatory

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<sup>22</sup> Identity conflicts emerge with intensity when peace has been categorized as positive and negative peace. Positive peace, according to Galtung implies the just and dignity based order in the society. A community in response to unmet. Security, resolves to strengthen its collective influence and struggle for political recognition (Lederach 1999:8).

<sup>23</sup> Eventually the results of the study will lead to positive reforms and changes in the Community especially when local governance institutions are strengthened to respond to local interests and preferences.

methodologies like mediation and conciliation of dispute resolution are being accepted and practiced.

In order to cater to this, the study explores into the following questions :

- To what extent do the democratic local governance institutions offer space for negotiating issues and resolving disputes?
- Does the concept of collaboration and community participation in local dispute resolution process through interest based mediation contribute to access justice and fulfill interests and needs of the parties involved in disputes?
- Does it fulfill interest, needs of the parties involved in disputes ?

### **1.5 Objectives of the Study**

The overall objective of the study is to assess the state of local dispute resolution as an integral element of local governance. The specific objectives of the study are as follows:

- To discuss the concept and relevance of democratic local governance
- To examine the LSGA provisions in regard to local dispute resolution in the light of growing use and efficiency of mediation as an effective methodology of local dispute resolution.
- To identify the emerging issues in regard to implementation of local dispute resolution in the evolving political and social circumstances in the country.
- To assess the strength and weaknesses of the local governance institutions especially VDC with particular focus on local dispute resolution.

## 1.6 Conceptual Approach

The economic circumstances and social context influence the people's experience of justice. Hence, the access to justice movement tries to provide possible solutions to existing economic, organizational and procedural difficulties in order to make justice more responsive and accessible to all citizens in particular, the poor and underprivileged sections of the society

To cater to this, a great number of alternatives oriented towards the need to lessen the difficulties of access and affordability have been tried out. Some innovative means have been identified to resolve disputes in a less costly, less time-consuming and simpler way than formal litigation in the courts. The movement has promoted more extensive aid, advice and mechanism to address the barriers and impediments, and thus improve the quality of access and affordability of justice. The new mechanisms that can protect isolated citizens from the violation of their social rights have been established. Notwithstanding the heterogeneity in nature and institutional location of these alternative the ADR practices have a common characteristic in that they claim to promote decision making through dialogue and negotiation and with the aim of reaching agreed outcomes and shared decisions. Their objectives is to strengthen institutionalized participatory processes in which disputants can negotiate and come up with consensual settlement and agreed resolution of disputes. This is consistent with recent emphasis on expansion of participation of community at all social and political levels, and with a greater desire of people to take control of decisions that affect their lives instead of having decisions imposed on them. Likewise, the increasing recognition of the need to ensure safety, security and access to justice for all has led to the design of several programs and activities that aim to include civil society and communities as active participants and stakeholders in the process.

At the same time, there is a growing interest in extra-judicial private alternative dispute resolution mechanisms which in many countries represent historically common dispute resolution practices. Their increasing importance of the alternative dispute resolution in recent years is the result of the perception that lawyers, judges and other integral parts of the formal adjudication system pose

financial and procedural obstacles that make access to justice difficult, if not almost impossible for many people.

Another example of ADR is the community justice system established at the local government level as an integral part of the local governance system. It is supposed to address and resolve family and community disputes of different typologies in a more efficient, cheaper and quick way than the formal judicial institutions. The community mediation and conciliation systems under the local governance framework are also institutionalized in many contexts as a means to overcome the existing inequalities in access to justice, and thus enable poor communities to realize their legal rights and social entitlements. Nepal is a case in point in this regard. Within the framework of many institutional reforms for access to justice, the increasing interests in ADR is also due to the belief that many social conflicts do not need to be adjudicated, but instead they can be more appropriately resolved through alternative or complementary mechanisms whether within the communitarian or the local governance framework. This study explores and discusses the alternative or complementary mechanism within local governance framework according to the provision of the local self governance act that grants rights to VDCs and municipalities to help resolve disputes at the community level.

The study seeks to relate, discuss and analyze the concept of interest based mediation as a form of dispute resolution mechanism under the local governance framework of Nepal as conceptualized and elaborated by the internationally renowned John Paul Lederach and Ron Kraybill (Lederach : 1994, Kraybill:2001). They delineate two models of mediation as consensus based mechanism to resolve disputes, that is trust base model and a neutrality based model. These models are combined in LSGA and practiced accordingly in Nepal as they are premised on the perspective that neighbourhood should exercise responsibility for resolution of the conflict in adherence to the norms of trust and impartiality According to Federich Dubow and Craig Mc Even (Merry and Milner 1995) in community mediation conflicts/disputes are viewed as a normal part of life and peaceful (verbal) expression of conflict is desirable because it provides an opportunity to identify deeper issues and interests and lays ground work for

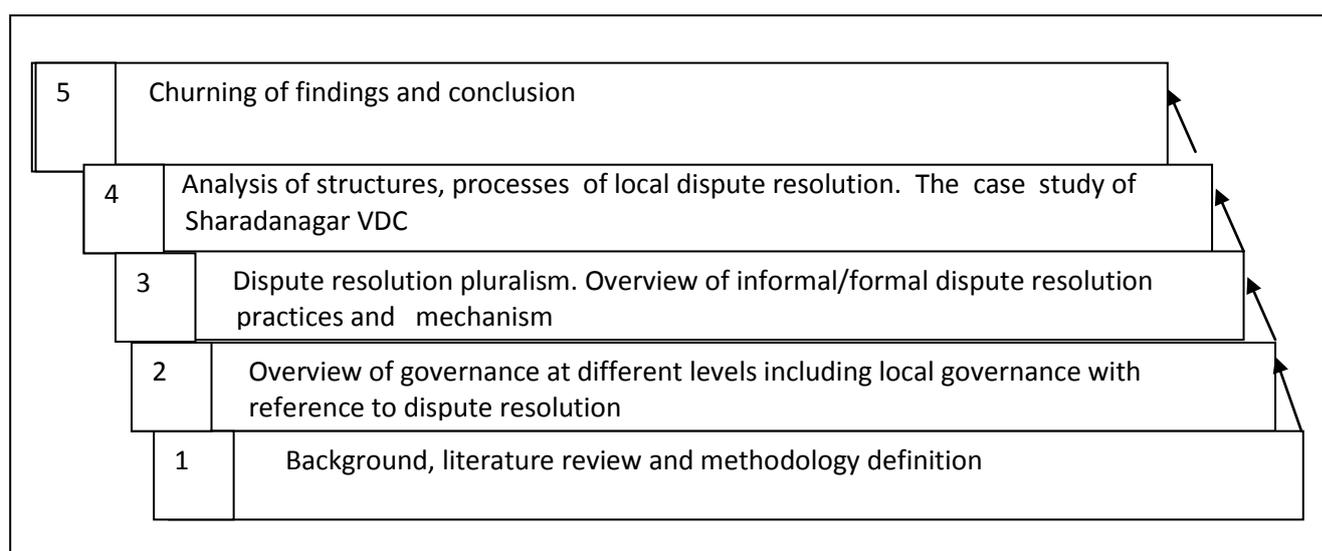
resolution . Participation in the dispute process and in making agreements must be voluntary. The concept of a visible community presence through panel of mediators services as an analogue to the osmosis of the trust and neutrality . Learning to suspend judgment by mediators and open a space for decision making by the disputants themselves is perhaps the most aspect of the community mediation program. This approach when translated into English is often referred to as ‘neutrality’. In fact it might be better described by as the self discipline of not judging or recommending a solution while still providing a context that appreciates the interpersonal relationships so important in Nepali context (Lederach and Thapa: 2003) . The panel of mediators can fairly approximate the demographic characteristics of the community and assist disputants in feeling comfortable in the voluntary dispute process. This concept of dispute resolution is elaborated and further illustrated by Roger Fisher and William Ury in their most remarkable work *Getting to Yes: Negotiating agreement without Giving in* (1992). The parties in a dispute generally do not see themselves as negotiators. Instead, they each other as the problem. One of the tasks of mediator is to help the parties to see each other as allies, instead of enemies, as cooperative problems solvers seeking a solution which will resolve the dispute. The mediators need to shift the parties away from their focus on determining who is right, who is wrong, who is to blame and who started quarrel. Instead, the mediator should focus the parties on negotiating a settlement which will provide a satisfaction and a fair solution. To accomplish this, the task of mediator is to help both parties understand needs of each other. Another term to understand need is interest. Interest may include parties' desire for certain tangible outcomes form a negotiation, parties desire for a process that is satisfaction to them and the parties' desire to be treated a certain way.

In this study I have attempted to discuss the provision in Local Self Governance Act in regard to dispute resolution with reference to the concept of interest based negotiation/mediation conceptualized by Lederach and Kraybill elaborated by Fisher and Ury. Ronald Kraybill sets forth Six step problem solving process like story telling, understanding the interests, creating options, considering options, funding common group and making commitments. These steps of dispute

resolution are empirically tested in a case study in the light of LSGA provision. The discusses dispute resolution within formal local governance framework applying the principles of the interest based mediation. Moreover, it looks at the issues through liberal democratic prism with the prenuise that institutional reforms through decentralization ushers in a situation where disputes are resolved peacefully and justice is accessible to the people.

**Table 1.1**

**Schemata and logical steps of the study**



Needless to say, Mediation Act 2011 has been in place in Nepal to enhance mediation as alternative dispute resolution mechanism. It has placed more emphasis on court referred mediation- a process by which cases are referred to mediation process by the judges to reach the settlement through the mediated collaboration of the litigants. The law potentially enlarges court related mediation program while it doesn't provide elaboration on community mediation under local governance framework. However, even if Nepalese legislation is very advanced in paper there are still great limitations in the implementation of the new framework provided by the mediation law. But this study draws on the concept of interest based mediation provided, more or less by the LSGA framework which is implemented in the some VDCs of the country. It makes a modest attempt to ascertain the extent to which the concept of interest based mediation has been put

in practice in addition to discerning existing capacity of the local bodies to implement the same. The concept has been tested from the perspective of users, mediators and other local stakeholders in terms of fairness, impartiality, participation and satisfaction of the service recipients. Interest based mediation is neither soft nor hard but a combination of each. It is soft on the people, hard on the problem. Instead of attacking each other, the disputants jointly attack the problem. Joint problem solving revolves around interests, instead of positions. Each sides interests, concerns, needs fears and desires have to be indentified, different options for meeting those interests have to be explored. A mutually satisfactory agreement in an efficient and amicable fashion. Joint problem solving can generate better result for both sides (Ury : 1993)

### **1.7 Operational Definition of the Key Words**

By using the term local bodies, this study refers to the local government institutions as defined and mentioned in the various legislative instruments in Nepal particularly the local self Governance Act. Local bodies and local government institutions are used interchangeably in this study even though these bodies-VDCs, DDCs and municipalities - are yet to be developed and strengthened institutionally as the full fledged and competent local governments. The local bodies had been named as Village Panchayats, Nagar Panchayats and Zilla Panchayats when the country was under the partyless Panchayat rule from 1960 to 1990. And these bodies had been governed by separate legal enactments and instruments. After the local self governance act was enacted in 1999, the instruments were amalgamated in the form of a consolidated law for VDCs, municipalities and DDCs. Though the intent of the act<sup>24</sup> has been to strengthen the role and capacity of local bodies legally as self governing institutions through devolution of functions, finance and functionaries, the absence of elected representatives at the local level compounded by ongoing political instability and uncertainty has blocked the devolution process. In this study ample references have been made to local bodies but it is specifically VDC since the focus of this

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<sup>24</sup> See Preamble to Local Self-Governance Act, 1999

study has been the lowest unit of local government entrusted with mandate to resolve the disputes, among others.

The concepts like 'dispute settlement' and 'dispute resolution' are often used in this study to convey the same meaning. Similarly, concepts like dispute management and dispute transformation are also used as if they would mean the same. Conflict transformation refers to outcome, process and structure oriented long term peace building efforts which aim to truly overcome revealed forms of direct, cultural and structural conflicts. However, in this study dispute resolution has been used purposively because resolution goes deeper to address the causes of the disputes than dispute settlement. It is defined as the process of concluding a dispute or conflict in which the adversary parties with or without the assistance of mediators negotiate or otherwise strive toward a mutually acceptable agreement or understanding taking each other's concerns into account (Kreisberg quoted in Dahal, Shestha and Uprety (eds), 2003:17). There is likelihood of the disputes being resolved and the embittered relations mended and improved. When interest based mediation is used as process and mechanism to address disputes and conflicts, it is likely that the deeper and latent causes of disputes would be tackled to restore and harmonize relationships. Since the local mediation panels use mediation based process and mechanism to assist the disputing parties to resolve the disputes amicably, dispute resolution is used to reflect the process. The terms like trust based and neutrality based mediation, right based and interest based mediation are contested ones in conflict resolution literatures. But in this study mediation is used to connote interest based mediation implying articulation of interest and satisfaction of the disputing parties. Needless to say, interests, not rights, form the bedrock of dispute resolution at the local level.

Similarly, the concepts like conflicts and disputes are used interchangeably as synonyms in this study even though they have different meanings and connotations. Conflicts can be overt and covert, manifest and latent, violent and non-violent but dispute is always understood to be manifest. In this study, as the role of local institutions especially VDC in handling or resolving cases brought to VDCs is discussed, the term dispute is mostly used. But in the conflict literatures

the term conflict is found used universally to convey the meaning of disputes, animosities, incompatibilities and disagreements. Hence, in this study too conflict is also used to reflect or denote the meaning of the dispute. Conflict and dispute shall mean the same according to the context in this study.

## **1.8 Methodology**

The study is based on descriptive analytical data relying primarily on exploration<sup>25</sup> and description. A wider range of secondary literature have been consulted and referred to discuss the importance of democratic local governance in institutionalizing space for conflict minimization and mitigation. For empirical data, the case study method has been employed. Moreover, observation of the dispute resolution proceedings through mediation was conducted to gather first hand information on the process followed and facilitated (The disputes observed overtly are discussed in the appendix). Observation was conducted overtly. In overt observation those being observed are aware of the investigator's presence and intention (Johnson and Joslyn :1986). The qualitative description focuses on describing and understanding a phenomenon with reference to concept, actions, process and relationships. It includes an account of the concept, experiences, and the processes, with primary focus on processes rather than outcome (Pant, 2010).

The empirical data is collected in this study through case study method. A description of case can contribute to generalizing the conclusions as hypothesis generating or theory confirming activity. No description is possible without some reference to theory or to some general idea. One can find traces of theory, however, rudimentary or un- explicated, even in a non-doctrinal study. The theory confirming studies mean examination of a single case within a particular theoretical framework for the purpose of either strengthening or challenging the established theory (Chatterjea, 2006AD).

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<sup>25</sup> Exploratory research aims at expanding understanding of the issue and looking for ways to address the problems (*Johnson and Joslyn :1986*)

Marshall and Rossman (1999:153)<sup>26</sup> appreciate the case study method which has local, district or village as the unit of description. Cases studies in general are designed to document the issues occurring in practice as part of outcomes of implementing policy, plan or strategies (Adhikari:2006:169). However, this study on local dispute resolution doesn't aim at testing hypothesis. But it may contribute in generating hypothesis or issue for further research and investigation.

### **1.8.1 Sources of Data**

The study uses both secondary and primary data.

#### **a) Secondary Data**

The secondary sources used in this study are as follows:

1. Relevant works, studies/publications, the laws and regulations promulgated by the government from time to time germane to democratic local governance and dispute resolution have been consulted to define the concept of local governance as institutional space for conflict mitigation. Moreover, these materials are consulted to discuss the importance of alternative dispute resolution mechanism besides locating the historical context of local dispute settlement in Nepal.
2. The relevant reports/magazines and journals containing articles on local governance, conciliation and mediation techniques and processes of local dispute resolution have been consulted.
3. The profiles, records and relevant papers kept and maintained by local bodies/ local mediation panels have been perused and consulted.
4. Relevant electronic sources especially internet have been accessed.

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<sup>26</sup> Marshall and Rossman (1999) prescribe very clear and practical criteria for case study site selection. A realistic site is where a) entry is possible b) there is a high probability that a rich mix of the process people programs interactions and structures of interest are present c) the research is likely to be able to build trusting relations with participants in the study and data quality and credibility of the study are reasonably assured.

## **b) Primary Data**

The primary data for the study are based on or drawn from the case of Sharadanagar VDC in Chitwan district with respect to local dispute resolution. Sharadanagar VDC is the unit of description with particular focus on local dispute resolution. Needless to say, case units can be typified into holistic and embedded. In this study, Sharadanagar VDC is taken at the holistic level with focus on local dispute resolution.

### **1.8.2 Reason for Selection**

Sharadanagar VDC offers realistic site for field data collection where movement and entry is possible, where a rich mix of people inhabit and interactions and structures of different interests are present. The researcher has selected this VDC because of the possibility of building trusting and cooperative relations with respondents or research participants. In addition to it, Sharadanagar VDC is characterized by social diversity and a rich mix of demographic composition. The VDC is the abode of the heterogeneous communities with the Gurungs as the major group. Moreover, the VDC is one of the model local bodies in the district that meets minimum conditions and performance indicators prescribed by the government. The VDC offers valid and reliable sample in light of local dispute resolution.

Moreover, the VDC has a functioning mechanism. The VDC has set up the mediation service centers in helping the process of community disputes resolution in collaboration with District Development committee and development partners. However, the external support has been phased out and the VDC has owned and allocated its own resources to continue with the dispute mediation process.

### **1.8.3 Research Participants**

Research participants in the case study were selected from the mediators, disputing parties and the local stakeholders both at the VDC and District level based on non probability purposive sampling. A non-probability purposive sample conforms to certain defined criteria to fulfill the purpose of the study.

### **a) VDC Level Research Participants**

Mediators, members of the ex-all party mechanism (Sarvadaliya Sanyantra), disputants, VDC secretary have been the key respondents at the VDC level. Out of 27 mediators (Memilapkarta), nine were selected in consultation with VDC secretary for in depth interview (list of mediators in appendix VI) . However, the basis of selection was their pro-activeness and degree of involvement and participation in dispute mediation. Another criteria for selection was that they should have participated in resolving at least five disputes successfully. Altogether 40 disputing parties were selected to gather their experience on dispute resolution (See list of disputants interviewed in appendix I). They are selected from among the 120 disputants involved in the cases in the 2010 and 2011 AD. The selection of disputants for in-depth interview was based on the reasoning that they would provide a sense of immediacy to the dispute resolution action. Similarly, other local stakeholders were selected to gauge into their perspectives on local dispute resolution, and offer assessment of its strengths and weaknesses.

Similarly, one member each from three major parties Nepali congress, CPN (UML), UCPN (Maoist)- of the currently dissolved all party mechanism were interviewed for in-depth information (List of VDC level stakeholders in appendix IX).

### **b) District Level**

Local Development Officer (LDO), District Court Judge, District Police Office representative, Representatives of Nepal Bar Association Chitwan District chapter had been interviewed as respondents from the District level stakeholders.

The reason for selecting these research participants was to generate variations in the set of responses and descriptions in analyzing the phenomenon of dispute resolution at the local level.

## **1.8.4 Data Collection Method**

### **1.8.4.1 Data Gathering Instrument**

The data gathering was carried out through in-depth interview with the target respondents using a set of checklists (Focus Group interview questionnaires in

Appendix I, II, III, IV, V). Most of the questionnaires are non-structured to allow probing and open discussion. However, separate questionnaires were used to conduct interview with disputants especially to derive their perception on the fairness and accessibility of the mediation process (see appendix VI for demography of disputants).

In order to facilitate the data collection for qualitative description, guiding checklists or questionnaires are useful. James B Christoph and Berrard F. Brown quoted in Comparative Politics (Mahlers:2008) state that the case study method involves the intensive study of individual cases. The case studies run the gamut from microcosmic to the most macrocosmic level of political and local phenomenon. The key distinguishing features of qualitative methodology is that research undertaken is interpretive often descriptive and usually unstructured. Example of different qualitative methods in governance related research studies are in-depth interviews, focus groups and participant observation. In-depth interviews are widely used in a variety of studies, such interview don't use highly structured yes-no type questions which form the basis of most-large scale survey research but use open ended and unstructured questions noted down and tape recorded as well. During each interview, attempts were made occasionally to probe in order to derive information to cater to the objective of the study.

### **1.8.5 Data Analysis**

The doctrinal data have been used in building the conceptual framework of the study. Relevant information, excerpts, quotations, observation and examples have been used to discuss different aspects of local dispute resolution.

The primary data obtained through interview/face to face interaction had been analyzed in narrative and descriptive form. Some apt and pertinent responses were also quoted as evidences in the body of study. However, statistical techniques have not been used in the analyzing data and information.

## **1.9 Literature Review**

The academic interest in conceptualizing the role of democratic local governance institutions to resolve conflicts and inter personal disputes has been a fairly new phenomenon. However, some studies undertaken in this sphere have been found

premised on the relationship between local governance and conflict resolution. It is argued that when local governance and participation processes are not transparent and credible, people withdraw and alienate as they feel frustrated and excluded. It results into poor and dismal performance of public institutions. The society gets trapped into structural problems and finds itself divided into winners and losers. And an endless process of furthering divide in the society erodes a sense of community. This reduces society to little more than a loose collection of interest groups. But democratic local bodies if they are transparent, responsive and accountable can foster participation to minimize disenchantment and frustration. They do not let conflicts germinate and escalate in the communities. In democratic local governing system, the public have a say in decisions about actions that affect their lives. Public participation encourages and ensures that the people have a say in decision making process. It tends to meet the interests of all those who have the stakes on the issues. It facilitates the involvement and participation of those who are likely to be affected. It communicates to participants how their input affected the decision.

Democratic local bodies contribute significantly in preventing and minimizing conflicts stemming from structural and institutional problems, inequitable resource distribution and exclusion. Moreover, these institutions offer framework, mechanism and process to resolve disputes and conflicts by providing alternatives mechanism to bring disputes for negotiated settlement. Similarly, indigenous conflict management practices are also found to be important to manage the emergence of violent conflict. However, there have been too few systematic attempts to analyze and assess the role and impact of traditional mechanism in resolving disputes. The IDEA commissioned study titled Traditional Justice and Reconciliation after violent Conflict learning from African Experiences (Luch Hyse and Mark Saler: 2008) serves both as a resource book and guide on traditional Justice and Reconciliation. It is an anthology of articles on traditional justice system and reconciliation with focus on experiences of the African countries in particular affected by the violent conflict. The study suggests that in some circumstances traditional mechanism can effectively complement to

conventional judicial systems and represent a real potential for promoting justice, reconciliation and a culture of justice in the society.

Social Conflicts edited by N. Jayaram and Satish Saberzwal (2011AD) Readings in Sociology and Social Anthropology, Oxford) offers major contribution to the issue of social conflict interwoven with an abundance of ethnographical material from the Indian context (very much relevant to the Nepalese context as well) on all domains of social disputes and conflicts. The book is an anthology of articles by both Indian and foreign scholars and provides a solid contributions to our understandings of local conflict/disputes in contemporary societies in this part of the world especially South Asia where social structures still remain inequitable and oppressive. The book comprises articles on family sphere disputes, cultural conflicts, political sphere conflicts, work sphere conflicts containing empirical data and observations. A rich stock of rich and informative articles on dispute resolution it discusses different social and ethnographical aspects of disputes at formal, informal judicial and local settings reflective of the Indian context and circumstances.

Alternative Dispute Resolution what it is and how it works edited by Rao and Sheffield (1997) constitutes a major attempt to offer a comprehensive account of alternative dispute resolution covering concept, perspectives and practices. The various ADR methods practiced and accepted as the viable mechanism for dispute settlement in different countries are discussed in the articles contributed by different authors with expertise in the working of those models. The essays are both informative and provide rich insights in this growing field of interest.

Searching for peace, The Road to Transcend by Johan Galtung, Carl G. Jacobsen and others (2002 A.D) is a multi-faceted and wide ranging work of the globally eminent conflict experts and practitioners containing articles on different aspects of peace and conflict. The authors demonstrate the value of their approach for achieving comprehensive peace incorporating diagnosis, prognosis and therapy by applying them to understanding and responding to the events of conflicts. The authors draw from their many years of experience as analysts, consultants and

trainers around the world. The book maps the conditions and path to sustainable peace, and the challenge for comprehensive peace by peaceful means.

Pooja Kataria's study titled *Conflict Resolution: Forms, Causes and Methods of Resolution* (2007) combines both theoretical and empirical data and presents conceptual analysis of conflict resolution in its broadest form. The study elaborates various causes, forms of methods and techniques of conflict resolution. The study summarizes the underlying causes of the regional conflicts in India (Kashmir and Nagaland) and the challenges posed by these conflicts to the national security system of India. Though it refers to the different dimensions of the conflicts and disputes, it does not discuss the various facets and forms of the resolution of the interpersonal disputes at the community level.

*Transforming ethno-political conflict* edited by Alex Austin Martina Bergh of Handbook (2004) is the outcome of the contributions of the conflict experts virtually from all over the world. In this Handbook the renowned scholars and practitioners have taken cognizance of the fact that most of the current violent conflicts are intra-state occurring within the state. It means that either different groups struggle over the control of the government or that governments are set against one or other groups that are mainly defined in ethno-political terms. The issues of the intrastate wars are to maintain or gain political power, assert cultural identity, gain economic advantage or capture natural resources. Some wars spring from the decay and disintegration of states and others target at establishing new states, many of them affect regional economics and political stability and last over long periods. While the inter-state conflicts primarily deal with and debated within the institutions of the internal system, it was the focus on intra-state conflicts that lead to new practices and institutional orientations to new discourses and even to a new terminology in the field of responding to conflicts. More relevant in this context is the article contributed by Gunter Bachler in which he argues that conflict transformation can be achieved through state reform.

The work titled *Crime and Punishment in Nepal in Historical perspective* by Tulsi Ram Vaidya and Tri Ratna Manandhar (1985) is first of its kind that analyses the prevailing provision and practices of crime and punishment in Nepal in historical

perspective. It is an original contribution covering important dimension of history of Nepal, including the aspects of crime and punishment during the Rana Period (1846-1951) in particular. This work was written keeping the historical – chronological methodology in view and provides the ample materials to investigate into the historicity of crimes and punishment system in Nepal.

The book titled *Nepalese Administration: An Image* (1981) by Dr. Tulsi Narayan Shrestha makes a vivid depiction and draws the clear image of Nepal's administrative system covering many of its major aspects. He has traced the historical background from the ancient period, sketched the administrative framework and analyzed the vital regulatory function of law and order of different periods in Nepal. He has also examined the Area administration, Nepal's experimentation with decentralization and various attendant facets of mal-governance, corruption and abuse of authority in Nepal. It contains a treasure trove of materials on Nepalese administration and administrative authorities that exercise the quasi-judicial power to resolve disputes and conflict at the local level.

A study undertaken by New Era a research firm titled- *A study of the Legal System and Legal Situation in Rural Areas of the Kingdom of Nepal* (1988) in cooperation with Friedrich Naumann Foundation (FNF) - is an empirical attempt on dispute resolution in rural areas of Nepal. It discusses role of the elected officials in local bodies who participate in tackling community disputes. According to the study if the complainant feels that he or she cannot get a fair hearing from his or her nearby traditional local leader or if he or she happens to live near the Pradhan Panch (chief) or Upa Pradhan Panch (deputy chief), then he or she may approach the Pradhan or Upan Pradhan Panch initially. There did not seem to be much difference in the procedure followed in either case. The New Era study concludes that unlike judgments made by the courts, the decision made by local leaders in informal proceedings and even by the officially constituted Panchayat Justice Committee could not be enforced by resorting to force and coercion. They were a kind non-punitive measures enforced through social pressure. But those who disobeyed such decisions, they could be made the subject of social disapproval or ostracism. The various forms of non-punitive options

included Mafi Magne (Public apology), Jariwana (Fine), Chhatipurti Bharaune (Compensation) and so on.

In this context, mention can be made of the study conducted by Dinesh Parasai (2001) titled *Community Dispute Processing in Rural Nepal: An Exploratory Study* with support of Penal Reform International that focuses on the role of local institutions especially VDCs and communities as justice processors and dispensers. The study was based on basic data collected from Illam, Jhapa and Saptari, and takes an intensive look into the current practices and procedures followed by the VDCs in dispute resolution. The study shows the growing trend among the local communities to bring disputes to local bodies especially VDCs for settlement despite the fact that the embargo on the LSGA provisions has not been lifted. A larger categories and typologies of disputes than defined and prescribed in the LSGA are brought to VDCs for settlement. The study clarifies, among others, that many disputes are settled outside the formal courts not only because of inaccessibility of courts in terms of costs, time and lack of legal knowledge but also because the conception of what constitutes justice for disputants could be very different from those the students of modern law are socialized to believe in<sup>27</sup>.

In the same way, Development Associates for Rural and Regional Development (DEVA) (2002 AD) conducted a diagnostic study on Local Conflict mediation system in Surkhet and Kanchanpur districts of Nepal with support of Hugou/Danida. This is the most comprehensive study undertaken yet in analyzing the role of local bodies especially VDCs and MCs in accordance with the provision of Local Self Governance Act, 1999. The study is limited to two Districts- Surkhet and Kanchanpur. The three major aspects of the study - Legal aspect, organization aspect and social and human rights aspect - provide a broaden based view on the current strength and capacity of local bodies in dispute resolution with focus on the provisions of the Local Self governance Act.

A study undertaken by Reliance Law Firm titled *Legal and Social study on Arbitration Board* (2003) with support UNDP is based on the provisions of Local

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<sup>27</sup> A chapter of the study was presented in the seminar on community mediation and accessible justice international experiences and National perspective held in Kathmandu, 4-6 October, 2001.

Self Governance Act with regard to dispute resolution. Both secondary and primary data are synthesized for analysis and interpretation. The study has done a stocktaking of the current situation and sought opinions from the representatives of local bodies about the problems they faced or likely to be faced to manage the conflicts at the local level. The study concludes that VDCs lack in capacity to help resolve dispute and embargo attached to LSGA implementation.

The important reasons for approaching local bodies for dispute settlement, according to the study are that, these institutions are easily accessible, dispute settlement process involves low cost and it consists of known persons and they have a belief that decision will be based on justice and fairness. Lack of commitment and willingness among the disputants to reach to a mutually acceptable decision, not attending the meeting called by local body, possibility of politicization in decision, lack of skills and techniques in resolving the disputes and so on are pointed out as problems faced in the process of dispute resolution.

Dr. Bishnu Raj Uprety has produced a book titled Management of Social and Natural Resource Conflict in Nepal: Realities and Alternatives (2002) that examines the imperatives of grassroots justice and gives alternative perspectives and pragmatic methodology in conflict resolution. The interactive conflict management methodology proposed in the book integrates legal and indigenous conflict resolution practices to overcome the weaknesses of the existing conflict management systems. The book by Dr. Uprety shows the ways to resolve social conflict by sensitizing and mobilizing civil society, enhancing community awareness, building legal and regulatory institutions, promoting indigenous knowledge and skills which will contribute towards implementing measures towards attaining grass root justice and positive social change. In regard to authority of VDC to resolve disputes, Dr. Uprety has emphasized that the interactive conflict management system should be enhanced to develop the capacity of local bodies to improve communication and engage with local bodies for service delivery. According to Dr. Uprety although the performance of VDC in conflict management is not satisfactory, they are far better than other formal options in terms of accessibility, affordability time and cost.

Mukti Rijal in a study titled "Sociology of Dispute Resolution at the Local Level (2003 A.D) has mentioned that the world Panchbhaladmiharu (gentlepersons) were widely called upon to help settle the disputes and conflicts in the past. Even before the government grafted the term Panchayat as part of state polity and established units of Panchayat, the ordinary people did mean it to be the local level institution that was primarily mandated and trusted socially to help settle disputes and conflicts among the people. The word Panchayat has not been preferred to be used during these days in Nepal. However, the word is well embedded in the psyche of the people to mean an assemblage or group of people with probity and propriety to help resolve community disputes and help maintain and sustain relationship among members of the society.

Furthermore, Mukti Rijal in the yet another work titled ADR in Nepal: Perspectives on Mediation (2003 A.D.) analyzes the LSGA provision and makes an apt observation that the Local Self Governance Act has made a break from the past. It intends to embody new changes and provisions as the elected representatives are absolved of responsibilities to participate in settling local level disputes and this has been shifted to local community as mediators have to be drawn from the localities.

Nepal Law Society (2002 A.D) undertook a study titled Study of popular perception on performance of Judicial Institutions and quasi-judicial institutions including VDCs with support of The Asia Foundation. The study argues that a country with preponderance of villages and rural communities obviously needs functioning alternative dispute resolution mechanism in addition to regular courts. According to the study findings, only 15% of the disputing parties use the mechanism of the court to settle their disputes. The rest of the people have been using various other mechanisms including VDCs for dispute resolution.

Some of the current studies listed above have not been the independent research initiatives. They are rather the product of donor funded projects aimed at stocktaking the state of dispute resolution in the country at a time when direction and trend of political discourse was quite different from what it obtains today. The mediation law had not been and enacted, court referred mediation services

were not available. The country today is a democratic republic and federalization through constitutional division of state authority among various territorial units is a major theme of the national deliberation.

### **1.10 Organization of the Study**

The study is organized into seven chapters. The Chapter One is more or less an introductory chapter containing background, objectives, rationale, justification and methodology of the study. The Chapter Two explores into the emergent paradigm of multilevel governance with special description of local governance that by virtue of its intrinsic merit and institutional strength has the potential to mitigate or redress the causes of the conflict.

Chapter Three introduces the approaches and mechanism of Dispute resolution with special discussion on different aspects and mechanism of alternative dispute resolution. Moreover, theoretical traditions of ADR and cross national experiences based on use and application of ADR have been discussed in this chapter.

Chapter Four discusses at length about a variety of forums of dispute resolution, traces the experiences of local disputes resolution in Nepal from past to the present. The chapter introduces the provision of new mediation law enacted in Nepal. Needless to say, the mediation law constitutes a milestone in creating an important framework for dispute resolution through interest based mediation.

Chapter Five discusses the implementation of local dispute resolution with particular focus on the case of Sharadanagar VDC in Chitwan district. The Chapter Six analyses the issues, perspectives, results of the local dispute resolution. And the Chapter Seven provides summary and conclusion of the study.

### **1.11 Limitations of the Study**

The study discusses concept of local governance with special focus on dispute resolution using the tools and techniques of mediation. The studies of this kind dealing with local dispute resolution mechanism within local governance

framework subject to provision of LSGA are the scarcest in number, if not non-existent. This did constrain the researcher to benefit from the advantage of consulting with or learning from theoretical or empirical contributions or base on them to further the investigation towards enriching the knowledge on the subject.

The prevailing situation in the country has been politically fluid and unstable overall several exacting a heavy toll on local governance process and institutions. Hence, local governance system in Nepal remains dysfunctional for over a decade. The capacity and legitimacy of the local governing institutions is severely weakened and eroded. The failure to conduct local elections and on top of that an absence of elected democratic institution to implement the LSGA provisions pertaining to the local dispute resolution, among others, has created a void giving rise to several anomalies. Moreover, the LSGA provision in regard to local dispute resolution has not been implemented in a majority of VDCs. This did impact the process of undertaking the present study in terms of collecting, using and comparing the empirical data for precisely broader generalization and conclusions.

## CHAPTER - II

### LOCAL GOVERNANCE: A SHIFT IN PARADIGM

The chapter aims at sketching an overview of the multilevel governance with general focus on local governance. The objective of this chapter is to take cognizance of the paradigmatic shift characterized by the increased role of plural actors in governance at all levels from global to local. Moreover, this shift has been important at the local level as this strengthens the role of different stakeholders and civic actors, and promotes their participation in local governance. This leads to building a supportive environment to contribute towards mitigation of social and political conflicts opening up spaces and opportunities for deliberation and negotiations to resolve disputes and address conflicts. This has direct or indirect bearing upon the resolution, if not prevention, of the interpersonal disputes or group disputes, inter alia, at the microcosmic community level.

Needless to say, the democratic governance has been long appreciated as a system of managing social conflicts using a set of agreed social rules. In a democracy, disputes arisen are processed, debated and reacted to, if not being resolved definitely. In short, democracy operates as a conflict management system without recourse to violence (Sisk et.al, 2001).<sup>28</sup> As democracy takes root, it will itself have a pacifying effect since it is based on values such as pluralism, tolerance inclusiveness and compromise and because it helps to establish norm of behavior such as negotiation, compromise and cooperation among the political actors (Bachler in Berghof Handbook:2004:274).

Consequently, to institutionalize the communicative and conflict management mechanisms, and to develop conflict-transforming capacities within the political system, specific arrangements of democratic structures, procedures and political culture are vital and necessary. Moreover, intra-state violence has not decreased in some of the countries of the Third Wave<sup>29</sup> democracies. Series of violent ethnic

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<sup>28</sup> Quoted in DSIUC/SAI Local Governance and Conflict Management in Sri Lanka.

<sup>29</sup> According to Dr. Rabindra, Khanal, the Third Wave of democracy mentioned by Samuel P. Huntington, has brought new challenges to the existing system around the for greater participation of the people in decision making process which affect their life.

conflicts have often been triggered in the process of democratic and liberal transformation (Khanal: 2006:1). Therefore, building suitable institutions, structures and procedures as well as a political culture which supports non-violent conflict management has been felt to be imperative and necessary. In classic sense, democracy is often understood and practiced as the rule of the numerical majority. Democracy in this sense tends to lose sight on the issues of minority representation and protection. Numerically weak minorities resent the majoritarian essentialism inherent in this understanding of democracy<sup>30</sup>. It often leads to ethnic conflicts and disputes. However, democracy and minority representation is often correlated. "Democracy is about inclusion and exclusion about access to power, about privileges that go with inclusion and the penalties that accompany exclusion. The policies and institutions that settle ethno- political conflicts and manage diversity peacefully include full political and civil rights for ethnic minorities, programs to alleviate their poverty, protection for them to use their languages and power, constructing multi-ethnic coalitions, encouraging crosscutting alignments, and allowing broad access to power . Many violent conflicts – the most immediate and acute threat to human security and to human development – is internal to states. Many analysts see the ultimate causes of conflict in economic deprivation, social exclusion and deep seated social structures. These give rise to group grievances- often exacerbated by cross border spillover influences. Human security threats emanate from weak state environments. There is, therefore, an imperative for focusing on improving democracy's capacity to address the underlying sources of human insecurity (IDEA, 2003).

However, Irrespective of political value systems, the twentieth century witnessed two world wide conflicts of the global scale. These conflicts had involved regions and nations with unprecedented destructive scale and tragic results. Prior to that conflicts and wars had limited character being confined to a few neighboring nations and countries. Today, state system has become globalized. And conflicts and wars have been fought by different means in various parts of the world (Bachler: 1997). The state collapse, civil war and local conflicts have turned

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<sup>30</sup> David Held in his monumental work titled *Models of Democracy* (1996:318) has mentioned that a democracy would be fully worth its name if citizens had the actual power to be active as citizens, that is to say if citizens were able to enjoy a bundle of rights which allowed them to demand democratic participation and to treat it as an entitlement.

out to be a perplexing phenomenon. It has also become a part of the post-cold war. As a result, a picture of the bifurcated world has emerged with rich and poor, developed and least developed nations. They live side by side with mutually conflicting interests and incompatible objectives. Globalization has thus affected all aspects of the individual and national life. Globalization has been metaphorically described as juggernaut. It is a powerful runaway wagon that nobody can control unless collective action is taken. The juggernaut crushes those who resist it. While it sometimes seems to have a steady path, there are times when it veers away erratically in directions we can not foresee.

A new paradigmatic shift has occurred in the concept of state and government. The Westphalia consensus formed around the notion on the sanctity of statehood and validation of the state's exercise of power, influence and domination over a bounded space called territoriality now remains a contested source of political legitimacy (Dahal in IGD, 2007). However, despite the continued erosion and assault in the sanctity and authority of the state, the rationale of the state institutions exists to provide security, protect life and property, produce and deliver common goods and services to the people. State is a set of institutions and these are manned by the state's own personnel. The state has the monopoly over the use of legitimate means of violence and coercion. Crucially, the state looks inwards to its national society likewise it looks outward to larger societies in which it must make its way; its behavior in one area can only be explained by its activities in the other. The state monopolizes rule making within its territory. This leads towards the creation of a common political culture shared by all citizens (Hall & Ikenberry, 1997).

State is often used as a synonym of the government, the state exercises its monopoly of legitimate power through the latter. Max Weber defined state as a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory (Quoted in Fukuyama, 2004:5). Modern state is a complex set of institutions, these institutions are integrated and hierarchically structured. The state attempts to replace the group loyalties: cultural, religious, caste and tribal-with affiliation to state. Moreover, state seeks

“to mould those (groups) into a uniform and easily governable community (Vashun and Louis, 2002). The modern state through its various government institutions: the executive, the legislature, the judiciary comprising different courts, the ubiquitous bureaucracy, the military and police etc whose reach is long and all pervasive. It is able to put any individual or a group of individuals to fall into line .It puts pressure and uses its ample machinery to educate, advertise and persuade citizens. R.M Maciver in the Modern State (1992) writes “the law of the state is ineluctable. It binds the ruler as well as subjects. The state then, because of its rigid, unbroken, coercive framework of political law, has a permanence and fixity that distinguishes it from all other associations. A democratically effective state provides stable and cohesive society. It is free from violent and destructive disputes and conflicts. But repressive and authoritarian state is itself a cause of social disputes and conflicts.

Concurrently, a government is within the state. It is the key element of the state. Government refers to specific institutions or entities within the state. The government designates the formal, public, national territorial apparatus of the modern state (Katrina Sehm-Patomaki & Marko Ulvila: (eds) 2007). However, the notion and scope of government has undergone changes and adaptations over the time. In an authoritarian state, the scope and strength of the government institutions is bigger and comprehensive. The same cannot be said with the government in liberal and democratic state. However, the size, functions and scope of the state (government) has increased in non -totalitarian countries as well. This is the case in virtually all democracies during the first three quarters of the twentieth century. While state sectors at the beginning of the century consumed little more than ten per cent of gross domestic product in most western European countries and the United States, they consumed nearly fifty per cent (seventy percent in the case of social democratic Sweden) by the 1980s (Fukuyama, 2004:15).

## **2.1 Government and Governance**

A fundamental change has taken place in the notion of the government too. David Osborne and Ted Gaebbler in their best seller titled (Reinventin Government:

1992)<sup>31</sup> have introduced new elements and dimensions to elucidate the notion of the government. In order that the government becomes effective, it, according to David Osborne and Ted Gaebbler, has to be catalytic, competitive, and anticipatory and so on. The government is also being looked from the perspectives of formal and informal roles, interactions, interconnections, and functions. This has resulted into shift from the notion of the government to governance. Governance is a broader concept than the notion of the government. Governance is a neutral concept. It is not synonymous with the concept of government. There are many more actors involved in governance, and government is basically one of them. Governance means institutions and process for exercise of authority and control. Governance can be further defined as the political direction and control exercised over the actions of the members, citizens or inhabitants of communities, societies and states<sup>32</sup> (Random House Dictionary revised edition: 1984:571). The concept of governance or so to say, good governance was specifically emphasized by international financial and development institutions. The World Bank and International Monetary Fund (IMF)<sup>33</sup> emphasized on good governance in response to the need to enhance aid ineffectiveness in the developing and least developed countries. It was assumed that positive results of aid could not be achieved due to lack of various institutions, process and structures to control, mediate and distribute outcome of development. Governance has been defined by World Bank (2001) as the manner in which power is exercised in the management of a country's social and economic resources. Similarly, the UN agencies like the UNDP (Quoted in Dhungel (ed), 2003) define governance as the complex ensemble of mechanism, processes, and institutions through which citizens and social groupings manage their interests and conflicts. Moreover, according to UNDP, it is the exercise of political, economic and administrative authority to manage a society's affairs. More precisely, the UNDP definition implies the governance as the process and mechanism in dealing with issues for negotiating

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<sup>31</sup> In *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector*. David Osborne and Ted Gaebbler write "we are deeply about what government do, put this a book about how they work" (Page XXI)

<sup>32</sup> Random House College Dictionary revised edition New York Random House 1984 p.571

<sup>33</sup> World Bank and IMF are euphemistically known as the Bretton woods institutions created after the second world war

various interests in society. It is increasingly seen as a concept that encompasses a series of mechanisms and processes designed to maintain the system, to empower population and to ensure that society owns up the process.

In the same way, governance has been defined as the sum of many ways-individuals and institutions, public and private to manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and cooperative action can be fostered. It includes formal institutions and regimes empowered to enforce compliance. Moreover, it comprises informal arrangements that the people and institutions either have agreed to or perceive to be in their interests. Governance is indeed about government behavior and performance, including the exercise of economic, political and administrative authority to manage a country's affairs at all levels in a transparent and accountable manner. It provides the framework, based on the rule of law through which citizens and groups exercise their rights, meet their obligations and articulate their interests.

Governance comprises both formal and informal institutions from local to global, their interaction and interconnection in the exercise of power and management of public affairs and mediating interests that otherwise give rise to social unrest, violent conflicts and unmanageable disputes.

## **2.2 The Emergent Multilevel Governance**

### **2.2.1 Global Governance**

The global governance system comprises international system, institutions, agreements and regulations that have been long put in place. After the First World War (1914-1918AD), the League of the Nations<sup>34</sup> was created as the novel and larger attempt at building a global system. However, the League proved ineffective and weak to prevent war and build peace in the world. And after the Second World War (1939-1945 AD), a new international system was designed with the creation of institutions and agencies such as the United Nations, the World Bank, the International Monetary Fund, and World Trade Organization and so on. These provide basic mechanism for the global governance.

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<sup>34</sup> The League of Nations was created after the devastation of the First World War (1914-1918 AD) to promote peaceful relations among the various nation states.

However, it needs no mentioning the fact that the international governance system suffers from many deficits and weakness, these include absence of and effective enforcement mechanism and representativeness. Globalization is the dominant force in shaping a new era of interaction and interdependence among nations and people in the twenty first century. Globalization provides new opportunities for economic and social development to countries around the world through trade liberalization, foreign investment, capital flows, information exchange and technological change (Rondinelli and Cheema, 2003).

### **2.2.2 Changing Rules of Game**

For more than two decades, globalization has been changing the rules of the game. In response to US President Barak Obama's accusation in connection to the violation of the international trade rules and agreements that China shot back recently stating that it refused to abide by international economic rules that it had no part in writings. If the rules are made collectively through agreement and China is a part of it will abide by them. If rules are decided by one or even several countries China does not have the obligation to abide by that<sup>35</sup>. The government, seeking to participate in and benefit from globalization are required increasingly to assume new roles they should they should perform the role of catalysts for economic and social development, enabler of productivity and efficiency, regulators for ensuring that economies remain open and equitable, promoter of private sector expansion and stimulators of financial and human resource development etc. Greater economic and social interdependence seems to affect national decision making processes in two fundamental ways. It calls for a transfer of some decisions from the national to the international level. Due to increasing demands for participation and response, it also requires many decisions to be transferred to local levels of government. Cooperation and regulation are required on many levels due to the complexities and transnational nature of current world issues. This has led some scholars to predict the end of national state power. The pacifists of the early twentieth century, who endeavored to formulate constructive concepts of peace, thought in international terms; they genuinely aimed to achieve a world peace order. It could also be called as global governance system reflecting as it does many old and indeed very new global interdependence and interrelationships. Never the less, they were realistic enough to recognize that such an order needs

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<sup>35</sup> The Kathmandu Post Nov. 15, 2012

regional or continental building blocks in order to be truly functional. In the efforts to establish global governance, the aim to create an architecture and inner life for a world peace order: from the lower level, of the peaceful and conflict free individual state (what a prerequisite) via its integration into loose or broad based integrated regional organizations up to the higher level where international organizations and rules (international regimes) create sustainable institutional and legally constituted framework conditions for the civilized resolution of unavoidable conflicts (Dieter Senghaas in Berghoff Handbook:2004)).

### **2.2.3 Diminishing Autonomy**

Decisions at the international level are having increasing impact on what in the past would have been regarded as national prerogatives. There is no such thing as democracy at the global level and nor is likely to be for a long time. Unfortunately, governments tend not to devote much time to having national public discussions of what is happening in these international bodies. This is true even of ex post facto discussions, All the more true of consultations before decisions are taken. International agencies have treated policy formation as confidential to governments, and not something to be exposed to external. We live in a world where state sovereignty has to be understood in practical terms in different ways than in the past. States have diminished autonomy to act as we live in a world that is increasingly influenced by a myriad of networks. These networks may well include the governments and international institutions or individuals within them. The state centric world has been joined by a multi-centric world. The information revolution is changing everything. This has increased access to information and revolutionized the field of communication. It permits global coalitions to be formed. Civil society and larger transnational private sector agencies are the key actors in the domain of global governance. International civil society is bound together more by shared values than by self interests. These values lead to coalitions of a strategic or tactical variety. Civil society is unquestionably contributing to the global agenda, for example, by identifying the consequences of globalization that might otherwise be ignored. Civil society is also working with international institutions to transform existing institutions or their policies – the World Commission on Dams being a case in point. Similarly, it is found that the international NGOs are playing an increasing role in conflict

prevention. For example, the faith based non state religious organizations have contributed to several peace building initiatives around the world, the best known being its skillful mediation in Mozambique that culminated in the 1992 accord.

In the foregoing discussions, we have outlined some important features of a modern state. And these have showed that sovereignty is an essential prerequisite of it. However, as has been seen, in the contemporary globalized context with economy opening up, the freedom of most state to act independently in the interests of their citizens is severely curtailed by the multilateral agencies like the World Bank and the World Trade Organization (WTO). These institutions have imposed serious conditions which are affecting the basic governance of countries and jeopardizing the interests of the common man as far as job opportunities, availability of food and health services are concerned and are pushing a large number of people below the poverty line. There is a crisis of governance that has been made worse by the liberalization and globalization of the economy. The greatest challenge facing most developing countries in 21<sup>st</sup> century is how to strengthen their respective participation in the global economy and to do so in ways that bring widespread and sustainable benefits to their people (MC Behara (ed), 2006:16). The distribution of the benefits of global relations depends not only on domestic policies but also on a variety of international social arrangements including trade agreements, patent laws, global health initiatives, international educational provisions, facilities for technological dissemination, ecological and environmental restraint, treatment of accumulated debts, restraining of conflicts and local wars (Sen: 2009:409).

This global system remains in place today as the primary means for addressing the global issues. As global issues and challenges have intensified, demands for reforms to make these global governance mechanisms more effective have grown ever more urgent. Some progress has been made in the adoption of global compacts in which countries agree to work together towards global development goals and to prevent and resolve violent conflicts (Bhargava (ed), 2006:6). If the global governance is made non-hegemonic, democratic, transparent and participatory, the poverty and servitude faced by the global community would be reduced and conflicts and animosities could be eliminated.

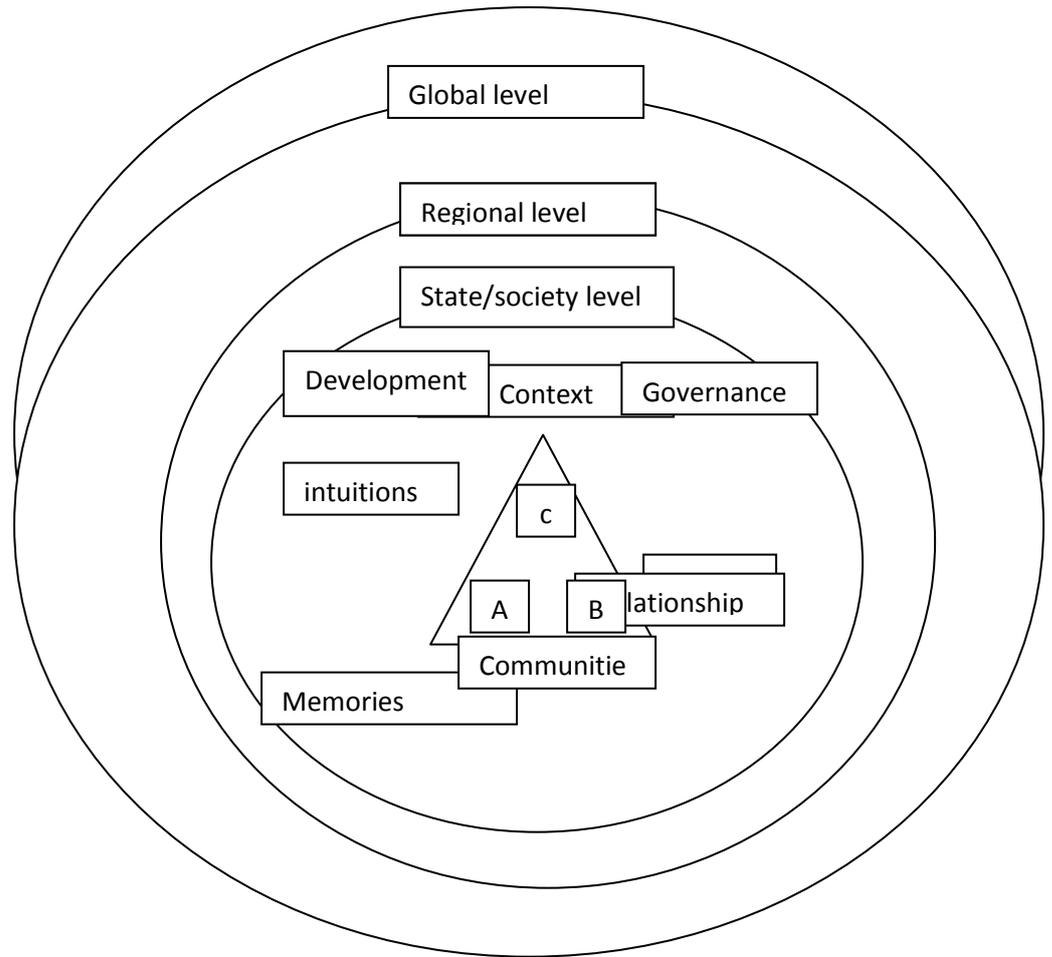
#### **2.2.4 Supranational /Regional Governance**

Regionalization is the evolving trend alongside globalization during the contemporary times. Considerable regulation of global flows (in terms of communication, finance, investment, trade) has developed over recent decades through regional governance apparatuses such as the European Union, the Association of South East Asian Nation (ASEAN), South Asian Association for Regional Cooperation (SAARC) and so on. Many advocates of regionalism have argued that such frameworks offer major opportunities to harness global flows in the public interests. From this perspective, regionalization would be a primary strategy for the democratization of globalization and minimization of tensions and conflicts. One of the causes leading to the dissatisfaction of many a nation is that the bottom line for decision making under the current international system focuses most pervasively on maximization for the benefit of its selected members. Indeed international law of the colonial period was carefully constructed to appear to be a neutral system while cloaking asymmetries of power. The international law that was shaped in the colonial period was not a neutral discipline. It was often used as instrument of naked power, skillfully dressed up to hide its objectives of controlling the colonized world for the benefit of colonial powers. To achieve this, manipulation of policies and institutions including the law, is commonplace, which occurs in several forms involving, inter alia, persuasion for buying willingness, capturing by force or corrupting the participants and stakeholders in a weak position, thereby disempowering many and denying justice for others (Jehani and Uprety, 2009).

At the regional level too, political community building is a difficult collective learning process. This is borne out, in particular, by the experiences with European integration and other regional experiences. The integration process requires certain shared basic values, enhanced communications, fair exchange which benefits all parties and, above all, responsiveness to the needs and concerns of weaker participants in the integration process. However, such a process of integration at the regional level must be successful even if only in the European context at first, because this alone will provide proof that that lasting peace and order beyond the national state is not an illusion but can be a reality.

**Figure 2.1**

**Governance relationships: global to local level<sup>36</sup>**



(Adapted from Berghof Handbook: 2004)

**2.2.5 Regional Governance Frameworks**

Thus far two regional governance projects have acquired directly elected parliamentary bodies. Representatives of the European Parliament of the EU have been directly elected every five years since 1979. Voters in the six member countries of the Central American Common market select 132 representatives to the Central American parliament which has convened in Guatemala City since 1991. The emergence of directly elected regional assemblies has encouraged the development of regionally organized political parties to contest the seats.

<sup>36</sup> The figure is taken with necessary adaptation from Hugh Miall's article titled Conflict Transformation: A multi-dimensional task published in The Berghof Handbook 2004, edited by Aistin Fischer and Robers p. 76

Regionalization is thus an emerging and growing trend taking shape in the world. It aims at finding ways to understand and deal with globalizing – localizing dichotomy. The cultural territorial identity could provide a framework for understanding this dichotomy.

Over the past decade there has been an increased understanding of the appropriate level- local, national, regional or global- at which collective action is desirable. Actions that benefit the local communities should be conducted at local level; and those that benefit the citizens of an entire country should be undertaken at the national level. Similarly, those that affect the region or the globe should be conducted at the global or regional level. More than at any other time of history, the future of mankind is being shaped by issues that are beyond any one nation's ability to solve. Climate change, avian flu, financial instability, terrorism, waves of migrants and refugees, water scarcities, disappearing fisheries, are all examples of the issues whose solution requires cooperation at the regional or global level. The European Union, the Arab League, the African Union, the Association of South East Asian nations (ASEAN) and the Organization of American States (OAS), South Asian Association for Regional Cooperation (SAARC) and so on do provide mechanism for regional governance. Sound regional governance framework contributes to reduce interstate tensions and conflicts and promotes harmony and peace not only within the region but also within the state and community.

### **2.2.6 National Governance: Sole Seat of Sovereignty**

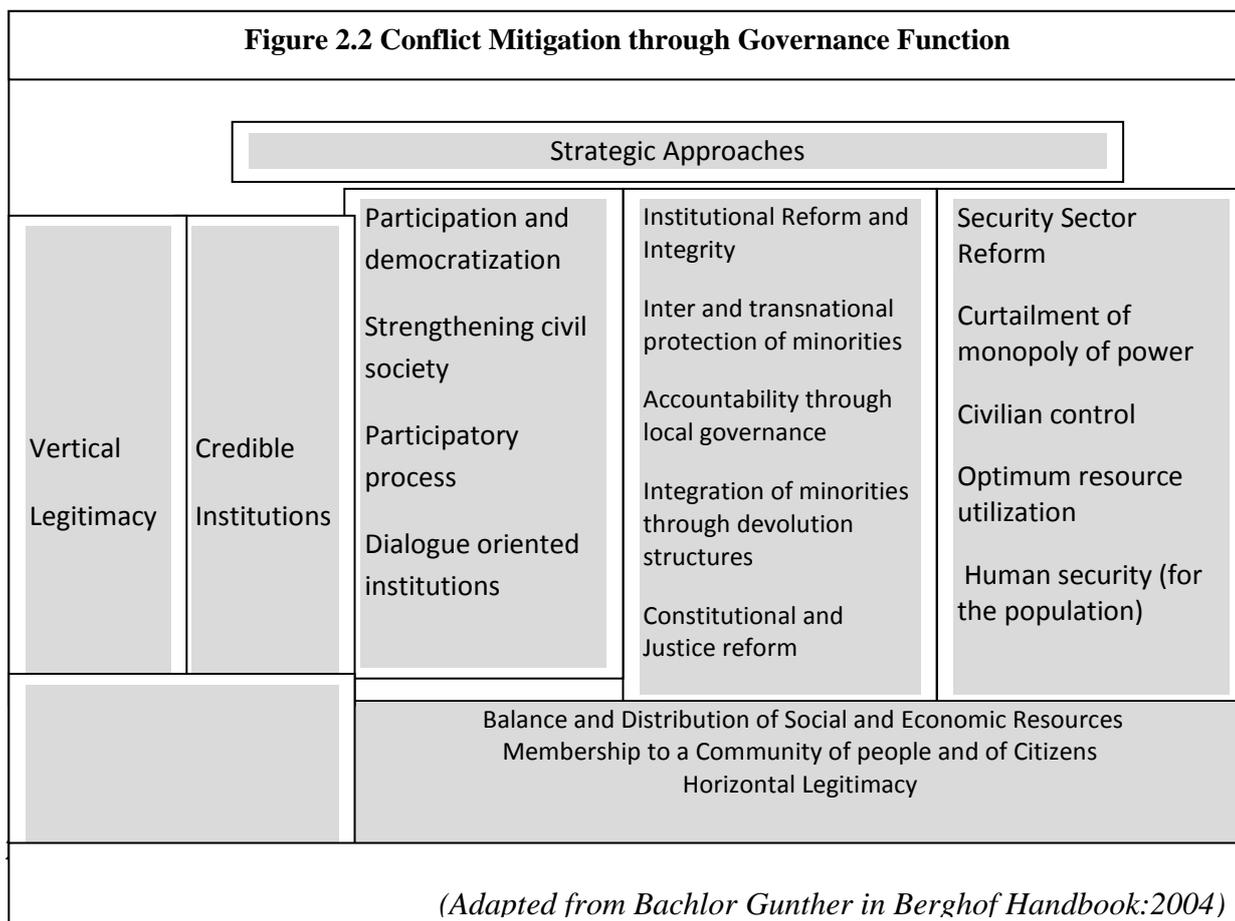
The nation state is the sole seat of sovereignty. It exercises both de facto and de jure sovereign power. It exercises authority for conducting the national administration and management. Sovereignty or the general will is inalienable. National governance is the intermediation between local and global governance. It offers a via media between the global and local level governance. Jean Bodin is considered to be the modern initiator of the concept of sovereignty. According to him sovereignty is republic's absolute and perpetual power. In spite of the fact that there is growing trend towards the hollowing out of sovereignty, the national government remains the key-actor in domestic and international policy making.

The assumption that the emergence of global civil society and increasing levels of cross border trade, finance, and investment turns the nation state into an anachronism is simply wrong. Closer international cooperation among the states is in itself an exercise of state sovereignty (Rondinelli and Cheema (eds), 2005).

### **2.3 Local Governance**

Local government can be defined as a sub-national level of government which has jurisdiction over a limited range of state functions, within a defined geographical area which is part of a natural governance system. The term local government refers to the institution or structures which exercises authority or carry out governmental function at the local level. Different models of local government may represent different forms of decentralization as delegation and deconcentration. Where Local Government is often portrayed as representing the highest form of decentralization that is the devolution model but this is not always so. Local governments operate essentially as agents of central government rather than as instruments of self expression. This in reality constitutes delegation rather than the devolution. Devolution is the ideal and effective version of decentralization devised to guarantee the competencies of the local government. Local governance is a broader concept and is defined as the formulation and execution of collective action at the local level. Needless to reiterate the democratic local bodies in general contribute to resolving conflicts or preventing the threats of potential conflict by provisioning spaces for local citizens to participate in deciding subjects of their respective concerns and interests. They provide spaces to participate contest and settle differences and conflicts at the local level. Local politics indeed deals with policies that are of direct concern to each community. Local governance, in this context, consists of values of inclusion, tolerance and openness. It consists of accepting different ideas and interests as well as forms of peaceful conflict resolution. It is presumed to be responsive to their electorate and listen to their wishes. They have to be open to participation, accept proposition and advice from different actors, they have to try to negotiate with competing choices to seek compromise (Jacob, Linder and others (eds.), 1999). Furthermore, democratic local bodies undertake dispute mediating

functions and they offer process and mechanism in sorting out interpersonal differences and disagreements.



Local government is closest to the people. At the local level, democracy demonstrates in daily life by allowing citizens to play a role in local level decision-making. Local participation has power of socializing impact (Burns Hambleton and Hoffet: 1994). The involvement of people in the democratic local governance has a great educative force. It teaches citizens to look beyond their immediate interests. It recognizes the just demands of others' and, if necessary, accept the decisions that they did not initially like.

Transparent and efficient procedures at the local level encourage people's participation which plays an important role in conflict resolution. Local governance is all about conflict management. Often overlapping dimensions exist within the local conflicts. For examples, disputes over land use rights on the one hand, have a resource dimension, as it is struggle over claims to scarce resources

(status, power), but it can be interlinked with political dimensions within a partisan political system as well as include dimensions of identity conflicts if different identity groups (ethnic, caste, gender etc) are involved. As these conflicts are part of any society, these can be tackled by suitable local governance institutions, structures and mechanisms. Resolving conflicts at local level provide support to consolidate democracy. Moreover, if the process of problem solving is done in a transparent and fair manner, unjust social relationships are transformed. Creating spaces for people's empowerment through participation in decision-making is one important entry point for the promoting of conflict management mechanism in societies (Jha and Mathur (ed): 1999).

Local government brings state to the grassroots population to give citizens a sense of involvement in the political processes that control their daily lives. A local governance process can mature when the strengthening of local government through decentralization goes hand in hand with a deliberate effort to mobilize and strengthen civil society structures and institutions at lower levels in a manner that would allow their relationship with sub national authorities to become more interactive (Estrella and Izzat (ed):2004).

Local governance system rests on co-responsibility between institutions of governance at the central level, regional and local levels according to the principle of subsidiary. It increases the overall quality and effectiveness of the system of governance. It is a means for creating an effective local government and representational systems of community level decision making. The complementary roles of national and sub-national actors should be determined by analyzing the most effective ways and means of achieving a desired objective. Democratic Local Governance comprises of the values of transparency, accountability, efficiency, effectiveness, participation, rule of law, equity and so on. It has both vertical and horizontal dimensions. The horizontal dimension is about how local government institutions are organized, regulated and guided by public authorities at certain institutional levels or within a certain political communities which cooperate and work together in promoting their interests. The

vertical dimension of democratic local governance describes governance relationship between various institutional levels.

## **2.4 Citizen Centric Governance**

It emphasizes the interaction between citizens, political representatives and administrative machinery. It opens up a view to the practices in which institutions, organizations, and citizens steer and guide society and communities. It focuses on citizen centered view of governance. Democratic local governance is accompanied by democracy to avoid local elites from taking power without grass root control. Democratic local governance therefore means greater democracy and political equality. It includes participation, empowerment, accountability and transparency. The quality of governance depends on transparency in the elaboration, execution and evaluation of budgets, access to participation, public actions and policies, government responsiveness to demands, free flow of ideas and information concerning the choice of policies and the election of leaders. According to Blair quoted in Fon von Oosterhot democratic local governance is characterized by participation, representation, and empowerment, equitable sharing of benefits and poverty reduction as major principles. It requires constitutional or statutory reforms. It combines devolution with democracy at the local level where local governance takes shape through participation and accountability<sup>37</sup>.

### **i) Enhancing Citizen Welfare**

Democratic local governance is the most human development friendly system of governance. It helps to increase life expectancy," improve adult literacy and school enrolment and raises per capita income by providing a system of government that responds to the needs of the people (Cheema: 2005). If the people desire better health care, education and quality of life – and we must assume that these are universal human aspirations. It ensures that elected representatives act according to the will of the people in an accountable way. Human development performance can be increased by enhancing the quality of democracy and

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<sup>37</sup> Synergy is created between state and society through reforms in local governance (Hickey and Mohan :2004:32).

deepening it to the grass root level. It provides an institutional framework through which groups and individuals at many levels can organize themselves and participate in making decisions affecting them. It is seen as a more effective means to ensure the accountability of political leaders and government officials. It improves access of the people to government initiated services and facilities. It promotes the institutionalization of democratic culture by providing opportunities to groups and individuals to make political and financial decisions affecting their jurisdiction. It provides a better framework for poverty reduction. It promotes checks and balances between the centre and sub national/local units of government and administration. The transfer of authority and resources to local units of government and administration to design and implement development programs provides opportunities to local citizens to play more direct role in development and governing process (Blindenbacher and Koller (ed):2002).

Democratic local governance improves operation of administration at the local level. It enhances of public authority's capacity to effectively manage public affairs through collaborative networks and partnerships at the local level. The basic elements of democratic local governance are similar to the national and other spheres of governance. They include transparency, accountability, efficiency, effectiveness, participation, and rule of law, clarity in vision, equity and efforts for consensus in decisions related to public affairs (Dahal in Sahabhagita: 2006)

## **2.5 Accountability**

Democratic local governance has two principal components: participation and accountability. Participation is concerned with increasing the role of citizens in choosing their local leaders and in telling those leaders what to do- in other words providing inputs into local governance. Accountability constitutes the other side of the process; it is the degree to which local governments have to explain or justify what they have done or failed to do. Improved information about local needs and preferences is one of the theoretical advantages of decentralization local governance (Reddy and Singh (ed):2006)

Accountability can be an indicator to ascertain and validate the degree of participation. Accountability comes into two dimensions: that of government workers to elected officials and that of latter to the citizens who elect them. The second type of accountability is that of elected officials to the citizenry. Elections provide the most obvious accountability. But it offers only the broadest citizen control over the government. Citizens need more discriminating instruments to enforce accountability. The discriminating instruments that the citizens need to enforce accountability are political parties, democratic media, public meetings/hearings, grievance redressed mechanism, opinion surveys, public audit mechanism and so on.

Political parties can be a powerful tool for accountability. They have a built-in incentive to uncover and publicize wrongdoing by the party in power they present continuously an alternative set of public policies to the voters. Similarly, democratic media is a very effective instrument for governance. However, If citizens are to hold their government accountable, they must be able to find out what it is doing. At the immediate neighborhood level words of mouth is perhaps sufficient to transmit such information. But at the higher level some form of media becomes essential.

Public meetings/hearings can be an effective mechanism for encouraging citizens to express their views and obliging public officials to answer them. In some settings such meetings may be little more than briefing sessions but in others they can be effective in getting public officials to defend their actions (Triesman: 2008).

The decentralized local governance has been championed for several reasons. However, most of these reasons are connected to its possible contribution towards conflict resolution and minimization of tensions whether explicitly or implicitly. Local governance is instrumental for institutionalizing attainment of democracy and good governance. Democracy and good governance have built in internal mechanisms central for conflict resolution. Local governance can facilitate genuine democratic participation, empower grassroots and channel their input constructively into the national developmental efforts. It brings the government

closer to the grassroots both in special and institutional sense thereby making it more responsive, accountable and representative". Local governance helps to reduce conflicts in improving efficiency and effectiveness in the working of the public sector. Local governance is regarded as a solution to an overloaded, over-centralized, hierarchic and monopolistic organization which is susceptible to conflict.

## **2.6 Effective Service Delivery**

Services such as education, health, or local roads can be delivered efficiently and effectively by local government institutions. Moreover, it is necessary that certain services have to be unbundled with central and sub-national units dividing up aspects of service delivery according to the principles of subsidiarity. However, the role of each tier of the government should be clearer and fixed. And the local governments should be endowed with sufficient authority to perform the roles assigned to them. With a view to assure that the government is accountable to the people and citizens have an expanded space for engagement with the state, clear cut of functions, finances and functionaries has to be ensured.

Needless to say, poor distribution of services and goods at the local level leads to massive discontents and frustration among the people deprived of basic services. To redress this issue, quite a many experts on state reform and local governance maintain that the solution should be found in the structure of the government that consists of a complex set of principal- agent relationship in which local government act both as agents of their constituents in the delivery of local services.

## **2.7 Social Justice**

Decentralized local governance is an alternative system of governance where a people-centered approach to resolving issues is followed to ensure economic and social justice. The entire process should be for locating people at the centre of power so that they become the basic engine of the development process and not, as hitherto, merely its beneficiaries. There is a need to see the evolution of local

governance through decentralized processes along a continuum. Merely setting up governing structures would in no way promise effective decentralization; the commitments here need to extend beyond to ensure the devolution of real powers and resources. Merely setting up local self government bodies does not necessarily amount to the advancement of democratic politics and realization of social justice (Kothari in Jha and Mathur (eds):1999).

A local government can be an effective weapon for channeling local pressures, articulating, and aggregating local interests which may not necessarily coincide with the idea of central government. It can provide a forum for political education not only for the party leadership but also for the general population who would be able to appreciate the utility of this basic level of government. This, of course, presupposes the superior capacity of local people to understand and conduct local affairs. It can plan with its superior local knowledge, for enhancing social Justice and enlarging options for livelihood. Local governance enhances active popular participation in local development process aimed at enhancing justice for the weaker section of the society.

Local government can be an effective communication channel between the centre and the people which can, in a way, ensure the effectiveness of the actions of the central government as well. Moreover, a local government can also perform two indirect functions: first it can prevent the emergence of alternative power centers at the local level that are usually not subjected to influence and authority of the state, and second, it can be used to decongest the government at the higher level (s), thereby freeing national or provincial leaders from unnecessary involvement in local issues.

Local governance is crucial for the development of democracy and offering space for resolving conflicts. Local politics deal with polices that are of direct concern to each community. Local infrastructure and public services are decisive for many basic needs of citizens. Local elites are confronted with the problem of resource allocation, of setting priorities for these public goods. They have to deal with economic and social conflicts rising in the community (Jacob, Linder and other (eds):1999).

There is considerable debate over which specific criteria should be used in determining the most appropriate allocation of responsibilities and functions. It is commonly agreed, however, that criteria such as effectiveness, that is the degree to which a stated objective or conditions achieved or maintained and efficiency which refers to the quantity of resource expended in the effort to achieve a stated objective or condition. The criteria basically implies cost minimization for attaining specific degree of goal achievement

Based on the three criteria- efficiency, effectiveness and responsiveness, two interrelated hypothesis have been proposed. The first hypothesis asserts that the knowledge of local needs and responsiveness to changing local conditions are better at local government level than at regional or national level. Further, democratically elected local bodies are in a better position than non- democratic local government institutions to respond to citizen demands. It follows from this hypothesis that as many development and service functions as possible should be turned over to local authorities, particularly where these are democratically elected (Martinussen, 1997: 215). These authorities by dint of their becoming responsive to citizens mitigate local conflicts and tensions.

## **2.8 Greater Efficiency**

Local level government really matters for individuals and their families. According to Prof. Kalin in many countries with centralized systems, however the pursuit of good governance has neglected the local level of the government. The failure of centralized governments to perform properly at the local level affects the entire local population including the poor, women and children. Among the most important reasons to give more authority to lower level of government are: the greater efficiency and accountability of local governments, the positive effect such authority shifts have on local development, the enhancement of democracy and protection of liberty that local governance has on the citizens and the greater ability to protect the rights and values of minority populations etc (Kalin in UNDP: 2001).

One of the various advantages of local governments is the question of legitimacy. When the citizens trust in their officials and are more actively involved in the betterment of their community, their relationship to the state as a whole is also improved. Thus, while the authority of central government may be diminished by strengthening of local government the legitimacy of state as a whole is enhanced. The local government led changes must, therefore, be seen as not only a 'local versus central' government phenomenon but rather as a way to mutually benefit both levels of government and citizens simultaneously. Local governments perform better due to several reasons. A decentralized local government body in comparison to national government is more accessible, more sympathetic and quicker to respond to local needs. The local level programs and services can be more easily adapted to particular local circumstances and needs. This is so because local authorities are obviously more knowledgeable about a local situation than are authorities who are far away from realities at the grassroots level. As a result, the necessary information to plan such programs and services is more readily available and the chances of success are consequently higher. The decision making close to the people is an excellent instrument to prevent governments from abusing their powers. This is so for at least two related reasons. First, it is more difficult to hide corruption among those in authority when the citizens know the officials than in situations where the government is far away and inaccessible. Thus, persons in authority in the local government are generally less likely to have the opportunity to hide their corruption than are the person in authority in central government. Second, it is easier to hold local officials and elected office bearers accountable for their action that is to impose accountability on politician at higher levels of government, as members of local governments are often less protected politically than the corresponding official in the central government. The strong local government helps reduce costs. They remove institutional and legal obstacles to self help and encourage innovative forms of solutions for local problems (Benequiata in PRIA: 2011).

Thus, empowering local governments allows diverse solutions to emerge in response to general problems. Local resources for social and economic development can be more easily mobilized if such projects are decided by and

implemented at local level. By letting the local people determine how a particular program should be designed, enhances the sense of ownership and responsibility of the project. It gives the citizens a personal stake in the program's success. The citizens are more likely to invest their time and resources into furthering the project's goals.

The most anticipated benefits of strengthened local governments, according to especially UNDP quoted in the paper by John Vander Walle are that it deepens democracy by extending representative politics to lower levels, broadens participation in political, economic and social activities, draws on local knowledge and preferences about development, improves efficiency in service provision, relieves top central ministry officials of routine tasks to concentrate on policy, facilitates cooperation between government at different levels, lower level association and NGO, allows greater access to political decision making and more equitable distribution of resources for marginal regions and groups in society, creates a local focus for more effective coordination of all national to local programs, allows local experimentation with more creative, innovative and responsive measures, and creates political stability and national unity by allowing citizens to be involved in local public initiatives.

The closer a community comes to realizing the democratic ideal of self-government, the greater the extent of citizen participation in government, the more the conventional distinction between the government and the governed is dissolved. In such circumstances to categorize democracy simply as a form or method of government is misleading. It is true, of course, that self-government is one answer to the problem of government (Arbalester: 1994).

Accessibility and a readiness to listen are not incompatible with a fundamentally authoritarian structure of power and government. Nor is making a show of consultation and participation, if what is being looked for is essentially a ratification of decision already taken. This tends to become the appearance of democracy without the substance. The substance is the power of the people to make governments and their representatives accede to the popular will and demands. Democracy involves debate and discussion, but these are not enough if

they remain inconclusive and ineffective in determining actual policies. The outcome of such discussions should be popular decision making and popular demands and since in a democracy, it is the people and not the govt. or parliament, who is sovereign. It is the business of govt. to accept and implement the popular will.

## **2.9 Making Voices Heard**

Arthur MacEwan in his highly informative and analytical work titled "Neoliberalism or democracy (1990:202) argues in favour of popular participation in local government institutions because it promotes democracy. People know things, and in some realms of policy, the knowledge provided by popular participation in policy formulation, however, is not simply a matter of knowledge but is also a matter of power. Formal mechanism for popular participation provide a means by which various groups whose interests are affected by a policy can make their voices heard both positively and negatively.

The fundamental government policies cannot be effectively implemented by such an apparatus. Hence, there is a need for divestiture of the centralized state functions. With the existing drive for rapid globalization, the earlier tendency of modernization and homogenization of the society under a centralized system of the state has, in fact, further divided most of the societies into economically and socially hierarchic order. A vast majority of the people have been marginalized and disenfranchised in the process. The stronger local governance can help re-enfranchise local communities so that they can control immediate decisions and reduce their tense and conflict-ridden relationship with the state (Goetz and Gaventa: 2001).

The program implemented by the centralized state structure with an inherited bias towards regulatory functions has invariably been experiencing implementation failures. Local government with priority provision of social mobilization can go a long way toward countervailing such centralized state structures. Human resource development pursued so far mainly to achieve quantitative progress in certain areas (e.g. literacy, infant mortality, life expectancy, employment, status of

women, hospital beds, primary health care facilities, nutrition etc) has not yet been able to make a significant impact on the quality of people's life especially in the rural communities. This calls for empowerment, a qualitative dimension which cannot be ensured by the existing centralized arrangements. Concentration of power, prestige and sources of income generation in the urban sector compels the people to migrate from rural areas to the cities.

Unplanned urbanization has been causing congestion and other kinds of environmental degradation. Decentralized local governance cannot only reduce the flow of the people from rural areas to the cities but also can create an opportunity for better management of the urban problems. Domestic resource mobilization remains a major constraint to development in the Third World countries. A fine balance between revenue generation and delivery of public services can be an acceptable solution to this problem. National government can acquire a better legitimacy if people get better public services through local governments (Rahman in Panday & Aditya (ed.), 1995).

## **2.10 Social Empowerment**

James Manor (World Bank, 1999) has listed the positive effects of strengthened local governance and decentralization and emphasize that it constitutes a genuine attempt at empowerment.

It draws increasing numbers of people and groups into lobbying, bargaining and political participation more generally into active engagement with the formal institutions of state. It changes incentive structures for political participation by giving rural dwellers opportunities to exercise influence over decisions that affect their lives. It has genuine promise in fostering, over time, a more equitable balance of power both between local communities and higher levels of govt. and between more and less prosperous groups within local arenas. It strengthens civil society and integrates pre existing, informal arrangements and process at the local level for managing resources and local affairs into the official political process. It increases participation of people in political systems and enables them to know how much public money is available for development. They, therefore, become more aware of budget constraints. Their interaction with decentralized institutions

yields a realistic understanding of what is and is not possible from the government. It finally contributes towards promoting political stability and reduces the drivers for disputes and conflicts in the country.

Administratively, proximity means better accessibility and therefore enhanced accountability, politically, it means better scope for concretization (Mukherjee: 22).

Local governance is the first necessary step to enable people to realize the notion of self-reliance by removing the existing forms of domination, alienation, inequality, poverty and deprivation whether structural by enhancing the capabilities for self-direction, self-governance and self-fulfillment. In order to attain good governance, it is always important to bring a comprehensive ideas and values of the grassroots institutions to press on the policy priority of the government. Working with local leadership can help identify problems and formulate plans necessary for local development. This means governance has to strive for local capacity building so that development becomes self-sustaining and reliable (Robinson and Friedman in IDS: 2005).

## **2.11 Social Contract**

The traditional political system prefers stability to aspirations, laws rather to politics, decay rather than development. Participation is the heart of the social contract between citizens and the state upon which power and wealth are mediated. In a hierarchically, stratified society barriers to participation spring from the underlying system of monopolization of power and resources.

Wendy S. Ayes in Panday & Aditya (1995) refers to the failure of the top-down approach to promote development and reduce poverty. Disappointment has been particularly high with rural development programs initiated, designed and executed by central government representatives with little or no input from communities highlights the reasons why the centralized approach has not worked well. The reasons are numerous. The central govt. representatives are too far removed from communities to know what local preferences and priorities truly are. Local people feel little sense of ownership of projects and therefore do not sustain them. It empowers underrepresented groups such as local entrepreneurs to

be politically active. It gives communities control over resources to invest in projects they care about-often education, health, rural infrastructure and other growth promoting activities. It creates conditions for competition and bargaining among different groups improving efficiency.

### **2.13 Conclusion**

Devolved local governance involves participation, and participation, in turn, leads to the search for new forms of association or partnerships between or among the local actors. Partnership is the most recent trend in local governance which has started to establish itself as the new deal in rural and local development. This partnership approach recognizes that besides public institutions and their new functions, other local actors- professional or representative organizations, private sector or other NGOs and community based organizations- should be included in decision making processes. Their role should be enhanced in the production of goods and services. Local governance/local government creates institutions and environment for responding to wishes and aspiration of the people and thus helps mitigate conflicts and resolve disputes.

Elements of political power sharing through democratic sub-national or local governance such as federalization, proportional participation of cultural minorities, and lawmaking by negotiation can be helpful in any country that is faced with problems of social disputes and conflict. Democracy and peace, not only depend on adequate political institution. They also need the social development of a political culture. According to Gunther Bachler (2005) governance reform and conflict are closely interrelated. Conflict resolution in this context must first of all deal adequately with dynamic changes of structures also termed process-structures. Conflicts are not to be regarded as isolated elements to be addressed from a narrow managerial approach. Rather they are necessary and integral part of the transformation of the whole range of societal relationships. It is for this reason that the transformation of such process structures is seen as the most appropriate method of state reform.

## CHAPTER - III

### DISPUTE RESOLUTION APPROACHES AND EXPERIENCES

#### 3.1 Concept of Dispute

The word dispute or conflict is used both as a noun, to mean a fight, struggle, collision, or clashing of opposed principles, etc and as an intransitive verb: to come into disagreement, struggle, clash or incompatibility. On the basis of these connotations, conflict can be defined in different ways. It is therefore fruitless to ask for a consensus on the meaning of 'conflict or dispute'.

Conflict may be taken to mean a struggle over values and claims to scarce status, power to injure or eliminate rival. Conflict is thus a comprehensive category. It encompasses a variety of phenomena, from brawls in the bazaar to wars between nations (Jayaram and Saberwal( ed) (2011). However, not all episodes of conflict are equally significant from a social perspective. Socially viewed, conflict doesn't mean random disorder rather it refers to meaningful action in pursuit of goals.

Given the emphasis on the relational nature of conflict, it is sometimes used synonymously with competition. But it is necessary to distinguish between the two. Fink<sup>38</sup> (1968) has listed fourteen more or less discrete pairs of variables which have been used separately and in combination to differentiate competition from conflict. But there appear to be two key criteria, one is that competition is organized in the sense that it has rules and regulations whose observance is supervised, But conflict is not so organized, In fact, conflict may start when a sense of shared 'rules of the game' is missing or begins to be flouted . The other is that conscious reference to the striving of others is not necessary in competition, but is central to conflict (Ibid:2011)

The relational concept of conflict has also to be distinguished from the dialectical concept of contradiction. The dialectical concept is central to Marxism .According to Marx the opposition entailed in contradiction cannot be absorbed by the system, whereas that entailed in conflict can be so absorbed. For example, Marx

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<sup>38</sup> Fink quoted in Social conflict edited by .Jayaram and Saberwal (2011) Oxford University Press

identified the opposition between the forces of production and the relations of production as the prime contradiction of any socio-economic formation, which can only be resolved by the destruction of that formation. On the other hand, the opposition arising from a supervisor-worker conformation can be resolved without destroying the relationship between them. There is a tendency in Marxism to view all significant conflicts as a reflection of the basic contradictions of society and to ignore other conflicts as surviving aberrations of a decadent socioeconomic formation.<sup>39</sup>

We may also consider a set of process concepts such as resistance, protest, rebellion, revolt and revolution in relation to conflict. These processes are associated with relations of degree of dominance. Integral to such relations are questions of power and authority and therefore, also the possibilities of conflict (Jayaram and Saberwal ed(2011)). It is possible to posit a continuum of rising conflict. At one end, those subordinated may accept their situation without question, especially if it has a strong ideological support. Further along the continuum, the subordinated may practice silent, yet determined, everyday resistance. Articulated resistance may be called protest. At the other end of the continuum, the subordinated, rejecting the relationship of dominance, may rise in open rebellion, revolt or revolution

### **3.2 Cause and Content of Conflict**

There can be many causes of conflict, and the content of conflict will vary accordingly. The causes of conflict may be interrelated. Even when it begins in a clear issue, the dispute, once generated, may be transformed by secondary issues. The major causes of conflict and their varying content are : economic, social, political, symbolic, psychological and multiple.

In his seminal analysis socio-economic formation, structure and functioning of the capitalist socio-economic formation, Marx located the prime cause of social conflict in the skewed relations of production (between the employer and the employee) and the resultant unequal distribution of wealth and resources.

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<sup>39</sup> Marx Karl, Engels, Federeich (1975) Collected Works(volume 2)

Conflicts in the work sphere with an economic content are generally subsumed under the term class conflict

The analysis of class conflict in the Maxism tradition has tended to locate the principle springs to human action in the actor's location in the world of material interests (Jayaram and Saberwal ed (2011). Without ignoring such interests, analysts in the Weberian tradition have looked at the actor's fuller context, her or his values and the manner in which he or she perceives and comprehends a situation. These values, and modes of perception and comprehension, have turned out to vary along the several dimensions of stratification. Max Weber has distinguished stratification in terms of wealth, status, and power more closely than with material interests alone. Consequently, sociologists have often discerned a close connection between stratification and conflict.

Intense conflicts can still emerge in open societies when opportunities are effectively available through political and social networks. On the other hand, closed societies may dissipate the potentials for conflict for some period, they may encounter intense conflicts pertaining to the structure of existing relations.

Another reaction to the earlier sociological thinking on conflict came from Dahrendorf (1959)<sup>40</sup>. He argued that structurally significant conflict arises in relations of dominance. Drawing insights from Weber, he argued that even moderately complex societies require that the activity of many persons and groups be coordinated. While every relation of dominance may be seen as carrying the germs of conflict, the relations flowing from the overreaching authority of the state are especially significant. At various levels of polity, the process of decision-making implies authority and therefore it may be prone to conflicts and disputes. The basis of legitimacy of authority, the manipulation of consent for its exercise, the spheres and process of decision making, the effectiveness of the machineries all these are crucial to understanding political and social disputes (Bottomore:1970).

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<sup>40</sup> Quoted in Social Conflict edited by N.Jayaram and Satish Saberwal (2011) Oxford University Press.

Galtung refers to conflict/disputes as some types of incompatibility (Galtung quoted in Kataria: 2007:11). He distinguishes conflict as an undefined, latent condition and its manifestation in terms of attitude and behaviors of actors. In the same vein, disputes are said to be caused due to misinformation or the lack of information and even the way we interpret information. Disputes are also caused due to differences in values and principles. For some people something may be right and must be upheld, whereas for others this may be different. The real or seemingly inequitable distribution of all kinds of resources is also the cause of disputes. The need to save face, power, authority and influence and how they get used- and abused are also the source of disputes. Moreover, disputes and conflicts are rooted in differences in values, norms of behavior, distribution of substantive goods, inequitable power relationships and cultural differences (Lederach:2006).

Dispute is a stage of a social relationship in which conflict between two parties is asserted before a third party. For the disputes to emerge and remedial action to be invoked, an injury or harm must be perceived, identified and named. The injury must be attributed to the fault of another individual or entity. The grievance to the person or entity believed to be responsible for resolution seeking remedy or restitution must be voiced. A claim becomes a dispute when it is rejected and complainant seeks a remedy outside the relationship. Moreover, dispute also indicates patterns of behavior. That is to say, underlined condition for hostility which is called 'root conflict' is equally if not more important than the manifestation of the dispute or the hostile behavior.

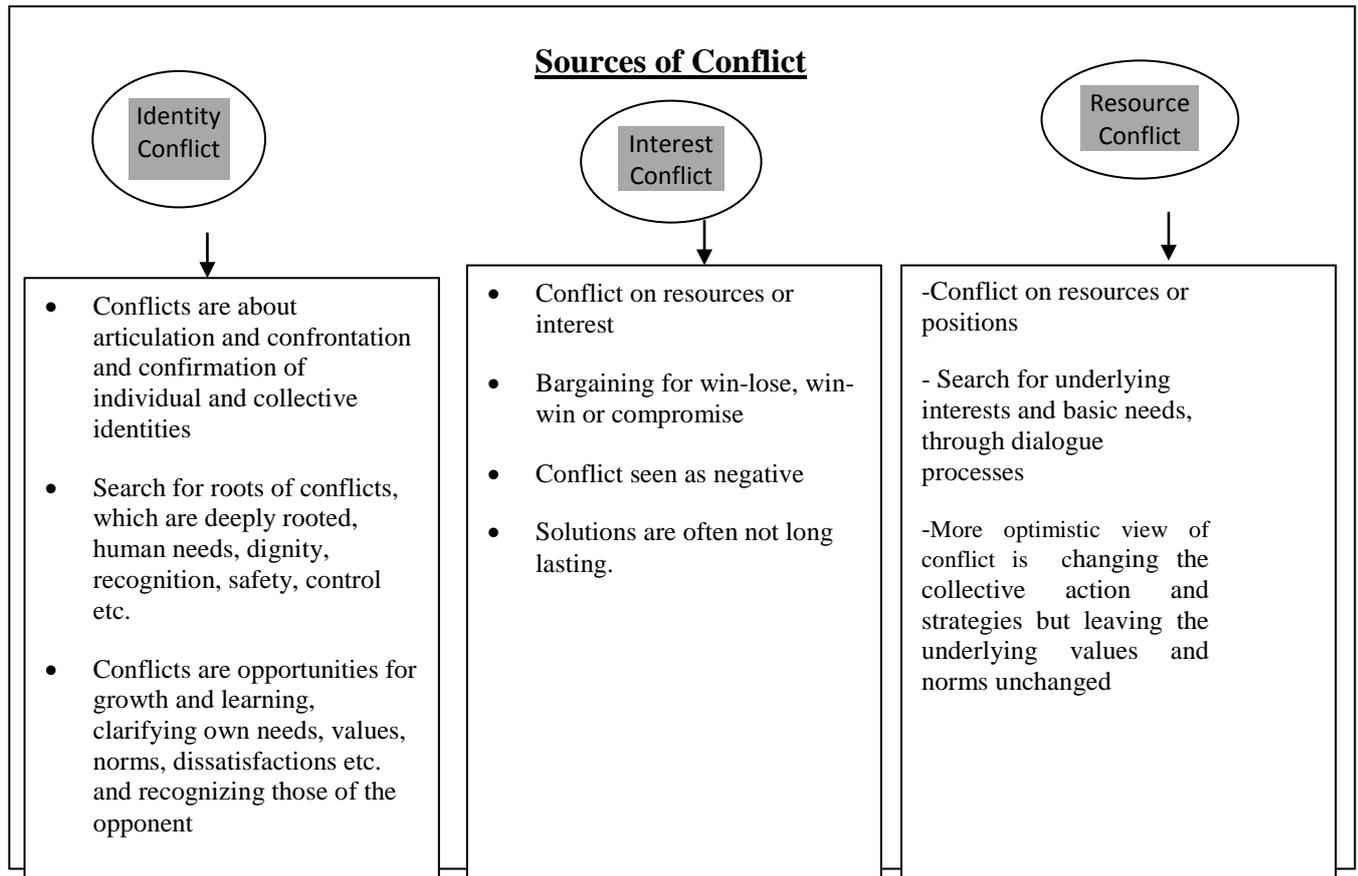
Conflict also stems from a situation of scarcity. Both the parties want the same thing but there is not enough and available for each to have what they want. The situation of scarcity is not only the condition that brings forth conflict. When the interest is intensified to the extent of becoming 'greed' even a situation of 'just enough' would bring forth or breed conflict.

The factors under-mentioned may be the most salient indicators of a country or society's vulnerability to the outbreak of conflict. Not all are 'cause' of conflict, and indeed some of these indicators (such as high infant mortality rates) may be consequences of conflict.

- 1) A history of conflict or dispute which may recur in old or new form.
- 2) Poverty situation is more prone to experience violent conflict.
- 3) Dependence set the stage for competition among different social groups over control of the revenues from such exports.
- 4) Rapid change of existing governance structures or the breakdown of law and order.
- 5) Restricted civil liberties and political rights, resulting into constraints on personal freedoms.
- 6) Militarization of the state and society or situations in which an unusually high percentage of gross national product is spent on defense, security and policing.
- 7) Situations in which one or more ethnic groups systematically control political and or economic power.
- 8) They harbor the potential for spillovers and contagions. High youth unemployment, which creates a reservoir of people who can be, induced fight through economic incentives.

Attitudes and behavior, according to Galtung, are usually assumed to be negative when they are related to conflict. These negative manifestations can take the form of sudden burst of hatred or direct violence. But they can also take institutionalized form of social distance and structural violence. Dispute involves many factors. It may refer to the behavior of different parties, the underlining conditions of conflict or the factors that motivate the actors for conflict (Galtung, Jacobsen and Others (2002). Dispute or conflict situation is one in which two or more social units or parties perceive that they are 'differentially situated. And they are having mutually incompatible goals' in which conflictive attitudes and behaviors foster characterized by discrepancy, disparity, discrimination, denial of rights, exploitation, scarcity, competition etc. A situation of this kind by itself is not conflict, but is potent with conflict chances (Kataria, 2006).

**Figure 3.1**  
**Source of Conflict/disputes**



(Source: Adapted from Berghof Handbook (2004, P.350))

In concrete terms, disputes are caused when men seek to fulfill their needs and interests. Unless the causes of disputes are identified and located, they cannot be addressed and resolved properly. Specifically, the causes of disputes can be categorized materially as follows:

- 1) **Natural resources:** Land, forest, water, minerals, Mountain, river etc
- 2) **Economic resources:** Monetary transaction, trade, occupation, industry etc.
- 3) **Physical assets/infrastructures:** Public building, School, Hospital, temple,
- 4) **Information/messages:** Wrong messages/mis-information, Incomplete or inadequate information, Lack of information, Wrong interpretation of

information, Access to information or denial of information, Doubts on reality, interpretation and importance of information

- 5) **Relationship to each other:** Lack of mutual confidence, understanding and communication, Negative attitude or tendency to misinterpret gestures.
- 6) **Individual desires and needs:** Needs of dignity, self-esteem/respect, Hidden interests/underlying interests/aspirations.
- 7) **Social structures/framework:** Access to resources and issues relating to exercise of rights, Social structures, tradition, local values/norms, Local institutions, rules/by laws.
- 8) **Ideology/values:** Incompatible ideas, principles, religious faiths, tradition and cultures, Challenges to the issues of identity

In his work Management of Social and Natural Resource in conflict in Nepal (2002) Upreti summarizes the potential causes of conflict as follows:

- 1) Opposing interests (or what we think are opposing interests)
- 2) Competition over scarce resources and time
- 3) Ambiguity over responsibility and authority
- 4) Differences in perceptions, work styles, attitudes, communication problems, individual differences
- 5) Increasing interdependence as boundaries between individuals and groups become increasingly blurred
- 6) Community members work in situations with complex and often contradictory incentive systems
- 7) Division of labour which is the basic for any organization causes people and groups to see situations differently and have different goals

- 8) Continuous tension exists between equity (the belief that we should be rewarded relative to our relative contributions) and equality (belief that everyone should receive the same or similar outcomes).
- 9) When strongly held beliefs were in opposition Lack of basic understanding of relationship between different components of social processes: when the social impacts of their activities on society are poorly understood by the involved actions.
- 10) Unwillingness to respond to social, political, cultural, technological, economic and any other changes
- 11) Failure to exchange the information between actors.

Conflicts/disputes have both positive and negative dimensions. Speaking of positive aspects it is agreed that conflicts contribute towards curtailing injustices unjust behaviors/treatment, impact motivation for positive changes. Moreover, conflicts can give room for creative ways to resolve disputes and discover new options, alternative possibilities for change and transformation. Conflicts once resolved can help in improving relationships. The negative sides of conflict are many such as spoiling relationships, destruction of physical, institutional and social assets, loss of resources and human lives etc.

### **3.3 Stages of Dispute Escalation**

A dispute is like the flare of fire. If (disputes/conflicts) are ignored, and no efforts made in time to address them, they gradually escalate and erupt into violence. How do the conflicts gradually escalate into violence has been discussed below?

#### **1) Latent Stage**

This is the first stage of dispute. It is the beginning of a dispute. At this stage, a problem does exist. Problem is confined in the differences of opinion. Communication gap begins to take place. Once in a while minor problems and disagreements are noticed.

## **2) Overt Stage**

This is the second stage of conflict escalation. In this stage, arguments between the parties start to surface. Parties start abusing verbally to each other. They start to comment and criticize on the past behaviors rather than concentrate on the present problem. They start to blame each other and try to become aggressive from time to time.

## **3) Polarization/ Factionalism:**

Polarization and factionalism is the third stage of dispute escalation. At this stage, both the parties think they are right on their positions. One thinks that the other is wrong. Both the parties develop negative attitude to each other. Both parties try to pull more and more people to one's own side for gaining support and make one's own position stronger than others. At this stage normal communication breaks down between the parties.

## **4) Hostile Arguments**

This is the fourth stage of dispute escalation. At this stage, parties become more aggressive and try to fight face to face. They become negative and tougher towards each other. Instead of focusing on existing problems, they start criticizing and blaming to one another.

## **5) Aggressive stage**

At this stage both the parties do engage in trying to harming the opponent. Both the parties ignore the main problem and focus on harming the other side. The behaviors of the parties become highly offensive and destructive.

## **6) Organized polarization**

This is the last stage of dispute escalation. At this stage, parties become more organized, and try to fight in an organized way. Contact and communication between the parties breaks down totally. Trust between the parties diminishes. Blemish and accusations against one another turn nasty. The possibilities of

resolving problems become dim, and there is likelihood of dispute/conflict becoming violent.

The disputes can be prevented or escalation can be arrested if the preventive measures are undertaken in time. The dispute preventive measures include attempts to resolve at the initial stage of dispute, focus on identifying issues that otherwise tend to lead escalation of the disputes, avoid casting blame or hate or aspersion on others, nurture positive and cooperative feeling and encourage to enhance understanding the needs/interests of other (Francis Diana, 2002)

### **3.4 Methods of Dispute Management**

Disputes are managed and tackled through recourse to a variety of ways and methods. Conflicts often require a specific combination of strategies for settlement and resolution. The key methods of dispute management are discussed below:

- a) **Conflict Settlement:** Conflict settlement refers to strategies for achieving solutions and/ or putting an end to "direct violence". But this doesn't necessarily address the underlying causes of dispute". Conflict settlement thus does not necessarily deal with the structural conditions of society that give rise to and accentuate disputes and conflicts. Its immediate purpose is to prevent the escalation of dispute and mitigate its destructive nature. Disputing Parties involved in a conflict can reach a settlement by achieving mutually satisfying results.
- b) **Conflict Transformation:** Conflict transformation is a deliberative process. It aims to devise mutually shared rules of the game and conduct activities within that framework. It is a problem solving approach. But the solution may not be the final end-product. Every solution requires "a new synthesis of knowledge or techniques and a change in theoretical structure" (Lederach: 1999). This process contributes to effective restoration of peace and preservation of peace. Every post-violence transition addresses the question of reconciliation. It aims moving from divided past to a shared future. It refers to outcome, process and structure-oriented long term peace building

efforts which aim to truly overcome revealed forms of direct, cultural and structural violence". It refers to an improvement in the nature of a conflict due to de-escalation, the altered nature of relationships between the parties involved and reconciliation between rival parties of the disputes. This means conflict transformation seeks an attitudinal change of those forces locked into disputes to result into a new productive relationship. It doesn't aim to eliminate conflict but tries to utilize it for non-violent change (Lederach, 2003). Dispute transformation requires an understanding of conflict. Due to the changing nature of political and social reality, conflict and its components are constantly transforming. This transformation process can bring resolution to intractable conflicts of values and interests. Transformation can occur in four areas, such as actor transformation, process transformation, issue transformation, role transformation. Actor transformation means changes within the parties or the emergence of new players. Process transformation means changes in the way the disputes are negotiated. Issue transformation means finding common ground, which might require fundamental political changes within the parties. Role transformation means changes in norms of interactions and engagement. Finally, this leads structural transformation which is the most significant way of changing the nature of the conflict.

- c) **Conflict Resolution:** In recent years, there have been a number of strategies evolved under the concept of dispute resolution to arrest the disputes from being escalated into violent confrontations. According to the strategy of the dispute resolution, the third party is invited as neutral facilitator to examine the conflict constellation and the process of its regulation. It seeks in building trusting relationship designed for longer-term co-operation. The third party needs to be regulated by ground rules and norms. One of the prime tasks of this strategy is to create willingness and ability for direct communication between the parties to the conflict. The focus is not on 'mapping' the particular material issue. It puts emphasis on ascertaining the real concerns of the parties' interests behind their respective positions.

Conflict resolution thus refers to all process-oriented activities.. It involves a deeper process than conflict management or settlement.

### 3.5 Strategies of Dispute Resolution

Different strategies can be applied in resolution of disputes. Some of the principal strategies are as follows:

**a) Competition:** If the relationship is not given due to importance and one's own interests and demands are bargained for, then competition and domination starts. When a person becomes self-centered and seeks to use force to meet demands, he or she becomes uncooperative to others. He or she firmly stands to fulfill one's own interests and needs. Its result becomes "Win – Lose".

**b) Avoidance:** Sometimes a person does not want to discuss the issues involved in disputes. He or she tries to shy away from conflict. It means he or she doesn't give due importance to others needs and interests. It is often preferred not to be involved in conflict unnecessarily. So, people seek to linger or avoid conflict. People do not want to discuss the problem. In this situation both the parties will lose as the real initiative to resolve dispute is not commenced.

**c) Accommodation:** If people ignore their own needs and interests, and provide more importance to relationships, people become more lenient and accommodating towards the others. People try to accommodate themselves to other's needs and demands. They easily accept the proposal of the others. They ignore their interests and needs to meet the demand of others. This will result into the situation of "lose-win"

**d) Compromise:** If people try to relate the interests and needs with relation, then they become ready to compromise. This is based on the principle that 'I sacrifice a little and you sacrifice a little". They do not expect much. But they try hard in bargaining. In the bargaining process, sometimes they become very rigid in one's own position but sometimes they also become cooperative too. In this strategy, both the parties lose something and gain something. This is also 'win – lose' situation.

**e) Collaboration:** If they give importance and priority to their own interests by appreciating the needs and concerns of the others as well, then they try to move towards the strategy of collaboration. Both the parties shall win if this strategy is properly followed to reach an agreement. In this strategy of collaboration, both the parties become committed to work together to craft the legitimate options and solve the problem.

Sometimes people avoid conflict/dispute. Often times people accommodate others and reconcile to and compromise with others. Depending on situation and temperament, they react either aggressively or with restraint to the context of disputes and conflict.

### **3.6 Dispute Resolution Mechanism**

The state establishes various legal, judicial and administrative institutions where people bring their disputes for resolution. Several dispute handling institutions exist in the society. However, some societies may be said to be unitary or less plural in character than the others. The unitary legal system or less plural system could either be found in two contexts. Some nation states have only an official justice system. In these states unitary legal system is said to be responsible for issuing laws and promulgating orders. There is possibility of unitary legal system in the extremely traditional societies too. In these societies customs of society is considered as the only source of law. The nation states, with official justice systems, claim or at least have the possibility of having a unitary legal system. But, they may be legally plural in practice. Similarly, even traditional societies do not have unitary system of rules. It was perhaps, this type of legal pluralism of the traditional societies which led some to assert that the traditional societies do not possess any law (Kalannu: 2002).

### **3.7 Legal Pluralism**

In most of the post-colonial third world societies, national states have both the traditional and the formal systems of justice. They have subsystems often known as legal dualism or pluralism. Legal pluralism has been defined in as the existence

different legal mechanism applied to identical cases. L. Pospisil, a renowned legal anthropologist, advanced the idea of hierarchically arranged legal levels. This means that customary legal systems were in various ways and to various extents affected by the law of the states often the former considered a little lower in hierarchy and order (Pradhan et. al. (ed.), 2005)

Some subgroups living in a society may have their own legal system. They may be different in some respects from those of the other groups. The principles incorporated in the legal decisions of the authority of subgroups constitute the legal system unique and applicable to them.

Legal pluralism allows the possibility for parties involved in dispute in the process of disputing, to select one institution instead of others for the settlement of the dispute. People think one institution to be more beneficial than others. Formal institution that are legally authorized to hear a case, are not always successful in resolving disputes. Their decision regarding settlement of a dispute may end the dispute for them. But the disputing parties may feel differently about the decision. The same dispute may be fought in another informal association and forum.

The relationship between the law and the social circumstances needs to be ascertained to see reason behind the formulation of the law and its rules. Human societies have evolved from hunting to grazing to agriculture and eventually to commerce and industry, while striving for survival. Also, social order evolved, from communecracy to sole proprietorship, slavery and feudalism and from there onward to capitalism and socialism. In this continual process, consequently, answering the query ‘what is law?’ becomes a matter of relative perception that is highly influenced by time and place, among other factors (Jehani and Uprety, 2010).

### **3.7.1 Social Field**

Between the body polity of the state and the individual, there exist various smaller organized social fields. An individual belongs to these social fields. These social fields have their own common rules and means of coercing or enforcing

compliance. The semi-autonomous social field is suitable for defining areas of enquiries in the complex societies. The semi-autonomous social field is defined and its boundaries identified not by its organization (it may be a corporate group, it may not) but by process how it generate rules to coerce or induce compliance to them. In addition, corporate groups themselves may constitute a semi-autonomous social field. Many such fields may articulate with each other in such a way as to form complex, chains, rather the way social network of individuals when attached to each other (Mian Zaffar, 2004). The legal pluralism is also characterized by the horizontal dimensions. The individuals do not only obey the rules of the state but also show their allegiance to sources like the traditions and customs of his group or tribe.

### **3.7.2 Adversarial System**

The formal judicial institutions are plagued by several problems including the docket congestion; as a result<sup>41</sup> the worldwide movement to resolve disputes through resort to Alternative Dispute resolution mechanism is attracting considerable support. All countries following the common law system have faced the problem of delay and excessive expenses in the disposal of civil cases as also the apathy of judges and lawyers. Developed countries like the USA, Australia and Canada have witnessed, a few decades back huge backlog of cases, excessive legal costs and expenses resulting into litigants' misery and impoverishment. What they found was that the adversarial system prevalent in common law countries was no longer adequate to address the growing legal problems of the modern day litigation. The adversarial system creates two mutually hostile and competitive

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<sup>41</sup> When a civil case is instituted in a court of competent jurisdiction, the scenario usually is that long time is taken to serve the process. The case takes several years to reach a settlement date and on the date of positive hearing half a dozen or more ready cases are fixed for hearing, resulting in the hearing of none. In the mean time years roll by, presiding judge of a single case is transferred a number of times, witnesses of a single case may be heard by more than one presiding judge, arguments are listened to may be by another presiding judge and judgment may be delivered by a presiding judge who had had no connection with the case ever before. Our legal system has thus been rendered uncaring, non accountable and formalistic. It delivers formal justice and it is oblivious of the sufferings and woos of litigants, of their waste of money, time and energy and of their engagement in unproductive activities for decades. When they win a case the result is much more worsening than winning it. When they lose a case they lose not only the subject matter of the dispute but also a good part of their fortune. See key note paper titled In introducing ADR in Bangladesh by Justice Mustafa Kamal (former chief of Bangladesh ) presented in workshop on Alternative Dispute Resolution : In quest of a new dimension in civil justice delivery system in Bangladesh held in Dhaka 31 October 2002)

parties to litigation. This system does not generate a climate of consensus, compromise and cooperation. As litigation progresses, it generates conflict after conflict. At the end of litigation one party emerges as the victor and other party is put to the position of vanquished. Adversarial litigation, does not end in harmony. It creates more bitterness between the parties that manifests itself in more litigation between them or even their successors.

It is therefore that the alternative dispute resolution mechanism has grown popular as these offer all possibilities for amicable resolution of disputes. The Alternative Dispute resolution process is qualitatively distinct from the judicial process. It is a process where disputes are settled with the assistance of an impartial third person of the disputing parties' one's own choice. In this process, the impartial person is familiar with the nature of the dispute and the context in which such disputes arise. The dispute resolution proceedings are informal and devoid of procedural technicalities (Bhattarai: 2006). The process is conducted, by and large, in the manner agreed by the parties, where the dispute is resolved expeditiously, and with less expense and costs. It is designed to address broader concerns of justice, which in turn, is one of the seminal pillars of 'good governance'. This movement of access to justice is considered as the very important manifestation of a new approach to both political and legal interdisciplinary scholarship and reform in different parts of the world. It has become especially stronger in the Europe and the United States since the 1960s. The idea of a welfare state led to make a call for changes in national legal systems to enhance 'access to justice' especially for disadvantaged and subjugated groups of people (Mustafa Kamal, 2004).

### **3.8 Challenges to Formalistic Approach**

At a theoretical level, the access to justice through local institutions challenged the formalistic state approach to justice. The formalist approach identified law with the 'system of legal norms' without taking into consideration the 'real-world components like subjects, institutions, processes and more generally, their societal context. The alternative dispute resolution mechanism emphasizes the need to go beyond this limited conception of law. It operates in practice according to the needs and imperatives of class, gender and ethnicity. The movement represents a

move towards a more realistic and complex vision of human society. It emphasizes the need to contextualize law within a particular social setting (Ramos Rojo: 2002). Un-disputably, the people's material circumstances and contexts influence and decide their experience of justice. There is a strong correlation between material circumstances like ability to participate in development process and effective enjoyment of the rule of law. In the absence of the former, the rule of law becomes at least in practice, if not in terms of pure theory, a fraudulent concept. The classic example of this was the then Apartheid South African system in which the rule of law was promoted but the at the same time used to preserve and strengthen the structures which are directly responsible for the denial of the rights of the majority of the population which plays no part either in the framing of law in the choice of legal structures (ICJ Report, 1986). The access to justice at the local level provides possible solutions to existing economic, organizational and procedural difficulties in order to make justice more responsive to all citizens, in particular the poor.

### **3.9 Effective Access to Justice**

The access to justice at the local level emphasizes the fact that new alternative-or alternatives that are informed and morphed by informal systems that people have developed through their social interactions-must be put in place to guarantee effective access to justice for all. They should provide real 'alternatives' to the ordinary courts and complex litigation procedures. This growing concern to find effective alternatives to the formal judicial system has provided the progressive support for the consensus oriented alternatives like mediation, conciliation and arbitration as means of dispute settlement.

Alternative Dispute Resolution processes can offer numerous advantages over both formal litigation. In contrast to formal litigation, ADR procedures may lead resolutions that are: faster, less expensive more creative and better tailored to all parties underlying interests. ADR can ensure that the parties have access to information. It can also improve the quality of justice by helping the parties obtain a fair understanding of their case. It may provide an opportunity for client to communicate their views directly and informally. It helps parties get to the core of

the case and identify the issues in dispute. It enhances the parties understanding of the relevant law and evidence. Moreover, it let that parties know theirthe strengths and weakness of their positions and agree to exchange key information directly for finding solution to the problems.

### **3.10 Theories of ADRM Traditions**

District traditions of alternative dispute resolutions have been generally found developed. Each tradition contains a distinct vision of contribution and orientation to popular justice. The first two traditions, the reformist and the socialist, promote institutions of alternative justice or popular justice closely connected to and controlled by state law. The second two, the communitarian and the anarchic traditions are more closely connected to and controlled by indigenous community ordering and system (Merry in Merry and Milner (eds):1995).

#### **3.10.1 Reformist Tradition**

The reformist tradition is developed within liberal democratic and capitalist economics. This endeavors to increases the efficiency of the formal legal system by streamlining and increasing its accessibility. The intent is to improve its capacity to solve a wide range of problems. In this tradition, popular justice endeavors to make the system work better, not to change its principles. It does not critique the fundamental organization of the legal order or seek to alter relationships of power. Reformist approach to ADRM is constructed as the opposite to an inefficient structure of law. State law is criticized for its inaccessibility plagued by a variety of problems. The reformist tradition promises to change society by increasing participation in modern legal institutions and by revising its procedures (Merry and Milner (eds):1995:40).

Alternative Dispute Resolution or popular justice in the reformist tradition promises to develop appropriate procedures to handle the diverse problems, the legal system faces. This tradition creates specialized forums tailored to particular kinds of problems. Some prominent advocates of the alternative dispute resolution describe this approach, "letting the forum fit the fuss". Certain problems are viewed as appropriate to certain forums. The reformist popular justice introduces new processes tailored to particular problems.

### 3.10.2 Socialist Tradition

The socialist tradition springs from Marxist-Leninist theories. It aims at empowering the masses to deal with rule breaking or violation and to educate them in the forms of a new socialist society. The initial inspiration for popular tribunals' was Lenin's philosophy, expressed in 1919 that workers should participate in the management of all state and communal affairs, including the administration of justice. Socialist popular justice promises to transform relations of power from the domination of the bourgeoisie to that of the working class and proletariat. It seeks to bring new groups into the position of determining justice and expressing the will of the masses.

Soviet Comrade's Courts, Yugoslav Labor Courts and East German conflicts Kommissionen are examples of socialist popular justice in the European countries. The socialist tradition of popular justice has also spread to many Third World countries, especially Cuba, Chile and China. In these countries, popular justice was harnessed to the task of reshaping society according to a new revolutionary vision. After a fairly legalistic period during the 1950s, China dismantled the early courts in favor of a more radical, popularity based form of justice centered in neighborhood and factory mediation. The Maoist conception of popular justice combines the Leninist view of revolutionary popular justice with that of traditional Chinese mediation. This produces a distinct version of popular justice in which local forums serve to reeducate the masses in the new social order, eliminate "feudal" thinking and strengthen the masses. The Jan Adalat created by the Maoists during the decade long insurgency in Nepal and 'Praja Court' set up by the Maoists in Odisha state of India are its nearest examples <sup>42</sup>. The communists see the legal system of liberal democracies and non-Marxist totalitarian or autocratic states as instruments of class rule and believe that the main functions of the courts in these systems are to legitimize and buttress the domination of the capitalist class (Encyclopedia of Social science quoted in Johari: 1979).

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<sup>42</sup> The Praja Court set up by Communist Party of India (Maoist) in Odisha abducted and tried politician and member of the Legislative Assembly in Odisha, Hakmi, However, he was freed after negotiation with the state government.

### **3.10.3 Communitarian Tradition**

The communitarian tradition of alternative dispute resolution or popular justice is much closer to indigenous ordering than to state law. Popular justice in this tradition seeks to operate entirely outside the state and its institutions. Communitarian popular justice is said to be part of a withdrawal from secular society. It is an attempt allegedly to create a new religious or cultural social order. Communitarian popular justice operates typically in small communities for maintaining social order and moral code.

### **3.10.4 Anarchic Tradition**

Anarchic popular justice takes a kind of form of mass uprisings the ad hoc groups assume the power to judge and punish outside the preview of state legal system. It is often described as the actions of the masses against the enemy. This form of popular justice is often called as "known as wildcat popular justice". It is called anarchic because it threatens the established social hierarchy and state authority. It is completely separate from state law in its authority. But it is in a way, closer to indigenous ordering.

Michael Foucault defines popular justice as an action carried out by the masses against their immediate enemy in response to some specific injury. He argues that popular justice occurs between the masses and their enemies. When the masses decide to punish or reeducate their enemies, they do not rely on an abstract idea of justice, but only on their own experience and on the injuries they have suffered.

### **3.11 ADR Devices and Tools**

ADR devices-whether judicial or not-that have emerged as alternatives to the ordinary or traditional types of procedure. Since the 1970s there have been a growing number of initiatives to institutionalize 'alternatives' to litigation across the development and developing nations.

The alternative dispute resolution functions through the use of mechanism or process namely negotiation, conciliation/arbitration medi-arbitration and so on. They are discussed shortly as follows:

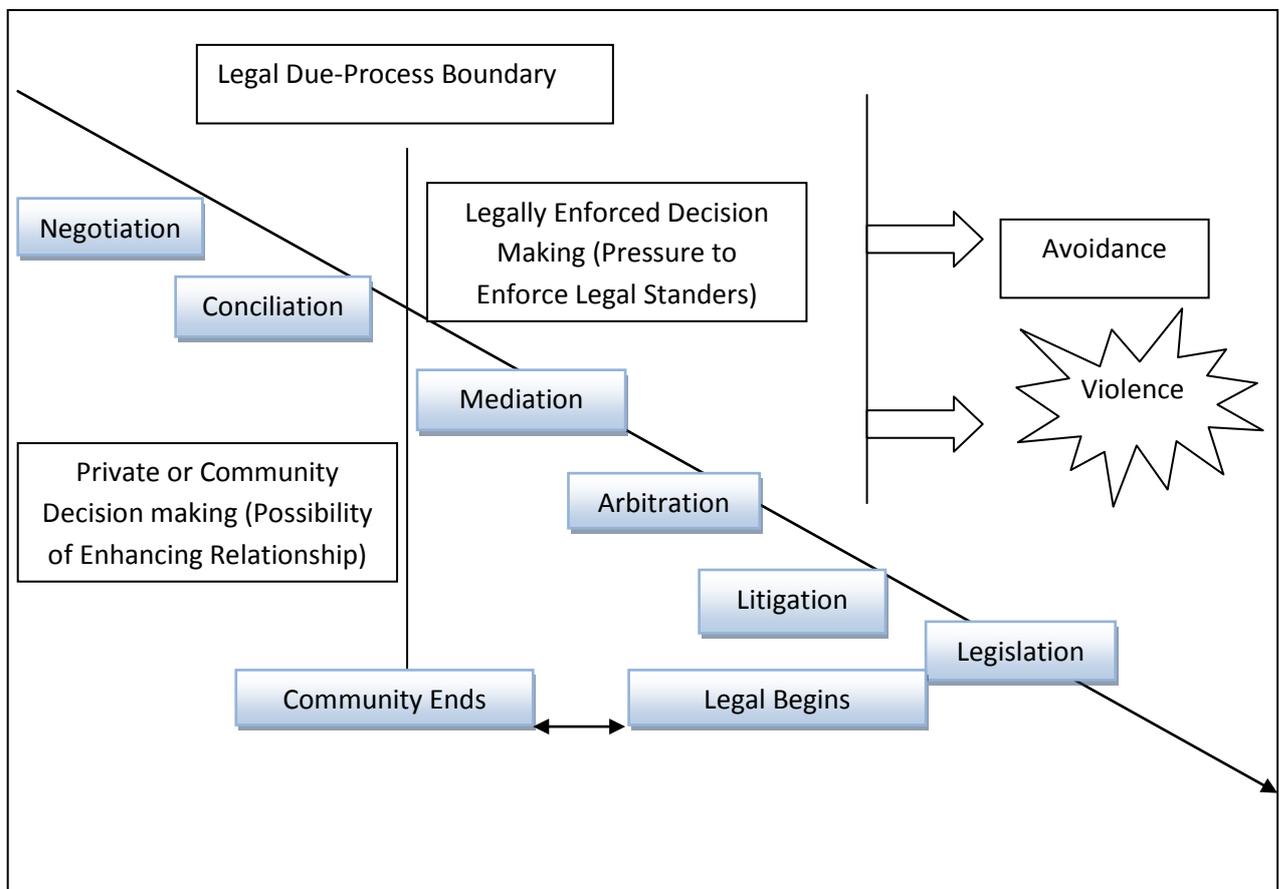
### 3.12 Negotiation

Negotiation is a bilateral process in which agreements may be reached between the parties on their own, without involving others (Parkinson: 1997).

It is a nonbinding procedure involving direct interaction of the disputing parties. In it, a party approaches the other with the offer of a negotiated settlement based on an objective assessment of each other's position.

Objectivity and willingness to arrive at a negotiated settlement on the part of both the parties are essential characteristics of negotiation.<sup>43</sup>

**Figure 3.2**  
**Approaches to Handling Disputes**



(Source: This Diagram is taken from Manual for Community Mediators by Ronald S. Kraybill and Others: 19)

<sup>43</sup> According to Fisher and Ury (1992) dealing not with abstract representations of the 'other side' but with human beings. They have emotions, deeply held values and different backgrounds and view points and they are un-predicable.

### **3.13 Mediation/conciliation<sup>44</sup>**

Mediation and conciliation are interchangeable expressions. In both the mechanism and procedures, an impartial third party assists the disputants for a successful completion of the proceedings in arriving at mutually agreed settlement of disputes. Both are the non-binding procedures completely dependent upon the willingness and determination of the disputing parties (LGoDEF: 1993).

#### **3.13.1 Arbitration**

Contrary to mediation, arbitration is a binding procedure where dispute is submitted for an award or decision<sup>45</sup>. The arbitral panel or tribunal may consist of sole or an odd number of arbitrators. The tribunal gives its decision in the form of an award that finally settles the dispute. The award is binding upon the disputing parties concerned. Arbitrators are judges chosen by the parties to decide the matter submitted to them, finally and without appeal.

#### **3.13.2 Medi-arbitration**

It is a procedure where the parties agree to settle their disputes first by attempting conciliation within a specified time. If the parties fail to conciliate and arrive at agreement, the dispute will be decided through an arbitral award (Rao and Sheffield: 2002).

The above list of alternative dispute resolution tools is by no mean exhaustive or final. The disputing parties are often advised to adopt a combination of the elements of more than one ADR procedures. New hybrid techniques are evolved or developed to suit the nature of dispute or convenience of the parties. Among the hybrid processes early neutral evaluation, mini-trial, rent a judge, neutral listener agreement, final offer arbitration are a few.

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<sup>44</sup> The word mediation comes from the Latin medium, medium meaning in the middle. It is a process in which the disputing parties are assisted by an impartial third party, the mediator or mediators to explore the options available to them and to consider ways of reaching agreement (Lisa Parkinson :1977).

<sup>45</sup> Arbitration may be seen as a form of ADR but it is closer to adjudication because of binding decision arrived at through the process.

However, as illustrated in figure 3.1 negotiation, conciliation and mediation provide unchecked avenues for the disputing parties to have own decide and control the process of dispute resolution by getting involved and in the process of dispute resolution. The participation of disputants discusses and terms for settlement are key to gain satisfaction through the process.

### **3.13.3 ADRM Practices and Experiences**

As mentioned earlier, the development of Alternative dispute resolution mechanism has proliferated in recent years in both developed and the developing world. Modern laws provide for binding and non-binding ADR mechanism. An arbitrator, unlike a mediator has power to decide the terms of settlement (Parkinson: 1997).

### **3.13.4 Lok Adalats in India**

In India, the origin of ADR could be traced to the origin of political institutions. One of the chief characteristics of these traditional institutions had been that they were the recognized system of dispute settlement. And the procedure followed by the traditional institutions was that of arbitration and conciliation depending on the nature of dispute. The formal system of administration of justice introduced during the British colian rule supplanted the old system of dispensing justice. But the traditional social institutions Kulas, Srenis and Pugas continued to play their role of dispute. Panchayats have replaced them in nomenclatures today but in practice they follow the same procedures. In India, largely due to the development of trade and commerce, arbitration has been recognized as an effective alternative to formal judicial system.

The Lok Adalats are an innovative form of voluntary efforts for amicable settlement of disputes between the parties in India (Agrawal:2009)<sup>46</sup>. These are not akin to regularly constituted law courts. They are meant to supplement and not to supplant the existing adjudicatory machinery. The Lok Adalats are organized by

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<sup>46</sup> The paper titled Institutionalizing traditional mediation practices focusing Lok Adalat was presented by Prof. Nomita Agrawal at the National Conference institutionalize Mediation in Nepal, 16-17, 2009 held in Kathmandu

the State legal aid and advice boards at different places India. They have become popular as supplementary forum for resolution of disputes among the rural poor. The Lok Adalats are constituted of integrity persons. They are ordinarily drawn from retired judges, public spirited lawyers and persons, law teachers selected on the basis of their reputation in the community, professional integrity and aptitude for social work. The procedure followed in the Lok Adalat is informal, flexible and non-controversial. Some degree of uniformity has been maintained in order to ensure minimum standards of fairness and justice. The spirit behind Lok Adalat is said to be live and let live, give and take. There is neither a victor nor a vanquish. ADR drive in India is professionalized, damaging to narrow rights based remedies as opposed to creative problem solving.

### **3.13.5 Shalish System in Bangladesh**

A strong tradition of alternative dispute resolution exists in Bangladesh. Traditionally, it is called as Shalish, Darbar, Bothak and Madhysthata. The origin of traditional ADR mechanism is often claimed to be prehistoric. Traditional ADR is mostly informal and voluntary- conducted by relatives, village elite and so on. A number of laws provide for conciliation and mediation in Bangladesh. The code of civil procedure 1908 (order XXIII, Rule 3) provides for compromise and its recent amendment provides for mediation. The code criminal procedure 1898 (section 345) provides for conciliation on certain offences. The Arbitration Act 1940 as amended in 2001 provides for both arbitration and mediation. The family courts ordinance, 1985 provides for mediation of family disputes. The village courts ordinance, 1976 provides for mediation. Muslims Family Law Ordinance 1961 provides for arbitration of family dispute relating to divorce, polygamy, dower, maintenance etc. Labor laws and Money loan Court Act, 2003 also have some provision for mediation. Statutory ADR is often backed by legal provision. Traditional ADR (Shalish) is mostly male dominated, filled with religious biases, often arbitrary and prone to denying legal requirements. Traditional Shalish emphasize heavily on the existing social structuring and this unequal power

structuring creates impediment to ensure justice for the poor (Jahan: 2009)<sup>47</sup>. Union Parishad members conducting mediation or arbitration are hardly trained on applicable laws and mediation/arbitrating techniques as well as documentation, monitoring etc. Mediation conducted by judges of Family Court also has some constraints as well<sup>48</sup>.

### **3.13.6 Community Relation Services in US**

In the United States of America (USA), arbitration and other forms of ADR are not claimed to be new mechanism. Their use and application predate both the Declaration of Independence and the US constitution. For example, according to Dana H. Freyer arbitral tribunals were established as early as 1768 in New York and shortly thereafter in other cities primarily to settle disputes in the clothing, printing and other industries (Rao and Sheffield (ed) 2001)

The modern day ADR movement in the US received a fillip with the promulgation of the Civil rights act in 1964 followed by the creation of Community Relation Services (CRS) which utilized mediation and negotiation to assist in preventing violence and resolving community wide racial and ethnic disputes. The CRS helped to resolve numerous disputes involving schools, police, prisons and other government entities throughout the 1960s. One of the significant developments of alternative dispute resolution movements in the United States has been the spawning of various hybrid dispute resolution processes each of which blends in some way the particular features of some of the basic processes. However, mediation has been undoubtedly the most powerful and preferred tool in resolving a variety of cases ranging from tort cases to consumer cases. Private mediation in divorce cases is common in the US. The neighborhood justice centers are active in resolving minor disputes involving consumer, family, and landlord-tenant and so on. The multi-door court house approach is one way of institutionalizing a multifaceted approach to dispute resolution. In US a big number of law firms have set up ADR departments in which one or more lawyers

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<sup>47</sup> The paper titled Access to Justice for the poor in Bangladesh, Problems and Prospects was presented by Prof. Nomita Agrawal at the National Conference institutionalize Mediation in Nepal, 16-17, 2009 held in Kathmandu

<sup>48</sup> Union Parishads are the lowest tier of the local government in Bangladesh

develop sufficient expertise to serve as a resource to clients as well as to other members of the firm. The goal of the boards was to use participation in local forums to build neighborhood from, increase local self-governance and empower local people. Neighborhood mediation panels were entirely separate from state law. The boards no referrals from criminal justice system, they imposed no penalties enforced by state law, and they received no financial support from the govt. Those with problems are labeled first party and second party has a way of decriminalizing the process and emphasizing the mutuality of problems (Merry and Milner (ed):1995).

### **3.13.7 Mediation in UK**

Alternative Dispute resolution mechanism is now an accepted tool of reform in dispute management in the United Kingdom. ADR has developed relatively quickly in the UK partly because of problems presented by the unwieldy and expensive process of civil litigation and lawyer dominated arbitration. Most leading lawyers and many other professionals are already members of ADR bodies. They have taken training or have otherwise acquainted themselves with ADR process. A variety of public bodies, institutes and charities have started ADR schemes for their own sectors. The increase in the divorce rate and the widespread concern to bring a non-adversarial approach to disputes between separating and divorcing couples led to a growing number of voluntary family mediation services being set up in many parts of the United Kingdom (Parkinson: 1997).<sup>49</sup>

### **3.13.8 ADR Services in Australia**

Similarly, ADR has quietly slipped into the mainstream of legal practice in Australia. The benefits of the ADR in Australia have been assessed as providing, ensuring user satisfaction. Moreover, other benefits of ADR compliance to the terms of the settlement, saving time and costs, reducing backlogs in court and removing sources of the problems. The Australian experience has shown that the expanded use of informal methods would result in resolutions more suited to the

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<sup>49</sup> The San Francisco community board, was a prominent and vocal proponent of ADR in the US along the communitarian tradition. It drew on that part of communitarian tradition, not grounded on the religious or ethnic communities

parties needs, reduce reliance on laws and lawyers, rebirth of local communities, maintenance of long term relationship and relief for non parties affected by conflict such as the children of divorcing couples. Moreover, in the last few years Hong Kong has emerged as one of the major international dispute resolution centre in Pacific Asia. The Hong Kong legal system is based on English law and courts.

### **3.13.9 Mediation Boards in Sri Lanka**

Sri Lanka has adopted system for mediation to resolve disputes at the community. The mediation boards in Lanka assist in resolving disputes and maintain peace and harmony in the society. Disputes in factories and educational institutions are also resolved through recourse to mediation.

In implementing the mediation Board (Amendment) Act of 2011, , much emphasis is placed on the training of mediators and of mediator training. The Act provides for the legal framework necessary for institutionalizing mediation boards which are empowered to resolve, by the process of mediation, all disputes referred to it by disputing parties as well as referred by the courts.

The mediation boards provide an affordable, quick and accessible means for citizen to resolve disputes that might otherwise go without redress. Currently, there are 302 mediation boards in Sri Lanka, just over 7000 trained mediators handling an average of 12000 disputes every year. According to a recent evaluation of the program conducted on the working of mediation boards in Sri Lanka by The Asia Foundation, 90% of people who had used a mediation service said that they were satisfied with mediation process and 83% indicated that is latest legislative instrument to provide for mediation and conciliation in Sri Lanka.<sup>50</sup>

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<sup>50</sup> [www.LK/docs](http://www.LK/docs) Retrieved on May, 10  
[www.adrisrilanka.org/resource](http://www.adrisrilanka.org/resource)

### 3.13.10 Barangaya Justice System in the Philippines

Barangaya Justice System (BJS)<sup>51</sup> has been very popular as mechanism for dispute resolution at the local level. Barangayas are the lowest unit of local govt. The recognition of the BJS was especially motivated by the increasing concern on the heavy court docket congestions. It is based on the premise that the resolution of disputes through cheaper and quicker processes improves access to justice for those who cannot make use of the formal system. Each Barangaya creates a mechanism for helping the resolution of justice.

The BJS has a universal target sector. For this reason, any individual who pay the appropriate filing fee can participate in the system and bring any dispute before the Lupon chairman of the Barangay. Once the complaint is received, both the disputing parties-the respondent(s) and complainant (s) – are called for sitting of the mediation to resolve their conflicting interests. If the mediation fails, a date is set for the constitution of the conciliation panel that will hear both parties and their witnesses, simplify issues, and explore all possibilities for amicable settlement. Arbitration is also recognized as an ADR procedure under the BJS, and parties can, at any stage of the proceedings, agreed in writing that they shall abide by the arbitration award as well. When a settlement has been voluntarily agreed upon by the parties before the Barangay mediator or the three-member conciliation panel, the law gives it "the force and effect of a judgment of the court". This means that the prevailing party may have the settlement enforced by a writ of execution to be issued upon application to the municipal or city court. The above discussion shows that alternative dispute resolution movement has received recognition and gained momentum worldwide<sup>52</sup>. This has been well accepted and attempts have been made to promote and institutionalize alternative or appropriate dispute resolution mechanism in Nepal.

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<sup>51</sup> Since the Barangays are the smallest political unit in the Philippines, they are primarily based on Kinship ties. They are said to be total intuitions where residents are forced to live in daily contact (see Ramos Rojas) the Barangaya Justice System in the Philippine. It is an effective Alternative to Improve access to Justice for disadvantages people:2002)

<sup>52</sup> ADR can be viewed as a tool box of dispute resolution methods that complements rather than offers real and concede alternative to court system. ADR should in fact be defined examined and explained as a set of instruments towards various ends, most often but not always dispute settlement.

## CHAPTER - IV

### DISPUTE RESOLUTION PLURALISM IN NEPAL

#### 4.1 Introduction

In Nepal, as elsewhere in the democratic nations, courts are mandated to adjudicate disputes and deliver as what is known as the integrative and fair justice (Purna Nyaya) according to law. The Interim constitution 2006 A.D. which was promulgated following the abolition of century long monarchy in Nepal mandates the courts to administer justice conforming to universally recognized values and principles of human dignity, recognition and freedom<sup>53</sup>. This articulation in the Interim constitution is in line with the preamble to the Universal Declaration of Human Rights (UDHR) 1948 (UN Charter 1948). The UDHR accords recognition to the inherent dignity and equality of all members of the human family. It is the foundation of freedom, justice and peace in the world.

However, there is yawning gap between the ideals and reality. The judiciary and judicial system have become increasingly inaccessible and antithetical to the populace in general and the interests of the poor and the marginalized groups in particular (Sangraula: 2009). Lawsuits do often turn as bitter experiences of their life time for the vast majority of men and women go to courts praying for resolution of disputes in order to get justice (Bhattarai :2001)<sup>54</sup>. The Report of the Committee formed to recommend measures for Strengthening Judiciary not very long back (High level Committee Report 2000AD) highlights the weaknesses and impediments faced by the judicial institutions while discharging their responsibility for the adjudication of cases. The report spell out structural/organizational/institutional problems plaguing the judiciary and recommend measures towards promoting, among others, the adoption and use of mechanisms for alternative dispute resolution (ADR) such as conciliation and mediation in lieu of adversarial adjudication. Similarly, the CA thematic committee on Judiciary recommends for examining suitability and appropriateness

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<sup>53</sup> Interim Constitution 2007 AD provides for three tier court system Supreme Court, Appellate court and District court. Supreme Court is the apex court vested with right of judicial review and interpretation of the constitution.

<sup>54</sup> Interface between formal and informal justice system and its implications for accessible justice- a paper presented by Ram Chandra Bhattarai at a seminar titled Community Mediation and Accessible Justice. International Experiences and National Prospecting Kathmandu, 4-6, 2001.

of the mechanism towards adopting alternative dispute resolution mechanism to reduce burden piled upon the courts due to trivial and minor disputes

The social groups and communities in Nepal use not only courts but a variety of other formal and informal mechanism to resolve disputes. The percentage of people who use formal state mechanism like judicial and quasi judicial institutions is relatively small compared against those who use community based local mechanism. According to survey findings, around fifteen percent people use state mechanism for resolving disputes while the remaining rely on the community based options for the purpose.<sup>55</sup>

**Figure 4.1**

**Dispute Resolution Pluralism in Nepal at a Glance**

|                             | <b>Institutions / Forums/ Sites</b>   | <b>Process</b>  |
|-----------------------------|---|---|
| <b>Formal Institution</b>   | <ul style="list-style-type: none"> <li>▪ Judicial Institutions (Courts/Tribunal)</li> </ul>   | Adjudication (Adversarial process)  |
|                             | <ul style="list-style-type: none"> <li>▪ Quasi- judicial institutions (Administrative agencies, police authorities, Chief district officers, District Forest Officers (DFOs etc exercising judicial power)</li> </ul> | Summary decision  |
|                             | <ul style="list-style-type: none"> <li>▪ Local bodies (VDCs, MCs) according to LSGA provisions</li> </ul>   | Arbitration/Medi-Arbitration  |
| <b>Informal Institution</b> | <ul style="list-style-type: none"> <li>▪ Mobilized/ organized community based institutions/ networks (FECOFUN, Cooperatives, Water user/networks and other Networks)</li> </ul>                                       | Medi- arbitration/mediation   |
|                             | <ul style="list-style-type: none"> <li>▪ Interests based community mediation panels (according to mediation law)</li> </ul>   | Mediation and concilitation   |
|                             | <ul style="list-style-type: none"> <li>▪ Traditional Justice System (Various indigenous communities)</li> </ul>   | Arbitration/settlement (Riti-Thiti)   |
|                             | <ul style="list-style-type: none"> <li>▪ People’s tribunals (Jana Adalata) (exta - state structures created by the Maoists but cease to exist)<sup>56</sup></li> </ul>  | <ul style="list-style-type: none"> <li>• Summary award</li> <li>• “Reeducation”</li> <li>• Compensatory labour</li> </ul> |

(Source: Author's own construct)

<sup>55</sup> Constituent Assembly Thematic Committee Report, 2010

<sup>56</sup> The peoples Tribunals (Jana Adalat) ceased to exist following the end of the decade long armed conflict in Nepal.

## 4.2 Dispute Management Practices

Needless to reiterate, Nepal is a multicultural and multilingual society. Approximately, 110 indigenous groups inhabit in Nepal. Over 60 groups have their own languages, customs and self-governing customary practices. Moreover, they have their own conflict closure (settlement) practices evolved over long time. The indigenous groups such as the Magars, the Gurungs and the Thakalis and other communities in Nepal use their traditional mechanism to settle disputes. Similarly, the Pancheti, Manyajana etc. are some of the informal local institutions popular among the rural communities in Terai districts in settling disputes and keeping community ordering (Chhetri and Kattel: 2005).

Mukhiya Pratha is a traditional disputes settlement system practiced by the Thakalis mainly in the Mustang district of Nepal. The Mukhiyas select a Mir-Mukhiya. Mukhayas settle different types of disputes in the villages whereas the Mir-Mukhiya resolves the disputes that are more complex. Selection of Mukhiyas is done on a rotation basis. At times, Mukhiyas impose heavy penalties and punishment. The Tamudhin (translated as the House of the Gurungs) of the Gurungs and Magar Samaj are active dispute settlement mechanism that are found in the western hilly regions of Nepal. They are also registered as the non-state social organizations (Indigenous people's organization). Their main objective is, among others, to promote and protect the culture, distinct traditions of the communities concerned. These organizations are also involved in settling disputes in their own communities. The Kisan's court is one of the traditional dispute settlement structures in the Kisan communities of Jhapa district. The Kisan's court handles disputes related to physical assaults, domestic violence, etc. Villagers participate during the settlement process but woman are normally not invited to such meetings (Chhetri and Kattel: 2002).

The Baara Basne system is practiced among the Maauth community of Banke district. The Maauths have chowdharis as local leaders who settle local disputes in their communities. The Chowdharis arrange the meetings called Baara Basne (a meeting of 12 people) to settle disputes. Tamadhudin (Gurung- Ghar previously led by Mukhiya), Magar Samaj (Magar Society), and Thakali Samaj continue

settle kinship and family frictions and provide an environment within which the level of trust and sense of community bind the society in a durable peace. In the eastern part of Nepal Limbus developed Chumlung (an assembly to discuss and decide local issues), Muslims in various parts their trust Mullahs (Religious Guru) and several communities in Terai have evolved Chaudhary (Community leader) to mediate community disputes. Reconciliation, rather than competition and individualism, characterizes the dispute closure process among the indigenous societies.

Needless to say, Mukhiya system in lower Mustang and Raja system (principality) in upper Mustang are old institutional arrangements which have provided local governance and resolved local conflict on the basis of customary laws, standards and values. These characteristics are the product of long transactions-negotiation and interactions of families and communities. The level of trust among the Thakalis is so high that only a few cases go the court for resolution. And their overriding concern is the preservation of the society's dominant institutional practices. In the far western region of Nepal, Mukhiyas are influential in mediating all sorts of local conflicts. There is also provision for constituting a group called Bhaladmi (gentleman) who define a code to build trust and communication between the disputants, utilize historical precedents, seek common ground, make proposals for compromise, initiate public deliberation over common problems, and seek joint solution of conflicts. One can still find that agreements locally reached have some kind of gender, class and caste bias and therefore, young and educated people often contest such a resolution. Violent conflict has also disempowered the traditional authorities. Creating a long-term peace process now depends on the extent to which societies incorporate the norms, values and institution of democracy, adopt the traditional models of conflict resolution to the new demands and start constructive change through the mediation of interests and values of the various communities (Dahal and Bhatta, 2010).

Panchakahari, Purohit (priest), local school teachers, Mukhiya (village Headman), Maijan and Muyajan (Community leaders in Terai), Dharmadhikar (Officer responsible for enforcing regulation), local leaders and elderly people have used

the customary laws to ensure that village conflict does not spiral into uncontrolled violence and disrupt civic life. The locally trusted elderly people enjoy an eminent status and authority granted by customs. When mediating, they divided the contested issues into negotiable and non-negotiable ones, mediate on the negotiable issues and enlist the cooperation of both sides the hard core issues. Their decisions are based on a high level of social consensus and legitimacy, rather than evidence and majority vote. Historically, this is because the poor and illiterate don not always have documentation (keeping evidence) and cannot afford the cost of going to the court. One can cite the example of Guthis among the urbanite Newars of Kathmandu valley for the mediation of community conflict. Such informal techniques blend the local customs, provided a sense of justice and evoke the religious feelings to avoid repetition of crime –no less powerful than the official formal procedures (Dahal and Bhatta, 2010).

The elderly of a society Birtawals (traditional landlords exempted from tax), teachers Jankris (faith healers), Purohits (priest), and Mukhiya (local chieftains) are the principal local actors involved in mediating a wide range of local conflicts. Seen as neutral third parties, their process of mediation involves setting procedural terms and conditions, defining these steps, discovering the opponents true interests and positions and settling disputes on a common ground. The third party mediation comes outside the conflict system and mediators can overcome their feeling but hold sufficient stake in society. The criteria to resolve conflicts are not factual evidence and documents, but are hiding through religious paths in the name of God and touching holy sacred books or symbols. But, these principles are applicable only to particular faith groups, and are sustained by social and cultural beliefs. The ethnic communities (Gurung, Magar, Tamang, Tharus and Koiris) strongly prefer negotiators from their own group/leaders to the high level of trust among them. The mediation method, however, doesn't address the questions of social justice and promise of social transformation.

In Manang district near Jomsom, (Panch Gaule) indigenous communities utilize their own democratic way to mediate conflict. The community is divided into two groups, with different clans. The village assembly, which meets every two years,

elects the senior and junior village headmen. They take oath in the name of God and promise that they will serve the community for the next two years as volunteers also with other groups to resolve the basic problems. The village assembly also has the power to punish the headman after listening to his defense. But, the weakness of this village but do not have rights to participate in the decision making (Bhattachan, 2002:2)<sup>57</sup>

By and large, the traditional approaches are mostly used to resolve minor conflicts in the communities and villages. The major modus operandi of local conflict resolution is to collect witnesses, see the past character of the disputants, pool knowledge through public discussion, uphold the socially sanctioned local norms and interpret the legal and religious treatises. This technique provides a learning opportunity for all involved in the process. The ordinary people in villages still trust the advice of elders in resolving local conflicts for two obvious reasons. First, their advices are politically neutral, are socially sensitive and second, they are less expensive in natural and provide instant decision. Several conflict management activities thus carried out at the local level based on values and customs plays a crucial role in binding people together for collective action and holding accountable to their actions.

In the villages of the eastern Terai district, various communities still utilize these procedures and make decisions as inclusive as possible by involving their relatives, friends and neighbors. But the leaders of the Mushar community rely more on Maijan and engage elderly persons from their own community than police, elected authorities and courts to mediate their conflicts. They feel that the latter categories of people are partisan, lack interest in Dharma (Moral and spiritual duty) and costly because they need to be offered tea, food, money, or service. The penalty they charge from the guilty party is also high. They also believe that the elders decide on a win-win basis while others use personal discretion, coercion or a majority formula, opportunities due to in security not due to the lack of money. Linking the local connectors of society to the national level initiative is expected to strengthen the participatory process of decision-making

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<sup>57</sup> Quoted in Building Bridges of Peace in Nepal by Dev Raj Dahal and C.D. Bhatta FES (2010)

and mark a shift from elite based conflict resolution to a mass based one (Dahal and Bhatta 2010).

While settling disputes by the traditional norms, the communities tend to keep collective interests uppermost. The unity and cohesion, norm and traditions of the group weigh heavily to determine the outcome of the settlement. They place group interests above the individual choices, preferences and interests.

Some conflict settlement traditions among the indigenous groups are time tested and have lasting values. Taking time to talk and sort out the issues on consensual basis relational harmony and interdependence are some of the best values of the indigenous dispute management practices. A guilty party could be expected or forced to repent, apologize, ask for forgiveness and pay compensation. Throughout the entire dispute settlement process, the main responsibility of the (community elders) has been to guide the talks toward an agreement that would reflect the consensus of the entire group of relatives, neighbors, friends and acquaintances. The concern with relationship was indeed one of the core elements of the traditional methods. Jannie Malan, an expert on traditional and local conflict resolution, who has done extensive research on traditional methods of dispute resolution and conflict transformation in Africa, writes” Traditional ways of dealing with conflict can indeed encourage and inspire us. In spite of the definite shortcomings they might have had, they have functioned in conflict prevention, peace building, and reconciliation through the ages. They have enabled our ancestors to address conflict causing problems, reach consensual solutions and rebuilding relationship. Today, there are indeed situations in which we can still use these commonsensical methods either in their traditional form or with some modifications. There are many opportunities to multiply the potential effectiveness of contemporary methods by infusing time proven traditional insights and skills into them” (IDEA, 2006).

As outlined above, the traditional justice system has several positive attributes. It has been found appropriate and relevant in the modern complex society today. However, the system entails some pitfalls. Some of the practices in traditional system contradict the fundamental values of justice, fairness and judiciousness.

The system may is often dominated by traditional elite groups. A widespread lack of awareness on human rights and social justice issues has the possibility of prejudicing the principle of equity, equal treatment and fairness. Favoritism may often be an influencing factor in the settlement process. Self-determination of the disputing parties (individual) – the fundamental value of the mediation and conciliation may be jeopardized. In some communities, emphasis is also placed on seniority, rank, title, age etc. It is assumed that the powerful and seniors know better and they are solicited to arbitrate on dispute. And the decision making is often left to the elders and seniors in the communities concerned. The conflict is not viewed as direct interpersonal problem. The stakes and interests of the disputants concerned are not taken into consideration. It is not understood in the form of exchange and settling of scores between those who have been directly involved. It is perceived as disruption of community ties or relationships. Individual needs and interests have the likelihood of being sacrificed at the altar of the community interests. As a result, some disputes may not be resolved fairly and conclusively to the satisfaction of the parties concerned. In many societies tensions subsist between individual needs and collective interests. It is seen that the change in the realm of state capped by initiatives and measures to promote human rights, individual civil and political rights may not correspond with the changes in the realm of society to bring about mitigation of oppression, discrimination and inequity

### **4.3 Religious Approaches to Dispute Resolution**

The use of religious customs and ideals is an age old practice in conflict settlement in Nepal. Religion and languages are two major components for the growth of human society and civilization. The importance of informal conflict resolution practices is reflected by the particular need of a community people to exist and share the same space with other. Festivals such as Dashain, Tihar, Chhath, Jud Shital, Phagu Purnima, Ghewa, New Year etc and discourses on classical treatises Bhagbad and Puran and Yajna (religious rites) provide a public occasion to reconcile relations by visiting each other's houses, exchanging gifts and good wishes, receiving blessings from the elders an assuming local responsibility. This

helps to improve communication, renew relationship and build up confidence and mitigate animosities (Dahal and Bhatta 2010).

#### **4.4 Business Approach to Dispute Resolution**

The National Business Initiative (NBI) – an initiative of business community in Nepal for peace was regularly organizing political dialogues putting pressures on the political parties for non-violent resolution of conflict and ending of the protracted transition. Local chambers have undertaken initiatives to bring local leaders, women, socially excluded groups and other business organizations together for dialogue to sort out conflictual and divisive issues. Moreover, community associations, cooperatives, business service groups and financial institutions are also active to contribute to peace through dialogue, social inclusion, employment generation and income opportunities. Linking the local connectors of society to the national level initiative is expected to strengthen the participatory process of decision-making and mark a shift from elite based conflict resolution to a mass based one (Dahal and Bhatta 2010).

#### **4.5 Dispute Resolution in Retrospect**

The historical records document that the disputes have been settled in the communities with the help of elder and respected persons during the Kiranta and Lichhavi period of Nepal. Long before, the state institutions including formal judicial agencies were established and set up to adjudicate on disputes between persons, such disputes were peacefully and amicably decided by the intervention of Kulas (family or clan assemblies), Srenis (guilds of men following the same occupation), Parishads (assemblies of learned men and such other local bodies (Rao in Rao and Sheffield, 2001).

The earliest known history of Nepal is that of Kirats. Historians claim that there were 29 kings in this dynasty. The first King of the Kirat of dynasty was Yalamber. And the last one was Gasti who was defeated by the Lichhavis. The Kirat rule is said to have laid the foundation of local government system in Nepal. The Kirat administrative system was said to be largely based on the principle of local autonomy. For the convenience of administrative purpose, the Kirats had

divided their territory into various districts known as Thums (Vaidhya and Manandhar: 1985).

Each village had Subba and an upa-subba to look after village welfare. The headman used to be elected by the villagers on the basis of his capacity to defend the village in face of the attack of the enemy. The main responsibility of the headman was to look after all the village affairs. Besides, he was also responsible for marriage registration while his deputy would be the witness to it. Dispensing justice and settling disputes were the most important duties of the village headman.

The Lichhavi period, that followed the Kirats, is known as the golden period in the documented history of Nepal. The Lichhavis had tremendous respect for the people and their institutions that ruled the society. Certain institutions during the Lichhavis functioned as local government and civil society institutions. There was a linkage between the local institutions and the central government. This was looked after and supervised by a person of high ranking level, and he was nominated by the king. The Lichhavi period had a strong system of village administration (Dahal and Bhatta: 2010).

Each village had a local government institution called Panchali. It was the smallest unit of administration. The members of Panchali were called Panchaliks. The communities were empowered to manage the affairs of their respective villages. Some of the cases of judicial nature involving the local populace were under the jurisdiction of Panchali. The government officials and soldiers were not allowed to enter the village except for delivering the messages or decrees ordained by the king. The panchalis were empowered to collect taxes in order to maintain irrigation canals, religious monuments, and funeral grounds.

The Licchavi period was followed by the rule of the Malla Kings in Nepal. Jayasthiti Malla, who came to power in 1380, laid strong foundations of Malla dynasty. He ruled for 43 years and introduced several reforms in the social and economic spheres. The defeat of Malla Kingdoms by Prithivi Narayan Shah was the result of their internal feuding and rivalry. During the entire Malla period, the kings were absolutely powerful. They ruled with the help of their ministers and powerful officials. There was no concept of decentralization or local government

system as such. However, the Malla Kings could not ignore the traditional institutions in the villages that existed from the time of the Lichhavis. They continued the system of Panchalis in the name of Panchayats. At the grassroots level, pancha pramana and Pancha Samuchhaya functioned as village heads as in the Panchalis of the Lichhavi period and the present village development committees (Tripathi: 2001).

#### **4.6 Rana Period**

The Rana rule started in Nepal in 1846 following the ascendancy of Jung Bahadur as the absolutist prime minister of the country. The Ranas tightened their grip on the rule of the country through usurpation and centralization of authority. But when they felt some challenges and threats to rule through the centralized monolithic grip, they had started to loosening their hold through different mechanism and apparatuses created to administer the country at the local level.

However, the Rana regime (1846-1950) allowed the primacy of local custom over national Muluki Ain (Civil Code) for the settlement of local conflicts. The application of the principles of subsidiarity often played a role in helping people get instant justice. Although it was a bottom up model, the social code based on caste system was discriminatory toward Dalits, women and poor people's participation. Therefore, the methods of conflict resolution were coercive rather than collaborative due to imbalance in the negotiating strength of these groups. Large inequalities in status, education skill and wealth made it extremely difficult for the weaker sections of society to ensure influence in any decision (Dahal and Bhatta : 2010)

##### **a) Village Level Mechanism at Dang-Deukhuri District**

The Rana ruler had issued a decree on 1983 BS to create village level mechanisms at Dang- Deukhuri to help assist the local people to resolve their minor interpersonal disputes, among others. As it was called Manyajana Kachahari, the village court (Kachahari) consisted of the local notables and the respectable commanding the respect of the local people. The procedure was very simple. Reconciliation was the major objective. Penalties and punishment were totally prohibited. The rationale of creating village level mechanism (Panchayat) at the

local level, as spelt out in the promulgation, had been to mitigate problems and hassles faced by the people as going to court for settlement of minor disputes would cost dearly on their livelihood and occupation. The tasks, besides the dispute settlement, which fell within the jurisdiction of the village courts, were to maintain order and keep villages defended from the robbery, encourage people for land reclamation and cultivation and make arrangement for the repair and maintenance of pynes and irrigation canals etc.

#### **b) Village Court**

The Ranas had promulgated the Rules and Regulations and in 1993 BS they constituted Panchayat (Village Court) in two villages of Bhaktapur, six villages of Lalitpur and in different villages of eastern and western Nepal. The Panchayats consisted of the chief and other members chosen by the people. They were mandated to help resolve disputes through discussion and negotiation between the disputing parties. In the discussion held for settlement of disputes not only the chosen Panchas but local notables, elders and parties to the disputes could be invited to participate. The Panchayats had helped to resolve local disputes successfully since no complaints had been heard from the people against the Panchas. There are no allegations that they acted contrary to the norms and rules laid down. Moreover, the regulations stated that there had been demands coming from the Mofussils (rural peripheries) to constitute Panchayats, The chief administrators in the district (Bada Hakim) can create them at their own discretion. And in the Panchayats thus constituted, the Jimmidar and Talukdar (intermediaries authorized to collect land rent) would perform as head panchas while other panchas would be chosen by the subjects (Raiti Duniya). In 2000 BS, Panchayati Ko Niyamawali (Panchayati regulations) was promulgated had encouraged Panchas to bring settlement of the disputes among the disputing parties.

As a follow up to complement to the regulations, a new supplementary rule was promulgated in 2003 B.S. The new rule provided for constitution of Panchayat consisting of eight members- the chief nominated by the government and other seven members chosen by the people. The rule authorized the Panchayat to resolve the disputes involving amount up to one hundred rupees. The Panchayat was

authorized to impose and raise fine up to twenty five rupees. The Panchayat was given additional tasks to protect people from disturbance, theft and robbery, promote education, agriculture and other appropriate vocations and occupations etc. The rule was said to remain into effect for two years only.

**c) Village Panchayat Act 2006 B.S**

The Village Panchayat Act promulgated in 2006 B.S. had been the first legal instrument to create and set up the Panchayats in the country. It was not limited to remain in effect in the designated parts but intended to be applicable throughout the territories of the country. The Act was issued, as its Preamble mentioned, following the positive assessment and feedback received from the people on the performance of Panchayats and Manyajan Kacharhi set up time and again in the past.

The Act provides for the constitution of the Village Assembly (Gaon Sabha) and Village panchayat (Gaon Panchayat) through election. All the residents-male and female- of the Villages having completed the twenty one years of age and met other moral and social qualifications were entitled to be members of the Village assembly. The Act had separated Assembly and Panchayat. The village assembly was headed by chairman and vice chairman whereas Village Panchayat was headed by the chief (Pradhan pancha) and Upapradhan Pancha (deputy chief). The act entrusted multiple functions to Village Panchayats including the functions relating to dispute resolution and laid down relevant procedures and mechanism for the same. However, a separate law was issued to define the functions appertained to dispute resolution at the local level. Panchayati Adalat Ain 2006 B.S. (Panchayati Court Act) refers to the Village Panchayat Act 2006 B.S. and mentions that the law has been issued in accordance with Article 8 of the Act.

The Act intended to create institutions at the local level that could entertain cases and deliver judgment in adherence to the judicial rules and procedures. Article 2 of the Act mentioned that the Panchayati Adalat should follow the rules and procedures stipulated in the Muluki Ain as and when necessary. The Act sought the Panchayats to further and enhance conciliation among the disputing parties.

And in case no reconciliation and settlement was reached, the Panchayati Adalat was mandated to decide the cases. The Act furnished an elaborate procedure, frameworks and guidelines to be adhered to while deciding the cases keeping and maintaining the records of the same. However, as the Act was promulgated on the eve of the downfall of the Rana regime, it was not implemented.

#### **4.7 Post 1950 Period**

The Rana Regime collapsed in 1950 under the weight of the popular revolt. A new era of democracy was ushered in the country. However, the democratic development process was not smooth as political instability followed. The instability was engendered and marked by feuds and bickering among the parties. In fact, the governments were formed one after the other eluding stability and political endurance. The frequent change of the governments and ministers hindered in building policies and institutions to further and strengthen democratic practices and processes both at the center and local level. However, the Village Panchayat Act 2013 B.S. was promulgated with a view to strengthen” the foundation of local self governance (Sthaniya Swayatta Sasan)”. The Act elaborated an array of development functions for Village Panchayats but it fell short of specifying the functions relating to dispute resolution at the local level. But earlier a law relating to municipality was promulgated in 2009 B.S that had laid down functions roles and responsibilities of the institution for the town. But due to political instability and lack of policy coherence, the law failed to come into operation. The Constitution of the Kingdom of Nepal 1959 was promulgated in Nepal with a view to establish and strengthen multiparty democracy in the country in line with cabinet form of government long established and evolved in the UK. Multiparty election was held leading to the formation of democratic government. But the elected parliament was dissolved, and the partyless Panchayat polity was introduced in the country in 1960 A.D.

## **4.8 Partyless Panchayat Era (1960-1990)**

### **4.8.1 Formation of Elected Village Panchayats (Gaon Panchayat)**

Late King Mahendra introduced a new Constitution in 1962, which was the fourth constitution in the history of Nepal. The constitution vested sovereign power in the King and enshrined that the King was the source of power. It was also known as the Panchayati constitution because it created four tier Panchayat entities from village vertically up to the national level. The Rastriya Panchayat (National Panchayat) functioned as the national legislature while village Panchayat was conceptually designed as the pyramid of the partyless panchayat polity. The partyless Panchayat polity was practiced and experimented in Nepal for thirty years and created a number of vital social, political and economic infrastructures in the country.

The Village Panchayat act was promulgated in 2018 BS, and it provided an elaborate structures, roles and functions to village Panchayats. Section 41 of the Act granted rights relating to resolution of disputes to village Panchayats. However, the exercise of this right was embargoed till the notice to permit for the exercise of the right was gazetted by the government. The Act delegated the authority to the government to determine the timing and modality for authorizing the exercise of right on village Panchayats. The government was competent to decide whether it was expedient to confer the right of dispute resolution on the entire village Panchayats throughout the country or the select few in one part of the country. The government used this authority to defer the lifting of embargo on the right of village Panchayats to resolve disputes at the local level for twenty years. It was only during 2037 BS that the government gazetted notice to mandate all the Village Panchayats in the country to entertain applications and resolve disputes. However, the right may be granted to Village Panchayats to resolve all or some of the disputes listed in section 41 of the act. The disputes falling under the jurisdiction of the Village Panchayats as envisaged in the law included the: disputes relating to encroachment on the road or passage, to arable land encroachment, or wages determination, unpaid or uncompensated for labour,

non-payment of wages, trespass into houses and encroachment into premises, drinking water sources, grazing field/ pastures and fuel wood collection, killing of she-animals (except the cow slaughter), counterfeit weights and measures etc.

The Village Panchayats had to adhere to the procedures followed by the district court to hear and decide the disputes of the abovementioned categories.

#### **4.8.2 Village Justice Committee**

The Village Justice Committee was composed of three members headed by chief (Pradhan Pancha) or the deputy chief (Upa pradhan pancha) of the village Panchayat concerned. According to the Act, the members of the Village Panchayat who are named for the Justice committee should be so selected as to ensure that he or she represent the wards wherefrom the disputants come. This should be ensured especially when the committee members sit for disputes settlement. Likewise, while constituting the Justice committee, care needs to be taken to ensure that disputing parties are in no way related as kith and kin to the village Justice Committee members to warrant that there is no clash of interest and that, they act as impartial and neutral facilitator without any bias or favor. The emphasis of the law seemed to encourage and assist the disputing parties to resolve the cases amicably through discussion and negotiation. The committee was mandated to assist the parties to come into discussion, negotiate and reconcile their differences and resolve the disputes even with regard to the cases fell beyond the jurisdiction of the Village Panchayat. If the disputes were successfully mediated and resolved, the disputing parties should be asked to go to the nearest court where the deed of settlement along with relevant documents is forwarded. The court checks with the parties to confirm that the dispute had been resolved to their mutual satisfaction. However, in the case of the disputes falling within the jurisdiction of the Village Panchayat no revision and authentication of the district court was required. The parties to the disputes cannot repudiate the decision of the committee because it was considered as valid as the decision of the district court. In case, the parties to the disputes failed to arrive at the settlement, the committee could deliver its decision on the basis of the majority vote. The dispute had to be resolved within one month from the date of the registration of the case.

## **4.9 Post 1990 Period**

The partyless Panchayat polity was overthrown in 1990 following the massive upsurge of the people against the erstwhile regime. There was an intense anger and distrust against the terminology “Panchayat” as it carried connotation of the anti-democratic polity. So the proponents of the change of 1990 deleted the references to the Panchayat in the relevant laws and legislation. However, it was more in the form than in the content because no real democratic innovation and changeover was contemplated. The Constitution of the Kingdom of Nepal enacted in 1990, despite all the democratic provisions and credentials fell short of incorporating the local government as the part and embodiment of the constitution.

The Village Panchayat Act, the Nagar Panchayat Act and the Zilla Panchayat Act were replaced by Village Development Committee act, Municipality Act and the District development Committee act in 1991.

The Village Development Committee Act constituted a break from the previous laws. The law had made significant and consequential change in the functional frame of local bodies especially the VDC in regard to the settlement of community based disputes at the local level. From conceptual perspectives too, it was a big shift as the VDC, according to this act, was supposed to perform as a conciliation forum, not as an adjudication or arbitration forum. And the village level settlement reached at the VDC provided to be was valid and non appealable.

### **4.9.1 Contemporary Arrangement at the Local Bodies**

Nepal has been a centralized unitary state for centuries. But it is being reorganized and restructured currently into a federation<sup>58</sup>. Currently, the national government system consists of three tiers-central, district and village. And the local government system consists of two tiers that include district, village for rural areas and municipality for the town or urban areas. The bottom tier for the local government consists of rural local bodies (VDCs) and the urban local bodies

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<sup>58</sup> Though the demand for restructuring Nepal into a federation had been raised long time ago especially by the political groups in Terai, this was accepted after the Madhesh movement launched in 2007 AD

(Municipality). The next tier is district level. (VDCs) are 3915 in number covering the rural peripheries of the country whereas the municipalities are fifty eight in numbers. Criteria are also defined to elevate municipality into sub-metropolis and metropolis. The District Development Committees (DDCs) are seventy five in number. The thematic committees of the constituent assembly have suggested the three tier structure of the government under the new federal arrangement-federal government, provincial government and the local government. However, the conceptual and operational design of the local government under the new federal system is yet to be ascertained.

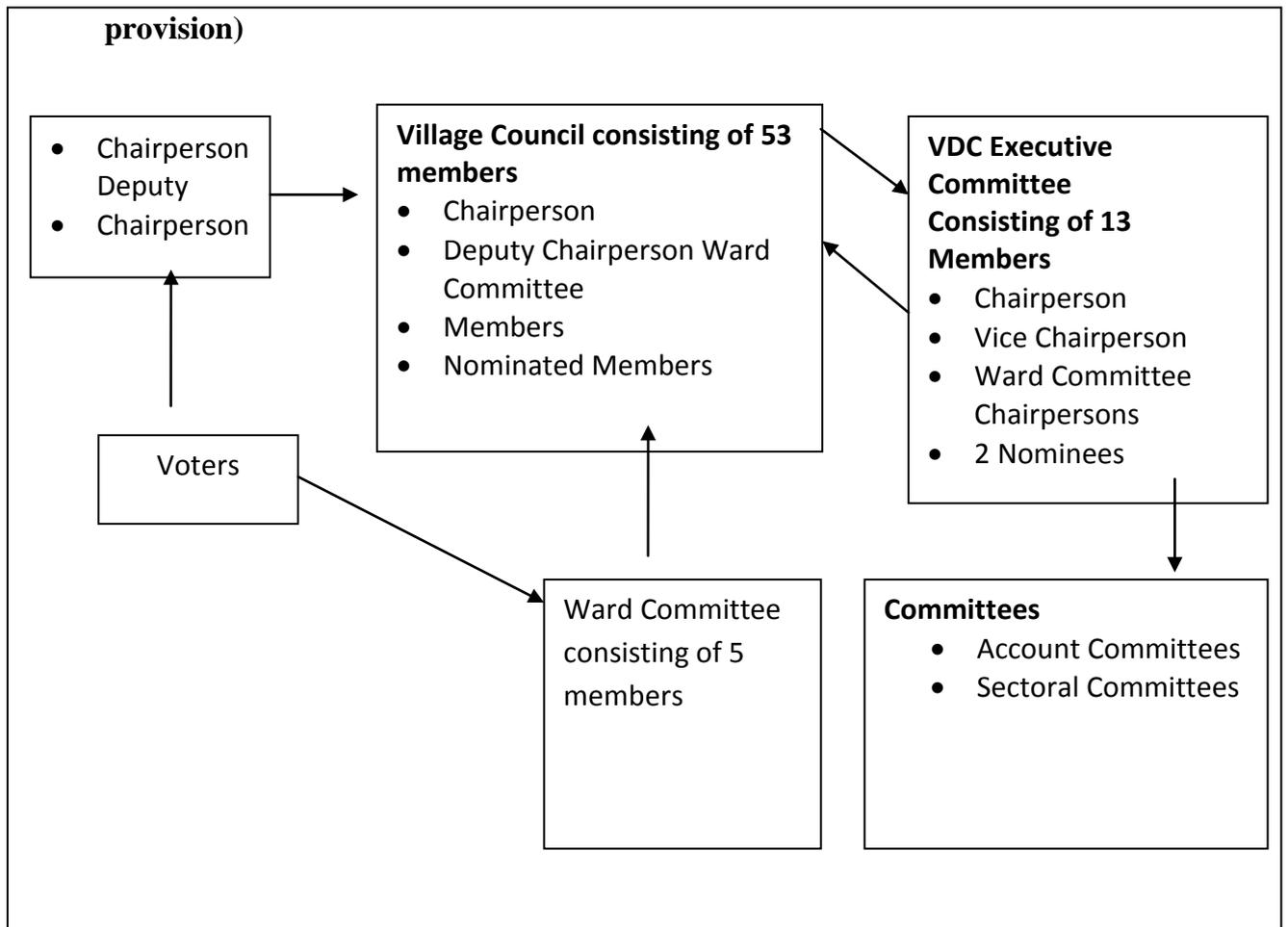
Enactment of the Local Self Governance Act (LSGA) in 1999 AD it constitutes an epoch-making event in the history of local democracy and development in Nepal, It is a comprehensive legislation, and it replaced the Village Development Committee Act, Municipality act and District development act promulgated immediately after the restoration of the multiparty democracy in the country. The Act, for the first time, has recognized that the VDCs, municipalities and DDCs are to be developed into the self governing institutions capable of catering to the needs of governance and development at the local level (Bhusal et.al in Shahabhagita; 2002).

#### **4.9.2 Composition of VDC**

Each village development area has a village council (VC) and an executive committee called the Village Development Committee (VDC). The council is the deliberative body. It consists of VDC chairman, Vice chairperson, Ward committee members, six nominated members representing women and backward communities. Hence, the council has 53 members in total. The council approves policies, programs and budget of the VDC.

**Figure 4.2**

**Composition of Village Development Committee (according to LSGA)**

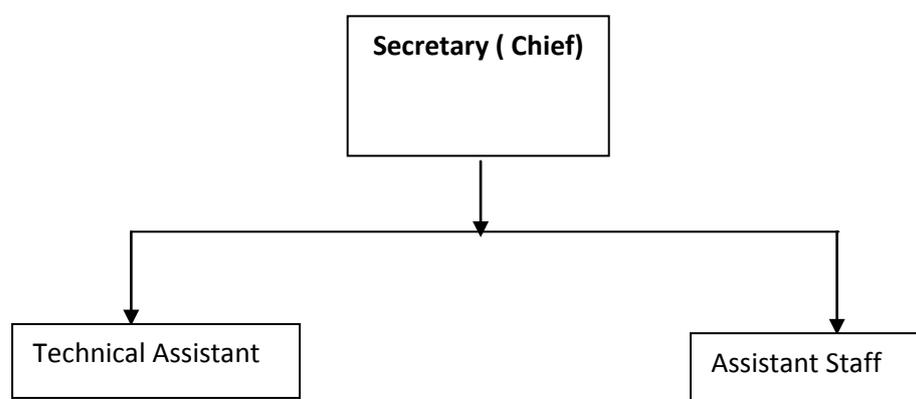


The executive committee of VDC has thirteen members in total. They are VDC chairperson and Vice- Chairperson, nine ward chairperson and two nominated members. However, one such nominated member should be woman. VDC shall have its own secretariat and administrative set-up.

In the Local Self-Governance Act, provisions exist for committee system both in VDC and Village Council. The council can appoint short-term sectoral committees- in order to assist in development efforts of the village. In addition, there is also provision of an Audit committee which is authorized to assess budget allocation and audit on financial performance of the VDC.

However, VDCs are run without the elected representatives for over a decade. The Secretaries are the chief (Pramukh) of the local institution.

**Figure 4.3**  
**A sample of current arrangement at VDC (in the absence of elected representatives)**



According to LSGA, the government can declare urban settlements as municipal areas if they fulfill the such criteria as population, service delivery and physical infrastructure. The municipal area thus fixed is divided into nine wards at the minimum but maximum is not specified. The municipality also has council (Deliberative organ), executive committee and ward committees. The numbers of elected council members of municipalities vary according to the number of wards. However, in the case of nominated council members, the number can range from minimum six to maximum twenty. And forty percent among the nominated members must be women. Provisions exist for formation of sectoral committees, audit committee and advisory committees. The municipalities are classified into three categories, municipality, sub-metropolis and metropolis.

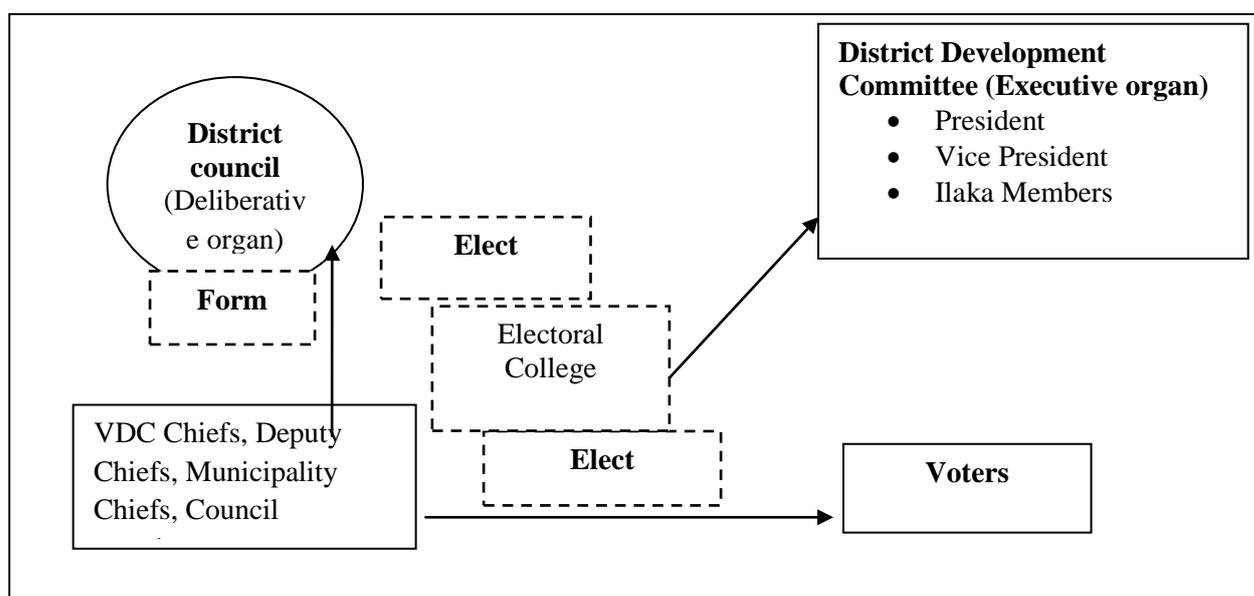
Accordingly, the Local Administration Act (1971), Nepal has divided Nepal into seventy five administrative districts. These administrative districts are categorized as the district development areas. Therefore, the number of DDCs also corresponds with this arrangement. The district development area can be divided into minimum nine and maximum seventeen Illakas or areas.

#### 4.10 Composition of DDC According to LSGA

The composition of District level local body (DDC) is sketched below in line with the provision of the local self Governance Act 1999. Since no elections has been held for the last decade and plus years, this mechanism does not exist in practical term. The government appointed functionaries carry out the roles and functions of the elected representatives.

**Figure 4.4**

**Composition of DDC according to LSGA provision**



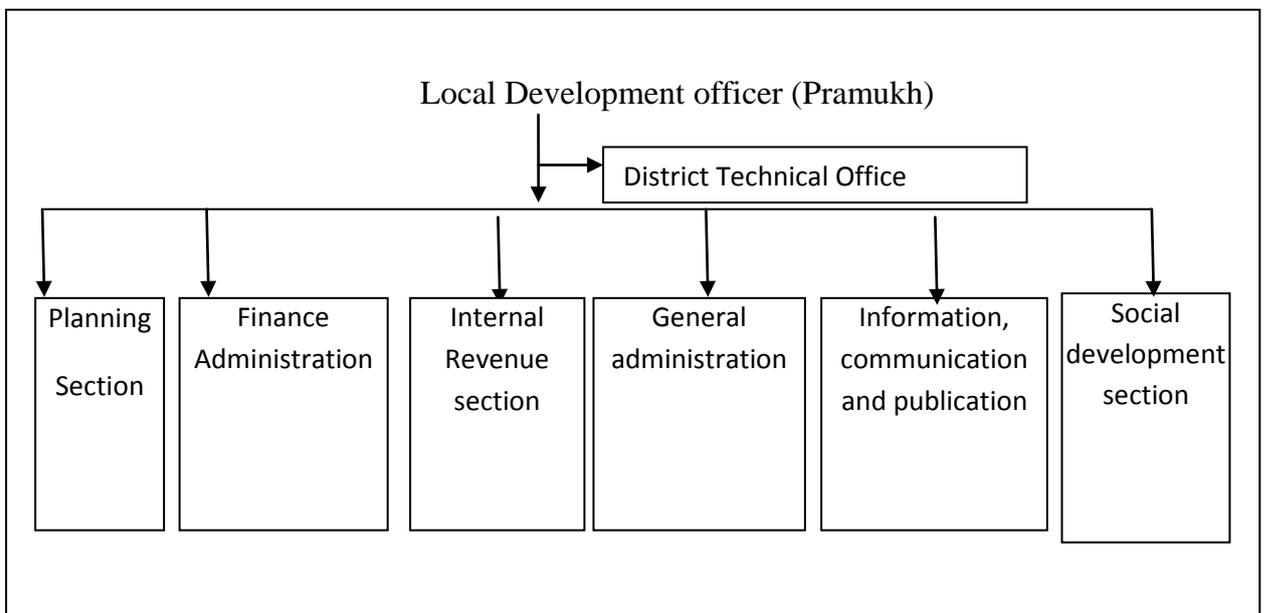
Provision for council and executives committee (DDC) exists. The district council has two types of members. They are elected and nominated.

The election of VDC and municipality is direct. All citizens of 18 years of age registered as voters and they qualify to vote at local elections. To run for offices of these bodies, one must be of 21 years of age. The VDC chairman, Vice chairman, municipality mayors and deputy mayors are elected by the voters of the village and municipal development area. The ward chairman and members are elected by the voters within the ward. The election of DDC is indirect. The elected members of municipal and village councils are voters for Illaka members, DDC chairman

and vice-chairman. The Ilaka members are the village and municipal council members of the specific area (Ilaka). They vote for the Ilaka members while the chairman and vice chairman are elected member of the village or municipal council to run for DDC positions. Thus, DDC is an aggregated institution of lower levels of local governance bodies at the district. The local elections are held based on multiparty competition. As the local development officers- the administrative deputy of the central government are at the helm of affairs in the absence of the elected representatives , the transitional arrangement at the DDC level stands as follows:

**Figure 4.5**

**Current arrangement at DDC (In the absence of elected representatives)**



The local governments have their own secretariat or office where two types of personnel work. One category of staff is government appointed and the other is local government appointed. The government appointed secretary heads the secretariat and its staff. In addition, the government may depute professionals to work at local government. Generally, the government deposes planning officer, accountant, engineer and overseers at DDC. They all belong to the unified civil service system of the government. They are governed according to the civil

service rules and regulations. The government appointed secretary together with the accountant operates budget and finance at DDC and municipality. Government provides salary and benefits of its civil service staff in separate budget allocation. DDCs receive development grants from MLD. In fact, the resource poor Moreover, DDCs mostly sustain their local staff from this grants.

#### **4.11 Dispute Resolution at Local Level**

Section 33 and Section 101 of the Act define and spell out the jurisdictions of the local bodies- VDCs and municipalities with regard to their mandates concerning resolution of community disputes. VDCs and municipalities are mandated to resolve such disputes as: Cases on border/ boundary of land, public land, Sandhisarpan, Alidhur, canals, dams, ditches or allocation of water and encroachment on roads or way outs, Cases on compensation for damage of crops, Cases on forced labour (Beth Begar) and cases under chapter on Wages (National Civil Code), Cases under the Chapter on Paupers (National Civil Code), Cases under the Chapter on Missing and Finding of quadrupeds (Chaupaya), Cases under No.8 and No.9 of the Chapter on construction of Houses (National Civil Code), cases under the Chapter on Kalyan Dhan (hidden and unclaimed properties), Cases under the chapter on trusteeship deposits except those under No.5 of that chapter (National civil code), Cases on maintenance (fooding and clothing) according to status and income under No.10 of the chapter on partition, Cases on uses of water resource/bank (ghat) and security of public property, Cases under the Chapter on quadrupeds other than the killing of cow (National civil code), Cases on pasture land, grass, fuel woods etc, Cases on entering into, staying in or attempting to enter in or stay in other's house forcefully. Except those cases referred to in annex-1 and annex-2 of the Government Cases act 2049, such other cases as assigned by Government of Nepal by publishing a notification in the Nepal Gazette, may be resolved by VDC and municipality.

However, the use and exercise of this jurisdiction has been embargoed stating that the VDC shall have the power to hear and settle at first instance the cases (as provided) within such village development area from the date as may be

prescribed by His Majesty's Government by publishing a notification in the Nepal Gazette.<sup>59</sup>

The government has not published a notification in the Nepal Gazette yet. As a consequence, local bodies have been denied the right to use and exercise the rights granted by the law. The Local Self Governance Act, 1999 provisions medi-arbitration for resolution of disputes at local level. The local bodies are mandated to form the medi-arbitration board to hear and settle cases. The board according to law, shall consist of three persons as agreed upon between the parties to a case from among the panel of medi-arbitrators. Social workers, women and those who are deemed appropriate to perform the role of medi-arbitrators are to be enlisted in the panel of mediators. The local bodies are required to make public the list of the medi-arbitrators for public knowledge and information. The medi-arbitrators, according to law, would encourage the disputing parties to discuss the issues involved in the disputes, negotiate and find resolution of the cases. In case, the disputes could not be resolved despite the attempts for reconciliation, medi-arbitrators are authorized to decide the case on the basis of majority vote

Judicial power provided to VDC and Municipality could be thus exercised through medi- arbitration Board. The board gives priority for settlement of dispute through conciliation. If the dispute is not settled by compromise, the arbitration board goes to decide the case according to the law. Though the conciliation and mediation process is favored most of the people are unaware of this process.

Needless to say, for the purpose of settling and mediating the case filed under the Local Self-Governance Act at first instance, the VDC and Municipality shall prepare a list of medi-arbitrators, setting out their names surnames and addresses as well, comprising such persons from among the local persons and social workers as one deemed appropriate with the consent of such person and shall publish it in the office of VDC and Municipality for public information. VDC and Municipality

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<sup>59</sup> Section 101 of the Local Self Governance Act, 19991

shall include the women and backward class as well to the extent possible, in the list of medi- arbitrators.

VDC and Municipality shall appoint three persons in the medi-arbitration panel as agreed upon between the parties to a case from amongst the persons enlisted in the list of medi-arbitrators. In case the parties fail to reach an agreement in the appointment of mediators, the parties to the case shall propose two medi- mediators of their own and provide the name of such arbitrator to VDC and Municipality. The VDC and Municipality after having so received the name of two medi- arbitrators shall appoint one other arbitrator from amongst the person enlisted in the list of arbitrators.

One of the mediators shall be designated as the chairman of the medi-arbitration panel from amongst the medi-arbitrators. The three medi- arbitrators shall collectively exercise the jurisdiction of medi-arbitrators and the opinion of majority shall be deemed the decision of medi-arbitrators. In case, the majority of medi-arbitrators could not be submitted to the Village Development Committee and Municipality and the opinion supported by the VDC and Municipality shall prevail on the matter.

A case shall have to be settled within the 60 days from formation of medi-arbitration Board. The medi-arbitration panel has to give more times if the parties demand more opportunities for conciliation, in such condition the case may be decided even after lapse of prescribed duration.

#### **4.12 Court Referred Mediation**

As has been discussed, various efforts are being made for the development of mediation as mechanism for dispute resolution by the government and non-governmental organization in Nepal. In the recent days, especially with the initiative of judiciary, provisions in regard to mediation have been incorporated in District Court, Appellate Court and Supreme Court regulations too<sup>60</sup>. And the

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<sup>60</sup> The court itself resorts to mediation for dispute settlement while some minor disputes are referred to the mediation services at VDC level.

disputes referred by court have been resolved through recourse to mediation. Court referred mediation is getting increasingly popular in Nepal. Even in the National Civil Code introduced in 1910 B.S, there was provision giving power to settle local disputes to Birtawal (revenue free land holder) and landlord at the local level. The legal provisions contained in section 182 of National Civil Code can be taken as the basis for the onward pursuit of mediation. Fourth Amendment to the District Court Regulations contains the provision with regard to resolution of disputes through mediation. The legal provisions have been included for and referred mediation of disputes for the first time in the Supreme Court Regulation Seventh Amendment 2063 B.S, Appellate Court Regulation (Seventh Amendment) 2063 B.S while the same was incorporated in the Fifth Amendment to the District Court Regulation 2060 B.S. Thus the provision in respect of mediation has been further developed and strengthened in Nepal through initiatives pursued by the judicial institutions.

Needless to say, a country's formal law grows out of its culture society. And the concept of mediation is being evolved from the social practices and experiences at the local level. This has been formalized into law

#### **4.13 Key Provisions of Mediation Act**

As a culmination of the efforts, experience and initiatives over the years at the state and non-state level, the law relating to mediation law has been enacted in Nepal in 2010 AD. It aims at resolving disputes. Moreover, it increases access of ordinary people to justice at speedier, efficient and cost effective manner, The scope of mediation, according to this act, includes such areas as trade, commerce and development. According to the law, mediation can be used as a resort of dispute resolution in the following conditions<sup>61</sup>:

- 1) In case disputing parties have agreed through deed of contract or a written understanding to take recourse to mediation for settlement

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<sup>61</sup> See section 6 of the mediation Act

- 2) In case of disputes whether sub-judicial in the court or quasi-judicial agencies if the prevailing law of the land does not prescribe that the said disputes cannot be resolved through recourse to mediation
- 3) In case of disputes registered in the prescribed resolving agencies (judicial or quasi judicial agencies) if the disputing parties agree to bring the said disputes for resolution through mediation and recourse to mediation
- 4) In case of disputes if the prescribed authority (judge/ quasi-judicial officer s etc) hearing the case considers that the said disputes can be appropriately resolved through mediation, and then refers to the disputes to the mediation panel for resolution
- 5) If the prescribed authority deems it fit that the disputes can be resolved appropriately through recourse to mediation, the same can be referred to mediation process by the order of the authority

The law provides for the assignment of mediators for resolution of disputes through resort of several ways. Section 5 of the law specifies that up to three mediators can be involved in the mediation session and one of the three mediators can preside over the mediation session. The disputing parties can select mediators on their own accordingly if the provision of the same has been agreed in the contract they have entered. According to section 7 of the law, in case, the disputing parties fail to submit the name of the mediators within the time as prescribed, to fulfill the procedures for the resolution of the disputes through recourse to mediation, the court can appoint the mediators from the approved roster of mediators. In case, a mediator appointed for assisting the disputing parties to resolve the case refuses to work or becomes unable to perform or relinquishes to perform due to one or the other reasons, a new mediator can be appointed accordingly. But the mediators who have received training of the prescribed quality/standard and duration are eligible for such appointment or assignment. The supplementary rules / regulations can prescribe the quality, duration and standard for the training.

#### **4.14 Code of Ethics for Mediators**

Section 12 of the Act prescribes the code of ethic for mediators: The act requires mediators to be impartial while facilitating the mediation session he or she shall not do anything that shows or indicates tilt to or bias, prejudice to or against any party to the dispute. A mediator shall not use coercion, intimidation, enticement or influence in the process of resolving the dispute. He or she shall not do anything that contradicts to the provision of this law or bylaws formulated to supplement it. Mediators shall not indulge in any pecuniary transaction or any other personally motivated transaction in connection to their work on the resolution of disputes. He or she shall follow other relevant code of ethics as laid down<sup>62</sup>.

The mediators who violate the code of ethics as outlined above shall be disqualified from carrying out the role of a mediator. Some other grounds for the dismissal of the mediators are cheating or deceiving, wrongful intent in prorogation of the mediation session. Mediators can meet with disputing parties collectively or separately in case it is needed. He or she may ask the disputing parties to produce any relevant information, evidences and documents to the dispute to support their contention/ argument. Mediators let the respondent (one of the disputing parties) to verify the evidences or document thus produced. Mediators facilitate the process to invent and try out different options to arrive at amicable settlement of dispute on the anvil. When the parties agree to arrive at settlement of the disputes, they should sign the deed of the agreement to confirm that the settlement is reached voluntarily. In case of the court annexed or court referred dispute the deed of settlement should be certified or authenticated by the court concerned<sup>63</sup>.

Mediation proceedings conclude or cease to continue if the disputing parties fail to agree to settle their disputes or fail to participate in the mediation proceedings on the prescribed date and time or fail to attend to the mediation proceeding to get off the process start on the date and time as prescribed. The law prescribes

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<sup>62</sup> Section 12 of the Mediation Act, 2010

<sup>63</sup> Section 15 of the Mediation Act, 2010

qualification of mediator as: having completed twenty five years of age, having obtained graduation from a recognized university, trained and capable, mentally aware, stable and sound, not convicted by the court on the offences amounting to moral turpitude and not financially insolvent or bankrupt.

The law relaxes the above mentioned provision in the case of mediator who is proposed or chosen to facilitate the mediation process by either of the disputing parties. He or she may not be required to possess all of the abovementioned qualifications<sup>64</sup>.

The law enshrines the provision for establishment of Mediation Council to update, reform, regulate and superintendence the process of mediation for resolution of disputes. The council will be composed of ten members including the member secretary. The council performs such functions as to promote of mediation as an appropriate mechanism for dispute resolution to envisage contribute develop simple, quick and plain procedures for mediation, to approve training curriculum for mediation and suggest the government to reform the law to institute simple process for mediation, or to designate organizations, To create stable structure/mechanism for community mediation at the local level and recommend to government in strengthening and promoting community mediation services, institute mechanism to conduct monitoring of the community mediation, to investigate into the complaints lodged against mediators and initiate action, if found guilty, to implement other measures to promote mediation and so on<sup>65</sup>.

The law provides separate provision relating to community based mediation. The respectable person in the community, persons recommended or selected by the community based organizations active at the local level, social workers/volunteers, teachers working at schools/colleges at the local level shall perform the role of mediators.

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<sup>64</sup> Section 20 of Mediation Act

<sup>65</sup> Section 20 of Mediation Act, 2010

The law requires inclusion of woman in the roster of community based mediators. The community mediation process should assist the disputing parties to arrive at win-win outcome of resolution.

The law defines such core values of mediation as: the outcome of the settlement shall not be binding, the mediator shall maintain confidentiality in relation to all matters dealt with in mediation. The statements/declarations cannot be taken as evidence in any court of law, The role of mediator shall be to perform as a facilitator, not as an arbiter or decision maker on the dispute, Mediator can be remunerated by the parties based on their own accord. In case, parties do not remunerate mediators, they may receive emoluments as described by the council, The judicial or quasi judicial agencies may refer sub judicial disputes to local bodies or mediation board taking consent of the latter<sup>66</sup>.

The law is first of its kind not only in Nepal in the South Asia as well. The law incorporates most of the core values of mediation as self-determination, confidentiality, voluntary settlement etc. The law envisages provision with regard to community mediation in a separate chapter. However, the law is drafted without taking cognizance of the fact that the state is being restructured through federalization. The law doesn't spell out the stages/phases of mediation process in clearer terms. The law makes mediation as a remunerative assignment. This is not possible in case of the community based mediation. Similarly, the law fixes educational qualification for mediators. This may not be feasible in case of community based mediators<sup>67</sup>. As the supplementary regulations has not been finalized and approved, the provisions enshrined in the mediation act are yet to come into effect.

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<sup>66</sup> Section 23 of Mediation Act, 2010.

<sup>67</sup> Section 17 of Mediation Act, 2010.

## **CHAPTER - V**

### **LOCAL DISPUTE RESOLUTION: A CASE STUDY OF SHARADANAGAR VDC, CHITWAN DISTRICT**

#### **5.1 Dispute Resolution Scenario at Chitwan District**

The preceding chapters discuss the concept of disputes, alternative dispute resolution and LSGA provision on local dispute resolution. The present chapter attempts to gain an understanding of ground situation of local dispute resolution process and mechanism through the prism of Sharadanagar VDC in Chitwan. In this chapter the concept of interest based mediation, in lieu of right based mediation, conceptualized by Lederach and elaborated by Kraybill, Roger and Ury that is implemented in Sharadanagar VDC within the local governance framework has been discussed on the basis of empirical data to discern whether the process followed is fair and participatory, whether mediators are neutral and impartial and outcome of the resolution satisfied the disputants. Needless to reiterate, the Sharadadnagar VDC has a set up of the mediation facility where disputes have been resolved through resort of the process of interest based mediation subject to reference to LSGA provision.

Needless to repeat, Sharadanagar is one of the fast developing VDCs in Chitwan. Before dwelling at the local dispute resolution at Sharadanagar VDC, a short account of the situation of Chitwan district with special reference to the roles and functions of the district level judicial and quasi-judicial agencies including the district court, District Administration office for dispute resolution, among others, is provided below.

Chitwan district covers an area of 2218 km. It has a population of 56,666. The district has four parliamentary constituencies, 13 Ilakas (district level electoral areas), two municipalities and thirty six VDCs. The Chitwan district features demographic and social diversity. The migrants from the hills constitute a preponderantly sizeable segment of the population. The district mingles both the indigenous Tharus and the new settlers migrated from the neighboring districts. People use both formal and informal mechanism in case they are confronted to

resolve disputes rooted in incompatible and clashing interests. The Tharus and other Indigenous groups like Gurungs often tend to follow traditional dispute resolution mechanisms of their own. The Brahmins/Chettris mainly bring some of their disputes to the formal institutions like VDCs, District Administrations office, District court and District police authority. But with the growing intermingling of the population and increased accessibility of formal mechanism, the divide between people in accessing and using formal and informal forums for dispute resolution has been increasingly narrowed. Moreover, actions to promote mediation for resolution of disputes like Community Mediation Project, Paralegal Projects have been implemented in the district these projects are said to be instrumental to popularize ADR in the district.<sup>68</sup> The district level administrative agencies exercise judicial and quasi judicial authority to settle general and sector related disputes. A short description of these agencies with reference the dispute settlement is provided below.

## **5.2 District Administration Office (DAO)**

The Chitwan District Administration Office (DAO) handles a wide range of disputes subject to various official fiats and legal instruments. It is reported that the DAO is burdened with a larger number of disputes that do not even fall within its jurisdictions . The local inhabitants bring their disputes for summary redressal of their grievances which the office cannot turn down. Some cases with criminal implications or consequences that call for court intervention or adjudication are just recorded while other small causes are arbitrated or mediated. According to Chitwan District Administration Office, 631 types of offenses have been recorded during the previous year. Out of 631 cases registered, 138 cases are related to public nuisance, 82 cases are related to road accident. Suicide cases are 75. The list is very comprehensive. The criminal offences pertaining to homicide and murder, suicide cannot be handled and decided by the DAO. They are reported and recorded as part of documenting the crime related data in the district .

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<sup>68</sup> Based on the interview with Chitwan DDC Local Development officer

**Table 5.1**  
**Disputes/Cases recorded and handled District Administration Office,**  
**Chitwan**

| S.N. | Types of cases                                | No of cases reported |
|------|---|----------------------|
| 1.   | Murder cases                                  | 122                  |
| 2.   | Attempt to murder                             | 15                   |
| 3.   | Accident (casualty)                           | 64                   |
| 4.   | Cattle theft                                  | 1                    |
| 5.   | Poison consumption                            | 46                   |
| 6.   | Fire  | 1                    |
| 7.   | Suicide by hanging                            | 75                   |
| 8.   | Suicide by jumping over the cliff             | 5                    |
| 9.   | Theft   | 33                   |
| 10.  | Cheat and fraud                               | 1                    |
| 11.  | Gambling                                      | 1                    |
| 12.  | Misuse of public property                     | 3                    |
| 13.  | Drug abuse                                    | 14                   |
| 14.  | Misuse of govt. stamp and signature (forgery) | 4                    |
| 15.  | Public nuisance                               | 138                  |
| 16.  | Citizenship through misinformation            | 2                    |
| 17.  | Human trafficking                             | 3                    |
| 18.  | Polygamy                                      | 4                    |
| 19.  | Sexual assault                                | 1                    |
| 20.  | Attempt to commit sexual assault              | 1                    |
| 21.  | Road accident                                 | 82                   |
| 22.  | Animal sex (bestiality)                       | 1                    |
| 23.  | Kidnapping                                    | 2                    |
| 24.  | Fire  | 4                    |
| 25.  | Witchcraft Accusations                        | 1                    |
| 26.  | Arms and Ammunitions                          | 4                    |
| 27.  | Unnatural sex                                 | 1                    |
| 28.  | Cyber networking crime                        | 1                    |
| 29.  | Cheating and misleading                       | 1                    |
| 30.  | Plan to kidnapping                            | 1                    |
|      | <b>Total</b>                                  | <b>631</b>           |

Source: Chitwan District Administration Office, 2068-2069.

### 5.3 Local Peace Committee

Local Peace Committees (LPCs) have been established in 75 districts to address the issues of conflict transformation and peace building. LPCs have been established to institutionalize peace at the local level following the signing of the comprehensive peace agreement between the state and the Maoists in 2006 A.D. The aim is to include all the stakeholders including the conflict victims in the reconciliation processes, provide relief to the victims of the conflict and displaced people, look into resettlement and rehabilitation related issues, promote the reconstruction of damaged infrastructure and provide an institutional focal point for peaceful recovery from the previous war and so on. LPCs are meant to be entrusted with multiple functions such as mediation and reconciliation. But they are not active and functional enough. Unless there is a strong political commitment to activate them, LPCs may fail to meet their objectives. The local peace committees are constituted in Chitwan at the district level and in its several VDCs as well. The number of cases addressed or support provided by Local Peace Committee for the families of those killed or affected and displaced due to the conflict in Chitwan are as follows

**Table 5.2**  
**Type of Cases Settled by Local Peace Committee (LPC)**

| S.N. | Types of Cases   | Cases handled | Total      |
|------|--|---------------|------------|
| 1    | Relief support to families of those killed in the conflict | 19            | 19         |
| 2    | Support to cases of displacement                           | 18            | 18         |
| 3    | Attacks and assaults                                       | 9             | 9          |
| 4    | Kidnapping and abduction                                   | 5             | 5          |
| 5    | Amputation   | 21            | 21         |
| 6    | Wounded during the conflict                                | 117           | 117        |
| 7    | Loot and robbery   | 36            | 36         |
|      | <b>Total</b>   | <b>222</b>    | <b>222</b> |

Source: Local Peace Committee, Chitwan 2068-2069.

#### 5.4 District Forest Office (DFO)

The District Forest Office provides mechanism for resolving disputes relating to use and illegal cutting of tree, smuggling of timber theft, and destructive exploitation of forest products. The dispute handled by the District Forest Office regarding the use of forest resources and poaching reported and settled by DFO are shown in following table:

**Table 5.3**  
**Types of Cases handled by District Forest Office**

| S.N. | Type of issues                                    | Reported | Settled disputes |
|------|---|----------|------------------|
| 1    | Illegal tree harvest and theft of forest products | 28       | 13               |
| 2    | Wild animal poaching                              | 8        | 2                |
|      | Total   | 36       | 15               |

Source: Local Forest Office, 2068-2069

Above table shows that 36 cases were registered in the Chitwan District forest office. The cases were about the illegal cutting of forest, theft of forest resources and wild animal poaching. Out of them, 15 cases are settled.

#### 5.5 District Police Office

The table presented below shows that 422 cases were recorded at the District Police office. Legally, the police office cannot entertain and decide cases. It can only mediate and counsel the parties to settle their disputes and help them live in peace in amicable terms. The cases recorded were related with family disputes, verbal slander and physical assault. All of them are settled.

**Table 5.4**  
**No and type of cases at the District Police Office**

| Disputes   | Family disputes and settled | Verbal slander | Physical assault | Total |
|------------|-----------------------------|----------------|------------------|-------|
| Registered | 214                         | 130            | 78               | 422   |
| Settled    | 214                         | 130            | 78               | 422   |

Source: District Police Office, Chitwan 2068/69

## 5.6 District Police Office, Women Cell

A special separate cell to look into cases of women and children is set up within the premises of District Police Office at Chitwan. Following table shows the number and type of cases recorded at the cell.

**Table 5.5**  
**No and type of cases at Women Cell**

| Type                             | Male children | Female Children | Female | Total |
|----------------------------------|---------------|-----------------|--------|-------|
| Number of missing women children | 92            | 30              | 118    | 240   |
| Number of found                  | 16            | 30              | 21     | 67    |

Source: Women Cell Nepal Police, Chitwan, 2068/9.

Above table shows that 240 people especially the women and children were missing in the district. Among them 122 were children (92 boys and 30 girls) while men and women were 118 respectively. Out of them, 80 were found and the rest are yet to be traced.

## 5.7 District Court

The district court is the judicial institution of the first instance that is constitutionally mandated to hear and decide both civil and criminal cases. The Following table provides the scenario of dispute adjudication at Chitwan district court. Out of 1227 cases, the number of family discord is 717. Land related dispute is second after family discord (146 cases) which is followed by attempt of murder (109). All of the cases have been settled.

The cases decided by District Court, Chitwan, have been shown in the following table:

**Table 5.6**  
**Type of cases settled by District Court, Chitwan, 2068/2069**

| <b>S.N.</b> | <b>Types of cases</b>           | <b>Settled</b> |
|-------------|---------------------------------|----------------|
| 1           | Monetary transaction (Lenden)   | 54             |
| 2           | Rent recovery dispute           | 3              |
| 3           | Breach of the contract          | 10             |
| 4           | Land disputes                   | 146            |
| 5           | Family discord                  | 717            |
| 6           | Rape                            | 15             |
| 7           | Theft                           | 49             |
| 8           | Physical assault                | 2              |
| 9           | Drug trafficking                | 28             |
| 10          | Contempt of Court               | 4              |
| 11          | Criminal Intimidation           | 10             |
| 12          | Forgery                         | 14             |
| 13          | Verbal slander                  | 18             |
| 14          | Human trafficking               | 1              |
| 15          | Kidnapping and                  | 11             |
| 17          | Fire                            | 2              |
| 20          | Cheating                        | 2              |
| 21          | Forest                          | 16             |
| 22          | Idol lifting                    | 1              |
| 23          | Fraudulent transfer of property | 1              |
| 24          | Blast and explosives            | 1              |
| 25          | Attempt to murder               | 109            |
| 26          | Other                           | 1              |
|             | <b>Total</b>                    | <b>1227</b>    |

Source: District Court, 2068/69.

### **g) Court referred mediation**

There has been a growing tendency on the part of the judiciary to refer cases to the mediation with a view to arrive at win-win outcome of the disputes. The mediation services are annexed to the Chitwan district court in a separate facility within the court premises where the trained mediators provide services to the disputants. Those disputes that do not bear criminal content and consequences are generally referred by the court to the mediation services. The district court regulations set forth guidelines in regard to resolving disputes through mediation services. The following table shows that the district court referred 86 cases to mediation centre during the last year and all of them are settled.

**Table No. 5.7**

#### **Cases Referred to District Mediation Center by the District Court, 2068-69**

**AD**

| <b>S.N.</b> | <b>Disputes</b>        | <b>Resolved</b> | <b>Percentage</b> |
|-------------|------------------------|-----------------|-------------------|
| 1           | Property Partition     | 15              | 17.45             |
| 2           | Trespassing            | 6               | 6.98              |
| 3           | Divorce                | 33              | 8.14              |
| 4           | Revocation of deeds    | 20              | 23.26             |
| 5           | Use of the assets      | 3               | 3.49              |
| 6           | Compensation           | 7               | 8.14              |
| 7           | Brawls and manhandling | 2               | 2.33              |
|             | <b>Total</b>           | <b>86</b>       | <b>100</b>        |

Source: District Mediation Center, 2068/69

### **5.8 Introduction to Sharadanagar VDC**

The Sharadanagar VDC selected for case study is one of the model VDCs among the thirty six in the Chitwan district. The government is reported to be considering to amalgamate its neighboring VDCs like Mangalpur and Gunjnagar into

Sharadanagar to designate and elevate it into a municipality. But this scheme has been shelved for now.<sup>69</sup>

Sharadanagar VDC lies 175 meters above the sea level. With triangular in shape, it has Mangalpur, Fulbari, Gunjanagar and Shivrinar VDCs in east, west, north and south respectively. Average north- south distance is 6 KM while it is 3.5 KM in east- west. It has an area of 20:21 sq km. The total population of VDC is 7637 with male 4587 and female 4497. The population density is 474.2 sq km. and administratively, the VDC is divided into nine wards.

The VDC is inhabited mostly by the Gurungs. And the population of the other ethnic groups like the Tamangs and Tharus is also sizeable. The Brahmins and the Chhetris inhabit in the district in a big number. A small number of the Dalits, Tharus, Muslims, Thakuri and Kumal population inhabit, among others, in the VDC. A greater majority of its population follow both the Hindu and Buddhist religion. The population in this VDC increased exponentially following the implementation of resettlement program by the government beginning from 1960s. A greater majority of local people in this VDC are enterprising and are said to be hardworking. They have adopted poultry farming, animal husbandry, vegetable farming and pisciculture, among others, in eking out and earning their livelihood. The remittance sent by the migrant workers especially from the Gulf has contributed to raise the income of the people. The new micro- scale industries and businesses have expanded in the VDC. It is one of the resourceful and capable VDCs in the district. Culturally, Sharadanagar VDC is very rich. It has temples and monasteries that are adored and worshipped by both Hindus and Buddhism and the festivals such as Dashain, Tihar, Teez, Shivaratri and Janain Purnima are also observed by the inhabitants. Moreover, Lohsar, Buddha Purnima, Id, and Christmas, among others, are celebrated by respective communities. Key offices in Sharadanagar include the health post, post office, banks, livestock offices, and cooperatives and so on.

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<sup>69</sup> Based on the information share by Chitwan DDC LDO. However the government has shelved the plan to designated the VDCs and elevate them into municipalites.

## **5.9 Office of the VDC**

Sharadanagar VDC office is relatively equipped in terms of facilities and availability of human resources. It has been functioning normally despite the lack of the elected representatives to carry out the responsibilities according to the provisions enshrined in LSGA. The secretary is the chief of the VDC office and handles day to day routine functions. Two junior level employees- one looking after accounts and other planning and technical aspects assist him. The VDC delivers services to the local communities including the allocation of resources for community level development projects, distribution of the social security allowances and coordinating with DDC and different line agencies so on. As noted above, the secretary is executing the role of the chief (Pramukh) and he handles both administrative, planning and management functions.<sup>70</sup> The secretary is the civil servant working under the Ministry of Local Development (MoLD).

## **5.10 Dispute Handling Forums**

A diverse mechanism exists in the communities for redress of the grievances and tackling of disputes. The Gurungs, Tharus and Tamangs have generally their own customs and traditional mechanism for resolving disputes. The formal mechanism for handling disputes like police posts, paralegals are also active in the VDC. The paralegal committee looks into cases of domestic violence against women and abuse, exploitation, maltreatment and abuse of children. The committee also coordinates with the local police authorities in grappling with some disputes and problems. The members of the paralegal committees are trained and empowered to handle the disputes and contribute towards raising awareness on rights and entitlement of women and children. Moreover, community forest user groups and water user groups and other community based organizations are active in the VDC that handle and help resolve general and sectoral disputes at the community level.

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<sup>70</sup> Since 2001, the local bodies in Nepal have been allowed to fend off for themselves without elected representatives. The VDCs have been headed by secretaries where as DDCs and municipalities are run by Local Development officers (LDOs) and executive officers (Eos) respectively. These officials are appointed by the govt. are therefore accountable to the Ministry of Local Development. A few years ago, the Ministry through a fiat (Circular) created a all party mechanism (Sarradaliya Sanyantra) to extend support to these govt. officials presiding over local bodies. But recently the govt. scrapped the mechanism in the face of allegation of corruption, leveled against them.

### 5.11 Community Mediation Services Centre in VDC

A Project to establish and promote community mediation services in the VDC with a view to help the local communities to resolve disputes had been implemented in the Sharadanagar VDC till the last year. The project was implemented with overall support and coordination of District Development Committee (DDC) management with financial and technical support of the external development partner and direct administrative and logistical support of the VDCs. A 36 panel of trained mediators exists in the VDC to facilitate the dispute resolution process using the tools and techniques of mediation.

### 5.12 Dispute Mediators in VDC

A critical group of mediators are available in VDC to assist in the process of dispute resolution. The roster of mediators is put on display at the VDC office to let the people know about them.

**Table 5.8**

#### **Mediators in Sharadanagar VDC**

| VDC          | Male | Female | Total | B/C | Ethnic | Dalit |
|--------------|------|--------|-------|-----|--------|-------|
| Sharadanagar | 20   | 16     | 36    | 9   | 26     | 1     |
| Total        | 20   | 16     | 36    | 9   | 26     | 1     |

Source: VDC data 2012

The above table shows that the composition of the trained mediators characterizes diversity in terms of gender and caste/ethnicity. Out of 36 mediators, 20 are male and 16 are female. Similarly, number and representation of Janjatis is sizeable in the panel of mediators. However, not all mediators are equally active and available for the task when called upon to resolve disputes at the local level<sup>71</sup>.

### 5.13 Categories of Disputes

According to the VDC record<sup>72</sup>, a total of 300 disputes have been resolved for the last six years in the VDC. An average of around 50 disputes is settled per year in

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<sup>71</sup> This information is based on the indepth interview with Mohan Singh Lama- local mediation service coordinator.

<sup>72</sup> Sharadanagar VDC record

the VDC. The following table shows the trend of dispute resolution in Sharadanagar VDC:

**Table 5.9**

**Trend of the Dispute Resolution in Sharadanagar VDC**

| S. N. | Year      | Registered | Status of dispute resolution |          |         |       |
|-------|-----------|------------|------------------------------|----------|---------|-------|
|       |           |            | Resolved                     | Underway | Pending | Total |
| 1     | 2004-2005 | 24         | 18                           | 6        | -       | 24    |
| 2     | 2005-2006 | 30         | 24                           | 6        | -       | 30    |
| 3     | 2006-2007 | 43         | 36                           | 3        | 4       | 43    |
| 4     | 2007-2008 | 30         | 25                           | 5        | -       | 30    |
| 5     | 2008-2009 | 51         | 47                           | 2        | 2       | 51    |
| 6     | 2009-2010 | 31         | 30                           | 1        | -       | 31    |

Source: VDC record 2012

**5.14 Disputants Demography**

Several types of disputes are brought to VDC for resolution. They range from verbal slander (Galibejjati) to matrimonial disputes:

**Table 5.10**

**Categories of Disputes resolved in VDC (Oct, 2009- Sept, 2010)**

| S.N          | Types of Disputes    | Total     | Percent    |
|--------------|----------------------|-----------|------------|
| 1            | Verbal Slander       | 6         | 14.28      |
| 2            | Monetary Transaction | 6         | 14.28      |
| 3            | Property Partition   | 3         | 7.14       |
| 4            | Physical Assaults    | 5         | 11.90      |
| 5            | Matrimonial Disputes | 6         | 14.28      |
| 6            | Land Disputes        | 8         | 19.04      |
| 7            | Trespassing          | 4         | 9.52       |
| 8            | Others               | 4         | 9.52       |
| <b>Total</b> |                      | <b>42</b> | <b>100</b> |

Source: VDC record 2012

The table shows that matrimonial disputes head the tally of disputes. It indicates that the mediation services provided in the VDC has assisted in resolving disputes and thus made justice accessible to the community.

Both male and female bring disputes to the VDC in anticipation of quick and effective resolution of the disputes. The profile of the disputants presented below shows that the Brahman/Chhettris, ethnic groups and Dalits bring disputes to the VDC. The ethnic groups also compose a sizeable number of disputants in the VDC.

**Table 5.11**

**Disputants by Gender/ethnicity**

| VDC          | Male | Female | Total | B/C | Ethnic | Dalit |
|--------------|------|--------|-------|-----|--------|-------|
| Sharadanagar | 41   | 17     | 58    | 15  | 31     | 12    |
| Total        | 41   | 17     | 58    | 15  | 31     | 12    |

Source: VDC record, 2012

**5.15 Mediation Services Management in VDC**

The VDC doesn't receive any financial support from the government especially to implement and deliver mediation services at the local level. However, seed fund called as the endowment fund in which a lump sum amount provided by the external development partners and VDC, among others, itself is deposited in the fund. Moreover, the fund is utilized to generate additional resources through loans to mediators and other stakeholders involved in the mediation services only. The VDC has provided a separate room for mediation service. Annually NRs. 5000.00 (fifteen thousand rupees) has been allocated by VDC to meet the minimum expenses to be incurred while delivering mediation services. However, the VDC is said to be considering charging a minimum of registration fee with a view to generate to response to growing popularity of the mediation services.<sup>73</sup>

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<sup>73</sup> Based on the information shared by incumbent VDC Secretary Kalika Prasad Ghimire

## **5.16 Process and methodology of Dispute Resolution**

### **5.16.1 Building Institutional Setup**

A group of three dozen community mediators are trained and capacitated in the Sharadanagar VDC to assist in the process of dispute resolution. The mediators are selected through participatory process based on some criteria<sup>74</sup>. In order to ensure the independence and competence of mediators they are required to be persons residing in the area and persons of high repute and unimpeachable record of integrity. Moreover, care is taken ensure that women, Dalits and marginalized groups are also represented and included in the panel of the mediators. The mediators provide voluntary and honorary service and their reward is satisfaction they gain in doing service to the community and individuals who come to the centre or them seeking their assistance. Much emphasis is placed on training the mediators in the art of facilitating the resolution of disputes through mediation techniques and skills, and following a structured mediation process. Needless to emphasize, success and credibility of mediation service is dependent upon the competence and skills of the mediators. They are imparted around two week long of trainings in mediation techniques and skills<sup>75</sup>. Follow up refreshers and advanced training is provided time and again to the mediator. Separate manuals and handbooks have been prepared and produced for the trainings.

### **5.16.2 Dispute Registration Process**

The registration or filing of dispute is an administrative and management function in the process of dispute resolution.<sup>76</sup> The disputing parties submit their application in written or oral form to VDC secretary, local coordinator of

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<sup>74</sup> The criteria are enthusiasm and willingness, good communication skills and integrity. Moreover, inclusiveness and diversity reflecting the local demographics are among the criteria for the selection of the mediators.

<sup>75</sup> Mediators need a solid knowledge base and a wide range of skills which they can use both sensitively and competently. According to Pacrkinson (1997:36). Training a mediator involves acquiring new habits and putting aside habits and skills that do not belong to the mediator's role. The longer one has worked in a particular capacity or role, the harder it may be to change one's practice and habits. Some people more naturally into the role of mediator whereas others experience considerable difficulty. There needs to be conscious transition from an existing role as lawyer, therapist social worker or counselor (or other background) to the different and distinct role of mediator.

<sup>76</sup> The information regarding the process is based on the details shared by Mr. Mohan Singh Lama the local coordinator of the mediation services

mediation services or any mediators who are known for their involvement in dispute resolution or mediation services. If any of the disputing parties states his or her case or complaints orally, the mediators assist him or her in writing an application (Nibedan). The application so registered is called dispute registration. A separate register is maintained to file the Nibedan (application). While registering the case, name, address, contact, telephone number, issue/subject of the dispute is also clearly and explicitly mentioned (basic information about dispute (form) appendix XII).

After the completion of the dispute registration process in general, the local coordinator is responsible to perform the following:

- 1) To keep contact with the disputing parties concerned.
- 2) To inform the parties concerned about mediation process.
- 3) To explain the role of mediators in dispute resolution process.
- 4) To require the presence of the disputants in the mediation proceedings convened to resolve disputes.

### **5.16.3 Preliminary Phase for Dispute Resolution**

In the dispute resolution process, the preliminary phase is the most important and instrumental stage. After the application (Nibedan) is registered, the tasks to be performed until the start of real mediation proceedings constitute the action appertained to preliminary phase. When one party registers the dispute, sometimes, the other party (respondent) may not present himself or herself in the mediation session as scheduled. What needs to be understood is that mediation is a voluntary process. Disputing parties may not feel urged or compelled to comply with request or need to present themselves to participate in the mediation proceedings in the prescribed time and place. The disputants may be reluctant to be present. So, after a dispute has been registered, mediators often face difficulties to settle the dispute by convening mediation sessions due to absence of the disputing parties. But this occurs rarely<sup>77</sup>. Sometimes, VDC needs to postpone

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<sup>77</sup> Based on information shared by local coordinator

mediation meetings due to absence or non-cooperation of the second disputing party respondent together in the mediation proceedings<sup>78</sup>.

The second important task of the preparatory stage is to inform the disputing parties clearly about mediation and processes involved in proceedings. Mostly, the disputing parties do not know the real values of the mediation process. So, local coordinator give clear information to disputing parties about mediation the process involved and benefit to be had from it. The coordinator explains to the disputants parties why open and frank discussion/disclosure is essential to the process of mediation.

The coordinator helps build confidence and trust in the parties concerned towards mediation process. Until and unless, trust and confidence is built and imparted in the concerned parties towards mediation process, it is very difficult to secure cooperation from them. Even if they participate in it, they hesitate to openly tell their problems.

### **5.17 Selection of Mediators**

After an application (Nibedan) has been filed or submitted by a disputing party praying for settlement of dispute, the mediators are selected from among the trained members of the mediation panel established by the VDC. Then, on the basis of the trust and confidence, disputing parties select any two from the same list on their respective behalf. In this way three mediators are selected in the panel as other one is selected from the VDC to preside over the proceedings. The three member mediation panel so constituted conducts and facilitate the mediation proceedings. The panel of three mediators is made inclusive and balanced. At least, one woman is more or less included in the panel.

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<sup>78</sup> This information is shared by VDC Secretary with the researcher. The local coordinator is a trained mediator who is elected from among the active mediators, and is employed to coordinate the activities of the Mediation Service centre at Shardanagar

### **5.17.1 Venue Selection and Other Logistics**

Selection of venue is very important in the success of mediation proceeding. While selecting a place or venue for conducting mediation session, care is taken to ensure that the venue is safe secure and convenient. The disputing parties should feel the venue to be safe and convenient. It should be arranged parties as to maintain secrecy and confidentiality of the whole proceeding. In Sharadnagar VDC, generally use of the VDC facility (room) is preferred because of the safe environment as well as adequacy of the space it offers. Amenities and logistics such as furniture items, paper, pen, chart paper and other amenities are made available on behalf of the VDC in the venue.

### **5.17.2 Seating Arrangements**

Seating arrangement is also a crucial part of the mediation proceeding. Generally, circular seating arrangement is provided and the information about the available physical facilities such as seating arrangements are made in such a way that the both the disputing parties and the mediators sit and talk face to face.

### **5.17.3 Work Division among Mediators**

As has been mentioned above, three mediators are selected to convene and conduct mediation session. The preparation is made before hand about their roles in facilitating the mediation session.

The discussions are held on the day, at the time and in the place as decided beforehand. During the mediation session, selected mediators, and disputing parties hold discussions to arrive at settlement of the dispute in amicable and voluntary terms. In making mediation session productive and result oriented, personality and speaking style of the mediators are very helpful. They greatly determine the outcome of the mediation session. Positive expression helps to create friendliness and amicable ambience. The mediators create cordial atmosphere and demonstrate empathy to ensure that the disputing parties feel respected, and take part actively in the settlement of their dispute.

## 5.18 Four Stages of Dispute Resolution

Needless to repeat, mediation is a tool that can empower people to solve their disputes on their own and take responsibility for the outcome or result, Mediation empowers people to make decisions about their own problems. It encourages more responsible behavior from their part to resolve problem. Mediation is more likely to genuinely resolve the specific conflicts since both parties have a say in the solution. Each culture and each community is different. Therefore, mediation approaches may differ from one setting to the other but the basic values and principles of mediation such as fairness, impartiality and suspending judgment by the mediators among others are common. The community mediation practiced for dispute resolution in Sharadanagar is carried through four stage process<sup>79</sup>. The four stages of dispute resolution using the values and principles of the interest based mediation have been summarized as follows:<sup>80</sup>

### 1. First stage:

Starting and introduction (providing safe and secure environment)

### 2. Second Stage:

Helping both the parties to tell about their own events of dispute (Telling one's own stories)

### 3. Third Stage:

Helping the disputing parties to understand each other and creating a congenial and welcoming environment for resolution of dispute (Pursuing joint ownership for agreement).

### 4. Fourth stage:

Helping the disputing parties to search for alternatives and reach consensus/agreement (Promoting and ensuring collaboration for sustainability of the agreement).

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<sup>79</sup> The four stage process is discussed in details in the manual titled Peace Skills: A manual for community mediators by Ronald S Kraybill with Robert A Evans and Alice Frazer Evans, San-Francisco California 2001. The manual used for training of the community mediators draws heavily from this Manual and four stage process has been widely used practiced the training for mediation.

<sup>80</sup> Some of the information is taken from the Mediators Handbook based on which the mediators use as guidelines to conduct mediation proceedings. Other information is drawn and synthesized from the sharing of the VDC secretary and mediators is Sharadanagar VDC.

The objective and detail of the process for the four stages has been provided below.

**a) First Stage: Starting and Introduction**

**Objectives of the First Stage:**

1. To make the disputing parties feel secure, safe and confident for discussion.
2. To make them know about the mediation process and the role of the mediators.
3. To inform the disputing parties about the available logistics for use including toilet, drinking water etc.
4. To help the disputing parties frame ground rules like speaking turn by turn, and avoiding the use of abusive language etc.

**c) Second Stage:**

Helping both disputing parties, in turn, to tell the detail about their own events.

**The objectives of the second stage are as follows:**

- 1) To get detail information about the dispute and problems of the disputing parties concerned.
- 2) To motivate and encourage the disputing parties to listen attentively to each other's statements and stories.
- 3) To help both parties to clarify about each other's perceptions and views.

**The tasks mediators do at this stage are as follows:**

- 1) To help both parties to tell their stories/problems/ grievances and understandings clearly.
- 2) To encourage/motivate the parties to listen patiently while other party is speaking.
- 3) To stop the one party from interrupting or asking question or passing abusive remarks while other party is speaking.

- 4) To help the disputing parties make their statements, clarify their points by asking questions and seeking clarification.
- 5) To summarize the major points/issues raised by the disputing parties
- 6) To ask the other party to tell his / her views
- 7) To note down the interest and needs of the disputing parties

#### **Facilitation skills used by mediators**

- 1) To use active and reflective listening skills.
- 2) To use open ended questions
- 3) To paraphrase the statements of the disputing parties and laundering them.
- 4) To summarize the statements.

#### **Some questions asked by mediators at the second stage**

- 1) Now tell what had happened?
- 2) How did the dispute arise?
- 3) What are the major problem/issues?
- 4) What do you think will be solutions to the issues?
- 5) Please clarify the issues options and solutions?

The following questions are asked to understand the feeling and sentiments of the concerned parties.

- 1) How did you feel at that time?
- 2) How did you take that event when it happened?
- 3) How are you feeling now?
- 4) What impact has the event left on you physically or mentally?

**c) Third Stage:** Helping the disputing parties to understand each other is the objectives of the third stage:

The objectives are mentioned below:

- 1) To help both parties to understand feelings, sentiments, views and problems of each other.
- 2) To identify the main issues to be discussed.
- 3) To identify interests, needs and options
- 4) To make sure whether both parties are committed to find out solution or not.

The tasks done by the mediator at this stage are as follows

- 1) To help identify main issues to be discussed and resolved,
- 2) To help to frame main issues as open question.
- 3) To motivate and help the disputing parties to discuss the issues to get solution on the issues on their own.

Facilitation skills used by mediators at this stage:

- 1) Listening carefully
- 2) Asking open questions
- 3) Reframing statements
- 4) Paraphrasing statements
- 5) Summarizing the statements
- 6) Some questions asked by mediator to the disputing parties at the stage are as follows
  1. Are these main issues whose solution you are seeking?
  2. If there are the main issues, how can these be resolved, please discuss among yourselves?
  3. Now, how do you like to resolve these issues, please hold discussion among yourselves?
  4. What may be the solutions of these issues, please discuss among yourselves.

**d) Fourth Stage:** Helping both parties to find out alternatives and reach a consensus:

Objectives of the fourth stage are as follows:

- 1) To address personal, relational and material issues
- 2) To find out as many alternatives/options as possible to resolve the issues.
- 3) To prepare work plan in improving mutual relationship
- 4) To help the disputing parties reach a consensus
- 5) To prepare a deed of settlement/agreement

The tasks done by mediators at this stage are as follows:

- 1) To help both parties to address their personal and relational issues.
- 2) To ask and take views of the disputing parties about which issue should be addressed or discussed first,
- 3) To take into account that if relationships are resolved/settled first, it becomes helpful to arrive at agreement on the main issues
- 4) To help find out the alternative options which can address the interest, and needs of both parties
- 5) To use brainstorming method to find out alternatives/options.
- 6) To help pay attention to interests and needs while exploring into options and alternatives,
- 7) To help to select appropriate alternatives and reach consensus agreement.
- 8) To help prepare finalized deed of settlement.

Facilitation skills used by mediators

- 1) Brainstorming method
- 2) Discussion

A sample of some questions to be asked likely by mediators to the disputing parties

- 1) On which issues do you like to hold discussions at first?
- 2) Are there any possible alternatives/options to address this issue or problem?
- 3) Are there any other more appropriate options/alternatives to resolve or address these issues properly?
- 4) Which option may address interests and needs of both of you?
- 5) Are you really happy with the alternative/options selected for consensus/agreement?
- 6) Are we ready to write deed of settlements?

The things that are kept in mind in preparing/writing a deed of settlement/agreement<sup>81</sup>.

- 1) The deed of agreement/settlement is made simple, precise clear and prepared in the format as prescribed.
- 2) The points of mutual understanding of the disputing parties are clearly mentioned in the deed of settlement.
- 3) Terms of agreement of to be honored by both parties are mentioned in the deed of agreement.
- 4) What to do, who to do, till when to do etc, are mentioned clearly for the implementation of the points agreed.
- 5) The deed of agreement reflects the design to achieve win-win of outcome of the dispute.

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<sup>81</sup> According to William Ury (1993), It takes two to tangle but it takes only one to begin to untangle a knotty question. It is within the power of disputing parties to transform even their most difficult. During the American made speech in which her referred sympathetically to rebels, An elderly, upbraided lady, a staunch unionist, upbraided him for speaking kindly of his enemies when he ought to be thinking of destroying them, his reply was classic “ why madam”, Lin Lolin answered” do I not destroy my enemies when I make them my friend? The break through strategy is to do precisely that to destroy adversaries by turmine them into negotiating partner relationships. Their great test power is the power to change the game from face to face for formation to side by side problem solving. Obstructing the path are formidable barriers: their natural reactions, their positional behavior their strong donation faction and their perceived power. They can over come these barriers by applying the strategy of break through negotiation, they don’t have to take no for an answer them into negotiating partner.

- 6) A draft prepared outlining the terms of settlement. After the both of the disputing parties agree to it, then final deed of agreement is prepared and this is signed by the disputing parties.
- 7) Both of the concerned parties get the letter of agreement signed and then the mediators also attest to it.

### **5.19 Post Mediation Phase**

Mediation helps the disputing parties to work out a practical solution to problems. However, addressing the relationship issues between them is very crucial, and mediators need to be aware of it during the post-mediation phase.

The signing of deed of settlement is not enough, executing the terms of agreement constitutes an important part of the dispute resolution. Information about the relationship of both the parties is tracked down to ascertain whether the terms agreed upon by the parties have been implemented or not. Information about the post mediation situation is taken. For example, there was a dispute between husband and wife. This dispute was settled through mediation process. The mediators kept on tracking the implementation of the agreement. They seek to know whether the behavior of disputing parties has been improved or not, mutual relations improved or not, and how good and healthy is the relationship between them after mediation is etc. The mediator seeks information to know whether or not the agreement has been implemented or not.

### **5.20 Monitoring**

Monitoring of mediation services is carried out to know about procedural aspects and their impact at the community level. In the procedural monitoring especially information and data are taken to know how many and what types of disputes were registered, how many were settled and how many are yet to be settled. The information is also gathered whether or not the points of agreement have been implemented as stipulated.

Similarly, information is taken about the impact of the mediation. This monitoring is done to gather data/ information about the relation between the parties

concerned. In this monitoring the issues pertaining to impact or effect of the mediation services are collected is found on the family. Moreover, information is also collected about the changes in the perception and attitude of the parties concerned (Information and monitoring formats in appendix XII).

### **5.21 Record Management**

The task of collecting accurate and contextual information and keeping their record is an important aspect of dispute resolution implementation. In fact, baseline information is collected about the social/economic and institutional context in the community before the mediation is implemented in the community.

Moreover, data/information is collected and maintained about the number of disputes registered, dispute already mediated and the dispute yet to be resolved and so on. The information about disputes and demography of disputants is also recorded and maintained in Sharadanagar VDC.

Arrangement of record file constitutes an important aspect of office management. It makes retrieving and accessing information prompt, reliable and possible. Relevant records, data information, letters and documents are maintained in the separate room provided to mediation services (Melmalap Sew Kendra) in the VDC office.

The applications, letter/or information or acknowledgement to the second party, letters, details about disputing parties and copies of the settlement are kept categorically and systematically in record file. Any person interested to know or gather information about mediation can access it from the VDC.

## **CHAPTER – VI**

### **DISPUTE RESOLUTION AT SHARADANAGAR**

#### **ANALYSIS OF PERCEPTIONS AND PERSPECTIVES**

As discussed in the foregoing chapter, the interest based mediation is gradually accepted as an appropriate concept for resolving disputes at local level especially at Sharadanagar VDC – the locus of the case study . The disputes are resolved to the satisfaction of the disputing parties concerned. The three member mediation panel- Madhyastha Samiti-currently renamed as Melmilap Samiti, according to LSGA provision, are responsible for resolving disputes by using techniques and skills of facilitation and mediation. This opens space for mediated voluntary settlement of disputes by capitalizing on the community resources, capacity and so on. The most important part of the LSGA provision has been that dispute resolution has been an integral part of local or subsidiary governance.

The consensual dispute resolution forum provided by Sharadnagar VDC in the forms of community mediation Service centre contributes to enhance community participation in local governance and influence the process of citizen engagement in local dispute resolution process among others. However, it is often contested that interest based mediation<sup>82</sup> can not always offer an appropriate mechanism for dispute resolution in a hierarchic and stratified society like Nepal. The social structure is characterized by power imbalances and unequal relationships. The dimension of inequality and social differences are expressed in facets like gender, caste, class and so on. The society is diverse, and it is governed by plurality of legal and societal norms. All these have been said to militate against the values of mediation that rests on the principle of individual self-determination. But to offset or avoid it mediators use certain techniques to assist the disadvantaged parties through certain techniques that is providing a safe place, using inquiry skills to encourage the disadvantaged disputant to speak up, use reflective listening to encourage the disadvantaged disputant and use reframing to focus on important points made by the disadvantaged disputants etc. Societal morality of mediation is the realization and enforcement of agreement of the parties by themselves. They are entitled to decide and the mediators' role is limited merely to facilitate and assist the process of negotiation.

In mediation, parties are empowered to make whatever deal they wish to make; the mediator does not serve as judge or jury, the parties do that. The parties are in

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<sup>82</sup> Interest based mediation differs from right based mediation in the sense that the former empowers the disputing parties to articulate their interests and settle issues to arrive at win-win settlement.

control of the resolution. Focus is upon the interests and concerns of the parties, not upon the legal provisions or perceived rights

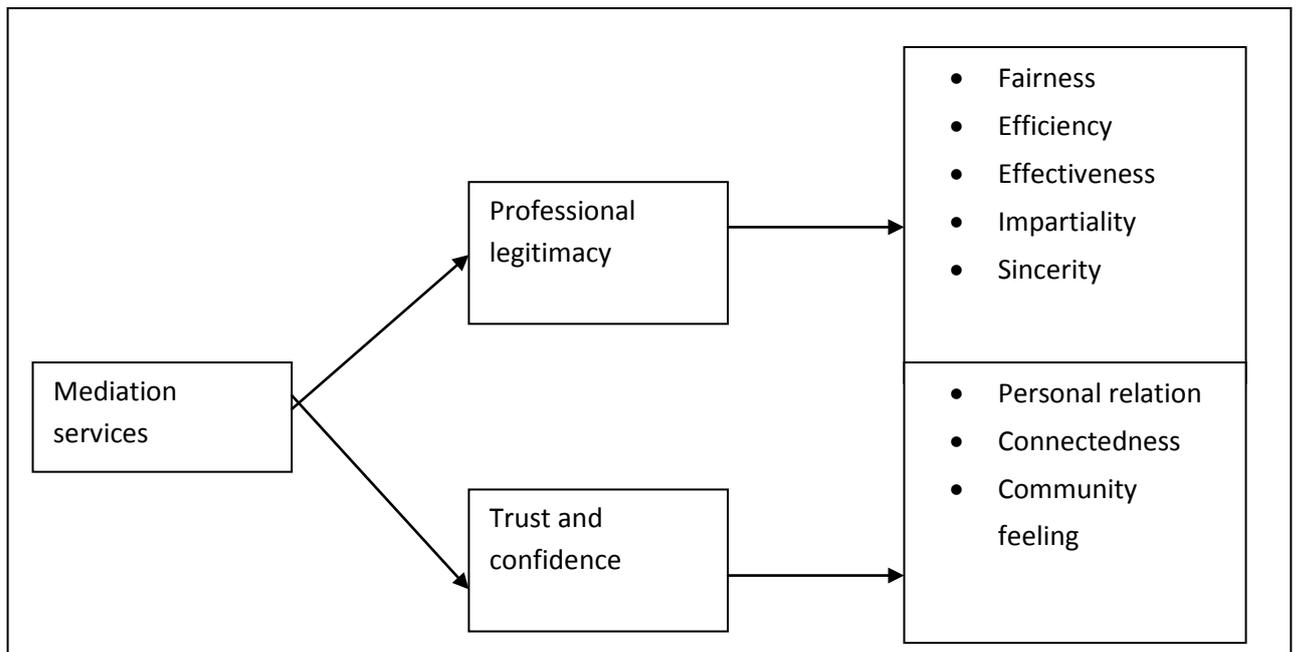
### 6.1 Conformity to Local Structures

Dispute resolution with resort to mediation conforms to structure of the Village development Committees having division into the nine wards. The ward represents the local level organized governance unit in rural areas of Nepal.. Three people from each ward, were conceivably expected to volunteer, by the framers of law, their services to resolve disputes. This number was provided to create a large enough pool of skillful people in each ward. It also intended to reflect the diversity of caste, class and gender across the VDC. By the choice of a large pool of mediators, care was taken to ensure that diversity of local demographics was reflected and represented. In Sharadanagar VDC, this is fully reflected as the panel of mediators permeate rich social diversity.

Moreover, VDC provides overall coordination in the administration and management of mediation services. As it is a cost free service, VDC allocates, a regligible amount to bear minimum expenses in regard to dispute management.

Local dispute resolution at local level through mediation is initiated and executed based upon the premises as under mentioned.

**Figure 6.1:** Impartiality and trust key to mediation services



Source : Author's own construct

The mediators (Melmilapkarta) work towards facilitating conflict resolution relying on both trust and neutrality based approach. Generally, mediators subscribe to neutrality and impartiality as key element of their role in the mediation process. The training imparted to mediators emphasizes impartiality. The code of ethics bind mediators to these principle. Their legitimacy and authority is buttressed primarily through their role and function of the mediator as a professional. As described by Max Weber, this is a rational legal type of authority<sup>83</sup>. Besides this at the local level, trust and confidence work effectively at dispute resolution process. This is called as trust based approach. The selection of mediator by the disputant who in turn form the panel to facilitate the dispute resolution is a pointer to the equal importance and role given to trust in addition to impartiality and rationality. In trust model, legitimacy and authority to act is invested in the person through a personal relationship as opposed to a professional role. So entry in mediation as seen in service is through rationality and trust in Shardanagar VDC.

## **6.2 Cost Effectiveness and Affordability**

Cost is taken as major factor for dispute resolution at community level. People in the villages cannot afford to meet costs involved in litigation. Needless to repeat, the judicial system has become complicated and costly. Dispute resolution using mediation at VDC level is preferred because of its cost free provision. In the local dispute resolution process, no fees is charged. In Sharadanagar, stationery costs for printing necessary formats and documents is borne by local government itself. Local communities don't have to bear any fees or direct cost for dispute resolution. The poor people using mediation services avail it free of cost.

However, as shared by the local mediation service coordinator, it is slowly becoming a challenge to bear the minimum cost because of rising expenses for stationers and prolonged duration it takes for mediators to settle complex disputes.

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<sup>83</sup> According to Weber quoted in . Haralambos with RM Heald :1980 in legal national terms business is conducted according to calculated rules and without regard for persons

Needless to say, formal judicial system is very expensive and cumbersome. Moreover, the execution of judgments of the courts is costlier. In addition to court fees and other costs, disputants need to pay an additional fee equivalent to 2.5% of the recoverable property in civil case, whereas such fee would be even higher in case of criminal cases. In contrast, almost all the agreements, reached by the disputing parties through mediation process in Sharadanagar VDC are executed without entailing any costs and expenses. In a very few disputes where legal compliance like registration of the deed of property partition or payment of debt in several installments is to be done excessive time than anticipated may be required to execute the agreement. But it does not necessarily incur any additional costs.

In response to a question, a disputant mentioned that Mudda Mamila (litigation) is very costlier not only due to exorbitant costs consumed in the judicial process within the court but also expensive fees quoted by legal counsel. According to the respondents, mediation is cost free and better tailored to meet interests and needs of the poor people. It is appropriate to resolve minor disputes at the local level as people need not have to go to judicial and administrative agencies like District Administration office, Police for the same.

### **6.3 Process and Duration**

Local dispute resolution through mediation in Sharadanagar process is simple, participatory and less time consuming. For poor people who have to work every day in eking out their subsistence, the likely duration of a case has been a major reason stopping them from approaching the formal justice mechanism. More often it is found that dispute settlement through formal adjudication process is quite slow and cumbersome. Usually, average time taken in disposal of cases in trial level is around two years. Moreover, the litigants have to attend more than twenty ordinary appearances and hearings in the court.

In terms of time consumed in the process of VDC level dispute resolution, it usually involves two appearances at Sharadanagar (VDC)<sup>84</sup> firstly, at the time of filing request for mediation and secondly, at the sitting of mediation proceeding. Usually, resolution is achieved in the first sitting. It is found that over 88% of the disputes get resolved in first sitting. Some disputes like land encroachment take more time than expected. Even then, the cases related to land encroachment are resolved in one or two sittings. Disputes which have taken more time than anticipated are the ones where disputing parties refused to be involved and cooperate in the mediation process. However, in Sharadanagar VDC such disputes are very few.

Disputants aver the fact that local level dispute resolution takes extremely shorter period. Due to shorter duration involved in dispute resolution, the VDC level dispute resolution mechanism is gaining popularity. Furthermore, people from poorer section have benefitted immensely from it.

#### **6.4 Knowledge about Service**

One of the issues relevant to VDC level dispute resolution is the extent of knowledge of the mediation service system among the general people. The best designed system may be useless if people do not know about it and don't use it in practical terms effectively. VDC level dispute resolution process' effectiveness varies in terms of and awareness about villagers' knowledge of the system. In some of the wards of Sharadanagar VDC, the availability of the mediation system is widely known to people. In others, it is not that adequate. In such wards as three and five, Dalits and Janajatis are still unaware of mediation services available at the VDC<sup>85</sup>. In response to a query a respondent participating in Focus Group Discussion said that the level of knowledge and awareness varies in various groups due to reasons such as level of education, performance of the coordinators, quality of mediator services and motivation and support of the VDC secretary involved. Though social marketing through street drama, has been conducted, broad based awareness is still lacking among the service users.

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<sup>84</sup> Based on information provided by Mediation Service coordinator Mohan Singh Lama

<sup>85</sup> Based on information shared by VDC Secretary Kali Prasad Ghimire

In response to a query participants in the Focus Group discussion raised, many issues related to knowledge of the system. A respondent in focus group discussion said that the VDC had weak communication facilities and they are not so much interested to inform the people about local dispute resolution services. Similarly, another respondent suggested that VDC should make people aware through tapping of public media such as, local F.M. radio which are accessed and listened to widely and so on. VDC should also conduct public dissemination program time to time in enhancing awareness about local dispute resolution. VDC has therefore a greater role in dispute resolution through dissemination of knowledge and awareness about the benefits and suitability of program.

### **6.5 Accessibility and Acceptance**

The level of acceptance of the VDC level dispute resolution by the local people is another point of consideration. Needless to repeat, the service, is according to respondents, mostly used by poor and economically disadvantaged groups and weaker sections in the community. The list of disputants indicates that Dalits and Janajatis are among the users of the dispute resolution services at the VDC. Almost 50% users of the mediation service are women, Dalits and Jananatis. The acceptance level of the outcomes of such systems by the parties is very high. There are very few cases only where parties have not honored the agreed terms, says the VDC secretary.

Mediation services for dispute resolution provided by VDCs has better acceptance. However, mechanism like dispute resolution is not stand alone mechanism; rather it has several social functions, with broader relationships in the society. One of the respondent mentioned that dispute resolution process through mediation is linked with such local functions as culture and tradition as well.

Accessibility is an important factor for popularity and usability of service. As the mediation service is more accessible, its popularity and legitimacy is very high. It is equally important that the mediation service should cover the whole VDC with proximal distance. One of the respondents in the focus group discussion mentioned that ward level mechanism for dispute resolution should also be

created. Needless to say, one of the shortcomings of the formal judicial system is its geographical limitation. The availability of the first level of court only in district headquarters only has been a major reason posing constraints to access justice for ordinary people. Moreover, court system is adjudicative and adversarial that tends to further dissatisfaction and disenchantment. VDC level mediation centers have given better access to such population in comparison to district courts. But there are some challenges yet. Within the Sharadanagar VDC, the neighbourhood wards where VDC office is housed tends to receive more services as compared to other wards. In some instances, it is found that people living far from the office are unaware about the VDC dispute resolution services due to remoteness from VDC office.

### **6.6 Trust, Fairness and Satisfaction**

Trust is another variable to measure the significance and efficacy of dispute resolution. Trust is mutual understanding of the process and product of the system. If people honor the process and the product of the dispute resolution, then it indicates the growing trust between service provider and the recipients. In response to a query, disputants showed a reasonable level of trust to the local level dispute resolution process. When pressed to speak about the factors that help in enhancing the level of trust, one female disputant suggested that there should be more involvement of females to assist in resolution of female related cases. Fairness of the process is also required to enhance the level of trust in the disputants. The fairness of the mediation services provided at VDC depends upon honesty and impartiality of the negotiator one participant in Focus Group Discussion (FGD) pointed out that high-chances of domination and influence by power five people including political workers exist if care is not taken to in list of mediators reflections the Local demographic diversity As the local issues are wont to be politicized and spaces and opportunity are captured by them the mediation services may be prejudiced and loose their values of impartiality.

However, the level of trust at VDC level dispute resolution has been found to be very high. In response to a query, one male disputant said that, in Sharadanagar VDC, mediators have been using local fairs, exhibitions and festivals to

disseminate information about the functioning of the dispute resolution process. A high level trust in the system exists but there may be enhances of suppression of legitimate interests in the name of compromiser settlement, added .

Be that as it may, mediators representing ethnicity, caste or culture group can generate sufficient trust to the weaker sections of society to use the system. Adult people as mediators give better fare to ordinary and less educated people. The case related to marital discord and matrimonial relationships are very sensitive. Therefore, the mediators need to show sensitivity when handling these types of disputants. One of the respondents suggested that separate female mediation panel to help resolve the cases should be provided.

Satisfaction is an important indicator of measuring disputants' perception regarding the dispute resolution. If disputing parties are satisfied with resolution, then it becomes evident that dispute resolution mechanism and process is successful. In response to a query, a respondent told that they were satisfied with service provided by the local government for dispute resolution. This is a cost free and trust-based process in which disputants collaborate and participate in finding solution to the problem themselves. The mediators work as facilitator to help the disputing parties to resolve the disputes. Mediation promotes peace and order, and fosters harmonious relationship among local residents. On of the respondents mentioned that the dispute settled amicably/fairly saves time and resources because of plain simple and less cumbersome process involved in it.

In response to a query one Dalit disputant said that local mediation services Shardanagar has helped the local people to settle their disputes. As a result, it creates peace and harmony by restoring relationship between the disputants. Poor people benefit from it effectively. It also serves the purpose of dispute resolution impartially. It tends to settle cases in a shorter duration and at a low cost. Needless to say, the settlement of disputes is arrived at through the mutual acceptance of the disputing party; there is no point in raising obstacles in enforcing the agreed terms and outcomes.

Most of the respondents at the VDC level told about the reasons why local people choose mediation. The reasons are summarized as follows:

- 1) Needing to sort out issues, they were unable to deal with by themselves
- 2) Needing some one impartial and trustworthy to help them manage discussion and negotiation on specific issues.
- 3) Wanting to avoid legal costs as far as possible
- 4) Wanting some one who would be unbiased, objective and knowledgeable
- 5) Wanting to stay on in good terms with each other
- 6) Wanting practical and emotional help at the same time
- 7) Wanting reconciliation “hoping for instant resolution”

### **6.7 Sustainability of Outcomes**

The win-win outcomes of the dispute resolution are surest basis for sustainability of the outcomes. The agreement is based on shared interest and trust, In rare cases, the trust and confidence is breached.

In the Sharadanagar VDC mediators are alleged to be affiliated with political parties. But giving all political parties the proportional share in selection of mediators, in their view, has given practical neutrality. The composition of mediator's panel somehow may make people who are not politically aligned hesitate to approach VDC for dispute resolution. In addition, all the mediators may not have reasonable basic social knowledge and effective skills to facilitate the resolution of disputes alleges one of the ex-VDC office bearers participating in FGD. Therefore, sometimes mediation done in good faith may lead to illegal or legally unsustainable results.

However, most of disputants perceive that dispute resolution process as fair. One female mediator shared her experience of slapping a man accused of domestic violence with her shoe to persuade him to come to a mediation process.. Mediation is the process for voluntary dispute settlement. According to Sharadanagar VDC Secretary, community mediation program has helped to re-solve the several

disputes related with land encroachment, verbal abuse and slander, marital discords and so on. It is based on trust and mutual relationship. It also saves the time, efforts and money of the people. In response to a query ex-chairperson of the VDC Ash Bahadur Lama told that local dispute resolution should be regulated and enforced by code of ethics. Though code of ethics for mediators exist, it is not always taken into consideration. In cases where deviations occur, these need to be checked. In the opinion of the ex-VDC office bearer taking part in FGD, the mediation has reduced the load of VDC itself.

Sharing his view about the mediation, one member of UCPN (Maoist) party told that at the beginning the Maoist did not take dispute resolution in positive term perceiving and suspecting that it was implemented to counter and weaken Jana Adalat (People's Court) but later the Maoists understand that the techniques and process used in community mediation good and helpful to resolve disputes at local level in a fair way. When UCPN-Maoist was waging battle against the state, cadres of the party had established so-called 'people's court' against the state's adjudication system. However, the people's court doesn't exist now. The local functionaries affiliated with parties like NC and UML told that they are satisfied with the dispute management practices in the VDC.<sup>86</sup>

The ex-chairperson of Sharadanagar VDC expressed satisfaction on the ongoing local level dispute management at the VDC saying, "It helps in reducing disputes in the VDC and also it develops mutual understanding among the local people". He mentioned the fact that mediators have earned high self esteem and recognition in the VDC. The VDC secretary who is directly involved in to support the process said that he was satisfied with the dispute management process in the VDC.

## **6.8 Legality/Effectiveness**

Though law relating to mediation is enacted, this has not come into effect in the absence of supplementary by laws and regulations<sup>87</sup>. It does not spell out much about local dispute resolution as such since its focus lays primarily on court

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<sup>86</sup> The all party mechanism (Sarvadalya Samyantra) has been dissolved now

<sup>87</sup> Mediation law was enacted almost one and half years ago. But the supplementary by laws and regulation laying out proceedings for its operation have not been formulated.

referred mediation. Similarly, the embargo attached to LSGA provision is another legal impediment for the implementation of local dispute resolution.

In practice, VDCs have provided support and forum for dispute resolution. However, as they are the bottom level tier of local government, VDCs have to carry out several functions ranging from administrative governance to development<sup>88</sup>. In this context, Sharadanagar VDCs need to be capacitated secretary mentioned that the local body should be equipped with sufficient physical assets and human resources to make its actions effective and result oriented. Similarly, ex-VDC chairperson told that VDC should be equipped for its several new roles and responsibilities in the changed context of Nepal.

In response to a query regarding local dispute resolution, the district court judge observed that, the small scale disputes should be resolved by the local community themselves under the local governance framework. Such disputes should not be brought to district court. The dispute resolution at VDC level indeed unburdens the court. The judiciary is in favour of mitigation of load through strengthened system of alternative dispute resolution and this has been endorsed by the judges' conferences convened from time to time.

In response of to query , the Chitwan Local Development Officer (LDO) mentioned that local dispute resolution process through mediation and conciliation should be promoted because it resolves minor disputes at local level. It reduces the police, court and district administrative office/DAO's work load. The LDO said "At a time when the scope for distributional and identity related to conflicts are likely to grow due to changes in social and political context the local capacity to resolve conflict is very relevant". He mentioned that in the state restructuring process, VDCs should be recognized as the stronger tier of the local governance where basic governance functions are carried out without dependence on central agencies and mechanism. The central supervision and control needs to be minimized.

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<sup>88</sup> In the absence of elected representatives local level VDCs are lacking capacity and institutional infrastructures to tackle functions enshrined in LSGA

Initially, some lawyers and legal practitioners used to view local dispute resolution through mediation with suspicion and skepticism. Now, their outlook towards local dispute resolution has changed for positive. The lawyers affiliated with Nepal Bar Association, Chitwan Branch, said that due to the lack of proper legal standing capacity and infrastructure, local dispute resolution process has not been functioning properly. Local dispute process has abundant potentials but it has not been used and utilized effectively.

There is no professional loss due to local level dispute resolution program. It is not a matter of gain or loss but the questions of accessibility and delivery of justice to the people. “said one of the office bearers of the District bar”

The dispute resolution program's success is based on the capacity of VDC. The local body is undoubtedly the democratic government institution with limited physical and human resources at the local level. Many social professional organizations are actively engaged to promote local dispute resolution with a view to enhance capacity for resolving community disputes and transforming conflicts. The VDC should be enabled to coordinate and tap the support of these organizations to build local capacity for peace and harmony at the local level. The elected representatives should be in place to carry out functions effectively<sup>89</sup>.

Moreover, VDC should have separate well equipped section in handling functions pertaining to dispute resolution. There should be a small reference unit containing books related to dispute resolution in addition to relevant laws and regulations, suggests the president of Nepal Bar association District chapter Govinda Sigdel.

## **6.9 Quality and Standardization**

Needless to say, quality and standardization is the major issue of local level dispute resolution. Several agencies have started to use mediation and conciliation as mechanism to resolve disputes but the quality of services provided by mediators and conciliators is not said to be assured and standardized . There exists no provision to ensure and enforce uniformity and standard basis for imparting

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<sup>89</sup> The Interim Constitution-2063, provides for autonomous and empowered local governance institutions but the absence of democratically elected mechanism renders the ideas into a mirage.

training to local level dispute processors and resolvers. The curricular of trainings designed by some agencies are totally biased in favour theoretical aspects while some others but emphasis on practical skills and techniques of mediation. A common and uniform standard should be laid down and prescribed to ensure quality and uniformity not only in training but also delivery of services. If VDC dispute resolution is not standardized, and lacking in quality whole process might be questioned. It can lose trust of the local people. Standardization enhances the credibility and quality. The mediation bylaw should provide an elaborate arrangement regarding quality and standardization<sup>90</sup>. In case of mediators for Sharadanagar VDC they have received basic mediation training lasting over forty hours and the advanced, follow up refreshers to enhance their competence for mediated resolution of the disputes . Moreover, there exists provision for practice sharing and coaching for the mediators to ensure the quality of mediation services provided to the community.

## **6.10 Support and Coordination**

Support from and collaboration with other stakeholders is important for promoting dispute resolution at local level. It is a collaborative effort of the stakeholders involved. Once district level agencies and stakeholders are aware, they can refer the disputes back to the process of dispute resolution at the local level.

VDC secretary needs to perform critical role coordinate and tap support of relevant stakeholders. District police and CDO office needs to be coordinated as some disputes are referred back to VDCs for resolution. Moreover, the support of local political parties is also crucial in this regard.

### **6.10.1 Relational Changes**

Relational changes have been reported to have occurred especially by mediators. This is primarily among those people who actively took part in facilitation of dispute. The local mediators reflected the diversity within community. Receiving

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<sup>90</sup> The Mediation law in section 28 envisages creation of central level mechanism to regulate the quality aspects of the mediation services, but in the absence of by laws implementation has been hindered.

training together and then functioning as mediation teams changed the view of each other and the nature of their relationships. They reported increased respect and increased participation in community processes. Many reported they now had more contact, communication and cooperation in the activities at the community level.

The mediation centers have some impact on local structures and institutions. For example, social and political leaders have begun to refer cases for mediation. Previously, these disputes might have remained unresolved or would have required assistance of police or administrative agencies for settlement. The mediation services seems to have significantly contributed to the transformation of social relations. It shows that local dispute resolution through community mediation provides much more than just the resolution of disputants.

### **6.10.2 Institutional Changes**

Changing lenses from a narrow view of resolving cases and access to justice to a wider view encompassing broader affects on the local community shows that when mediation is available as response to conflict and when it is conducted using local resources, it changes both individuals and institutions (Lederach and Thapa: 2012). Mediation programs create a new kind of space of cooperation within the local community. The quality and sustainability of the mediation process depend on careful recruiting of the group of mediators. As has been discussed at the outset of this chapter, the choice to have three mediators, originally mandated by LSGA, becomes a procedural mechanism for establishing the panel of mediators for each case. Each party chooses one and the VDC adds the third. It is found that people chose their mediator from the list for a variety of reasons. Some chose the person because he or she was known to them and they trusted that person. Others said that they thought the chosen person would be more likely to understand and represent them. For example, a person from an ethnic minority might choose a mediator from their ethnic group. Some chose as they did because they believed the person had moral or social status to enforce the solution on the other side. It shows that much more than a notion of neutrality is at play in these choices.

### 6.10.3 Level Playing Field

Several possible explanations of how the photo list of mediators contributes to change have emerged. The photo list provides a level playing field for those who cannot read and write. It clarifies who the prospective mediator actually is in a community where many people may share the same name importantly. It allows people to situate themselves as disputants among the locally known and locally based resource people. The panel of three also appeared far more important than its original, legally mandated purpose. The formation of the panel requires participation by the disputants and creates for each case a mix of people coming from different parts of the community. The mediators are perceived as embedded and are known within the local community. The panel often comprises a mix of caste, gender, class and ethnicity. The mediators as individuals can be recognized as coming from one or more identity groups within the community. As a group of three, however they provided a certain balance. This more closely resembles an inside partial than an 'outside neutral' approach to mediation.

Mediators emerge from training with a capacity to suspend judgment or not being judgmental, and resist to give disputants a solution. This, they felt, was different than 'neutrality' given that the mediators as individuals may often have social connections to the disputants. The key was whether, as a team of three, they could create a space for the participants to reach the solution, rather than having it imposed or suggested by the mediators. This differs from the Nepali cultural tendency to offer advice when approached with a problem. However, mediation services provided at the local level is confronted with tensions and overlaps. First, the overlap between the LSGA provision and newly enacted mediation exist . LSGA provision provides for medi-arbitration whereas the mediation law enlarges the domain and scope of use and application of mediation. But the law refers to community mediation, it doesn't speak much about it. Another tension is seen between voluntarism and professionalism of mediation services. The community mediation is cost free as it is provided by trained and trusted volunteers motivated by altruistic sense to serve the community. However, the question again rises about its sustainability, efficiency and effectiveness. The volunteers may not

always sustain themselves to come forward to serve the community at their own cost and risk. The trust based model anchored to volunteer mediators might not work in the geographic community of a modern complex setting. This needs to be carefully ascertained to arrive at appropriate answers and optional solutions to strengthen the values of mediation- an important mechanism of alternative dispute resolution.

#### **6.10.4 Users’ perspectives on mediation services**

As the disputants are the users and beneficiaries of the mediation services, the appropriateness and effectiveness of the services provided at the local level can be gleaned from an assessment of their perceptions and perspectives of disputants. The following tables present perceptions and perspectives of the users based on the responses of interview conducted with them.

##### **6.10.4.1 Knowledge/Information of VDC Mediation Services**

Mediation services have been provided to community at Sharadanagar VDC. The table provided below shows the sources of knowledge to the users of mediation services available to them:

**Table 6.1**  
**Sources of Information about Mediation Services**

| <b>S.N.</b> | <b>Sources of information</b>       | <b>Frequency</b> | <b>Percentage</b> |
|-------------|-------------------------------------|------------------|-------------------|
| 1           | Neighbors                           | 7                | 17.5              |
| 2           | Village Development Committee (VDC) | 5                | 12.5              |
| 3           | Mediators                           | 15               | 37.5              |
| 4           | Friends                             | 7                | 17.5              |
| 5           | Relatives                           | 6                | 15.0              |
|             | <b>Total</b>                        | <b>40</b>        | <b>100</b>        |

Source: Field Study, 2012.

Above table shows that majority of the disputants knew about mediation services from the local mediators involved in facilitating the resolution of disputes. Some

knew about it from the neighbors (17.5%) and friends (17.5%). Similarly, some (15%) disputants knew from relatives. As some of the neighbors are also tied with kin relations, role of kinship in promoting mediation is also found significant.

#### 6.10.4.2 Benefits of Mediation Services

Perception of disputants on mediation services is also diverse. In a query about the use or benefit of the mediation, disputants answered differently which are shown in the table below:

**Table 6.2**  
**Benefits of Mediation Services**

| S. N. | Benefits of Mediation              | Frequency | Percentage |
|-------|------------------------------------|-----------|------------|
| 1     | Effective resolution of dispute    | 5         | 12.5       |
| 2     | Cost effective and quick services  | 10        | 25.0       |
| 3     | Trust on mediators' skill          | 13        | 32.5       |
| 4     | Easy to access                     | 9         | 22.5       |
| 5     | Participation in mediation process | 3         | 7.5        |
|       | <b>Total</b>                       | <b>40</b> | <b>100</b> |

Source: Field Study, 2012.

Of the total types of benefits reported, the highest percentage (32%) of the disputants viewed that the mediators are trustworthy. Ten disputants perceived that the mediation service has been cost effective and quick. 22.5 percent viewed that the access to mediation services are easy. Others (12.5%) viewed that the mediation results in resolution and ends the disputes. The mediation at their disposal is flexible enough to ensure the participation of the disputant. Therefore, they think that it is beneficial.

#### 6.10.4.3 Appropriateness of Mediation Services

The appropriateness of mediation services according to responses of the disputants are many and they are shown in the following table:

**Table 6.3**  
**Appropriateness of Mediation**

| <b>S. N.</b> | <b>Reason for Appropriateness</b> | <b>Frequency</b> | <b>Percentage</b> |
|--------------|-----------------------------------|------------------|-------------------|
| 1            | Based on local values and customs | 8                | 20.5              |
| 2            | Local people as mediator          | 19               | 47.5              |
| 3            | Win-win outcome                   | 4                | 10.5              |
| 4            | Easy to understand                | 5                | 12.5              |
| 5            | Available at the local level      | 4                | 10.0              |
|              | <b>Total</b>                      | <b>40</b>        | <b>100</b>        |

Source: Field Study, 2012.

All the disputants are positive indicating that mediation service is appropriate. The reasons behind the appropriateness are varied. More frequent reason perceived by the respondents is the involvement of local people as mediator. The mediation services are based on local values and culture. Similarly, the service is easily understandable. Easy access and win-win outcome are other reasons perceived by the respondents for mediation services to be appropriate.

#### **6.10.4 Cost Involved as Experienced by Disputants**

According to the disputants the mediation services for them was provided free of cost.

**Table 6.4**  
**Cost Incurred**

| <b>S. N.</b> | <b>Appropriateness in term of cost</b>    | <b>Frequency</b> | <b>Percentage</b> |
|--------------|---|------------------|-------------------|
| 1            | Free of cost in terms of procedures       | 36               | 90                |
| 2            | Free service in terms of fee to mediators | 4                | 10                |
|              | <b>Total</b>                              | <b>40</b>        | <b>100</b>        |

Source: Field Study, 2012.

Above table indicates that the disputants do not need to bear litigation costs. Similarly, all the associated services are free of cost. It is tantamount to voluntary services used by members of the community.

### 6.10.5 Time Consumed to Resolve Dispute

The service delayed is equal to service denied. In this regard, how quick the mediation service is provided is a genuine question. Data shown in the following table answer the questions in regard to time taken as experienced by the disputants.

**Table 6.5**  
**Time Taken/Spent by Mediation Services**

| S. N. | Time Consumed to Resolve Disputes | Frequency | Percentage |
|-------|-----------------------------------|-----------|------------|
| 1     | One day                           | 25        | 62.5       |
| 2     | Two days                          | 7         | 17.5       |
| 3     | Three days                        | 6         | 15.0       |
| 4     | Additional days(than three days)  | 2         | 5.0        |
|       | <b>Total</b>                      | <b>40</b> | <b>100</b> |

Source: Field Study, 2012.

Above table shows that majority of the cases (62.5) were resolved in a day. Eighteen percent cases were solved within two days. Fifteen percent cases were resolved in three days and only five percent cases took additional days.

### 6.10.6 Facilitation and Mediation Skills

The disputants are reported better facilitated by the mediators. Following table shows their perception regarding the communication and facilitation skills of the mediators

**Table 6.6**  
**Mediators' Skills**

| S.N. | Mediation skills    | Frequency | Percentage   |
|------|---------------------|-----------|--------------|
| 1    | Reframing           | 3         | 7.5          |
| 2    | Paraphrasing        | 3         | 7.5          |
| 3    | Questioning skills  | 6         | 15.0         |
| 4    | Inquiry skills      | 13        | 32.0         |
| 5    | Summarizing skills  | 3         | 7.5          |
| 6    | Facilitation skills | 12        | 30.0         |
|      | <b>Total</b>        | <b>40</b> | <b>100.0</b> |

Source: Field Study, 2012.

Thirty-two percent respondents commented that they preferred inquiry skills of the mediators which is followed by facilitation skills (30%). Questioning, reframing, paraphrasing and summarizing skills of the mediators are also appreciated by the disputants.

### 6.10.7 Impartiality and Neutrality

Impartiality and neutrality are key quality required from the mediators. Following table shows the response of the disputants about the key features they would like to mediators:

**Table 6.7**  
**Impartiality and Neutrality of Mediators**

| S.N. | Impartiality and neutrality | Frequency | Percentage |
|------|-----------------------------|-----------|------------|
| 1    | Biasedness                  | 6         | 15.0       |
| 2    | Equal treatment             | 20        | 50.0       |
| 3    | Equal respect               | 8         | 20.0       |
| 4    | Opportunity to participate  | 6         | 15.0       |
|      | <b>Total</b>                | <b>40</b> | <b>100</b> |

Source: Field Study, 2012.

Of the total respondents, 50 percent viewed that they were equally treated during the course of facilitation. According to 20 percent respondents, they were equally respected during mediation. Fifteen percent respondent said that they were given opportunity to tell their own story. Only 15 percent disputants were of the opinion that the mediators were biased or not impartial.

### 6.10.8 Satisfaction on the Outcome of Disputes Resolution

The researcher used four scales to measure the satisfaction of the disputants after settlement of their disputes. Following table shows the level of their satisfaction regarding dispute resolution.

**Table 6.8**  
**Satisfaction with the Outcome**

| S.N. | Satisfaction on the Outcome | Frequency | Percentage |
|------|-----------------------------|-----------|------------|
| 1    | Highly satisfied            | 10        | 25.0       |
| 2    | Fair satisfaction           | 13        | 32.5       |
| 3    | Normal satisfaction         | 12        | 30.0       |
| 4    | Poor satisfaction           | 5         | 12.5       |
|      | <b>Total</b>                | <b>40</b> | <b>100</b> |

Source: Field Study, 2012.

Out of the 40 respondents, 10 (25%) were highly satisfied with the mode of disputes settled by the mediators. The number of fairly satisfied is 13(32.5%). Thirty percent respondents were simply satisfied. Five disputants were not satisfied with the mediation.

#### **6.10.9 Fulfillment of Needs and Interests**

The question whether the needs and interests are fulfilled or not is also interesting in this regard. Three scales were used to measure the level of fulfillment of the needs and interests. The table below shows the level:

**Table 6.9**  
**Fulfillment of Needs and Interests**

| S.N. | Fulfillment of Needs and Interests | Frequency | Percentage |
|------|------------------------------------|-----------|------------|
| 1    | Fully fulfilled                    | 8         | 20.0       |
| 2    | Fairly fulfilled                   | 20        | 50.0       |
| 3    | Less/Normally fulfilled            | 12        | 30.0       |
|      | <b>Total</b>                       | <b>40</b> | <b>100</b> |

Source: Field Study, 2012.

The above table shows that the needs and interests of only eight disputants were fully met. Fifty per cent disputants said that their needs were fairly met. Needs of thirty percent or 12 disputants were met normally.

### 6.10.10 Execution of Agreement

According to the empirical indicators, the disputes were settled in specific terms and conditions. Whether the terms of settlement were executed or not is another question emerged during the research. Following table shows the level of their execution:

**Table 6.10**  
**Execution of the Terms**

| S. N. | Execution of the Terms and Conditions  | Frequency | Percentage |
|-------|--|-----------|------------|
| 1     | All the agreed term have been executed | 12        | 30.0       |
| 2     | Not at all terms have been executed    | 25        | 62.5       |
| 3     | Poor execution of terms                | 3         | 7.5        |
|       | <b>Total</b>                           | <b>40</b> | <b>100</b> |

Source: Field study, 2012.

Both parties involved in the disputes had agreed some terms and conditions during negotiation.

The table above shows that only 30 percent disputants informed that all the terms and conditions agreed were executed.

Twenty five disputants informed that the terms and conditions were partially executed. Only three disputants informed that the terms and conditions agreed upon earlier were poorly executed.

### 6.10.11 Post-Mediation Relationships

It is hoped that the mediation can restore the relationship after dispute. The impact of the mediation was measured through the type of post-mediation relationship among/between disputants. The type of relationship has been shown in the following table:

**Table 6.11**

**Relationship between the Disputing Parties**

| <b>S. N.</b> | <b>Type of Relationship</b>                | <b>Frequency</b> | <b>Percentage</b> |
|--------------|--|------------------|-------------------|
| 1            | Amicable relationship                      | 13               | 32.5              |
| 2            | Normal relationship                        | 25               | 62.5              |
| 3            | Poor relation or relationship not restored | 2                | 5.0               |
|              | <b>Total</b>                               | <b>40</b>        | <b>100</b>        |

Source: Field study, 2012.

Above table shows that 13 disputants said that they had amicable relation after mediation. Twenty-five disputants had normal relationship with their counterparts. Two disputants said that they had poor relationship even after mediation.

**6.10.12 Recommendations**

**a) Competence of Mediators**

The role of mediators is vital for the success of the program. The opinions of the disputants regarding the competence of the mediators are given below:

**Table 6.12**

**Suggestions to Enhance Competence of Mediators**

| <b>S.N.</b> | <b>Enhancing competence of mediators</b>       | <b>Frequency</b> | <b>Percentage</b> |
|-------------|--|------------------|-------------------|
| 1           | More training for enhancing skills             | 25               | 62.5              |
| 2           | Instant feedback or coaching fro mediators     | 4                | 10.0              |
| 3           | Further emphasis on the values of impartiality | 5                | 12.5              |
| 4           | Continuous learning and education              | 6                | 15.0              |
|             | <b>Total</b>                                   | <b>40</b>        | <b>100</b>        |

Source: Field study, 2012.

Above table shows that 25 disputants have suggested to provide more training to the mediators in order to enrich their capacity to handle complex disputes. Four disputants suggested that instant feedback or coaching is necessary to tackle the disputes. Five disputants emphasized on the values of neutrality and impartiality

whereas six disputants opined that continuous learning and education are essential for the mediators.

### **Recommendations**

The role of mediators is vital for the success of the program. The suggestions provided by the disputants for enhancing the competence of the mediators are given below:

Above table shows that 25 disputants have suggested to provide more training so as to sharpen the capacity of mediators. Four out of 40 disputants suggested that instant feedback or coaching is necessary. Five disputants emphasized on the values of neutrality and impartiality whereas six disputants opined that continuous learning and education are essential for the mediators.

### **6.11 Role of VDC secretary**

Role of VDC secretary is very important and pivotal in VDC level service delivery related issues especially in the absence of the elected representatives. Following table shows the opinions of disputants regarding the role of VDC secretary:

**Table 6.13**  
**Role of VDC Secretary**

| <b>S.N.</b> | <b>Possible role of VDC Secretary</b>  | <b>Frequency</b> | <b>Percentage %</b> |
|-------------|--|------------------|---------------------|
| 1           | Increase role of VDC secretary for coordination and promotion                  | 7                | 17.5                |
| 2           | Allocate resources and logistics to mediation services                         | 11               | 27.5                |
| 3           | Add resources for endowment fund   | 9                | 22.5                |
| 4           | Contribute in building supportive environment by involving social stakeholders | 8                | 20.0                |
| 5           | Provide financial support to mediators   | 5                | 12.5                |
|             | <b>Total</b>   | <b>40</b>        | <b>100</b>          |

Source: Field Study, 2012.

Above table shows that seven disputants were in favor of the need for increased role of VDC secretary for coordination. Eleven respondents view that the secretary needs to allocate resources and arrange logistics while nine disputants expect that the secretary need to add resources for endowment fund. Eight of them aspire that s/he needs to contribute in creating enabling environment. Five disputants opined that the VDC secretary should provide financial compensation.

#### **b) Role of Political Parties**

As election of local bodies has not been possible since 1998, role of the political parties in village is very crucial. Local level issues have been often settled through inter-party committee. The responses of the disputants regarding the role of political parties have been shown in the following table:

**Table 6.15**

#### **Perception of the Disputants on Role of Political Parties**

| <b>S.N.</b> | <b>Role of Political Parties</b>                       | <b>Frequency</b> | <b>Percentage %</b> |
|-------------|--|------------------|---------------------|
| 1           | Help increase trust on role of mediator                | 16               | 40.0                |
| 2           | Help popularize benefits of mediation                  | 6                | 15.0                |
| 3           | Coordinate with VDC and other actors financial support | 7                | 17.5                |
| 4           | Keep positive attitude towards mediation services      | 4                | 10.0                |
| 5           | Help empower the mediators                             | 7                | 17.5                |
|             | <b>Total</b>   | <b>40</b>        | <b>100</b>          |

Source: Field study, 2012.

According to above table, 40% disputants emphasize on the need for the increment of trust to the role of mediators. Similarly, seven out of 40 respondents viewed that political parties need to be coordinated with financial support. Equal number of respondents suggested that the VDC secretary can play vital role to empower the

mediators. Four respondents said that political parties can enkindle positive attitude towards mediation services.

**d) Role of Government Agencies**

The government can play supportive role in and suggestions the mediation services. Following table shows the perception of the respondents on the role of the governmental agencies to support mediator:

**Table 6.15**  
**Role of Governmental Agencies**

| <b>S.N.</b> | <b>Roles</b>                             | <b>Frequency</b> | <b>Percentage</b> |
|-------------|--|------------------|-------------------|
| 1           | Provide financial support                | 6                | 15.0              |
| 2           | Provide support for office management    | 5                | 12.5              |
| 3           | Help formulate mediation friendly policy | 9                | 22.5              |
| 4           | Legalise mediation service               | 20               | 50.0              |
|             | <b>Total</b>                             | <b>40</b>        | <b>100</b>        |

Source: Field study, 2012.

According to the table provided above, fifty percent respondents have viewed that government should legalize and mediation service through an enabling policy framework. Fifteen percent respondents have viewed that government should provide financial support to enhance mediator services. Rests of the disputants have opined that government should provide logistics support for it.

The perceptions of the disputants gleaned through their responses indicate that the mediation services are appropriate and effective. However, there are areas where policy, legal and function related changes and improvements are needed. The users' satisfaction of the mediation services confirm that the interest based mediation provided under local governance framework is effective and appropriate.

## **CHAPTER - VII**

### **FINDINGS AND CONCLUSIONS**

Social life is replete with disputes and conflicts. In order to resolve disputes and mitigate conflicts, several institutional mechanism and wherewithal have been tried out, innovated and created. Needless, to repeat, with a view to ease the process of accessing justice through involvement and participation of the stakeholders themselves, alternative dispute resolution mechanism especially negotiation and mediation has gained popularity across the developed and developing nations.

The advent of formal state institutions led to professionalization and bureaucratization of justice delivery system but the indigenous informal processes existed side by side to complement but not to substitute the state system. Mention in this context should be made of the reform initiatives undertaken to address the weaknesses and problems associated with formal judicial institutions. This is evidenced by the amendments of the court regulations carried out to introduce court referred/annexed mediation in dispute resolution process. Moreover, the democratic and accountable local governance system offers an important institutional space and mechanism for negotiating and re-negotiating diverse interests, resolve disputes arising out of structural issues including incompatibility of values, resources, goals and interests.

Initiatives have been made in Nepal to reform state through democratic devolution and promotion of citizen engagement in the governance institutions through such legislative enactments as the local self governance act 1999. The act is premised upon the rational of democratic local governance. It offers the possibility of addressing broader, social and political interests through dialogue, deliberation, negotiation and finally development and empowerment. Moreover, the Act mandates the local bodies especially the VDC and Municipality to offer institutional arrangement and safe space to resolve interpersonal disputes. However, due to continued absence of elected representatives compounded by the lack of legitimate and capable organization at the local level, the functional

competence of local bodies especially the VDCs to deliver services and respond to the needs and aspirations of the people has been poor.

Local dispute resolution at Sharadanagar VDC discussed in the foregoing chapters has exemplified that a broader typologies of disputes are also brought to local bodies for resolution. Most of these cases are not prescribed in the LSGA provision. This underlines the need for necessary revision in the local governance statutory framework to warrant that the law truly reflects the social practices, norms and realities.

As has been mentioned above, local body election has not been held for the last twelve years. The institutional and organizational capacity of local bodies especially VDC is very much weakened, if not emasculated. Out of around 3915 VDCs, almost around 800 VDCs are said to be reckoning without Secretary to carry out routine functions, not to talk of planned development and affective service delivery. Absence of elected representatives, since 2001, in local bodies has created leadership and governance vacuum. This has greatly constrained the scope for interaction between the local govt. and communities as a consequence there has been the lack of accountability relationship between citizens and local institutions.

However, the ordinary people in the VDCs like Sharadanagar oftentimes seem oblivious of the poor shape of local government institutions and present their all and sundry problems and issues to VDC. In case, secretaries are not available, they go to the former VDC office bearers seeking their help in getting development projects sanctioned and resolve disputes. The active role of the former VDC office bearers in Sharadanagar VDC attest to it. Needless to say, the administrative leadership of VDC is weak and feeble. The secretary is the non-gazetted staff of the government entrusted with wider range of funded and unfunded mandates that used to be handled by the elected VDC with 13 member executive committee and 53- member village council. He or she lacks capacity and qualification to tackle both executive and administrative functions at a political and social environment punctuated by tussles and confrontations.

As has been mentioned above, the LSGA provision regarding dispute resolution is itself vague, and fails to spell out the procedures regarding dispute settlement clearly. It is neither based purely on the values and principles of mediation nor does it lay down the plain procedure for the same. However, the positive part of the LSGA provision has been that it recognizes the concept of devolution of justice to the grassroots despite the fact that embargo has been appended to block its implementation and enforcement. Secondly, it recognizes the right of disputants to engage in discussion and arrive at the point of agreement on their own. In this context, there is a need to bring the LSGA provision to conform to the tune of the values and principles of the interest based mediation. At a time when the debates are raging in on the state restructuring through federalization, care needs to be taken to ensure that initiatives taken tend to address local diversity, social specificity and needs. Moreover, from management and administrative point of view too, local bodies alone can respond to context of diversity local needs and interests. There is a need of further reflection to allow room for local innovation and provision in congruence with the principles of decentralized governance. When talking about the reforms in the dispute resolution related provision in LSGA, the possibility of intervention by the VDC authority in the situation of failure of the disputing parties to reach an agreement should be avoided because it defeats all purpose of mediation based on a win-win outcome of dispute resolution. The VDCs should not be allowed to be run as the judicial institution, nor is the intent of the LSGA provision. There is a need to reformulate the relevant provisions of LSGA and its bylaws in line with the principles and values of community mediation. A simple and flexible process for dispute resolution needs to be provided in the law to ensure the win-win outcome of the settlement. The concept of the mediation needs to be embraced with its universally accepted values and defining principles. Justice in the local community should be comprehended as an attainable and objective phenomena largely controlled by people's own choice. Justice should not be defined something as a prize to be handed over by someone from the above or outside. It is something that could be negotiated between the concerned disputing parties themselves. Furthermore, justice at the local level should mean to promote mutual cooperation, good and

quality neighborhood. This can not be derived from the intervention of the judicial or quasi-judicial institutions. It needs to be understood as an integral part of the broader social process to be fostered and sustained under the framework of local governance system. It is incumbent upon the authority and policy makers to create a supportive and enabling environment to implement mediation services in all the VDCs and municipalities in the country so that people access justice and nurture and safeguard the community for self governance and healthy neighborhood.

In microcosmic terms, there are problems and constraints that impede the implementation of the dispute resolution process and mechanism at the local level. The absence of elected representatives continues to be the major impediment in this regard. The crippling insufficiency of local capacity and absence of a competent mechanism to handle routine functions and support the process of dispute resolution presents another obstacle. This needs to be addressed. However, this calls for major initiative on the part of the government to coordinate with different agencies and stakeholders both at the national and local level to remove policy hurdles to promote alternative dispute resolution through mediation and conciliation.

Undoubtedly, multiple institutions and forums are used by the local people to settle or resolve their disputes in the context of plural norms and institutions governing society. There is a need to bring harmony and uniformity in terms of approach and quality of mediation services provided by different local forums, institutions and actors. There is a need to demarcate precisely the jurisdiction of the LSGA and mediation law so that they do not clash to each other. Since the mediation law is more oriented in setting forth provisions for the court annexed or court referred mediation, the convergence between the LSGA provisions should be enhanced through adjustments both in the legal provision or working procedures.

Since the knowledge and awareness of the availability of the local dispute resolution services is not adequate and widespread, social marketing strategy needs to be conceptualized and implemented. The lack of information, education and limited outreach poses major hurdle in this respect. Moreover, care needs to be taken to ensure that the composition of mediators panel reflects the social and

demographic diversity. It can be done by involving educated, experienced, credible adult citizens to combine both rationality of neutrality, impartiality and trust and confidence of the community. A perusal of disputes brought to VDC for resolution indicate that cases arising the incidence of domestic violence are significant in number. The cases are generally treated as something internal and the subjects falling within personal domain .As the issues are very sensitive and delicate that involve the question of human rights and justice, a separate capacity development package for resolving these type of disputes needs to be formulated and conducted. Moreover, separate special provision and safe facility for mediation of family related disputes need to be ensured. Similarly, weak reporting and supervision systems interfere with the quality of the mediation services delivery process

The technical capacity of VDC is very weak. The available manpower, budget and financial resources do not seem to be enough to entrust a plethora of functions and mandates to VDC without building their infrastructures and capacity. VDCs capacity needs to be strengthened with the provision of administrative and financial resources. Finally, mediators, as shared by them and other stakeholders in Sharadnagar VDC, are torn between the imperatives of voluntarism and calling of professionalism. Needless to say, law and authority can not influence and dictate the dispute resolution norms as practiced by the communities, capacity for using appropriate communication and facilitation skills can be enhanced through tailor made trainings modules.

Several dilemma thus pose hurdles in strengthening local governance institutions and implementation of local dispute resolution. Many of the challenges and problems can be tackled only if democratic local elections is held and local institutions are made organizationally strong and resource wise competent to manage and support the local public service delivery through appropriate decisions and their effective implementation.

# **APPENDICES**





**APPENDIX – III**  
**QUESTIONNAIRES**  
**FOR INTERVIEW WITH VDC SECRETARY**

Name:                      Age:                      Sex: M/F

Address

- 1) What kind of support is provided for mediation services from Sharadanagar VDC?
- 2) What is your role in coordination and management of mediation services delivery to the community?
- 3) How you assess the management of mediation services to community?
- 4) How sufficient you think is existing capacity/ resource base of VDC to support mediation services?
- 5) How you assess of the role of mediators in dispute resolution?
- 6) How you assess support from political parties , social stakeholders and line agencies to community mediation services?
- 7) How supportive or adequate is the existing policy and legal framework in regard to community mediation services?
- 8) What you think needs to be done to popularize, institutionalize and strengthen mediation services in the community?

## APPENDIX - IV

### QUESTIONNAIRES FOR FOCUS GROUP DISCUSSION

#### WITH EX-VDC OFFICE BEARERS

Name: Sex: M/F

Address Designation

Ward No:

- 1) What is your role and involvement in the management of local dispute resolution as ex-VDC office bearers?
- 2) What according to your opinion, should be the role and contribution of VDC in regard to local dispute resolution?
- 3) How do you perceive or assess the current state of mediation service delivery at the local level?
- 4) What you think about the competence and integrity of mediators in resolving disputes?
- 5) What is the extent of popularity of and awareness about mediation in local community and ways and means to enhance it?
- 6) What , according to your view, are the ways and means to popularize the community mediation services at the local level?
- 7) What , according to your opinion, are the constraints and opportunities in local dispute resolution?

## APPENDIX - V

### QUESTIONNAIRES FOR INTERVIEW WITH DISTRICT LEVEL STAKE HOLDERS (JUDGE/CDO/ POLICE/LDO/LAWYERS)

Name:                      Age:                      Sex: M/F

Post                      :

1. What is rational and significance of community mediation services at the VDC level?
2. What, according to your view, is the existing capacity of VDC in coordinating and implementing local dispute resolution?
3. How supportive is the current institutional environment at the local level?
4. How you assess the strengths and weakness is of community mediation service provided at the VDC level?
5. Do you think the community mediators posses sufficient skills to help resolve disputes?
6. In terms of making mediation popular in which areas you think the improvements are needed?

## APPENDIX - VI

### LIST OF MEDIATORS AT SHARADANAGAR VDC<sup>91</sup>

| S.N | Name                  | Address            |
|-----|-----------------------|--------------------|
| 1   | Ash Bahadur Lama      | Sharadanagar VDC-1 |
| 2   | Asha Gurung           | Sharadanagar VDC-1 |
| 3   | Bal Kumari Rana Magar | Sharadanagar VDC-1 |
| 4   | Tika Ram Rana         | Sharadanagar VDC-2 |
| 5   | Kamala Gurung         | Sharadanagar VDC-2 |
| 6   | Purna Bdr. Gurung     | Sharadanagar VDC-2 |
| 7   | Mohan Singh Lama      | Sharadanagar VDC-3 |
| 8   | Bimala Mahato         | Sharadanagar VDC-3 |
| 9   | Rupesh Chandri Khanal | Sharadanagar VDC-3 |
| 10  | Jeevan Ram Mahato     | Sharadanagar VDC-4 |
| 11  | Bandu Mahato          | Sharadanagar VDC-4 |
| 12  | Arjun Dhakal          | Sharadanagar VDC-4 |
| 13  | Saraswoti B.K         | Sharadanagar VDC-4 |
| 14  | Sandhya Gurung        | Sharadanagar VDC-4 |
| 15  | Sesh Kanta Adhikari   | Sharadanagar VDC-5 |
| 16  | Indu Mandit           | Sharadanagar VDC-5 |
| 17  | Gita Gautam           | Sharadanagar VDC-5 |
| 18  | Laxmi Mahato          | Sharadanagar VDC-6 |
| 19  | Som Prasad Gurung     | Sharadanagar VDC-7 |

<sup>91</sup> The list contains the name of these mediators who are active and available to resolve disputes at the local level, as shared by VDC secretary in concurrence with mediation service coordinator.

|    |                        |                    |
|----|------------------------|--------------------|
| 20 | Sita Gurung            | Sharadanagar VDC-7 |
| 21 | Rudra Prasad Sapkota   | Sharadanagar VDC-7 |
| 22 | Ash Bahadur Lama       | Sharadanagar VDC-8 |
| 23 | Khadga Bahadur Pakhrin | Sharadanagar VDC-8 |
| 24 | Kha Maya Lama          | Sharadanagar VDC-8 |
| 25 | Sukanya Rai            | Sharadanagar VDC-8 |
| 26 | Moti Prasad Gurung     | Sharadanagar VDC-8 |
| 27 | Yek Maya Gurung        | Sharadanagar VDC-9 |
| 28 | Devi Thapa Magar       | Sharadanagar VDC-9 |
| 29 | Krishna Kumari Gurung  | Sharadanagar VDC-9 |

**APPENDIX – VII**

**LIST OF FORMER ELECTED OFFICE BEARERS IN  
SHARADANAGAR VDC**

| <b>S.N</b> | <b>Name</b>            | <b>Address</b>      |
|------------|------------------------|---------------------|
| 1          | Ash Bahadur Lama       | Sharadanagar-8, VDC |
| 2          | Chudamani Kharel       | Shardanaga-6, VDC   |
| 3          | Chandra Sobha Gurung   | Sharadanagar-1, VDC |
| 4          | Tika Ram Rana Magar    | Sharadanagar-2, VDC |
| 5          | Shyam Kumar Chadudhary | Sharadanagar-6, VDC |
| 6          | Jeevan Ram Mahato      | Sharadanagar-4, VDC |
| 7          | Lal Kumar Thapa        | Sharadanagar-5, VDC |
| 8          | Dev Narayan Mahato     | Sharadanagar-6, VDC |
| 9          | Khum Bahadur Gurung    | Sharadanagar-7, VDC |
| 10         | Khadga Bahadur Pakhrin | Sharadanagar-8, VDC |
| 11         | Moti Prasad Gurung     | Sharadanagar-9, VDC |

## APPENDIX - VIII

### DISTRICT LEVEL KEY INFORMANTS

| S.N. | Name                         | Designation/post     | Address   |
|------|------------------------------|----------------------|-----------|
| 1    | Basant Adhikari              | LDO                  | Bharatpur |
| 2    | Lekh Nath Baral              | District court judge | Bharatpur |
| 3    | Dig Bhupal Kumar<br>Bhandari | Police official      | Bharatpur |
| 4    | Ganesh Raj Karki             | CDO                  | Bharatpur |
| 5    | Govinda Sigdel               | Lawyer               | Bharatpur |
| 6    | Ful Maya Rana<br>Magar       | Lawyer               | Bharatpur |

## APPENDIX – IX

### VDC LEVEL KEY INFORMANTS

| S.N | Name                   | Designation                  | Responsibilities                            |
|-----|------------------------|------------------------------|---|
| 1   |                        |                              |   |
| 2   | Surendra Gurung        | UCP(M)                       | Members of all party VDC mechanism          |
| 3   | Shankar Mahoto         | UCP(M)                       | Members of all party VDC mechanism          |
| 4   | Chandra Nath Ghimire   | UCP(M)                       | Members of all party VDC mechanism          |
| 5   | Hum Bahadur Chhetri    | Nepali Congress              | Members of all party VDC mechanism          |
| 6   | Shesh Kanta Adhikari   | Nepali Congress              | Members of all party VDC mechanism          |
| 7   | Top Man Singh Gurung   | Nepali Congress              | Members of all party VDC mechanism          |
| 8   | Surath Prasad Shrestha | UML                          | Members of all party VDC mechanism          |
| 9   | Tikaram Pandit         | UML                          | Members of all party VDC mechanism          |
| 10  | Krishna Kumari Gurung  | UML                          | Members of all party VDC mechanism          |
| 11  | Hom Nath Timilsina     | RJP                          | Members of all party VDC mechanism          |
| 12  | Anup Adhikari          | Government Representative    | Health Post, Sharadanagar VDC               |
| 13  | Purna Prasad Poudel    | Government Representative    | Agriculture Service Centre, Gunjanagar, VDC |
| 14  | Kali Prasad Ghimire    | VDC secretary                | Sharadanagar 1                              |
| 15  | Mohan Singh Lama       | Mediator service coordinator | Sharadanagar 6                              |

**APPENDIX – X**

**DEMOGRAPHIC PROFILE OF DISPUTANTS INTERVIEWED**

**AT SHARDANAGAR VDC**

| <b>S. N</b> | <b>Name</b>                 | <b>Gender</b> | <b>Marital Status</b> | <b>Ethnicity</b> | <b>Education</b> | <b>Occupation</b> | <b>Age</b> |
|-------------|-----------------------------|---------------|-----------------------|------------------|------------------|-------------------|------------|
| 1           | Sona Gurung                 | Female        | Unmarried             | Ethnicity        | I.A              | Business          | 33         |
| 2           | Jit Bahadur Mahoto          | Male          | Married               | Ethnicity        | I.A              | Agriculture       | 44         |
| 3           | Krishna Bahadur Thapa Magar | Male          | Married               | Ethnicity        | I.A              | Service           | 63         |
| 4           | Mira Ghimire                | Female        | Married               | B/C              | Literate         | Agriculture       | 50         |
| 5           | Nirmala Ghimire             | Female        | Married               | B/C              | Literate         | Agriculture       | 41         |
| 6           | Shamshre Gurung             | Male          | Married               | Ethnicity        | S.L.C            | Service           | 60         |
| 7           | Kopila Gurung               | Female        | Married               | Ethnicity        | Literate         | Agriculture       | 41         |
| 8           | Durga Gurung                | Female        | Married               | Ethnicity        | Literate         | Service           | 42         |
| 9           | Purna Bahadur Gurung        | Male          | Married               | Ethnicity        | Illiterate       | Agriculture       | 44         |
| 10          | Tul Bahadur Gurung          | Male          | Married               | Ethnicity        | 5 class          | Agriculture       | 40         |
| 11          | Sanu Maya Bhujel            | Female        | Married               | Ethnicity        | 9 class          | Agriculture       | 45         |
| 12          | Mina Lama                   | Female        | Married               | Ethnicity        | +2               | Service           | 27         |
| 13          | Laxmi Adhikari              | Female        | Married               | B/C              | Literate         | Agriculture       | 40         |

|    |                      |        |           |           |            |             |    |
|----|----------------------|--------|-----------|-----------|------------|-------------|----|
| 14 | Man Bahadur Adhikari | Male   | Married   | B/C       | Literate   | Agriculture | 50 |
| 15 | Arjunmaya Tamang     | Female | Married   | Ethnicity | Literate   | Agriculture | 41 |
| 16 | Chuni Kumari Mahoto  | Female | Married   | Ethnicity | Literate   | Agriculture | 48 |
| 17 | Gangamaya Tamang     | Female | Married   | Ethnicity | Illiterate | Agriculture | 50 |
| 18 | Jevan Tamang         | Male   | Unmarried | Ethnicity | Literate   | Agriculture | 22 |
| 19 | Harka Bahadur Sunar  | Male   | Married   | Dalit     | Illiterate | Agriculture | 58 |
| 20 | Lakhan jiya Mahato   | Female | Married   | Ethnicity | literate   | Agriculture | 55 |
| 21 | Laxmi Mahato         | Female | Married   | Ethnicity | Literate   | Agriculture | 35 |
| 22 | Maina Paudel         | Female | Married   | B/C       | SLC        | Agriculture | 39 |
| 23 | Tanka Kumari Dhakal  | Female | Married   | B/C       | Illiterate | Agriculture | 77 |
| 24 | Bal Bahadur Tamang   | Male   | Married   | Ethnicity | Literate   | Agriculture | 50 |
| 25 | Roja Gaire           | Female | Married   | B/C       | Literate   | Agriculture | 26 |
| 26 | Bishu Gaire          | Male   | Married   | B/C       | Literate   | Agriculture | 28 |
| 27 | Basanti Joshi        | Female | Married   | B/C       | Literate   | Agriculture | 24 |
| 28 | Jagdish Gaire        | Male   | Married   | B/C       | Literate   | Agriculture | 35 |
| 29 | Kamala Pariyar       | Female | Married   | Dalit     | Illiterate | Agriculture | 45 |
| 30 | Rojani Pariyar       | Female | Married   | Dalit     | Literate   | Agriculture | 25 |

|    |                      |        |           |           |          |             |    |
|----|----------------------|--------|-----------|-----------|----------|-------------|----|
| 31 | Dhoshe Sarki         | Male   | Married   | Dalit     | Literate | Agriculture | 40 |
| 32 | Kali Sharki          | Female | Married   | Dalit     | Literate | Agriculture | 38 |
| 33 | Sajan Gurung         | Male   | Unmarried | Ethnicity | +2       | Student     | 22 |
| 34 | Nandalal<br>Mahato   | Female | Married   | Ethnicity | literate | Agriculture | 44 |
| 35 | Ramesh Khanal        | Male   | Married   | B/C       | B.A      | Student     | 26 |
| 36 | Pabitra Adhikari     | Female | Unmarried | B/C       | +2       | Student     | 19 |
| 37 | Santa Bahadur<br>B.K | Male   | Married   | Dalit     | Literate | Agriculture | 45 |
| 38 | Bhi Bhadur<br>Lama   | Male   | Married   | Ethnicity | Literate | Agriculture | 42 |
| 39 | Bishnu Shah          | Female | Married   | B/C       | Literate | Agriculture | 26 |
| 40 | Prakash Kandel       | Male   | Married   | B/C       | B.A      | Agriculture | 48 |

**APPENDIX – XI**

**Types of Disputes at Sharadanagar VDC**

| <b>S. N</b> | <b>Types of Disputes</b>   | <b>Year 2006</b> | <b>Year 2007</b> | <b>Year 2008</b> | <b>Year 2009</b> | <b>Year 2010</b> | <b>Year 2011</b> | <b>Year 2012</b> | <b>Total Resolved</b> | <b>Percent %</b> |
|-------------|----------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|-----------------------|------------------|
| 1           | Land boundary encroachment | 4                | 11               | 2                | 8                | 4                | 5                | -                | 34                    |                  |
| 2           | Physical assault           | 7                | 6                | 7                | 8                | -                | -                |                  | 31                    | 17.7             |
| 3           | Monetary transaction       | 2                | 5                | -                | -                | 2                | -                | 4                | 13                    | 7.4              |
| 4           | Family discord             | 2                | -                | 8                | 9                | -                | 4                | -                | 23                    | 13.1             |
| 5           | Water use                  | -                | -                | 3                | 4                | 6                | 3                | 3                | 19                    | 10.8             |
| 6           | Compensation               | -                | -                | 1                | -                | 9                | 2                | -                | 12                    | 6.9              |
| 7           | Defammation                | -                | -                | -                | 3                | -                | 3                | -                | 6                     | 3.4              |
| 8           | Theft accusation           | -                | -                | -                | 3                | -                | -                | 1                | 4                     | 2.3              |
| 9           | Road access and block      | -                | -                | -                | 7                | -                | 5                | -                | 12                    | 6.9              |
| 10          | Property partition         | -                | -                | -                | -                | 7                | 2                | -                | 9                     | 5.2              |
| 11          | Maintenance                | -                | -                | -                | -                | 3                | -                | -                | 3                     | 1.7              |
| 12          | Domestice violence         | -                | -                | -                | -                | -                | 2                | -                | 2                     | 1.2              |
| 13          | Poison consumption         | -                | -                | -                | -                | 1                | -                | -                | 1                     | 0.6              |
| 14          | Accident                   | -                | -                | -                | -                | -                | -                | 1                | 1                     | 0.6              |
| 15          | Wages                      | -                | -                | -                | -                | -                | -                | 3                | 3                     | 1.7              |
| 16          | others                     | -                | -                | -                | -                | -                | -                | 3                | 3                     | 1.7              |
|             | <b>Total</b>               | <b>15</b>        | <b>22</b>        | <b>21</b>        | <b>43</b>        | <b>31</b>        | <b>26</b>        | <b>18</b>        | <b>176</b>            | <b>100</b>       |

## **APPENDIX - XII**

### **SAMPLES OF MEDIATED CASE IN SHARADANAGAR**

#### **1.0 ISSUE OF DISPUTE : SLANDER( GALI BEIJATI)**

##### **2.0 Facts of the dispute**

Krishna Gautam (Name Changed) and Ram Bhattarai (Name Changed) - inhabitant of ward number 2 and 4 of Sharadanagar VDC respectively- are the friends from their childhood. They have stood united even at the time of crises and helped each other in all possible ways. Their relationship turned even stronger when Ram Bhattarai joined as an employee at the local cooperative office in 2059. Three years later, Krishna Gautam with his family opened a grocery shop at the ground floor of the building where cooperative was established. The spouse of Ram and Krishna got emotionally involved and reach a new height. However, in 2064, Uma Bhattarai- wife of Ram Bhattarai- based on her observation raised a serious question related with alleged illicit relationship between Sudip and Bishnu's wife. As a result, the childhood friends turned into the greatest foe in no time.

To mitigate the situation , the local elites and chairperson of the cooperative decided to relieve Krishna of his office and dislocate the grocery shop. Despite the initiative by local people, the situation went worse from bad. In 2065, Ram along with Sunita (Name Changed)- Krishna's wife- carried out indecent activities including bluff call to sudip's in- laws. The situation took an ugly turn when Sita-Ram's wife- accused Samita of being character less woman. The irate Sunita manhandled Sita in response to her allegation. Following the incident, both registered an application at the local mediation service committee for justice.

##### **3.0 Process of Mediation**

Mediation Service Centre at the VDC was unable to settle the disputes within the premise of the VDC for various reasons. Dairy Chowak was selected as the venue to mediate the related issue. This was necessary to avert any further untoward

incident. During the mediation process, local people accused Sunita of being an immoral and wicked woman. Local people were exerting pressure on the mediators who were not in position to control the local mob. Meanwhile, Samita under the pretext of nature's call left the mediation process and consumed poison after reaching home as she was unable to endure the allegations. She was immediately taken to the local hospital for medical attention by the mediators and other concerned people. Five days after the intense medical observation, Samita's health was partially stable. Eight days later when Samita was out of danger, fresh mediation process was sought by the disputants. The mediation process was held at local Mediation Service Centre.

**Story of Sita/ Ram Bhattarai:** Krishna and I have remained very good and close friend for ages. We have shared the ups and downs of our life. Ram also said that he suggested Krishna to open a grocery shop which will mutually benefit each other in the long run. As an immediate neighbor and close friend, I helped Sunita in dealing with the business transaction on regular basis in Krishna's absence. This fueled the skepticism within my near and dear ones. As a result, both wives started squabbling over trivial issues which eventually widened the gulf between two friends. The situation turned malicious when Sunita manhandled Sita at her premises leading to serious injury. During the mediation process, Ram urged the mediators for arrangements of compensation and also demanded that such activity should not take place in near future. On the other hand, he denied to reimburse the expenses borne when Samita was undergoing treatment after consuming poison.

**Story of Sunita/ Ram Gautam:** Krishan Gautam said that they have remained very good friends for ages. Their relationship turned sour when Sita accused Sunita of being a whore and wicked woman. Thus created an unending gulf and fissure our conjugal relationships. With the local people support, they hatched the conspiracy as a result I was compelled to quit my job. During the mediation process, he admitted that Sunita and Sita resorted to physical assault but the baseless allegation that intends to defame our nuptial relationship should be taken seriously. Finally, he urged the mediators for the creation of environment which will allow him and his family to live a dignify life in the community.

#### **4.0 Points of settlement**

Points agreed upon by the disputing parties during the mediation process are listed below:

- Krishna Gautam will be solely responsible to manage his family affairs.
- Subita Guatum will not make any irrelevant phone calls to Sudip
- Krishna and Sunita Gautam will provide Rs 10,000 as compensation to Sita Bhattarai within one month
- Sita Bhattraai will not spit venom against Krishna and Sunita Gautam
- Ram Bhattarai and Krishna Gautam will remain as good friend and live as good neighbor.

#### **5.0 Obstacles faced during the mediation process**

- Mediation process was held in the presence of several people, not directly related to dispute.
- The mediation process could not start on scheduled time
- Un called for interference of un related people in the mediation process
- One of the disputants consumed poison where mediation proceeding was going on
- Mediators had to be involved to take the patient to the nearest hospital

#### **6.0 Skills used by mediators to help settle disputes**

- Mediators were neutral and performed the role of a bridge between the disputants.
- Disputants were reminded the ground rules time and again.
- Selection of appropriate venue and people.
- Listening and rephrasing skills were used time and again.

## APPENDIX – XIII

### SAMPLE OF MEDIATED CASE

#### **1.0 ISSUE OF THE DISPUTE: THEFT AND SLANDER**

**2.0 Issue of Dispute:** Defamation through charge of theft

**3.0 Facts of the Dispute:** The dispute surfaced after two Tolas gold was stolen from the premises of Bishnu Maya Aale (Name Changed) - a resident of Sharadanagar VDC. According to her, the neighbor's children used to come at her residence to watch television on a regular basis. One day, the gold that was lying on the television table went missing when she was not at home. She accused neighbor's children, especially Khem Bhadur Gurung (Name Changed) and Jeet Gurung (Name Changed), of stealing gold on the pretext of watching television. Later, local people also charged duo over the cases of burglary and handed them over to local police station. Even the local police was unable to find the lead and could not prove them guilty. Parents of the accused registered a case in local mediation centre to settle the case.

**4.0 Mediation Process:** At the behest of the mediation committee, the accused boys were released and sent back to their respective places. Soon after their release, the disgruntled Bishnu Maya Aale manhandled them. Immediately, mediation was held when the mediators came to know about the incident.

**5.0 Story from the Part of Maya Aale :** During the mediation, Shree Maya Aale said that two Tolas gold worth over sixty thousand went missing while the boys were watching television. She also charged that they do not bear any moral characters. Hence, this fueled my doubt and I am compelled to raise finger against them. Later, when I sought help from the local priest in finding the gold, it fortunately turned out to be fruitful. Next morning, the gold was lying on the corner of my drawing room as told by the local priest. I am extremely happy and apologize for my unethical behavior that resulted due to misunderstanding. Hereafter, I want to live in friendly environment.

**6.0 Story of the Parents of the Accused:** According to parents of the children, it is true that they regularly visit Bishnu Maya's residence to watch television. But

based on it, they cannot be alleged for their involvement, the parents questioned Bishnu Maya Aale. Such baseless allegation will defame them. Moreover, they were tortured and passed through tough phase when they were interrogated in an unethical way. These kids, who did not know much about police station, were taken into custody without any concrete evidences. Through the mediators' effort, the kids were later released. However, dissatisfied Bishnu Maya Aale along with local people vented their ire, manhandled and verbally abused these kids. They also threatened the kids to finish them off if they do not admit to their crime. Such activities on the part of Bishnu Maya Aale and local people have left irreparable scars on our social and cultural life. This will be only healed when Bishnu Maya Aale, in front of the community, apologize for her misdeed and vowed not to commit such mistake in time to come

### **7.0 Terms of Agreement**

1. Bishnu Maya Aale apologized for accusing two kids of stealing the gold
2. Bishnu Maya Aale withdraws the baseless charge against them and restore the past relationship.
3. Hereafter, they will all live in friendly environment.

### **8.0 Challenges during the mediation**

1. The issue turned into personal animosity
2. It was tough to get under aged children released from police custody
3. Implementation of commitment was difficult
4. Both disputing parties refused to budge from their respective stances

### **9.0 Positive aspects during mediation**

1. Gold was found in the corner of the same room where the television was kept
2. Bishnu Maya Aale withdrew the baseless charge against the kids
3. As the case was related with under age children, there was participation of local police officers and community people during the mediation

**APPENDIX - XIV**

**BASIC INFORMATION ABOUT DISPUTE (FORM)**

**To be filled by Mediator Service Centre**

a) Description of disputing parties:

Form No.

1(a)

|  |                     |                      |          |
|--|---------------------|----------------------|----------|
| Reg. No                                |                     | Reg. Date:           |          |
| District:                              |                     | VDC/municipality     |          |
| Type of dispute                        | 1. Personal:        | 2. Group:            |          |
|  |                     |                      |          |
| Description of first party of dispute: |                     |                      |          |
| Name                                   | Gender              | Race/caste           | Age:     |
| District:                              | VDC/Municipality    |                      | Word No: |
| Contact address:                       | Telephone no:       | Mob no:              |          |
| 1.1 Educational qualification          |                     |                      |          |
| 1. Illiterate                          | 2. Fairly literate  | 3. Primary education |          |
| 4. Secondary                           | 5. Higher secondary | 6. College           |          |
| 1.2 Selection of mediator:             |                     |                      |          |

|  |                     |                      |
|--|---------------------|----------------------|
| 1. First selection   | 2. Second selection | 3. Third selection   |
| 1.3 Name of other stakeholders number  |                     |                      |
| <u>1.3.1 Previous mediation service</u>  | a) Taken            | b) Not taken         |
| <p><u>Note:</u></p> <p>1) First party means the party filing the dispute</p> <p>2) In collective dispute, name means, name of group leader, qualification not needed</p> |                     |                      |
| Form No. 1(b)  |                     |                      |
| 1. Description of second party:  |                     |                      |
| Name:  | Gender              | Caste                |
|  |                     | Age                  |
| District   | VDC/Municipality    | Ward No.             |
| Contract address.....  |                     |                      |
| Telephone no:.....Mobile no.....   |                     |                      |
| 1.1 Educational Qualification  |                     |                      |
| 1. Illiterate  | 2. Fairly literate  | 3. Primary education |
| 4. Secondary   | 5. Higher secondary | 6. College           |

|   |                     |                    |
|---|---------------------|--------------------|
| 1.2 Selection of mediator:  |                     |                    |
| 1. First selection  | 2. Second selection | 3. Third selection |
| 1.3 Mediation service in past   | 1. Taken            | 2. Not Taken       |
| <p>Note:</p> <p>1) Second party means against whom the dispute is registered:</p> <p>2) If collective dispute name of group leader, qualification not needed:</p> |                     |                    |

|   |                     |                           |
|---|---------------------|---------------------------|
| 2. The date when dispute started:   |                     |                           |
| 2.1 If effort was made to settle the dispute before coming to mediation center: |                     |                           |
| 1. Yes  | 2. No               |                           |
| 2.2 If effort was made, in which body?  |                     |                           |
| 1. Local police post  | 2. Ward office      | 3. District Police office |
| 4. District Administration office   | 5. VDC/Municipality | 6. Others                 |
| 2.3 What was the outcome of the effort/dispute: Reason mentioned?               |                     |                           |
| 2.4 Is it going on in the above mentioned body?                                 | Yes                 | No                        |

|   |                    |                                   |                     |
|---|--------------------|-----------------------------------|---------------------|
| 2.5 Source of information about mediation service                   |                    |                                   |                     |
| 1. Friend   | 2. Poster          | 3. District coordinator           |                     |
| 4. Brochures  |                    | VDC/Municipalities employers      |                     |
| 2.6 Name if any on the following referred the dispute for mediation |                    |                                   |                     |
| 1. Local police office  | 2. District Police | 3. District Administration office | 4. Private advocate |
| 5. District Court   | 6.VDC/Municipality | 7. others                         |                     |

**APPENDIX XV**

**DETAILS OF DISPUTE SUBMITTED FOR MEDIATION**

| Types of Dispute                         | Reg No.....          |
|--|----------------------|
| Land encroachment/ Boundary traagression | <input type="text"/> |
| Transaction                              | <input type="text"/> |
| Road Accident                            | <input type="text"/> |
| Physical assault                         | <input type="text"/> |
| Distribution of water, use of water      | <input type="text"/> |
| Abuse/defamation                         | <input type="text"/> |
| Payment for damaged crop                 | <input type="text"/> |
| House hold/domestic conflict             |                      |
| Marital discord                          | <input type="text"/> |
| Partition/use of property                | <input type="text"/> |
| Others                                   | <input type="text"/> |
| 4. Name of the mediators                 |                      |

|  |
|--|
|  |
|  |
|  |
| a.....(selected by first party)              |
| b..... (selected by second party)            |
| c..... (selected by VDC                      |
| 5. Details of the Mediation meets held       |
| Day/month/year..... Hours/day.....           |
|  |
| Day/month/year..... Hours/day.....           |
|  |
|  |
| Day/month/year..... Hours/day.....           |
|  |
| Day/month/year..... Hours/day.....           |
|  |
| 6. Dispute settled through mediation process |
|  |
|  |
|  |
|  |
| Day/month/year.....                          |
|  |

**APPENDIX: XVI**

**QUESTIONNAIRES ASKED TO DISPUTING PARTIES AFTER 3- 5  
MONTHS OF DISPUTE RESOLUTION**

**Form No. 3**

a) Refer to information taken at the time of resolution of dispute

|   |           |           |         |
|---|-----------|-----------|---------|
| <u>1. If it is Family Dispute?</u>                                |           |           |         |
| Name:   | Male      | Female    |         |
| VDC/Municipality  |           |           |         |
| Age:  | Education | Education | Word No |
| 2. Type of Dispute:   |           |           |         |
| 3. Date of dispute registration:                                  |           |           |         |
| 4 .After how many sitting the dispute was settled                 |           |           |         |
| 5. Was the dispute taken to any formal body before the mediation? |           |           |         |
| Yes   |           | No        |         |

1. a) Have all the provisions been fulfilled as agreed with the other party at the time of dispute resolution?

1 Yes all

2. Only some

3. Not any

If the answer came some or not any

b) What will be about the things not done according to agreement?

1. Time to fulfill the agreement is still remaining

2. Consensus was made to fulfill in future:

3. The agreed points are not likely to be fulfilled

2.a) Was the dispute between you been fully resolved?

Yes

No

b) How is the relation between you after settlement?

1. Got good

2. Not improved

3. Further worsened

4. Irrelevant

3. Are you satisfied with the terms of resolution?

1. Yes

2. A little satisfied

3. A little dissatisfied

4. Dissatisfied

4. Did any body force you to resolve the dispute?

1. Yes

2. No

5. Are you satisfied with the mediator's role in settling the dispute?

1. Yes

2. A little satisfied

3. A little dissatisfied

4. Satisfied

6. Were they impartial/fair?

1. Were impartial

2. Not fully impartial

7. Do you give advice to your neighbors to go to mediation center if such dispute arose between neighbors?

1. Yes

2. No

8. What benefit do you think you have got by resolving the problem through mediation?

a.....

b. ....

c.....

d.....

9. Are there any things dissatisfactory with the method of dispute resolution through mediation?

a.....

b. ....

c.....

d.....

## **APPENDIX: XVII**

### **TYPES OF DISPUTES RESOLVED THROUGH MEDIATION AT SHARADANAGAR VDC**

#### **Household disputes:**

- Disputes relating to family discords.
- Dispute relating to alcoholic abuse.
- Disputes relating to household expenses.
- Dispute relating to social rituals, festivals, religious works etc.
- Disputes relating to use of one's own property.

#### **Disputed with Neighbors**

- Disputes relating to monetary transactions, exchanges of articles, loan, debt etc.
- Disputes relating to destructions of crops, fruits, vegetables and theft
- Disputes relating to the activities of children, and their behaviors.
- Disputes relating to social behavior, customs, tradition, religion etc.
- Disputes relating to land boundary, fencing etc.
- Disputes relating from cattle rearing, custody and damage caused by cattle, etc.
- Disputes relating to disposal or management of household goods.

#### **Disputes of Villages/Ward (Tole)**

- Disputes relating to road/foot trail construction and reparation

- Disputes relating to drinking water, well, water tap, irrigation channel etc.
- Disputes relating to grass/fodder, fuel-wood, grazing land etc.

### **Disputes related to public assets/infrastructures**

- Disputes relating to road, bridge, their construction, renovation reparation etc.
- Disputes relating other educational institutions, their construction, renovation, reparation and their management etc.
- Disputes relating to irrigation water, drinking water etc.
- Disputes relating to use of forest products etc.
- Disputes relating to distribution of service, opportunities and construction etc.

## **APPENDIX - XVIII**

### **MEDIATOR'S CODE OF CONDUCT<sup>92</sup>**

1. Mediator's shall work as impartial person but not as representative of either party.
2. Mediator shall facilitate the process of resolving dispute. Mediator shall not compel any party to rush to any kind of decision, nor exercise any influences.
3. Mediators shall be neutral, and not show any kind of bias/prejudice on the basis of gender, race/caste, religion, economic status or political involvement etc.
4. Mediators shall keep all information/matters discussed during the mediation process confidential and privileged.
5. Mediators shall not use the information shared, secrecy expressed or proposal or stated by the parties in context of mediation proceeding as evidence or witness nor shall make them public.
6. Mediator shall not discuss on the dispute with any of the disputing parties at any other time except the time of mediation.
7. The mediators who are related and may get affected by the result of settlement of any dispute shall not take part in such mediation.
8. Mediators shall not work as advocate or as decision maker in the process of dispute settlement.
9. Mediators shall not show any prejudices and discriminative or preferential bias or against or other person based on race, caste. Religion and sex.
- 10 Mediators shall maintain clean image and dignity and have good relationship with the local community.
- 11 If any mediators feels that he/she can't observe/abide by the mediator's code of conduct due to some unavoidable situation, such mediator's should not take part in mediation.
- 12 If any mediator violates any of the points of the code of conduct, he/she shall be deemed to be unqualified for mediating/facilitating settlement of dispute and shall be absolved of responsibility for mediation.

---

<sup>92</sup> All the mediators need to express commitment to uphold the code of conduct and sign in the document

**APPENDIX – XIX**

**BASIC MEDIATION TRAINING MODULE**

| <b>Day -1</b> |               |  |   |                                  |
|---------------|---------------|--|---|----------------------------------|
| <b>Date</b>   | <b>Time</b>   | <b>Activities</b>  | <b>Technique</b>                                    | <b>Trainer/<br/>Facilitators</b> |
|               | 30            | Registration   |   |                                  |
|               | 1hr           | Opening Session <ul style="list-style-type: none"> <li>• Chaired by Chief guest</li> <li>• Training Overview and Objectives</li> </ul> |   |                                  |
|               | <b>1hr</b>    | <b>Lunch</b>   |   |                                  |
|               | 1hr           | Introduction to the Program  | Lecture and Activity<br>Discussion & Presentation   |                                  |
|               | 30 min        | Hope and Expectation   | Lecture and Activity<br>Discussion and Presentation |                                  |
|               | 30 min        | Ground Rules   | Lecture and Activity<br>Discussion and Presentation |                                  |
|               | <b>15 min</b> | <b>Break</b>   |   |                                  |
|               | 30 min        | Peace Builder  | Lecture and Activity<br>Discussion and Presentation |                                  |
|               | 45 min        | Paired Interview <ul style="list-style-type: none"> <li>• Peace Builder</li> </ul>   | Lecture and Activity<br>Discussion and Presentation |                                  |
|               | 30            | Check Out  |   |                                  |

| <b>Day -2</b> |                |   |   |                                  |
|---------------|----------------|---|---|----------------------------------|
| <b>Date</b>   | <b>Time</b>    | <b>Activities</b>   | <b>Technique</b>  | <b>Trainer/<br/>Facilitators</b> |
|               | 30             | Check in<br>Debriefing  | Presentation  |                                  |
|               | 1.30 hr        | <ul style="list-style-type: none"> <li>• Nature of Conflict</li> <li>• Peace Building</li> <li>• Paired of interview</li> </ul>   | Lecture and<br>Activity<br>Discussion and<br>Presentation |                                  |
|               | <b>15 min</b>  | <b>Break</b>  |   |                                  |
|               | <b>1.30 hr</b> | Conflict Resolution Strategies <ul style="list-style-type: none"> <li>• Competition</li> <li>• Avoidance</li> <li>• Collaboration</li> <li>• Accommodation</li> <li>• Compromise</li> </ul> | Lecture and<br>Activity                                   |                                  |
|               | <b>1hr</b>     | <b>Lunch</b>  |   |                                  |
|               | 45 min         | <ul style="list-style-type: none"> <li>• Causes of Conflict</li> </ul>  | Lecture Method<br>and Small<br>Group<br>Discussion        |                                  |
|               | <b>15 min</b>  | <b>Break</b>  |   |                                  |
|               | 45 min         | <ul style="list-style-type: none"> <li>• Stage of Conflict</li> </ul>   | Lecture Method<br>and Small<br>Group<br>Discussion        |                                  |
|               | 30 min         | Check Out   |   |                                  |
| <b>Day -3</b> |                |   |   |                                  |
| <b>Date</b>   | <b>time</b>    | <b>Activities</b>   | <b>Technique</b>  | <b>Trainer/<br/>Facilitators</b> |
|               | 30 min         | Check in<br>Debriefing  | Presentation  |                                  |
|               | 1.hr           | Mechanism of Disputes<br>Resolution <ul style="list-style-type: none"> <li>• Negotiation</li> <li>• Conciliation</li> <li>• Mediation</li> <li>• Arbitration</li> </ul>                     | Lecture Method  |                                  |
|               | <b>15 min</b>  | <b>Break</b>  |   |                                  |

|               |               |   |   |                                  |
|---------------|---------------|---|---|----------------------------------|
|               | <b>1hr</b>    | <ul style="list-style-type: none"> <li>• Mediation Process</li> <li>• Facilitative Mediator</li> </ul>                          | Lecture and Activity<br>Discussion and Presentation |                                  |
|               | <b>1hr</b>    | <b>Lunch</b>  |   |                                  |
|               | 1.30hr<br>min | <ul style="list-style-type: none"> <li>• Apple Exercises</li> </ul>   | Four Small Group Discussion                         |                                  |
|               | <b>15 min</b> | <b>Break</b>  |   |                                  |
|               | 30 min        | <ul style="list-style-type: none"> <li>• Interest Based Approach</li> </ul>   | Lecture Method and Small Group Discussion           |                                  |
|               | 30 min        | Check Out   |   |                                  |
| <b>Day -4</b> |               |   |   |                                  |
| <b>Date</b>   | <b>time</b>   | <b>Activities</b>   | <b>Technique</b>                                    | <b>Trainer/<br/>Facilitators</b> |
|               | 30 min        | Check in<br>Debriefing  | Presentation  |                                  |
|               | 1.hr          | <ul style="list-style-type: none"> <li>• Position Based Approach</li> <li>• Interest Based Mediation</li> </ul>                 | Lecture Method<br>Activity                          |                                  |
|               | <b>15 min</b> | <b>Break</b>  |   |                                  |
|               | <b>1hr</b>    | <ul style="list-style-type: none"> <li>• Ladder of Influence</li> <li>• Intent and Impact</li> </ul>                            | Lecture and Activity<br>Discussion and Presentation |                                  |
|               | <b>1hr</b>    | <b>Lunch</b>  |   |                                  |
|               | 1.30hr<br>min | Reflective Listening <ul style="list-style-type: none"> <li>• Acknowledge</li> <li>• Paraphrase</li> <li>• Summarize</li> </ul> | Lecture and Activity                                |                                  |
|               | <b>15 min</b> | <b>Break</b>  |   |                                  |
|               | 30 min        | <ul style="list-style-type: none"> <li>• Inquiry skill</li> <li>• Reframing</li> </ul>  | Lecture and Activity                                |                                  |

|               |                |   |  |                                  |
|---------------|----------------|---|--|----------------------------------|
|               | 30 min         | Check Out   |  |                                  |
| <b>Day -5</b> |                |   |  |                                  |
| <b>Date</b>   | <b>time</b>    | <b>Activities</b>   | <b>Technique</b>   | <b>Trainer/<br/>Facilitators</b> |
|               | 30 min         | Check in<br>Debriefing  | Presentation   |                                  |
|               | 45.min         | <ul style="list-style-type: none"> <li>• Basic Concept of Mediation</li> <li>• Three Perspective</li> </ul>   | Lecture Method<br>Activity   |                                  |
|               | <b>15 min</b>  | <b>Break</b>  |  |                                  |
|               | <b>1.45 hr</b> | Fishbowl and Debrief <ul style="list-style-type: none"> <li>• Pre (15min)</li> <li>• Mediation (1hr)</li> <li>• Debrief (30 min)</li> </ul>                 | Role Play<br>Activity<br>Discussion  |                                  |
|               | <b>1hr</b>     | <b>Lunch</b>  |  |                                  |
|               | 1hr min        | <ul style="list-style-type: none"> <li>• Legal Aspect and Human Right</li> <li>• Social Justice</li> </ul>  | Lecture Method   |                                  |
|               | <b>15 min</b>  | <b>Break</b>  |  |                                  |
|               | 30 min         | <b>Orientation of Phase -1&amp;2</b> <ul style="list-style-type: none"> <li>• Introduction</li> <li>• Story Telling</li> </ul>                              | Lecture Method   |                                  |
|               | 30 min         | Check Out   |  |                                  |
| <b>Day -6</b> |                |   |  |                                  |
| <b>Date</b>   | <b>time</b>    | <b>Activities</b>   | <b>Technique</b>   | <b>Trainer/<br/>Facilitators</b> |
|               | 30 min         | Check in<br>Debriefing  | Presentation   |                                  |
|               | 2.hr           | <b>Role Play Phase -1 &amp; 2</b> <ul style="list-style-type: none"> <li>• Pre (15min)</li> <li>• Mediation (1.15hr)</li> <li>• Debrief (30 min)</li> </ul> | Role play 3 groups<br>Different room<br>3 Mediators<br>3 Disputants<br>3Observer |                                  |
|               | <b>15 min</b>  | <b>Break</b>  |  |                                  |

|               |               |   |  |                             |
|---------------|---------------|---|--|-----------------------------|
|               | <b>30 min</b> | <b>Orientation of Phase-3&amp; 4</b> <ul style="list-style-type: none"> <li>• Identify stakeholders</li> <li>• Identify Issues, Interest, Options, Agreement</li> </ul>   | Lecture  |                             |
|               | <b>1hr</b>    | <b>Lunch</b>  |  |                             |
|               | 2             | <b>Role Play Phase -3&amp;4</b> <ul style="list-style-type: none"> <li>• Pre (15min)</li> <li>• Mediation (1.15hr)</li> <li>• Debrief (30 min)</li> </ul>   | Role play 3 groups<br>Different room<br>3 Mediator<br>3 Disputants<br>3Observer    |                             |
|               | <b>15 min</b> | <b>Break</b>  |  |                             |
|               | 30 min        | Check Out   |  |                             |
| <b>Day -7</b> |               |   |  |                             |
| <b>Date</b>   | <b>time</b>   | <b>Activities</b>   | <b>Technique</b>   | <b>Trainer Facilitators</b> |
|               | 30 min        | Check in  | Presentation   |                             |
|               | 45 min        | <b>Orientation of Phase 1-4</b> <ul style="list-style-type: none"> <li>• Introduction</li> <li>• Story Telling</li> <li>• Identify stakeholders</li> <li>• Identify Issues, Interest, Options, Agreement</li> </ul> | Lecture Method   |                             |
|               | <b>15 min</b> | <b>Break</b>  |  |                             |
|               | 3.15 min      | <b>Role Play of Whole Session Phase - 1- 4</b> <ul style="list-style-type: none"> <li>• Pre (45 min)</li> <li>• Mediation (1.30min )</li> <li>• Debrief (45 min</li> </ul>  | Role play 3 groups<br>Different room<br>3 Mediators<br>3 Disputants<br>3 Observers |                             |
|               | <b>1hr</b>    | <b>Lunch</b>  |  |                             |
|               | Cont.....     | <b>Role Play of Whole Session Phase -1-4</b> <ul style="list-style-type: none"> <li>• Pre (45 min)</li> </ul>   | Role play 3 groups<br>Different room<br>3 Mediators                                |                             |

|               |               |   |                             |                             |
|---------------|---------------|---|-----------------------------|-----------------------------|
|               |               | <ul style="list-style-type: none"> <li>• Mediation (1.30min )</li> <li>• Debrief (45 min)</li> </ul>                | 3 Disputants<br>3 Observers |                             |
|               | <b>15 min</b> | <b>Break</b>  |                             |                             |
|               | 30 min        | Check Out   |                             |                             |
| <b>Day -8</b> |               |   |                             |                             |
| <b>Date</b>   | <b>time</b>   | <b>Activities</b>   | <b>Technique</b>            | <b>Trainer Facilitators</b> |
|               | 30 min        | Check in<br>Debriefing  | Presentation                |                             |
|               | 45 min        | <b>Orientation</b> <ul style="list-style-type: none"> <li>• Code of Conduct of Community Mediators</li> </ul>       | Lecture Method              |                             |
|               | <b>15 min</b> | <b>Break</b>  |                             |                             |
|               | 45. min       | Orientation <ul style="list-style-type: none"> <li>• Process of Application</li> <li>• Data entry system</li> </ul> | Lecture Method              |                             |
|               | <b>1hr</b>    | <b>Lunch</b>  |                             |                             |
|               | 45 min        | <ul style="list-style-type: none"> <li>• Evualution of Training and Participants</li> </ul>                         | Lecture Method              |                             |
|               | <b>15 min</b> | <b>Break</b>  |                             |                             |
|               | 30 min        | Closing Session   |                             |                             |

## APPENDIX – XX

### ADVANCED MEDIATION TRAINING AGENDA

#### Day - 1

| <b>Time</b>  | <b>Minutes</b> | <b>Activities</b>   |
|--------------|----------------|---|
| 9:00         | 30 min         | Welcome   |
| 9:30:30      | 30 min         | Training Overviews and Objectives   |
| 10:30        | 30 min         | <ul style="list-style-type: none"><li>• Debriefing of Mediation Process ( Four Phases)</li></ul>  |
| 11:15        | 15 min         | <ul style="list-style-type: none"><li>• Break</li></ul>   |
| <b>11:30</b> | <b>15 min</b>  | <b>Break</b>  |
| 11:45        | 1 hr           | Issues of Social Justice <ul style="list-style-type: none"><li>• Introduction of Issues</li><li>• Discussion (Small Group)</li><li>• Report &amp; Discussion</li><li>• Overview of Tool and Technique</li></ul> |
| <b>12:45</b> | <b>1hr</b>     | <b>Lunch</b>  |
| 3:15         | 1.15 min       | Safety Place <ul style="list-style-type: none"><li>• Lecture Method ( with Body Language)</li><li>• Activity</li><li>• Report</li></ul>   |
| 3:45         | 15 min         | Break   |
| 4:00         | 60 min         | Basic Ground Rules <ul style="list-style-type: none"><li>• Individual thought</li><li>• Discussion</li><li>• Introduction of Basic Concept</li></ul>  |
| <b>5:00</b>  | <b>30 min</b>  | <b>Check Out</b>  |

## Day - 2

| <b>Time</b>  | <b>Minutes</b> | <b>Activities</b>   |
|--------------|----------------|---|
| <b>9:00</b>  | <b>30 min</b>  | <b>Check in</b>   |
| 9:30         | 1hr            | Reflective Listening <ul style="list-style-type: none"> <li>• Lecture Method</li> <li>• Activity</li> <li>• Report &amp; Discussion</li> </ul>        |
| <b>10:30</b> | <b>15</b>      | <ul style="list-style-type: none"> <li>• <b>Break</b></li> </ul>  |
| 11:15        | 1 hr           | Inquiry Skill <ul style="list-style-type: none"> <li>• Lecture Method</li> <li>• Activity</li> <li>• Report &amp; Discussion</li> </ul>               |
| <b>11:30</b> | <b>15 min</b>  | <b>Break</b>  |
| 11:45        | 1 hr           | Reframing Skill <ul style="list-style-type: none"> <li>• Lecture Method</li> <li>• Activity</li> <li>• Report &amp; Discussion</li> </ul>             |
| <b>12:45</b> | <b>1hr</b>     | <b>Lunch</b>  |
| 3:15         | 1.15 min       | Fishbowl and Debrief <ul style="list-style-type: none"> <li>• Pre (10 min)</li> <li>• Mediation (1hr)</li> <li>• Debrief (20 min)</li> </ul>          |
| <b>3:45</b>  | <b>15 min</b>  | <b>Break</b>  |
| 4:00         | 60 min         | Don't Agreement in this situation <ul style="list-style-type: none"> <li>• Concept of Legal law and human Rights</li> <li>• Social Justice</li> </ul> |
| <b>5:00</b>  | <b>30 min</b>  | <b>Check Out</b>  |

### Day - 3

| <b>Time</b>  | <b>Minutes</b> | <b>Activities</b>  |
|--------------|----------------|--|
| 9:00         | 30 min         | Check in   |
| 9:30         | 1hr            | Role Play ( 2 sets of 3 co- mediation )<br><br><ul style="list-style-type: none"> <li>• Prep (20min)</li> <li>• Mediation (45hr)</li> <li>• Debrief (20 min)</li> </ul>  |
| <b>10:30</b> | <b>15</b>      | <ul style="list-style-type: none"> <li>• <b>Break</b></li> </ul>   |
| 11:15        | 1.35hr         | Role Play ( 2 sets of 3 co- mediation )<br><br><ul style="list-style-type: none"> <li>• Prep (20 min)</li> <li>• Mediation (45hr)</li> <li>• Debrief (20 min)</li> </ul> |
| <b>12:45</b> | <b>1hr</b>     | <b>Lunch</b>   |
| 12:30        | 1.35hr         | Role Play (2 sets of 3 co- mediation )<br><br><ul style="list-style-type: none"> <li>• Prep (20 min)</li> <li>• Mediation (45hr)</li> <li>• Debrief (20 min)</li> </ul>  |
| 2:45         | 15 min         | Break  |
| 3:00         | 30 min         | <ul style="list-style-type: none"> <li>• Evaluation</li> </ul>   |
|              | <b>15 min</b>  | <b>Check out</b>   |

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