MEDIATION

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MODULE 1

WHAT IS MEDIATION?

- Mediation is a **structured** process **facilitated** by a **neutral** third party/mediator who **assist** the parties in **conflict** to **communicate** and effectively **negotiate** to resolve their differences in a **time bound** manner to reach a **settlement** which is **binding** and **implementable** in different **jurisdictions**.



TYPES OF MEDIATION

COURT-REFERRED MEDIATION

PRE-LITIGATION MEDIATION

MANDATORY MEDIATION

COURT-REFERRED MEDIATION

- Section 89 CPC, (1) Where it appears to the Court that there **exist elements of a settlement** which may be **acceptable to the parties**, the **Court shall formulate** the **terms of settlement** and **give them to the parties** for **their observations** and after **receiving the observations** of the parties, the Court **may reformulate the terms** of a possible settlement and refer the same for-

(a) Arbitration; (b) Conciliation

(c) Judicial settlement including settlement through Lok Adalat; or

(d) Mediation.

- Under **Section 89 of the Code of Civil Procedure, 1908**, the judge directs the parties to participate in mediation in the pending case before him.



- The mediation is conducted at a **court-annexed mediation centre**, which is functioning under the supervision of the judiciary.
- In the event of settlement the file goes back to the referral court and the judge passes the order in view of the settlement agreement and in the event when the parties do not participate or are unable to arrive at a settlement sends a report as a non starter/ mediation is unsuccessful respectively so that the normal trial can resume.
- Provisions of mediation as an alternative dispute resolution mechanism in various statutes such as **Industrial Dispute Act, 2006**, **Hindu Marriage Act,1955 & Special Marriage Act, 1954**, **Real Estate (Regulation and Development) Act, 2016 [Section 32 (g)]**, **Commercial Courts Act, 2015** and **Consumer Protection Act, 2019**
- **Court Annexed Pre-litigation desk.**

PRE-LITIGATION MEDIATION

- Pre-Litigation mediation takes place **without the requirement of a court case**, and parties willingly agree to resolve the dispute through mediation.
- It takes place **before litigation begins (pre-litigation/post litigation)** and after the case has been filed, if the parties prefer a private mediator over court-annexed mediation services.
- The parties are free to select a mediator of their choice.
- Unlike court processes, private mediation follows **no rigid procedural rules**, and the discussion format is adapted to the comfort of the parties.
- If a settlement is reached, Conciliation Settlement Agreement will be signed which will be binding **(Section 27 Mediation Act, 2023/ Arbitration and Conciliation Act, 1996).**
- It is commonly used in business disputes, commercial partnerships, workplace conflicts, matrimonial disagreements, banking settlement negotiations, construction disputes, and service-industry complaints.



MANDATORY MEDIATION

- **Section 12 A of the Commercial Courts Act, 2015 states Pre-Institution Mediation and Settlement.**-

(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority authorised by the Central Government under sub-section *(2)* shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section *(1)*:
Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:
Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

(5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section *(4)* of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

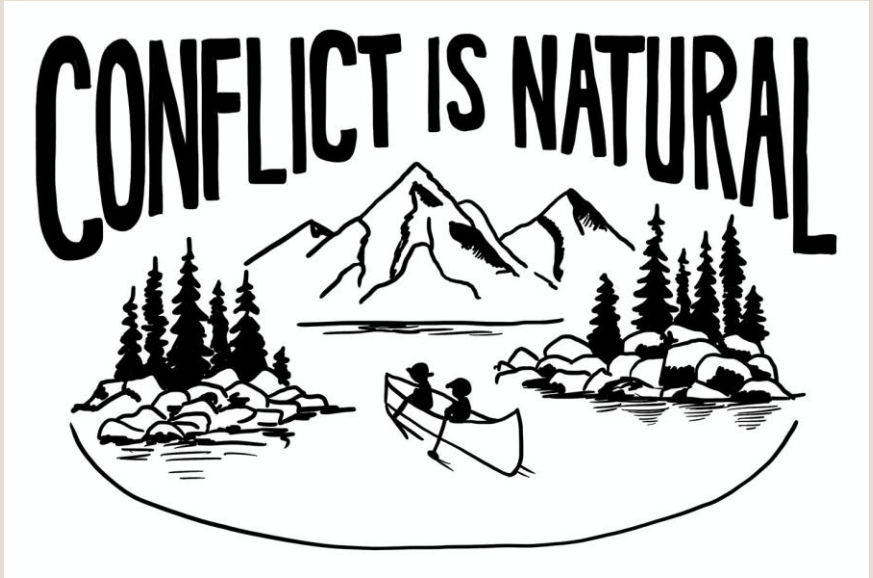
BENEFITS OF MEDIATION

PARTY DRIVEN PROCESS	PARTICIPATIVE PROCESS
VOLUNTARY	SPEEDY, EFFICIENT & ECONOMICAL
FLEXIBLE	STUCTURED PROCESS
CONFIDENTIAL	PROMOTES FINALITY
PRESERVES RELATIONSHIP	MUTUAL BENEFIT

REFUND OF COURT FEES
(Section 16 of the Court Fees Act, 1870)

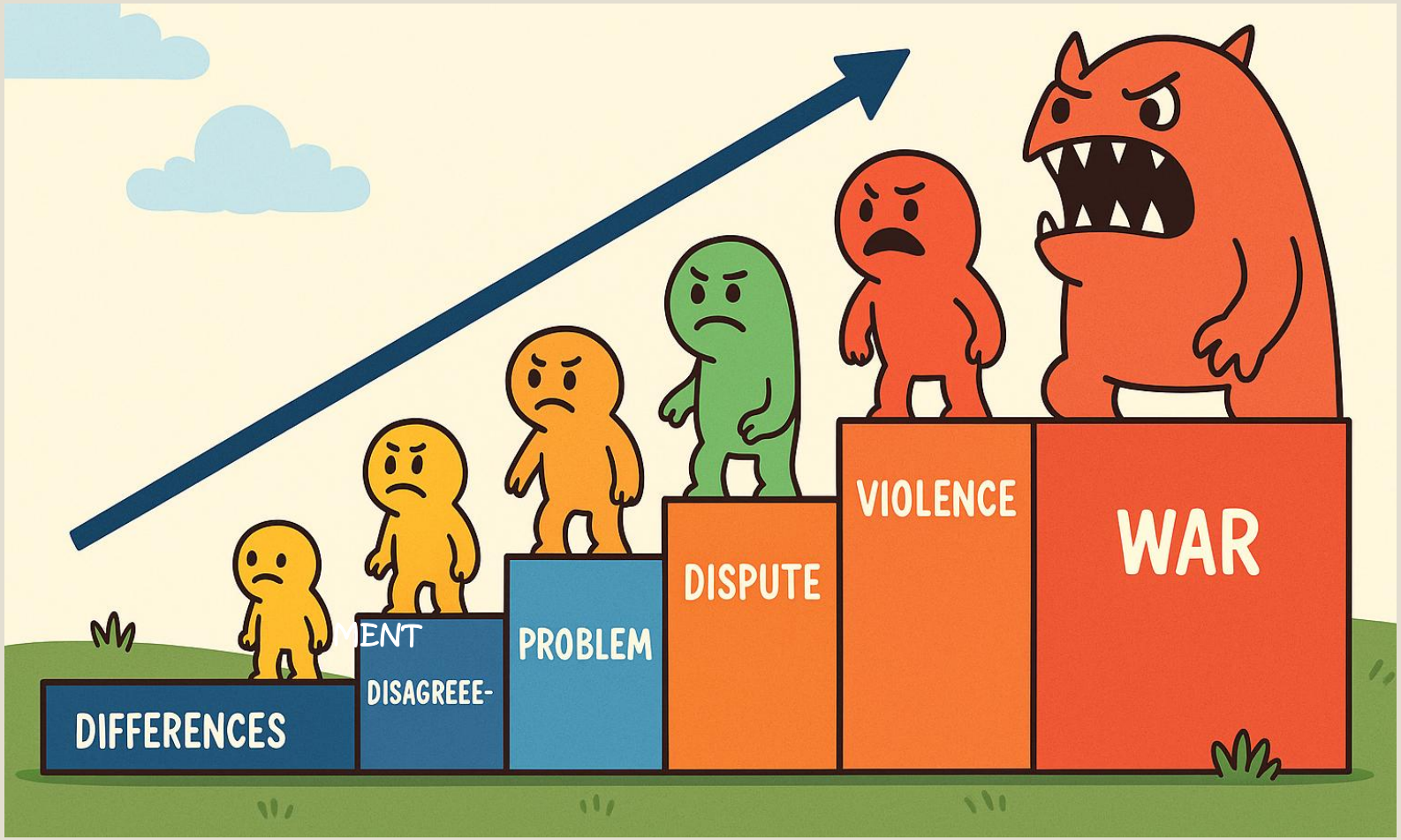
WHAT IS A CONFLICT?

- Conflict means a clash of opinions or ideas, where people hold firmly to their views and find it difficult to reach common ground.
- It is a visible piece of continuing hostility



CONTINUUM OF TENSION

- Unresolved differences lead to disagreements. Disagreements cause problem. Disagreement unresolved become dispute. Unresolved disputes become conflicts. Unresolved conflicts can lead to violence and even war. This is called the continuum of tension



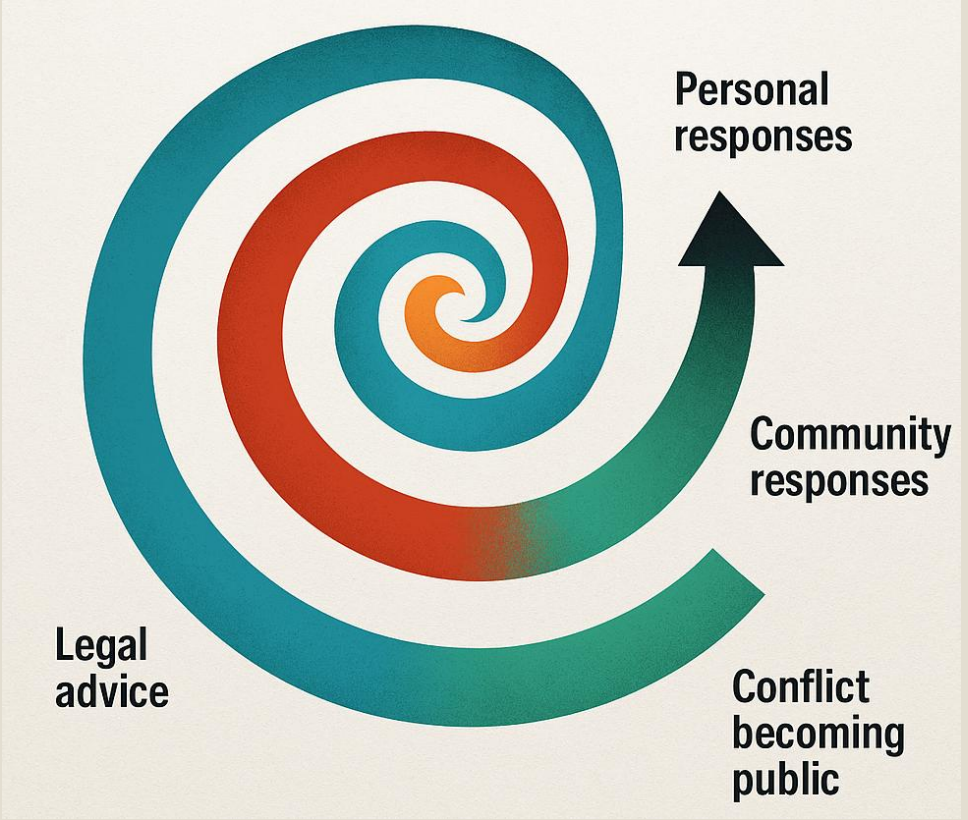
CONFLICT CORE

- Conflict emerges when something important is threatened, misunderstood, and creates tension
- By the time conflict reaches negotiation or mediation, parties often feel threatened both internally (within themselves) and externally (by the other side).
- The parties feel fear, suspicion, helplessness, frustration, embarrassment, anger, hurt, humiliation, distrust, desperation, and vengeance.
- Unless these emotional layers are addressed, the dispute cannot be effectively resolved.



CONFLICT SPIRAL

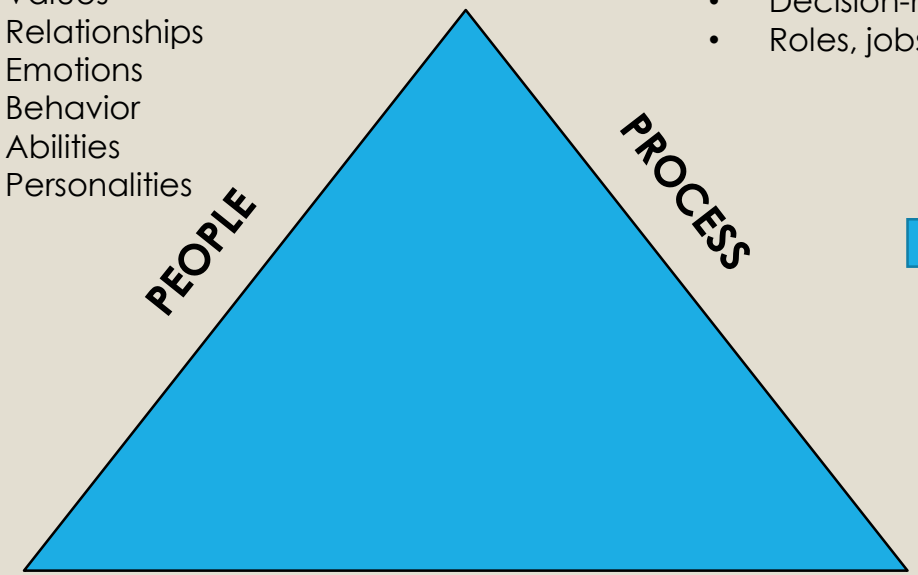
- A conflict spiral occurs when initial tensions spread to individuals, relationships, tasks, organizations, and communities.
- Personal conflict provokes emotions like anger, anxiety, and suspicion, making people rigid and unable to think clearly.
- Community conflict are disputes THAT not only affect the people directly involved but also affects their family, friends, and community.
- Legal advice often heightens tensions, but neutral intervention can help find acceptable solutions.
- When conflict becomes public, parties take rigid positions, gather allies, and attract media, making resolution more complex.



CONFLICT TRIANGLE

- Past history
- Values
- Relationships
- Emotions
- Behavior
- Abilities
- Personalities

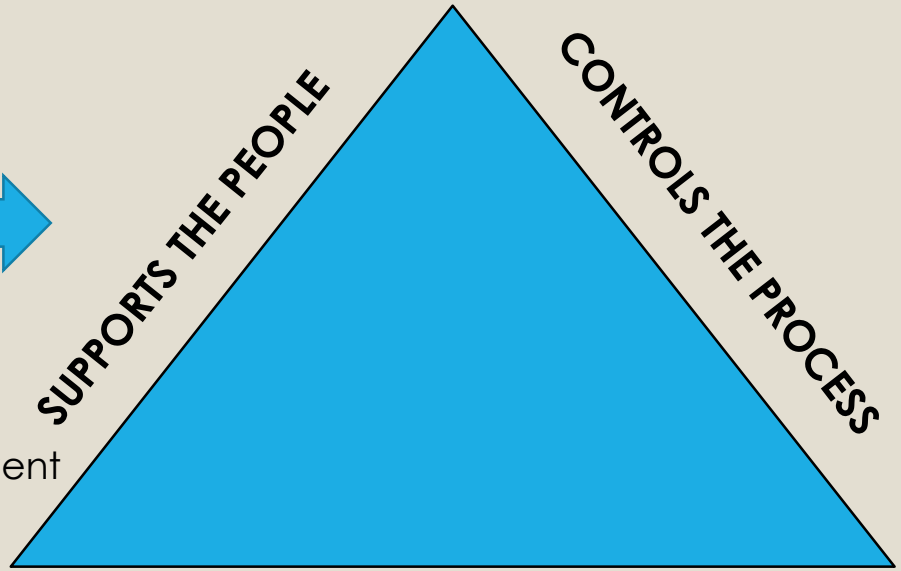
- How people communicate issues and feelings
- Structures, systems, procedures
- Norms to behave in a conflict
- Decision-making
- Roles, jobs



PROBLEM

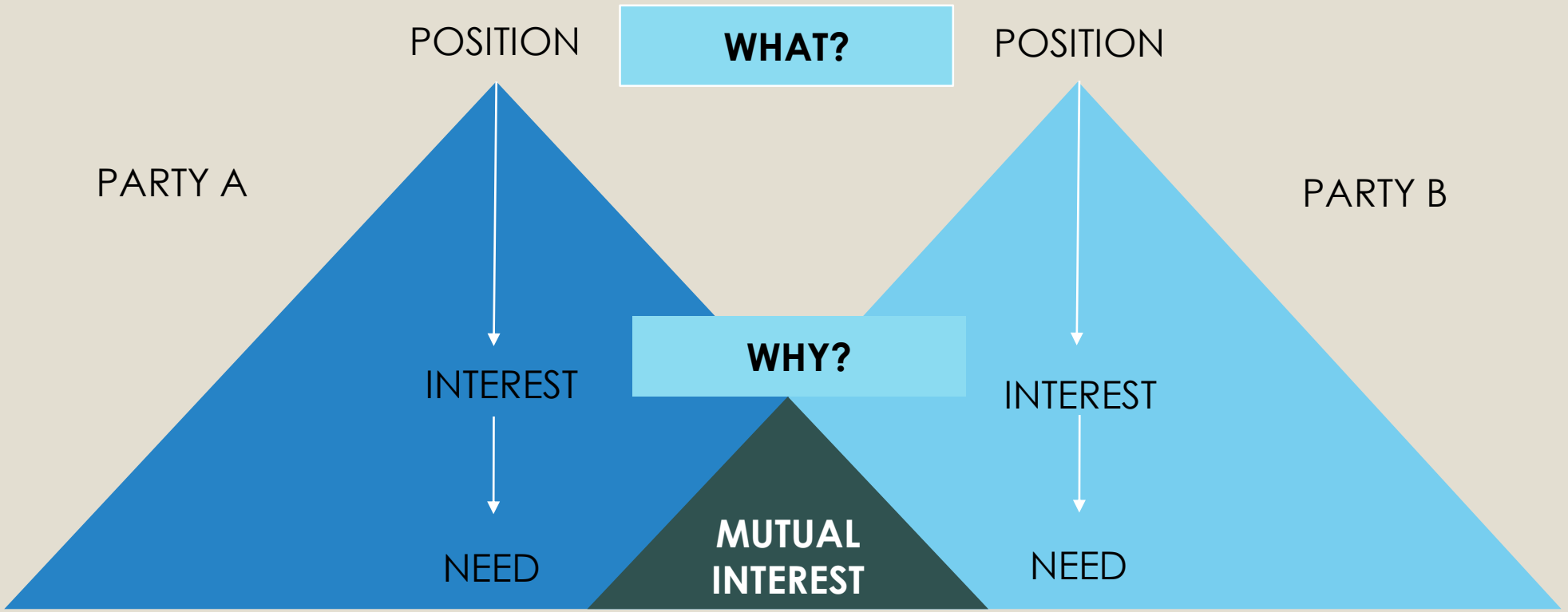
MEDIATION

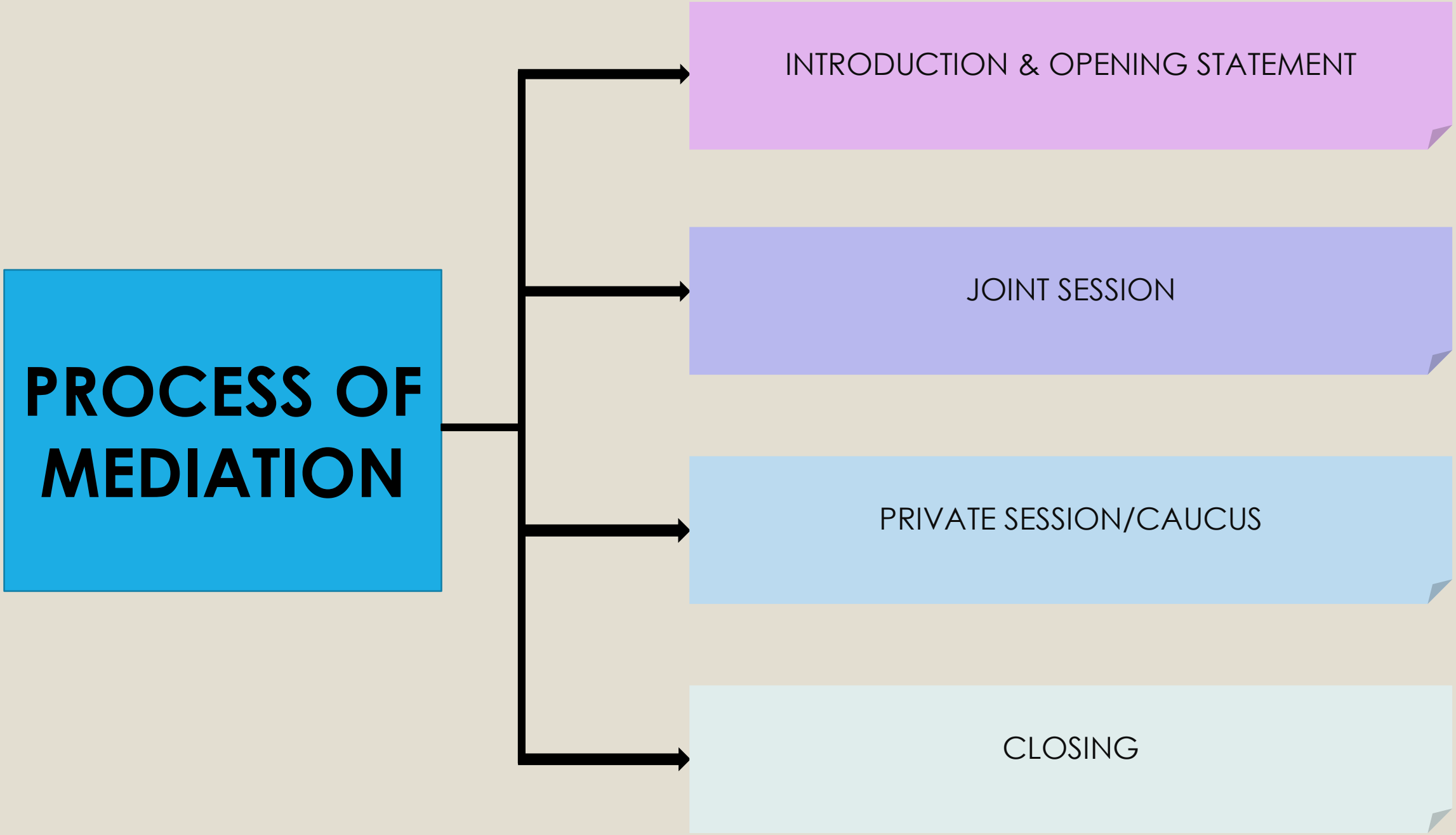
- Facts
- Position
- Issues
- Consequences of event



SOLVES THE PROBLEM

- Perception
- Interest, needs
- Solution
- Consequences of possible outcome


POSITION
WHAT?
POSITION
PARTY A
PARTY B
INTEREST
WHY?
INTEREST
MUTUAL INTEREST
NEED
NEED


PROCESS OF MEDIATION
INTRODUCTION & OPENING STATEMENT
JOINT SESSION
PRIVATE SESSION/CAUCUS
CLOSING

STEP I: INTRODUCTION&OPENING STATEMENT

- ESTABLISH NEUTRALITY
- DESCRIBE THE ROLE OF A MEDIATOR
- ADDRESS CONFIDENTIALITY
- ESTABLISH A CONDUCIVE ENVIRONMENT AND CONTROL OVER THE PROCESS
- DETERMINE WHETHER THE MEDIATION PROCESS HAS BEEN UNDERSTOOD
- GENERATE A MOMENTUM TOWARDS AN AGREEMENT
- RESPECT



STEP II: JOINT SESSION

- GATHER INFORMATION ABOUT FACTUAL BACKGROUND
- LEARN ABOUT PARTIES CLAIM, DEFENCE, ARGUMENT AND POSITIONS
- GATHER INFORMATION ABOUT PARTIES UNDERLYING INTEREST
- MANAGE INTERACTION BETWEEN PARTIES
- MAINTAIN ENVIRONMENT THAT IS CONDUCTIVE TO CONDUCTIVE NEGOTIATION
- ELICIT INFORMATION
- ASK EACH PARTY IF HE/SHE HAD GOT ANY OTHER POINT
- ALLOW PARTIES TO GIVE FULL INFORMATION OF FACTS
- SESSION SHOULD BE COOLY DONE AND NOT TO IN RUSH
- REMAIN NEUTRAL



STEP III: PRIVATE SESSION/CAUCUS

- ENCOURAGE PARTIES TO OPEN UP WITH THEIR EMOTIONS
- MEDIATOR SHOULD NOT BE BAIS TOWARDS ANY PARTY
- MEDIATOR SHOULD EXPLAIN THE CONFIDENTIALITY CLAUSE
- GATHER INFORMATIONS BY ASKING MORE QUESTIONS
- SAFE ENVIRONMENT



STEP IV: CLOSING

- ORAL CONFIRMATION OF SETTLEMENT
- WRITTEN TERMS AND CONDITION
- CONFIRM THE SETTLEMENT IN A JOINT SESSION
- CLOSING COMMENTS



MEDIATION STAGES

- INTRODUCTION
- UNDERSTANDING THE PROBLEM
- UNDERSTANDING INTEREST & NEEDS OF PARTIES
- DEFINING PROBLEM
- GENERATING OPTIONS
- EVALUATING OPTIONS
- SETTLEMENT/NON-SETTLEMENT

ROLE OF A MEDIATOR

NEUTRAL & IMPARTIAL	CREATE SAFE ENVIRONMENT
HELPS PARTIES TO IDENTIFY ISSUES	UNDERSTAND NEEDS AND UNDERLYING INTEREST
ENCOURAGES OPEN DIALOGUE	CONTROL MEDIATION PROCESS
ASSIST PARTIES TO GENERATE OPTIONS	MAINTAIN CONFIDENTIALITY
ASSIST PARTIES TO COME TO A MUTUALLY AGREED SETTLEMENT	DRAFT SETTLEMENT AGREEMENT



ETHICAL PRINCIPLES OF A MEDIATOR

ETHICAL PRINCIPLES OF A MEDIATOR

- SELF DETERMINATION
- IMPARTIALITY
- CONFLICT OF INTEREST
- COMPETENCES
- CONFIDENTIALITY
- QUALITY OF THE PROCESS
- TERMINATION OF MEDIATION
- RECORDING SETTLEMENT
- PUBLICITY AND ADVERTISING
- FEES
- LEGAL ADVICE
- DUTIES TO THIRD PARTIES



1. SELF DETERMINATION

- Mediators empower parties to make their own decisions regarding dispute resolution, fostering a sense of ownership and autonomy.
- The mediator's role is to facilitate an environment where individuals can freely express their perspectives without external pressure or dominance.
- Non-domination is key, ensuring that no party exerts undue influence over the decision-making process and that all participants have an equal opportunity to contribute.
- Mediators must remain vigilant and impartial, intervening to maintain fairness and equity if any attempts to monopolize the conversation occur.
- By promoting self-determination and collaborative dialogue, mediators help parties create solutions that align with their needs, leading to greater compliance and positive relationships.



2. IMPARTIALITY

- Mediators maintain impartiality throughout the mediation process in their words, mannerisms, attitude, and body language.
- They adopt an unbiased stance from the outset, using an even-handed communication style to build trust.
- Mediators ensure every participant feels heard and respected, vigilantly managing the mediation dynamics.
- They use open and non-threatening body language to avoid any suggestion of favouritism.
- This commitment to neutrality fosters a balanced dialogue and allows parties to engage confidently in the mediation process.



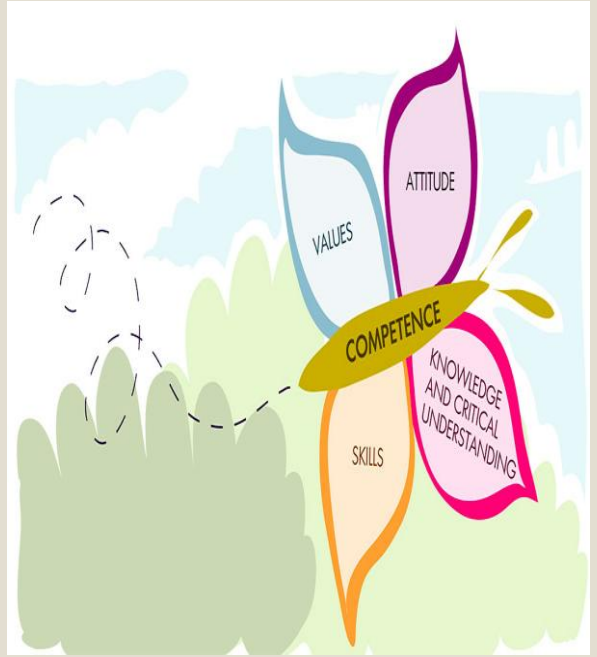
3. CONFLICT OF INTEREST

- Mediators must avoid mediating cases where they have any direct personal, professional, or financial stake in the outcome.
- They must disclose any indirect interests, such as associations with individuals or entities connected to the case, and proceed only if all parties agree.
- If the mediator is also an advocate, they must not represent any party involved in the dispute they mediated to ensure impartiality.
- Mediators should maintain a professional distance from the parties and refrain from establishing relationships until a reasonable period after mediation.
- By following these ethical guidelines, mediators ensure fairness, neutrality, and transparency, fostering trust in the mediation process.



4. COMPETENCES

- Mediators must assess their own competence and skills, undertaking only assignments they are adequately equipped to handle.
- They should communicate their background and experience to the parties, providing transparency about their qualifications.
- Mediators must refrain from offering other professional services to the parties involved in mediation, even if they are licensed to do so.
- Providing additional services can create conflicts of interest and compromise the mediator's neutrality and effectiveness.
- By focusing solely on their role as facilitators, mediators ensure fairness, uphold neutrality, and maintain the integrity of the mediation process.



5. CONFIDENTIALITY

- Mediators maintain strict confidentiality to protect information shared during mediation unless parties consent otherwise or legal obligations dictate disclosure.
- This ensures participants can freely discuss issues and explore solutions without fear of their statements being used against them.
- Confidentiality fosters trust, transparency, and effective conflict resolution by creating a secure environment for open dialogue.
- Upholding confidentiality is essential for mediators to preserve the integrity of the process and uphold ethical standards in mediation.



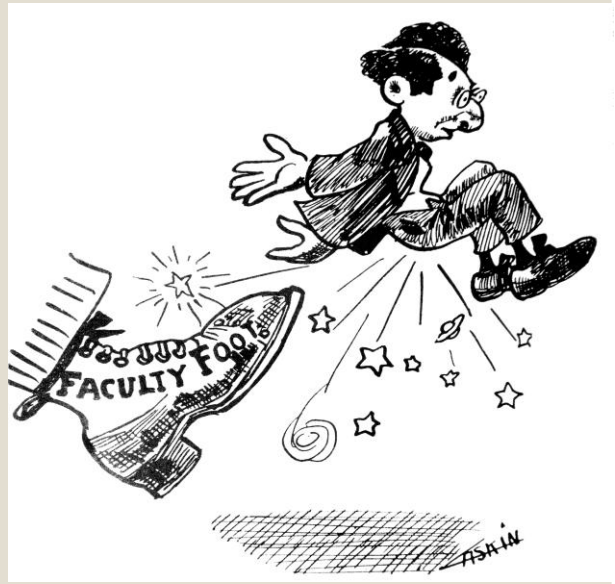
6. QUALITY OF THE PROCESS

- Mediators ensure a quality process by promoting mutual respect and constructive dialogue among parties.
- They address any attempts to abuse the mediation process promptly and protect the integrity of confidential communications.
- Mediators adjust their approach based on participants' emotional readiness to engage effectively in mediation, fostering a supportive environment.
- They maintain neutrality by refraining from making promises about mediation outcomes, thereby managing expectations and upholding trust.



7. TERMINATION OF MEDIATION

- Mediators terminate mediation if parties abuse the process to maintain fairness and respect.
- They end mediation if there's no realistic prospect of settlement to save time and resources.
- Mediators consider terminating if a settlement appears unenforceable or illegal to uphold legal standards.
- When mediation is unlikely to result in a settlement, mediators communicate clearly to redirect efforts effectively.



8. RECORDING SETTLEMENT

- Mediators guide parties in mediation to ensure informed decision-making by encouraging open communication and suggesting expert involvement when necessary.
- They meticulously document settlement terms to ensure clarity and prevent misunderstandings, maintaining accuracy and transparency in the process.
- Mediators facilitate access to essential information for all parties involved, promoting fairness and ensuring equitable participation in the settlement process.
- Their ethical commitment in recording settlements upholds integrity, fosters trust, and ensures that agreements are based on informed consent and mutual.



9. PUBLICITY & ADVERTISING

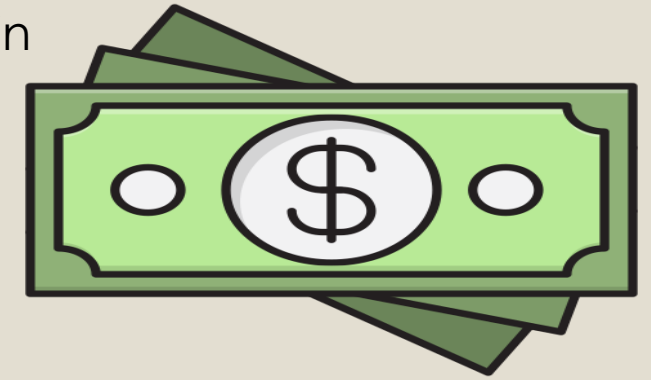
- Mediators must avoid soliciting private business or advertising their services to maintain impartiality and focus on fair resolutions.
- They adhere strictly to set rates in Multi-Door mediation, avoiding extra payments to uphold fairness and prevent conflicts of interest.
- Mediators cannot provide other paid services to parties they mediate, ensuring neutrality and trust in the process.
- These rules safeguard mediation's integrity by prioritizing fairness, impartiality, and trustworthiness.



10. FEES

- Mediators must disclose fees clearly before mediation, ensuring agreement from all parties.
- Written documentation of fee terms prevents misunderstandings during mediation.
- Mediators should avoid fees tied to mediation outcomes to maintain impartiality.
- Following these ethics ensures fair, transparent mediation processes.





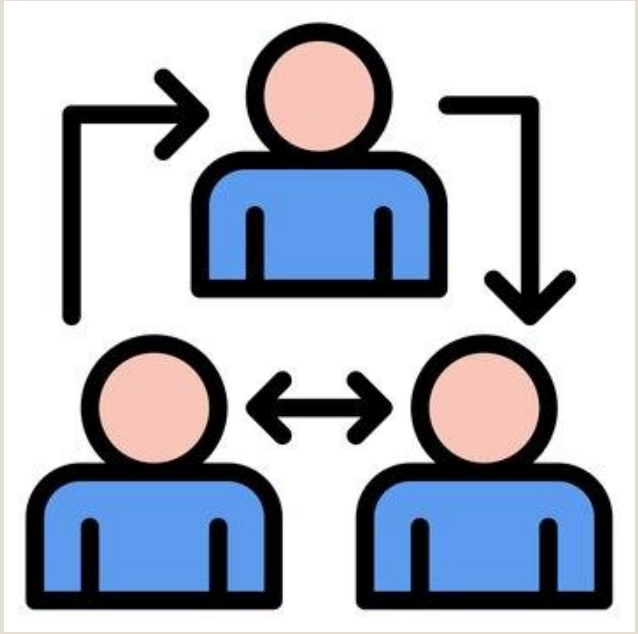
11. LEGAL ADVICE

- Mediators must stick to their role and avoid giving legal, financial, or therapeutic advice to keep mediation fair and impartial.
- They guide parties to seek advice from professionals like lawyers or financial advisors for informed decisions, supporting self-determination in mediation.
- By staying neutral, mediators uphold fairness and build trust, fostering a constructive negotiation environment.
- Clear boundaries ensure mediators facilitate rather than influence decisions, maintaining neutrality and integrity in the mediation process.



12. DUTIES TO THIRD PARTIES

- Mediators prioritize the well-being of vulnerable third parties like children, the elderly, or the infirm, even if not directly involved.
- In family disputes, especially those with children, their best interests are prioritized to minimize harm.
- Mediators also address the unique needs of the elderly or infirm, encouraging solutions that protect them.
- Gathering information on potential impacts and arranging care or support are crucial for fair and compassionate outcomes.

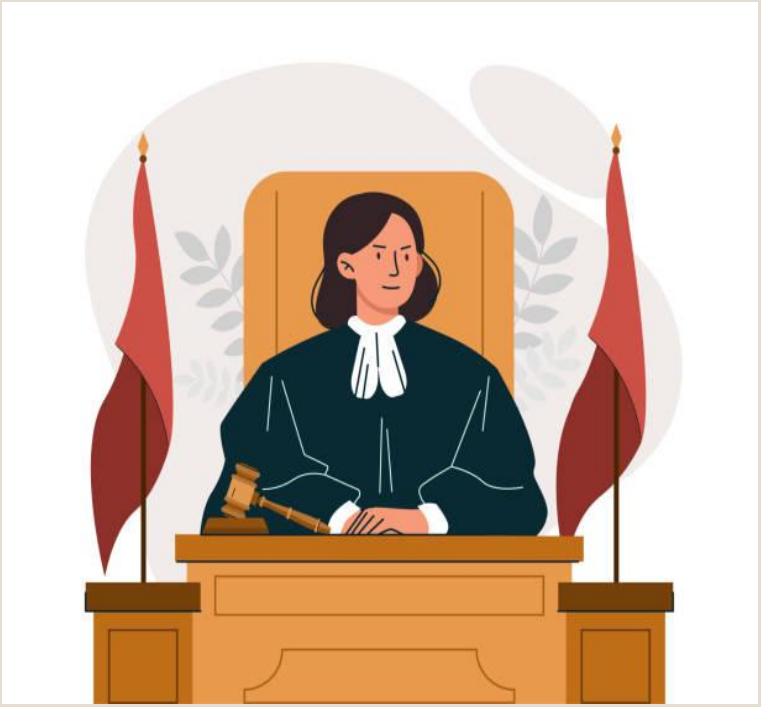




ROLE & RESPONSIBILITIES

WHO IS A REFERRAL JUDGE?

- **Section 89 of CPC**, empowers Judges to send matters that have the possibility of settlement for mediation or any other form of alternative dispute resolution (ADR) .
- Referral judges are judges who identifies and selects cases suitable for ADR methods such as mediation, arbitration, conciliation, or Lok Adalat.
- Referral judges assess the nature of disputes and the willingness of parties to determine mediation appropriateness.
- This targeted approach by referral judges maximizes successful settlements and helps alleviate the judicial system's burden.



SALEM ADVOCATE BAR ASSOCIATION v. UNION OF INDIA (2003) 1 SCC 49

SALEM ADVOCATE BAR ASSOCIATION v. UNION OF INDIA (2005) 6 SCC 344

AFCONS INFRASTRUCTURE LIMITED AND ANOTHER v. CHERIAN VARKEY CONSTRUCTION COMPANY (PRIVATE) LIMITED AND OTHERS, 2010 (8) SCC 24.

SALEM ADVOCATE BAR ASSOCIATION v. UNION OF INDIA (2003) 1 SCC 49

- The court **upheld the constitutional validity** of Section 89 CPC and other amendments.
- It **recognized the intent of reducing delays and pendency** in courts through ADR.
- However, it acknowledged **practical difficulties in implementing Section 89**, particularly about procedural rules.
- So, the court formed a **committee to frame proper rules** for the effective implementation of Section 89.

SALEM ADVOCATE BAR ASSOCIATION v. UNION OF INDIA (2005) 6 SCC 344.

- The court accepted the **Model Rules** prepared for ADR mechanisms under Section 89.
- It clarified **how courts should refer matters to ADR**.
- Emphasized **judicial discretion** in choosing the appropriate ADR method.
- **Training programs** for judges and lawyers were recommended to make ADR effective.
- Clarified that Section 89 is valid and enforceable, and rules were laid down for practical implementation.

AFCONS INFRASTRUCTURE LIMITED AND ANOTHER v. CHERIAN VARKEY CONSTRUCTION COMPANY (PRIVATE) LIMITED AND OTHERS, 2010 (8) SCC 24

- The court explained the **correct procedure** under Section 89.
- It distinguished between **judicial and non-judicial ADR** methods.
- Laid down that **court should first frame issues, then consider ADR**.
- The court held **mediation, conciliation, Lok Adalat** could be applied to almost all civil cases.
- But **arbitration can be used only when parties have a prior arbitration agreement**.
- Gave **detailed procedural clarity** on how and when to refer cases to ADR under Section 89, making it a **landmark precedent** for courts to follow.

IMPORTANT GUIDELINES FOR REFERRAL JUDGES

- Under Section 89 & Order 10 Rule 1-A of CPC, Court should explore ADR after pleadings are complete and before framing of issues.
- Hold a preliminary hearing post-pleadings to understand facts and dispute nature before ADR referral.
- If suitable, explain all ADR options to the parties.
- Ask parties if they want arbitration — inform them it removes the case permanently from court.

CONTI…

- If any settlement term is illegal or unenforceable → court must draw parties' attention to avoid future invalidity.
- Record mutual consent when referring to arbitration or conciliation.
- For other ADR processes, brief referral order stating ADR chosen suffices.
- "Formulating terms of settlement" under Section 89 only requires naming the dispute's nature and ADR path — not drafting the full settlement.

CONTI…

- If the presiding judge tries judicial settlement and it fails → that judge should not adjudicate the case later (to avoid bias).
- After ADR referral, court should schedule a date for ADR report and ensure ADR time-limits are respected.
- ADR must not be allowed to be used merely to delay litigation.
- Do not send original judicial records to ADR forum — only relevant copies.
- Exception: where court-annexed mediation centre under judicial supervision may need the original file.

ROLE OF REFERRAL JUDGES

A. CASE SUITABLE FOR REFERANCE

B. STATUTORY REQUIREMENTS

C. MOTIVATING & PREPARING THE LAWYERS AND PARTIES FOR MEDIATION

D. CONSENT

E. STAGES OF REFERAL

A. CASE SUITABLE FOR REFERANCE

- Afcons Case identified the cases which are appropriate for ADR:

1. **Matters related to Trade**, **Commerce and Contracts:** Including all Money claims; Specific performance; disputes between suppliers and customers; disputes between bankers and customers; disputes between developers/ builders and customers; disputes between landlords and tenants/licensor and licensees; disputes between insurer and insured;
2. **Matters related to Family dispute**: Including matrimonial disputes like, maintenance, custody of children; disputes relating to partition/ division among family members/coparceners/ co-owners; and disputes relating to partnership among partners;
3. **Matters related to continuation of the Pre-existing relationship:** Including disputes between neighbours relating to easementary rights, encroachments, nuisance, etc.; disputes between employers and employees; disputes among members of societies/associations/apartment owners' associations;

- **Matters related to Tort-Based dispute:** Civil wrongs where compensation, settlement is involved, Injury or loss claims or Motor accident arising without criminal intention.

B. STATUTORY REQUIREMENTS

- **Section 89 & Order X Rule 1A CPC** require courts to consider all five ADR options—Arbitration, Conciliation, Judicial Settlement, Lok Adalat, and Mediation.
- The **Referral Judge must assess facts and dispute nature** to decide the most suitable ADR method.
- The judge **need not draft or formulate settlement terms** before referral.
- **Unsuitable cases must not be referred**; reasons for non-referral must be briefly recorded.
- Courts must **consider ADR in every case**, but actual referral is mandatory only when the case does not fall under an excluded category (as clarified in *Afcons*, Paras 24 & 26).

C. MOTIVATING & PREPARING THE LAWYERS AND PARTIES FOR MEDIATION

- Referral judges play a key role in encouraging parties and lawyers to choose mediation.
- If parties resist mediation, the judge should identify the reasons for their reluctance and address them.
- The judge must explain the mediation process, its benefits, and how it addresses underlying interests of the parties.
- Even if the whole case isn't suitable for mediation, the judge may refer specific issues that can benefit from mediation.
- Judges act as motivators and guides, helping parties understand the value of settlement through mediation.

D. CONSENT

- **Consent of all parties is mandatory** for referring a case to **Arbitration** (when no prior arbitration agreement exists).
- **Consent is also mandatory** for referring a case to **Conciliation**.
- **Consent is NOT required** for referring a case to **Mediation, Lok Adalat, or Judicial Settlement**.
- Lack of consent does **not affect the voluntary nature** of mediation because parties still decide whether to settle.

E. STAGES OF REFERAL

- The ideal stage for ADR referral in civil suits is **after pleadings are complete and before framing issues**.
- If ADR is not considered at that stage, the court may still **refer the case later**.
- In **family and matrimonial disputes**, the best stage for mediation is **after service of notice and before filing of objections/written statements**.
- Early referral in family matters helps prevent **hostility from escalating** due to allegations and counter-allegations.
- Referral orders must be passed **in the presence of the parties or their authorized representatives**.

RESPONSIBILITIES OF REFERRAL JUDGES

- Referral judges issue detailed referral orders that include essential details such as the parties' names, case specifics, stage of trial, nature of the dispute, and the statutory provision for legal clarity.
- They must confirm parties' consent to mediation and identify the mediator or institution, ensuring the mediator's suitability for a fair resolution.
- Judges set practical aspects like mediation timelines, fees, and remuneration, ensuring transparency and avoiding conflicts.
- They provide contact information for parties and legal representatives to maintain seamless communication and coordination.
- The diligence of referral judges in crafting precise referral orders significantly impacts the mediation's efficiency, party engagement, and likelihood of a successful resolution.
- Under Section 37 (B) CPA, 2019 the referral judge shall within seven days of the receipt of the settlement report pass suitable order recording such settlement of consumer dispute.

MEDIATION & CONCILIATION RULES

- Following are the rules laid down by **ORISSA HIGH COURT, CUTTACK**
  - **Rule 1: Title:** These Rules shall be called the civil procedure mediation Rules, 2007 AND come into force on the date of their publication in the Orissa Gazette.
  - **Rule 2: Appointment of Mediator**
  - **Rule 3: Panel of Mediator**



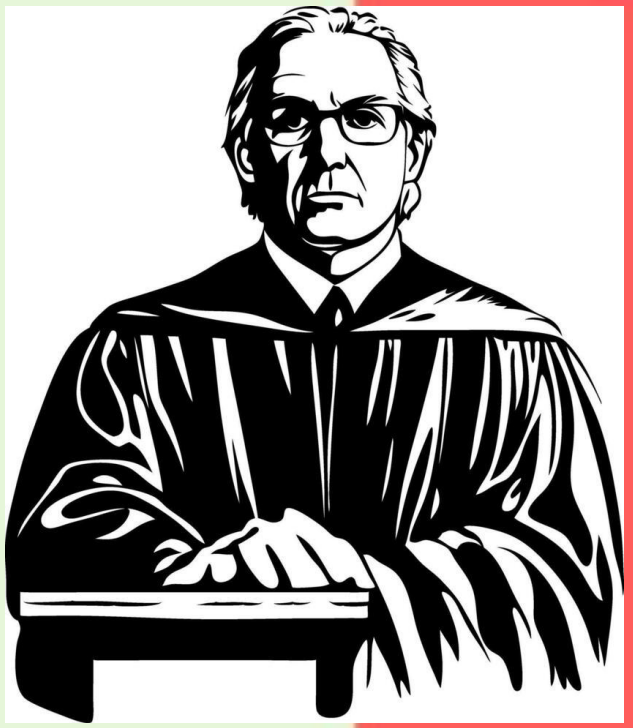
- **Rule 4: Qualifications of Persons to be Empaneled**
- **Rule 5: Disqualification of Person**
- **Rule 6: Venue for Conducting mediation**
- **Rule 7: Preference**
- **Rule 8: Duty of Mediator to Disclose Certain Facts**
- **Rule 9: Cancellation of Appointment**
- **Rule 10:Removal or deletion from Penal**
- **Rule 11: Procedure of Mediation**
- **Rule 12: . Mediator not bound by Evidence Act, 1872 or Code of Civil Procedure, 1908**
- **Rule 13: Non-attendance of parties at sessions or meetings on due dates**

- Rule 14:Administrative assistance
- Rule 15: Offer of settlement by parties
- Rule16: Role of Mediator
- Rule 17: Parties alone responsible for taking decision
- Rule 18: Time limit for completion of mediation
- Rule 19:Parties to act in good faith
- Rule 20: Confidentiality, disclosure and inadmissibility of information
- Rule 21: Privacy
- Rule 22: Immunity
- Rule 23: Communication between mediator and the Court
- Rule 24: Settlement agreement

- **Rule 25: Court to fix a date for recording settlement and passing decree**
- **Rule 26: Fee of mediator and costs**
- **Rule 27: Ethics to be followed by Mediator**
- **Rule 28: Transitory provisions**
- **rule 29: Pre-Litigation Mediation**

DOS

DON'TS



REFERRAL JUDGES

DO'S



- Ensure presence of the parties or authorized representatives at the time of referral;
- Assess relevant facts of the case;
- Interact and motivate the parties;
- Ascertain willingness of the parties;
- Explain Role of Mediator;
- Explain Right to Self Determination and Confidentiality;
- Select appropriate cases;
- Encourage Advocates and Litigants to choose Mediation;
- Ensure Authority of Government Officials;
- Obtain free consent of the parties for referral;
- Find reasons if parties are not ready for Mediation;
- Explain benefits of Mediation;
- Pass appropriate Referral Order;
- Obtain signatures of parties on Referral Order;
- Fix date and time for appearance before Mediator;
- Fix Schedule of Trial.

DON'T'S

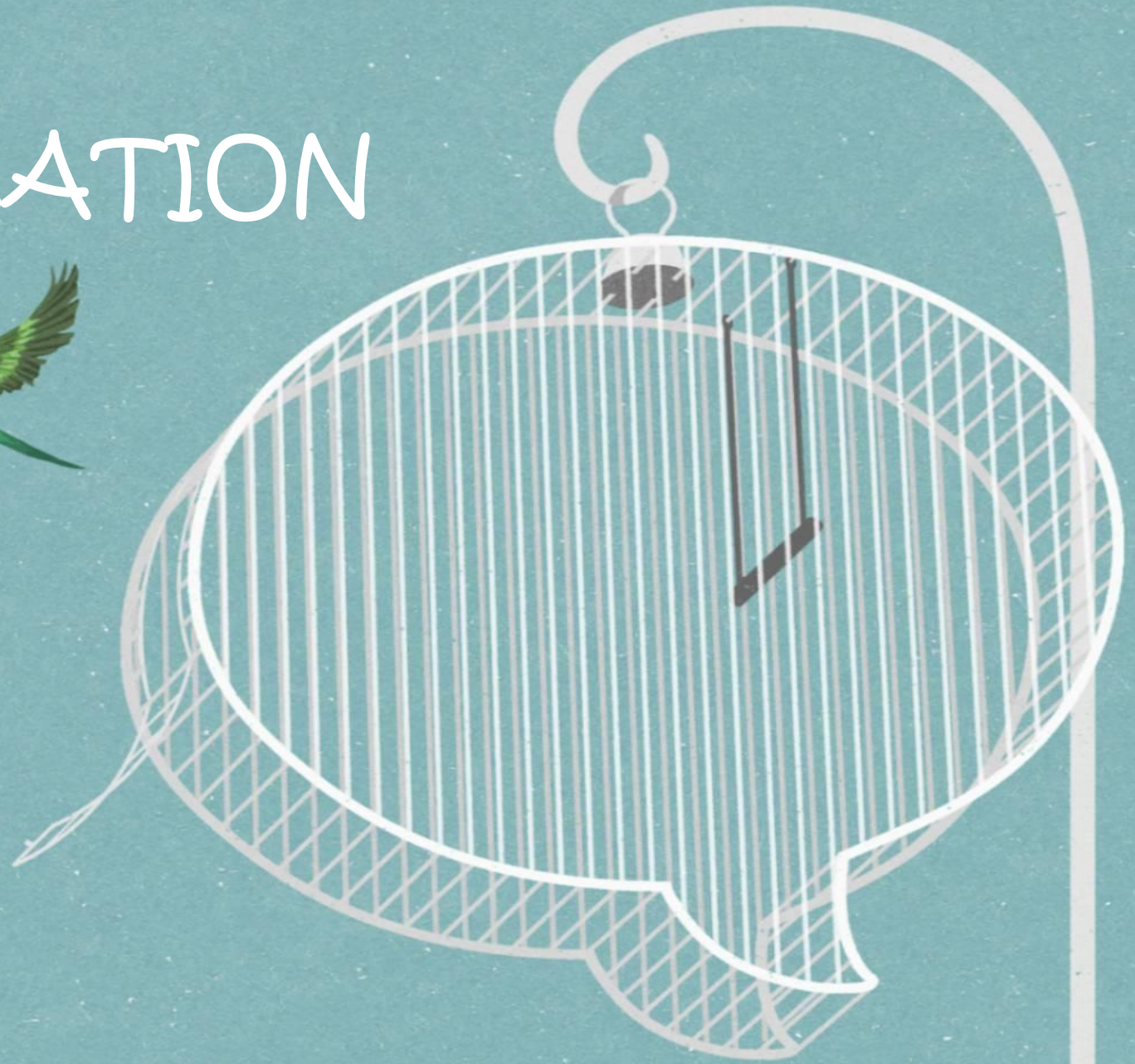


- Do not refer Ex-parte case;
- Do not refer cases involving complex legal issues, multiple parties, Constitutional matters, Public Policies;
- No delay of Trial;
- No reference for sake of reference;
- No reference without objective assessment;
- Do not refer a case barred by Statutory Provisions;
- No communication with Mediator.

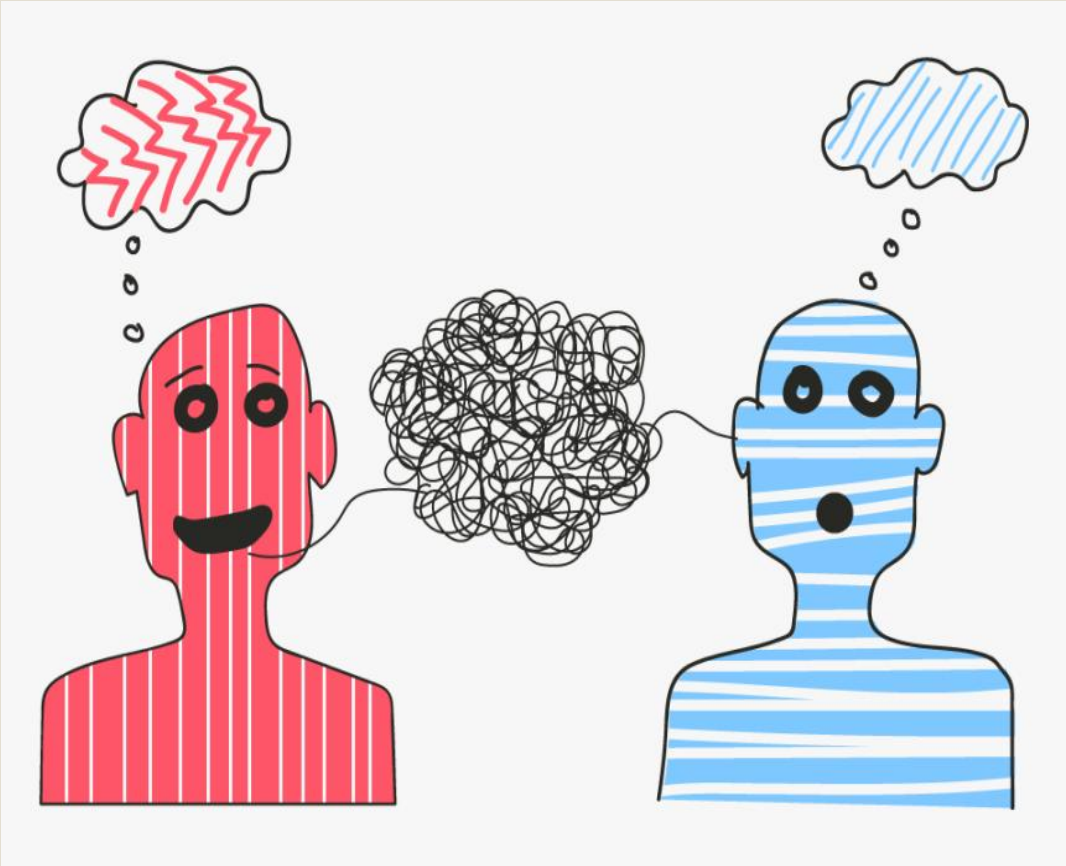
MODULE 2

COMMUNICATION



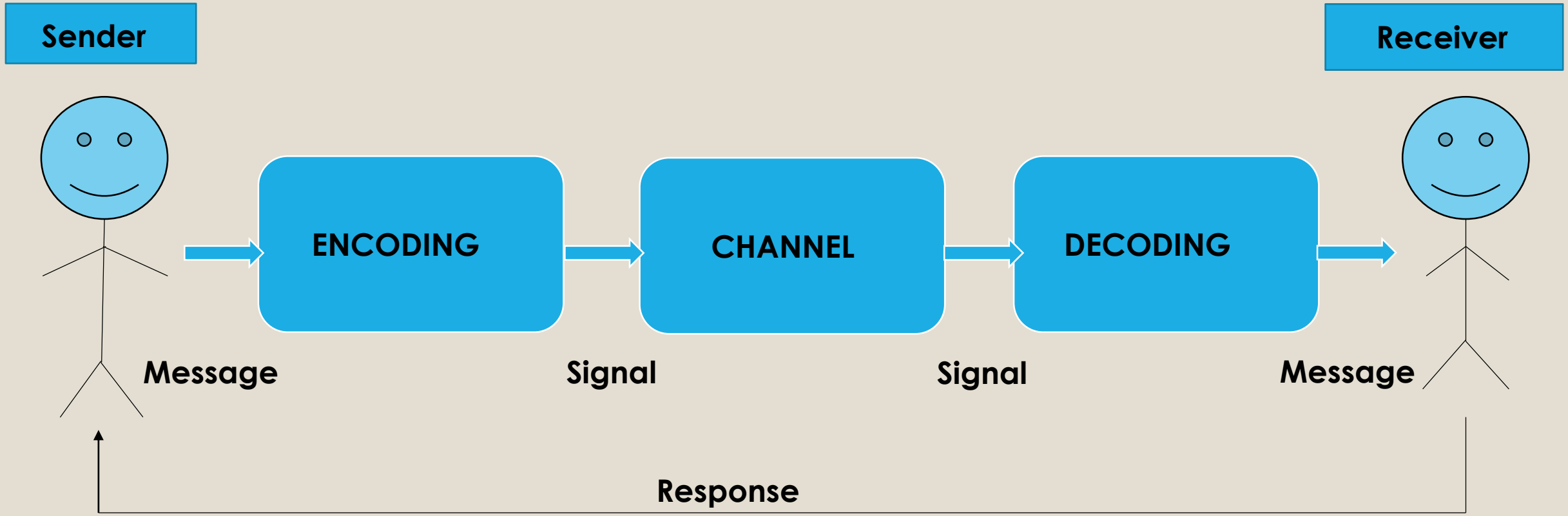


WHAT IS COMMUNICATION?



- **Communication is a process of transmission of information.**

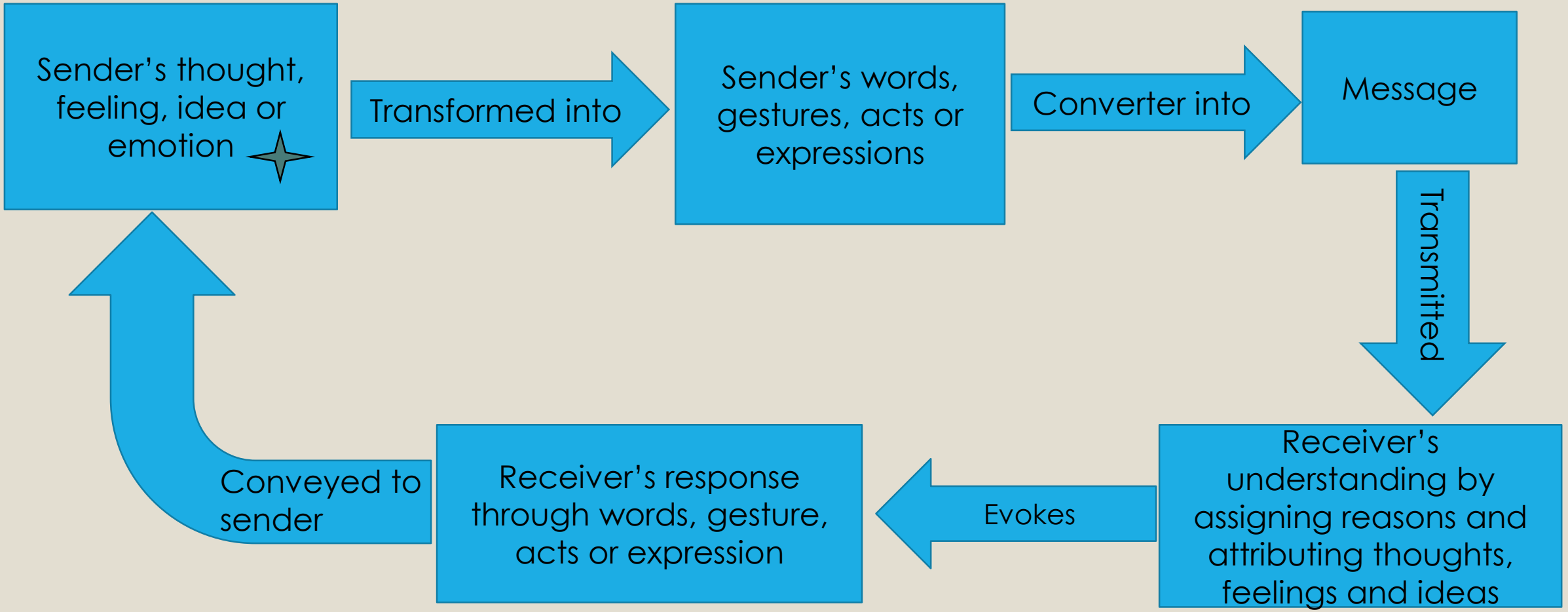
COMMUNICATION PROCESS



PURPOSE OF COMMUNICATION

- To express feelings, thoughts, ideas, emotions or desires to others;
- To make others understand what and how we think or feel;
- To derive a benefit or advantage;
- To express needs and demands.

DECODING A MESSAGE

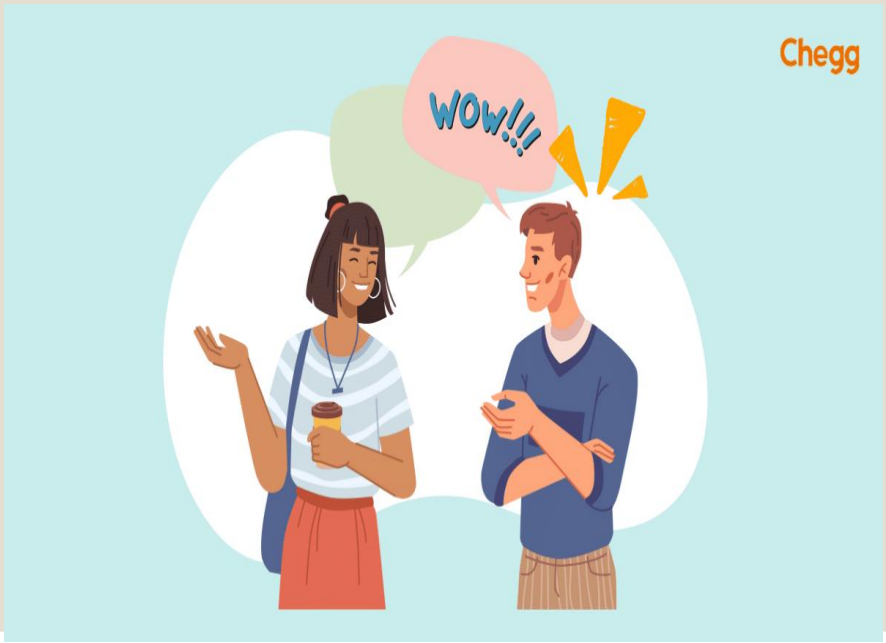


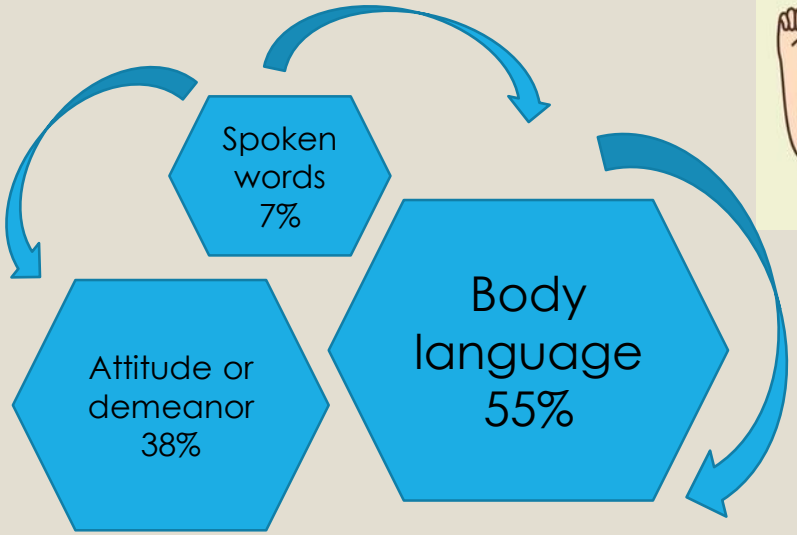
IMPORTANCE OF COMMUNICATION IN MEDIATION?

- Communication is essential for understanding and resolving conflicts.
- Effective communication fosters a collaborative environment, enabling parties to work towards mutually beneficial solutions.
- Mediators must listen attentively to identify underlying issues and facilitate constructive dialogue.
- Allows parties to express their views fully without feeling rushed or disrespected.
- Communication encourages respectful and productive dialogue.

TYPES OF COMMUNICATION

- **VERBAL COMMUNICATION**
- **NON-VERBAL COMMUNICATION**







VERBAL COMMUNICATION

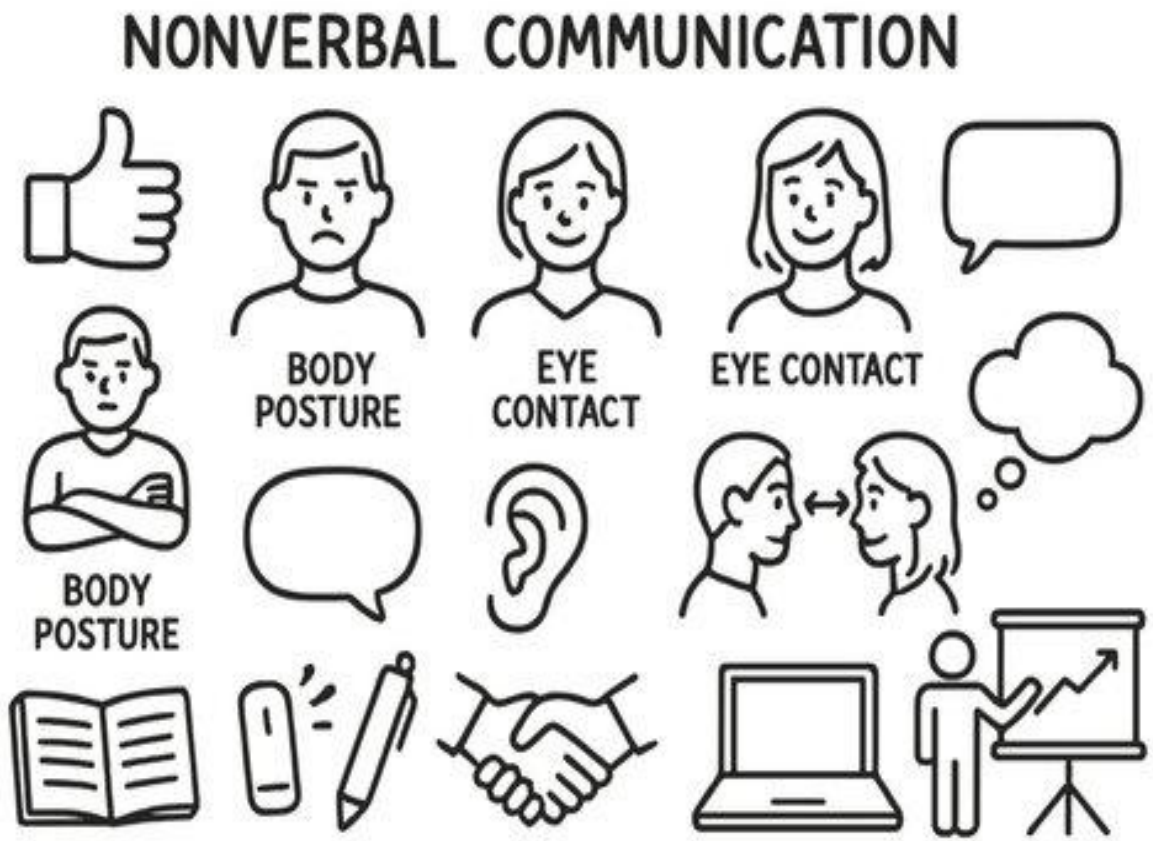
- Verbal communication involves the transmission of information, ideas, emotions, or instructions using spoken words.
- It is the primary means through which parties articulate their thoughts, express concerns, and negotiate solutions.
- Parties clarify and validate their perspectives and ensures that all viewpoints are heard and understood through communication.



NON-VERBAL COMMUNICATION

- Non-verbal communication refers to the transmission of messages through gestures, facial expressions, posture, eye contact, tone of voice, and other forms of body language.
- Non-verbal cues often provide deeper insights into a party's emotions, attitudes, and unspoken concerns, as they tend to be less consciously controlled and more spontaneous. For example, a party's crossed arms or averted gaze might indicate discomfort or resistance, even if their verbal communication suggests otherwise. Mediators must be skilled at observing and interpreting these cues to address underlying issues effectively and foster trust between the parties.




NONVERBAL COMMUNICATION
BODY POSTURE
EYE CONTACT
EYE CONTACT
BODY POSTURE



Traffic & Road Sings



Traffic Lights



Pedestrian crossing



Road Work



No Overtaking



No U-Turn



Bend



No smoking



No goods vehicles



Maximum length



No cycling



Cycle track



Pass this side



Direction to be followed



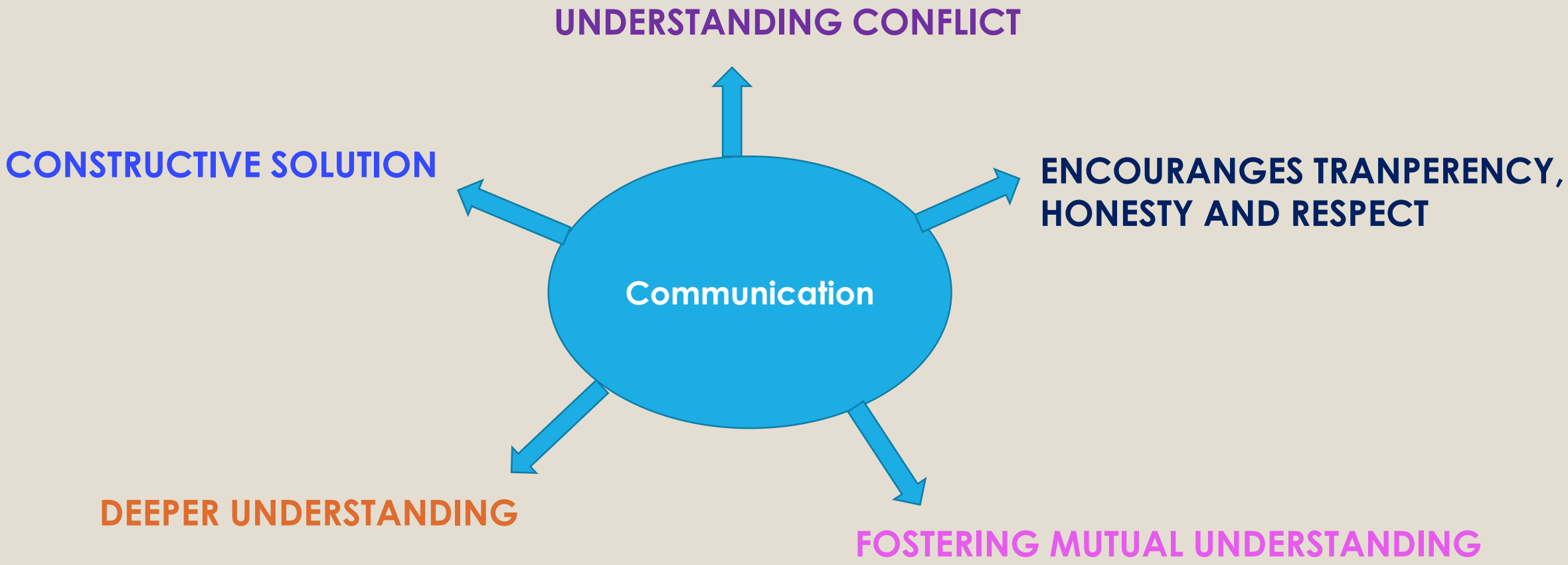
One way Street



No parking

www.englishan.com

ROLE OF COMMUNICATION IN MEDIATION



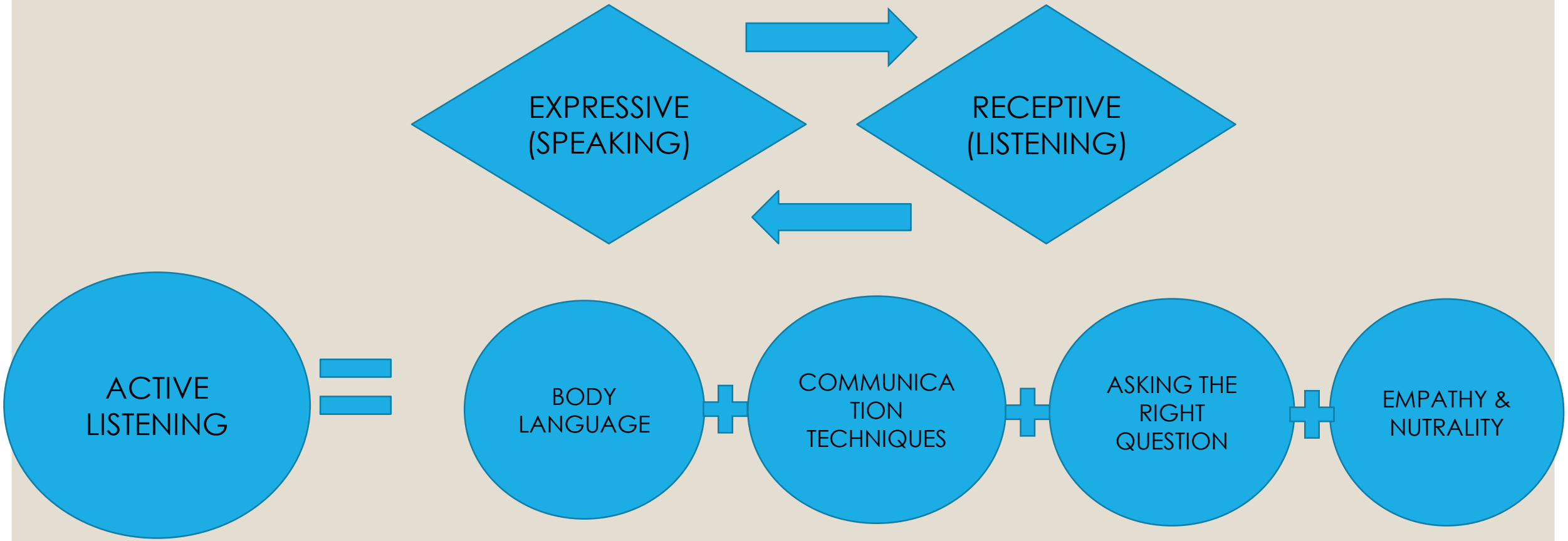
COMMUNICATION IN MEDIATION

- Communication is the primary technique employed throughout the mediation process, from initial contact to conflict resolution through assisted negotiation.
- Effective communication helps the mediator understand the parties' roles, conflict history, and value systems, forming a comprehensive conflict resolution strategy.
- Mediators must consider diverse cultural backgrounds, focusing on common cultural elements to establish mutually accepted evaluation criteria.
- In collective-oriented cultures, communication should emphasize personal responsibility for conflict resolution, even if the conflict originates from a collective perspective.
- Communication facilitates the use of objective criteria for conflict resolution, ensuring that the parties' interests and needs are met in a fair and satisfactory manner.



VARUNA BHANDARI GUGNANI

CONSTRUCTIVE COMMUNICATION



ACTIVE LISTENING



- Active listening is hearing words and engaging with the spoken words and unspoken nuances of communication.
- It involves understanding what is being said and also what is left unsaid.
- It involves understanding silence and nonverbal cues which also conveys meaning powerfully.
- Active listening requires understanding the speaker's intended message, regardless of errors or limitations in their communication.

1. BODY LANGUAGE



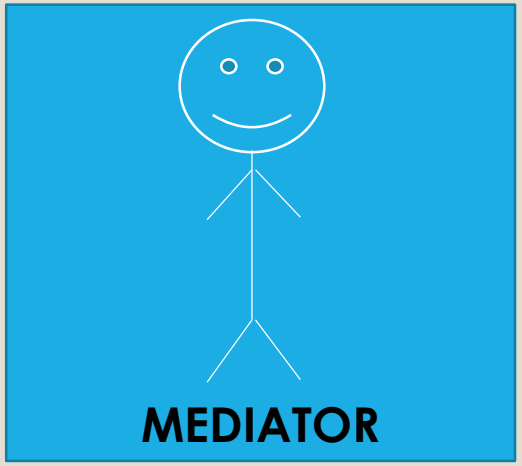
- Body language plays a crucial role in mediation, impacting the dynamics and outcomes of the process.
- A mediator's body language can build rapport, establish trust, and facilitate effective communication between parties.
- Creates a supportive and conducive environment for constructive dialogue and resolution.
- Helps parties find common ground and move towards a mutually acceptable solution.
- Enhances the mediator's ability to facilitate effective communication and build trust with parties.

BODY LANGUAGE FOR A MEDIATOR (SOLER)

1. Symmetric: Balanced Posture

2.Open: Uncrossed arms and legs

5. Relaxed



3. Leaning: Tilt forward Gently towards the Speaker

4. Eye contact: Proper Eye Contact with the Speaker

2. COMMUNICATION TECHNIQUES

- Summarizing
- Reflecting
- Re-framing
- Acknowledging
- Deferring
- Encouraging
- Bridging
- Restating
- Paraphrasing
- Silence
- Apology
- Setting an Agenda

SUMMARIZING

- Summarizing is a key technique, especially in mediation, where the mediator repeats or paraphrases the main points expressed by a speaker to ensure mutual understanding.
- The goal of summarizing is to provide a concise, neutral, and accurate outline of the speaker's ideas, helping the speaker feel heard and reducing the need for them to repeat their points.
- This technique allows the mediator to check for clarity and align with understanding of both parties before moving forward.

RE-FRAMING

- Re-framing is a technique where the mediator skilfully shifts the speaker's statements from negative, emotionally charged positions to constructive, interest-based dialogue.
- By re-framing, the mediator encourages parties to focus on their underlying needs and future solutions rather than dwelling on past grievances.
- Converts the statement from negative to positive.
- Converts the statement from past to future.
- Converts the statement to position to interest.
- Shifts the focus from the target of the statement to the speaker.

- **Example:**
  - Party: "My boss is cruel and indifferent. It is impossible to talk to him. I should be able to meet him at least once a day. He doesn't make any time for me and always ignores me."
  - Mediator Re-frames: "You want regular access and communication with your boss and you want him to be considerate, is that right?" This re-frame has converted the employee's complaint from negative to positive, past to future, position to interest and shifted the focus back to the employee's needs/interests.
- NOTE:
  - Position: A position is a perception ('my boss is cruel and indifferent") or a claim or demand or desired outcome ("I should be able to meet him at least once a day").
  - Interest: An interest is what lies beneath and drives a person's demands or claims. It is a person's real need, concern, priority, goal etc. It can be tangible (eg- property, money, shares etc.) and/ or intangible (e.g. communication, consideration, recognition, respect, loyalty etc.).

REFLECTING

- Reflecting is a technique where the mediator acknowledges and restates the speaker's emotions to confirm understanding.
- By reflecting, the mediator not only conveys that they are listening but also validates the speaker’s feelings, which helps to build rapport and trust in a neutral manner.
- This technique involves identifying the speaker's emotions and paraphrasing them back, using similar language to ensure the speaker feels their emotions are recognized and valued.
- **Example:**
  - "So, you are feeling frustrated".
  - Reflecting usually demonstrates empathy.

ACKNOWLEDGING

- Acknowledging is a technique where the mediator simply and neutrally confirms that they have heard and understood the speaker.
- This technique does not involve agreement or disagreement but rather shows respect and attentiveness, letting the speaker know their voice and perspective are valued.
- By acknowledging, the mediator creates an open space for dialogue, encouraging the speaker to continue sharing without feeling judged or dismissed.
- **Example:**
  - "I see your point" or "I understand what you are saying. This way mediator assures the speaker that he has been heard and understood.

DEFERRING

- Deferring is an technique where the mediator intentionally postpones discussion of a particular topic until a more suitable time in the mediation process.
- This approach helps maintain focus and manage the flow of conversation, ensuring that issues are addressed in an orderly and effective manner.
- By noting down the deferred topic, the mediator demonstrates respect for the speaker's concerns and reassures them that the topic will not be overlooked.
- This technique is especially helpful for managing complex or highly emotional issues that may need careful timing and context for productive discussion.

ENCOURAGING

- Where the mediator provides positive reinforcement to help parties feel reassured, supported, and motivated to communicate openly.
- By encouraging, the mediator validates the speaker's contributions, which fosters confidence and encourages them to express their thoughts more freely.
- This technique is especially valuable when parties are hesitant and need reassurance.
- It helps build rapport and maintains a constructive environment within the mediation process.
- **Example:**
  - " what you said makes things clear" or "this is useful information"

BRIDGING

- Bridging is a technique where the mediator uses subtle prompts to encourage parties to continue their thoughts, helping to maintain a smooth flow of communication.
- This technique often involves using connecting words like “And…” or “And then…” rather than “But…” to create an inviting, open-ended space for the speaker to elaborate.
- The word "And" gently prompts the speaker to continue without interrupting or redirecting the conversation, while words like "But" may come across as contradictory or dismissive, potentially discouraging further sharing.
- **Example:** "And--------", "And then-----", The word "And" encourages communication whereas the word
- "But " could discourage communication.

RESTATING/MIRRORING

- Restating is a technique where the mediator repeats or paraphrases the speaker's statement using key words or similar language.
- This technique is used to confirm that the mediator has accurately understood the speaker's message.
- Restating shows attentiveness, encourages clarity, and reassures the speaker that their words are valued and correctly interpreted.
- By mirroring the speaker's language, the mediator validates their perspective and encourages further dialogue.
- **Example:**
  - "My husband does not give me the attention I need."
  - Mediator restates "Your husband does not give you the attention you need."

PARAPHRASING

- Paraphrasing is a technique where the mediator rephrases the speaker's statements in their own words while retaining the original meaning.
- This technique allows the mediator to show understanding and clarify the speaker's message without merely repeating it.
- Paraphrasing is effective for summarizing complex or emotionally charged statements and can help simplify issues, ensuring both the mediator and speaker are on the same page.
- It also reassures the speaker that their message has been understood, even if expressed in slightly different words.

SILENCE

- Silence is a powerful technique where the mediator allows a pause in conversation, giving parties time to process their thoughts and emotions without pressure to speak immediately.
- Effective use of silence signals to the parties that they have space to reflect, gather their thoughts, or express themselves in their own time.
- This technique helps reduce tension, encourages introspection, and allows for a deeper understanding of issues, making it especially valuable during emotionally charged or complex discussions.

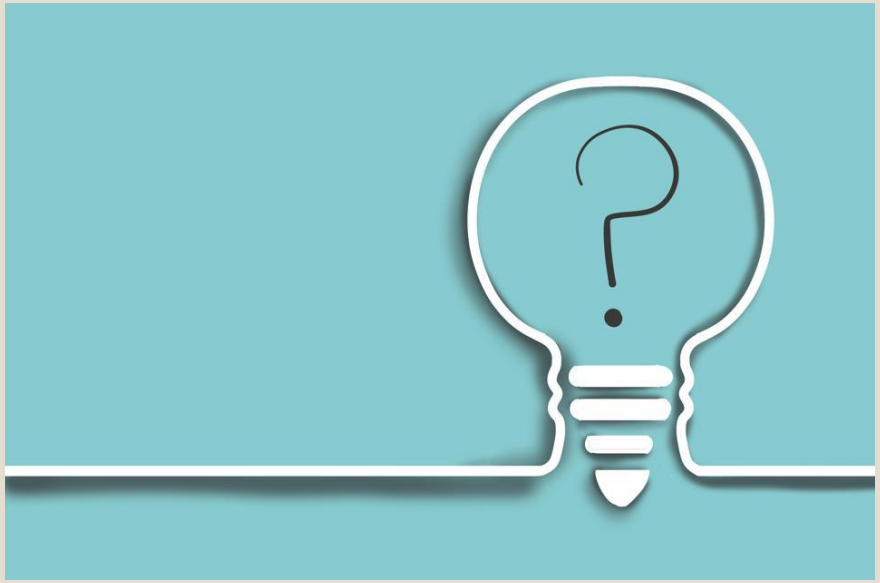
APOLOGY

- An apology in mediation is a technique where a party acknowledges the emotional impact of their actions or words on the other party without necessarily admitting guilt or liability.
- This acknowledgment of hurt or pain can be powerful in building empathy, diffusing tension, and fostering a more constructive environment.
- The mediator plays a crucial role in guiding parties to craft genuine apologies, ensuring the message is both clear and sensitive to the emotional needs of the other party.
- Apologies can often pave the way for reconciliation, trust, and more open communication between parties.
- Example: "I am sorry that my words/act caused you hurt and pain. It was not my intention to hurt you"

SETTING AN AGENDA

- Setting an agenda is a technique used by the mediator to organize and prioritize topics, issues, and concerns in a way that facilitates effective communication and a structured approach to the mediation process.
- By establishing an agenda, the mediator can help reduce overwhelm, manage emotions, and create a logical sequence for discussion.
- This technique is especially valuable when tensions are high or when the issues are complex, as it allows the mediator to direct attention to specific topics one at a time, creating a manageable, goal-oriented framework.
- The agenda can be set either in consultation with the parties or decided by the mediator based on the context and dynamics of the dispute.
- Often, addressing simpler or less contentious issues first can build momentum and pave the way for resolving more challenging topics.
- **For example:** when tensions are high it is preferable to select the easy issue to work on first. The mediator may determine what is to be addressed first so as to provide ground work for later decision making.

3. ASKING THE RIGHT QUESTION



- Mediators strategically employ questions to unravel layers of information and clarify perspectives.
- Questions illuminate underlying interests and guide parties towards mutual understanding.
- Precision, discretion, and sensitivity are crucial when wielding questioning as a tool.
- Effective questioning demonstrates the mediator's active engagement and encouragement of dialogue.
- The right questions serve as beacons, leading towards clarity and consensus for all parties involved.

ASKING EFFECTIVE QUESTION

- Open Question
- Questions to get Information
- Questions to get interest
- Questions to get solution
- Questions to get consequences
- Questions to test an agreement

OPEN QUESTIONS

- Open questions are a type of questioning technique in mediation that allows parties to expand on their thoughts, clarify their positions, and explore underlying interests.
- These questions are broad and intentionally designed to encourage detailed responses, providing the speaker with the freedom to express their perspective more fully.
- Unlike closed questions that elicit brief or yes/no answers, open questions invite elaboration and can reveal insights into the party's true needs, concerns, or goals, helping the mediator gain a deeper understanding of the issues at hand.
- Using open questions effectively helps the mediator facilitate constructive dialogue, encourage self-reflection in the parties, and maintain an atmosphere of respect and openness.
- **Examples:**

- "Can you tell me more about the subject ?"
- "What happened next?"
- "What is your claim?"
- " What do you really want to achieve?"

CLOSE QUESTIONS

- Closed questions are a type of questioning technique in mediation designed to obtain specific, factual information.
- These questions are narrow in scope, direct, and focused on precise details. The responses to closed questions are usually brief, often “yes” or “no” answers, or short factual statements.
- Closed questions can help the mediator gather important details, clarify specific aspects, and check accuracy without inviting elaborate explanations.
- However, since they tend to limit the response, they’re best used for confirming facts or clarifying points rather than exploring deeper issues or emotions.
- Closed questions can be valuable for quickly obtaining necessary information, streamlining the conversation, and focusing on key facts.
- They also help prevent ambiguity, as they prompt the speaker to provide a clear and direct answer.
- **Examples:**

- "What colour shirt was the man wearing?”
- "On which date was the contract signed?”
- "What is the total amount of your medical bills?”
- "Were you present in the market when the event occurred?"

HYPOTHETICAL QUESTIONS

- Hypothetical questions are a type of questioning technique in mediation that allows parties to imagine alternative scenarios, outcomes, or solutions.
- These questions encourage parties to explore new ideas, consider potential compromises, and evaluate “what-if” situations that might not have been initially considered.
- Hypothetical questions help the mediator to gently guide parties toward creative problem-solving and broaden their perspective on potential solutions.
- This technique can be particularly effective when parties are entrenched in their positions or unable to see beyond their current stance.
- By posing hypothetical questions, the mediator helps parties consider options without commitment, opening up possibilities that can lead to breakthrough moments or innovative resolutions.
- **Examples:**

- "**What if** the disputed property is acquired by Government?”
- "**What if** your husband offers to move out of the parental house and live separately?"

QUESTIONS TO CRISTALIZE INTREST

- PARTIES TO ASK:
  - WHAT IS MOST IMPORTANT FOR THEM?
  - WHAT IS THE BEST THING THAT CAN HAPPEN TO THEM?
  - WHAT IS THAT THEY CANNOT DO WHITHOUT?
  - WHY IS IT SO IMPORTANT TO THEM?
  - WHAT WILL HAPPEN IF THEY DON'T GET IT?
- EXAMPLE: If 'A' want to sell a car and he has fixed a price at 10lakhs and 'B' wants to buy a car for 7lakhs, how to come to a solution which satisfies both and is a win-win situation for both of them.

4. EMPATHY & NEUTRALITY



- Listening with empathy is crucial in mediation, where conflicts are at play.
- Empathy involves understanding the underlying emotions and needs of the speaker without expressing agreement.
- Focus on the parties involved, allowing them to express themselves fully without fear of bias or criticism.
- Create a safe and supportive atmosphere where individuals can explore their concerns openly.
- Verbal and non-verbal response of a mediator that demonstrate understanding and concern without emotional commitment.

- **Example:**

- Wife: "I had such a hard day at work”
- Husband :"I am so sorry you had a hard day at work"

(focus is on listener/ husband) – Sympathy

- Husband :"You had a hard day at work, mine was worse" – Sympathy

(focus on listener/husband)

- Husband: " You feel it was hard for you at work today.
- Would you like to talk about it?”

(focus on speaker/wife)

DIFFERNCE BETWEEN EMPATHY AND SYMPATHY

EMPATHY (Focus on Speaker)	SYMPATHY (Focus on Listener)
Involves understanding others' feelings and perspectives from their viewpoint.	Acknowledges and responds to someone's emotions from one's own perspective.
Requires active listening, genuine curiosity, and a non-judgmental attitude.	May involve expressions of concern or support, but often centers attention on the listener rather than the speaker.
Focuses attention on the speaker, seeking to appreciate their emotions and needs without inserting personal opinions.	Responses may unintentionally redirect focus away from the parties in conflict.
Understanding another's view point without necessarily agreeing or showing concern through having a similar experience or feelings.	Expressing concern by showing that you have similar experiences, viewpoints or feelings.

BENEFITS OF EFFECTIVE COMMUNICATION



- Use straightforward and clear language;
- Steer clear of complex words and expressions;
- Eliminate redundant repetition;
- Be precise and logical in your communication;
- Maintain clarity of thought and expression;
- Respond with empathy, warmth, and genuine interest;
- Maintain proper eye contact;
- Be patient, attentive, and courteous;
- Avoid unnecessary interruptions;
- Cultivate strong listening skills and abilities;
- Refrain from making statements or comments that could have a negative impact.

INEFFECTIVE COMMUNICATION IN MEDIATION



- When the sender's message is not correctly understood by the receiver due to varying interpretations.
- The receiver may misinterpret or distort the message, leading to misunderstandings.
- Variations in language and expression can create barriers to effective communication.
- Inadequate listening abilities and skills can prevent accurate comprehension of the message.
- Impatience can hinder the communication process, leading to incomplete or rushed exchanges.
- When a message is relayed through a third party or intermediary, valuable information may be withheld or distorted, causing communication breakdowns.

BARRIERS TO COMMUNICATION IN MEDIATION

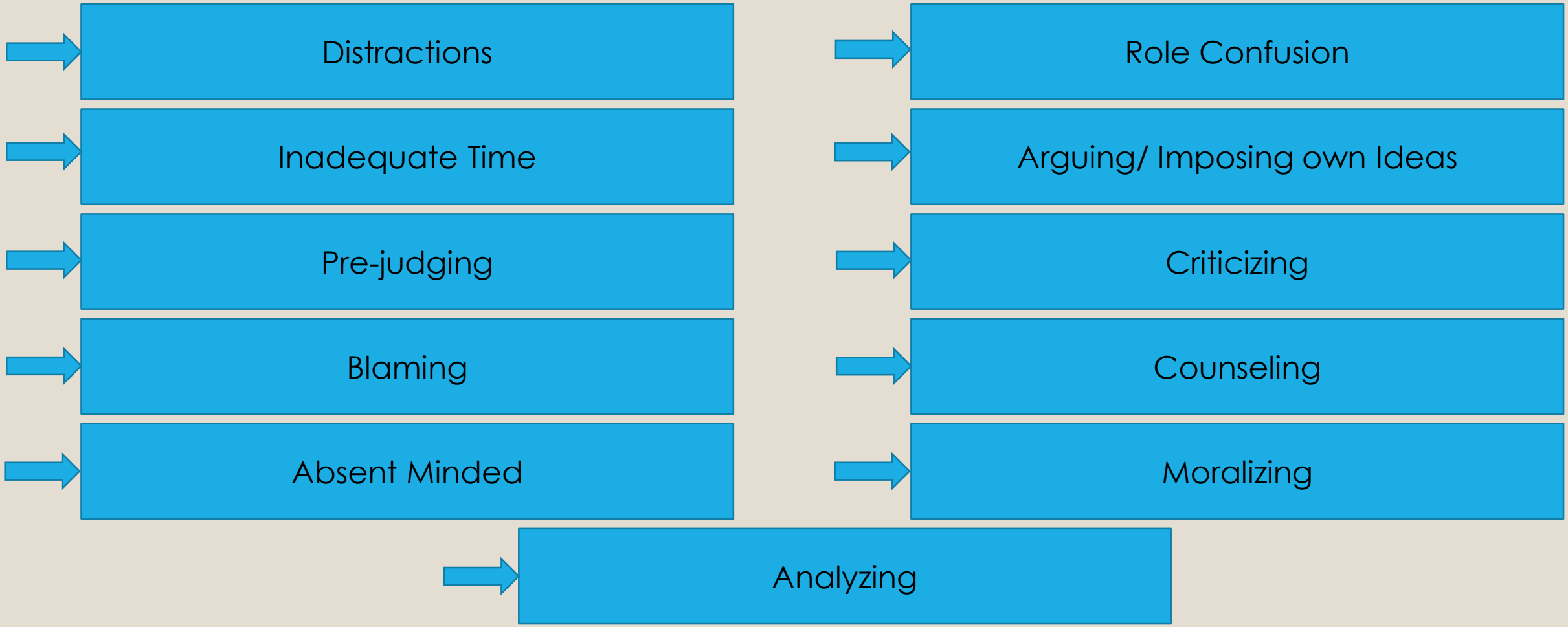


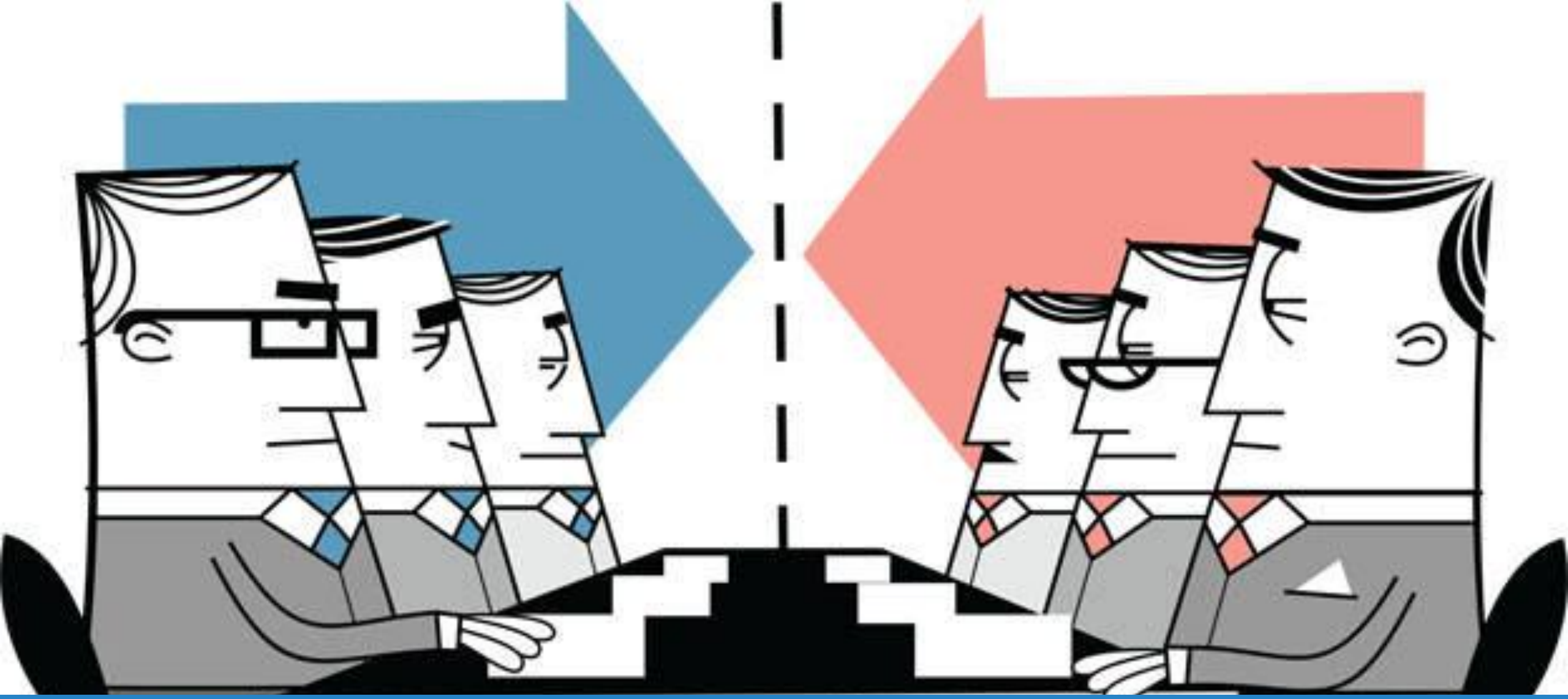
- **Physical Barrier:**
- Unpleasant Environment;
- Inadequate Seating Arrangements;
- Presence of Third Parties;
- Insufficient Time.
- **Emotional Barriers:**
- Party Temperaments and Emotional Intelligence;
- Feelings of Inferiority, Superiority, Guilt, or Arrogance;
- Fear, Suspicion, Ego, Mistrust, or Bias;
- Hidden Agendas;
- Personality Conflicts.

- **Mediators Role:**

- Mediator steps out of his role as a neutral facilitator
- Prejudging
- Blaming
- Absent mindedness
- Arguing and Imposing own views
- Criticizing
- Moralizing
- Analyzing

BARRIERS TO COMMUNICATION





NEGOTIATION

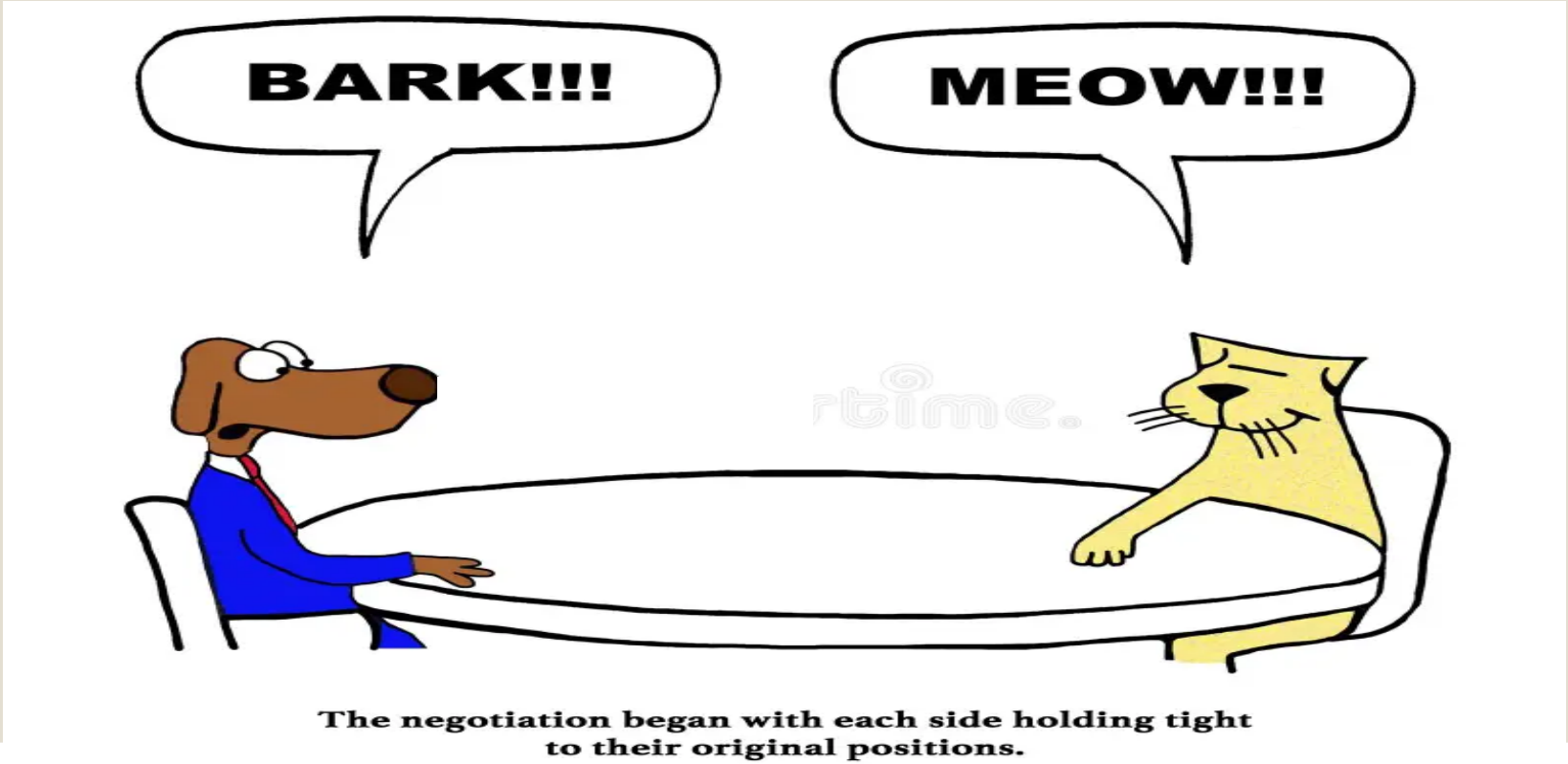
WHAT IS NEGOTIATION?

- Negotiation is a process of **communication aimed at persuasion** between two or more parties to reach a **mutually acceptable agreement**.
- **Negotiation is the process of back and forth communication aimed to reach an agreement between the parties.**
- It is an essential **decision-making process** used in daily life, business, law, and conflict resolution.



IN OTHER WORDS

- Mediation is assisted Negotiation process conducted in the presence & with the assistance of neutral third party- Mediator.



WHY NEGOTIATION?

- To express views and interests
- To prevent unfair treatment
- To build cooperation
- To avoid going to court
- To reach a mutually agreeable solution



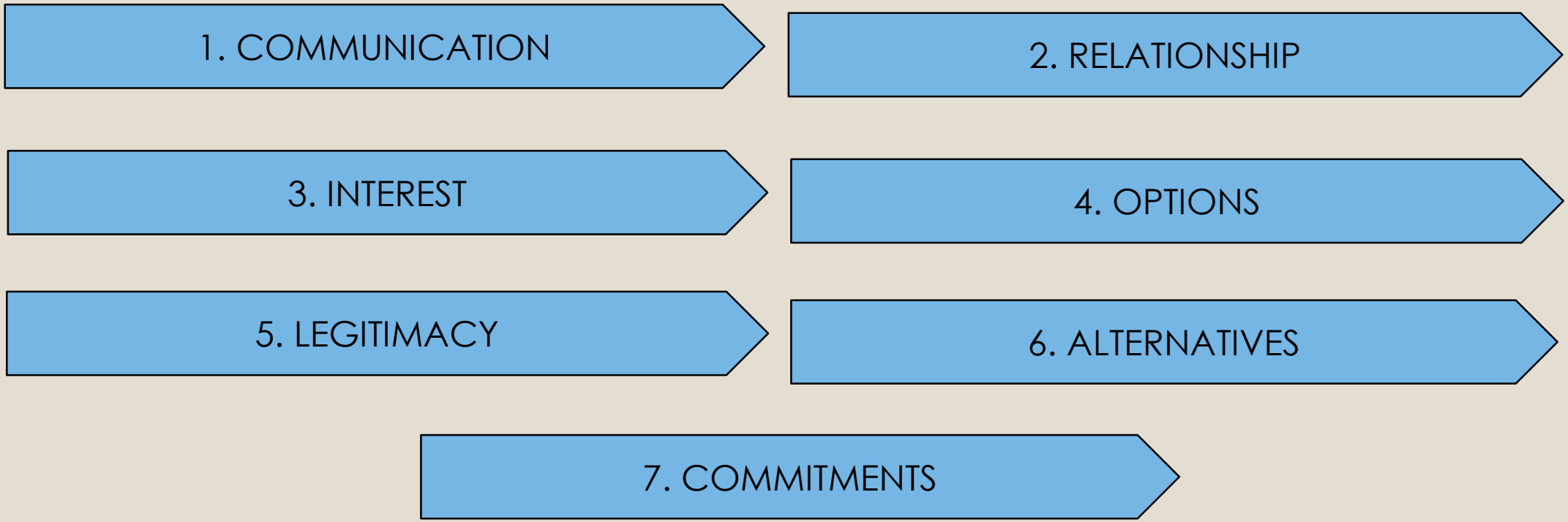
ROLE OF NEGOTIATION IN MEDIATION

- Opens the channel of communication.
- Builds Rapport & promote understanding.
- Keeps focus on future & understand the
- Carries proposals back & forth- Shuttle Diplomacy.
- Encourage creativity & explore innovative options.
- Assist to evaluate options- Reality Testing, Brainstorming etc.
- Aim is to reach settlement which satisfies all.
- Help parties to Assess Realities.
- Frame Offers As potential gains.
- Help To View Concessions As Gains.
- Discuss Clauses To Protect Fear of Uncertainty.
- Frames Litigation Costs / Time in terms of losses.



"We have an agreement in principle. The question is, do we all have the same principles?"

THE HARVARD NEGOTIATION PROJECTS: THE SEVEN ELEMENTS/ DRIVERS OF NEGOTIATION



Acronym: C.R.I.O.L.A.C

1. COMMUNICATION & EFFECTS OF EMOTIONS IN NEGOTIATION:

- The parties must talk to each other while negotiating.
- Positive emotion fosters open two way sharing of important information.
- Negative emotion fosters withholding of information and adversarial confrontation.

2. RELATIONSHIP & EFFECTS OF EMOTIONS IN NEGOTIATION :

- Two or more parties must deal with one another while negotiating, even if this is a one-time transaction and they have no past or ongoing interaction.
- Positive emotion fosters mutually cooperative relationship.
- Negative emotion fosters suspicious and distrust.

3. INTEREST & EFFECTS OF EMOTIONS IN NEGOTIATION :

- Concerns, objectives, needs, desires or fears must be included and satisfied in some way if the parties are to reach a negotiated agreement.
- Positive emotion fosters listening to their interest and disclosing our interest.
- Negative emotion fosters undisclosed interest, extreme demands and grudging concessions.

4. OPTIONS & EFFECTS OF EMOTIONS IN NEGOTIATION :

- The various possible ways the parties could work together so their interests are included and satisfied to some degree in a negotiated agreement.
- Positive emotion fosters creating options that may satisfies both sets of interests.
- Negative emotion fosters only two option ours vs. there's.

5. LEGITIMACY & EFFECTS OF EMOTIONS IN NEGOTIATION :

- Objective standards e.g. market value, precedents, industry practices) and fair procedures (e.g., appraisals, bidding, split-the-difference) that can be used to evaluate options.
- Positive emotion fosters usage of fare criteria that may be persuasive to both.
- Negative emotion fosters unpersuasive arguing of we are right and they are wrong.

6. ALTERNATIVES & EFFECTS OF EMOTIONS IN NEGOTIATION :

- The range of possible things a party can do away from the table without the other negotiator's agreement. Of all your alternatives, your BATNA (Best Alternative to a Negotiated Agreement) is the one that you will pursue, if no agreement is reached in negotiation.
- **Positive emotion** fosters reaching agreement if it is better than the alternative.
- **Negative emotion** fosters walking away even if alternative is worst than agreeing.

7. COMMITMENT & EFFECTS OF EMOTIONS IN NEGOTIATION :

- Any preconditions of the parties that must be met in order to negotiate in addition to the parties' ability to assent to a final, binding agreement.
- **Positive emotion** fosters clear, workable, realistic obligations which both parties support.
- **Negative emotion** fosters no agreement or unclear, unworkable commitments.

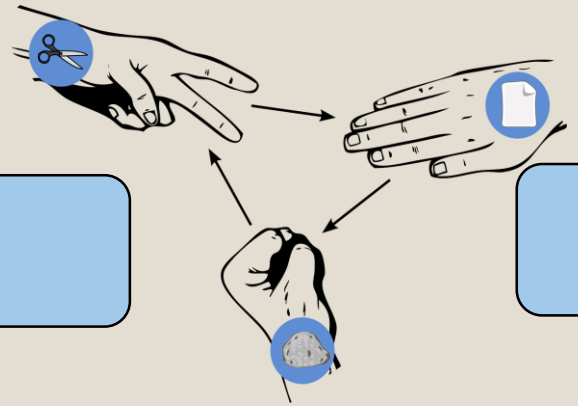
TYPES OF NEGOTIATION





NEGOTIATION STYLE

AVOIDING STYLE



COMPROMISING STYLE

ACCOMODATING STYLE

COLLABORATING STYLE

COMPETING STYLE

Negotiation Styles

Competitive



- Assertive
- Uncooperative
- Typically favors a hard approach

Compromising



- Neither assertive nor unassertive
- Neither cooperative nor uncooperative
- Typically favors compromising

Accommodating



- Unassertive
- Cooperative
- Typically favors a soft approach

Avoiding



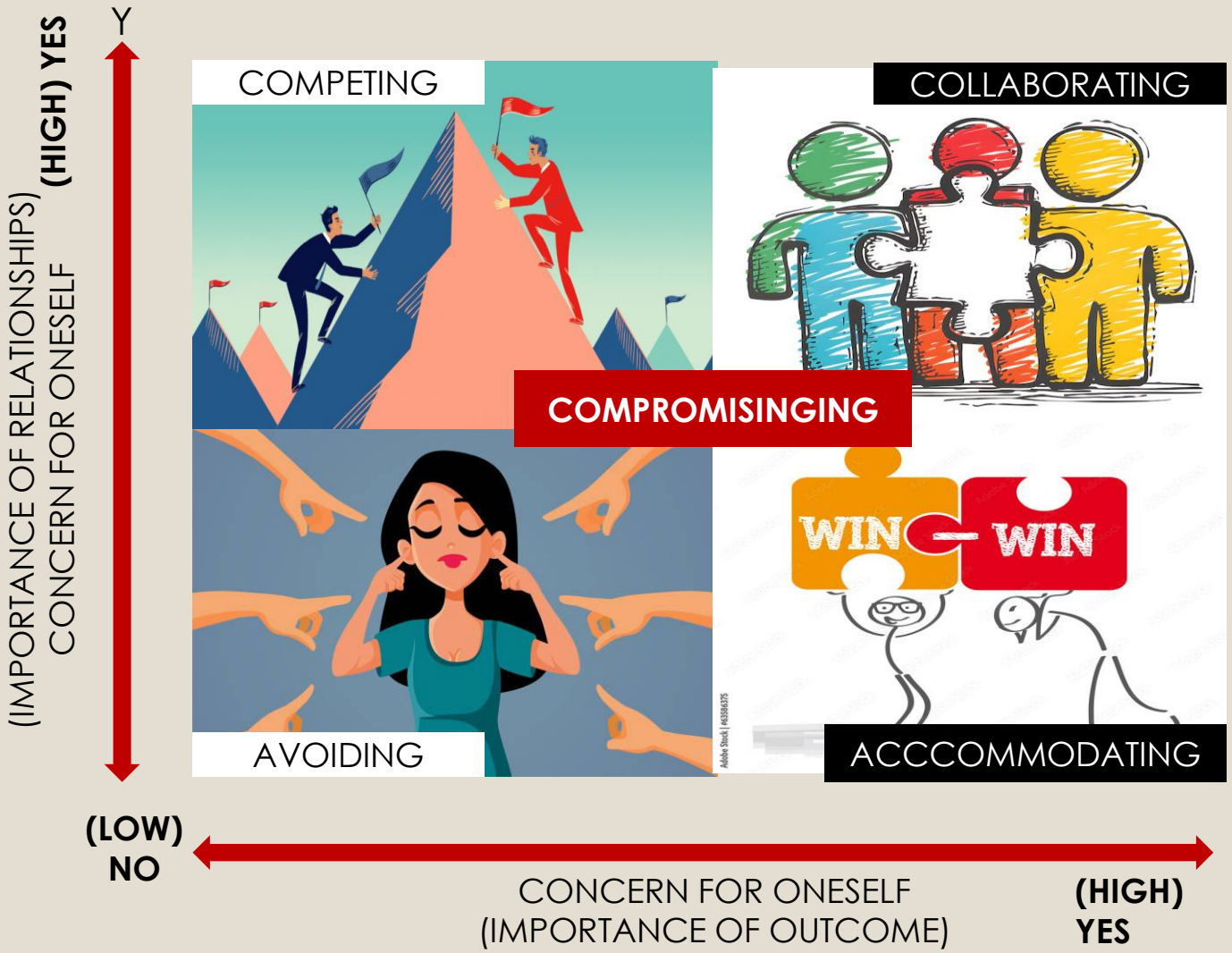
- Unassertive
- Uncooperative
- Typically avoids engagement

Collaborating



- Assertive
- Cooperative
- Typically favors a principled approach

RESPONSES TO CONFLICT



WHAT DOES NEGOTIATION STYLE INDICATES?

- Informs about Negotiators approach.
- Helps to understand their preferences.
- Depends on Experience, Personalities, Beliefs etc.
- Change according to proposals & options generated.
- Mediator plays a key role in identification and consequent improvisation.

PRINCIPLES OF NEGOTIATION

- DISTINGUISHING THE INDIVIDUALS FROM THE ISSUE
- FIRM ON THE ISSUES, GENTAL ON THE PEOPLE
- PRIORITIZING INTERESTS OVER POSITIONS
- GENERATING MULTIPLE SOLUTION
- DEPENDING ON OBJECTIVE CRITERIA

TOOLS OF NEGOTIATION

- ACTIVE LISTENING
- SEPARATE PEOPLE FROM PROBLEM
- REVERSE ROLE PLAY
- DE-ESCALATE HIGH EMOTIONS
- CREATE VARITIES OF OPTIONS
- TAKE BREAKS
- BRIANSTORMING
- IDENTIFYING INTEREST

BARRIERS TO NEGOTIATION

STRETERGIC BARRIER

COGNITIVE/ PERSPECTIVE BARRIER

PRINCIPLE AND AGENT BARRIERS

1. STRETERGIC BARRIER

- Clearly define strategic barriers as deceptive tactics used by one party in negotiations, like fabricating stories or manipulating situations.
- Explain how the mediator acts as a neutral facilitator, encouraging open dialogue and helping parties understand each other's motives.
- Stress the importance of uncovering the reasons behind each party's actions to de-escalate conflicts and find effective solutions.
- Highlight the mediator's role in promoting collaboration and guiding parties to focus on mutually beneficial outcomes.
- **Example:** A seller sticking to only one stated sale price while negotiating for sale of his property, knowing fully well that the property prices have fallen in the area and he is probably getting the best deal possible from the buyer.

2. PRINCIPLE AND AGENT BARRIERS

- Occurs When Decision Makers Are Not On The Negotiation Table.
- Occurs When There Is Conflict Of Interest Between Their Goals.
- Occur Due To Lack Of Full Information
- Occurs When Agents Have limited Power To Negotiate
- Tactic To Get last Minute Concessions & Delay Negotiation
- Process Agents who represent principals in negotiations may not always act in their best interests due to personal motives or limited knowledge.
- Describe how a mediator intervenes to ensure the principal, the real decision-maker, is actively involved in the negotiation process.
- Emphasize the mediator's role in facilitating direct communication between all parties involved, allowing for clarity and ensuring everyone's interests are considered.
- Highlight the mediator's objective of achieving a fair and satisfactory outcome for all parties by ensuring that decisions are made with full understanding and consent from the principal.

- **Example:** In a negotiation between companies, the authorized representative of both or one company, having official authority to negotiate on behalf of his/her company is not present. The person who is actually negotiating does not have the requisite authority. Or the owner of the shop sends his representative instead of coming himself, without formally authorizing that representative to negotiate on behalf of the owner.
- Problem: Barriers that occur when the people involved with the negotiation are not the final decision makers (example: in a negotiation between companies, the authorized representative of both or one company, having official authority to negotiate on behalf of his/her company is not present. The person who is actually negotiating does not have the requisite authority. Or the owner of the shop sends his representative instead of coming himself, without formally authorizing that representative to negotiate on behalf of the owner).
- Overcoming: Principal and agent barrier by bringing real decision maker (the Principal) to the table and helping him/her understand his/her own interests.
- Confirm authority at the earlier stage.
- Prefer to take confirmation by principal in writing.

3. COGNITIVE/ PERSPECTIVE BARRIER

- Cognitive barriers is a psychological obstacles that can complicate negotiations.
- Some examples such as risk aversion, assimilation bias, inattentional blindness, and the endowment effect to illustrate common cognitive barriers.
- It can hinder the achievement of a fair agreement for both parties by influencing decision-making processes.
- Mediator in navigates cognitive barriers and guiding the negotiation process towards a favourable resolution.
- **Example:** Usually people do not gamble for gain, but do gamble to avoid loss.

- Problem: Barriers that prevent parties from fully engaging in negotiations due to misconceptions and negative perceptions about losses and wins. (example: usually people do not gamble for gain, but do gamble to avoid loss).
- Overcoming: Emphasising potential gains and de-emphasizing or dampening the losses. The mediator takes the parties from loss aversion to risk aversion.

EXAMPLE OF COGNITIVE BARRIERS

- Risk Aversion
- Assimilation Bias
- Inattentional Bias
- Reactive devaluation
- Endowment Effect
- Psychological Impediments
- Anchor Price, Aspiration Price, and Reservation Price

RISK AVERSION

- Psychological Attitude Toward Risks.
- Prefer Less But Certain Outcome.
- Avoid Uncertain Higher Gain.
- Voluntarily Accept Losses to Avoid Risk.
- Impacts Decision making & Generating Options.
- Reason-Socio Economic factors, Culture, Confidence, Fear of Loss.
- Risk aversion is the tendency of parties to avoid uncertain outcomes in favour of known ones, especially when dealing with potential gains.
- **Example:** A party refuses to settlement for 10 lakhs in mediation, fearing future losses, even though continuing litigation poses higher risks.
- However, when facing potential losses, parties may be willing to risk an even greater loss to avoid a guaranteed smaller loss, hoping for a favourable outcome at trial. This can affect a party's openness to negotiation and settlement.

ASSIMILATION BIAS

- Also Called Confirmation Bias.
- Screen out Unfavorable Information.
- Prefer Information which Supports Pre-Existing Beliefs.
- Selective Recollection of Facts & Statistics.
- Reason - Avoid Emotional Impact or Fear of Accepting the Reality.
- Mediator Uses Reality Testing Techniques.
- Assimilation bias occurs when parties ignore or minimize unfavourable information that contradicts their beliefs or expectations. For example, a party may disregard a court decision that negatively affects their case, focusing solely on details that support their perspective.
- This bias can lead to a skewed understanding of the strengths and weaknesses of one's position, potentially prolonging disputes.
- Mediators can counter assimilation bias by emphasizing key points repeatedly, using concrete evidence and written summaries to help ensure that both parties acknowledge all relevant information.
- This strategy encourages more balanced, fact-based discussions and promotes informed decision-making.
- **Example:** A party ignores key facts shared by the other side, focusing only on their own version of the story.

INATTENTIONAL BLINDNESS

- Focus On Specific Detail.
- Fail To Notice Visible larger Picture.
- Key Information Is Over- Looked.
- Effect Analysis & Evaluation.
- Inability To Take Rational Decision.
- Mediator Shifts Attention To The Larger Pictured.
- Inattentional blindness refers to a party's tendency to become fixated on specific details of a dispute, ignoring the larger context or other significant aspects of the issue. For instance, in a dispute over a shared asset, a party may only focus on the financial valuation, neglecting the emotional and future value of the asset.
- This narrow focus can hinder comprehensive understanding and problem-solving.
- Mediators counter this bias by periodically shifting discussions from specific details to the broader picture, helping parties develop a holistic understanding of the issues at hand.
- By encouraging parties to consider both micro and macro perspectives, mediators facilitate more constructive dialogue.
- **Example:** A party misses a workable solution because they're too focused on proving they're right.

REACTIVE DEVALUATION

- Proposal Is Devalued As Originated From An ADVERSARY.
- Lack Of Reciprocation Discourage Further Initiatives.
- Emotional Reactions- Distrust, Ego, Anger, Suspicion.
- Blocks Rational & Objective Thinking.
- Mediator Changes The Source Of Proposal.
- Reactive Devaluation has the tendency for individuals to devalue offers from the opposing party in a negotiation due to the conflict between them.
- Reactive Devaluation can hinder the negotiation process by causing parties to overlook potentially beneficial offers, leading to impasse and prolonged conflict.
- Mediator has to address Reactive Devaluation by redirecting focus towards the substance and benefits of the offer, rather than its source. Emphasize the importance of impartiality and objectivity in overcoming this cognitive bias.
- **Example:** A party rejects a good offer just because it came from the opposing side.

ENDOWMENT EFFECT

- Behavioral Economics & Psychological Principle.
- Over Value What They Possess, Often Irrationally.
- Has Emotional And Symbolic Significance.
- Difficult To Negotiate AS Have An Inflated Sense Of Their Worth.
- Mediator Use Objective For Evaluation.
- The endowment effect is a cognitive bias where people overvalue possessions simply because they own them, leading to inflated perceptions of worth.
- In mediation, a party may place an unrealistically high value on their property, business, or even their position in a dispute, often based on personal attachment rather than objective criteria.
- This can create obstacles in negotiations, as parties resist fair offers that don't meet their inflated valuations.
- To address this, mediators use objective standards such as market valuations or relevant case judgments to help parties accurately assess the value of their assets.
- **Example:** A party overvalues their claim simply because it's theirs.

PSYCHOLOGICAL IMPEDIMENTS

- Unwarranted Assumptions.
- Power Imbalance.
- Fear Of Losing Face.
- Competitive Arousal.
- Over Exhibition Of Emotions.
- Psychological impediments are unwarranted assumptions parties make about each other's motives and intentions, often leading to mistrust and resistance in negotiations.
- For instance, one party might assume the other's sole motivation is greed, impairing open and constructive dialogue. These assumptions can prevent parties from fully engaging in the mediation process.
- Mediators work to mitigate these impediments by facilitating open communication, asking clarifying questions, and providing a neutral space for parties to express their true intentions.
- This approach helps to dispel misconceptions and promotes mutual understanding, making it easier for parties to move forward productively.
- **Example:** A party refuses to settle due to anger or need for revenge, not logic.

- Problem: Barriers related to the effect of receiving concessions from the other party (example: one party is likely to be suspicious when the other party makes an offer that favors both sides).
- Overcoming: by owning the source of the proposal and changing the messenger so that parties can rationally evaluate the option.

ANCHOR PRICE, ASPIRATION PRICE & RESERVATION PRICE

- Rely Too Heavily On First Piece Of Information.
- Subsequent Actions Happens Around The Anchor.
- Problem - If Anchoring Point Is Not Accurate.
- Problem- If Rely Too Much On It.
- These pricing concepts are central to negotiation strategy and help mediators understand each party's expectations and limits.
- The anchor price is the initial offer or base number that sets a benchmark for negotiations. If properly defined, it can guide the negotiation effectively, but if it's unrealistic, it may cause impasses.
- The aspiration price represents the ideal outcome a party hopes to achieve, while the reservation price is the minimum amount they are willing to accept. Knowing these parameters helps mediators manage expectations and balance negotiations.
- By ensuring these prices are realistic, mediators help parties navigate toward a mutually agreeable outcome and avoid deadlock caused by unrealistic expectations.
- **Example:** A party clings to their first demand (anchor), ignores realistic goals (aspiration), and won't go below a hidden minimum (reservation), blocking settlement.

WHO IS A MEDIATOR?

- **Section 3(i)** of the Mediation Act, 2023 defines mediator as **a person** who is **appointed** to be a mediator, **by the parties** or by a **mediation service provide**r, to undertake mediation, and includes a **person registered** as **mediator with the Council**.
- Identify the conflict of interest between parties.
- Bring the real decision maker on the table.
- Assist parties to understand their interest.
- Confirm authority at the opening stage.



Informs About Negotiators Approach

Helps To Understand Their Preferences

Depends On Experience, Personalities, Beliefs etc.

Change According To Proposals & Options Generated

Mediator Plays A key Role In Identification And Consequent Improvisation

HOW MEDIATOR ASSIST NEGOTIATION EFFECTIVELY

- Effective communication
- Asking good questions
- Active listening
- Preparedness
- Problem-solving
- Building relationships
- Creativity
- Aware of biases
- Open-mindedness
- Patience
- Emotional intelligence

INEFFECTIVE NEGOTIATION

- Making Extreme Demands or Offers
- Failing to Listen or Understand the Other Party's Interests
- Being Overly Aggressive or Hostile
- The Risks of Burning Bridges in Negotiation
- Lacking Preparation or Alternatives

ROLE OF LAWYERS IN NEGOTIATION

- Understanding the mediation process
- Negotiating a Resolution
- Protecting the Client's Interests
- Preparing the client for Mediation
- Representing the Client During Mediation

ETHICAL NEGOTIATION

- **Selective Disclosure:** Negotiators highlights positive information and downplay or fail to mention negative information.
- **Misrepresentation:** Most of the time negotiators misstate facts and information or their position. For example, they misrepresent the lowest price they are willing to accept.
- **Deception and Lying:** Negotiators give the other party factually incorrect information or information that leads to incorrect assumptions or conclusions.
- **False threat and false promises:** negotiators provide misinformation about actions that they may take and concessions they may be willing to make.
- **Inflict direct or indirect harm:** Negotiators intentionally sabotage the other party's chance of success.

NEGOTIATION V/S MEDIATION

MEDIATION	NEGOTIATION
Parties work with a neutral third Party (mediator) to resolve a dispute.	Parties work with each other to resolve a dispute.
Mediator meets the parties both jointly and separately to discuss the issue and come up with solutions	The parties come together and present their interests, demands, and talk about their rights.
The outcome is controlled by the parties in dispute.	The outcome is based on the relationship between the parties involved.
Time-Limit is 120 days, can be extended by 60 days.	No specific time frame.

BARGAINING



WHAT IS MEDIATION?

- Mediation is a structured process facilitated by a neutral third party/mediator who assist the parties in conflict to communicate and effectively negotiate to resolve their differences in a time bound manner to reach a settlement which is binding and implementable in different jurisdictions.



STAGES OF MEDIATION

STAGE I:
Introduction and Opening Statement

STAGE II:
Joint Session

STAGE III:
Private Session/ CAUCUS

STAGE IV:
Closing

WHAT IS BARGAINING?

- Bargaining or haggling is a type of discussion and debate between parties involved in a contract/agreement to define that who will give/ receive What, How and When.
- **BAR THE GAIN.**



TYPES OF BARGAINING

DISTRIBUTIVE BARGAINING

Zero sum negotiation where one party's gain is another's loss.

i. Positional Bargaining (Focus on positions rather than interest, often competitive)
ii. Rights-based Bargaining

INTEREST BASED BARGAINING

Centers on underlying interest and needs, not position.

INTEGRATIVE BARGAINING

Seeks win-win outcomes by expanding the pie.

A. DISTRIBUTIVE BARGAINING



- Distributive bargaining divides fixed resources (like money/property etc.) , often leading to compromises or win-lose result where neither of the parties is satisfied with the outcome.
- Combining both approaches can facilitate a comprehensive negotiation process, satisfying legal rights while addressing parties' interests.
- It is often referred as 'zero sum game', where any gain by one party results in an equivalent loss for another.

TYPES OF DISTRIBUTIVE BARGAINING

Positional Bargaining

- In this strategy where each parties simply trade position without discussing underlying interest without exploring options for trade-offs or terms.
- Many times it can lead to dissatisfaction as parties don't agree and eventually to agree they compromise.
- Primary focus on offers and counter-offers.

Rights-Based Bargaining

- It is a method where parties rely on rules, laws, standards, or authoritative principles to determine who is "correct" in a dispute.
- It analyses and define obligations of the parties.
- It is often used with Positional bargaining.
- It may result in impasses if interpretations differ.

CONTI…

Example of Positional Bargaining

- In a workplace dispute, an employee says, "I want a ₹10,000 salary raise," while the manager says, "I can offer only ₹2,000," and both continue negotiating only by changing the numbers without discussing the real issues behind the demand—this is positional bargaining.

Example of Rights-Based Bargaining

- In a neighbourhood dispute, one neighbour says, "The municipal law gives me the right to build this wall," while the other says, "The same law gives me the right to object because it blocks light," and both argue based on legal rights to prove who is correct—this is right-based bargaining.

EXAMPLE

OPENING OFFFER
RS. 16,000/-

STICKER PRICE
RS. 20,000/-

VALUE TO BE DISTRIBUTED
RS. 4000/-

RS. 17000/-

RS. 17500/-

RS. 17750/-

RS. 17800/-

RS. 17900/-

RS. 18000/-

RS. 18200/-

RS. 18500/-

RS. 18700/-

RS. 1900/-

RS. 19500/-

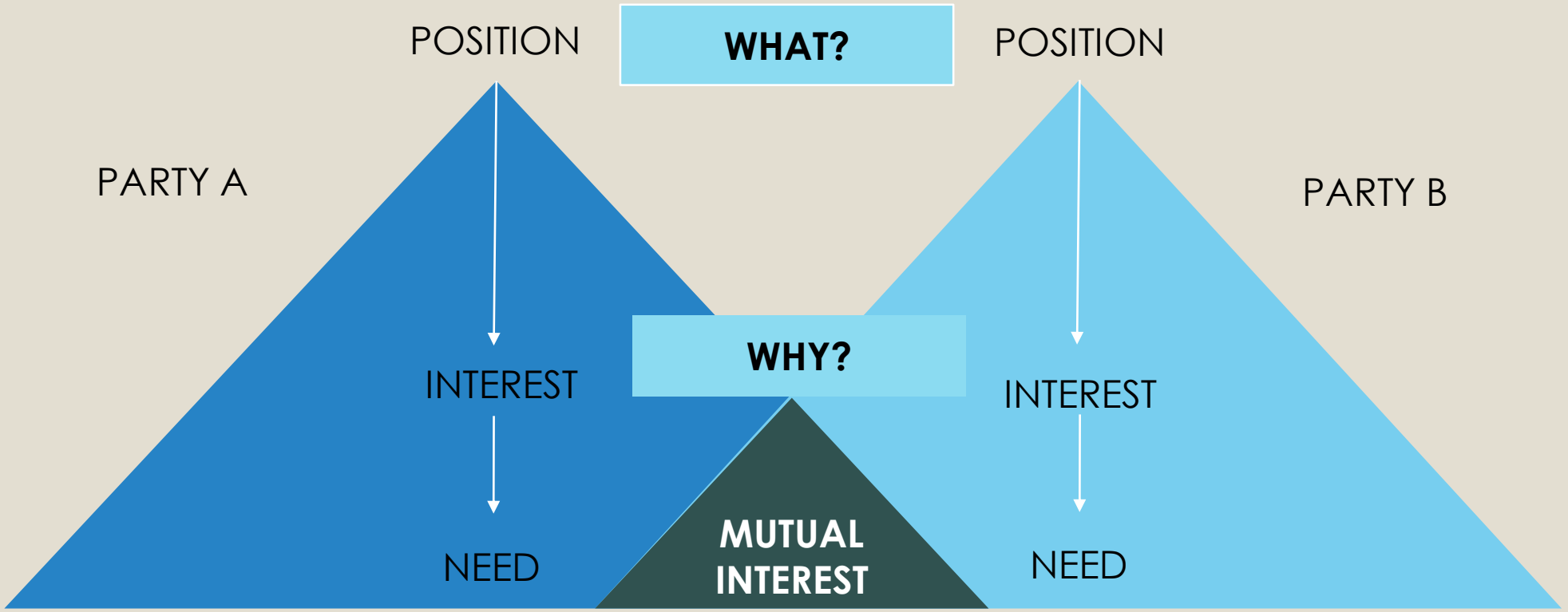
NEGATIVE CONSEQUENCES OF DISTRIBUTIVE BARGAINING

- By taking rigid stands that relationship is often lost.
- Creative solutions are not explored and the interest of both parties are not fulfilled.
- Time consuming.
- Both parties take extreme position often resulting in impasse.

B. INTEREST BASED BARGAINING



- **Win-Win bargaining.**
- Interest-based bargaining emphasizes collaboration and mutual benefit.
- It focuses on understanding the underlying interests, needs, and motivations of all parties involved.
- This approach seeks to create a "win-win" scenario by combining interests and generating joint value.
- By prioritizing shared objectives and developing terms that address the parties' most important interests, interest-based bargaining preserves relationships and fosters cooperation.
- It can lead to agreements that not only satisfy immediate needs but also enhance long-term relationships and outcomes.


POSITION
WHAT?
POSITION
PARTY A
PARTY B
INTEREST
WHY?
INTEREST
NEED
MUTUAL INTEREST
NEED

EXAMPLE









SOLUTION



STEPS INVOLED IN INTREST-BASED BARGAINING



C. INTEGRATIVE BARGAINING



- Integrative bargaining encourages parties to work together to identify underlying interests and needs, fostering a collaborative approach to finding solutions.
- Unlike distributive bargaining, which often leads to win-lose outcomes, integrative bargaining aims for win-win solutions by expanding the pie and creating value for all parties involved.
- Integrative bargaining involves thinking outside the box and exploring alternative options, such as trade-offs or additional benefits, to address the parties' interests and concerns.
- In mediation, the mediator plays a crucial role in guiding the integrative bargaining process, facilitating communication, encouraging brainstorming, and helping parties find mutually acceptable resolutions.
- By focusing on mutual gain and collaboration, integrative bargaining helps preserve relationships between parties, fostering a positive and constructive negotiation environment.

EXAMPLE

- A father passed away, leaving **17 camels** to his three sons with specific instructions:
- The eldest son was to receive **1/2** of the camels.
- The second son was to receive **1/3** of the camels.
- The youngest son was to receive **1/9** of the camels.
- However, dividing **17 camels** according to these fractions seemed impossible. The sons argued until a wise mediator intervened and proposed a **creative solution**.



SOLUTION

- The mediator temporarily **added 1 camel**, making it **18 camels**, and divided them as follows:
- Eldest son received **9 camels (1/2 of 18)**.
- Second son received **6 camels (1/3 of 18)**.
- Youngest son received **2 camels (1/9 of 18)**.
- After the division, the total was **17 camels**, leaving the **18th camel** unused. The mediator then took back the extra camel.
- The mediator focused on the **interests** (fair division) rather than the rigid positions.
- A **temporary creative option** (adding one camel) allowed all sons to feel their father's wishes were honoured.
- The solution addressed everyone's needs without compromising the inheritance.

STRATERGIES OF INTEGRATIVE BARGAINING

- Focus on the issue, not the individual.
- View the problem from the other party's perspective.
- Differentiate between issues and underlying interests.
- Identify and prioritize parties' core needs and concerns.
- Acknowledge and address emotions openly.
- Understand the other side's expectations and viewpoints.
- Verify interpretations before taking action.

- Explore the rationale behind stated positions.
- Avoid projecting fears onto the other party's intentions.
- Ensure decision-makers are present.
- Use open-ended questions to gather information.
- Analyse alternatives like BATNA, WATNA, and MLATNA.
- Collaboratively develop and refine creative options.
- Postpone evaluation until all options are presented

LOGICAL THINKING

- Logical thinking is a systematic approach in which information, facts, and evidence are examined step by step before arriving at a conclusion.
- It focuses on analysing a problem in detail, breaking it down into smaller components to understand it clearly.
- Different perspectives and possible solutions are considered, ensuring the thinker does not jump to conclusions prematurely.
- Decisions are based on facts, data, and verification, rather than assumptions, personal preferences, or emotional reactions.
- **Example:** During a mediation between a contractor and a homeowner over a delayed renovation, the mediator applies logical thinking by first listing verifiable facts—start date, agreed deadline, actual progress, and payment records—and then helps both parties examine these facts step by step, separating emotional claims from evidence so they can reach a reasoned and fair solution based on what can be objectively proven.

LINEAR
TRADITIONAL
RATIONAL
ANALYTICAL
FACT-BASED

USED TO ASSESS:
LIABILITY
DAMAGES
POSITIONS

LATERAL THINKING

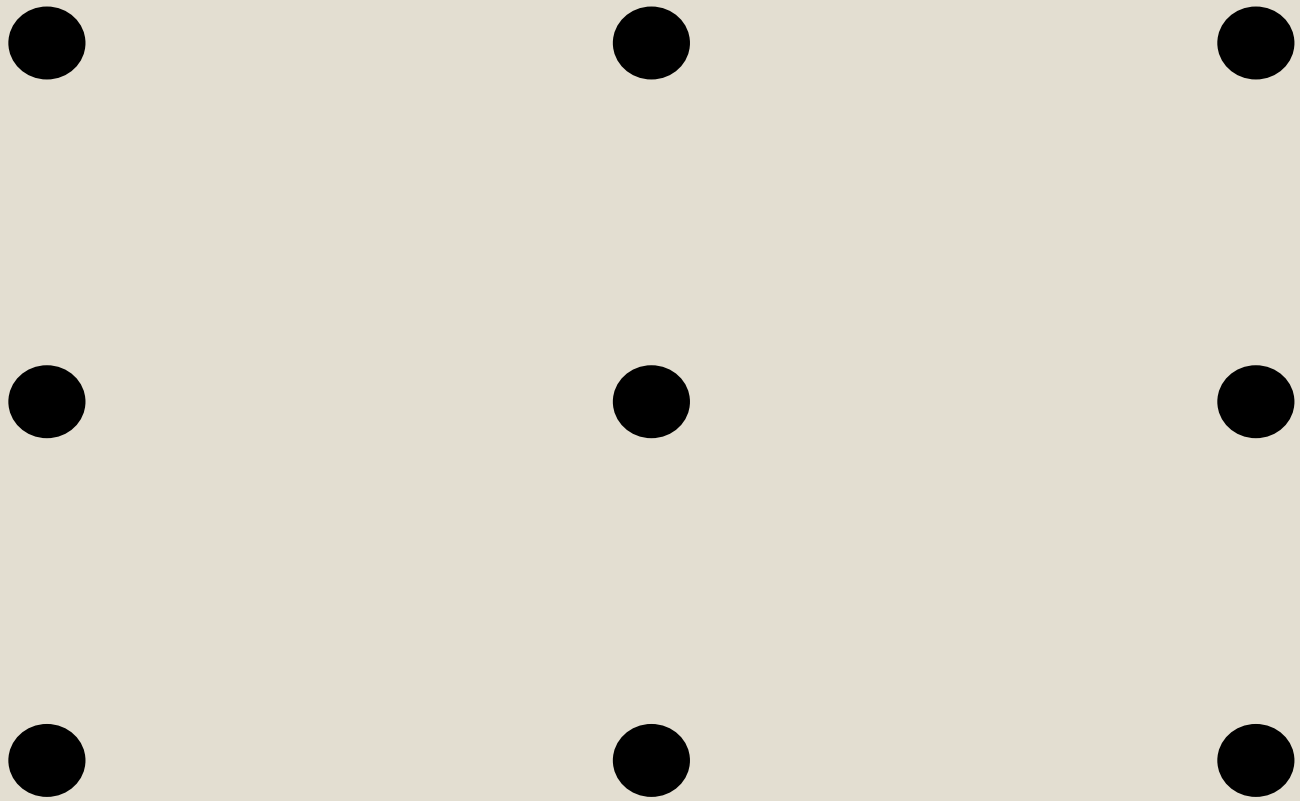
- Lateral thinking is a creative form of problem-solving, where solutions are developed through unconventional or non-linear reasoning.
- It encourages stepping away from traditional patterns of thought, enabling individuals to explore ideas that are not immediately obvious.
- Problems are viewed from new and unusual perspectives, allowing deeper insights that may not emerge from standard analytical approaches.
- Indirect, imaginative methods are used, rather than strictly logical or procedural steps.
- It is essentially "thinking outside the box", moving off the beaten path to discover innovative and breakthrough solutions.
- **Example:** Two neighbours argue because one's tree drops leaves into the other's yard. Instead of arguing about trimming the tree, the mediator encourages creative thinking and they agree to plant small flowering plants along the fence, making the falling leaves useful as natural fertiliser.

CREATIVE
INNOVATIVE
INTUITIVE
NON-LINEAR
NON-
TRADITIONAL

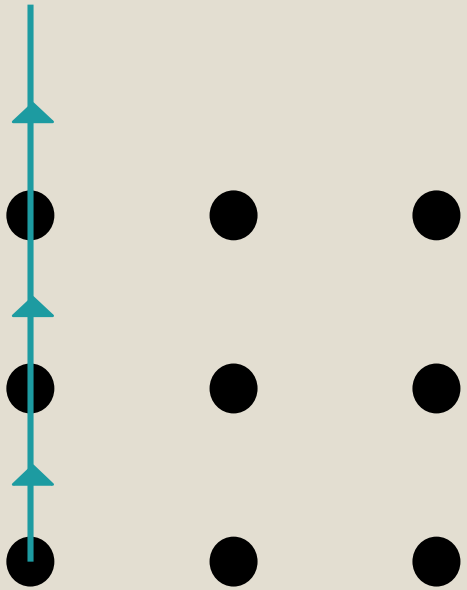
USED TO ASSESS:
GENERATE OPTIONS
BRAIN STORMING
THINK OUTSIDE THE BOX

VARUNA BHANDARI GUGNANI

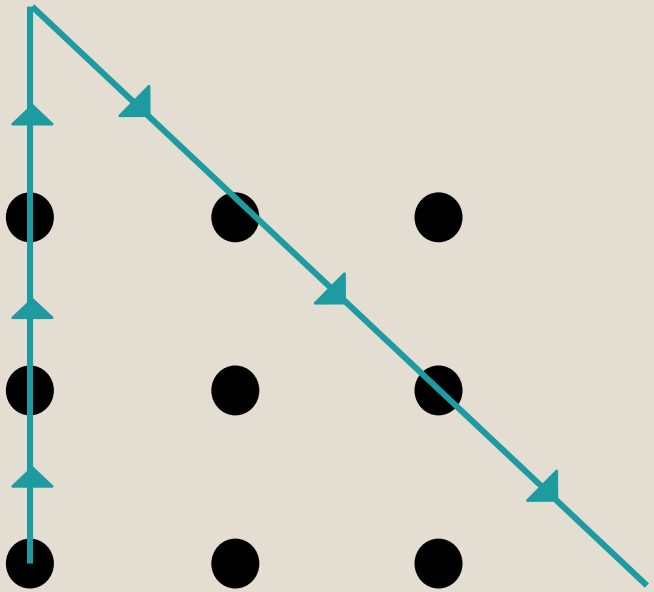
THINKING OUTSIDE THE BOX EXCERCISE



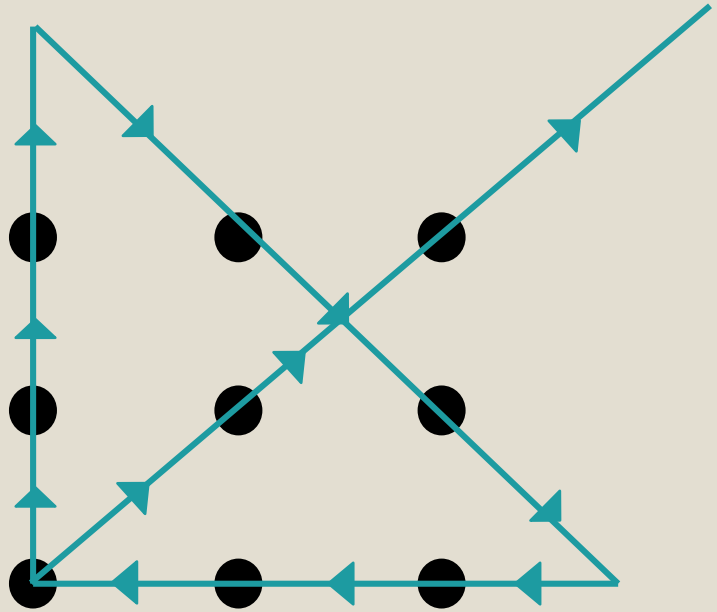
SOLUTION



STEP 1



STEP 2



STEP 2

BENEFITS OF BARGAINING

- Parties are more satisfied about fairness of process.
- Parties tend to become more committed for agreements.
- Parties develop greater understanding and respect for each other.
- Agreement set as a precedent for future conflict in mediation.

MEDIATOR'S ROLE IN BARGAINING

- Discover underlying interests of parties.
- Prioritize interest of both the parties.
- Invent multiple options for mutual gains.
- Develop agreements based on underlying interest of parties.

DIFFERENCE BETWEEN NEGOTIATION & BARGAINING

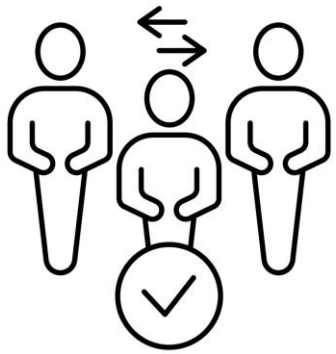
SI NO.	NEGOTIATION	BARGAINING
1.	Communication Process which drives the process.	A Give & Take process to narrow down the gaps.
2.	Focus: Interests Needs & Relationship.	Focus: Position prices & term.
3.	Approach is flexible creative & collaborative.	Approach is competitive tactical & distributive.
4.	Goal is mutually beneficial agreement	Goal is to extract more & more from the deal
5.	Discussion that involves consideration and deliberation over multiple issues of a deal.	Agreement between two or more parties, as to what each party will do for the other, or a thing bought or offered for sale more cheaply than is usual or expected.



IMPASSE: UNDERSTANDING AND MANAGEMENT

WHAT IS MEDIATION?

- **Mediation is a structured process facilitated by a neutral third party/mediator who assist the parties in conflict to communicate and effectively negotiate to resolve their differences in a time bound manner in order to reach a settlement which is binding and implementable in different jurisdictions.**



MEDIATION



A. WHAT IS IMPASSE?

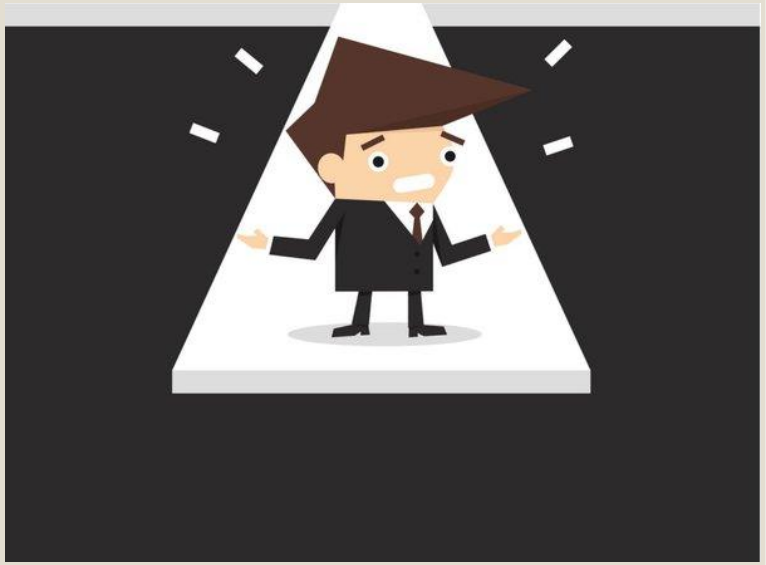
- An impasse means:

- **Deadlock**
- **Stalemate**
- **Standoff**
- **Bottleneck**
- **Hurdle**
- **Barrier**
- **Hinderance**



B. WHY DOES IMPASSE OCCUR?

- Strong disagreements and differing values can create significant obstacles.
- Resistance to find common ground or workable solution.
- Lack of creativity.
- Exhaustion of creativity.
- Impasses can also be used strategically to pressure the other party into making concessions or speeding up decision-making.



TYPES OF IMPASSE

EMOTIONAL IMPASSE

SUBSTANTIVE IMPASSE

PROCEDURAL IMPASSE

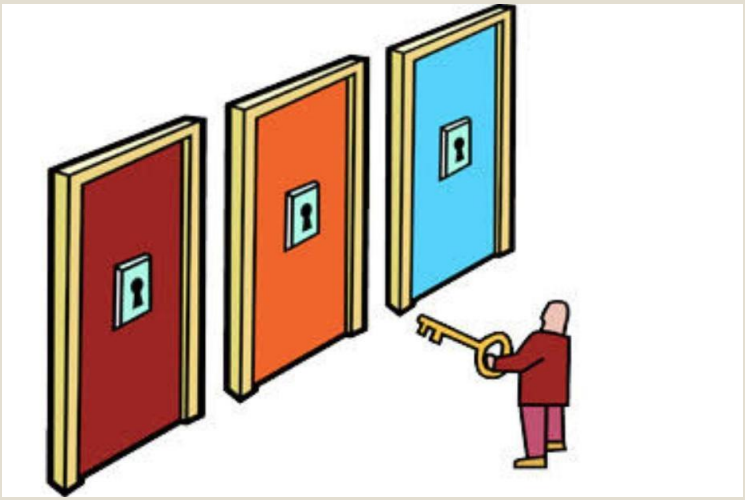
1. EMOTIONAL IMPASSE

- Emotional impasses are triggered by personal animosity, mistrust, false pride, arrogance, ego, vengeance, fear of losing face, hindering progress and escalating conflicts.
- Challenges include difficulty in making concessions or compromising due to entrenched positions and a lack of constructive dialogue.
- Overcoming emotional impasses requires mediation techniques addressing underlying emotions and building trust between parties.



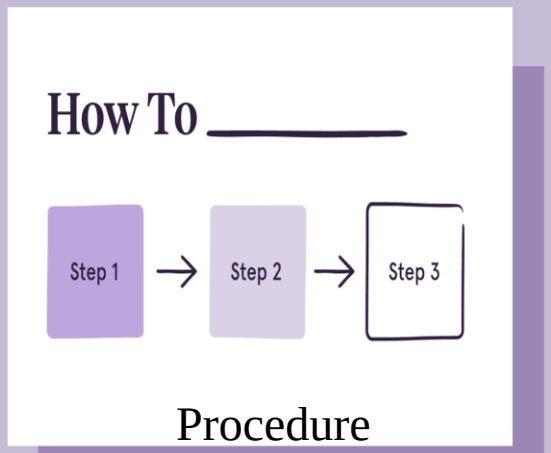
2. SUBSTANTIVE IMPASSE

- Substantive impasses arise from tangible obstacles like lack of knowledge of facts/law, limited resources, Incompetence (disability), instigation, interference, settlement for extraneous reasons, Standing on principles, ignoring the realities, adamant attitude of the parties which eventually leads to negotiation deadlocks.
- Challenges include parties' unwillingness or inability to proceed due to a lack of understanding.
- Overcoming these impasses involves addressing barriers through education, resource allocation, and limiting of interference.



3. PROCEDURAL IMPASSE

- Procedural impasses arise from issues like negotiation authority, power imbalances, or mistrust in the mediation process, causing frustration and deadlock.
- Challenges include parties lacking negotiation authority and power imbalances hindering effective communication.
- Mistrust in mediator impartiality or competence further complicates matters, perpetuating impasses.
- Overcoming these hurdles involves clear negotiation protocols, equitable power dynamics, and building trust in the mediator's ability to facilitate fair communication, aiding parties towards resolution.



C. STAGES WHERE IMPASSE CAN ARISE



Impasses are common in mediation and occur at any stage.

MEDIATOR'S REFLECTIONS

Understanding Impasse Dynamics

Convening Stage Importance

Preparation

Communication

Navigating Negotiations

Crafting the Agreement

Embracing Continuous Learning

I. UNDERSTANDING IMPASSE DYNAMICS

- Impasses are not the sole cause of failed negotiations. Multiple factors contribute to failures, such as differing corporate cultures in business merger negotiations.
- Lack of thorough understanding can cause surprises, like undisclosed financial issues in divorce mediations.
- Misunderstandings can stall progress, such as misinterpreted intentions in workplace mediations.
- Poor handling can escalate conflicts, like aggressive tactics in labour disputes.
- Mediators must grasp underlying issues and use strategies like reality testing to resolve impasses and achieve settlements, as seen in family business disputes



II. CONVENING STAGE IMPORTANCE

- Mediators meticulously prepare and engage with parties before mediation sessions, setting the stage for productive dialogue.
- Proactive engagement helps clarify expectations, identify key stakeholders, and exchange necessary information beforehand.
- By fostering open communication channels and setting a cooperative tone, mediators pre-empt potential impasses before they arise.



III. PREPARATION

- Mediators prioritize robust preparation, ensuring a deep understanding of case details, discovery, and potential sticking points.
- Thorough preparation empowers parties to navigate negotiations with clarity and purpose, minimizing the likelihood of impasse due to informational gaps or unmet expectations.



IV. COMMUNICATION

- Effective communication lies at the heart of mediation success, with mediators adeptly uncovering underlying barriers early in the process.
- By fostering open dialogue and addressing concerns head-on, mediators mitigate the risk of impasse stemming from unexpressed needs or unresolved conflicts.



V. NAVIGATING NEGOTIATION

- Mediators guide negotiations with assertiveness and empathy, keeping parties focused on their underlying interests and shared goals.
- Proactive intervention helps pre-empt potential impasses and steer discussions toward constructive outcomes, ensuring progress is made.



VI. CRAFTING THE AGREEMENT

- As negotiations near resolution, mediators focus on drafting comprehensive settlement agreements informed by thorough discussions and mutual understanding.
- Attention to detail ensures that potential impasses are addressed during the finalization process, safeguarding the integrity of the agreement.



VII. EMBRACING CONTINUOUS LEARNING

- Mediators embrace a culture of continuous learning, viewing challenges as opportunities for growth and improvement.
- Through ongoing reflection and refinement of skills, mediators elevate the practice of mediation, fostering more successful outcomes and empowering parties to navigate conflict with confidence.

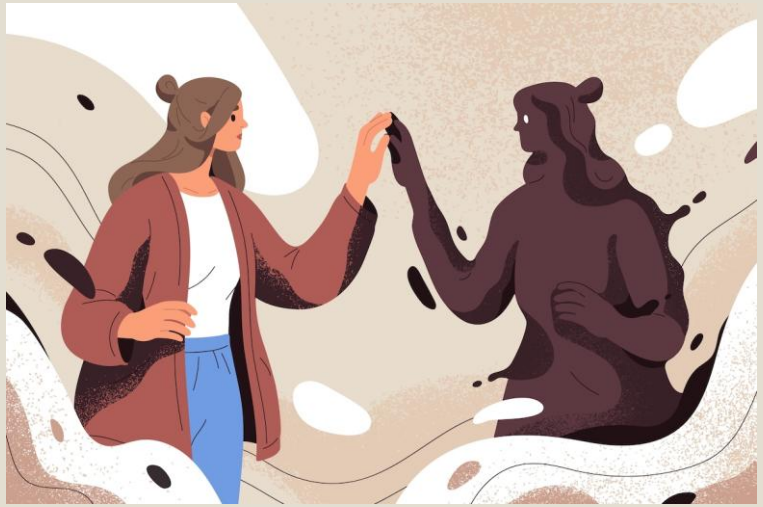


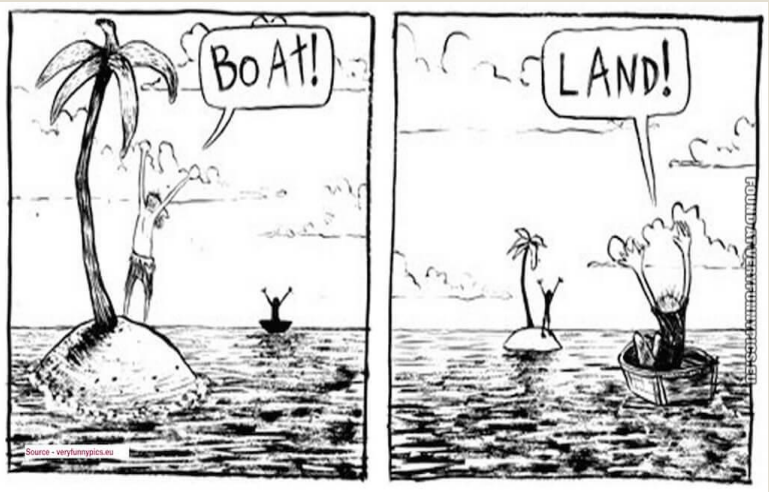
D. MANAGEMENT AND STRATEGIES

- ASSESSMENT STRATEGIES
- OPTIONS GENERATION STRATEGIES
- RE-DIRECTING MEDIATION PROCESS
- USE OF EXTERNAL RESOURCES
- RESHAPE PHYSICAL CONTROL OF MEDIATION PROCESS
- SOCIAL SKILLS
- LAST RESORTS

1. ASSESSMENT STRATEGIES

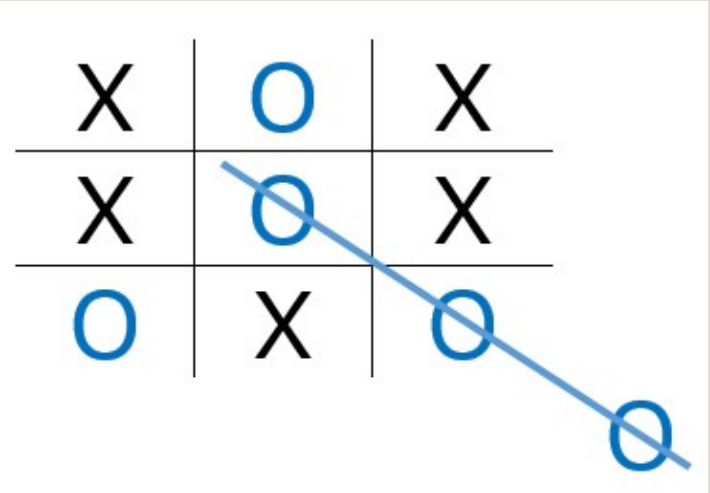
- Assessment strategies are fundamental in impasse management, allowing mediators to understand the conflict's underlying dynamics.
- **Reality Testing:**
- Reality testing involves presenting objective evidence to challenge parties' perceptions and foster a more objective understanding of the situation.
- Example: In a workplace mediation, the mediator uses reality testing to present evidence of each employee's contributions to a project, challenging their perceptions and fostering understanding.
- **Role Reversal:**
- Role reversal encourages parties to imagine themselves in each other's position, promoting empathy and helping them recognize the validity of each other's perspectives.
- Example: In the same workplace mediation, the mediator encourages Alex to imagine themselves in Taylor's position and vice versa, fostering empathy and laying the groundwork for resolution.





2. OPTIONS GENERATION STRATEGIES

- Options generation strategies focus on generating innovative solutions to overcome impasse deadlocks and move towards agreement.
- **Lateral Thinking:**
- Lateral thinking involves prompting parties to consider unconventional approaches or ideas to solve a problem.
- Example: In a community mediation over noise complaints, the mediator uses lateral thinking to suggest unconventional solutions like soundproofing shared walls or implementing designated quiet hours.



- **Brainstorming:**
- Brainstorming involves encouraging parties to contribute freely and generate creative ideas without criticism or judgment.
- Example: In the same mediation, the mediator conducts a brainstorming session where both parties suggest ideas like community sound-muffling initiatives or neighbourhood mediation forums to address the issue.



3. RE-DIRECTING MEDIATION PROCESS

- Allowing parties to revisit priorities and concerns with a fresh perspective.
- Encouraging parties to explore previously overlooked compromises.
- Example: In a family inheritance dispute, the mediator suggests starting all over again to help siblings Sarah and David find common ground.



4. USE OF EXTERNAL RESOURCES

- Seeking guidance and support from relatives to provide alternative viewpoints.
- Gaining insights from child psychologists to prioritize children's well-being in custody arrangements.
- Example: In a divorce mediation, the mediator invites spouses' parents to share experiences and consults child psychologists to ensure child custody arrangements prioritize the children's welfare.



5. RESHAPE PHYSICAL CONTROL OF MEDIATION PROCESS

- Moving from joint sessions to separate sessions to promote focused discussion.
- Reshaping the physical environment to facilitate constructive negotiation.
- Example: In a commercial dispute mediation, the mediator suggests shifting gears to separate sessions to allow parties to express concerns privately and brainstorm solutions without interruptions.



6. SOCIAL SKILLS

- Mediators employ social skills to orchestrate harmony amidst conflict, fostering a conducive atmosphere for negotiation.
- Example: In a neighbourhood mediation over a communal garden, the mediator uses humour to lighten the mood and compliments each neighbour, affirming their shared goal of community beautification.

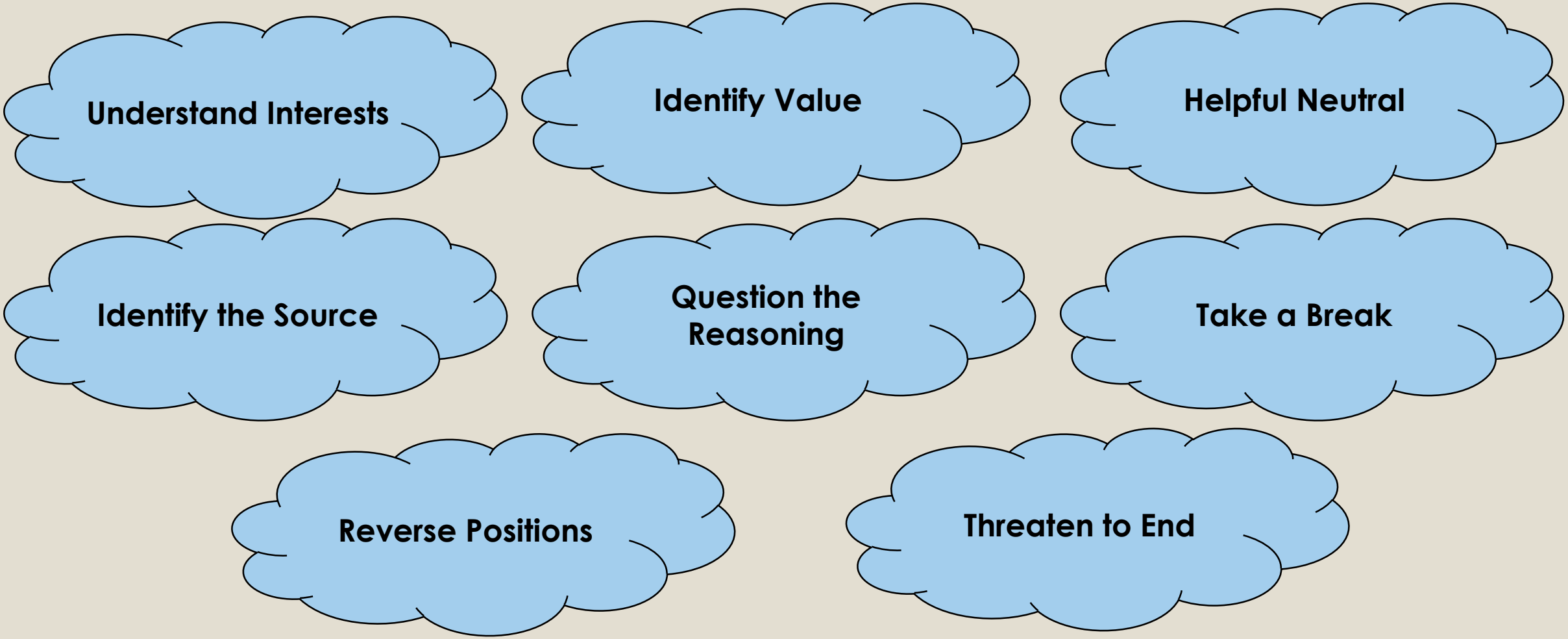


7. LAST RESORTS

- In challenging impasse situations, mediators resort to strategies like holding hope and strategic silence to navigate obstacles.
- Example: In a workplace mediation with conflicting project visions, the mediator holds hope for breakthroughs and strategically uses silence to encourage reflection and alternative perspectives.



E. IMPASSE AVOIDANCE



A. UNDERSTAND INTEREST

- Parties should engage in thorough introspection and analysis to identify their underlying interests and priorities in the negotiation process. This involves not only understanding their own needs and objectives but also empathizing with the perspectives and motivations of the other party.
- For example, in a workplace mediation concerning team dynamics, understanding each team member's career aspirations, concerns, and working style preferences can help anticipate potential areas of conflict and facilitate discussions aimed at achieving alignment and mutual understanding.



B. IDENTIFY VALUE

- Beyond monetary considerations, parties should explore and leverage non-monetary sources of value that can enhance the overall outcome of the negotiation. This could include intangible benefits such as enhanced relationships, improved reputation, or increased future collaboration opportunities.
- In a business partnership mediation, identifying opportunities for mutual growth, innovation, and shared success can transcend immediate disputes and incentivize parties to explore creative solutions that maximize long-term value for all stakeholders involved.



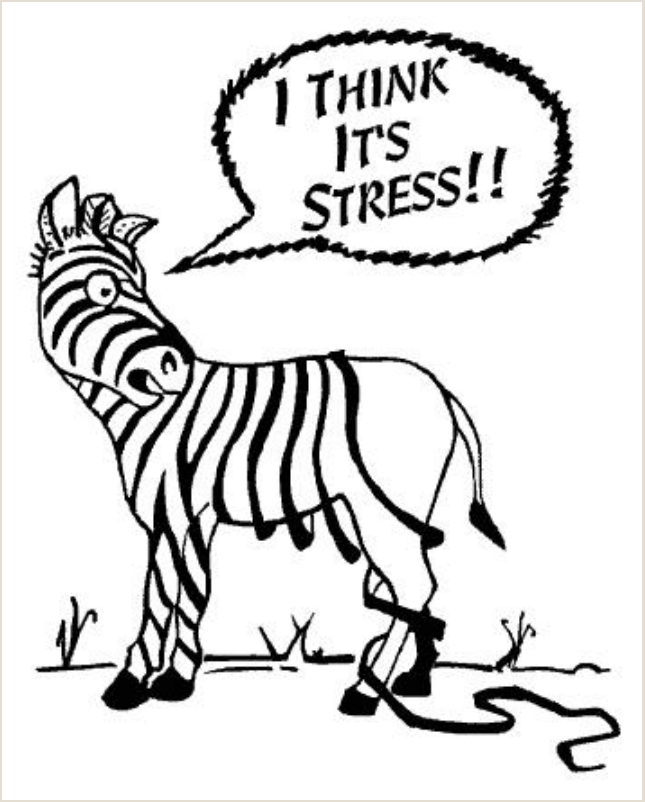
C. HELPFUL NEUTRAL

- A skilled mediator or neutral facilitator serves as a critical ally in navigating impasse situations by providing impartial guidance, reframing contentious issues, and facilitating constructive communication channels.
- Through active listening, empathy, and strategic intervention, a helpful neutral can foster an environment of trust and collaboration, empowering parties to move beyond impasse obstacles and work towards mutually beneficial outcomes.
- For instance, in a family inheritance dispute, a mediator may employ techniques such as reframing contentious issues in neutral language, encouraging empathy between siblings, and structuring discussions to focus on shared interests rather than individual grievances.



D. IDENTIFY THE SOURCE

- Parties should delve deeper into the underlying causes and triggers of the deadlock, rather than merely addressing surface-level symptoms. This involves engaging in open and honest dialogue to uncover hidden concerns, fears, and misunderstandings.
- Address fundamental issues more effectively and develop targeted strategies to overcome obstacles and reach consensus.
- For example, in a landlord-tenant mediation, an impasse over lease terms may stem from underlying issues of trust, communication breakdowns, or differing interpretations of contractual obligations. By pinpointing these underlying dynamics, parties can collaboratively explore alternative solutions and reach a mutually acceptable resolution.





E. QUESTION THE REASONING

- Parties and mediators alike should employ probing questions to challenge entrenched positions, encourage critical thinking, and foster a mindset of openness to alternative perspectives.
- By encouraging parties to articulate the rationale behind their positions and decisions, mediators can uncover underlying assumptions, biases, and misconceptions that may be contributing to the impasse.
- For instance, in a divorce mediation, a mediator may ask each spouse to explain the underlying reasons behind their desired asset division, exploring not only the tangible financial considerations but also the emotional significance and future implications of their preferences. This process can illuminate areas of flexibility and common ground, paving the way for constructive negotiation.



F. TAKE A BREAK

- When emotions run high and tensions escalate, taking a temporary pause from negotiations can provide parties with an opportunity to regain composure, reflect on key issues, and recalibrate their approach.
- Breaks allow parties to step back from the intensity of the negotiation environment, consult with advisors or support networks, and return to the table with a refreshed perspective and renewed commitment to finding common ground.
- For example, in a contract dispute mediation, a mediator may suggest a brief recess following a particularly contentious exchange to allow parties to review documents, consult with legal counsel, and consider potential concessions. This interlude can diffuse escalating emotions and facilitate more productive discussions upon reconvening.



G. REVERSE POSITIONS

- Encouraging parties to step into each other's shoes helps broaden their understanding of the conflict.
- By experiencing the opposing viewpoint, parties may uncover previously unnoticed common ground.
- Role reversal fosters empathy and reduces the adversarial nature of the negotiation process.
- Understanding the motivations and concerns of the other party can lead to more creative problem-solving.
- Exploring alternative perspectives often opens up new avenues for compromise and agreement.





H. THREATEN TO END

- A strategic threat to walk away from negotiations can serve as a wake-up call to parties who may be reluctant to compromise.
- The possibility of negotiations collapsing can compel parties to re-evaluate their positions and prioritize finding common ground.
- However, threats to end negotiations should be used sparingly and with careful consideration of their potential impact on trust and rapport.
- When employed judiciously, the threat of ending negotiations can create urgency and incentivize parties to make concessions.
- It's essential for mediators to manage threats to end negotiations delicately, ensuring they do not escalate tensions or damage the negotiation process.




ANY
QUESTIONS?


THANK YOU!