

A Just Alternative

The National Mediation Programme of Sri Lanka



Mediation in Sri Lanka

Mediation as a form of alternative dispute resolution (ADR) has a distinctive recognition rooted in Sri Lanka's history and culture. Historically, village councils (*Gam Sabha*) consisting of elders would meet in a public place to discuss complaints involving petty crimes, boundary disputes and a variety of minor offences to 'do justice among neighbours'. Although the process may have had elements of adjudication, the main goal appeared to be to reach an amicable settlement, instead of apportioning blame.

These village councils did not survive colonial rule, and after several failed attempts with different alternative dispute resolution approaches during the post-independence era, Sri Lanka created Mediation Boards in 1988 through an Act of Parliament (No 72 of 1988). At the policy level Mediation Boards are regulated and administered by the State under the leadership of the Ministry of Justice and an independent Mediation Boards Commission – consisting of 5 Commissioners (including a chairperson) appointed by the President and supported by a dedicated Secretariat. The Commission appoints and supervise volunteer mediators who directly manage and implement the mediation process.

Across the entire island, at community level, there are 329 Community Mediation Boards (CMBs), assisted and supported by more than 8,400 well-trained volunteer mediators (20% who are women), who on average deal with more than 200,000 disputes per year with a settlement rate exceeding 65%. Hybrid in nature, straddling both State and society participation, Sri Lanka's mediation programme has proven itself to be an effective ADR mechanism to mitigate against the delays and cost of the formal court system.

Community Mediation Boards

The first Community Mediation Boards were established in Sri Lanka in 1990, seeking to provide access to justice to marginalised communities, who found it difficult to access the formal justice system, by ensuring an alternative to litigation that is free, fast, and locally available.

CMBs use an interest-based mediation approach which has proven to be successful in settling a range of disputes between individuals which include minor criminal offences, civil, land, and debt issues. Interest-based mediation require mediators to facilitate a process for the disputants to understand the root causes of the conflict and, in so doing, create a better appreciation of their competing needs and interest. Mediators seek to understand power imbalances between disputing parties and focus on creating equal power between disputants, as a basis for an effective settlement of a dispute. Unlike in the adversarial formal court system, the role of the mediator is not to adjudicate the dispute, but rather to help disputants find a win-win solution acceptable to both parties, without deciding who is right or wrong.

In Sri Lanka it is mandatory for certain types of disputes to be referred to CMBs before they can be presented to a formal court. However, participation in the mediation process is entirely voluntary and disputants can choose to use mediation services. The informal nature of the mediation process is underscored by the fact that lawyers or representatives are not allowed to be part of the process, while the State or its agencies cannot be one of the disputants. Although the agreements between disputants are not recognised by the formal court system, unless it is referred by a civil court, Mediation Boards will issue a certificate of non-settlement when mediation fails, which then allows disputants to approach a court of law for a legal remedy.



329

Mediation boards



8,400+

Volunteer Mediators in Sri Lanka



200,000+

Disputes Per Year



The role of Women in Mediation

Community Mediation Boards and the services they provide are firmly established and widely accepted as the most popular form of alternative dispute resolution in Sri Lanka. Yet, despite women disputants making up slightly more than half of the parties who use mediation services, only about twenty percent of mediators are women, which seriously undermines the participation and representation of women in mediation.

This underrepresentation of women mediators is only one of the considerable socio-cultural barriers for women to bring their disputes to mediation, particularly where the dispute is of a sensitive domestic or family nature. The power imbalance between male and female disputants and lack of gender representation on mediation boards inevitably affect the treatment of women in the mediation process and their own perceptions of what is a fair and just outcome.

There is a broad recognition of the importance of equal representation of women mediators and to better cater for the specific needs of women disputants in the mediation process. In this regard there is a need for specific measures to increase the number of women at both the nomination – and selection process of community mediators in Sri Lanka.



Special Mediation Boards

The legislation and policy that guide mediation in Sri Lanka has undergone considerable evolution over time, based on the needs of the specific country context. Due to the limitations of the Community Mediation Boards, the Mediation (Special Categories of Disputes) Act No. 21 of 2003 was enacted to give effect to Special Mediation Boards (SMBs) to mediate specific social and economic issues. This empowers the creation and establishment of Special Mediation Boards by the Ministry of Justice and the Mediation Boards Commission for special categories of disputes and in dedicated geographical areas. The SMBs are also mandated to mediate disputes over State Lands or Private Lands between individuals including where the State or its agencies are a disputant, while mediators selected for SMBs are required to have unique qualifications for the particular category of dispute.

The first SMBs were established in the wake of the 2004 tsunami which devastated significant parts of the coastline of Sri Lanka. These SMBs were mandated to focus on disputes related to land and compensation below a certain financial value before it could go to a court of law.

Even though land related disputes have been a common feature of the community mediation landscape in Sri Lanka, the complex displacements created by the 30-year civil war has caused many in the Northern and Eastern provinces of the country to become particularly vulnerable to land related issues. To this end Special Mediation Boards (Lands) were established from 2015 to deal with issues related to the possession and ownership of land in 9 districts in the Northern, Eastern and North-central provinces, with the jurisdiction of these SMBs now expanded to cover the entire country.

Due to financial disputes clogging up the caseload at Community Mediation Boards, in 2021 Special Mediation Boards (Financial Disputes) were authorised to settle through mediation low-threshold financial disputes arising out of a commercial business transaction between individuals or institutions and between individuals or between institutions – to be initially established in 6 specific geographical areas. It is expected that once operationalised, these SMBs would restore the essence of community mediation which was intended to solve disputes by focusing on interpersonal relationships.

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