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Cultural Sensitivity in Pakistani Mediation: Challenges and Opportunities

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Abstract

In Pakistan, due to a steady judicial slowdown, increasing legal fees for participating in court systems, and a growing need to provide faster and less adversarial ways to resolve disputes, mediation has become very popular as an alternative to going through a court system. However, mediation will not work well unless the cultural realities and social conditions in which disputes arise and are settled are taken into consideration. Pakistan is very culturally diverse, with religious influences, communal ties, language differences, and the presence of deeply rooted social hierarchies all affecting dispute resolution. These variables will shape not only how people argue with each other but also how they express their complaints and what their cultural expectations are for settling a dispute. This research project will identify and examine what mediators need to know about cultural sensitivity when conducting mediations in Pakistan, so they can use their understanding of cultural differences and apply it to the resolution of disputes.

Key words: Court-Annexed Mediation; Cultural Sensitivity; Alternative Dispute Resolution (ADR); Mediation Practices; Social Hierarchies

Introduction

The Need for Mediation in Pakistan's Justice System

Pakistan's courts deal with many cases, dealing with long delays and expensive litigation. Cases such as civil disputes over property, divorces, and business disputes can often sit for years or even decades before resolution. Because of the time and cost, many citizens are discouraged from pursuing legal remedies, and this also adds to the frustration of society.

To deal with these issues, Alternative Dispute Resolution (ADR), including mediation, has become a viable and flexible way to help parties resolve disputes. Mediation offers parties the ability to reach a resolution together through dialogue rather than through the adversarial litigation process. Mediation can assist with maintaining relationships, reducing costs, and enhancing the parties' ability to comply with the agreed resolution.

However, mediation cannot be simply imported from other legal systems and used in Pakistan without considering the way it fits culturally. Mediation that does not consider how society views certain types of disputes, how society expects things to be done, and how society communicates is likely to lead to failed mediation efforts. Therefore, the implementation of mediation in Pakistan must be done with an understanding of the cultural context to ensure successful mediation occurs in Pakistan.

Culture as a Determinant of Conflict Resolution

Disputes are shaped by the culture in which they exist; therefore, cultural influences have implications for how people define their sense of injustice, how they express their grievances, and how they find solutions to those injustices through negotiations. In Pakistan, the majority of disputes stem from the family or community environment rather than being an issue between two individuals only. Thus, a disagreement over a property, marriage, or inheritance can impact societal relationships for many years.

As a result, when resolving conflicts, it is important to consider the overall social issues, including those involving honour, respect, reputation, and social harmony. If a resolution is legally acceptable yet not culturally acceptable, it is likely to break down at some point in the future.



When mediating disputes, cultural sensitivity requires the mediator to understand both legal aspects of a dispute and the emotional, social, and cultural context related to that dispute.¹

Objectives of the Study

This research investigates the influence of Cultural Sensitivity on the mediation process in Pakistan by examining how Cultural Norms shape Communication, Negotiation dynamics, and Dispute Resolution outcomes, and analysing the challenges experienced by Mediators when Cultural Traditions Conflict with Fairness and Legal Rights Principles.

Ultimately, this research aims to identify ways in which Mediation Practices in Pakistan can incorporate Cultural Awareness while also adhering to ethical standards and fulfilling equitable opportunity.

Significance of the Research

With the increasing reliance on mediation as an adjunct to the formal Legal System in Pakistan, it is critical to understand the effects of culture on mediation outcomes.² Mediators who lack culturally appropriate mediation practices may impede the success of institutional reforms that will be supported through mediations in the formal legal system.

This research will contribute to the body of knowledge about mediation and dispute resolution, as well as provide practical recommendations for Mediators, Als, policymakers, and participants in training programs.

Conceptual Framework: Cultural Sensitivity in Mediation

Understanding Cultural Sensitivity

Mediators who possess cultural sensitivity understand how culture influences the way disputants see things, act, and how they negotiate.³ They understand how things such as traditions, values, language, religion, and social systems all impact how parties negotiate with one another.

An example of a culturally insensitive mediator would be someone who uses a negotiation method from their culture and doesn't consider the differences between them and the disputant. That would create mistrust and break down communication between the two parties. On the other hand, if a mediator knows the cultures of the disputants, it would create a more open process with greater cooperation.

Cultural Awareness Versus Cultural Competence

Cultural awareness simply states that people are different. Cultural competence goes beyond just acknowledging differences; cultural competence is about developing a mediator's skills so that they can be culturally competent in the mediation process.⁴ Developing cultural competence requires ongoing education, professional development, and self-examination for you to be able to effectively facilitate a mediation that is fair and inclusive for all parties involved.

¹ Christopher W. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 4th ed. (San Francisco: Jossey-Bass, 2014), <https://www.beyondintractability.org/bksum/moore-mediation>

² World Bank, *Alternative Dispute Resolution Guidelines* (Washington, DC: World Bank, 2011), <https://documents1.worldbank.org/curated/en/906371468169461301/pdf/782230WP0Alter0Box0377330B00PUBLIC0.pdf>

³ Kevin Avruch, *Culture and Conflict Resolution* (Washington, DC: United States Institute of Peace Press, 1998), <https://www.jstor.org/stable/684089>

⁴ Robert A. Baruch Bush and Joseph P. Folger, *The Promise of Mediation: The Transformative Approach to Conflict*, 2nd ed. (San Francisco: Jossey-Bass, 2005), <https://www.beyondintractability.org/bksum/bush-promise>

A mediator who is competent knows that being neutral does not equate to ignoring cultural differences. A mediator who is competent understands that neutrality means making accommodations for and involving all parties' cultural differences during the facilitation of the mediation process.

Culture and Perceptions of Conflict

Different cultures understand and handle disputes or negotiations in various ways. Certain cultures value expressing disagreement directly; other cultures do not encourage confrontation to avoid disrupting group harmony. Individuals who demonstrate public displays of disagreement in many Pakistani communities (especially between family members or different generations) may find such actions to be considered disrespectful by their respective culture.

Thus, individuals engaged in disputes may use indirect communication or avoid making direct statements when expressing their position about the dispute, requiring mediators to carefully interpret these styles of communication before creating environments in which parties can feel safe when expressing viewpoints without violating their culture's norms.

Cultural Landscape of Pakistan and Its Influence on Mediation

Diversity Within Pakistani Society

Due to its large number of different ethnic, linguistic, and geographical communities, how people from Pakistan culturally resolve disputes differs in varying degrees depending on the culture of the individuals involved in a dispute.⁵ For example, individuals in urban areas are more inclined to use formal legal processes to resolve a dispute, whereas individuals in rural areas are much more likely to utilise traditional community methods.

This variance in dispute resolution across Pakistan indicates that mediators must adjust the procedures they implement while mediating disputes based on the region in which they are working, regional customs associated with the parties involved in the dispute, and the local power structures. Understanding these customs and local power structures will enable mediators to facilitate dialogue effectively.

Collectivist Social Structure

In Pakistan, people typically place more value on the needs of the family unit than on the needs of the individual; therefore, family members looking for an answer to a dispute will most often seek advice from their extended family.⁶ The process of mediation that is solely focused on the needs of the individual may disregard many important social elements.

Often, the agreement has to fit into the family's or community's expectations so as to be sustainable.

Honor and Social Reputation

Honour, known as *izzat* in Pakistan, plays a key part in people's daily interactions with one another. Therefore, many disputes become severe when someone believes that he/she has lost their honour or reputation to another party. Therefore, the mediator must protect the parties' honour.

⁵ United Nations Development Programme, *Informal Justice Systems: Charting a Course for Human Rights-Based Engagement* (New York: UNDP, 2012), <https://www.undp.org/sites/g/files/zskgke326/files/publications/Informal-Justice-Systems-Charting-a-Course-for-Human-Rights-Based-Engagement.pdf>

⁶ Geert Hofstede, *Culture's Consequences: Comparing Values, Behaviors, Institutions and Organizations Across Nations*, 2nd ed. (Thousand Oaks, CA: Sage, 2001), https://www.researchgate.net/publication/230557580_Culture's_Consequences_Comparing_Values_Behaviors_Institutions_and_Organizations_Across_Nations

If a mediator publicly humiliates someone or gives someone blame, he/she may inadvertently add fuel to the fire. In the mediator's craft, the successful mediator will develop solutions that allow the parties to retain their honour and dignity with the community.

Traditional Dispute Resolution Mechanisms

Community Councils and Elders

Historically, various communities in Pakistan have settled disputes through councils or groups of elders called jirgas or panchayats. Jirgas or panchayats work based on support from their communities and respect for seniority within that community.⁷

They provide prompt and accepted ways for community members to resolve issues based on their cultural heritage. Nevertheless, various parties have criticized jirgas or panchayats for further strengthening existing societal hierarchies or eliminating the voices of marginalized groups, particularly women.

Nevertheless, traditional mediation practices play an important role and continue to influence how parties view their options for dispute resolution.

Islamic Principles of Reconciliation

Pakistan's Islamic faith places much emphasis on forgiveness and peaceful dispute resolution; therefore, rather than acting at odds with Islamic traditions, many Pakistanis have a strong connection to concepts that promote punishment, forgiveness, and resolution strategies.

Using religious principles to mediate disputes is a common practice among many mediators because disputants tend to respond positively when negotiations are framed within the context of familiar religious beliefs. At the same time, mediators must use caution when referencing religious principles to avoid imposing their interpretation of the religious belief system on the two parties to the disagreement.⁸

Communication Patterns in Pakistani Mediation Contexts

Indirect Communication Styles

Several Pakistani communities are known for preferring indirect communication for sensitive disputes. Individuals frequently will refrain from direct criticism of others to preserve social harmony. When mediating parties, the mediator should be aware that differences may be expressed through indirect means, such as tone or hesitation, rather than direct statements, and encourage respectful expressions without forcing disagreement.

Language and Emotional Expression

The variety of languages within Pakistan also influences mediation processes. Parties may restrict expressing their feelings in a formal language instead of their native language. Providing for comfortable communication between parties promotes understanding and trust, while creating language barriers could make the mediation process more complicated if not managed appropriately.

Non-Verbal Communication

⁷ Kamran Adil, "Jirga System in Pakistan: A Transgression of Human Rights," *Research Society of International Law (RSIL)*, April 11, 2022, <https://rsilpak.org/2022/jirga-system-in-pakistan-a-transgression-of-human-rights/>.

⁸ John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (Washington, DC: United States Institute of Peace Press, 1997), [https://www.defence.lk/upload/ebooks/John%20Paul%20Lederach%20-%20Building%20Peace%20Sustainable%20Reconciliation%20in%20Divided%20Societies-United%20States%20Institute%20of%20Peace%20\(1998\).pdf](https://www.defence.lk/upload/ebooks/John%20Paul%20Lederach%20-%20Building%20Peace%20Sustainable%20Reconciliation%20in%20Divided%20Societies-United%20States%20Institute%20of%20Peace%20(1998).pdf)

The cultural importance of non-verbal cues, such as body language and gestures, can influence how we view confrontational behaviour in different societies. Mediators must therefore be careful in how they read/react to these gestures and body language.

Social Hierarchies and Power Dynamics

Influence of Age and Status

In Pakistan, elders hold a high degree of respect. It is common for younger family members to question older family members' judgment, especially when it comes to how those judgments affect their lives. However, mediators must make sure that all parties have an equal opportunity to speak without disrespecting the culture.

Economic and Political Influence

Many mediators have to deal with the fact that individuals who have authority (such as wealth or politicians) can influence the outcome of mediation by putting pressure on weaker parties. Therefore, while mediators need to be respectful of cultural issues, they also need to be fair.

Community Leadership Roles

In many cultures, community leaders are very important to the resolution of disputes. Excluding community leaders from a dispute resolution can lessen the legitimacy of the mediation process, while including community leaders without procedures to protect against possible biases can negatively affect the mediation process⁹. Mediators need to be cautious about how to best involve community leaders in the resolution of disputes.

Gender Norms and Their Impact on Mediation Processes

Mediation processes in Pakistan are significantly affected by how gender plays a role in how families, inheritances, and community disputes are mediated.¹⁰ Within the existing social systems, men are usually seen as the decision-makers. Women's voices, however, are often mediated through male relatives. Cultural realities often prevent women from participating in negotiation processes, even though the legal framework has increasingly included women's rights as a part of the law.

Women will often not speak out freely in a setting where there are both men and women, especially if there are elders or other community leaders present. Moreover, even if the woman is a direct party to a dispute, negotiations may occur predominantly among the male members of the family. As a result of this type of mediation, women may receive settlements that do not adequately reflect the women's interests, desires, or wishes.

Mediation that takes into consideration the cultural aspect of mediation is not simply applying a foreign set of standards to a particular group of people. It also includes creating a safe space and an acceptable environment in which women can participate in mediation. Mediators can hold separate meetings; encourage mediation to take place; or create mediation sessions in a manner that allows women to raise their concerns without fear of social pressure. In urban areas, we have also seen the increased use of female mediators to assist in creating a more inclusive environment for dispute resolution, especially with respect to family mediation.

⁹ Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative* (Washington, DC: Carnegie Endowment, 2003), <https://carnegieendowment.org/research/2003/10/beyond-rule-of-law-orthodoxy-the-legal-empowerment-alternative>

¹⁰ Merry, *Human Rights and Gender Violence*, <https://press.uchicago.edu/ucp/books/book/chicago/H/bo3636543.html>

Finding a balance between cultural respect for how a person wants to mediate and ensuring that everyone has equal participation in the mediation is one of the most difficult challenges facing mediators practicing in Pakistan's mediation system.

Religious Influences on Mediation Practices

In shaping social norms and resolving disagreements within Pakistan, religion plays an important role. In Islamic culture, some teachings encourage individuals to resolve disputes through negotiation and forgiveness and peacefully find a resolution that aligns with their cultural background. Examples of this would be Sulah (reconciliation), which provides a foundation for building a relationship as opposed to just resolving legal disputes.

Additionally, due to the religious nature of the mediation and due to the large number of disputants who will be more comfortable with using mediation if they know that it stems from ethical and religious principles, mediators may incorporate religious principles into their process. Particularly when working on family disputes, the mediator may use religion as a means to encourage cooperation and build mutual understanding between the disputants.

However, when using religion, the mediator should be careful. Not all parties will interpret the same religious obligations the same way; therefore, the mediator should not use a particular religion to impose a point of view. A mediator must realize that religious values can be applied culturally sensitive manner by recognizing them and not allowing them to be placed under pressure or coercion.

Thus, religion can serve as both a bridge for the parties to come together and as an area of caution that must be managed carefully during the mediation.

Trust Building in Mediation Settings

Successful mediation requires a foundation of trust. In Pakistan, trust is most often placed in a person and not an organization. Mediators achieve this trust by being third-party neutral, maintaining confidentiality, and showing respect for cultural traditions. Many times, a mediator will lose their credibility among the parties quickly if they do not follow cultural and traditional expectations or if they appear biased toward one party.

The unwillingness of a disputant to provide private information to a mediator has much to do with whether the mediator understands the disputant's social basis. In this way, the mediator must spend time making informal contact with the parties before entering formal negotiations and establish rapport with the parties using culturally appropriate methods of social interaction, such as the use of culturally appropriate greetings and recognizing the status of individuals in the community.

Mediators should also consider the parties' perceptions of the fairness of the outcome of mediation. If a party believes that the outcome is biased in favour of one of the parties with influence, the mediator will have difficulty in obtaining their cooperation in any future mediation. Therefore, mediators who are aware of social hierarchies should strive to respect these hierarchies while at the same time providing fair treatment to all parties.

Challenges to Cultural Sensitivity in Mediation

Ethnocentrism and Mediator Bias

One of the biggest barriers to culturally inclusive mediation is when the mediator has interpreted the dispute through their own cultural lens only. For instance, a mediator trained in an international or western alternative dispute resolution system may place emphasis on direct communication, autonomy of the individual, and neutrality in process, and this approach does not consider that local cultures may have totally different negotiation styles.

This can lead to the disputant feeling alienated from mediation, and this also leads them to not feel like they can continue in mediation. Additionally, the non-inclusive cultural practices can cause the disputant to become frustrated and withdraw from the mediation process.

Bias may also arise through the mediation, as some individuals have social status and power. The mediator may unconsciously defer to a party that holds more power than another party and inadvertently facilitate a settlement that is influenced by coercion. Addressing this type of bias requires continual self-reflection and ongoing training.¹¹

Communication Barriers

Language differences and communication styles frequently complicate the mediation process. The parties may feel emotionally constrained by having to speak in formal language instead of their local language or dialect.

There are also instances where indirect communication may generate confusion within the mediation process. Silence or ambiguity may be interpreted by the mediator as a signal of either disagreement, hesitancy to commit, or social caution, vs. consent.

Non-verbal communication differences can add a layer of complexity to the mediation process, as the way that people use their bodies/gait, muscles, tone of voice, and other non-verbal cues can have completely different meanings in other cultures, which means that the mediator may not be familiar with those cues when interpreting the actions of the parties in the mediation.

Institutional Weaknesses

A formal mediation system has yet to reach maturity in Pakistan. In many training programs, procedural training is emphasized while cultural competence is often overlooked. In addition, due to inconsistent enforcement of mediation agreements, parties may be disinclined to rely on formal mediation.

Traditional dispute resolution systems operate outside of a formal structure. Although these systems are culturally relevant, there are no safeguards against coercion or discrimination. There are also no links between the informal and formal systems, creating a mismatch in the outcomes produced by both.

Conflict Between Cultural Norms and Legal Standards

Some traditional resolution practices may contradict modern legal or human rights principles. Mediators are often placed under pressure to support culturally acceptable settlements that may also be legally unacceptable.

When mediators are faced with the above-described conflicts, they must exercise careful judgment before settling these types of disputes. Mediators must ensure that all settlements are voluntary, consistent with the law, and culturally appropriate. Failure to respect cultural norms will weaken the legitimacy of mediation as an option to resolve disputes, while failure to qualify cultural norms will result in a non-just outcome.

Case Studies Illustrating Cultural Sensitivity in Practice

Urban Family Property Dispute

An example of the need for cultural consideration can be seen in a case of sibling inheritance in a mediation session in Lahore. Initially, the male siblings resisted sharing property equally, saying that the cultural norms dictated that sons should inherit land. The female siblings, on the other hand, stated that, under the

¹¹ Avruch, Kevin, and Peter W. Black. "Conflict resolution in intercultural settings: Problems and prospects." *Conflict resolution theory and practice: Integration and application* 3 (1993)

law, they had an entitlement to an inheritance. The first mediation sessions focused entirely on legal arguments and resulted in an emotional confrontation. However, the second session redeveloped how the parties were to view the discussions using concepts of family unity and parents' legacy. Through considering the parties' emotional concerns and through the preservation of family honour, the mediators were able to assist the parties in reaching compromises that respected both parties' legal rights and cultural expectations.

This demonstrates, in part, that mediation can be successful when the legal aspects and the culture of the parties are considered as part of the process.

Rural Land Conflict

As another example of mediation with cultural awareness, a rural community dispute arose regarding agricultural land boundary issues. Attempts to resolve the dispute were made using traditional elder community mediation practices, but accusations of bias and favouritism resulted. Professional mediators later facilitated communication between the involved families and the elder members of the community, using both cultural community legitimacy and the communities' perceptions of procedural equity to reach an agreement.

Ultimately, the use of the cultural community elders and the neutral mediation facilitators created a respectful and conforming agreement amongst the families. Ultimately, the communities' participation in the mediation process created a guarantee of compliance, while at the same time ensuring no one family involved exercised undue influence or domination over the other family.

Workplace Dispute in the Corporate Sector

In companies with a high level of hierarchy, employees often hesitate to provide direct feedback to their supervisors due to a respectful attitude toward authority and fears of potential negative consequences. Research has shown that individuals in cultures with high power distance are more likely to remain silent about their issues instead of voicing them, particularly when providing feedback might be perceived as confrontational or disrespectful.

Harun and colleagues (2011)¹² noted that the level of power distance within a company fosters various cultures, which in turn leads to different communication behaviours. This cultural diversity can cause employees to avoid giving upward feedback.

To tackle this challenge, mediators involved in workplace conflict resolution conduct individual meetings with employees. These sessions create a safe space for employees to express their concerns without fear of repercussions related to hierarchy. The mediators use these private discussions to minimize the impact of cultural factors on communication behaviours, protecting workplace relationships and promoting productive dialogue.

Mediator Skills Necessary for Cultural Sensitivity

Understanding Local Cultural Norms and Social Structures

A culturally competent mediator will need to have a detailed understanding of the traditions, customs, and social connections of the local population that might affect the way the parties will act in relation to the dispute. In Pakistan, many times, disputes are not only between two individuals, but they also include families and, at times, entire communities. Thus, the mediator must have an awareness of kinship systems, issues of honour, and expectations of communities in relation to where parties will formulate their negotiating positions. If such awareness is not applied, there is a risk of the mediator misunderstanding the issues of concern to the parties, or of them proposing solutions that may not be socially acceptable.

¹² Harun, Etty Harniza, Hasni Abdul Rahim, Musdiana Mohamad Salleh, and Junaida Ismail. "Power distance and employee silence: a review in the superior-subordinate relationship." *FBM Insights* 3 (2021)

Moreover, cultural literacy will enable the mediator to create processes of discussing and formulating a solution that will honour the values of the community while encouraging productive dialogue.

Communication Adaptability in Mediation Settings

It is also important for the mediator to have a flexible communication style. The way Pakistani parties discuss sensitive issues is usually indirect, and they use a subtle form of communication and code language. Therefore, the mediator must develop the ability to interpret the tone, hesitations, and other non-verbal aspects of communication while helping the parties become clear without forcing them into confrontation. Communication flexibility requires that the parties be given the option of speaking in their preferred language when appropriate, so that they can express themselves emotionally and widely understand the issues. A mediator that modifies their communication style to fit the culture will help create an environment that fosters trust, cooperation, and collaboration between the parties.

Managing Power Imbalances Among Parties

Power imbalances can play a significant role in the outcome of a mediation, especially when it involves someone who holds a great deal of power within a community, such as an elder, an employer, or a landlord. Therefore, it is essential for culturally competent mediators to be aware of these power imbalances and to create a fair process. Creating a process that respects the social hierarchy does not mean allowing for coercive or dominating behaviours; rather, mediators should develop a process such that less powerful participants can express their concerns without fear of being coerced, sometimes through private sessions or structured opportunities to speak. The effective management of the dynamics of power will ensure that any agreement ultimately reflects the true consent of the parties involved and not coercion or social pressure.

Gender Sensitivity and Inclusive Participation

The gender norms in Pakistan may create barriers to women's engagement in negotiation processes; accordingly, the mediator must utilize strategies that promote women's participation in a manner that is respectful of the cultural norms. Separate consultation sessions, flexible seating plans, or allowing the participation of trusted female representatives may allow women to express their concerns more freely. In addition to ensuring that appropriate consideration is given to any constraints faced by women, culturally competent mediators must be aware that women's voices should be used to influence the outcome of the mediation process.¹³ Utilizing an inclusive mediation process enhances the fairness and stability of the settlement.

Ethical Responsibility and Protection of Vulnerable Parties

The mediation process is ethically sound when all agreements have been made voluntarily and fully informed. Agreements that arise within a multi-cultural context may be influenced by social pressure to accept decisions that are not best for you. As an ethical mediator, you must stay alert to ensure that all vulnerable persons, such as women, children, and economically disadvantaged people, who are involved in a mediation are protected from any coercive actions. In other words, cultural sensitivity or respecting others' cultural rights is never an excuse for coercion or violation of rights. Mediators are ethically responsible for using legal and ethical guidelines as well as cultural sensitivities to balance both.¹⁴

¹³ Merry, *Human Rights and Gender Violence*, <https://press.uchicago.edu/ucp/books/book/chicago/H/bo3636543.html>

¹⁴ Robert A. Baruch Bush and Joseph P. Folger, *The Promise of Mediation: The Transformative Approach to Conflict*, 2nd ed. (San Francisco: Jossey-Bass, 2005), <https://www.beyondintractability.org/bksum/bush-promise>

Continuous Learning and Professional Development

Cultural competence is not a fixed point in time. As societies change and new social dynamics emerge, all mediators are required to continually learn and improve themselves through continuing education, by exposing themselves to a diversity of cultures and people, and by self-reflecting on all mediation experiences. For mediators to stay competent, they must have an understanding of the emerging urban/suburban cultural dynamics, gender role changes, and generational differences. Programs that promote professional development relative to cultural awareness and conflict resolution skills all contribute to the increase in quality; therefore, they positively affect mediation nationwide.

Institutional and Policy Reforms for Culturally Sensitive Mediation

Strengthening Mediator Training and Certification Programs

Improving mediator training standards is needed for institutional reform to occur. Most mediation programs lack the cultural competency focus, which is needed to assist with resolving cultural disputes. Training curricula should have additional modules that focus on social hierarchy, regional customs, communication norms, and ethical dilemmas that arise from the cultural context of these disputes. Real-life experience in community mediation scenarios should also be part of the certification process, so that mediators are able to adjust their methods of practice for real-world issues.

Judicial Support and Integration of Mediation Mechanisms

Judicial institutions also have an important role in supporting mediation through their referral of appropriate cases to mediation centres and encouraging settlement efforts. For this level of integration to be successful, the mediation process must reflect the realities of the community that is being served. The court system and mediation institutions need to work together to ensure that the mediator is aware of the social context of the dispute and the impact it will have on the mediation process. The court's endorsement of culturally competent mediation will help the public develop more trust in the use of alternative dispute resolution mechanisms.¹⁵

Legal Recognition and Enforcement of Mediation Agreements

The enforceability, providing confidence in mediation, is vital to the public's trust in this process. If a tripartite agreement cannot be legally acknowledged, the parties will likely not trust the mediation process or outcome. When legal provisions allowing for widespread acceptance of mediation agreements exist, this will improve the confidence of the parties to engage in mediation processes.¹⁶ However, at the same time, the flexibility in recognizing a range of culturally determined settlement procedures should exist, as long as they also comply with the state law/ethical requirements.

Integration of Traditional and Formal Mediation Systems

The influence that traditional forums, such as jirgas or community councils, have on the resolution of conflict through traditional methods will continue in Pakistan. Therefore, by finding ways to integrate these traditional approaches with those used by the formal legal systems, policymakers can maintain the cultural

¹⁵ S. M. Mudeel Raza Jurgess, Sofia Suleman, and Ali Shahid, "The Role of Alternative Dispute Resolution (ADR) in Pakistan's Legal System," *Qlantic Journal of Social Sciences and Humanities* 5, no. 1 (2024): 194–202, <https://doi.org/10.55737/qjssh.733319300>

¹⁶ World Bank, *Alternative Dispute Resolution Guidelines* (Washington, DC: World Bank, 2011), <https://documents1.worldbank.org/curated/en/906371468169461301/pdf/782230WP0Alter0Box0377330B00PUBLIC0.pdf>

legitimacy of dispute resolution while ensuring a fair process and respect for human rights.¹⁷ Hybrid dispute resolution systems rely on trained mediators working in collaboration with traditional community leaders and provide for both social acceptance and procedural protection.

Institutional Collaboration with Community Organizations

Partnerships among mediation centres, civil society organizations, and community organizations help create greater access to mediation services. Community organizations generally have greater cultural knowledge and existing networks of trust than formal organizations.¹⁸ Through this collaboration, mediation services will be able to be provided to populations that have been historically underserved while maintaining a high standard of professional service. The continued cooperation among institutions will enhance the effectiveness of the overall dispute resolution framework.

Public Awareness and Community Engagement

Increasing Public Awareness of Mediation Benefits

Many citizens remain unaware of the fact that mediation is a possible method of resolving disputes rather than having to go to court. Conducting public awareness campaigns that promote the benefits of mediation, such as lower cost, confidentiality, and maintaining relationships, can contribute to greater use of mediation. Local language and easy-to-access media platforms should be used for public awareness initiatives, so they are easily understood by various communities.¹⁹

Community Participation in Mediation Frameworks

Demonstrating community engagement and participation can provide legitimacy to the mediation process. Including local elders, respected community members, or other people from the community to be involved in the mediation process promotes acceptance of mediated outcomes. When a community is involved in developing a mediation program, the resulting framework is likely to reflect the expectations of the community and provide a better community fit. A mediator who works with members of the community will have a better understanding of the social dynamics that lead to the dispute.

Role of Educational Institutions in Promoting Mediation

The participation of universities and training schools is also important for the development of a mediation culture. Including negotiation and conflict resolution training in the curriculum will help develop awareness in future professionals. Law schools and social science departments should particularly focus on teaching students about culturally appropriate methods for resolving disputes.

Media and Civil Society Contributions to ADR Awareness

The public's view of mediation can be changed through the efforts of media and civil society to show how successful mediation is and provide information about conflict resolution forms other than litigation.

¹⁷ United Nations Development Programme, *Informal Justice Systems: Charting a Course for Human Rights-Based Engagement* (New York: UNDP, 2012), <https://www.undp.org/sites/g/files/zskgke326/files/publications/Informal-Justice-Systems-Charting-a-Course-for-Human-Rights-Based-Engagement.pdf>

¹⁸ Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative* (Washington, DC: Carnegie Endowment, 2003), <https://carnegieendowment.org/research/2003/10/beyond-rule-of-law-orthodoxy-the-legal-empowerment-alternative>

¹⁹ John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (Washington, DC: United States Institute of Peace Press, 1997), [https://www.defence.lk/upload/ebooks/John%20Paul%20Lederach%20-%20Building%20Peace_%20Sustainable%20Reconciliation%20in%20Divided%20Societies-United%20States%20Institute%20of%20Peace%20\(1998\).pdf](https://www.defence.lk/upload/ebooks/John%20Paul%20Lederach%20-%20Building%20Peace_%20Sustainable%20Reconciliation%20in%20Divided%20Societies-United%20States%20Institute%20of%20Peace%20(1998).pdf)

Additionally, civil society, through work on human rights and community development, may be able to incorporate mediation into its outreach to the public.

Building Community Trust in Formal Mediation Systems

For mediation to be successful, there must be a level of trust between the parties involved in mediation. Formal mediation services must show the public they take service delivery seriously through office transparency, fairness, and cultural appreciation. The use of mediators with a range of backgrounds and the ability of the public to access mediation services from within their communities contribute to the development of trust with the public with regard to mediation as a preferred method of resolving disputes.

Future Directions for Mediation in Pakistan

Expanding Mediation in Urban and Rural Contexts

As Pakistan urbanizes and becomes more heterogeneous, mediators will need to adapt their mediation styles and methods to accommodate the different styles of each type of mediation. Urban mediation is increasingly focused on resolving disputes between businesses, workplace issues, and complex family matters resulting from modern lifestyles. On the other hand, most disputes that are resolved through rural mediation focus on land ownership, family Honor, and community relationships.

As such, mediation processes should be established so that there is flexibility in responding to disputes in both types of environments. An urban mediation centre may require a mediator with expertise in business or family affairs, whereas rural mediation should involve the participation of the community as well as local dispute resolution traditions. Also, expanding mediation services throughout the country can help reduce dependence on lengthy court processes and develop the capacity of local communities to resolve their own conflicts.

Use of Technology and Online Mediation Platforms

Advancements in technology provide opportunities for mediation by developing online platforms and virtual mediation processes. Using online mediation eliminates or reduces the need for travel costs and speeds up the process of scheduling mediation, particularly for parties that live in different cities or countries. These forms of mediation have also been beneficial during global crises that restrict the ability for individuals to meet physically.

Technology-based mediation processes must address cultural factors in addition to being efficient.²⁰ Face-to-face interaction is a significant factor in developing trust in Pakistani society, and the removal of that personal connection in providing mediation services may be detrimental to the ability to develop an emotional attachment and trust through the process. Therefore, future mediation processes must provide a balance between technology and appropriate interpersonal interactions within the context of the culture.

Balancing Modernization with Traditional Practices

The traditional methods of dispute resolution in Pakistan continue to shape social expectations. Future reform initiatives in mediation must not completely replace traditional methods due to potential resistance. Rather, modernization efforts should focus on reforming and improving traditional methods while incorporating standardized mediator qualifications.

Finding a balance between the two requires that community-based dispute resolution methods respect the legal protections and ethical standards that apply to them. Purposeful collaboration between trained

²⁰ Ethan Katsh and Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (San Francisco: Jossey-Bass, 2001), <https://www.beyondintractability.org/bksum/katsh-online>

mediators and traditional dispute resolution practitioners can assist with developing culturally based & fair methods of resolving disputes.

Developing Specialized Mediation Services

With the increasing complexity of both social and economic issues, disputes are becoming increasingly specialized. Thus, mediators who work with commerce-related disputes, workplace-related disputes, environmental disputes, or intellectual property disputes will need to have subject matter expertise in addition to being culturally competent.

Future mediation training programs should therefore establish both subject-specific training programs for mediators to prepare them to facilitate specific types of disputes. Establishing specialized mediation programs will promote efficiency and credibility, while still allowing for cultural sensitivities to remain at the forefront of dispute resolution discussions.

Mediation as a Tool for Social Cohesion and Peacebuilding

Mediation supports the resolution of both localised conflict and a greater degree of social cohesion and peacebuilding within communities where there is ongoing conflict and/or social tension. The relationship-building aspect of mediation, when culturally appropriate, can be used to restore relationships between groups as well as promote co-operation between groups.

Future policy may embrace mediation to be used in conjunction with developing communities and reconciliation, recognising that the resolution of disputes is an important contributor to long-term social stability. Promoting a strong culture of mediation will help foster an approach to resolving disputes using dialogue rather than confrontation, thereby supporting the creation of peaceful relationships between communities.²¹

Conclusion

Due to its varied population and longstanding communal customs, cultural sensitivity is essential to performing mediation well in Pakistan. Disputes extend beyond issues of legality into the realm of complex emotional, familial, and social contexts, which are influenced by religious practices, honour, socially stratified communities, and collectively defined identity. If mediators overlook cultural aspects of mediation, it may result in settlement agreements being invalid or unsustainable. The successful use of mediation requires respect for cultural norms in a manner suitable to the outcome of the mediation process; it builds/creates effective communication, develops/creates trust, and fosters the probability of reaching sustainable settlement agreements.

The analysis within this paper demonstrates that there are many factors related to culture that impact mediation in Pakistan, including communication styles, relationships between men and women, religious beliefs/values, community leadership structure, and power issues/hierarchies; therefore, challenges arise for the mediator when attempting to apply/establish a negotiation model that is outside of the culturally known/understood model or to consider other social factors, such as peer pressure and social obligations, that may impact how a person makes a decision.

The enhancement of culturally relevant mediation will take place, primarily through institutional reforms combined with expanded mediator training, active involvement of communities, and enhanced legal systems. Hybrid mediation models that combine culturally relevant traits with more professional processes are being developed and provide positive approaches to addressing this issue.

²¹ John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (Washington, DC: United States Institute of Peace Press, 1997), [https://www.defence.lk/upload/ebooks/John%20Paul%20Lederach%20-%20Building%20Peace_%20Sustainable%20Reconciliation%20in%20Divided%20Societies-United%20States%20Institute%20of%20Peace%20\(1998\).pdf](https://www.defence.lk/upload/ebooks/John%20Paul%20Lederach%20-%20Building%20Peace_%20Sustainable%20Reconciliation%20in%20Divided%20Societies-United%20States%20Institute%20of%20Peace%20(1998).pdf)

In conclusion, culturally aware mediation provides benefits for resolving disputes as well as enhancing access to justice on a large-scale, including establishing lawful social relationships. In relation to developing its mediation infrastructure, Pakistan's future progress toward maintaining effective mediation and public acceptance will depend upon having incorporated cultural knowledge into mediation processes.

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