

Neutrality and Power in Mediating Domestic Violence Disputes in the Community Mediation Programme in Sri Lanka: Issues of Women's Equality

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Introduction

Community mediation boards in Sri Lanka are mandated by law¹ to look into disputes where domestic violence is a factor. It is a popular and widely accessed system of alternative dispute resolution and mediation boards get actively involved in the settlement process.

In the discourse on mediating domestic violence disputes, different schools of thought have expressed different views ranging from viewing the process as beneficial or as extensively detrimental. There are arguments in favour of mediating domestic violence disputes on the basis that *the mediation process is more empowering and more effective for victims than engaging in court proceedings* while opponents of mediating domestic violence issues *have long argued that mediation is inherently unfair and potentially unsafe* for victims. There is still a third school of thought that argues that *the mediation process may be helpful but that a case-by-case determination of appropriateness must be made* and highlights the possibilities (ways and methods) of mediating domestic violence disputes keeping the interests of parties safe. These include discussion on the implications of power, impartiality, and neutrality on mediating domestic violence disputes.

Methodology

This paper is based on one component of research into the mediation of domestic violence disputes from a women's equality perspective. This component seeks to understand the notions of neutrality and impartiality in mediation which impact heavily on the mediation of domestic violence disputes.

The research is based on the theoretical and conceptual framework combining theories of women's equality espoused in feminist legal theory with theories of interest based mediation. Feminist legal theory concludes that the sphere of law (including legal processes and dispute resolution processes) is male centric and contributes to the denial of women's equality and equity, while literature on mediating domestic violence disputes is divided on the issue of women's equality.

¹ Second Schedule to the Mediation Boards Act No. 72 of 1988

The research paradigm followed is interpretivist and thus qualitative research methods are used to understand the process of mediating domestic violence disputes from the point of view of those who are directly involved in the process. The qualitative data was gathered from observations of domestic violence mediation sessions, in depth interviews with disputants, mediators, trainers of mediators and legal service providers to women victims of domestic violence. The research was conducted over a period of three years with field data being gathered within a period of two years.

Neutrality is a central component of interest based mediation where a third party facilitating the possible settlement of a dispute needs to be a neutral and impartial guide allowing disputing parties to come to their own settlement. In Sri Lanka the community mediation boards follow the principles of interest based mediation and mediators “endeavour to bring the disputants to an amicable settlement”². Moore (2003)³ states that “*for a mediator to be effective, he or she needs to be able to analyze and assess critical situations and design effective interventions to address the causes of the conflict*”. However, Moore himself further states that, “*conflicts do not come in neat packages with their causes and component parts labeled so that the intervenor will know how to creatively respond to them. Causes are often obscured and clouded by the dynamics of the parties, interactions.*” (Moore 2003 p. 61).

Findings

The fact that disputes, and their causes and manifestations, are not clearly defined, impacts directly on the notion of neutrality in mediating disputes. This is particularly so in mediating domestic violence disputes as causes and manifestations of domestic violence can be complex and hidden. In this background, mediators in Sri Lanka’s community mediation boards grapple with the issue of neutrality when it comes to what are known as ‘value conflicts’ and domestic violence disputes are essentially value based conflicts.

In mediation, neutrality or impartiality is often construed to mean the same thing. The objective adherence to the notion of neutrality can adversely affect power between two disputing parties which are not placed in an equal position. However mediators in Sri Lanka see ‘neutrality’ different to ‘impartiality’ where partiality in domestic violence disputes is interpreted as positive bias towards the less powerful disputant in specific given moments during the mediation process. This bias is seen to be beneficial to the less powerful and not

² Section 10 Mediation Boards Act no 72 of 1988

³ Moore, C.W. (2003). *The Mediation Process Practical Strategies for Resolving Conflict*. Jossey-Bass. USA.

detrimental to the more powerful, thereby helping maintain 'neutrality' at all times by creating a level playing field for both disputants.

The ability to be partial (to balance power), yet neutral in (facilitating settlements) is articulated confidently by mediators. All mediators are confident of being able to balance power effectively in the mediation of domestic violence disputes. This often leads to settlements of domestic violence disputes. However mediators are affected by the hidden force of gender socialization, cultural interpretations of women's position and a benevolent protective attitude that impact negatively on women's equality.

Conclusion

The research concludes that the practical and conceptual interpretation of neutrality, impartiality and balancing of power in mediation among community mediators in Sri Lanka does not lead to women's equality and women's empowerment in the process of mediating disputes where domestic violence is a factor.

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