

LB-602 – Alternative Dispute Resolution

Objectives of the Course

With the introduction of Section 89, CPC and amendment in the Arbitration and Conciliation Act 1996 in 2015, alternative dispute resolution methods have been given a primary role in reducing arrears and promoting fast and affordable settlement of disputes. This course has two primary objectives. First is to provide the students with the theoretical understanding of the concepts and the legal provisions relating to ADR. Secondly, the course is geared to train the students in the practical skills required to effectively participate in the ADR processes. The course has been designed for a class of not more than 30 students. It is desirable that the course is delivered by a team of teachers together for individualized learning and supervision.

The teaching methods to be employed by teachers include lectures, use of multi-media, simulation exercises, role plays, field visits, feedback and other CLE methods of teaching and learning. The course focuses on instilling the following practical skills among the students: Communication including verbal, non-verbal, body language and para-linguistic; Case and Dispute Analyses and Strategy; Distinguishing interests from rights; Persuasion; Skills of mediators; Drawing agreements; Negotiation skills; Ethical dilemmas.

Learning Outcomes: At the end of the Semester, the students will be able to

- Describe, analyse and apply the substantive rules of ADR
- Choose appropriate ADR
- Communicate effectively
- Draw settlement agreements
- Choose appropriate negotiation strategy
- Practice Mediator's skills
- Solve the ethical dilemmas

Required Readings: (Material which has not been supplied but is nonetheless important for the course, and should be read)

1. The Draft Mediation Bill 2021
2. The Arbitration and Conciliation Act 1996 as amended in 2015
3. Section 89, Code of Civil Procedure
4. Legal Services Authorities Act, 1987
5. Mediation and Conciliation Rules 2004 of Delhi High Court
6. P.C. Markanda, LAW RELATING TO ARBITRATION AND CONCILIATION, pp.1-8, (8th Edn. 2013) LexisNexis
7. 222nd Report of the Law Commission of India on NEED FOR JUSTICE-DISPENSATION THROUGH ADR, etc. (2009)
8. 246th Report of the Law Commission of India on AMENDMENTS TO THE ARBITRATION AND CONCILIATION ACT 1996 (2014)
9. Justice Manju Goel, 'Successful Mediation in Matrimonial Disputes' available at <http://www.delhimediationcentre.gov.in/articles.htm>

Suggested Readings: (Material which has not been supplied but will improve overall understanding of the course)

1. 'Concept & Techniques of Mediation', Mediation Training Module: Delhi Mediation Centre.
2. Thomas P Valenti and Tanima Tandon, Mediation in India-Practical Tips and Techniques, in Shashank Garg (ed.) Alternative Dispute Resolution, The Indian Perspective 187-248 (OUP 2018).
3. Relevant Excerpts from the Mediation Training Manual of India by Mediation and Conciliation Project Committee of Supreme Court of India. Full text available at: <http://supremecourtindia.nic.in/mediation>.
4. *Dayawati v. Yogesh Kumar Gosain*, 243 (2017) Delhi Law Times 117 (DB), Full text available at: <http://lobis.nic.in/ddir/dhc/GMI/judgement/17-10-2017/GMI17102017CRLRF12016.pdf>
5. Vikramajit Sen and Satyajit Gupta, The Concept of Seat in International Arbitration- Developments in India, in Shashank Garg (ed.) Alternative Dispute Resolution, The Indian Perspective 187-248 (OUP 2018).
6. Sheila Ahuja, International Arbitration with an Indian Connection, in Shashank Garg (ed.) Alternative Dispute Resolution, The Indian Perspective 249-388 (OUP 2018).
7. Tameem Zainulbhai, Justice for All: Improving the Lok Adalat System in India, 35(1) Fordham International Law Journal (2016) pp. 248-278. Full text available at: <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2422&context=ilj>

A) Introduction to Alternate Dispute Resolution: Differences between Litigation, Arbitration, Conciliation, Mediation and Negotiation (2 lectures)

Supplied Readings:

1. Need for Alternatives to the Formal Legal System (Special Address by Muralidhar S. in International Conference on ADR, Conciliation. Mediation and Case Management Organized By the Law Commission of India at New Delhi on May 3-4, 2003). 1
2. 'Comparison of Adjudication with ADR', Mediation Training Module of India Chapter 4 (2011) SC of India. 8
3. 'Development of Mediation in India', Mediation Training Module of India Chapter 1 (011) SC of India. 11
4. *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. P. Ltd.* (2010) 8 SCC 24.....19

B) Communication – Introduction, verbal, non-verbal communication, para linguistics (2 lectures)

Supplied Readings:

1. Creating Effective Communication in Your Life by Randy Fujishin, Creating Communications: Exploring and Expanding your Fundamental Communication Skills, 2nd Edn., Rowman Littlefield Publishers.2009, pp 1-17). 35
2. Body Language- non-verbal communication 44
3. One and Two-Way Communication

Simulation Exercises (2 classes)

C) Negotiation- Introduction, Style and Strategies (2 lectures)

Supplied Readings:

1. **Negotiation** 47
Exercise: The negotiating style profile
Predominant Negotiation Styles
Development of conflict
Negotiating techniques/Strategies
Eight critical mistakes
Being assertive in negotiation
Exercise: Questionnaire: opinions and attitudes
Negotiation: the art of negotiating
2. **The Seven Elements of Negotiation** 70

Simulation Exercises (6 Classes)

D) Conciliation/ Mediation: Difference between mediation/ conciliation and other ADRs, Mediator's Skills and Roles, Stages of Mediation: Mediator's Opening Statement; Parties' Opening Statement: Joint Session; Caucus or Separate Session; Final Negotiation/Deal-Making Round; Closure, Strategies and Techniques, Role of Silence/Apology, Handling Emotions/Impasse, Drafting Agreement, Ethical Dilemmas in Mediation (4 lectures)

Supplied Readings:

1. Concept & Techniques of Mediation', Mediation Training Module 72
2. Delhi Mediation Centre. Shriram Panchu, Mediation Practice Law - The Path to Successful Dispute Resolution Pages 90-111, 2nd Edition, LexisNexis 2015.(on the 'How to'of conducting Mediation and essentials of a mediation settlement agreement)
3. *Dayawati v. Yogesh Kumar Gosain*, 243 (2017) Delhi Law Times 117 (DB) ... 92
4. United Nations Convention on International Settlement Agreements Resulting from Mediation, 2018 (Singapore Convention on Mediation) 100
5. Points of Discussion on Mediation Bill 2021..... 105

Simulation Exercises (8 classes)

E) Arbitration

NOTE: The Arbitration Module is just for conceptual introduction/understanding of the process of Arbitration, drafting of arbitration clause, getting to know the recent changes in the Indian Arbitration Act, 1996 and knowing the differentiation of Arbitration with other form of ADR. The lecture formulation is indicative.

- (a) Overview of A & C Act, 1996 (4 lectures)
- (b) Overview of International Rules (2 lectures)
- (c) Drafting Arbitration Clause (2 lectures)

Supplied Readings:

1. Aman Hingorani, “Alternative Dispute Resolution, including Arbitration, Mediation and Conciliation”, All India Bar Examination Preparatory Materials 105
2. Duties of Arbitrator by P.C. Markanda, Naresh Markanda & Rajesh Markanda, Advocates, Supreme Court of India. 128
3. 2015 Amendment to the Arbitration and Conciliation Act, 1996. 135
4. 2019 Amendment to the Arbitration and Conciliation Act, 1996. 139
5. Excerpts from Drafting Dispute Resolution Clauses A Practical Guide, American Arbitration Association. 145

Simulation Exercise (4 classes)- Drafting Arbitration Clause

F) Visit to Delhi Mediation Centre/ Lok Adalat/ Arbitration Centre.

Discussion on Legal Services Authorities Act, 1987

The students shall have to prepare the reports according to the experience gained during field visit-whether it is to Mediation Centre/ Lok Adalat/ Arbitration Centre.

EXAMINATION

End-semester written examination--- 50 marks (2 Hours)

Oral/practical exercises- 50 marks

• Mediation (10 marks)	• Attendance 96 – 100%=10 marks 91 – 95% = 8 marks 86 - 90% = 6 marks 81- 85% = 4 marks 76 – 80 % = 2 marks 70%-75%= 1 marks
• Negotiation (10 marks)	
• Arbitration (10 marks)	
• Field Visit Report (10 marks)	