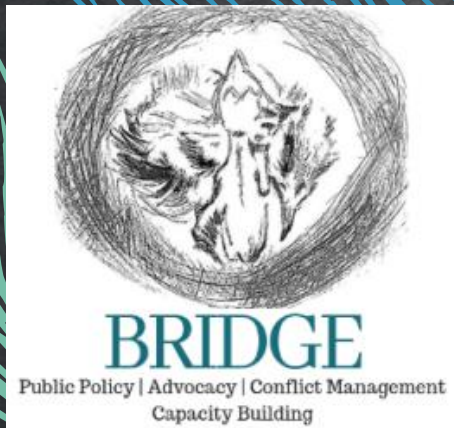




Kritika Krishnamurthy

Advocate & ADR Neutral

Partner, AK and Partners

Director, Bridge Think Tank India

Mediation of Disputes

Moving from Crisis to Consensus

NALSAR PG Diploma in ADR 2019-20

Confidentiality

Neutrality

ADR Ethics

Party Autonomy

Means to End

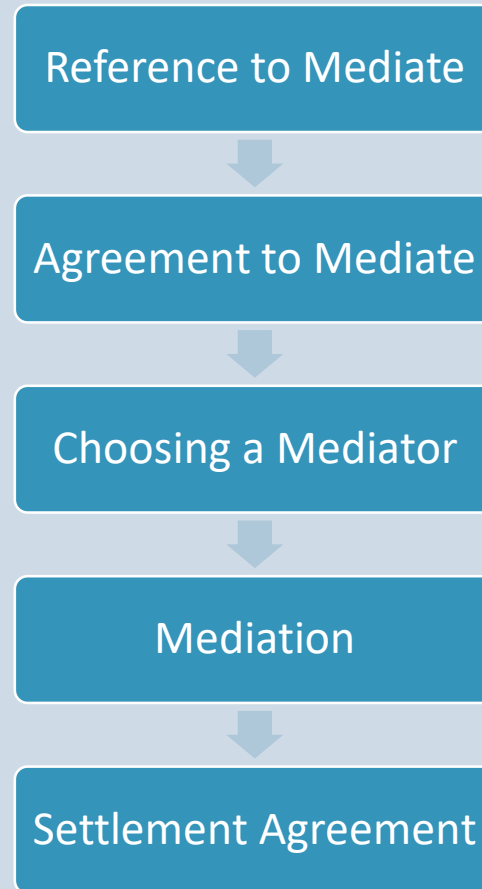
What is Mediation?

Ad Hoc versus Institutional versus Court Annexed

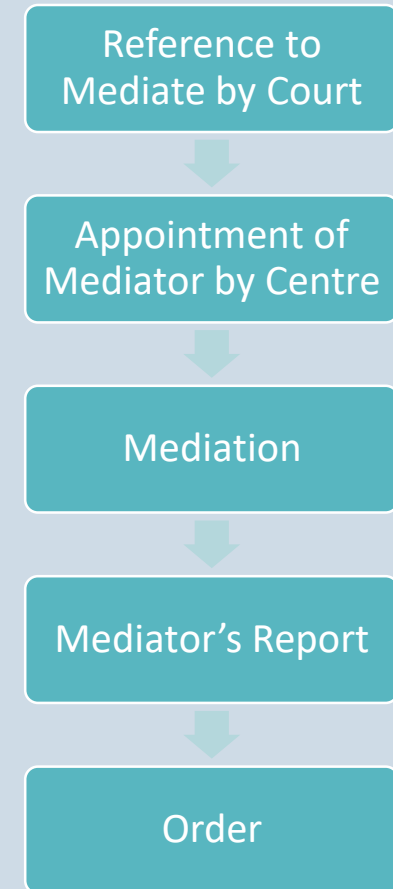
Ad Hoc



Institutional- Private



Court Annexed



The Process



Pre
Mediation
Meetings

Separate
Meetings

Settlement/
Termination

Opening
Presentation

Joint
Meetings



Key Agreements & Terminologies

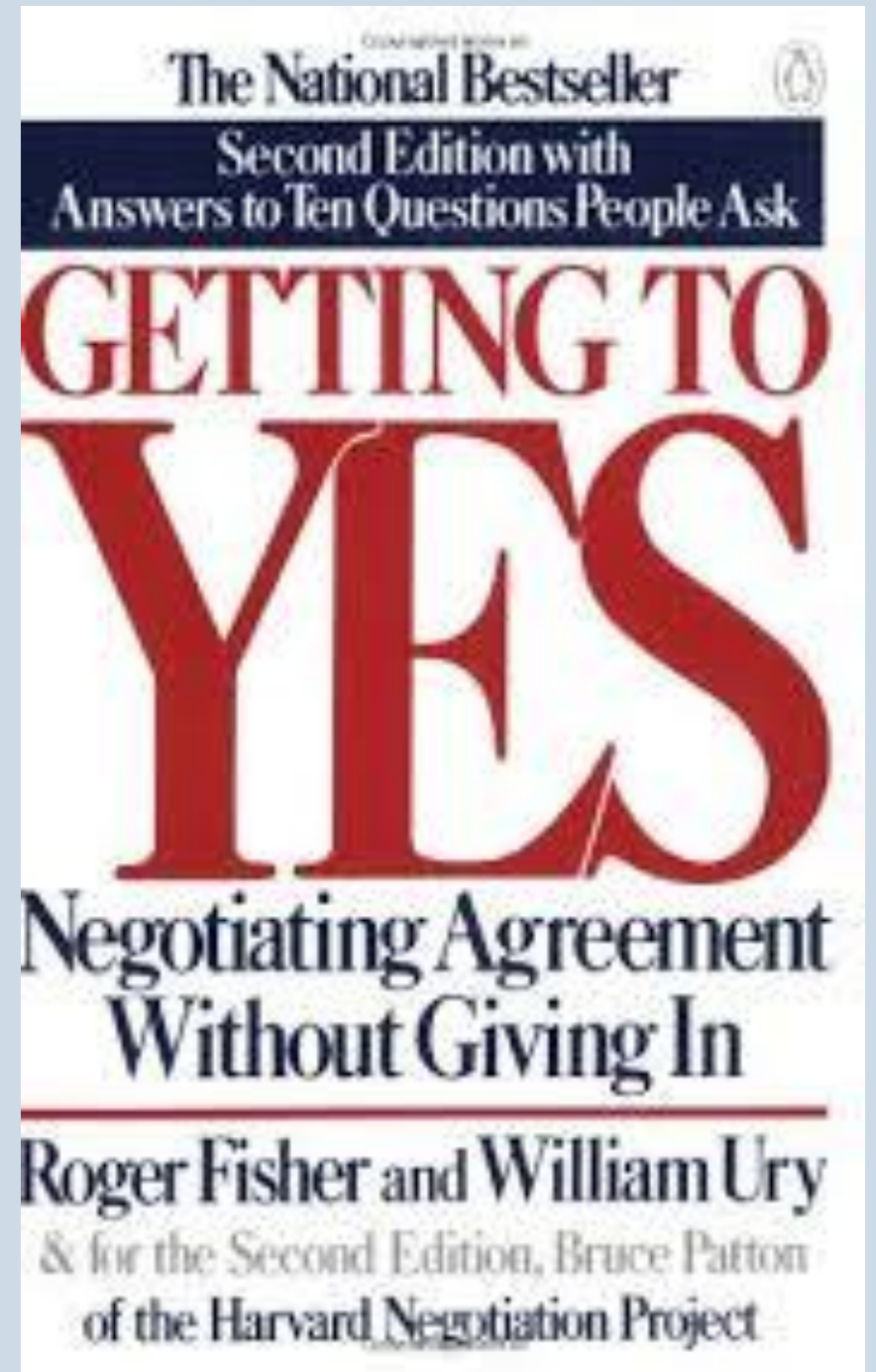
Agreement
to Mediate

Settlement
Agreement

Consent
Award

Consent
Order

Mediator's
Report



Crisis and Conflict India and Pakistan Ratan Tata & Cyrus Mistry



WHEN WRITTEN IN CHINESE, THE WORD

CRISIS

IS COMPOSED OF TWO CHARACTERS

ONE REPRESENTS

DANGER

AND THE OTHER REPRESENTS

OPPORTUNITY

危机

John F. Kennedy



Hospital Transfer Case

- Prahar Healthcare is a famous hospital in Jodhpur
- Prahar was sold to Jeevan Healthcare
- After transfer of the hospital, the old owners of Prahar were sued by a medical equipment supplier for payments due
- *If you are a professional meeting the parties, what questions will you ask them?*

Standard Philosophical Map



If one wins, the
other loses

Dispute is
resolved by
application of law
to facts

We put people and events into categories that are **legally meaningful**, to think in terms of **rights and duties** established by **rules**, to focus on **acts more than persons.**” - Leonard Riskin



The Thinker on the Gates of Hell
Auguste Rodin (1840-1917)



NagpurCityPolice 

@NagpurPolice

When someone asks for your OTP :

"I am not supposed to tell you this"

#WelcomeHomeAbhinandan 

Friedrich Glasl's Model of Conflict De-Escalation



Positions-Interests-Needs



Positions

What?

Interests

Why?

Needs

Must have

De-Escalation through Reframing

So, it is important to you that...
What I understand you to say is...
What you are concerned with is...

What you need to see here is...

Your goal would be to...

Re-
Stating



De-
Escalatio
n



Reframing

De-escalate

Disputant: He's a liar. He said he would release my payment of INR 5 crore and then he only gave me INR 3 crore.

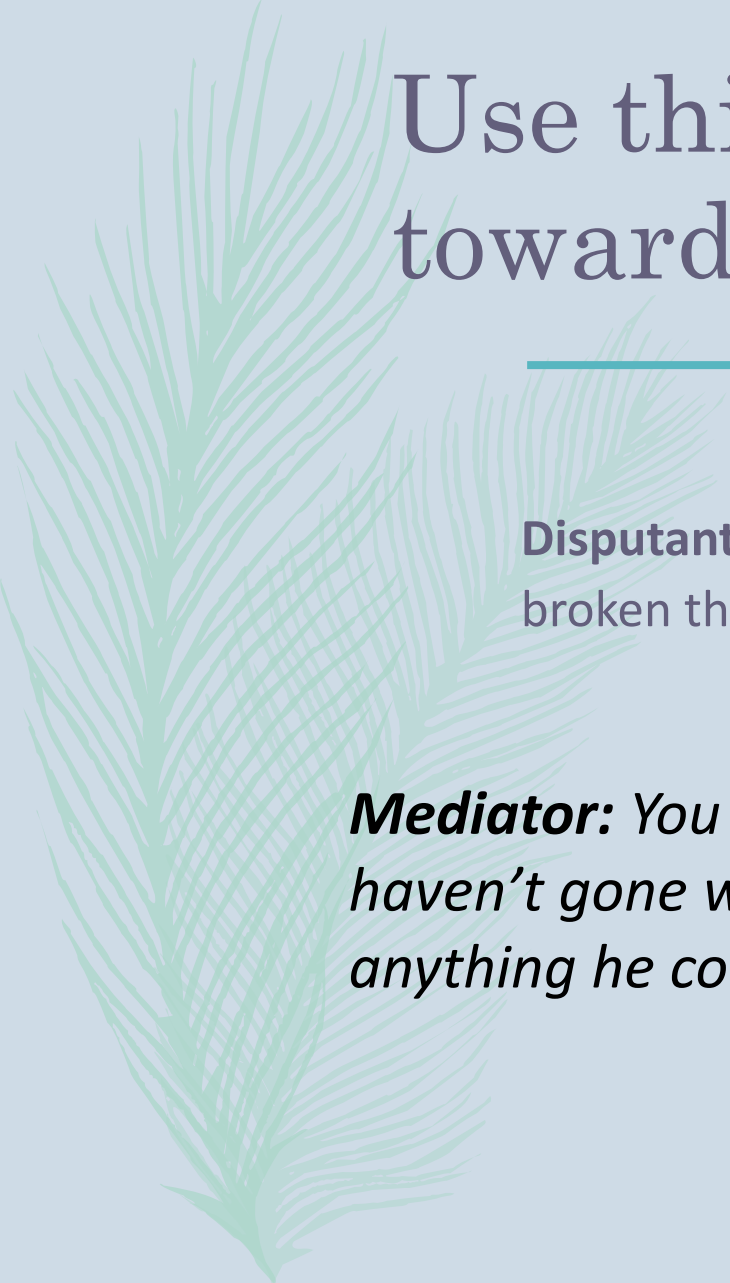
Mediator: *It sounds like you are angry because you did not get the amount you thought you deserved.*



Challenge the mindset

Disputant: I'm so fed up with all of this I'll do anything to get my payment!

Mediator: *I am happy to note that your goal is to resolve this and you are willing to put in effort to amicably reach a settlement*



Use this to create movement towards resolution

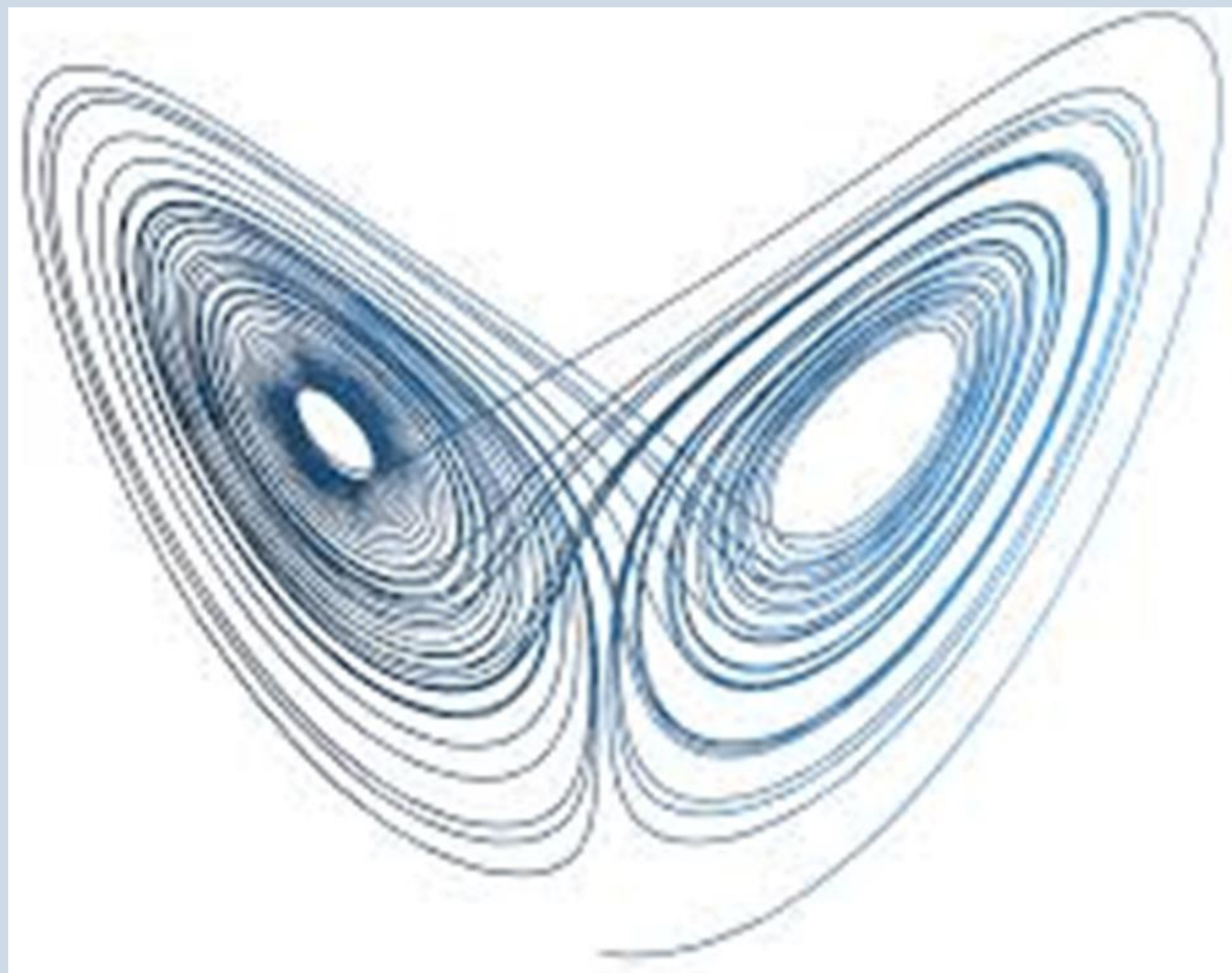
Disputant: Every time he has made promises to me he has broken them. I can't trust him.

Mediator: *You are concerned that because previous agreements haven't gone well that this one might not succeed either. Is there anything he could do that would help you trust him?*

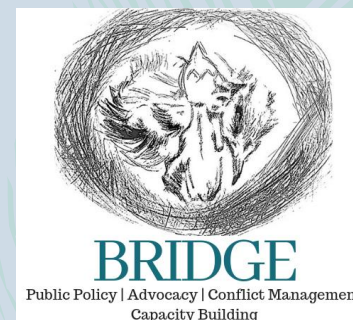


Summarize

- **S-** Create a **Story**
- **U-** I understand
- **M- Main Ideas-** facts, issues, concerns, feelings, perception
- Accuracy Check



Preparing for Mediations



Lessons from Singapore as a Jurisdiction





Venue



Authority



Agenda



Culture



Interests & BATNA



Game Plan



Basic Maslow



Jargon



Extraneous Material

Importance of Private Meetings



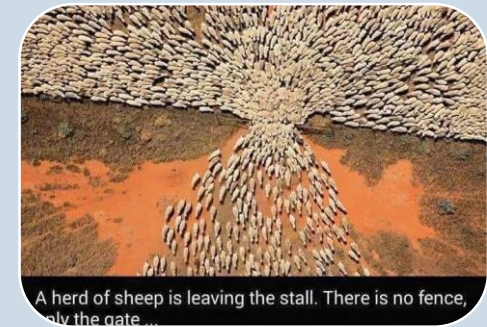
Ground Setting



Anticipating
Moves



Venting



Crowd Control

Important Takeaways before we begin!

- Reframe, reframe, reframe!
- Summarize
- De-escalate
- Gather information
- Don't make statements.... Ask questions
- No Advice, No Blame, No Suggestion, No Compromise, No advocating for 1 party

Mock Problem- General Information

IFC has a project with the **Malagasy Group Company Limited (MGC)** in Madagascar, supporting the expansion of an agro-chemical formulation plant. The expansion includes a lab to conduct research for the production of a new fertilizer prototype to support the Baobab tree farming industry, warehouse storage facilities for the fertilizer equipment (bottling and packaging machinery) and fertilizer distribution stations. The project is estimated to cost approximately US\$20 million. IFC made an investment in the project of US\$10 million in 2014. The complaint was submitted to CAO by an international NGO (**WE CAN**) who represents a community of approximately 103 households. The complaint raises concerns about i) water contamination and the impact of production of a new fertilizer prototype on the local water sources such as streams, creeks and rivers, from which the community receives their water; and ii) employment of people who do not live within the local community where the plant is situated. **The parties have agreed to mediation process. Tensions are high between the parties because of lack of trust.**



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