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INTRODUCTION TO CONFLICT

Quotations

A man's greatest battles are the ones he fights within himself.

Ben Okri (1959)

Antagonism is a form of struggle within a contradiction, but not the universal form.

Mao Zedong (1893-1976) Chinese statesman

We should look in society not for consensus, but for in eliminable and acceptable conflicts, and for rationally controlled hostilities, as the normal condition of mankind...Harmony and inner consensus come with death. **Stuart Hampshire (1914-2004)** British philosopher

We have met the enemy and it is us. **Walt Kelly**

Introduction to Conflict

Conflict is everywhere. Every relationship has conflict. It exists inside us. It exists around us. It is natural and inevitable part of all human social relationships. It occurs at all levels of society - intrapsychic, interpersonal, intragroup, intergroup, intranational and international (Sandole & Staroste, 1987).

Conflict is ubiquitous at all levels of human social relationships. Some social scientists have given conflict a bad reputation by linking it with psychopathology, social disorder and war (Burton, 1990). Conflict is not deviant or sick behavior. Social scientists need to analyze the level and the type of the conflict in order to understand the phenomenon.

Conflict is largely a perceived phenomenon. It is our perception of the situation that determines if a conflict exists. Conflict may be either healthy or unhealthy. Moreover, it should not be taken as the opposite of order. Though, there is orderliness in conflict yet it can be disorderly.

No two persons in the world are absolutely same or absolutely different. Therefore no two persons can feel or think alike. The difference between thinking of different people causes conflict. The parties in conflict believe they have incompatible goals, and their aim is to neutralize, gain advantage over, injure or destroy one another.

Conflict is the root of personal and social change. Hence, the organizations have conflict because of its ever changing environment. Conflict prevents stagnation. It stimulates interest and curiosity. Conflict management is very popular in business schools. The role of the administrator or a manager in an organization is to handle day to day conflict in the allocation of limited resources.

Definitions

- a. Conflict is a state of opposition, disagreement or incompatibility between two or more people or groups of people.
- b. A state of opposition between persons or ideas or interests.
- c. A hostile encounter between two or more people.
- d. Conflict is usually based upon a difference over goals, objectives, or expectations between individuals or groups. Conflict also occurs when two or more people, or groups, compete over limited resources and/or perceived, or actual, incompatible goals.
- e. A hostile encounter between two or more people.
- f. The dramatic struggle between the antagonist and the protagonist.
- g. An escalated, natural competition between two or more parties about scarce resources, power and prestige (Sandole & Staroste, 1987).

Interpersonal conflict

An actual or perceived incompatibility of goals between two or more people or entities is termed as interpersonal conflict.

Incompatibility need not be realized by either disputant. It means a conflict may be latent in the sense that it is not recognized by either of the parties.

Incompatibility need not be actual/real. In other words a conflict may be false in the sense that there may not be real incompatibility.

Mixed-Motive Situations

A conflict situation characterized by a combination of contrient and promotive interdependence is called mixed-motive situation. In mixed-motive situations some goals are incompatible, others are complementary. Virtually all conflicts are mixed-motive situations.

Dispute

Definitions

- a. A disagreement or argument about something important
- b. When an employer and a trade union representing the employees cannot agree upon the terms and conditions of a collective agreement
- c. The Act defines a dispute as including 'any difference'. Whether there is a dispute capable of being referred to adjudication will depend on the circumstances of each case. A dispute might be said to exist where a claim has been made by one organization against another and there has been sufficient time to consider, admit, modify or reject that claim on the basis of reasoned argument.
- d. Where a customer, having received an explanation, still does not agree with the decision
- e. A conflict being expressed outwardly and in which the incompatibility of goals is the main focus
- f. A quarrel over a divisive issue such as territory, borders, resources, ideology, etc. with no military aspect. The sides are in disagreement but force is not being considered.

The term dispute implies that the incompatibilities are conscious on the part of at least one of the parties to the conflict and that the incompatibilities- rather than the complementary goals, interests or needs- are uppermost in the minds of those involved in the conflict. Disputes often relate to grievances arising from behavior or events that occurred in the past.

Legal Dispute

A dispute in which some of the contentions can be expressed as a cause of action, or as a defense to a cause of action

Fender-Bender

A collision involving motor vehicles that results in minor damage is called fender bender.

In fender bender the disputants have incompatible interests.

Many times even very careful and sharp drivers happen to meet minor motor car accidents; and the conflicting situation arises. Unnecessary complications can be avoided if one knows how to deal with and react in such circumstances.

Surviving a Fender-Bender

Here are some important tips that every driver must be familiar with.

1. Keep calm
2. Call the police
3. Exchange information
4. Consider your deductible
5. Contact your insurance company
6. Get an estimate and repairs

1. Keep calm

Stay cool and don't engage in shouting.

2. Call the police

Call the police to report the accident even if it is minor.

3. Exchange information

Write down the following information on a piece of paper.

1. Name, address and phone number of the other driver(s) involved
2. Name and address of car's owner (if different from driver)
3. Location of accident
4. Driver's license number(s)
5. Year, make and models of car(s) involved
6. License plate numbers
7. Name of automobile insurance company and policy number
8. Names, addresses and phone numbers of any passengers and/witnesses
9. Any damage done to your car or the other car(s) involved

Name of automobile insurance company and policy number

4. Consider your deductible

Your deductible is the amount you have to pay from your own pocket when an insurance claim is filed. For example, if your deductible is Rs.5000, and your car needs Rs.20,000 worth of repairs, you may only receive Rs.15,000 from the insurance company. You're responsible for the first Rs.5000 of any repair.

5. Contact your insurance company

If you and the other driver decide not to pay for your own repairs, contact your insurance company immediately. If you don't report the accident to your insurance company, and the other driver does report it to his or hers, it could work against you if the case ends up in arbitration.

6. Get an estimate and repairs

Take your car to an automotive repair shop and get an estimate for how much it will cost to fix any problems that resulted from the fender bender. Some insurance companies may require two separate estimates from two different repair shops.

Agent

One standing in the shoes of a disputant during an interpersonal conflict, acting for the disputant is called an agent.

Principal

The disputant for whom an agent is acting is called principal.

Advocate

An agent having a special obligation to represent the interests of his or her principal vigorously, zealously, and with a certain standard of competence is known as an advocate.

Constituent

One whom the conflict affects but who is not a disputant, agent, or advocate; sometimes called a *stakeholder* e.g. Disputants' family and friends

Recommended Text Book

Conflict Diagnosis and Alternative Dispute Resolution

Author: Laurie S. Coltri

DISPUTE RESOLUTION I

Quotation

We should look in society not for consensus, but for in eliminable and acceptable conflicts, and for rationally controlled hostilities, as the normal condition of mankind. Harmony and inner consensus come with death. Stuart Hampshire (1914-2004) British philosopher

Conflict

Conflict is a natural and inevitable part of all human social relationships. Conflict occurs at all levels of society-intrapsychic, interpersonal, intra-group, inter-group, intra-national and international (Sandole & Staroste, 1987).

People with different beliefs, values and expectations effectively live in different worlds.

It leads to: more they talk, more they experience frustration and hostility; may result in violent conflict.

This course deals with conflict dynamics and cooperative process of conflict management-negotiation, meditation, facilitation, problem solving, and conflict resolution.

Emotions in Conflict Management

Emotions play an important role in the conflict management, although it is only in recent years that their effect is being studied. Emotions have the potential to play either a positive or negative role in negotiation. During negotiation, the decision as to whether or not settle rests in part on emotional factors. Negative emotions can cause intense and even irrational behavior, and can cause conflicts to escalate and negotiations to break down, while positive emotions facilitate reaching an agreement and help to maximize joint gains.

Humans have 400 emotions. Fear, anger, depression, satisfaction are the primary emotions.

Positive affect in Negotiation

Even before the negotiation process starts, people in a positive mood have more confidence, and higher tendencies to plan to use a cooperative strategy. During the negotiation, negotiators who are in a positive mood tend to enjoy the interaction more, show less contentious behaviour, use less aggressive tactics and more cooperative strategies.

Negative affect in Negotiation

Negative affect has detrimental effects on various stages in the negotiation process. Although various negative emotions affect negotiation outcomes, by far the most researched is anger. Angry negotiators plan to use more competitive strategies and to cooperate less, even before the negotiation starts. These competitive strategies are related to reduce joint outcomes. During negotiation, anger disrupts the process by reducing the level of trust, clouding parties' judgment, narrowing parties' focus of attention and changing their central goal from reaching agreement to retaliating against the other side.

The effect of the Partners' Emotions

Specific emotions were found to have different effects on the opponent's feelings and strategies chosen:

a) Anger

Anger caused the opponents to place lower demands and to concede more in a zero sum negotiation, but also to evaluate the negotiation less favorably. It provoked both dominating and yielding behaviors of the opponent.

b) Pride

Pride led to more integrative and compromise strategies by the partner.

c) Guilt

Guilt or regret expressed by the negotiator led to better impression of her by the opponent, however it also led the opponent to place higher demands.

d) Worry or Disappointment

Worry or Disappointment left bad impression on the opponent, but led to relatively lower demands by the opponent.

Conflict Resolution

There are many ways to resolve conflicts - surrendering, running away, overpowering your opponent with violence, filing a lawsuit, etc. The movement toward Alternative Dispute Resolution (ADR), sometimes referred to simply as conflict resolution, grew out of the belief that there are better options than using violence or going to court. Today, the terms ADR and conflict resolution are used somewhat interchangeably and refer to a wide range of processes that encourage nonviolent dispute resolution outside of the traditional court system. The field of conflict resolution also includes efforts in schools and communities to reduce violence and bullying and help young people develop communication and problem-solving skills.

Alternative Dispute Resolution (ADR)

Dispute resolution processes used in the resolution of legal, commercial, and other interpersonal conflicts

- a) Other than litigation
- b) Other than doing nothing
- c) Other than illegal or violent means

In simple words, alternative Dispute Resolution or ADR is a way of resolving disputes without going to court.

Forms of Resolving Conflict (Alternative Dispute Resolution)

Common forms of conflict resolution include:

- a) Negotiation
- b) Meditation
- c) Conciliation
- d) Arbitration
- e) Adjudication

Negotiation

Negotiation is a discussion among two or more people with the goal of reaching an agreement.

Broadly speaking, negotiation is an interaction of influences. Such interactions, for example, include the process of resolving disputes, agreeing upon courses of action, bargaining for individual or collective advantage, or crafting outcomes to satisfy various interests. Negotiation is thus a form of alternative dispute resolution.

Negotiation involves two basic elements: the process and the substance. The process refers to how the parties negotiate the context of the negotiation, the parties to the negotiation, the relationships among these parties, the communication between these parties and the tactics used by the parties. The substance refers to what the parties negotiate over, the agenda the issues, the options, and the agreements reached at the end.

Meditation

Mediation is a voluntary and confidential process in which a neutral third-party facilitator helps people discuss difficult issues and negotiate an agreement. Basic steps in the process include gathering information, framing the issues, developing options, negotiating, and formalizing agreements. Parties in mediation create their own solutions and the mediator does not have any decision-making power over the outcome.

Conciliation

Conciliation is the least intrusive of third-party processes. A neutral person agreeable to all parties is selected to serve as conciliator. The conciliator serves as a go-between. Typically the conciliator meets separately with each party in attempts to persuade the parties to proceed with each other. Thus, the conciliator's primary role is to reestablish or improve communication between the parties.

When the parties are too angry to speak with each other, a conciliator may be all that is needed.

Arbitration

Arbitration is a process in which a third-party neutral, after reviewing evidence and listening to arguments from both sides, issues a decision to settle the case. Arbitration is often used in commercial and labor/management disputes.

Adjudication

Adjudication is the legal process by which an arbiter or judge reviews evidence and argumentation including legal reasoning set forth by opposing parties or litigants to come to a decision which determines rights and obligations between the parties involved.

Three types of disputes are resolved through adjudication:

- a) Disputes between private parties, such as individuals or corporations.
- b) Disputes between private parties and public officials.
- c) Disputes between public officials or public bodies.

Interdependent Relationship**a. Conitient interdependence**

Defined – meeting one party's goals is seen to harm the other party's goals.

Zero-sum situations are those seen by the parties as perfectly conitient – the more one party is benefited the more the other is harmed. In other words, benefit "sums to zero."

b. Promotive interdependence

Interdependence may also be positive (known as "promotive interdependence").

Defined – meeting one party's goals is seen to promote the other party's goals

Virtually all conflicts combine promotive and conitient interdependence.

An interpersonal conflict in which both the promotive and conitient aspects of interdependence are recognized is known as a "mixed-motive" situation.

Alternative Dispute Resolution (ADR) in Pakistan

Various alternative dispute resolution (ADR) techniques are used in Pakistan. Some of the relevant laws/provisions dealing with ADR are as follows:

1. Section 89-A of the Civil Procedure Code, 1908 (as amended in 2002) read with Order X Rule 1-A (deals with alternative dispute resolution)
2. The small Claims and Minor Offences Courts Ordinance, 2002

3. Sections 102-106 of the Local Government Ordinance, 2001
4. Sections 10 and 12 of the Family Courts Act, 1964
5. The Arbitration Act, 1940
6. Article 156 of the Constitution of Pakistan, 1973 (National Economic Council)
7. Article 184 of the Constitution of Pakistan, 1973 (Original Jurisdiction when federal of provincial governments are at dispute with one another)

Parties to Conflict

Disputants

In the interpersonal conflict, those who have incompatible goals are called disputants.

Disputants may be individuals, groups, corporations, congregations, communities, nations, or any collective of people.

Agents

One who acts on behalf of a disputant is called an agent.

Or a representative who acts on behalf of other persons or organizations is called an agent.

Advocate

An advocate is a kind of agent. The one who speaks on behalf of another, especially in a legal context is called an agent. Implicit in the concept is the notion that the represented lacks the knowledge, skill, ability, or standing to speak for themselves. Common advocates include lawyers, activists, and public relations consultants.

Dispute

Dispute is a disagreement or argument about something important.

Dispute Resolution

The methods that people use to resolve interpersonal conflicts are called dispute resolution.

Advantages of ADR

- Less formal
- Less costly and
- Less time-consuming than going to court.
- Results are specific to your needs

Factors that Distinguish Dispute Resolution Processes

Dispute resolution processes are distinguished from each other on the following bases:

- Who decides the outcome?
- Who participates in the process?
- Under what auspices is the process provided?

Negotiation and Adjudication

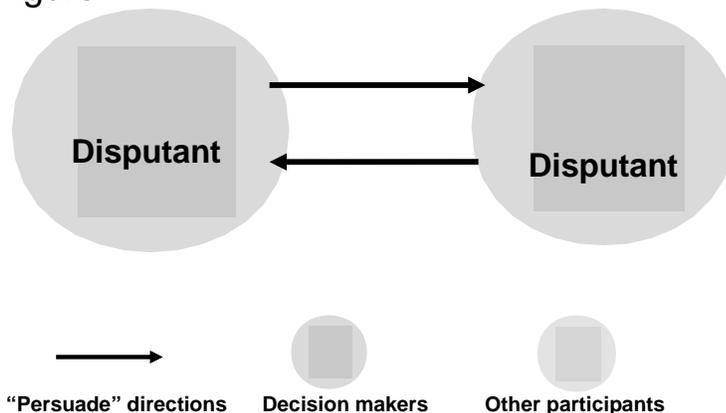
Negotiation: dialogue or communication between the disputants aimed at settling interpersonal conflict.

Adjudication: process in which neutral third party renders binding decision in interpersonal conflict.

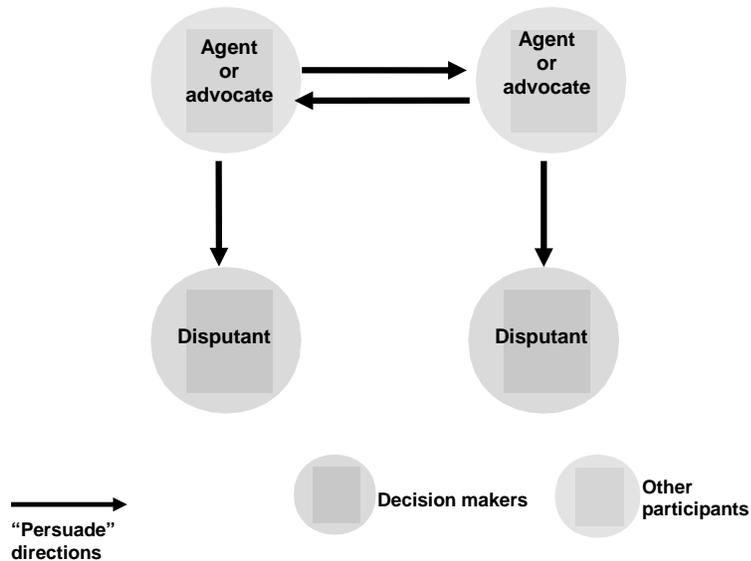
Negotiation Models

Negotiation

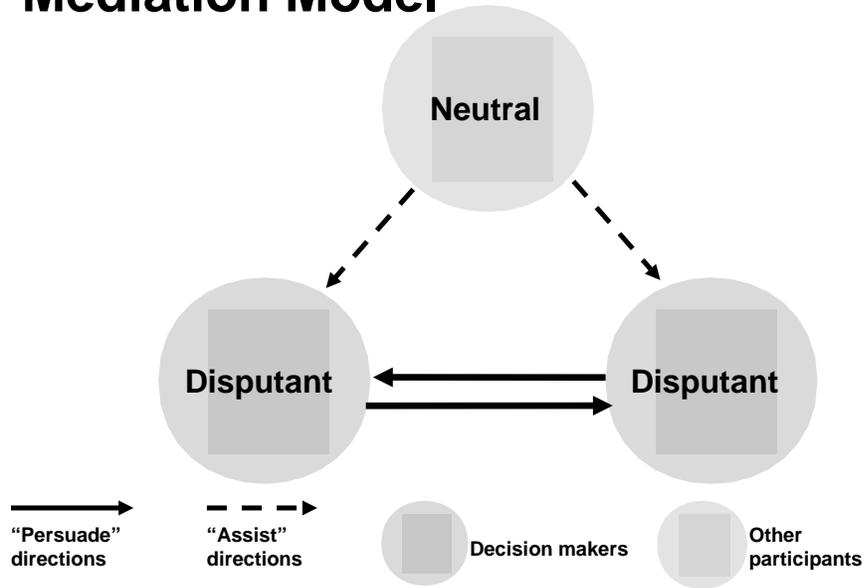
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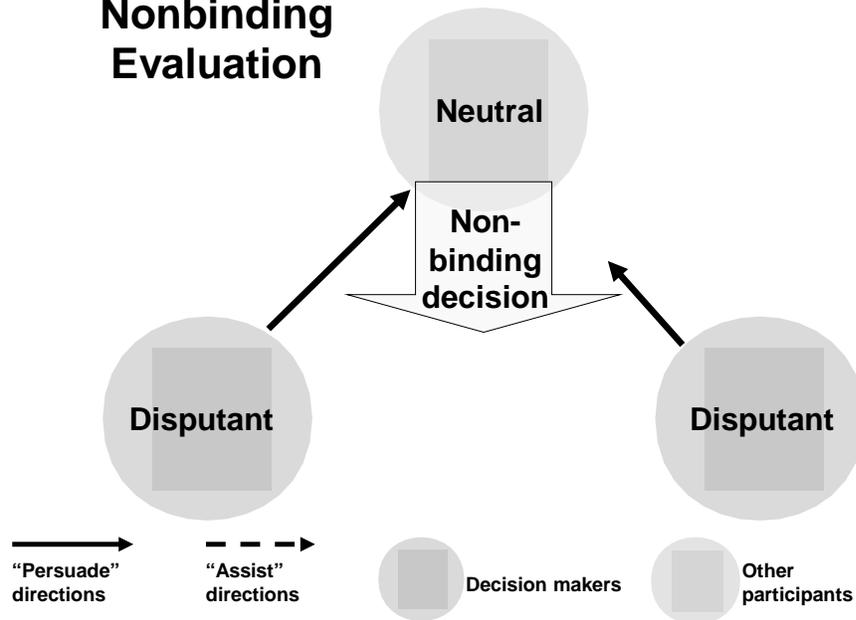
Negotiation with Agents or Advocates

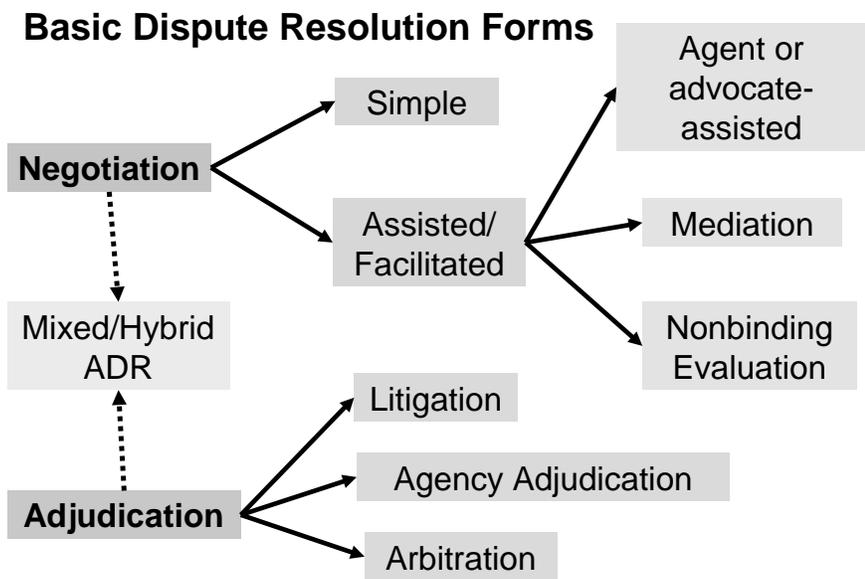


Mediation Model



Nonbinding Evaluation





DISPUTE RESOLUTION II

Quotations

A man's greatest battles are the ones he fights within himself. Ben Okri (1959) Nigerian novelist, short-story writer and poet

"We have met the enemy and it is us." Walt Kelly

Dispute resolution processes can be divided into two main categories, according to the identities of the persons who decide the outcome. These two categories are called Adjudication and Negotiation.

Adjudication

In adjudication the decision maker is a neutral third party, rather than the disputants.

Kinds of Adjudication

Following are the important forms of Adjudication

- a) Litigation
- b) Agency Adjudication
- c) Arbitration

Litigation

Litigation is adjudication in court system under legal auspices, in which the adjudicator is the judge.

- a) Only certain situations can legally be taken to court.
- b) Process is very formal and structured to protect the due process rights of the litigants.
- c) In litigation only certain kinds of outcomes are legally possible.

Agency adjudication

Agency adjudication is similar to litigation. Except that the law underlying recourse to the process is regulatory.

1. Adjudicator is often called an administrative law judge or hearing officer.
2. May be less formal and structured than litigation.

Arbitration

Arbitration is the form of adjudication in which authority of adjudicator is conferred by disputants' contract.

It may be provided for by a court rather than privately but if so,

1. The parties are free to decline arbitration, or
2. If the parties must participate, they are free to disregard the results (making this non binding evaluation)

Negotiation and Adjudication: Basic Distinction

In negotiation the disputants decide the issue whereas in adjudication the neutral third party decides the issue.

Negotiation

The process in which disputants seek to resolve an interpersonal conflict through dialogue or another form of communication is called negotiation. In negotiation, the disputants themselves decide mutually whether, and on what terms, the conflict should be resolved.

Forms of Negotiation

There are various types of negotiation.

- a) Assisted (Facilitated) Negotiation
- b) Unassisted (simple) Negotiation

Simple negotiation

In this type of negotiation only participants are the disputants.

Assisted (or facilitated) negotiation

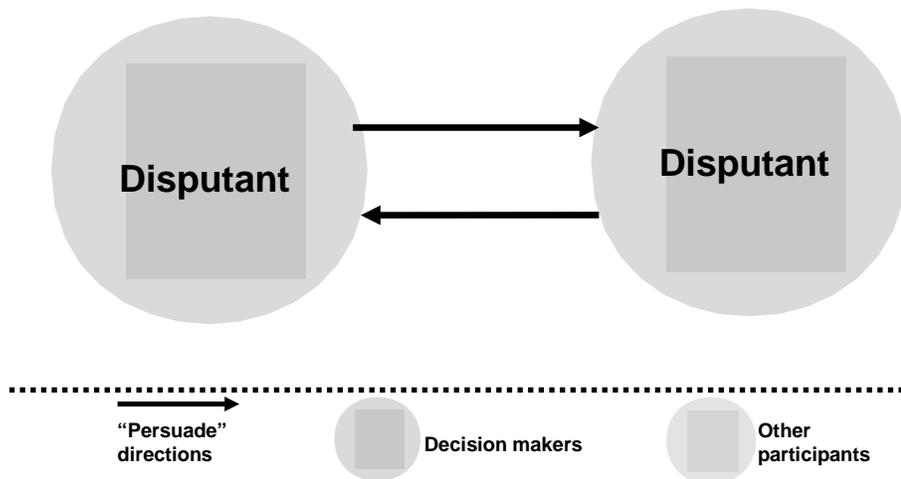
In assisted negotiation the disputants are joined by others.

Types of Assisted Negotiation

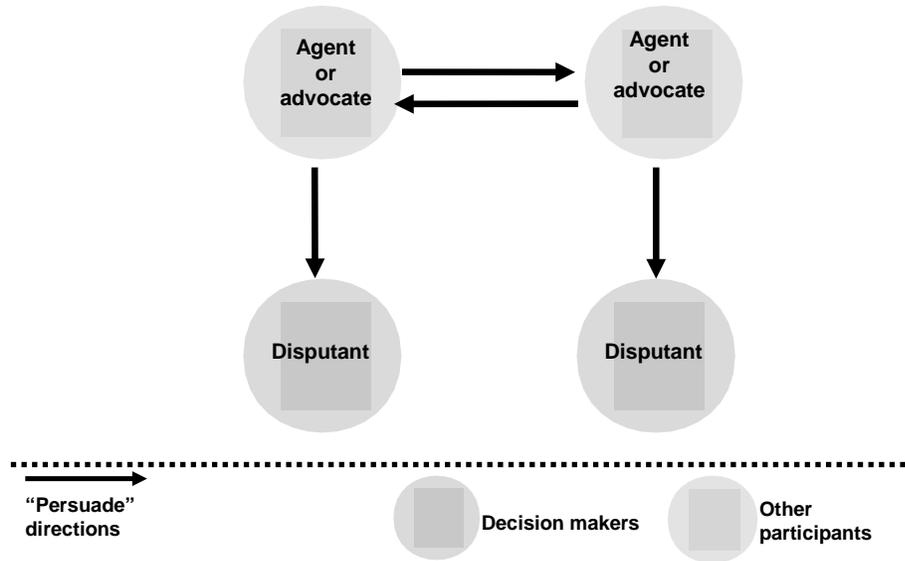
Following are the various types of assisted negotiation.

- a) **Agent or advocate-assisted** disputants’ representatives conduct the negotiation
- b) **Mediation**- neutral third party assists the disputants in settling the dispute.
- c) **Nonbinding evaluation**- neutral third party renders a nonbinding evaluation of the conflict

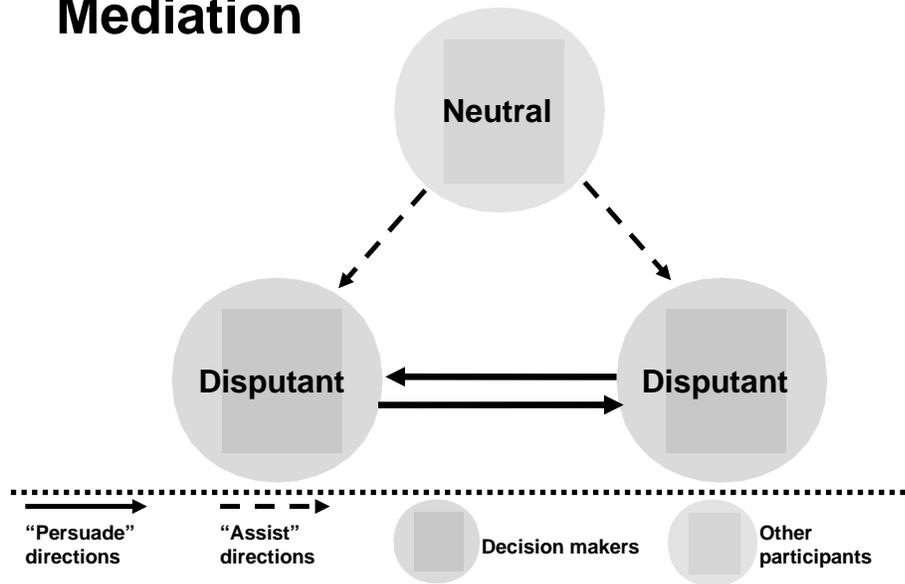
Simple Negotiation

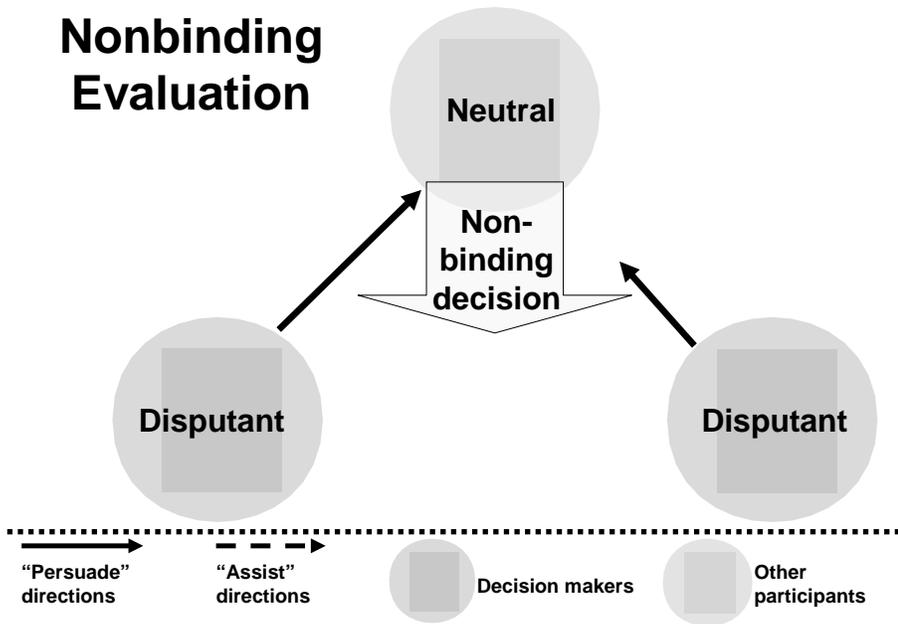


Negotiation with Agents or Advocates



Mediation

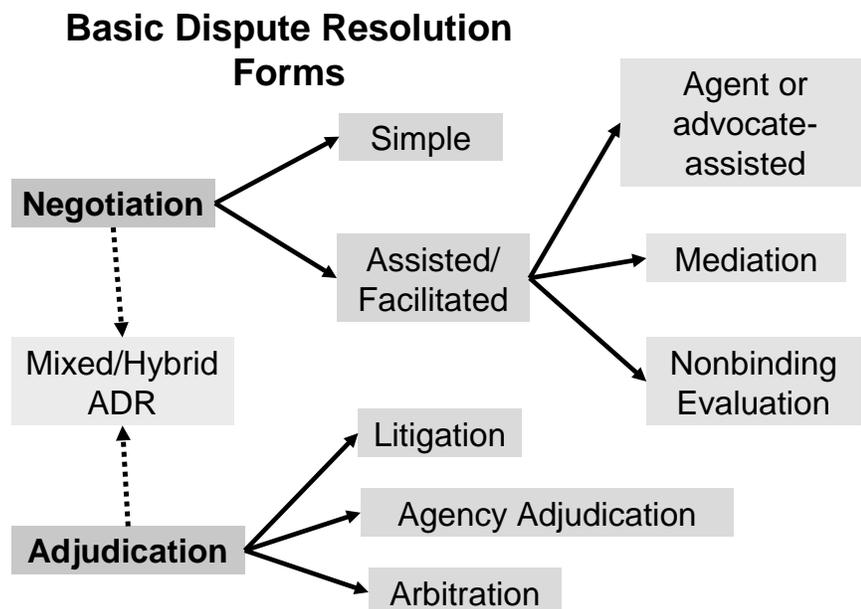




Mixed (Hybrid) Processes

Processes that combine the attributes of two or more of the major forms of dispute resolution are called mixed (hybrid) processes.

It combines elements of mediation, adjudication, and/or nonbinding evaluation.



Some of the Types of Mixed Dispute Resolution Processes**1. Mediation-Arbitration**

In this process mediating parties submit their dispute to arbitration if mediation does not result in settlement.

2. Arbitration-mediation

In this process an arbitrator issues an award, but keeps it a secret and destroys it if the disputants reach agreement in a subsequent mediation.

PRECONCEPTIONS ABOUT CONFLICT I

Quotations

An ounce of mediation is worth a pound of arbitration and a ton of litigation. Joseph Grynbaum

The courts of this country should not be the places where the disputes end after alternative methods of resolving disputes have been considered and tried. Justice Sandra Day O'Connor

Introduction

This lecture deals with the discussion about the misperceptions about conflict. Before we proceed the following points regarding conflict must be clear in mind. We have discussed them in the previous lectures. Interpersonal conflict is all around us. We confront interpersonal conflict when we decide who will do the house work, attend staff meetings, negotiate for a raise, or discipline a child. Any time we deal another person, the possibility of incompatible goals raises the possibility of conflict. We must remember that

- Conflict is not the opposite of the order
- Interpersonal conflict is to be distinguished from inner conflict
- Conflict is an escalated but natural competition between two or more parties.
- Conflict is an unusual occurrence
- Extreme form of conflict is violence and violence generally hurts weaker parties.

Misperception in Interpersonal Conflict

There are certain misperceptions about interpersonal conflict

- a. Ubiquitous and invisible
- b. Importance of recognizing

Impairs our ability to respond to conflict

Impairs our ability to choose ADR processes and providers

Pedagogical Development

The craft metaphor of pedagogical development

- Narrow experiences create narrow beliefs and assumptions
- Bronfenbrenner's theory (*bioecological* systems theory) defines complex "layers" of environment, each having an effect on the development of persons and their consequential disagreements or conflicts.
- Development of knowledge base in favour of ADR and clarify the advantages of non-adversarial approaches.

Pressures against Innovation – Social Ecology

- Macro system reflects dominant values and perceptions
- Individuals gain practice and proficiency
- Individuals transmit dominant values and perceptions to children
- Efficacy of dominant values and perceptions seems "obvious"
- Individuals perpetuate dominant values and perceptions

Bio-ecological Systems Theory

Bronfenbrenner, an eminent developmental psychologist, named the overall social structure that acts as a source of blueprints for individuals the macrosystem. The macrosystem includes the important institutions in which we operate- the court system, the governmental structure and so on. In his influential theory of Social Ecology, Bronfenbrenner postulated that there is a synergistic relationship between the macrosystem and the individual.

This theory looks at a child's development within the context of the system of relationships that form his or her environment.

Bronfenbrenner's theory defines complex "layers" of environment, each having an effect on a child's development. This theory has recently been renamed "*bioecological* systems theory" to emphasize that a child's own biology is a primary environment fueling her development. The interaction between factors in the child's maturing biology, his immediate family/community environment, and the societal landscape fuels and steers his development. Changes or conflict in any one layer will ripple throughout other layers. To study a child's development then, we must look not only at the child and her immediate environment, but also at the interaction of the larger environment as well.

The macro system is structured to reflect the cultural belief systems of its inhabitants-that is because a society is composed of its individual members, and their collective efforts maintain the macro system. The macro system's structure generates situations in which individuals, to survive and do well, must adopt blueprints and use tools consistent with the overall cultural belief systems.

Components of Mastery of Environment

Following are the components of mastery

- Idea, plan or roadmap.
- Skills, strategies, tool (a tool box of mastery).
- Proficiency-the ability to competently apply the right tools (skills and means) to a given situation to execute the plan of action.
- Apparent superiority of status quo.
 - a. Practice creates high degree of efficiency
 - b. Testing new ways will necessarily lack efficiency
 - c. The failures of innovations are taken as the inferiority of innovation over the existing practice, rather than to the lack of efficiency.

Pressures against Innovation

Here are some pressures against Innovation.

- a. We lack proficiency in using new ways and tools.
- b. Poor and inefficient outcomes result.
- c. Poor and inefficient outcomes likely to be attributed to the innovative ideas or means.

PRECONCEPTIONS ABOUT CONFLICT II

Quotations

If you are patient in one moment of anger, you will escape a hundred days of sorrow. (A Chinese proverb)

Do not find fault, find a remedy. Henry Ford

The greatest glory in living lies not in falling, but in rising every time we fall. **Nelson Mandela**

Bronfenbrenner's Theory of Social Ecology

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Significance for the study of ADR in USA

Before embarking on a study of conflict and the processes of resolving it, it is necessary to appreciate that people- particularly from westernized cultures, such as the United States- have a narrow perspective on what conflict is and how it is best managed and resolved.

Approach to the handling of interpersonal conflict

- a. Highly individualistic
- b. Featuring adversarial resolution of most disputes
- c. Reflected in a wide variety of societal institutions and policies

Cultural beliefs about interpersonal conflict

- a. Role of religion
- b. Conflict as battle
 - Tendency to conceptualize interpersonal conflict as a competition
 - Tendency to conceptualize interpersonal conflict as a "zero-sum" situation
 - Important factor in the underuse of "value-enlarging" processes, such as principled negotiation and facilitative mediation

Individual beliefs vs globalization, Parents vs children – are some of the examples

Adversarial approach in USA

In the American system of government, the formalized structure built to handle disputes that people have been unable to resolve on their own is the judicial system. Of all the social systems that reflect the competitive/adversarial blueprint for conflict resolution, the American judicial system is the most stark. American legal process is an adversary process built on the notion that justice is achievable only through competition. The judicial system even has a name reflective of this blueprint: the adversary system.

Members of the culture acquire the belief that this individualistic, adversarial approach is “best” in that

- These cultural preferences and structures tend to be invisible to inhabitants.
- Developing individuals to use adversarial for their survival and to flourish in the new environment.
- Most opportunities to deal with conflict are set within institutional structures that encourage this approach.
- For example, how is conflict resolution portrayed on TV and in movies? How does our government handle conflict?)
- Develop individuals’ capacity by practice to execute innovative ways to handle conflict.

Role of stress and emotion in creating threat for a disputant

Role of stress and emotion in creating the sense that the other ‘disputant’ is threatening to one’s well being and goals is following.

- Fear, anger, depression, and urge for happiness lead to negative stereotyping of other disputants and the belief that their objectives are at odds with one’s own objectives. (Zero sum situation)
- Tendency for social perception during conflict to produce overly simplified, demonizing and negative portrait of other disputant.
- Ambiguity of interpersonal conflict – and ambiguous behavior is taken to be true.
- (Happy family- discuss as an example)

ADR

ADR can be thought of as a radically innovative set of ways and means and a radically different method for the resolution of conflict imposed on a culture featuring an adversarial and individualistic approach to dispute resolution.

ADR innovation is often seen through the “lens” of the traditional adversary system– of course this typically leads to failure, causing its users to reject ADR.

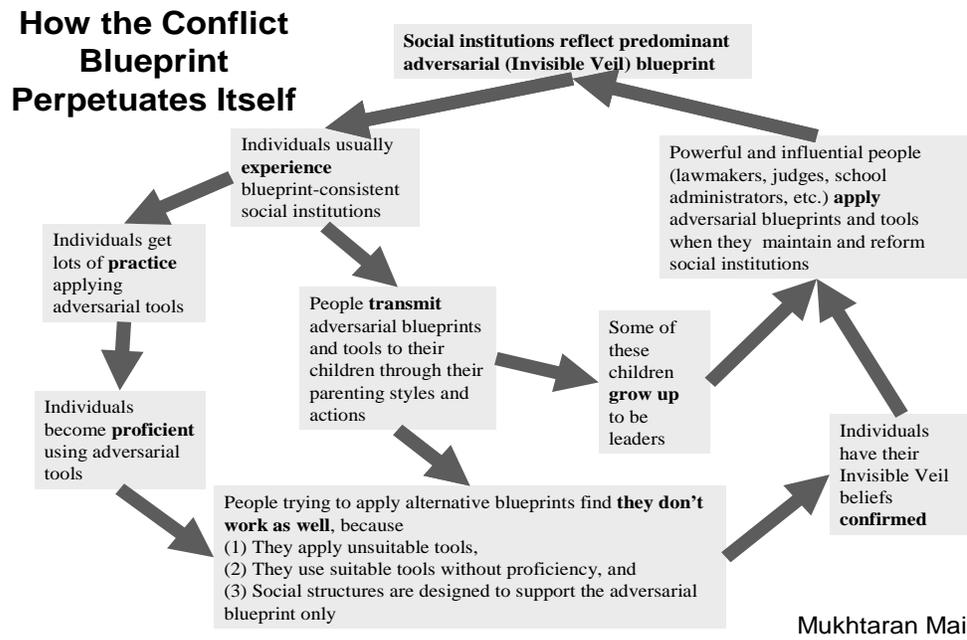
When ADR processes are adopted, often adversarial features are added to them, which dilute their effectiveness.

Why strategies of change fail (ADR failure)

Following are the four reasons of why strategies of change fail:

- a) Resistance and lack of support from others
- b) Application of existing (traditional) ways and means, rather than innovative solutions
- c) Lack of proficiency in using innovative tools
- d) Support by social structures of traditional ways to resolve disputes.

There is a tendency for individuals to attribute failures of innovation to the superiority of the traditional approach rather than to the four reasons given above.



ADR in USA

Lawyers and the American Legal System

American “adversary legal system” reflects individualistic, adversarial cultural values.

Legal disputing tradition assumes that truth and justice are best obtained via the clash of legal adversaries.

There is no empirical evidence that truth is best obtained in this manner the authoritative pronouncements on this issue are judicial, not empirically grounded.

(Fuller and Randall do make an argument that an adversary presentation prevents bias but it does not follow that truth will win out, only that a more unbiased result will be obtained.)

Some opinion research of legal and business professionals suggests that there is not a strong belief in the ability of the adversary system to produce truth.

Lawyers are steeped in adversary tradition beginning with their legal education. Lawyers develop a high degree of mastery over the use of adversarial tools. As would be predicted, this level of mastery is accompanied by a narrowing of beliefs about how best to handle interpersonal conflict.

Basic assumptions (beliefs) of the lawyer’s standard philosophical map:

Following are the basic assumptions about lawyer’s philosophical map:

Zero-sum nature of all disputes.

Applying some general rule of law will resolve interpersonal conflict.

The complaint Riskin makes about the lawyer’s standard philosophical map is that while these beliefs will be true for some disputes they are not as widely applicable as many lawyers assume.

Because adversary processes have a number of damaging consequences, they should not be overused, and if adversary processes are assumed to be “best,” they will be.

Legal System in USA

Legal system in USA reflects societal dominant adversarial milieu. Assumption is that justice is achievable only through a clash between adversaries or individuals.

Lawyer's Standard Philosophical Map given by 'Len Riskin' has the following assumptions

- a. Disputes are zero-sum
- b. Disputes must be submitted to a third party, whose decision must be based on the application of law.

Limitations of Lawyer's Standard Philosophical Map

Over-application of assumptions

Failure to see or other appreciates factors that can impact dispute resolution.

CONFLICT DIAGNOSIS

In this lecture we will try to understand the various perspectives of conflict in order to diagnose the conflict. We will also familiarize with the concept of ADR which might be new for you people.

Conflict

Conflict is everywhere. It is part of everyday life. Some periods of conflict provoke periods of great creativity. Competition is a form of conflict and it helps individuals, groups, communities, societies, and countries to outpace others; and excellence comes out, as a result. Conflict may be constructive as well as destructive. We already have discussed a lot about the conflict in previous lectures.

Conflict Diagnosis

Conflict diagnosis is a structured process for understanding and responding to interpersonal conflicts, disputes, and transactions. Conflict diagnosis provides a rigorous and clear framework for understanding and appreciating the multiple facets of any conflict. It also serves as a clear guide for the development of strategies for addressing conflict, including the selection of dispute resolution processes and providers. In a sense, conflict diagnosis provides the basis for designing methods of producing maximally good conflict in any conflict situation. Conflict resolution poses the most pain and the least gain when the parties are able to cooperate rather than having adversarial approach.

Perspectives on the Handling of Interpersonal Conflict

An evaluation of interpersonal conflict depends on how it is handled. Conflict diagnosis allows the user to choose the best blueprint and the best tools to handle a conflict well.

Conflict can have positive and negative consequences. Perspective is critical in discussing positive and negative consequences of interpersonal conflict.

a. Time perspective

- . Short-term
- . Intermediate-term
- . Long-term

b. Person perspective

- . Individual-disputant
- . Joint-disputant
- . Systemic
- . Institution or society-wide

c. Issues perspective

- . Process versus outcome
- . Narrow versus broad focus
- . Monetary or economic versus non monetary, tangible or intangible
- . Prospective versus retrospective

Who Needs to Know About Conflict Diagnosis?

Everyone can benefit from understanding conflict diagnosis. Legal and dispute professionals, such as lawyers, paralegals, professional negotiators, and others involved in dispute resolution, need to know the principles of conflict diagnosis, so that they can do their job intelligently.

I. Conflict gamers and conflict phobics

Conflict gamers love interpersonal conflict and feel the most alive when up to their necks in it. They don't seem to meet to prepare for a negotiation- their innate personality and temperament alone seem to be preparation enough. They jump at the chance for a rumble. In a negotiation, they seem utterly fearless. They are always ready to inflict punishment on their adversaries. After litigation is over, win or loose, over drinks or lunch conflict gamers express what a profound pleasure it all was, what a rush, and how it resembled the happy days, they once spent in high school.

On the other hand for a conflict phobic, the conflict diagnosis has many important advantages to offer. It will give a clear guidance when conflict arises. It will help the conflict phobic to understand what to do when he/she feels unprepared and don't know how to prepare.

II. Conflict professionals

Conflict diagnosis is also for conflict professionals and professionals-in-training seeking to enrich their understanding of their field. For example for a lawyer, a judge, a paralegal etc. the course will help a lot in diagnosing conflict and applying ADR techniques for conflict management. Applying theses techniques to conflicts enable conflict professionals to find the magic keys to unlocking their clients' potential power to settle their differences.

Why Conduct Conflict Diagnosis?

Conflict diagnosis empowers and calms "conflict phobics". It provides additional options for "conflict gamers". It allows better choice of dispute resolution processes.

Steps in Conflict Diagnosis

1. Describe/map the conflict
2. Identify sources
3. Analyze interests
4. Characterize the conflict
5. Consider trust
6. Identify impediments to settlement
7. Address negotiation styles and preferences
8. Consider power
9. Identify/maximize the **Best Alternative To a Negotiated Agreement (BATNA)**
10. Consider diversity issues

1. Describe/map the conflict

Map out the conflict, identifying the roles of the participants.

2. Identify sources

Identify the sources and the causes of the conflict

3. Analyze interests

Identify each participant's aspirations, positions, interests, principles and values and basic needs and consider how they interrelate logically. Identify any linked conflicts and consider how the conflicts affect one another.

4. Characterize the conflict

Characterize the conflict as cooperative, competitive or in between. If a cooperative conflict identify attributes of the situation that could cause it to become competitive.

5. Consider trust

Analyze the kinds and level of trust present in the relationship between the disputant and other participants in the conflict.

6. Identify impediments to settlement

Identify any impediments to cooperative settlement.

7. Address negotiation styles and preferences

Access the negotiation styles of the participant in the conflict, consider how these styles have an impact on the conflict, and if possible develop plans for encouraging cooperation and collaboration among the participants.

8. Consider power

Analyze each participant's power. Analyze the sources of power, the ways in which each participant could exercise each source of power, the likely impact of its exercise, and ways that this source of power could be increased.

9. Identify/maximize the Best Alternative To a Negotiated Agreement (BATNA)

Develop a list of alternative to a negotiated agreement, including the best alternative to a negotiated agreement, or BATNA. If you are a disputant, agent or an advocate, develop plans for clarifying these alternatives and improving them.

10. Consider diversity issues

Choose a dispute resolution processes, or a series of processes, appropriate to the conflict diagnosis. Select practitioners best able to meet your goals in the processes. If necessary, negotiate the dispute resolution selection processes with other conflict participants.

Using Conflict Diagnosis Ideas to Understand the ADR Movement

ADR as Movement (*in USA and in India*)

Some forms of ADR, such as religion-based or community-based mediation and commercial arbitration, have been around for centuries. In USA, mediation and other forms of ADR have been used for legal disputes since about 1970 and became mainstream in the late 1980s and 1990s.

Efficiency and radical perspectives on ADR

Efficiency perspective

In this root of the ADR tree, ADR is seen primarily through the prism of efficiency.

ADR is useful for cutting costs, speeding settlements, and avoiding overburdening the courts. From this perspective, the type of ADR used is less important than the availability and use of ADR in any form.

Radical perspective

Radical wing of ADR takes a very different perspective. ADR is useful for improving the resolution of conflicts, allocating resources among disputants, improving disputant relationships and reforming overall cultural attitudes about conflict resolution.

Prevalence of efficiency perspective

Economic forces tend to support ADR to save time, money, and court resources. The efficiency wing has been more influential, and because this wing cares less about the form of ADR used, certain looseness with ADR terminology is rampant.

Traditional culture has influenced the development of language about ADR.

Efficiency of ADR is important. ADR is controlled by the invisible veil, structure, or wisdom. Conclusions about ADR tend to be colored by the invisible veil or wisdom.

Radical-wing Concerns

Differences (even small ones) among ADR processes matter greatly in terms of quality of the process (so understanding these differences matters greatly). A lack of rigor in defining, identifying, and understanding distinctions in ADR processes has led to marketplace confusion. Individual users of dispute resolution processes and providers can become better-informed consumers using conflict diagnosis.

Society as a whole is not benefiting from the full panoply of options for dispute resolution.

Use of non-adversarial ADR can lead to positive macro-system changes and should be encouraged.

Quality of ADR

Though saving time and money are important goals, if the process is flawed, long-term efficiency is lost, and so the quality of dispute resolution process and outcome must be considered.

There is little evidence that this longer-term assessment of long-term efficiency and effectiveness is taking place.

Assessments of the quality of ADR are confounded by the lack of empirical research to adequately discriminate among forms of ADR.

Conflict diagnosis ideas will also help researchers and policy makers to design better studies and to interpret studies more effectively.

The ADR Revolution

“Efficiency wing” adopts ADR to save time and money, divert cases out of litigation

“Radical wing” adopts ADR to attain better conflict resolution.

RECURRENT THEMES IN CONFLICT DIAGNOSIS I

Quotation

"No doubt there are other important things in life besides conflict, but there are not many other things so inevitably interesting. The very saints interest us most when we think of them as engaged in a conflict with the Devil". Robert Lynd

Nelson Mandela had been in conflict through out his life and now he is one of the most respected persons in the world.

In this lecture we will try to understand the circumstances in which human beings misperceive, misinterpret, and mistreat during interpersonal conflict.

Understanding and Diagnosing Interpersonal Conflict

Interpersonal conflict is part of everyday life. It exists when there is incompatibility of goals. It occurs in every type of relationship. In interpersonal conflict, what we think we see is often not what really goes on. Also what the other disputant is responding to is often not what we think he or she is responding to.

Conflict is not necessarily a negative phenomenon; it also plays a positive role in everyday life. When we see some relationship prima facie without conflict, it can not necessarily be taken as good or healthy relationship. There must be some hidden conflicts which may be more harmful for a relationship as compared with some known conflict. These relationships may include workplace relationships, business relationships, family relationships, or relationships among friends. Hostility and resentment can destroy interpersonal relationships whereas conflict may be productive if taken positively. Disputants may solve the problems by resolving the conflicting issues.

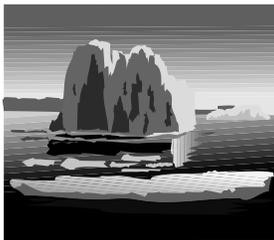
Sources of conflict are usually hidden

Opposing needs, ideas, goals and interests may be the sources of conflict. Conflicts may be real and/or perceived (Corvette, 2007). Conflict is a very complex and multifaceted phenomenon. Most of the time, it is not what we see or perceive rather it is something else and somewhere else. It is often heard that perception is more important than reality. Our perceptions affect most of the part of our behavior and attitude.

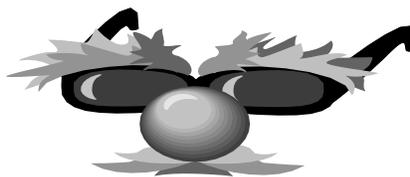
Social and cognitive psychology provides a cognitive structure to understand complex and paradoxical ideas. For better understanding and diagnosis of the conflict one must be fully aware of the predisposition of the issue.

Conflict is never quite what it seems

Interpersonal conflict is like...

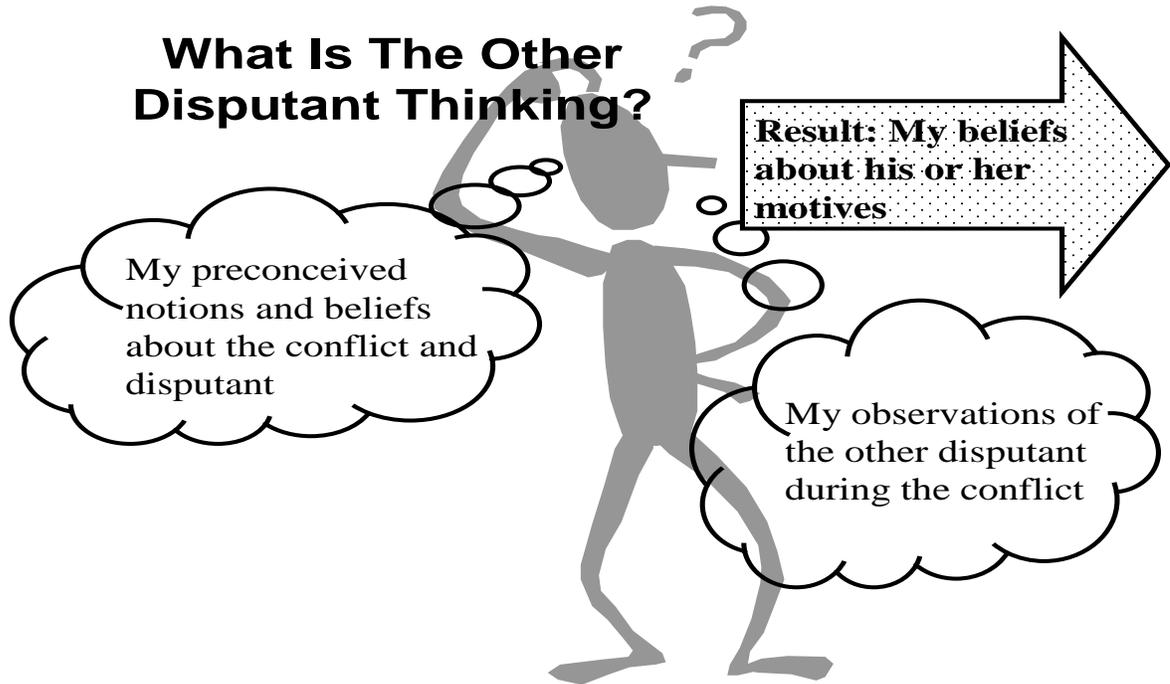


- An iceberg
- Funny glasses
- A tornado



Conflict is like a tornado – it's very disorienting and disturbing.

B. Disputants use one another’s conduct to diagnose conflict. It leads to ever-widening errors of perception and judgment by parties in conflict.



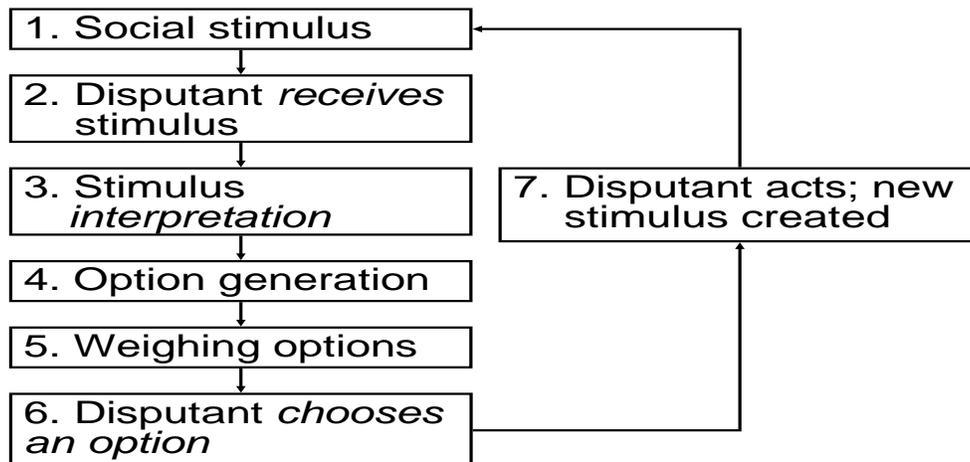
The Seven Steps of Social Behavior

Developmental and basic psychological theories can provide a step by step model of conflict response. Conflict is based on subjectivity and perception. Many opportunities for error exist in all social interactions.

Experience is greatly subjective (based on personal beliefs or feelings rather than facts). Hence interpersonal conflict is subjective. Accordingly its understanding is difficult. That is why ADR is useful for understanding conflict. Perceptual distortions are very important for ADR.

ADR depends upon perceptions of parties. Negotiation process actually addresses perception and brings people closer in their views.

Seven Steps of Conflict Diagnosis



Seven Steps To Diagnose Conflict**1. Social Stimulus**

A stimulus is something in one's environment that stimulates a reaction.

A social stimulus is a stimulus emanating from another individual or from the social setting or situation. Social stimuli can be verbal, nonverbal (e.g., body language) or contextual (e.g., where and when behavior took place).

2. Disputant receives the social stimulus with his or her senses

Remember that receiving the stimulus is only the first part of **perception** – the other essential part is **interpretation**. Stimulus reception can be prone to error.

3. Disputant interprets what he or she has seen/heard/sensed

What is it? It's the assigning of meaning to a received stimulus by the observer.

This is the second half of perception. This important half of perception often goes unrecognized – perception is often misunderstood as an “objective” rendering of a real-world event. But in reality, perception can be very subjective. “Error” occurs during interpretation because virtually every received stimulus has ambiguous components.

During interpersonal conflict, the disputants will tend to use one another's behavior to make guesses and draw conclusions about one another's motivations and likely next moves. The stress of interpersonal conflict worsens the tendency to make errors.

Specific sources of interpretational error:

- a. Actor did not intend his or her actions.
- b. Use of a heuristic. It is defined as mental shortcuts that facilitate the interpretational phase of perception
- c. Negative heuristics that tend to be associated with escalated conflict.
- d. Self-fulfilling-prophecy behavioral responses to application of a heuristic by the observer.
- e. Application of heuristics is associated with high levels of stress and reduced mental and emotional resources (as during conflict).
- f. Influenced by individual contextual factors and motivational factors.

4. Disputant generates options for responding.

Option generation will be more or less abbreviated or detailed, depending on the importance of the situation, the stress and arousal level of the observer, and the cognitive resources of the observer.

5. Disputant weighs the options.

If more than one option is generated, the observer will have to choose which action to take, and at some level he or she will do this by weighing the costs and benefits of each.

Sources of cost-benefit assessments used in analysis:**Factors that influence weights given to options:**

- i. Factors that influence availability of mental resources – such as complexity, fatigue, emotional arousal
- ii. Salience of particular issues in the present context
- iii. Blueprints about interpersonal conflict and how it should be resolved
- iv. Personal values assigned to the likely possible outcomes of the options (both positive and negative)
- v. The weighing of options is often wholly or partially unconscious.

6. Disputant chooses an action

Stable source is perceived self-efficacy whereas transient source include time limitations, cognitive overload, and attention robbing factors.

7. Disputant acts, creating a new social stimulus.

1. Because of deficiencies in actual self-efficacy (proficiency), the action that occurs may not be the one intended.
2. Proficiency is not a stable trait and it is impaired by stress.
3. Even proficiently executed tactics sometimes fail.
4. Due to errors in interpretation or judgment made by the disputant about the situation.
5. Due to mistaken beliefs about the effectiveness of various blueprints and their tools.
6. Due to changes in the situation.
7. Due to chance – the tactic may carry a known risk that was assumed by the actor.
8. Actions become social stimuli.

RECURRENT THEMES IN CONFLICT DIAGNOSIS II

Quotation

"When one ceases from conflict, whether because he has won, because he has lost or because he cares no more for the game, the virtue passes out of him". Charles Horton Cooley

This lecture is the continuation of the previous lecture. In the last lecture we had discussed seven steps of social behavior in detail. In this lecture we will try to understand the themes of the Conflict diagnosis by applying the seven steps of social behavior.

Themes of Conflict Diagnosis

Following are the ten themes of conflict diagnosis

1. Behavior makes sense to actor
2. The interpretation of reality is subjective
3. Behavior during conflict is used to infer motivational state of others.
4. Interpretation of the behavior of others is largely unconscious and automatic
5. Misperceptions and misinterpretations are common during conflicts, and contribute to the persistence of conflict
6. Pleasure principle
7. Expectations about results of one's actions are subjective
8. Actor's choice of response will be largely unconscious, subjective, based on diverse, often contradictory motives
9. People in conflict often don't attain intended goals
10. Interpersonal conflict tends to be self-fulfilling

Theme 1. Behavior makes sense to actor

An individual will behave in ways that make sense to him or her.

It is of no utility to write off someone's behavior as motivated by evil intent.

Theme 2. Interpretation of reality is subjective.

Each individual's interpretation of reality is subjective.

Theme 3. Conflict to Form Perception

Conflict participants use the conflict itself to make judgments about the motives of the other conflict participants.

Mind reading is impossible, and the statements of others about their motives are usually not trusted.

Theme 4. Perceptual Biases are Unconscious

The influence of mental processes on the perception of reality in interpersonal conflict is largely unconscious and automatic.

Because these processes are unconscious and automatic, errors of perception are not usually noted.

The faulty perceptions that arise during conflicts are usually thought as "obvious".

Theme 5. Perceptual Biases Feed Conflict

Expect interpersonal conflict to be misperception

Because the perceptual frames of reference of disputants usually differ, they usually attribute the wrong motives to each other as they try to explain the behavior they are seeing using the wrong frame of reference.

Emotional reactions to misunderstood actions feed the conflict.

Defensive responses to misunderstood actions further confirm to the observer the negative perceptions.

Theme 6. The Pleasure Principle

Each individual is motivated to improve his or her basic well-being, happiness, comfort, and pleasure and to reduce discomfort, pain, and harm to the self.

This is an expression of the basic motivating force assumed by behaviorists and social learning theorists to underlie human and animal behavioral responses.

Theme 7. Subjectivity of Expectations about Results

Expectations held by individuals, about the results that their behavior will produce, are subjective.

Theme 8. Complexity and Inconsistency of Motivation

Individual choices in a conflict are the result of reconciling among many diverse and contradictory motivations. Motivation usually appears simpler to an observer than it does to the one taking action. Motivation is often unconscious to the actor. This can create a situation in which hidden motives unduly influence an actor because he or she is unaware of their existence and influence. It also can create a situation in which an actor seems to be lying, but in fact lacks insight into his or her own behavior.

Interpersonal conflict creates predictable motivations. It can “beat” the other disputant.

Theme 9. Intended goals are not usual achieved

Individuals in a conflict frequently don't attain their intended goals.

Reasons for failure:

- i. Misinterpretation of the situation
- ii. Application of inappropriate conflict blueprint
- iii. Application of unhelpful strategies for resolving conflict
- iv. Failure to proficiently execute a strategy
- v. Chance; the strategy had a known risk of failure

Theme 10. Self-fulfilling prophecy

The course of a conflict tends to be self-fulfilling. The dynamics of interpersonal conflict typically cause it to evolve into what the disputants think it is.

Some ADR practitioners use this feature of conflict, subtly manipulating conflict participants into a frame of mind conducive to resolution. A more constructive approach to handling the conflict often follows.

DESCRIBING THE CONFLICT I

Quotation

“There are three principles in a man's being and life, the principle of thought, the principle of speech, and the principle of action. The origin of all conflict between me and my fellow-men is that I do not say what I mean and I don't do what I say”. Martin Buber

Description of Conflict

Make sure that we understand the roles of the parties to a conflict. Clarify that often there are several interpersonal conflicts hidden in a situation, and that the participant role assignments may change if the focus of the dispute is changed.

Tease out underlying and hidden interpersonal conflicts. It will help uncover paths to constructive resolution of the conflict.

Identifying Interpersonal Conflict

- Analyze the situation carefully to ensure it really is “interpersonal” and not an “inner conflict.”
- Identify the disputants, and the divergent goals and interests that create the interpersonal conflict.
- Now, start diagramming or mapping the conflict.

Purposes of the conflict map or “sociogram”

When it is decided that a conflict is interpersonal conflict not intrapersonal conflict, then we map out the conflict.

Following are the purposes of a map or sociogram:

1. It clarifies what the conflicts are among the disputants.
2. It helps us analyze disputants' interests.
3. It reveals interests of non-disputants that may impede resolution or provide ways to creative strategies to resolve the conflict.
4. It clarifies the points on which more information is needed.

Place symbols on the sociogram that represent the disputants and briefly write the divergent goals of the principal disputant.

Evaluate the situation, conduct research where necessary, to identify agents, advocates, and constituents. Place them on the sociogram as well.

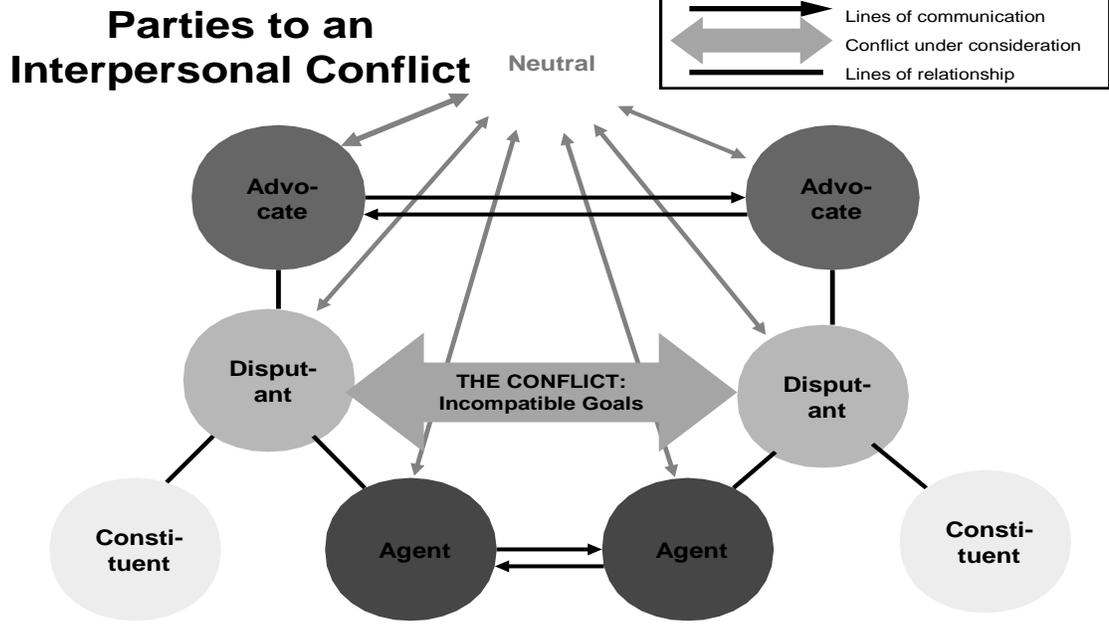
Explain the sociogram with side conflicts that add to the complexity of the situation.

Be prepared to edit the sociogram as and when additional information becomes available.

Keep in Mind the complexity

Many conflict situations will have more than one interpersonal conflict.

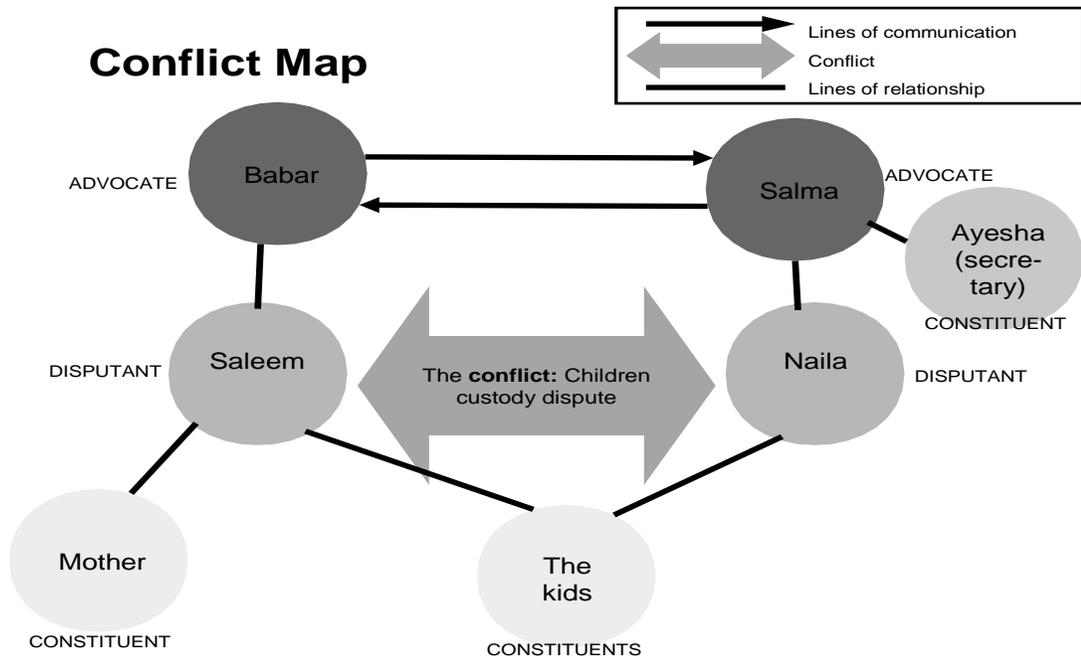
- i. Who are the main disputants, agents, advocates, constituents or neutrals, if any? This explanation will depend on the conflict that is being focused.
- ii. Often, we know which conflict to focus on. Some times, we have to decide systematically which conflict is to be focused. Usually there are multiple conflicts.
- iii. Whether to include some individuals with loose connections to the conflict as constituents will depend on our goals. It will be good to include all conflicts.



Sample Interpersonal Conflict

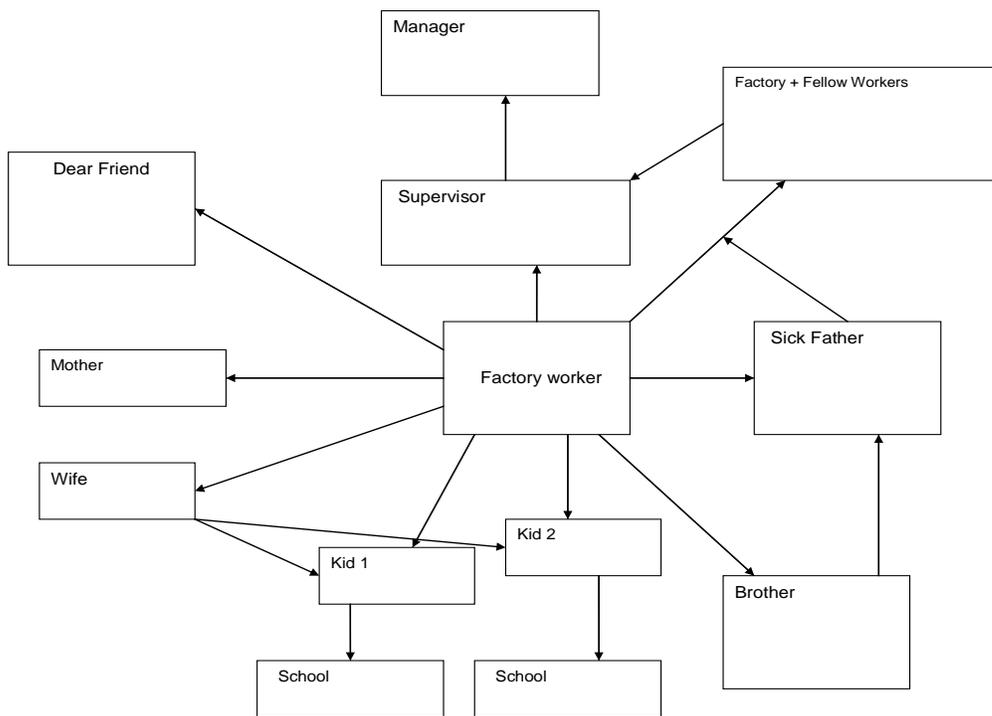
Saleem and Naila are in the process of divorcing; and disagree over the custody of their two children

- Lawyer Babar represents Saleem and Salma represents Naila
- The children are upset with each other. They blame each other for the impending divorce between their parents.
- Babar’s mother can not decide about her possible role to resolve their dispute by providing child care, if given custody of children to the father.



Important Point

Roles of participants' change, depending on which interpersonal conflict is given focus.



DESCRIBING THE CONFLICT II

Quotations

“Well begun is half done”. Aristotle

“All men have an instinct for conflict: at least, all healthy men.” Hillarie Belloc

Conflict, mistrust, insecurity, individualism, and competition are buzz words of today’s social, economic life. These concepts depict relationships. If you understand the anatomy of these relationships, you can enjoy personal, work, and social life.

Step 1 for Conflict Diagnosis

The first step towards conflict diagnosis is the description of conflict.

Putting the situation or conflict in words will help clarify it in your mind.

Developing a conflict map or sociogram will help understand the nature of conflict.

A sociogram is a diagram or chart that shows individuals and their relationships to one another.

Focus of conflict

When focusing on a dispute, it is useful to identify other conflicts involved in the dispute.

Usually several interpersonal conflicts are involved but they are hidden. The focus on one conflict in a dispute can change the total situation; and ultimately the resolution of the conflict will also change significantly.

Write down or map your conflict and sleep over it for about at least 12 hours. It will help clarify hidden conflicts.

Conflict: Interpersonal or Intrapersonal

Understand the nature of conflict: is it interpersonal or intrapersonal?

Example: Divergent views of a father and son. The son wants to pursue a career based on his understanding about his own limitations while the father wants an impressive career for his son. Both want the good career for the boy; there is no inter-personal conflict. It is actually an intrapersonal conflict. The conflict is within the person of the boy. He misinterprets the feelings of his father and thought about the existence of conflict between him and his father.

Sale of a product as conflict

Company S wants to sell its product (a chip) to company B (mobile phone manufacturer). It is an example given in your textbook. Although it is a western example but can apply in the context of companies in Pakistan. You as an employer of a company may have to face such a situation.

Summary

Comprehensive description of a conflict can provide an edge to the negotiator who is better prepared by having conflict map or a sociogram. It can provide alternative ways of reaching a conclusion or agreement. The pertinent attitude and understanding of conflict can help you succeed in your career and personal life.

SOURCES AND CAUSES OF CONFLICT I

Quotation

“It is essential to the sanity of mankind that each should think the other crazy...” Emily Dickinson

We have met the enemy and it is us. Walt Kelly, *"Pogo comic strip"*

Main objectives of this lecture

Following are the main objectives of this lecture

- How the obvious cause of an interpersonal conflict is seldom the only cause or even the most important one.
- Usually the sources of conflict are multiple and many of them are hidden
- Need to determine and understand many sources of conflict.
- 12 main sources of many conflicts

Source of Conflict

The ‘source’ of an interpersonal conflict is the underlying reason for the emergence of conflict. Understanding and conceptually organizing the sources of conflict can greatly help improve the chances of resolving the conflict. Understanding human behavior can help reveal the motivations of individuals involved in the conflict. While interest analysis illuminates the motivations of individual conflict participants, the process of identifying the sources of conflict illuminates the features of the relationship among conflict participants that foster conflict.

Main Sources of Conflict

Following are the main sources of conflict.

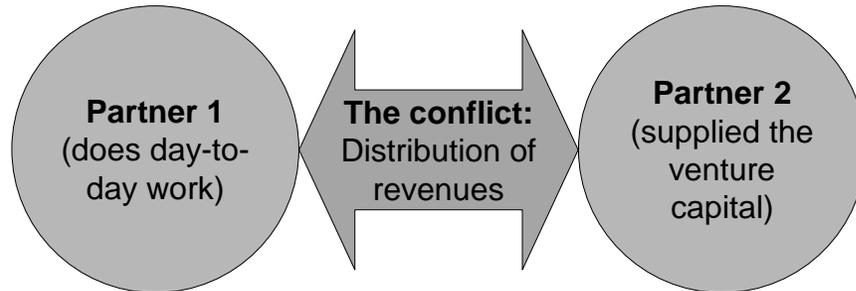
1. Resources
2. Data-type or about facts or laws
3. Preferences and nuisances
4. Differing attributions of causation
5. Communication problems
6. Differences in conflict orientation
7. Structural or interpersonal power
8. Identity
9. Values
10. Displaced and misattributed

Multiple Sources of Conflict

It is vital to know that there are usually multiple sources of any given conflict.

Leaving one or more sources of conflict may aggravate conflict. That is why you have to think through coolly and sleep over it. It will improve your understanding about the conflict.

Conflict between two partners



The tip of the iceberg: a resource and data-type conflict (who's entitled to how much revenue?)

Hidden conflict: threats to identity and self-concept

Discussing major sources of conflict

Now let us go through individual sources of conflict, one by one. It will develop your understanding about the sources of conflict.

This exercise will make you learn how to identify various sources of conflict in a dispute.

Conflict type	Explanation	Example	Useful approach
Control over resources	Disputant's degree over control of valued items or struggle over ownership of scarce commodities	The dispute is between neighbours over property boundaries	Many conflicts that appear at first glance to be resource conflicts can be resolved by understanding and dealing with deeper sources of conflict that may be operating. (tactics aimed at expanding the pie).

Conflict type	Explanation	Example	Useful approach
Data-type conflicts: conflicts over facts	The conflicts is over reality, either past or present	Two drivers disagree over who drifted into whose traffic lane	<p>Sometimes, a focus on satisfying the underlying interests of the disputants avoids the need to resolve the factual issue.</p> <p>If not, these types of conflicts can be resolved through fact finding, non-binding evaluation, or adjudication.</p> <p>Many disputes over facts mask other, deeper conflicts.</p>

Conflict type	Explanation	Example	Useful approach
Data-type conflicts: conflicts over law	The disagreement is over how the law impacts the relationship between the disputants.	The disagreement is between divorcing spouses over the appropriate appraisal and allocation of property rights.	<p>Ironically, litigation is probably the least desirable way to handle most of these kinds of conflicts, because they typically arise when the law is vague.</p> <p>Often, the best tactic is for the disputants to educate themselves about the law (to verify the degree of uncertainty), then to engage in principle negotiation aimed at developing solutions that accommodate mutual interests.</p> <p>Litigation should be used primarily when the legal conflict masks a dispute over social structure and interpersonal power imbalance.</p>

Conflict type	Explanation	Example	Useful approach
Preferences and nuisances	One disputant's behaviour disturbs the other.	Factory runoff pollutes the stream of a landowner who loves to fish.	These types of disputes are particularly amenable to creative problem solving that acknowledges and seeks to preserve the underlying interests of the disputant but rearranges the environment, modify people's schedules, and so on.

Conflict type	Explanation	Example	Useful approach
Communication difficulties	The meanings of language and behaviour may be misunderstood	Frequently, self-interested tactics on the part of one disputant are misunderstood by an opponent.	Approaches include becoming familiar with the other disputant and his or her cultural practices; using active listening; hiring and mediator, an agent, a consultant who shares the cultural background of the other disputant, or a translator.

Conflict type	Explanation	Example	Useful approach
Differences in conflict orientation	There are differences in the basic approach to relationship.	<p>One disputant sees the relationship of the parties as mutually cooperative.</p> <p>The other disputant is basically competitive.</p>	<p>It helps resolve the conflict if the disputant recognize the style differences to minimize communication difficulties that result from differences in conflict orientation.</p> <p>The cooperative disputant can refuse to negotiate unless the parties agree to use a set of objective principles to guide the negotiation.</p> <p>The cooperators may need to signal a willingness to fight hard if the other disputant fails to act cooperatively.</p>

Conflict Type	Explanation	Example	Useful approach
Values	Conflicts are over personal beliefs and deeply held values.	Ongoing conflicts in Iraq and Afghanistan may have religious origins, which include values conflicts.	<p>Sometimes, values conflicts can be resolved if the disputants can agree to disagree about the underlying values, as when a disputant agrees to go along with a settlement without admitting liability.</p> <p>Values conflicts are difficult to resolve peacefully if the values involved are central to the self-concepts or world views of the disputants or if coupled with many other sources of conflict, such as disputes over limited resources.</p>

Conflict Type	Explanation	Example	Useful approach
Threats to self-concept and world view	What disputant’s viewpoint threatens the other disputant’s central ideas about him- or herself or about how the world works.	In a medical mal-practice case, the patient’s allegations of negligence threaten the physician’s self-concept as a competent professional. An employee’s allegation of racism on the part of a supervisor threatens the supervisor’s self-concept as racially tolerant.	As with values conflicts, occasionally these conflicts can be managed by having the disputants agree to disagree while implementing a solution that threatens neither disputant’s self-concept or world view. It helps to use negotiation tactics that confirm and protect the dignity of each participant. Sometimes, these conflicts can be handled through the use of negotiating agents. Conflicts based on the negative stereotypes held by one social group about another social group are very difficult to resolve.

Conflict Type	Explanation	Example	Useful approach
Structural and inter-personal power issues	A disputant perceives an unjust balance of power and struggles to rectify it.	School integration and affirmative action disputes are examples.	The more powerful disputant is generally unwilling to give up power and may honestly fail to see that a power imbalance exists. If this disputant is made aware of this imbalance, sometimes he or she can be convinced to give up power to preserve long-term social structure, avoid violence struggle, or make his or her own actions consistent with deeply held values (as when discriminatory laws are pointed out as being inconsistent with national values of equality and equal rights). Frequently, however, appeal to a more powerful authority (e.g., litigation) is the only method that produces lasting change.

Summary

Understanding the sources of conflict will make you go through the multiple sources of conflict. It has been noted that identifying all the sources of conflict is very important for mapping the conflict and then resolving the conflict. While mapping the conflict, try to keep in mind all the sources of the conflict.

SOURCES AND CAUSES OF CONFLICT II

Quotation

We have met the enemy and it is us. Walt Kelly, *"Pogo comic strip"*

In the last lecture, we started talking about different sources and causes of conflict. Knowing the sources of conflict can help resolve conflicts rather easily and successfully.

The continuing inventory of major sources of conflict can help you identify major sources of conflict.

Conflict type	Explanation	Example	Useful approach
Preferences and nuisances (Loud music) (Poverty stricken youth)	One disputant's behaviour disturbs the other.	Factory runoff pollutes the stream of a landowner who loves to fish.	These types of disputes are particularly amenable to creative problem solving that acknowledges and seeks to preserve the underlying interests of the disputant but rearranges the environment, modify people's schedules, and so on.

Conflict type	Explanation	Example	Useful approach
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Conflict type	Explanation	Example	Useful approach
Differences in conflict orientation	There are differences in the basic approach to relationship.	<p>One disputant sees the relationship of the parties as mutually cooperative.</p> <p>The other disputant is basically competitive.</p>	<p>It helps resolve the conflict if the disputant recognize the style differences to minimize communication difficulties that result from differences in conflict orientation.</p> <p>The cooperative disputant can refuse to negotiate unless the parties agree to use a set of objective principles to guide the negotiation.</p> <p>The cooperators may need to signal a willingness to fight hard if the other disputant fails to act cooperatively.</p>

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Conflict Type	Explanation	Example	Useful approach
Structural and inter-personal power issues	A disputant perceives an unjust balance of power and struggles to rectify it.	School integration and affirmative action disputes are examples.	The more powerful disputant is generally unwilling to give up power and may honestly fail to see that a power imbalance exists. If this disputant is made aware of this imbalance, sometimes he or she can be convinced to give up power to preserve long-term social structure, avoid violence struggle, or make his or her own actions consistent with deeply held values (as when discriminatory laws are pointed out as being inconsistent with national values of equality and equal rights). Frequently, however, appeal to a more powerful authority (e.g., litigation) is the only method that produces lasting change.

Conflict Type	Explanation	Example	Useful approach
Differing attributions of causation	Each disputant believes that the existing state of affairs is due to a different cause and hence warrants a different remedy.	In a products liability case, the manufacturer contends that the product was treated improperly, whereas the consumer contends that the product is defective.	Some attributional disputes boil down to a data-type conflict (did the consumer kick the washing machine or didn't she?), whereas other attributional disputes are really values conflicts (yes, she kicked it, but the washing machine should be built to handle occasional violent outbursts). The most effective treatments depend on which kind of attributional conflict is involved.

Conflict Type	Explanation	Example	Useful approach
Displaced conflict	There is an unacknowledged conflict; the disputants are disputing over something else.	Business partners who have an unacknowledged conflict over the allocation of rights and responsibilities dispute about a minor aspect of the business.	The underlying conflict should be uncovered and diagnosed. A mediator is often useful in such situations. Unfortunately, the underlying conflict is often deep-rooted and difficult to resolve (otherwise, it would not have stayed hidden).

Conflict Type	Explanation	Example	Useful approach
Misattributed conflict	There is an unacknowledged conflict; one disputant picks a fight with someone else.	A teen living in the inner city under circumstances of grinding poverty, loses his temper and fights with a neighbour.	<p>It is important to uncover the 'real' conflict to avoid repetitions of misattributed conflict.</p> <p>Often, the underlying conflict is a structural/power issue that the disputant feels powerless to change.</p> <p>Sometimes, the former disputants, once aware of the misattributions, can band together to address the real problems with the formerly acknowledged disputant.</p>

INTEREST ANALYSIS I

Quotations

The shortest and best way to make your fortune is to let people see clearly that is in their best interests to promote yours. La Bruyere

Interests:

Interest may be defined as a sense of concern with and curiosity about someone or something.

The motivations that individuals have during a conflict, including positions (demands), aspirations, underlying interests, principles, values, and basic needs may be described as interests.

Interests analysis:

Interest analysis is perhaps the most critical step in the conflict diagnosis process. A systematic exploration of a conflict participant's interests is called interest analysis.

Briefly stated, interests analysis is the development of an accurate and complete understanding of each conflict participant's positions, aspirations, interests, needs and values in relation to the interpersonal conflict. Interest analysis includes an explanation of all the underlying interests, needs, and values of each conflict, participant, as well as an exploration of how all link together and are organized.

An effective interest analysis can mean the difference between **grudging settlement and real satisfaction**.

Interests motivate people; they are the silent movers behind the positions people take. Your position is something you have decided upon your interests. So, interest is something what caused someone to decide something.

What people normally say they want out of a conflict are positions, whereas the why of people shows what people want are interests.

Analyzing your interests

When you are involved in an interpersonal conflict, your thought processes are often clouded or diverted by strong emotions and stress. People caught up in a conflict often focus on the lines they have drawn in the sand-there positions-and on beating the other disputant-rather than on getting what is best for them.

Analyzing your interests also allows you to develop flexibility in your bargaining position, so that you can find better ways of attaining an agreement.

In most negotiated agreements, "the devil is in the details"; failing to make effective arrangements for delivery, payment, and so forth can make the difference between a good sale and a very bad one.

Finally, using interest analysis allows you to avoid the negative consequences of drawing lines in the sand, known in the conflict resolution field as positional bargaining.

Positional Bargaining

A process of negotiation that involves each disputant taking successively more moderate positions in hopes that eventually a compromise will result is described as positional bargaining.

Negative consequences of positional bargaining

There are three negative consequences of positional bargaining.

1. becoming locked into position psychologically- regardless of whether a better option is available
2. becoming blinded to issues unrelated to your position
3. seeing the other disputant as the enemy leading to an unnecessary impasse and additional "spinoff" conflicts

Advantages of knowing your team's interests

Following are the advantages of knowing the team's interests

1. Gain a clearer understanding of your goals
2. Clarify what interests would be best met in resolving this conflict and what interests would be better met elsewhere
3. Develop flexibility in bargaining, so that a good settlement is more attainable
4. Avoid the problems of positional bargaining
5. Finally, positional bargaining makes enemies.

Purpose of Interest Analysis

Here are some of the purposes of the interest analysis.

1. It promotes clear thinking and prevents inappropriate decision making resulting from emotional arousal and stress
2. It helps clarify what one wants and needs, and helps the user rank interests in relation to one another
3. It helps user visualize and recognize alternate ways to meet goals
4. It creates greater flexibility in coming to settlement
5. It ensures user isn't diverted by details, hot emotion, heat of the moment, and so on
6. It ensures user doesn't miss an optimal resolution
7. It enables user to evaluate whether some interests could be met outside the conflict

Analyzing the other disputant's interests

Analyzing one's own interests and those of one's principal, it is also important to analyze the interests of the other disputant. Here are some of the important points regarding analysis of other disputant's interests

1. Greater likelihood of settlement on optimal terms: ability to appeal to other disputant's desires while meeting your own goals.
2. Avoid settling for less than you could get.
3. Minimizing the likelihood of settlement sabotage by appealing to the other disputant's interests.
4. Avoid positional bargaining.
5. If coercion becomes necessary, allows one to design more effective pressure.

INTEREST ANALYSIS II

Quotation

The interest of the landlord is always opposed to the interests of every other class in the community.

David Ricardo (1772 - 1823) British political economist

We have no eternal allies and we have no perpetual enemies. Our interests are eternal and perpetual, and those interests it is our duty to follow.

Lord Palmerstone (1784 - 1865) British prime minister. Speech to the British Parliament

In the previous lecture, we talked about the analysis of interests. How interests of conflict participants are important to understand the nature of conflict. The analysis of interests helps diagnose conflict greatly. The deeper understanding of the sources of conflict, both superficial and deep, could help resolve conflict successfully and favorably.

Conflict in its collective sense is sometimes defined as a condition, sometimes as a process, and sometimes as an event. Conflict can be taken as a challenge and could be transformed into an opportunity.

Analyzing the interests of constituents and stakeholders

Constituents and stakeholders are affected by the course and outcome of a conflict; in turn, their connection to the disputants can lead to their significantly affecting the settlement, or potential settlements, made by the disputants, for good or for ill. Uncover conflicting interests that might lead to undermining negotiation or sabotaging a settlement.

Improve the ultimate result by taking account of what others are likely to do. For example in a divorce case, the children’s interests should be analyzed carefully. Apart from the moral responsibility the adults in the situation to act in the best interests of these children, it is highly likely that, without an understanding of the children’s interests, the children will themselves contribute to the destruction of the agreements made by the grown ups. Children also attempt to create a secure relationship between themselves and each parent by telling each parent what the children think the parents want to hear.

Analyzing the interests of all participants is important as any participant could sabotage the settlement of the dispute.

Advantages of interests analysis

The Disputant	<p>Clarifies what the disputant really wants and needs Enables the disputant to consider whether interests, values, and needs would be better met outside the conflict Enables greater flexibility and creativity in crafting solutions Avoids the pitfalls of positional bargaining.</p>
The other disputant	<p>Enables the negotiator to craft appealing proposals Avoids errors of judgment about how to resolve the conflict Sabotage by a disputant whose deep-seated interests are not addressed by the resolution of the conflict Avoids the pitfalls of positional bargaining Enables the negotiator to (if necessary) tailor coercive measures to the disputants interests</p>
Constituents and Stakeholders	<p>Allows action to be taken up front to avoid later sabotage of or damage to the settlement</p>
Disputants own Agents and Advocates	<p>Reveals possible conflicts of interest. Requiring replacement of representative</p>
Agents or Advocates for the other Disputant	<p>Reveals possible conflicts of interests and how they may make resolution more difficult and complex.</p>

An interest analysis should also include the agents and advocates for the other disputant. This is because the interests of other participants in the conflict can add to the complexity of motivations driving behavior in the conflict.

Interests analysis of agents and advocates

An interest analysis should explore the interests, values, and needs of the agents and advocates on all sides of the conflict. The principal reason that interests' analysis should include the agents and advocates of one's team is to clarify whether they have problematic conflicts of interest with their principal.

Better understand the complexities of what is motivating the "other team" and develop coping strategies. Develop understanding of motivators of other team members and strategize to cope with such conflicts.

What are interests?

Interests are emotions, drives, needs, principles, values, preferences, likes and dislikes, or the forces that move you to an action. These interests are drives or motivators of human behavior.

The interests are many in one individual. They are related in a complex way and if the parties to a conflict are multiple, then understanding the logical relationship among interests is hard and complex; that is why we diagram the relationships among various interests.

Why diagram interests?

Superficial interests are logically connected to more fundamental interests.

The concept of an interest tree diagram is used to represent the hierarchical and logical relationships between interests. It also clarifies which fundamental interests underlie more superficial interests.

Because the superficial interests are "driven" by the deeper ones; clarifying these logical connections allows one to concede on superficial interests while standing firm on more fundamental interests.

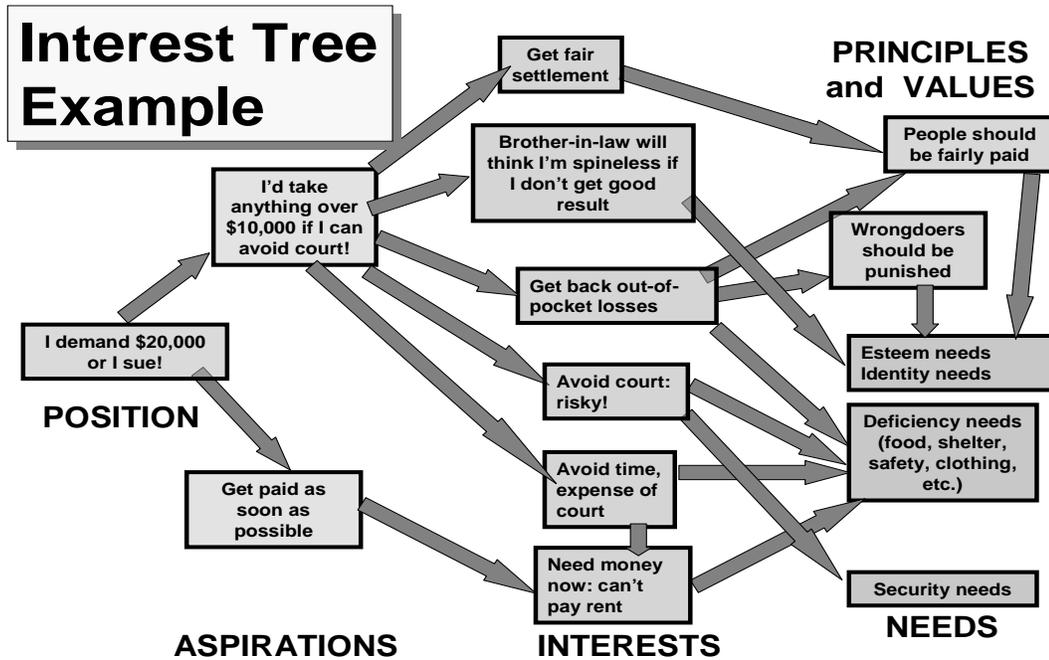
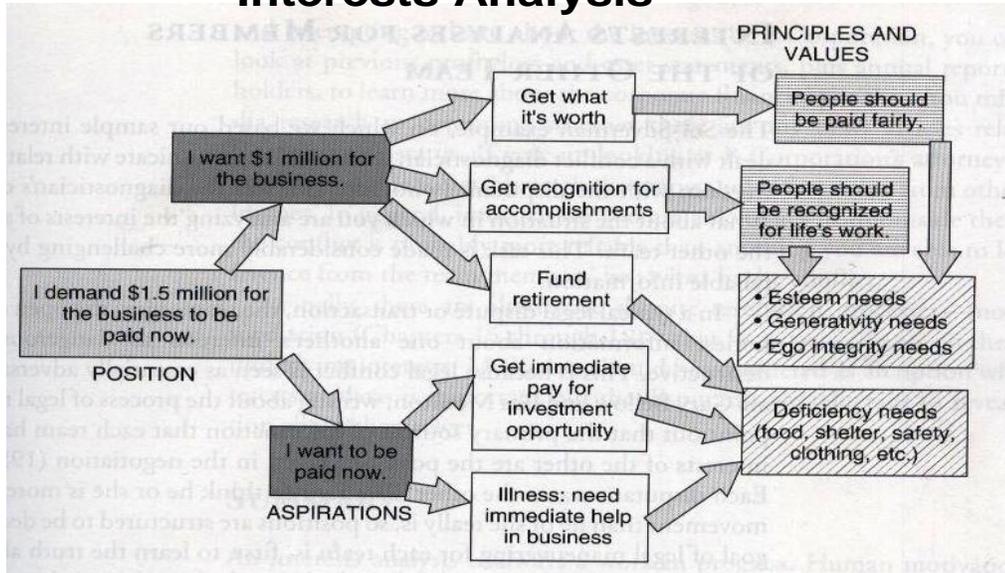
Looking at interests of others allows one to appeal to deeper interests as an "end run" around more superficial demands. Diagramming the interests of others, creates the knowledge base one needs to develop effective negotiation and other resolution strategies.

Tips for Interest Trees

An interest tree must include following points:

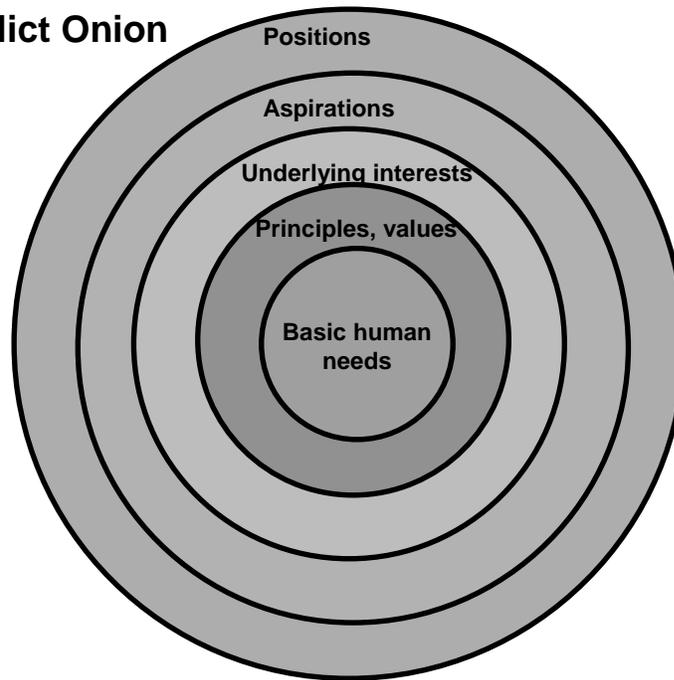
1. There must *always* be needs – other elements are optional
2. There may be *multiple levels* of underlying interests
3. Each position, aspiration, interest, and principle/value rectangle *must* logically relate (directly or indirectly) to one or more need rectangles
4. Don't *confuse* interests with facts or contentions

Interests Analysis



Always ask **WHY!**

Why is it important for you to get compensated fairly; may be your values of justice.

Conflict Onion**Layers in the Conflict Onion****Positions**

A stated demand of a conflict participant; no stated demand means no position.

Aspirations

Concrete aspirations may also be absent. For example, highly experienced negotiators, coming into a situation wanting to avoid positional bargaining, may avoid either positions or aspirations altogether and start their analysis with interests.

Deeper interests

There may be more than one level of underlying interests, with more superficial interests being driven by deeper ones.

For example, an auto purchaser may have an interest in reliable transportation, and his deeper interest may be to get reliably to work every day.

Summary

Knowing interests and analyzing them will make us understand the complimentary interests. It can help us bargain in our favor. These interests are significant for the success of our personal, work, and social life.

INTEREST ANALYSIS III

Quotations

It is easier for a camel to pass through the eye of a needle if it is lightly greased. Kehlog Albran

I do not love the money. What I do love is the getting of it...What other interest can you suggest to me? I do not read. I do not take part in politics. What can I do? Philip D. Armour (1832 - 1901) U.S. business executive

Interpretation: Philip may like to gift away money but will probably not like to let any body else win in a business conflict. Deeper interest here is the personal success of an individual in a negotiation.

Principles and Values

Conflict participants have underlying principles and values at play in their motivations.

Disputants may express principles and values disingenuously, as rationalization for a position, rather than as honest expressions of deeply held beliefs. A conflict diagnostician must be able to distinguish between legitimately held principles and values and those that are trotted out as argument.

Principles and values are closely tied to basic human needs. The need for the esteem of others and a stable, positive sense of self are among the most important and deeply seated basic human needs.

Justice and basic principles/values

Principles and values are almost always one element of a disputant's interest tree.

The need for justice is one of the basic human needs. A sense of justice, of having and doing justice, is an intrinsic part of almost all interpersonal conflict. Each participant in a conflict seeks justice for him or herself, and an outcome that violates a participant's sense of justice is almost sure to fall apart later on.

Justice scholars generally identify two major type of justice: distributive justice and procedural justice. Distributive justice is concerned with whether the outcome of a conflict is fair. According to the scholarly research on justice, there are three basic principles generally called upon to determine distributive justice, each of which tends to be more important in particular sorts of situations. Equity considerations, which allocate resources based on the contributions of the participants, are often most relied upon when groups of people must be motivated as a group. Equality considerations, which indicate that resources should be allocated equally, are generally most prominent when there is a high need for group cohesion.

Finally, need considerations just that resources should be allocated to those who need them most, as when a judge orders child support to a child based on the need of the family the child is living with. Many decisions about distributive justice are a combination of two or even all three, considerations.

Procedural justice refers to the fairness of the process used to reach a given outcome. Procedural justice is extremely important in lending a sense of legitimacy to a conflict resolution process that imposes an outcome, or exerts some other sorts of pressure or influence, on the disputants.

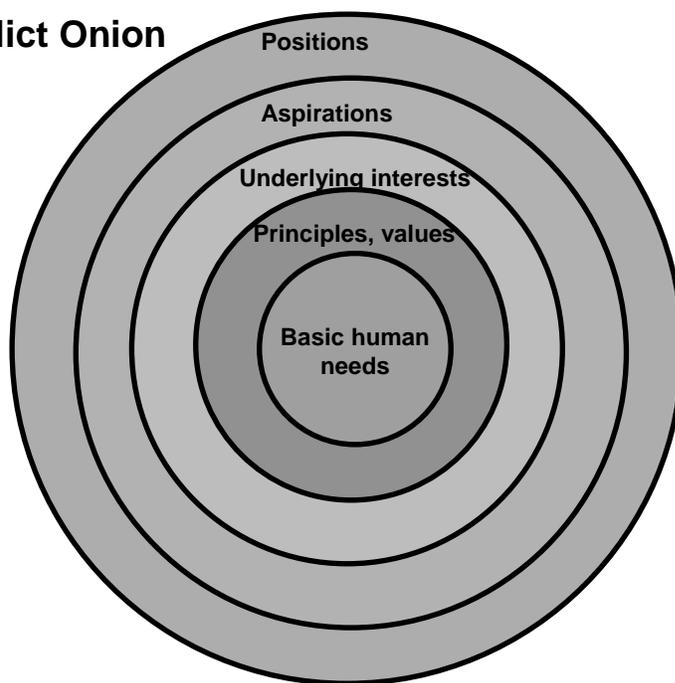
Basic Human Needs

Lying even more deeply at the heart of the conflict onion than principles and values are basic human needs. People are not able to verbalize easily the basic human needs that lie at the heart of a conflict onion: they must be inferred from what people say and do and the circumstances they are in.

A good interest analysis should include basic human needs. Basic human needs are basic, and a failure to deal with and address them creates pressure for them to be expressed in other ways.

Theories about human development and human drives provide a conflict diagnostician with guidance about basic human needs.

Conflict Onion



Interests and the Conflict Onion

Kind of Interest	Definitions
Position	The demand the disputant makes to others
Aspiration	The bottom line the disputant is looking for
Underlying Interests	The reasons for the aspirations
Principles and Values	Beliefs and moral codes that influence the interests
Basic Human Needs	Underlying needs that drive the motivations of the disputant



Maslow's Need Theory

Abraham Maslow, a psychologist working in the first half of the twentieth century presented a theory to explain the behaviour and development of mentally healthy adults. Maslow theorized that people have a drive to satisfy human needs and these needs are organized hierarchically. He believed that the most basic needs are the physiological needs (such as needs for air, food, shelter and sleep) and that, until these needs are satisfied, people are not motivated to address other needs or desires. The next most basic need on Maslow hierarchy is for safety and security.

Maslow believed that one is not motivated to satisfy the higher needs until and unless more basic needs are satisfied. On the other hand, one might expect that, when a need is “just barely” satisfied, one might be motivated to consolidate that need even while addressing higher –level needs.

Erik Erikson's Theory

Another theory that can illuminate the deep seated motivations of persons involved in conflict is the psychological theory of Erik Erikson. Erikson's theory, which is based fundamentally on the work of Sigmund Freud, posits that healthy development over the human life span follows a set course of development, in which a particular life stages are associated with particular sets of overriding concerns. Thus, knowing Erikson's theory and the approximate ages of the individuals involve can provide some clues into deep seated motivations.

People at different stages of life have predictable motivations or drives or interests.

Poorly resolved stages can get people “stuck” at various positions. These underlying motivations often drive irrational conflict and prevent fair, rational resolution of conflicts

A legal professional can deal with the underlying motivation as s/he is trained to look into that.

Erik Erikson's Life Span Stages

Birth-1 yr	Trust vs. Mistrust
1-3 yr	Autonomy vs. Shame, Doubt
3-6 yr	Initiative vs. Guilt
6-12 yr	Industry vs. Inferiority
Adolescence	Identity vs. Role Confusion
Young adult	Intimacy vs. Isolation
Middle age	Generativity vs. Stagnation
Late adult	Ego Integrity vs. Despair

8 Stages of Erik Erikson's Psychosocial Development

Stage 1 (birth to 1 year) – “trust versus mistrust.” The individual's life challenge is to develop a healthy and realistic ability to trust others in his or her world, particularly an ability to trust the primary caregiver.

Stage 2 (1 to 3 years) – “autonomy versus doubt and shame.” The individual's life challenge is to learn to act in an autonomous manner, to exercise control over him- or herself.

Stage 3 (3 to 6 years) – “initiative versus guilt.” The individual's life challenge is to develop a sense of potency over his or her environment, to be able to act on the environment in creating situations and plans, without impinging on the rights and needs of others in the social system. It is here that the developing individual first confronts the limits of social organization and interpersonal conflict first appears.

Stage 4 (6 years to adolescence) – “industry versus inferiority.” The individual's life challenge is to develop a mastery of the academic, social, and vocational skills that will be needed in adulthood.

Stage 5 (adolescence and very young adulthood) – “Identity versus role confusion.” The individual's life challenge is to develop a strong and stable sense of self with clear values, a sense of vocational identity, a social identity, and so forth.

Stage 6 (young adulthood) – “intimacy versus isolation.” The individual's life challenge is to develop enduring intimate relationships, such as marriages.

Stage 7 (middle adulthood) – “generativity versus stagnation.” The individual's life challenge is to find a way to make a lasting contribution to others and to society in general. This stage often includes an emphasis on procreation and the raising of children.

Stage 8 (late adulthood) – “ego integrity versus despair.” The individual's life challenge is to find a way to reconcile and find peace and satisfaction with the manner in which he or she has lived life and to find meaning for the experience.

Summary

In summary, we need to understand the dynamics of human behavior. What are the fundamental and superficial factors that move an individual to act in a certain direction? If we understand the human-related drives to move in particular direction, we have to understand about these drives. This explanation can help modify human behaviors in the desired directions.

ASSESSING THE CHARACTER OF THE CONFLICT I

Quotations

"There are two educations; one should teach us how to make a living and the other how to live". John Adams

"Nothing is given to man on earth - struggle is built into the nature of life, and conflict is possible - the hero is the man who lets no obstacle prevent him from pursuing the values he has chosen." Andrew Bernstein

- **Conflict is either Constructive or Destructive**
- **Constructive Conflict**
- **Transforming Competitive Conflict into Comparative Conflict**

In this lecture we will try to examine the four components of Morton Deutsch's theory of constructive and destructive conflict. Why Morton Deutsch thought that cooperation is more likely than competition to produce constructive conflict? Why conflict has the amazing capacity to become what the disputants think it is? Why it's easier for a cooperative conflict to become competitive than vice versa? What is the criterion for assessing a conflict as cooperative or competitive? What are the strategies and tactics for turning a competitive conflict into a cooperative one?

"Grief and disappointment give rise to anger, anger to envy, envy to malice, and malice to grief again, till the whole circle is completed." How can we break this cycle? We will learn, cooperation is better than competition.

Perception becomes reality in cooperation and competition ("Deutsch's crude axiom").

Morton Deutsch's Theory of Constructive and Destructive Conflict

Deutsch's ideas about what makes conflict constructive and destructive are well summarized in his 1973 work, "The Resolution of Conflict: Constructive and Destructive Processes".

1. Conflict is either cooperative or competitive.
2. Cooperation tends to be constructive, and competition tends to be destructive.
3. Cooperation and competition tend to be self-fulfilling prophecies: Perception becomes reality.
4. Cooperation easily turns into competition, but not vice versa.

Premises of Deutsch's Theory

1. Cooperative conflict

A conflict in which the disputants believe that, when one disputant helps him- or herself, the other disputant is also helped.

2. Competitive conflict

A conflict in which the disputants believe that, when one disputant helps him- or herself, the other disputant is humbled or quite or less powerful.

3. Autistic hostility

A phenomenon in which hostile feelings promote a lack of communication, leading to negative attributions about the acts, attitudes, and motivations of the other person is termed as autistic hostility. Because of the lack of effective communication, neither disputant is able to correct misperceptions.

4. Reactive Devaluation

A phenomenon present in escalating conflict, in which a suggestion made by one disputant, or members of his or her team, is met with suspicion by the other disputant, or members of his or her team may be described as reactive devaluation.

5. Meta-Conflict (meta-dispute)

An interpersonal conflict (dispute) over the way another interpersonal conflict is being handled.

Premises of Deutsch's Theory

How the conflict is characterized in the minds of the disputants

Since a cooperative conflict is perceived as primitively interdependent, the disputant perceiving a conflict as cooperative will tend to see the conflict as a joint problem to be solved i.e. if the problem is solved for one disputant, it will also tend to be solved for the other.

Communication in cooperation and competition

Since the disputant in a cooperative conflict sees the goals of the other disputant as promoting his or her own interests, it appears to be in his or her best interests to share as much information as possible. Cooperation is characterized by open, honest communication of relevant information. In contrast, since the interests of disputants in a competitive conflict are seen to be in opposition, competition is characterized by efforts on the part of the perceiving disputant to avoid open and honest communication. In competitive conflict, disputants tend to be suspicious of one another, fearing that information they share will be used against them.

Coordination of Effort in cooperation and competition

Since a disputant who sees the conflict as cooperative believes that the other disputant's efforts will help him or her, the disputant will tend to try to coordinate his or her efforts with those of the other disputants.

Efforts of the disputants on One Another's Behalf

Obviously, a disputant who believes that meeting the other disputant's interests will meet his or her own interests has good reason to help the other disputants: it will help him or her as well.

Responses to the Suggestions of the other disputant

The reactions of one disputant to suggestions by the other disputants are controlled by the attitudes engendered by their perceptions in cooperative conflict, a disputant will tend to see the suggestions of the other disputants as motivated by a sincere desire to help, since everyone's goals are perceived to be complementary. Conflict, suggestions tend to be welcomed, approved of, or at least taken at face value

Feelings of the Disputants for one another

There is a great deal of evidence from social psychological research indicating that disputants in a cooperative relationship tend to develop feelings of friendliness and positive regard for one another.

Effect of Cooperation behavior on the disputants' Egos

In a cooperative conflict, cooperating with the other disputant is a comfortable outgrowth of the self interest of each disputant. The feelings of friendliness that tend to grow out of a cooperative relationship further motivate the disputants to be helpful to one another.

Perception of Similarity and difference

The positive and negative regard that cooperating and competing disputants hold for each other have indication for their perceptions about one another. People who like one another tend to focus on, and even inflate, mutual similarities, while they tend to ignore differences.

Task focus in cooperation and competition

The disputant who perceives a conflict as cooperative believes that he or she helps him or herself by helping the other disputant; he or she tends to stay focus on the task at hand. Thus cooperation tends to be characterized by task focus and efficiency.

Productivity, containment, and escalation of cooperative and competitive conflict

A cooperative conflict tends to be characterized by contained size and maximal productivity. There are several reasons for this feature of cooperative conflict.

Summary

Understanding the nature of cooperative and competitive conflict is very important. It can help you transform competitive conflict into cooperative or promotive conflict. It is your attitude which will make it either of the two types of conflict. It is very easy for a cooperative conflict to evolve in a competitive conflict. We can avoid that if we want to.

ASSESSING THE CHARACTER OF THE CONFLICT II

Quotations

If thou are a master, be some time blind; if a servant, sometimes deaf. Thomas Fuller (Turning competition into cooperation)

"Problems are only opportunities in work clothes" .Unknown

You are educated when you have the ability to listen to almost anything without losing your temper or self-confidence. Robert Frost

Features of Cooperation and Competition while in conflict

Features of Cooperation while being in conflict	Features of Competition while in conflict
<i>The conflict is seen as a joint problem to be solved.</i>	<i>The conflict is seen as a contest, with a winner and a loser.</i>
This is characterized by open, honest communication of relevant information.	It is characterized by avoidance of communication, miscommunication, and misleading communication.
Disputants pool efforts to gather information (efficient in time, money).	Disputants duplicate efforts to gather information because they mistrust one another’s effort (inefficient in time, money).
Disputants try to help one another.	Disputants try to obstruct one another.
It generates feelings of friendliness; disputants tend to see one another’s similarities and not see differences.	It generates feelings of enmity, hostility; disputants tend to ignore one another’s similarities and focus on differences.

Features of Cooperation and Competition while in conflict

Features of Cooperation while being in conflict	Features of Competition while in conflict
The dispute tends to be contained in size and tends not to spread.	Meta-conflicts and beliefs about the hostile intentions of the other disputant cause original conflict to spread and escalate.
One disputant’s suggestions for resolving dispute are welcomed and respected be other disputant.	One disputant’s suggestions for resolving dispute are mistrusted by the other and are seen as a devious effort to gain the upper hand (reactive devaluation).
Cooperating with the other gives an ego boost.	Cooperating with the other feels like losing face and is psychologically intolerable.
Disputants tend to be task-oriented.	“Defeating the enemy” becomes more important than staying on task.
Total productivity is maximized.	Total productivity is impaired.

Cooperation constructive, Competition destructive

Deutsch’s second major premise is that cooperation tends to be constructive, whereas competition tends to be destructive. The many benefits of using cooperation, rather than competition, to resolve conflict follow directly from the ten major features of cooperation and competition.

Premise 3:

Deutsch’s Crude Axioms

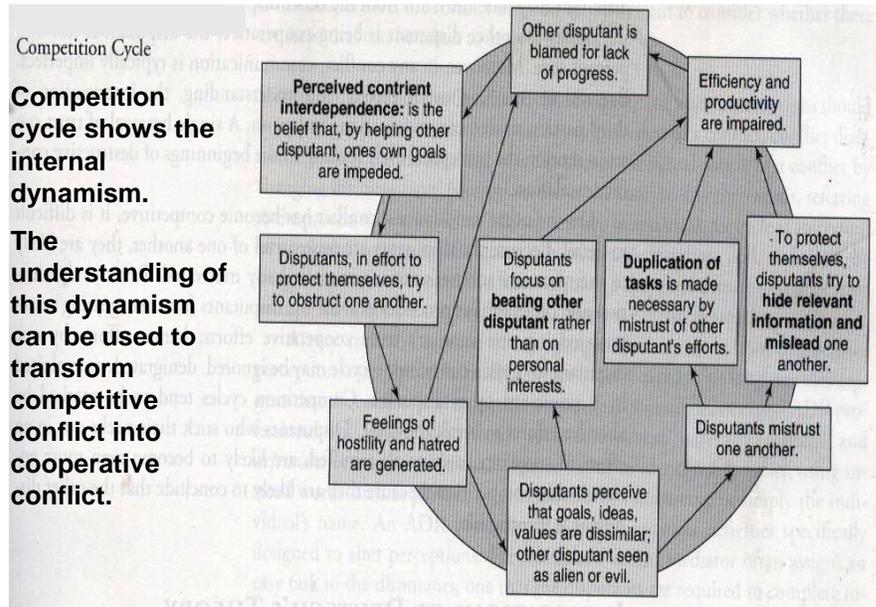
Cooperation begets cooperation and competition begets competition. A disputant’s perception regarding whether the conflict is cooperative or competitive will produce conduct that tends to reinforce this perception. In the other words, cooperation and competition tends to be self –fulfilling prophecies. This premise is referred to as “Deutsch’s crude axiom”. You will recall that one recurring theme in conflict diagnosis is that conflict participants who are unable to read the minds of other participants, tend to use the conflict itself as a source of information about their motivations. It is worth noting that, the more objective information about the conflict is possessed by each disputant, the less the disputant is likely to be swayed by the other’s behavior in the conflict.

Basic idea: If a disputant thinks of a conflict as cooperative, it will tend to become more cooperative, and if a disputant thinks of a conflict as competitive, it will become more competitive.

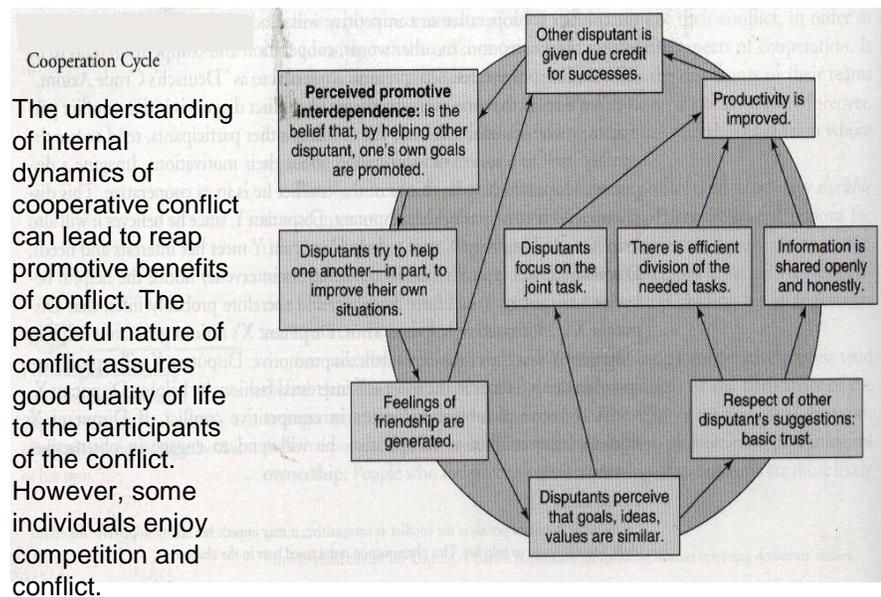
Reason: a disputant who thinks his or her interdependence with the other disputant is promotive will tend to try to help the other in an act of self-aggrandizement, actually creating more promotive interdependence.

But a disputant who thinks the interdependence is contrient will avoid promoting the interests of the other disputant out of a desire to protect him or herself, thus increasing the contrience of the interdependence.

Competition Cycle



Cooperation Cycle



Premise 4: It is easier to move from cooperation to competition than vice versa

Deutsch final premise about cooperation and competition is that cooperation is relatively fragile. People never have perfect knowledge about one another, and, in their fear and suspicion, they tend to set in motion protective actions that promote competition.

Techniques to transform competitive conflict into cooperative

Here are some of the methods and techniques to transform competitive conflict into cooperative conflict.

1. Choose Language with Care
2. Assign Joint Tasks
3. Expand the Pipe
4. Establish ground rules for civility in communication.
5. Create or focus on a common enemy
6. Point out areas of agreement
7. Focus blame away from the disputant and towards process
8. Prepare “the case”
9. Use trust –building exercises
10. Set up structure to create sharing of information

Transforming Competitive Conflict into cooperative conflict

TECHNIQUE	STEPS IN COMPETITIVE CYCLE AFFECTED	EXAMPLE
Choose Language with Care	Perception of Contrient Interdependence	Instead of calling the disputants “opponents” call them “Saleem” and “Naila”. Instead of referring to the conflict as “dispute”, refer to it as “ the problem we need to solve”. Instead of asking disputants to “ state their positions” ask them to “ talk about their goals for the process”
Assign Joint Tasks	Perception of Contrient Interdependence and perception of inefficiency into conflict resolution	Business partner disputing over appropriate assignment of the venture’s profits are assigned to interview jointly a CPA to learn some steps they can take to increase overall profitability.
Expand the Pipe	Perception of Contrient Interdependence	Spouses disputing over a property settlement are encouraged to characterize a payment as alimony- the wealthier spouse receives a tax deduction bigger than the tax the other spouse will have to pay on the amount received. The overall benefit is allocated between the spouses, so both are better off.

Transforming Competitive Conflict into cooperative conflict

TECHNIQUE	STEPS IN COMPETITIVE CYCLE AFFECTED	EXAMPLE
Establish ground rules for civility in communication. Create or focus on a common enemy	Perception of enmity between disputants. Perception of enmity; hostility; perception of contrient interdependence	An ADR neutral requires each disputants to refrain form “ bad- mouthing ” the other and take the time to guide each disputant in using the complimentary, polite discourse. In a custody dispute, the parent’s advocate reframe the issue into problem of how the parents can convince a mother-in-law who has created friction in the past of the merits of a proposed parenting plan.
Point out areas of agreement	Perception of difference in values and principles	The disputant’s advocate make sure to comment, “ so, you agree about that ”, each time the disputant mention something that already has been resolved.
Focus blame away from the disputant and towards process	Perception that other disputant is at fault for failure to progress in a conflict	In response to disputant’s complaint about the other disputant’s not complying with a prior agreement, counsel says, “so those arrangement didn’t work for you. Let’s work on making some new, more effective and workable arrangements ”

Transforming Competitive Conflict into cooperative conflict

TECHNIQUE	STEPS IN COMPETITIVE CYCLE AFFECTED	EXAMPLE
Prepare “the case”	Minimization of the impact of Deutsch’s Crude Axiom	The disputants is encouraged to get all the information he or she can about the factual and legal aspects of the dispute and to perform in-depth conflict diagnosis
Use trust – building exercises	Lack of trust between disputants	Disputants are encouraged to confirm the accuracy of one another’s statement. The ADR professional gently guides the suspicious disputant into realizing that the other disputant has, in fact, been behaving as the disputant would have believed in the same thing
Set up structure to create sharing of information	Tendency to mislead	The mediator requires the sharing of information to both the disputants. The mediator ask each disputant to back up claims about expenditures with receipts and other documentation.

TRUST AND ITS SIGNIFICANCE I

Quotations

Don't trust anyone over thirty. Jerry Rubin (1938 - 1994) U.S. activist and author.

Complexity and trust go together...the more firms downsize and outsource, the more they need partnerships, alliances, and joint ventures. Peter Keen U.S. business executive.

“It takes years to build up trust, and only seconds to destroy it.” Unknown

According to one prominent theory, there are three levels of trust: (i) calculus-based trust, (ii) knowledge-based trust, and (iii) identification-based trust. In this lecture we study and analyze these three levels of trust.

What is Trust?

Trust can be defined as a state of mind in which a person believes that another person intends to be helpful and, accordingly, that it is appropriate to take risks in the relationship.

Trust can be described as a basic component of human relationships. It plays vital role in the improvement of quality of every relationship. Different people define the phenomenon of trust according to their own perspectives. The behaviors essential to maintaining a constructive or cooperative relationship involves an element of risk. To risk the open communication and altruistic behavior that makes cooperative sharing of tasks possible, each disputant must believe that the other will not exploit the situation. The attitude that allows this risk taking behavior is called ‘trust’.

Trust: But such a trust may not be good



What is Mistrust?

You may be deceived if you trust too much, but you will live in torment if you don't trust enough. Frank Crane

Mistrust is not the absence of different forms of trust. It is a separate and distinct phenomenon. Disputants in a state of mistrust are actively motivated to protect themselves from the other disputant. Lack of trust is like having uncertainty while mistrust is considered as a state in which one individual actively believes that the other is likely to harm him or her.

Trust is difficult to establish when mistrust is present. Lack of trust entails uncertainty whereas mistrust operates to make disputants believe that they will harm each other. Mistrust is associated with aggressive behavior and the escalation of destructive conflict.

Trust and business

Business relationship is designed for people who must be involved in a relationship but who have very low levels of trust in each other.

A business relationship has following components:

1. Explicit and detailed agreement
2. Formality
3. Restraint of emotional expression
4. Balanced, neutral facilitating and evaluation

If you succeeded in building mutual trust with your business partner, it will serve as a strong foundation that will free you to respond together to the unexpected, which is essential for mutual creativity in conflict resolution.

Business is too complex to expect ready agreement on all issues, and trust, thus, does not imply easy harmony. "However, in a trusting relationship, conflicts motivate you to probe for deeper understanding and search for constructive solutions.

Trust creates good will, which sustains the relationship when one firm does something the other dislikes. Having trust gives you confidence in a relationship and makes it easier to build even more.

Trust and conflict

When one puts faith and trust in another, and that confidence is broken, it can create an emotional response that elevates to conflict.

To trust someone is to place a high confidence level that the relationship will not be compromised in any way...that I can expect you to do what you say. A trusting relationship leads to feelings of confidence and security.

A breach of trust unleashes our strongest emotions that frequently lead to conflict.

Breach of trust and its consequences

Even a single threat to mutual trust can turn a cooperative relationship into an escalating competition.

When trust is threatened, the mistrustful person suspects that the other may harm or exploit him or her, and risky behaviors, such as information and effort sharing, are abandoned as dangerous. Moreover, a mistrustful person in a conflict is likely to see his or her own well being as dependent on self-defense. Mistrust is therefore associated with aggressive behavior and the escalation destructive.

Trust, mistrust and conflict



Three levels of trust

The levels of trust are given below

- (1) Calculus-based trust
- (2) Knowledge-based trust
- (3) Identification-based trust

Some forms of trust are hard to establish

Some forms of trust are more useful than others.

Calculus-based Trust

The first and most basic level of trust is called calculus-based trust. It is based on knowledge of the consequences of compliance or noncompliance. In legal disputes, the calculus-based trust is more commonly used. It is used in settlement agreements and court judgments.

The incentives that can produce calculus-based trust are as varied as the individuals involved in the conflict, and they do not always involve money.

Disputants are made aware of the fact that refusal to comply with settlement provisions can mean being hauled into court made to produce information about assets and enforced to sell property.

These threats of inconvenience and penalty are usually enough to promote compliance and to create minimal levels of peace of mind in those insisting on their inclusion.

Calculus based trust is the easiest type of trust to create. Calculus-based trust is not required if other higher levels trusts are attainable and appropriate for the situation.

Calculus based Trust at a Glance

- Trust based on knowledge that the other person won't want to incur the consequences of betrayal
- Narrow applicability to the action for which consequences are in place
- Easiest type of trust to establish (you just need a contract)

Knowledge based Trust

The second level of trust is known as knowledge based trust. It is on one disputant's knowledge and understanding of the other disputant.

For example if a woman needs to leave her children with their regular baby sitter while she attends a business meeting she can trust that the baby sitter will keep them safe because of her long standing history of having them so in the past. Mother may also have knowledge of the baby sitter's background, skills, education, and apparent values, as displayed in numerous social contexts in which the mother has observed in the past. Knowledge-based trust is usually unwarranted in new relationships, in very short relationships, and in relationships that are caught-up in competition cycle. It can be understood by the example of a reliable employee.

After a period of effective functioning, we may convert calculus-based trust into knowledge-based trust. This type of trust is based on knowledge of the other person's habits, traits, attitudes, principles, and values.

Knowledge based Trust at a Glance

- Trust based on knowledge of the other person's habits, traits, attitudes, principles, and values
- Applicability to all actions about which relevant characteristics of the person are known
- Establishment depends on knowing the other person well enough to acquire relevant knowledge.

Identification-based Trust

The highest level of trust is identification-based trust. It is founded on the disputant's sense of identification with one another because the disputants identify with one another, they tend, as do all groups with a sense of solidarity to see themselves as being "as one" in their goals, values, and needs. Thus it is intrinsically satisfying to a disputant in a relationship characterized by an identification based trust to meet the perceived needs of the other disputant. In intimate relationships such as those between family members, preserving identification based trust is more important than the specific substantive agreements reached. For example two spouses who are arguing over the best color to paint a bed room generally have a much greater need to preserve their mutual sense of identification with one another than to resolve the issue of the paint color.

Business organizations (some MNCs for example) that indoctrinate their new employees into the company, and devote resources to building company spirit, are exploiting the advantages of this type of trust. In intimate relationships, this is the most important trust.

Sometimes, the desire to establish identification-based trust may be damaging (for example, the divorcing couple). Establishing identification based trust is very difficult; it requires a period of intimacy, partnership during a crisis, or another intense interconnection.

Identification-based Trust at a Glance

- Trust based on a sense of identification, or “oneness,” with the other person
- Broad applicability to entire relationship.
- Establishment is very difficult: requires a period of intimacy, partnership during a crisis, or another intense interconnection.

Summary

Trust is an important behavioral character of individuals and companies. It can enhance efficiency and can reduce undue formalities. It creates pleasant feelings among participants in a conflict or among those who are in business partnerships.

As there are three levels of trust (calculus-based trust, knowledge-based trust, and identification-based trust), the first one is easiest to establish and the last one is the most difficult to establish. However, higher the level of trust between individuals, companies, or even countries; higher the outcome of the relationships. It is an important personal attribute and also a great social asset. If people trust each other in a system or society, the life becomes joyous and happy for all of us.

TRUST AND ITS SIGNIFICANCE II

Quotations

“A verbal contract isn’t worth the paper it’s written on”. Samuel Godwyn

If you'll believe in me, I'll believe in you. Lewis Carroll (1832 - 1898) British writer and mathematician

Believe in yourself, but do not always refuse to believe in others. Joaquim Maria Machado de Assis (1839 - 1908) Brazilian novelist and short-story writer

In this lecture we will discuss the following points regarding the importance of trust.

- Trust can be built between and among disputants or parties i.e. individuals, companies, or countries
- High levels of trust carry distinct advantages.
- High levels of trust are not always attainable.
- That a “business relationship” can protect disputants when trust is low or distrust is high.
- Low levels of trust can be promoted into higher levels of trust.

Advantages of high trust level

Why high level of trust is given importance, it has certain advantages, such as:

- Less guesswork
- Fewer formalities; greater efficiency
- Pleasant feelings and comfortable work environment
- Fosters cooperation
- Better quality of life for every one

Origins of trust

Calculus-based trust can come directly from provisions in contracts that give people incentives not to harm one another as when an agreement specifies penalties for breach.

Since a contract is all that is needed to create this form of trust, it is relatively easy to establish. It can be created even between hostile adversaries using a penalty system.

Calculus based trust can also come from the course of dealing itself: in a continuing relationship often each disputant can count on the other disputant to preserve the course of dealing because of its intrinsic advantages for those involved.

Knowledge based trust comes from any situation in which people become well and so on.

Knowledge-based trust need not be based on intimate knowledge of the other disputant: it may be relatively narrow and based on a course of dealing. The cooperation cycle can promote knowledge-based trust easily. Knowledge based trust can also come from any situation in which it is clear that interests are not in conflict. Regular communication can also promote knowledge-based trust.

Identification-based trust is hardest to establish. It is commonly found among intimate partners of families. It is also created in situations involving a joint venture that both disputants care about deeply. However certain companies (MNCs for example) build this trust through inculcation of company specific values. Some Japanese companies make their employees sing loyalty promoting poems/songs every morning.

Effects of trust

It is very useful to operate with high levels of trust, particularly with identification based trust. It is seen that the higher the level of trust, greater the chances of perpetuating cooperation cycle.

Typical situations in which there is little or no trust include brand new relationships, such as transactions between strangers, situations in which an intimate relationship goes bad, and situations in which a betrayal of trust occurs in a cooperative relationship. The effect is to move the disputants into a competition cycle and toward a state of active mistrust.

On contrary low levels of trust can trigger a cycle of competition. High levels of trust produce good feelings and generate good quality of human life. Mistrustfulness creates a perception of contrient inter-dependence. Mistrust creates the impetus to hide information and duplicate effort, which escalate competition cycle.

Building of trust

When one puts faith and trust in another, and that confidence is broken, it can create an emotional response that elevates to conflict. To trust someone is to place a high confidence level that the relationship will not be compromised in any way...that I can expect you to do what you say. A trusting relationship leads to feelings of confidence and security whereas a breach of trust unleashes our strongest emotions that frequently lead to conflict.

CBMs (confidence building measures) with India provide good example of building trust. As a consequence of these measures trade between India and Pakistan is increasing now.

Business Relationships

A business relationship is designed for people who must be involved in a relationship but who have very low levels of trust in each other.

A business relationship has following components.

- Explicit and detailed agreements
- Formal, preferably written communication
- No sharing of emotion
- Balanced, neutral assessment methods

Achieving a Business Relationship through Effective agreement Drafting

Nothing destroys trust quite as fast as the belief that the other disputant has flagrantly violated a hard-won settlement agreement. Unfortunately poor agreement drafting can lead to misunderstanding over the terms of a settlement. In a climate of low trust or mistrust, a difference of interpretation can be perceived as a betrayal. Effective agreement drafting consists of the following goals.

- . Accuracy and completeness
- . Clarity and certainty
- . Flexibility
- . Legal enforceability
- . Relationship preservation

Accuracy and completeness

The resulting agreement should correctly and completely set down the agreement of the parties. It is critical to represent the settlement with complete faithfulness and accuracy and not to expand upon or alter the results of negotiation.

Clarity and certainty

The agreement should make all rights, responsibilities and procedures clear, including minutiae such as the manner of payment due date, delivery date, responsibility for shipping goods, and risk of damage during shipment.

Flexibility

The agreement should be workable despite unforeseen developments that might occur in the future. Flexibility and certainty are often traded against one another in a case-by-case balancing process.

Legal enforceability

The agreement should preserve or attain the legal status of a contract, and the limits of legal enforceability should be specified where necessary. The appropriate signature line, seals, and acknowledgement forms should be used as required.

Relationship preservation

The resulting agreement should avoid damaging relationship by preserving fairness, by avoiding inflammatory, insulting or demeaning language and by minimizing the likelihood of misinterpretation.

Low trust situation

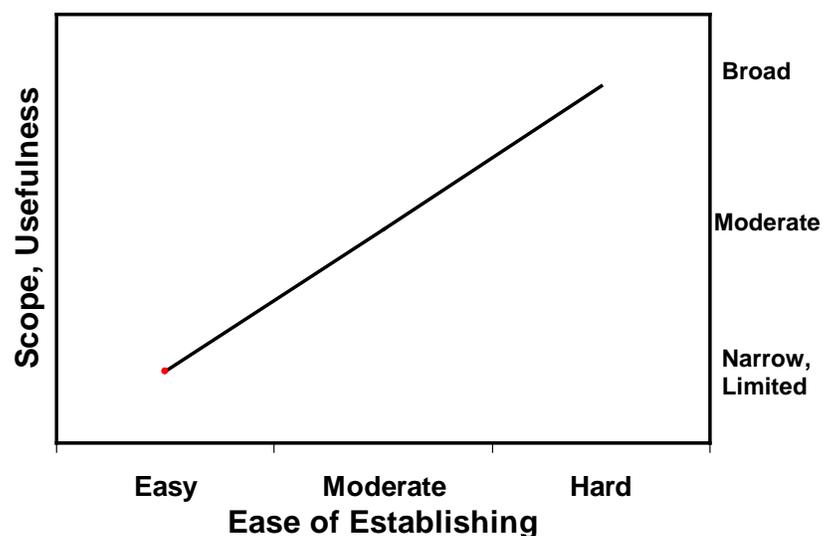
Following are some of the situations where level of trust is low

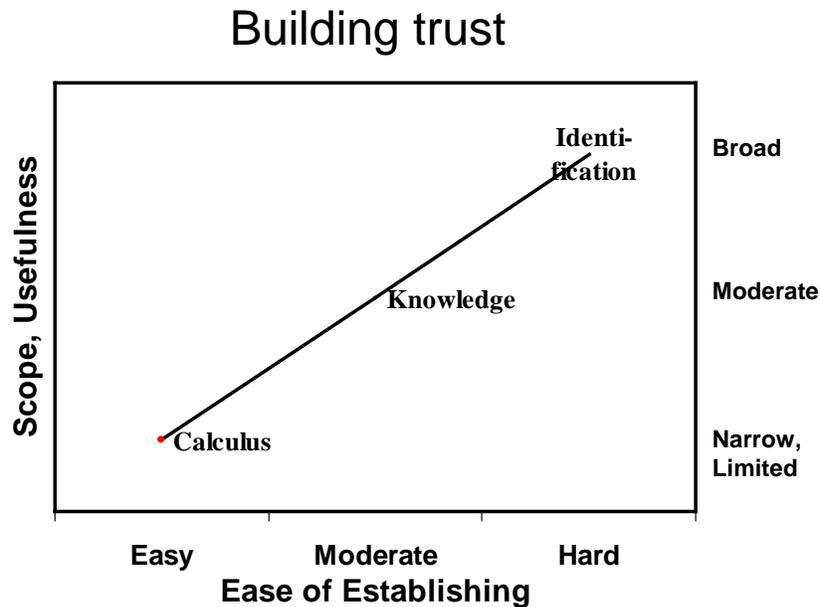
- New transactions and relationships
- Breakdown in close relationships
- Historical enemies
- Apparent betrayal of trust

Dealing with low trust situations

In intimate relationships, preserving identification-based trust is the whole point. In other situations, create calculus-based trust.

Easier a trust is established, the lower its scope





Key Points to Remember

Following points should be kept in mind for developing a trusting environment.

- Be a model of calm and control
- Don't give in to emotional outbursts
- Don't assume people are being difficult intentionally
- Find a quiet place in to resolve breaches of trust quietly and privately

Set some ground rules for the discussion:

- No raising of voices
- This is not a debate
- Speak only for yourself... "I" phrases
- Confront the issues, not the people
- Maintain or enhance self-esteem

Summary

Trust can be built with an appropriate strategy between or among individuals, companies, or countries. Confidence building measures (CBMs) between India and Pakistan present a good example to build trust between the two nations. In present day environment and in increasingly controlled world, trust can be built with explicit tactics and strategies.

ASSESSING IMPEDIMENTS TO RESOLVE THE CONFLICT I

Quotation

“The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy.” Martin Luther King, Jr.

Introduction

Conflict is a product of social and economic system. Culture plays an important role in creating conflict. If we see it at individual level, we find that Individualism is rampant which is source of conflict among people and societies. On the other hand if we examine it at community level the structure of society and system of social relations are the sources.

Impediments to Resolving Interpersonal Conflict

Here are fourteen important factors that impede the resolution of conflicts.

- Motivation to seek vengeance
- Meta-disputes
- Mistrust
- Vastly different perceptions about reality
- Over-commitment and entrapment
- Lack of ripeness
- Jackpot syndrome
- Loss aversion
- Linkages
- Conflicts of interest among team members
- Excluded stakeholders
- Disempowered disputant
- Unpleasant disputant
- Competitive culture or subculture

Motivation to seek vengeance

Vengeance makes an individual sacrifice advantage of cooperation and presses for punishing the other disputant. A disputant who is motivated to seek vengeance is likely to sacrifice the advantages of cooperation to punish the other side. This phenomenon often occurs after a conflict has been in a competitive cycle and has escalated and spread. Disputants have many reasons to seek revenge. e.g.

- Revenge to rectify injustice
- Revenge to prove self worth
- For preventing other disputant from further havoc
- Perception of hostility and hatred
- Vengeance as a difficult impediment to deal with conflict
- Disappointment of vengeful disputant
- Anger and angry attitude (Rigidity of values/fixity of mind, lack of flexibility and creativity)

It can be difficult to admit to vengeful feelings, because they are considered socially unacceptable in many circumstances. The motivation to seek vengeance is a difficult impediment to deal with.

Meta Disputes

Meta-disputes are disputes about the way a conflict is being handled. Unresolved and escalating conflict breeds meta-disputes. More the conflict is complex, more the chances of evolving meta-disputes. The best way to deal with meta-disputes is to prevent them.

A cooperative conflict cycle minimizes meta-disputes through free and open communication.

Disputants can avoid negative attributions of each others behaviors. Meta-disputes generally are based on misunderstandings. Third party or mediator can untangle such misunderstandings.

Mistrust

Mistrust and low levels of trust are the engines driving conflict escalation: low levels of trust create the suspicion, circumspection, and defensive tactics that promote inefficiency, bad feelings, and disputants' efforts to undermine one another.

Vastly different perceptions of reality

When disputants have dramatically differing perceptions of the facts or law that underlie the conflict, they usually have trouble achieving resolution without help. If each person has a strong, honest belief that his or her point of view is the correct one then it is difficult to convince the person beside otherwise.

Summary

To resolve conflict, understanding about impediments to resolving conflict is important. There are fourteen impediments that are mentioned in this and the next lecture. Being aware and sensitive about shall make you see those impediments operating in the conflict in hand; it will make you resolve the conflict comfortably.

ASSESSING THE IMPEDIMENTS TO RESOLVING THE CONFLICT II**Quotation**

“If a man empties his purse into his head, no man can take it away from him. An investment in knowledge always pays the best interest.” Benjamin Franklin

Summary impediments to cooperative settlement of interpersonal conflict

Impediment	Explanation	Example
Motivation to seek vengeance	A disputant wants retribution against another participant more than he or she wants a settlement.	Knowing she will lose in court, a plaintiff pursues a lawsuit because of the inconvenience she knows it will cause the defendant.
Meta-disputes	Conflicts and disputes that relate to how the main conflict is or has been handled.	During a labor dispute, one side accuses the other of unfair practices.
Mistrust	A disputant believes that the other disputant is like to use a settlement process as an opportunity for exploitation.	During the Israeli-Palestinian conflict, the Israeli government is unwilling to take the word of Palestinian leadership that they will take care of anti-Semitic terrorists; as a result, Israel takes violent action against Palestinian militants.
Vastly differing perceptions of reality	Each side believes a completely different version of the situation.	An employee files a grievance, claiming discrimination on the basis of gender against her supervisor, who believes that no gender discrimination has taken place.
Over commitment and entrapment	A disputant's team commits so much time, resource, or psychological energy to a competitive position that they feel that to settle would be a waste of would create intolerable loss of face.	After committing \$50,000 to preparing for trial, a plaintiff refuses an eleventh-hour offer to settle for an amount the plaintiff originally felt would be in his best interests.
Lack of ripeness	One or both teams have not yet come to believe that there is an urgent need to settle.	An auto accident plaintiff has filed suit, the case is scheduled for trial in fifteen months, and the plaintiff's legal team sees no harm in letting the case sit. They use the requests for settlement discussions by the other side for strategic advantage, hoping that playing hard to get will sweeten the eventual outcome.
Jackpot syndrome	One of the parties is willing to take a huge risk that he or she will lose for the opportunity to obtain a huge recovery.	A plaintiff sues for \$10 million and refuses to settle, despite her attorney's warning that she's unlikely to beat the defendant's latest offer.
Loss aversion	A disputant would rather gamble on a likely huge loss than pay out a smaller loss now.	A defendant, faced with an offer of settlement if he pays \$2,5000, prefers to try the case although his lawyer warns that he's very likely to lose more than that.
Linkages	Settling this case will affect other situations in unpredictable or damaging ways.	A prosecutor refuses to accept a plea-bargain offer from a defendant accused of accounting fraud – even though the evidence in the case is weak – because of the slap-on-the- wrist message that might be sent to others with similar cases pending.

Conflicts of interest among team members	A settlement that addresses the interest of one team member well does a bad job of addressing the interests of another team member.	A mother refuses to settle a pending child custody case with her child’s father because civility with this man enrages her present husband.
Excluded stakeholders	One of the important stakeholders in the conflict is left out of the negotiations and therefore sabotages efforts to complete a settlement.	During negotiations over custodial arrangements for a teenager, parental efforts to institute visitation arrangements fall apart when the teenager refuses to go to the mother’s house as specified in the agreement.
Disempowered disputant	A disputant feels overmatched during a conflict and is fearful that agreeing to a settlement will harm him.	A major corporation can’t convince a frightened consumer to settle a warranty claim despite the honest beliefs of corporate counsel that they have bent over backward to accommodate the consumer.
Unpleasant disputant	A disputant, or a member of the disputant’s team, is so unpleasant that settling with her leaves a bad taste.	A defendant can’t bring herself to settle with the plaintiff: the latter has made the defendant’s life so miserable that the defendant finds giving her any sort of satisfaction to be intolerable.
Competitive culture or subculture	A disputant or negotiator comes from a culture or subculture in which competition is the primary blueprint for conflict management.	In a dispute over baseball salaries, both owners and players believe that it is inappropriate to cooperate with the opposition.

In the previous lecture we discussed the first three impediments in resolving the conflict. The remaining points will be discussed in this lecture.

Over-commitment and entrapment

A disputant over-commits when he or she pours so much time, money, and energy into preparing for a battle that it is seemingly wasteful to back out of the project. The result is that the disputants feel trapped. Over-commitment is a toxic combination of inattention and fear of losing face. It is insidious; it happens inch by inch, creating entrapment by degrees. The best ways to combat entrapment are to make disputants attentive to the process of commitment and to avoid the loss of face issue that comes with it. It creates entrapment. Avoid over-commitment by avoiding loss of face situation.

Rubin, Pruitt, and Kim (1994, 114-16) recommended four tactics designed to avoid over commitment and entrapment.

First, before entering into a negotiation, it helps to set some boundaries on how much the disputant will lay on the line.

Second, during the negotiation, one can schedule “points of decision”, at which the decision to stay involved is periodically reevaluated.

Third, attention should be paid, during analysis of whether to continue committing resources to a conflict, on the costs, non-monetary and monetary, of continuing the conflict.

Fourth, it is very useful to build in ways to save face wherever possible. As entrapment builds, the participants continue to persist in the dispute to avoid loss of face.

Lack of Ripeness

Resolving a conflict is perceived as costly, difficult, and unpleasant. Many times, disputants won’t confront the work needed to resolve a conflict until they find no alternative. This situation of conflict is called ripeness.

In legal disputing, ripeness is often created by the proximity of the trial. A trial usually has many unexpected twists and turns; it is expensive, time consuming and emotionally disturbing.

Jackpot Syndrome

The Jackpot Syndrome, identified by prominent law professors Frank Sander and Stephen Goldberg (Sander & Goldberg 1994), involves apparently irrational behavior by a disputant who is risk-tolerant. Disputants afflicted with this syndrome believe that they have a chance of “winning big” if they hold out and refuse to settle. The irrationality comes because their chances of actually getting the big payoff are miniscule.

- Apparently irrational behavior by a disputant who is risk-tolerant.
- Believe in a chance of winning big.
- Need to be educated: jackpot syndrome is unrealistic.
- Differing views about reality and expecting a chance to become rich or famous.

Loss Aversion

Loss aversion is the propensity of many people to prefer to gamble on an uncertain outcome rather than to take on a certain but manageable loss. Loss aversion is the complement of Jackpot Syndrome; it involves people who would rather gamble, knowing they have a good chance of losing than give up a sure thing of lesser value.

Linkage

A linkages problem (sander & Goldberg 1994) occurs when the conflict under consideration is interlinked with other conflicts and other parties. The implications of settlement may be hard to clarify or may overwhelm the stakes in the current conflict. It may seem safer just to avoid settlement altogether. Linkages are a reality of many interpersonal conflicts and effective conflict diagnostician deals with linkages by performing detailed interest analyses to determine the nature of each interdependent relationship affecting the conflict.

Interest analysis is necessary to understand the linked conflicts or parties. Being unaware about underlying interests of disputants, agents, and constituents will be harmful in conflict management.

Conflicts of interest among team members

Non-disputant can put a variety of barriers in the way of conflict resolution. Constituent agents and other influential parties can all impede the otherwise effective work of disputants. Conflicts of interest can sometimes be treated as separate interpersonal conflicts, subject to creative resolution. When advocates and agents have clear conflicts of interests with their disputants, sometimes they must withdraw from representing the disputants to prevent the conflict of interest from doing harm to those they ostensibly represent.

Excluded Stakeholder

Another group of people who frequently impede the smooth resolution of a conflict are those who are not at the negotiation table but feel they should be. In a complex conflict, sometimes the disputants are difficult to identify. There may be a number of advocacy groups, each of which claims to be an interested party. Or, within a single group of disputants, there may be conflict over who should be physically performing the negotiation of the conflict.

Any individual who feels a need to contribute to the resolution of a conflict, but who isn't invited to do so, is likely to feel slighted about the lack of consideration. This psychological string typically prompts the person who has been left out to dislike any settlement being considered (in a phenomenon closely related to reactive devaluation), and this person will often seek to sabotage the settlement process.

At times, unimaginable forces or interests could impede resolution of conflicts. They could duly become part of negotiation. For example an adult ward (child) may like to sit on the negotiation table on property dispute

Disempowered Disputant

A disempowered disputant is a disputant who feels he or she has insufficient power in the relationship with the other disputant. For example one brother or partner is active while other is passive or sleeping partner.

A disempowered disputant fears coming to agreement, because he or she is afraid to be taken advantage of and doesn't know how to protect him – or herself. Often, the disempowered disputant cannot assess the utility of a proposed settlement, because he or she lacks essential knowledge. A disempowered disputant is very likely to dig his or her heels into the sand and become paralyzed.

A seeming paradox is that a very powerful disputant in negotiation with a much disempowered disputant often benefits from conferring power on the latter. A conflict diagnostician who finds a disempowered disputant impeding settlement should look at ways that the disputant can be empowered.

Unpleasant Disputant

Some disputants are so irritating that no one wants to please them. Their unpleasant personalities generate intense hostility in those who have to deal with them. They push conflicts into a competitive cycle by directly generating enmity between the participants. Helping the irritating person may feel psychologically intolerable to the other participants (contrient interdependence results). Sometimes, the problem is “goodness of fit” – a disputant is only unpleasant to single other disputant – but sometimes the unpleasant disputant is directed almost universally as impossible to work with.

Bossy attitude, unpleasant face, body, or outlook may also be the impediments. The solution may be to create distance between disputants.

Competitive culture or sub-culture

A competitive culture or subculture breeds competitive conflict escalation in numerous ways. Alternative ways of behaving are misunderstood, decried, or ridiculed. Efforts to create a cooperation cycle are met with efforts to exploit the opening thus created. It is difficult to deal with conflict in such an environment without retreating to the self-protective illusion of competition. The most common competitive subculture is the legal subculture. Lawyers are inculcated in the ways of competitive conflict resolution.

Obviously, trying to establish a cooperative relationship within a competitive culture or subculture involves one of two approaches: either creating enough incentive for the other disputant to break cultural traditions or moving the site of the conflict out of the competitive setting. Both of these approaches are used for legal disputes.

Summary

The importance of fourteen impediments to resolve conflict may have been known to you by now. If you can identify the active impediments by doing interest analysis, you will be able to resolve conflict easily.

ASSESSING THE NEGOTIATING STYLE I

Quotations

Let us never negotiate out of fear, but let us never fear to negotiate. John Fitzgerald Kennedy (1917 - 1963) U.S. president. Inaugural address as president of the United States

Making a billion dollars on a new deal is not difficult for me. Making it in a way that gives me satisfaction is the real challenge. Adnan Khasoggi (1935) Saudi Arabian entrepreneur, Daily Express (London)

Compromise used to mean that half a loaf was better than no bread. Among modern statesmen it really seems to mean that half a loaf is better than a whole loaf. G. K. Chesterton (1874 - 1936) British writer and poet

Introduction

Conflict is resolved in many ways. Arbitration, mediation, adjudication, and negotiation are some of the methods of conflict management. We will focus in this lecture on understanding negotiation.

Negotiation has different styles. The choice of negotiation style depends upon the nature of conflict and the nature of disputants. Following are the main points of our discussion.

- Why Deutsch's theory of cooperation and competition doesn't tell the whole story about behavior in a conflict.
- How it is possible to cooperate without being taken advantage of.
- The five negotiation styles.
- Dual concern model

Negotiation

Negotiation is one of three primary methods of alternative dispute resolution. A dialogue, discussion, or written exchange aimed at resolving a dispute or consummating a transaction.

Virtually all cooperative conflicts are resolved through discussion and negotiation.

Negotiation style

It is a strategy, not a tactic.

Choose a negotiation style that is suitable for the conflict you are dealing with. Most of us have our own biases about choosing different styles of negotiation according to one's strengths and weaknesses.

Deutsch's Model

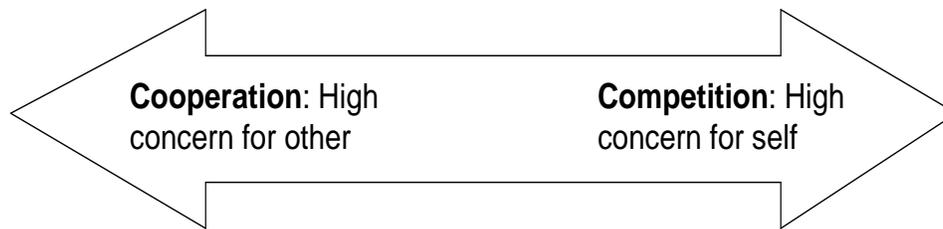
According to Deutsch's model, conflict is either cooperative or competitive. This approach is advantageous as it shows the course of conflict rather than the behaviors of individual disputants or agents.

However it fails:

- (i) To describe the self perception of disputants, this is very important to know.
- (ii) Cooperation and competition are cyclical in nature and Deutsch's model refers to conflict, not the positions of individual disputants;
- (iii) According to this model, there is only one form of cooperation. Actually there could be different forms of cooperative strategies to resolve conflict.

For example 'pushover' cooperation strategy makes the other disputant cooperate forcefully and joint problem solving strategy entails looking after the interests of the other party.

Deutch's Model

**Dual Concern Model**

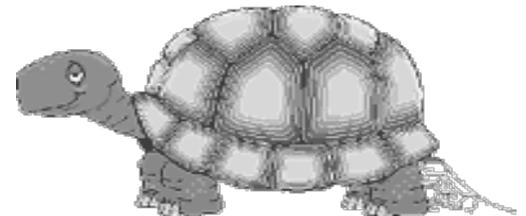
1. The *avoiding style*, which represents a low level of concern for both self and other;
2. The *dominating (or competing) style*, which represents a high level of concern for self and a low level of concern for other
3. The *obliging (or accommodating) style*, which represents a low level of concern for self and a high level of concern for other
4. The *integrating (or collaborating or problem-solving) style*, which represents a high level of concern for both self and other
5. The *compromising style*, which represents a moderate level of concern for self and other

Pareto-efficiency: The quality of a settlement agreement or another social arrangement to maximize overall value to the participants by allocating specific resources to those who value them most.

Avoiding Style

A turtle is a symbol for the avoiding style because it can avoid everything by pulling its head and legs into its shell to get away from everyone.

A turtle also chooses other styles at times. It does not always choose to stay in its shell, because it would miss out on everything from eating to swimming.

**Dominating or competition style**

It represents a high level of concern for self and a low level of concern for other

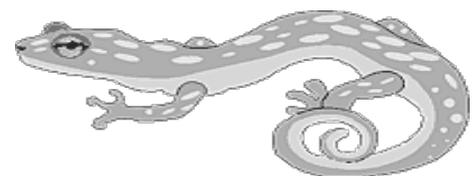
A lion can be a symbol of a competitive style. The lion's roar helps the lion to satisfy its interests. For example, if the lion's family is hungry and needs food, the lion may use its strength and loud roar to get the food because it is important for the family.

However, the lion can also choose to use a compromising or accommodating style when playing or resting with a lion cub.

**Obliging or accommodating style**

A chameleon is a symbol of the accommodating style because it changes its color to match the color of its environment. By changing its color to accommodate its surroundings, the chameleon fits quietly into its environment.

Although the chameleon may always change its color to accommodate its surroundings, it may choose other styles when it is hunting for food, taking care of its young, or hiding from enemies.

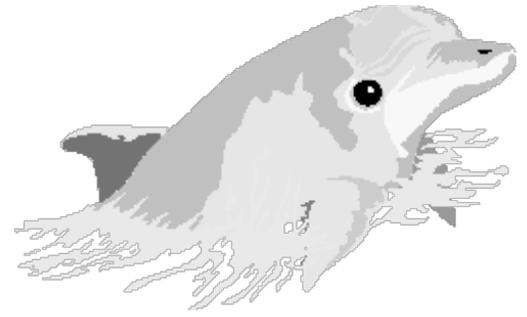


It represents a low level of concern for self and a high level of concern for other

Integrating or cooperative style

It represents a high level of concern for both self and other.

A dolphin usually chooses a cooperative problem-solving style. Dolphins use whistles and clicks to communicate with each other to catch food cooperatively and to summons help. For example, when a dolphin is sick or injured, other dolphins will help it to the surface so it can breathe.



Although the dolphin usually chooses to be a cooperative problem solver, it can also choose other styles depending on the situation.

For example, if a dolphin has a baby and a shark is in the area, the dolphin will choose to use a competitive style to deal with the shark. Continuing to use its favorite style of cooperation would greatly endanger the life of the baby dolphin.

Compromising style

A zebra can be a symbol for the compromising style.

A zebra's unique look seems to indicate that it didn't care if it was a black horse or a white horse, so it "split the difference" and chose black and white stripes.

However, a zebra may not choose a compromising style

for all things. A zebra may choose a cooperative

or competitive style like the dolphin or lion depending on the situation.



It represents a moderate level of concern for self and other

ASSESSING THE NEGOTIATING STYLE II

Quotations

Anger can be an effective negotiating tool. Mark McCormack (1930) U.S. sports agent, promoter, and lawyer

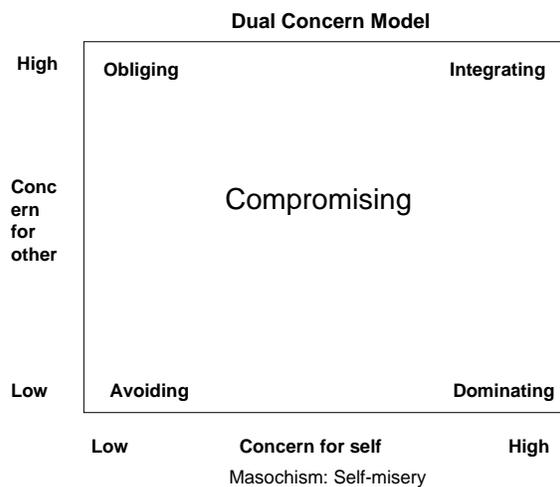
You must never try to make all the money that's in a deal. Let the other fellow make some money too, because if you have a reputation for making all the money there is in a deal, you won't make many deals. **J. Paul Getty** (1892 - 1976) U.S. oil magnate

War is the trade of kings. **John Dryden** (1631 - 1700) English poet, playwright, and literary critic

We will discuss the following points in this lecture.

- The best negotiation styles to use for preserving cooperation.
- The best negotiation styles to use for self-protections.
- The negotiation skills of the best negotiators.
- Some ways of assessing your own preferred negotiation style and those of your clients, associates, team, and other disputant team.
- Tactics that can be used to develop win-win solutions to conflict.

Dual Concern Model

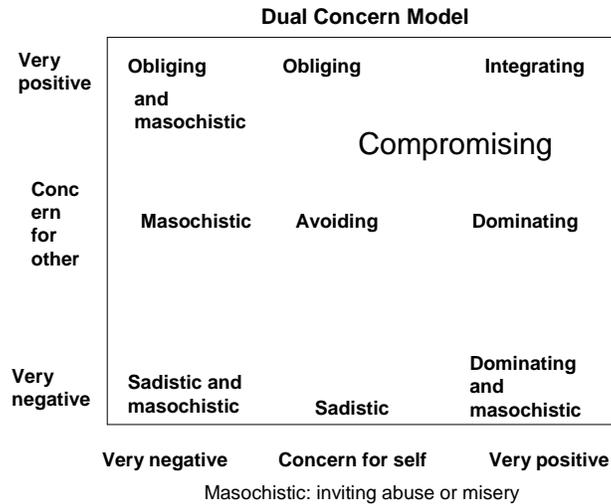


Limitations of Dual Concern Model

Research in the field of negotiation is highly complex and situations vary significantly.

Dual concern model assumes that no disputant has negative orientation, which is not the case. Sometimes, a disputant may be sadist and get pleasure by harming others.

Negotiation style is an overall strategy not just a tactic.



The Parable of the two sisters and the orange

The situation

Two sisters go to the Fridge at the same time for an orange. There is only one orange and a dispute arises between them as who will take the orange.

Avoiding (Low concern for self and other)

The sisters do nothing, since they can't decide. Two weeks later, there are two dissatisfied sisters and the orange got stale in the fridge.

The orange is wasted and there is a cost of disposing it off.

Dominating, or competing (High Concern for self and low concern for other)

The sisters agree to an arm-wrestling contest, with the winner taking the orange. Naila wins the orange and Ayesha loses. Naila juices the orange and drinks it and Ayesha is unhappy.

The skin of the orange is wasted and there is a cost of disposing it off for the tax payers, which is better than wasting the whole orange.

Obliging, or accommodating (Low Concern for self and high concern for other)

Naila says, "You take the orange, Ayesha". Naila replies, "No, no, dear, you take it. I want you to have it." Naila rejoins, "I couldn't possibly, Ayesha Bahan. You take it." Unless one or both sisters can recover from their case of terminal etiquette, the result will be same as for avoiding.

Another possible outcome is that one sister relents and takes the orange, an outcome similar to that for dominating, except that animosity may be less.

Compromising (Moderate Concern for both self and other)

The sisters agree to divide the orange in half. Naila juices her half and has a tiny glass of juice. Ayesha grates the skin from her half orange for a cake (except she doesn't have quite enough). The result is two half-satisfied sisters and a half-wasted orange.

Taxpayers, have about the same bill for waste disposal that we had for the dominating/competing outcome.

Integrating, Collaborating, or Problem-solving (High Concern for both self and other):

Naila asks Ayesha, "What do you need an orange for?" Ayesha replies, "I need the skin for my cake." (Integrating always includes an investigation of the disputants' underlying needs.) Naila smiles and says, "Then there is no problem. I just want a glass of juice." The result is two satisfied sisters and a fully utilized orange.

The taxpayers have less waste to dispose of. (Now, if we could only find use for the seeds!)

Considerations involved in using five negotiation styles

While deciding which negotiation style would be the most suitable for a particular situation, there are certain points which need to be considered, such as

1. Usefulness in inducing cooperation (motivate cooperation)
2. Self-protectiveness (high degree of motivation to protect one's own interests)
3. Integrating is good especially when there is power imbalance
4. Effective interests analysis is a must for using integrative style
5. Creative problem solving for meeting the underlying needs of all the disputants
6. Mutual and unilateral styles: Integrating and compromising require mutuality.

Integration style not possible in some situations

There are certain situations when integrating style can not be adopted e.g.

1. A relatively powerful disputant does not want to cooperate
2. A disputant is disempowered due to lack of information
3. When one disputant is forced to litigation
4. When there is constraint of time or limited mental energy
5. Integrating style is difficult for those who have limited cognitive capacities.

Tactics Used In Integrating

Expert integrators are familiar with five common tactics that support the integrating style of negotiation (Rubin, Pruitt, & Kim 1994 173-79)

1. Expanding the pie: it involves making the resource pool larger
2. Cutting costs: it is the converse expanding the pie: it relies on cost reduction to increase the net revenues available for distribution
3. Nonspecific compensation: It refers to giving the other disputant “unrelated” compensation for giving up something of value
4. Logrolling: it is simply the exchange of items that have values personal to the disputants
5. Bridging: It is responding to underlying interests rather than to positions. In essence, every effective integrating negotiation is a bridging process.

Integrating style is the best style but it has its own limitations. It assumes that all disputants are rational and in actuality some disputants may be irrational and masochistic. These limitations of individual disputants can influence the choice of negotiation style.

ASSESSING POWER AMONG DISPUTANTS I

Quotation

Wounds inflicted by the sword heal more easily than those inflicted by the tongue. Cardinal Richelieu (1585 - 1642) French churchman and statesman

In this lecture we will study

- That power is not merely about the ability to use physical force but works to understand human relations.
- That power exists in the personal, environmental, and relationship domains.
- The coercive, reward, normative, referent, and expert power are different types of relationship power. Referent and expert power will be discussed in detail in the next lecture.

Power

Power may be defined as a deliberate or purposive influence. It is a kind of force to modify the behavior of people, change the environment, or change physical or social conditions. In short, having a force to change any thing can be defined as power.

Understanding power is essential to the study of interpersonal conflict, However, like interpersonal conflict itself, our ideas about power have been distorted and made unduly narrow by the invisible veil.

Peacekeeping and feminist theorists coined the term equal power relationship to describe a situation in which neither partner had a clear power over the other. Peacemaking is a form of conflict resolution which focuses on establishing equal power that will be robust enough to forestall future conflict, and establishing some means of agreeing on ethical decisions within a community that has previously had conflict. When applied in criminal justice matters it is usually called transformative justice.

Power may be divided into two types such as

1. Formal Power
2. Informal Power

According to Peir & Meli (2003) Formal power in organisations is associated with hierarchy. Hierarchy is a social shared structure, which implies that, in some depend areas, the spread of decision of a level is explicitly restricted in favor of a higher level. Thus, the distribution of Formal power in a hierarchy is graded and unequal. Formal power relationships between people of different levels are intrinsically asymmetrical (not reciprocal).

Informal power is based on personal resources whose distribution is not necessarily related to the hierarchical structure of the organization. It requires that the target accepts the influence of the agent and allows the target to develop a feeling of control and empowerment (Goldberg & Campbell, 1997).

Formal power is exercised in a top-down manner. The superiors exert formal power on

Their subordinates while the opposite is not the case. Therefore, it can be expected that a power agent holding a higher hierarchical position than that of the target will hold more formal power over the target than peers or subordinates.

Conflict and Power

Power and conflict has complex relationships. Analyzing the differences between

Formal and Informal power can help to unravel some of these complexities.

For most people, the concepts of conflict and power are interconnected. The idea of conflict makes you see two conflictive parties, each seeking to use powerful means to gain an advantage over the other.

Understanding power is necessary to diagnose interpersonal conflict. However, our understanding of power is distorted and is taken as ‘narrow’ due to the invisible veil or complexity of human systems.

Uses of Power

We can easily understand the uses of power through these simple everyday life examples

- A mother soothes her young infant with a gentle, enfolding embrace.
- The members of a family whose home and town has been destroyed by an earthquake in Azad Kashmir; rebuild their lives elsewhere.
- A superstar athlete endorses a sports drink in a TV commercial.
- A good teacher explains a difficult concept to a group of students.
- A man finally is able to quit smoking for good.
- A political party publishes its political manifesto on a web site or in newspapers.
- A lawyer, who has been negotiating fruitlessly with opposing counsel to settle a dispute, Later he files a suit for Rs5 million; a week later, opposing counsel calls with an offer to settle the dispute.

Domains of Power

When we talk about power, we may ask over what domain this deliberate or purposive influence is exercised. There are three major domains:

1. Environmental domain – a person’s surroundings
2. Relationship domain – a person’s relationship to another person
3. Personal domain – a person’s own interests

Personal and environmental power becomes more important when a disputant considers his or her alternatives to a negotiated agreement.

Kinds of power in the Relationship Domain

Many types of relationship power are available to disputants and their teams. An effective conflict diagnostician must think “outside the box” when it comes to considering the impact of power in a conflict.

1. Coercive Power
2. Reward/Exchange Power
3. Referent Power
4. Normative Power
5. Expert Power
6. Ecological Power

1. Coercive Power

Coercive power is the type of power we are all mostly familiar with: the power to impose negative, damaging, or unpleasant consequences on someone else. Coercive power includes the power to kill or injure someone, to damage someone’s property, to irritate someone, to create expensive outcomes, and so forth.

Coercive power often carries the greatest potential for immediate influence, particularly when the threat of harm is severe. However, coercive power also damages the ability of the disputant wielding the power to use other, more positive sources of influence later.

Hence, an over-reliance on coercive power actually disempowers the user, by denying him/her the ability to exercise any other types of power. Such a phenomenon has occurred in the Middle East. The process of engineering a lasting peace between the Israel and the Palestinian people has been seriously compromised by the use of coercive power by both sides, with the Israeli government relying on institutional military and police power and selected Palestinian groups using terrorist attacks on Israeli civilians.

2. Reward/ Exchange Power

Reward/exchange power is the flip side of coercive power. Reward/exchange power is the ability to influence people by offering them something they value. Thus, a father offering his daughter money or a special treat in exchange for a good grade is exercising reward/exchange power. So, disputant who offers to dismiss a law suit in exchange for a favorable settlement.

Coercive a reward/exchange power go hand in hand. Often, disputants in a conflict engineer situations that carry the threat of coercion, only to offer to withdraw the threat as a reward for a favorable outcome (as with the disputant who offers to dismiss his or her lawsuit).

When reward/exchange power is wielded as threat withdrawal, it often creates the same problems that coercive power does. Offering a child a bribe for cleaning room, for example, tends to work a few times, but typically more and more money has to be offered to produce the same behavior.

Reward/exchange power is very effective when there is a rational basis for concluding that the amount and type of reward is a just and fair exchange for items given up by the person being rewarded.

3. Referent Power

Referent power is the power, held by attractive, charismatic people, to persuade and influence others. It is the power that drives the giant industry of celebrity product endorsement. For example, the hundreds of millions of dollars paid to sports stars such as Tiger Woods, and rock stars such as Britney Spears to appear with products as diverse as soft drinks, mutual funds are a testament to the immense power of personal attraction.

Of course, not everyone possesses referent power, and, of those who do, their appeal is not to every audience. Thus, referent power must be used with some judiciousness. Also, referent power used in an illegitimate manner not only fails to persuade but also can undermine the power of the referent.

4. Normative Power

Normative power is the power of moral rectitude. Being on the “right” side of a moral issue gives the user the ability to convince others to serve the norm.

For example, if I am your supervisor and you come to me, arguing that an employee of the opposite gender, of equal qualification and performance, is getting paid more than you, my commitment to gender equity is likely to convince me to increase your salary.

Normatively powerful people tend to acquire a certain degree of referent power by virtue of their noble or heroic positions with individuals or communities.

There are two sources of normative power, individual and group norms. If you try to convince someone to comply with your wishes based on that person’s individual moral stance on an issue, you are using an individual-norm source of normative power.

But, to wield normative power it is not essential that the other disputant share the norm you are depending on, only that a large and influential group of people do so.

Limits of Normative Power

There are two important limitations on the use of normative power.

First, an appeal to prevailing norms taken to an individual disputant who does not hold to them will fail if the other disputant can rationalize that the norm is inapplicable. The Affirmative Action can be an example.

Second, obviously, the use of normative power will not be effective against an individual who holds to a contrary norm, if he or she has a significant support group. Indeed, in such circumstances, the use of normative power will only consolidate and harden the contrary group.

Summary

Power is a force to bring or induce change in anything. It is generally considered negative and in damaging terms. But it has several positive dimensions. Power to influence others is the main domain under which conflict is usually resolved. In other words, the domain of relationship remains the main interest regarding conflict resolutions. However, other domains of power can greatly influence the process of conflict resolution.

ASSESSING POWER AMONG DISPUTANTS II

Quotation

“I don’t know with what weapons World War III will be fought, but World War IV will be fought with sticks and stones.” Albert Einstein

This lecture is the continuation of previous lecture, in this lecture we will study

- The varieties of relationship power are context-dependent for their effectiveness.
- That the use of each type of power is associated with predictable side effects, including the creation of alienation in the person on whom the power is exercised.
- That understanding your alternatives to a negotiated agreement, including the best alternative, can help you maximize your use of power in many ways.

5. Expert Power

Expert power is the power of knowledge. Expert power is effective when the wielder has considerable knowledge and the person he or she is trying to influence comes to accept this degree of knowledge.

It is critical for legal professionals and other dispute resolvers to be familiar with the expert power, the power of knowledge.

Expert power, used honestly to persuade others, is considered the least likely form of power (1) to disempower the person exercising the power and (2) to result in conflict escalation.

Expert power can be used illegitimately, and this misuse can create a sense of alienation in the person against whom it is used- for example, a daughter whose father requires her engage in some action “for her own good,” when in fact, it obviously serves the father’s interest, will cease to believe the father’s honest views of expert power. The illegitimate or dishonest use of expert power disempowers the wielder by creating the belief, on the part of other disputant, that the claimed superior knowledge is a lie.

Conflict Escalation

The United States gained a lot of expert power throughout the twentieth century in such arenas as conflict resolution (as when it acted as a mediator in international conflicts), public health, and agricultural science and technology.

Expert power can be used illegitimately, and this misuse can create a sense of alienation in the person against whom it is used.

6. Ecological Power

Ecological power is the power to manipulate the environment. For Example, imagine a dispute between two neighbors.

Although some social scientists list ecological power as separate type of power in the relationship domain, in fact, it functions in the environmental domain as a means of exercising various types of powers. Ecological power tends to be harmful as the type of power it is used to impose.

Disputant often use ecological means to exercise coercive power. Ecological power used to coerce and ecological power perceived as illegitimately used by other disputants tend to create conflict escalation and to eliminate the wielding disputant’s ability to use broader power sources.

Power and Alienation

The term alienation refers to the extent to which a person becomes mistrustful of, hateful toward, and unwilling to assist another.

It has been recognized that six types of power have different intrinsic tendencies to create alienation in the person toward whom the power is exercised.

Of the six types coercive power is considered the most alienating; expert power the least alienating. Any exercise of power that is perceived as illegitimate by the recipient also produces alienation.

Alienation is disempowering to the person exercising power. Suppose Disputant A Influences Disputant B, In doing so A alienates B. Alienation directly impairs Disputant A’s referent power by causing Disputant B to dislike Disputant A. Moreover by creating distrust, alienation also undermines disputant A’s normative and expert power.

In a relationship already marked by high degrees of alienation, the use of coercive power may be appropriate if the relationship is likely to be short-term, so that one coercive move is likely to be sufficient to produce desired results.

Sources of Relationship Power

We have considered six types of powers that can be used in the relationship domain. Where do these forms of power come from?

Resources including tangible assets, such as money, are the important sources of power that operates in all domains. Money and other forms of wealth can be converted to other types of power.

Personal attributes also influence power. Characteristics such as physical appearance, mode of dress, articulateness, educational level, likeability and emotional stability are important sources of normative, referent and expert power. Power also comes from the roles that people play in the society and interpersonal relations. Social role expectations often seem to create a script like interaction between role participants.

Type of Power	Definition	Example	Sources of Power: Examples	Likelihood of Alienation from use
Coercive	The ability to influence others by coercing, threatening, harming, irritating	A disputant tries to get the other disputant to agree to his or her terms by threatening litigation.	Physical strength, weaponry, ability to file a lawsuit, ability to write threatening letters, having the law on one’s side	Very high
Reward/exchange	The ability to influence others by rewarding or withdrawing threats of coercion	A disputant offers to dismiss a lawsuit if the other disputant agrees to terms.	Coercive power, wealth, possession of something the other disputant wants	High
Referent	The ability to influence others based on charisma and attractiveness	The power of a father to influence his son is based on the son’s looking up to the father.	Improvement of physical appearance, improvement of how one comes across (“charm school”), a charismatic spokesperson	Moderate
Normative	The ability to influence others based on high moral standing	A minister influences his penitent’s important life choice.	Association with a “good cause,” an influential spokespersons, “image handling”	Moderate

Expert	The ability to influence others based on availability of knowledge	A parent convinces a child to behave in a certain way, based on the parent's experience.	Research, investigation, formal learning, experts	Low
Ecological	The ability to influence others by manipulating the environment	A disputant who wants to sell a used refrigerator cleans the kitchen to give the potential buyer the impression that the refrigerator has been well cared for.	Wealth, research into options, "elbow grease"	Dependent on what the power is exercised for

Context and Power

Power is context-dependent. Each of the six types of power exists to varying degrees depending on the specific other person toward whom the power is directed. It also works in the specific situation where power is exercised.

Powerful people and entities often have a lot to lose because they come to rely on their power and are comfortable with the choices and advantages it brings with it.

A less powerful person, paradoxically, may be in better position because he or she has little to lose.

Summary

Power and its use is context dependent. Power is not all joy; it brings a lot of pressure and anxiety as well. At times, the powerless is more at peace/comfort than a person who has power.

POWER, CONFLICT AND BATNA

Quotations

Power is where power goes. Lyndon Baines Johnson (1908-1973) U.S. president

Headmasters have powers at their disposal with which Prime Ministers have never yet been invested. Winston Churchill (1874-1965) British prime minister and writer

There is no history of mankind, there are only many histories of all kinds of aspects of human life. And one of these is the history of political power. This is elevated into the history of the world. Karl Popper (1902-1994) Austrian-born British philosopher

The greater the power, the more dangerous the abuse. Edmund Burke (1729-1797) Irish-born British statesman and political philosopher, Speech to the British Parliament

The weak have one weapon: the errors of those who think they are strong. George Bidault (1899-1983) French statesman

Power, Conflict, and BATNA

Power: the force to modify behavior of individuals, groups, societies, or nations

Conflict: Clash of interests among individuals, groups, societies, or nations

BATNA: Best Alternative to the Negotiated Agreement

BATNA

BATNA is a term coined by Roger Fisher and William Ury in 1981. It stands for "best alternative to a negotiated agreement."

It is always useful to increase one's BATNA, as it increases negotiating power. Good negotiators use it for the better results of negotiation. If a negotiator is well aware of how desperately the other party wants to come to a settlement, the negotiator may use the opportunity according to his/her terms and conditions. Therefore making your BATNA as strong as possible before negotiating, and then making that BATNA known to your opponent; strengthen your negotiating position.

In an interpersonal conflict, does the exercise of power in the other two power domains, personal and environmental, have any relevance? The answer is yes. Sometimes, a disputant finds that using negotiation to meet his or her interests and needs is not as useful as getting those goals attained some other way.

The best of all available ATNAs for any given disputant is referred to as the **Best**

Alternative to Negotiated Agreement, or BATNA.

Knowing, the BATNA protects a disputant, and the team, from irrational action. Trying to resolve a conflict without knowing the BATNA put the team in the untenable position of not knowing whether to negotiate or to stop negotiating. Many disputants deal with this pressure to act irrationally by developing a bottom line. If the negotiation leads to deal that's as good as the bottom line, the negotiators will settle; otherwise they won't.

Knowing the BATNA also helps a disputant and the team to act with efficiency. The team chooses to negotiate only if there appear to be potential benefits to negotiating, stays in negotiation only as long as it appears to be potentially beneficial, and gains a clear idea of what to do in the event that negotiation does not lead to settlement. There is less wasted time, money, effort and trauma.

Role of Third Party in BATNA

Third parties can help disputants accurately assess their BATNAs through reality testing and costing. In reality testing, the third party helps clarify and ground each disputing party's alternatives to agreement.

Assessing the BATNA

BATNA assessment follows a six-step process.

1. Conduct an Interest Analysis
2. Brainstorm the Alternatives to a Negotiated Agreement
3. Fine-tunes the Alternatives
4. Assess Each Alternative Realistically
5. Choose the best alternative
6. Regularly Reassess the BATNA

Conduct an Interest Analysis

BATNA assessment begins with an interest analysis. Why? Because there is no way to determine which alternative to negotiation is best without a clear picture of the disputant's interest, needs, and goals.

Brainstorm the Alternatives to a Negotiated Agreement

Can the disputant meet his or her goal by exercising personal power or by spending some money or consider litigation.

Fine-tunes the Alternatives

Develop a list of alternatives to a negotiated agreement. Personal power and environmental power are highly relevant to this stage of BATNA analysis.

Personal power and environmental power are highly relevant to this stage of BATNA analysis.

Assess Each Alternative Realistically

In assessing both costs and benefits, it is important to avoid the temptation to limit the analysis to the monetary aspects of the alternative. Non monetary factors such as the impact of the alternative on relationships, the potential for conflict escalation, and the grief and wasted time that some alternatives might produce, are equally important to consider.

Choose the best alternative

The next step is to compare the estimated costs or benefits of each alternative to the disputant's goals to determine which the 'best' alternative is. This is the disputant's BATNA.

When developing a BATNA, a negotiator should:

Brainstorm a list of alternatives that could be considered if the negotiation failed to deliver a favorable agreement:

Select the most promising alternatives and develop them into practical and attainable alternatives: and

Identify the most beneficial alternative to be kept in reserve as a fall-back during the negotiation.

Regularly Reassess the BATNA

Situations change, new information becomes available, and disputant interests can evolve or change. Some alternative that were formerly available may disappear, and others may develop.

Knowing the other Disputant's BATNA

It is useful to know the other disputant's BATNA as well as your own. The better the other disputant's BATNA, the lower your team's chances of an excellent outcome in negotiation (unless the other disputant's team is unaware of their BATNA).

Litigation and the BATNA: Performing Case Valuation

In most legal disputes, the choices will be either to settle with this disputant or to go to court. If you are assessing the BATNA of a potential claimant, the options often are to negotiate a settlement, walk away without compensation, or to file a lawsuit.

Where do attorneys get their figures? Case valuation is a very inexact science. Attorneys use the following information to help them value a case:

1. Their experiences with similar cases
2. Their knowledge of, or research into, the applicable law
3. Their knowledge of the presiding judge
4. Their assessment of the believability and likeability of the witness
5. Their assessment of the evidence
6. Their assessment of opposing counsel
7. Their institution

Drawbacks of BATNA Analysis

Understanding and appreciating the BATNA has many advantages. Having a well-conceived BATNA in mind can lead to better decisions about whether to accept a (1) settlement, (2) “hang in” with a negotiation or (3) end a negotiation. Moreover, the other disputant’s BATNA can help you gain needed leverage and make more realistic assessments of the prospects of negotiation.

BATNA analysis has three drawbacks. The first is that it’s often difficult to perform BATNA analysis accurately. And, when you misconstrue a BATNA, the effects can be unwanted.

1. A common mistake in BATNA analysis is to omit the non-monetary implications of ATNAs (for example bad relations).
2. The second drawback to BATNA analysis is that it often takes a great deal of time, money, and resources. This is particularly true when litigation is involved.
3. The third drawback to the BATNA is that, in some circumstances, it is not relevant.

These circumstances usually relate to conflict involving long-term, close, intimate, family relationships.

Power Imbalance

In a technical sense, no two disputants have the same degree of power. Each interpersonal conflict brings together two or more persons or entities with complex patterns of power.

It is frequently true that disputants have obviously un-equal powers (for example gender power).

Power affects the choices that individual disputants are able to make and the degree of influence that one disputant can have on another.

Group Power Imbalance

A high-power group is highly likely to wield or threaten coercive, brutal, and sadistic power. Group power imbalance sets in motion a series of processes that reinforce and increase the existing power imbalance.

Once group power imbalance is in place, it can be very difficult to dislodge. These considerations can set the stage for explosive and violent clashes if the lower-power group does not accept its status.

The identity of the lower-power group members is transformed from “helpless victim” to “rights struggle” and the higher-power group correctly views this new attitude as a direct threat to its entrenched privileges.

The identities of the struggling groups tend to perpetuate a protracted, competitive, and destructive conflict cycle.

Becoming Empowered

Power means choice. The more power you have, the better your range of choices and the better the potential outcomes you have.

We usually think of people wielding power in the relationship domain to get the outcome they want, as in when they threaten one another or take a legal dispute to court to coerce a favorable outcome. But another important use of relationship power is to influence the other disputant to engage in the most desirable conflict resolution process.

Power exercised in the personal and environmental domains can produce better alternatives to a negotiated agreement and, hence, better BATNAs.

Changes wrought by uses of power in the personal and environmental domains can also improve a disputant's ability to wield power in relationship.

Empowerment can be produced two ways: either the amount of power can be increased or the person's ability to use what powers he/she has can be strengthened.

Overall, it is often the case that the expert power is more alterable than any other type of power. Expert power is the least likely form of power to create alienation, conflict participants who seek to empower themselves are smart to begin by increasing this form of power.

Dealing with Power Imbalance

Legal scholars differ on whether power imbalance is best dealt with through zealous and adversarial advocacy or whether less competitive processes can be used effectively to handle power imbalance.

Some legal experts argue that the only effective means for dealing with power imbalance is to resort to the legal system or to resort to extra-legal processes, such as violent or revolutionary struggle.

Implications for conflict diagnosis

The concept of power, applied to interpersonal conflict, goes far beyond the commonly held idea of physical force. A conflict diagnostician must be able to understand how power operates in each of three major domains (relationship, environmental, and personal) and to identify the types of power available to the conflict participants in each domain.

Power is a context-specific attribute. A characteristics of an individual disputant, his or her resources and environment, or his or her team may spell out considerable power in one circumstance but helpless in another.

There are no "Magic Bullets" that can fix power imbalances. A conflict diagnostician needs to examine each situation and carefully consider the interests of the disputants.

STEREOTYPES, DIVERSITY AND CONFLICT I

Quotations

In individuals, insanity is rare; but in groups, parties, nations, and epochs it is the rule. Friedrich Nietzsche, Beyond Good and Evil

Every man over forty is a scoundrel. George Bernard Shaw (1856-1950) Irish playwright

I love the people with their straightforward minds. It's just that their smell brings on my migraine. Bertolt Brecht (1898-1956) German playwright and poet

In this lecture we will discuss the following points:

- The influence of stereotyping, culture, and social-group power on inter-personal conflict
- The reasons of stereotyping others and why stereotypes resist change
- ‘Red Flags’ that alert you to a situation may mislead you
- Tactics and strategies to offset stereotyping
- How cultural and sub-cultural differences affect interpersonal conflict
- Ways to minimize negative impact of cultural differences
- Effect of caste, baradarism, religious sect, and gender on handling conflict

Stereotype

Man for the field and woman for the hearth:
Man for the sword and for the needle she:
Man with the head and woman with the heart:
Man to command and woman to obey;
All else confusion.

Alfred Tennyson (1809-1892) British poet

Obedience is woman's duty on earth. Harsh suffering is her heavy fate.

Friedrich von Schiller (1759-1805) German poet, playwright and historian

Stereotypes are oversimplified generalizations about the person who belong to a different group. **Prejudice** can be defined as an unsubstantiated judgment or opinion about an individual or a group, either favorable or unfavorable in nature.

The term is usually used in unfavorable ways or to show hostile attitude towards other people based on their membership in the other group. The distinguishing characteristic of a prejudice is that it relies on stereotypes.

Result: Discrimination and Integration

Categories of Diversity Issues

Diversity issues fall into three main categories.

1. The first category is stereotyping. Stereotyping is the attribution of thoughts, qualities, behaviors, and attitudes to others based on their categorization into a social group.
2. The second category includes considerations of culture. Language, cultural values, perspectives, and cultural attitude towards conflict, negotiation, and conflict resolution.

3. The third category of diversity issue is the issue of power. Power problems in diversity conflict include the disempowerment of particular social groups and the existence of bigotry and prejudice based on social group membership.

These categories frequently influence one another.

Stereotyping

“First impressions are important”. (First impression is the last impression). Stereotypes are similar to first impressions; indeed, many first impressions come from stereotypes.

All human beings stereotype. The propensity to judge people based on stereotype is general practice. It is in human cognitive system.

Effect of stereotypes

Two major problems exist with this sort of attribution.

The attribution that one makes as the result of stereotyping may be totally wrong.

It is shameful to be stereotyped.

Stereotyping in Interpersonal Conflict

Stereotypes are often wrong, leading to bad strategy. People are embarrassed when they are stereotyped, making conflict escalation likely

Why People Stereotype

People use systematic processing to try to understand other people only if

- a) They have plenty of time and resources to devote to the task,
- b) They are highly motivated to understand the situation accurately

In the absence of these two requirements, people will use categories, such as stereotypes, to draw inferences about people

Summary

Stereotypes are used to determine ready behaviors towards individuals belonging to different social categories.

If we try to process the information about every individual in all situations, it will become highly inefficient. Stereotypes are part of human cognition and they are an important component of human relations and interpersonal conflict. The understanding of stereotyping can help avoid conflict and also towards resolving the interpersonal conflict.

STEREOTYPES, DIVERSITY AND CONFLICT II

Quotations

Leaders have to break out of old habits and stereotypes to build organizations that continually improve quality and reduce costs to prosper in the turbulent marketplace. Dean Tjosvold U.S. psychologist and author

I believe world civilization can be built only upon the common basis of international living...The ideal life...to live in an English cottage, with American heating, and have a Japanese wife, a French mistress, and a Chinese cook. Lin Yutang (1895-1976), Chinese-born writer and philologist

Main source of conflict is diversity. Diversity is being different. There are three sources of difference!

Categories of Diversity Issues

Diversity issues fall into three main categories.

1. First category is stereotyping. Stereotyping is the attribution of thoughts, qualities, behaviors, and attitudes to others based on their categorization into a social group.
2. Second category includes considerations of culture. This category includes considerations of culture. It includes issues of language difference, cultural values, and frames of reference, and cultural attitude towards conflict, negotiation, and conflict resolution.
3. Third category of diversity issue is the issue of power. Power problems in diversity conflict include the disempowerment of particular social groups and the existence of bigotry and prejudice based on social group membership.

These categories frequently influence one another.

Why People Stereotype

The effect of stress and situational complexity; the more stressful the situation, the more likely it is that stereotyping will occur

Interpersonal conflict tends to be an inherently stressful and complex situation that tends to impose a high degree of cognitive load.

Fatigue, illness, hunger, and intense emotion; personal factors contribute to cognitive load. It also affects the propensity to stereotype.

- Unfamiliarity with the other person
- Unfamiliarity with the racial, ethnic, religious, or other social group
- Social group salience
- Strong category is a social category associated with a particularly strong likelihood of stereotypes application.
- Strong categories tend to be those associated with obvious physical attributes and rigid social roles. (Gender roles is an example)

Strong category features: Physical obviousness and restricted social role. There are also greater propensities to stereotype people based on social groups that have two special qualities.

First, social groups that are associated with obvious physical attributes, such as skin and hair color, size, facial features,

Second, gender characteristics are associated with a greater propensity to stereotype.

Third, social groups associated with rigid social roles in the society are more likely to be the targets of stereotyping.

Seven Mental Processes to Prove Stereotypes

Processes and stereotype reinforcement: Individuals may hold their own unique stereotypes

Processes of stereotype confirmation: People of a belief tend to confirm group’s stereotypes.

1. Ignoring
2. Explaining away
3. Memory intrusions (memories of things that didn’t happen)
4. Selective weighting processes
5. Stereotype over interpretation
6. Stereotype-consistent perception
7. Active processes that confirm stereotypes

Processes of Stereotype Confirmation

Process	Explanation
Ignoring	Stereotype inconsistent traits are ignored, allowing the stereotype to go unchallenged
Explaining away	Stereotype inconsistent behavior is explained as either a fluke or a result of special circumstances, whereas stereotype consistent behavior is attributed to innate qualities
Memory intrusion	Stereotype-consistent aspects of a situation are imagined
Selecting Weighting Processes	Stereotype-consistent events are attributed greater importance than stereotype inconsistent events
Stereotype over interpretation	Stereotypes that are true in a limited sense are overextended in importance or applicability
Stereotype-consistent perception	Ambiguous situations are interpreted in a way that confirms stereotypes
Fundamental attribution error	Behavior that is due to restricted social roles is attributed to innate characteristics
Behavioral confirmation	Responses to people based on social categorization tend to create a self-fulfilling prophecy
Data collection errors	Information available in the overall social environment is biased in favor of prevailing stereotypes

Summary

Stereotype, diversity, and conflict are related concepts. Diversity is perpetuated and reinforced through stereotype images. Stereotype images are confirmed through a step-by-step process. It is interesting and we can learn about this mental process by experiencing/doing it.

STEREOTYPES, DIVERSITY AND CONFLICT III

Quotations

Life is one long process of getting tired. Samuel Butler (1835-1902) British writer, Painter and musician

Life is making us abandon established stereotypes and outdated views, it is making us discard illusions. Michail Gorbachev, Russian statesman

Dual-Process Theory

When peoples are forming impressions about people and things in the world, they either gather the information they need “from scratch” or draw inferences about the person by fitting him/ her into various categories, including his/her own social category. The former type of impression formation is called **systematic processing**, whereas the latter is called **category-based processing**.

The **thinkers behind the dual-process theory** view category-based and systematic processing as the poles of continuum. A person who needs to form an impression of someone else in order to action will engage in some category-based processing, plus a limited amount of systematic processing.

Dual-process theory relies on so-called cognitive miser assumption. This assumption is, in essence, that, category-based processing is lot easier than systematic processing, category-based processing will be used unless the person forming the impressions judges it to be insufficient under the circumstances.

Systematic processing may also be promoted by two other motivational sets:

1. Defense motivation
2. Impression motivation

One designed to protect the impression farmer’s deeply seated, deeply valued self concepts if threatened, called **defense motivation**.

One designed to reach a conclusion that satisfies a social goal, such as agreeing with more powerful person or going along with a group---called **impression motivation**.

Dual-process theory predicts that category-based processing will be used, anyway, if there are insufficient resources (time ,energy, attention) to devote to systematic impression formation, Why because, without sufficient resources to process systematically, category based processing provides the best available prediction of what others will do. This corollary to the dual-process theory is called the **Sufficiency principle**

Sufficiency principle can be expressed as follows:

People use systematic processing to try to understand other people only if

1. They have plenty of time and resource to devote to task, AND
2. They are highly motivated to understand the situation accurately.

In the absence of these two requirements, people will use categories, such as stereotypes, to draw inferences about people.

Cognitive Load

A competitive conflict stets the stage for the use of stereotyping: the sharing of information is minimized and the stress and emotionality of a competitive and escalating conflict add to the cognitive load of the situation.

Think through whether you have actual knowledge that a stereotype is true and what the implication of your knowledge is for this situation: don’t apply stereotypes unless absolutely necessary and only in the manners that respect the dignity of the other negotiator.

Individual Difference and Social Category

Remember that social group membership is but one facet of a person's identity; there are many more differences among people of the same social group than difference between different social groups taken as a whole.

If it is safe and appropriate within the context of the various relationships among conflict participants, make the stereotyping issues part of the discussion. Besides helping the negotiation, this act will build bridges among members of cultural groups. The term **'in dependant self'** and **'interdependent self'** have been coined to describe how the orientation to social context plays out in an individual. Because an interdependent self is role-dependent, this person tends to see his or her own characteristics as somewhat fluid and changeable.

When independent and interdependent selves negotiate, the interdependent self may experience the independent self as arrogant and insensitive, unwilling to bend to the vicissitudes of the situation because of 'principle,' whereas the independent self may experience the interdependent self's fluidity as dishonest and lacking in integrity.

When culture produces variations in self-concept, these variations create differences in the manner in which interests and basic needs are interpreted and expressed.

Although one can stereotype a Westerner as an independent self and an Easterner as an independent self, in specific instances, these stereotypes will prove wrong. Even in a conflict that appears to lack cultural diversity, self-interdependence may be an important variable.

Cultural differences in values

Cultural groups are also associated with commonalities in values, for example, religious freedom in US is assumed as a basic value and transcends cultural differences. On the other hand, in certain countries, single religion is considered as an appropriate enforcement. It is important to balance the rights of the individual against the needs of the collective. Interpersonal harmony is important in collective cultures and creates interdependence selves. Collectivists are, on average, more comfortable than individualists with mediation by strong personalities. Collectivists value conflict resolution to restore social harmony.

Summary

We have learnt in this lesson, dual process theory, cognitive load and independent and interdependent selves. These concepts are important to prevent, avoid and restore conflict.

MEDIATION I

Quotations

“A pessimist sees the difficulty in every opportunity; an optimist sees the opportunity in every difficulty.”
Winston Churchill

It's a well-known proposition that you know who's going to win a negotiation: it's he who pauses the longest. Robert Holmes à Court (1937-1990) Australian entrepreneur

In this lecture we will try to explore and study the following points:

- What mediation is and how it differs from other ADR processes.
- The difference between facilitative and evaluative mediation.
- That the product of mediation, should the disputants reach agreement, is a valid, binding, and enforceable contract.
- The uses of mediation today.
- The five basic varieties of mediation and their goals, characteristics, advantages, and disadvantages.
- The roles played in mediation by mediators, disputants, disputants' lawyers, paralegals, constituents and stakeholders, and experts/consultants.

Mediation

Mediation is second class justice. It is a type of assisted negotiation that uses a third party (or panel of third parties) to help disputants negotiate their settlement. This third party, who is called the mediator, is typically impartial with respect to the disputants and neutral as to the settlement reached.

In USA, there is a huge burden of work on courts. To alleviate that burden, ADR movement has been started in the US. An emerging and increasingly popular form of ADR is mediation. Although interest in and use of ADR has grown significantly in the past decade, it is still in a relatively early stage of development.

In general, the operation of mediation aims to facilitate the development of consensual solutions by the disputing parties. The mediation process is overseen by a non-partisan third party, the mediator, whose authority rests on the consent of the parties that she facilitates their negotiations.

The mediator has no independent decision-making power, or legitimacy, beyond what the parties voluntarily afford her.... While mediators use many strategies and techniques to encourage the parties to reach an agreement, for example helping to generate so-called 'objective criteria' which both parties recognize as valid, and in some cases assisting them with specific provisions of any settlement arrangement, the final result of a mediated agreement must be legitimized by disputants.

Depending on his or her approach and style, the mediator can take an active role in the process or remain more passive, only intervening when necessary to facilitate communication, clarify, or focus the participants on the important issues at hand.

The function of the mediator is determined in part by the desires of the parties and in part by the attitude of the individual mediator. Some mediators propose settlement terms and attempt to persuade parties to make concessions. Other mediators work only with the party-generated proposals and try to help parties realistically assess their options. Most mediators will provide an environment in which the parties can communicate constructively with each other and assist the parties in overcoming obstacles to settlement.

Legal counsel can be present in the mediation, but they are often encouraged to take a less active role, allowing the parties to dialogue and negotiate themselves. Further, the procedure of the mediation itself is primarily controlled by the parties' mutual agreement (e.g. over confidentiality agreements, the use of caucusing, etc.) with assistance from the mediator.

One function the mediator can perform in the collective bargaining situation is that of reminding the parties that their negotiations constitute a cooperative enterprise and that one does not necessarily make a gain for

himself simply because he denies to the other fellow something he wants. "The rule must be that you give, so far as is possible, what is less valuable to you but more valuable to the receiver; and you receive what is more valuable to you and less valuable to the giver."

Resolution of the dispute, like negotiation, is determined entirely by the participants themselves through mutual agreement - no result will be imposed on them by the mediator. Although the mediator is usually paid for his or her services, a successful mediation will invariably save all parties money on further litigation. Ultimately, in theory at least, what is common to mediation as it is used in many different contexts is that the outcome is consensual rather than imposed and the solution fashioned by the parties themselves rather than by a third party.

Mediation (Important points to remember)

1. A kind of facilitated or assisted negotiation process.
2. Mediation is done through a third-party neutral person.
3. The mediator's main role is to assist the disputants in negotiating or in coming to an agreement.
4. However, the disputants retain the power to conflict resolution.
5. Mediation is a type of assisted negotiation that uses a third party (or panel of third parties) to help disputants negotiate their settlement. This third party, who is called the mediator, is typically impartial with respect to the disputants and neutral as to the settlement reached.

When is mediation required

When interpersonal conflict occurs, the most common approach to resolving it is negotiation – an interplay and a dialogue between the disputants and their representatives aimed at resolving the conflict. If negotiation does not resolve the conflict, and if the conflict involves legal issues, litigation is the only option many disputants see as recourse.

It should be evident from previous lectures that negotiation offers many benefits over litigation. From the individual disputants' perspectives, negotiation offers relationship preservation, the opportunity for creative problem solving, economy, time-saving, and a greater likelihood that the settlement will not unravel over time. Of course, a principal drawback to negotiation is that sometimes it fails to produce a settlement. Is there any way to preserve the advantages of negotiated settlement – particularly those of collaborating – when a negotiation leads to impasse or when it is anticipated that negotiation is not likely to settle the dispute? It is mediation.

Related Concepts

Facilitative mediation

In facilitative mediation, the mediator's primary function is to promote effective negotiation or dialogue. Facilitative mediators use techniques designed to promote effective negotiation as they view it: they lay ground rules for effective communication, help participants discover their interests and those of their counterparts, guide the disputants in the steps of cooperative negotiation, and intervene at all stages of the conflict cycle to keep the conflict as noncompetitive as possible. The strictly facilitative mediator assiduously avoids any evaluation of the merits or strengths of either disputant's case.

Evaluative mediation

In evaluative mediation, the mediator's primary function is to narrow the gap between the positions taken by the two disputants. Evaluative mediation assumes that negotiation will be a process of positional bargaining. Another way to think of this process is that evaluative mediation is a process of BATNA clarification. Nonbinding evaluation is different from evaluative mediation. Mediator will go beyond evaluation and broker settlement. In nonbinding evaluation, the process generally stops with evaluation.

In evaluative mediation, the mediator works to narrow the gap between the demands of each disputant by expressly evaluating the merits, strengths, and weaknesses of each disputant's position and by strategically communicating these evaluations to the disputants. In extreme forms of evaluative mediation, the centerpiece of the process may be a single evaluation of the likely outcome if the dispute is taken to court.

An extremely evaluative mediation may closely resemble nonbinding evaluation: the neutral hears all sides of the issue and then issues an opinion regarding how the case might be decided if it were to be litigated.

There is also much blurring in practice between facilitative and evaluative mediation. Many mediator practice midway along this continuum, and some mediators jump from facilitative to evaluative approaches based on what they think will promote the goals of the mediation.

Processes Related to Mediation

Settlement conference or meeting – court process in which a judge moderates a meeting with the disputants’ lawyers in which the group organizes a case headed for trial. It helps to soften the conflict.

Facilitation is generally, a process in which a mediator helps to prepare for a complex negotiation.

Conciliation has no set definition. Sometimes it is used to describe mediation, sometimes nonbinding evaluation and sometimes facilitation.

Settlement Conference

A settlement conference is a judicially created process presided over by a judge. Settlement conferencing is used for legal disputes filed in court and headed for trial.

Facilitation

A process in which a neutral third party, or panels of neutrals, helps prepare for complex negotiation. Typically, facilitation is used if an interpersonal conflict involves multiple, complex parties and issues.

Conciliation

Applied to numerous processes conceptually related to mediation. Sometimes the term applied to mediation itself, sometimes it is applied to facilitation; sometimes it is applied to nonbinding evaluation.

Results of Mediation

Settlement may or may not come about as disputants may not agree. Settlement may be partial or total. It may be permanent or interim/temporary. Settlement is usually in written form.

The mediator may write a “memorandum of agreement” and lawyers can formalize it.

Some mediators draft agreements themselves. Settlements reached in mediation are enforceable contracts, just as they are in any other negotiation process. Mediation may mention special enforceability issues. Since mediation is confidential, there are special concerns that involve proof of or defenses to a mediated agreement.

Product of Mediation

If the disputants reach an agreement of some sort in mediation, some mediators provide the parties with the written memorandum of settlement, memorandum, memorandum of agreement, or memorandum of understanding (MOU).

This document is not intended to be binding but, instead, is “translated” by the parties’ legal advocates into a contract of settlement, or stipulation; or, if the mediation is of a case filed in court, by the judge into an order or judgment.

Summary

We learnt about mediation. This is needed when either negotiation fails or negotiation is not possible due to positional gap. Mediation is done through a third party who is neutral and just brings the disputants to settle the dispute without going to the expensive court procedures.

MEDIATION II

Quotations

Only free men can negotiate; prisoners cannot enter into contracts. Nelson Mandela, South African president and lawyer. (Replying to an offer to release him if he renounced violence)

If you choose to be a negotiator, you eliminate worry about whether you deserve to be successful. Theodore Zeldin, British historian

Uses of Mediation Today

Mediation has been around a very long time and is used internationally. Mediation has been historically present in Pakistan in social and business circles where shared value systems prevail. Costs of unresolved disputing can also lure for mediation. In USA, mediation as a mainstream approach to legal disputing in general first became common in the 1990s.

In the recent past, there is a substantial rise in the number of mediators. Accordingly, mediation is becoming more adversarial. Some mediation proponents worry that this change will eliminate some very important advantages of mediation as a non-adversarial process. Mediation is actually an ancient form of conflict resolution, having been used in Eastern and African societies for thousands of years. Even today, mediation is practiced all over the world. Elsewhere, mediation-like styles of dispute resolution are much more predominant than they are in Western cultures, although mediation in non-Western nations is often quite different from that in the West.

In the United States, mediation has been used for centuries in the commercial arena to maintain good ongoing business relationships. Some religious groups and traditional Native American societies have also relied on mediation style interventions to resolve disputes among members; moreover, historically the handling of conflicts in many ethnic communities by powerful elders is very similar to mediation.

The past quarter-century marks the first time that a consensual and non-adversarial dispute resolution process such as mediation has been tried on such a broad and mainstream basis in a time a society of unprecedented social diversity. The 1990s saw a dramatic expansion of mediation into the legal mainstream – it is currently seen in the following areas:

Labor and employment relations, particularly in federal agencies – precipitated by a host of federal status and regulation.

State civil litigation, particularly in major urban metropolitan areas such as Los Angeles, San Francisco, and the District of Columbia

Federal Civil Litigation: as of 1996, fifty-one federal districts offered some form of court-connected mediation (Gauvey 2001)

Divorce and Custody cases, both private and court-connected

Special education disputes among schools, service providers and parents of special-needs children

Neighborhood disputes

Disputes between disputants of different countries, in which the choice-of-law problems are too expensive or difficult to sort out in court

Disputes involving consumer grievance against commercial entities

Out side the legal arena, in *public and private schools* to resolve conflicts and prevent violence by and to students; those programs use students trained to use mediation and are called peer mediation.

Forms of Mediation

To understand how mediation works, when it is effective and what its advantages and disadvantages are, it is important to understand the great diversity of mediation forms. In talking about the advantages and

disadvantages of mediation, it is important to realize that each type of mediation has its own distinct characteristics, uses, strengths, and limitations.

Important distinguishing factors

1. Is the process more facilitative or more evaluative?
2. Does the mediation deal narrowly with the presenting dispute, or deal with the entire landscape of the disputants' relationship?
3. How much coercion is placed on the disputants to settle?

Triage mediation (court-connected process)

Triage mediation is believed to be relatively uncommon today. Formerly, it was widely seen in court systems and was developed to divert large numbers of cases away from the trial system.

This sort of mediation is typically very brief and focused. The *goal* of triage mediation is to get the dispute out of the court system as quickly as possible by seeking a quick settlement. The *focus* of triage mediation is typically narrow – it is focused in the short term on *this* dispute because that is all that's needed to get the case out of court.

The main advantage of triage mediation is that it's cheap, it's quick, and it clears court dockets. However, triage mediation presents a number of significant problems (Beck & Sales 2000). Because its principal goal is to save money and avoid court, mediators are often poorly trained and poorly and carry overly heavy caseload.

Goal: to divert the dispute out of the system and obtain a quick and inexpensive settlement.

Focus: Focus is narrow. Process is usually highly evaluative and quite coercive.

Advantages: It is cheap and quick.

Disadvantages: It often uses poorly trained mediators and/or imposes overly heavy caseloads on mediators. Because of pressures to divert large numbers of cases, mediators may be very coercive.

Outcome is less likely to respond to the needs of disputants and their constituents.

Advantage of psychological ownership of the settlement is lost.

Bargaining-Based Mediation

Bargaining-based mediation is an extremely common form of mediation. Sometimes it called concession-hunting. It is the predominant style used in court-connected civil dispute mediation, as well as the mediation of commercial, construction, and personal injury cases.

The primary goal of bargaining-based mediation is to attain a fair agreement through compromise. Lawyer mediators are more likely to use this form of mediation than any other. The focus is usually *narrow* and the process is typically *evaluative*.

Bargaining-based mediation is particularly good for cases in which there are highly divergent perceptions of fact or law – because the divergent perceptions may be the most important impediment to settlement. It's also good for cases involving highly complex legal issues, since lawyers tend to be closely involved in the mediation process.

Because the process is evaluative, bargaining-based mediation tends to cause the disputants to become increasingly position-bound. In other words, the focus is on each disputant's position and how successful he or she is likely to be with it.

Goals, Advantages and Disadvantages of Bargaining-Based mediation

Goal: Its goal is to get a fair agreement through compromising.

Focus: Focus is usually narrow and process is usually evaluative.

Usually the process involves a series of separate “caucus” meetings in which the mediator tears down each side’s assessment of the merits of their case. Facilitative tactics may also be used to nudge the disputants into settlement.

This process resembles lawyer-assisted negotiation.

Note: What is Caucus

Caucus is a meeting between a mediator and one disputant (with or without the disputant’s representatives), out the earshot of the other disputant and his or her representatives. A caucus is different from a joint session, which all the disputants involve in mediation, and/or their representatives, attend.

Advantages:

1. Bargaining based mediation is particularly good for cases in which there are highly divergent perceptions of fact or law.
2. Good for situations with highly complex legal issues
3. Saves time
4. Feels familiar to legal advocates

Disadvantages:

1. Promotes positional bargaining – may produce impasse and conflict escalation.
2. If conflict is already escalated, it’s unlikely to work.
3. Outcomes are usually restricted to money and often display a lack of creativity.
4. Psychological ownership may be low.
5. Only mediators with subject-matter expertise will be able to muster the authoritative presence needed to do the work.

Therapeutic Mediation

Therapeutic mediation is generally designed to improve the relationship of the disputants, so that they are able to settle their conflicts. However, it is sometimes unclear what the goal of therapeutic mediation is. This is a problem. Mediation has many similarities to therapy, and, because there are so many varieties of mediation, it can be difficult to define the difference. The problem with therapeutic mediation occurs when the neutral is unclear about what the goals are.

Nonetheless, therapeutic mediation, if its goals are clearly defined, can be both necessary and very helpful in high-conflict situation, particularly those involving a disputant who has a mental illness or an emotional or personality disorder requiring high levels of professional support before he or she can negotiate effectively.

Goals, Advantages and Disadvantages of Therapeutic Mediation

Goals:

1. It is to improve relationship functioning so that conflicts can be resolved.
2. Focus is extremely broad and facilitative.
3. Much like counseling – the mediator explores reasons for relationship breakdown and also helps parties explore solutions.
4. This process resembles lawyer-assisted negotiation.

Advantages:

1. Can improve overall functioning so disputants with a continuing relationship can resolve future conflicts
2. Useful in escalated conflict between former intimate partners
3. Can assist disputants whose mental-health issues are impeding

Disadvantage:

Mediators need to make their roles very clear; otherwise, conflicts of interest and role confusion may result.

Pure Mediation

Pure mediation is a facilitative process whose goal is to promote collaborative, integrative, principled bargaining. (It is very important to note that the goal of pure mediation is *not* to reach agreement but, rather, to promote the sorts of negotiation behaviors that will lead to reaching agreement.)

Pure mediation is often seen in community and divorce mediation, and it is being found in other contexts in increasing numbers. This form of mediation is also becoming more accepted by the legal profession. It is highly facilitative, and the breadth of issues dealt with is as broad or narrow as the disputants wish it to be.

There are many advantages to pure mediation. They mirror many of the advantages we have already noted for mediation in general. Since pure mediation facilitates principled bargaining, the agreements reached tend to be highly creative, win-win outcomes that optimized the use of resources. Pure mediation may have long-term benefits for disputants who must continue a relationship.

Goal: It is to facilitate Collaborating/Integrating negotiation between the disputants.

Focus: as narrow or broad as the disputants decide to make it. It is highly facilitative and non-coercive. Mediators work to restore or maintain a cooperation cycle and to deescalate the conflict.

Advantages:

1. Best at retaining the advantages of cooperative negotiation – optimal outcomes, preserved relationships, psychological ownership.
2. Even if agreement isn't reached, substantive improvements in relationship and narrowing of conflict often result, making other dispute resolution easier and faster.
3. Disputants often have issues clarified, which empowers them if other dispute resolution processes are needed.

Disadvantages:

1. More time-consuming than evaluative processes (short term).
2. May not be appropriate for marginally functioning disputants.
3. Marketing problems – disputants and their attorneys often prefer evaluative approaches.

If mediator is incompetent this is a poor option.

More Advantages and Disadvantages of Pure Mediation

There are long-term benefits even if agreement is not reached:

Pure mediation narrows the issues, so that, if another dispute resolution process is required, it's likely to be easier and faster.

There is a good chance that the disputants will be more cooperative, so other alternatives will not be as expensive, time-consuming, or traumatic.

Pure mediation can teach principled bargaining to the disputants, so that they can use it elsewhere in their lives. There are fewer disadvantages to pure mediation than we have seen for other varieties of mediation, but it does raise a few problems. First, if time is an important consideration and if only a narrow, short-term perspective is important, bargaining-based mediation may be a better choice.

Transformative Mediation

Transformative mediation resembles pure mediation, except that its goals are even more completely removed from "getting an agreement." There are two primary transformative goals:

Empowerment: the improvement of the personal power of each disputant

Recognition: the ability of each disputant to take the perspective of the other disputant and to communicate this sense of understanding to the other disputant.

Transformative mediation’s advantages are similar to those of pure mediation. Agreements reached in transformative mediation are psychologically owned in full by the disputants, who are very likely to abide by them.

Goals, Advantages and Disadvantages of Transformative Mediation

Goals:

1. It is to promote empowerment and recognition of each disputant.
2. Its focus is very broad and facilitative.
3. Process is very fluid and involves having the disputants tell about the situation.
4. Mediator takes advantage of any opportunity to confer power and recognition on each disputant.

Advantages:

As with pure mediation; may be even better than pure mediation at conferring psychological ownership. Research suggests that it may be effective in “transforming” disputes constructively, and there are claims that its widespread use would transform and improve society at large.

Disadvantages:

Disputants may not want this form of mediation (since it does not claim to have settlement as a goal) – marketing dilemma.

Research is not clear that it has the advantages it claims.

Forms of mediation

Form	Typical Adherents	Major Goals
Triage mediation	Untrained mediators, underfunded court systems	Getting an agreement cheaply and quickly
Bargaining-based mediation	Lawyer-mediators, retired judges	Getting a “fair” settlement, getting a compromise
Therapeutic mediation	Mental-health professionals	Improving the relationship between the disputants, so they can work better together and avoid present and future conflict
Pure mediation	Some private mediators, particularly family law	Facilitating collaboration between the disputants to get a win-win outcome
Transformative mediation	Expanding use among private mediators, used by U.S. Postal Service REGRESS program	Extremely broad, facilitative; promote empowerment of each disputant and recognition of each disputant’s perspective and situation by the other; attaining settlement considered a secondary goal

Legal Assistants and Paralegals

Paralegals are becoming increasingly important members of the legal team, and many of the activities for lawyers in the mediation process are appropriate paralegal functions.

Role:

1. His/her role is to do anything the lawyer could have done except negotiate on the lawyer’s behalf and give legal advice. Particularly important role is in case and client preparation, interests and BATNA analysis.
2. Keep roster of mediators and make recommendations.

3. Paralegals attend mediation sessions; assist and keep records.
4. They act as mediators (some disputes and jurisdictions).

Summary

We have learnt five different forms of mediation. Depending upon the nature of disputants and the nature of conflict, you can pick and choose one or more forms of mediation to resolve the conflict between participants.

ADVANTAGES AND DISADVANTAGES OF MEDIATION I

Quotations

There are many occasions in life where it is possible to affect by forgiveness every object which proposes to effect by resentment. Sydney Smith, Sermon: The Forgiveness of Injuries

Identify with the victims and you become one yourself. Victims make lousy litigators. Russell Banks, U.S. novelist

Discourage litigation. Persuade your neighbors to compromise whenever you can. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough. Abraham Lincoln (1809-1865) U.S. president

Win your lawsuit and lose your money. Anonymous, Chinese Proverb.

This lesson builds your capacity to act as a good mediator or disputant. In this lecture we will have a look at the various processes of ADR.

Negotiation

Negotiation is a kind of direct discussion or dialogue between and among disputants.

Broadly speaking, negotiation is an interaction of influences. Such interactions, for example, include the process of resolving disputes, agreeing upon courses of action, bargaining for individual or collective advantage, or crafting outcomes to satisfy various interests. Negotiation is thus a form of alternative dispute resolution.

Negotiation involves three basic elements: process, behavior and substance. The process refers to how the parties negotiate: the context of negotiations, the parties to the negotiations, the tactics used by the parties, and the sequence and stages in which all of these play out. Behaviors to the relationships among these parties, the communication between them and the styles they adopt. The substance refers to what the parties negotiate over: the agenda, the issues (positions and more helpfully interests), the options, and the agreement(s) reached at the end.

Arbitration

Arbitration is reference of a dispute to an impartial person or persons, called arbitrators, for a decision or award based on evidence and arguments presented by the disputants. The parties involved usually agree to resort to arbitration in lieu of court proceedings to resolve an existing dispute or any grievance that may arise between them. Arbitration may sometimes be compelled by law, particularly in connection with labor disputes involving public employees or employees of private companies invested with a public interest, such as utilities or railroads.

Adjudication

Adjudication is a way of resolving disputes or controversies, usually through action in a court of law. The issues settled by adjudication may be civil or criminal; they may arise between private parties or between private parties and public bodies. Issues are settled according to specific procedures involving submission of proofs and presentation of arguments for each side. The dispute is argued before an impartial judge and jury or judge, both of whom are empowered to decide in favor of one of the parties

Litigation

A controversy before a court or a "lawsuit" is commonly referred to as "litigation". If it is not settled by agreement between the parties it would eventually be heard and decided by a judge or jury in a court. Litigation is one way that people and companies resolve disputes arising out of an infinite variety of factual circumstances.

Lawsuit or Action, legal action brought between two private parties in a court of law is termed as litigation.

In American law, a lawsuit is a civil action brought before a court in which the party commencing the action, the plaintiff, seeks a legal remedy. One or more defendants are required to respond to the plaintiff's complaint. If the plaintiff is successful, judgment will be given in the plaintiff's favor, and a range of court orders may be issued to enforce a right, award damages, or impose an injunction to prevent an act or compel an act. A declaratory judgment may be issued to prevent future legal disputes.

Efficiency Consideration

Time and money consideration-the efficiency arguments were the original impetus for the ADR movements in the United States. Early comments on the litigation explosion and the need for alternatives prominently cite the high cost of litigation, the long delays to trial, and the burden on court systems of our litigious society. Thus, many early efforts to create ADR programmes focused on considerations of immediate savings of time and money for clients and courts. When these programmes were evaluated, researchers focused primarily on comparing the time required to mediate cases to settlement with that required to litigate to judgment, as well as on the money spent on moving the cases to their conclusions.

It is beyond refute that mediation is cheaper and quicker than litigation. Mediation is an informal process that does not require discovery, pleading, motions, practice, hearings, or rules of evidence.

The efficiency of mediation is often compared with that of litigation because it is assumed that cases that are mediated would otherwise be litigated. If mediation is compared with their ADR processes, such as arbitration and non binding evaluation the pictures become still more cloudy. Arbitration ranges from a highly informal inexpensive and rapid process to something as expensive, slow, and complex as the most bureaucratically snarled law suit.

Another way of viewing efficiency considerations is to use the perspective of conflict theory. Litigation, arbitration, and non binding evaluation are dispute resolution processes that approach conflict from a positional-bargaining paradigm. If a longer-term view is taken, it seems clear that mediation emphasizing the use of principled-bargaining techniques is more efficient than mediation based on a positional bargaining model.

Mediation is more efficient than informal adjudicative and non binding evaluative processes depending on the perspective taken.

Conflict Management and Prevention

It is the area of reducing and preventing conflict that mediation really shines, relative not only to litigation but also to arbitration and non bonding evaluation. It is known from the consideration of the conflict theory that using cooperative principled-bargaining techniques tends to short circuit a competitive conflict cycle, promote cooperation, build mutual trust, and create solutions that better meet all disputants' most deeply seated interests.

Mediators act directly on conflict cycles, reducing conflict escalation and promoting cooperation. It increases efficiency of dispute resolution behavior, increases likelihood of settlement, increases likelihood that settlement will be good for all concerned. It lessens likelihood of conflict spreading and intensifying it. If mediation does not result in agreement, it will make it easier to use other forms of dispute resolution. It improves and preserves trust and relationships.

Summary

We tried to learn that mediation is a good alternative to resolve disputes because negotiation failed to do the same. Mediation is a good technique to resolve conflict as compared to court-related procedures like litigation. We also learnt that informal mediation may be cheaper than formal mediation. It may be noted that informal mediation is more prevalent in our society but it is likely to decline in future. As self-interest based social relations are developing in this country, the conflict will become rampant and we may be pushed to establish formal mediation systems.

ADVANTAGES AND DISADVANTAGES OF MEDIATION II

Quotations

Discourage litigation. Persuade your neighbors to compromise whenever you can. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough. Abraham Lincoln (1809-1865) U.S. president

Win your lawsuit and lose your money. Anonymous, Chinese Proverb.

Advantages and Disadvantages of Mediation

The following points can help decide the advantages and disadvantages of mediation.

- Quality of consent
- Position-based vs. principle based mediation
- Finality of ADR process
- Individual transformation
- Benefit for legal council
- Comparative advantages and disadvantages of mediation, arbitration, and litigation

Quality of Consent

Quality of consent refers to how willing the disputants are to accede to the process and outcome. And also, is this consent freely given and disputant is well informed?

Seven quality-of-consent attributes in dispute resolution:

- Explicit identification of principals' goals and interests
- Explicit identification of plausible options for satisfying these interests
- Disputants' generation of options for achieving their interests
- Disputants' careful consideration of these options
- Neutral's restraint in pressuring principals to accept particular outcome
- Limitation on the neutral's use of time pressure
- Neutral's confirmation of principals' consent to selected options

Quality of Consent Effect

Disputants tend to “psychologically own” the outcome and the outcome tends to be more durable. If there is a failure of the settlement, the disputants may act more constructively.

Relationship Preservation

Mediation is widely regarded as the most effective dispute resolution process for preserving ongoing disputant relationships. This advantage of mediation is particularly important in situations in which disputants will be required to deal with each other after the conflict is resolved. Examples of such situations include parents who are divorcing, disputes between neighbors, disputes between corporate shareholder groups, landlords with rental disputes with tenants, parent teacher conflicts etc.

Conflict Management and Prevention

Mediators diagnose the conflict and act accordingly. Mediators (particularly facilitative) promote interests analysis.

Effects:

1. Impasses can be avoided – disputants are better focused on the joint task and not on scoring points against each other

2. Outcomes are optimized to the situation and often quite creative
3. Better resolution of entire dispute possible
4. Mediation flexible in scope, deals with *entire* situation
5. Mediator diagnosis of conflict
6. Mediator exploration of disputant interests

Outcome flexibility

Result: more effective and complete outcomes

Effects of mediation when no settlement is attained:

When no settlement is attained in a dispute, then following are the effects of mediation

1. Clarify and narrow the issues
2. Promote cooperative interactions
3. Increase both disputants’ expert power and knowledge of BATNA
4. Directly discuss strategies for resolving unresolved issues

Effects on the parties to mediation:

It teaches dispute resolution, negotiation, and conflict diagnosis skills. It may have some long-term positive effects on relationships (but evidence does not bear this out).

Effect on social system:

Widespread use of mediation *could* improve the cultural approaches taken to conflict (impossible to determine whether this is happening).

Litigation	Arbitration	Mediation
Formal process	Less formal process	Least formal process
Formal rules of evidence	Rules of evidence relaxed	Rules of evidence do not apply
Formal discovery	Limited discovery	Informal fact-finding
Public record	Hearings are private	Private and confidential
Judge/Jury makes decision	Arbiter makes decision	Parties make decision
Verdicts final, subject to appeal	Decisions can be binding with limited appeal rights	Parties decide whether to settle; agreements are enforceable contracts
Expensive and time-consuming	Often quicker and cheaper than litigation	Quicker, cheaper and less stressful than litigation

Summary

Quality of consent is an important factor behind the success of mediation as a strategy to resolve conflict. Presently informal mediation is prevalent in Pakistan but formal mediation will become significant. NAB has used mediation or ADR strategies to resolve conflict between or among disputants.

PROCESS OF MEDIATION

Quotation

Focus 90 percent of your time on solutions and only 10 percent of your time on problems. Anthony J D'Angelo, The College Blue Book

Introduction

Gender equality movement is likely to enhance gender-based conflicts. Therefore understanding gender based conflict and the processes of resolving those conflicts are becoming important. It will become even more important in future, when the frequency of such conflicts arises. Mediation is one of the methods of resolving conflicts.

This lesson deals with formal mediation, mainly mediation service and mediation law.

In this lesson we will study the stages of mediation

Mediation

Mediation sessions are 1-2 hour long

Several caucus sessions followed by joint sessions to tie down agreements

In family disputes (divorce cases) less likelihood of caucus sessions-due to the need for instilling trust.

Stages of Mediation

Mediation is a highly fluid process; it is possible to conceptualize mediation as occurring in a series of stages.

Following is the list of all the stages of mediation

1. Initial client contact
2. Introductory stage
3. Issues clarification and communication
4. Productive stage
5. Agreement consummation
6. Debriefing and referral

1. Initial client contact

Mediation begins when one or both disputants make contact with a mediation provider. Although clients may be referred to mediation by a court or their lawyers, often one of the two disputants contacts the mediator directly to inquire about services. The mediator must inform the person making contact of the nature of the services etc. The mediator will frequently send informative brochures that provide specific facts about mediation and demonstrate its advantages.

Although some disputants will be making contact with the mediator with the knowledge and consent of the other disputant, others will be making contact independently. Trust is essential for success. Disputants are generally hostile against each other. Under certain circumstances the other disputant may regard it as a hostile invasion of his/her privacy, if the mediator tries to contact him.

2. Introduction

The purposes of the introductory stage of mediation are to break the ice and get comfortable, to introduce and clarify the mediation process, to establish the ground rules and policies of mediation, to clarify and establish the legal basis of mediation, and to begin to orient the disputants toward productivity in the mediation.

Mediators usually seat their clients around a conference table. The table may be round to eliminate symbolic power distinctions between mediator and clients, emphasizing the critical role the disputants have in

fashioning the settlement. A competent mediator will balance the need of each client to talk about what is the bone of contention that is escalating the conflict.

After establishing a certain level of control the mediator set the stage to play active role. The mediator must be well aware of what the mediation is all about. The mediators must also ensure that the client knows what the mediation is. The mediator will typically also present contractual documents that participants must sign in order to create a mediator-client relationship, protect the confidentiality of the mediation process, and so forth.

Because disputants entering mediation have been unable to achieve a settlement of differences on their own, it is typical for them to enter mediation caught up in a competitive conflict cycle. Mediators work actively from the beginning to break the cycle of blame game of the disputants and to replace it with the cycle of cooperation.

Numerous techniques are used to subtly reorient the disputants away from conceptualizing the conflict as a win-lose contest and replacing it with the idea that the disputants have a joint problem to be solved together. Another technique used by mediators to interrupt the competition cycle is to emphasize the cooperative elements of the disputants' relationship and to deemphasize the competitive elements.

3. Issues clarification/communication:

Facilitative and evaluative mediators generally handle the issues clarification and communication stage quite differently. An evaluative mediator's goal at this stage is to get a sense of the positions and aspirations of each disputant. The evaluative mediator is apt to begin by asking each disputant to state the case, or to describe the disagreement. The mediator will sometimes use information gained in the other side's presentation in an effort to lower the expectations of each disputant.

Following the joint session, the evaluative mediator will typically meet each disputant separately to gain further information about the disputant's real aspirations. The reason for this emphasis is that, in a facilitative mediation, the primary goal at this stage is to facilitate the disputant's clarification of issues and underlying interests with each other.

Each disputant speaks about the conflict; the facilitative mediator reframes and refocuses the communication to defuse personal attacks directed at the other disputant and to clarify the interests, needs, principles and values connoted by the speaker's statements. Active listening is a critical skill the mediator uses to help the speakers.

Mediators of all persuasions often act as organizers of information. Facilitative mediators will also make a list of the issues that need to be resolved but will also typically list the deep seated interests, needs, values, and principles with which the disputants agree.

4. Productive stage:

Third stage is the productive stage. In an evaluative mediation, it is in the productive stage that the evaluation occurs. During caucus, the evaluative mediator expertly probes the situation, pointing out weaknesses in the case of the disputant before him/her and suggesting strengths in the opponent's case that the disputant might have missed or discounted.

In a facilitative mediation, the productive stage often involves a period of brainstorming for possible options to address the list of interests that the disputants generated previously. Both facilitative and evaluative mediators will write down any settlements that the disputants reach, either in an informal memorandum of agreement or in a formal contract.

5. Agreement consummation:

Agreement consummation can occur inside or outside of the mediation. If the mediator has drafted a formal contract, sometimes the disputants will execute this contract at a mediation session.

6. Debriefing and referral:

The last stage of mediation is debriefing and referral. This stage may occur before or after the agreement consummation stage. The mediator and disputants review what has been decided in mediation and what

remains to be done. Mediation can back track to initial stage; the disputants may decide that they have missed something.

The process of mediation is typically non linear. The stages presented in any description of mediation are not fixed in sequence.

What do mediators do?

Mediation is both science and art. Each mediator and mediation is different.

Facilitative tactics in mediation:

Even highly evaluative mediators have as a goal the facilitation of a negotiated settlement. For this reason, nearly every mediator uses a number of facilitative tactics.

It is helpful to an understanding of mediator behavior to place facilitative mediator tactics in the following categories:

1. Educating
2. Structuring the negotiation
3. Improving communication
4. Handling emotions
5. Maintaining disputant motivation

1. Educating

Mediators educate their clients in numerous ways. Much of this educational process occurs in the introductory stage of mediation but continues through out the mediation process.

2. Improving communication

At all times, a competent mediator improves communication between the disputants. Effective communication helps in achieving the goals of complete interest analysis, encouraging perception of cooperation, building up mutual trust and performing effective conflict diagnosis.

3. Handling emotions

Mediation inevitably gives rise to strong emotion, and handling emotions is an important aspect of the mediator's craft. In setting the stage for effective communication, emotional expression is tricky to handle. The mediator reads in-between the lines, listen with the third ear and finds cause behind emotions. In this process anger is important to understand. Active listening, avoiding name calling and staying positive are important factors.

4. Maintaining disputant Motivation

The final group of facilitative mediator tactics relate to maintaining disputant motivation. Conflict is usually an unpleasant experience, and mediation confers only limited protection from this unpleasantness.

Numerous tactics are used by mediators to maintain or improve disputant motivation.

5. Evaluative tactics in mediation:

Even evaluative mediators use many of the facilitative tactics. However there are techniques that are unique to evaluative mediators e.g.

- i. Instilling doubt
- ii. Case evaluation tactics
- iii. Caucusing

Summary

We learnt mediation process, the stages of mediation. We also learnt about tactics used in facilitative mediation and evaluative mediation. If we understand these stages of mediation and the tactics used, we can act like a good mediator or a good and well informed disputant.

LAW AND ETHICS OF MEDIATION I

Quotation

In civilized life, law floats in a sea of ethics. Earl Warren

Why is mediation Regulated?

The regulation of mediation can be best understood as a series of efforts designed to protect and preserve the essence of the process, to ensure its effectiveness, and to ensure that, as it is used, other legal rights and obligations are not damaged. The more radical wing of the ADR movement argues that the presence of the invisible veil keeps us from truly realizing the promise of mediation.

- To preserve the essence of mediation
- To ensure the effectiveness of mediation
- To protect other legal rights

Mediation is a legal event. Mediation technique is influenced by psychological considerations and sometimes resembles psychotherapy. But situation is slowly changing as mediation becomes more widespread and institutionalized.

Preserving the Essence of Mediation

It is easy to determine whether there is a third-party intermediary involved in a dispute resolution process, although whether a given intermediary is correct to refer to his or her services as mediation is sometimes controversial. The second element of the essence of mediation, the need for self determination, has been the topic of far more controversy among both mediation scholars and policy makers. Mediation is a diverse process. It can be almost unrecognizable to a colleague, so it can be abused.

Characteristics of mediation:

Following are the characteristics of mediation.

1. A third-party mediator must be involved
2. Mediation is characterized by disputants' self-determination
3. Intermediary involved
4. Little regulation exists to control mediator "truth is advertising"
5. Controversy among both mediation scholars and policymakers
6. Self-determination is regarded as "the fundamental principle of mediation"
7. Participation of Mediator
8. Impartiality and neutrality
9. Truth and advertising and client-informed consent to the process
10. Client self-determination
11. Need for informed consent
12. Distinguishing of mediation from evaluative ADR
13. Preservation of Mediation as a Non-adversarial Process
14. Confidentiality in mediation

Ensuring the effectiveness of mediation

Mediation is also regulated to ensure its effectiveness, however, here also controversy and uncertainty abound. The most important regulatory issue that springs from the motivation to ensure effectiveness relates to the confidentiality of mediation. It is the consensus of most mediation scholars and practitioners that, for mediation to work well, it must be confidential.

Effectiveness in mediation is also promoted through the regulation of mediator credentialing, competence, and conduct.

1. Effectiveness depends upon personal attitudes
2. Short term goals will promote evaluative mediation
3. Long term goals will promote facilitative mediation
4. Confidentiality: most unsettled area of mediation law
6. Perspectives on effectiveness: short- vs. long-term and broad vs. narrow

7. Confidentiality
8. Enforceability of settlement
9. Constructing settlement agreement
10. Good-faith participation
11. Ensuring competent mediators:

Protecting other Rights:

The third major reason for the regulation of mediation is to protect the rights held by the participants in mediation and others affected by the process.

1. Due process consideration
2. Safety issues
3. Conflict with other rights

1. Due Process Considerations:

Limitations on coercion in mediation; informal consent; lifting of confidentiality to protect the rights to give evidence in other proceedings are some of the considerations.

2. Safety Issues:

Mediation in abuse situations is concerned with the safety issues.

3. Conflict with Other Rights:

Confidentiality of mediation involving the government: effects of laws rendering proceedings open to the public

Legal Issues in Mediation

The need to preserve essential aspects of the mediation process, and to preserve and promote the effectiveness of mediation, has led to efforts to regulate mediation in a number of areas.

Confidentiality

Most kinds of mediation are held in a confidential setting; that is, secrets revealed or communications made in mediation can't be shared with others or used in litigation. Confidentiality is invoked because it is believed that disputants won't feel as free to communicate openly with one another if they believe that what they say or reveal might be used against them. Moreover the quality of mediation as a cooperative process could be compromised if disputants believed that communications in mediation would be the subject of discovery or trial tactics later on. Additionally, confidentiality is needed to preserve the neutrality of the mediator: disputants participating in mediation need to be reassured that the mediator will not testify against them later. Early in the mediation movement, there were two principal sources of confidentiality in mediation: law providing for the inadmissibility of compromise negotiations and specific contracts specifying that mediation be confidential.

Waiver of Confidentiality

Statutes and court rules, as interpreted by decisional law, provide for waiver of confidentiality in particular circumstances.

1. Consent of the participants
2. Mediator malpractice or malfeasance claim or defense
3. Protection of mediation process
4. Matter to be resolved was not confidential to begin with
5. Evidence of a crime or child abuse/neglect
6. To uphold the administration of justice (more critical need to provide justice in another case)
7. Confidentiality in conflict with another explicit law

Summary

Mediation can be practiced in a given frame of law. The rules to govern mediation are derived from ethics which prevail in the pertinent society. Mediation should be practiced with the provisions of law to promote the essence of mediation, effectiveness of mediation, to protect legal rights, and to promote justice in society at large.

LAW AND ETHICS OF MEDIATION II

Quotation

'Golden Rule' – “Do unto others as you would have them do unto you”.

Law of mediation is being developed but ethics are important in the initial stages. It seems as role of ethics neglected until now. Mediation is non-adversarial alternative to dispute resolution. Mediation is not a forum for misbehavior. Failure of mediation may lead to adjudication; hence mediation must work under the framework of appropriate law. Mediation is flexible.

- Keeping promises as a process or consequence
- Mediation is based on ethics and on which law is based. Ethics change with time, places and communities.
- Right act is one where we are able to maximize the good
- Society operates within the blinders and distortions created by the invisible veil.
- Some people value actions lies in the motives rather than the consequences.
- Mediation is a flexible process. Any mediator has to modify the process and approach to understand and resolve the issue. The mediators are encouraged to be creative and tailor each mediation to meet the needs of all the parties to a dispute.
- The purpose of ethics in mediation is to handle emerging issues while doing mediation. Mediation is a voluntary, non-binding process involving a neutral third party to help the disputants to reach a mutually beneficial agreement to resolve the issue.
- A mediator helps the disputants reach an agreement by facilitating communication, promoting understanding, assisting them in identifying and exploring issues, interests and possible bases for agreement, and in some matters, helping parties evaluate the likely outcome in court or arbitration if they cannot reach settlement through mediation.

Role of ethics in mediation

The role of ethics in negotiation has been neglected. Often when people talk about what is ethical they immediately talk about what they feel people should do and how we can persuade them to come round to our way of thinking.

However, this sort of discussion presumes certain conventions of what is right and wrong without looking at the theories behind these connotations of rights and wrong.

Negotiation, and mediation, occurs between people. It will vary with the disposition and traits of the parties involved. The ethical beliefs will color perceptions and approaches to bargaining and results of the mediation.

In all cases a mediator needs to pay attention to the values that the parties express. Mediation must be dedicated to the principle that all disputants have a right to negotiate. **Kevin Gibson**

Mediation is Not

- toothless
- just a compromise
- a bar to arbitration or litigation
- what lawyers or managers do ‘all the time’
- a waste of time and money if it fails
- yet another cost to the unfortunate parties
- a sign of weakness
- to avoid courts
- to disclose your hand necessarily
- to be risky
- a kind of counseling

Why is Mediation Regulated?

The regulation of mediation can be best understood as a series of efforts designed to protect and preserve the essence of the process, to ensure its effectiveness, and to ensure that, as it is used, other legal rights and obligations are not damaged. The more radical wing of the ADR movement argues that the presence of the invisible veil keeps us from truly realizing the promise of mediation.

- To preserve the essence of mediation
- To ensure the effectiveness of mediation
- To protect other legal rights of the participants to a dispute

The authors present these model standards of conduct for mediators to serve three major functions: as a guide for the conduct of mediators, to inform the mediating parties, and to promote public confidence in mediation as a process for resolving disputes.

8 Dimensions of Ethics in Mediation

Following are the 8 dimensions of ethics in mediation.

1. Self-determination
2. Impartiality
3. Conflicts of interest
4. Competence
5. Confidentiality
6. Quality of the process
7. Advertising and solicitation
8. Fees

1. Self-determination: A mediator shall recognize that mediation is based on the principle of self-determination by the parties. Self-determination requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Any party may withdraw from mediation at any time.

2. Impartiality: A mediator shall conduct the mediation in an impartial manner. A mediator shall mediate only those matters in which he or she remains impartial and evenhanded. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw. A mediator should guard against partiality or prejudice based on a party's personal characteristics, background or performance at the mediation.

3. Conflicts of interest: A mediator shall disclose all actual and potential conflicts of interest reasonably known to the mediator. After disclosure, the mediator shall decline to mediate unless all parties choose to retain the mediator. The need to protect against conflict of interest also governs conduct that occurs during and after the mediation. A conflict of interest is a dealing or relationship that might create an impression of possible bias. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related manner, or in an unrelated manner under circumstances that would raise legitimate questions about the integrity of the mediation process. Pressure from outside the mediation process should never influence the mediator to coerce the parties to settle.

4. Competence: A mediator shall mediate only when the mediator has the necessary qualifications to satisfy the reasonable expectations of the parties. Mediators should have information available to the parties regarding their relevant training, education, and experience. The personal competence requires appropriate knowledge about personal, local, and universal human values.

5. Confidentiality. A mediator shall maintain the reasonable expectations of the parties with regard to confidentiality. The parties' expectations of confidentiality depend on the circumstances of the mediation and any agreements they may make. The mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by law or other public policy. If the mediator holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions. In order to protect the integrity of the mediation, a

mediator should avoid communicating information about how the parties acted in the mediation process, the merits of the case, or settlement offers.

6. Quality of the process: A mediator shall conduct the mediation fairly, diligently, and in a manner consistent with the principle of self-determination by the parties. There should be adequate opportunity for each party in mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate mediation.

7. Advertising and solicitation: A mediator shall be truthful in advertising and solicitation for mediation. Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of a mediator shall be truthful. Mediators shall refrain from promises and guarantees of results.

8. Fees: A mediator shall fully disclose and explain the basis of compensation, fees and charges to the parties. The parties should be provided sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of a mediator. A mediator should not enter into a fee agreement that is contingent upon the result of the mediation or the amount of the settlement. A mediator should not accept a fee for referral of a matter to another mediator or any other person.

Summary

Ethics and law of mediation is being developed. Mediation as a practice or service can develop only if it is practiced under the umbrella of appropriate ethics and the provisions of law. The origin of conflict may have roots in the diversity of values adhered by the disputants and the appreciation of this dimension of conflict will help resolve conflicts amicably.

ARBITRATION I

Quotation

Law and settled authority is seldom resisted when it is well employed. Dr. Johnson, The Rambler (1750-52)

We will learn about arbitration and its varieties in this lecture.

What we will learn about arbitration is that it is an ADR process that can closely resemble litigation. We will also learn about the tension between providing informality and legalistic protections in arbitration. The advantages and disadvantages of arbitration compared with litigation and other ADR processes and how thus information can be useful to conflict diagnosticians will also be discussed.

Ways to Resolve Conflict

A conflict can be resolved in a number of ways. The methods which are usually employed are given below

- Negotiation
- Mediation and Conciliation
- Adjudication
- Arbitration
- Litigation
- Avoidance
- Violence

We will focus here only on arbitration as negotiation, mediation and adjudication have previously been discussed.

Arbitration

Arbitration is a legal process whereby a neutral third party (arbitrator) hears the dispute and issues an award. Arbitration awards are final and binding on the parties and can only be challenged in very exceptional circumstances. An arbitration award has a status similar to a judgment and arbitration.

Arbitration award

The binding decision issued by an arbitrator is called arbitration award.

Advantages of Arbitration

Following are the advantages of arbitration

1. Flexibility of Proceedings
2. Confidentiality of Proceedings
3. The Speed of Resolution
4. Low Cost relative to Litigation
5. Legally Binding Nature
6. International Enforceability
7. Expertise of Arbitrator

Disadvantages of Arbitration

A major weakness of the arbitral process is the limited powers which the arbitral tribunal may exercise. Another perceived drawback of the arbitral process lies in the fact that, in general, it is not possible to bring multi-party disputes together before the same arbitral tribunal. Unlike a Court of Law, an arbitral tribunal generally has no power to order consolidation of actions.

If the Arbitrator is an expert within a specified field, he/she may not have the requisite expertise when the dispute hinges on difficult points of law. The doctrine of precedent does not apply. Each case is decided on its merits; and is therefore no guide to future similar cases.

Arbitration Act in Pakistan

The law of arbitration in Pakistan is contained in the Arbitration Act, 1940 (a pre-partition enactment, which still continues in force). Its main features are summarized as under:

The Act provides for three classes of arbitration:–

- (a) Arbitration without court intervention (Chapter II, sections 3-19);
- (b) Arbitration where no suit is pending, (but through court) (Chapter III, section 20) and
- (c) Arbitration in suits (through court) (Chapter IV, sections 21-25).

The Act also contains further provisions, common to all the three types of arbitration

Summary

We learnt arbitration as a way of alternative dispute resolution which resembles to litigation. It is done on case by case basis and 'precedent' does not carry much value in arbitration as it does in litigation or in courts of law.

ARBITRATION II

Quotation

"Excellence is to do a common thing in an uncommon way". Booker, T (Moving from complicated court procedures to simplified and more human procedures to resolve disputes among individuals)

We will learn the following points in this lecture

1. How the arbitration process works.
2. The situations in which courts intervene to enforce, modify, or eliminate the process or outcome of arbitration.
3. The many ways in which the law supports a deferential attitude toward the arbitration process.
4. The reviewability of arbitration awards.
5. The problems of choice of law in interstate, international, and multinational arbitration.

Arbitration

Mediation, arbitration, and litigation are the main forms of ADR.

Local Govt. Ordinance 2001, have many sections relating to ADR (Alternative Dispute Resolution). Arbitration is a legal process whereby a neutral third party (arbitrator) hears the dispute and issues an award. Arbitration awards are final and binding on the parties and can only be challenged in very exceptional circumstances. An arbitration award has a status similar to a judgment and arbitration.

Arbitration award:

The binding decision issued by an arbitrator is called arbitration award.

Executory agreements to arbitrate:

Agreements to submit future disputes, not currently in existence, to arbitration are called executory agreements to arbitrate.

De novo: Latin, meaning, “a new.” In the law, a retrial of a previously decided dispute, in which all of the legal and factual issues may be relitigated and redecided. A trial *de novo* is in contrast to an appeal, in which only errors of law can be the basis for a change in outcome.

Varieties of mediation

Formality and rigidity of the process	Informal arbitration: arbitration characterized by minimal participation by lawyers, minimal discovery, procedural rules, or rules of evidence. Arbitrator may act in a facilitative manner.
When a contract to arbitrate is formed	Executory arbitration: agreement to arbitrate predates dispute.
Types of labor arbitration	Interest arbitration: arbitration to determine terms of collective bargaining agreement
Private or public sector	Private arbitration: arbitration not under auspices of public sector.
Varieties that restrict the nature of the arbitrators award	High-low arbitration: arbitrator’s decision is restricted to a range of possible outcomes by prior agreement of the disputants.
Bindingness of the outcome	Binding arbitration: arbitration in which the outcome is binding on all disputants (“true” arbitration).

Varieties of Arbitration

Beyond the dichotomy between traditional and legalistic arbitration, there are other variants commonly seen in today’s arbitration practice.

Executory and Ad-Hoc arbitration:

Executory arbitration is arbitration provided according to an executory agreement.

Ad-hoc arbitration is arbitration agreed to after the fact of a dispute.

Administered and non-administered arbitration:

Another way to distinguish forms of arbitration is to consider whether the arbitration is *administered* or *non-administered*.

Interest and Rights Arbitration:

Labor arbitration is divided into *interest arbitration* and *rights arbitration* according to the sorts of issues being arbitrated.

Other arbitration varieties: One can distinguish between *private arbitration* and *court-based* arbitration.

Litigation	Arbitration	Mediation
Formal process	Less formal process	Least formal process
Formal rules of evidence	Rules of evidence relaxed	Rules of evidence do not apply
Formal discovery	Limited discovery	Informal fact-finding
Public record	Hearings are private	Private and confidential
Judge/Jury makes decision	Arbiter makes decision	Parties make decision
Verdicts final, subject to appeal	Decisions can be binding with limited appeal rights	Parties decide whether to settle; agreements are enforceable contracts
Expensive and time-consuming	Often quicker and cheaper than litigation	Quicker, cheaper and less stressful than litigation

Process of Arbitration

Arbitration consists of eight basic steps:

1. Creating the arbitration contract
2. Demanding, choosing, or opting for arbitration
3. Selecting the arbitrator or panel of arbitrators
4. Selecting a set of procedural rules
5. Preparing for arbitration
6. Participating in the arbitration hearing
7. Issuing the arbitration award
8. Enforcing the award

Creating the Arbitration Contract

Arbitration always begins with a contract to arbitrate, the arbitration contract may be executory (developed prior to the development of a dispute) or ad-hoc (develop to resolve an existing dispute).

As with any other contract, arbitration contract should be designed to minimize the chances of dispute escalation, should anticipate future developments, and should be appropriately fair and equitable.

Additional points for arbitration contract are given below:

Contents of Arbitration Act

1. The matters to be arbitrated should be set out explicitly.
2. The expenses of arbitration (arbitrators' fee, cost of transcripts, and cost of hearing room) should be shared equitably among disputants.
3. Arbitrators' selection and qualification should be considered carefully.
4. The agreement should specify whether discovery is to be permitted.
5. The hearing of hearings and their duration may be explicitly scheduled.
6. Privacy and confidentiality should be addressed.
7. The roles of arbitrators should be clarified duly.
8. Rules of evidence may be specified with mutual agreement.
9. The disputants should agree about the provision of specified documents with a schedule for submission.
10. The contract should specify the nature of arbitrators award (just outcome or with explanatory opinions).
11. Reviewability and enforcement of the award may be specified (law must be in purview).
12. Choice of law may be spelled out in the agreement, especially if the arbitration is between different states.
13. Provisional remedies or temporary injunctions may be needed in an arbitration contract.
14. Disputants may like to include a class providing mediation as a first resort in any executory agreement to arbitrate.

Law of Arbitration

Arbitration would be an extremely simple process if everyone involved in every arbitration proceeding accepted it with enthusiasm. However, arbitration, being an adjudicatory process, frequently leads to at least one dissatisfied customer. And when a disputant is dragged, kicking and screaming into an arbitration he consider loathsome, the disputant is likely to search for ways to avoid the process or its outcome.

Before Arbitration

When should a dispute be arbitrated?

Enforceability and arbitrability.

Enforceability: Whether the contract to arbitrate is valid and can be enforced against the party seeking to avoid arbitration.

Arbitrability: Whether a particular dispute is subject to an agreement to arbitrate.

After Arbitration

1. Enforcement of arbitration awards.
2. Review of arbitration awards.
3. Choice of law during arbitration.
4. Choice of law in matters of enforceability, arbitrability and reviewability.

Summary

Arbitration contract is extremely important. It should be explicit and comprehensive as it will guide the process of arbitration. It also assures enforceability and implementation. It improves the acceptance of the award by all the disputants. In short a good arbitration contract is a guarantee for the successful implementation of the award.

NON BINDING EVALUATION I

Quotation

“A little inaccuracy sometimes saves a ton of explanation.” H. H. Munro

We will learn

1. Nonbinding evaluation as a class of ADR that brings out merits and demerits of the disputes.
2. Advantages and disadvantages of non-binding evaluation compared with other forms of ADR.
3. Appropriate uses of nonbinding evaluation.

Lawyers with adversarial attitude like non-binding evaluation.

Non-Binding Evaluation

Non-binding evaluation is a group of processes used in legal disputes to evaluate the likely outcome of the dispute being taken to court. It is also called mixed or ‘hybrid’ forms of ADR since it contains the characteristics of both negotiation and adjudication. It is a form of assisted negotiation. It consists of a hearing followed by an evaluation award which is advisory only. It is an assessment of strengths and weaknesses of both disputants. In adversarial legal system, it is considered the best ADR.

Disadvantage:

Following are the disadvantages of non-binding evaluation.

1. It encourages an adversarial perspective without providing certainty of adjudicated outcome.
2. The complexity and formality of the process is variable.
3. The process of evidence and testimonies may be different for different cases.
4. Outcome may be a single decision or a range of decisions.
5. Non-binding evaluation is a BATNA clarification.

Varieties of Non-binding Evaluation

There are a number of varieties of non-binding evaluation. Non-binding evaluation is intended to give each disputant’s legal team a preview at a litigation future, in an effort to give both sides enough information that their positions will overlap, enabling settlement to take place.

Following are the various kinds of non-binding evaluation.

1. Non-binding arbitration.
2. Minitrial
3. Summary jury trial.
4. Neutral evaluation.
5. Dispute review board

1. Non-binding Arbitration

Non-binding arbitration is the most basic form of non-binding evaluation. Non-binding evaluation simply consists of an adjudication process in which the out come is not binding. Sometimes non-binding arbitration is a process chosen by private parties, but often it is a mandatory process ordered by the court.

2. Minitrial

In minitrial, the time and expense of case presentation is minimized through the presentation of a summary version of the dispute. Minitrials are usually attended by representatives of the disputants who have the authority to settle the case. After case presentation, the neutral will either issue a non-binding decision or will discuss strengths and weaknesses with disputant representatives and their advocates.

3. Summary Jury Trial

Summary jury trial is a form of non-binding evaluation intended to promote settlement by demonstrating to the disputants and their legal teams what would be likely to happen if jury decided the case.

4. Neutral Evaluation

Neutral evaluation is a process in which an expert in the subject matter of the dispute, or a legal expert, is hired to give an assessment of the strengths and weaknesses of each side’s case. Neutral evaluation has many variations and is known by a variety of terms, used in often inconsistent fashion.

5. Dispute Review Boards

Dispute review boards (also known as dispute resolution boards) are entities created by contract to resolve disputes as they arise during construction projects. Boards are generally made up of three members empanelled by the owner and contractor. As disputes arise during construction, they are submitted by informal hearing process to the review board, which issues an advisory decision in the matter.

The dispute review board process is designed to facilitate the complex relationship among owners, contractors, and others involved in large construction projects.

Process	Who is typically the neutral?	What is typically presented?	Nature of outcome	What is the process useful for?
Nonbinding arbitration	Arbitrator, who may be an attorney, a retired judge or an ADR neutral	Oral arguments; occasionally exhibits and informal testimony (as in arbitration)	Arbitration award, advisory only; may be oral, written, or both	General BATNA clarification
Minitrial	Corporate executives with authority to settle; may also be a neutral moderator	Typically, oral arguments; may also be some evidentiary showing	Typically, no outcome <i>per se</i> ; observations of hearing provide BATNA clarification to those with authority to negotiate settlement; advisory award may be issued by neutral if no settlement reached	BATNA clarification for those in a position to settle

Advantages and Disadvantages of Non-Binding Evaluation compared with other forms of ADR

Non-binding evaluation represents an effort to obtain the benefits of both negotiation and adjudication.

1. Compared with litigation
2. Compared with arbitration
3. Compared with mediation

Summary jury trial	Members of the jury pool as a adjudicators; judge or retired judge as moderator	Abbreviated version of litigated case	Nonbinding verdict	Teasing out of complicated factual issues (as in class actions/products liability); BATNA if jury trial expected; “day in court” for litigants
Neutral evaluation	Experts in technical area of dispute, or lawyers with expertise in the sort of dispute being litigated	Typically, oral arguments	Assessment of the strengths and weaknesses of each sides case; may include advisory award	BATNA clarification; expert empowerment

Varieties of nonbinding evaluation

Process	Who is typically the neutral?	What is typically presented?	Nature of outcome	What is the process useful for?
Neutral evaluation	Experts in technical area of dispute, or lawyers with expertise in the sort of dispute being litigated	Typically, oral arguments	Assessment of the strengths and weaknesses of each sides case; may include advisory award	BATNA clarification; expert empowerment
Dispute review board (example; M2 Motorway construction by Turkish firm)	A panel of leaders or other experts in the field involved, empanelled by the owner and contractor in a construction project	A summary of disputes that threatens to delay or derail a complex construction project	An advisory decision	Overcoming of costly impasses and delays created by disputes that occur during complex construction projects

1. Compared with litigation

The most important advantage of non-binding evaluation is probably also its greatest disadvantage, i.e. its non-binding quality. Non binding evaluation allows the disputants to retain a measure of their autonomy. A settlement reached after non-binding evaluation is more likely to be accompanied by psychological ownership than a judgment imposed by the court, because the disputants have freely chosen the outcome themselves.

Non-binding evaluation is also chosen by disputants because it is potentially cheaper and faster than litigation. Non-binding evaluation is sometimes touted as an efficiency measure without due regard for whether, in fact, the presumed cost and time savings will be realized.

Finally, like other forms of ADR, non-binding evaluation is typically a private process. Privacy can have both advantages and disadvantages. Some disputants may benefit from the privacy, whereas others prefer that the public be informed of the process and outcome.

2. Compared with Arbitration

In many ways, non-binding evaluation is similar to arbitration: it can seem indistinguishable from arbitration until the moment when one disputant decides not to accept the decision of the neutral. It should not be surprising, then, that non-binding evaluation has many of the same advantages and disadvantages of arbitration. Like arbitration it has a tendency to promote an adversarial, competitive perspective on the conflict and to promote positional bargaining.

3. Compared with Mediation

The comparison of non-binding evaluation with facilitative varieties of mediation raises the most interesting questions for conflict diagnosticians. Non-binding evaluation is considered effective in dealing with extreme differences of fact or law, and it is useful for BATNA clarification: it functions as a dry run at litigation, enabling attorneys and their clients to get a reasonable estimate of what would happen if the case went to trial.

MIXED AND MULTIMODEL DISPUTE RESOLUTION I

Quotation

“Excellence is to do a common thing in an uncommon way”

When we face unique situations/problems where there is a need to counter different conflicting situation which are not solvable through mainstream alternate dispute resolution techniques (like mediation, arbitration, litigation and facilitative mediation) then it is a dire need of time that we use complex and mixed modals of Dispute resolution. It is necessary that we tailor-make a model to address to the required situation in an innovating way.

At times, it is the need of time that we focus our efforts in making mix models of dispute resolutions in a sequential order as first mediation then arbitration or litigation or vice versa.

We all are aware of the proverb “Necessity is the mother of invention”. Therefore, inventing a new way to cater difficult and complex conflicts, mixed modals are created through amalgamation of two or more than two models.

Alternate Dispute Resolution (ADR):

All situations are different pertaining to events and causes. Therefore, a different case/situation wants a solution addressing its causes and remedy. It is evident that culture plays a pivotal role accordingly when resolving disputes which are heavily influenced with values and norms.

Invisible Veil (Parda in Urdu language) refers to the values, beliefs and practices of a culture which are prepared in a manner as to serve only one narrow segment of the population. It means that people tend not to think out of the box as their minds are trained to think in only a single way. They cannot think for long terms and are sought to have shortsightedness because they have been blinded by the societal veil. Mixing of facilitative and evaluative processes can impair the facilitative elements of resolving disputes. Whenever we mix the two processes, we should always include positive impacts of both facilitative and evaluative elements in order to cater different issues of people in tailor-made solutions.

The main purpose of the mixed-model design system is; 1) to design a court-connected new system in which there are mediators, arbitrators, paralegals, lawyers and relevant field experts such as commercial and family dispute handlers. 2) It also functions as to give a relief to courts from work pressure. 3) It acts as to improve civilized life.

Mixed Hybrid and Multimodal Processes:

1. Med-Arb: Mediation then arbitration (More common)

2. Arb-Med: Arbitration then mediation (Less Common)

Mediation-Arbitration is mostly used worldwide as the frequently used hybrid model. This is because mediation process is less time consuming and less costly at the same time. If the conflicting issue is not resolved through it then arbitration is continued through a neutral arbitrator which has a binding decision.

On the other hand, if arbitration is applied first in **Arbitration-Mediation then a binding** decision among disputants escalates positional bargaining in mediation later.

It is important to know that mediation and arbitration can continue along with each other as during mediation, some issues can be resolved through arbitration techniques. Moreover, in **arbitration-mediation system**, it is often practice that an arbitrator reserves the verdict of a case and let the mediation follow. This will enhance the chances of a fair settlement between two conflicting parties which might not be the same in arbitrator’s final verdict. It is because mediation better preserves the relationships in its pure form then a binding decision from arbitration (BATNA).

Mediation Windowing:

It is a concept which is followed in arbitration as to hold some sessions (ad hoc) of mediation. In this way, an innovative solution to the problem is formed.

Another mixed model is incentive arbitration. In this model, a penalty is given to the party which does not accept the final decision of the arbitrator. For example, the cost of the arbitration process will be bear by the party which is not accepting the final decision if it was mutually shared.

Similarly, Minitrial and Ombuds (a person who addresses complaints of people against government) are other short models of hybrid/mixed models which bridge the gap between the powerless and the powerful; between an individual and large organization.

It is important to know that effective Ombuds should be compassionate, good listener, good communicator, high integrity, good mediation skills, in-depth understanding of structure, culture and politics.

Mixed/Hybrid Design System helps in forming such a model which address a certain issue which has no such immediate remedy in standardized model of dispute resolution. Conflict is a part of life and is an automatic process but it should not be disruptive and through different modeling of ADR techniques, it should be resolved in a continuous process.

Emergent conflicts are a big source of motivation for new innovative designs. It is pivotal that mediators and other ADR experts should be connected with courts as these models are court-connected techniques. It is because if the mediation goes ill then the resources and time spent on it must not get wasted. In this way, courts get to know the real issue and can readily avail the required information.

To increase the psychological ownership of the mixed/hybrid models, it is mandatory that end-users should be included in designing them. This is how we can increase the individuals' overall rights, quality of life and a better society.

Court Connected ADR is adopted to improve efficiency of the court-systems. Adoption of different law cases and their implications will enhance the acceptability and congruence in dispute resolution.

MIXED AND MULTIMODAL DISPUTE RESOLUTION

Designing New Dispute Resolution Systems

The first heuristic involves the relationship between three ways of resolving disputes: by negotiating interests, by adjudicating rights, or by pursuing power options (such as strikes or lockouts).

The following diagram shows a distressed conflict management system, such as the one found at Caney Creek before it was improved, and a healthy dispute management system that resolves most disputes at the interest level, fewer at the rights level, and fewest through power options. This is healthy for several reasons.

Negotiating interests is less expensive than adjudicating rights or pursuing power options.

Negotiating interests' results in mutually satisfactory solutions, while the other two approaches are win-lose, meaning one side wins and the other side loses. When power-based approaches are tried, the losing side often is angry, and may try to "get back" at the other side whenever they get the chance. Interest-based negotiation is usually less time consuming than the other approaches.

Six System Design Principles

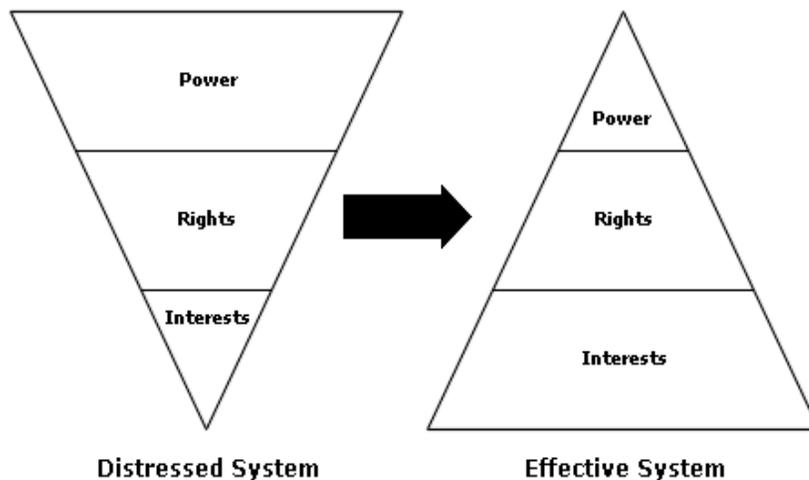
1. **Put the focus on interests.** This means any dispute resolution should start with a process (either direct negotiation or mediation) where the parties try to solve the problem using interest-based bargaining. This is the best way to find a solution that satisfies everyone. Only when this doesn't work, you move on to rights-based processes (such as arbitration) or power-based processes (such as elections).
2. **Provide low-cost rights and power backups.** Arbitration, voting, and protests are low-cost alternatives to rights and power contests. Although they are higher in cost than negotiation, they are less costly than adjudication or violent force.
3. **Build in "loop-backs" to negotiation.** Rights-based and power-based strategies for resolving disputes seldom need to be played out to the end. Rather, as soon as it is clear who is going to "win," parties can return (the authors call this "loop-back" to negotiation to develop a solution which best meets their needs, as well as their rights). A common example of such a "loop-back" process is when parties settle a lawsuit out of court. As soon as it becomes clear who is likely to win, it is advantageous for both sides to avoid the costs and uncertainty of further litigation, and negotiate a solution to their dispute.
4. **Build in consultation before, feedback after.** Increasing shared information is a basic strategy in ameliorating all conflicts. Consultation and feedback mechanisms between parties provide a consistent and reliable method of sharing information.
5. **Arrange procedures in a low-to-high-cost sequence.** Dispute-resolution systems typically have a series of steps. If one has a grievance or a conflict with another person or an organization, first you try to solve it on your own, and then you seek the help of a lawyer, etc. Ury, Brett, and Goldberg advise that by arranging dispute-resolution procedures in a low-to-high-cost sequence one can reduce the probability of rapid escalation. Minimizing this tendency toward rapid escalation had the added benefit of reducing enmity and increasing faith in the ability of the system to resolve basic disputes.
6. **Provide the necessary motivation, skills, and resources.** An alternative system can function only if people buy into it. People are creatures of habit, and this is the greatest limit to broad-based systemic change. While there may be active resistance from some groups to new dispute-resolution systems, the greater problem is spreading the skills, knowledge, and habits that reinforce the new system. It is incumbent on the elites in the conflict, and third-party interveners, to provide the resources and time necessary to generate cooperation with the new system.

While every situation is unique, the typical steps involved in dispute resolution systems are the following:

Dispute Resolution System Design

1. Establish a process for making decisions about new or enhanced dispute resolution processes.
2. Identify and diagnose the causes of recurring ORG conflicts and effectiveness of existing dispute handling procedures.
3. Examine the range of options for additional procedures or revisions of existing procedures.

Moving from a Distressed to an Effective Dispute Resolution System



Designing New Dispute Resolution Systems

4. Select or revise conflict resolution procedures, considering the corporate culture and the kinds of disputes that arise.
5. Organize the selected procedures in a comprehensive conflict management system.
6. Seek support from key organizational constituencies and secure approval for the proposed new system.
7. Develop a plan for implementing the new system and promoting its use. Train personnel to administer the

system and to provide specific services, such as mediation.

8. Create a process for quality control, feedback and refinement of the system.

Guiding a Disputant

- Screening clerk Room 1
- Mediation Room 2
- Arbitration Room 3
- Face finding Room 4
- Malpractice screening panel Room 5
- Superior court Room 6
- Ombudsman Room 7

ADR and the Internet

ADR of cyber disputes: use of ADR to resolve disputes occurring in the online environment

Online dispute resolution (ODR): use of online platforms to resolve conflicts of all origins

ODR Varieties

Following are some of the ODR varieties.

1. ADR by email
2. ADR with web-based conferencing

3. ADR using technologically sophisticated, multimodal platforms
4. Analytical tools added to multimodal platforms
5. Blind bidding sites
6. Online summary jury trial

Advantages of ADR Conducted Online

Following are the advantages of the ADR conducted online.

1. Transcend geographic and time-zone differences
2. More immediate than letter writing
3. Time to diagnose conflict, think, respond appropriately
4. Protect intimidated disputants
5. Separate enraged disputants
6. Handle disabilities that prevent attending sessions
7. Technologies allow better conflict diagnosis

Disadvantages of ADR Conducted Online

Here are some of the disadvantages of the ADR conducted online.

1. Disempowers computer-illiterate; people who write poorly
2. Disempowers people with impaired access to Internet
3. Lack of body language, technology problems may produce meta-disputes
4. ADR neutrals lose non-verbal information
5. Disputants may abandon process

Dispute Resolution System Design

Dispute Resolution System Design is

1. Performed by consultants
2. Used by large organizations
3. Tailor dispute resolution processes and procedures to fit entity or enterprise

Legal Issues in ODR

There are some issues which are involved in ODR e.g.

1. Where did the dispute arise? (cyberspace dispute choice of law problem)
2. Where is ADR taking place? (ADR choice of law problem)
3. How can settlements be enforced?

Extensions of Dispute Systems Design

Several authors advocate refinements to make dispute systems design more effective. For example, **Rowe** suggests that an effective dispute-resolution system should incorporate:

1. Commitment to the values of fairness and freedom from reprisal;
2. Interest- and rights-based options;
3. Multiple access points;
4. An organizational ombudsperson;

5. Wide scope; and
6. Continuous improvement via an oversight committee.

Lynch argues that an effective system should incorporate:

1. Responding to stakeholder interest;
2. Reflecting important values;
3. Promoting the mission of the new agency;
4. Providing visible support by the organization's leadership;
5. Loop-backs forward and back between interest- and rights-based options;
6. A system that is fair, flexible, friendly, and fast;
7. The goal of resolution at a low level; and
8. Mechanisms by which the organization can shift from conflict resolution to management.

Extensions of Dispute Systems Design

Slaikeu and Haddon outline four principles for an effective system:

1. It should acknowledge four means of resolution (essentially, power, rights, interest, and avoidance);
2. It should include prevention and early-intervention options;
3. It should seek to build collaborative strength through seven checkpoints;
4. It should utilize the mediation model in order to build consensus among those involved.

Summary

Dispute resolution systems are necessary for resolving ongoing disputes around us, in our personal and work lives. ODR (online dispute resolution) systems are also becoming need of the time. People are finding solutions through online systems.

POWER TOOLS AND MAGIC KEYS I

Quotation

With the world becoming a smaller and more vulnerable place, we have no choice to continue to engineer an increasingly effective array of alternative tools for dealing with interpersonal conflict. Lauri S. Coltri

There is one thing stronger than all the armies in the world, and that is an idea whose time has come. Victor Hugo

“A camel is a horse designed by a committee” Anonymous

We will learn in this lecture

1. The potential for conflict diagnosis to improve the delivery of legal services.
2. The ethical and practical issues that complicate the use of conflict diagnosis by lawyers and legal assistants.
3. The ethical obligation of lawyers to advise their clients of ADR options and the scope of this obligation.
4. Approaches to layering that incorporate the ideas advanced in this text book, including client-centered layering and collaborative law.
5. How to use conflict diagnosis to develop effective strategies and tactics for representing legal disputants.
6. A leading approach to selecting a dispute resolution process and provider, known as fitting the Forum to the Fuss.
7. An alternative approach to selecting a dispute resolution process and provider, suggested by the principles of conflict diagnosis.

Introduction

You have been introduced until now with the conflict diagnosis, a theory based set of skills. As a stand alone technique, conflict diagnosis is a practical method of understanding and analyzing interpersonal conflict, particularly legal disputes. After reading this course you must have recognized that you are now able to use less destructive and useful approaches to resolving conflicts.

Necessity of conflict diagnosis

Conflict diagnosis is mentally challenging and time consuming. That is why most lawyers would say that conflict diagnosis is not necessary. And that the efforts to develop an understanding of underlying interests, sources of conflict, personal power, and the need to preserve relationships and trust are in the domain of the client alone. However some will say yes it is necessary. The reason is that the invisible veil will always hide many important aspects of interpersonal conflict from those involved in it. Most of the time one enters a conflict aware of the resource disputes, preferences and nuisances problems, and perhaps the disputes over facts or law, but little else. The hidden information will be critical to assessing the hidden conflict, the participants' most interests, the opportunities presented by the other disputant's interests. Emotional issues and hidden interests may complicate or impede resolution. Once adversarial negotiation or litigation starts, it is extremely hard to find out about them.

Using conflict diagnosis

The practice of conflict diagnosis has two major uses in dealing with legal disputes and transactions. It assists the disputant or conflict professional in

1. Choosing strategies and tactics for handling conflict and
2. Choosing a dispute resolution process and provider

Choosing strategies and tactics for handling conflict

In real-world interpersonal conflict, the practice of conflict diagnosis can reap benefits if applied early, before ADR is even a consideration. A disputant or conflict professional who regularly engages in conflict diagnosis can maximize gain for clients, prevent conflict escalation and dispute recurrence, ensure optimal resource use, and for disputes that involve ongoing relationships, protect the viability of these relationships.

Legal professionals and other advocates can enhance their advocacy role by applying conflict diagnosis as early as possible.

Choosing a dispute resolution process and provider

The use of conflict diagnosis for selecting ADR processes is a field still in its earliest infancy. This lack of maturity makes conflict diagnosis very exciting to study and practice.

Comparing the major dispute resolution forms

	Facilitative mediation	Nonbinding evaluation & evaluative mediation	Informal arbitration	Formal arbitration	Litigation
Cost					
Time					
Finality					
Psychological ownership and quality of consent					
Outcome creativity and pareto optimality					
Conflict containment and escalation					
Invisible-veil thinking					
Sense of procedural justice					

Comparing the major dispute resolution forms

Bigoted or prejudiced behaviour: dangers					
Dealing with disparities in bargaining power					
Disputant transformation					
Where it is often found	Family mediation	Court-connected ADR	Private sector civil dispute resolution	Private sector civil dispute resolution	The default process
Usefulness in conjunction with other processes					
Misconduct by neutral					
Special qualities					

Summary

We learnt the comparative nature of different forms of conflict resolution against various dimensions related with the needs of disputants. We also learnt about the complexity of social and economic environment and also about the nature of invisible veil.

POWER TOOLS AND MAGIC KEYS II

Invisible Veil Consideration

Reasons for needing conflict diagnosis are often hidden. Conflict escalation obscures important information and disempowers participants. Anger is part of the invisible veil. It hampers rationality and curtails your capability to see the hidden interests. As a consequence, your ability to understand conflict is impaired.

Factors thought to impede the usefulness of facilitative mediation

FACTORS	EFFECTS
Other disputant/team refusing to participate	May not be possible to use facilitative mediation. Even if other teams participation can be coerced, quality of consent may be impaired.
Unfamiliar format disturbing to other disputant/team	Quality of consent may be impaired.
One or both disputants or their teams unsure of their BATNAs	Quality of consent may be impaired.
Large differences in perceptions of fact or law	Impasse may result unless BATNAs are clarified
Immediate enforcement needed	Irreparable harm may result from failure to act decisively.
Untrustworthy disputant	Irreparable harm may result from failure to act decisively.
Underlying interest in legal reform	Consensual processes may not address underlying interests.
Disempowered disputant	Exploitation of disempowered disputant may occur in any dispute resolution process. Decisions will reflect poor quality of consent unless disputant acquires more power.
Time and/or money very limited	Facilitative mediation can take longer than more evaluative, informal processes.

Proposed Contents of a Clients’ Interview

1. A summary of the client’s interview
2. A description of the client’s presenting problems and goals
3. A description of the likely sources of the conflict
4. A sociogram showing he participants and their roles
5. An exploration of the client’s underlying interests and goals, as well as the other disputants likely goals and interests (it is helpful analytically to use interest trees)
6. Analysis of how the other participants interests may play into exacerbating or resolving the conflict
7. A sense of how escalated the conflict has become and the state of trust between the parties
8. An initial list of the apparent impediments to cooperative resolution
9. An assessment of the various sources of power held by the client and the other disputant
10. An analysis of the client’s BATNA, including a case evaluation, and the same for the other disputant
11. A list of the information needed to prepare the case, including any analysis of the legal and factual issues
12. An analysis of what strategy would best help the client meet his or her underlying goals, interests, and needs, with the discussion of the tactics that might be useful

- A section discussing “next steps”—further interviews, investigation, legal research, referrals, and so fourth

Collaborative Law

A form of lawyering currently seen primarily in family law and based on a contractual relationship between a lawyer and a client is called collaborative law. This contract generally specifies the lawyer’s duty to seek collaborative and interest-based document with the other disputant. If litigation commences, the lawyer is required to withdraw from representing the client.

Fitting the Forum to Fuss (Brainchild of Frank Sander and Stephen Goldberg)

Basic Ideas:

Different dispute resolution processes are better at different things and different things are important to different people.

Fitting the Forum to the Fuss – Sander/Goldberg List of Client Objectives

- Minimize costs
- Speed
- Privacy
- Maintain/improve relationships
- Obtain vindication
- Obtain neutral opinion
- Obtain precedent
- Maximize or minimize recovery

How to use fitting the forum to the fuss

CLIENT OBJECTIVE	VALUE ("I")
Minimize costs	5
Speed	
Privacy	
Maintain or improve relationship with other disputant	
Obtain vindication	
Obtain a neutral opinion	
Obtain a precedent	
Maximize or minimize recovery	
OTHER - Describe _____	

Filling in the Grid - Step 1

	Mediation			Minitrial			Summary Jury Trial			Early Neutral Evaluation			Arbitration			Litigation		
Costs	3x	5	15	2x	5	10	2x	5	10	3x	5	15	1x	5	5			0
Speed	3x			2x			2x			3x			1x					0
Privacy	3x			3x			2x			2x			3x					0
Maintain/ Improve Relationships	3x			2x			2x			1x			1x					0
Obtain Vindication			0	1x			1x			1x			2x				3x	
Obtain neutral opinion			0	3x			3x			3x			3x				3x	
Obtain precedent			0			0			0			0	2x				3x	
Maximize/ Minimize Recovery			0	1x			1x			1x			2x				3x	
SUM																		

Another client objective filled in

CLIENT OBJECTIVE	VALUE ("I")
Minimize costs	5
Speed	
Privacy	
Maintain or improve relationship with other disputant	
Obtain vindication	
Obtain a neutral opinion	
Obtain a precedent	
Maximize or minimize recovery	
OTHER - Describe _____	

Filling in the Grid – Next Step

	Mediation		Minitrial		Summary Jury Trial		Early Neutral Evaluation		Arbitration		Litigation	
Costs	3x		2x		2x		3x		1x			0
Speed	3x		2x		2x		3x		1x			0
Privacy	3x		3x		2x		2x		3x			0
Maintain/ Improve Relationships	3x		2x		2x		1x		1x			0
Obtain Vindication		0	1x		1x		1x		2x		3x	
Obtain neutral opinion		0	3x		3x		3x		3x		3x	
Obtain precedent		0		0		0		0	2x		3x	
Maximize/ Minimize Recovery		0	1x		1x		1x		2x		3x	
SUM												

More client objectives filled in

CLIENT OBJECTIVE	VALUE ("I")
Minimize costs	5
Speed	
Privacy	
Maintain or improve relationship with other disputant	
Obtain vindication	
Obtain a neutral opinion	
Obtain a precedent	
Maximize or minimize recovery	
OTHER - Describe _____	

Filling in more of the Grid

	Mediation			Minitrial			Summary Jury Trial			Early Neutral Evaluation			Arbitration			Litigation		
Costs	3x	5	15	2x	5	10	2x	5	10	3x	5	15	1x	5	5			0
Speed	3x	5	15	2x	5	10	2x	5	10	3x	5	15	1x	5	5			0
Privacy	3x			3x			2x			2x			3x					0
Maintain/ Improve Relationships	3x			2x			2x			1x			1x					0
Obtain Vindication			0	1x			1x			1x			2x				3x	
Obtain neutral opinion			0	3x			3x			3x			3x				3x	
Obtain precedent			0			0			0			0	2x				3x	
Maximize/ Minimize Recovery			0	1x			1x			1x			2x				3x	
SUM																		

Completing the client objectives

CLIENT OBJECTIVE	VALUE ("I")
Minimize costs	5
Speed	
Privacy	1
Maintain or improve relationship with other disputant	5
Obtain vindication	
Obtain a neutral opinion	
Obtain a precedent	
Maximize or minimize recovery	
OTHER - Describe _____	

Entering Remaining Objective Utilities on the Grid

	Mediation			Minitrial			Summary Jury Trial			Early Neutral Evaluation			Arbitration			Litigation		
Costs	3x	5	15	2x	5	10	2x	5	10	3x	5	15	1x	5	5			0
Speed	3x	5	15	2x	5	10	2x	5	10	3x	5	15	1x	5	5			0
Privacy	3x	1	3	3x	1	3	2x	3	6	2x	3	6	3x	3	9			0
Maintain/ Improve Relationships	3x	5	15	2x	5	10	2x	5	10	1x	5	5	1x	5	5			0
Obtain Vindication			0	1x	2	2	1x	2	2	1x	2	2	2x	2	4	3x	2	6
Obtain neutral opinion			0	3x	2	6	3x	2	6	3x	2	6	3x	2	6	3x	2	6
Obtain precedent			0			0			0			0	2x	1	2	3x	1	3
Maximize/ Minimize Recovery			0	1x	4	4	1x	4	4	1x	4	4	2x	4	8	3x	4	12
SUM																		

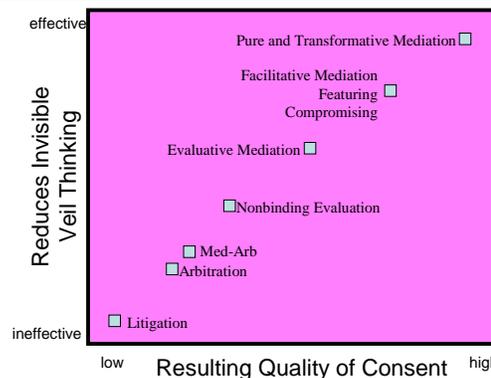
Calculating the Scores for Dispute Resolution Processes

	Mediation			Minitrial			Summary Jury Trial			Early Neutral Evaluation			Arbitration			Litigation		
Costs	3x	5	15	2x	5	10	2x	5	10	3x	5	15	1x	5	5			0
Speed	3x	5	15	2x	5	10	2x	5	10	3x	5	15	1x	5	5			0
Privacy	3x	1	3	3x	1	3	2x	3	6	2x	3	6	3x	3	9			0
Maintain/ Improve Relationships	3x	5	15	2x	5	10	2x	5	10	1x	5	5	1x	5	5			0
Obtain Vindication			0	1x	2	2	1x	2	2	1x	2	2	2x	2	4	3x	2	6
Obtain neutral opinion			0	3x	2	6	3x	2	6	3x	2	6	3x	2	6	3x	2	6
Obtain precedent			0			0			0			0	2x	1	2	3x	1	3
Maximize/ Minimize Recovery			0	1x	4	4	1x	4	4	1x	4	4	2x	4	8	3x	4	12
SUM			48			45			48			53			44			27

Conflict Diagnosis Approach

1. Facilitative mediation is the default choice
2. If there are reasons not to use facilitative mediation:
 - Try to work around them
 - If not possible, use fallback choices

Dispute Resolution, Invisible-Veil Thinking, & Quality of Consent



Impediments to use facilitative mediation

There are certain hindrances to use facilitative mediation which are given below.

1. The other team won't play
2. Worry about signaling weakness
3. Unknown or uncertain BATNA
4. Wildly divergent BATNA assessments
5. Limited time, money
6. Need for immediate enforcement
7. Other disputant a nasty fellow
8. Underlying interest in legal reform
9. Facilitative process already tried, settlement did not result

Theories of conflict, cooperation, and competition, and negotiation style, suggest that the best processes for promoting constructive, equitable, and efficacious dispute resolution are those in which the participants are consistently guided away from invisible veil, zero-sum thinking and toward collaborative, integrative problem solving. These processes include (1) pure mediation geared directly toward promoting collaborative problem solving and (2) transformative mediation.

PANCHAYAT, LOCAL GOVERNMENT SYSTEM AND ADR

Introduction

Panchayats and Jirgas are kinds of local government system through which social justice and local development issues are regulated and managed. These systems have functioned for centuries in the sub-continent. These are a kind of today's ADR systems. Panchayats and Jirgas are now becoming part of local government system which is operational in more than sixty countries in the third world. It is good to learn the characteristics of Panchayats and Jirgas; and in this way, we can better understand ADR system within our own culture and traditions.

Definitions of Panchayat

1. Panchayat - a village council.
2. 'Panchayat' literally means assembly (*yat*) of five (*panch*) wise and respected elders chosen and accepted by the village (local) community.
3. The other word for panchayat is called Jirga

From an informal, community-based body that was meant to settle small claims, the 'jirga', or council of tribal elders, has in Pakistan been allowed to emerge as a powerful force protecting the interests of the powerful. This all-male body is often called Panchayat or Jirga.

Definition of Jirga

1. A Pashto term for a decision making assembly of male elders; most criminal cases are handled by a tribal Jirga rather than by state laws or police.
2. A Jirga (occasionally jirgah) (Urdu: جرگہ) is a tribal assembly of elders which takes decisions by consensus, particularly among these Pashtuns but also in other ethnic groups near them; they are most common among the Pashtuns in Pakistan and Afghanistan.
3. Loya Jirga - a grand council or grand assembly used to resolve political conflicts or other national problems. (Example: Recent Pak Afghan Jirga)

The word Panchayat mostly used in South Punjab, Pakistan and in India.

The word Jirga is used in Afghanistan and Pushtun areas in NWFP.

In Pakistan, both words are used depending upon the area.

Functions of Panchayat and its types

Traditionally, Panchayats are used to settle disputes between individuals and between villages. Modern Panchayats also address key social issues by manipulating and using unchallenged power of elders and chieftains. Indian government has decentralised several administrative functions to the village level, empowering elected Panchayats at three levels or tiers. However, in Pakistan panchayats are not working in many rural areas/villages. Police stations or Thanas are now active components of state machinery to provide justice to people.

The poor in our rural areas remain shy to get justice from the present Thana culture of police.

Types of Panchayats:

- (1) Village panchayats (members of panchayats from same village);
- (2) Inter-village panchayats (between villages, rare but discuss issue of serious nature like inter-village conflicts);
- (3) Biradari Panchayats (between Biradries).

Popularity of Jirga System

Jirgas are used increasingly in Pakistan. Cost of justice and delay in dispensing justice by the courts are the major causes of its popularity. Inefficient Police system where justice seekers are reluctant to come forward

is another reason why people prefer it. However, traditional social system and lack of modern education also compel people to seek justice through panchayats and jirgas.

Frontier Crimes Regulation (FCR) of 1901

Due to efficiency and people's acceptability, sometimes tribal jirgas are recognized as lawfully established judicial tribunals, although the law under which they are created, the (Frontier Crimes Regulation (FCR) of 1901), has been generally denounced by the superior judiciary of the country and also by some people.

Powers of Jirga under FCR

Theoretically, a Jirga's findings are in the form of an advice, but custom has elevated these findings to the level of a court verdict which usually translates into law. (a kind of ADR). This law is applicable only to the tribal areas. The council of elders has jurisdiction in both civil and criminal matters. No appeal is generally allowed against Jirga verdicts although the commissioner can review any case.

A jirga has sweeping powers to impose penalties in criminal cases. It can award punishments in the shape of fines, whipping, life imprisonment, demolition of a convict's house and the blockade by a hostile or unfriendly tribe. Technically, under the FCR, a jirga cannot award capital punishment.

Jirga system can be compared with jury system in America

Jury can also decide within boundaries of State Laws. But jirga has unlimited powers. In the context of gender equality movement, Jirgas are usually projected as unlawful activities against women. The ruthless decisions made by jirgas are the result of women's relational and honour-related importance.

New Panchayati Raj System

Panchayati Raj is a new system of governance in India and elsewhere, in which gram Panchayat are the basic units of administration. 'Raj' literally means governance or government, *Panchayati Raj*, a decentralized form of Government where each village is responsible for its own affairs.

In the history of Panchayati Raj in India, on April 24, 1993, the Constitutional (73rd Amendment) Act, 1992 institutionalized Panchayati Raj institutions.

Panchayati Raj System

The system: Panchayati Raj Institutions – the grass-roots units of self-government – have been proclaimed as the vehicles of socio-economic transformation in rural India. Effective and meaningful functioning of these bodies would depend on active involvement, contribution and participation of its citizens both male and female. The aim of every village being a republic and Panchayats having powers has been translated into reality with the introduction of the three-tier Panchayati Raj system to enlist people's participation in rural reconstruction.

Funds to Panchayats

Panchayats receive funds from three sources:

- i. Local body grants, as recommended by the Central Finance Commission
- ii. Funds for implementation of centrally-sponsored schemes
- iii. Funds released by the state governments
- iv. The council leader in panchayat is named Sarpanch, and each member is a Panch. The panchayat acts as a conduit between the local government and the people. Decisions are taken by a majority vote (Bahumat).

Three Levels of Panchayat

Village: At the village level, it is called a Panchayat. It is a local body working for the good of the village. It can have its members ranging from 7 to 31. However, in exceptions, it can have members above 31 but not below 7.

Block: The block-level institution is called the panchayat samiti.

District: The district-level institution is called the zilla parishad.

73rd and 74th Constitution Amendment Acts (1992) in India

1. Panchayats and Municipalities will be “institutions of self-government”.
2. Basic Units of Democratic System - Gram Sabhas (villages) and Ward Committees (Municipalities) comprising all the adult members registered as voters.
3. Three-tier system of panchayats at village, intermediate block/taluk/mandal and district levels. Smaller states with population below 2 million will have only two tiers
4. Seats at all levels filled by direct election

Salient Features

1. Seats reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs)
2. Chairpersons of the Panchayats at all levels also shall be reserved for SCs and STs in proportion to their population.
3. One-third of the total number of seats reserved for women. One-third of the seats reserved for SCs and STs also reserved for women. One-third offices of chairpersons at all levels reserved for women.
4. Uniform five year term and elections to constitute new bodies that are to be completed before the expiry of the term. In the event of dissolution; elections to be held compulsorily within six months.

Zilla Parishad**Responsibility**

The various Rural Development Works carried at the Villages, Gram Panchayats, Block and District levels are planned, implemented, monitored and maintained by the Zilla Parishad. These works are monitored on the State Level by the Panchayats & Rural Development Department of the Government of West Bengal and on the National level by the Govt. of India. The Z.P. at the district level is responsible for the development and welfare works carried through the central, state share and its own funding. Zilla Parishad supervises the works of Panchayat Samities as well as Gram Panchayats within its Jurisdiction.

PANCHAYAT SAMITIES

There are 18 Panchayat Samities in the district. Each Panchayat Samiti is functioning with the Community Development at the Block level created by the government in the Panchayats & Rural Development Deptt.

Each Panchayat Samiti consists of official and elected members. The official members are the Block Dev. Officer and the Officers of various State Govt. Dept. ordinarily stationed at the Block level. The official bearers include the Panchayat Samiti members and the Pradhan of the Gram Panchayats. Savapati is the head of the body and is elected directly by the Panchayat Samiti members. And BDO of the respective block is the Executive Officer of the Panchayat Samity.

The main functions of the Panchayat Samitis are planning, execution and supervision of all developmental programmes in the Block . It also supervises the works of Gram Panchayats within its Jurisdiction.

Gram Panchayat

Gram Panchayat is the primary unit of Panchayati Raj Institutions. The district has 210 Gram Panchayats. Each Gram Panchayat comprising some villages and is divided into mouzas. The election of Pradhan, Upa-Pradhan & members are conducted according to the provisions of the West Bengal Panchayat Election Rules. Pradhan as the head of the GP is elected by the G.P. members. There are 210 Gram Panchayats in this district under 18 Panchayat Samitis.

Gram Sabha (assembly)

The Gram Sabha is the most powerful foundation of decentralized governance by ensuring elected representatives. They are directly and regularly accountable to the people. However, the Gram Sabhas are yet to become operational entities and to do justice to their potential for making the Panchayat system truly self-governed and a bottom-up structure.

Some of the key features in relation to Gram Sabhas are as follows:

The quorum for a Gram Sabha meeting remains one tenth & it is essential to have one-third of the quorum as women members. The Gram Sabha will work as a supervisory body, and audit and regulate the functioning of Gram Panchayats.

Recommendations of the Gram Sabha will be binding on the Gram Panchayat.

The Gram Sabha can approve as well as audit expenditure up to a limit (3 lacs).

The Panchayat Karmi (Panchayat Secretary appointed by the Panchayats but drawing salary from the state government) can be removed from his/her post only if the Gram Sabha approves it.

All the villages within a Gram Panchayat can have separate Gram Sabhas.

The Gram Sabha will have the right to recall the Pradhan after two and a half years of commencement of his/her tenure

Gram Sabha

The key roles entrusted to the Gram Sabha are microplanning, social audit of Panchayat functioning, ratification of Panchayat accounts, balance sheets, identification and approval of beneficiaries, and supervisory and regulatory functions.

The following indicators were chosen for assessing the prevailing situation in the field:

1. Participation and level of awareness of the Gram Sabha.
2. Issues of discussion and the process of decision-making.
3. Pattern of leadership.
4. Capacity of Gram Sabhas.
5. Transparency and accountability of the three tiers (GP, PS & ZP) to the Gram Sabha.

Modern Functions of Panchayat

1. General Functions
2. Agriculture, Including Agricultural Extension
3. Animal Husbandry Dairying and Poultry
4. Fisheries
5. Social and Farm Forestry, Minor Forest Produce Fuel and Fodder
6. Khadi, Village and Cottage Industries
7. Rural Housing
8. Drinking Water
9. Roads, Buildings, Culverts, Bridges, Ferries, Waterways And Other Means Of Communication
10. Rural Electrification
11. Non-Conventional Energy Source
12. Poverty Alleviation Programmes
13. Education Including Primary Schools
14. Adult And Non Formal Education
15. Libraries

Usual Functions of Panchayat

1. Cultural Activities
2. Markets And Fairs
3. Rural Sanitation
4. Public Health And Family Welfare
5. Women And Child Development
6. Social Welfare, Including Welfare Of The Handicapped And Mentally Retarded
7. Welfare of the Weaker Sections and in particular the Scheduled Castes and Scheduled Tribes
8. Maintenance Of Community Assets
9. Construction And Maintenance Of Cattle Sheds, Ponds And Cart Stands
10. Construction And Maintenance Of Slaughter Houses
11. Maintenance Of Public Parks, Playgrounds Etc
12. Regulation Of Manure Pits In Public Places
13. Such Other Functions As May Be Entrusted

SUMMARY AND MESSAGE OF THE COURSE

Introduction to conflict

Conflict is everywhere. Every relationship has conflict. It exists inside us. It exists around us. It is natural and inevitable part of all human social relationships. It occurs at all levels of society - intrapsychic, interpersonal, intragroup, intergroup, intranational and international (Sandole & Staroste, 1987).

Conflict is a kind of disagreement and discord between two or more persons, parties or entities. The conflict could also be among ideas, values, perspectives, thoughts, opinions or attitudes. Conflict is ubiquitous at all levels of human social relationships. Some social scientists have given conflict a bad reputation by linking it with psychopathology, social disorder and war (Burton, 1990). Conflict is not deviant or sick behavior. Social scientists need to analyze the level and the type of the conflict in order to understand the phenomenon.

Conflict is largely a perceived phenomenon. It is our perception of the situation that determines if a conflict exists. Conflict may be either healthy or unhealthy. Moreover, it should not be taken as the opposite of order. Though, there is orderliness in conflict yet it can be disorderly.

No two persons in the world are absolutely same or absolutely different. Therefore no two persons can feel or think alike. The difference between thinking of different people causes conflict. The parties in conflict believe they have incompatible goals, and their aim is to neutralize, gain advantage over, injure or destroy one another.

Conflict is the root of personal and social change. Hence, the organizations have conflict because of its ever changing environment. Conflict prevents stagnation. It stimulates interest and curiosity. Conflict management is very popular in business schools. The role of the administrator or a manager in an organization is to handle day to day conflict in the allocation of limited resources.

Definitions of conflict

- a. Conflict is a state of opposition, disagreement or incompatibility between two or more people or groups of people.
- b. A state of opposition between persons or ideas or interests
- c. A hostile encounter between two or more people

Interpersonal conflict

An actual or perceived incompatibility of goals between two or more people or entities is termed as interpersonal conflict.

Incompatibility need not be realized by either disputant. It means a conflict may be latent in the sense that it is not recognized by either of the parties.

Conflict resolution

There are many ways to resolve conflicts - surrendering, running away, overpowering your opponent with violence, filing a lawsuit, etc. The movement toward Alternative Dispute Resolution (ADR), sometimes referred to simply as conflict resolution, grew out of the belief that there are better options than using violence or going to court. Today, the terms ADR and conflict resolution are used somewhat interchangeably and refer to a wide range of processes that encourage nonviolent dispute resolution outside of the traditional court system. The field of conflict resolution also includes efforts in schools and communities to reduce violence and bullying and help young people develop communication and problem-solving skills.

Alternative Dispute Resolution (ADR)

Dispute resolution processes used in the resolution of legal, commercial, and other interpersonal conflicts

1. Other than litigation
2. Other than doing nothing

3. Other than illegal or violent means

In simple words, alternative Dispute Resolution, or ADR, is a way of resolving disputes without going to court.

Forms of resolving conflict (Alternative Dispute Resolution)

Common forms of conflict resolution include:

1. Negotiation
2. Meditation
3. Conciliation
4. Arbitration
5. Adjudication

Negotiation

Negotiation is a discussion among two or more people with the goal of reaching an agreement.

Broadly speaking, negotiation is an interaction of influences. Such interactions, for example, include the process of resolving disputes, agreeing upon courses of action, bargaining for individual or collective advantage, or crafting outcomes to satisfy various interests. Negotiation is thus a form of alternative dispute resolution.

Negotiation involves two basic elements: the process and the substance. The process refers to how the parties negotiate, the context of the negotiation, the parties to the negotiation, the relationships among these parties, the communication between these parties and the tactics used by the parties. The substance refers to what the parties negotiate over, the agenda the issues, the options, and the agreements reached at the end.

Meditation

Mediation is a voluntary and confidential process in which a neutral third-party facilitator helps people discuss difficult issues and negotiate an agreement. Basic steps in the process include gathering information, framing the issues, developing options, negotiating, and formalizing agreements. Parties in mediation create their own solutions and the mediator does not have any decision-making power over the outcome.

Conciliation

Conciliation is the least intrusive of third-party processes. A neutral person agreeable to all parties is selected to serve as conciliator. The conciliator serves as a go-between. Typically the conciliator meets separately with each party in attempts to persuade the parties to proceed with each other. Thus, the conciliator's primary role is to reestablish or improve communication between the parties.

When the parties are too angry to speak with each other, a conciliator may be all that is needed.

Arbitration

Arbitration is a process in which a third-party neutral, after reviewing evidence and listening to arguments from both sides, issues a decision to settle the case. Arbitration is often used in commercial and labor/management disputes.

Adjudication

Adjudication is the legal process by which an arbiter or judge reviews evidence and argumentation including legal reasoning set forth by opposing parties or litigants to come to a decision which determines rights and obligations between the parties involved.

Three types of disputes are resolved through adjudication:

1. Disputes between private parties, such as individuals or corporations.
2. Disputes between private parties and public officials.

3. Disputes between public officials or public bodies.

Alternative Dispute Resolution (ADR) in Pakistan

Various alternative dispute resolution (ADR) techniques are used in Pakistan. Some of the relevant laws/provisions dealing with ADR are as follows:

1. Section 89-A of the Civil Procedure Code, 1908 (as amended in 2002) read with Order X Rule 1-A (deals with alternative dispute resolution)
2. The small Claims and Minor Offences Courts Ordinance, 2002
3. Sections 102-106 of the Local Government Ordinance, 2001
4. Sections 10 and 12 of the Family Courts Act, 1964
5. The Arbitration Act, 1940
6. Article 156 of the Constitution of Pakistan, 1973 (National Economic Council)
7. Article 184 of the Constitution of Pakistan, 1973 (Original Jurisdiction when federal of provincial governments are at dispute with one another)

Conflict management can rightly be said an art. Conflicts are to be described through mental pictures or on paper with sociogram. This exercise clearly shows the parties to a conflict, their interests; and indicates possible ways to resolve the conflict. After describing the conflict, it is analyzed with the help of looking into interests of the parties involved in the conflict, either directly or indirectly. The strategies used to resolve the conflict may also be the combination of two or more methods. Conflicts can be handled skillfully by understanding the nature of the conflicts and applying the best strategies.