

SHIVAJI UNIVERSITY, KOLHAPUR



DEPARTMENT OF LAW

Hand Book of Information
Relating to
Post-Graduate Certificate Course
in
Alternative Dispute Resolution (ADR)

Implemented from June, 2005

(with effect from the academic year 2005 - 2006)

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1. INTRODUCTION :

The resolution of dispute forms a large part of the justice delivery system. India has a long tradition of resolving disputes through Alternative Dispute Resolution methods viz Nya Panchayat System.

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. 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 ADR Methods in pending suits, which will create more demand for trained Arbitrators, conciliators and Mediators, to cater to the needs of more than 10,000 courts spread all over the country.

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

2) ADVANTAGES OF ADR

1. Reduces legal cost
2. Reduces time spent on litigation
3. Confidentiality maintained in business relationship
4. Confidentiality maintained in family relationship

3. OBJECTIVES OF THE COURSE

The main objectives of the Course are

1. Understand the strengths and weakness of various dispute resolution methods.
2. Explain primary dispute resolution process and functions
3. Develop techniques and skill to make effective use of ADR methods.
4. Describe and explain the ADR movement.
5. Compare and contrast various legal implications of each method.

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6. Train participants to be effective Arbitrators, Conciliators and Mediators.
7. Reduce the backing of pending cases
8. Develop Case Management System.
9. Reduce the time pendency of the litigations

Ordinances, Regulations and Syllabus relating to Post Graduate Certificate Course in Alternative Dispute Resolution (ADR)

4. TITLE OF THE COURSE

"POST GRADUATE CERTIFICATE COURSE IN ALTERNATIVE DISPUTE RESOLUTION"

5. ELIGIBILITY

A candidate for being eligible for admission to Post Graduate Certificate Courses should be graduate in any discipline of any recognised University.

6. FEES

Tuition fee Rs. 2,500/-

7. COURSE STRENGTH

The course will admit only 50 students at a time.

8. SELECTION COMMITTEE

Selection of the candidates will be done by a Committee consisting of following members

- a) A person nominated by the Vice Chancellor
- b) Member nominated by the District Judge, Kolhapur
- c) Head of the Department of Law
- d) Dean, Faculty of Law
- e) A Principal of affiliated Law college nominated by the Vice-Chancellor

9. DURATION OF THE COURSE

The Course will be conducted twice a year at Shivaji University, Department of Law. The first Course will commence in July 2005 and the Second in January, 2006. Duration of the Course will be 12 weeks. The Course will be conducted twice in a week, on Saturday (2 hours) and Sunday (3 hours).

12 Weeks - 2 hours on each Saturday ----- 6.00 p.m. to 8.00 p.m.
3 hours on each Sunday ----- 10.00 a.m. to 1.00 p.m.

5 hours x 12 Weeks = 60 hours

8 Role plays of 2 hours each = 16 hours
Extended up-to 20 hours.

ADR Applications on following 6 topics- 44 hours.

1. Commercial and Financial Disputes.
2. Family and Matrimonial Disputes.
3. Real estate and Land Disputes.
4. Co-operative Disputes.
5. Consumer Disputes.
6. Accident Claims.

10. TEACHER'S QUALIFICATIONS

Experts in the subjects will deliver lectures and conduct Simulation Exercises in Arbitration, Conciliation and Mediation based on live cases. Experts in the field will conduct the course. They will be -

- a) Judges
- b) Advocates with 10 years practice and above.
- c) Academicians with more than 5 years teaching experience preferably the teaching concerned subjects.
- d) any other activist in this field.

11. SCHEME OF EXAMINATION

1. Candidate should fully interact in the class programmes.
2. Candidate should compulsorily have 80 percent attendance.
3. Candidate should complete and submit about 4 to 6 assignments, which will be given to him/her.
4. Candidate should actively participate in simulation and role play exercises.
5. Theory - One Paper - 100 Marks

Pattern of Question Paper :

- 1) There will be 8 questions having internal options
 - 2) Seven Full Questions each will carry 12 marks and One question on short notes will be of 16 marks(4 short notes out of six)
 - 3) Passing Standard - 45 Marks out of 100 in Theory and Practical (separate heads)
 - 4) 45% to less than 60% will be Second Class
60% to less than 70% will be First Class
70% and above will be Distinction class
6. Practical- - 100 Marks

Assignment or Project - 25 Marks
Role Play - 25 Marks
Report on ADR - 25 Marks
Viva - 25 Marks

In case the student fails, the practical marks will be carried forward and he/she should appear for theory paper only.

12. NO. OF ATTEMPTS

The Student is permitted 6 attempts or he should complete the course within 3 years period, after completing his terms.

13. COURSE SYLLABUS

(A) ADR (Alternative Dispute Resolution)

1. Introduction to ADR
2. Key Concepts in Dispute Resolution
3. Disputes - Kinds of Disputes - Justiciable dispute- Dispute Resolution in adversary system, court structure and jurisdiction.
4. Dispute Resolution at grass root level, Lok Adalats, Nyaya Panchayath, Legal Aid, Preventive and Strategic legal aid.
5. ADR - Meaning and philosophy, overview of ADR processes, Legal counselling, case - planning strategy, Conciliation/Mediation, Negotiation and Arbitration-Court annexed Arbitration – encouraging settlement.
6. Negotiation I - Theories and Frameworks.
7. Negotiation II - Skills and Behaviour
8. The Negotiation III - Barriers to Agreements
9. Negotiation IV - Rule of law; Ethics and Policies.
10. Mediation i - Introduction Overview, Purposes and Uses.
11. Mediation II - Skills - Roles of Mediators, Parties, Lawyers.
12. Mediation III - Ethics, Fairness, Neutrality, Confidentiality and Personal values - policies, Controversies.
13. Mediation IV - Practical skills of client interviewing/legal counselling.
14. ADR Information, Technology, Internet - Cyber space, online, cyberspace dispute resolution.
15. Arbitration I - Introduction - Arbitral Proceedings, commencement Roots of procedural evidence, "Fast Track" arbitration, statement of claim and defence, hearing and return proceedings-interim measures by Court and by Arbitral Tribunal.
16. Arbitration II - The law of binding Arbitration.
17. Arbitration III - Skills and Ethics of Arbitration.

- 18 Arbitration IV - Arbitral Tribunal - Composition, eligibility and qualifications of arbitrators. Termination or a mandate of arbitral Tribunal's and of arbitrators, appointment of arbitrators and filling up of vacancies, powers and functions of Arbitral Tribunal's. competence of arbitral Tribunal to rule on its own jurisdiction etc.
19. Arbitration V - Practice and Legal issues; "compulsory" arbitration in courts and contracts.
20. Arbitration VI : Evolution of mediation/conciliation as a mode of settlement of disputes, distinction between mediation, conciliation, negotiation and good offices - definition and scope of conciliation, advantages of conciliation and the Arbitration and Conciliation a Act of 1996 - Appointment of conciliators, commencement of conciliation, proceedings - submission of statements - communication between conciliator and parties, suggestions for settlement - confidentiality of information - Admissibility of evidence in other proceedings - settlement agreement-status and effect. Termination of conciliation proceedings; costs and deposits.

PRACTICAL APPLICATION OF ADR METHODS IN DIFFERENT FIELDS AND AREAS

1. Commercial and Financial Disputes:

- 1A - Commercial Disputes - Brief introduction to
 1. Contracts including Government Contracts, Engineering Contracts, Insurance.
 2. Sale of Goods Act, 1930
 3. Partnership Act, 1932
 4. Transfer of Property Act, 1882.
- 1B - Labour and Industrial Disputes - Brief introduction
- 1C - Financial Disputes
 1. Bank Disputes, Securities and Matters related to Debt recovery
 2. Negotiable Instruments.

2. Family and Matrimonial Disputes

1. Marriages and Divorce
2. Matrimonial home and Property
3. Maintenance

4. Guardianship
 5. Custody of the Child
 6. Adoption
 7. Inheritance/Succession
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3. Building Contracts, Real Estate and Land Disputes -
Brief introduction
 1. Partnership
 2. Housing societies
 3. Maharashtra Housing and Area Development Authority
 4. Maharashtra Land Revenue Code
 5. Slum Rehabilitation
 4. Co-Operative Disputes
 - a) Introduction to Maharashtra Co-op Societies Act, 1960
 - b) Disputes relating to recovery proceedings.
 5. Consumer Disputes
 - a) Introduction to Consumer Protection Act,
 - b) Disputes relating to Consumers.
 6. Accident Claims.

14. WHETHER ALLOWED SIMULTANEOUSLY 2 COURSES AT A TIME.

Yes, if any Student is willing to do 2 courses at a time i.e. this certificate course and any other course, he would be permitted and allowed simultaneously 2 courses (One degree or /and this Certificate course) subject to condition that the lecture period should not clash and he/she should obtain prior sanction of University authorities.

15. LIST OF BOOKS RECOMMENDED FOR READING ON MEDIATION

1. The Indian Arbitration and Conciliation Act of 1996.
2. The Fundamentals of Family Mediation by John M. Haynes and Stephanie Charlesworth.
3. The Promise of Mediation, by Robert A Baruch Bush and Joseph Folger
4. Alternative Dispute Resolution, by P. C. Rao and William Sheffield
5. Getting to Yes, by Fisher

6. Getting past, No. by fisher and Ury
7. Mediation in Family Dispute, by Marian Roberts.
8. Family Mediation, by Lisa Parkinson
9. People Skills, by Robert Bolton
10. The Mediator's Handbook by Ruth Chariton and Micheline Dewdney
11. Meidation: Principles, Process, Practice by Laurence Boulle -Butterworths.
12. Living the 7 Habits by Stephen R. Govey
13. The Monk who sold his Ferari by Robin Sharma
14. The Code of Civil Procedure, 1908.

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