



सत्यमेव जयते

**FULL COURT REFERENCE**  
**TRIBUTE TO LATE O.P. MALHOTRA**  
SENIOR ADVOCATE  
TUESDAY, MARCH 12, 2013

*Mr. Grewal;*

*Mr. Malhotra  
Secy Bar Counc Delhi*

THE HON'BLE CHIEF JUSTICE, HON'BLE JUDGES, CHAIRMAN, BAR COUNCIL OF DELHI, STANDING COUNSEL FOR THE GOVERNMENT OF INDIA AND GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI, MR. J. P. SENGH, VICE-PRESIDENT, MR. MOHIT MATHUR, SECRETARY AND OTHER OFFICE BEARERS OF DELHI HIGH COURT AND OTHER BAR ASSOCIATIONS, MS. INDU MALHOTRA AND OTHER MEMBERS OF THE FAMILY OF LATE MR. O. P. MALHOTRA AND RESPECTED SENIOR MEMBERS OF THE BAR, MY COLLEAGUES, LADIES AND GENTLEMEN:

We are here this afternoon to pay our homage to a departed senior member of the Bar, viz., O.P. Malhotra. A true senior he was - in terms of life, profession, learning and knowledge. Ninety three year old, a senior advocate designated by the High Court of Delhi as well as the Supreme Court, both in December 1969, <sup>a rare distinct</sup> and an author of major works in law. His magnum opus "The Law & Practice of Arbitration and Conciliation," is one of the main reference books on arbitration, after the book on the Industrial Disputes Act, in many leading law colleges and universities, and is acclaimed well across the globe. To borrow the words of the



famous Romain Rolland that **“there are some dead who are more alive than the living,”** Malhotra ji will be undoubtedly in that class who will be more alive than the living. In the forward to the book on Arbitration, The Rt. Hon. Lord Mustill concludes the same saying:

**“the authors are to be congratulated on their labours in crafting a work which represents a milestone and in their successful endeavours to make it a book, not only for today, but for tomorrow as well.”**

His books, articles, and the cases he handled, are referred to, discussed and learnt every day. So we had better say that Malhotra ji was amongst us till he was ninety three, but will live longer, as long as we have to regulate and settle industrial disputes and use the process of arbitration to settle disputes and differences.

According to Malhotra ji an Hon'ble Judge should never be a lifeless conglomeration of sections or precedents. He must illumine justice and humanize law. While referring to the Hon'ble Supreme Court judgment in Bhatia International he says in his book on Arbitration that



**“the correctness of this decision is not free from doubt because it purports to replace the clear and unambiguous language of s 2(2) with court-coined language, which is tantamount to judicial legislation – an area beyond the jurisdiction of the court.”**

Bhatia International has been overruled by the Hon'ble Supreme Court in Balco's case in 2012 and, in fact, confirms the views of the Ld. Author. I must proudly add here that this Hon'ble Court was, perhaps, the first one to interpret Section 9 of the Arbitration Act and held that it would not apply to Part II of the Act which the Hon'ble the Supreme Court has followed now, almost over twelve years after!

A doyen of learning and a highly respected lawyer and jurist, Malhotra ji enjoyed confidence of his clients, Bench and the Bar at its maximum. As a jurist the view that justice is the cardinal rule in the legal system, was always dear to him. He practiced this in his life as well.

To do such master works, it is not the money that matters. It is the labour of love for the future generations. Considerable amount of professional time has to be sacrificed to bring out a



quality professional tool. A decade ago, technology was not as efficient as today to do research and other related activities.

While talking about technology, I wonder whether the optimism portrayed in contemporary writings would be true that there will be a day when the entire work, or most of it, could be controlled by IT devices and methods and lawyering would come to an end! It is true there is too much law and the laws are too complex as well. Impact of law is not at all obvious to non-lawyers. The profession has evolved to help manage, interpret and apply the law. Thus, the body of lawyers has become the principal interface between the law and the people. The soothsaying is that it is possible that efficient interfaces could be developed by information technology, which is more likely the way technology is driving us, that lawyers will not be the only means of securing access to legal understanding and justice. If that be so, yet I am sure; the unparalleled aspect of benevolence, understanding and interpretation of law for the welfare of the society, can never be done by any technology. For anything humane, human involvement and brilliance are necessary. In the beginning we called the profession a noble one and now we are forgetting the



nobility and the simplicity its stalwarts carried, and are simply exploring the sky-high possibilities of material enrichment the profession can promise. Often, it is not the sense of securing justice that matters, but the cut-throat competition to 'win.' That is not what the profession really stands for as officers of the court. One is tempted to remember the term, or say an aphorism, coined by George Bernard Shaw in his 1906 play, **"The Doctor's Dilemma,"** that **"all professions are conspiracies against the laity."** This view, obviously regards law professionals not as benevolent custodians, but as covetous guards who hinder access to law and legal process. Of course, we cannot put all in one category, but it may not be wrong to assume that there are <sup>many</sup> both benevolent custodians and <sup>a few</sup> jealous guards as well.

Lord Derlin while speaking on justice delivery system pointed out major defects in the legal system in Britain and attributed the same to the Bench and the Bar besides the Executive. Though the administration of justice, in India, is so vast and so urgent, yet we have not even started nibbling at it. There can be no excellence in law without excellence in Bench and Bar. I remember, a few years



ago, I was summoned by an Hon'ble Judge, then presiding over the Original Side, and handed over an Affidavit filed by the Plaintiff by way of evidence. A bare perusal showed that it was just a repetition of the plaint and except for using cut and paste technology of computers; there was no change in the same. His Lordships remarked, "**many of us do not even know how to ask a question in Court**". Others object to everything and, he said, giving an example of a lawyer who during the course of trial had exclaimed; "**That is leading question!**", when a witness was asked, "**Is your name Ram Prasad?**"

According to Malhotra ji we need to address this problem right from the time we make an entry to the Law Schools and the learning process must continue till we hang our coats. We shall be endangering the cause of justice by stressing that the Original Side is only to be seen in the corridors of District Courts in the GNCT of Delhi.

We must not forget the great masters of the profession who set great store by their conduct, character, humility, erudition, integrity and intelligence belonged primarily to the practice on the Original Side of this Hon'ble Court. Technology cannot make



any inroad into these qualities, which make a lawyer a star forever.

No doubt, Malhotra ji was a benevolent custodian. I have known this myself directly, personally, and from his juniors and family members. Amongst his juniors there are many who have excelled much and shine in the profession and have shone on the Bench as well. May be this benevolent spirit must have impressed his children and grandchildren also to follow his footsteps. This profession is known for its pedigree succession. But looking at the achievements his children have made, it must be appreciated that they drew only inspiration and the rest belonged to their hard work and sincerity. Indu, who is amongst us, is the second lady lawyer, if I am not wrong, who has been given the designation of senior by the Hon'ble Supreme Court. His other daughters Shashi and Krishna are doing well in the profession, Shashi exceptionally well in taxation! So are his grandsons Vikas and Vikram. We should not hesitate to say they had followed him in every respect, if they too make such impressive contributions reflecting Malhotra ji's spirited academic pursuit and abiding commitment. <sup>to the cause of justice</sup> Malhotra ji maintained that a lawyer



has always to act as a catalyst. A lawyer without reading the statute thoroughly, not able to cite a precedent effortlessly, is worse than a king without kingdom and a jazzman without his trumpet.

It would be apt to recall the words of Hamlet, when he speaks of his deceased father that:

**“He was a man, take him for all in all,  
I shall not look upon his like again.”**

It is difficult to look upon another like Malhotra ji soon. Every generation is duty bound to hand over the next something better and brighter. Otherwise, posterity would condemn the older generation. Malhotra ji remains before us an ever-illuminating example of learning, forbearance, generosity and compassion. He was the rare combination of a starlet lawyer, a serious academic and a fine human being.

I have an autographed copy of his book on Arbitration and Conciliation, which I refer frequently. It has become more precious now, for Malhotra ji is not there to give me the next edition with his blessings and insignia.





Time will lessen the sorrow of bereavement, but memories will stay on. Our hearts go out to Indu, Shashi, Krishna, Vikas, Vikram and other members of the family. Our condolences and prayers are with them. May God grant them enough strength to bear the loss and may his soul rest in peace.

Before concluding, I extend heartfelt condolences to Malhotra ji's family on behalf of the Government of India <sup>also</sup> since Mr. Rajeeve Mehra, the Ld. Additional Solicitor General could not be here to pay his tributes to the departed soul owing to exigencies due to bereavement in his family.

Thank you very much.

A.S. Chandhiok