

TOOLS AND TECHNIQUES FOR EFFECTIVE RESOLUTION OF FAMILY DISPUTES

- Cultivating appropriate judicial persona for dispute resolution
- Communication skills, couple therapy and group therapy as effective tools



Resolving conflict is rarely about who is right. It is about acknowledgement and appreciation of differences.

**- Thomas Crum,
The Magic of Conflict**



INTRODUCTION

- Marriage- An institution
- Foundation of this Institution:

Trust

Respect

Tolerance

Adjustment

- Aim of law:

Holistic well-being

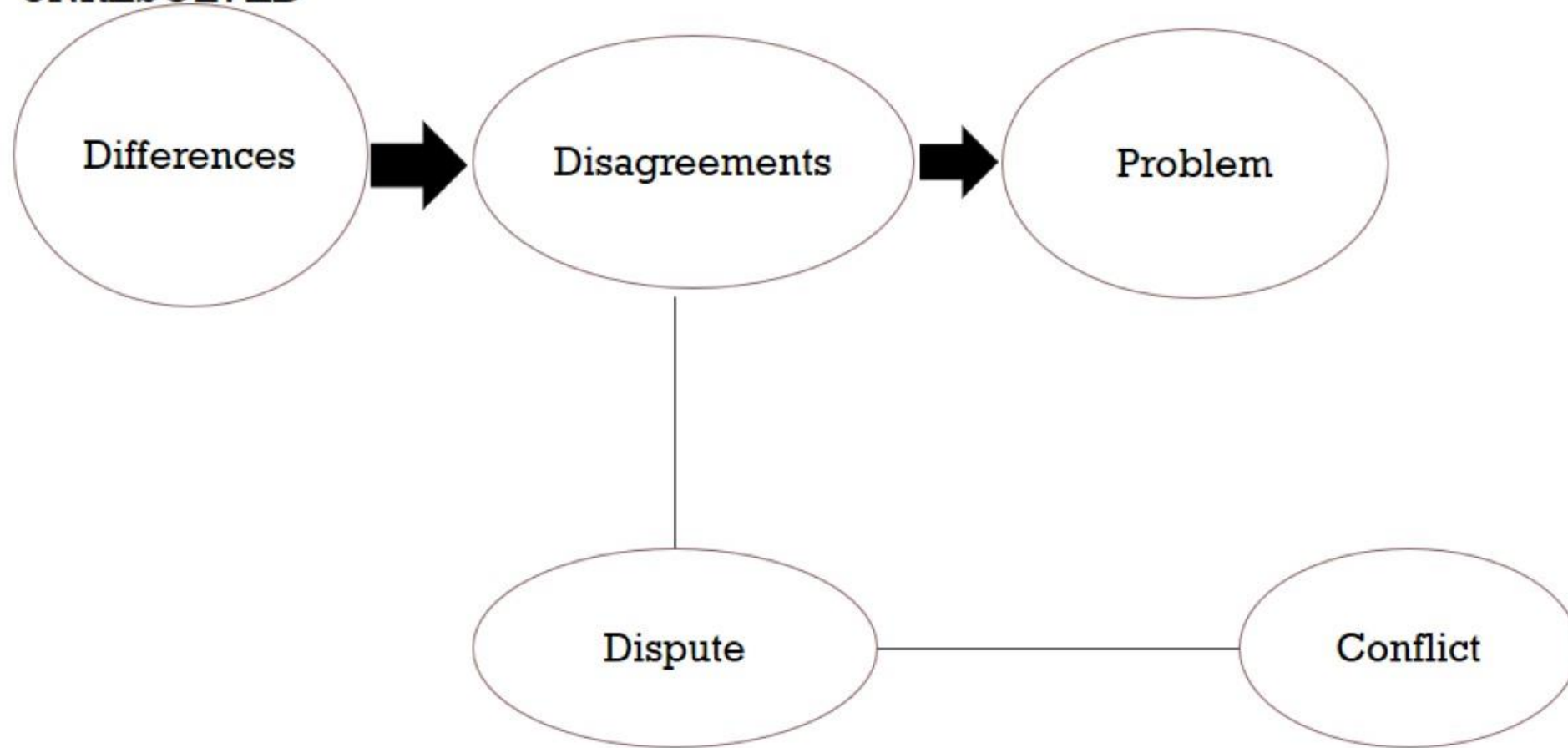
Friendship

- According to Bentham the aim of law, like life itself, is to promote the greatest good of the greatest numbers.

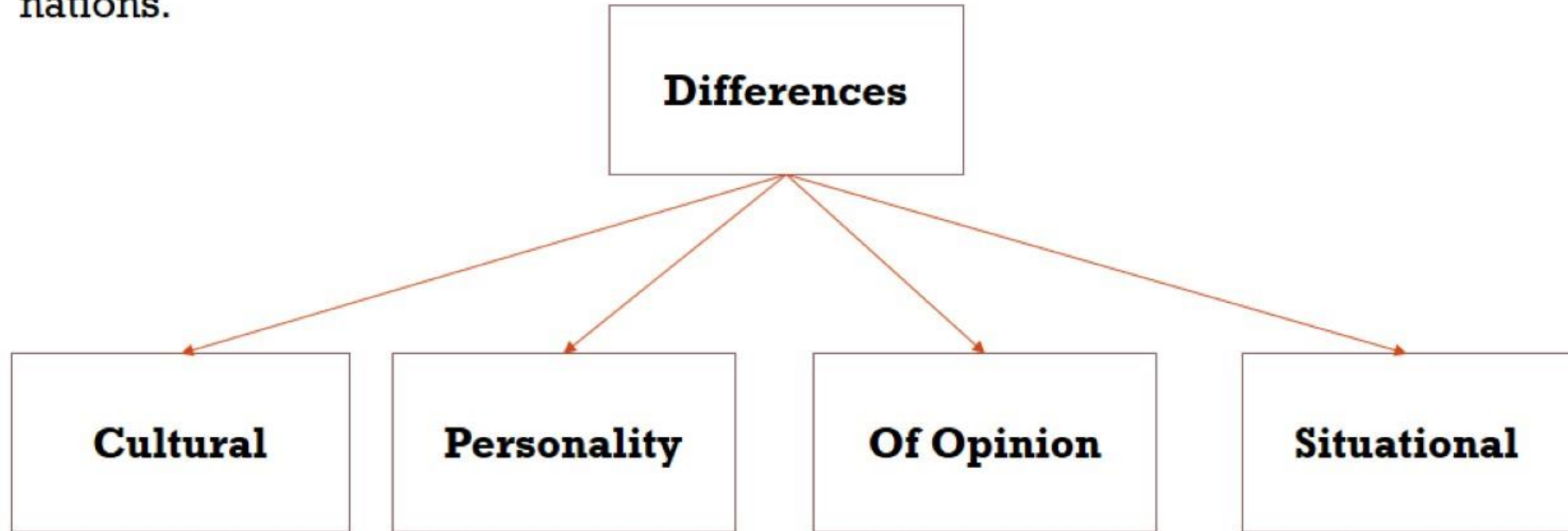


UNRESOLVED DISPUTES AND CONFLICTS

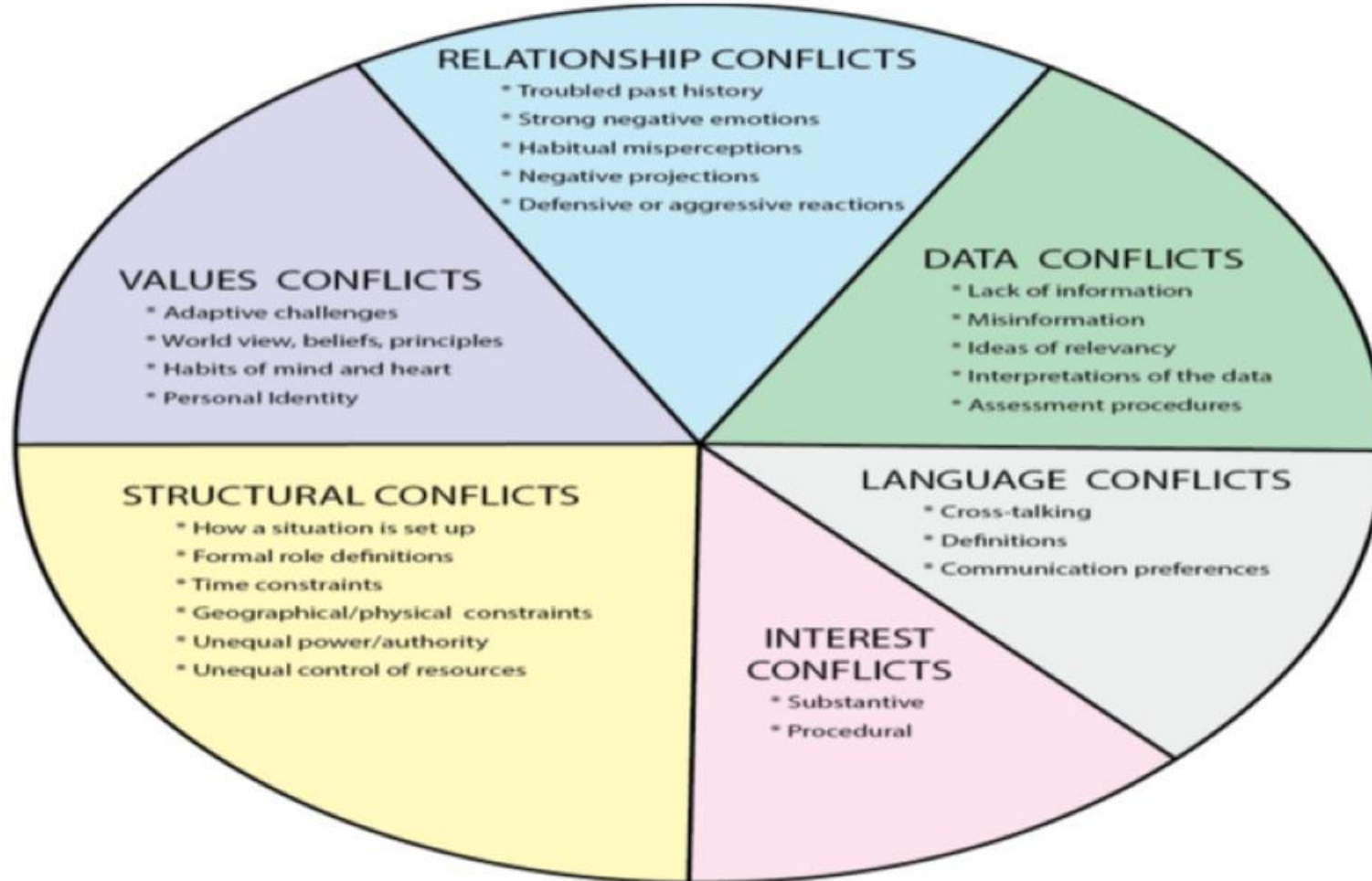
■ UNRESOLVED



- Life comprises of several differences between and among people, groups and nations.



CHRISTOPHER MOORE'S CIRCLE OF CONFLICT



LAW COMMISSION AND THE APEX COURT

- 59th report emphasis- the Court to adopt an approach radically different from that adopted in ordinary civil proceedings. Attempt settlement before the commencement of the trial.
- The constitutional mandate for speedy disposal of such disputes in grant quick justice to the litigants the need for special handling of matters concerning marriage and divorce. (*Sushil Kumar Sharma v. Union of India*, AIR 2005 SC 3100 Para 18)
- The learned members of the Bar also have enormous social responsibility and obligation to upkeep social fiber of family life. One complaint should not lead to multiple cases. (*Preethi Gupta v. State of Jharkhand*, AIR 2010 SC 3363)



- Directions to all courts is to settle all matrimonial disputes through the process of Mediation.
- Family Courts and Criminal courts to refer parties to Mediation Centers to settle disputes through settlement under mediation. (*K. Srinivas Rao v. D.A. Deepa* (2013) 5 SCC 226)
- The Supreme Court directions in view of section 9 of Family Court Act, 1984 to make all possible efforts to settle matrimonial disputes through the process of mediation.
- Family courts rest on twin pillars of Counselling and Conciliation.



CONCILIATION MEDIATION AND LOK ADALATS

- Conciliation, Mediation and Lok Adalat are deeply rooted in social tradition of many societies particularly Asian culture and values.
- The philosophy behind ADR is the amicable dispute resolution.



SECTION 89 CPC- SETTLEMENT OF DISPUTE OUTSIDE OF COURT

- Section 89 of the Code of Civil Procedure States that: (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 observation 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.
- CPC (Amendment) Act 1999 – The court to identify the cases where amicable settlement is possible; Formulate the terms of such settlement; Invite observations thereon to the dispute.



INDIAN JUDICIARY

- The vital role of the court as the facilitator of strengthening institution of marriage and promoting peace, harmony and everlasting congeniality in society.
- To promote conciliation and secure speedy settlement of disputes between the couple and amongst the family members.



- The inherent powers under section 482 of Criminal Procedure Code, 1973 in family relation disputes to be exercised,
 - where the process is abused or misused;
 - where the ends of justice cannot be secured;
 - where the process of law is used for unjust or unlawful object;
 - to avoid the causing of harassment to any person or
 - to avoid the delay of the legal process in the delivery of justice.



DEVELOPING JUDICIAL PERSONA

- Intensive self education
 1. Openness- be above oneself (Shri Setalvad M)
 2. Listening capacity- be the eyes and ears while listening (Shakespeare)
 3. External considerations- putting oneself in others' shoes (Gurdjieff)
 4. Empathy for the human beings (not sympathy)
 5. समत्वम योग उच्यते- Physical, emotional , mental well-being with inner poise



ROLE OF ADR IN DISPUTE RESOLUTION

- Mediation

Court annexed and court referred mediation

- Conciliation

- Lok Adalat



ROLE OF MEDIATION

AN OUNCE OF MEDIATION IS WORTH A POUND OF ARBITRATION AND A TON OF LITIGATION!

— JOSEPH GRYNBAUM

- Mediation is a forum in which a neutral mediator facilitates communication between parties to promote reconciliation, understanding, and settlement.
- Mediation allows to avoid the high financial and emotional costs of a litigated divorce.
- Mediation allows couples to avoid the risks of trial, protects confidentiality, and decreases stressful conflict.
- Mediation protects the children of a marriage from the pain of parental conflict.
- Mediation reduces the burden on the courts.



COMMUNICATION IN MEDIATION

*THE MOST IMPORTANT THING IN COMMUNICATION
IS HEARING WHAT ISN'T SAID.*

- PETER DRUCKER

- Communication is the core of mediation. Effective communication between all the participants is necessary for success of mediation.
- The purpose of communication could be:
To express oneself and to make other understand one's point of view.



REQUIREMENTS FOR EFFECTIVE COMMUNICATION

- Use simple and clear language.
- Avoid difficult words and phrases.
- Avoid unnecessary repetition.
- Precision and logic.
- Have clarity of thought and expression.
- Respond with empathy, warmth and interest.
- Ensure proper eye contact.
- Patience, attentiveness and courteousness.
- Avoid unnecessary interruption.
- Good listening abilities and skills.
- Avoid unnecessary comments causing the negative effect.



COMMUNICATION SKILLS IN MEDIATION

- Communication skills in mediation include :-
 - (A) Active Listening.
 - (B) Listening with Empathy.
 - (C) Body Language.
 - (D) Asking the Right Questions.



TYPES OF QUESTIONS

- **Open Questions:** They are broad and general in scope.
- **Closed Questions:** These questions are limited in scope, specific, direct and focused.
- **Hypothetical Questions:** Hypothetical questions are Questions which allow parties to explore new ideas and options.



- To make person responsible (to respond in the present moment)
- To appeal and remind his/ her true self Wisdom and prudence
- to also emphasize on Ahinsa, one of the सार्वभौम महाव्रत



“DISCOURAGE LITIGATION. PERSUADE YOUR NEIGHBORS TO COMPROMISE WHENEVER YOU CAN. POINT OUT TO THEM HOW THE NOMINAL WINNER IS OFTEN THE REAL LOSER — IN FEES, AND EXPENSES, AND WASTE OF TIME. AS A PEACE-MAKER THE LAWYER HAS A SUPERIOR OPPORTUNITY OF BEING A GOOD MAN. THERE WILL STILL BE BUSINESS ENOUGH.”

– ABRAHAM LINCOLN



SOURCES

- V. Hemalatha Devi, Rural Women-Legal Awareness, Supreme Court Journal - 1990, Vol-3(sep-Dec).
- Govt. of India 18th Law Commission 217 Report pg.9 Para 1.2.
- <http://supremecourtofindia.nic.in/MEDIATION%20TRAINING%20MANUAL%20OF%20INDIA.pdf>.
- Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*; 2nd edition, 1996, pp. 60-61.
- Heifetz and Linsky, *Leadership on the Line*, 2002.
- A.V. Dicey, *Law & Public Opinion In England*, 414 (Universal Law Publishing Co. Delhi, 3rd Indian Reprint, 2003).
- *MEDIATION: MARITAL CONFLICT RESOLUTION THERAPY* by N Bhagya Lakshmi
www.manupatra.com



