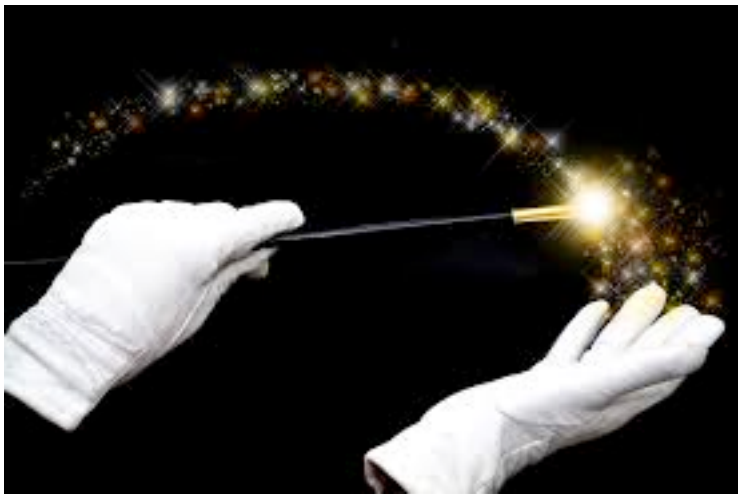
MEDIATION: A MAGICAL TOOL FOR DISPUTE RESOLUTION



by

Zafar Iqbal Kalanauri[i]
Mediator, Advocate Supreme Court of Pakistan

When we begin our mediation training and practice, we often hear (and speak) of the magic of mediation. When it works, it truly is wondrous. It's easy to see why a mediator feels like a wizard with supernatural powers, enabling lambs to lie down with lions. Based on my experience in the realms of magic and mediation, here is my hope.

Once upon a time, if you could take a cup of water, put it in a box, push a button, and make that water boil — without raising the temperature inside the box — you'd have a miracle on your hands. Ditto for talking to someone, or even seeing them in real time, on the other side of the planet — or even in outer space! How magical is that! And yet, thanks to technology, even the youngest child is jaded by these daily experiences.

My fondest wish is that our social evolution keeps pace with our technological progress, so that the peaceful resolution of disputes will similarly become as commonplace as microwaves and mobile devices. Then it will no longer seem that mystical forces -or card tricks, or magic pennies — are needed to bring together the bitterest of enemies for a common purpose.

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CONCEPT AND PROCESS

The use of mediation as an example of modernization in the Pakistani' legal system is ironic in two respects. First, the words "mediation" and "modernization" hardly seem to belong in the same sentence; mediation is one of the oldest forms of peaceful dispute resolution. Second, Pakistan has been a latecomer to recognize the benefits of mediation; other cultures have used mediation to resolve disputes for centuries.

Having finally realized the benefits of mediation as a dispute resolution mechanism, Pakistan has made mediation a critical part of its efforts to solve its serious court congestion and backlog. In most jurisdictions in Pakistan, mediation is offered as one of several alternatives to the traditional legal process. Indeed, in many jurisdictions, mediation has become the most popular method of alternative dispute resolution.
Mediation is a procedure designed to resolve disputes through agreement, i.e., through the mutual consent of the parties. Although the procedure is frequently confused with arbitration, it is fundamentally different. In arbitration, the neutral reaches a decision based upon evidence presented by the parties; in mediation, the neutral facilitates discussion between the parties with the objective of reaching an agreement between the parties. Mediation relies upon the consent of the parties; arbitration does not.

A successful mediation is thus dependent upon two inter-related factors: The willingness of the parties to resolve their dispute; and the skill of the mediator in guiding the parties to the point where agreement is possible. Being involved in ADR since its inception for the last two decades in Pakistan—and a frequent participant in almost all programs—I can say that there exists a point in every dispute where the parties can reach agreement; it is the duty of the mediator to help the parties find that point. The existence of parties acting in good faith to resolve their differences, however, will significantly assist even the best mediators in achieving their objectives. The combination of a talented mediator and motivated parties will generally result in resolution of even the most difficult disputes.

BENEFITS OF MEDIATION

The benefits of mediation are so obvious; it is surprising that it took a clogged judicial system for Pakistan to embrace the concept only when the courts began to be overburdened with cases.
Mediation as an alternative dispute resolution mechanism is:

1.Fast

As the amount of time necessary for the parties and the mediator to prepare for the mediation is significantly less than that needed for trial or arbitration, mediation can occur relatively early in the dispute. Moreover, once mediation begins, the mediator can concentrate on those issues he or she perceives as important to bring the parties to agreement; time consuming evidence-taking can be avoided, thereby making the best use of the parties' time and resources. Even if the entire evidence

gathering has already occurred, it almost invariably takes less time to mediate a dispute than to try it in a court.

2.Flexible

There exists no set formula for mediation. Different mediators employ different styles. Procedures can be modified to meet the needs of a particular case. Mediation can occur late in the process—even during trial—or before any formal legal proceeding begins. The mediation process can be limited to certain issues, or expanded as the mediator or the parties begin to recognize during the course of the mediation problems they had not anticipated.

3.Cost Efficient

Because mediation generally requires less preparation, is less formal than trial or arbitration, and can occur at an early stage of the dispute, it is almost always less expensive than other forms of dispute resolution. If the mediation does not appear to be headed in a successful direction, it can be terminated to avoid unnecessary costs; the parties maintain control over the proceedings.

4.Brings parties together

In India, parties often form opinions about their dispute that over time become intractable. The other side becomes the "enemy"; winning becomes a matter of principle. The only side a party can see—even if counseled otherwise by their attorney— is their own. Sitting down in a neutral setting with the opposing side can bring a better understanding of the problems with one's own case, particularly if guided by a skilled mediator. Listening to the opponent's case—and having it evaluated by a neutral—can give pause to even the most ardent believers in their own cause.

5.Convenient

The parties can control the time, location, and duration of the proceedings to a significant extent. Scheduling is not subject to the convenience of overworked and sometimes bureaucratic courts.

6. Creative

Resolutions that are not possible through arbitration or judicial determination may be achieved. For example, two parties locked in a dispute that will be resolved by an arbitrator or a judge may be limited to recovery of money or narrow injunctive relief. A good mediator makes the parties recognize solutions that would not be apparent—and not available—during the traditional dispute resolution process. Two companies may find it more advantageous to work out a continuing business relationship rather than force one firm simply to pay another money damages. The limit on creative solutions is set only by the variety of disputes a mediator may encounter.

7.Confidential

What is said during a mediation can be kept confidential. Parties wishing to avoid the glare of publicity can use mediation to keep their disputes low-key and private. Statements can be made to the mediator that cannot be used for any purpose other than to assist the mediator in working out a resolution to the dispute. Confidentiality encourages candor, and candor is more likely to result in resolution.

WHAT IF THE MEDIATION FAILS?

1.11 In the event of failure to settle the dispute, the report of the mediator does not mention the reason for the failure.

1.12 The mediator cannot be called upon to testify in any proceeding or to disclose to the

court as to what transpired during the mediation.

1.13 Parties to the mediation proceedings are free to agree for an amicable settlement, even ignoring their legal entitlement or liabilities.

1.14 Mediation in particular case, need not be confined to the dispute referred, but can go beyond and proceed to resolve all other connected or related disputes also.

TYPES OF MEDIATION

1. COURT-REFERRED MEDIATION– it applies to cases pending in Court and which the Court would refer to mediation under Sec 89 of the Code of Civil Procedure,1908 or any other law which authorises the court to refer the case for mediation.
2. PRIVATE MEDIATION- In private mediation qualified mediators offer their services on a private, fee-for-service basis to the Court, to members of the public, to members of the commercial sector and also to the governmental sector to resolve disputes through mediation. Private mediation is used in connection with disputes pending in court and pre-litigation disputes.

ADVANTAGES OF MEDIATION

1. The parties have CONTROL over the mediation in terms of 1) its scope (i.e. the terms of reference or issues can be limited or expanded during the course of the proceedings) and 2) its outcome (i.e. the right to decide whether to settle or not and the terms of settlement)

1.1 Mediation is PARTICIPANTE, Parties get an opportunity to present their case in their own words and to directly participate in the negotiation.

1.2 The process is VOLUNTARY and any party can opt out of it at any stage if he feels that it is not helping him. The self-determining nature of mediation ensures compliance with the settlement reached.

1.3 The procedure is SPEEDY, EFFICIENT and ECONOMICAL.

1.4 The procedure is SIMPLE and FLEXABLE. It can be modified to suit the demands of each case. Flexible scheduling allows parties to carry on with their day-to-day activities.

1.5 The process is conducted in an INFORMAL, CORDIAL and CONDUCIVE environment.

1.6 Mediation is a FAIR PROCESS. The mediator is impartial, neutral and independent.The mediator ensures that pre-existing unequal relationships, if any, between the parties, do not affect the negotiation.

1.7 The process is CONFIDENTIAL.

1.8 The process facilitates better and effective COMMUNICATION between the parties which is crucial for a creative and meaningful negotiation.

1.9 Mediation helps to maintain/ improve/restore relationships between the parties.

1.10 Mediation always takes into account the LONG TERM AND UNDERLYING INTERESTS OF THE PARTIES at each stage of the dispute resolution process- in examining alternatives, in generating and evaluating options and finally, in settling the dispute with focus on the present and the future and not on the past. This provides an opportunity to the parties to comprehensively resolve all their differences.

1.11 In mediation the focus is on resolving the dispute in a MUTUALLY BENEFICAL SETTLEMENT.

1.12 A mediation settlement often leads to the SETTLING OF RELATED/CONNECTED CASES between the parties.

1.13 Mediation allows CREATIVITY in dispute resolution. Parties can accept creative and non conventional remedies which satisfy their underlying and long term interests.

1.14 When the parties themselves sign the terms of settlement, satisfying their underlying needs and interests, there will be compliance.

1.15 Mediation PROMOTES FINALITY. The disputes are put to rest fully and finally, as there is no scope for any appeal or revision and further litigation.

1.16 REFUND OF COURT FEES is permitted as per rules in the case of settlement in a court referred mediation.

DIFFRENCE BETWEEN JUDICAL PROCESS, ARBITRATION & MEDIATION

	JUDICIAL PROCESS	ARBITRATION	MEDIATION
1	Judicial process is an adjudicatory process where a third p arty (Judge/other authority) decides the outcome	Arbitration is a quasi - judicial adjudicatory process where the arbitrator(s) appointed by the Court or by the parties decide the dispute between the parties.	Mediation is a negotiation process andnot an adjudicatory process. The mediators facilitates the process. Parties participate directly in the resolution of their dispute and decide the terms of settlement.
2	Procedure and decision are governed, restricted, and controlled by the provisions of the relevant statures.	Procedure and decision are governed, restricted and controlled by the provisions of the Arbitration 1940.	Procedure and settlement are not controlled , governed or restricted by statutory provisions thereby allowing freedom and flexibility.
3	The decision is binding on the parties	The award in an arbitration is binding on the parties.	A binding settlement is reached only if parties arrive at a mutually acceptable agreement
4	Adversarial in nature, as focus is on past events and determination of rights and liabilities of parties	Adversarial in nature as focus is on determination of rights and liabilities of parties	Collaborative in nature as focus is on the present and the future and resolution of disputes is by mut ua l agreement of parties irrespective of rights and
5	Personal appearance or active participation of parties is not always required	Personal appearance or active participation of parties is not always required	Personal appearance and active participation of the parties are required.
6	A formal proceeding held in public and follows strict procedural stages	A formal proceeding held in private following strict procedural stages	A non -judicial and informal proceeding held in private with flexible procedural stages
7	Decision is appealable	Award is subject to challenge on specified grounds	Decree in terms of the settlement is passed and is not appealable.
8	No opportunity for parties to communicate directly with each other	No opportunity for parties to communicate directly with each other	Optimal opportunity for parties to communicate directly with each other in the presence of the mediator

9	Involves payment of court fee	Does not involve payment of court fees	In case of settlement, in a court annexed mediation the court fee already paid is refunded able as per the Rules.

QUALITIES OF A GOOD MEDIATOR

Because mediation differs from arbitration, a good arbitrator will not always make a good mediator. Obviously the two forms of dispute resolution have some overlap, and there certainly exist individuals who are both excellent arbitrators and mediators. However, the ability to render a decision is not the same skill as that required bringing parties together to reach agreement. The following are some of the qualifications that make a good mediator:

1.Trust:
This is the most important characteristic. If the parties do not respect the mediator, the chances of success are small. Mediation often involves private discussions between a party and the mediator. If the party does not trust the mediator to keep confidences disclosed at such a session, there will exist little chance of success. Similarly, if the parties cannot trust the mediator to evaluate their positions impartially, the mediation is doomed.

2.Patience:
Parties frequently come to the mediation with set positions that take a long time to modify. A mediator must have the patience to work with the parties to bring them to the point where agreement is possible.

3.Knowledge.
The chances of success are greater if the mediator has some knowledge or expertise in the area of dispute. Because mediation does not result in a decision by the neutral, knowledge of the subject matter is not as crucial in mediation as it is in arbitration. However, the parties in a complicated dispute over software, for example, will have more confidence in a mediator who knows something about software technology than they would in a mediator who knew nothing about the subject. Furthermore, such expertise will enable the mediator to better assist the parties in identifying non-traditional solutions to their dispute.

4.Intelligence.
A mediator must be resourceful and attentive to understand not only the nature of the dispute, but also the motivations of the parties. Through an understanding of what is important to each of the parties, the mediator can bring them into agreement much more quickly. The requirements are thus not only an ability to understand the subject matter, but an ability to understand people and their motivations as well.

5.Impartiality.
This characteristic is closely related to trust. A mediator must be impartial. Some mediators will express their opinions about the position of a party, or will use their powers of persuasion in order to bring the parties to agreement. Other mediators will not analyze or evaluate the merits of a dispute, but will cause the parties to realize on their own where the settlement potential lies. In either case, the parties must be satisfied that the mediator is neutral. In the former situation, if the

mediator is not viewed as neutral, any opinions will carry no weight; in the latter situation, the parties will refuse to follow a biased leader.

6.Good communication skills.
An arbitrator needs only to listen to the evidence and render a decision based upon knowledge of the law and good judgment. Although these talents are extremely valuable ones, an arbitrator need not have the ability to communicate with the parties. A mediator needs good judgment and good communication skills; it is the mediator's job to evaluate and understand the motivations of the parties, foresee potential solutions, and then bring the parties to an agreement. Without good communication skills, this task is impossible.

STAGES OF MEDIATION

The functional stages of the mediation process are:

1) Introduction and Opening Statement
2) Joint Session
3) Separate Session(s)
4) Closing

At the commencement of the mediation process, the mediator shall ensure that the parties and their counsel are present

STAGE 1: INTRODUCTION AND OPENING STATEMENT

- Objectives
- Establish neutrality
- Create an awareness and understanding of the process
- Develop rapport with the parties
- Gain confidence and trust of the parties
- Establish an environment that is conducive to constructive negotiations
- Motivate the parties for an amicable settlement of the dispute
- Establish control over the process

Seating Arrangement in the Mediation Room

There is no specific or prescribed seating arrangement. However, it is important that the seating arrangement takes care of the following:

- The mediator can have eye-contact with all the parties and he can facilitate effective communication between the parties.
- Each of the parties and his counsel are seated together.
- All persons present feel at ease, safe and comfortable.

Introduction

- To begin with, the mediator introduces himself by giving information such as his name, areas of specialization if any, and number of years of professional experience.

- Then he furnishes information about his appointment as mediator, the assignment of the case to him for mediation and his experience if any in successfully mediating similar cases in the past.
- Then the mediator declares that he has no connection with either of the parties and he has no interest in the dispute
- He also expresses hope that the dispute would be amicably resolved. This will create confidence in the parties about the mediator's competence and impartiality.
- Thereafter, the mediator requests each party to introduce himself. He may elicit more information about the parties' and may freely interact with them to put them at ease.
- The mediator will then request the counsel to introduce themselves.
- The mediator will them confirm that the necessary parties are present with authority to negotiate and make settlement decisions.
- The mediator will discuss with the parties and their counsel any time constraints or scheduling issues.
- If any junior counsel is present, the mediator will elicit information about the senior advocate he is working for and ensure that he is authorized to represent the client.

The Mediator's Opening Statement

The opening statement is an important phase of the mediation process. The mediator explains in a language and manner understood by the parties and their counsel, the following:

- Concept and process of mediation.
- Stages of mediation.
- Role of the mediator.
- Role of advocates.
- Role of parties.
- Advantages of mediation
- Ground rules of mediation

The mediator shall highlight the following important aspects of mediation:

- Voluntary
- Self-determinative
- Non-adjudicatory
- Confidential
- Good-faith participation
- Time-bound
- Informal and flexible
- Direct and active participation of parties
- Party- centred
- Neutrality and impartiality of mediator
- Finality

- Possibility of settling related disputes
- Need and relevance of separate sessions

The mediator shall explain the following ground rules of mediation:

- Ordinarily, the parties/counsel will address only the mediator
- While one person is speaking, others will refrain from interrupting
- Language used will always be polite and respectful
- Mutual respect for the process will be maintained
- Mobile phones will be switched off
- Adequate opportunity will be given to all parties to present their views
- Finally, the mediator shall confirm that the parties have understood the mediation process and the ground rules and shall given them an opportunity to get their doubts if any, clarified.

STAGE 2: JOINT SESSION

Objectives

- Gather information
- Provide opportunity to the parties to hear the perspectives of the other parties
- Understand perspectives, relationships and feelings
- Understand facts and the issues
- Understand obstacles and possibilities
- Ensure that each participant feels heard

Procedure

- The Mediator should invite parties to narrate their case, explain perspectives, vent emotions and express feelings without interruption or challenge. First, the plaintiff/petitioner should be permitted to explain or state his/her case/claim in his/her own words. Second, counsel would thereafter present the case and state the legal issues involved in the case. Third, defendant/respondent would thereafter explain his/her case/claim in his/her own words. Fourth, counsel for defendant/respondent would present the case and state the legal issues involved in the case.
- The mediator should encourage and promote communication, and effectively mange interruptions and outbursts by parties.
- The mediator may ask questions to elicit additional information when he finds that facts of the case and perspectives have not been clearly identified and understood by all present.
- The mediator would then summarize the facts, as understood by him, to each of the parties to demonstrate that the mediator has understood the case of both parties by having actively listened to them.
- Parties may respond to points/positions conveyed by other parties and may, with permission, ask brief questions to the other parties.
- The mediator shall identify the areas of agreement and disagreement between the parties and the issues to be resolved.
- The mediator should be in control of the proceedings and must ensure that parties do not

'take over' the session by aggressive behaviour, interruptions or any other similar conduct.

- Upon completion of the joint session, the mediator may suggest that he meets each party with his counsel separately, usually with the plaintiff/ petitioner going first. The timing of holding a separate session may be determined by the mediator's judgment concerning the productivity of the on-going joint session, silence by the parties, loss of control, on request by the parties or if the parties are getting repetitive.

STAGEJ: SEPARATE SESSION

Objectives

- Understand the dispute at a deeper level
- Provide a forum for parties to further vent their emotions
- Provide a forum for parties to disclose confidential information which they do not wish to share with other parties
- Understand the underlying interests of the parties
- Help parties to realistically understand the case
- Shift parties to a solution-finding mood
- Encourage parties to find terms that are mutually acceptable.

Procedure

Re-affirming Confidentiality

During the separate session each of the parties and his counsel would talk to the mediator in confidence. The mediator should begin by re-affirming the confidential nature of the process.

Gathering further information

The separate session provides an opportunity for the mediator to gather more specific information and to follow-up the issues which were raised by the parties during the joint session. In this stage of the process: -

- Parties vent personal feeling of pain, hurt, anger etc.,
- The mediator identifies emotional factors and acknowledges them;
- The mediator explores sensitive and embarrassing issues;
- The mediator distinguishes between positions taken by parties and the interest they seek to protect;
- The mediator identifies why these positions are being taken (need, concern, what the parties hope to achieve);
- The mediator identifies areas of dispute between parties and what they have previously agreed upon;
- Common interests are identified;
- The mediator identifies each party's differential priorities on the different aspects of the dispute (priorities and goals) and the possibility of any trade off is ascertained.
- The mediator formulates issues for resolution.

Reality-Testing

After gathering information and allowing the parties to vent their emotions, the mediator makes a judgment whether it is necessary to challenge or test the conclusions and perceptions of the parties and to open their minds to different perspectives. The mediator can then, in order to move the process forward, engage in REALITY-TESTING. Reality- testing may involve

any or all of the following:

(a) A detailed examination of specific elements of a claim, defense, or a perspective;
(b) An identification of the factual and legal basis for a claim, defense, or perspective or issues of proof thereof;
(c) Consideration of the positions, expectations and assessments of the parties in the context of the possible outcome of litigation;
(d) Examination of the monetary and non-monetary costs of litigation and continued conflict;
(e) Assessment of witness appearance and credibility of parties;
(f) Inquiry into the chances of winning/losing at trial; and
(g) Consequences of failure to reach an agreement.

Reality-Testing is often done by;

1. Asking effective questions,
2. Discussing the strengths and weaknesses of their respective e cases of the parties, and/or
3. By considering the consequences of the failure to reach an agreement

(BATNA/WATNA/MLATNA analysis).

(A) ASKING EFFECTIVE QUESTIONS

Mediator may ask parties questions that can clarify facts and alter perceptions with regard to unrealistic expectations and flawed assessments of the case.

Examples of effective questions

- OPEN-ENDED QUESTIONS like 'Tel me more about the circumstances leading up to the signing of the contract'. 'Help me understand your relationship with the other party at the time you entered the business.' 'What were your reasons for including that term in the contract?'
- CLOSED QUESTIONS, which are specific, concrete and which bring out specific information. For example, 'it is my understanding that the other driver was going at 60 kilometres per hour at the time of the accident, is that right?' 'on which date the contract was signed? "Who are the contractors who built this building?'
- QUESTIONS THAT BRING OUT FACTS: 'Tel me about the background of this matter'. 'What happened next?'
- QUESTIONS THAT BRING OUT POSITIONS : 'What are your legal claims?'
- 'What are the damages? "What are their defenses?'
- QUESTIONS THAT BRING OUT INTERESTS: 'What are your concerns under the circumstances?' 'What really matters to you?' 'From a business/personal/family perspective, what is most important to you?' 'Why do you want divorce?' 'What is this case really about?' 'What do you hope to accomplish?' 'What is really driving this case?'

(B) HELPING PARTIES UNDERSTAND THE STRENGTHS AND WEAKNESSES OF THEIR CASES

The mediator may ask the parties or counsel for their ideas about the strengths and weaknesses of their case and the other side's case. The mediator may ask questions such as, 'How do you think your conduct will be viewed by a Judge?' or 'Is it possible that a judge may see the situation differently?' or 'I understand the strengths of your case, what do you think are the weak points in terms of evidence?' or 'How much time will this case take to get a final decision in court?' Or 'How much money will it take in legal fees and expenses in court?'

(C) BATNA/WATNA/MLATNAANALYSIS

BATNA	-	Best Alternative to Negotiated Agreement WATNA
	-	Worst Alternative to Negotiated Agreement
MLATNA	-	Most Likely Alternative to Negotiated Agreement

This is a negotiation technique. In the context of mediation, "alternatives" are the best, worst and most likely outcomes if a dispute is not resolved through negotiation in mediation. As part of reality-testing, it may be helpful to the parties to examine their alternatives outside of mediation (specifically litigation) so as to compare them to options available at mediation. It is also helpful for the mediator to discuss the consequences of failing to reach an agreement e.g., the effect on the relationship of the parties, the effect on the business of the parties etc.

While the parties often wish to focus on best out comes at litigation, it is important to consider and discuss the worst and the most probable outcomes also. The mediator solicits the viewpoints of the advocate/party about the possible outcomes at litigation. It is productive for the mediator to work with the parties and their advocates to come to a proper understanding of the best, worst and most probable outcomes to the dispute at litigation as that would help the parties to recognize reality and thereby formulate realistic and workable proposals.

It is helpful for the mediator to work through theses possible alternative outcomes by discussing them with the parties/Advocates during the separate session.

If the parties are reaching an interest-bases resolution with relative ease, a BATNA /WATNA/ MLATNA analysis need not be resorted to. However, if parties are in difficulties at negotiation and the mediator anticipates hard bargaining or adamant stands, BATANA/ WATNA/ MLATNA analysis may be introduced.

(iv) Creating options for Settlement

By using the above techniques, the mediator assists the parties to understand the reality of their case, give up their rigid positions, identify their genuine interests and needs, and shift their focus to problem-solving. The parties are then encouraged to invent several creative options for settlement. A mediator may use the two- steps BRAINSTORMING PROCESS: (1) invent options (prepare a written list of all ideas from the parties, including ideas that may not be workable, affordable, or realistic) and (2) evaluate options (systematically work through the written list of ideas, giving attention to the reasons why an idea is not feasible or agreeable). A mediator will also encourage the parties to use LATERAL THINKING, which is creative, intuitive, non-traditional, non-linear thinking in addition to logical thinking (analytical, linear, rational).

(v) Negotiation

The mediator carries the options generated by the parties from one side to the other. The parties negotiate through the mediator until a mutually acceptable settlement is found. However, if negotiations fail and settlement cannot be found the case is sent back to the referral Court.

(vi) Some Additional Points to keep in mind

I. Sub-Sessions

The separate session is normally held with all the members of one side to the dispute, including their advocates and other members who come with the party. However, it is also possible for the mediator to meet separately with sub-groups – such as only advocates or parties, an advocate or a party individually, or various groupings of parties/advocates in a multi-party dispute.

- Mediator may hold a sub-session with ONLY THE ADVOCATES, with the parties' consent, in order to discuss the legal issues. During a sub-session, the advocates may be more open and forthcoming regarding their positions and settlement goals.
- Similarly if there is a divergence of interest among the parties on the same side, it is

permissible and, at times, advantageous for the mediator to meet with SUB- GROUPS OF PARTIES with common interest to facilitate negotiations. This type of sub-session may facilitate the identification of interests and also prevent the dynamics of the whole group, independent of consistent or conflicting interests, joining together to resist the claims.

- There can be several separate sessions. The mediator could revert back into a joint session at any state of the process if he feels the need to do so.

STAGE 4: CLOSING

Once the parties have agreed upon the terms of settlement, the parties reassemble and the following steps are followed:

1. Mediator orally confirms the terms of settlement;
2. Parties reduce to writing the terms of settlement with the assistance of the mediator. The agreement should be signed by all partiers to the litigation and their respective counsel. Thereafter, a copy of the agreement would be furnished to the parties while the original would be sent to the referral Court for drawing up a decree in accordance with the agreement.
3. Mediator's Closing Comment- The mediator should briefly thank the parties for their participation and work during the mediation and, where appropriate, congratulate all parties on reaching a settlement.

THE WRITTEN AGREMENT SHOULD:

./ Clearly specify all material terms agreed to;

./ Be drafted in plain, precise and unambiguous language;

./ Be concise

./ Use active voice, generally (passive voice does not clearly identify who has an obligation to perform a task pursuant to the agreement)

./ Ensure that neither of the parties feels that he or she has 'lost';

./ Be sufficiently clear and definite in its terms to ensure that the terms of the agreement are executable in accordance with law;

./ Include defrnite dates for performed by the parties; and

./ Be complete in its recitation of the terms.

./ The mediator SHOULD NOT sign the settlement/agreement as as an adjudicator but only as a witness.

If a settlement between the parties could not be reached, the case would be returned to the referral Court simply reporting non-agreement/failure to settle. The report will not assign any reason for such failure or fix responsibility on any one for the failure. The statements made during the mediation will remain confidential and should not be conveyed by any party, advocate, or mediator to the Court without the prior written consent of all parties.

Whether a settlement is reached or not, the mediator should, in a closing statement, thank the parties and their counsel for their participation and efforts for the settlement.

CONCLUSION

Mediation is a valuable dispute resolution tool which is most popular mode of Alternate Dispute Resolution Mechanism in most jurisdictions around the World because the means of reaching an agreement can be as varied as the disputes that need to be resolved. Mediation procedures can be tailored to a variety of factors: the personality of the mediator; the nature of the dispute; the time or resources available; and the antagonism between the parties. The procedure can thus minimize contentiousness, cost, and resources. If it is unsuccessful, the parties can always resort to the courts or other means of dispute resolution. In short, mediation is a valuable weapon against delay, cost, and injustice, which is now available in Pakistan through different models at different levels and the present Chief Justice of Lahore High Court Mr. Justice Syed Mansoor Ali Shah is a champion of this cause and introduction of ADR in our legal system to reduce the backlog and provide expeditious justice and inexpensive justice to the litigants of our homeland who are suffering the pangs of the system is on top of his lordship's agenda.

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[i] Zafar Iqbal Kalanauri, Arbitrator, Mediator, Master Trainer & Advocate Supreme Court of Pakistan, Adjunct Faculty of Law at SAHSOL, Lahore University of Management Sciences (LUMS), SAF Center, #3 3rd Floor, 8-Fane Road Lahore 54000, Pakistan.
Cell: (92) 300- 4511823 & 314-4224411 E-mail: kalanauri@gmail.com ; Web: http://www.zklawassociates.com