

Empowerment in Mediation

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Abstract:

Empowerment as a theoretical concept is complex and has several dimensions. It found its application in different scientific disciplines: psychology, political theory, sociology, education, economy, management etc. Empowerment has also become a popular concept in mediation.

As the growth of mediation as an alternative method of dispute resolution continues, scholars recognized empowerment as a core issue and one of the fundamental concept of mediation. Nowadays the research on empowerment in mediation is limited; there is still no clear definition of empowerment. R. Bush and J. Folger conducted the most thorough study of empowerment, although the concept was addressed only from the point of view of transformative model of mediation. H. Burgess has raised some questions on the efficiency of mediation in relation to the disempowered or oppressed parties. Several empirical studies (S. Cobb) have been conducted on how empowerment works in real mediations, key characteristics of empowerment were identified, including access to information, ability to make choices, assertiveness, and self-esteem.

The subject of the current research paper is definition of empowerment as a specific feature of mediation. The author will look at the existing definitions of empowerment in mediation and analyze the most common approaches to this concept.

Key words: ADR, mediation, empowerment, self – determination, role of mediator, dispute, voluntary settlement.

Definition of Empowerment in Mediation

Empowerment in mediation is a widely recognized concept among scholars and practitioners. In spite of the high recognition of that concept, there is no general definition of empowerment in academic researches or scholars' articles on mediation.

There are different approaches to empowerment in mediation. Empowerment is often presented as an essence, a key characteristic of mediation that differentiates mediation from other alternative dispute resolution methods. For example, some scholars view empowerment as a "objective of mediation", "unique value of mediation" "core concept in mediation", "the essence of what the field of conflict resolution has to offer to disputants solving serious conflict, others as a special feature of a resolution method which allows to shift parties "from weakness to greater strength".

There are attempts to describe empowerment from philosophical or psychological points of view in some academic sources. Defining empowerment this way scholars mostly focused on what is happening from a psychological and existential point of view with the parties when they are empowered in mediation. Empowerment is described as a "process through which someone who feels unable to change something in their life is supported in creating ways of doing so". Mediation results in "empowerment through having a choice" and the empowerment in turn is "the free choice of disputants in determining how best to resolve their conflicts". Explanation of empowerment through new choices correlates with another concept: empowerment as "seeing", meaning "person's new ability to see options and alternatives that they did not see before". The result of this is that parties in mediation start to see new choices and this way are able to face "new freedom they haven't experienced before".

Some of the scholars look at the empowerment through its communicative and narrative nature and define it as "a

process of elaborating desirable life patterns and of changing undesirable life patterns... where mediator enactment of neutrality allows disputants to elaborate whatever autobiographical and relationship narratives are already in progress". Using a narrative theory, Sara Cobb defines empowerment as "a set of discursive practices that enhance the participation of disputants". Cobb recognizes that parties' participation, and hence empowerment, may "be constrained by both the structure of narratives and by the process by which narratives are created".

Other mediators speak of empowerment as a valuable outcome that is achieved through the process of mediation: participants themselves fashion a unique solution that will work for them without being strictly governed by precedent or being unduly concerned with the precedent they may set for others. Some scholars approach the definition of empowerment describing it thoroughly as a set of elements: parties' decision-making power; access to information and resources; range of options from which to make choices; understanding own rights; assertiveness; a feeling that individual can make a difference; changing others' perceptions of one's competency and capacity to act etc.

Several scholars and mediation practitioners limit definition of empowerment to mediator's role in providing empowerment to the parties in mediation. Representatives of that concept view the mediator as a neutral person who "empowers" disputants to negotiate their own mutually acceptable agreement. The main purpose of the mediator is to provide a supportive environment, which enables parties to find a resolution of the conflict in their own way and by themselves.

There are different perspectives on how a mediator should empower parties in mediation. Some of the scholars think a mediator should be a person who helps parties to realize that they are able to approach conflict and successfully resolve it by themselves using the set of skills that they already have but do not use. The mediator should not by any means

influence the process of dispute resolution providing to the parties additional resources, advice and giving more power to those who could be defined as a weaker party. Other scholars believe that the mediator's role in empowering parties should be more active, that mediators should not only encourage parties to see what they do not see in themselves but also equip them with additional sources. This approach is closely connected with party's self-determination.

The first vision of empowerment belongs to Folger and Bush, the authors of "The Promise of Mediation", and founders of the "transformative" model of mediation. Bush and Folger adopted the "relational theory" of human nature, which states that humans have inherent capacity for strength, responsiveness and ability to resolve the problems by themselves. According to Bush and Folger, empowerment is based on the following parties' qualities: self – respect, self-reliance and self-confidence and on the ability of the parties to address problems and achieve goals by mobilizing their own resources. Parties themselves have very useful conflict-resolution skills, which have simply been forgotten in the flow of the conflict. If those skills can be resurrected, or new approaches established, people can improve their own conflict situations. A mediator, by validating the importance of parties' inner skills empowers parties, activates their capacity for decision making in adverse circumstances, and restores "a sense of their value, strength and their own capacity to make decisions".

According to Bush and Folger, a mediator's primary goal in creating supportive environment through empowerment is limited to:

1. Support of each parties decision regarding either process or outcome;
2. Activate each party's capacity for decision making in adverse circumstances.

A mediator should be able to "help parties to make positive interactional shifts by supporting the exercise of their

capacities for strength and responsiveness through decision making, communication and other party activities”.

Furthermore, Bush and Folger defined two fundamental requirements for the mediator to be able to support parties through empowerment:

- 1) never forget that his mission is to help parties (not influence) to transform their conflict interactions from destructive to positive;
- 2) deep belief and acceptance of the premises about human motivation and capacity.

Bush and Folger stated that if a mediator follows those requirements, parties themselves will very likely make positive changes in interactions, find acceptable terms of resolution, and will succeed in finding and agreeing on solutions to specific problems, without the need for the mediator to do that for them.

Therefore, transformative approach to empowerment sets out that the mediator’s role is “neither to promote agreement nor to protect right per se”. The mediator’s role is to encourage the parties to exercise their autonomy and independent choice in deciding whether and how to resolve their dispute. Thus, mediation is seen as process that emphasizes the participants' own self-responsibility for making decisions that affect their lives. It is therefore mostly a self-empowering process.

The proponents of another approach to the role of a mediator in parties’ empowerment share the same idea with the representatives of transformative mediation in a sense that the mediator should create an environment that empowers the parties in a conflict. However, these scholars claim that mediators should take a more active position and empower the parties via “a forum for self-determination,” and “a model for cooperation and compromise”. Sarah Cobb in her research states that to empower parties, a mediator could use two primary techniques: “balancing power between the parties” and “controlling the process”. While balancing powers the mediator

would re - distribute relative power to each party, making the less powerful party engage in the process and be capable enough to advocate on her own behalf. While controlling the process mediator would make sure that each party has an equal position in the procedure and an opportunity to express herself during dispute resolution.

To empower parties mediators take active positions, educate and “supply” parties with resources such as: legal and other relative information, additional options, time etc. As some scholars stated, “it should not be considered improper for the mediator to serve as a source of pertinent information” and be actively involved in the mediation process. Therefore, representatives of this approach view that the mediator’s role is to ensure that mediation agreements are based on an informed consent and they are not fundamentally unfair to any party.

Conclusion

Empowerment as a concept is not directly determined in ethical or legal standards that regulate mediation. However, the definition of empowerment finds its reflection in the doctrinal sources. Author supports approach taken by some researches that refer to the determination of empowerment through mediator’s role in the process.

According to author’s point of view since the term “empowerment” itself implies that some actions should be done with the object (in case at hand - parties in mediation), in order to give power, the role of mediator (the person who performs the actions) is of particular interest. Parties’ empowerment in mediation could be greatly influenced by the mediator, depending on which model of mediation he adopts and how well he adheres to the fundamental principles of that model.

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