LOK ADALATS & OTHER AVENUES/ALTERNATIVES FOR SETTLEMENT OF DISPUTES*

I am very happy to be associated, this afternoon, with the inauguration of the building for ICADR. I have learnt the reports about the wonderful work in the field of resolution of disputes, by systems alternative to courts which is being done at this end. The reports are very encouraging. The state of the art centre, which will be housed in this new building, will become a role model for similar centres, coming up in the country. I hope the Ministry of Law & Justice, which has taken initiative and lend all its support which is commendable in bringing up this centre, would take initiative in this regard. It will be a great service to the justice delivery system of this country.

Backlog of arrears and ever-increasing burden on law courts, dispensing justice as per traditional systems of justice dispensation, bound by the rules of evidence and procedure, are the talk of everyday. In spite of all the hassles, the courts are doing commendable job. Recently, I have reviewed the statistics of the disposal of cases by the courts. This year, there has been substantial increase in the overall disposal of cases but the proportion, in which the institution of cases is increasing, goes much beyond the increase in disposal of cases. The reasons are not difficult to find. Post-independence, there is increasing awareness in the citizens of this country as to their own rights and obligations of the State and other wings of the society towards the citizens. The citizens, more and more, reach the courts for the enforcement of these rights and obligations. Secondly, there is unstinted faith of the people in the judicial system of this country. They believe that though there may be delay but one day justice shall be done. Thirdly, the courts have an edge over other wings of governance. They are open, transparent and have an easy accessibility. Fourthly, it is inherent in the system that reasons are assigned for any decision taken by the judges. The obligation to assign reasons is the guarantee against arbitrariness. And lastly, the system may be slow but it works.

On 18th September 2004, delivering the key note address, at the joint conference of the Chief Justices and the Chief Ministers, I had declared the year 2005 to be 'The Year of Excellence in Judiciary'. In my 'Law Day' speech, I had stated that in order to improve the judicial system of the country, both qualitatively and quantitatively, I would like to see three things done, within the short tenure of time available to me as Chief Justice of India. Firstly, making the National Judicial Academy fully functional; secondly, introduction of information and communication technology in judiciary and thirdly, strengthening the alternative dispute resolution system. With the cooperation of my sister and brother judges and of the members of the Bar, as also the assistance of the Government of India, and in particular, the Ministry of Law & Justice and the Ministry of Communication and Information Technology, I can assure you of some good outcome and positive indications

coming forth. The National Judicial Academy has become fully functional. In the year 2004-2005 (July to June), 17 prestigious training programmes were held. For the year 2005-2006, the calendar of 24 training programmes is ready where tailor-made training programmes, catering to the requirements of different segments of judiciary will be conducted throughout the year. The beginning was made in the first week of July, with a Summer Retreat Camp for the apex judiciary of the country wherein, 11 Judges of the Supreme Court participated. The programme has been a success from all angles and has earned an international recognition for its merit and utility.

In the direction of alternative dispute resolution systems, I have something to say in a little more details. What is the problem of arrears and what is the significance of ADR system in resolving the monstrous problem? This can be explained by a simple example. Let us visualise a container or a tub of water in which there is one inlet from which water is coming in and an outlet from which the water is flowing out. There is clogging of water; the water is accumulating. The water is not flowing out with the speed with which it should to prevent clogging. Now, this is the problem. What is the solution? The solutions are three. One, we switch off the inlet of the water. We do not permit the water to come. Naturally, what is already accumulated will gradually flow out. To use the phraseology of Judicial System we would say, we stop filing of new cases and we concentrate only on disposing of cases. Is it possible? Can we shut the courts for the litigants?

Judge Ms. Fern M. Smith, who is Director of the Federal Judicial centre in Washington, D.C., gives an interesting example. In the United States, prior to 1990, it was not terribly unusual for a civil case to go on for four or five years, depending on what state it was in. In California, they enacted five-year dismissal statute, so that if a civil case was not tried within five years, it would be dismissed unless there was some good cause for it. Finally, what happened in 1990, was that the Congress got annoyed with how long these cases were taking and how much money they were costing. So Congress actually passed a statute, the Civil Justice Reform Act of 1990, which ordered the courts, in a sense, to take a more active role, and required reporting from the courts about how long cases were taking to get through and giving the courts, a mandate for the trial judges to get involved and to set the schedules and to get more active. Thus, in a way, the judges were held accountable for delayed disposal of cases.

The US experiment is neither called for in India nor will it work. The High Courts exercise power of superintendence, judicial and administrative on sub-ordinate courts. The accountability of judges in sub-ordinate judiciary is already assured under the Constitution of India. We cannot accept a system in which a suit will be deemed to have been dismissed or decreed simply because it has remained pending for a certain number of years. The first option is ruled out. The inflow can neither be stopped not reduced.

But there are other solutions available which are practical, feasible and more sensible. The outflow can be increased to solve the problem of clogging or stagnation. This can be done in several ways.

One is that the size of outlet remains the same but the speed by which the water is discharged is increased. To put it in other words, increase the efficiency of system by training, learning and continuing education.

Second is, increase the size of outlet; meaning thereby, open more courts and appoint more judges.

The third is, increase the number of outlets, devise more outlets.

There is only one outlet. Let us have 2,3, or 4 additional or alternate outlets. And this is ADR Systems. Instead of having the resolution only by courts – the single outlet, we find out other methods through which the water, which is clogging or collecting in the container, can be discharged or disposed of and that is the ADR systems.

Lok Adalats or the 'peoples' court' have done a wonderful job in disposing of the cases. Lakhs and lakhs of cases have been disposed of ever since the commencement of Lok Adalats. Encouraged by the success of the system, more and more powers have been conferred on Lok Adalats by making suitable amendments in the law.

Arbitration is a well-known, accepted and most prevalent system of ADRs. In India, it has been in vogue throughout the preceding century. Drastic changes were introduced by the 1996 Act. However, we will have to accept that arbitration, though introduced as a means of less expensive and speedier justice, has not fully come up to this expectation. The culture of '5-star arbitration' is on an increase. Those who have proved to be good arbitrators, are much in demand and gradually being over burdened just like the courts. Moreover, arbitration in India is like free lancing or an evening passtime for busy lawyers. There is need to institutionalise arbitration. There should be a system of licensing and evaluating the performance of the arbitrators. There is also need to develop a separate arbitration Bar, the members whereof would be available full time for assisting in arbitration proceedings. At the same time, there is need for introducing, developing and strengthening other ADR systems. I would like to make a mention of mediation and conciliation as a much more effective means of ADR, which is gaining ground in advanced countries and has been found to be very effective in settlement of commercial and family disputes.

Mediation and Conciliation are two terms, often used interchangeably. The difference between the two is fine and thin. Conciliation is a procedure in which an impartial third party, the conciliator, assists the parties to a dispute in reaching a mutually agreed settlement of the dispute. Mediation differs from conciliation in terms of degree. The neutral person, acting in mediation, assumes a more positive role in assisting the parties to arrive at an agreed settlement in comparison with conciliation. On successful completion of the proceedings, both conciliation and mediation result in a mutually agreed settlement. There is no adjudication, involved as is in arbitration awards or court judgments. Mediation and Conciliation do not, primarily, aim at searching for the truth or justice so much as for persuading the parties to accommodate each other. A judgment and an arbitration award aim at deciding the dispute. Mediation and Conciliation aim at resolving or dissolving the dispute.

Conciliation and Mediation have some advantage over Litigation. These are:—

(i) Confidentiality.

(ii) Less formal, more feasible and more cost efficient.

(iii) The parties can choose their own judge (arbitrator, conciliator or mediator) who may be an expert or more knowledgeable in the field, which forms subject-matter of the dispute such as commercial, matrimonial, family or requiring knowledge of particular field related to science, technology or economics.

(iv) Greater scope for innovation and creativity to find the best solution as the conciliator/mediator and the parties to such proceedings are not necessarily bound by the applicable laws.

(v) Convenience – Time and place of hearing can be chosen as per mutual convenience.

(vi) Parties retain happy relationship avoiding acrimony. Court or arbitrator decides; mediator resolves; conciliator dissolves the dispute.

Section 4 of Legal Services Authorities Act 1987, enjoins as one of the functions of the Authority, "to encourage the settlement of disputes by way of negotiations, arbitration and conciliation". Section 30 of the Arbitration and Conciliation Act 1996 speaks of settlements. Part III of the Act, consisting of sections 61 to 81, specifically deals with conciliation as one of the methodologies to be adopted. The introduction of section 89 in the CPC in its present form, statutorily contemplates arbitration, conciliation, settlements including settlement through Lok Adalat and mediation as methods for settlement of disputes outside the court. There is an urgent need for introduction of mediation, conciliation and settlement services in the courts so that court annexed ADR systems enable fast settlement of disputes. NALSAR, Hyderabad has introduced a course of study where prospective mediators and conciliators join the regular course of study and are awarded diplomas. I have appealed to other National Law Schools to introduce similar courses of study and award degrees and diplomas in ADR system. Such qualified mediators and conciliators should become a part of the judicial system and should also be available, outside the court, practicing mediation and conciliation on professional basis just as arbitrators do. In some of the areas of litigation such as commercial disputes, family disputes, labour disputes, cheque bouncing cases and petty offences there is ample scope for resolving disputes through these systems.

The need for concrete thinking and action can best be illustrated by reference to matrimonial disputes.

Hindu Marriage Act, 1955, which was enacted fifty years before, statutorily provided by sub-section (2) of section 23 that before any decree under the Act, whether of judicial separation or divorce is passed, it shall be the duty of the Court in the first instance to make every endeavour to bring out reconciliation between the parties. The provision has completely failed for two reasons. Firstly, the over-burdened judges, trying matrimonial cases do not have time to spend on conciliation which is a time taking process. Secondly, a judge, though he may be a good at judging he may not necessarily be a good conciliator. Conciliation is an art by itself. It needs persuasion and patience. One must be well versed in the principles of psychology and sociology to effectively conciliate. It is a faculty by itself and needs instructions, learning and training. The Family Courts or other courts trying matrimonial disputes must have the assistance of professional conciliators. As nothing has been done in this direction, the purpose of providing for conciliation in the Act has been frustrated. Matrimonial Laws were enacted for preserving the institution of marriage and not for breaking it. The aim was to restore harmony and understanding between the couple and not to grant an easy breaking up of the ties. What is true of matrimonial disputes, is also true of other relationships in the society to be it emotional, social or commercial.

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* Inaugural speech on occasion of Inauguration of the Headquarters of ICADR at New Delhi, on 29th August, 2005.