

**Speech of Hon'ble Minister of Law and Justice
at the Seminar on Arbitration in India: The Future
Scenario" held on 22nd December, 2014**

I am glad that the Indian Council of Arbitration, an Arbitration Institution, is organising a Seminar on an important issue related to settlement of disputes, i.e. *“Arbitration in India: The Future Scenario”*.

In the liberal economic era, boundaries of nations have become redundant in business world. Allowing free trade and commerce in the global world is the moto and goal of today's good governance. With the increase of trade and commerce, number of commercial disputes are bound to arise. Having speedy, cost effective and fair settlement of commercial disputes, preferably in an informal way, is the key for becoming leader amongst the developing nations.

We all know that our regular courts are overburdened with huge pendency of civil as well as criminal cases. Therefore, we need to resort to Alternative Dispute Resolution (ADR) mechanisms like arbitration for settling commercial disputes. Globally arbitration has become the major instrument for settlement of contractual obligations. Normally, every commercial agreement contains an arbitration clause for settlement of a dispute, if arises. The common experience is that alternative dispute resolution processes preserve and enhance personal and business relationships that might otherwise be damaged by the adversarial process.

The Alternative Dispute Resolution (ADR) system has brought about major changes towards achieving more flexibility in the process of dispute resolution. The concept of arbitration is known in this country from time immemorial. In the Panchayat system which existed in the country before the British Judicial system was introduced, all disputes arising between members of the community were, and to certain extent, are even now referred to the Panchayat. The basic advantages of arbitration are:

- a) simplicity of procedure
- b) low costs
- c) cordial atmosphere
- d) expeditious disposal

Our legal system enhances and supports the ADR mechanism. Section 89 of the Code of Civil Procedure, 1908 mandates the courts for exploring possibility of settlement of a dispute by ADR mechanism. Our Arbitration and Conciliation Act, 1996 is based on the Model Law adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1985. The main purpose of the enactment of the said Act is to encourage ADR methods for speedy dispute resolution without much interference of the courts. However, we all know that with the passage of time, some difficulties in applicability of the Act have been noticed. The courts have pointed out some lacunae in the Act which leads to conflicting views.

Arbitration process can help resolve most of domestic commercial disputes to the advantage of all parties better than the regular legal process. Even the international arbitration cases can

be better handled. However, India has to become the venue for international arbitration cases which requires few tweekings in our laws as well as the institutional mechanism dealing with it. However, there is growing tendency to take undue advantage of court procedure to gain time and delay arbitration or implementation of award is certainly undesirable.

Some of the concerns relating to arbitration process in the country are:

- Not having much quality Arbitration Institutions in the country.
- Involvement of high cost of arbitration proceedings and fees of arbitrators.
- Arbitration proceedings are not being conducted on working days but rather than on Saturday, Sunday and holidays.
- Having no separate Arbitration Bar consisting of specialized lawyers who practice only in arbitration cases.
- Raising technical issues during arbitration which resulted in delay.
- Need to have greater acceptance of the arbitral award as final and avoid challenging arbitration awards.
- Appointment of legal academicians and technical resource persons also as arbitrator.
- More and more encouragement and recognition of arbitration process and finality of awards from the judiciary.

The thrust of this Government led by Hon'ble Prime Minister of India is creating enabling environment. The Government is pushing forward the concept of "*Make in India*" and converting our country as

a major player in the world market for which we need to come out with enabling business friendly environment. Some of the points which need consideration are:

- a) Fixed schedule for the entire arbitration process.
- b) Code of Conduct for Arbitrators – no payment by the hour or day to reduce incentive to prolong proceedings.
- c) Guidelines for conduct of counsel and adherence to schedule.
- d) Express provisions for acceptance of electronic means of communication.
- e) Provisions for participation by video conferencing.
- f) Fixed schedule for costs to be imposed on party responsible for delays.
- g) Guidelines for essential documents for filing a claim with a check list to avoid delay in discovery of facts.

I am aware that there is a dire need to make some amendments in the Arbitration Act, 1996 so as to make our country as a major International Arbitration Hub. The Ministry of Law and Justice is going to table shortly before the Parliament amendments to the Arbitration and Conciliation Act, 1996 so as to make it more dynamic by giving a push to:

- a) Institutional Arbitration
- b) Lesser court interference
- c) Regulating the fee of arbitrators
- d) Narrow down the areas for challenge of awards
- e) Encourage the case of teleconference and video conferencing

- f) Make arbitration law business friendly and to make it at par with international standards in the conduct of arbitration.

I hope that deliberations in the Seminar would help us in making arbitration more successful in India.