



HIMACHAL PRADESH NATIONAL LAW UNIVERSITY, SHIMLA

Semester: IX

B.A./B.B.A. LL.B. (Hons.)

Paper Code: LB-902

Alternate Dispute Resolution

Credit - 04

Introduction:

In today's world everyone desires for quick and affordable settlement of their dispute, as an early resolution of a dispute not only saves valuable time and money of the parties to the dispute but also promotes the environment for enforcement of contracts. The traditional mode of dispute resolution i.e. litigation route is a lengthy process leading to unnecessary delays in dispensation of justice as well as over-burdening of Judiciary. In such a scenario, Alternative Dispute Resolution (ADR) mechanisms come in handy. It helps in reducing the burden on the judicial system. The main objective of ADR is to ensure socio-economic and political justice in society. ADR includes varying means like Mediation, Arbitration, and Conciliation to determine conflicts outside the prescribed court system. These ADR mechanisms are less adversarial and are capable of providing a better substitute to the conventional methods of resolving disputes. This course is drafted in order to understand various methods of ADR and its utilization in resolving disputes.

Course Objectives:

1. To understand the meaning, advantages, and disadvantages of ADR mechanisms and the process of dispute resolution through ADR mechanisms, in particular, under the Arbitration and Conciliation Act, 1996.
2. To enhance the practical skills and elements involved in Negotiation, Mediation, Conciliation and Arbitration.
3. To understand the nature of dispute, conflicts and make choice of appropriate settlement technique to resolve them.
4. To critically assess the strategies and formulae in adopting the right ADR process for the parties while respecting their choice of forum.

Learning Outcomes:

On the successful completion of course, students will be able to:

1. Practice Mediator skills and undertake legal research and promote legal reforms in theory and practice.
2. Analyze conflict situation and to select the appropriate dispute resolution method.
3. Apply problem-solving techniques, including: identification of core issues from a set of facts, advising the client and to resolve the issue.
4. Practical trained via internship and training in order to find effective solutions to the dispute.

Module - I**Introduction to ADR**

- 1.1. Disputes and approaches to dispute resolution – philosophy underlying alternative dispute resolution methods;
- 1.2. ADR – ethics of ADR – fairness, neutrality, confidentiality and personal values;
- 1.3. Overview of ADR methods - negotiation, mediation, conciliation, arbitration, expert determination, dispute resolution board, hybrid methods, online dispute resolution (ODR), Court annexed ADR process;
- 1.4. ADR under Code of Civil Procedure, 1908: Section 89, Order XXIII, XXVII;
- 1.5. High Court rules, Dispute resolution at grass root level – Lok Adalats, Nyaya Panchayath, Legal Aid, Preventive and Strategic Legal Aid.

Module - II**Arbitration**

- 2.1. Arbitration Agreement - Number of Arbitrators - Appointment – grounds for challenge, Court Assistance, role, Commencement of proceedings –termination of conciliation proceedings;
- 2.2. Determination of rules of procedure - Place of Arbitration – Language –Statement of claim and defense - Hearing and written proceedings – Expert appointment by arbitral tribunal;
- 2.3. Settlement – Form and contents of arbitral award – Termination proceeding, Recourse against Arbitral Award - Finality and enforcement of arbitral awards– Appeals;
- 2.4. Law and practice of International commercial arbitration;
- 2.5. Application of ADR methods in different fields and areas; Administrative Tribunals, Article 323 A and B; Family Court under the Family Court Act, 1984; Consumer Disputes under the Consumer Protection Act, 1986.

Module - III
Mediation and Negotiation

- 3.1. Mediation: A mode of Alternative dispute redressal; Historical perspective; Key concepts in Mediation, theories of mediation – Gandhian philosophy of nonviolent conflict resolution; Mediation and Restorative Justice;
- 3.2. International Conventions and Models of Mediation – UNCITRAL model law, Singapore convention;
- 3.3. Constitutional and legislation aspects on mediation, provisions under the procedural laws Commercial Courts (Pre-Institution Settlement) Rule, 2018;
- 3.4. Processes, Stages and Approach to conduct mediation (including online Dispute redressal – Practice in India and International Approach);
- 3.5. Conducting effective Mediation – Decision making techniques, Problem solving tactics, and ensuring positive outcomes; guiding ethics; developing mediation skills; confidentiality requirements.

Module - IV
Conciliation

- 4.1. Conciliation: Nature and modes of conciliation; Approaches; Law Relating to Conciliation: UNCITRAL Model of conciliation;
- 4.2. Conciliator: qualification, appointment, and role;
- 4.3. Conducting conciliation proceedings: commencement, procedure, and techniques conciliation: Settlement agreement;
- 4.4. Mediation/ Conciliation Competition on – disputes relating to Family law, commercial and criminal law;
- 4.5. Drafting of ADR “Settlement Award/ Agreement” – on family law and commercial disputes.

Prescribed Legislations:

1. The Arbitration and Conciliation Act, 1996.
2. The Arbitration and Conciliation (Amendment) Act, 2015.
3. The Arbitration and Conciliation (Amendment) Act, 2019.
4. The Arbitration and Conciliation (Amendment) Act, 2021.
5. The Legal Services Authorities Act, 1987.

Prescribed Books:

1. Anuroop Omkar and Kritika Krishnamurthy, THE ART OF NEGOTIATION AND MEDIATION - A WISHBONE, FUNNYBONE AND A BACKBONE, (LexisNexis, 2015).
2. Christopher Moore, THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT, (Wiley, 2014).
3. O. P. Malothra, THE LAW AND PRACTICE OF ARBITRATION & CONCILIATION, (LexisNexis Butterworths, 2006).
4. P. C. Markanda, LAW RELATING TO ARBITRATION AND CONCILIATION, (LexisNexis, 2013).
5. R. S. Bachavat, LAW OF ARBITRATION & CONCILIATION ACT, VOL – I & II, (LexisNexis, 2013).
6. Rahul Banerjee and Amita Chatterjee, INDIAN PHILOSOPHY AND MEDITATION: PERSPECTIVES ON CONSCIOUSNESS (ROUTLEDGE STUDIES IN ASIAN RELIGION AND PHILOSOPHY), (Routledge, 2015).
7. Roger Fisher *et. al.*, GETTING TO YES: HOW TO NEGOTIATE AGREEMENT WITHOUT GIVING IN, (2011).
8. Sriram Panchu, MEDIATION PRACTICE & LAW: THE PATH TO SUCCESSFUL DISPUTE RESOLUTION, (LexisNexis, 2015).

Prescribed Readings:

1. The 222nd Report of the Law Commission of India, NEED FOR JUSTICE DISPENSATION THROUGH ADR, (2009).
2. The 246th Report of the Law Commission of India, AMENDMENTS TO THE ARBITRATION AND CONCILIATION ACT 1996, (2014).

Suggested Readings:

1. P. C. Rao and William Sheffield, ALTERNATIVE DISPUTES RESOLUTION - WHAT IT IS AND HOW IT WORKS, (Universal Law Publishing, 2006).
2. N. D. Basu, LAW OF ARBITRATION AND CONCILIATION (Universal Law Publishing, 2000).
3. G.K. Kwatra, THE ARBITRATION AND CONCILIATION LAW OF INDIA, (Universal Law Publishing, 2000).
4. Surendra Malik, SUPREME COURT ON ARBITRATION, (Eastern Book Co, 2003).

Dean Academic
H.P. National Law University, Shimla