

भारतीय विधिज्ञ परिषद्
BAR COUNCIL OF INDIA

(Statutory Body Constituted under the Advocates Act, 1961)

21, Rouse Avenue Institutional Area, Near Bal Bhawan, New Delhi - 110002

BCI:D: 1897 :2020 (323/2020)

13.08.2020

To,
The Vice Chancellors,
of All Universities
issuing LL.B Degrees

Sir's

Subject: Introduction of Mediation (*with Conciliation*) as compulsory paper/subject to be taught with effect from the Academic Session 2020-2021 in 3 year and 5 year LL.B degree course/s

Sir's

It is hereby notified that from the academic session 2020-2021, Mediation *with Conciliation* shall be a course component/ compulsory paper/subject for the pursuit of a LLB degree course, both for 3 years and 5 years Integrated courses, (both Honours and non Honours). It shall be aimed to provide training in practical skills apart from theory.

All Universities/Centers of Legal Education are directed to incorporate the same as a compulsory paper/subject from the Academic Session 2020-2021.

In times of pandemic and Covid-19, when physical hearings in courts are suspended and norms of social distancing are required to be maintained, Mediation as a tool for conflict resolution has come to the fore. Litigants have been drawn towards Mediation and have begun to realize it's immense benefits.

Mediation and Conciliation has been seen to lead to resolutions without undergoing arduous trials and moreover resolutions/solutions are arrived at, at a relatively lesser time.

The Hon'ble Chief Justice of India is also keen that the art of Mediation is taught to LL.B students as it will go a long way in reducing the backlog and flood of cases. With litigants, students and Lawyers being more aware and keen about Mediation, this will be looked upon more as an option instead of filing suits/cases straight away.

With the introduction of Section 89 in C.P.C. alternative dispute resolution was sought to be invoked and used more, and courts have often started referring many matters under this provision.

However, what is required is that students of LL.B and Lawyers are also trained in the art of Mediation and Conciliation to understand its true benefits and reap its true fruits which will pave the way for a great reform in the Indian Legal System, which will lead to reduction of burden on courts and quick and efficacious resolution being agreed upon by parties in disputes having varied points of conflict.

This will lead to blending judicial and non-judicial dispute resolution mechanism and bring mediation to the centre of the Indian Judicial System. The long-drawn process of litigation, the costs incurred by both parties for the same have made Mediation an important aspect of the Judicial system to ensure swifter and speedier justice.

The purpose of Mediation and Conciliation is to provide amicable, peaceful and mutual settlement between parties without intervention of the court. In countries all round the world, especially the developed few, most of the cases (over 90 per cent) are settled out of court. The case/ dispute between parties can and should go to trial only when there is a failure to reach a resolution.

The teachers for such programs must be trained adequately. The qualification of teachers required to teach Mediation *with Conciliation* shall be decided by the Bar Council of India in consultation with any authority/institution as it may deem fit including U.G.C. For the moment, applications may be invited from the lawyers having at least 10 years of practice with theoretical knowledge and practical experience in these subjects, inclusive of trained Mediators/Conciliators, and from persons having 2- years LL.M Degrees in these subjects.

Trainings will also be introduced by the Bar Council of India, in the near future and subsequently, such certificate/ Diploma holders would be preferred for being appointed as Teachers for teaching the subject of Mediation and Conciliation.

The Legal Education Committee of the Bar Council of India, had on 22.12.2019 while considering the letter of Hon'ble Chief Justice of India, Shri S.A. Bobde wherein it was desired that Mediation be a compulsory subject and BCI should take necessary steps in this regard, had resolved that Mediation should become a compulsory subject, which would enable students passing LL.B to become experts and proficient to enable parties to reach upon a successful conclusion. Keeping all the above in mind, the Bar Council of India, has vide its Council resolution dated 02.08.2020 has decided to notify Mediation with conciliation as a compulsory subject/paper to be taught in 3 year and 5 year LL.B (honours and non honours courses)

The syllabus and weekly course schedule for a 45 hour Mediation component *with Conciliation* for LL.B degree course is herein provided below:

RECOMMENDED MEDIATION SYLLABUS FOR LLB COURSE
THEORY & PRACTICAL CONTENT
(45 Hours / 1 Semester / 9-14 Weeks)

OVERVIEW OF COURSE CONTENT:

1. **Understanding Conflict and Disputes:** Modes of Dispute Resolution, need for ADR & the importance of Mediation
2. **Mediation and Restorative Justice:** Theory of restorative justice and its application, Gandhian principles of non-violent conflict resolution, traditional mediation practices in India and abroad
3. **Mediation Laws in India:** Judicial interpretation and relevant case law, dispute resolution institutions in India
4. **Key Concepts in Mediation:** Essential elements, process and stages, approaches to Mediation, role of the mediator
5. **Importance of Communication:** Elements of verbal and non-verbal communication, effective and ineffective communication techniques
6. **Conducting Effective Mediation:** Decision-making techniques, problem-solving tactics, ensuring positive outcomes
7. **Qualities and Skills of Mediators:** Developing mediation skills, code of ethics, confidentiality requirements
8. **Status of Mediated Agreements:** Drafting of agreements, sanctity of mediated agreements, enforcement laws and procedures
9. **Important Developments in Mediation:** Growth of virtual dispute resolution, Pre-Institution Mediation, UNCITRAL Model Law, Singapore Convention

Weekly Course Schedule

Week-1

Understanding Conflict and Disputes: Causes for conflict, Kinds of conflict, Escalation and De-escalation of conflict. Dispute as a manifestation or starting point of conflict. The role of Law and Society in ensuring settlement of disputes and effective conflict resolution.

Modes of Dispute Resolution: Negotiation, Mediation, Arbitration and Adjudication: scope and relative merits. Limitations of the adversarial process and need for consensual resolution. Mediation as the preferred ADR mode.

Importance of Mediation: Pendency of cases in India, its causes and consequences. The need for Alternative Dispute Resolution. Mediation as a flexible, timely, cost-effective mode of alternative dispute resolution.

Week-2

1. **Mediation and Restorative Justice:** Promoting dialogue, reconciliation, healing and mutual agreement in the pursuit of justice. Concept of *Ubuntu* and South Africa's Truth & Reconciliation Commission; The *Abunzi* mediators and the *Gacaca* courts of Rwanda.

2. **Traditional Mediation Practices in India:** Mediation by *Mahajans*, *Panchas* and religious leaders. *Ahimsa*, *Satyagraha* and Gandhian principles of pragmatic, non-violent conflict resolution.
3. **Traditional Mediation Practices in Other Societies:** Village elders in ancient Greece and interlocutors under Roman law, influence of Confucianism and Taoism on Mediation in China, the role of community/religious leaders: the *Ketua Kampong* (village headman) and the *Imams* in Malaysia, the *Ting* (local assembly) in Nordic countries.

Week-3

Elements of Mediation: Definitions and key characteristics. Fastest growing ADR mode. Nature of mediation as voluntary, consensual, non-coercive, confidential and risk-free. Parties retain control of the process.

Process/stages of Mediation: Problem-defining, Problem-solving and settlement stages. Opening round, joint sessions and private caucus. Gathering information, analysing issues and interests, generating options and proposals, resolving disagreements, reaching agreement.

Approaches to Mediation: Facilitative, Evaluative and Transformative Mediation. Role of the Mediator as a neutral facilitator, impartial moderator, trusted interlocutor but never a legal advisor.

Week-4

Importance of communication: Communication styles, Communicative behaviour, Compassionate or Collaborative Communication.

Elements of verbal and non-verbal communication: Choice of words, clarity of thought and expression, right pitch, tone and emphasis, body language.

Effective and Ineffective communication techniques: Active listening skills, building rapport, empathy not sympathy. Use of open-ended questions, neutral rephrasing, factual summarizing.

Week-5

Conducting effective mediation: summarizing the facts, understanding respective positions, discussing issues rationally, recognizing both individual and common interests, empathizing with underlying emotions and asking relevant open-ended questions.

Decision-making techniques: neutral reframing of issues, identifying interests, moving parties away from issues towards interests, generating and exploring options, formulating objective criteria,

conveying offers and proposals, applying reality checks. Assessing the alternatives to a negotiated settlement (BATNA, WATNA, MLATNA)

Problem-solving tactics: Causes for impasse and effective intervention techniques: time-out, calculated adjournment, deadlines, refocusing attention, emphasizing relationships, brainstorming, using expert valuation, using other dispute resolution modes.

Ensuring positive outcomes: Distributive v Integrative negotiation. Expanding the pie and developing win-win solutions.

Week-6

Ideal Qualities and Skills of Mediators: Being neutral, impartial, objective, communicative, open-minded, quick-thinking, patient, amicable, diplomatic, honest and empathetic. Learning how to build rapport, gain trust, formulate creative solutions and deal with impasse.

Code of Ethics for Mediators: Importance of ethical conduct during Mediation. Ensuring impartiality and neutrality, no conflict of interest, dealing with power imbalance, preventing abuse, encouraging parties to reach their own solutions without any coercion or undue influence.

Confidentiality Requirements: Confidentiality extends to all case info, identity of parties, proposals and offers made by parties, confidential revelations during private sessions, terms of the settlement and all case-related documents

Week-7

Drafting of Mediated Agreements: Identifiable parties, unambiguous terms, clear language, specific outcomes, measurable commitments, provision for monitoring implementation and accepted mode for resolving future conflicts.

Enforcement Laws and procedures: Enforceability of arbitral agreements under Section 36 of the Arbitration and Conciliation Act of 1996. Court decree for court-annexed mediation settlements. Vitiating factors: fraud, coercion, corruption, incapacity of a party or the settlement being contrary to public policy or Indian law. Need for Mediation-specific legislation to regulate and give legal sanctity to mediated settlements.

Week-8.

Mediation Laws in India: All statutes and regulations on Mediation and Alternative Dispute Resolution; This includes: The Arbitration and Conciliation Act, 1996; Conciliation--Relevant Provisions and Case Law (sections 61-81); Arbitration--Relevant Provisions and Case Law (sections 30-37); Sec 89, CPC 1908; Model Rules under Sec 89: Model Civil Procedure ADR and Mediation Rules, 2003 (Parts I and II). Other Provisions of the CPC, 1908: Order X (Rules 1, 1A, 1B, 1C); Order XXIII

Rules 3, 3A and 3B. Order XXVII (Rule 5B), Order XXXIIA (Rule 3); Commercial Courts Act 2015; The Commercial Courts (Pre-Institution Mediation and Settlement) Rules 2018 (the PIMS Rules). The Consumer Protection Act 2019 and relevant regulations.

Judicial Interpretation and Case Law; pertinent case law on Mediation/ADR; Difference between Mediation and Conciliation, *Afcons Infrastructure v Cherian Varkey*.

Dispute Resolution Institutions in India: Panchayats, Lok Adalats, Ombudsmen, Police Authorities, Bureaucrats, Grievance Cells, Conciliation Officers

Week 9

Online Dispute Resolution: The Covid pandemic has given a major boost to virtual dispute resolution or online dispute resolution (ODR) in India. Legal & technical viability of ODR: Arbitration and Conciliation Act, 1996 read with Information Technology Act, 2000 and Indian Evidence Act, 1872. Advantages: overcomes jurisdictional and geographical barriers, automates routine tasks, improves professional productivity, employs eco-friendly processes, and delivers a quick, economical and effective solution to disputes. A tech-enabled dispute resolution helps litigants, eases the judicial burden and boosts efficiency. Creates a more conducive business environment.

Pre-Institution Mediation: Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018. Speedy settlement of commercial cases through mediation. Settlement enforceable as deemed arbitral award (under Section 30(4) of Arbitration and Conciliation Act, 1996)

Key Developments in Mediation: UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018; United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention on Mediation). Mediation training and skill development, international accreditation and development of global mediation standards.

GUIDELINES FOR INTERNSHIP

Gaining an overview of prominent mediation centres in Delhi, Chennai, Bangalore, Mumbai and their functioning with information +intimation to Local State Bar Council.

Periodic attendance at court-annexed mediation centres to observe mediation sessions (with information +intimation to Bar Council of India)

Gaining practical mediation experience as observers with private mediators recommended and approved by Bar Council of India and at

private mediation centres (duly approved by Bar Council of India) or court-annexed mediation centres.

The internship should be offered through Bar Council of India for all the students and they would be required to attend the courses/ classes to be taught by the Hon'ble Sitting/Former Judges of Supreme Court and/or High Courts, and/or by senior and/or experienced Advocates and/or by the nominated members of Bar Council.

Conducting research on various aspects of Mediation.

NOTES

Proportion of Theory vs Practical Content:

A quarter of the time allotted for the Mediation course may be devoted to practical exercises and mediation role play. Practical exercises may be devised to train students in developing crucial communication and negotiation skills, including summarizing of facts, neutral reframing, identification of issues, formulating objective criteria, conducting reality checks, assessing alternatives (BATNA & WATNA).

Mediation & Conciliation

As Mediation and Conciliation are viewed as very similar modes of dispute resolution based upon the same guiding principles, they can be easily taught in the same integrated course.

Forthcoming Training Programmes

It may be noted that specialized training programmes for Mediation teachers, trainers and practitioners will be offered by Bar Council of India Trust and/or the Centre for Mediation Studies, Chennai in the form the Diploma/s Certificate/s. A limited number of internship opportunities will also available at Chennai Centre and Bar Council of India for interested students specializing in Mediation.

The Bar Council of India Trust will arrange for the training classes/ programmes for teaching and training the Teachers to be appointed/engaged for teaching the courses of Mediation and Conciliation in the Centers of Legal Education (C.L.Es). The panel of Trainers and Teachers for such teaching programmes shall be decided by the Bar Council of India Trust from amongst Hon'ble Judges of Supreme Court or High Courts (Sitting or retired/former) Senior and/or experienced Advocates, who may be trained Mediators/Conciliators and/or Social activists. Regular teachers of Law without having a Degree or diploma in that field would not be eligible to teach the subject.

Note: Bar Council of India Trust is going to take steps for initiating and encouraging Centres of Legal Educations having sufficient infrastructure to Start with effective LL.M courses for the Subject " Mediation and Conciliation". Such LL.M Courses will include and require at least a practical Training


(alongwith Theory subject for 2 years) No on-line LL.M courses are permissible, No on-line LL.M Degree is valid for being teachers in LL.B /LL.M courses as per the decisions of Bar Council of India.

RECOMMENDED READING

1. *Mediation Practice & Law: The Path to Successful Dispute Resolution*
(Author: Sriram Panchu)
2. *Mediation Training Manual of India*
(Authors: Mediation and Conciliation Project Committee, Supreme Court of India)
3. *Getting to Yes: How to Negotiate Agreement Without Giving In*
(Authors: Roger Fisher, William Ury and Bruce Patton)
4. *The Art of Negotiation and Mediation - A Wishbone, Funnybone and a Backbone*(Authors: Anuroop Omkar and Kritika Krishnamurthy)
5. *An Asian Perspective on Mediation*
(Authors: Joel Lee and The Hwee Hwee)
6. *The Mediation Process: Practical Strategies for Resolving Conflict*
(Author: Christopher Moore)
7. *Introduction to Non-Violence*
(Author: Ramin Jahanbegloo)

This is for your kind information and necessary action.

Yours sincerely


(Srimanto Sen)
Secretary