

Publisher's Note

The University of Pune has great pleasure in publishing the revised syllabus for the Law Examination under the Faculty of Diploma course in Alternative Disputes Resolution system.

It is hoped that this syllabus will be most useful to the students of this course.

On behalf of the University, I thank the experts and authorities of the University for their keen interest and whole hearted co-operation in bringing out this publication.

University of Pune
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Dr. D. D. Deshmukh
Registrar

पुणे विद्यापीठ
परिपत्रक क्र. २०७ / २००७

विषय : विधी विद्याशाखेअंतर्गत डिप्लोमा कोर्स इन् अल्टरनेटीव्ह
डिस्पूट रिझोल्युशन सिस्टिम अभ्यासक्रमाबाबत.

विद्यापीठ अधिकार मंडळाने घेतलेल्या निर्णयानुसार आपणास
कळविण्यात येते की, शैक्षणिक वर्ष २००७-२००८ पासून विधी
विद्याशाखेअंतर्गत "डिप्लोमा कोर्स इन् अल्टरनेटीव्ह डिस्पूट रिझोल्युशन
सिस्टिम" हा पदविका अभ्यासक्रमास नव्याने प्रस्थापित करण्यास मान्यता
देण्यात येत आहे.

(सोबत : अभ्यासक्रम)

Sd/- ला. फु. वसावे

संचालकांकरिता
(म.वि.वि.मं.)

UNIVERSITY OF PUNE

Diploma Course in Alternative Dispute Resolution
Syllabus

Introduction :

In India, the Law of Arbitration was changed in 1996 by repealing the Indian Arbitration Act of 1940. The new statute, the Arbitration and Conciliation Act of 1996 contains dependable framework for Arbitration and Conciliation based on the UNCITRAL (United Nations' Commission on International Trade Law) Rules:

The resolution of disputes is the main objective of the justice delivery system. India has a long tradition of resolving disputes by Arbitration, Conciliation, Mediation, Lok-Adalats etc at present there are about 30 million cases pending in the Indian Courts.

A Major step to expedite judicial process in this direction was initiated by the Central Government by enactment of the Arbitration and Conciliation Act, 1996 which made significant changes in the Law of Arbitration. Conciliation has been given statutory recognition for the first time for settlement of disputes. Institutions such as Lok Adalats have been given statutory recognition by the Legal Services Authorities Act, 1987. The Code of Civil Procedure, 1908 has been amended by incorporating Section 89 and Order X, Rules 1A, 1B and 1C making it obligatory on the courts to explore the settlement of disputes by A.D.R. methods in pending suits. All these changes in Statutes and activated atmosphere in Courts throughout the Country have created more demand for trained Arbitrators, Conciliators and Mediators to cater the needs of more than 10,000 courts spread all over the country.

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The need of the hour is to create an awareness of A.D.R. Methods among the people and to prepare a large pool of trained professionals in the field of A.D.R. who will be able to practice these ADR Methods to resolve disputes.

II. Advantages of A.D.R. :

1. Reduces legal cost.
2. Reduces time spent on litigation.
3. Confidentiality in business relationship of litigants maintained as they are not forced to have public trial.
4. Help to Court to reduce dockets.
5. Provides opportunity to party to end dispute in unconventional manner.
6. Creates opportunity to illuminate real controversy.
7. ADR can be applied when case is pending before Court or at pre-trial stage.
8. The ADR programmes are flexible and not affected with rigors of procedure.
9. Freedom of parties to litigation is not affected.
10. ADR can be used with or without advocates.

III. Objectives of the course :

1. Understand the strengths and weaknesses of various dispute resolution methods.
2. Explain primary dispute resolution process and functions.
3. Develop techniques and skill to make effective use of A.D.R. methods.
4. Describe and explain the ADR movement.

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5. Compare and contrast various legal implications of each method.
6. Train participants to be effective Arbitrators, Conciliators and Mediators.
7. Assist the Courts to reduce backlog.
8. Develop case Management system.
9. Reduce the delay in justice delivery.

Diploma Course in-Alternative Dispute Resolution

Eligibility for Admission :

To be eligible for admission, the candidate must be a graduate of any faculty either of this University or of any other University, whose degrees are recognized as equivalent to the corresponding degrees of this University.

Duration of the Course :

Duration of the course shall be one academic year commencing from June only.

Medium of Instruction :

The medium of Instruction at the Diploma Course in-Alternative Dispute Resolution shall be English.

Examination :

The examination shall be held at the end of the every academic year, on the dates to be announced by the University. Second half examination may be held in case of students who have failed.

Standard of Passing or exemption :

- (a) Each paper shall carry 100 marks.
- (b) The standard of passing for the Diploma Course in-

Alternative Dispute Resolution Law is 35% marks in individual paper/subject and 50% marks in aggregate. The candidate obtaining between 50% and 54% marks will be declared to have passed in SECOND CLASS. between 55% and 59% marks shall be placed in HIGHER SECOND CLASS. the Candidate obtaining between 60% and 69% marks will be declared to have passed in FIRST CLASS. The candidate 70% marks and above will be declared to have marked in FIRST CLASS WITH DISTINCTION.

Exemption :

Candidate who obtains at least 50% of the full marks in a paper shall at his option, be exempted from the paper at subsequent examination. He/She Shall, however, have to pass in the remaining paper or papers in accordance with standard of passing laid above, such exemption is for six years only.

Syllabus for ADR

Paper-I

Law relating to Arbitration in India

1. Part-I : Historical Background :

- (a) Meaning, concept and need of Arbitration.
- (b) Historical development of Arbitration in India and other Countries.
- (c) Important features of Arbitration-Advantages & disadvantages.
- (d) Fast track arbitration.

2. Part-II : Legislation Relating to Arbitration :

- (a) Arbitration and Conciliation Act, 1996.
- (b) Comparative study of the provisions of the Arbitration Act, 1914 and the provisions of the Arbitration and Conciliation Act, 1996.
- (c) Comparison of the provisions of Arbitration & Conciliation Act, 1996 with UNCITRAL (United Nations Commissions on International Trade Law) Model Law.

3. Part-III : Conciliation :

- (a) Arbitration & Conciliation Act, 1996. (Sec. 61 to 81).
- (b) UNCITRAL Conciliation Rules.

Paper-II

Comparative study of alternative modes of dispute resolutions

Part I :

- (a) Methods of Dispute Resolution.
- (b) Concept of Alternative Dispute Resolution and its philosophy.
- (c) Requirement of ADR system.
- (d) Merits and demerits of Judicial adjudication.
- (e) Development of ADR system.
- (f) Role of NGO's in ADR system.

Part II :

- (a) Methods of ADR system and their comparison.
 - (i) Negotiation
 - (ii) Mediation.
 - (iii) Conciliation.
 - (iv) Arbitration.
- (b) Negotiations :
 - (i) Theories.
 - (ii) Framework.
 - (iii) Skills of negotiator :
active listening, questioning, option generation.
- (c) Mediation :
 - (a)
 - (i) Introduction.
 - (ii) over view.
 - (iii) purposes & uses.
 - (iv) skills of mediators.
 - (v) role of mediators :
Parties & lawyers ethics-fairness, neutrality, confidentiality & personal values, practical skills of client interviewing.
 - (vi) Legal counseling.
 - (vii) Responsibilities of mediators :
impartiality, mediators behaviour, speed, neutrality, maintaining confidentiality.
 - (b) Hybrid Methods of alternative dispute resolution
Mini trial, Fast track Arbitration.

- (c) Methods of Dispute Resolution at grassroot level.
Lok Adalat, Jat panchayat, Free Legal Aid, Preventive strategic Legal Aid.

Part III : Legislative Recognition of ADR system

Section 89 Code of Civil Procedure and Order X Rule (1A) of the Code of Civil Procedure.

Art. 323-A and Art. 232-B of the Consitution of India.

Art. 39-A and Art. 21 of the Constitution of India.

Lokpal & Lokayukta.

Legal Services Authorities Act, 1987.

Family Courts Act, 1984-Object and provisions relating to Conciliation.

Consumer Protection Act, 1986-Role of Consumer forums and Consumer Councils.

- (1) Provisions of The Motor Vehicles Act relating to Motor Accident Claims.
- (2) Determination of compensation.
- (3) Fatal accidents.
- (4) Permanent disability.

Concept of Lok Adalat-history, Jurisdiction, types.

Settlement of cases at pre-litigation state.

Paper III

International Law Relating to Arbitration

1. Part I :

- (a) Meaning of International Commercial Arbitration.
- (b) Foreign awards and its enforcement (Secs. 44 to 60 of The Arbitration & Conciliation Act, 1996).

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2. Part II :

- (a) Efforts of United Nation's Commission on International Trade Law (UNCITRAL).
- (b) UNCITRAL Model Law on International commercial Arbitration.
- (c) Arbitral Rules of UNCITRAL & Ethics of International Arbitrators.

3. Part III :

- (a) World Trade organization's system for Resolving Trade dispute.
- (b) Comparative Analysis of ADR system in U.S., U.K., New Zealand, Australia & India.
- (c) International NGO's involved in Arbitration & ADR system.
The First, Second, Third Schedule of the Arbitration and Conciliation Act, 1996.

Paper IV

Practical Training

1. Part I : Practical Application of ADR Methods in different fields and areas.

- (a) Moot Arbitration/Conciliation/Mediation.
- (b) Paper Presentation.
- (c) A project relating to any of the aspects of ADR (Family Disputes, Building contracts, Estate and hand Dispute, Commercial disputes, etc.).
- (d) Drafting Agreements/Clauses relating to ADR.
- (e) Case study.
- (f) Intellectual property.

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2. Part II :

- (a) Visits to various institutions relating to ADR.
- (b) Viva-Voice.

IMP Books

- 1. Motiwalla O.P.-Arbitration & ADR in India & abroad, 2001.
- 2. Chaudhari S. K. Roy & Saharay H. K.-Law of Arbitration & Conciliation.
- 3. Bichawat, R. S.-Law of Arbitration & Conciliation, 1999.
- 4. Bansal & Chadha-Cases & Material on Arbitration, 1999.
- 5. Bhandaris-WTO and Development centuries-deep & deep publication 1998.
- 6. Goyal, Arun-WTO in the New Millennium Bombay, MUIDRDC World T. Center, 2000.
- 7. Basu, N. D.-'Law of Arbitration & conciliation, 2000, Universal Publication Delhi.
- 8. Murkana P. C.-Law Relating to Arbitration & conciliation (Universal Public Delhi), 1998.
- 9. G. K. Kwatra-The Arbitration and conciliation Law in India, 2000 (Universal Delhi).
- 10. A. K. Bansal-Law of International commercial Arbitration, 1999 (Universal, Delhi).
- 11. B. S. Patil-Law of Arbitration & Conciliation.
- 12. Fundamentals of family Mediation-by John M. Haynes & Stephanie Charles worth.

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13. Promise of Mediation-by Robert A. Baruch Bush & Joseph folger.
14. Medintion-Principales, Process, Practice-by lawrance Boule-(Butter worth Publi.).
15. Family Mediation-by Lisa Parkinsan.
16. Mediation in family Disputes by-Marian Robers.
17. Mediators handbook-by Ruth charlton & Micheline Dewdney.
18. Legal Services Authorities Act.
19. Consumer protection Act, 1986.
20. Family courts Act, 1984.
21. Motor vehicle Act.
22. Constitution of India.
23. Laws relating to Lok Adalat by-Justice P. S. Marayan.
24. Lok Adalat and the Poor by-M.C.T. Chitkara.

General Reading

1. Getting to say Yes-By Fisher.
2. Getting past No-By Fisher & Ury.
3. Peoples skills-By Robert Bolten.
4. Living the 7 habits-By Steven R. covey.
5. Monk who sold his Ferruri-By Robin Sharma.

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