

MEDIATION STYLES AND APPROACHES IN ASIAN CULTURE

Abstract

Mediation is a dynamic and flexible process. The styles and approaches adopted by individual mediators are likely to differ depending on their background, training and personal values. Mediation styles vary not only among individual mediators but also among countries because of the cultural and societal influences within the broad institutional framework. Many of the approaches in mediation are influenced by the customs and norms that exist in different cultures, notably between those of the western and oriental cultures. However, studies have shown that differences exist even among the Asian cultures which have been described as representing the typical oriental culture.

This paper examines the various styles and approaches adopted by community mediators in the Asian countries. The purpose is to explore the common approaches used and the reasons and influences which encourage the use of these mediation approaches. The study is based on a survey of 50 community mediators carried out in Singapore. The findings were compared with similar studies carried in other Asian countries such as Japan, China, South Korea and Malaysia. Interesting conclusions were drawn from the comparison and the implications of the study were discussed.

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Introduction

Mediation is a dynamic and flexible process. The styles and approaches adopted by individual mediators are likely to differ depending on their background, training and personal values. Mediation styles vary not only among individual mediators but also among countries because of the cultural and societal influences within the broad institutional framework. Many of the approaches in mediation are influenced by the customs and norms that exist in different cultures, notably between those of the western and oriental cultures. However, studies have shown that differences exist even among the Asian cultures which have been described as representing the typical oriental culture (Kim et al, 1993; Lim, 1996; Wall and Callister, 1999).

This paper examines the various styles and approaches adopted by community mediators in the Asian countries. The purpose is to explore the common approaches used and the reasons and influences which encourage the use of these mediation approaches. The study is based on a survey of 50 community mediators carried out in Singapore. The findings were then compared with similar studies carried in other Asian countries such as Japan, China, South Korea and Malaysia. Interesting conclusions were drawn from the comparison and the implications of the study were discussed.

Previous studies

Formal mediation was said to have started in Singapore with the launch of the Court Mediation Centre in 1995 (Lim, 1997). Since then, community, peer and commercial mediation have been introduced. Mediation in general has been actively promoted and lawyers and the public have been introduced to mediation as a useful means for resolving disputes before going to trial. Mediation is now embraced as part of the judicial process.

Mediation is also being promoted elsewhere in various parts of Asia although the concept of mediation is not new. In view of the influence of Confucianism, informal mediation has been practised in countries such as China, Japan and South Korea. China has a long history of community mediation (Kim, 1987; Wall and Blum, 1991). Mediation has always been a traditional way used by the Chinese to solve civil disputes. For a long time in the past, when disputes arose among the people, the relatives, friends, and elders of the disputing parties or those who were impartial and enjoyed high prestige would often be asked to intervene and mediate a settlement. By the late 1950s commune and street mediation services were well in place. "Disputes among the people ought to be resolved whenever possible by democratic methods, methods of discussion, of criticism, of persuasion and education, not by coercive, oppressive methods" said Mao (1957).

In South Korea, mediation like its language, literature and legal institution has drawn heavily from the Chinese. One of the strongest influences has been Confucianism (Kim, 1987). Informal mediation was used in early Korea (Osgood 1951). Norton (1968) found

mediation in the villages where “people who are good at helping conflicting parties settle their disputes are well respected within the community” (p3). Because of the Confucian orientation, the Korean people think of themselves as a part of an organic human society. In their society, order and harmony, rather than competition and adversarial relations, are valued (MacDonald, 1988). Face-saving, like harmony seeking, also has an important role in Korean mediation. The Korean mediator is concerned not only with establishing harmony and within-groups tranquility, but also with saving face for all parties.

Similarly, in Japan, its culture has greatly influenced the growth and practice of mediation. Throughout their history, the Japanese valued social harmony and have taken steps to maintain it (Miyazawa, 1987; Callister and Wall, 1997). The Japanese have developed intermediaries over the centuries to settle their disputes. The Japanese view harmony as an objective that must be pursued by the disputants (Craig 1979) as a well-known Japanese proverb goes: “In a quarrel both parties are to blame” (Nakamura 1969).

When a Japanese goes to court, he or she is in a sense admitting personal failure. In a dispute the parties are both held responsible for the lack of harmony and they are expected to rectify this deficiency (Lebra, 1976). Their society expects them to tolerate others and not disturb them but maintains empathy (Norbeck, 1965; Buckley, 1985; Lebra, 1976). A contemporary characteristic of the Japanese is the need to save and give face. Traditionally, the Japanese have valued honour highly, and consideration of the other’s honour is very important in social relations (Honna and Hoffer, 1989; Goldman, 1994). Therefore, they will try to avoid open confrontation (Jones, 1995).

Mediation is also used in Malaysia. While mediation is promoted for resolving commercial disputes, the use of mediation is more prevalent in the rural areas. Since the 1600s or earlier, each village has been administered by a ketua kampung ie village head. whose duties include the settling of disputes (Bastin and Winks, 1966).

Although formal mediation has now been introduced to Singapore, it should be noted that Singapore is a multiracial society with its population predominantly Chinese with many of the older folks having migrated originally from China. Therefore it would be expected that the traditional Chinese values which influence the behaviour and attitudes of Chinese people in dispute resolution towards settlement through mediation by community or village elders would have established strong roots in Singapore. This is generally true, although the colonial influence when Singapore was under the British rule has somewhat affected the average citizen’s approach to conflict resolution. The legacy left by the British is a strong legal and institutional framework. Politically, Singapore practices the Westminster-style of parliamentary democracy. Economically, Singapore combines a largely capitalistic mode of production with socialist distribution. With an increased level of education, again influenced by the western system, the younger population is generally more attuned to the lifestyles and conditions of the western societies than those of the Orient (Lim, 1996). Because of the western influence and the impact of modernisation, it is essential to appreciate that the cultural orientation of a Chinese Singaporean is not necessarily the same as that of a Chinese from the People’s Republic of China.

On mediation techniques, a number of studies have been carried out in different situations by numerous authors (Wall, 1981; Wall and Lynn 1993; Lim, 1998; Wall et al 2001). Wall and Callister (1999), Callister and Wall (1997), Kim et al (1993) and Wall and Blum (1991) investigated the techniques used in Malaysia, Japan, South Korea and China respectively. Lim (1997, 1998, 2000) has investigated techniques used in Singapore.

Research Problem

Culture is of relevance to the understanding of dispute resolution (Lim, 1996). Accommodating the cultural habits of others is important in social relationships and is a good etiquette. Culture is therefore one component which a mediator should be aware of, along with all the other personality and procedural influences that are part of the dynamics of any interaction process. It will be beneficial to find out any cultural differences which may affect the use of techniques in different countries so as to suggest improvements in our mediation practices.

Research methodology

This paper examines the various styles and approaches adopted by community mediators in the Asian countries. The purpose is to explore the common approaches used and the influences which encourage the use of these mediation approaches. The study is based on a survey of 50 community mediators carried out in Singapore. These mediators were asked about the techniques which they adopted when conducting mediations. The purpose is to identify the most frequently used techniques and why they were used. A list of techniques was first identified from the previous studies carried out in other Asian countries in Malaysia, Japan, South Korea and China (Wall and Callister, 1999; Callister and Wall, 1997; Kim et al, 1993; Wall and Blum, 1991). In addition, the mediators were asked to indicate other techniques not specified in the list. A comparison of the findings was then made of the various techniques used in all these Asian countries.

The overseas studies in Malaysia, Japan, South Korea and China were carried out in a fairly similar manner as there was one common investigator in all these studies. The respective mediators surveyed in each country were asked to recall the last dispute they had mediated successfully as well as unsuccessfully. They were asked to describe the nature of the dispute and persons involved in it. They were also asked to state the specific measures they took to resolve the dispute and to recall the agreement concluded.

The study in Korea was carried out with 190 mediators selected from random sections of Daegu in South Korea (Kim et al, 1993). The subjects in the study in China were 97 street committee mediators in Nanjing, PRC. Of the 97 mediators, 88 were female and 9 were male. The average age was 58, the youngest mediator was 45 years and the oldest was 70, suggesting the importance and respect for elders (Wall and Blum, 1991). The Japanese study was based on a preliminary survey of 47 students attending colleges in US of whom 31 had conducted community mediations, and structured interviews with 45 community mediators in Japan. The final survey was based on 40 organisational

mediations from 25 males and 15 female mediators (Callister and Wall, 1997). The survey in Malaysia was conducted with 127 ketua kampungs and 52 imams from villages in the northern parts of Malaysia, specifically the area from Kuala Lumpur north to the Thailand border. A ketua kampong is a village headman, one of whose main responsibilities is to handle disputes brought to him (Merry, 1989). An iman is a village mosque leader who conducts religious ceremonies, runs the mosque and directs religious affairs in the villages. He typically mediates family disputes in the village (Wall and Callister, 1999).

In these various studies, having determined the frequency with which the mediation techniques were used, a factor analysis with varimax rotation was performed to identify the main group of tactics they employed. A cluster analysis was also used in one of the studies.

Analysis and Results

The study was confined mainly to community and family disputes. The types of disputes handled by these mediators are shown in Appendix 1. They relate mainly to disputes occurring between family members and friends. The kinds of conflicts handled reflect the characteristics of the local society in the particular country.

The techniques frequently used by these mediators are tabulated in Appendix 2. The data was obtained based on the most number of times that a particular technique was used in the mediation. The analysis highlighted the following findings.

In Singapore, the exploratory techniques such as “listen to disputant’s side” and “gather information from disputants”, and “clarify issues” are commonly used. Assertive technique techniques such as “threaten” and “criticize” are seldom used. Mediations in Singapore rely less frequently on third-party assistance such as “gather information from third party”, “have third party educate” and “meet with third party”.

In the South Korea study, the “reconciliation” strategy tended to be used often where the mediator nudges the parties together, lubricates the exchange with a drink or two, and argues for mutual compromise (Kim et al, 1993). Using this strategy the mediators turn the process over to the parties, calling on them to compromise toward each other’s position. As they do so, the mediators refrain from telling parties how they should think and act.

The second cluster is a “dependency” strategy in which the mediator emphasizes that the two disputants are interdependent, and that the dispute is disrupting the harmony between them. To regain this harmony, an apology or forgiveness from one or both sides should be extended. Two other strategies used are mainly procedural in nature. In the “gather data” strategy the Korean mediators gather information themselves and from third parties. Once the data are gathered, some mediators in the “analysis” strategy evaluate the parties and get a grasp of the situation.

The study on Chinese mediators revealed that they rely on the “assist” strategy where the mediators have a third party provide resources or services eg a job for an unemployed husband in order to reduce the conflict. The mediator may also assist, for instance, in finding a new job for a depressed wife, helping a son convert a shed into an apartment or replacing a broken flower pot (Wall and Blum, 1991).

The second cluster is a procedural strategy in which the mediators control or set the agenda by holding group meetings, separating parties, or dictating who is to talk. While controlling the agenda, the mediators also gather information from the disputants so that they can better understand and resolve the dispute.

Education is another cluster where the mediators advise or educate one or both parties as to how they should behave. Once the education has been done, the mediator asks the other side to forgive the offender. Finally an “external reliance” strategy was used where the mediators rely on third parties to criticize or educate the disputants including using law to win the disputants’ cooperation.

The study on Malaysia mediators showed differences between the ketua kampungs’ and imam’s mediations. Although both used a “meet separately” strategy, however, the imams used a “meet together and a prayer” strategy, whereas the ketua kampungs did not.

While the Chinese rely primarily on education, calls for concessions and criticism, the Malaysians used education and criticism less frequently. Malaysians listen to the disputants and gather the information from them or third parties more often. However, like the Chinese, the Malaysians have separate meetings and frequently negotiate for concessions.

In the Japanese study, the most frequently used techniques are “meet separately”, “gather information”, “negotiate for concession” and “listen to others”. In contrast, the less frequently used techniques are “criticising”, “educating”, “separating them”, “putting the parties together” and “calling for empathy”.

Discussions

This study revealed several interesting findings and implications. First, it would appear that the Chinese mediators adopted a more evaluative approach to mediation than those in other countries. They have no qualms in telling the disputants how to think and behave. The Chinese techniques and strategies have a distinct mediator-knows-best flavour (Wall and Blum 1991). Chinese mediators tend to preach (the term used is “educate”) to disputants rather than to convince them with logic to resolve their disputes.

In addition, as there are about one million mediators in China (Laden, 1988), the Chinese mediators are well known in the community. As a result, they have established close relationships with the disputants. To the Chinese mediators, knowledge of, and familiarity with, the disputants is a great asset that enables them to determine who is right or wrong in a dispute. Neutrality is therefore of less a concern to Chinese mediators than

those mediators in the western countries such as United States and Australia. To the Chinese, the major goals are eliminating the dispute and keeping the anger down. To this extent, the Chinese mediators serve more as adjudicators than mediators.

Second, the Malaysian society is strongly influenced by the Muslim religion, whereas China, South Korea and Japan are to varying extents, influenced by Confucian-based principles. However, this religious difference does not engender differences in the countries' mediation practices. Muslim (Abu-Nimer 1996) as well as Confucians (Hahm 1986) value harmony and expect others to seek this goal. Therefore, mediators in Malaysia, as well as in China, South Korea and Japan use similar techniques eg explaining the other side's point of view in the pursuit of this goal.

In contrast, as Singapore is a predominantly Chinese society with a large majority of Chinese population, mediators are also influenced by the Confucian principles. However, there is a tendency for Singapore mediators to adopt western style processes and techniques in mediation in view of the influence of practices in United States. Therefore, the procedures used tend to be formal with techniques focused on getting settlement from the parties. There is less time spent on getting to know the parties and understanding their background.

Third, in view of the different culture, it would appear the Korean mediators are more prepared to spend time in understanding the parties. Drinking is apparently an important aspect of Korean mediation related to face-saving. Koreans are reluctant to express their inner feelings to others, and drinking can serve as a convenient excuse for sharing inner feelings that are relevant to the conflict (Kim et al, 1993). Drinking thus allows the disputant to vent anger without appearing to lose control or to fix blame without the appearance of losing objectivity.

Fourth, the study concluded that the Japanese, Singaporeans and Malaysians are nonassertive mediators in their community and organizations. There is a relatively less usage of "criticizing" and "educating" techniques. Mediators in these countries prefer to rely on discussion with the disputants ie they are more apt to "gather information" and "listen to others".

It should be noted that despite these findings, an important limitation of these studies is that the surveys were carried out at different periods with varying numbers of mediators. There are also problems associated with the correct interpretation and translation of the responses by the mediators. A further limitation is that the responses are dependent on the mediators correctly recalling the cases mediated and what had actually transpired. Hence, any conclusions drawn from these studies have to be interpreted in the light of these limitations and the differences arising from the sample size and period of data collection.

Conclusion

Culture is an important aspect which can influence a mediator's approach to helping parties to resolve their disputes. This paper looks at mediation techniques used by mediators in five countries in Asia. The study revealed interesting findings. While these countries are in Asia where harmony and social cohesion are often emphasised, there are variations in the approach mediators in these countries would adopt. Although the common techniques have been persuasive in nature, mediators do engage in more directive and aggressive approaches. This study confirms the need for taking cultural differences into account when conducting mediations.

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TYPES OF DISPUTES HANDLED BY MEDIATORS IN DIFFERENT ASIAN COUNTRIES

China

Husband's adultery
Husband's gambling
Brothers' division of inheritance
Sister's broken flower pot
A mother's remarriage to a man not approved by children
Wife spends too much money
Wife continues to have female children
Older son is forced to live in shed
Wife drinks poison because of husband's gambling
Wife does not do housework

South Korea

Wife not having a son
Husband withholds salary from wife
Drunken man ridiculed a woman
Son's career
Brother refuses to perform ancestral sacrifice
Love triangle
Friend does not pay debt
Friends fighting over restaurant bill
Quarrel over favourites in election
Car accident
Fight in billiard hall

Malaysia

Theft of cow
Dispute over land border
Monkeys in farmer's orchard
Fight between students
Rubber tree tapper fired without reason
Car accident
Firecracker rocker set neighbour's house ablaze
Husband beats wife
Division of land after father's death
Slander
Fight between neighbour's children
Failure to repay loan

Singapore

Quarrels over corridor obstruction
Noise disturbance
Water leakage
Quarrels between family members
Quarrels between friends
Quarrels between landlord and tenant

RANKINGS OF MOST FREQUENTLY USED TECHNIQUES USED IN COUNTRIES

Technique	Singapore	Malaysia	Japanese	Chinese	Korean
Listen to disputant's side	1	2	4	16	3
Gather information	2	5	2	6	11
Clarify issues	3	-	-	-	-
Negotiate for concession	4	3	3	2	5
Set guideline	5	-	-	-	-
State other party's point of view	6	10	5	5	4
Meet separately	7	1	1	4	1
Get apology	8	13	6	7	7
Forgive	9	15	12	18	14
Reframe	10	-	-	-	-
Get grasp of situation	11	27	9	15	8
Meet together	12	12	13	9	6
Put disputants together	13	4	8	-	-
Help save face	14	-	-	-	-
Educate and advise	15	7	7	1	2
Call for empathy	16	25	11	13	9
Meet with third party present	17	8	26	23	25
Calm parties	18	16	14	22	23
Call for break	19	20	10	20	17
Use logic	20	24	19	11	10
Mediator gives assistance	21	14	17	17	18
Address grievance	22	-	-	-	-
Praise disputants	23	-	-	-	-
Provide objective data	24	21	20	19	16
Have third party educate	25	17	25	8	22
Gather info from third party	26	6	23	24	13
Threaten	27	22	22	21	20
Note cost to party	28	23	24	12	21
Criticise	29	26	18	3	12
Drink	-	28	15	26	15
Have third party assist	-	9	16	10	24
Cite moral principles	-	11	21	14	19
Pray	-	18	27	25	26
Have third party argue for concessions	-	19	-	-	-