



INDIA ADR WEEKDAY 5: DELHI

**Keynote Speaker - Hon'ble Mr. Justice Hrishikesh Roy, Judge, Supreme Court
of India**



1 **HOST:** Thank you. Can I request you all to please remain seated? We have the keynote
2 speaker, Justice Hrishikesh Roy, Judge of the Supreme Court of India, joining us very soon.
3 Can I request you all to please take your seats. Thank you. A very good evening to one and all.
4 I would like to invite on stage Mr. Nakul Dewan, MCIA Senior Counsel member to kindly
5 introduce the chief guest for the evening.

6
7 **NAKUL DEWAN:** Good evening, everybody. The reason why you see me walk up with this
8 great smile is because I was just talking to Justice Hrishikesh Roy, who is our Chief Guest, and
9 something that I'm going to tell you a little later on is that he certainly has a great sense of
10 humour. But let me start by thanking everybody on behalf of the MCIA. For one, coming to the
11 India ADR Week and making it an absolutely super success. I'm sure at the end of Justice Roy's
12 speech, you will hear about how successful it's been, but from whatever little tidbits that I have
13 been given, I think it's been stellar in all the three cities. I also have the privilege of introducing
14 Justice Hrishikesh Roy, who is currently the fifth senior most judge of the Indian Supreme
15 Court and in fact interestingly, is from 1982 batch of India's leading law school, which is in the
16 University of Delhi, which is where I also studied, which has in fact, produced four judges of
17 the Supreme Court, including the current Chief Justice. So I think some part of the pedigree
18 seems to have rubbed off reasonably well on the younger folks.

19
20 Anyway, coming back to this, a lot of people in the room have heard of Justice Rohinton
21 Nariman and many years ago, Justice Nariman went to Mumbai and gave a speech on the
22 value of a dissent. And then when he was writing a judgment on the right of privacy, he
23 actually wrote a bit about the value of a dissent, and what he said is that the Indian Supreme
24 Court owes much of its intellectual foresight and bravery to dissenters, and he names some
25 stellar judges Justice Fazal Ali, Justice Subba Rao, who were judges of the Indian Supreme
26 Court because their dissents on matters such as the freedom of speech, the Right to Privacy,
27 eventually, in time, became part of the judgments of courts because their dissents became part
28 of the majority decisions in larger benches, which took a couple of years but it's got there. Well,
29 on the arbitration front, Justice Hrishikesh Roy wrote a dissent not very long ago. In a
30 judgment which is very well known as ***NN Global 2*** arbitrations in India were getting stalled.
31 They were getting stalled because when an application to appoint an arbitrator was filed, an
32 objection would be taken that the agreement was not properly stamped and hence was
33 unenforced and judges had to grapple with that issue in ***NN global 2***. Justice Roy wrote and
34 said, you cannot conflate the concept of existence and validity of an arbitration agreement.
35 And when an appointing authority is required to appoint an arbitrator, all that it needs to look
36 out for is the existence of an arbitration agreement. He was one out of the four judges who
37 took that point of view. Very quickly, in a couple of months, that decision went up to seven



1 judges and Justice Roy was found to be correct. And seven judges of the Indian Supreme Court
2 have now taken the view and have said that his analysis is correct. I mean, that's Justice Roy,
3 for you. He stood up for what he believed in, didn't get cowed down by four other judges. The
4 effect of it is that today, if you have a non-stamped Arbitration Agreement, you cannot derail
5 the appointment of an arbitrator. I'm sure Justice Roy will certainly discuss more concepts on
6 arbitration or other aspects with you later this evening. But let me tell you, Justice Roy, apart
7 from being a judge and being a pedigree of an exceptionally good law school, has many other
8 interests. One is theatre. Gourab was in fact, Gourab Banerji who's right here, sent me an
9 article which I couldn't open because I don't subscribe to Live Law, which actually has an entire
10 interesting discussion of how he was sitting in the Supreme Court. And there was an entire
11 conversation about his love and interest for theatre. Perhaps, he'll talk to you about that later
12 today. But I said this he's also got an exceptionally great sense of humour. Sometimes it's
13 wicked. And one time it was wicked, was on me. I met him at a dinner organized by one of
14 these international arbitration organizations. He walked up and he said Nakul, there are a lot
15 of people talking about you in the other room, and that brightens you up, right? I mean, come
16 on. I mean, this is really good. He says, but none of them said anything good about you. So,
17 ladies and gentlemen on behalf of the MCIA, I'd like to welcome Justice Roy and thank him
18 for agreeing to be the Chief Guest this evening. Thank you, sir.

19

20 **JUSTICE HRISHIKESH ROY:** I always thought Nakul to be somewhat bright, certainly,
21 but not a very naughty person. But I see another characteristic of Nakul as he was introducing
22 me. Today of course, is the day of the Mumbai Centre for International Arbitration. I was just
23 speaking to Neeti and I was telling her, how you still have your smile intact with so many things
24 going on, and so many things capable of going wrong, people not turning up, something not
25 happening, the caterers have given up. So many things can go wrong, and yet she had that very
26 bright smile. But thank you very much for giving me this opportunity. It is really a privilege to
27 speak in a gathering of professionals, who like me, believe in the power of arbitration as a key
28 Alternate Dispute Resolution Mechanism. Arbitration was once envisaged as a fast, flexible,
29 cost effective solution to resolve disputes outside the court system. It was to be the "knight in
30 shining armour", sweeping disputes of their feet and delivering swift and fair justice, without
31 the cumbersome formalities of litigation. And yet as we sit here today, arbitration is no longer
32 the sleek sports car that we once envisaged. Instead, it has become more like an overloaded
33 truck struggling up the hill while we watch from behind wondering, wasn't it supposed to be
34 faster? The frequent adjournments in arbitration proceedings are often driven by part time
35 arbitrators and lawyers juggling court appearances and arbitration hearings. I'm sure many of
36 you have the experience of arbitration proceedings being kept on hold because a lawyer is



1 rushing from the court to an arbitration hearing with the infamous reason of being caught up
2 in the court.

3

4 We are slowly turning arbitration into what it was never meant to be. Just another formal
5 process with more adjournments, more delays, more paperwork and less arbitration actually
6 getting done. Frankly, our lawyers and judges have not only treated arbitration as an
7 Alternative Dispute Resolution Mechanism but have also treated arbitration as a second
8 calling after their regular court appearances. Attending in court is important, as it provides a
9 degree of recognition amongst your peers, your colleagues, but at the same time, unless we
10 have committed bar members attending to arbitration in more or less in an exclusive fashion,
11 the professionalism needed in the field of arbitration is unlikely to develop into a dynamic
12 entity we all hope for. Arbitration, I feel is burdened with too many practicing lawyers who
13 attend court full time and then, time permitting, also attend arbitration. Likewise far too many
14 retired judges are acting as arbitrators in India.

15

16 Sometime back, a friend told me and this, I think is appropriate because you are having a
17 cricket match tomorrow scheduled between... which are the teams? Right. So two teams
18 playing cricket, locking horns tomorrow in the cricket field. Now, this is something which a
19 friend told me. A fictional conversation between Sachin Tendulkar, who is the legendary
20 cricketer and Roger Federer, who is the tennis legion. Now, Federer tells Sachin that India is
21 the world's largest market for tennis balls and rackets. Sachin replies with affirmation and says
22 that we love tennis but cricket is our first love. Federer follows up and asks if Indians play
23 cricket with tennis balls, Sachin says, "yes" to which Federer ask, "then what do you do with
24 all the rackets?" Then Sachin Tendulkar, he replies we connect batteries to the tennis rackets
25 and kill mosquitoes with that. I hope we don't do the same thing with arbitration and make it
26 something else. Arbitration practice needs to shed its legalise grow. We need to move on from
27 the mentality of choosing legal. Legal in Devil wears Prada dresses in pinstripe suits as
28 arbitrators and instead choose people who can promise their time, efficiency and quality
29 service.

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31 Recently the Chief Justice, whom Nakul, so graciously has introduced us, my class fellow in
32 the law school, informed that in course of his court proceedings in Courtroom Number 1 of the
33 Supreme Court, he appoints young, talented arbitrator lawyers as arbitrators with expertise,
34 skill, rather than retired judges. The number of arbitrators amongst lawyers that he has
35 appointed is outnumbering the retired judges that Chief Justice is appointing. So true strength
36 of arbitration lies in its flexibility in appointing those best suited to resolve the particular
37 dispute at hand. Another crucial recommendation for reforming arbitration practice in India



1 has been to appoint genuine experts from the concerned field as arbitrators. In international
2 commercial arbitration, oftentimes a quick, not so expensive, and yet expert resolution of the
3 dispute is illusive while we are talking about arbitration.

4
5 I'm reminded of a story not of mine, but of Professor William Park of the Boston University,
6 who used to describe arbitration and its deficiencies. This story goes like this. And some of you
7 might be familiar as well. There is a sign in the window of a shoe repair shop in downtown
8 Boston. It is run by a Greek immigrant who is fed up with customer complaint. So he puts up
9 a sign with a triangle connecting three different expressions. The top of the triangle has "fast
10 service" one of the bottom has, "low price" and the other side of the bottom of the triangle is,
11 "high quality" and at the top of the triangle are the words and underneath the triangle is the
12 all-important instruction, P 2. Because if we think a little, you'll understand all three things
13 together fast service, low price and high quality at the present moment are simply unattainable
14 particularly in the international commercial arbitration and in international investment
15 arbitration. Therefore, if we have to have fast service we must recognize the efforts made by
16 an arbitrator to not only provide high quality service, but also prepares and delivers awards
17 within the permitted time.

18
19 In the context of speed of disposal how can I forget another stalwart. In fact, a true stalwart
20 emerging from the Bombay Bar and shifting to Delhi, Fali Nariman is the man that I am talking
21 about now. Fali Nariman, he narrated the story of an Indian visiting London and the Indian
22 gentleman in London, he came down with a toothache and it was unbearable. So he needed to
23 consult a dentist. So he went in, had fixed an appointment and went and met the dentist and
24 asked the dentist of the procedure that he intends to sort of undertake to cure the pain. And
25 then, we as Indians, we have this thing about knowing the price of the procedure, so he said
26 doc, how long would the procedure be and what is the cost? So the doctor said, the dentist said
27 that it's going to be just a couple of minutes and my charge will be £300. The Indian was
28 aghast. He said £300 for a procedure lasting two minutes? Now, this is a story told by Fali
29 Nariman. So I'm just narrating what he said on another occasion. So the doctor who had such
30 experience with patients, he said if you feel more comfortable, he told the patient, if you feel
31 more comfortable I can extract your tooth very slowly so that you will have a procedure which
32 might last longer than two minutes. And yet you will feel that Rs 300 is 300 pound is worth
33 the procedure that was undertaken by the dentist. Now, ladies and gentlemen the choice in the
34 field of arbitration is sometimes people feel short charged when they are not rendered on time
35 but there are occasions. And I'm sure you've had pleasant experiences also of arbitrator
36 rendering award in good time and in that situation, such arbitrators will also require a bit of
37 your recognition, recognition in terms of getting quality work, recognition in terms of proper



1 remuneration because very often the process gets elongated because people have a system of
2 not only I'm talking about the arbitrator, but also the lawyers who are appearing before the
3 arbitrators on a part per day appearance fee basis. So sometimes things get prolonged because
4 of that also, so that is something which we can always address.

5
6 Now arbitration, like we also have the mediation requires a fine balance of several key
7 elements to ensure its effectiveness, accuracy, fairness, cost, speed, enforceability of the award.
8 The same Professor William Park, in his article arbitration and fine dining, two faces of
9 efficiency provides an analogy to illustrate the balance. Now, we are sitting in a hotel banquet
10 hall, where dinner is awaiting. So, think about a restaurant which provides quality food. You
11 visit this restaurant which has the reputation of providing quality food. But suppose food
12 arrives much delayed or you go to a restaurant where food arrives promptly, but the quality of
13 food is not very good. So therefore, a chef has to focus not only on one aspect, but he has to
14 focus not only on the quality of the food, but also on how quickly he can deliver the food. Both
15 balancing, both is very important. So similarly, in arbitration also, we need to balance all the
16 desired elements to ensure that there is a positive experience to be earned. And just as we need
17 to focus on arbitration, similarly, a chef in a hotel must balance timeliness and quality together
18 in order to give a wholesome experience to his customers.

19
20 Now, in India, we are having a situation of arbitration to avoid the procedural complexities
21 and it was expected that it will shorten delays in the litigation which are pending in court.
22 While party autonomy forms the foundation of the arbitration process, the intervention of
23 courts is fairly frequent. Practically the arbitration has turned into a two-step process
24 arbitration, followed by a trip to the court. This begs the question, is arbitration truly an
25 alternative dispute resolution mechanism when you end up in the court anyway? As another
26 time, Professor Park had said, "fairness requires some measure of efficiency, since justice too
27 long delayed becomes justice denied." It is a balancing act, really, to say, too fast and we lose
28 substance, too slow and we have the... The very recent arbitration was designed as an alternate
29 in the first place where arbitration reforms such as the 2015 Amendment and 2019
30 Amendment have aimed at expediting, quickening the proceeding. It is critical to remember
31 that efficiency is not the end goal. Fairness and legitimacy are the true benchmark of a well-
32 run arbitration.

33
34 So how do reconcile these competing demands as we move forward to our quest to improve
35 arbitration? We need to steer the process in a way that delivers reasonable speed without
36 compromising on due process, as we have seen in foreign practice where economists and
37 experts have been brought in to aid specialized disputes. Arbitration success lies in its ability



1 to tailor the process to the complexities of each case. Efficiency should serve as fairness and
2 not replace it. If we can achieve that, the arbitration will truly live up to its promise. As I am
3 ending my speech, I think that two things that have been said by Mr. Dewan when he
4 introduced me. I was really wondering what was the reason why I am being asked to speak in
5 this forum. He's mentioned about a particular judgment that I wrote. A dissenting judgment,
6 which got endorsed by a larger bench. The dissenting view got endorsed by the larger bench
7 and a couple of other judgments that I wrote, which I don't wish to speak about, but definitely
8 I must appreciate the opportunity to speak with you today. Thank you.

9

10 **HOST:** Thank you, sir. I would now like to invite Mr. Nish Shetty, MCIA Council coach to
11 propose the vote of thanks and deliver the concluding remarks.

12

13 **NISH SHETTY:** Good evening, ladies and gentlemen. Justice Roy, thank you very much for
14 that. It's exactly what we all needed at the end of a very fruitful day, but also at the end of a
15 very fruitful week of deliberations around arbitrations. I think your comments infused with
16 inimitable humour has really set the tone for the evening. You've touched on how arbitration
17 really should be, fast, flexible and cost effective and not be that overloaded truck. I'd like to
18 think that since MCIA's inception, it has set out to try and do exactly that. Those who know
19 me know that I love sports cars. And I think this is our way of ensuring that it's not a truck,
20 but it is a Ferrari in due course. So, part of that exercise is sort of amending our rules and
21 making sure that they're fit for purpose, but it's also addressing some of the issues that you
22 raised sir, which is around frequent adjournments and how to prevent that, ensuring that only
23 experts do give their time to arbitrations, ensuring that it's not done as an extracurricular
24 activity after court and having institutional arbitration, ensure there is that ability to try and
25 infuse some oversight and control over the process. So it's a timely and salutary reminder to
26 all of us, and we certainly endorse it.

27

28 You've also touched on the need for an arbitration bar, and one of the themes of my closing,
29 both in Bombay and in Delhi is around how far we have come as an institution and also as an
30 arbitral community within India, and I'll touch on that a little bit. But your point on the need
31 for an arbitration bar is well said. I've practiced all my life in Singapore. Many sort of hold that
32 up in Asia as one of the centres that reflects best practices in international arbitration. But I
33 can say to you that when I started practice, there was no arbitration bar. We all started as
34 litigators, and every now and again we did an arbitration. But our primary practice was
35 litigation. Today, when you look across the Singaporean landscape, there are many that only
36 practice arbitration, and that bar has formed. The reason I raise that is not to praise Singapore,
37 but to encourage everyone in this room that wasn't that long ago. You can see how young I am



1 so, there is absolutely the possibility of the same happening in a wonderful nation like this.
2 And I have seen my own time coming to India, talking about arbitration, how much interest
3 there is. And that interest is almost reflected more in the younger generation of Indian lawyers
4 going outside of India and also practicing within India and making arbitration very much a
5 part of their core practice, not just an extracurricular activity. So I think there is real hope that
6 that bar will be created into course I'm not going to deal with all of the points that you've made
7 Justice Roy. But again, I want to thank you on behalf of everyone present and on behalf of the
8 MCIA for the comments that you've made this evening. We are truly grateful for that and I
9 think we're all grateful for your dissenting judgment and then global. So thank you very much.
10 If you'll all join me in thanking the judge once more for his broader contributions.

11
12 So, in closing, I wanted to say that the theme I want to develop, and I have developed over the
13 last couple of days, is really how far we've come. And here's what I mean by that we've got ADR
14 Week here. When Madhukeshwar and I first discussed in 2015 or so, the possibility of hosting
15 an Arbitration Conference in India as part of the setting up of MCIA, et cetera, he said it will
16 never happen, okay. He said lucrative opportunities in court beckon these people that you
17 want to come and spend at. We were talking about half a day for this arbitration event on
18 behalf of MCIA. They're not going to leave their lucrative practices and come and sit in a room
19 and listen to people talk about arbitrations. Fast forward eight years, we're now talking about
20 three cities, possibly even more. There's a lot of pressure, I know, on Madhukeshwar and Neeti
21 to have more and more cities where this arbitration week and ADR Week is held and we have
22 full attendance completely sold out events weeks in advance of the event itself, and it just
23 shows how far we have come. And I think we have come this far, but there's still a long way to
24 go, and this is to be celebrated.

25
26 I think it's wonderful to see one of the first things that we did during the first conference that
27 MCIA organized was to introduce live transcription. At the time, we had an international
28 transcription organization provide that live transcription. And I remember vividly people
29 coming up to me and saying, "are you all reading from a script?" Because it's appearing exactly
30 as you are saying on the, on that screen, because a good number of people in the room had
31 never experienced live transcription. Now, again, fast forward eight years, the live
32 transcription is being done by an Indian company called TERES. So again, how far have we
33 come in these eight years is something that I think we can be proud of and celebrate. On the
34 screen, you will see the new counsel that is going to sort of lead MCIA from September onwards
35 and you see some amazing names in addition to those that were, some of those that were there
36 before. I'm not going to name all of them, but just illustrations. Justice Sikri has now joined
37 our council and the principle for MCIA has always been both strong Indian representation but



1 also strong international representations so that you have the best of both worlds and the
2 international arbitration community within India can benefit from views from both sides. So
3 you have Justice Sikri, we've got Gary Born, we've got Domiti Baizu, et cetera. Real sort of
4 luminaries in the arbitration world providing their time, *pro bono* to this institution so that
5 we can have international best practices while taking into account nuances that are relevant
6 to India in administering arbitrations administered by the MCIA.

7

8 I've spoken about the rules again. They reflect international best practices. The caseload is
9 certainly growing, and that's something that the team and MCIA is very proud of and I think
10 we're hitting that inflection point where MCIA is being introduced to more and more contracts
11 by companies. So how far we've come, but how far should we go from here one of the things
12 that MCIA has set out to do is to build capacity and it's done that through training programs,
13 both for arbitrators for Tribunal Secretaries and the like. I don't know if the table has the
14 Annual Report of the MCIA. Certainly the table outside has those. Have a look at that because
15 it reflects MCIA's principles in terms of diversity. 47% of the arbitrators appointed are women.
16 And I think that this is the only institution that I'm aware of on the ground in India that can
17 boast of such a statistic in terms of timeliness. It's been at the core of what MCIA has set out
18 to do, and that will remain the way that it manages matters moving forward. So I think the
19 future is bright and that's the way forward for MCIA with the benefit of both international and
20 domestic practitioners.

21

22 Finally an event such as this does not just happen without many, many people working very,
23 very hard in the background. So I know I've taken up a lot of your time, but if you'll indulge
24 me in just thanking a few people. Now, the first Madhukeshwar, Neeti, Charvi and the team at
25 MCIA. You do a fabulous job, and I want to just acknowledge that and thank you for that.
26 Secondly, all the sponsors that have sponsored the various events right through the week our
27 media partners, Bar and Bench, SEC Times, the Daily Lawyer, which has a podcast. This event
28 could not have been as successful as it has been without your support, so thank you very much.
29 Now I'm going to touch on ADR Week 2025. I said earlier that this event was completely sold
30 out weeks in advance, and one of the challenges with a sold out event is, you have disappointed
31 people, disappointed people who will say, look, why can I not come at the last minute, et cetera.
32 So we want to flag and let everyone know what the dates for ADR Week 2025 are. So please
33 mark these dates in your calendar, 15th to 20th September, 2025. The early bird tickets will
34 sort of go on sale around the first week of October. So grab them early to avoid disappointment.
35 So that's ADR Week 2025.

36



1 And finally, the cricket match for tomorrow. I would encourage all of you to attend. I think it'll
2 be a really fun event and hopefully will be part of the tradition that we want to form for ADR
3 Week, and that's going to be at 08:30 a.m. The toss will take place in 09:00 a.m. The match
4 will start and there will be a lunch at 01:30 p.m. So, just remains for me to thank all of you for
5 participating in ADR Week, So right through this week thank you very much. Thank you for
6 staying till this evening. And I believe drinks are served outside of this room. Join me in
7 thanking everyone in the room as well. So, wonderful event. Thank you so much.

8

9 **HOST:** Thank you, everyone. I request you all to please join us for dinner and drinks outside
10 and I look forward to seeing you all at the cricket match tomorrow.

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~~~**END OF SESSION**~~~

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