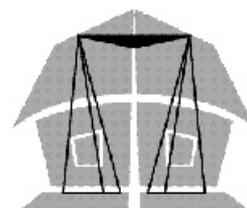

MEDIATION MANUAL



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INTRODUCTION

The present legal system in Bangladesh is not friendly to the poor and illiterate population of the country. Although the system was built on the traditional English common law model, it has failed to respond both to the collectivist spirit of Bangladeshi society and the particular socioeconomic plight of its largely agrarian, impoverished majority. Also since the legal system is adversarial and expensive, the poor rarely make use of it voluntarily.

For these reasons, in recent years, Bangladesh has witnessed a high degree of enthusiasm for the promotion and use of alternative dispute resolution (ADR) mechanisms. The new and innovative mechanism of ADR is designed to provide legitimate redress in light of the failings of the judicial system. By reforming, refining, and repackaging the traditional rural practice of “salish”, the ADR process is able to bring disputants, community members, and village elders together in a small, local environment to mediate the conflict and arrive at a solution acceptable to all. Reformed salish is a widely accessible mode of dispute resolution which is less confrontational and more flexible than litigation. It is also oriented more towards the actual needs and problems of people in rural communities and more personal and satisfying for the disputants.

The Madaripur Legal Aid Association (MLAA) was founded in 1978 by a group of social scientists, human rights NGO activists, and like-minded legal professionals. MLAA was the first organization to identify salish as an important foundation for a cost-effective, expeditious, and accessible venue of justice for the disadvantaged. MLAA took the bold step of incorporating elements of new trends of mediation” into traditional salish, creating an ADR mechanism better known as Madaripur Model of Mediation (MMM). MMM goes one more step forward by addressing and significantly reducing elements of malpractice and gender and power inequality which have plagued the salish system in recent times.

The success of MMM depends heavily on community mediation, which is facilitated through the creation of locally-based mediation committees. MLAA has organized nine ward committees and an apex union committee in every Union Parishad of its project area. Each committee is composed of ten volunteers. In addition, MLAA has a mediation worker in each Union Parishad who receives applications for mediation, sends letters to the parties, arranges for mediation sessions, supervises and posts follow-ups to the head office, and performs other related duties. A supervisor in each Thana also oversees the works of the mediators and mediation workers and reports their activities to the Mediation Coordinator at the head office. Finally, MLAA has incorporated a monitoring, evaluation,

and research component into its model to ensure transparency, accountability, and effectiveness of all mediation activities.

So far over 30,000 disputes have been successfully mediated under the MMM since its inception, bearing testimony to the overwhelming acceptability, credibility, and popularity of the model across its project areas. It also holds promise and prospect of the acceptability and popularity of the model throughout rural Bangladesh. Interpersonal and community disputes that would otherwise have found their way into the already overburdened courts of Bangladesh have been successfully mediated under the MMM. Moreover, the overall condition of the community has improved considerably. Social evils related to marriage, divorce, and polygamy have been largely reduced at the grassroots level. Gender discrimination and abuses are gradually being removed through the increased involvement and participation of women in the mediation process.

The outlook of traditional local mediators (“Salishkars”) has also changed considerably due to adoption of MMM, and as a consequence, quality of their mediations has significantly improved. MLAA has accomplished this through its training at the Madaripur-based Research Center (TARC), which has become a key player in educating and equipping volunteers from across Bangladesh, Nepal and Sri Lanka with the knowledge, skills and techniques of mediation.

The idea of promoting widely accessible, expeditious, informal, and cost-effective justice has caught the attention of many people and human rights, legal aid, and NGO activists across Bangladesh have replicated the Madaripur Model of Mediation in their own activities. With the support of these organizations, MLAA has managed to raise public awareness about the importance of ADR mechanism within the formal judicial system to such an extent that even the Government of Bangladesh is currently planning to introduce such mechanism.

In summary, the goals of the Madaripur Model of Mediation (MMM) are to:

- t offer disputants an alternative to the court system
- t provide inexpensive, expeditious access to justice for rural women and the poor
- t help disputants resolve their conflict in a manner that is compatible with their abilities to commit themselves to and follow through on an agreement
- t identify facts and feelings that personify the conflict and establish a means for resolving the conflict without resorting to violence
- t identify the communication patterns that emerge during the mediation and to observe any destructive behaviors that result from those patterns
- t encourage the disputants to work further on contentious issues that cannot be resolved in individual negotiations.

PART 1

MEDIATION: HISTORICAL DEVELOPMENT

1. Forms of conflict resolution have been practiced since the existence of three or more people on earth.
2. Mediation, like most concepts, is not a novel invention but an adaptation and existed in other cultures or other times.
3. In ancient China, South Asia and Africa, mediation was the principal means of resolving disputes.
4. The Chinese philosopher Confucius (551-479 B.C.) was of the view that optimum resolution of a dispute was achieved by moral persuasion and agreement rather than sovereign coercion.
5. Confucius believed and proposed that the existence of a natural harmony in human affairs should not be disrupted.
6. Unilateral self-help and adversary proceedings presume the end of a harmonious relationship.
7. Conciliation and mediation have a rich history in Japanese customs.
8. The leader of the village community was expected to help community members settle their disputes.
9. In Africa, the custom of “assemblings a moot” or a neighborhood meeting has long provided an informal mechanism for resolving a variety of disputes.
10. This moot used to be chaired by a tribal head who was a notable, well respected person or “big man”.
11. The moot or meetings vary from community to community but seek settlement without a judge, arbitrator or use of sanctions.
12. The church, temple and mosque, for centuries, have played an important part in resolving conflict among its members.
13. The local priest, ministers, and Imam were frequently called upon to mediate in family disputes.

PART 1

14. Along with other religion there is Biblical foundation and approval for mediation to bring peaceful coexistence.
15. The Bible says: “Blessed be these peacemakers for they shall be called, the sons of God”.
16. Beginning in the late 1960s American society experienced a growing interest in alternative forms of dispute settlements.
17. This period was marked by strife and discontent on many fronts.
18. The Vietnam war was protested, there were civil rights struggles, and student unrest along with growing consumer awareness, gender role re-examination and so forth.
19. Court filings of civil and criminal complaints expanded rapidly creating alarms regarding delays in trial.
20. The public became disillusioned with the formality, expense, slowness and denial of access to justice.

PART 2

CONFLICT

All of us encounter conflict in our lives – at home, school, work, and play. We are bombarded with descriptions of conflict in newspaper, magazines, and on television and radio. For the most part, the messages we receive are negative ones, that conflict is a destructive force. It is therefore very important to understand what conflict is and what its consequences are. Consider first the following definition of conflict:

Conflict exists when there is a difference (actual or perceived) between two or more parties and when that difference is characterized by:

1. tension
2. mistrust
3. poor communication, and / or
4. emotionalism

The above definition, however, is not the only way to think about conflict. Below are other descriptions which may help us understand what it is:

- t Conflict occurs when at least two psychological forces are in opposition to one another.
- t Conflict exists when two incompatible activities occur. Examples of such activities include all behaviors and emotions that make others feel they are less likely to be effective.
- t Conflict suggests a struggle between incompatible values. In this struggle one value is invariably seen as having greater importance than others.

The above ideas concerning conflict suggest that conflict can occur:

1. when an individual encounters numerous internal psychological forces that are in opposition to one another (intrapersonal conflict);
2. when two or more individuals come into conflict through their opposing emotions or behaviors (interpersonal conflict); and
3. when competing values clash, either within or between organizations (intra and inter – organizational conflict).

In many instances, interpersonal and organizational conflict have intrapersonal consequences (e.g. stress, ulcers, insomnia) which serve to magnify the original conflict

and its outcome. These intrapersonal manifestations of conflict tend to immobilize individuals and foster ambivalent feelings in them. Although such feelings may result in positive change or other action, they may also leave individuals feeling upset or dissatisfied. Whatever the ultimate outcome, most individuals invariably experience difficulty when involved in a conflict.

A common difficulty confronting parties involved in conflict is a breakdown in communications. If the conflict is allowed to escalate until the parties are polarized, communications usually cease. This obviously reduces chances for resolving the conflict, since the parties no longer have an opportunity to clarify the issues that led to the initial conflict and its escalation. In short, conflict fractures communications.

Although some degree of conflict is inevitable in each of our lives, few of us are ever comfortable with it. To varying degrees we choose to avoid conflict, possibly because we fear its negative outcomes. This means we often ignore conflict until its resolution becomes extremely difficult. Ironically, when conflict has the potential to endanger an important relationship (interpersonal conflict), or when it endangers an individual's emotional stability (intrapersonal conflict), there is a greater tendency to avoid the conflict until a crisis arises. During such avoidance, the involved parties often fear that their needs will not be met in the relationship. This results in an absence of intimacy in close relationships and distrust in more formal ones.

If avoidance fails to reduce tensions in a given conflict, the conflicting parties may resort to fighting to resolve the problems. Parties who fight often adhere to the adage that "might makes right", but other forms of fighting – such as psychological warfare – also occur with great regularity. In either case, the intent of each party involved is to control the other party. Although most of us have been socialized to accept a certain amount of fighting in our society, recent trends indicate that some types of violent fighting such as spouse abuse and child abuse – are becoming increasingly unacceptable. But regardless of the severity or type of fighting, this "solution" seldom ever solves the conflict. It usually only serves to reinforce existing power disparities between the conflicting parties. Fortunately, unless one is fairly certain of the outcome, he or she will choose in the long run not to fight. In such cases avoidance appears as a much more palatable method for dealing with the conflict.

Even when there is strong motivation for maintaining a relationship that is experiencing conflict, the parties to that conflict may possess poor interpersonal communication skills. Even when such communication skills exist, the strong emotional content of the conflict may render either or both parties incapable of using those skills. The avoidance or fighting that invariably results does not lend itself to the creation of safety valves, which can help conflicting parties restructure the conflict or otherwise resolve it in a positive way. This absence of a safety valve (e.g., an agreement to discuss the conflict when certain emotional issues have dissipated) can often be traced to our personal concerns, fears, or needs. Thus, many of us are reluctant to confront important differences we have with another individual for fear of being uncomfortable, or worse, yet, for fear of destroying the entire

relationship. Thus fear, coupled with avoidance, can result in a generalized failure to recognize or acknowledge problems we may have with others. Without being able to identify these problems, we have much less of an opportunity to deal with them, either intellectually or emotionally.

Another factor inhibiting the establishment of safety valves is the presence of power. Power can be defined simply as the ability to control another's behavior. Many conflicts arise when someone thinks that another party is behaving in a manner that decreases his or her own power. Power and the control it entails is viewed by most of us in financial or economic terms. But because economic control is so important in society, most of us fail to see the significance of other forms of power – such as those based on emotional control, or control over communication. In many instances, these other types of power are more potent than even economic power. This fact is important when parties with different power bases are involved in a conflict, since both parties are capable of bringing completely different “weapons” to bear in that conflict. Furthermore, the ability to recognize the various types of power possessed by individuals in a relationship can translate into a greater awareness of the dynamics of that relationship. Within organisations, especially work organisations, power can be seen as emanating from two distinct points: from the position or from the person. Positional power corresponds most directly to economic power, since one's boss or supervisor has the power to hire or fire. Personal power parallels emotional power. This kind of power comes from within the individuals, regardless of that individual's position within the organisation.

In present-day society, the regulation of conflict is being given over more and more to our legal system. Until very recently, Americans relied upon their families, churches, and communities to give them a means for resolving conflict. This was possible since there existed clearly defined normative rules governing everyday interaction. The general acceptance of these rules led to the development of informal, yet highly effective, ways of dealing with conflict; intervention by the legal system was relatively rare. This is much less the case today, as we have become a highly litigious society, increasingly relying on the rule of law to resolve conflicts. Although this rule stipulates that certain categories of behavior are unacceptable to society, it leaves untouched a vast range of behavior that is completely legal, although highly inappropriate. The rule of law is also predicated on the concept of “right versus wrong” and “innocent versus guilty” a black and white approach which suggests that only one person or party is responsible for the negative consequences resulting from a conflict.

While the legal approach is simple, it nonetheless neglects the mutuality implied in interpersonal conflict. It tends to polarize people, since each party to a dispute is expected to maximize his or her gains at the expense of the other party. The legal approach also attempts to downplay the importance of the emotional component in conflicts by ignoring it. It thus presumes to resolve the conflict by attending to the “facts” of the case and the facts alone. Because of this attempt to deny the importance of the emotional component in conflict, the legal system neglects the needs of the disputing parties to obtain emotional satisfaction.

In general, the legal approach follows a win/lose model of conflict resolution. This model implies that every conflict has both a winner and a loser. In real life, however, a “winner” in court may not truly win if the “loser” chooses to contest or otherwise change the outcome of the decision.

For example, a courtroom loser may take revenge on the winner, ultimately resulting in a lose/lose situation destructive to both parties. This is why it is important in many types of conflict to promote a win/win model of conflict resolution. In such a model all conflicting parties experience positive gains in the final solution.

Most of us use one of the three approaches mentioned above – win/win, win/lose, lose/lose – when we negotiate resolutions to conflicts. We also often enlist the aid of advocates and third party interveners in such negotiations. Below are listed some of the possible outcomes of negotiations according to the type of model being followed:

win/lose	lose/lose	win/win
fighting	blaming	mediation
flight	placating	values
avoidance	violence	clarification
litigation	war	negotiation
arbitration	sabotage	problem-solving
one-upmanship	murder	consensus
	guerilla warfare	

Organisations approach conflict with other organisations in much the same way that individuals do. Within such organizations as well, conflict is normally handed by implementing formal policy or by following informal practice. Thus, in the workplace, management and labor have specific procedures for settling their differences, while individual supervisors can draw upon the use of grievance procedures or informal mediation to resolve conflict among those they manage. In all too many cases, however, constructive conflict resolution techniques are simply not utilized. The conflict is either ignored or resolved by authoritarian or arbitrary means. When this happens, employee trust decreases and internal organisational communication is stifled. This in turn diminishes overall staff commitment and promotes de-motivation among those employees affected by the conflict, Ultimately, production within the organisation suffers.

When management staff are involved in conflict within an organisation, it is often difficult for them to separate their personal needs from the needs of the organisation. In such instances it is easy to focus attention on an “objective” indicator, such as a production slowdown. But the production slowdown is merely a symptom and not the cause of the

problem. Thus, disciplining a disgruntled employee for lack of production may resolve some frustration for the supervisor, but it creates even greater problems, first because the original nature of the conflict is not being addressed, and second because the less powerful employee becomes resentful that his or her needs are not being met. If production continues to lag, the cycle of management discipline and employee resentment usually ends in a major organisational change, such as the termination of employees.

Before such drastic action is taken, however, much damage to both parties can occur. For example, lowered morale affects employers and employees alike. Also, if employees perceive that they have been intentionally hurt by their supervisor, they may respond with something worse than a slowdown in production. Since employees best know how the organisation functions, it is easy for them to engage in subtle forms of sabotage. This results in a lose/lose situation that diminishes growth and productivity for everyone involved. Even when an employee does not resort to sabotage, the cost to the organisation and the individual is significant; lowered morale affects everyone. Also, organisations make considerable investments in their employees and their departure is expensive. Moreover, the use of a supervisor's time to document a worker's lack of productivity reduces the time available to the supervisor for other duties.

When conflict within organisations occurs, both management and employees have an equal responsibility to avoid a lose/lose situation. During the course of a conflict, the involved parties need to refrain from "blaming" the other for the cause of the conflict. Each party also needs to work toward the creation of a supportive environment. For its part, organisations can help accomplish this by:

1. promoting responsible communication by using "I" messages
2. noting the emotional aspects of the conflict
3. encouraging direct dialogue between disputing parties
4. demonstrating active listening skills
5. handling grievances by negotiating win/win solutions
6. building consensual models of problem solving
7. diminishing fears by clarifying outcomes
8. distinguishing the power to hurt from the power to persuade; and
9. affirming the emotional issues in the conflict.

Understanding the Dynamics of Conflict

Consider the following two examples of conflict.

- a.** Yusuf, aged 24, has borrowed his father's motorcycle to attend a friend's wedding. Yusuf's father, Rashid Ali, teaches at a distant village school, and rides his motorcycle to work in the absence of direct public transportation. Rashid Ali is late for classes the next morning because his son has not yet arrived from his friend's place. That night he lets his son know what an inconvenience his irresponsible attitude has caused. Yusuf's apology is half hearted and his father reminds him of his inconsiderate and irresponsible behavior in the past. Eventually, Yusuf is provoked, and begins a loud argument with his father. Outraged at his son's uncalled-for behavior, Rashid Ali announces that his son will no longer be allowed to use his motorcycle. Around this time, Firoza, Yusuf's mother, intervenes on her son's behalf, trying to persuade her husband that perhaps he is being too hard on Yusuf. When Rashid Ali tells his wife not to interfere and to mind her own business, both the mother and son walk out of the room, leaving the father to wonder later what went wrong.
- b.** Abdul Rahim, a bargadar, is allowed to cultivate one acre of Sadek Ali's land, as long as he gives him 40 mounds of paddy each year. However, the two men have recently entered a heated dispute. Sadek Ali is furious that Abdul Rahim has given only half of the paddy he was supposed to give under their Kabuliat (a type of contract). On the other hand, Abdul Rahim continuously maintains that this year's paddy production has been seriously affected due to a shortage of timely rainfall. He argues that all of the farmers have suffered a loss and that many did not have any harvest at all. He further mentions that he is giving the entire year's paddy harvest to Sadek Ali. Sadek Ali looks unconvinced and argues again that Abdul Rahim must comply with the Kabuliat. He also notes that Abdul Rahim had a good crop through irrigation during the dry season, which he also had not shared. Abdul Rahim counters by noting the high costs of producing paddy during the dry season, which includes irrigatings and applying manure and insecticide. Even though it is customary for the landowner to share some of the production costs with the farmer, Abdul Rahim bore all of these expenses himself. Abdul Rahim maintains that 40 mounds of paddy is too high a cost for the yearly cultivation of just one acre of land, and would force any farmer to also produce paddy during the dry season.

Both of them argue over the same issues without any positive outcome . In the meantime, Haji Abdul Rashid, a village elder, comes to see what all the commotion is about. He is a widely respected man and has a history of resolving many interpersonal and community disputes. He voluntarily interferes and asks what the quarrel is about. Both Sadek Ali and Abdul Rahim speak out their concerns.

After listening to the two men, Mr. Rashid turns to Sadek Ali. He first notes that the production of paddy has indeed been far below expectations. He also mentions that, while farmers had a good crop during the dry season, Abdul Rahim must have finished all of that paddy by now and most likely has none of it to offer. Next he turns to Abdul Rahim and says that he is obligated under the Kabuliati to deliver the entire amount of paddy to Sadek Ali and that delivering only half will be very unfair. Abdul Rahim again mentions his reduced paddy production.

Mr. Rashid then takes Sadek Ali aside. “Everyone agrees that nature has yielded a deficient production of paddy this year,” he argues. “Even if you lodge a complaint with the Union Parishad, or call a salish, you are unlikely to get the outcome you want. And even if they judge in your favor, it will be very difficult for Abdul Rahim to comply. Instead, he may decide to cultivate someone else’s land instead of yours. People are losing interest in agriculture, and it will be very difficult for you to get another good bargadar like Abdul Rahim to cultivate your land. Perhaps you should agree to receive a smaller amount this year, maybe 30 mounds of paddy instead of the original 40.” Sadek Ali offers a lukewarm response to these suggestions.

Mr. Rashid now pulls Abdul Rahim aside. “I have suggested to Sadek Ali that he receive 30 mounds of paddy instead of the 40 which was stated in the contract. Are you prepared to give this amount? If not, Sadek Ali may raise this dispute in the Union Parishad or salish, and you will be compelled to pay the whole amount.” Abdul Rahim agrees with this advice, but says that he will be unable to deliver any more paddy this season, since he has already given his whole harvest to Sadek Ali. However, he is willing to deliver the additional 10 mounds during the dry season.

Mr. Rashid conveys this message to Sadek Ali who initially disagrees with the proposal. However, he soon mentions that he may agree if Abdul Rahim delivers 20 mounds of paddy at that time instead of just 10. Mr. Rashid discusses Sadek Ali’s latest requirement with Abdul Rahim. The farmer finally agrees, provided that Sadek Ali bear one-fourth of the production costs during the dry season. Sadek Ali agrees with this condition and the dispute is resolved.

Although different in scale and significance, the two instances cited above have a great deal in common. They both reflect a conflict between two or more parties, a situation in which each party is aspiring for an outcome or solution that the other party is apparently unwilling to provide. Before we can ask how one should pursue the efforts of settling a conflict, we must analyze what the word “conflict” connotes and implies.

The dictionary meaning of “conflict” implies a fight, battle, collision, or struggle. Given that the terms “conflict” and “dispute” are used interchangeably, the definition also includes altercation, quarrel, and controversy. When understood in this sense, a conflict situation is a *zero-sum game*, one whose outcomes are polarized as *win-lose*, *victory-defeat*, *gain-loss*, and *rise-downfall*. In each of these situations, one party’s gain means the other’s

loss. Zero-sum thinking is a concept widely promoted by lawyers who treat litigation as positional bargaining.

In a conflict situation understood as a zero-sum scenario, each party deliberately engages in a set of moves and counter-moves with the intention of maximizing his/her own interest at the expense of the other. This causes the conflict to escalate. Each party entrenches himself behind his positions and dismisses the other's aspirations as illegitimate and wrongful. The situation is further exacerbated in circumstances when each party has a very high aspiration or when the pool of integrative options seems to be in short supply. Mutual distrust and hostility deprive both parties from working towards a settlement and the conflict between the disputing parties remains unresolved.

The popular idea that one can “win it all” without having to give up or sacrifice anything in the process is a precious illusion for many people. Frivolous litigation is a direct consequence of such thinking, where the focus is on blaming, proving the other is at fault, and seeking to win at the expense of the other. This black-and-white approach is used as a means to achieve justice even though it is intentionally designed to avoid a fair outcome. This devious tool of litigation is frequently used as recourse to conflict resolution; however, it is highly ineffective in rebuilding relationships and results in a total breakdown of communication between the disputants.

Zero-sum thinking is responsible for chipping away at social cohesion, regardless of the given community's size. Interfamilial conflicts where both parties are determined to “win it all” often leads to divorce and a splintering of the family; international border conflicts between two recalcitrant parties often means war. It is important then to perceive “conflict” in a new way with a new context, so that peaceful resolution becomes a logical outcome instead of an impossibility.

When we understand conflict as a *perceived divergence of interest*, a person's interests, goals or aspirations are recontextualized as his subjective feelings about what is desirable. The stumbling block to a resolution is created by the positions that each party has locked itself into. *Position* here means something that a party wants, or a legitimate claim that overtly surfaces on the negotiating table. For instance, a company may claim Tk. 200,000 as damages for a breach of contract. *Interest* is what lies behind this company's claim. The stipulated amount may reflect loss of face, fear of bad publicity, concerns about the possibility of an alternative contract with a third party, etc. While positions remain obvious and rigid, interests are multiple and fuzzy, and may be traded to clinch an agreement that both parties can live with. This approach replaces the concept of *win-lose* with *win-win*. When the settlement of a conflict or dispute is arrived at by reconciling or integrating the interests of both parties, the focus shifts from blaming to sharing responsibility, from judgment to self-realization, from disregarding to accommodating the other party's interest. This concept of designing an opportunity for both parties to mend fences and get along by seeking mutual agreement is highly productive and beneficial for building relationships and recreating lines of communication.

Given the collectivist cultural traits that prevail in rural Bangladesh, *integrative bargaining*, an interest-based, cooperative strategy of problem solving, is an effective tool for diffusing conflict between disputing parties involved in an ongoing inter-personal, social, and/or commercial relationship. Disputes between any parties who must co-exist despite their differences are best resolved through the mechanism of integrative negotiation – whether the disputants are family members, ex-spouses, neighbors, roommates, husbands and wives, landlords and tenants, consumers and businesses, employers and employees, parents and teachers, or students and administration.

Identifying the Causes of Conflict - In Search of a Strategy

Conflicts are rampant in every sphere of human life. They are an inevitable part of our everyday life and cannot be avoided. Gaining meaningful insight into the causes of conflict is useful in developing a strategy to deal with particular types of conflict. Christopher Moore has identified five basic causes of conflict, popularly known as “Moore’s Pizza”. He has also suggested strategies for dealing with these conflicts:

1. **Relationship Conflicts:** They are caused by inadequate or fractured communication between parties as a result of reactive and emotional behavior, wrong assumptions, and stereotyping. Personal experience or emotional baggage from the past colors the meaning of information, events, and actions.

Strategy: Creating a climate conducive for dialogue. For starters, it is important to show respect and empathy for the other’s claim by providing an opportunity for the other to be heard. This in turn enables one to focus on the substance of the conflict in an objective manner. A neutral third party or mediator may then be called in to facilitate a dialogue between the estranged parties.

2. **Structural Conflicts:** They emanate from unequal ownership or distribution of resources, unequal power and authority, geographical, physical or environmental factors that hinder cooperation, and time constraints. One example is a conflict between a respected village moneylender and a poor farmer incapable of paying off his debts within the stipulated time frame.

Strategy: Bring in a neutral third party who has a sound understanding of the dynamics of power. In common language, power is the capacity of influencing another and may be broadly classified into social and economic power. A professional who has mastered the ability to offset power imbalances holds the key to altering the structure and forging a settlement.

3. **Value Conflicts:** They stem from the perceived incompatibility of fundamental values or beliefs involving stringent moral, religious, or political principles

between disputants.

Strategy: The parties must honestly ask themselves whether the values in question are really incompatible and mutually exclusive. Then the value conflict must be reframed as an interest conflict, so that both sides may trade and alter their positions without loss of integrity and face.

- 4. Data Conflicts:** They are caused by perceived incompatibility of data, conflicting interpretations of information based on different evaluation criteria, different priorities with respect to information, lack of information, or wrong information.

Strategy: Checking the source and accuracy of the information. Comparing one's information with the other may follow this. In the event that either party is unwilling to disclose, third party intervention may be sought to ask questions and for clarification.

- 5. Interest Conflicts:** They are direct consequences of the perceived incompatibility of procedural, substantive, and emotional interests between disputants.

Strategy: Engage in creative thinking with a view to design multiple options for mutual gains. Using objective criteria as the yardstick, prioritize one's interests and trade with the other. An experienced mediator may be brought in to identify potential interests that may be more significant to one side and unimportant to the other so that they may be traded accordingly to reach an agreement.

PART 3

CASE STUDY

Nabin and Nasima

A CLASH OF HINDU AND MUSLIM COMMUNITIES
MADARIPUR LEGAL AID ASSOCIATION
Madaripur Bangladesh

Nabin, a young Hindu man, and Nasima, a young Muslim woman, had a relationship. Nasima became pregnant, but she opted for an abortion. However, when her pregnancy and abortion became known, the local community demanded a trial for “rape.”

In the first of two mediations with influential local people, Nabin was fined. He fled the village the next day without paying. This traditional mediation relied heavily on wealthy and influential people, and many villagers felt that the fine was too meager. Nasima’s father, therefore, sought out a second mediation from the Madaripur Legal Aid Association, which would insure a more neutral mediation committee. In the second mediation, a larger fine was assessed against Nabin.

The broader issue, however, is the community’s feelings about the relationship between a Hindu and a Muslim. Because marriage between the two was not possible under the present legal system, a fine was assessed to help Nasima begin a new life.

This case shows mediation to be a community problem-solving mechanism whereby members of the community participated as mediators in a dispute that was representative of the larger issue of relationships between the Hindu and Muslim communities.

The relationship of Nabin, a Hindu man, and Nasima, a Muslim woman, and subsequent pregnancy is the subject of this case study. Nasima, age 18, lived in Chiraipara village of Ghatmajhi Union of Madaripur District. Her father Shawkat Ali Akon is a poor peasant who used to sell milk in Madaripur town. Nasima was the eldest of five brothers and sisters. Nabin, age 24, lived in the neighboring Sonomandi village of Baligram Union. His father Anil Chandra Mandal was a rich peasant who had 10 sons. Nabin, the sixth born, studied up to Class VII and then left school to look after family land. Nasima’s cousin Wazed Ali Akon used to live near Nasima’s house. Wazed was Nabin’s friend, and Nabin used to come to Wazed’s house to visit him.

Nabin and Nasima were introduced to each other by Wazed and later developed an

attachment. Although Nasima did not readily agree to a physical relationship in the beginning, she later consented when Nabin promised to marry her. However, sexual relationships between unmarried men and women is a taboo, perceived as a crime in rural communities and censored both as socially unacceptable behavior and a grave sin.

After a year of this relationship, Nasima became pregnant. Pregnancy of an unmarried woman is perceived as a crime and, therefore, to avoid the stigma she was secretly taken to a local quack for an abortion. The local community learned of this, and some influential people of the village spontaneously arranged for a trial. Nabin was pressured to marry Nasima. Nabin did not agree to that, but promised to pay her Tk. 10,000/- instead. Local mediators informed Nasima's parents of this decision. But Nabin fled the village right after the mediation. Nasima's father then sought another mediation from the local elites for his daughter's "rape." Terming it rape helps lessen the stigma of a premarital sexual relationship and enables the "victim" to regain social acceptance, for a woman cannot be "accused" or be "guilty" of a consensual sexual relationship if she were raped.

Nabin's father was persuaded to agree to a "trial" of his son, but it could not be arranged due to Nabin's absence. Nasima's father later informed the chairman of the local Ghatmajhi Union of the incident. To resolve this dispute, he turned to the Madaripur Legal Aid Association (MLAA) in September 1992. After hearing Nasima's complaints, the MLAA fixed a date for mediation.

Both parties were sent letters to be present at the mediation on September 9, 1992, but neither appeared. On October 3, 1992, the next date for mediation, both parties requested that the mediation take place in their village for their convenience and not at the MLAA office. On the basis of their requests, mediation was held on October 20, 1992, despite Nabin's absence. In the mediation, it was decided that Nabin must pay Tk. 65,000/- as compensation to Nasima. Nasima's cousin, Wazed, was also fined Tk. 10,000/- for encouraging the relationship between Nabin and Nasima. Both sides agreed to this decision.

As both communities have a common culture (Bengali), the culture itself has no role in instigating the conflict between the Hindu and Muslim communities. However, rules of conversion from one religion to another are different for different communities. There is an established rule that no one can convert from another religion to Hinduism. But if anyone wants to be a Muslim, it is readily done. Nasima had asked Nabin to convert to Islam, but he refused. Even though Nasima wanted to abandon her religion and become a Hindu, such a conversion was not possible under Hindu law.

MEDIATION PROCESS

Background

Solving conflicts through mediation is an ancient practice. It is a system that is traditionally related to the culture and lifestyle of Bangladesh people. However, over the past few decades, the traditional mediation process has become another site for exercise of power and domination by the local elite. Rather than considering which side was good or bad, the mediator's own opinion was the determining factor in solving conflicts. Even if the opposing parties did not want to accept the solution, they were compelled to do so.

Until the past few years, village mediators and other influential community members played a big role in traditional mediation. This system was acceptable to all as the only way to resolve local conflicts. Sometimes, mediators lacked neutrality, and the parties did not get the desired solution. Nevertheless, everyone accepted this arrangement, for the only alternative was a lengthy and expensive court procedure. But due to changes in the social system and increasing lack of neutrality, the popularity of village mediations has gradually decreased. The Madaripur Legal Aid Association (MLAA) is trying to reestablish a neutral and reliable mediation system. The organization has formed village mediation committees with local people to solve conflicts legally and properly.

In every Union in the working area of the MLAA, one mediation worker is appointed. Mediation workers play a vital role of organizer in arranging these mediation meetings. On the day fixed for resolving disputes they present all documents and a legal analysis of the problem so that a proper, peaceful, and legal decision can be reached that is acceptable to the parties involved and the local community.

It is important that mediators should be persons who are well thought of in the community and have the ability to control the mediation process along with presence of mind to remove any deadlocks in a discussion.

The mediators present in the mediation of Nabin and Nasima inquired into various aspects of reports of the two sides, verified the facts, and took the conflict toward a solution. The mediators reached their decision after prolonged discussion on the conflict with the help of the workers of the organization. The decision is the outcome of openly given opinions of the opposing parties.

As stated earlier, the dispute between Nabin and Nasima was resolved locally on October 20, 1992. Of the 14 mediators present, 2 were mediation workers of the MLAA who held bachelor's degrees. All 14 had training in mediation and legal aid and also had four years' experience in resolving disputes.

Moreover, the members of the mediation committee belonged to the local community. They knew Nabin and Nasima's families and their cultural and social background. The mediators decided to demand money for Nabin's father to marry off Nasima.

Traditional Mediation

Nasima's abortion was seen as tantamount to publicizing a sexual relationship between an unmarried couple. Therefore, although Nasima did not seek justice from the local mediators, local people themselves arranged the mediation, justifying it by stating that acts of this sort are heinous crimes (in their own words) and so the society needs to be purified. Although they had no right to call a mediation and even though Nabin and Nasima had not asked for one, the local people arranged it anyway in the name of social responsibility. The people accepted Nabin's fine of Tk. 10,000/- in this mediation, although neither Nabin nor Nasima accepted it. They wanted to start a new life as husband and wife, but the local community would not accept marriage between a Hindu man and a Muslim woman unless the Hindu became a Muslim. Because Nabin and Nasima had no say in this mediation, the decision was the result of the initiative of village people themselves, which is common in traditional village mediation. The parties do not play any role in such mediation. Nasima had applied for legal assistance to the MLAA in September 1992 after Nabin had fled the area. When the organization contacted Nabin's father in Nabin's absence, he agreed to resolve the dispute.

Mediation by the MLAA

The October 20, 1992 mediation was held in Ghatmajhi Union, arranged locally by the MLAA as per both parties. Nabin was absent on this occasion. The mediation committee consisted of 14 persons: 6 representing Nabin, another 6 representing Nasima, and 2 from the MLAA. Besides Nasima's father, her uncle, local elites, and local Union Parishad Chairman Jaker Darjee were present. On Nabin's side were two of his brothers and four other relatives. As the incident had created enough sensation in the area, about 100 observers were also present on the day of the mediation. Confidentiality or privacy is not paramount in rural Bangladesh as in the western sense.

In the beginning segment of the mediation, Nasima's side was heard. Nasima herself said, "I was in love with Nabin. We are both responsible for what had happened. I wanted to live with Nabin as his wife. But you people did not let that happen." Before Nasima had finished, relatives on her side nudged her to keep quiet. A commotion created by the observers and relatives as well as the mediators on Nasima's side held Nabin solely responsible for the incident after listening to her statement.

Although Hindus and Muslims live side by side, the Hindus, being the minority, usually keep a low profile on such occasions, for it is perceived as a crime for a Hindu man to have a relationship with a Muslim woman. Another 25-30 villagers took Nasima's side. All of them kept blaming Nabin: "We want justice to be done for such crime." Much excitement was created in the session at this stage. The mediators intervened, and the commotion died down after some time.

Nabin's elder brother was asked for his opinion about the whole incident. He stood up with folded hands and humbly said, "You are the guardians of this village. We will be happy with whatever you decide." He spoke in such a manner as if he had committed the

crime himself, not Nabin.

As per the general norm of mediation, every side and every person present on the occasion were given the opportunity to voice their views in order to discover the truth. One of the MLAA workers, Md. Shajahan Mia, told everyone present to be patient and said to Nabin's brother, "We think that neither your brother nor Nasima committed any crime, but being the elder brother of Nabin you suggest what could be the solution." In answer, Nabin's brother spoke in an impassioned voice: "Nabin is not present here. We have no objection whether he accepts Nasima or converts to a Muslim. But as he is absent, we will accept anything you decide." At this stage of the process, the mediators began to consider what would be the best solution of the dispute. Nasima's father became excited at one point and said, "My daughter is disgraced. She cannot show her face in society. What will be her future?" His outburst stirred the crowd and emotionally moved Nabin's brother. An MLAA worker then said to Nasima's father, "What harm has been done to Nasima is irreparable. It is not possible to repair the loss by any of us. Nevertheless, would you accept if all of us try to resolve the dispute together?" Nasima's father gave his assent silently and started crying like a baby.

When mediating any dispute, consent of both parties is very important, especially to those who are involved in the matter, but it was not possible in this case because of Nabin's absence. Nasima conceded to mediation due to social pressure and her relatives' perceptions, even though she did not consider Nabin a criminal.

OUTCOME

For a proper resolution by any mediation, it is necessary to have an experienced mediator who is neutral and acceptable to both parties. The relationship between Nasima and Nabin was not criminal. Nevertheless, the local people considered it a social crime. It was not legal to charge any fine in this case, but Nabin's father was agreed to Tk. 75,000/- as compensation.

Actually, if this conflict had been allowed to linger further, much harm would have been done to Nabin's family and other Hindus. The agreed upon was to solve the dispute. Peaceful social coexistence was the successful outcome of the conflict. Nasima subsequently bought land with the Tk. 75,000/- and then married. She has no problem at present. Nabin never returned to the villaae. He has taken up permanent residence in neighboring India.

CASE SUMMARY

- t Intimacy between a Hindu and a Muslim was "overlooked" by the community because it was unthinkable.
- t Nabin's family took responsibility for Nabin.

Khukumoni and Masud
LIVING HAPPILY NOW
MADARIPUR LEGAL AID ASSOCIATION
Madaripur Bangladesh

While still students, Khukumoni and Masud married with the consent of Khukumoni's family. After a year, Masud's father accepted Khukumoni into his home. All others in Masud's family, however, did not accept the marriage and abused Khukumoni physically, perhaps harming her unborn child. As a student living in his father's home, Masud was materially dependent on his family.

Banchte Shekha, a local social welfare organization, provided shelter for Khukumoni when the relationship became stormy and tried to resolve the dispute without success. Mediation was attempted by a committee of locals, including representatives from Banchte Shekha and from both sides of the dispute. Their decision called for a divorce.

However, Khukumoni became pregnant again during the mediation. With the help of workers from Banchte Shekha and Masud's father, the couple began to live together but apart from their families.

This case illustrates the involvement of the community in both the dispute and its resolution. The mediation committee included parties with interests in the outcome of the mediation and who may have, in fact, acted to set aside the committee's decision by later actions. The community's involvement through direct action and through mediation restructured the relationships of the family members.

Khukumoni, age 18, of Rupsha in Khulna district married Masudur Rahman of Monglati, Jessore. Slim, shapely, and smart-looking, she was considered an intelligent person. Her father used to deal in coconut and betel nut in Rupsha. Khukumoni is the third of six children and second among sisters. Her father came to Jessore to start a business and had rented a house in nearby Monglati. The house he rented belonged to Masud's cousin.

Khukumoni and Masud met and gradually fell in love while still in school. Khukumoni was a student of Class VI and Masud of Class IX. When Khukumoni was in Class IX, her father decided to marry her off and had selected the bridegroom. Masud was in college by then. In the meantime, they were deeply involved with each other. Khukumoni could not even think of marrying anyone other than Masud. Under these circumstances, when her family started putting pressure on her to marry, she left for her elder sister's house in Jessore. Masud knew the reason for her leaving. After a few days with the help of her elder sister, Khukumoni and Masud's marriage was registered. Khukumoni then returned to her father's house and lived there for the next seven months. No one in either family other than Khukumoni's elder sister knew about the marriage.

Masud's father, Habibur Rahman, was a businessman in Jessore. He had three daughters and six sons; Masud was the fourth. The family was financially well-off. They had land and traded in rice. Although Khukumoni and Masud tried to keep their marriage a secret for a year, gradually a lot of people came to know about it. Neither of the families would accept the marriage, except Masud's father who formally received Khukumoni as his daughter-in-law and brought her into his house. Meanwhile, Khukumoni's father closed down his business in Jessore and went back to Rupsha. Khukumoni's mother-in-law, however, did not accept the marriage and began to mistreat her, even beating her on several occasions. Khukumoni sometimes was not allowed to eat. She was made to do all the house chores. This continued for three years.

Masud had married the girl of his choice without consulting other members of his family. Masud's father, sisters, brothers, and especially his mother could not accept the marriage. As for Khukumoni, she also did not inform any member of her family, with the exception of her elder sister, and as a result her family showed no sympathy toward her.

The dispute started when Masud's mother could not accept Khukumoni as her daughter-in-law. Because Khukumoni's family members were also angry that she had married without their approval or consent, she had to tolerate physical and mental abuse by her in-laws without any protest, knowing she had no support from members of her own family. To complicate matters, Masud was still a student and did not have any job or sufficient financial means to live with his wife independently outside his parents' home.

Khukumoni was tortured even when she became pregnant. Although Masud was totally devoted to his wife, he could not protest against his parents' treatment of her because he was still a student and did not have a job. Khukumoni gave birth to a retarded son, probably because she was not given adequate food during her pregnancy. Then, too, the torture and beatings she suffered during the pregnancy may have affected the child. Their son Nipun was unable to stand up or walk because his feet were lean and thin. Her mother-in-law continued her abuse of Khukumoni after the child's birth. She advised her son to divorce Khukumoni. Compelled by his mother's advice, Masud drove Khukumoni out of the house after beating her severely because of a petty quarrel over some family problem. Helpless, Khukumoni was crying on the street when she met Mrs. Bulu Begum, a staff member of Banchte Shekha, who provided Khukumoni shelter. This took place in August 1991. After staying with Banchte Shekha for a while, Khukumoni went to Masud's sister's place for shelter because they liked her very much.

STRATEGY OF INTERVENTION: MEDIATION

Banchte Shekha workers tried in vain to resolve the dispute locally. It was only when Banchte Shekha workers decided to file suit on behalf of Khukumoni that Masud agreed

to a mediation with the help of the local chairman. But nothing was solved in a number of mediation sessions. In the meantime, Masud tried to file suit against Khukumoni on the allegation of theft. After two months a mediation was arranged by Banchte Shekha workers, where both sides were thoroughly heard. But Masud refused to take back his wife. The local chairman also gave his opinion in favor of Masud after, probably, receiving some money from Masud's family.

Khukumoni's elder sister was present in the session. Later, with the help of Banchte Shekha workers and local elites, it was decided that their marriage would be dissolved. A sum of Tk. 55,000/- for Khukumoni's dowry, her son's 7 year maintenance, and her alimony for 3 months and 10 days was assessed to be paid by Masud to Khukumoni.

They were divorced in December 1991. Although Khukumoni was two months' pregnant at the time, she kept it a secret. Masud loved her very much, which is why he started to visit her again only 14 days after the divorce. When Khukumoni informed Banchte Shekha workers about it, they helped them arrange a remarriage. The Mohorana (the amount settled upon for the wife at the time of marriage) was fixed at Tk. 110,000/-. Khukumoni's father was also present at the occasion.

Khukumoni then had an abortion when she was three months' pregnant. Again, no one except Masud's father accepted the marriage. He arranged a separate home for them to live in, and he also gave Masud money to start a business.

ROLE OF BANCHE SHEKHA IN THE MEDIATION

Banchte Shekha does not have local workers in Jessore to conduct mediation. In 1991, when Khukumoni was thrown out of the house after being severely beaten by Masud, she sought Banchte Shekha's help. Banchte Shekha usually tries to first resolve the dispute through coordination among local influential people and elites. Both the local people and Banchte Shekha's field workers organize the mediation sessions.

The field organizer then personally contacts both parties to be present at the session as per the advice of the organization's law official. He also calls for concerned persons and local religious leaders to be present at the session. At the session, a mediation committee is formed of persons from each party involved in the dispute, Banchte Shekha workers, and neutral locals. For this dispute, a 10-member committee was formed. This committee reached its decision only after having discussions with both parties and analyzing every aspect of the complaint and considering the legal aspects of the decision in view of the background of the dispute. The committee's decision is treated as the final one, and both parties come to mediation prepared to accept the finality of the decision.

In the mediation session to resolve the dispute between Masud and Khukumoni, Banchte Shekha law official Khijurul Begum, law support official Anwara Begum, other staff

members, and 8-10 local elites were present. The Banchte Shekha law officer has a master's degree in law and is experienced in mediation procedures. The Banchte Shekha law supporting official has 18 years' experience working with non-governmental organizations.

Many of the others present at the mediation were associated with the traditional village mediation process. They had participated in mediations at different times. Although they had no training in mediation, they had vast experience. Moreover, most of the mediators present were locals or from neighboring villages. The committee members were aware of cultural traditions and the social position of Khukumoni and Masud because the mediators also lived in the same social and cultural surroundings. Thus, the mediators could judge the mentality, or the way of thinking, of the conflicting parties very easily and were quite sympathetic to both sides.

Three mediations were held to solve the conflict of Masud and Khukumoni. The first one was arranged at the end of August 1991 by Masud's side only. No one from Khukumoni's side or Banchte Shekha was present. Three days later, another mediation was arranged with the help of the field organizers of Banchte Shekha. The mediation committee heard both sides. Masud said he would not take his wife back. He would divorce her instead. One member of the committee was the local chairman, who spoke in favor of Masud. He even said to the Banchte Shekha workers, "You have done this with one Khukumoni. How many wounds of society can you heal?" In this context, members of the Monglati social welfare women's group strongly protested, saying "We want fair judgment on the torture of Khukumoni." When Masud refused to take back his wife, the committee wanted to hear Khukumoni's opinion, and she said, "I cannot go through the same torture anymore. You [the Banchte Shekha workers] have done so much for me. You can decide what is best for me."

When Banchte Shekha workers requested that Masud take back his wife, he refused. Moreover, it was decided that it might not be a good idea to send Khukumoni back to Masud's house in view of past tortures. After prolonged discussion, the committee decided that Khukumoni and Masud could no longer stay married to each other. At that point, the workers of Banchte Shekha claimed, "If they have to divorce then it should be done legally and according to Muslim law."

The mediation committee resolved that an amount of Tk. 55,000/-, which included Khukumoni's 3-month, 10-day alimony, son Nipun's maintenance until he was 7 years old, and Khukumoni's Mohorana), must be paid by Masud. The opposition party accepted the resolution, and thus the dispute came to an end. It was also decided in the session that the amount would be paid in installments. On the day of the mediation session, Masud paid her Tk. 15,000/-.

It should be mentioned that, unknown to the mediation committee, Khukumoni was pregnant when the divorce took place. Divorce is not legal during pregnancy, so in effect they were still married.

OUTCOME

Although the divorce was settled on a payment of Tk. 55,000/-, Masud remarried Khukumoni after paying her the first installment of Tk. 15,000/-. This remarriage took place with the help of Banchte Shekha workers. Khukumoni agreed to remarry Masud when he promised to live with her outside his parents' home. Masud and Khukumoni had loved each other very much, but the members of both families had intervened and poisoned their relationship. That is why divorce did not end their conflict. Their remarriage did that.

At present, the couple and their son are leading a very happy life together. Khukumoni took the S.S.C. (secondary school certificate) exams. And Masud also continued his studies taking the bachelor of arts exam while running his business.

CASE SUMMARY

- t Conflict was tolerated while living with parents.
- t Masud and Khukumoni divorced, as insisted on by his family under traditional mediation.
- t Both Khukumoni and Masud moved out of his parents' home to a separate place, thereby becoming more independent.
- t The mediation process was more indirect and circuitous than direct.
- t Khukumoni and Masud were remarried with the help of the Banchte Shekha mediators.

Rawshan Ara
THE VICTIM OF POLYGAMY
MADARIPUR LEGAL AID ASSOCIATION
Madaripur Bangladesh

Rawshan Ara was married to Yousof, who neglected many of his responsibilities to her. Abused by her in-laws and her husband who married another woman, she gave birth to a dead child.

Rawshan sought legal aid. Yousof agreed to not beat Rawshan any more and give her a portion of land. However, he soon appealed for a second mediation, which resulted in a public divorce with payments to Rawshan Ara, who would not agree to live with another wife of her husband. Polygamy, however, is allowed in Muslim law.

The mediation committee, composed of locals familiar with local customs, were advised by the Madaripur Legal Aid Association. The committee heard statements from both parties and issued a decision based on law.

This case illustrates the importance of understanding local customs and laws, even when they may seem contradictory. The locals on the mediation committee had that knowledge. The mediation committee first reached a decision that was not accepted. After an appeal, a second decision was satisfactory to both parties.

Rawshan Ara's home is in Rajoir Thana of Madaripur district. She is the youngest of the three daughters of Abu Mollah of Shakharpura of Ilibpur Union of Rajoir Thana. She is 20 years old. Her father's main occupation was agriculture. He was also selected as a member of the Union Parishad twice. He studied up to the S.S.C. level. Rawshan Ara had studied up to Class VI, even though she lived in a village. They were not poor and owned 9-10 Bighas of land. They were somewhat influential in the village because her grandfather Fatik Mollah was also selected a member of Union Parishad twice. Her grandfather was a bit conservative. That is why her guardians were trying to marry her off as soon as her other two sisters were married. Rawshan Ara was only 15 then. She could not study further, even though she was very eager to do so, because she had to take responsibility for a family.

She was married in August 1988 to Yousof Khalifa, whose home was in Ragdi Union of Gopalganj district. Yousof had four brothers and two sisters. He had studied up to Class VII. He dealt in fruits. After marriage, Rawshan Ara spent almost a year at her father's house, as she was not yet formally handed over to her husband. Occasionally, she would go to the in-law's house for four or five days and then return to her father's house because Yousof was away from the village most of the time to look after his business.

Yousof had divorced his first wife Jharna before marrying Rawshan Ara, but Rawshan Ara's family was kept in the dark regarding this matter. Moreover, Yousof's father, Najir Khalifa, had high hopes that his son would bring a huge dowry from his in-laws' house. Rawshan Ara's father presented goods worth Tk. 8-10,000/-, but that did not

satisfy her in-laws.

Although Rawshan Ara was married to Yousof, they did not seem to have developed emotional attachments. His aloofness may have been responsible for this. Yousof formally took Rawshan Ara to his house in June 1990.

After living together for six months, Yousof went off to India on a trading trip. By then, Rawshan Ara had become pregnant. In Yousof's absence, Rawshan Ara's in-laws started to abuse her, first verbally and then physically. Rawshan Ara tolerated everything for her child's sake, but when she could take the abuse no longer, she returned to her father's house.

Upon Yousof's return home, his parents advised him to get married again, saying that his wife was not good enough. No one accepted Rawshan Ara's educational qualifications; they said, "There is no need for an educated wife." Yousof tended to believe everything he was told. However, he went to Rawshan Ara's house and brought her back to his home, but the in-laws continued to abuse her, and she was not even sufficiently fed. After a few days, she again returned to her father's house. Yousof again came to fetch Rawshan Ara, but this time she refused to go with him. Yousof somewhat forcibly took Rawshan Ara to his uncle's house and even continued to beat her while she was staying there. Soon after, Yousof married another woman - his third marriage.

Rawshan Ara returned home after Yousof's third marriage and two months later gave birth to a dead child. Yousof did not even go to see Rawshan Ara after hearing the news.

On July 7, 1991, Rawshan Ara appealed to the Madaripur Legal Aid Association (MLAA) for assistance. In her complaint, she stated that her husband had remarried without her prior approval as required by law. She demanded alimony and a settlement. In view of Rawshan Ara's appeal, MLAA mediation workers twice sent letters to Yousof, seeking to resolve the dispute in a peaceful manner, but he did not bother to respond. After repeated letters, he eventually attended the mediation and promised never to torture his wife, to give Rawshan Ara her due respect as his wife, and to let her have 10 Kathas of land. But after some days, as per his father's advice, he refused to comply with his promises and appealed for another mediation. This time, on September 20, 1991, Rawshan Ara informed the mediators that she would not live with her husband anymore as she was afraid of further abuse. A divorce was agreed to on September 30, 1991, and Yousof paid Tk. 11,000/- as alimony.

MEDIATION PROCESS

Background

Mediation to resolve conflicts created by polygamy is common in this country. In traditional mediations, polygamy is not treated as a principal problem. Although these

mediations take place in the presence of influential and respected members of the community, the decisions rendered often are not agreed to by the disputing parties. The mediators often impose their decision in the name of Islamic law, leaving the two parties involved no choice but to accept the decision.

In the current mediation conducted by the MLAA's mediation workers, local mediators voiced their opinion after hearing both sides' complaints. Thus, the two parties had a say in the decision arrived at by the 8-10 mediators present. The MLAA's method is easily acceptable because all the sides to the dispute are allowed opportunities to voice their opinion, and the decision is reached on the basis of the law and the opinions offered.

As mentioned earlier, Yousof had been married once before marrying Rawshan Ara. He had divorced Jharna, his first wife, because she could not bring any dowry and also because she was not good looking. He then married Rawshan Ara and later married once more (i.e., took a third wife). In view of his actions, it is apparent that Yousof accepted polygamy. When Rawshan tried to stop him from marrying for the third time, Yousof felt her objections were unwarranted. He also wanted to make her understand that marrying two or three times is accepted by the Sharia (Mohammedan ecclesiastical law).

Yousof's polygamy and his demand for dowry were the main reasons behind this dispute. Rawshan Ara could not accept this third marriage and would never agree to live with another wife. That was why Rawshan wanted to leave her husband's home.

Course of the Mediation

Four mediation sessions were held to resolve the dispute between Yousof and Rawshan Ara. These sessions were held in coordination with several mediation workers, five of whom were graduates. All had appropriate training in mediation. Each member of the MLAA of each Union is adequately trained to conduct mediation, is familiar with the local culture and its local traditional mediation system, and therefore can play a vital role in a mediation session. Other MLAA workers also help the local mediators. The MLAA always provides legal explanations of the dispute and thus plays an important role in the mediation. Because the mediators are local, their experiences are important for settling the dispute. The mediator workers exchange views with the local mediators to reach a sound conclusion.

Mediation by the family was attempted to resolve dispute between Yousof and Rawshan Ara. This, however, failed to produce acceptable results. Thereafter, upon Rawshan Ara's appeal to the MLAA, a mediation process was initiated. A letter was sent requesting both parties to be present at the session.

To resolve the dispute between Rawshan Ara and Yousof, the mediation workers of the MLAA had to send four letters of request. Yousof and his associates did not respond to initial letters, but they did show up at the third mediation meeting, during which Rawshan

Ara asserted, "I want to go back to my husband's house. But first he has to divorce the one he has married." After discussions among the parties, Yousof agreed to divorce his third wife, to not abuse Rawshan Ara anymore, and to give her 10 Kathas of land. This mediation took place on September 24, 1991. But after a few days, Yousof informed the mediators that it was not possible for him to accept the decision. He could not divorce his third wife, so he appealed for another mediation to resolve the matter. The mediation workers again sent a request letter to the committee members for both parties to be present at the mediation session set for September 30, 1991. The MLAA workers talked with both sides to request them to come to a decision regarding the dispute, saying, "We shall try to find a solution to this dispute. We tried to resolve it thrice. It won't do any good to prolong this dispute." When all of those present agreed to resolve the dispute, the mediation process formally began.

The mediators asked Yousof why he could not accept the earlier decision. Yousof replied excitedly, "Don't people get married twice? What is the harm if I marry again? I agree to keep both wives. I will not divorce my other wife. Rawshan will stay, so will my other wife." People from his side agreed on this, one of them saying, "Yes, he is right. Don't people get married twice?" The mediator kept control of the situation and said, "Please don't get excited. We have come here to resolve this, not fight." The mediator in this context wished to hear Rawshan Ara's opinion. But a mediator from Yousof's side spoke up, "She is a woman. What will she say? Let her father speak." The mediator then told all present, "The dispute is between Rawshan and Yousof. It is necessary to listen to them. We have to listen to Rawshan's complaint too." Although the mediator asked her to speak, she could not gather enough courage to do so: It was difficult for her to speak in front of so many people. When the mediator requested again, she broke down in tears and said, "Send me back to my husband's place. I want to go to my husband's place. But then he will have to divorce his other wife. And all of you are here. He has to say in front of all of you that he will not beat me." Some of the mediators stated, "The girl talks too much." One mediation worker, with the help of the other mediators, requested that everyone calm down and then asked Yousof, "Think and answer how we can solve the problem." Yousof repeated, "I shall keep both wives. I shall not divorce anyone." The mediation worker in this context wished to hear Rawshan Ara's opinion again. Initially, she could not find the words, but later she said, "May be I am cursed. Living with my husband is not my fate. Now you do what you feel is best. I will not live with the other wife."

After listening to the statements of both parties, the mediators wanted to hear her father's opinion. Rawshan Ara's father supported his daughter. He said, "I will not send back my daughter to live with the other wife." One mediation worker said to the other mediators, "Rawshan does not want to live with the other wife. Moreover, Yousof will not divorce his other wife. In this context, what is your opinion?" After due consultations by the mediators, they proposed that the marital relationship be broken off. Both parties then agreed to a mutual divorce after having detailed discussions. All those present saw this as the only solution to the dispute, and thus the dispute was resolved at last.

OUTCOME

The mediators' decision was to dissolve the marriage in exchange for Tk. 11,000/- as alimony after reviewing the legal aspects of the dispute. Yousof was ordered to pay that amount to Rawshan Ara.

One and a half years after the divorce, Rawshan Ara remarried in April 1993. MLAA workers were present at the occasion. She and her husband are now living happily. She even has a farm of chickens and ducks.

CASE SUMMARY

- t The boy's father controls his son's decisions.
- t Yousof married, divorced, married, divorced, and married again, based on his father's advice.
- t Polygamy is accepted by the local culture in spite of procedural restrictions imposed by recent laws.
- t Mediation was done by a group of 8-10 local community members.
- t The mediators, with the consent of the couple, made the decision to divorce.
- t The mediation was considered a success.

Ishaq Gets Back Land After 40 Years

MADARIPUR LEGAL AID ASSOCIATION

Madaripur Bangladesh

As an orphan, Ishaq received 3 Bigha of land from his grandfather. After his father's death, Ishaq lived in his uncle's house until the age of 18 and then was forced to leave. Only after the death of his wealthy and influential uncle did Ishaq demand his land from his cousins.

Ishaq sought out mediation help to claim his land. A mediation committee of people with knowledge of the family and of local traditions and culture together with advocates for both sides was formed. The mediation committee convinced the cousins to agree to mediation as an alternative to spending money in a court. The mediation committee heard statements, examined documents, and then awarded the land to Ishaq.

This case illustrates the many forms that mediation can take. The mediation committee acted in a judicial role, yet it resolved the issue within the community without involving a court.

Ishaq Hawladar, 50, lives in Ramzanpur Union of Kalkini Thana in Madaripur district. On October 20, 1991, he filed a complaint regarding land with the mediator of Ramzanpur Union. He alleged in the complaint that his cousin Kalam Hawladar and others forcefully occupied his 3-Bigha (90-decimal) land for a long time. The Madaripur Legal Aid Association (MLAA) has recovered that land through mediation.

Ishaq is an only child. His father Golam Hawladar died when Ishaq was only 2 years old. Concerned about the future of Ishaq, his grandfather, Samsher Hawladar, registered 3 Bighas of his land to his grandson. Grandpa was a little bit worried about Ishaq's future. He used to look after Ishaq, put him in school, and even married off Ishaq's mother to his eldest son, Abdul Kader Hawladar. This was done in consideration of the future of his grandson Ishaq and daughter-in-law, even though Abdul Kader Hawladar already had a wife. After the grandfather's death in 1952, life became miserable for Ishaq. His uncle, Abdul Kader, who was now also his stepfather, took him out of school and put him to work doing house chores. His uncle then started abusing him. In 1958, when he was 18 years old, Ishaq was thrown out of the house. Later, he managed 1 Bigha of land from his neighbors. Twenty years have passed since then.

Ishaq did not have the courage to ask for the rest of his land because his uncle is an influential person in the village. Ishaq had to be content with 1 Bigha for fear of fighting and killings. Ishaq had no other choice. In 1978, his uncle died. Ishaq hoped that his cousins would return his other 2 Bighas, but when he asked for the land, they did not give it back and behaved rather badly. Some suggested that he go to court, but he could not afford to.

In 1991, when the mediation project of the Madaripur Legal Aid Association (MLAA)

extended to Ramzanpur Union, Ishaq learned of their efforts to solve conflicts through mediation and appealed to get his land back. The MLAA mediators called Ishaq's cousin Kalam Hawladar and others to a peaceful settlement, but the effort fell through. Ishaq's cousins not only did not appear, they spread the word that Ishaq had no land because his father had died while the grandfather was still alive. Later, Thana mediator supervisor contacted both parties to resolve the issue. This time the cousins agreed. But on the appointed day, opponent Kalam Hawladar did not agree to a settlement. So the mediator personally talked with him to tell him that if he did not agree to settle the issue Ishaq's plea would be sent to court with legal aid from the MLAA. This time Kalam agreed to a settlement. December 14, 1992 was chosen for the mediation.

Discussions were held in the presence of the mediation workers, supervising committee, and local elites. After scrutinizing the necessary papers regarding the dispute, they decided that Ishaq was the rightful owner of the remaining two Bighas of land. After the legal issues were explained, Kalam Hawladar accepted the decision. The dispute was ended when Ishaq got back his two Bighas of land.

THE MEDIATION PROCESS

Land disputes often lead to dangerous situations. Although village elders call the meeting, these mediations are filled with tension. Mediators often side with the wealthy party, and the outcome usually goes their way.

Agriculture is the main profession of most of the Bangladeshi. Power and wealth in rural Bangladesh are directly related to the size of land holding. Large land owners control the local society, and they determine the social rules and regulations. Generally, they play the role of mediators in solving various disputes in the villages.

They often influence the solution of mediation directly or indirectly for their own selfish reasons. For example, if the dispute is between a landlord and his working man, the landlord would try to influence the decision of the mediation. The poor opposite party, even with valid legal claims, often has to accept an unfavorable decision.

As for the legal issues involved in this mediation, if a man with children died while his father was alive, the children would not inherit the grandfather's property. Even though this rule was changed by the Muslim Family Act in 1961, most villagers are unaware of it. As such, conflicts arise regarding distribution of property of the deceased. Everyone assumed that since Ishaq's father had died before the grandfather did Ishaq would not get the property. Also, Ishaq's uncle's lengthy possession of the disputed land discouraged Ishaq from claiming his right to it.

Three meetings were held to resolve the Ishaq-Kalam conflict. Members of the mediation committee, mediation workers, and local elites supported and were present in these mediations. Their educational qualifications ranged from primary to graduation.

Mediation workers and supervisors were aware of land laws and mediation resolving methods. Moreover, as they were locals, all knew Ishaq and Kalam and their culture and tradition. The members of the committee were also involved with traditional local mediations. To resolve land-related disputes, one must have knowledge of land laws as well as experience in the field; otherwise, legal issues cannot be resolved satisfactorily.

As Ishaq got a bit older, he learned of the land that was given to him by his grandfather. When he demanded the land back, his uncle told him, “Your father is dead. He had not left any property. You will not get the land. If you insist, you might not live anymore.” After hearing such threats, Ishaq never spoke about his demand again. Ishaq’s uncle and cousin were very influential in the village, so it may be said that Ishaq did not have any influential person on his side, and those who were on his side could not do much for him.

Once Ishaq appealed to the MLAA, they tried to resolve the dispute through mediation, but opponents Kalam Hawladar and others did not appear. Subsequently, the MLAA staff and supervisor spoke with Kalam Hawladar about the mediation to resolve the dispute. Finally, he and others agreed to do so. Accordingly, a date was fixed for mediation, but again the opponents did not appear and the dispute could not be resolved. Moreover, it took some time to collect Ishaq’s land documents, as they are vital for land disputes. Kalam Hawladar could not be present on two appointed occasions as he could not get the papers ready either. Their aggressive attitude toward each other was also an important factor in whether an agreement could be reached. After the mediator and the supervisor again requested Kalam Hawladar to resolve the dispute through mediation, he was informed that “if the dispute cannot be solved through mediation, then the organization would go to the court to provide Ishaq with legal aid.” Finally, he agreed to resolve the matter through mediation instead of having to spend a lot of money if Ishaq went to court.

The final mediation session was held on December 14, 1992. Eighteen persons were actively involved in the mediation: 1 MLAA mediation supervisor, 1 mediation worker, 6 members of the mediation committee, 4 persons who were on Ishaq’s side, and 6 who were on Kalam’s. Besides these, 24 people were present as observers.

When mediating land disputes, emphasis is placed on documents of both parties regarding land ownership and on the legal basis of the dispute.

Both parties were heard and their statements taken into consideration, depositions were obtained from witnesses, and questions were asked to extract information. In solving the dispute between Kalam Hawladar and Ishaq, Ishaq’s side of the story was heard first. Ishaq said, “My grandfather has given me this land in his will. I am successor of this property. You all please make arrangements for me to get back the land so that I and my children can live.” The mediation supervisor then wanted to hear opponent Kalam Hawladar’s comments regarding Ishaq’s statement. Kalam Hawladar said, “Ishaq was brought up in our family. My father bore his food and education expenses. He has no right to demand back the land from us.” The observers at this moment seemed to be a bit agitated. Elep Ali, one of the mediators on Kalam Hawladar’s side, was one of the wealthy

men of the village. He shouted to the onlookers, “Keep quiet. Kalam is right. Ishaq’s father died when he was only a year old. He was brought up in Kalam’s family. He has no right to ask for the land now.” Many of the mediators supported the wealthy and influential Elep Ali’s statement.

The MLAA mediation worker and the mediation supervisor then presented the legal basis of Ishaq’s demand and requested that the mediators do justice by checking the documents of the land as presented to them. Although at first Kalam Hawladar and the mediators on his side tried to influence the mediation, once the legal documents of the land were presented the observers started to speak for Ishaq. In light of Ishaq’s rightful demand, Kalam Hawladar and his associates told the mediators present, “All right, you do what you think is right.” Afterward, they heard appeals by both sides and other opinions. They also went through the papers regarding the property and gave their judgment for Ishaq, as he was the rightful owner of the land as per the law. The dispute was settled after the uncle agreed to relinquish the land.

OUTCOME

At present, Ishaq occupies the land. There have been no further disputes over this land.

CASE SUMMARY

- t Abused and disinherited, Ishaq attempted to keep land given him by his grandfather against the wishes of his family.
- t Ishaq appealed to mediators to defend his interests.
- t The family was threatened with legal action if they ignored mediators.
- t Family traditional rules do not always regard individual rights.
- t The legal documents became the common ground for settlement.
- t Ishaq got his land back even though his uncle had possession for 40 years.

PART 4

POTENTIALS OF MEDIATION

Mediation Contributes in Many Ways:

- t create peaceful coexistence and cooperation
- t ensure sharing of discussions irrespective of sex, color, religion, and so forth
- t uphold human qualities
- t increase commitments and duties toward society
- t decrease class conflicts
- t foster socio-cultural values in people
- t ensure equality regarding rights and dignity as the key focus of mediation
- t remove hatred and bring amity
- t decrease future conflicts
- t encandles humanity and in the process discourages human instinct for committing crime.

Mediation: Significance and Necessity

Mediation is a process and not an end result. It is also an art and not a science. It involves specific techniques and methods which can be taught to most people. It also involves qualities which cannot be taught (at least not within a short period of time): empathy; sensitivity; compassion the ability to listen and hear; a sense of timing; or intuition. There is no one, single definitive “bible” that you can use to mediate conflicts. The greatest resource is your-self. In mediation, you are intentionally putting yourself into a conflict with the idea of helping the disputants reach a solution. It is their dispute and not yours. If they reach an agreement, it will be their agreement and not yours. You are the facilitator and the catalyst.

A “Win-Win” Proposition

The purpose of mediation is not to judge guilt or innocence but to help disputants define the root of their own problems and to help them devise their own solutions. Mediation deals directly with the relationship between the two disputing parties. The question of right and wrong is secondary and, as you will see, a blind alley and dead-end in terms of solving some of the issues at hand. Mediation concerns itself with the future behavior of both disputants. What resolution can be worked out that avoids the problem once the disputants leave mediation? If there are civil issues involved, who will pay whom, how much money, and on what day? How can both disputants best interact with each other when they come into contact once they leave the mediation session?

A mediator helps disputants focus on the future rather than on questions of punishment, revenge, who is responsible, and what occurred in the past. Disputants are not masked assailants talking through their attorneys but rather ordinary people who may have to face each other the next day at work, over dinner, at the neighborhood store, at school or the next time the rent is due. In the heat of their dispute, their communications have broken down and they have probably not been able to listen to each other. Their perceptions of each other may be distorted or aggravated by side issues, unstated assumptions, or prejudices. Usually, both believe they are right, and that their response to the problem has been correct. Many times they will feel that the other person is at fault. Very often both parties want the other to be punished. Most often, both parties want the problem to be solved because it has become troublesome, but they don't really know how to solve the dispute.

In the broadest sense, mediators help disputants “mend their fences”. The key words are “compromise” and “negotiate”. Although not all mediations necessarily involve compromise, it is a posture conducive to producing the environment necessary to the successful resolution of any dispute.

As a mediator, your job is to not create a court-like atmosphere where one party wins and the other loses but, instead, to establish a willingness to negotiate and an atmosphere conducive to mutual settlement. Mediation is a “win-win” proposition where both sides can come away with something – having given something and having aired their feelings.

In any glossary of dispute resolution methods, mediation must be seen as one of many different methods and not as the only or always ideal one. Mediation works for certain kinds of problems and not others. Many disputes properly require a decision by a judge and must involve the adversarial proceedings that attorneys and judges are trained to conduct. The problem is that many minor disputes that could be settled by negotiation find their way into the judicial system and take up excessive amounts of time and money and – in the end – do not necessarily settle the problem.

Since mediation comes from the Latin word “mediare” meaning, “to heal”, it differs from the other methods of dispute resolution in that it seeks to accomplish a healing of the relationships involved in the dispute. Unlike arbitration and adjudication, the disputants in mediation retain complete control of the process.

When is Mediation Appropriate?

The use of mediation is appropriate when the conflicting individuals or parties are involved in a continuing relationship. Examples of such relationships include, but are not limited to, employer/employee, merchant/consumer, partner/partner, spouse/spouse, parent/child, and neighbor/neighbor. To participate in the mediation process, disputants must be able to:

- a. express their feelings, needs, and wants
- b. communicate with the other party (this includes listening to them)
- c. control their own actions and behaviors; and
- d. follow guidelines and accept some degree of structure (both in the mediation process itself and in any resulting agreement).

In many cases disputants believe that mediation will not be any more successful than their previous efforts to resolve their conflict. They may say they have already “tried to talk things out,” but were unable to resolve the issues. When this occurs the disputant’s actions need to be acknowledged, since they probably have tried to resolve the conflict. It also helps to ask the disputants to share their concerns and to determine if those concerns can provide a positive stimulus to participate in mediation.

The reasons why disputants believe a conflict cannot be resolved are complex. Part of the problem lies in the dynamics of conflict itself. For example, with an unresolved conflict communication lines often break down. If the conflict continues, this lack of communication tends to heighten or recycle the conflict, leading to a belief among the disputants that the conflict cannot be resolved. This not only promotes a feeling of helplessness, but it also develops an aura of “magic” surrounding the resolution of the conflict— the disputing parties simply do not believe that a third party can help. Often, each party portrays the other as unwilling to cooperate, as in the commonly made claim that “he/she won’t come to the mediation.” It may be the case that one of the parties really is unwilling to cooperate, but it is also possible that confronting the other party is simply difficult to do (and easier to avoid). This leads some disputants to actually hope that the other party does not show up so that a confrontation can be avoided. Such fears and concerns obviously need to be addressed by the mediator. If either party actually believes that the mediation places him or her in physical danger, safety measures need to be instituted so that everyone concerned feels safe. Many mediations are successfully scheduled as a result of the mediator’s ability to translate negative motivations into positive ones for initiating the mediation process.

Attorneys are occasionally involved in a conflict prior to the desire to mediate. An attorney may instruct his or her client to refrain from communicating with the other party. The attorney may also ask that all proposals be initiated and offered from one attorney to the other. In such cases and when mediation appears to be an option, the conflicting parties and the mediator may need to consult with the respective lawyers. While many attorneys

are aware of mediation, others are not. Although the reaction of attorneys to mediation is somewhat mixed, experience has shown that attorneys tend to be supportive:

1. when they believe the disputing parties are responsible
2. when resolving the conflict via the legal system will likely destroy the relationship between disputants
3. when economic considerations dictate that a legal intervention does not have merits
4. when the facts are debatable, and a legal resolution will not have positive results; and
5. when disputants' emotions run too high to undertake an effective legal intervention.

Studies on mediation show that it is difficult to mediate family matters successfully if either or both parties harbor intense anger at the other. Also, mediation may not be successful in cases when severe pathology, new lovers, or extreme financial difficulties are involved. Remember, however, that the motivation of the parties is ultimately the best predictor of success. Also remember that each mediation is a unique case and that the mediator should help the involved parties assess for themselves what is needed to resolve the conflict. In any event, mediators should rely upon the mediation process as a guide. The following pages describe that process.

The Objectives of Mediation

The Objectives of Mediation are:

1. production of a plan (agreement) for the future that the participants can accept and comply
2. preparation of the participants to accept the consequences of their own decisions
3. reduction of the anxiety and other negative effects of the conflict by helping the participants devise a consensual resolution.

Mediation Helps to:

1. reduce the obstacles to communication between participants
2. maximize the exploration of alternatives
3. address the needs of everyone involved
4. provide a model for future conflict resolution.

What is Mediation

1. Mediation is an extension and elaboration of the negotiation process. Mediation

involves the intervention of an acceptable, impartial, and neutral third party who has no authoritative decision-making power to assist commanding parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute. As with negotiation, mediation leaves the decision-making power in the hands of the people in conflict. Mediation is a voluntary process in that the participants must be willing to accept the assistance of the intervener if the dispute is to be resolved.

2. Mediation is a voluntary method of dispute resolution in which the parties to a dispute are assisted in reaching a settlement by a neutral third party or mediation team.
3. Mediation involves an independent third party that acts as a facilitator, hears both sides of the problem and helps people achieve a satisfactory resolution about the issues at hand. The mediator's primary function is to provide a forum where disputants can construct their own mutual agreement. Mediators work directly and in-depth with the people who are involved in conflict. Mediators encourage discussion but are not concerned with rules of evidence. Witnesses and documents are seldom presented and are used to persuade the other party, not the mediator. Mediators impose no decisions but mediators do help people make their own decisions about what solution will work for them.

Mediation is

1. a cooperative, interest-based process of negotiation managed by a third party neutral with the goal of mutually resolving the problem in a way that is satisfactory to both sides
2. when parties make all decisions for themselves. The mediation helps the parties examine their needs and interests and explore multidimensional options for settlement that address the needs of all parties. The mediator does not advise or make decisions for the parties
3. when the parties retain control of the conflict resolution process and speak for themselves. Sometimes the parties use "advisory" counsel to assist them during the decision making process
4. when procedural rules concerning participant's confidentiality, disclosure of information, the effect of any settlement agreement, causing and the like are developed on a case by basis and are tailored to meet the needs of all parties. The mediator will often present simple "protocols" for consideration
5. when the parties reach agreements based on an exploration of settlement options, which address the needs and interests of all parties
6. when the mediator centers discussions on the present and how to best plan for the future. The mediator also focuses discussions on the connectedness and the commonalities of the parties.

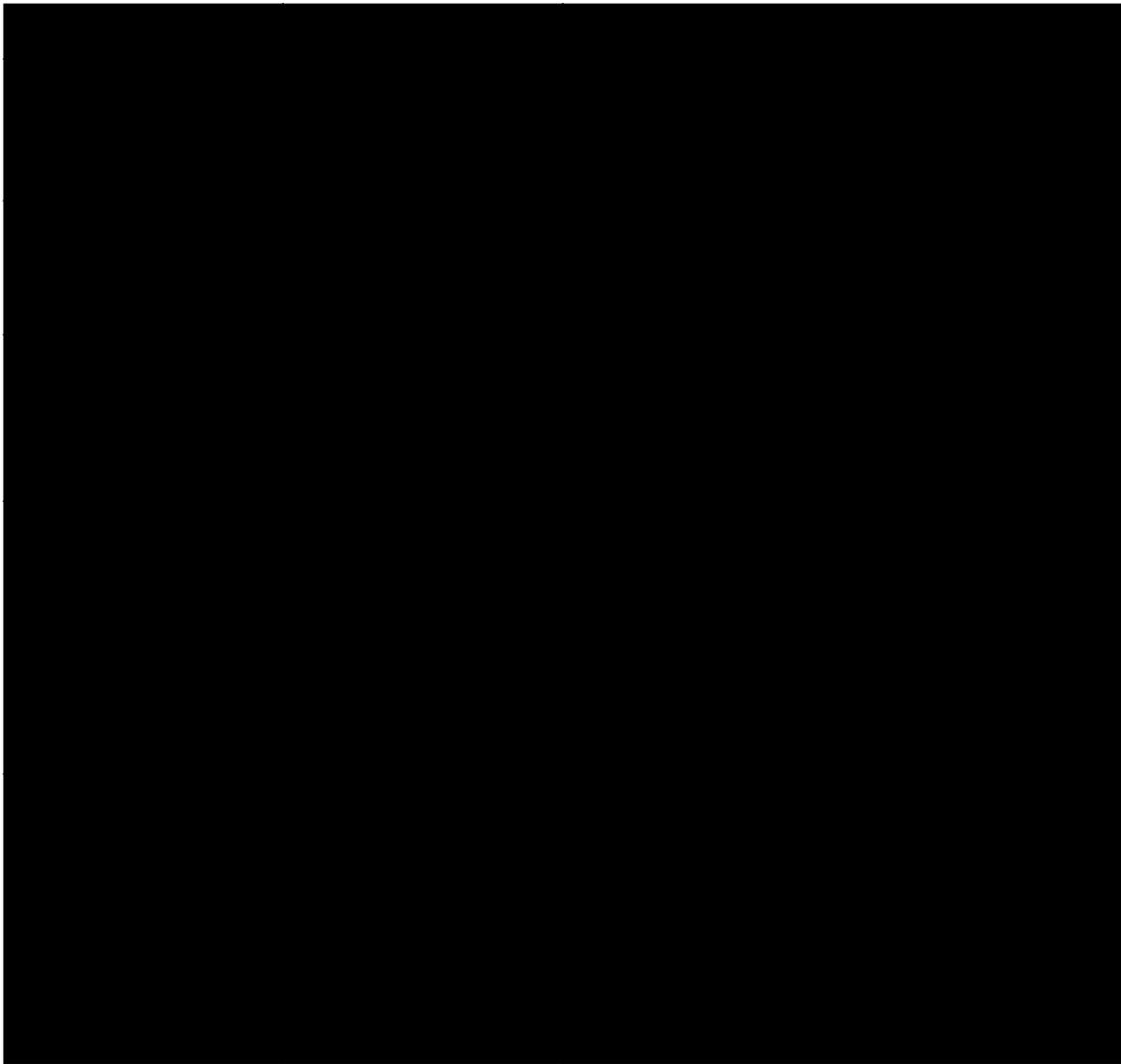
What Mediation is Not

Clearly, the essence of mediation lies is not making a judgment. Mediators do not decide cases. They do not advocate for either disputant nor represent one party against the other. They may carry representations back and forth between the disputants but they do not argue on “behalf” of either the Complainant or the Respondent. Mediators are also not therapists, counselors or social workers. While they are trying to help disputants deal with aspects of their relationships, they are not trying to resolve every quirk and kink in either the individual or their family; nor are they advice givers (“what you should do is....”). Mediators are also not police; they may suggest compliance with the law but they do not enforce the law nor do they enforce agreements that disputants enter into between themselves.

PART 5

ADVANTAGES OF MEDIATION

Conflict Resolution Process



Dispute Resolution Mechanism

In practice, conflict resolution is a complex exercise involving the permutation and combination of a host of traditional dispute resolution mechanisms. For this reason, it is imperative that we briefly analyze the major paths to resolving a conflict.

1. **Negotiation**: The most common recourse to the resolution of conflicts in our everyday life. The parties in dispute seek to carve out a mutually acceptable solution without the assistance of any third party.
2. **Mediation**: The fundamental difference between negotiation and mediation is the presence of an impartial third party who has the role of facilitating an agreement between the disputants.
3. **Arbitration**: A process of private adjudication in which a knowledgeable third party makes a binding award on the basis of some objective standards and measures after having heard the submissions made before him by both parties. The decision-making power is vested in the third party even though the disputants are at liberty to determine the scope and nature of the arbitration. Although it may be conducted in a private setting outside the court system, the process is nevertheless subject to legislation and court review.
4. **Litigation**: The most coercive and intrusive form of dispute resolution that embraces the concept of adversarial and positional negotiation. Litigation refers to a state-financed and state-administered court system of formalized rules and appealable or non-appealable decisions made by a judge or jury. Strict adherence to technicalities of law, rules of evidence, and legal jargon characterize this process. Litigation requires the intervention of lawyers who are trained in the art of aggressive positional bargaining and a judgment or sentence imposed by a third party determining who is right or wrong. All these features raise the question of whether litigation should rightly be glorified as the best remedy for conflicts and disputes.

Comparison of Mediation with Arbitration and Litigation

Process	Provider (or Decider)	Arbitration & Litigation
Decision Making	Voluntary	Compulsory
Who Decides?	The Parties	Arbitrator or Judge
Who Controls? Representatives	The Parties	Attorneys or
Procedure	Informal	Less formal or Formal
Time Required more	1 to 2 months	6 months to 3 years or
Cost	Tk. 250 – Tk. 500	Tk. 3,000 – Tk. 50,000
Concerns	Subjective & Personal	Objective & Impersonal
Subject Matter Agreement	Relationships & Communication	Law & Coll. Barg.
Focus	Future	Fast
Rules of Evidence	None	Informal or Technical
Publicity	Confidential	Public
Relationships of Parties	Cooperative	Antagonistic
Method of Negotiation	Compromise	Hard Bargaining
Communication	Improved	Blocked
Production of Evidence	Voluntary	Mandatory
Result	Win/Win	Win/Lose
Compliance with Agreement Appeared	Generally Honored	Often Resisted or
Relationship Afterward	Cooperative	Hostile
Emotional Result	Release of Tension	Tension Persists
Organizational Result	Increased Productivity	Decreased Productivity

Mediation From A to Z

The reasons why mediation works can be listed simply, from A to Z. At the least, they include the following:

- A. Mediation breaks issues down into “bite-size” bits, isolating issues so they seem less complex.
- B. The process in mediation is collaborative rather than confrontational.
- C. Mediation acknowledges and values all human needs.
- D. Mediation does not rely on memory or credibility.
- E. Mediation allows the parties to decide the outcome.
- F. Mediation encourages creative remedies.
- G. Mediation is future-oriented, as opposed to law which tries to resolve what happened in the past.
- H. Mediation permits parties to become human to each other and appear less like cardboard figures.
- I. Mediation allows both sides to see the problem as a whole.
- J. Mediation employs the synergy between the parties to bring about agreement.
- K. Mediation compliments the parties as opposed to insulting them.
- L. Mediation equalizes the power of the parties to compel a result regardless of the difference in their real power outside the mediation.
- M. Mediation surfaces hidden agendas.
- N. Mediation lets quiet people speak and talkative people be quiet.
- O. Mediation allows parties to “fine-tune” a result or change their minds.
- P. Mediation encourages the parties to actually tell the whole truth including the subjective and emotional truth.
- Q. Mediation connects parties through empathy.
- R. Mediation permits the mediators to model useful behavior and techniques for avoiding future conflicts.
- S. Mediation allows both sides to win.
- T. In mediation, the focus is shifted from people to positions and from positions to interests.
- U. Mediation permits dialogue to take place in the language of metaphor.
- V. Mediation reveals the parties deeper motivations.
- W. Mediation allows for constructive feedback without the appearance of judgment.
- X. Mediation empowers both sides to say no.
- Y. Mediation lets the parties compromise and save face.
- Z. Mediation encourages the parties to substitute internal for external constraints and avoids enforcement problems due to resistance.

PART 6

SANCTION OF LAW FOR MEDIATION

1. Mediation on a grand scale was practiced in the People's Republic of China through the institution of People's Conciliation Committees under statutory conciliation scheme of 1954.
2. Provision for conciliation of personal disputes in Japanese courts was enacted prior to World War II.
3. Pakistan adopted Conciliation Council in the year 1961.
4. In Sri Lanka the Conciliation Scheme originated from 1954. But Sri Lanka had Mediation Boards Act no. 72 of 1988 as amended Act no. 15 of 1997.
5. The Village Court Ordinance, 1976 deals with disputes in Bangladesh.
6. Barangay Justice System of Philippines started being practiced in local level from 1979.
7. In 1964 The Civil Rights Act established The Community Relations Services in the US Department of Justice to aid the settlement of racial and community disputes. The Federal Mediation and Conciliation Services, was established in 1947 to provide dispute resolution services for industry and labour. But at the same time experimented (in 1978) with resolution of non-labour disputes.
8. The Association of Family and Conciliation Courts, was founded in 1963 to promote court connected family conciliation.
9. In 1980 Congress passed the Disputes Resolution Act to provide nationwide Disputes Resolution Services as an alternative to the courts but money was never allocated.
10. In India there is Lok Adalat, but it deals with minor cases of motor accidents and so forth.

PART 7

ROLE AND FUNCTION OF A MEDIATOR

Who is a Mediator?

A Mediator is:

- t an expert person
- t a sincere listener
- t eager to know the facts
- t able to arrange open discussions
- t aware about the terms and conditions for settlement of the dispute.

Characteristics of a Mediator

A Mediator should have the following characteristics by displaying:

1. acceptance by the disputing parties
2. impartiality
3. knowledge about the culture and the ways of life of the disputing parties
4. patience
5. knowledge about the existing laws of the country
6. convincing power
7. sincere listening
8. sociable and openheartedness
9. organizing capacity
10. ideas about people of different strata in the society
11. sympathy and tolerance towards disputing parties

12. tactfulness
13. capability of solving afterwards problems
14. firm confidence and keen interest
15. capability of controlling the unfair situation
16. knowledge about the process of discussion
17. knowledge about documentation of mediation.

Role and Function of Mediators

The mediator's role is extremely diverse, and in the course of a session s/he will be required to play a variety of different roles. The mediator must assist the parties by constantly fine-tuning the conversation, deciphering the needs and interests that lie behind each party's particular position, dealing with the complex psychological and emotional dynamics that accompany the conflict, and performing a wide array of other interventions. The mediator must act as a:

1. **Convener:** The key role of the mediator is to get the parties to face each other and get them to agree to negotiate a settlement in good faith.
2. **Process-Assessor:** The mediator plays an instrumental role in determining the degree of intervention necessary to structure the conflict and help the disputants to identify their underlying interests for the purpose of assessing whether those interests may be reconciled or jointly accommodated. S/he may also assess the personalities involved in the conflict and determine how they can be made to work together to bring out a resolution.
3. **Communication Facilitator:** The mediator should master the skills of active listening and must be able to summarize, restate, frame, reframe, and prioritize issues in order to facilitate constructive and meaningful dialogue between the parties. By setting the context, making observations, asking relevant questions, using reflective statements, checking perceptions, and eliciting reactions, the mediator should seek to develop a comfort zone for the parties to talk and air their views openly. Like the psychotherapist, the mediator must delve into the dispute with the goal of unraveling hidden agendas and reading inner messages, as this will reveal the parties' underlying needs. To ensure the free flow of communication, the mediator may also need to circumvent issues that hinder interaction between the parties and will have to make transitional statements that have a positive bearing on the parties' approach to their conflict.
4. **Referee:** The mediator has to undertake the daunting task of acting as a referee or buffer zone between the parties. To achieve this, he must recognize and deal with any power imbalance between the parties and must reconcile their respective desire

for self-justification. The mediator is not a judge or an arbitrator, but does have considerable power, stemming first from his/her authority, experience, and expertise, and second from the information s/he has gathered during intake procedures and sessions (both joint and private) with the parties. When the mediator senses a power imbalance, he should exercise his/her personal or positional power in order to empower the more vulnerable party and encourage him/her to participate in the decision-making without fear of retribution. The mediator should also consider staging discussions on the weaker party's home turf and supporting his/her interests in order to equalize the bargaining position of the disputants. Under MMM, for example, an extensive intake procedure is carried out to balance any power discrepancy between the parties. These procedures help empower the more vulnerable party (women, the economically disadvantaged, the uninformed) by educating them about their potential rights and encouraging them to speak. By listening to the grievances and acknowledging the concerns of the weaker party, the playing field can be made considerably more equal. Finally, the mediator must face one serious challenge when attempting to empower the weaker party. In doing so, he compromises his own neutrality and necessarily makes his intervention more directive. The mediator must skillfully attempt to reduce power imbalances without compromising his credibility in the eyes of the more powerful party.

5. **Reality-Tester:** Besides acting as a sounding board for the parties to test out their theories regarding the conflict, the mediator must also assume the role of reality-tester and provide the disputants with an independent perspective on the quality of their arguments. The mediator should ask a lot of questions and challenge disputants to raise questions and doubts about their own arguments. This will allow the disputants to determine their best and worst alternatives to a negotiated agreement and will persuade them to come up with a realistic claim that is not based on far-fetched and wishful thinking. The mediator may also encourage the parties to enter into a negotiated settlement by helping them measure the potential risks involved in walking away from the negotiation table. Such interventions enable the parties to reflect more realistically on their claims, behaviors, and attitudes.
6. **Idea Generator:** Parties in conflict tend to exhibit poor communication skills. This can completely distort a disputant's perception of what the other party wants and is willing to concede. As a result, both parties lose the ability to think clearly and objectively, and the element of blame begins to dominate their understanding of the conflict. Under such circumstances, the mediator should attempt to document the conflict sequence in neutral language, to help the parties develop collaborative options beyond zero sum thinking. To do this, the mediator must again rely on his listening, clarifying, and reframing skills.
7. **Resource Expander:** Misunderstandings, broken lines of communication, and emotional and psychological volatility preclude parties from thinking outside their assumed positions. The mediator must therefore facilitate movement from disputants' positions to their underlying interests in order to expand the resources

for trade-offs and compromises.

8. **Harmonizer:** Most conflicts are fraught with negative emotions that color disputants' perceptions; it is therefore important for the mediator to create an emotional climate conducive for productive dialogue and decision making. S/he can accomplish this first by allowing parties to vent their anger and feelings of frustration and second by easing tension through a tactful manner, neutral wording, and a sympathetic presentation of each side's position to the other.
9. **Consensus Tester:** The mediator should frequently assess the possibility and proximity of an agreement through a trial-and-error process. This will provide insight into the specific areas of contention.
10. **Gainer of Closure:** Although the decision-making capacity is vested in the disputants, the mediator may intervene to help them realize when an idea has been presented that may be potentially developed into a solution. A potential solution may arrive in the midst of a heated exchange. It is up to the mediator to encourage the parties to leave the dispute behind once such a suggestion arises.

A Mediator Will do the Following

(a) Before mediation the mediator will:

1. think about the duties assigned by the authority
2. be prepared for what to do
3. realize the need, interest and emotion of both disputing parties
4. assist both parties to reach a win-win solution
5. collect necessary information regarding the dispute.

(b) During a mediation session the mediator will:

1. think about yourself
2. start with something attractive to all
3. proceed slowly and continuously
4. introduce self distinctly and nicely
5. address everyone by name
6. be faithful and dedicated
7. show self-confidence
8. be mild and intelligent

9. pursued both parties to be patient in regards to listening to each other
10. be an attentive listener
11. not be dominant
12. be aware of the positive result of the sitting
13. take minimum time for a confidential sitting if necessary
14. maintain secrecy
15. spend time according to the plan
16. for a peaceful agreement, settle the disputing issues gradually
17. settle the dispute sincerely and impartially
18. make the best use of time when parties are supposed to reach a decision
19. be conscious of reaching a realistic agreement.

What a Mediator Will Not Do?

A Mediator will not:

1. dominate discussion
2. give a decision on hearing about the conflict
3. identify somebody to blame and take a side.

In a Mediation session:

1. no specific witness like courts are required
2. no party is offended.

PART 8

ART OF MEDIATION

Active Listening

When the parties are in a mediation talk, the mediator should listen actively in order to:

1. convey respect and interest
2. role model respectful listening
3. convey empathy
4. learn the parties' perspectives
5. discover underlying causes of conflict
6. discover the parties' interests
7. hear the parties' "terms" or "position"
8. learn the parties' responses to offers
9. discover what the parties have in common
10. discover positives to share
11. discover room for movement
12. discern a softening of attitudes
13. discern a readiness to settle.

Phrases for Active Listening

Encouraging	"Can you tell me more?"
Clarifying	"When did this happen?"
Summarizing	"Let me see if I understand what you just said."
Acknowledging	"I can see you are feeling very angry right now."
Open Questioning	"Why?" "What would you like to see happen?"
Responding	"I see it this way How do you see it?"
Soliciting	"I would like your advice about how we can resolve this."
Encouraging	"How would you feel if it were you?"
Normalizing	"Many people feel the way you do."
Empathizing	"I can appreciate why you feel that way."
Reframing	"I understand that you feel when s/he"
Validating	"I appreciate your willingness to be here."

Purposeful Speaking

When parties have finished speaking, the mediator may wish to speak, for one of the following purposes in order to:

1. set the parties at ease and earn their trust
2. make sure the mediation process is clear
3. draw out the parties' view of the conflict
4. demonstrate that they are listening
5. give evidence that they are listening
6. show that they care, and take what they hear seriously
7. help the parties hear one another
8. manage tensions between the parties
9. find out the nature of the relationship between the parties and their expectations for the future
10. see if there are underlying causes for the conflict
11. find out the parties' initial expectations
12. discover the parties' interests
13. find out the "givens" that the parties must work within in developing an agreement
14. help the parties invent options for mutual gain
15. test the parties' receptiveness to various options
16. transfer information
17. translate information, re-frame statements positively
18. share positives
19. help the parties see reality
20. stress the consequences of various options
21. build the will to settle
22. keep up the parties' and the mediators' morale
23. compliment the parties on reaching an agreement.

Phrases for Mis-Communication

Ordering	“You must...” “ You have to ...” “You will...”
Threatening	“If you don’t, then” “You’d better or else...”
Preaching	“You should...” “You ought...” “It’s your duty...”
Lecturing	“Here is why you’re wrong” “ Do you realize”
Giving Answers	“What I would do is....” “It would be best if you....”
Judging	“You are argumentative....lazy...” “You’ll never change....”
Excusing	“It’s not so bad” “ You’ll feel better....”
Diagnosing	“You’re just trying to get attention....” “ What you need is....”
Trying	When? How? What? Where? Who?
Labeling	“You’re being unrealistic.... emotional angry....”
Manipulating	“Don’t you think you should”

Sample Questions to Develop Appropriate Criteria in Mediation

1. How can we decide which option to choose?
2. How can we accomplish what you want?
3. What makes that solution fair?
4. How did you arrive at that idea?
5. What is the theory behind that?
6. How do other people handle that problem?
7. What would happen if you went to court?
8. Would expert opinion be of any help?
9. What is it you are trying to accomplish?
10. How have you resolved this problem before?
11. Is there another alternative you can think of?
12. Why do you think that will/won’t work?
13. What would you need to resolve this dispute?
14. What do you think your opponent wants?

15. What would make you feel that you both have won?

Ten Reasons to Caucus

1. Explore hidden agendas.
2. Reduce emotional tension.
3. Build trust.
4. Resolve personal emotional issues.
5. Analyze risks and reasons for settlement.
6. Test for realistic perceptions.
7. Explore available options.
8. Defuse resistance.
9. Communicate confidential or embarrassing information.
10. Break impasse.

Iron Laws of Human Behavior

The iron laws of human behavior are actually made of aluminum. They work most of the time for most kinds of people.... enough times that you can rely on them as a rule of thumb. They bend, but don't usually break.

1. People will rarely make a decision if there is any way to avoid it.
2. People usually act out of self-interest.
3. When two people have a dispute, it can't be resolved until both parties decide to resolve it.
4. When two people have a dispute, they can't resolve it until some of the mistrust has been eliminated.
5. People tend to carry out decisions they helped formulate.
6. People do not like to be told what to do.
7. People are more important than disputes. If they can agree to live peacefully with each other without resolving who did what to whom, then those precipitating incidents become unimportant.
8. Disputes are not resolved by dwelling on the negative. They are resolved by discovering preliminary areas of agreement, accentuating the positive, and expanding small agreements into larger ones.
9. When all is said and done, regardless of the type of case or where it comes from, the dispute belongs to the disputants. It is not the lawyers, judges, arbitrators or mediators or mediators who must live with it.

10. No settlement is entered into without some doubt or reservation.

Skills, Nuances, and Techniques of Mediation

As the above roles suggest, mediation is a very serious job that requires as much practical skill and technique as theoretical knowledge. To understand both parties' perspectives on a conflict situation requires a keen, intuitive sense of human psychology, and to gain the trust of both requires an equal degree of compassion, empathy, humor, and sensitivity. Few individuals possess all of these indispensable people skills, and even fewer are able to calmly maintain them in a heated conflict situation. A mediator must therefore nurture and fine-tune his skills through continuous learning and reflection. The following skills are essential for successful mediation:

1. **Active Listening:** The mediator must bridge the communication gap between the two parties, who are reluctant to provide each other with an opportunity to be heard. Promoting constructive dialogue between the disputants is done by aptly demonstrating that their viewpoints are not being ignored but rather taken into account. Active listening consists of much more than just effective and attentive hearing and also includes the following elements:
 - a. **Reading Body Language:** A careful observation of a disputant's body language can help gain insight into the context of the verbal message being delivered. Body language constitutes *body movement* (leaning forward or backward, getting fidgety), *eye movement* (relaxed, staring, or avoiding) and *body posture* (open: torso directed away from the other person; closed: arms and legs crossed, palms hidden).
 - b. **Clarifying:** The mediator should constantly check with the disputants to make sure he has received the right message in light of the points they have made. This is a great way to keep the negotiation focused on facts, figures, and events, rather than on the feelings and attitudes that accompany them. Clarifying also preempts the mediator from missing important points and enables him/her do away with ambiguities and encourage the parties to speak more clearly. Clarifying questions include:
 - | So what you are saying is...
 - | If I understand you correctly...
 - | Okay, so you want...
 - | Could you please explain that again? I do not understand.
 - c. **Pausing / Taking Time-Outs:** Pausing or maintaining silence after one side has made his/her point reflects that s/he has been attentively heard. It also allows and encourages the party to make a significant statement that s/he would have otherwise refrained from in the event that s/he was abruptly interrupted by an inappropriate comment. In a situation of intense conflict, silence is a golden means of communication that sends the message that the mediator has shown respect for what has been conveyed. It may also indicate empathy, embarrassment, challenge,

uncertainty, or simply a cultural norm on the part of the mediator. In circumstances that do not warrant a verbal acknowledgement or feedback, silence may allow disputants to unburden emotionally fragile issues and may facilitate the revelation of sensitive information that changes the dynamics of the existing conflict.

- d. Inquiries or Open-Ended Questions: General and indeterminate questions that do not call for a specific or a simple yes/no answer from the respondent enable the mediator to elicit further information from the parties in dispute. Unlike closed questions, which stop communication by demanding an affirmative or negative response, open-ended questions ensure the free flow of information and are vital for developing options to resolve the conflict. The following are instances of open-ended questions:
- | How did you arrive at that figure?
 - | Why do you feel that you have been wronged?
 - | What makes you feel that there is no other avenue?
 - | What led you to that conclusion?
 - | Is there anything else that you would like to add to that statement?
- e. Verbal Follow-Up: The mediator should encourage the speaker to continue his statement and demonstrate that he is paying attention by uttering short follow-ups such as, “Oh really,” “I see,” “Yes,” etc.
- f. Empathetic or Reflective Questions: The mediator must demonstrate empathy and show that s/he understands what the disputants are going through. In other words, the mediator must show that s/he appreciates why each disputant has taken a particular stand and must make it clear that s/he is sincerely trying to step into the shoes of each party. The following are examples of reflective questions:
- | It sounds as if you are really hurt...
 - | I can understand that you feel let down because...
- g. The mediator must be cautious about the subtle difference between empathy and sympathy, so that neither party perceives him/her of being biased or taking sides.
- h. Summarizing: When the mediator summarizes, in his own language, what one or more of the disputants has said, he is given the opportunity to recall and condense information and to demonstrate to the parties that he understands their views and perspectives. Summarizing also provides a sufficient time gap for both sides to consider what has been said, so that they are more prepared for the next round of discussions. It is highly recommended during the advanced stages of negotiation, when the parties have already engaged in selecting options and are close to reaching an agreement. Summarizing is also effective when a previously adjourned mediation sessions has been reassembled, when a negotiation has reached a point of deadlock, or before the finalization of an agreement. Instances of summarizing

statements are:

- | Let me check that I understand your position properly...
- | Let me see if I understand you so far...
- | Can I make sure I have got this right?

2. Reframing: Reframing is a strategy that allows the mediator to detoxify poisonous statements and present the sequence of the conflict in neutral language. When reworking the words, phrases, and terms used by the disputants, the mediator should create a non-intrusive and emotionally non-invasive language, free of allegations and accusations. When used effectively, reframing can restructure the parties' perceptions of the conflict situation, remove the element of blame, and provide the parties with the necessary insight for carving out a mutual solution. It serves the following purposes in mediation:

- | replaces accusation, hostility, and verbal sting with neutral language
- | reorients parties from a negative to a positive perception of the issues
- | shifts the focus from positional claims to underlying interests
- | removes personal judgments; shifts the focus from the people to the problem
- | focuses parties' attention on the present and future rather than the past
- | determines issues of mutual concern.

The following are some examples of successful reframing and its objectives:

- a. **Party Statement:** "Hanif has always failed to repay his loans and never returns the money in time."

Mediator's Reframe: "So Rahman, if Hanif agreed to pay up half the loan in a week, could you consider giving him another month's time to pay off the rest?"

Objective of Reframe: Removes judgment; shifts the focus from the people to the problem and from the past to the future.

- b. **Party Statement:** "All I have had since he became a tenant is lies, nothing but white lies."

Mediator's Reframe: "So Shakir, you see things differently from your tenant Adnan?"

Objective of Reframe: Removes verbal sting and accusation, introduces neutral language.

- c. **Party's Statement:** "You are a highly irresponsible father and my children are much

better off without you.”

Mediator’s Reframe: “So Nafisa, you are trying to do all the parenting alone. You are taking too much responsibility for making your husband a good father and protecting his relationship with the children.”

Objective of Reframe: Removes the accusation, shifts the focus from position to interests.

- d. Party’s Statement: “Well how can you do business with Akram, who takes forever to decide on even petty matters?”

Mediator’s Reframe: “So Akram is careful about making decisions, which affects your partnership?”

Objective of Reframe: Reorient from negative to positive perception.

- e. Party’s Statement: “I have to get out of this mediation session right now.”

Mediator’s Reframe: “So Imtiaz, you are anxious about whether you can negotiate successfully?”

Objective of Reframe: Shift from position to interest.

A word of caution: Reframing is an art and must be cultivated with a lot of care and caution. When used poorly, it can be perceived as the mere parroting of someone else’s viewpoint and may be quite annoying and frustrating for the parties. In the process of reframing, the mediator must also ensure that s/he is not perceived as being biased or partisan. Inexperience combined with inappropriate wording may only compound the problem and actually prevent a satisfying solution from arising.

PART 9

THE MEDIATION PROCESS

Mediation is practiced in various ways, its definition is somewhat imprecise. Consider the characteristics of mediation described below.

- a. Mediation is a process in which conflicting parties attempt to reach a consensual settlement of issues with the assistance of a neutral party.
- b. The mediation process systematically isolates points of agreement and disagreement, develops options, and works toward a final agreement.
- c. Mediation is a “helping” intervention that is goal-directed and oriented toward problem-solving.
- d. Mediation is a group process that examines facts, feelings, and behaviors.
- e. The mediation process emphasizes each participant’s responsibility for making decisions that affect his or her own life.
- f. Mediation is a flexible process that allows participants to use outside experts (lawyers, therapists, etc.) in order to reach the best possible solution.

Remember that mediation may not always resolve all elements of a dispute, but it does usually keep conflict at a manageable level. More specifically, the goals of mediation are:

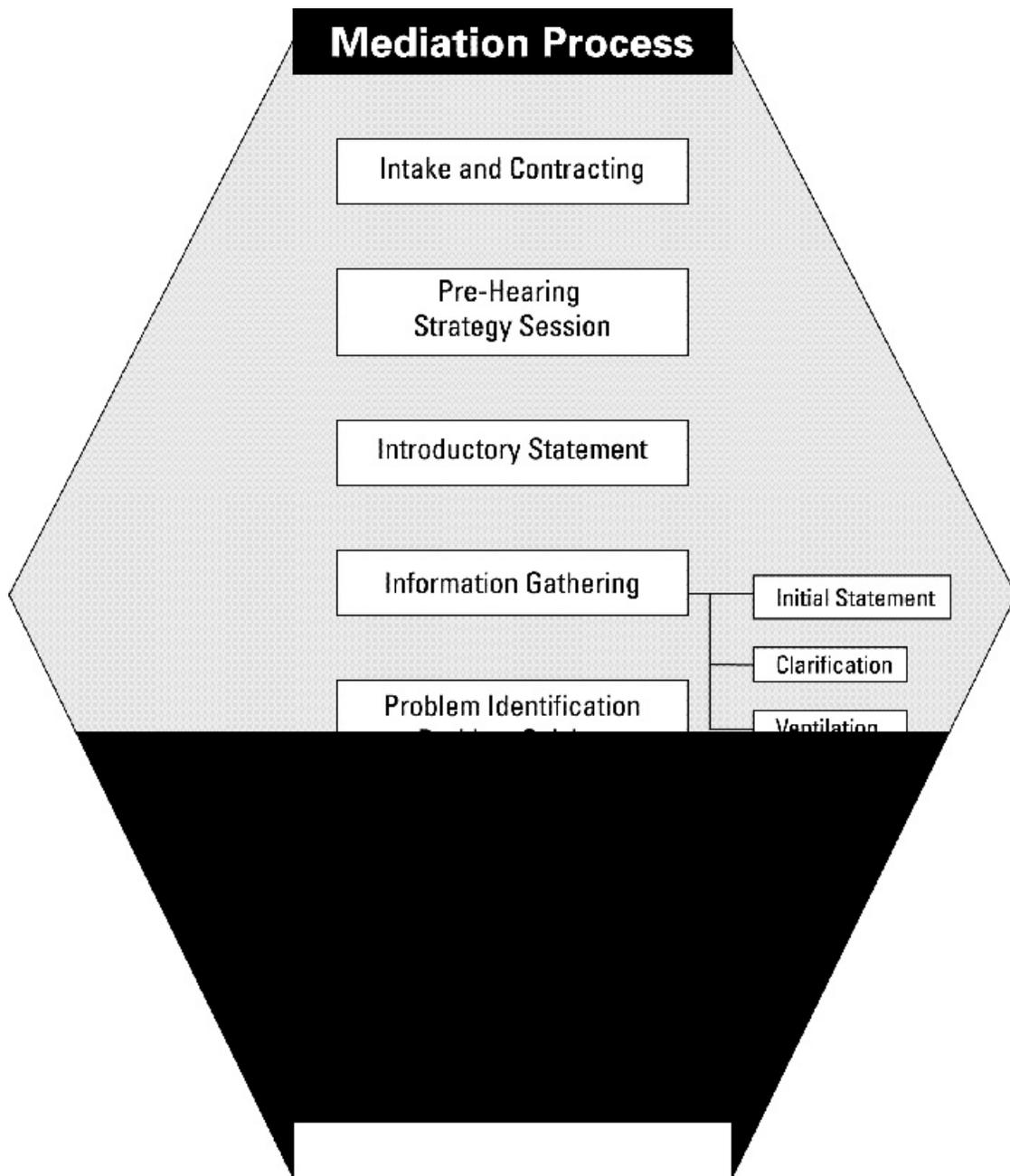
- a. to help the involved parties resolve their conflict in a manner that is compatible with their abilities both to commit themselves to and follow through on an agreement
- b. to identify facts and feelings that personify the conflict and to establish a means for resolving the conflict without resorting to violence
- c. to encourage the involved parties to work further on those issues that cannot be resolved in individual negotiations
- d. to identify the communication patterns that emerge during the mediation and to note the destructive behaviors that result from those patterns; and
- e. to offer conflicting parties an alternative to the court system.

The benefits of mediation are numerous. Perhaps the most important is its effectiveness in resolving emotional and factual issues in a dispute. Other benefits include mediation’s:

- a. affordability
- b. convenience
- c. privacy

PART 9

- d. comfort
- e. speed and ease of use
- f. flexibility
- g. healing quality and
- h. participatory nature, which results in a strong commitment by the disputants to adhere to the agreements reached.



The above chronology of the mediation process represents an ideal case. Although mediators are trained to intervene in a conflict using this chronology, disputing parties do not necessarily proceed in such an orderly manner. Typically, the intake, pre-hearing, and introductory statement stages occur in the order described once information gathering is initiated.

However, the conflicting parties make choices (both conscious and unconscious) concerning how the mediation will proceed. Some will share much information about the conflict and others will share little. Some will spend considerable time dealing with the emotional aspects of the conflict before considering the negotiations phase; others will jump directly into negotiations. As the mediation proceeds, the parties may move rapidly back and forth through various stages of the process until they reach closure, either with or without an agreement.

Intake and Contracting

The mediation process begins when one or more parties to a dispute decides to ask a third party intervenor to assist in resolving an impasse situation. If only one party initiates the process, the remaining party or parties may or may not choose to participate. On occasion, judges or prosecutors may require conflicting parties to submit to mediation. If the parties to a dispute voluntarily agree to participate, they have taken a cooperative step that suggests a win/win outcome can be developed. This step can be seen as a type of contract demonstrating that an effort is being made by the disputants to resolve their conflict.

To set the stage for the mediation, each party outlines his or her view of the conflict. Although this information establishes the groundwork for the mediation, it is not always completely reliable. In an impasse, the conflicting parties often develop polarized positions, a situation which tends to breed distrust. This in turn makes it difficult to achieve full disclosure of information. Such sharing of information usually occurs only after the involved parties are comfortable with one another and with the mediation process itself. To help in this latter regard, a mediator may need to educate one or more of the parties regarding the usefulness and/or advantages of mediation for resolving conflicts (e.g., in mediation disputants are assured that their side of the story will be heard and that they can make their own agreement). If all parties do agree to participate, the mediator then schedules a meeting at a time that is agreeable to all.

Pre-Hearing Strategies

Prior to the actual mediation, the mediator should decide whether to mediate alone or with others. Because co-mediation requires considerable teamwork and planning, potential co-mediators should ask themselves whether their mediating styles are compatible and whether they feel comfortable mediating with one another. If the answer to these questions is “Yes,” the mediators should determine beforehand who will have responsibility for the

different aspects of the mediation (e.g., who will give which parts of the introductory statement). The mediators should also establish safety valves in case a problem arises between the mediators during the mediation. Once these issues are decided, the mediators can focus on housekeeping concerns, such as setting time schedules, selecting a mediation site, and managing case records. Also, the mediators need to design a seating arrangement which they believe will maximize communication between the disputing parties. This includes taking into account the presence of “significant others” who may be strategic to the mediation. With the resolution of these issues, the mediators are finally ready to meet with the conflicting parties.

Ground Rules for Mediation (disputants)

1. Speak only for yourself and in the first person.
2. Use language that does not blame or find fault with others.
3. Do not interrupt while another is speaking.
4. Use non-inflammatory words.
5. If stating a complaint, raise it as your own concern and follow it with a constructive suggestion as to how it might be resolved.
6. Attack the problems and concerns at hand; do not attack the other person.
7. Make statements about your interests and needs instead of stating your position.
8. Be respectful to others.
9. Listen to understand what each person is saying without being judgmental about the person or the message.

Introductory Statement

When the disputants to the conflict appear, the stage is set for the introductory statement of the mediators. The purposes of this statement are:

- a. to affirm the goals of mediation
- b. to establish ground rules for the session; and
- c. to explain the concepts of confidentiality and impartiality.

The introductory statement also helps set the tone for a mediation. When mediators present this introductory information in a concise and trusting manner, disputants gain confidence, both in the mediators and in the mediation process itself. The points that should be covered in an introductory statement include:

- a. welcoming statement

-
- b. an identification of the parties present and a clarification of the names to be used during the session (i.e., first or last name)
 - c. an explanation of the mediation process, including a definition of mediation
 - d. an explanation of confidentiality and impartiality and how it applies to the current mediation; and
 - e. an outline of the ground rules for the mediation, specifically:
 - n that each party will be allowed to make an initial statement
 - n that interruptions will not be allowed
 - n that the mediators will take notes during the mediation
 - n that the mediators may choose to meet privately (i.e., caucus) with one or all of the parties involved
 - n that the disputants will not resort to name-calling; and
 - n that the mediators will help the disputing parties write an agreement.

To help mediators become more comfortable with the' introductory statement and to help it sound more natural, each mediator should practice delivering the important points of the statement in his or her own words.

Other functions of the introductory statement include:

- a. verifying each party's commitment to the process
- b. allowing parties to raise sticky issues that might lead to future problems
- c. stressing the procedures to be followed during the mediation
- d. building rapport with the disputants by establishing an appropriate degree of psychological distance (and closeness) in order to intervene effectively
- e. reassuring the disputants that the mediation process can help them work through their problems; and
- f. setting expectations for the success of the mediation.

After the introductory statement is given, the mediators move the conflicting parties into the information-gathering phase of the mediation process.

Information Gathering

Information gathering involves three distinct activities:

- a. developing the disputants' initial statements
- b. clarifying the issues of the dispute; and
- c. allowing ventilation of emotions by disputants.

Initial statements each disputant is asked to give his or her view of the conflict. The statements are given without interruption from the other party. Ideally, each statement should be exactly that, a “statement.” It should not be merely a reaction to charges made in an earlier statement by another disputant.

Clarification following the completion of the initial statements, the mediators seek to clarify the strategic issues in the dispute. They do this by using open-ended or indirect questions to engage the disputants in verbal exchanges leading to voluntary disclosures of information. Such questions include how the disputants feel about certain issues in the conflict. Answering these “feeling” questions allows conflicting parties to share the often strong emotions that result from any conflict. Although direct questions are not ideal for developing trusting relationships with disputants, mediators should nonetheless feel free to use them when indirect questioning has not produced the information needed to clarify important issues .

Ventilation as indicated above, it is important to elicit the feelings of disputants concerning the issues of the conflict. During such “ventilation”, mediators can help the parties express their feelings by using affirmative approaches. This may consist of nothing more than acknowledging or clarifying the emotional issues when they arise. As simple as this may sound, however, mediators may find that the expression of strong emotions by disputants is difficult to handle. Instead of letting the conflicting parties ventilate these feelings, some mediators have a tendency to interrupt disputants when the expression of their emotions becomes “too loud” or “too intense”. Mediators should interrupt such sharing of feelings only when the level of emotion is disruptive or uncomfortable for the disputants themselves. A mediator should not interrupt simply because he or she is uncomfortable with the strong emotions being expressed. On the other hand, there are cases when the disputants are actually unable to air their emotions, even when mediators try to elicit them. When this happens it is entirely acceptable for the disputants not to ventilate.

To determine the productiveness of ventilation, mediators should review key points to see if the emotional information generated is actually being heard by the other party. Mediators can do this by asking the other party to respond to the feelings being expressed. For example, a mediator might ask, “Did you understand that he felt (fill in the feeling) when you said/did... ?” Productiveness can also be gauged by how much information is generated during ventilation. When individuals ventilate, they typically share facts freely and without careful consideration. This usually results in a wealth of information that can be used to illuminate the issues of the case.

The initial statement and ventilation stages of the mediation process are steps taken toward clarifying the conflict situation. To further clarify confused issues, a mediator should summarize, restate, and/or mirror the information as he or she understands it. If any of what the disputants say is in question, it may be necessary to use the following approach to establish standards of credibility for the conflict.

1. Hear all information, including hearsay.
2. Encourage the disputants to communicate directly with one another to help them establish what is the conflict.
3. If the disputants agree on what is credible, a mediator should not interject his or her own view of the conflict, even if it appears to be more sensible.
4. If the disputants disagree on what is credible, each party should be made responsible for spelling out what the differences are.
5. When there continues to be disagreement over what is credible, mediators should check their own perceptions of the situation with what the disputants say actually happened (i.e. they should “reality test” their perceptions, but they should do so without judging the correctness or in-correctness of the disputants’ perceptions).

If credibility remains an issue mediators may share with the disputants their own understanding of the situation. The mediators may also seek background information to help clarify what actually transpired. During such clarification mediators should look for common points in order to begin developing a consensual standard. If the parties develop such a standard, the conflict can be resolved; if they do not develop it, the only recourse left to the mediators short of halting the mediation is to proceed and hope for a standard to emerge later in the process.

Problem Identification and Problem Solving

As the facts, feelings, and behaviors associated with the conflict are elicited, the parties define for themselves the problems that need to be resolved. Although each disputant theoretically describes these problems at the intake and/or initial statement phase of the mediation, the real definition occurs during ventilation and clarification. Disputants reveal what they consider to be problems and their own priorities with regard to these problems by doing one or more of the following:

1. expressing repeated interest in one issue or one set of issues
2. expressing emotional commitment to one issue or one set of issues
3. enlarging upon an issue to the detriment of other issues; and
4. directly avoiding an issue considered important by the other party.

After the problems associated with the conflict are identified, mediators should determine whether the disputants have provided enough information for the bargaining and negotiations phase of the process to begin. If there are any gaps in the information,

mediators should ask further questions of the disputants.

During this phase of the process, the mediators should also help the disputants outline the potential choices they may have for resolving the conflict. This can include “brainstorming” possible alternative solutions for the conflict. Mediators can even outline an “ideal solution” for the disputants and then compare it to their needs. As options are generated, the problem-solving phase of the mediation process begins. At this point, however, mediators need to be aware that the process can break down unless numerous options are spelled out by the disputants. Although it may seem easier to select the first option that emerges, it is usually advantageous to develop others. Mediators should also remember not to advocate one option over another at this juncture, since this can push the conflicting parties into premature bargaining and negotiations. After potential options have been generated, mediators should help the disputants review the consequences of each option so they will fully understand what each entails.

Bargaining and Negotiations

Once the disputants seriously begin considering options for resolving their conflict, they have entered into “bargaining and negotiations”. This stage in the mediation process involves a “give and take” on issues important to the disputants. Bargaining usually follows a sequential order consisting of proposals, counterproposals, and concessions. The ultimate goal is to find and agree on options that will satisfy the needs of all the conflicting parties.

Even though everyone engages in negotiations on a regular basis, this phase of mediation is viewed by many as the most difficult. When difficulties arise in negotiations, it is easy for conflicting parties to fall into old and destructive patterns of relating to one another. When this occurs, emotional outbursts may be triggered. This tends to hinder communications between the disputants, often leading them and the mediation back to the ventilation stage. Disputants engaged in this cycle can easily lose track of the options that have been proposed and may even revert to their initial demands. To counter this tendency, mediators should help the parties work through the process once again. They can begin by allowing the disputants to ventilate. If any new issues are uncovered, they should be clarified, and attempts to resolve them should be initiated. When the disputants find themselves back at the bargaining and negotiations stage, the mediators can then remind the disputants of the options that have already been proposed and the agreements, if any, that have resulted.

Another problem encountered during bargaining and negotiations is the “impasse”, a situation in which conflicting parties seem-unwilling to compromise on their demands. Faced with such a situation, mediators should “collapse” (i.e. mentally review) the mediation to determine if the parties have completed each stage of the process. This is necessary since disputants do not always follow the mediation process in the order described here. In some instances whole stages of the process may have been leapfrogged,

in which case the mediators should lead the disputants back to those missed aspects of the mediation.

If an impasse is not the result of incomplete or missed stages in the mediation process, mediators should consider two other possible causes for the impasse. First, the motivation of the conflicting parties may be the cause. The mediators need to clarify exactly what the motivations of the disputants are. One very direct way of doing this is to ask the disputants why they came to mediation and what they think will happen if an agreement is not reached. If their motivations are completely different from one another, this fact needs to be recognized by the parties. If this recognition, or “ownership”, of motivations does nothing to move the parties in their impasse, the mediators should check the second possible cause for the obstruction, viz., themselves. They need to ask whether they have consciously or unconsciously taken sides in the conflict or whether they have limited the flow of information in some manner. If the mediators determine that they are indeed the cause, they should mentally step back and allow the disputants to work through the issues without interference.

Once an agreement appears imminent, mediators should help the parties move from a general “meeting of the minds” to a more specific understanding of the points on which they agree. This brings us to the agreement writing phase of the mediation process.

Agreement Writing and Closure

The goal of mediation is to reach an agreement that is acceptable to all parties. During the “bargaining and negotiations” phase, mediators need to take careful notes as each issue is settled. Special attention should be paid to the actual language used by disputants and to the exact terms of agreement over each issue. Mediators should not be afraid to stop the process in order to record details accurately.

During the “agreement writing and closure” phase of the mediation, mediators perform two basic tasks that can have a profound effect on whether or not the conflicting parties ultimately adhere to the final agreement. First, is the task of clarification. If the details of an agreement are not clarified— such as when, where and how a specific action will be performed— that action may never be carried out. This type of problem can readily destroy any agreement. Second, is the task of reality testing, which is nothing more than asking the question, “How realistic is this agreement?” Reality testing is especially urged for issues that a mediator suspects will not stand the test of time. When engaged in reality testing, mediators should be wary of “parenting” the disputants. That is mediators should not tell disputants that their own superior knowledge of human nature, interpersonal dynamics, etc. tells them that the agreement is not realistic. Mediators can usually get the same message across by asking questions and by appealing to the common sense of the disputants themselves. The final reality test has to do with future actions and the possibility of the agreement breaking down. Thus, mediators should ask the conflicting parties, “How do you expect to handle any future problems” and, “What happens if the

agreement breaks down?” The answers to these questions should yield safety valves (i.e. specific ways of dealing with possible future conflict). If safety valves are agreed upon, they should be included in the written agreement. One possible safety valve is to get the disputants to agree to return to mediation if they are unable to deal with future problems that might arise.

Following successful clarification and reality testing, the disputants are ready to finalize the agreement. When doing this, it is best to put even the shortest and simplest agreement in writing. This limits any questions or disputes the parties may later have concerning details of the agreement. To add legitimacy to the mediation process and its outcome, any agreement that is reached should be signed by the involved parties. Although this legitimacy is important, remember that an agreement is only as sound as the psychological commitment given it by the conflicting parties. When successful, the process of mediation itself builds a psychological commitment, culminating in an agreement that is acceptable to all.

Sample Agreement on Landlord and Tenant

This Agreement is entered into by and between Fazlur Rahman and Shamsul Huq with reference to the following facts and objectives:

- A. Fazlur Rahman is a tenant and Shamsul Huq is a landlord pursuant to a (n) oral/ written lease for the house located at (A copy of the lease is attached hereto as Exhibit "1").
- B. Fazlur Rahman owes Shamsul Huq back rent in the amount of Rs. 1000.00
- C. The parties desire to make an agreement under the mediation for the termination of the tenancy and the payment of the back rent.

Now, therefore, in consideration of mutual promises and conditions set forth herein, (and voluntarily intending to be bound) the parties agree as follows:

1. Ray agrees to pay Shamsul Huq the sum of Rs. 1500.00 for all rent which he owes for the period of This Rs. 1500.00 will be paid in installments as follows:
 - Rs. 500.00 on or before
 - Rs. 500.00 on or before
 - Rs. 500.00 on or before
2. The parties agree to terminate Ray's tenancy and their lease as of Fazlur Rahman agrees to vacate the premises in good condition by midnight However, Fazlur Rahman may elect, at he option, to vacate the premises prior to provided that he gives Shamsul Huq at least one (1) day prior (written) notice. If Fazlur Rahman then vacates the premises prior to pursuant to this notice, then Fazlur Rahman shall be entitled to substract Rs. 50.00 per day for each day he has vacated the premises prior to
3. Except as modified or amended by this Agreement, all other terms and conditions of the lease between Shamsul Huq and Fazlur Rahman shall remain in full force and effect.

Executed this..... day of in Kathmandu, Nepal.

Fazlur Rahman
Address:

Shamsul Huq
Address:

Sample Customer / Merchant Agreement

This Agreement is entered into by and between Ram and Sam the owner of the Lucky Store with reference to the following facts and objectives:

- A. Sam is the owner of Lucky Store, a furnishing business and Ram is a customer of Lucky Store.
- B. On or about (date)....., Sam and Ram agreed that Lucky Store would make 6 chairs and a sofa for Ram for the total of Tk.....
- C. To date, 4 chairs have been upholstered for Ram by Lucky Store and Sam is not satisfied with the appearance of those chairs.
- D. The parties desire to agree through mediation on a full and final settlement of this incident.

Now, therefore, in consideration, the parties agree as follows:

1. Sam will pay Tk..... for the remaining unused material still held by Sam.
2. Ram will arrange to have his furniture remaining at Lucky Store picked up on
3. The parties acknowledge that this agreement is intended to be a full and final settlement of a disputed claim, and is not an admission of liability.

Ram (date)

Lucky Store by Sam (date)

Mediator

Witness

Sample Agreement Family Matter

This Agreement is entered into by and between A. Rashid and Rahima Khatun with reference to the following facts and objectives:

- A. A. Rashid and Rahima Khatun have been married for years and have three mutual children named Rakhi (date of birth 5-6-90) and Rekha (date of birth 8-18-95).
- B. A. Rashid and Rahima Khatun have been separated and living apart since
- C. A. Rashid and Rahima Khatun intend to enter into an Agreement for the division of their property, custody of their children and visitation of the children.

Now, therefore, in consideration of the mutual promises and conditions set forth herein and voluntarily intending to be bound, the parties agree as follows:

1. Children
 - a. Rahima Khatun shall have legal and physical custody of the two children.
 - b. Rashid will have visitation rights at least every other weekend, and additional times as arrange in advance by mutual agreement.
 - c. Holidays, vacations and birthdays: The children will spend ½ day with one parent, and ½ with the other.
 - d. Religion: Both parents must agree mutually on any religious instruction for the children.
 - e. Education, medical, etc.: Any major medical, therapeutic, or educational decisions shall be made by the mutual agreement of both parents.
2. Property
 - a. Rahima will maintain possession of the house they own as tenants in common at for five years, at which time Rashid can require the sale of the house if he so chooses. Furthermore, Rahima may agree to sell the house sooner.

PART 9

When the house is sold, Rahima will receive $\frac{1}{2}$ of the appraised value of the house at the time of separation, plus $\frac{1}{4}$ of the increase value.

3. Personal Property:

- a. Rahima will keep all personal property and furniture, with a few exceptions previously agreed upon by the parties.

Mediator

A. Rashid

Rahima Khatun

PART 10

SKILLS & TECHNIQUES OF MEDIATION

Strategy of the mediation process includes the following headings.

- a. The Introductory Statement by the Mediators
- b. An Opening Statements by the Parties
- c. Facilitating Communication
- d. Handling Emotional Issues
- e. Setting the Agenda
- f. Contracting
- g. Role of the Mediator in Negotiating the Agreement
- h. Breaking Impasse
- i. Drafting the Agreement
- j. Closure

A. Introductory Statement by the Mediators

Purpose of the introductory statement is:

- a. to explain the process
- b. to make the parties feel comfortable about the process
- c. to help parties gain confidence to reach an agreement
- d. to make clear to the parties, that they can only work on an agreement reached by themselves.

Outlines

Be informal

Be friendly at the first meeting. Encourage the use of first names.

Make them feel comfortable

Give positive feedback when settling disputes through mediation.

Explain what mediation is

Be clear about the neutral role of the mediators. Assure mediator is not a judge or police officer.

B. Opening Statements by the Parties

These include:

- a. giving an opportunity to both parties to describe the dispute
- b. discussing strategies to overcome interruptions
- c. requesting the parties not to interrupt
- d. turning your chair away from the interrupting parties
- e. stopping the proceedings
- f. emphasizing the importance of both sides
- g. asking parties to take notes.

C. Facilitating, Communication

i) Active listening is:

- h. nonverbal communication: nodding, body posture, smiling
- i. mirroring back: reflecting words of what the parties said
- j. focusing on feelings: reflect the feeling of the statement
- k. clarifying the main points: what the speaker said
- l. summarizing points for drawing up an agenda
- m. avoiding arguing by not asking why. Ask how?, when?, what?.

ii) Re-framing issue by:

1. emphasizing agreement: congratulate both parties on their agreement to come into mediation
2. restating issues positively, so that, parties can resolve the problem
3. refocusing the parties about issues: which will be helpful to solve
4. normalizing: the way we are thinking, feeling or acting is normal

iii) Using Open Ended Question

This usually produce more information.

iv) Pausing

Wait sometimes after a significant statement.

v) Directing the Process

If one party talks more, encourage others. Keep to the topic.

vi) Disclosing the Process

Take a break if you are confused, if you need to think.

D. Handling Emotional Issues

When handling emotional issues you must:

- b. remain neutral
- c. sit back and let the people talk for a while
- d. ask disputants to use "I" rather than 'you'
- e. stop interaction, when conflict remains high
- f. make the emotional issues an agenda item
- g. ask what would solve the problem.

E. Setting the Agenda

When setting the agenda it is important to:

- a. outline the agenda items
- b. take active role
- c. express agenda items as mutual, concerns
- d. state all issues
- e. assign the items priority basis such as:
 - immediate need
 - easily resolvable issues (try to solve earlier)
 - crucial issues
- f. note: hidden issues to be added later.

F. Contracting

Contracts can be informal and the goal is to have the parties agree on mediation and spell out the ground rules of the process. Emphasize that:

- b. mediation is voluntary
- c. mediation is neutral
- d. mediation is a good faith negotiations
- e. mediation is a participatory method.

G. Role of the Mediator in Negotiating the Agreement

The role of the mediator in negotiating the agreement is to:

1. separate content issues from process issues
2. focus on interests and goals instead of position
3. invent multiple options for mutual gain
4. refine and test the proposed options.

H. Breaking Impasse

When breaking impasse it is necessary to:

- a. break the issue down into smaller parts
- b. ask the parties why an alternative is unacceptable
- c. go on to other issues
- d. review the parties' priorities
- e. suggest consulting an expert
- f. caucus
- g. split the difference
- h. trade-off
- i. acknowledge each other's points of view
- j. tell the parties you are stuck and ask for their ideas
- k. ask parties to indicate what would change
- l. make certain the parties prefer mediation, as opposed to litigation
- m. look at the impact of various solutions

- n. stress the emotional investment
- o. encourage them to reach a complete agreement
- p. request silence to think about it
- q. ask more questions about problems, feelings, hidden agendas etc.
- r. end the session and assign homework for the parties to return next session
- s. tell the parties which alternative you believe is fair and why
- t. increase their fighting, as a paradox to show the uselessness of the conflict.

I. Drafting the Agreement

The Written Agreement:

- a. should be simple, concise, specific
- b. should reflect parties mutual understanding
- c. should allocate responsibility on both parties for fulfilling the agreement
- d. should articulate specific condition as to how, when, where an act will be carried out.
- e. should be understandable as to what dispute has been resolved and what is required
- f. should include the date, time and place, of each condition, if needed
- g. should have the agreement reflect a “win-win” situation for both parties
- h. should have a draft be prepared, to correct and modify
- i. should be signed at the end of the mediation session.

MONITORING

What is Monitoring?

Monitoring is:

- a. the systematic and continuous assessment of the progress of a piece of work over time
- b. is a basic and universal management tool for identifying strengths and weakness in a program
- c. is to help all the people involved make appropriate and timely decisions that will improve the quality of work
- e. covers a wide variety of techniques and methods and applies to the management of finance, personnel, vehicles and buildings, as well as to the progress of program activities and the way the activities are carried out.

Why Monitoring?

Monitoring commonly addresses the following needs to:

- a. gather information needed to make day to day decisions about the work
- b. provide an ongoing picture of progress
- c. maintain high standards
- d. make sure resources are used effectively
- e. plan work
- f. identify problems and find solutions at an early stage
- g. identify opportunities
- h. provide a record of events
- i. look at the process of development
- j. provide an information base for future evaluations; and
- k. to help staff feel their work has a definite purpose.

Types of Monitoring

There are two types of monitoring

1. Process Monitoring
2. Impact Monitoring

Process Monitoring

Process Monitoring should include information about the use of resources, the progress of activities, and the way these are carried out. Process monitoring is a means for:

- a. reviewing and planning work on a regular basis
- b. assessing whether the activities are carried out as planned (for example, according to standard criteria of quality)
- c. identifying and dealing with problems as they come up
- d. building on strength and taking advantage of opportunities as they arise
- e. assessing whether the style of work and management is the best way to achieve the development objectives of the work (capacity building, changing power relationship etc)
- f. monitoring changes in the target population and in the external environment that are relevant to the work.

Impact Monitoring

Monitoring should also provide information on the process towards achieving objectives and on the impact the program is having in relation to these objectives. Impact Monitoring is the means by which:

- a. the work can be related to its overall purpose on a continuous basis, in order to provide a measure of progress
- b. the work can be modified in response to changing circumstances without losing its overall directions
- c. the need to change objectives can be identified
- d. the need for further information or research can be indemnified
- e. the assumption that the activities will help achieve the stated objectives can be verified.

Impact monitoring is a form of continuous self-evaluation. If it is done well, formal evaluation will be needed less often. And if a formal evaluation is carried out, the program staff will already be familiar with their work in relation to their objectives. They will be able to participate more fully in the evaluation, and find it less threatening.

All monitoring systems should include both the Process and Impact monitoring.

Monitoring of the Mediation Project

Process Monitoring

Process monitoring includes:

- a. information about the input / resource
- b. the progress of activities as per plan
- c. ways how these are carried out.

Information from the Progress Report

The progress report contains:

- a. monthly target achievement
- b. how many applications have been received and how many have been resolved and pending
- c. the nature of the disputes and the number of women participants and so forth.

The cell will:

- a. monitor all process of work done by the project
- b. communicate with both parties about their agreement whether it is continuing or not
- c. provide reports to the management regarding achievements and problems, if any
- d. make recommendations to the management regarding the smooth functioning of the project activity.

Impact Monitoring

The monitoring cell has the responsibility to:

1. oversee and evaluate all reports submitted by the mediation workers and supervisor
2. monitor the mediation process, enforce the mediated agreement on the basis of random sampling and
3. evaluate the over- all impact of the activities in the society.

Regarding 1: the cell will oversee and evaluate the reports as a routine practice

Regarding 2: the cell will monitor certain mediation processes in order to examine, whether:

- a. the model of mediation is properly followed
- b. women are allowed to participate in the mediation process
- c. mediators are acting as facilitators to resolve the disputes
- d. the resolution is consensual
- e. any male and other social or religious biases of the mediators are predominant in the mediation process
- f. the process is properly documented.

Regarding 3: the cell will conduct field level studies focused on various aspects of the society. The study contains:

- a. on-the-spot interview with villagers, beneficiaries, committee members, village elites, teachers, women, NGO activists etc.
- b. interview through structural questionnaire
- c. data received through interviews are then processed, analyzed and published for wider dissemination.