

FULL TEXT OF THE SPEECH DELIVERED BY
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MEDIATION AND INFORMATION TECHNOLOGY

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This is my first visit to the State of Gujarat and I am thrilled to be in the land of Mahatma Gandhi. This land has been a fertile ground for the national movement. Many great freedom fighters who shaped the destiny of independent India were born here. Dadabhai Naoroji, Vallabhbhai Patel, Vithalbhai Patel, Morarji Desai, Kasturba Gandhi, Vikram Sarabhai, Homi Bhabha were among those towering leaders. This land also has the distinction of giving the first ever Chief Justice to independent India – Justice Hiralal J Kania.

The State of Gujarat has a glorious legal history. Gujarat has been known for orderly dispute resolution. The *Nyay Ni Devdi* (temple of justice) is a fine example of this commitment to justice. Once a prominent Court during the British Raj, it is now a district court in Vadodara.

1960 was a historic year for the High Court and the State of Gujarat, as it marked the bifurcation of the State of Bombay. Since its formation, the High Court of Gujarat has become well known for the effective and efficient adjudication of disputes, and the quality of justice dispensation.

Standing before the “*Statue of Unity*”, it is appropriate to talk about conflict resolution by peaceful means. It is through his skills and leadership that Sardar Patel could make considerable progress in integrating the various Princely States into the Union of India. It is in this spirit of conciliation that this conference on “*Mediation and Information Technology*” is being organized.

I would like to begin with the mythological story, that I often refer to. It is the story of mediation undertaken by Lord Krishna, to prevent the war of Kurukshetra. We all know the consequences of that failed mediation. Imagine, how much destruction would have been avoided; how lives could have been saved and how the kingdoms would have prospered, had Krishna succeeded.

Conflicts are inevitable aspects of our lives. Misunderstandings, ego issues, lack of trust and greed can lead to conflicts. Even the big conflicts can be resolved through understanding. Conflicts have a human face. One must have the foresight to look beyond the conflict. A dispute should not spoil your relationship.

A prolonged litigation can not only drain your resources but also cause animosity. It is not necessary that every conflict or difference of opinion must find its way to

the courts. But these differences can be resolved in a neutral environment, where both parties are in a win-win situation. After all, life is a balancing act.

In times of disagreements, one would usually start by initiating a dialogue to clarify issues. If this also doesn't work, then the only option people consider, is, to go to Courts.

Gujarat was always known for its merchants. Nobody understands it better than the merchants that, time wasted is money lost. It is this realization that encouraged the merchants of Gujarat to be innovative in their dispute resolution process. In business, one has to think of an easy way of settling disputes without wasting much time or money, or losing your peace of mind. In fact, an efficient businessman effectively deals with his disputes.

In our country, due to obstacles in formal litigation, people hesitate to approach judicial forums. The concept of ADR, through Lok Adalats, Gram Nyayalayas, mediation and arbitration centers, has the potential to transform the legal landscape of India by providing millions of people a platform to settle their grievances. Imbibing effective ADR mechanisms into the judicial process can reduce pendency, save judicial resources and time, and allow litigants a degree of control over the dispute resolution process and its outcome.

There are multiple benefits of adopting alternate methods of dispute resolution. Mediation and negotiation at the pre-litigation stage are one of the most empowering methods of resolving disputes as they maximize the participation of stakeholders. But, since ADR is designed around a participatory model, its adoption is going to break the existing barrier. From being an “*outsider to the process*”, citizens with their direct involvement will be “*insiders in the process*”.

Mediation is also increasingly gaining prominence in the international commercial sphere. Private mediations, which take place at the pre-litigation stage, are also becoming more prevalent in the country. Most arbitration clauses in commercial contracts have a multi-tiered approach, where the first attempt to resolve the dispute between parties is through mediation or negotiation.

Coming back to the issue of mediation, along with increased awareness campaigns to educate the public, the role of Courts assumes great importance in realizing the full potential of ADR. An active effort must be taken by Courts to make negotiation and mediation mandatory, as a part of case management.

Legal Service Authorities play an integral role in disposal of cases through ADR mechanisms which include Mediation as well as the Lok Adalat system. But the success of any endeavour rests upon the stakeholders. Lawyers must pursue every possibility of pre-litigation settlement and advice clients to approach Lok Adalats for the greater benefit of parties.

Additionally, it is the responsibility of the parties who opt for this forum to commit and work towards the early resolution of their dispute. It should not be used as a mere delaying tactic. Lastly, judicial officers dispensing justice, should not bring any adjudicatory flavour to the proceedings, and must understand parties and their economic conditions with patience.

We need skilled mediators to decide some significant issues during the process of mediation. Particularly, in a situation where settlement is fully going in favor of a particular party. What is the duty of a mediator if the settlement reached is patently unjust to the weaker party? Should the mediator be a silent spectator during such negotiations?

These are just some of the questions which one must consider, particularly in a country like India with our diverse social fabric. The ideals of substantive equality must be reflected in the resolution process as well. This conference is necessary to resolve these types of issues. With adequate cooperation from all stakeholders, it has the ability to emerge as a tool of social justice in India. Several States in India are currently coming to build a robust ADR-friendly environment.

It is appropriate to reiterate the words of *Mahatma Gandhi* who had once said: “*the true function of a lawyer is to unite parties*”. Developing expertise in negotiation and mediation is much-needed for new-age lawyers and law students. The skills involved are not only useful in the world of alternate dispute resolution but are also vital for managing personal and professional relations in day-to-day life.

The second aspect which needs our attention revolves around Information Technology and its utility in law. I am reminded of a quote from an English drama written by James Graham: “*money is fine - but data is power*”.

These words are important for 21st Century, wherein, computing ability has increased by a billion times, while law regulating the same has not been able to catch up. The last three decades have seen a massive increase in processing power, the explosion of data, significant reduction in data management costs and increased availability of sophisticated machinery and software.

The rapid development of technology has resulted in increased complexity even within the legal and regulatory landscape of the country. For instance, technological developments such as crypto currency, data protection, encryption and artificial intelligence have caused Courts and law enforcement agencies to engage with novel issues. With the passage of time, there is a possibility of increased litigation on these issues.

All those engaged in the justice dispensation mechanism: judges, lawyers, law enforcement agencies, and others, now need to have a thorough understanding of new technologies.

At the same time, technology can be beneficially employed by the judicial system. Our profession is at the brink of a technological revolution. The pandemic has helped to speed up this process. The traditional litigation model is sometimes criticized as being an extremely expensive process. Charles Dickens in his book "*Bleak House*" has commented on the number of legal papers generated in a dispute as "mountains of costly nonsense". We see every day that tons of paper are filed before Courts especially in a big corporate litigation. They follow the old saying, "*if you cannot convince the judge, confuse him*".

Technology has the potential to simplify this process. Courts in India have started utilizing technology. The E-Committees have taken up various initiatives such as developing E -filing, Computer Assisted Transcription, Document Display System and the integration of Courts under one IT Infrastructure. Harnessing the modern technology, recently the Supreme Court has launched the "FASTER", a digital platform for fast and secured delivery of urgent court orders in encrypted electronic format, to the stakeholders. This would ensure effective implementation of court orders, without any delay. Various High Courts have taken the transparency to a new level by way of livestreaming of the proceedings using the cost-effective technology. I am sure many more would like to emulate this model.

The disruptive impact of the pandemic, in some ways, has lead us to an era of transformation. These testing times have forced us to innovate. We all had to learn new technical skills and adopt new ways for the betterment of society. During the pandemic, India was at the forefront in adopting technology to enable access to justice. To make the idea of access to justice effective, and user-centric, the need of the hour is the popularization of mediation, across various platforms. The adoption of technology and shift towards online dispute resolution, has resulted in the popularisation of Online Mediation.

Distance, money and time are no longer barriers for parties. Online mediation has ability to revolutionise the justice delivery system by promising simple and affordable justice for all.

Before I conclude, I would like to place on record my sincerest thanks to Hon'ble Rashtrapati Ji. He has served as a member of Rajya Sabha and as a Governor, before adorning the highest Constitutional Office. Irrespective of the office that he has held, his heart was always with the legal profession. I am grateful for his encouragement and guidance to the judiciary. I am fortunate to have enjoyed his goodwill and affection. His wisdom continues to guide us.

I would like to thank the Governor, Shri Acharya Devvrat and Chief Minister, Shri Bhupendra Rajnikant Patel, for graciously facilitating this event. My dear friend Kiren Rijiju, is ever-ready to add energy to such events. During his tenure a good number of appointments to various High Courts were made. I am expecting that he will clear many more names soon.

I would also like to thank my brother and Sister Judges of the Supreme Court. Their presence and participation enriches the current discourse. Here I must add, that High Court Gujarat has added immense value to the Indian judiciary, by sparing the services of Justice M.R. Shah, Justice Vikram Nath and Justice Bela Trivedi for Supreme Court.

Lastly, I would like to thank, the Chief Justice of the Gujarat High Court, Brother Justice Aravind Kumar and brother and sister Judges of the High Court, for hosting this conference. Chief Justice Aravind Kumar's hard work is reflected in the scale and success of this conference.

I hope the deliberations in this conference and its working sessions, will help in finding answers to many issues and challenges associated with mediation scenario in India. I wish the conference a grand success.

Thank You.