

# HUMAN RELATIONSHIPS IN THE CONCEPT OF MEDIATION:

Justice K.S.Radhakrishnan

Justice is often identified as an attitude of the human mind, willingness to be fair and a readiness to give recognition to the claims and concerns of others, which of course, can be attained only by practical measures and institutional means. Mediation as a tool for dispute resolution is not a new concept, knowingly or unknowingly we might have had occasions to resolve several disputes involving human relationships through the process of mediation may be in the capacity as a child, youth, friend, parent, brother or sister and in various capacities. Urge to mediate is a natural human instinct and to fight is beyond human dignity.

Legal system which cannot meet the demands of justice will not be able to provide peace and stability in the society. Real justice cannot be achieved in the absence of an orderly system of judicial administration. Let us strive to reduce aggressiveness and predatory practices and cultivate concern for other human beings to achieve social harmony. Civilized society like ours can ill-afford to perpetrate a dispute which will disturb human relationships and create unrest in the society and be a bottle-neck for progress. Of late, Judges, lawyers, jurists and litigants and society in general have expressed concern about the adversarial system which rendered inaccessible to many due to prohibitive costs and consumption of time taken. Adversarial system places emphasizes on the substantive and procedural laws and aggravates already strained relationships between the parties creating social unrest. Hence, the necessity of a more adaptable, party friendly, dispute resolution system, by way of mediation. Human beings tend to react unfavorably, if their activities are controlled by strict rules and regulations rather than by a reasonably stable determination of their rights, through a friendly process.

Mediation is a structured process where a neutral mediator adopts various strategies, tactics, styles to bring the parties together so as to resolve their disputes amicably for better relationships focusing on future. Process of dispute resolution through mediation enables the parties to resolve the disputes themselves and preserve relationships giving complete mental satisfaction a must for an orderly society.

Experiences in other countries would show that in the following areas, dispute resolution through mediation was more successful.

- 1) Commercial Mediation (business disputes, legal disputes, insurance disputes),
- (2) Community Mediation (community disputes, neighbor, neighbor disputes, relationship disputes),
- (3) Family Mediation (family disputes, divorce, custody, child support, visitation),
- (4) Victims / Offender Mediation (criminal offences where the offender has remorse and parties want closure, drunk driving, graffiti, infractions, misdemeanors disturbing the peace),
- (5) Peer Mediation (school disputes between students including bullying, teasing and fighting), Statistics of the mediation centers at Delhi and Bangalore etc. would indicate that the following category of civil and criminal cases are found suitable for mediation.

(1) Civil Cases (all categories of civil cases are not suitable for mediation). However, the following categories have been identified. (a) Suit for recovery, (b) Suit for injunction, (c) Suit for possession, (d) M.A.C.T. cases, (e) Labour cases, (f) Suit for partition, (g) Landlords / tenants disputes, (h) Matrimonial disputes, such as, Divorce, Custody / Guardianship cases, cases under Section 125 of the Cr.P.C. (i) Cases under Section 406, 498-A IPC, (j) Complaints under Section 138 of the Negotiable Instruments Act. Type of Mediation: (a) Private mediation, (b) Judicial mediation, (i) Court annexed mediation (ii) Court referred mediation (c) Community mediation, (d) Government mediation, Referral Judges in Judicial Mediation:

Role of Referral Judge can be identified at two stages i.e. one at pre-mediation and another at post mediation. Referral Judge should make an objective assessment whether the case is fit for mediation. Section 89 read with Order 10, 1(A), 1(B) and 1(C) of the Code of Civil Procedure is the source of power of a Referral Judge. Before referring a case, a Referral Judge should have knowledge of the relevant facts and should satisfy himself that the case involves an element of settlement by way of mediation. A good Referral Judge has to identify categories of cases which are suitable for mediation. Referral Judge can send a case for mediation even without the consent of the parties if he finds that there is an element of settlement. But all the same, he must be conscious of the fact or he must guide himself that mediation shall not be a device to delay the proceedings. Further, it may be relevant to note that certain disputes may not be appropriate for mediation including the cases involving criminal offence which involve novel question of law, dispute where one party strives for legal precedent, or the dispute which affects the large number of persons or the society in general, etc.

## Lawyers to change their mind-set:

We may notice that there exists a school of thought that alternative dispute resolution mechanism is not real substitute to the adversarial system of dispute resolution. They often think that ADR is a success only while dealing with the human relations, but not in the commercial domain. Experiences show otherwise. Lawyers as a class tend to foster and develop the disputes for their clients, being professionals, but when accustomed ways of doing things have become obsolete and found insufficient, it is quite natural that the same would be replaced by more adaptable, effective, alternatives. Usual resistance is often seen against changes, but in the long run such attitude promotes feeling of insecurity in the society. Lawyers as a class, it is heartening to note have accepted this change, which calls for

appreciation. Lawyers can function as effective mediators with their legal background and experience and have proved to be successful Mediators.

#### **On-line Mediation:**

World over, on-line mediation has proved to be a success. Sitting anywhere, in any nook and corner of the world, disputes can be settled through on-line mediation due to development of science and technology. Computer oriented on-line mediation centers are also on the rise in the various developing countries, though may not be appropriate or suitable in all forms of disputes resolution but many commercial disputes could be resolved using latest technology, with the aid of video conferencing.

#### **Essence of Mediation :**

Self determination is fundamental and the quintessence of the concept of mediation. Mediator shall conduct mediation in an impartial manner. Confidentiality is also an essential element to be borne in mind by the mediator. Unlike the arbitrator or the Judge, the Mediator is not an authority to make binding decision. Mediator has to play a role purely facilitative to bring the parties together by listening, counseling, guiding, suggesting and the parties can reach their own amicable settlement. Process of mediation is voluntary. Agreement arrived in mediation can be enforceable as a contract. Process is informal and it focuses on future and outcome is mutually acceptable agreement. The decision is private and the decision makers are parties themselves.

Ethical Standards for Mediators: Mediator should have no interest in the lis and avoid conduct that gives appearance of partiality towards one of the parties. Quality of the mediation process enhances, when the parties have confidence in the impartiality and neutrality of the mediator. Mediator shall not try to establish a professional relationships with any of the parties. Conflict of interest cast doubts on the integrity of the mediator. Mediator should be well equipped to mediate professionally and should conduct the process fairly, diligently, honestly and consistent with the principles of self determination of the disputes between the parties, and shall not coerce or compel the parties for a settlement. Process of mediation once establishes as a system of dispute resolution, will bring happiness and inner contentment amongst the parties which will increase social harmony and diminish excessive selfishness, noxious conduct towards others and will create better society to live in.