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IN CONVERSATION WITH HON'BLE JUSTICE DEEPAK VERMA

Editorial Board ["**EB**"]: **The 'Bhopal Gas Tragedy' was, as we know, a one-of-a-kind incident that affected the lives of many. Considering that you were the Welfare Commissioner at the time, in what manner do you think ADR may have had a scope in helping with such an incident, and how far do you think that ADR can address such environmental concerns?**

Hon'ble Justice Deepak Verma ["**J. Verma**"]: Actually, that incident had taken place at midnight on the third and fourth of December 1984, when, according to the records available and other data, more than twenty-five thousand people had died, and more than one lakh residents of Bhopal, near the factory, were affected either critically or mildly. Then, of course, the money was fixed by the Hon'ble Supreme Court of India to be disbursed to the family of the deceased and also for the treatment of those who had suffered from the gas inhalation.

Then came the question, "*How to disburse that amount?*" So, an Act was promulgated under which the Bhopal Victims Gas Welfare Commissioner, Bhopal, was appointed. Before me, there were several Welfare Commissioners who had already been appointed, and according to one of the provisions of the Act, it could be only a sitting judge of the High Court. I was a sitting judge of the Madhya Pradesh High Court, Bench, Indore, at the time when I offered as I was posted at Indore and my immediate predecessor was about to retire, so I said I will take up these matters. So, I used to do my regular matters in the High Court between Monday and Friday and then used to go to Bhopal on a Friday evening and return on a Sunday evening. This is a matter of record. I do not need any certificate as I am sitting at the sunset of my life. Thus, the regular work of the High Court did not suffer.

Now the question was, "*how do you take up all the cases on Saturdays and Sundays?"* Because it would not be proper to dispose of the matters on non-working days unless you had the consent of the learned advocates. So, I called a meeting of learned lawyers who used to generally appear before either the Deputy Commissioners of Bhopal Gas or before the Appellate Authority or before me

in the Gas matters to see if I could hold the sittings on Sundays and told them of my difficulty that I was unable to leave the work pending in the High Court. Yet, I wanted to do the matters for them, for which I was ready to take up the matters on Saturdays and Sundays. They were also ready and willing to pass a motion in this regard.

So, all those matters used to be taken up on Saturdays and Sundays. I had a Registrar who used to put up the cases and supply me with the facts. Generally, I used to dictate and pass the orders then and there, so every day, on instructions, a hundred matters were listed and disposed of. Generally, I used to finish all the cases listed in the Cause list before me. Sometimes, the matters used to get rolled over as the lawyer was not there, or not well, or any other reason, which then used to come on a later date.

So, after taking matters in this procedure for four to five years continuously without taking any holidays except for the festivals of Holi and Diwali, which were a must, pendency in my Court was reduced to zero.

But what had happened was that by the time the money was distributed, some amount was still left, around Rs. 30 to Rs. 40 Crore. A *suo moto* matter had come up in the Supreme Court, and I made various suggestions as to how the money could be distributed. I had suggested that schools be opened for the children, skill training could be imparted to the widows, and so on. I had given about ten to eleven suggestions, but the Hon'ble Supreme Court did not accept them and said that this money belongs to the gas victims and, thus, they and their families alone should get it on a pro-rata basis.

Thus, on account of the Order passed by the Hon'ble Supreme Court of India, once again, about five lakh thirty-five thousand cases cropped up. All those cases came up for re-distribution of the remaining funds on a *pro-rata* basis. For example, if someone had received ten thousand rupees earlier, the same amount would be repaid to him. So, I was thinking to myself how lucky I was to bring zero pendency in my Court, but once again, this number had gone up hugely.

I was thinking to myself how to deal with this situation, and you must have heard the name of Dr. Moolchand Sharma, who was the Director of Bhopal National Law College at that time. He must have also read the Order; he came to me and said, "*Sir, I have read in the newspaper that all those new cases have cropped up, and now you have to do all those cases once again*." He offered me that every day, meaning Saturday and Sunday for my Court and even on other days (because about thirty-five Deputy Commissioners were also there who were checking the records), from 10:30 AM to 4:30 PM, about 100 college students would come from the law college, attend the hearing before the

Deputy Commissioner, and what they would do was take out the freshly filed papers by the victims and tally them with the earlier decided matters. This was required because in twenty years, appearances and faces had changed, looks had changed, and so many changes had taken place; it was natural body change, and we could not prevent the same; everyone changes over time, so the problem was how to verify that the same victim has come to take the money once again. For that, the students offered their services and used to do all the tallying work, and then informed the Deputy Commissioners that this is the correct and same victim, entitled to receive the money once again, and then it did not leave any doubts. If they felt that it raised any doubt, they would put it on a piece of paper and pass it on to the learned Deputy Commissioner, who would then issue summonses to them to check whether he had Ration Card, Voter ID, etc. If it were found that there was no discrepancy, then, of course, he would pass an Order and disburse the amount.

So, this was a huge help extended to the Bhopal Gas Victims by the students, and had there been any requirement, we would have resorted to ADR. But here I thought, let the students come forward and learn something. They would also get to know the Court Process and how to deal with the matters to tally the personality of the person after a gap of 20 years. It was indeed a difficult task, which was sorted out by the students. This is how we could achieve the target, and all those who were awarded the compensation on the first occasion were given compensation again, under the Orders passed by the Hon'ble Supreme Court, on a pro-rata basis.

But one thing has been noticed: as per the Census of that year, Bhopal's total population was only about 1.50 lakh, but around five lakh persons had come to claim compensation. From where all these cases came up was a big question. I was helpless in the sense that all the relatives of victims who were living in the neighboring places came forward to ask for compensation and said that "*there was a Satyanarayan katha in my elder brother's house, and I had come from Sihor*," some said "*there was a thread ceremony of my nephew so I had to come, to bless him and on third and fourth, I was caught up*," and they had Medical Certificates with them issued by doctors of Bhopal, mentioning he was having breathlessness, was coughing, etc. That certificate was almost sufficient in this case; that is how the floating population increased. People from the neighboring States and Districts came to get the money from the Deputy Commissioners, but once registered, you had no choice. I could not have asked for a reassessment of the papers, and there was no occasion to do that, which is why everyone who had received the compensation earlier received the same amount once again.

So, this is how I think: if the students could help there, then why could the other methods, as required under Section 89 of the Code of Civil Procedure, 1908 ["**Code**"], not have helped the

Bhopal Gas Victims to get the compensation. ADR is a strong method to reduce the pendency of the Courts, which are otherwise already overburdened.

EB: You have been a Supreme Court Judge, and now that you have become an arbitrator, we wanted to know what this transition looks like. Moreover, could you give us a practical approach as to how this transition actually happened?

J. Verma: Actually, it varies from person to person, judge to judge, and how you take it. When I took my oath as a High Court Judge, I knew when I would demit the office, either as a Judge of the High Court or Supreme Court. I was mentally, emotionally, physically, and in all respects, ready to quit and demit my office. I did, of course, know that there would be no increase in the age of retirement.

Then I thought to myself, what should I do? I do not belong to Delhi, so I would have to rent a house if I continued to be in Delhi. I thought to myself that I would not go back home to Jabalpur; I would live here and start arbitration, or opinion, or consultation work, whatever came my way. That was a very tough decision because it was always lurking in the back of my mind if I would be able to make it. Having demitted the office as a judge of the Supreme Court, I decided not to take any other assignment. My wife also agreed to this and said she had had enough of *Lal Batti* and guards, and she wanted to live life like a common person.

You will be surprised to know that before I started handling arbitration matters, I was offered many assignments in different places such as Delhi, Uttar Pradesh, Madhya Pradesh, and so on. Now, I am busier than before, but in a different form.

Thus, the transition has been good, smooth, and nice for me, and I am certainly enjoying it. One has to develop a work culture and manage the time to do various tasks simultaneously.

As a Judge of the High Court and then the Supreme Court, my workload used to be quite heavy. In both the Courts, all the Judges read the files at home so that less time is consumed in hearing arguments. My perception used to be that even if I have read it, I kept my mind open, so in case I had skipped something important to read, and if the same was pointed out by Ld. Counsel for the party, then I had to do the needful either by issuing notice or by granting relief to the party.

After being a Judge for a few years, one comes to know what to read and what not to read in a File/Record. But as I said, a particular view should not be made up by the Judge even if you have read the file fully from page to page.

EB: Post retirement, you have been actively involved as an arbitrator in various jurisdictions. Could you elaborate on your experience in the courts and arbitration and highlight the key differences and changes you have noticed?

J. Verma: Most domestic arbitrations are conducted like regular civil suits, but arbitration matters are governed by the Arbitration & Conciliation Act 1996 ["**Arbitration Act**"], which has undergone substantial changes from time to time, wherein it has been made categorically clear that provisions of the Indian Evidence Act, 1872, and the Code of Civil Procedure do not apply to the Arbitration Act except only underlying principles shall apply to the same.

Thus, in domestic arbitration matters, parties contest the same as regular civil suits, which go on for several months and years, defeating the purpose of parties approaching the matter through arbitration.

However, there is a vast difference in the approach to the matters that are heard in international arbitrations. Generally, they start on Monday and are over by Friday. If a matter is very heavy and the lawyer insists, then it may spill over to the next week for a day or two. All the arguments are transcribed with the help of the transcribers, who will record every word that the party advances. At the end of the day's hearing, you get about 200-250 pages of reading material. A great advantage of this procedure is that Awards are pronounced early.

Before fixing the timeline for hearing the Arguments, the Ld. Counsel for the party is asked as to how much time each lawyer is going to take to conclude his arguments, and accordingly, the timelines are fixed.

In case any lawyer is not able to conclude their arguments within the timeline, as requested by them and fixed by the tribunal, then at the most, they are given five to ten minutes to conclude the same. This is a big difference that I have found in domestic and international matters.

At times, I wonder why, in domestic matters as well, the tribunal cannot adopt the same procedure that is being adopted in international matters. We have to cultivate and develop that method and habit of working.

EB: Given your experience in International advocacy, what is your opinion on the legal practice across countries?

J. Verma: I do not subscribe to the notion that the Indian advocates are less competent than their foreign counterparts. The Indian advocates are well-read and knowledgeable. They are intelligent

and well-versed in the case and argue well, too. Advocates practicing in India are very hard-working, laborious, and industrious.

EB: Recently, have you been dealing with more institutional or ad-hoc arbitrations? What practical differences have you noticed between them from the perspective of an arbitrator?

J. Verma: The only advantage in institutional arbitration is that we get the record from that particular body only after the pleadings are complete. Until this point, everything is completed by the Secretariat. They fix all the relevant dates, such as those for filing Statements of Claims, Statements of Defence, Counter-Claims, Documents, Admission and Denial etc. The matter comes before the arbitrators only after all these pleadings and exercises are complete. The arbitrators then take up the matter either for recording the evidence or if both parties have submitted the documents which have been admitted, then the matter can be fixed straight for arguments.

However, in other matters, we have to start from the beginning. We have to conduct a preliminary hearing and issue notices to the Parties, and then it starts with the filing of a Statement of Claim and so on. A lot of time is consumed in the Interlocutory Applications, which the Parties file from time to time.

EB: What is your opinion on the mandatory Pre-litigation Mediation? Do you think it affects party autonomy? Also, what is your opinion on the practical implications of such enforcement under the new Mediation Bill?

J. Verma: I think that it is a good suggestion. Parties should try for mediation and settlement of the matter before it goes for arbitration. If the heading of the Arbitration Act is read, you will find that the 'conciliation' part comes later, and the 'arbitration' part comes first. It should be the other way round. The parties must first sit down, let a good conciliator be appointed, and put the matter before him in two to three hearings to understand the disputes if he can reach an amicable settlement between the parties, nothing like it. If not, then the matter can be taken up before the arbitrator or panel of arbitrators. Hence, I believe that it is an excellent step to take.

EB: Could you give some practical insights into the 'Group of Companies Doctrine' in arbitration law, considering the developments in the case of *Cox and Kings Pvt. Ltd. v. SAP India Pvt. Ltd.* Not to mention it has been recently listed before a Constitutional Bench. Could you please share your opinions in this regard?

J. Verma: Since the matter is already pending before the Supreme Court of India, I would not like to comment on it. Let the matter be decided one way or the other.

EB: The Central Government recently set up a committee for reforms in the 1996 Act. What are some reforms that you believe are required for the arbitration regime in India?

J. Verma: I was one of the first few to provide suggestions in this regard. I have already sent my suggestions to the Honorable Mr. T.K. Vishwanathan, Chairman of the Arbitration Reforms Committee, sometime back.

The suggestions primarily include provisions for expediting arbitration procedures, particularly in cases of small claims where urgency is essential; provisions for consolidation of multiple related arbitration proceedings; disclosure of third-party funding; and making a code of ethics and conduct for both the arbitrators and the legal counsel who are involved in the arbitration process.

There is also a requirement to make the arbitration process a time-bound process with specific timelines for completion of different stages, which would prevent unnecessary delay in the completion of the cases and expedite the resolution of disputes. Further, appointment, appeal, and enforcement mechanisms must be revamped. I also suggested that encouraging arbitration education and training and recognizing explicitly the procedures of mediation and conciliation at par with arbitral awards would play a critical role in promoting the use of dispute resolution and reducing the burden on the court system.

Other suggestions included the proposal to institute a default arbitrator appointment mechanism for cases where parties cannot agree on their selection. This aims to prevent delays arising from disputes over arbitrator's appointments. Additionally, I suggested introducing a specialized arbitration appeal process, offering parties a means to address concerns about the legal soundness of arbitration awards.

Furthermore, my suggestions emphasized bolstering the enforcement of arbitral awards by simplifying the enforcement process and removing unnecessary hurdles. This would encourage compliance with awards, preserving the credibility of arbitration as a mechanism in India. Another important suggestion is to provide focused arbitration education and training programs, elevating the expertise of arbitrators and other stakeholders involved. Lastly, my recommendations aim to enhance transparency in arbitration costs and fee structures. This would entail requiring arbitrators to disclose their fees and providing parties with upfront cost estimates. Such transparency

empowers parties to make informed decisions, averting finance-related issues during arbitration proceedings.

In addition to these, some of my suggestions in the context of Schedule IV of the Arbitration Act included abolishing fixed fees and opting for a tailored fee system at 1% of the claim and counter-claim. I proposed a fee cap for the initial 15 hearings, transitioning to per-hearing charges thereafter, balancing both predictability and adaptability. Fees would correlate with time invested, rising by 25% when one party presents oral evidence and 50% when both parties do, encouraging efficiency.

The suggestions also include the appointment of a tribunal secretary, who is required to be compensated at 10% of the arbitrator's fees unless otherwise agreed. To expedite proceedings, arbitrators handling expedited cases could charge higher hourly rates. An exemption from the Goods and Services Tax on arbitrators' fees is also proposed in the interest of cost-effectiveness. Further, there's a proposal to make arbitrators' fees mandatory costs for the winning party, distinct from other discretionary costs. As a precondition to Section 34 of the Arbitration Act, it was also suggested that the losing party pay the arbitrators' fees to the prevailing party.

EB: With your background of working on the bar and the bench, could you offer your professional advice on the key skills required for a budding arbitrator?

J. Verma: Definitely. What I had noticed, from when I was the judge of the High Court and then later at the Supreme Court, all the lawyers who used to come to argue matters before us, after arguing for a while, could make out that the lawyer, even if a beginner, had obtained his law degree from a National Law University or a reputed law college. They are bubbling with knowledge; still, they do not know when to stop. Even when the Hon'ble Judges are in their favor, they want to submit everything before them. So, the first important thing is to know when to stop.

Secondly, one should know how the case starts. Any new case begins with the pleadings. They should be short, sweet, and crisp. Lengthy pleadings serve no purpose, as judges lack the time to read it. One must make the point that they plan to press very methodically so that it gets the judge's attention. Such a point should be in line with the law of evidence. Evidence, too, should be short and not too long. The longer it is, the more scope there is for the opposing counsel to cross-examine. One should also ensure that there are no repetitive pleadings.

EB: Considering your experience spans decades, what is your philosophy on work-life balance and handling stress?

J. Verma: First things first, if a litigant comes to you, never enter into the shoes of the litigant. You are only contesting the matter for him and are not a litigant yourself. You are working on a case for the litigant against the payment of fees. Contest as much as possible and do your best as much as you can. But never think that you are the litigant. Once you start thinking that you are the litigant, it causes mental pressure. There is no need to take it on yourself because, in the end, one is bound to lose since two parties are litigating and both cannot win.

One must work hard until a fixed time and spend the remaining time with your family. One may jot down what is to be done on a particular day and act accordingly. Time management is of utmost importance. The best procedure is to sit down calmly in the morning and prepare a list of what you plan to do during the day. I still follow this practice to this day. This is how one should work. One should also enjoy their life. The sky is the limit; if one indeed works hard, then you are bound to reach the top.

One piece of advice that I would like to give you is that all those students who graduate prefer to join either law firms or MNCs on huge pay packets; I think that a lawyer is well recognized only when he argues a matter in court. The satisfaction one then gets is enormous. The beginning is always tough, yes, but there is always room at the top.

Thank you, and Blessings to all.

Date: 05.12.2023
Place: New Delhi
Hon'ble Justice Deepak Verma
Former Judge, Supreme Court of India.