

Understanding Conflict

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Base and Grounding of Conflict

- The source of every conflict is some defect in the understanding, some error in reasoning or some sudden force of passion.
- While the mediation process aims to transform conflict, it is crucial for the mediator and each disputant to understand the source of conflict for them to correct that defect, error or force.

Process of development of conflict

Dissatisfaction: about not being able to achieve a target or a goal.

- Analysis: the party does an analysis for such failure.

Process of development of conflict

Analysis in order to:

- Understand the nature of the problem;
- Decide how he wants it resolved;
- Formulate various means and strategies he could use for getting the desired resolution.

Process of development of conflict

Behavioural Pattern

- The party modifies his behaviour pattern to be in tune with his analysis.
- An erroneous analysis leads to wrongful behaviour and non-resolution of the problem.

Process of development of conflict

Conflict cycle: The party remains dissatisfied by non-resolution of the problem thereby starting the cycle of conflict

- Leading to deeper dissatisfaction,
- Even more erroneous analysis, and
- Further wrongful behaviour.

Models to Understand Conflict

Commonly used models to understand conflict:

- The Ranking Model
- The List Model

Ranking Model

Mediator requires each disputant to consider and 'rank' in importance the interests that are of most concern to that disputant. These interests could include:

* Prepared from various sources and experience as practicing mediator.

- The target or goal that disputant had wanted to achieve.
- A fair deal or the best deal.
- The need to be vindicated or to 'get even'.
- Personal grievance or need for apology.
- The need to dispose of this dispute and move on ('get a life').
- The time that the dispute is likely to take if not settled.
- The risks (prospects of success or failure at trial, consequences).
- The money or costs incurred.
- Salvaging a working relationship.
- Other projects that may suffer.

Each disputant is to then

- Repeat the exercise, but this time use his best 'guestimate' to answer as if he were the other disputant;
- Compare the rankings. Are there any similarities? What are the differences ?
- Discuss the rankings, in confidence, with the Mediator.

Each disputant is to provide his respective rankings to the Mediator who is to keep the same confidential.

The Mediator to then

- Consider how the disputants have ranked the interests that are important to them;
- Are there any points of agreement between the lists;
- Where are the points of principal disagreement;
- Consider over which points a disputant might be prepared to accept compromise in return for movement on interests that are more important.

The Mediator may use the rankings of both disputants as a framework for the negotiation and/or to overcome impasse.

List Model

Each disputant is guided through BATNA/ WATNA analysis, and is required to

- Write a list of the issues that are most important to his case.
- Write a list of the strongest points to his case.
- Write a list of his weakest points.
- Write a list of the evidence he has to support each issue. The likely evidence of witnesses to be included.
- Identify and write down any issues that are not supported by evidence.
- Write a list of his legal arguments to the best of his understanding and ability.

Each disputant is to then

- Repeat the exercise, but this time use his best 'guestimate' to answer as if he were the other disputant;

- Compare the lists. Are there any similarities? What are the differences ?
- Discuss the lists, in confidence, with the Mediator.
- The Mediator must not disclose the lists of one disputant with the other.
- The Mediator can use the lists as a framework for the negotiation and/or to overcome impasse.

Stage of Use

Either model can be used at

- Interest understanding stage.
- Pre-mediation stage, should the mediator have called for a pre-mediation summary from the disputants.

Legal Framework

Civil Procedure Mediation Rules formulated by *Supreme Court in Salem Advocate Bar Association v Union of India* : (2005) 6 SCC 344.

Rule 11: Procedure of Mediation

(iv) Each party shall, ten days before a session, provide to the mediator a brief memorandum setting forth the issues, which according to it, need to be resolved, and its position in respect to those issues and all information reasonably required for the mediator to understand the issue; such memoranda shall also be mutually exchanged between the parties.

(v) Each party shall furnish to the mediator, copies of the pleadings or documents or such other information as may be required by him in connection with the issues to be resolved...

(vi) Each party shall furnish to the mediator such information as may be required by him in connection with the issues to be resolved.

Arbitration and Conciliation Act 1996

Section 65: Submission of statements to conciliator.

(1) The conciliator, upon his appointment, may request each party to submit to him a brief written statement of his position and the facts and grounds in support thereof, supplement by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.

(2) The Conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.

(3) At any stage of the conciliation proceedings, the conciliator may request a party to submit to him such additional information as he deems appropriate.