

**(Text of the Inaugural Address delivered on August 28, 2008 by
Hon'ble Mr. Justice R C Lahoti, Former Chief Justice of India
at the Seminar on 'ADR in the Era of Globalization'
(the Amity Law School Annual National Seminar, 2008)**

I am indeed delighted to be associated with this National Seminar organized by Amity Law School. The theme of the Seminar is:-‘Alternate Disputes Resolution in the Era of Globalization’. It hardly needs to be emphasized that focus of the Seminar is on a subject of singular contemporaneous significance to the world business community and justice dispensation system of the country.

With unprecedented advancement and innovations in the field of science and technology and, in particular, transport and communication the world stands reduced into a global village. The world trade has prospered and assumed boundless dimensions post second world war, and, in particular, during the two decades marking the closure of the previous century and the beginning of the present one. Trade and commerce thrive on peace, understanding, co-operation and communication. Howsoever meticulous one may be in the matter of finalizing business deals and giving it legal shape, disputes and differences are bound to arise. That is inevitable. However, a businessman faced with disputes and differences does want an early settlement and that too in an informal atmosphere, in an informal way and possibly by saving the costs too. Time is the most precious of all the commodities and sensible businessman would not like to waste time on litigation. Time is money, said Benjamin Franklin. A businessman who aims at prosperity in business does not squander time. Litigation is certainly squandering— a non productive activity. Informality of methodology is involved in resolving the disputes by ADR the methodology is informal, quick and less complex; it also carries an inbuilt possibility that there will be no blood lost and harmonious business relationship will soon be restored. Cost, complexity and colossal wastage of time have come to be recognized as the traits of the traditional justice delivery system on account of back breaking weight of arrears- a challenge which faces the courts which are numerically too less to meet the challenge and also illequipped so far as modernization and rationalization are concerned. Alternate disputes resolution systems are therefore gaining popularity and momentum. Though there are a number of ADR techniques but the most popular of them, universally accepted, are Arbitration, Conciliation and Mediation, in that order of preference.

I have been apprised of the themes of different sessions in this National Seminar. I find the themes about eight in number to be well thought of and comprehensive enough. Care has been taken to include for discussions and deliberations by law teachers, experts, professionals, research scholars and senior students on subjects like compulsory mediation, minimum judicial interference, adhoc versus institutionalized ADR system and the areas into which ADR methodology can stretch and expand itself guaranteeing better results. I have had the benefit of reading the 'concept notes' prepared by the organizers touching the different themes of the Seminar. You will be deliberating on those themes and having a free and frank exchange of innovative ideas in every session. There are other learned speakers in the inaugural session and they are sure to throw flood light on these topics. I would, therefore, observe self restraint and not preempt the deliberations at the seminar. However still, from the Indian perspective I wish to float a few thoughts.

India and China have been nicknamed as 'two Asian giants', ready to embrace the whole world in their arms and on their terms. The experts predict that in the coming generation India is going to be one of the four top economic powers.

Just like medical tourism, arbitration tourism is also gaining ground. Asia in general, and India in particular, is ideally suited to be the seat of international arbitration on account of certain potentials available here. We can guarantee low cost and high quality. We the Indians are basically service minded and philanthropic by temperament. Service industry in India has during last two decades multiplied in an unbelievable proportion. Service sector contributes 54% of India's GDP. We have the best of law professionals available (about one million lawyers on the rolls of Bar Council) and a force of former judges, bureaucrats and experts willing to make available their services in ADR systems. The number of former judges with judicially trained mind, physically and mentally fit to work and with record of impeccable integrity and honesty in the background may not be less than 1500 or 2000. Both quantitatively and qualitatively we have an edge over the rest of the world.

Most simplistically put, '**Arbitration**' is the reference of disputes or difference between a minimum of two parties for determination after hearing both sides in an informal manner but consistently with the principles of natural justice and the applicable law, by a person or persons other than a court. '**Mediation**' is a flexible, non binding disputes resolution procedure in which a neutral third party- the mediator- facilitates negotiations between the parties to help them settle. The focus is on exploring resolutions by going beyond the legal issues involved.

Mediation sessions are confidential and the mediator encourages the parties to stimulate communication and thereby remove misunderstandings, probe the strengths and weaknesses of the two contending versions and making the parties understand the ‘advantages of settling’ over the ‘disadvantages of not settling.’ ‘**Conciliation**’ is akin to mediation excepting that the involvement of conciliator is more intense and persuasive appeal more forceful. In India, arbitration is more prevalent and popular while mediation and conciliation are still in an age of infancy. But it is interesting to note that in Federal District Courts of US, arbitration is the second most frequently authorized ADR programme and falls well short of mediation in number.

Although I have already emphasized that India is most ideally suited to be the seat for settlement of disputes by ADR methodology but there are a few issues which are perceived as bottlenecks in the process of popularizing ADR systems in India. I would very briefly indicate them for the consideration of this august audience. These are:-

- (i) Arbitration and other ADR systems are being practiced in India with adhocism; there is urgent need to institutionalize these systems and also develop an institution offering international ‘state-of-the-art’ services matching with international standards which have come to be settled; also streamlining the procedure so as to curtail delay;
- (ii) Arbitration in India is criticized as infected by judicial overreach. In particular, the cases generally referred to are *Bhatia International*¹, *ONGC case*² and *Patel Engineering*³. I defend these cases because the overriding consideration prevailing with the Ld. Judges who have decided these cases has been ‘securing justice’ and upholding the rule of law, in the background of the Indian circumstances. However, in our judicial system, an error in judicial opinion can always be corrected without much-a-do;
- (iii) The basic distinction between the philosophy underlying the court adjudications compared with the ADR systems is that while the former aims at *resolving* the dispute, while the other aims at *dissolving* the dispute. In arbitration also the emphasis is more on determination/ decision in accordance with the law applicable. There is need for switching over more and more to mediation and conciliation methodology and intertwining conciliation with arbitration as the

¹ Bhatia International (2002) 4 SCC 105

² ONGC v SAW Pipes Ltd. (2003) 5 SCC 705

³ S.B.P. v. Patel Engineering Ltd. (2005) 6 SCC 288

UNCITRAL Model contemplates and the Arbitration and Conciliation Act of India also provides for. Mediation and conciliation are such arts as need a specially trained mind. The mindset of the people has to change and trained mediators and conciliators made available. An institution like Amity can take a lead in the matter.

What has impressed and inspired me the most is: an educational institution and young professionals having taken a lead in organizing this Seminar. The chain of Amity educational institutions has a well established reputation and goodwill of its own. The preliminary meetings preceding my presence in this Seminar today has given me an opportunity of meeting the brilliant students studying in Amity Law School, its faculty and the Director Mr. Balachandran. My joy of the day is limitless to see the young students of this school being forerunners organizing this Seminar. I would like to share a few parting thoughts with them.

Every country, every democracy and every system has its own problems and its own shortcomings. The distinguishing feature is: while some genuinely attempt at identifying and solving the problems while some just wait, watch and see. In a country like India it is the youth on whom our hopes are riveted. The great philosopher Socrates has said – ‘Pay attention to the young, make them just as good, competent and capable as possible and the brightness of the future is assured; future – not only of theirs but of the society as a whole’. This is because, as Francis Bacon had well put it – ‘Young men are fitter to invent than to judge, fitter for execution than for counsel, and fitter for new projects than settled business.’ The participation of youth, as I see in this Seminar, makes me feel assured that the future of ADR systems in India is bright. We will be able to develop a strong, well built and most modern ADR system which can be an example to other communities of the world.

My dear young friends! I would like to deliver a word of counsel to you ‘Believe in yourself! Have faith in your abilities! Without a humble but reasonable confidence in your own powers you cannot be successful or happy. But with sound self-confidence you can succeed. A sense of inferiority and inadequacy interferes with the attainment of your hopes, but self- confidence leads to self-realization and successful achievement’⁴. The days spent in school is the golden period of life of every individual. Life is full of challenges which you begin to face when in college. This is the right time to learn an affirmation from Bible. It reads – “I can do all things through Christ which strengtheneth me”.

⁴ Norman Vincent Peale, *Positive Thinking*, p. 1

Learn by heart these words and repeat them as many times as you can. Remembering your God and deriving strength from His endless treasure will fill your mind with overflowing faith. Develop a tremendous faith in God and that will give you a humble yet soundly realistic faith in yourself.⁵

With these few words, I have pleasure in declaring this seminar inaugurated. I congratulate the organizers and wish the seminar all the success. I do hope for the Seminar to prove landmark in the development of ADR systems in the country and lead them in the right direction.

⁵ Ibid, p.7