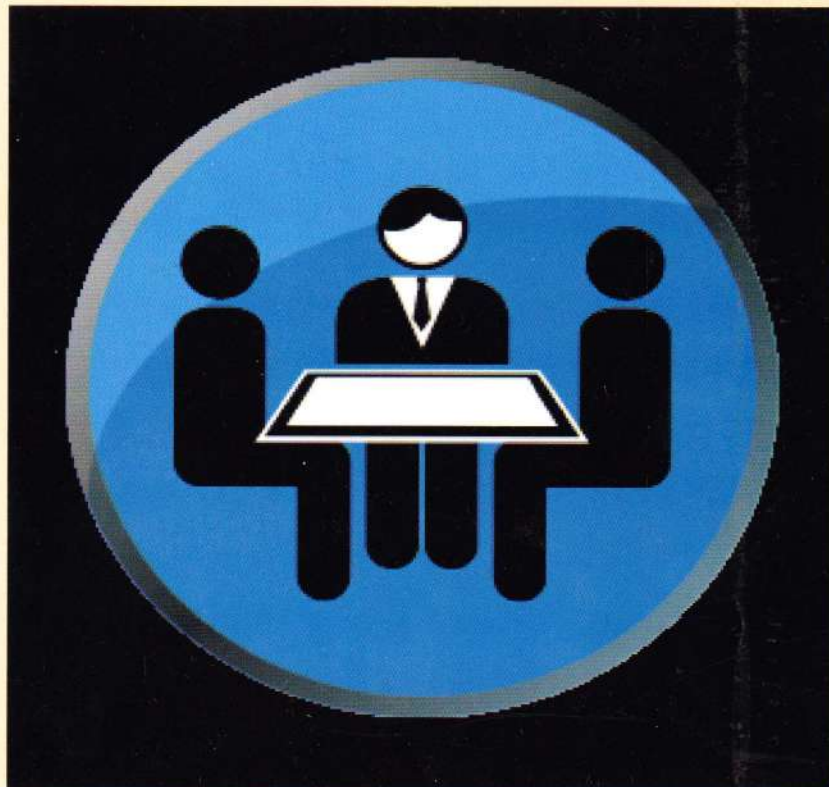


1st International Mediation Summit: Bangladesh – 2018

Mediation – the Path to Peace & Prosperity



Bangladesh International Mediation Society

Published and Printed by



**Bangladesh International Mediation Society
By its Chairman**

**Samarendra Nath Goswami
Advocate, Appellate Division, Supreme Court of Bangladesh
Room No.319, Supreme Court Bar Building
Dhaka-1000, Bangladesh.**

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বাংলাদেশের স্বপতি জাতির জনক বঙ্গবন্ধু শেখ মুজিবুর রহমান
Founder of Bangladesh Bangabandhu Sheikh Mujibur Rahman

Message From Chief Guest



Dr. Shirin Sharmin Chaudhury MP

**Speaker
Bangladesh Parliament**

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Message

I am delighted to know that Bangladesh International Mediation Society (BIMS) is going to arrange the International Summit on Mediation on 31 May 2018 in Dhaka. I would like to thank and congratulate all members of BIMS for their tireless efforts in holding this Summit.

In today's complex and fast paced life, as interaction between individuals, groups and communities has become widespread, conflict has become rife. Mediation can bridge between individuals, amongst communities and distinct groups. Therefore this year's theme of the Summit "Mediation - the Path to Peace and Prosperity", is very relevant.

United Nations and many of its organs are actively trying to promote Mediation and other forms of Alternative Dispute Resolution worldwide. I am indeed heartened to learn that Bangladesh International Mediation Society (BIMS) has been playing a pioneering role in this regard. Mediation needs Trained Mediators and BIMS have already trained about sixty mediators at home and abroad, and more are in the pipeline. I also came to learn that by providing training on Model Law of UNCITRAL and arranging enhanced training by Indian Institute of Arbitration and Mediation, BIMS has already achieved international standards. Their plans include opening of Mediation Centres at district level and spreading the training and utilization of mediation from schools to communities and up to the Courts, which may culminate in the establishment of an 'International Mediation Academy' in Bangladesh.

I am honoured to be associated with this great endeavour. My thanks and appreciation goes to all the esteemed panelists for their valuable participation.

I wish the Summit a grand success.

Shirin S. Chaudhury
Dr. Shirin Sharmin Chaudhury MP



Message from Chairman Bangladesh International Mediation Society

A year ago, on the 31st of May 2017, Bangladesh International Mediation Society was born as the result of hard work, dream and dedication of a few of us. To usher our beloved country Bangladesh into the new era of Alternative Dispute Resolution (ADR), especially Mediation, was our motivation.

We, the people connected with legal profession in this country, are extremely well aware of the inordinate delay and the almost insurmountable sufferings connected with the legal proceedings in our court system. The old adage, 'Justice delayed is justice denied', is not lost on us by any means. Hence, taking a leaf out of the book from our friends near and far, we decided to pursue ADR, specially 'Mediation' as a highly important, useful and easily available form of dispute resolution to be used in Bangladesh. Accordingly, BIMS has been taking baby steps in training and preparing 'Accredited and Certified' mediators in the country.

The 1st International Mediation Summit only goes to show our sincerity and commitment towards achieving our goal. Inauguration of the Summit by the Hon'ble Speaker of Bangladesh Parliament Dr. Shirin Sharmin Chaudhury, MP and participation therein by the renowned participants from home and abroad as panelists, has filled us with hope for the future. We feel honoured for the all-encompassing support by all and sundry.

I wish to personally express my sincerest gratitude and thanks to the Chief Guest, valued panelists, all our participants and all members of BIMS who worked tirelessly to make the event a success.

We solicit your continued support and good will for the future.

Samarendra Nath Goswami
Advocate, Bangladesh Supreme Court, &
Chairman,
Bangladesh International Mediation Society (BIMS)
31 May 2018
Dhaka, Bangladesh

Introduction to the Editor

Air Commodore M. Obaidur Rahman, BSP, ndc, psc is veteran of Bangladesh Air Force with more than three and a half decades spent in the service of the nation. A well decorated officer with credit for successful service in Command, Staff and Instructional assignments, interspersed with foreign training and assignments with UN as a 'Peace Keeper', having earned the UN Medal for his dedicated service.

Air Cdre Obaid's repertoire becomes richer through his work with Civil Aviation Authority of Bangladesh as the Member (Operations and Planning) for two and a half years and his instructional assignment with Defence Services Command and Staff College (an institute of international repute) in two terms for seven years. He also trained with various UN agencies on Disaster Management in Sri Lanka (2009) and UN Peace Keeping Operations Contingent Commanders Course, at Naval Post Graduate Institute, California, USA (2011).

During his tenure at Civil Aviation Authority he was instrumental in hosting a DGCA's Conference at Dhaka, where officials of ICAO and the Directors General of Civil Aviation of many Countries took part. He performed as the master of the ceremony at the conference. He also participated in national level seminar for formulating the Public Procurement Regulations – jointly organized by UN and Bangladesh Govt., in 2003.

His article "Flood Damage Mitigation on Civil Aviation Sector", was presented at a National level seminar and was published by the Prime Minister's Office in 2003 and his research paper, "Political Economy of Illegal Migration" was published in National Defence College Journal having local and international recognition and circulation.

Having completed the required training, the Air Commodore is now a Grade 'B' Accredited mediator with BIMS and IIAM. Air Commodore Obaid has been made the Chairman of the Convening Committee for the current Mediation Summit and also the Editor of the souvenir brought out on the occasion. Recently, he has been nominated to take over as the 'Director General' of International Mediation Academy, Bangladesh to be established under UNCITRAL shortly. I wish him and the new institute success and prosperity.

Samarendra Nath Goswami

Advocate, Bangladesh Supreme Court,
& Chairman,

Bangladesh International Mediation Society (BIMS)

31 May 2018

Dhaka, Bangladesh

Editor's Comments

Editing a publication, should be fairly simple, right? That's what I told myself, when one April night in Kohci, Mr. Goswami, asked me if I could shoulder the responsibility. I was, to tell you the truth, a bit flattered and also a bit worried at the same time. Flattered because of the scope and possibilities and worried because of all the eminent writers whose pieces I would have to edit, with my limited knowledge and limited time frame.

As the request went out for articles and write ups, I kept on gobbling up all material I could lay my hands on and tried to increase my knowledge so that I could appreciate the gems that were handed over to me and present those to the readers in the right perspective and right order. I had to be extra vigilant as the contributors are all authoritative figures and stalwarts in their own fields. My sincerest gratitude to each one of them for making this an informative and a valuable collectible for all ADR proponents.

I am very grateful to Mr. K S Sarma, Mr. S N Goswami and Mr. Anil Xavier for their encouragement and support, and also the brilliant ideas for bringing this souvenir to its present state. Dr. Rajib Goswami deserves sincere gratitude for taking the pain in publishing the issue and for bearing with all the associated troubles that I put him through. My colleagues, the mediators and members of BIMS, have been instrumental in their unconditional support; hence they deserve my whole hearted thanks as well.

I am a newbie in the world of ADR. Though I have managed to get Accreditation from BIMS and IIAM, still I feel that I have to go a long way before I could feel satisfied. This souvenir had been a look into the unknown and all the precious knowledge that awaits us along the way. I would justifiably feel gratified, should this publication prove to be of help to the readers and the ADR proponents all over.

This souvenir was brought out in commemoration of the international Mediation Summit, Bangladesh 2018. The theme was, 'Mediation – the Path to Peace & Prosperity', as the editor, I would like to end my commentary by saying that I feel it would be more appropriate if the theme was, "Mediation – the Proper Path to Peace & Prosperity". Perhaps – someday – soon.

Thank You.

Air Commodore M. Obaidur Rahman, BSP, ndc, psc (LPR)

Editor & Accredited Mediator

BIMS & IIAM.

31 May 2018

Dhaka, Bangladesh



Forewords

The Editorial Board is ecstatic for the extremely valuable, scholarly and timely contribution by our valued and esteemed panelists and other contributors, whose whole-hearted participation has undoubtedly enhanced the candour and worthiness of this souvenir. It is our honour and pleasure to have been able to bring out this publication on this momentous occasion of the 1st ever International Mediation Summit in Bangladesh. The title of the summit, chosen aptly, 'Mediation – the Path to Peace and Prosperity', has not only been appropriate but is also a true reflection of the need of the time and society.

The summit, being inaugurated by the Hon'ble Speaker of Bangladesh Parliament is highly indicative of the good intentions and support of the Government for continued and increased use of ADR in the country. Esteemed participants and panelists, by their presence and participation have not only added colour but also made the summit more eloquent and expedient. Surely, such an event being hosted successfully bodes well for the future of ADR in Bangladesh.

We wish to express our gratitude and sincere appreciations to all concerned for the remarkable support in our endeavour. We wish the event a grand success

31 May 2018
Dhaka, Bangladesh

K S Sarma
Chairman,
Editorial Board &
Advisor, BiMS

Bangladesh International Mediation Society



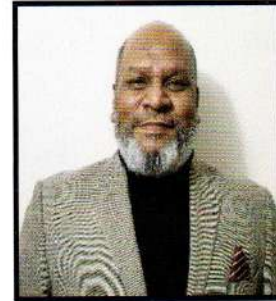
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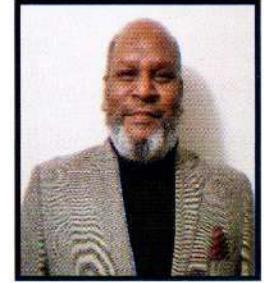
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Tangina Rahman
Advocate

Welcome Address

By Chairman of BIMS

Honourable Speaker of Jatiya Sangsad - Dr. Shirin Sharmin Chaudhury, the learned Speakers of this Conference - Mr. Kevin Brown, Principal and Co-leader of PwC's Tax Controversy and Regulatory Services, Mr. Anil Xavier, the President of the Indian Institute of Arbitration and Mediation, International Arbitrator - Mr. Inbavijayan Veeraraghavan, Dr. P. V. Rajagopal the Founder President of Ekta Parishad, India Ms. Jill Carr-Harris of Canada, well-wishers of Bangladesh International Mediation Society, Dr. Mizanur Rahman is the chief of our faculty and Mr. Sharma is our advisor thanks both of them.

Ladies and Gentlemen:

It gives me immense joy, as Bangladesh International Mediation Society has completed one year of service, to celebrate which we are holding this Conference. The first year of BIMS was successful, as we could conduct a number of useful activities to promote Mediation and Arbitration, thanks to the active involvement of its office bearers and members, all of whom I thank profusely at the outset.

It is not without significance that this Conference will be inaugurated by the Honourable Dr. Shirin Sharmin Chaudhary, who is the daughter of the late Mr. Rafiqullah Chaudhury, who was a close associate and Secretary of Banga Bandhu Sheikh Mujibur Rahman. Bangladesh International Mediation Society, has been striving hard to bring about the change that the Father of our Nation - Sheikh Mujibur Rahman wanted bring about in our legal system. The Vision 2021 of BIMS is to realize the dream of Banga Bandhu of changing the legal system with thrust on Mediation. It is with this noble purpose that my friends and I founded Bangladesh International Mediation Society and we have been contributing our time, efforts and funds to realize the Vision 2021.

The realization that there has to be an alternative dispute resolution system, which is less expensive and less time-consuming than litigation has now come upon the countries the world over. But the founding Father of Bangladesh had suggested this more than 44 years ago! Many countries are today bringing about legislations to introduce Mediation and Arbitration as the preferred alternatives for dispute resolution.

This Conference is titled 'Mediation - the Path to Peace and Prosperity'. By accepting our invitation to inaugurate it, Honourable Dr. Shirin Sharmin Chaudhury, who presides over the supreme law making body of our country - the National Parliament of Bangladesh, has endorsed her support to the cause of promoting Mediation in our country to resolve disputes,

which will not only reduce the backlog of cases in the courts, but also enhance the ease of doing business in Bangladesh, which will promote our industry and commerce.

We at Bangladesh International Mediation Society have been conducting training programmes in Mediation and Arbitration and have also been deputing lawyers and other professionals to the Indian Institute of Arbitration and Mediation to get trained. I thank Mr. Anil Xavier - the President of the Indian Institute of Arbitration and Mediation for the support that he and his institution has been extending to BIMS. I take pleasure in welcoming him to this Conference and we look forward to hearing his words of wisdom.

I had heard Mr. Kevin Brown at Netharland and developed a great admiration for him. We at BIMS feel honoured by his presence and participation in this Conference. I am grateful to him for accepting our invitation and am pleased to extend to him a warm welcome.

Mr. Inbavijayan Veeraraghavan of India has been our course director for all the three training programmes that we conducted at BIMS. He is an internationally renowned Arbitrator. I had the good opportunity to listen to him at Rangoon held last year. Since then, he has been a part of BIMS. I take pleasure in welcoming him to the gathering.

We have with us two internationally known leaders in community mediation - Dr. P. V. Rajagopal of India and Ms. Jill Carr-Harris of Canada, both of whom have been rendering yeomen service to promote peace and nonviolence in the world. I warmly welcome both of them to this Conference.

S.N Goswami
Advocate,
Supreme Court of Bangladesh

Training Activities by BIMS

The very first international training course on Alternative Dispute Resolution (ADR) was arranged and organized by Bangladesh International Mediation Society(BIMS) at Surma conference hall of Hotel Pan Pacific Sonargaon at Dhaka, Bangladesh between 20th and 21st December 2017. A total of 27 participants attended the training. The programme was inaugurated by Mr. Justice Muhammad Mamtaz Uddin Ahmed, Chairman of Bangladesh Press Council.

The Trainers

First Mr. Veeraraghavan Inbavijayan the Course Director and Chief Trainer. In his personal life Mr.V. Inbavijayan is a highly acclaimed lawyer and an international Arbitrator. So far he has presided over and counselled in over 300 domestic and 14 international arbitrations. He is a visiting professor at Tamil Nadu Dr. Ambedkar Law University and Indian Maritime University. Currently, Mr.V. Inbavijayan works as a full time international arbitrator and an international trainer on mediation and arbitration.

Next was Mr. Anant Merathia, a practicing litigation and alternative disputes resolution lawyer with over 11 years of experience in India and Singapore. He is a member of Chartered Institute of Arbitrators CIArb, UK and a member of Young Mediators Initiative with IMI, Hague. He has been a Tutor at CIArb, India.

We also had Mr. Krishnayer Sankarnarayana Sarma commonly known as Mr. K S Sarma. Mr. Sarma is the CEO and Director of Life Skills (India) Training Private Limited, a Chennai based initiative for peace and development. Having a rich experience of working in many prestigious institutes and having trained rigourously on mediation and arbitration, Mr. Sarma is an experienced counsellor, mentor, coach and an accredited Mediator.

Mr. S N Goswami, the founder of BIMS, an eminent lawyer of Bangladesh Supreme Court Bar, who is also an IIAM Mediator and empaneled Arbitrator, India.

The Curriculum and the Conduct

First day's training, guided by Mr. Inbavijayan began with 'Prevention and Regulation' of conflicts. This was followed by a discussion on ADR Tools, Merits and Demerits of Arbitration and Stake Holders in Arbitration. Later Universal Mediation Rules and practices was taken up and Salient features of UNCITRAL conciliation Rules and National Mediation Rules were examined.

Mr. Anant then took up the Topic of Ad hoc versus Institutional mediation. Mr. Anant further elaborated on mediation process and also court assistance. In the last session, Mr. Sarma brought forward the requirements and qualities of a successful mediator in the form of some interactive exercises where, the human interaction using appropriate psychological techniques were highlighted.

Second Day started with Mr. Inbavijayan discussing the settlement agreement in a mediation. This was followed by Forms and Contents used in drafting the 'Award' in an arbitration. Thereafter, Mr. Goswami took over and divided the class into two groups for the conduct of a Mock Mediation exercise. Conducted eloquently, the exercise generated enormous amount of interest among the participants and participation was overwhelming.

Later, UNCITRAL Model law, its adaptation by different countries including Bangladesh and its comparison with Bangladesh Arbitration Act, 2001 were examined and scrutinized. Both Mr. Inbavijayan and Mr. Anant participated in the session. This was followed by the valedictory speech and Issuance of Certificates. Lastly, a bonus session on life skills and human relations improvement was conducted by Mr. Sarma to the delight of all the participants.

Following this training, BIMS arranged for periodic discussions and classes for the participants whereby they could enhance their knowledge and remain current on the subject matter.

The 2nd Training Course on “Introduction to International Arbitration and Mediation” arranged by BIMS was held at ‘BURIGANGA’ Conference Hall of Hotel Purbani International, Dhaka between 16 and 17 February 2018. Attended by 13 aspiring mediators/arbitrators from different walks of life (retired Judicial service officers and police officers, lawyers and a number of university students), the course was second such initiative by BIMS. Prof. Dr. Mizanur Rahman, Professor of International and Comparative law, Dhaka University and former Chairman, National Human Rights Commission, Bangladesh (2010 – 2016) inaugurated the training programme. After a brief introduction by Mr. Goswami, Course Director Mr. V. Inbavijayan took over. He spoke about ADR in general so as to prepare the mindset of the participants to accept and embrace ADR. Mr. Inbavijayan informed the house about the legal aspects and/or the ways around for ADR to be more effective. He gave a brief idea about the UNCITRAL Law and Bangladesh Arbitration Act, where he praised Bangladesh Arbitration Act as one of the finest such Acts around the world. He urged upon the participants to master these laws for becoming expert mediators and arbitrators in future. Thereafter, Mr. K S Sarma, spoke on ‘Prevention and Resolution of Conflicts’. He stressed upon the fact that human relations are fraught with frictions giving rise to fire i.e., conflict and the best way to resolve this would be through mediation.

During the subsequent sessions Mr. Sarma utilized interactive methods to explain the essential characteristics of a mediator. He showed that pointing out the good qualities in a person actually encourages that person to be even better and improve upon his qualities. He stressed upon the need for a mediator to become such a person so that he can bring out the best in people and successfully mediate to resolve conflicts. Mr. S N Goswami thereafter enlightened the house about the mediation Law and its practices in Bangladesh. To give a very simplistic yet practical demonstration of modern day ADR (Mediation), the class was then divided into two for a mock mediation. The scenario was developed as a conflict regarding loan repayment between a bank and its client. After mediation, a ‘Settlement Agreement’ was reached and signed by both the parties.

Ms. Iram Majid then covered the ‘Role of Mediators’. Taking place immediately after the mock mediation, this lecture allowed the participants to clearly relate to the role and different characteristics of a mediator as has been witnessed firsthand during role play exercise of mock mediation. Finally, Mr. Sarma explained the important aspect of reading a disputant correctly and discovering the hidden agenda behind his ploy so that the issue at hand can be addressed competently. With this the first day’s programme was accomplished.

The 2nd day’s training, devoted to Arbitration, started with Mr. Inbavijayan discussing the UNCITRAL Model law in great details and pointing out the salient features of the model law. Mr. Inbavijayan stressed upon the need for all Arbitrators and mediators to be master of these laws as the basic foundation lies within. He informed the house that, upon making a decision, the arbitrator will provide a written arbitration award that serves as the settlement of the dispute and that the award issued by an arbitrator is legally binding, and enforceable by law.

Ms. Iram Majid then spoke on the 'Challenges of International Mediation'. Here the difficulty in matching time and space, language(s), local and international norms and customs, social and religious hurdles to dress code and acceptability of a mediator were examined. Ms. Iram shared her international experience, while Mr. Inbavijayan also joined in to enrich the session further.

At this stage Mr. George Poothicote, Secretary General of India International ADR Association took the floor, who was on a semi-official visit to Bangladesh. He briefly introduced his organization, described its functions and talked about its requirement and usefulness. Talking about ADR – Mediation and Arbitration, Mr. Poothicote informed the house that both processes are advantageous for individuals involved in a civil dispute, as well as for reducing court dockets and costs. So, he welcomed all the would be mediators and arbitrators in their midst. During the final session of the day and the training course, Mr. K S Sarma talked about the mediation agreement which was followed by the valedictory speech. The trainees thanked BIMS and Kovise foundation for arranging the course. Finally, certificates were distributed among the course participants by the faculty.

The New Trainer: The new inclusion this time was Ms. Iram Majid. A practicing lawyer of Delhi High Court, Ms. Majid is an IIAM accredited mediator and enlisted on the panel of Delhi High Court list of mediators. She has varied experience on mediation and arbitration both, domestically and internationally.

The Latest: As this souvenir reaches the reader, BIMS has already completed the 3rd International Training course on Mediation and Arbitration for about 31 participants. The specialty of this course is the fact that, this time it is a true International Course with three participants from India. BIMS also managed to send two batches of BIMS trained mediators to Indian Institute of Arbitration and Mediation (IIAM) for a 40 hours course for IIAM accreditation as Grade 'B' Mediators having certificate in International Business Negotiations, and yet more are sent for the 15 hours training on arbitration at IIAM. Thus the relentless forward march is on in full swing, and the fruits of the hard work should begin to benefit all within a very short span of time.

Air Commodore M. Obaidur Rahman, BSP, ndc, psc (LPR)
Editor &
Accredited Mediator, IIAM & BIMS

International Certification for Mediators

-Kevin Barry Brown

For many years, there have been ongoing debates regarding whether mediation should be regulated, yet, to this day, mediation remains an unregulated profession in most countries. There is little to differentiate highly skilled mediators from those with only a weekend course and minimal mediation experience.

Many mediators (the vast majority of us) have received training from multiple providers offering training programs from basic to advanced levels, including specialized training sessions, all of which allows the individuals to 'hang out their shingle' as a mediator. The caliber of these trainings varies considerably on content, coverage, cost and achieved competency levels.

While the majority of mediation courses offer excellent training, they are, however, typically only recognized locally. Mediators wishing to "stand out" and be recognized as highly competent professionals, or to work outside their local region, need to be recognized for their skills and competence. Fortunately, international recognition can be achieved, through, what is considered by many, to be the most highly acclaimed mediation institute in the world; International Mediation Institute (IMI).

IMI operates out of The Hague. They do not train nor do they mediate. IMI is the only organization in the world to transcend local jurisdiction to develop global, professional standards for experienced mediators, advocates and others involved in collaborative dispute resolution and negotiation processes. Global professional standards exist when high practice standards are developed, tested and implemented consistently cross-border by recognized, professional experts.

IMI makes a positive difference to and is changing the landscape in the ADR world. IMI programs and standards add value to the quality and transparency of conflict management, thereby facilitating consistent, credible and ultimately more satisfactory results.

IMI has approved a small number of international organizations to conduct training programs and mediator assessments, qualifying the successful mediators to become IMI certified and thus, recognized at an international level.

IMI certified mediators are recognized worldwide as they are required to meet the highest of professional, ethical and competency standards.

Achieving these high standards can be accomplished through one of the IMI recognized Qualified Assessment Programs (QAP) such as Mediation International (MI).

MEDIATION INTERNATIONAL is a leading Mediation and Alternative Dispute Resolution service provider operating across Europe and internationally.

MI provides globally acclaimed courses and assessments, which lead to international certification through the International Mediation Institute.

Those mediators who have already received advanced mediation training and have been practicing mediation may be eligible to undergo an assessment with Mediation International in order to receive international certification.

MEDIATION INTERNATIONAL offers this assessment globally. The assessments would take place over a 2-day period (with an additional pre-assessment training day provided if requested). Each mediator would be afforded the opportunity to complete a minimum of two role-plays as a mediator as well as additional opportunities as mediation parties and coaches.

There are 3 steps to this assessment.

Step 1.

Prior to the MI assessment, the mediator must have completed the following;

- A- 60 hours of mediation training including theory and practical,
- B- 5 mediations, at least 2 of which were compensated,
- C- written exercise administered by MI demonstrating the candidate's overall mediation knowledge.

Step 2.

The mediator must be successful in the role-play assessment.

Step 3.

Successful mediators must then complete the equivalent of 20 mediations within a 2-year period in order to qualify for IMI certification. (Those mediators who have already completed the 20 mediations may bring proof of this to the assessment or submit it at a later date within the 2-year timeframe).

Those mediators who successfully complete steps 1 and 2 will receive a certificate from Mediation International.

Those mediators who successfully complete all 3 steps of the assessment will be offered the opportunity to join the internationally acclaimed IMI Roster of mediators, receive a certificate from International Mediation Institute and be authorized to use the IMI logo as part of their marketing. The IMI certified mediator will also be able to have their profile/feedback digest listed on the IMI profile site and be included in their search engine (more information can be obtained on the benefits of being IMI certified at http://imi-mediation.org/private/downloads/CVLA7R2HppPji5_jutv-bKA/what-s-in-it-for-me_-article-by-irenavanenkova.pdf)

Those mediators who are not successful in the assessment will be offered an additional assessment at a reduced/no cost as well as mentorship, as needed.

For additional information regarding the Qualified Assessment Programs, please contact Kevin Brown at kevinbarrybrown@gmail.com

* Kevin Brown is President of MEDIATION INTERNATIONAL. He has over 25 years of experience as a senior Alternative Dispute Resolution (ADR) specialist, as an Ombud, Mediator, Facilitator, and as an academic theorist. Kevin provides ADR training through MEDIATION INTERNATIONAL and UNDP .

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ALTERNATIVE DISPUTE RESOLUTION *

Dr. Mizanur Rahman,
Professor of Law, University of Dhaka and
Former Chairman, National Human Rights Commission, Bangladesh

In ascertaining that an essential feature of ADR is its consensual quality, it is necessary to define ADR as being the alternative to adjudicatory processes of dispute resolution. Until fairly recently, most practitioners would probably have defined ADR as being alternative to litigation, thereby including arbitration as a form of ADR. However, partly because arbitration has become as well established as litigation, and partly because of the increasing tendency to include in the term ADR only consensual processes, most practitioners today are likely to regard ADR as alternative to litigation, arbitration and all other forms of adjudication. However, this does not mean that ADR cannot borrow from the adjudicatory procedures to help facilitate settlements, for example by providing in some form non-binding adjudications; or that it cannot coexist side by side with formal adjudication. On the contrary, it complements adjudication, and could indeed be called 'Complementary Dispute Resolution'. However, keeping in view the emphasis that is given to consensual form of resolution of disputes in the contemporary world and almost in all the legal systems, this author feels tempted to refer to ADR as the "Only Dispute Resolution (ODR)".

If ADR is distinguished from adjudication by virtue of its need to achieve consensus between the parties in order to be able to resolve a dispute, it is distinguished from traditional bilateral or multilateral negotiation by a number of features: firstly, by the fact that it generally involves the intercession of a neutral third party, who acts as a facilitator of the dispute resolution process, secondly, by the existence of certain structures within which those negotiations can take place and be enhanced; and thirdly by the greater involvement in the process which most ADR offers to the parties than traditional negotiation undertaken by the professional representatives.

The philosophical basis of ADR probably is drawn from Confucianism. In ancient China, inspired by Confucianism, ADR became the primary method of setting disagreements. The philosophy of Confucius was, in essence, one of harmony, of peace, and of compromise resulting in a win-win combination. The Confucian view is that the best way of resolving a disagreement is by moral persuasion and compromise instead of by sovereign coercion. It was agreed that the foundations of the community are ethical rules which require that the state of a natural harmony in human affairs should not be disrupted. These are based on the strong belief that laws are not the appropriate way to regulate daily life and hence should only play a secondary role.

The greater involvement of parties themselves in most forms of ADR is one of the features leading to the sense that ADR empowers individuals. This is certainly true in that it gives them ultimate responsibility for the resolution of their own issues: the decision as to the outcome of a dispute must remain firmly in the hands of the parties, and if it does not, then an integral feature of ADR will be absent.

The constructive intervention of the neutral third party and the close involvement of the parties personally in the process, also provide greater opportunities to structure mutually beneficial settlements. This accounts for the perception that ADR settlements tend to have a creative and mutually compensatory quality to them, allowing for both substance and nuance in a way that even bilateral negotiation between lawyers could not do, let alone litigation with its 'win-lose' outcome.

The preservation or enhancement of relationships, whether of a personal or business nature, is also a feature of ADR, as compared with the inevitable escalation of mutual antagonism that so commonly epitomizes traditional litigation with its language of conflict and confrontation.

ADR may be said to fill the gap between, on the one hand, bilateral and multilateral negotiation in the traditional way, and on the other hand, litigation, arbitration and adjudication processes, by providing a range of processes which facilitate and enhance the resolution of disputes in a consensual manner, without any inconsistency with either negotiation or adjudication. These processes usually involve the intercession of a neutral third party to assist disputants in dealing with their issues, whose level, quality and manner of intervention may depend on various considerations, including the actual ADR processes being used, the model of working adopted, the code of practice being followed, the requirements of parties and the individual attributes of the neutral.

The ADR process most commonly used is mediation. This may be defined as a process by which disputing parties voluntarily engage the assistance of a neutral mediator, who has no authority to make any decisions for them, but who uses certain skills to help them to resolve their dispute by negotiated agreement without adjudication.

Another ADR procedure is the mini-trial, in which the disputing parties are given the opportunity, with the help of an independent neutral, to observe an abbreviated form of non-binding trial, presented to them by the respective lawyers, so that they may assess relative strengths and weaknesses, and thereafter enter into realistic settlement negotiations, bringing their business judgments, so often under-utilized in the traditional legal process, back into play. The neutral can help to clarify and assess the issues and to evaluate the case.

There are various other ADR processes including for example the neutral fact-finding expert in which the parties jointly appoint a neutral expert to investigate facts and to form a legal or technical view either about certain specified issues, or on all issues generally, and to make a non-binding report to the parties, which helps to inform any settlement discussions that may then take place; and med-arb in which the neutral attempts to assist the parties to settle their dispute through mediation; but if this is unsuccessful, he then makes a binding determination as arbitrator.

In addition to processes which stand alone, there is also a range of court-attached procedures which serve to facilitate the settlement of cases brought through the courts. These include, for example, court-annexed arbitration (which is initially non-binding, with provision for making the determination binding under certain circumstances) and early neutral evaluation (in which the evaluator narrows issues, expedites procedures and facilitates settlement). Some jurisdictions are developing the concept of multi-door court house in which all disputes are brought to the court, which provides screening and intake machinery to recommend appropriate procedures and agencies, including litigation, arbitration, mediation or any other.

ADR may have a number of rationalizations for its existence and development, but ultimately the crucial test will be its efficacy: does it work? The experience in those countries which it has developed is that it does, in the United Kingdom, the experience of the Centre for Dispute Resolution is that after two years since its launch, some 95% of commercial and civil cases referred to mediation were successfully resolved. This is similar to the experience of the Australian Commercial Dispute Centre, which is also reported as having resolved 139 of 140 commercial disputes during its first two years using ADR techniques. In the United States, mediation has consistently resolved very large numbers of disputes in a wide range of activities; and the mini-trial procedure is regularly reported as achieving a high success rate.

Notwithstanding the high success rate of ADR it must be emphasized that ADR is not a panacea, and under the existing realities it is very difficult to suggest that it could somehow replace adjudication. A vigorous, fair and effective system of adjudication- litigation, arbitration, tribunals and others- is absolutely necessary for healthy functioning of any society. There are many situations in which an ADR practitioner might be the first to suggest that parties seek the resolution of their issues through the courts, rather than in an ADR forum: for example, where the issues are those of constitutional principle, or involve civil rights or other matters of substantial public importance, where a delay in bringing proceedings would result in a

loss of rights, as where a limitation period is imminent, where there is the abuse of the process causing actual or potential prejudice (including for example where the parties are not all committed to resolving the issues consensually but one or more are using the process exclusively for delay) etc. etc.

It is also impossible to ignore the fact that ADR processes might well be unworkable if it were not for the fact that parties knew that in the absence of negotiated resolution, adjudication might follow. Very often parties conclude settlements because 'negotiations take place in the shadow of the law'.

Against this background, it may be suggested that ADR processes can work in two different ways: as a compliment to litigation, arbitration and other traditional procedures, to enhance them and make them more responsive and efficient by providing additional resources and strategies for practitioners and the court; and by providing processes which stand alone in their own right as effective alternatives to adjudication, even if conducted 'in the shadow of the law'.

What then is necessary is a balanced mixture of ADR remedies with the remedies of the public law. The public law would support ADR without interfering with its essentially private nature. And in a very real sense ADR would support the legal system.

If one of the defects of our justice delivery system is it is overloaded, ADR can relieve the overload, leaving it able to devote its full resources to the things it does best-indeed to the things which must be dealt with within the state's judicial structure like criminal law, public law, human rights etc. where it is important that a powerful and important institution stand between the state and the individual.

If it is a defect of the present system of administration of justice that access to it for ordinary people is limited by its cost, by the technicality of its procedures-even by the need to employ expensive professionals like lawyers, then ADR methods can be designed to provide an accessible means to avoid these problems and help resolve their disputes.

If the daily diet of contract disputes, small tort claims, and family disputes can be diverted into an alternative, less formal and less expensive and possibly more efficient system which is none the less backed where necessary by the power of the state, I think we will succeed in creating a dispute resolution system which will meet the standards of 'equal protection of the law' provision of our constitution.

*Reprinted from: Dr. Mizanur Rahman (Ed.) Human Rights. Summer School Manual. HRSS, Dhaka, 2000.

ARB-MED: MEDIATION PROCESS IN ARBITRATION

**By Veeraraghavan INBAVIJAYAN,
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INTRODUCTION:

Alternative Dispute Resolution (ADR) offers arbitration, mediation or conciliation that might be more satisfactory than what is offered by the conventional judicial systems. Observer's views are that the proportion of each country's economic life that is bound up with international/cross border aspects is growing steadily in a rapid manner. We are not economists who pursue the study of commercial activity in aggregative terms, using statistical analysis of national exports, imports, balance of payments and other movements. Institutional approach leading to a study of the kinds of organizations that take part in international business, their decision making structures and purposes they are trying to achieve when they make decisions about the location and direction of their profit-making activities, is most suitable in the perspective of ADR practitioners and lawyers.

In India, the "Panchayat system" in which decisions are handed down under a shady tree was most prominent in resolving disputes between traders and villagers from ancient days. The Village headman presides and decides and his decisions are enforced, and failing compliance would result in the offender's removal from the society. This is the core module of ADR system in India.

GLOBAL BUSINESS BACKGROUND FOR DISPUTE RESOLUTION:

Abundant natural resources play a major role in attracting investors surpassing the judicial scenario. Overwhelmingly a better judicial system prevails in the investor's mind among the competitors with reluctance over national courts of the host country. We could review about choices that must be made as between different methods of doing business and on the types of legal risks that are built into each of them. General and Schematic sense of how Global business operates, who acts in it, what their motivations are and what their chief forms of transactions are, have to be understood.

PLAYERS:

Personal contact between individuals of different nations coming into contact was the model of the international/cross border commercial transaction. Individual sympathies with strong element of national prejudices were the psychological background for international trade or disputes that arose from it. During 1990s, large organizations, like multinational corporations, took over a vast portion of global economic activity. These corporations attempt to decentralize many aspects of their functioning, particularly those that require more adaptation to local peculiarities such as labour relations and government lobbying since, government of the home corporations tend to interfere occasionally so as to make the corporations an overseas agent for policies of its own. This would help such corporations to take refuge in its nationality and appeal to the home government for help in dealing with the demands of other governments.

TYPES OF COMMERCIAL TRANSACTIONS:

Various international dealings tend to produce their own characteristic patterns of disputes and put different kinds of strain on courts. Most important of those emerges from

1. Sales
2. Licensing

3. Foreign Direct Investment
4. Joint Ventures
5. Development Agreement
6. International Loans

The confusions and uncertainties that beset litigation in national courts where cross border matters are at stake, are so confounding that it is no surprise that parties think of Alternative Dispute Resolution (ADR) whenever they enter into contracts/agreements with counterparts from other countries. In such private arrangements it seems to find not only certainty but also privacy, speed, economy, neutrality and commercial/technical expertise. It is an undisputed fact that ADR mechanisms are flourishing rapidly.

ARBITRATION:

Arbitration is a quasi-judicial process in which a neutral person sits as a private judge and resolves the disputes between the disputants in a confidential manner.

“Arbitration is a legal technique for the resolution of disputes outside the courts, wherein the parties to a dispute refer it to one or more persons such as (the "arbitrators", "arbiters" or "arbitral tribunal"), by whose decision (the "award") they agree to be bound”.¹

The concept of Arbitration was described as “If one party resolves to demand what the other resolves to refuse, the dispute can be determined only by arbitration; and between powers who have no common superior, there is no other arbitrator than the sword”.²

The main system of ADR, Arbitration gradually came to be recognized as a means of settling disputes and helped in taking the burden off from the regular legal system. On the global front there seemed to be special needs for arbitration, for the creation of specialized neutral bodies that could deal with problems that belonged wholly to neither of the systems of law of the nations to which the parties belonged. Further, various legal systems had special fears of international arbitration because it was associated, in their minds, with the superior economic bargaining power of large foreign corporations. Huge resistance prevailed to international arbitration, especially in developing and least developed countries. The culmination of these tensions and pressures was the production of a convention on recognition and enforcement of foreign arbitral awards³ which assures national support to international arbitration. Protection under this convention was available only to proceedings that meet the following criteria:

1. “Commercial” as defined by the national system of the parties,
2. Significantly foreign, and
3. State in which the arbitration is to be held must be a signatory state.

One main thing we have to look at is that most of the arbitration institutions, centers and courts are run by Chambers of Commerce, Business Associations and Trade Blocks. It is essential to go through this unwritten rule. How could traders and business people decide on disputes? Parties to the disputes are master of the issues involved. They know the pros and cons of their dealings and future business relationships. Dispute Resolution should be seen as a simple win-win situation allowing continuity and not an everlasting battle. The investment climate, the first criteria for a business, has a space for Dispute Settlement information, even though in the last, but considered as the final key for investment approval. It is fortunately an increasingly improbable contractual scenario. The arbitration process has a binding nature and it can also be preceded by mediation process.

MEDIATION:

In the developing nations, mediation (called Conciliation in some countries⁴) is a popular means of com

commercial dispute resolution⁵. Mediation is a dispute resolution process which helps the parties to end their problem more efficiently and at lesser cost than the existing adversarial processes.

The major advantages of mediation include:

1. Effective Management over the outcome
2. Flexibility
3. Confidentiality
4. Rapidity
5. Cost Effectiveness
6. Safeguarding of cordial relationship (Win-Win situation)

Surprisingly, it has the major disadvantage of being non-binding in nature. Moreover, people from different culture often resolve internal and external conflicts in different ways⁶.

Here, I like to examine the impediments in mediation in use and ways to overcome them, more particularly, med-arb procedure. Med-arb is a variation of the mediation process in which the mediator changes role if the matter does not settle in mediation and becomes an arbitrator with the task of making a binding determination⁷.

In executing the Med-Arb procedures there exists some practical difficulties. The foremost is the reliability of the same mediator acting as arbitrator in the second stage. Furthermore, it adds to the question of impartiality and the integrity of the adjudicative role of an Arbitrator who earlier mediated the same dispute. As a positive step the concept of mediation can be brought within the scope of arbitral process.

ROLE OF AN ARBITRATOR:

The prime question is, whether the same individual can act as both Arbitrator and Mediator. In this article, I like to highlight the essential role of an Arbitrator in bringing about a settlement between the parties by facilitating mediation. Constructive is the Legislation in Bangladesh, “it shall not be incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute otherwise than by arbitration and with the agreement of parties, the arbitral tribunal may use mediation, conciliation or any other procedures at any time during the arbitral proceedings to encourage settlement”.⁸

It is relevant to address the question of whether the arbitrator can act as mediator in a dispute. Mediation, a term derived from west, which is a facilitating process has a long history. Its success rate speaks for itself more particularly from the Quotes of the Father of our Nation “I realize that the true function of a lawyer was to unite parties ... A large part of my time during the 20 years of my practice as a lawyer was occupied in bringing about private compromise of hundreds of cases. I lost nothing thereby – not even money, certainly not my soul”.⁹ The social and economic advantage makes mediation a widely accepted mechanism of dispute resolution. Arbitrators appointed to adjudicate a specific dispute can put on the mediator’s hat. but if the mediation break down there is a possible risk that the award may be subject to challenge on the grounds of lack of impartiality or concerns about natural justice.

ROLE OF MEDIATION IN ARBITRATION:

To make ADR a flexible and useful mechanism for disputants and the commercial process in general, it is significant to scrutinize new ideas and consider better solutions. Really, the most important factor underlying the usage of Mediation in Arbitration is that it will speed up the process and save time and cost with a Possible Settlement Award or Award on Agreed terms.

In India, as earlier said, it is traditionally seen as a cultural value known as Panchayat System, which always encourages dialogue and further refine it. Even now it is effectively followed where the Court system can't reach as in Paadu System.¹⁰

In General variation, this process is broadly categorized as follows by David Elliott¹¹:

1. Mediate first and if it fails, arbitrate
2. Start arbitration proceeding and allow for mediation at some point during the arbitration
3. Mediate some issue and arbitrate others
4. Mediate, then arbitrate some unresolved issues, then return to mediation
5. Mediate if unsuccessful; ask for an advisory opinion by the mediator which is binding as an award, unless either party vetoes the opinion within a limited period of time.
6. Mediation if unsuccessful, followed by a final offer by each side, coupled with limited argument, following which the mediator turned arbitrator, must choose one or other offers.”

In common law jurisdiction, these variations themselves appear to be a disadvantage due to lack of structure and the idea of the same individual changing roles from that of a mediator to arbitrator creates a haphazard situation. Private caucus is the fundamental principle in mediation. This process is impossible in arbitration. It is pertinent to highlight at this juncture that both mediation and arbitration is a good means for settling commercial disputes.

The guiding principle of the arbitrator shall be to promote timely and fair settlement failing which; they would proceed to adjudicate the dispute in accordance with the law. Further, it is the elementary principle in which the English Arbitration Act, 1996 Part I is founded– “obtained fair resolution of disputes by an impartial tribunal without unnecessary delay and expansion”¹² and “the parties should be free to agree how their disputes are resolved subject only to such safeguards as are necessary in the public interest”¹³. It is appropriate to say that an effective mechanism by which settlement of disputes can be achieved is by way of Mediation. Surely, this is a distinct alternative to judicial process and judicial reforms rely wholly on it.

The role of arbitrator in Mediation:

Arbitrator should not act in a dual capacity. However, the risk must outweigh the benefits. “There is clearly risk to all when an arbitrator steps down from that role and enters a different arena and is to perform a different function. It is a binding settlement of the whole or part of the dispute results, then the risk will prove to be worth taking.”¹⁴ Arbitrators who have been removed from office for attempting to act as mediator are no more than particular example of arbitrators who have crossed the boundary of “Natural Justice”.¹⁵

Some National Arbitration Legislation has gone so far as to include a provision for arbitrators to act in a dual capacity. Article 35(1) says, “The members of an arbitral tribunal may, if the parties consent, use mediation, conciliation or similar techniques during the arbitration to encourage settlement of the matters in dispute”. Article 35(2) “After the members of an arbitral tribunal use a technique referred to in subsection (1), they may resume their roles as arbitrators without disqualification”.¹⁶

The process in mediation is broad and much can be influenced by the approach of the arbitrator acting as mediator in the arbitral process. The disputants are directly involved and speak freely in an informal manner and thus the enhanced quality of information flows between parties can pave the way for amicable settlement. Even though a private meeting is essential in mediation involved arbitration process, there could be pre-agreed rules as to how to deal with the information obtained. This would remove impartiality and bias.

CONCLUSION:

The vital paradigm, the parties' autonomy is safeguarded when arbitrators facilitate mediated settlement.

It would further remove impartiality and bias, subject to pre agreed rules and procedures by the parties.

To achieve a win-win situation and to focus on compromise, mediation is an effective tool in the arbitral process. Further, when the mediator becomes arbitrator and is empowered, he is surely capable of avoiding the risk of bias. The settlement table could be effectively brought out in mediation by the facilitator to expand the scope of positive dialogue. Another important advantage in this is that the parties would surely lay the ground work for the final phase, arbitration, which is binding. Surely, the dual role would stimulate dialogue and receive comments and suggestions to make dispute resolution more user friendly.

End notes:

1. <http://en.wikipedia.org/wiki/Arbitration>
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4. Report of the Secretary – General, UNCITRAL Working Group on Arbitration, 33rd Session at www.uncitral.org
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6. Walter A. Wright, “Cultural Issues in Mediation: A Practical Guide to Individualistic and Collectivist Paradigms,” – www.texasadr.org/cultural.cfm (1998)
7. Henry Brown and Arthur Marriott, “ADR Principles and Practice”, Page No.147, Second Edition published by Sweet and Maxwell, 1999
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9. Gandhi – An Autobiography -The Story of My Experiments with Truth published by Navajivan Trust, 1927
10. It is a system practiced among fisherman folks in Pulicate Lake for resolving the disputes relating fishing boundaries among various villages
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13. Section 1(b) of English Arbitration Act, 1996
14. Judge Lloyd in *Glencot vs Barrett*
15. Jonh Uff, “Dispute resolution in the 21st Century: Barriers or Bridges?” (2001) 67 Arbitration 4-16, Journal of the Chartered Institute of Arbitrators, UK
16. Arbitration Act, Alberta, Canada

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Framing Nonviolence: Its Theory and Practice

-By Rajagopal, P.V.

In the first part of this article I want to recall my experience with the Dacoits of Chambal and how we contained and managed the violence, and then review how we worked out reconciliation between the conflicting parties. It was through this foundational learning and many years of experience thereafter that I began to frame nonviolence as a theory and practice.

When we were first faced with Dacoit abduction and killings in Chambal in the early 1970s, a group of Gandhians of which I was a member, did not go to the armed groups directly as they would not have listened to our advice. We began by holding dozens of youth trainings in different areas of Chambal to gradually wean young people away from violence and violent activities. Then began the process of reorienting the rural youth towards constructive work so that they would rebuild their own society. Once the youth understood the futility of violence and the benefit of constructive work, they began to take the lead in connecting us to those Dacoits in the jungles. The Dacoits were trying to find their solutions through violent means because of their deep sense of injustice. This then was the beginning of a series of dialogues that led five hundred and seventy Dacoits giving up their arms in front of Gandhi's photo and in the presence of Jay Prakash Narayan in 1972 in Chambal.

What we learned from this experience is that in containing violence, it is best not to do so directly with the people involved in violence. Operating on the periphery with young people and then moving to the core of the problem with the Dacoits allowed us to have sufficient time to understand their grievances and to gain their trust, building on Vinoba's 'change of heart' method, which then began a long process of reconciliation.

Reconciliation with the Dacoits, I found to be the most challenging of tasks because there were interlocking cycles of revenge between families, gangs, other people in the society as well as with the police and state. Initially we spent a lot of effort in bringing together perpetrators and victims face-to-face to start a process of forgetting and forgiving each other. This was meant to break the cycle of revenge, and it did to a great extent, because when the Dacoits finished their 20-year prison terms, they were not killed when they came out from the jail. This meant that the society was prepared to forgive and accept an attitudinal change towards them. What we called Bhagis (Rebels and not Dacoits) was a small example of how by using nonviolent communication, one can change an attitude of fear, and then to get the feeling of acceptance.

This experience of doing reconciliation work taught me that in any conflict situation, if people do not have the channel to take up reconciliation, they can easily turn to violence; they will take the opportunity to strike back and then violence can escalate. In such a scenario reconciliation becomes more challenging. So convincing society to be more accepting and becoming part of the solution, even if a reconciliation process requires a certain degree of sacrifice, is important for reviving peace in their communities. Out of this Chambal-Dacoit experience of containing violence and facilitating reconciliation, I learned that the root of the problem was that the Dacoits had lost their land to powerful persons and the ability of terrorizing was one way in which they felt that they could get justice for the injustice they had suffered. This is similar to many other incidents of conflict in the world today, whereby we tend to make blanket generalizations that reduce egregious communities to criminals and terrorists, and argue for their punishments without considering how this conflict situation actually had emerged. It is oftentimes when one sees the roots of a conflict and not just the crime, that people are willing to exonerate the perpetrators.

One such example is the story retold in Vandana Shiva's writings, of the many large dams that have been constructed in eastern Turkey that have reduced the ground and surface water in eastern Syria. As a result, there was the onset of drought, and in 2009 one million people migrated from these dry regions, to areas around Damascus, where there were suddenly a large number of young people that could be inducted into rebel and government forces. I am not trying to take sides on the war but to say that these groups have been waging war ever since. It is better when outsiders can see the 'unseen' indirect violence (by examining the root causes) and not simply become fixated on the onset of war. With this view, of migration as being a cause for the war, people may in turn favour a pre-emptive development response rather than a military campaign.

The Dacoit-Chambal problem taught me how indirect violence, such as displacement, poverty, exploitation all what we term as structural violence is the breeding ground for direct violence in the form of warfare. Solving indirect violence can be compared to a polluted pond, where mosquitoes are breeding in large number; so by changing the water and making it clean, there may be a more effective strategy, than trying to continually kill mosquitoes each season with pesticides.

It is with this in mind that Ekta Parishad, the organization with which I work, focused on the land issue with marginalized communities; I have witnessed that the root issue is having land for one's development, and that by forcibly removing people from their security and sense of dignity related to their land holding, means that there is inevitably an escalation of violence. This is an example of indirect violence that invariably leads to direct violence.

Ekta Parishad is an organization that came about because young people who were trained in nonviolence (and in the futility of violence) then had a space to take up social action. When nonviolence is not intentionally practiced in the society, it is necessary to train a large number of rural youth. One of the advantages of young people is that they are able to transform and help villagers to move towards nonviolent action in spite of high levels of social discrimination.

One of the examples of this was an incident in which local indigenous people, known as Baigas, demonstrated their nonviolence, in 2003 in Pandariya Block in Chhattisgarh. An Adivasis leader was killed essentially by the Forest Department, in a manner that was aimed at displacing his community out of the forest areas and their traditional homelands. A nonviolent protest ensued for the next one week and finally the widow and children of Birju Baiga along with two thousand other families got their land claims from the State Government and this prevented further displacement. In addition, the District Forest Officer was suspended and this may be one of the first cases in the history of the Forest Service. This was the people convincing the government of a form of justice for the Adivasis that is nonviolent. What is also interesting is how the state responded. They were also nonviolent. They did not arrest these people and put them in jail.

Ironically enough there was a similar kind of struggle over forestland in Mutanga, Kerala in the same month of the same year, but in the case of Kerala, both sides resorted to force and this led to the killing of a forest officer and the imprisonment of the activists. Since this was a violent struggle, Adivasis did not gain any land rights from the state government.

What we can learn from this story and others in countries across the world is that violence is a preferable option for Governments. So even if people are practicing all kinds of nonviolent tactics, most protests are met with a violent reprisal from the state. The state seems to be taking responsibility of being violent on behalf of the elite in the society that are avowedly bringing a large amount of violence against people who are asking for their basic rights such as access and ownership of land, water, forests and other natural resources.

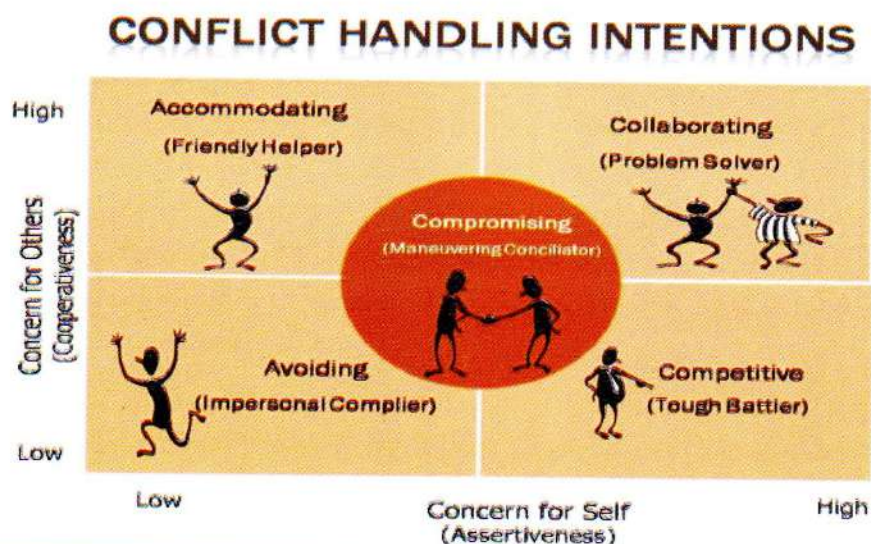
In fact, violence has such a huge market in the world today where powerful arms merchants and their lobbyists benefit greatly. Even a powerful US President like Barack Obama was unable to bring forward a Small Arms Control Act in spite of many young people being shot across the country, virtually because he

could not thwart the arms lobby. This underscores some of the reasons for the prevalence of so much state violence that is visible today. It is difficult for peace promoters to make the state accountable, and to contain the money-making lobbies that simply do not understand that their behaviour is what is creating social chaos and societal conflict. The educational system feeds into this situation; rather than socializing people to become nonviolent, educational institutions are making students part of the violent structures of society. The emphasis on book learning disconnects young people from the ground reality of experience. Thus, it is a sad state of affairs that educated people are actually the ones that are unleashing the fury of violence on common ordinary people, even though educated elites communicate a different narrative.

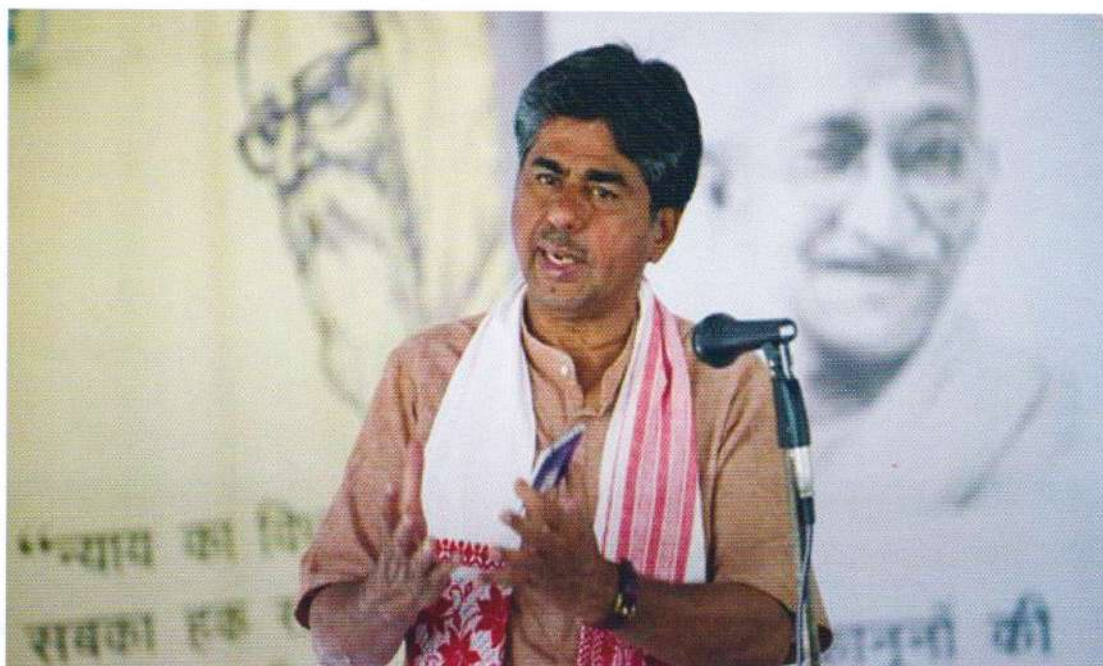
How to bring nonviolence into educational institutions? There are many experiments going on in various parts of the world. One that is noteworthy, is the Catholic University of Louvain in Belgium which has been considering a proposal to see nonviolence as a cross-cutting issue in every discipline under Arts and Sciences. This is meant to address subjects like psychology not to work from the premise that people are innately violent, but rather that people have an innate judgement to be nonviolent. Or in history not to look at the wars and crises of history but to see the good works that have given us a peaceful coexistence. Similarly, in politics to see that having a Department of Peace helps to promote peaceful coexistence unlike a Department of Defence. These subjects reorient the students to see the possibility of a nonviolent society.

In my own work organizing people with little formal education, I have found that after their training, they practiced it and sustained nonviolence much more effectively than those whom had been educated. In the Janadesh march of 2007 when 25,000 people sat down in prayerful meditation when a truck had killed three of the fellow marchers, this was indicative of how nonviolence can be built among ordinary people. It is also interesting to note that all the inspirational leaders who promoted nonviolence like Mahatma Gandhi, Martin Luther King and Nelson Mandela, they all came out of situations of social discrimination. The same can be said that change is likely to come from the global south, because of the need for reducing poverty and discrimination, environmental destruction and pervasive conflicts. People in more affluent societies do not feel this kind of compelling change and therefore will look towards maintaining the world order rather than changing it.

In 2019 to 2020, in the memory of Mahatma and Kasturba Gandhi's 150th birth anniversary, people from many countries of the Global South will move towards Geneva, the Home of International UN Development Institutions, to raise their voice for a world that is marked by peace and nonviolence. The Jai Jagat campaign 2020 is made up of several marches that will converge on Geneva in September 25th, 2020 and culminate eight days later on October 2nd. This will be a chance for people to express that it is now time for the whole world to live by a development model that leads to peace and justice. In a world where the media gives instantaneous communication, we welcome a new vision for planetary peace, that we can give to the next generations to celebrate life. The Jai Jagat is a vision of peace, that helps to guide our local to global actions into every subject.



P V Rajagopal



P.V. Rajagopal is a prominent Indian human rights defender, a member of the Gandhian fraternity, and founder of Ekta Parishad, dedicated to restoring land, forest and water rights to the rural poor.

Rajagopal started his peacebuilding by working alongside Gandhian stalwarts J.P. Narayan and Subba Rao to disarm 578 dacoits (outlaws) in Chambal region of India in 1972. Over the course of 30 years (1989 to 2018) Rajagopal trained thousands of rural young people to be in villages as trainer-leaders to build up community leadership and people's action. This culminated in many state activities, and then two national actions, one in 2007 when 25,000 landless poor –mainly Adivasis, marched 50-kilometre yatra from Gwalior to the capital Delhi to demand the land reforms promised at Independence. 'The government was forced to agree to all the demands that we made in that long march.' This led to the implementation of the Forest Rights Act.

And the second in 2012 Rajagopal led a march of 100,000 people to the capital of the nation to demand people's control over land and livelihood resources and the movement signed a ten-point agreement with the Govt. of India.

In 2018 Rajagopal is embarking on a more ambitious agenda of mobilizing one million people to nonviolently address their livelihood rights.

In 2019 in celebrating Gandhi's 150 years, Rajagopal is planning to take Gandhi's message across the Globe as a way to spread peace and nonviolence. (See jaijagat2020.org.)

Rajagopal main contribution can be seen as introducing nonviolence as tool for millions of people to use to address their grievances and also to enhance dialogue with the state.

A Brief Look into the Life & Exploits of Hon'ble Justice Indu Malhotra



Justice Indu Malhotra
1st Woman Judge in Supreme Court of India direct from the Bar

Indu Malhotra was recently appointed as a judge of the Supreme Court of India. She has a long history before becoming a judge. Her brief life sketch is described hereunder.

Justice Indu was born in 1956 in Bangalore to late Shri Om Prakash Malhotra, a Senior Advocate in the Supreme Court. She did her schooling from Carmel Convent School, New Delhi. Afterwards, she completed her B.A. (Hons.) in Political Science from Lady Shri Ram College, University of Delhi, and later obtained her Masters in Political Science from the same college. She then worked briefly as a Lecturer in Political Science in Miranda House College and Vivekanand College, Delhi University. She did her Bachelor of Laws from the Faculty of Law, Delhi University during the period 1979 to 1982.

Indu Malhotra joined the legal profession in 1983, was enrolled with the Bar Council of Delhi. In 1988, she qualified as an Advocate-on-Record in the Supreme Court, and secured the 1st position in the examination, for which she was awarded the Mukesh Goswami Memorial Prize on Law Day. She was appointed as the Standing Counsel for the State of Haryana in the Supreme Court from 1991 to 1996. Justice Indu represented various statutory corporations like Securities Exchange Board of India (SEBI), (DDA), Council for Scientific and Industrial Research (CSIR), Indian Council for Agricultural Research (ICAR), before joining the Supreme Court.

In 2007, she was designated as a Senior Advocate by the Supreme Court of India. She became the second woman to be so designated by the Supreme Court after a gap of over 30 years. She has been appointed Amicus Curiae by different benches of the Supreme Court in various matters. Recently, she was appointed as an amicus for restoration of Jaipur as a heritage city.

Indu Malhotra has specialized in the law of arbitration, and has appeared in various domestic and international commercial arbitrations. She has recently authored an exhaustive and illuminating commentary on the Arbitration and Conciliation Act, 1996. Indu Malhotra has been a valued and esteemed Senior Faculty Member of BIMS and was associated with the Indian branch of BIMS.



Justice Indu Malhotra, seating 3rd from left, attending a seminar on ADR. The Seminar is being addressed by Ms. Iram Majid, Advocate & Mediator and Regional Director (India), BIMS

Justice Indu is engaged in social and charitable work, and is a Trustee of Save Life Foundation, a non-profit organization.. She has been nominated by the Ministry of Corporate Affairs to the Central Council and Disciplinary Committee of the Institute of Chartered Accountants of India, a statutory body established under the Chartered Accountants Act, 1949.

Justice Indu Malhotra was given oath of office by Chief Justice Dipak Misra on 28 April 2018 at the Supreme Court, making her the first woman lawyer to enter the top judiciary directly in India. Her appointment met one of the unique requirements of UNCITRAL.

We, the BIMS family, are justifiably proud and extremely happy. We wish to congratulate Justice Indu on this great occasion and pray for her success in the top judiciary of India. As proponents of ADR, we hope that such appointments (ADR specialist to judiciary) would become commonplace all over the world at the earliest possible.

CONGRATULATIONS – YOUR HONOUR

BEING IRAM MAJID

My name is Iram Majid. I was born way back in a small town of state Uttar Pradesh known as Aligarh. My parents are alive and happily living in Aligarh. I have three brothers. They all are doing well in their lives and are well settled. My father is a man of dignity and integrity. He is very famous among his friends and family being social and gentle. I imbibe many qualities from him. He was the only person who insisted me all the time to study and gain knowledge. He used to tell me that there is no shortcut of success. I was born in Muslim Family. Muslims are considered to be a little backward as they don't go for education. But my father first teaching to me is to educate yourself. I started my schooling and there being good student I got double promotions. I always stood first in my class. I belong to a middle class family and my father did very hard work to get all of us four children to get educated.

Since childhood, I saw and learnt from my father many good conducts. I started feeling that for the development of the society, it is very important to impart and receive adequate education. When I was in class 8, I started teaching my younger brother's friends and made them aware about the importance of education. I also used to do all chores from the very early life.

One fine day I was standing outside my house, there was a green patch over there. Being a nature lover, I used to gaze at that green. Daily I used to see a small boy who grazed goats and cows. He had a pocket sized note book with him. One day I called him and asked him his name. He said his name was Rajesh (Munna). Talking to him gave me impression that he was interested in studies. Then I told to him that I will teach you, please start coming to my place. He was very excited and touched by my gesture and folded his hands in reciprocation. I started teaching him. He cleared his high school exam. Then he sat for entrance for Diploma Engineer. Then he got busy in his life and stopped coming to my place. But one day his father came and gave me a letter. That letter was full of thankfulness and love. He thanked me for all the help. I did for him without any return. That time I was not aware that what kind of social help I did being in my younger days. But now I realise that my act was not towards Rajesh but towards mankind.

Then I opted to study law so that I can help needy people and fight for justice and eradicate the social evil which is impairing our social system. There also I tried to be very helpful. I taught my classmates whatever they wanted to be. I also loved to teach my juniors and was known to help everyone. Sometimes I used to give my pocket money to needy fellows in my class. I got merit scholarship for being a good and meritorious student. From my scholarship money also I used to give to my other friends who needed money to pay their fees. That is how my college journey came to an end and professional life started.

I came to Delhi and started practicing law. I worked very hard and stood on my own and got a positive image, name and fame there. I also helped my friends to get placement in Supreme Court and High court, many of them have today attained zenith of their carrier. Till today, they very thankful to me. I always believe that service to mankind is service to God. I keep on helping others and without any expectation. I feel very satisfied and inner happiness comes when I help anyone.

I got married and entered into a new world. After marriage, I came in need of maids and servants to look after my house. Then after going through the basic problems in maid's life I started helping them. I live in Indirapuram. In front of my society there is a small basti where all Bengalis live and they work in societies as maid and household help. One day one of the maid in the society came to me after learning that Iram madam is very generous. She came and started crying. She said her employer was blaming her and falsely implicated her for theft. Then I went to RWA office to mediate the matter. I was astonished and wondered that day how rich people can become so proud and arrogant. The female who implicated that poor maid stated her complaint and when I asked what theft maid has committed, her reply made me ashamed. She

said, 'nail polish'. RWA declared the allegation as baseless and without proof and that poor maid was exonerated. She was very thankful. I provided her with work. By somehow I became famous and whenever any mishap occurred, the people from that basti came to me for help and till date they do so. One-day a gas cylinder exploded and one family got burnt along with two three cows. They informed me about the incident. I personally went to the basti and gave them all help and also provided them medical help. Then they said that they want to go to Bengal. I made all arrangements to send them to Bengal. After few days I got a call from one of those fellows, he said 'TUMI BOHAT BHALO MADAM'. You are like a goddess. My heart was filled with joy and at the same time sorrow that people are really in pain that how can I resolve their problems. One of my maid named Pinki used to bring her little daughter along with her and I used to teach her. One day she said 'MAA KYA SHEETAL PAANI' - they can't afford a fridge. After listening to her I was not able to drink the cold water from my fridge and immediately next day I bought new fridge and gifted to my maid. One day a rickshaw puller was beaten by hooligans and rickshaw was snatched by them. After listening this I went to his place and provided all help including bought new rickshaw for him.

One of my maid, named Shabana- Bengali again, was very good to me and after sometime she left to Delhi for work. Its 8 years now she has left but till date I am sending money to her on every festival to celebrate. Likewise, there were so many people who fell ill then on my own I used to take them to the hospital and get them treated. One of my friends, who is doctor in Delhi, helps me in getting the treatment done. So many things I have done towards mankind, so many I forgot like used to send money order, cloths food in big van. I myself regularly visit to missionaries and do lot of charities.

I have got a maid named Ana. She belongs to my native place Aligarh. She was an orphan and her mother ran away with some other man to live her life. She had nowhere to go. I took her to my place long back in 2010. I told her that she will live at my place and I will get her educated and married. She is getting basic education at home along with vocational training. Another Maid named Sadia belongs to a very poor family. Her father pulls Rickshaw, earns very less for lively hood. I know this rickshaw puller from my childhood. I told him that I will take care of your daughter. She is getting the same basic education. I treat them as a part of my family not as maid.

I personally believe that we all should believe in humanity and must not lose faith in humanity. Humanity is an ocean, if a drops of the ocean are dirty, the ocean does not become dirty. Then I opted to become a mediator because mediator are healers and can give a big relief to the society at large. Sometimes we see that humanity is destroyed by the people who don't believe in mankind. In Bible also Jesus said I am the way and the truth and the life. So we should collect best humanity examples and quotes to spread the awareness among the people. In fact, don't divide the man by his religion there should be one religion and that is HUMANITY ON THE EARTH.

According to me don't look for big things, look towards mankind and improve the society with love and passion. The smaller the thing the greater must be our love. I always pray to God that please help me to be better person than I was yesterday. We all human beings don't have peace because we forgot that we belong to each other.

Profile of Iram Majid

Ms. Iram Majid is a practicing lawyer of Delhi High Court, Ms. Majid is an IIAM accredited mediator and is enlisted on the panel of Delhi High Court list of mediators. She has varied experience on mediation and arbitration both, domestically and internationally. Recently, she has begun working as an international mediation trainer. Ms. Majid is also the Regional Director(India), of BIMS.

TESTIMONIALS



I have known Ms Iram Majid right from my law faculty days (1998 onwards), by virtue of being batch mates and our role numbers stood next to each other. Honestly we weren't great friends during our early law college days but had a mutual sense of great respect for each other. However, with the passage of time we became great friends. Needless to say that she was a student par excellence yet stayed humble as ever despite having achieved and tasted all success in academics and even professionally, she has been grounded and helpful to all. She would selflessly go that extra mile to help her friends out even if it means that she may have to suffer the adverse consequences. Truly fearless and dynamic when the occasion so arises. I haven't seen a person more determined and focused than her in all fields, be it academics, professional front or even otherwise. She has been extremely adaptable to the changing times and needs.

My best wishes to her and may she always get all the deserving success.

Usman Ali Khan
Advocate, New Delhi



Hi Iram,

I reminisce the days way back in 2004, when I was in deep desperation, hopeless, baffled and ambivalent about my career. I recollect, how you extended your kind support and cooperation and showed me a way forward, which built my career. You are really a life saver for me. I always remember you whenever I advance in my career. You are really a wonderful friend and I appreciate your love, kindness and generosity. I will forever be beholden to you...

Yours Truly
Azeez Nazar Sabri
Asst. General Manager(Legal)
Simplex Infrastructures Ltd. New Delhi

Iram you had always a support for not only me but other classmates also. Whenever we had any problems with studies you were always there. Right from explaining any topics or giving notes. We lived in hostel and missed our home but it was you who never made us feel like we were away from home. You with your family were always there. You always known for your positive attitude and forgiveness. This is a quality I always appreciate in u. You have always been humble and honest with a lot of positive energy.

Umme Aiman
Lawyer. UAE



Iram Majid is a hardworking intelligent and dedicated lawyer practicing in the High Court of Delhi. She is having more than a decade of experience as an advocate in the High Court. She has always followed the high standards of professional ethics and maintained professional dignity. She has seriously taken care of her clients focusing meticulously on facts, law and other allied issues in cases and used to discuss important matters with senior advocates so as to best sub serve her duties towards her clients and towards the institution of justice as an advocate.

She is very helpful to all. She helps out of the way whenever whosoever is in need. She used to teach her fellow classmates whenever they required any kind of help in studies. Still I remember her aid to neediest.

She is cheerful alert and updated on individual matters in the court of law. She has good relations with her fellow advocates in the bar to the best of my knowledge. She is cooperative and socially active. I wish her success in her future professional endeavour.

Mohd Afzal, Lawyer



MEDIATION AS A TOOL TO RESOLVE WORKPLACE CONFLICTS

Iram Majid

INTRODUCTION

People generally have strong conviction in their belief. And when you combine people with varying takes on life, there are bound to be clashes. The clashes due to small difference of opinion or ideologies. To resolve the disputes amicably without going to court, hiring a neutral third party to help employees work through their issues is the best option. It gives opportunities to settle their disputes out of the court thus the mediation is the best way to resolve the conflict. Mediation brings people together to proactively resolve their disputes. Mediation is a confidential, and usually voluntary, process of shared decision making in which one or more impartial persons, called mediators, assist people, organizations and communities in conflict to work towards a variety of goals. Mediation is a way to resolve disputes without filing a “formal complaint” or lawsuit. It can provide a non-public forum in which the disputing parties can discuss the dispute, feel that they are being heard, gain insight and understanding into the perspective of the other party, and work together in exploring and developing possible ways towards resolving the dispute.

DEFINITION:

Workplace Mediation is a confidential, informal and voluntary process whereby an impartial mediator facilitates communication between those in dispute to assist them in developing mutually acceptable agreements to improve their future working relationship. Mediation can be effective in both union and non-union settings and at all levels of the organization.

WHEN TO MEDIATE?

Mediation is more effective when conducted as early as possible after a problematic workplace relationship issue has arisen. It may be identified by one or both of the parties themselves, or by the parties’ managers or HR personnel. The best results are obtained when an adverse issue is in its early stages, when it can be “nipped in the bud” and before it:

- begins to make the employee dread coming to work each day;
- has a detrimental effect on the employee’s emotional wellbeing;
- becomes toxic and chronic;
- leads to dysfunctional workplace behaviour that has an adverse effect on the employee’s professional performance – for their own sake and that of their employer;
- has a detrimental effect on other employees in the workplace;
- leads to behaviour that warrants disciplinary investigation and/or performance management;
- causes the employee to want to leave their job. Although it is ideal if mediation is conducted early in the development of a workplace disharmony, mediation is still beneficial at any stage of employee conflict, for example: - before the making of a formal complaint;
- during the course of legal proceedings, e.g. the Fair Work Commission may order the parties to an application for an anti-bullying order to mediate;
- at the conclusion of legal proceedings, e.g., if an employee’s application / law suit was not successful and the parties still need to work together. Mediation at any stage of workplace conflict is worthwhile because it facilitates a process of self-actualization for each of the participants, and empowers them to express themselves, to be heard and understood, and to negotiate solutions on their own terms.

WHY MEDIATION IN THE WORKPLACE?

- **Recognition and Understanding.** When employees feel they are being heard and have the opportunity to hear and understand the other party's point of view, the chance for an amicable resolution is heightened.
- **Self-Empowerment.** The workplace is an environment in which employees feel they are normally being told what to do – mediation offers employees the opportunity to have input in the decision on how to resolve a situation.
- **Timeliness and Speed.** Mediation can take place quickly and within a short period of time (often just a few hours). In contrast, a formal complaint filed with a regulatory agency or court can take years to resolve.
- **Cost Effective.** Mediation is cost effective not only financially but also in human capital and time. Mediator fees are a fraction of the costs of the legal fees associated with a protracted conflict and litigation.
- **Confidential.** Once a lawsuit is filed it becomes a matter of public record while mediations, by their very nature and contract, are confidential, regardless if a mediation takes place prior to or after a lawsuit has been filed. In California, communications during mediation are inadmissible and are confidential as defined under the Evidence Code.
- **Durability of the Mediation Agreement.** Studies have shown that when disputing parties voluntarily enter into a mediation agreement they are far more likely to adhere to the terms of the mediation agreement since they helped draft and design the agreement rather than when a judgment is imposed by a court or regulatory agency.

WORKPLACE MEDIATION SHOULD NOT BE LABELED RIGHT OR WRONG

Workplace mediation is not a process designed to determine facts and make findings on exactly what happened and make a ruling on who is right or wrong. Sometimes the parties in a workplace mediation want for someone to be labelled right and the other person to be labelled wrong. If one or more parties is looking for a process that clears their name and labels the other person as wrong or at fault, then a workplace investigation should be conducted rather than a workplace mediation. However, an investigation should only be conducted where there are reasonable grounds to believe a workplace policy may have been breached. So in light of this the workplace mediator should not be trying to uncover the truth about actions and behaviours that occurred before, during and after the incidents in question.

EXTERNAL AND INTERNAL FACTORS OF CONFLICT AT THE WORKPLACE

The first step in uncovering workplace conflict is to consider the typical sources of conflict. There are a variety of sources of workplace conflict including interpersonal, organizational and external factors.

VALUES CONFLICT – Incompatibility in core beliefs such as religion, ethics or politics.

POWER CONFLICT – competition in the level of influence each party wishes to attain or maintain in the relationship or decision making process.

ECONOMIC CONFLICT – Competition is attaining monetary or human resources

INTERPERSONAL CONFLICT – Incompatibility in needs, goals or approaches to communication or work styles.

ORGANIZATIONAL CONFLICT – Inequalities in the organizational structure and how employees report to each other

ENVIRONMENTAL CONFLICT – External pressures such as recession that impact the daily work structure.

THE ROLE OF THE MEDIATOR

Conflicts occur not only because these parties have different perspectives but because they also haven't been able to communicate and resolve the conflict themselves. So the mediator's role is to encourage each party to share their views but not to gain agreement around these views. The mediator's role is also to help the parties find agreement about future workplace interactions and not past interactions. The mediator's role is to lead the parties to identify what changes in their interactions and behaviours are required that will support them to work safely, respectfully, professionally, and productively for going forward together in the future

THE WORKPLACE MEDIATION PROCESS

Because these parties in the workplace mediation haven't been able to resolve the conflict and communicate well with each other, the mediator may do well to hold pre-mediation phone call meetings with each person to be able to coach them around improved communication techniques and to coach them to see beyond their own perspectives and start to envision realistic, possible outcomes that they can put forward for discussion in the mediation. Its best that any agreement reached is recorded and documented and signed off by both parties. A workplace mediation may be held in the one meeting room with both parties sitting together opposite each other talking. Or it could be held in two separate rooms in a shuttle mediation with the mediator moving backward and forward between the parties delivering information from one to the other.

Importantly, workplace mediation is a voluntary process. Parties may choose not to participate or may start the process and then withdraw at any time. In addition, each party to a workplace mediation is entitled to have a support person present. Where participation in a facilitated discussion is the only reasonable & non adversarial process for resolution (for example to ensure parties are safe to work with each other, or to manage a low level bullying complaint or a performance management issue) then parties can be directed to attend a facilitated meeting and the process should not be referred to as 'mediation'.

TYPES OF WORKPLACE ISSUES WHERE MEDIATION CAN REALLY HELP

Disputes between employees. Sometimes interpersonal differences prevent co-workers from functioning effectively together. If the company needs both employees and wants them working together harmoniously, mediation can be very effective. The employees are offered a controlled setting in which to air their differences, guidance in communicating effectively about them, and a chance to make agreements about how they will function together in the future.

Performance Issues. Employee performance can deteriorate for an array of reasons: communication style, personal interactions, misperceptions and misunderstanding regarding roles and responsibilities, etc. Mediation can offer an alternative, and likely more productive, forum in which to discuss these difficult issues outside of the standard performance review process. **Sexual harassment complaints.** People often assume that parties to a sexual harassment complaint cannot work together to resolve the dispute. That assumption can do both parties a disservice. Many hostile environment complaints arise as a result of differences in perception about what is funny or flattering and what is offensive behaviour, or they arise as a result of one person's failure to respect the other or to understand the effect of his or her behaviour on the other. If the parties are willing to talk with each other, these complaints can be mediated to excellent conclusions. The employer can save his/her relationship with both employees and avoid an expensive and painful lawsuit.

Termination. When an employer chooses to terminate an employee even though the termination poses litigation risks, mediation on the terms of the separation can be very helpful. Through the mediation process, the employee has a chance to communicate severance needs and to affect the nature and quality

of the severance package, while the employer has an opportunity to eliminate the litigation exposure. Mediation can also be beneficial emotionally: the employee may never agree that the termination was warranted but will more likely feel that he or she had a fair hearing, and may come to understand the reasons for the employer's action. These realizations can make it easier for terminated employees to move ahead with their lives.

BENEFITS: Workplace Mediation offers important benefits to employers and employees alike. It provides fast, creative, mutually satisfactory resolutions. When a dispute is mediated shortly after it arises, the chances of optimal resolution are much greater: the parties' differences have not had a chance to fester, the situation is generally more fluid, and the parties have more resolution options available to them. Mediated resolutions work better and last longer than authoritatively imposed resolutions because everyone involved has a stake and buys into them. Moreover, mediation fosters mutual respect through improved communication, and can mend and preserve frayed working relationships even when the parties are extremely hurt and angry.

Mediation within the workplace generally looks very different from mediation within the context of litigation. The primary goal of workplace mediation is to leave the parties better able to work together. Traditional "settlement conferences," in which the mediator separates the parties and shuttles back and forth between them, often will not be adequate to this task; the parties will need to work through their differences together.

Many disputes arise out of a failure by either party or both parties to communicate, understand or consider the needs and interests of the other. People fix their attention on the question, "Who is right and who is wrong?" and become blind to the possibility that both may have a legitimate point of view. The mediator's task is to open communications between them about the reasons for the positions they have taken with each other, helping both parties to understand, as fully as possible, their own and the other's view of the situation. The mediator encourages both to look at the dispute through different lenses: What do they think will work as a practical matter? What do they think will be fair? What do they think will best honour and promote a good working relationship? As the parties gain an expanded understanding of the situation, their ability to work together toward resolution — and after resolution — increases.

CONCLUSION

Mediation is becoming more popular in helping companies resolve conflicts. National survey indicates that 65% of companies used mediation in response to the work place disputes, with 90% success rate. There are many situations where mediation can be helpful. Mediation is a great option but, be sure to find a mediator who is acceptable to both parties. Mediation that do lead to an agreement have endless benefits that include a positive resolution to a workplace dispute in a quick, cost effective manner. Mediation also has the long lasting effect of providing the employees who participate in the mediation the conflict resolution tools that were utilized in the mediation to resolve future disputes.

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Mediation Wisdom

- 1) Never mediate between a warring husband and wife couple. The chances of their reconciling are better without your mediation (meddling).
- 2) A typical mediation kit should contain a compass, an eraser, and patience pill.
- 3) We can learn the art of mediation from parents, not from their quarrels, but from their skillful and peaceful settlement of disputes among their offspring.
- 4) Mediation should be allowed to move at its own pace and take its own course.
- 5) Mediation is an art, more difficult than a martial art.
- 6) Mediation requires both knowledge and wisdom. It is often aided by empathy, common sense and compassion.
- 7) A successful mediator ought to have the attributes of a mother, the skills of a diplomat and the wisdom of a judge.
- 8) Mediation is the only game in which every player and every team wins.
- 9) Arbitration may go awry or arbitrary; but, mediation cannot afford such a luxury.
- 10) All disputes in the world can be resolved through mediation if everyone concerned comes forward with an open mind.
- 11) Mediation and meditation have something in common; both require commitment and concentration.
- 12) Mediation is a marathon. You cannot run it like a sprint.

Shared in public-cum-professional interest by:

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National Convener, 3i STEM Forum (3iSF)
Hyderabad, India

“Gandhi’s Influence of Nonviolence On Two Contemporary Indian Women Leaders”

Jill Carr-Harris

The current ascendancy of political leadership that prides itself in its “tough talk”, “singularity of vision” (reducing everyone to good or evil), and the ability to use “fire with fire” in defeating opponents, is deeply discomfiting for many, but most especially for those doing peace or education for peace work. There seems to be a legitimization of violence in public policy in democratic states that is a departure from the past. Even though it is difficult to avoid responding to the provocation and aggressive discourse, this kind of leadership seems to be eliciting fear—fear of enemies, fear of immigrants, fear of foreign businesses, and fear of war. What strategies of nonviolence do we draw from Gandhi, to wrestle with this new surge of hateful discourse so as not to join its chorus?

The two aspects of Gandhi’s approach that I want to bring forward to the audience is firstly, his belief in the unity of all things, and secondly, in the human capacity to transform violence. In terms of the unity of all things, some scholars posit that this was derived from his religious and spiritual beliefs and this gave him a sense of truth and moral vision that he brought into political life. Based on this vision of the unity of all things, he was able to impart shared understanding even among those that were in deepest of conflict with each other.

The second learning is how he responded to conflict with transformative nonviolence. Gandhi sought in his nonviolent conflict transformation, moments of transcendence that changed perspectives of one or both parties. He appreciated that conflict could not be solved by giving a lop-sided judgment to one side forcing the other side to accept what they did not believe to be just, for this would only work to undermine the situation. For Gandhi nonviolent conflict transformation was conversion not as coercion.

The two women nonviolent leaders that I want to profile today are both well-known: Ela Bhatt, the founder of the Self-Employed Women’s Association (SEWA) in India, and currently the Chancellor of the Gujarat Vidyapith University; and the second is Vandana Shiva, ecologist and anti-GMO crusader, as well as someone who has developed a planetary charter for development to safeguard the Earth and its resources.

Ela Bhatt’s work in SEWA, one of the largest cooperatives in the world is mostly run by poor women. As a grassroots organizer, Elabehn was able to start many unions and today there are 120 cooperatives, the most famous of which was the cooperative bank which has helped hundreds of thousands of self-employed women to access capital for creating sustainable livelihoods for their families and meeting their basic needs. She has brought poor women into the center of decision-making and participatory planning, and has advocated for government policy change.

People know Ela Bhatt less for her peace work. As a Gandhian she has been viewed by some of the political pundits in her own state of Gujarat with an amount of suspicion. Gujarat is a state in India, although the birthplace of Gandhi has been a nesting ground for Hindutva politics. Ela Bhatt started SEWA in 1972, but over the period that SEWA was being built, the organization cut across religious and caste divides. Today SEWA is 30% Dalit, 30% Muslim and 30% other caste groups. During the Bhuj Earthquake in 2001 or the Communal riots of 2002, SEWA responded to assist women who faced problems, whatever their backgrounds.

The question is where did Ela Bhatt learn to handle this magnitude of conflict? When I asked her this recently, she said that she learned nonviolence growing up during the Freedom struggle: “It was in the air that we breathed”, she said. “I was influenced by my maternal grandfather, who had joined the Sal Satygraha in 1930, and by reading his diaries I found that he had been beaten”. His participation in the Free dom struggle cost him his job at the Medical Hospital. But she was also trained in a Gandhian union known as the Textile Labour

Sarabhai, her associate, who founded the TLA in 1921, ran this union for fifty years. The TLA trade union was based on trusteeship and not on class differences. This meant that the goal was to gain shared understanding between management and the workers, based on both parties' recognition of their interdependence, and also on common goal formation, which helped them to sort out their differences over wages in negotiation.

Ela Bhatt said that Anasuya Sarabhai (Motabehn) was "a forward looking, and able to 'agree-to-disagree', rooted in her life and philosophy as a woman". Motabehn's leadership was full of humility and modesty, and according to Ela Bhatt, she was repeatedly successful in claiming the high moral ground in disputes and resolving what seemed to be intractable conflicts. Unfortunately, the Trade Union Leader was not widely recognized, partly because she was a woman, but also because Gandhi's assistance with one of the trade union disputes in 1918, made it look like he was the trade union leader. His fame eclipsed the Anasuya to some extent. To rectify this, Ela Bhatt put together an exhibition on Motabehn in 2013, at the time of SEWA's 40th anniversary, and this is a permanent exhibition demonstrating her unique leadership.

Ela Bhatt was deeply inspired by Motabehn, so she got involved with women workers that were affected by the textile layoffs in the 1970s. This led to the setting up of SEWA. In 1981 SEWA separated from the TLA, because Ela Bhatt supported the reservation of Dalits for medical school and the TLA did not want to take a stand and disrupt its high caste members. At the same time, they were not in favour of Ela Bhatt gaining so much space in organizing women and an increasing her notoriety within TLA. They asked her to resign from the union. She did so in 1981 and then SEWA was set up separately as a women's only organization. Ela Bhatt saw that by working with poor women and for them to gain autonomy through their labour was one way to deal with a very hierarchal and male dominated society. Ela Bhatt said:

"Women want stability. Women want roots for her children. Then they happily share their verandah; women are communicators, networkers, so they are good at linking in relationship of different kinds and at different levels within the community and outside the community. Because of having children and her biology, women are more futuristic. Her leadership is natural leadership".

In the process of this split with TLA, Ela Bhatt learned how to manage conflict. When the 2002 communal riots in Gujarat happened and fifty-eight Hindus were burned in a railway boggie on their return from Ayodhya on the 27th of February 2002, with three days of communal riots occurred, which resulted in three months of mass killing, rape and pillaging where thousands of people were murdered, SEWA's women positively responded. They supported five relief camps and gave sewing machines to women that had lost their homes so that they could immediately earn income through the sewing of garments that were then sold at the SEWA shops. This was to assist affected women with the trauma and to have them gain some dignity, and also to get back on their feet. Ela Bhatt did not get cynical after this episode. She continued to reaffirm her belief in a common humanity. She said:

"So people are good at heart. They have a conscience. If we remain conscious, they have a conscience. Your own conscience guides you all through at all time. Your conscience always knows what you have done is wrong. It will always tell you."

So what Ela Bhatt brings to peace is unique.

"I have great faith in our women and our people. Not everything is lost. That basic culture is still there. That faith is there. They know what is truth and what is not. So in the final stage when it comes to trust, then it succeeds. You do whatever but keep this credibility. That is our biggest capital".

Ela Bhatt, like Gandhi and Anasuya before her, had developed methods of carrying out nonviolent conflict resolution that seemed to keep SEWA together as an organization, and also it enabled them to work in unfavourable environments. One of the constants of these methods was to be truthful and not to exaggerate conditions, not to provoke the opposition, and to continue to collectivize women so that they could transcend their individual self-interest for a greater collective good.

* * * * *

Let us now turn to the second woman leader, that is, Vandana Shiva. In 1993, Shiva received the Right Livelihood Award. Time magazine, the Guardian, Forbes and Asia Week have all placed her on lists of the world's most important activists. She has a Phd on the non-locality and non-variability in Quantum Theory given by the University of Western Ontario, Canada. She has been awarded doctorates from universities in Paris, Oslo and Toronto among others. In 2012 she was awarded the Sydney Peace Prize, and many others. Vandana is known for her fights against policies supporting genetically modified organisms (GMOs), or standing up against agro-industrial giants, like Monsanto, and talking on behalf of small organic food-producers. She is not always understood for the contribution she is making to peace. In fact she has spoken for the past thirty years on violence as the basis of policy making, and how this needs to shift to a peace perspective. This has come from her exposure to Gandhi from childhood, viewing the struggles of the Chipko Movement as an ecological and not a peasant movement, and her close association with Arne Naess. She continually writes about making peace with the earth, and the link between destruction of eco-resources as a reason that people cannot make peace among themselves.

Johann Galtung had spoken about direct and indirect violence, and showed how structural violence was indirect violence seen as: "unintended structure-generated (rather than actor-generated) harm done to human beings" (Galtung, 1969). He shifted conflict from East-West (Cold War) to the North-South. Galtung at the time of globalization began to write about cultural violence (1990). This is where people's cultural milieu is contaminated with violence and they see structural or direct violence as legitimate or normal. Galtung was deeply influenced by Gandhi.

Vandana has had the courage to deconstruct the violent economy. She began writing on the violence in Punjab in the mid-1980s, linking two apparently separate entities, the chemical poisoning of the earth through the Green Revolution in the tradition of Rachel Carson, *Silent Spring*; as well as the civil strife that was being experienced by those Sikhs that wanted self-determination. Vandana writes:

"Discontent that had expressed itself in Punjab in the 1980s was the result of centrally controlled agricultural production and the resulting economic and political crisis. It was located in the Centre-state politics and the political economy of the Green Revolution" (Shiva, 1989B, p. 129)

Vandana showed through different resource struggles that the destruction of land, water, seed and forest, would invariably leads to civil strife. This is because of people's dependence on these resources are for survival. Vandana had to the courage to make connections between the economy and the violence that few policy makers were willing to admit.

She tells an interesting story about how she went to a meeting of chemical companies in Europe and realized that they were going to the business of patenting seeds. She says :

"On my flight back I made this matrix. First industrial revolution is coal, what did coal give us? Industries and what did industries first mechanize, textile making. What did they grab for it, markets and cotton and indigo. How was it fought back? Gandhi and the spinning wheel. Second Industrial revolution. Chemicals and Rachel Carson. There was not a concentrated response. Now we have the third industrial revolution where they are trying to industrialize life. These GMOs in 1987 did not exist. There was no BT cotton, there were no roundup ready, but the industrialization of life was so clear. What is the spinning wheel of today? Seed".

Vandana saw how agrochemical seed corporations could slowly dismantle human life. She showed these connections in terms of the convergence of globalization and terrorism that made way for many Dalits and subsistent farmers to be displaced by biotechnology, seed patents, and impounding water in large dams, dispossession from land –basically when people are internally displaced, this leads to structural violence.

On the face of it, it seemed dramatic however, as the years have gone by, many of these things that Vandana envisaged, have in fact come upon us. For instance how intellectual property rights have been manipulated

to control agriculture. How corporations under the law have become individuals that allows them to defend their interests under various regulations. How the displacement of people has led to great volatility in terms of civil life, and so forth.

What also became apparent to Vandana is that in order to raise these structural issues, it is not possible to depend on the same empirical reasoning that creates what she called the “paradigm of separation and fragmentation” where one cannot see the connections between these phenomena. Vandana shows the cultural violence differently than Galtung had, for while he depended on empiricism, Vandana uses interrelational reasoning. She wanted people to make connections between the violence of modern development and scientific reductionism. This was found in her works *Staying Alive* and *Ecofeminism*, and was based on the scientific work that she had carried out as a doctoral student at Western University.

Micheal Specter in the *Annals of Science* magazine (August 25, 2014) made a critique of her arguments, that he maintained were not based on scientific inquiry. Again Specter did not understand the larger epistemological argument that Vandana was making. Specter was looking at how gene manipulation helps produce more food for poor people without the consequences on people and the earth. Indeed, causality is not easy to prove but this does not dismiss Vandana’s arguments. She has shown in 17 books that the economic structures are violent to people and the earth, and there are many ways she arrives at this conclusion.

But Vandana does not stop there. She also tries to show the way forward. If you look at the manifestos *On the Future of Food*, *On the Future of Seed* (2007) or the *Terra Viva: Our Soil, Our commons, Our Future* (2015), these are roadmaps for future action. *Terra Viva* was done in the year of the soils in 2015 and again, Vandana links ecological rights with human rights so people can correlate these phenomena. In this work she also shows that the present economy is linear and extractive and it is based on the logic of exploitation, threatening ecological and social collapse. She contrasts this with the circular logic of the Law of return, of mutuality reciprocity, and regeneration.

Vandana like Gandhi before her was trying to give a holistic vision, where there was a unity of all things, in which to measure the diverse particulars.

To conclude then, these two women are examples of how they have been influenced by Gandhi in their work. More importantly they have extended Gandhi’s knowledge and show that it is being reused to deal with contemporary problems in how to resolve conflict and build a better future.

https://www.youtube.com/watch?v=50SH5sPc_9o

<https://www.youtube.com/watch?v=3EAVbQNBpq4>

Profile of Jill Carr-Harris

Jill hails from Canada and has lived for more than 30 years in India. She is trained in teaching peace education and Gandhian nonviolence, holding her doctoral candidacy from University of Toronto in Canada. At present she coordinates a small training and research program in South India on Gandhian Nonviolence and Peace and, she travels throughout the country doing education and action programs. Jill takes special interest on women and development, and looks at women’s empowerment process through the frame of nonviolence.

Currently Jill is coordinating a global peace campaign known as the Jai Jagat 2020, and this involves a large public engagement in India and in numerous other countries. The Jai Jagat consists of a march from Delhi to Geneva and this will be followed by eight days of action in Geneva in 2020. The objective is to press various UN Agencies to offer greater space for marginalized groups to carry out the Sustainable Development Goals (SDGs) not simply leaving it to National Governments or corporations, so that solutions will be drawn from the grassroots. (See www.jaijagat2020.org.)

Intervening to Neutralise Plague, Famine, War

Prof. Sunney Tharappan

Intervene and Neutralise

To intervene is to come in between. Intrinsicly this means that one is not committed to taking sides. However, it also means that one is dedicated and committed to the cause in which one is getting involved. It means that one may take sides if there is a need for the consideration of the truth in the matter. 'Neutralise' is a strong word, much stronger than 'intervening'. It may even mean that one is bent on annihilating the unwanted for establishing what is desired in the pursuit of a cause. In this case, when one thinks of neutralising something one has already taken sides in favour of the needy and against an enemy, especially when the latter is unwanted or even dangerous. Plague, famine and war are all unwanted and dangerous and hence it is necessary to intervene to neutralise them.

Alarming Warning

History is a grand view of the present and not simply something of the past, Spenser Wells tells us in his foreword to his book 'Pandora's Seed'. Cognitive, natural, physical and psychological scientists have been expressing their thinking that the world is in a flux, that we are on the brink of a transition, and that the world will be fundamentally changed somehow for the next few generations. We the Homo sapiens have a complex culture. Hence, there is a need for us to turn to history to understand who we are and deal with the changing world through the application of our own cognition. No doubt, our success in this is dependent on negating the prediction of Stephen Hawking that the world would come to an end sooner or later, sooner than later. The scientist did predict several things which came true. Hence, the matter is, no doubt, alarming.

History of the World

The history of the world tells us about our progress and growth into the ever increasing comforts of living that the humans created for themselves. Simultaneously it also tells us about the disasters that accrued alongside and also the evil that the humans exhibited which resulted in untold misery for millions of people. Fast spreading epidemics, lack of food, either because of unnatural calamities or egos of chieftains or kings that created conflicts between communities and countries, led the humans for several centuries to death and destruction. If the number of people who died due to epidemics or lack of food or because of conflicts is taken into consideration, one understands that it is much more than what unexpected natural calamities would have killed. The manmade spread of plague, continuation of famine or involving in war are all part of history as most tragic records of human living on earth after the humans became empowered with a fully developed brain and mind.

The eradications

A perusal of human history of the last 2500 years brings to us the resolutions made and tasks that the humans have taken against the spread of plague. Though medical science is yet to discover an effective medicine for the common cold or similar everyday health issues, it has travelled plenty to fight against diseases, has been fairly successful in most cases, and has been relieving the humans from pain and suffering. Similarly, famines occurred from time to time and took away lives of humans, and even animals and other beings, in millions in the past. Humanity stood with concern and a sense of defeat when wheat, potatoes and other grains and vegetables that they grew withered away and there was not even enough water to drink. While chieftains, kings and emperors led their armed forces to fight against each other, sometimes even for the flimsiest of reasons, the humans around them would only get killed as they went shouting about their loyalty to their ruler. Today, most rules are reluctant to commence a war even when there seem to be strong reasons to start one.

Impact of Revolutions

For several centuries, humans were shocked into a defeated status with the advent of plague, famine and war with all their ramifications and impacts. However, the cognitive developments and the scientific advancements of the middle ages and later, the technological and biological discoveries of the twentieth century and the knowledge revolution of the present century have shown to the world newer possibilities of eradicating plague, famine and war. The progress the humans have made during the last quarter of a century is equal to what they would have made in the previous two centuries. It is easy to notice that the progress in science and technology to defeat plague, famine and war is faster than what has been happening in the previous centuries. Ebola or AIDS met their enemies in the hands of the medical researchers who came out with chemical treatment solutions to nullify their effects. Any community or nation which faces famine gets food sent by other nations to circumvent the scarcity of food or other needs. In the last seven decades, especially after the threats of a possible world war melted, no super power is thinking of waging war against another.

No More Famine

History records that 5% of the population perished during the severe drought of ancient Egypt as was the case in medieval India also. Between 1692 and 1694, 15% of the French succumbed to famine. The famine in Estonia in 1695 killed 20% of their population. In 1696, Finland lost a quarter of its people because of famine. In 1695, Scotland lost up to 20% of its population. Humanity no more suffers from natural calamities of the same scale and even if there is a cause for a calamity, there are enough people, with enough knowledge, and with enough material resources to deal with it. Rarely do we see human hunger because of famine in the forms in which we have seen them in the medieval times. Also, today, if there is any famine in any country in the world which is making its people die, it is due to political reasons and hence could be called political famine. In fact, in the modern world, there are more people who die because of overeating rather than not eating. If or when earthquakes or tsunamis occur, there is always support from other nations. The world has become more or less a simple unit not only as an open global market but also as a collective of globally connected people.

No More Plague

Plague killed 75 million in the beginning of the 15th century; four out of ten Englishmen died because of plague. In 1520, a Spanish flotilla from Cuba travelled to Mexico; it had on board a slave called Francisco. He carried smallpox virus on him. He was the harbinger of the dreaded sickness in Mexico and 22 million people died and only 14 million remained. As of now, we not only fight against diseases in our own country but take action plans to prevent an epidemic being introduced into our own country or spread from our county to other countries. Till the beginning of the twentieth century, children and women died at child-birth. Today, we hear very little about the death of mother or child associated with delivery unless it is because of the lapses of other humans. The recent report of the health ministry shows that Kerala as a state has the least of child deaths, that is, only 6 per every one thousand, which is equal to that of the United States or slightly less than some of the European countries. Of course, one need not totally forget the case of an Uttar Pradesh which has a ratio of 42 child deaths in every thousand with which record they are the highest child mortality state. Yet, this is much less than what it would have been in the 18th or 19th century for which we do not have access to records.

No More World Wars

Post the Second World War, in fact within a short period of less than two decades, two mighty powers looked like they would commence a third world war. In the early sixties, when President Kennedy asked Nikita Khrushchev, the Russian premier, to remove all the missiles from Cuba, the world kept its ears open

to hear about the third world war. However, Khrushchev became a bigger peacemaker by removing the missiles and a third world war was averted. Though there are more than 5 major nuclear weapon states, none of them threaten each other with the use of a nuclear missile. Despite skirmishes, Israel and Palestine still exist side by side. So is the case with a Kashmir and the contention between India and Pakistan in which the verbal conflicts get accelerated though the conflict is minimal, as the terror groups express only their weakness through hidden attacks. The two Koreans, who never wanted to look at each other even in sports and games, have melted recently after threatening wars against each other. So, there is no threat of a world war even though minor confrontations, in which smaller groups of people die, happen over and over again. Though such things have the potential to start a third world war, the parties involved are careful not to be the beginners. Even the cyber war heroes do not get as much welcomed as the Grecians or the Romans got after a war. In fact, these days, sugar kills more people than war is capable of killing.

Are They All Over?

So, are we to believe that plague, famine and war will not happen at all? Do we want to believe that all forms of virus will go away like those of the smallpox? Do we want to believe that nature will always be kind and chances of famine do not exist at all despite the fact that global warming is increasing? Do we want to believe that there will be no unintelligent ruler in any country who might start a war which could escalate into one that will engulf more number of nations to commence a third world war?

The answer ought to be in the negative.

The Possibilities

Considering the discovery of viruses of AIDS, Ebola, Viral Flu or Chikungunya, one can never be sure that there will not be any newer diseases or epidemics that will kill humans in plenty or incapacitate them either temporarily or forever. Similarly, if global warming proceeds at the speed with which it is happening, one cannot deny the possibility of a famine at least in certain parts of the world. Famine could also be the result of a tsunami or a huge volcanic eruption, or even the after effects of a nuclear device used by a nation. Also, the Chekhov law stands over our heads as a Damocles sword as one recollects what the Russian famously wrote "If in the first act you have hung a pistol on the wall, then in the following one it should be fired. Otherwise don't put it there". True enough, the Chekhov gun, the word 'gun' is alternatively used for 'law', is a matter to be considered because with the type of arms build-up that is happening in various parts of the world and if the Chekhov law is true, one day or the other, there could be a war. Though George Bush foolishly declared, in fact it was more stupid than foolish, that there were Weapons of Mass Destruction in Iraq and destroyed an otherwise progressive state, Bush's stupidity and foolishness did not result in other countries fighting against his country. However, the possibility cannot be ruled out. So, the threat of plague, famine and war still remains though at a distance.

Products of the Human Mind

The annihilation of viruses to neutralize plague, research and development in the field of agriculture and climate to avoid any possible famine and greater and better relationships between nations to avoid war reflect the pinnacle of human enlightenment towards the possibilities of human living continuing creatively and peacefully in the future. If the humans of the past attributed reasons for plague, famine or war as a curse of God, or, in the minds of a few, as the displeasure of nature, the modern man understands that all three; plague, famine and war are products of the intricately developed human mind.

The Contradictions and the Vision

It is time for us to come nearer home. Child mortality may be the lowest in a state like Kerala, but it is a state which has the highest rate of diabetes, heart diseases, and to top both, suicides. It also has the highest

number of people who drink alcohol despite having the highest ratios of education and health. We have peaceful and quiet systems of states governing themselves but the lack of water in the forests of the Western Ghats and a Kaveri flowing down with a little less water can create lack of paddy growth in the Kaveri basin and result in lesser amount of rice production leading to a lack of it in our own homes. The death of a little girl in the Kashmir valley can result in bullets fired against the youth and stones against the army that could escalate into a minor war just as was the case when pellets were fired against our own youth by our own law enforcers.

The Vision

So, despite everything being better these days, there could yet be plague, famine and war though in smaller measures, and hence manageable, unlike those of the past centuries. One can only assure oneself that they would always be manageable and would not result in the destruction of millions at one go. That is the vision of the largest number of people in the world. One deeply wishes that this vision will ask for missions, completions of which will avoid plague, famine and war for ever.

Profile of Professor Sunney Tharappan

Professor Sunney Tharappan, started his career as an English lecturer, did a deep study and research in the teaching learning process and trained thousands of teachers and evolved into an expert in human resource of development. He established a few institutions, which made a significant contribution to human resource development.

Tens of thousands of teachers, educational administrators, parents, students and others have benefited by his training programmes.

A great humanist and a liberal intellectual, Professor Sunney Tharappan is Founder Director of the College for Leadership and Human Resource Development, Mangaluru, Karnataka State, India. He does action research, trains people in HRD and Leadership, and writes regularly. He has authored many books. There is a fresh approach and a discerning perspective in his writings.

Mediation

Prof. G. Surender Reddy
Corporate Advisor, Butterfly Fields
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What is Mediation?

Mediation is one of the ways of settling a dispute. A dispute can be simply defined as a disagreement followed by opposition against something. Disputes abound. Disputes occur between family members, individuals at workplace, organizations, nations, etc. Dispute resolution is the process of resolving disputes between parties. Dispute resolution processes fall into two major types: (1) Adjudicative processes, such as litigation or arbitration, in which a judge, jury or arbitrator determines the outcome. (2) Consensual processes, such as collaborative law, mediation, conciliation, or negotiation, in which the parties attempt to reach agreement.

Mediation is an informal and consensual process for helping people who have a dispute to sort it out for themselves, with the help of a mediator, without going to court. Wikipedia defines mediation as “a dynamic, structured, interactive process where a neutral third party assists disputing parties in resolving conflict through the use of specialized communication and negotiation techniques.” WIPO says, “In a mediation procedure, a neutral intermediary, the mediator, helps the parties to reach a mutually satisfactory settlement of their dispute. Any settlement is recorded in an enforceable contract.”

Mediation is a voluntary process and will only take place if both parties agree. It is a confidential process where the terms of discussion are not disclosed to any party outside the mediation hearing.

The role of the mediator is to help parties reach a solution to their problem and to arrive at an outcome that both parties are happy to accept. Mediators avoid taking sides, making judgements or giving guidance. They are simply responsible for developing effective communications and building consensus between the parties. The focus of a mediation meeting is to reach a common sense settlement agreeable to both parties in a case.

If parties are unable to reach agreement, they can still go to court. Details about what went on at the mediation will not be disclosed or used at a court hearing.

Both parties share the cost of mediation, which will depend on the value and complexity of the claim.

Benefits of Mediation

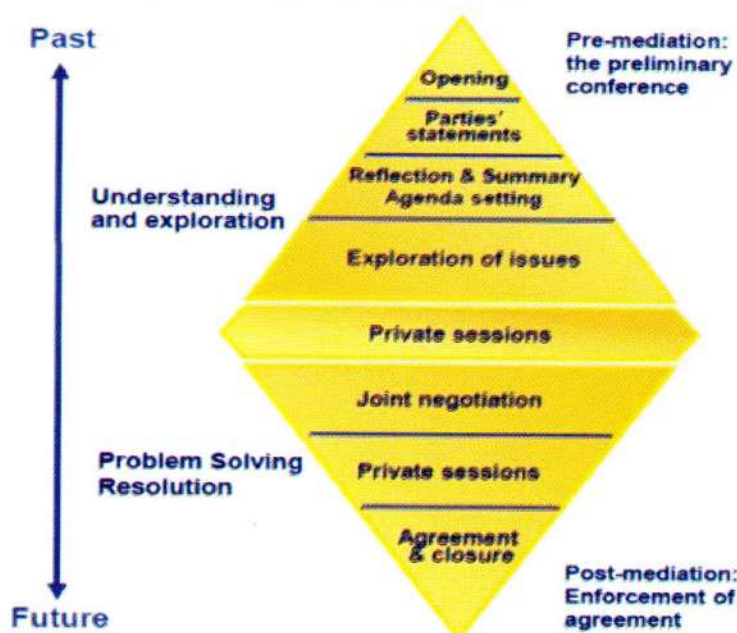
- **Less expensive:** While a mediator may charge a fee comparable to that of an advocate, the mediation process generally takes much less time than moving a case through standard legal channels. Taking less time means expending less money on hourly fees and costs.
- **Quicker:** While a case in the hands of a lawyer or a court may take months or years to resolve, mediation usually achieves a resolution in a matter of hours.
- **More informal:** Only the two parties to the dispute and a mediator are involved in the mediation. Parties to a mediation are typically ready to work mutually toward a resolution. In most circumstances the mere fact that parties are willing to mediate means that they are ready to "move" their position. The parties thus are more amenable to understanding the other party's side and work on underlying issues to the dispute. This has the added benefit of often preserving the relationship the parties had before the dispute.

- **Confidentiality:** While court hearings are public, mediation remains strictly confidential. No one but the parties to the dispute and the mediator or mediators know what happened. Confidentiality in mediation has such importance that in most cases the legal system cannot force a mediator to testify in court as to the content or progress of mediation. Many mediators destroy their notes taken during a mediation once that mediation has finished. The only exceptions to such strict confidentiality usually involve child abuse or actual or threatened criminal acts.
- **Control:** Mediation increases the control the parties have over the resolution. In a court case, the parties obtain a resolution, but control resides with the judge or jury. Often, a judge or jury cannot legally provide solutions that emerge in mediation. Thus, mediation is more likely to produce a result that is mutually agreeable for the parties.
- **Compliance:** Because the result is attained by the parties working together and is mutually agreeable, compliance with the mediated agreement is usually high. The mediated agreement is, however, fully enforceable in a court of law.
- **Support of a Mediator:** Mediators are trained in working with difficult situations. The mediator acts as a neutral facilitator and guides the parties through the process. The mediator helps the parties think "outside of the box" for possible solutions to the dispute, broadening the range of possible solutions.

How Mediation Works

In virtually every situation where negotiation is not going well, or where for one reason or another it seems impossible to get a real discussion going with the other party or parties, it's worth asking whether bringing in someone else might at least help get communication going. That someone else is likely to be, or act as, a mediator. Although a mediator cannot force an outcome, the process is very often effective. The key is the ability of the mediator to create a more productive discussion than the parties could have had by themselves. To do this, mediators help the parties determine facts; they show empathy and impartiality with the parties; and they help the parties generate new ideas. Mediators also exercise political skill and use persuasion to get people to soften hard-line positions. Often, though not always, they have a lot of background knowledge of the issues and type of dispute. Though many mediators are highly trained and experienced, not all are professionals, and they come from many different walks of life.

The Process of Mediation is a flexible process that can be adapted to suit the parties and the circumstances. The model (see figure below) gives you an idea of the process



Source: www.resolution.institute

Individual mediators vary the above steps to match specific circumstances, given that the law does not ordinarily govern mediators' methods. The mediator's primary role is to act as a neutral third party who facilitates discussions between the parties. In addition, the mediator can contribute to the process ensuring that all necessary preparations are complete. Finally, the mediator should restrict pressure, aggression and intimidation, demonstrate how to communicate through employing good speaking and listening skills, and paying attention to non-verbal messages and other signals emanating from the context of the mediation and possibly contributing expertise and experience. The mediator should direct the parties to focus on issues and stay away from personal attacks.

The role of the parties varies according to their motivations and skills, the role of legal advisers, the model of mediation, the style of mediator and the culture in which the mediation takes place. Legal requirements may also affect their roles. The parties' first role is to consent to mediation, possibly before preparatory activities commence. Parties then prepare in much the same way they would for other varieties of negotiations. Parties may provide position statements, valuation reports and risk assessment analysis. The mediator may supervise / facilitate their preparation and may require certain preparations.

Agreements to mediate, mediation rules, and court-based referral orders may have disclosure requirements. Mediators may have express or implied powers to direct parties to produce documents, reports and other material. Mediation requires direct input from the parties. Parties must attend and participate in the mediation meeting. Some mediation rules require parties to attend in person. Participation at one stage may compensate for absence at another stage.

Consider having the mediator meet the disputants prior to the mediation meeting. This can reduce anxiety, improve settlement odds and increase satisfaction with the mediation process.

Ensure that all participants are ready to discuss the dispute in a reasonably objective fashion. Readiness is improved when disputants consider the viability of various outcomes. Provide reasonable estimates of loss and/or damage.

Identify other participants. In addition to the disputants and the mediator, the process may benefit from the presence of counsel, subject-matter experts, interpreters, family, etc.

Ensure that supporting information such as pictures, documents, corporate records, pay-stubs, rent-rolls, receipts, medical reports, bank-statements, etc., are available.

Have parties sign a contract that addresses procedural decisions, including confidentiality, mediator payment, communication technique, etc.

Record the final agreement in writing.

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Visiting Professor

JNTU, Hyderabad, ASCI, BIFT, IPE, SNIST

Previous Positions Held

Deputy General Manager

IDBI

Professor of Banking & Management

IPE

Director In-charge

JNIDB

Sr Project Consultant

Marubeni Corporation (Fortune 500 Company)

Consultant (Infrastructure
& Regulatory Studies)

ASCI

Advisor

APSFC & APITCO

Founder Director

Royal College of Engineering (now HITAM)

Founder Director

M C Gupta College of Business Management (HMV)

Director & Dean

Sreenidhi Institute of Science & Technology (SNIST)

Educational Qualifications

BE (Mech)

Osmania University (First Class with Distinction)

MTech (Industrial Management)

IIT, Madras (First Class – A Grade)

PGDPEM

IPE, Hyderabad (First Class with Distinction)

PGDIPR

PG College of Law, O.U. (First Class)

LL.B.

Osmania (Member, Bar Association)

CAIIB

Indian Institute of Banking & Finance, Mumbai

Special Achievements / Recognitions

Awarded National Merit Scholarship, Recipient of two Gold Medals

Won a Silver Medal from the World Bank Institute, Washington, D.C.

Appreciation from GOI for training in-service IAS Officers

Served on the Boards of over ten companies as Nominee/Independent Director

On the Visiting Faculty of several prestigious institutions and universities

Resource Person @ UGC sponsored programmes for university teachers

Associated with many NGOs as member on their Governing Boards

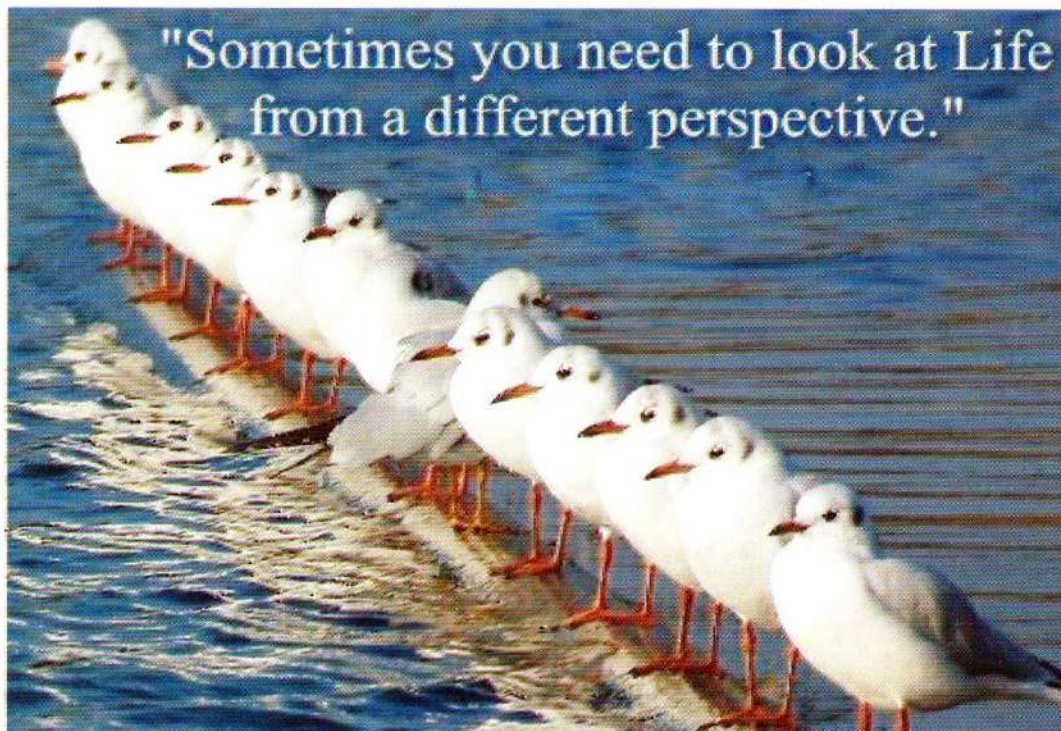
An active Rotarian (Received the Best President & Best Club Awards)

A Trustee of Triveni Foundation & Honorary President, BRRC, Bolarum.

Mediation: Some Innocent Questions

By Er. Prof. Adv. Rtn. G. Surender Reddy
National Convener, 3i STEM Forum,
Hyderabad, India

1. Who will mediate in a quarrel between two mediators?
2. Can we mediate a divorce by mutual consent and/or when there is mutual discontent?
3. How do we mediate between conflicts of interest?
4. How could one mediate between 'needs' and 'wants'?
5. Can children be mediators when their parents fight?
6. How can we rescue mediation from miscreants and "settlement" mafia?
7. How could we safeguard mediation from mediocre mediators?
8. Can mediation be considered as one of the factors/practices that differentiate humans from animals?
9. What constitutes the right context and the right time for mediation to begin?
10. Is there any link between the sustained mediation and the sustainable future?
11. Who should mediate when there is an infight among Hon'ble Supreme Court judges?
12. Who could be chosen as mediators between the Government of India and the Supreme Court of India whenever such a situation arises?



The Culture of Mediation

ANIL XAVIER

Culture – An Overview

A careful reading of social science literature on culture shows some recurring themes utilized by different authors to define what “culture” is and distinguish it from what it is not. Culture is the sum total of our birth, life and continuous environment. In most literature, the following themes are commonly employed – value, system, tradition, institution, belief, cultivation, history, inheritance, evolution, behaviour, society, etc. These themes have been used by many scholars in different ways and at different times and places to explain what culture is. Fundamentally, culture gives us messages that shape our perceptions, attributions, judgments, and ideas of self and other. Cultures embody the authenticity and unique purposes of each community. Each culture seeks to express a people’s values, sensitivity, and spirituality.

But most importantly, there are two things we need to understand about cultures – they are always changing, and they relate to the symbolic dimension of life. The symbolic dimension is the place where we are constantly making meaning and enacting our identities. Cultural messages from the groups we belong to give us information about what is meaningful or important, and who we are in the world and in relation to others – our identities!

Each stage of cultural progression, acknowledges that cultures and societies tend to develop and move forward and the underlying assumption is that cultural evolution leads to the growth and development of civilization.

Culture in Conflicts

Culture is also an essential part of conflict and conflict resolution. Though cultures are powerful, they are often unconscious, influencing conflict and attempts to resolve conflict in imperceptible ways.

Cultures create a ‘pool of habits’ for a society – that induces the society’s members into complementary, reciprocal habits. Each culture invites a wide range of habits, personality styles, and behavioural patterns for use in times of calm or in situations of conflict; and each culture also prohibits and seeks to limit the exercise of what it considers undesirable or unacceptable behaviour.

During prehistoric times, primarily humans had the tendency to solve their differences by fighting. As humans have waged conflicts, humans have also always engaged in various ways to end them. Often, one side coercively imposes its will upon the other side, sometimes violently, and thus terminates a conflict. Within every society, many ways of settling fights have long been practiced.

Even after the formal system of conflict resolution was established, during the very early times, even according to the history of England, justice was crudely and arbitrarily administered. The village moots, the shire courts, and in feudal times, the barons’ courts, administered justice without formality. During these times, the practice of advocacy was within the realm of priests, monks, when the Church Law / Canon Law prevailed and different types of law was administered to different categories or classes of people. This led to dissatisfaction among these classes. Culture evolved further and it was in the 13th century that centralised system for courts were established for dispensing justice.

It is considered that the rule of law and dispensation of justice that we administer now is the most cultured and civilized one. We could rather say that we have learned to judicialize our problems. In fact, Aristotle thought that development of culture stops when it reaches its maturity. But the Darwinian sense of varia

tion and selective inheritance, which is said to trace back to Darwin himself, states that social changes arise in consequence of a combination of social, evolutionary and biological influences and accordingly both customs and "inherited habits" contribute to human evolution.

Thus we can see now that the present system of litigation has also become complex, delayed and expensive. Moreover, with the present concept of cultural idea that value human empowerment, we feel that the dispute resolution system is giving away the right of the parties to resolve their disputes by themselves and is confined within the realm and expertise of judges and lawyers.

Taking Control over Dispute Resolution

As per the present cultural evolution, conflict can be seen as an expression of the highest level of social and political responsibility; as a necessary by-product of injustice; as a highly effective method for bringing about social change; as the way of expressing opposition. Since opposition or disagreements are inevitable, the challenge lies either in preventing these disagreements from developing into damaging conflicts or seeking to manage them and minimise their destructive nature when they do.

There is a culture of conflict which influences how we respond to it. This is where the culture of mediation evolves. It is a high context culture, where most of the meaning lies in the context. Law is supposed to be a low context culture, as most of the meaning is apparent in the words. Law seeks to abolish context while in mediation context is everything. To understand mediation, therefore, it is necessary to look beyond the words that are used to the context in which they take place.

In mediation culture one sees dispute as an opportunity for transformation through dialogue and problem solving. It seeks to bring about a deeper level of understanding and empowerment through honest communication about the causes of the dispute and allow the parties to decide how and whether to end it. Unlike ways of settlement of a dispute, mediation helps a resolution. Therefore, we can say that mediation is not just "another" dispute resolution method, but it is a culture.

Establishing Culture – Choosing Destiny

It is said that cultural evolution requires neurological instructions. A form of establishing culture is socialization practices. Parents, schools, and organizations all take a role in inculcating particular cognitive and emotional responses to interpersonal conflict. In other words, correlations between an individual's private cultural beliefs and the individual's behaviour are low because that person's behaviour is driven by variables in the external setting, which are part of culture.

But how do we establish this culture of establishing a system of self-empowerment to resolve dispute, which is an expression of the highest level of social and political responsibility. How do we "inherited habits" or change our destiny?

Can we choose our destiny or decide the destiny of a country or of its people? It is said that destiny is the situation that comes to you. No one can deliberately choose it. Situations are destiny. For eg., if someone comes and insults me, it is destiny. I did not choose it. But the response to that situation is my choice. Response is not destiny, it is a choice. What I choose is my choice and my choice to that situation decides my future destiny. Therefore, we can say that man is the maker of his destiny. It is not based on situations. Situations will remain what they are. But how you respond to those situations is completely and entirely your choice. We need to cultivate that attitude or habit to change our destiny and the destiny of our country.

The choice of a person or group of persons can ultimately influence the society or create the neurological instruction that is needed to bring about the cultural evolution. Richard Dawkins in this book "The Selfish Gene" (1976) proposed the concept of "meme", which is analogous to that of the gene. A meme is an

Idea-replicator that can reproduce itself, by jumping from mind to mind via the process of one human learning from another via imitation. Thus an idea, behavior or style spreads from person to person within a culture – often with the aim of conveying a particular phenomenon, theme, or meaning. Memes are a viral phenomenon that may evolve by natural selection in a manner analogous to that of biological evolution. Along with the "virus of the mind" image, the meme might be thought of as a "unit of culture" which spreads among the individuals of a population.

Be the Change that You Wish to See in the World

But are we ready to change this destiny or willing to be the cause to influence the society to bring about this change? It is said that there are 3 kinds of people in any given society. This distinction was noted by various sociologists and it was first identified and stated by the founders and supporters of democracy in ancient Greece, who gave us the foundation of the modern civilized world.

According to the Greek system any given society consists of 3 kinds of people. The first group are called the Idiots. Idiot is not perceived as mentally deficient, but he is a totally private person or a totally self-centred person. He is always looking at his personal gain or personal interest. He has no public philosophy or no skill to contribute to the welfare of a flourishing society. He is considered as an upgraded barbarian.

The second group of people are called the tribes. It is not meant to be the Tribes that we know, but who has a tribal mentality. These are people who cannot think beyond their own small tribe or group.

For them their only or primary allegiance is to their own group. According to the Greeks, the Tribals are always afraid of things that are different and they are always suspicious or fearful to think or try to do something which are alien to them.

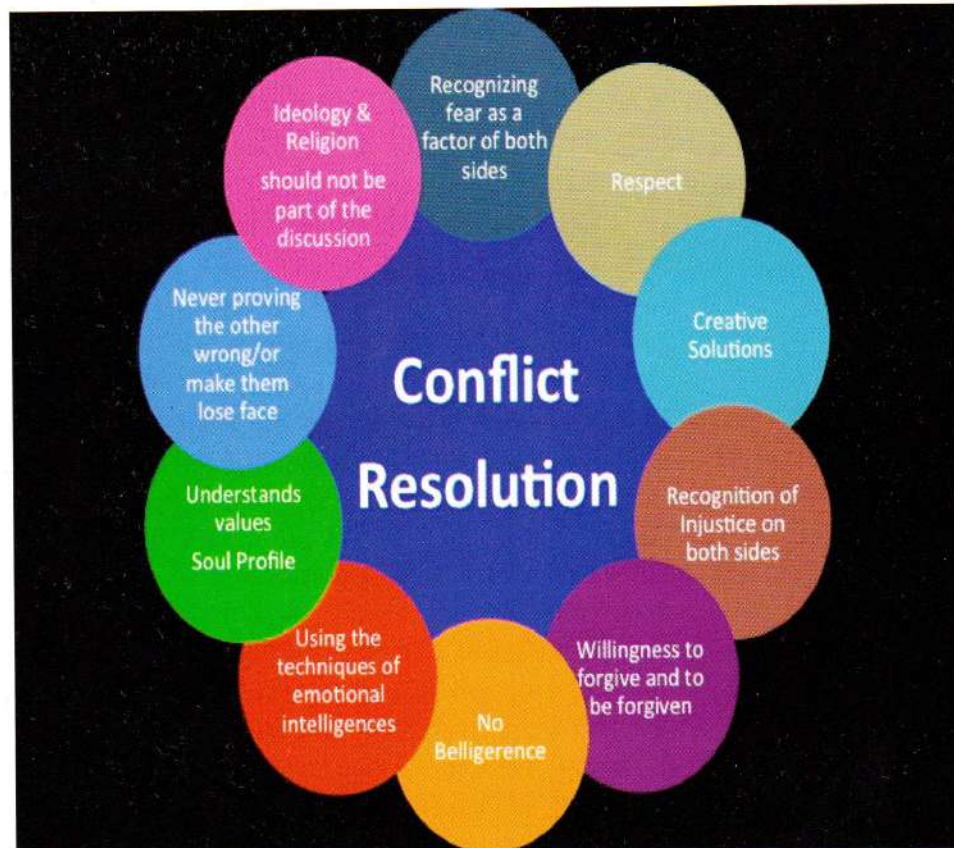
For the Greeks there was a third category of people, who they said are the ideal group and they called them the Citizens. These citizens are not the citizens that we understand now, namely the legal or political status of citizenship. So, who is a citizen? A citizen is a person who has the skill and knowledge to lead a public life, who is able to lead a life of civility. A citizen recognizes that he or she is a part of the community and thus strives for the common good. A citizen not only knows his rights in the society, but also understands his responsibility towards the society. Even though he fights for his rights, he always respects the rights and interests of others of their neighbours. It is the citizens that make up a civilized society. Citizens settle their differences with others with civility and so they produce a civilized society. It is the true reflection of a society. Society literally means friendship and friendliness.

These 3 distinctions are even now important. This is a choice that each one of us has to make in a society. Let us become the "citizen" who can promote the "meme" of mediation, so that it can influence the society to inherit the habit of mediation culture to resolve conflicts, so that a culture of self-empowerment is developed and every dispute is viewed as an opportunity for transformation through dialogue and problem solving.

On a concluding note, I would like to quote Mahatma Gandhi who once said, "The world will live in peace, only when the individuals composing it make up their minds to do so".

Profile of Anil Xavier

Anil Xavier is the President of Indian Institute of Arbitration & Mediation (IIAM) and the Vice-President of the India International ADR Association (IIADRA). He is a lawyer, arbitrator and an IMI certified mediator. He can be contacted at anilxavier@arbitrationindia.com



"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser---in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough."

- Abraham Lincoln

Pictorial



Mediation Training Program-12-01-2018 to 17-01-2018 at Indian Institute of Arbitration & Mediation



Bangladesh International Mediation Society (BIMS) Training on Introduction to international Arbitration and Mediation Pan Pacific Sonargaon Hotel, Dhaka, Date: 20-21 December, 2017

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