

Mediation and Spirituality  
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Cite as : (2011) PL September S – 10

## **Mediation and Spirituality**

Mediation as an effective Alternative Dispute Mechanism is gaining in popularity in Indian Judicial System. Advocate-Mediators and Judge-Mediators are increasingly coming forward and giving of their time to this cause. Mediators are increasingly viewing themselves as ‘Peacemakers’ and are experiencing the spiritual side of the process. Similarly, many litigants, after “laying down arms” marvel at their changed perspective to conflict.

In Mediation the conflicting parties have opportunities to access their higher intelligence/wisdom, and similarly the Mediator has marvelous insights and experiences with her own higher intelligence/wisdom.

Litigation with its win/lose approach destroys relationships between parties, causes financial and emotional trauma and often adversely affects their businesses’ and even their personal lives. On the contrary the win/win approach of mediation awakens the spirituality of conflicting parties, restores relationships between them while they retain control of the outcome of the process and experience minimal stress during the process.

The *raison d’être* of Mediation could be compared to that of the Indian greeting ‘Namaste’ in which the spirit in one honors the spirit in the other. The spirit is the sacred in every individual and the sacred is the same in all human beings. When human beings meet in a spiritual state, all differences dissolve and there is a true union. The Mediator strives to help parties to come to their spiritual space.

Jaluddin Rumi, a 13<sup>th</sup> century poet, mystic and philosopher said:

*Out beyond ideas of wrong-doing and right-doing,  
there is a field.  
I'll meet you there.  
When the soul lies down in that grass,  
the world is too full to talk about.  
Ideas, language, even the phrase  
each other  
doesn't make any sense.*

Parties caught in conflict have a choice to either stay in a mode of accusation and polarization, or to move into a spiritual space where pain, hurt and anger become senseless. The Mediator guides the parties into this space by helping them change their perspectives, leave behind the past and work as a team towards a common goal for resolution. It is a sacred moment or a moment of grace in mediation when parties loosen the tight knot in their perspectives and Mediators are privileged to be the catalysts in that shift.

In a case I recently mediated, Kavitha had repeatedly asked her two brothers for 1/3<sup>rd</sup> share of her late father's house but had failed to get any response. After the father's death, communication between the three of them had progressively deteriorated. She waited three years for her rightful share and then filed a suit for partition against her brothers. At Mediation, in the caucus, Kavitha explained that when her brothers had failed to give her share to the property, it signified a denial of all that she had done for them after their mother died when they were young children. As a young girl Kavitha had worked hard to bring up the younger brothers. She had delayed her marriage until her brothers were old enough to be on their own.

She had contributed towards the purchase of the house. The brothers gratefully acknowledged at caucus that Kavitha was like a mother to

them when they were young. But they explained that they had been living in that house for many years with their father and it was now difficult for them to shift. They did not have the financial resources to move out of this home and purchase new homes in the same neighborhood. One brother was running a music school in his home and the students come from the neighborhood. The price of property in the area had gone up and any alternate accommodation would have to be far away and he would lose his students. Recently the other brother had been diagnosed with failed kidneys and his hospital was nearby.

Since Mediation provides the opportunity for the Mediator to convey messages in the most positive light, after filtering out excessive emotions, the differing perspectives of Kavitha and her brothers were effectively communicated to each other. In this process Kavitha's need for acknowledgment was satisfied. With that, her perspectives changed. The interest and well being of her brothers once again became important to her. She agreed to take a smaller share at the partition. A bigger share of the sale proceeds of the house for the brothers made it possible for them to purchase homes in the same neighborhood. By using specialized communication techniques at Mediation it was possible to cut through the thicket of emotions of the parties and facilitate a conversation between them. Once communication was re established, the sacred in them met, conflict dissolved and solutions emerged. As the settlement was being drafted, the three siblings went out together for a cup of coffee after several years, signaling the end of their dispute.

### **How does mediation affect the shift to the spiritual?**

Mediation is built on the assumption that every human being has an inherent desire for peace. We all have the good and the bad in us, the kind, the compassionate, the magnanimous and also the angry, the

greedy, the stubborn, the envious. If we can access the good in a person, we can bring forth the desire for peace that exists within him. Mediation clears the way to the sacred and spiritual inner being in the parties.

### **Guiding principles in Mediation that create the opening to access the Spiritual**

- 1) Non-judgmental acceptance of every human being is a critical and practical tool in mediation. Most religions and spiritual practices advocate a non-judgmental approach. The *Vipassana* meditation is about observing oneself and others without judging. Jesus Christ in the Sermon on the Mount says “Do not Judge”.

A Mediator is aware that she will never know the whole truth and simply cannot understand many things in a conflict. She gives up the urge to judge as she is aware that her judgment has no validity. The Civil Procedure Code and the Evidence Act are not applicable in Mediation and so the Mediator does not have any machinery to establish the truth. A Mediator is therefore not occupied with forming opinions nor is burdened by having to give any decision. She believes in the dual nature of all human beings. The good and the bad, the kind and the wicked can co-exist in every human being. So why judge? Instead a Mediator only needs to understand what each party’s perception of reality is and the layers of experience that has possibly influenced that perception.

When parties feel they are not being judged, they feel secure and stop being defensive and argumentative and instead begin to open up and focus on what their underlying needs are. Once their underlying needs are identified and acknowledged, they begin to have the mental space to focus on the needs of the opponents. It is

then possible for the Mediator to guide the parties to a practical, workable and mutually acceptable solution.

- 2) A relationship of trust between the Mediator and each of the parties is fundamental to Mediation. Parties confide and cooperate with the Mediator to achieve a resolution of the dispute only when they feel that the Mediator is acting in their best interest.

The Mediator creates the trust by being focused on the parties, being centered and mindful of all that they are saying, attentive to their emotions, being compassionate and non-judgmental towards them, picking up on all their cues and responding appropriately. The parties feel that the Mediator has integrated into their experience, can feel like them, see like them and think like them. They lower their defenses and let the Mediator into their private space. They narrate their stories, vent their hurt and pain, explain their frustrations and self-righteousness. The Mediator journeys with them, helping them to identify and clarify issues, understand the reality of their case and even open their minds to the view points of their opponents.

- 3) Mediation unlocks a new consciousness in the understanding of the parties which invokes their reflective responses and intuitions. The Mediator shifts the context of the dispute by throwing light on what parties may not have seen or perceived. A glass seen as half empty may now be seen as half full. The Mediator encourages parties to move from their habitual ways of thinking into areas of unexplored thoughts, ideas and opportunities. This awakens the healing potential that exists within them and they are inspired to find several creative options to settle the dispute. Out of these several options, the Mediator helps the parties to find a set of terms

that is mutually acceptable to them. The settlement is always win-win and when both parties win, it is easier to forgive and reconcile.

In a case I mediated, five brothers got into bitter litigation over their father's will and the partition of the business he had left them. During the course of the litigation, two of them died (possibly due to the strain of litigation) and finally they came in for Mediation. At an impasse, everybody looked to me for direction. Nobody was willing to move from their respective fixed positions. What I would say or do next, would determine if the Mediation would move forward or not. We were at a crossroad and I had to do something. With a prayer, I got them to list down the names of all the members in their respective families including their departed mother and father adding up to thirty-eight members. Each of the three brothers were then asked to reflect upon the stress litigation had caused to their family members, the resultant ill-health, negative impact on their businesses, expenses involved, continuing strained relationships between each of them, loss of good times their families could have had with each other, the loss of honor to their departed parents etc. It was a powerful moment for the three of them to come to a realization of the adverse impact of their actions and the sad consequences on lives that were most precious to them. This helped to shift perspectives and the impasse broke. The dispute eventually settled.

- 4) Justice in mediation is participatory and through self-determination. A settlement at Mediation ensues only if the needs and interests of both sides are adequately met. The parties therefore remain alert and connected to each other to satisfy and accommodate each other and to weave an agreement that is mutually acceptable. When a settlement is thus reached, there is a

feeling of optimal well being and a positive motivation to comply with the terms. Mediated settlements very rarely reopen. The Mediator facilitates the process without being coercive and the parties retain autonomy as they have the freedom to terminate the process whenever they chose to do so.

- 5) The positive energy of the Mediator works for the process. It sustains the mediation and leads the parties to leave behind the past and look to the future with hope. Parties are often angry, frustrated and tired and it is the Mediator's enthusiasm, leadership, optimism and cheer that keep it going. The Mediators are the last to give up. They even consciously model the pattern of behavior which the parties are encouraged to show one another during the course of mediation.

**Mediation leads the Mediator to spirituality:**

Emotions are a big part of every conflict and a powerful tool to work with in Mediation. The Mediator allows the parties to vent their feelings, empathizes with their anger, pain and frustration and deals with the unproductive emotions. When the emotions are acknowledged and included in the process of Mediation, there is a better understanding of the conflict and that enhances the creativity of the parties and the Mediator.

In this process, the Mediator frequently has opportunities to hold a mirror to her emotions and sees reflections of her own emotional reactions and responses. She practices the art of being profoundly engaged and simultaneously detached. She learns to guard herself from any accusatory or emotional responses and reactions. She recognizes that only by knowing her own emotions and managing it, she develops a skill to deal

with the emotions of others. If she cannot manage the emotions in herself, she is reluctant to handle it in others and she tends to keep away from emotions and thus miss out on one of the most powerful tools to resolve the dispute.

The Mediator views conflict as an opportunity with many spiritual possibilities. Dalai Lama says of conflict, “Now, there are many, many people in the world, but relatively few with whom we interact, and even fewer who cause us problems. So, when you come across such a chance for practicing patience and tolerance, you should treat it with gratitude. It is rare. Just as having found a treasure in your own house, you should be happy and grateful to your enemy for providing that precious opportunity”

Mediators become instruments of peace and develop within them a peaceful attitude towards life. The Bible says “Blessed are the Peace Makers, they shall be called children of God.”

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