

Speech to the Rajkot Judiciary and Bar 25 February 2004 made by Deputy Judge Jay Chauhan of the Superior Court of Ontario, Canada, before the Members of the Bar (about 400 Lawyers) and Judges (about 25) of Rajkot.

President of the Bar Association, Members of the Bench and Bars of Rajkot, Gujarat.

Thank you for your kind introduction of me as a Deputy Judge of the Superior Court of Ontario, Canada. I am pleased to be here and share some of my thoughts on responsibility of the legal community in India and Canada for protection of the members of the society at large and its development. India and Canada share the common English heritage of the legal system.

Modern societies are governed by law. The purpose of the law is to provide minimum standards of behaviour in society. The laws are enacted to protect the individuals in society. The judges and lawyers who work with the legal system have the final responsibility for the protection of their rights. Without the protection of these rights the individuals would not be able to flourish and develop himself or herself fully.

In a modern society the economic development also requires the support of an unbiased judiciary and assertive and ethical bar. The businessman needs the support of the effective legal system for doing his business. If he cannot seek the support of the legal system he cannot move forward. Collectively the businessmen cannot advance the economy of the country. Singapore and Hong Kong are good examples of places where the economies have flourished with stable judicial and administrative systems.

The Indian and the Canadian system, outside of Quebec, are inherited from the English system. For resolution of a conflict it uses an adversarial approach for finding a solution of the problem. The rights of each of the parties facing the other before the court room are procedurally protected by rules of procedure. These rules are aimed at protecting the procedural rights of the parties seeking justice.

The procedural rights before the trial are aimed at providing protection to each party to prepare the documents, make disclosure and prepare their position for a trial. Procedural rights include the right to adjourn the trial for a good reason. If the adjournments are given for any reason without serious analysis of why the adjournment is needed it produces unreasonable delays before judgment is rendered at the trial. Justice delayed then becomes justice denied.

In Canada and particularly in the Province of Ontario the courts have attempted to shorten the time and cost of trial by using the Alternate Dispute Resolution method; in short ADR. ADR can be invoked at any stage of the trial process. The purpose of ADR is to permit the two adversarial sides to sit before a neutral party for the purpose of resolving the issues. Experience shows that a fair number of the cases do get settled with the ADR. saving considerable cost and agony to the parties concerned.

The ADR is a kin to the PANCHAYAT method used in India in villages where the village elders come together and hear the two parties and attempt to resolve their differences. The high respect accorded to the elders helps the parties to recognize the wisdom of the recommendations made by the elders and this helps to find amicable resolution without the conflict going through all the lengthy stages of an adversarial process of a trial.

The institutions of law and the participants in it are evolving institutions and are changing to meet the changing conditions of the society and the lawyers and judges who are the key participants in this process have a duty to improve these institutions on a continuous basis for the benefit of the societies they serve.

Rajkot Bar has produced some eminent counsel and judges. His Honour Judge Thakkar now is a Judge of the Supreme Court of India. Mr. M. K. Paul as an Advocate fought tirelessly for the rights of the prisoners wrongfully imprisoned and has appeared before Human Rights Tribunals in France and other countries. I am proud to say that my father was born here in Rajkot and we share a common ancestry.

I greatly appreciate the opportunity to speak before all the judges and lawyers of Rajkot present here today. Thank you.

Speaker

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