

POST GRADUATE DIPLOMA IN ALTERNATIVE DISPUTE RESOLUTION
(REGULAR COURSE) (2015)

AT VISAKHAPATNAM

DSNLU-ICADR



PROSPECTUS



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**The International Centre for Alternative Dispute Resolution (ICADR)
Regional Centre, Hyderabad
and**

Damodaram Sanjivayya National Law University, Visakhapatnam

CONTENTS

S.No.	Particulars	Page No.
1.	Why A Diploma In ADR	4
2.	About Damodaram Sanjivayya National Law University	5
3.	About ICADR	5
4.	Teaching Methodology	7
5.	Objectives of the Course	7
6.	Eligibility and Admission Procedure	7
7.	Duration, Fee, Attendance and Examination	8
8.	Passing Minimum and Award of Diploma	9
9.	Course Syllabus	
	Paper I : ADR Methods	10
	Paper II : Arbitration & Conciliation Act, 1996	11
	Paper III : International Commercial Arbitration	12
	Paper IV : Commercial Law	13
	Paper V : Family Law	16
10.	Project Report	17

WHY A DIPLOMA IN ADR

The resolution of disputes forms a large part of the work of the justice delivery system. India has a long tradition of resolution of disputes through conciliation methods at the village level. The Anglo-Saxon legal system imposed by the Britishers dismantled the indigenous dispute resolution mechanisms resulting in “docket explosion” in the courts. As a result, the courts are experiencing severe pressure owing to the increasing volume of litigation and consequent difficulties in managing the cases.

Realising the need for speedy and effective resolution of disputes, the Indian courts are encouraging the parties to use the ADR methods to produce faster and cost-effective results in dispute resolution. The diploma aims to develop the legal and technical expertise in conflict management including arbitration, conciliation and mediation.

In order to encourage ADR, institutions such as Lok Adalats have been given statutory recognition by the Legal Services Authority Act, 1987. The Arbitration and Conciliation Act, 1996 was enacted to replace the earlier legislation on Arbitration. Several new provisions have been introduced in the law of arbitration to reduce delays and expedite the process leading to the arbitral award. Conciliation has been given statutory recognition for the first time under this Act.

A new thrust has been given to settlement of disputes by ADR methods by the Civil Procedure (Amendment) Act 2002, which has, inter alia, inserted Section 89 in the Civil Procedure Code according to which wherever there exist elements of settlement in disputes, the courts are mandatorily required to refer such disputes to arbitration or conciliation or mediation including settlement through Lok Adalat, as the case may be.

Now a momentum is created in India to use ADR Mechanisms in most areas of legal disputes. The need of the hour is, to create an awareness of ADR methods and to prepare trained professionals in this area to be able to use alternatives to litigation. To that end, the Damodaram Sanjivayya National Law University and the International Centre for Alternative Dispute Resolution have joined together to institute a Post Graduate Diploma Course in Alternative Dispute Resolution through the regular mode.

ABOUT DAMODARAM SANJIVAYYA NATIONAL LAW UNIVERSITY:

Damodaram Sanjivayya National Law University (DSNLU) was established in the year 2008 by the Government of Andhra Pradesh at Visakhapatnam through the DSNLU Act, 2008 to impart quality legal education. The University is recognized u/s 2(f) of UGC Act 1956 and the Bar Council of India. DSNLU is the 15th participating university in CLAT-2015.

MISSION:

DSNLU is committed to design and deliver legal education, promote academic achievement and excellence in legal research.

VISION:

DSNLU endeavours to be a premier law school with state-of-the-art facilities to design and deliver legal education with emphasis on clinical aspects to promote and provide world class education, training, research consultancy and services.

DSNLU strives to motivate and develop quality human resources with ethics, by imparting knowledge, skills and domain expertise in regulatory and legal fields, and to attract and retain competent talent to eventually emerge as pioneers for promotion and proactive growth through interactive activities, globally competent academic programs with quality content, designed delivery and synchronized support services.

We strive to design and deliver unique, innovative and research based pedagogy for holistic promotion of the students.

ABOUT ICADR

The International Centre for Alternative Dispute Resolution (ICADR) is an autonomous organisation working under the aegis of Ministry of Law and Justice, Government of India. The Chief Justice of India and the Union Minister for Law and Justice are its Patrons. At the Regional level, the Chief Justice of the concerned State is the Patron. The Governing Council of ICADR comprises of Senior Government Officials, past and present, eminent Advocates, Engineers and others. The ICADR was established in the year 1995 to propagate, promote and popularize the settlement of domestic and International disputes by different modes of Alternative Dispute Resolution (ADR).

The ICADR has Regional Centres at Hyderabad and Bengaluru which are fully funded by the respective state Governments. At the regional level, the Chief Justice of the concerned state is the Patron. The ICADR has excellent facilities for holding arbitration, conciliation and mediation proceedings in its premises. It has a panel of Arbitrators/Conciliators/Mediators for resolution of disputes. It also provides secretarial services at nominal cost to the parties of the proceedings.

The main objectives of the ICADR are –

- to provide facilities and administrative and other support services for holding conciliation, mediation, mini-trial and arbitration proceedings;
- to maintain panels of appropriate persons competent and qualified to serve as arbitrators, conciliators and mediators, or willing to serve in any other specialist capacity such as experts, surveyors and investigators;
- to cooperate with other societies, institutions and organisations, national or international, in the pursuit of all or any of the above objectives;
- to constitute Regional Centres at convenient places in India and abroad to promote the activities ;
- to draw up and prescribe rules of the institution for different modes of ADR.
- to promote studies in the field of alternative dispute resolution (ADR) and allied matters, and to promote reform in the system of settlement of disputes.
- to undertake teaching and to provide for diffusion of knowledge of law and procedures on ADR and related matters and to award diplomas, certificates and other academic or professional distinction.
- to impart training in ADR and related matters to those who are handling arbitration, conciliation and mediation;
- to promote research and documentation in the field of ADR and publish books, periodicals, reports and other literature covering ADR;
- to organize Conferences, seminars and study groups on issues concerning ADR;

Advantages of Settlement of Disputes through ADR

- ✓ Saving of Time and Cost
- ✓ Autonomy for the parties to an National and International dispute, choice of the applicable law and procedure and the language of the proceedings;
- ✓ The possibility of ensuring that specialized expertise is available on the tribunal in the person of the arbitrator, mediator, conciliator or neutral adviser
- ✓ Strict Confidentiality

TEACHING METHODOLOGY

The course aims to combine theory and process with practical education in techniques and skills for using ADR methods in dispute resolution. The methodology of the course anticipates discussion, demonstration, case analysis & case study method of learning and role-playing exercises. In addition to group discussions, class room instruction will rely heavily on simulation, role-play and small group work assignments.

This is to enable the students to improve their skills in these areas and to develop a framework for self-learning in the future.

OBJECTIVES

The objectives of the course are to

- understand the strengths and weaknesses of various dispute resolution methods.
- explain primary dispute resolution process and functions.
- develop techniques and skills to make effective use of ADR methods
- describe and explain the ADR movement
- compare and contrast various legal implications of each method

1. ELIGIBILITY FOR ADMISSION

The following shall be eligible for admission:

- a) Advocates
- b) Company Secretaries/Chartered Accountants/Cost Accountants
- c) Engineers/Architects
- d) Managers/Executives in Companies with a Bachelor's Degree
- e) Psychologists/Psychiatrists with a Master's or Bachelor's Degree in Psychology and
- f) Any other Graduate from a recognized University.

2. ADMISSION PROCEDURE

2.1 Candidates intending to enroll for admission to the Post Graduate Diploma shall submit a note of about 500 words on their reasons for joining the course along with the prescribed application form. The application form duly filled in should be submitted before **10th June, 2015** The selection of the candidates for admission shall be made by the University after conducting an interview.

3. DURATION, FEES AND CONTENT

3.1 The course shall be for a period of 12 months. Classes will be held during Saturdays and Sundays only.

3.2 The fee for the entire course shall be Rs.29,000/- to be paid at the time of admission in one lumpsum.

Tuition Fee	:	Rs. 20000.00
Examination Fee	:	Rs. 2500.00
Library Fee	:	Rs. 2500.00
Facility Fee	:	Rs. 2000.00
Library Deposit	:	Rs. 2000.00
Total	:	Rs. 29000.00

3.3 The convocation fee shall be Rs. 1000/- for obtaining Post Graduate Diploma.

3.4 The course shall comprise the study of Alternative Dispute Resolution Methods, Arbitration and Conciliation Act, 1996, International Commercial Arbitration, Commercial Law, Family Law, and other subjects as determined from time to time.

4. ATTENDANCE AND EXAMINATION

4.1 A candidate shall attend atleast 65 percent of the total lectures/ classes including Practical Training before he /she can appear for the examination.

Marks for Attendance

The weightage to attendance for classes in each Paper shall be as follows:

90% and above	:	5 marks
80% to 89%	:	4 marks
70% to 79%	:	3 marks
Below 70%	:	Nil

4.2 The scheme of examination shall be as follows:

Paper	Title	Max Marks
Paper I	Alternative Dispute Resolution Methods	100 marks
Paper II	Arbitration and Conciliation Act, 1996	100 marks
Paper III	International Commercial Arbitration	100 marks
Paper IV	Commercial Law	100 marks
Paper V	Family Law	100 marks
	Project	100 marks
	Total	600 marks

5. PASSING MINIMUM AND AWARD OF POST GRADUATE DIPLOMA

5.1 A candidate shall be declared to have passed the examination and become eligible for the award of the Post Graduate Diploma if he/she secures not less than 50% marks in each Paper of the examination.

However, a candidate failing in a particular Paper may appear again in that Paper at the supplementary examination. A candidate who passes the Paper in the Supplementary Examination shall be declared to have only passed the Post Graduate Diploma without the benefit of being awarded any Division.

5.2 A candidate passing the examination by securing aggregate marks of

- (a) 75% and above shall be declared to have passed with distinction
- (b) 60% and above with First Division
- (c) 50% and above but less than 60% with Second Division and
- (d) below 50% shall be declared to have failed.

NOTE:

- 1. The maximum period for completion of the Post Graduate Diploma Course is 3(three) years including the year of admission.**
- 2. Any dispute arising out of the programme is subject to the jurisdiction of Courts in Visakhapatnam only.**

COURSE DETAILS

During the course intensive instruction and training in theoretical and practical aspects of the concerned subjects will be imparted, as the diploma course focuses attention equally on legal as well as methodological skills to enable and equip the students to become effective Arbitrators/Conciliators.

The course offers five Papers and a Project Report.

The course details for different Papers referred to in Regulation 4.2 are as follows:

PAPER - I : ADR METHODS

1. Overview of Dispute Resolution Processes; difference between Adversarial, Inquisitorial and Alternative Dispute Resolution Mechanisms; Principles of Natural Justice; Legal Counselling; Causes of delay in justice delivery system; Constitutional obligation to provide legal service and speedy justice; Alternative Dispute Resolution(ADR)- Meaning and philosophy; Ethics of ADR; Fairness, neutrality, confidentiality and personal values and relationship.
2. Negotiation- primary tool- as a learned skill; theories of negotiation- problem-solving approach, competitive-approach, integrative bargaining theory, skills and strategies in negotiation; variations of negotiations.
3. Mediation, models and approaches, facilitation, settlement, evaluation, stages and strategies in mediation; variations of mediations.
4. Practical application of ADR methods to different problems.
5. Personal Injury, Compensation under Workmen's Compensation Act, Motor Vehicle Act, Medical Negligence and utility of ADR in arriving at a conclusion to settle the claims.
6. Code of Civil Procedure, 1908 – Amendments of 1999 and 2000 – Section 89 –settlement of disputes by ADR in pending civil suits.
7. Learning skills through demonstration and simulation processes in negotiation and mediation.

EXAMINATION PATTERN

Written Examination	:	55 marks
Practical Training	:	40 marks
Attendance	:	5 marks
Total	:	100 marks

PAPER - II : ARBITRATION AND CONCILIATION ACT, 1996

Evolution of Law relating to arbitration in India. Definition of arbitration - Distinction between arbitration and other modes of settlement of disputes like judicial settlement, conciliation etc.- Advantages of arbitration over judicial settlement; arbitrable and non-arbitrable disputes; essential ingredients of arbitration agreement: arbitration clauses in contracts, 'written' arbitration agreement; who can enter into a valid arbitration agreement; Drafting of Arbitration Clause/Agreement.

Arbitral Tribunal: Composition, eligibility and qualifications of arbitrators; appointment of arbitrators and filling up of vacancies; challenge to appointment of arbitrator; powers and functions of arbitral tribunals; competence of arbitral tribunal to rule on its own jurisdiction etc;

Interim measures by court and by arbitral tribunal.

Arbitral Proceedings - Commencement; Rules of procedure and evidence; Statement of claim and defence; Hearings and written proceedings;

Determination of law applicable to arbitral proceedings; decision *ex aequo et bono*.

Making of an arbitral award; definition and kinds of awards; Form and contents of award; termination of arbitral proceedings, correction and interpretation of award; additional award.

Setting aside of an award - Grounds for.

Enforcement of awards; Appealable orders.

Lien on arbitral award and deposits as to costs; Effect of death of a party to an arbitration agreement; provisions in case of insolvency; applicability of the Limitation Act, 1963 to arbitration.

Repeal of earlier enactments - effect.

CONCILIATION UNDER ARBITRATION AND CONCILIATION ACT, 1996

Appointment of Conciliators; commencement of conciliation proceedings; conduct of conciliation proceedings - submission of statements - Communication between conciliator and parties- Suggestions for settlement -Confidentiality of information -

Admissibility of evidence in other proceedings. Role of Conciliator in conciliation proceedings. Settlement agreement - Status and effect thereof, Termination of conciliation proceedings; costs and deposits.

-Drafting of Conciliation Clause/Agreement.

-Important decisions of the Supreme Court of India with regard to Arbitration and Conciliation Act, 1996.

EXAMINATION PATTERN

Written Examination : 65 marks

Practical Training : 30 marks

Attendance : 5 marks

Total : 100 marks

PAPER- III : INTERNATIONAL COMMERCIAL ARBITRATION

Absence of uniformity in Private International Law - problems arising out of - Reluctance of MNC's to submit to domestic jurisdictions - Need for ICA; Methods to promote ICA.

Role and importance of ICA in international relations-Role of multinational corporations in international trade and commerce.

Determination of nationality of corporations and individuals.

Definition of ICA - meaning 'international' ; tests of nationality of parties, place of entering into contract, location of property, performance of contract etc. Statutory Arbitration.

Definition of 'commercial' - UNCITRAL MODEL LAW – Domestic interpretation.

Role of Private International Law in ICA; applicable law for contracts - Proper Law of contracts;

Growth of arbitral institutions in international relations - Permanent Court of Arbitration at the Hague, International Chamber of Commerce, Paris; American Arbitration Association; London Court of International Arbitration etc. - Evolution of arbitral practice.

Sovereign Immunity and commercial arbitration - *Juri gestionis and juri imperii*.

Enforcement of Foreign arbitral awards - Definition of 'foreign' award; Evolution of state practice relating to enforcement of foreign awards.

Geneva Protocol on Arbitration Clauses - 1923.

Geneva Convention on Execution of Foreign Arbitral Awards - 1927.

Indian Arbitration (Protocol and Convention) Act, 1937.

New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, 1958

Foreign Awards (Recognition and Enforcement) Act, 1961

Enforcement of certain Foreign Awards under the Arbitration and Conciliation Act, 1996 (Part II) - New York Convention Awards under Chapter I of part II of the Act - Geneva Convention Awards under Chapter II of Part II of the Act; Definition of ' Foreign Award' ; Power of judicial authority to refer parties to arbitration; Foreign awards when binding; Conditions for enforcement of foreign awards under New York and Geneva Conventions; Enforcement of foreign award; grounds for non-enforcement; appealable orders.

PRACTICALS

- (i) Drafting of Arbitration/Conciliation Clause/Agreement.
- (ii) Moot arbitration of an international commercial arbitration.

EXAMINATION PATTERN

Written Examination	: 65 marks
Practical Training	: 30 marks
Attendance	: 05 marks
Total	: 100 marks

PAPER - IV : COMMERCIAL LAW

I. INDIAN CONTRACT ACT, 1872

- a) **General Principles:** Definition of contract; essentials of contract; offer; Rules relating to offer; invitation to offer; General offer; Standing offer; Cross offers, Firm offer and option; Revocation of offer and acceptance; Law relating to contract made through post, telephone, telex and internet; Standard form of contract; Consideration; Rules relating to consideration; Stranger to consideration and contract; An agreement without consideration is void; past consideration; Competency of consideration; Capacity to contract; Minor's contract; Free consent, Coercion; Undue influence; Misrepresentation; Fraud; Mistake; Agreements opposed to public policy; Wagering agreement; Agreements in restraint of trade; Discharge of Contract; Discharge by performance; Attempted performance; Appropriation of payments; Discharge by breach; Anticipatory breach; Discharge by impossibility of performance; Remedies for breach of contract; Damages; Rules relating to assessment of damages; Damages for non-pecuniary losses; Liquidated damages and penalty; Earnest money and security deposit; Quasi Contracts
- b) **Law of Indemnity:** Definition, Meaning and nature; Commencement of liability of the indemnifier.
- c) **Law of Guarantee:** Definition, Meaning & features; Modes of discharge of surety from liability; Rights of surety; Bank Guarantee.
- d) **Law of Bailment :** Definition, Meaning & features; Duties of Bailor and Bailee; Lien; Pledge, Meaning and features; Rights of Pawnee.
- e) **Law of Agency :** Definition, features; Capacity; Modes of creation of Agency; Modes of termination; Irrevocable Agency; Duties/Rights of Agent.

II. **SALE OF GOODS ACT, 1930 :** Sale & Agreement to sell; Goods-Meaning and classification; Implied conditions/warranties; Hire Purchase Agreements; Rights of unpaid seller; Doctrine of Caveat Emptor; Sale by non-owners; International Sale of Goods Act, 1955 – Salient Features.

III. **PARTNERSHIP ACT, 1932 :** Definition; Distinction between Partnership, Company, Society etc; Partnership Agreement-Test of Partnership; Minor's position; Kinds of Partners; Implied Authority of a Partner; Dissolution

IV. LAW OF INSURANCE

General principles of Insurance Law; Nature of contract of Insurance; Insurable interest; Risk; Premium; Warranties and representation; Assignment of Insurance Policies;

The Insurance Regulatory and Development Agency;

Registration of Insurance Companies; Other regulations; Insurance intermediaries;

Fire Insurance : Definition; Nature and scope of Fire Insurance; Meaning of the terms 'Fire' and 'Loss of fire'; the amount recoverable; Subrogation; Contribution; Reinstatement; Double Insurance; Reinsurance;

Marine Insurance : Nature and scope of Marine Insurance contract; Classification of marine policies; voyage- deviation;

Perils of the sea; warranties in Marine Insurance; Loss;

Policy holder as consumer.

- V. BUILDING CONTRACTS** : What is a Building; Definitions; Tests for determining if the structure is a building; What is a Building Contract; Essential Conditions of Building Contract; Tendering for a Building Contract; What are contract documents.

Types of Building Contracts

Introductory; Types of Building Contracts; Lump Sum Contract; Item rate Contract; Cost plus Percentage Contract; Work Order Contract;

VI. ENGINEERING CONTRACTS

Tenders and Formation of a Valid Contract as per Law

Tenders-Proposals(offer) and Acceptance and Earnest Money; Notice inviting Tenders; Earnest money and Security Deposit; Procedure for dealing with Tenders; Tenders-acceptance and revocation thereof; Tenders-How long open; World Bank Aided Contracts; Pre-Tenders meetings; World Bank's Special Conditions; Non-world Bank Projects;

Usual Types of Construction and Engineering Contracts Explained

Main Classification of types of Contracts; Common features of the Contracts; Percentage rate contract; Item Rate Contract; Contract for supplying materials; Contract for Piece work; Lump sum Contracts; General rules regarding discrepancies and adjustment or errors in contracts.

Construction Contract Management

Post Contract Management; Project or Contract Management; Billing and paying the contract; Bank Guarantee; Communications between Employer and Contractor on the working of the contract.

Variations(Deviations)

Variations defined; Classifications of Variations.

Escalations in the price of a Contract

Time for execution of contracts; Grounds for the delay and their accountability; Mode of compensation for inflation; Escalation clause in Public Contracts.

Architects and their role in the Performance of the Contracts

Terms, Architects, Engineers and Surveyors explained; Architects authority as agent and duties; Liabilities of architects; Liability to Contractor; Liability for plans and quantity; Liability for fraud; Strict liability towards Engineer & Contractor.

Time for Performance of Construction and Engineering Contracts Analysed

Extension of time for performance of the Contract.

VII. GOVERNMENT CONTRACTS :

Basic Legal Structure: Constitutional provisions; Articles 14, 19 and 299.

Contracting Officers :

Who is a Contracting Officer; Contracting Officer's Authority; Legislative History; Ratification; Contracting Officers' Personal Liability

Contracting organisation :

Ministry of Supply; Directorate General of Supplies and Disposals; Ministry of Defence; Army Purchase Organisation; Ministry of Railways; Other Procurement Bodies

Kinds of contracts :

Single Transaction or Fixed Price Contract; Rate Contract; Running Contract; Cost Plus Percentage of Cost; Cost Plus Fixed Fee Contract; Maximum Price Contract; Target Cost Contract

Selection of the Contractor :

Competitive Tendering; Invitation to Tender; Preparation and Submission of Tender; General Conditions; Opening of the Tenders; Revocation or Modification of Tender; Evaluation of Tenders; Rejection of a Tender

Security :

Bank Guarantee; Forfeiture of the Earnest Money; Refund of Security; Limitation

Performance of the Contract :

Time-Essence of the Contract; Variation in the Time of Performance; Discharge of a Contract; Termination of the Contract; Standard Break Clause; Recovery of Government Dues.

VIII. Transfer of Property Act, 1882 : Definition of Transfer of Property; Specific Transfers; Modes of Transfer of Property; Sale, Gift, Exchange, Lease & Mortgage.

IX. General Principles of Insolvency : Acts of insolvency and fraudulent transfers, Adjudged insolvent - Effects, Discharged insolvent - Effects.

X. Intellectual Property : Basic features of the Laws on Copy Rights, Trade Marks, Patents and Designs and modern developments.

XI. Simulation Exercises in Arbitration.

EXAMINATION PATTERN

Written Examination	:	65 marks
Practical Training	:	30 marks
Attendance	:	5 marks
Total	:	100 marks

PAPER - V : FAMILY LAW

Introduction : Scope of Family Law in India – Inter-religious and Intra-religious family law – Unification and Uniformity.

Elementary Principles : Law governing the Institutions of Marriage, Divorce, Dowry and Dower.

Fundamentals of : Matrimonial reliefs under Personal Laws of Hindus, Muslims and Christians in India.

Other Institutions : Matrimonial Property, Maintenance, Adoption, Custody of children, Guardianship and Succession.

Family Dispute Resolution: Family Courts, Civil Courts- Conciliation and Counselling. Areas amenable to conciliation under Personal Law.

Simulation Exercises : Application of ADR methods in cases involving Restitution of conjugal rights, Separation, Divorce, Family Property, Maintenance and Custody of children.

EXAMINATION PATTERN

Written Examination	:	65 marks
Practical Training	:	30 marks
Attendance	:	5 marks
Total	:	100 marks

Note: The syllabus may be amended or enlarged as and when found necessary.

PROJECT REPORT

Every candidate shall submit a Project Report on a topic pertaining to any of the subjects studied by him/her in the diploma course. The Project Report shall consist of not less than 50 typed pages of A-4 size with the following specifications:

Font	:	Times New Roman
Font Size	:	12
Line Spacing	:	One and half lines
Page Margins		
Top	:	1”
Bottom	:	1”
Left	:	1”
Right	:	1”

The Project Report shall be submitted not later than 15 days of completion of the course-end examination. However, a candidate who fails to submit the Project Report within the stipulated time for valid reasons may be permitted by the Course Coordinator, within his discretion, to submit the Project Report along with candidates of the next batch of the diploma course. However, the result of such a candidate will be declared only after submission and evaluation of the Project Report. The Project Report shall be evaluated for a maximum of 100 marks and the minimum passing marks shall be 50%.
