Unit I - Alternative Dispute Resolution

→ Meaning, evolution and development of ADR in India.

→ Advantages and disadvantages of alternative methods.

→ Informal methods, negotiation, mediation, conciliation and arbitration.

→ Hybrid methods: Med-Arb, MEDOLA, pre-trial settlement, mediation centres and mobile courts.

→ Distinction between ADR and traditional court adjudication.

REMEMBER - EXAM TIP: DEFINITION + EXPLANATION + EXAMPLE + CONCLUSION

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Meaning and Nature of ADR

→ ADR means processes that resolve disputes outside a full traditional court trial.

→ It includes negotiation directly between parties and neutral-assisted methods such as mediation and conciliation.

→ Arbitration is an adjudicatory ADR process where an agreed tribunal gives a binding award.

→ ADR usually seeks practical solutions with flexibility, participation and less hostility.

→ ADR supplements courts; it does not abolish judicial remedies or constitutional protections.

REMEMBER - ADR = ALTERNATIVE METHODS FOR RESOLVING DISPUTES

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Why Society Needs ADR

→ Courts may face delay, litigation costs and lengthy procedural stages.

→ Many disputes are better solved through conversation than through a winner-versus-loser judgment.

→ Family, business, labour and neighbourhood conflicts often need restoration of working relationships.

→ A mutually designed settlement can preserve dignity and reduce unnecessary confrontation.

→ ADR offers extra routes to justice but must protect vulnerable parties.

REMEMBER - PURPOSE = ACCESS + EFFICIENCY + RELATIONSHIP

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Evolution of Dispute Resolution

→ The earliest communities settled disputes through elders, councils and respected local persons.

→ As organised states developed, formal judges and legal institutions became more prominent.

→ Commercial growth encouraged merchants to resolve technical disputes through agreed arbitrators.

→ Modern ADR developed as negotiation and mediation gained systematic processes and training.

→ The contemporary approach combines courts, private choice and suitable settlement mechanisms.

REMEMBER - COMMUNITY SETTLEMENT → COURTS → MODERN ADR

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Ancient Indian Traditions

→ Kulas were family or clan groups that helped resolve internal disputes.

→ Srenis were guilds associated with traders and persons engaged in the same occupation.

→ Pugas or local assemblies and learned Parishads also assisted in settlement.

→ Village Panchayats applied community knowledge and customary norms to local problems.

→ These practices show a history of consensual settlement, although equality and fairness were not always assured.

REMEMBER - KULA - FAMILY; SRENI - GUILD; PANCHAYAT - VILLAGE

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Development during Colonial India

→ Formal colonial courts expanded written procedures and adversarial litigation.

→ Private arbitration also received statutory attention under successive arbitration laws.

→ The Indian Arbitration Act, 1899 dealt with arbitration in specified circumstances.

→ The Arbitration Act, 1940 later provided a general domestic arbitration framework.

→ Litigation became more formal, but community settlement and private compromise continued.

REMEMBER - 1899 → 1940: EARLY ARBITRATION LAWS

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Development after Independence

→ Article 39A of the Constitution stresses equal justice and free legal aid.

→ Legal aid programmes and Lok Adalats expanded efforts to make dispute resolution accessible.

→ The Legal Services Authorities Act, 1987 gave a statutory framework to legal services and Lok Adalats.

→ The Arbitration and Conciliation Act, 1996 modernised arbitration and statutory conciliation.

→ Section 89 CPC strengthened court referral to suitable settlement processes.

REMEMBER - 1987 ACT + 1996 ACT + SECTION 89 CPC

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Important ADR Timeline in India

→ Ancient period: village councils, guilds, family assemblies and negotiated settlement.

→ 1940: a major statutory framework for domestic arbitration was enacted.

→ 1987: Legal Services Authorities Act institutionalised Lok Adalats and legal aid.

→ 1996: Arbitration and Conciliation Act modernised arbitration and conciliation.

→ 2002: Section 89 CPC became operative with broader settlement referral; court-annexed mediation developed.

REMEMBER - TIMELINE IS USEFUL FOR 5-MARK QUESTIONS

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Constitutional Basis of ADR

→ Article 39A directs the State to promote equal justice and free legal aid.

→ Article 14 demands equality before the law; access to remedies must be fair.

→ Article 21 supports fair procedure and meaningful access to justice as part of legal protection.

→ ADR advances these goals when it reduces barriers and gives parties a genuine voice.

→ However, consent obtained by coercion or intimidation is not a fair settlement.

REMEMBER - ARTICLE 39A = EQUAL JUSTICE AND LEGAL AID

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Section 89 of the CPC

→ Section 89 of the Code of Civil Procedure enables referral when elements of a possible settlement exist.

→ The listed avenues are arbitration, conciliation, judicial settlement including Lok Adalat, and mediation.

→ Order X Rules 1A - 1C support directions to opt for an appropriate settlement process.

→ Referral must take account of the nature of dispute and legal requirements of consent.

→ Afcons Infrastructure v Cherian Varkey (2010) clarified how Section 89 should operate.

REMEMBER - SECTION 89 = COURT-LINKED ADR OPTIONS

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Core Principles of ADR

→ Party autonomy means participants choose or influence the mode and terms of settlement.

→ Neutrality requires a mediator, conciliator or arbitrator to avoid bias and conflicts of interest.

→ Confidentiality protects private discussion subject to applicable legal rules and exceptions.

→ Fair opportunity allows each side to explain interests and respond without intimidation.

→ Good faith, transparency of procedure and enforceability determine the credibility of ADR.

REMEMBER - AUTONOMY + NEUTRALITY + FAIRNESS + TRUST

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Advantages: Time and Cost

→ ADR can resolve suitable disputes more quickly than a contested trial with multiple hearings.

→ Informal communication often reduces paperwork, travel and repeated procedural expenses.

→ Early settlement may prevent further financial loss and uncertainty.

→ The method can be tailored to the value, complexity and urgency of the dispute.

→ But arbitration can be expensive, so ADR should not automatically be called cheaper in every case.

REMEMBER - ADVANTAGE IS CONTEXT-DEPENDENT, NOT ABSOLUTE

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Advantages: Relationships and Choice

→ Negotiation and mediation encourage cooperation instead of purely adversarial argument.

→ Parties can agree upon solutions unavailable in a rigid court judgment, such as future supply terms.

→ Private discussion helps protect confidential business details and family concerns.

→ Parties may choose a neutral with relevant technical or commercial expertise.

→ A mutually accepted outcome often improves voluntary compliance and preserves future dealings.

REMEMBER - FLEXIBILITY + EXPERTISE + PRIVACY + COOPERATION

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Disadvantages and Risks of ADR

→ An economically stronger party may pressure a weaker person into an unfair agreement.

→ Without adequate legal advice, a participant may surrender important rights unknowingly.

→ Some ADR proceedings lack a public record or broader precedent for future cases.

→ Mediation can fail, forcing parties to spend additional time and then go to court.

→ Private arbitration may involve tribunal fees and limited statutory grounds to challenge awards.

REMEMBER - POWER IMBALANCE IS A MAJOR LIMITATION

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When ADR Is or Is Not Suitable

→ ADR suits commercial payment issues, neighbour disputes and many civil or family disagreements.

→ Mediation can address communication, ongoing relationships and flexible practical obligations.

→ Arbitration usually concerns disputes the law permits parties to submit privately.

→ Serious criminal offences, certain public rights and matters requiring authoritative public adjudication may not be arbitrable.

→ Afcons Infrastructure (2010) described appropriate and inappropriate categories for court referral.

REMEMBER - FIRST ASK: IS THE DISPUTE LEGALLY SUITABLE?

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Informal Methods of ADR

→ An informal method uses direct discussion, community meetings, family elders or respected facilitators.

→ These processes generally do not require elaborate pleadings, courtrooms or strict evidence rules.

→ Example: neighbours agree to repair a shared boundary after a meeting with a trusted elder.

→ Informality can make justice accessible and culturally familiar.

→ However, pressure, unequal status and discriminatory custom can make an informal settlement unfair.

REMEMBER - INFORMAL DOES NOT MEAN WITHOUT RIGHTS

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Negotiation : Meaning and Features

→ Negotiation is direct communication in which disputing parties try to reach a mutually acceptable agreement.

→ There is no compulsory neutral decision-maker; representatives or lawyers may assist.

→ Parties retain control of proposals, concessions and whether they settle.

→ It can be used before litigation, during a case, or even after judgment for payment arrangements.

→ Example: buyer and seller renegotiate delivery dates and compensation for delay.

REMEMBER - NEGOTIATION = PARTIES TALK AND DECIDE

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Stages of Effective Negotiation

→ Preparation: identify facts, legal rights, priorities and possible alternatives.

→ Opening: set a respectful tone and state concerns without personal attacks.

→ Discussion: discover underlying interests and clarify disputed facts.

→ Bargaining: exchange realistic proposals and concessions.

→ Closure: write precise terms, responsibilities, payment dates and consequences of default.

REMEMBER - PREPARE → DISCUSS → BARGAIN → WRITE

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Principled Negotiation and BATNA

→ Positions are what parties demand; interests are the needs behind those demands.

→ Separate people from the problem to lower emotion and personal blame.

→ Generate options for mutual gain instead of insisting on one rigid solution.

→ Use objective criteria such as market rates, documents and legal standards.

→ BATNA means Best Alternative to a Negotiated Agreement: know your realistic fallback.

REMEMBER - FOCUS ON INTERESTS, NOT ONLY POSITIONS

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Negotiation Example and Limits

→ Example: a tenant owes two months' rent while the landlord needs steady payment.

→ The tenant proposes instalments; the landlord agrees to waive part of the late fee.

→ Both record the amount, due dates and steps if payment is missed.

→ Negotiation may fail if information is hidden or one side uses threats.

→ For safety-sensitive, abusive or highly unequal relationships, an assisted process or court may be preferable.

REMEMBER - CLEAR WRITTEN TERMS PREVENT NEW DISPUTES

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Mediation: Meaning and Character

→ Mediation is a voluntary, structured process assisted by an impartial mediator.

→ The mediator helps parties communicate, identify issues and explore possible settlement options.

→ A mediator does not normally impose a judgment upon the parties.

→ The outcome depends on informed agreement, unlike a decision given by a court.

→ Mediation is useful in commercial, family, workplace and community conflicts where dialogue matters.

REMEMBER - MEDIATOR FACILITATES; PARTIES SETTLE

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Stages of Mediation

→ Stage 1: introduction, rules, neutrality and explanation of confidentiality.

→ Stage 2: each side gives an uninterrupted opening account.

→ Stage 3: issues and interests are identified, sometimes in private caucuses.

→ Stage 4: possible options are tested for legality, realism and fairness.

→ Stage 5: agreement is drafted and signed, or the process ends without settlement.

REMEMBER - INTRODUCTION → ISSUES → OPTIONS → AGREEMENT

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Role and Skills of a Mediator

→ A mediator listens actively and restates difficult statements in neutral language.

→ Open questions help parties express the real concerns behind accusations.

→ Reality testing asks whether a proposal can actually be performed.

→ A mediator must disclose conflicts of interest and avoid favouring either party.

→ The mediator should not threaten parties or give an impression that settlement is compulsory.

REMEMBER - LISTEN, REFRAME, ASK, TEST, STAY NEUTRAL

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Mediation: Example and Benefits

→ Two business partners disagree about profit distribution and management roles.

→ A mediator helps them list financial records and clarify future responsibilities.

→ They may settle through revised profit shares, audit access and a review meeting.

→ The process preserves business goodwill and permits a creative ongoing arrangement.

→ If one partner refuses informed consent, the mediation cannot manufacture a genuine agreement.

REMEMBER - THE SETTLEMENT BELONGS TO THE PARTIES

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Conciliation: Meaning

→ Conciliation is a settlement process assisted by a neutral conciliator.

→ Under Part III of the Arbitration and Conciliation Act, 1996, the conciliator assists an amicable settlement.

→ A conciliator may actively suggest terms or draft possible settlement proposals.

→ Participation ordinarily rests on the parties' willingness to use the process.

→ The goal is a mutually acceptable settlement, not a winner-and-loser determination.

REMEMBER – CONCILIATION = NEUTRAL ASSISTS AMICABLE SETTLEMENT

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Conciliation Procedure under 1996 Act

→ Section 61 concerns application of Part III to disputes from legal relationships.

→ The process normally begins when a written invitation to conciliate is accepted under Section 62.

→ The conciliator receives statements and documents and seeks common ground.

→ Section 73 concerns the settlement agreement, and Section 74 gives its agreed legal effect.

→ If agreement is impossible, conciliation may terminate in the manner provided by law.

REMEMBER - SECTIONS 61, 62, 73, 74 ARE IMPORTANT

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Mediation and Conciliation Compared

→ Both methods depend on a neutral person and the parties' consent to settlement.

→ Traditional mediation emphasises facilitation of discussion and party-designed proposals.

→ Under the 1996 Act framework, a conciliator may put forward specific settlement suggestions.

→ Neither neutral normally adjudicates the merits like an arbitrator or judge.

→ Legal effect depends on the governing statute and the form of the written settlement.

REMEMBER - BOTH HELP SETTLEMENT; NEITHER DECIDES AS JUDGE

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Arbitration: Meaning and Essentials

→ Arbitration submits a legally arbitrable dispute to an impartial private tribunal by agreement.

→ The arbitrator examines the parties' contentions and delivers an arbitral award.

→ Unlike a mediator, the tribunal can make a binding determination of the referred dispute.

→ The Arbitration and Conciliation Act, 1996 governs major aspects of Indian arbitration.

→ Parties may choose procedural features subject to mandatory fairness and legal limits.

REMEMBER - ARBITRATION = CONSENT TO A BINDING AWARD

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Basic Stages of Arbitration

→ Step 1: an arbitration agreement covers the dispute, often in a contract clause.

→ Step 2: a dispute arises and an arbitrator or tribunal is appointed.

→ Step 3: parties submit claims, defences and relevant documents.

→ Step 4: hearings or document-based proceedings are conducted fairly.

→ Step 5: the tribunal gives a reasoned award where required by the Act.

REMEMBER - AGREEMENT → TRIBUNAL → HEARING → AWARD

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Arbitration: Important Sections

→ Section 7 defines an arbitration agreement under the 1996 Act.

→ Section 18 requires equal treatment of parties and full opportunity to present the case.

→ Section 19 allows procedural flexibility: the tribunal is not bound by CPC or Evidence Act rules.

→ Section 31 deals with form and contents of the arbitral award.

→ Section 34 provides statutory grounds to apply for setting aside an award.

REMEMBER - SECTIONS 7, 18, 19, 31, 34

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Arbitration: Strengths and Limits

→ Technical expertise, party choice and procedural flexibility can be valuable in business disputes.

→ An award is not merely a settlement: it is a tribunal's determination with legal consequences.

→ Arbitration may still require lawyers, evidence, substantial fees and time.

→ Judicial review of an award is not an ordinary full rehearing on merits.

→ Non-arbitrable disputes must remain with the appropriate public legal forum.

REMEMBER – BINDING OUTCOME, BUT NOT SUITABLE FOR EVERY CASE.

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Four Main ADR Methods: Comparison

→ Negotiation: parties speak directly; no mandatory neutral; settlement only by agreement.

→ Mediation: neutral facilitates dialogue; no imposed decision; agreement is party-made.

→ Conciliation: neutral works for amicable settlement and may suggest proposals.

→ Arbitration: agreed private tribunal decides; award is ordinarily binding.

→ Choose a method by urgency, consent, relationship, legal rights and need for a binding decision.

REMEMBER - NEGOTIATE - FACILITATE - CONCILIATE - DECIDE

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Hybrid ADR Techniques

→ A hybrid process combines features of two or more dispute resolution methods.

→ Examples include Med-Arb, Arb-Med and final-offer procedures such as MEDOLA.

→ Parties may first attempt amicable resolution and then move to binding determination.

→ Hybrid designs can avoid starting a completely new proceeding after settlement fails.

→ They require clear prior agreement on procedure, neutrality, confidentiality and decision-making.

REMEMBER - HYBRID = COMBINATION OF ADR METHODS

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Med-Arb: Mediation + Arbitration

→ In Med-Arb, the parties attempt mediation first to resolve the dispute voluntarily.

→ If some issues remain unresolved, the process proceeds to arbitration for a binding award.

→ This creates a settlement opportunity without sacrificing finality.

→ Using the same neutral for both stages creates risks from confidential mediation disclosures.

→ Parties should clearly decide whether different mediators and arbitrators will be appointed.

REMEMBER - MEDIATION FIRST → ARBITRATION IF NEEDED

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MEDOLA : Final-Offer Selection

→ MEDOLA is a hybrid ADR technique described in Indian ADR study materials.

→ The parties first try mediation, but fail to reach a complete agreement.

→ Each side then submits its final negotiated offer for resolving the dispute.

→ A chosen neutral selects one of the final offers; that selection is treated as binding under the agreed procedure.

→ The possibility of final-offer selection encourages parties to make realistic proposals.

REMEMBER – MEDOLA = MEDIATION THEN FINAL-OFFER CHOICE

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Pre-Trial Settlement and ADR

→ Pre-trial processes seek to narrow issues or settle disputes before a full evidence-based trial.

→ A judge may direct attention to suitable settlement routes under Section 89 CPC.

→ Parties can exchange essential information and discuss a negotiated resolution.

→ Even partial settlement reduces the number of issues requiring a contested hearing.

→ Court supervision remains important where public rights or the validity of consent are questioned.

REMEMBER - PRE-TRIAL = SETTLE EARLY, SAVE HEARING TIME

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Mediation Centres

→ Mediation centres provide a structured place where trained neutrals assist settlement.

→ Court-annexed centres receive appropriate disputes referred from pending cases.

→ Sessions may involve joint meetings, private discussions and a written settlement.

→ Centres can help with case management, scheduling and trained mediator availability.

→ An agreement should be voluntary, clear, lawful and properly placed before the court where required.

REMEMBER - COURT-ANNEXED MEDIATION HELPS EARLY SETTLEMENT

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Mobile Courts and Access to Justice

→ Mobile courts take judicial services closer to people in remote or underserved areas.

→ They may function at different locations according to applicable legal arrangements.

→ Reduced travel and local access can lower barriers for rural litigants.

→ Mobile courts are not identical to private mediation or arbitration: they may exercise judicial powers.

→ Their connection to ADR is practical access, speedy disposal and encouraging lawful settlement.

REMEMBER - MOBILE COURT = COURT ACCESS NEAR THE PEOPLE

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ADR versus Court Adjudication

→ ADR may be voluntary and flexible, while adjudication applies established court jurisdiction and procedure.

→ In mediation, parties control the outcome; in adjudication, a judge decides disputed legal rights.

→ Arbitration is different: an arbitrator also decides, but under private agreement and statute.

→ Court hearings and judgments are generally more public; many ADR discussions are private.

→ ADR often preserves relationships; adjudication is essential for public precedent, coercive relief and non-settleable rights.

REMEMBER - ADR SUPPLEMENTS COURTS; IT DOES NOT REPLACE THEM

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Unit I: Revision and Case Laws

→ Q1. Trace the evolution and development of ADR in India with a brief timeline.

→ Q2. Explain the advantages and disadvantages of ADR with examples.

→ Q3. Distinguish negotiation, mediation, conciliation and arbitration.

→ Q4. Explain Med-Arb, MEDOLA, pre-trial settlement, mediation centres and mobile courts.

→ Q5. Distinguish ADR from court adjudication and discuss Section 89 CPC.

→ Cases: Salem Advocate Bar Association (II) v Union of India (2005); Afcons Infrastructure v Cherian Varkey (2010).

REMEMBER - FOR 14 MARKS:
DEFINITION + LAW + EXAMPLE + CASE + CONCLUSION

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