

**PRESIDENTIAL ADDRESS BY HON'BLE MR. JUSTICE M.Y.EQBAL,
CHIEF JUSTICE, MADRAS HIGH COURT
DURING THE OCCASION OF
"DISTRIBUTION OF CERTIFICATE OF ACCREDITATION TO MEDIATORS"
AT
TAMIL NADU MEDIATION AND CONCILIATION CENTRE
HIGH COURT, MADRAS ON 26.08.2011**

The Hon'ble Mr. Justice Markandey Katju, Judge, Supreme Court of India, my esteemed brother Justice C.Nagappan, Chairman, Tamil Nadu Mediation and Conciliation Centre, my brother and sister Judges of the Madras High Court, Mr.Sriram Panchu, Organising Secretary of the Mediation and Conciliation Centre, Mrs.Vimala, Registrar General, Mr.Arvind Datar and other trainers, the trained mediators who are going to receive certificates today, dear advocates, ladies and gentlemen,

Ellorukkum En Maalai Vanakkam.

First of all, I am very happy to participate in this function organised by the Tamil Nadu Mediation and Conciliation Centre in the presence of the Hon'ble Mr.Justice Markandey Katju, Judge, Supreme Court of India. His Lordship is a man of wisdom and courage, which everyone here knows.

The crowd of advocates gathered here on this Friday evening shows the affection you have towards Hon'ble Mr.Justice Katju, because everyone is close to his Lordship's heart. The Tamil Nadu Mediation and Conciliation Centre is the brain child of Hon'ble Mr.Justice Katju, which came to be established here, even before mediation movement had taken a shape in the legal world. This concept which had a humble beginning here was followed by many other High Courts like the Delhi High Court, when His Lordship was transferred as the Chief Justice of the Delhi High Court. Mr. Sriram Panchu, Mr.Arvind Datar and other trained mediators were assigned the role of imparting training to the advocates of those High Courts.

In that way, this Mediation and Conciliation Centre is a pioneer of sorts in the mediation movement.

To me also, mediation is a subject which is close to my heart. Mediation leads to the final settlement of a dispute. There is a proverb that a wound on any part of the body will be healed in course of time, but a wound in the heart cannot be healed. In a dispute which reaches the High Court after one or two subordinate courts, the parties would have total distress with the other party, and the wounds they carry cannot be healed by any amount of success in the case. Even if the case is decreed in part or full, the wound sustained in the heart could not be healed. However, by mediation, both the parties are invited to sit across the table and discuss their problems with the assistance of trained mediators. The trained mediators are appointed for both the parties and they spell out the chances of winning or losing of the case of their respective party or as to what extent their cases could be successful and also as to the weakness of their respective cases.

Mediation is a very important tool towards breathing new life into the movement of Judicial Reforms by a suitable amendment in the Code of Civil Procedure, 1908, empowering the Court to actively assist in a settlement and refer the same for mediation.

As a matter of fact, it is obligatory for the Court before the issues were framed to explore the possibilities of settlement of dispute through mediation and refer the same for mediation.

The roots of mediation are very old in this country. It existed in our country in one form or the other. Mediation has been practised in China, India and other countries for many centuries as the normal means of dispute resolution, but it has only recently been adopted in the western world. We had the system of "*Madhyamasi*", the reference of which is found in Rig Veda.

It is necessary to remember that there are two different conceptions of law. Law may be considered to be of divine origin, as is the case with the Hindu Law and the Islamic Law, or it may be conceived as man-made. The later conception is the guiding principle of all modern legislation.

In the case of Hindu Law, it is based first on the Vedas, that is '*Sruti*', meaning '*that which is heard*'; secondly, it is based on the '*Smriti*' or '*that which is remembered*' by the Sages or Rishis. '*Dharma*' citizens used to obey man-made laws. Not only that, '*citizens used to obey the high standards of decency which are not enforced by law, but are the hallmark of a truly civilized and mature democracy*'. The various facets of *Dharma* constitute the genus of India. The rulers and the ruled practised this *Dharmic* philosophy in their dealings in the society.

Dharma commands that the citizens shall obey both the man-made laws and moral laws. *Dharma*, in the context, has two dimensions, namely., legal and spiritual. It shall, however, be remembered that the legal dimension cannot become effective unless there is the moral dimension. When the moral awareness is lacking, there will be the tendency to break or bend the law for one's benefit.

The great saints really wanted man, wherever he is, to realise the significance of the great mantras of "*Tatwamasi*" and "*Loka Samastha Sukhino Bhavantu*", which declare that every human being be happy on par with every other human being, which may be achieved by MEDIATION. This Vedic lesson "*Loka Samastha Sukhino Bhavantu*" should be the slogan of our Mediation Centre.

All injunctions and precepts of the Holy Quran aim at enabling human beings to live a peaceful and purposeful life. Prosperity comes through peace and peace can be maintained by resolving differences through mediation. The fundamental precept in this regard in the divine words is, '*Was-sulh-o-khar*' (*Chapter-IV, Verse - 128*), which means 'an amicable settlement is best'.

Further, in regard to matrimonial disputes and differences, specific guidance has been given in Chapter – IV, Verse-35 to resolve it by mediation without much publicity and mud-throwing at each other. I take honour to recite the following divine verses,

وَأِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا
مِنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا
خَيْرًا 35}

“Wa-in-khifthum Shiqqa bain-e-hima, fab-athu hakaman min ahlehi wa hakaman min ahlela’; en-yorida islahan yuwaffiq-ul-laho bainahuma; en-nallaha kana a’liman khabira”

(If ye fear a breach between them twain (the man & wife), appoint (two) arbiters, one from his family, and the other from hers; if they seek to set things aright, Allah will cause their reconciliation : For Allah hath full knowledge and is acquired with all things).

Further, Islamic researchers refer and derive inspiration from the Prophet Muhammad’s (Peace and blessing be upon him) by quoting the following ‘Hadith-e-mubarak’,

“Fa-kana al-radda el-assulh, radda el-al-khair”

(One who turns to amicable settlement, turns to prosperity)

In ancient India, it was known as ‘Thalsi’, that was a process of resolving disputes by appointing a ‘Thalis’ – a third person, who intervened to set right the differences between the two parties. It was prevalent even during and prior to the British rule. Such form of administration of justice is known in the modern terminology as Community-mediation. Recently, a revised model of ‘Thalis’, i.e., community based mediation bill, has been introduced by the West Bengal Government, for creation of a Block Level Conciliation Board for resolution of disputes of the willing parties at the Block level through ‘Thalis’.

Mediation is Constitutional Justice. Our Constitution reflects this aspiration in the Preamble itself, which speaks about justice in all its forms – social, economic and political. It promotes fraternity and dignity of the parties. The paramount importance of justice is responsiveness and timeless. It means that decision by the Law Courts should be speedy, fair and cheaper. Mediation is a powerful tool since time immemorial to do justice where the disputes are resolved between the parties themselves, and Mediators act as neutral persons to facilitate the parties reach a common agreement for the resolution of the dispute.

The concept of mediation as alternate dispute resolution has assumed great importance because the existing system has failed to deliver speedy justice, particularly to the poor masses and downtrodden of the country, who are craving for prompt justice. Procedural wrangles, inordinate delay and costs have proved to be the barriers between justice delivery and the end consumer of justice.

Mediation not only helps in reducing the backlog of cases, but also the very object of the Constitutional philosophy as enshrined to the Preamble of the Constitution of India, i.e., “...to promote among them all fraternity, assuring the dignity of the individual...” is fulfilled. The process of mediation promotes the dignity and fraternity of the individual. It increases mutual co-operation, keeps the relationship intact, and ends the hangover of litigation. As a matter of fact, every human being basically wants peace and does not want to indulge in any kind of dispute, but it is the circumstances which convert a person into a combatant litigant. I do not think that there is any dispute which could not be resolved through effective negotiation, and mediation is an effective tool of negotiation, being 100% neutral in the entire process and the matter is resolved between the parties themselves and not by the mediator, who is only a facilitator.

Mediation is a skill which has the capacity to end wars and conflicts by bringing the warring parties to the negotiating table. “The key word is Trust – without it, you are dead and

without it, stay home!” says Alan Gold, the renowned Condition Mediator. We are witness to the role of powerful and skilled U.N. Mediators in bringing settlements and end of many International Conflicts such as the one in Central Asia, Africa, etc. as emissaries of the United National Secretary General.

This beautiful couplet excerpted from the “Sundarkand” in Tulsidas’ Ramayana shows how Vibhishan cajoles his egoist, and arrogant brother king Ravana to avoid conflict and bring peace with Lord Rama,

जो आपन चाहै कल्याना सुजसु सुमति, शुभ गति सुख नाना ।
सो परनारि लिलार गोसाई, तजहु चउथिर के चंटकि नाई ।

(If you want you welfare, fame, wisdom, progress and various kinds of well being, then please return the custody of the woman who belongs to some one else, like the look of the fourth day of Moon).

चौथ धद

सुमति कुमति सव् के उर रहही, नाथ पुरान निगम अस कहही ।
जहाँ सुमति तहँ सम्पति नाना, जहाँ कुमति तहँ विपति निदाना ।

(Wisdom and vice remain in everyone’s heart, but where wisdom prevails, there resides all types of wealth and where vice and evil ideas prevail, it spells doom at the end).

I personally feel that the century old dictum, “*LOKKA SAMASTA SUKHINIO BHAWANTU*”, which means “let the entire humanity be happy through Mediation” is very significant in the present day context of dispute resolution. The need is to cultivate enthusiasm in order to achieve a successful mediation. Enthusiasm is the first ingredient in making a worthwhile income. It gives purpose and direction to any project. It is the ability to be positive, that desire to examine and assess the worth of the project in hand, and once the worthiness has passed muster, to go ahead and get things done with a smile. Remember, in

mediation, it is not just the situation, but your reaction and perception towards it that will put you in good stead.

Nandri. Vanakkam.

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