



The Role of Mediation Board in Solving Minor Disputes

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ABSTRACT

This study explored the role of the Mediation Board as a mediator in resolving minor disputes. According to the Ministry of Justice, many Mediation Board activities have been performed in the past few years in Sri Lanka. Even though there are several mediation boards in the country, most Sri Lankans are still waiting in the judiciary process to get immediate solutions to their issues. Thus, the study addressed the main research questions: What are the processes employed by the mediation board to solve disputes? What kind of improvement should be suggested for an effective mediation process? The general objective is to identify the role and process of the mediation board, identify the problems faced by the mediation board, and make suggestions to improve the mediation board(s) for a better mediation process. The research was based on the Colombo district: The Purposive Sampling Method was utilized to select the research areas from urban, suburban, and rural. The data were obtained from interviews and observations as primary sources and journal articles and related books as secondary sources. Data analysis was carried out using MS Excel for quantitative data and manual data entry for qualitative data. According to the findings, it was revealed that the contribution of the Mediation Board in the rural category was higher than in the suburban and urban areas. It can be concluded that more than 50% of the disputes presented to the Mediation Board (Hanwella, Kaduwela, and Maharagama) are resolved efficiently in a very short period of time. The same procedure has been practiced by all three mediation boards. There are several shortages of both human and physical resources. Appointing experienced young and responsible middle-aged personnel for the mediation boards will help to enhance the efficiency of the service. Furthermore, it is also crucial to provide knowledge concerning the process of mediation and Mediation Boards at the community level and school level.

1. Introduction

Conflict is an unavoidable phenomenon that occurs at all times and in all places. Thus, "conflict resolution relates to all domains of conflicts, whether within or between families. Since human beings have always waged conflicts, they have also always engaged in various means to end them. "Often, one side coercively imposes its will upon the other side, sometimes violently, and thus terminates a conflict" (Bercovitch, Jacob, Kremenyuk, and Zartman, 2009, p1). Conflict resolution methods, which were based on political, social, and religious principles, took on a different nature with social evolution and social civilization. It is identified that conflict situations take on different aspects. Conflicts arise between individuals, between different human groups, between different nationalities, and between interstates. It is also noted that conflict resolution and mediation have grown in popularity. It has expanded gradually from terrorist violence to civilized methods such as peace discussions and mediation.

Examining the functions of the Mediation Board as a third party in conflict and dispute resolution is very important. The specialty of the scope of conflict resolution is that it provides theoretical and practical knowledge required for conflict resolution. In 1996, Schellenberg's views on conflict resolution gained the attention of the field (Schellenberg, 1996). Different methods have evolved concerning conflict resolution in different countries within the present-day context such as dominating, obliging, and integrating (Tho, and et. al, 2021) and arbitration (Dhingra, 2020), Litigation (Spier, 2007). Among the different methods, mediation is essential to resolve conflicts between social groups. Social dialogue has been established between the experts regarding the functions entrusted to the Mediation Board in conflict resolution. Within the current criminal justice system, the judiciary system undertakes an excellent task

concerning conflict resolution. A number of people tend to use the judiciary system, and it is indicated that, for non-essential (appropriate) reasons, people who want to obtain such services tend to postpone case hearings for long periods of time in the current context. Although the Mediation Board has been introduced as a more convenient and fair minor conflict resolution method, there is no positive attitude shown by the public towards it.

Thus, it is vital to get a clear understanding of what is in conflict within this context. As mentioned above, "actual conflict" can be defined as one common concept that can be seen in every society during every time period. Conflict can be classified as ranging from minor conflicts between two people to major conflicts between two states (nations). According to that, it is essential to have a basic idea, which is meant to be a conflict in the initial stage. "The traditional notion of conflict as a "fight, struggle, or clash of principles" (Oxford Dictionary, 1976). According to this analysis, it can have a more convenient and straightforward idea about conflict.

According to different studies by researchers, opinions concerning conflict are analyzed in different ranges. Tillet (1991) believes that conflict manifests when the needs and values of two or more parties are incompatible. Wertheim et al. view conflict as occurring when there are real or perceived differences in interests (i.e., wants, needs, fears, or concerns) that cannot be simultaneously satisfied (Wertheim et al., 1998). Furthermore, Diez et al. (2005) have stated that "conflict is a struggle or contest between people with opposing needs, ideas, beliefs, values, or goals. "Defined in broadest terms, conflict denotes the incompatibility of subject positions" (Diez et al., 2006). These material factors clearly explained either personal-wise conflict or state-wise conflict based on individual subjective or personalized factors.

However, it is essential to understand the difference between a conflict and a minor dispute. Even though there are parties to be easily recognized in a minor dispute, it is challenging to identify the respective parties in a conflict quickly. Even though it is identified as a state, there can be many people within the entire unit. A few approaches and methods about how such conflicts or minor disputes are resolved can be identified. They are, legal proceedings, settlement, entering into contracts, creating physical or mental persecution, or more. Tillet (1991) highlights the differences between conflicts and disputes by drawing attention to the contrasting sources of tension. He argues that disputes occur when there are competing interests or goals, whereas conflict has its origins in fundamental differences in human values and needs (Tillet, 1991).

However, different factors and reasons cause conflicts and minor disputes. The impact on social, economic, political, religious, and cultural factors, in particular, could be a major factor in such conflict. These factors can be emphasized when examining the major wars, already in place. Specifically, different religious beliefs created a platform for massive destruction in the world during the first and second world wars, as well as various wars resulting from various ethnic crises. Even minor disputes may escalate into serious wars, and both countries and individuals attempt to prevent the same in various ways, paving the way for massive importance in conflict resolution among them.

Different experts provide different definitions of conflict resolution. If it pertains to conflict resolution, it can be defined as a reputed and trustworthy method that can be used to resolve a certain kind of conflict. No physical force is to be used in conflict resolution, and a third party can intervene in such a process.

There is a very long history with respect to third-party intervention in terms of conflict resolution. As mentioned in Buddhist Literature, it extends successfully up to Lord Buddha's era. Also, the Holy Bible provides several concrete proofs; Jesus Christ also engaged in this function on numerous occasions. "Third Party" refers to an outside party in such a conflict. He is a person who impartially invites both parties to resolve the conflict peacefully by standing between the parties. A third party refers to any person, group of persons, official or non-official organization, or state, national, or non-international organization (Ekanayaka, 2001). According to Lawrence Freedman, intervention has two different meanings. The first meaning is, exercised with the purpose of protecting international peace and security. His second definition of intervention is: "One country acts to influence an internal matter of another country" (Freedman, 1992). Conflict resolution methods take different forms. Methods such as cooperation, participation, informal methods and involvement, peaceful settlement, and third-party involvement can all lead to mediation. Since there are different dialogues regarding third-party involvement to resolve minor disputes, it is important to have an idea of what is meant by mediation. "Mediation is an effective way of resolving disputes without the need to go to court. It involves an independent third party, a mediator, who helps both sides agree" (Civil Mediation Council, 2021).

A mediation board is one of the most effective and efficient methods of utilizing involvement. The third party is never confronted with the conflict, and it is an outside party. The purpose of the third party is to interfere with the conflicting party and offer impartial support at the invitation of the conflicting party or both parties. On some occasions, the third party voluntarily participates in assisting them. A third party may be one person or a group of persons, a formal or informal organization or state, or

may be an international or non-international organization.

It is more important and significant to draw more attention to conceptual and theoretical analysis regarding the Mediation Board's functions in conflict resolution. Recent research has attributed such double-edged effects to the multidimensional nature of the conflict (Amason, 1996). The cognitive dimension of conflict (e.g., Amason, 1996), also labelled as task conflict (Simons & Peterson, 2000), issue conflict (Hammer & Organ, 1978), or substantive conflict (Guetzkow & Gyr, 1954; Rahim, 2001), is a perception of disagreements among team members regarding the content of their decisions, differences in viewpoints, ideas, and opinions (Simons & Peterson, 2000).

The nature of the conflict differs, and various experts draw their attention to the most critical areas in conflict resolution. Especially significant concepts such as mediation, arbitration, building up negotiations, and counseling, which are interconnected with mediation as one central area in conflict resolution have immense significance in this process. Various experts in the world provide different opinions regarding the same and demonstrate their opinions and ideas regarding the efficiency of such proceedings, in the event that these proceedings are exercised differently around the world.

A Mediation Board established in Sri Lanka can be identified as a center for conflict and dispute resolution and an impartial institution within the present-day context. The mediation process often acts to confirm the relationship between the parties who are connected with such a dispute or conflict. To identify this process in detail, it is more important to explain it through definitions. According to the Oxford Dictionary, "mediation" is defined as "a process of a peaceful settlement" (1999). Within the said process, the necessary support for the parties involved in such a dispute or conflict is

provided through acceptable practical proposals in respect of the relevant dispute or conflict as an attempt to resolve the same. Also, a number of different countries in the world tend toward mediation. At its most basic level, mediation is a process in which a third-party neutrally assists in resolving a dispute between two or more other parties. Different methods are used to utilize mediation for dispute and conflict resolution. Scott Thompson, who conducts research on the subject points out that third-party influence is manifested in a variety of conflict-related aspects. According to that, in respect of conflict resolution or conflict management, the third party will utilize different types of approaches, such as changing the nature of conflicts, providing communication opportunities between conflicted parties, exchanging messages between the parties, changing the conduct, behaviour pattern, and attitudes of conflicted parties, etc. Jacob Bercovitch categorizes contributions made by a third party in respect of conflict resolution into two categories: a legal nature and a voluntary nature (Thompson, 1993).

According to experts, the matter should be explained according to the nature of such conflict, and individual research studies should be submitted by calculating the harmful results that arise within the conflict among all these research studies. However, in the event that we mention the Mediation Board and its respective process in Sri Lanka, it is necessary to understand the Mediator and the Mediation Board. A mediator is defined as a person who conducts the process of mediation. Such a person does not connect with any conflict under any circumstances. Provided that, several functions are interconnected with those of the mediator. The letter on "Community Mediation and Social Harmony in Sri Lanka" presented by Craig Valters (2013) demonstrated several vital facts in respect of mediation in Sri Lanka. According to the report, "Broadly speaking, this study suggests that community mediation benefits those it provides a service

to, particularly since it encourages disputes to be resolved in a way that promotes understanding and reconciliation" (Valters, 2013, 11–33).

Furthermore, he also illustrated that this mediation process had a much greater task concerning improving and developing social reconciliation. The letter "Mediation in Sri Lanka: Its Efficacy in Dispute Resolution" presented by Saranee and Gunathilaka (2017) emphasizes the significance of mediation in the process of dispute resolution. Likewise, the study also emphasizes why mediation is not utilized more effectively in Sri Lanka. Furthermore, their study also emphasizes how we utilized mediation for dispute resolution within the post-Tsunami context (Saranee and Gunathilake, 2017). The research studies conducted in Sri Lanka on mediation clearly explained one significant fact: the public of Sri Lanka do not utilize mediation efficiently and effectively. The below-mentioned factors are disclosed within this research study. In 2001, Siriwardhene researched on the mediation board in Sri Lanka. It has given several suggestions to enhance the quality of mediation boards, such as an increased focus on promoting diversity, adding new components to mediation training and upgrading training facilities, revisiting the Mediation Act, etc. (Siriwardhena, 2001). Further, Walikala (2016) has identified this local-level mediation as a hybrid practice in Sri Lanka. She argues for a contemporary legal pluralism that focuses on the interconnectedness of the different forms of normative ordering as they constitute the larger framework of the complex and plural qualities of law in modern society (P.420). According to Gunathilaka, "Sri Lanka is yet to experience the true benefits of mediation as a dispute resolution mechanism. The success achieved through Sri Lankan community mediation proves that the future can be much better. Thus, further steps need to be taken to amend the law or to introduce new laws on practicing mediation as a profession"

(Gunathilaka, n.d.). Studies show that "the nature of justice that the disputants seek, and their perceptions about this being delivered through the Community Mediation Board are mediated by their experiences of seeking justice through formal as well as informal mechanisms" (Mohamed and et. al., 2018, p. 42). According to their study of six districts in Sri Lanka, "Rather, for the disputants, justice is very much related to the process that is followed as much as the outcome. "For example, concepts like fair treatment, being listened to, being respected, not being biased, and the ability to present their complaint in their local language were highly valued by the disputants across all the districts" (p. 42).

Following the research gap, this study mainly provides a clear understanding of the functions of the Mediation Board, and attention is paid to the following research problems. What is the process employed by the mediation board to solve disputes? What kind of improvement should be suggested for the effective mediation process? Thus, the general objective is to identify the role and process of the mediation board and identify the problems of the mediation board and make recommendations to enhance its mediation process.

2. Materials and Methods

2.1 Geographical Area of the Research

Colombo District was utilized as a research area for this study. Within the present-day context, Colombo District is referred to as the smallest District in Sri Lanka. District of Colombo drives along 642 square meters, which is to be the leading commercial city in Sri Lanka at present. Colombo city is considered the most crowded city in Sri Lanka which is diverse in every aspect, such as social, economic, political, educational, and religious. As the commercial capital, majority of Government and private sector companies and organizations are located within it. In the judiciary field, this area entirely consists of a superior judiciary structure and several

institutions under the criminal justification system. Compared to the other areas in Sri Lanka, this area is perfectly and entirely consisting of utility facilities and technological facilities. Hence, thousands of people seek justice in the judiciary regarding crimes and conflict issues, and planned and systematic crimes. Since many persons are helpless and stressed due to the delay of court proceedings, it must have high-quality service by Mediation Board to resolve and mediate such conflicts. Therefore, this research study aimed at 03 areas, urban, semi-urban, and rural areas within the District of Colombo. Accordingly, the study used Maharagama mediation board as an urban category, Kaduwela mediation board as the semi-urban category, and Hanwella mediation board as a rural category. The study was carried out between 2005 and 2020 and used a Purposive sampling method. As this research aligns with the critical theorist paradigm, it has used mixed methods to obtain the data. Primary sources included

interview and observations. Journal articles, related books, and Commissioner Report of the mediation board, and records were used as secondary data. Data analysis was done in both quantitative and qualitative approaches.

3. Results and Discussion

The questioning procedure followed by the Mediation Board regarding dispute resolution indicates that one similar mediation process is exercised in every Mediation Board, including Maharagama, Kaduwela, and Hanwella Mediation Boards where this study was conducted. This study examined the contribution made by the Mediation Board in respect of resolving conflicts and disputes. With respect to Maharagama, Kaduwela, and Hanwella Mediation Boards, it is identified that, 50% of such disputes referred to the Mediation Boards are resolved within the mediation process. (Figure 1).

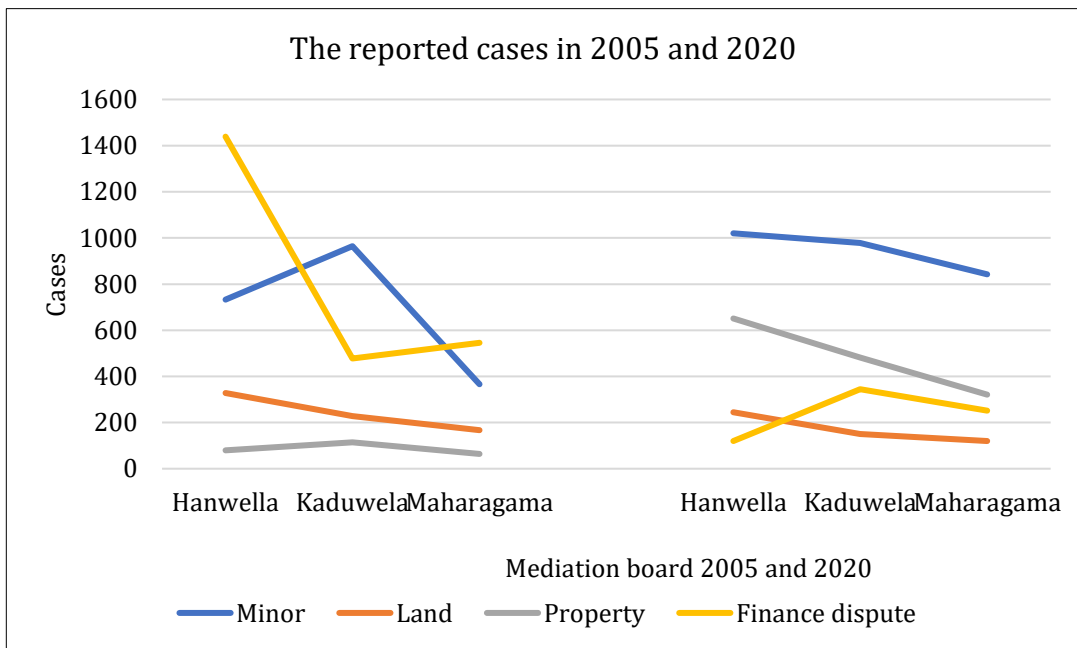


Figure 1. Nature of the reported cases (Source - Field Survey, 2005)

Figure 1, indicates that there is frequently a high number of minor disputes arising within

the semi-urban areas compared to other areas. Among the disputes referred to the

Mediation Board, Land disputes concerning money matters occupy a prominent place. Most of those are referred to the Mediation Board from rural areas.

The Parties may enjoy several advantages by referring such disputes to the Mediation Board for resolution. It is clearly understood that, if a party is referred to the Mediation Board in a personnel manner, this advantageous situation could be more enjoyable for such Parties. Such is that it would also take some time and money if the Police referred the matter. The most convenient thing the Parties will enjoy within the mediation process is that, since confidentiality and privacy are secured to the maximum level within the Mediation Board, Parties are able to submit/present their respective matters more openly, only in front of three mediators.

3.1. The process of mediation

In the event of a particular dispute, proceed before these Mediation Boards:

In the initial stage, the President of the Mediation Board surrenders such a dispute to its Mediation Board. Afterwards, a reference letter will be sent in the way of notice for calling for mediation discussions as per the Mediation Board Act No. 72 of 1998. Such a letter consists of relevant information, such as the location of the mediation process to be conducted, the date, etc. On the first day fixed for inquiring into the dispute resolution process, the mediator will approach the mediation process by utilizing the knowledge regarding technical mediation methods provided by the Ministry of Justice. Especially in the said process, both parties will be notified of essential factors, such as the admission of both parties, introduction to the mediation process, introduction to the basic rules and regulations, etc. This explanation will be carried out by one of the mediation officers. A precise and brief analysis of the judiciary and mediation processes, as well as their respective

functions, will be presented. By doing this, the Mediation Board attempts to create a feeling among the parties that the dispute should be somehow resolved within the Mediation Board. Further, this explanation emphasizes the fact that money and time are to be spent on the court proceedings (Field survey, 2005 and 2020).

Under the second stage, specific procedures will be carried out, such as giving an equal opportunity to present the dispute, questioning, and briefly mentioning the requirements. Next, within the next arena, the Parties shall be referred to separate negotiations to resolve the dispute. Also, Mediators will duly and in-detail analyze the dispute and discuss alternative solutions and support as much as the possible, where the Parties can enter into decision among themselves. After utilizing the required period, the relevant procedure will be taken to resolve the dispute. It is identified that every Mediation Board will follow the same procedure, similar to what have been discussed above.

The aforementioned incidents reveal certain stages of mediation, and it emphasizes how a mediator should employ his qualities for a better settlement. In general, the mediator's skill in identifying the issues, listening, patience, and addressing the parties can change the parties' firm and rigid opinions following a dispute, and potential harm or damage to the parties can be avoided. In dispute settlement, it is crucial that the right to justice of the parties, particularly the victimized parties, is preserved. Similarly, eradicating the causes of disputes and ensuring that both parties practically and actively implement such steps is crucial. It is important that the party that initiated the dispute agrees, which is also a difficult task, but, in dispute settlement, conveniently implementable. Several weak points can be identified in respect of the mediation boards subjected to this study.

One of the major weaknesses is the lack of participation of the parties in the dispute resolution and mediation processes. Under these circumstances, it is clearly understood that grave injustice will be caused to the Plaintiff Party. It is also clear that the parties' lack of knowledge regarding the Mediation Board has affected significant functions of the Mediation Board. There is a scant figure indicating that conflict parties will personally refer to mediation boards in urban, semi-urban, and rural areas. A unique factor is, that

even if a minor dispute is resolved within the Mediation Board, due to lack of public knowledge, such matters will be referred to the police with immediate effect instead of complaining to the Mediation Board. However, in the Police Department, such a complaint will be, in turn, referred to the Mediation Board. Furthermore, it is also clear that, in certain situations, courts will also refer some matters to the Mediation Board. Figure 2 shows that the public has very little knowledge about mediation boards.

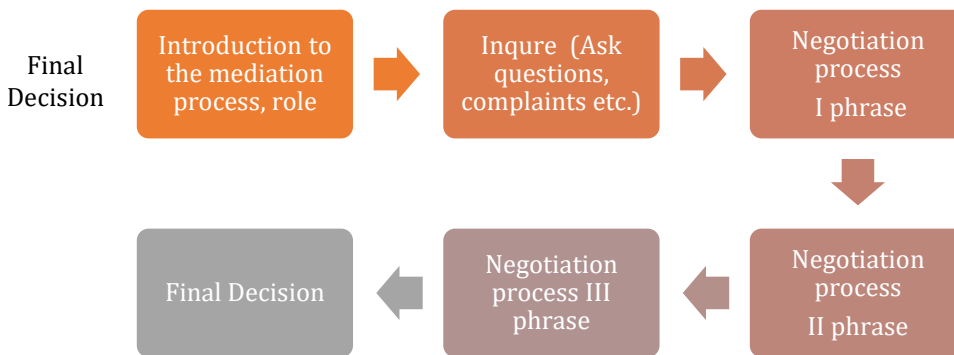


Figure 2. Mediation Process of the Mediation Boards (Source - Field survey, 2005 and 2020)

The steps taken by these conciliation boards in resolving minor conflicts can be identified in the following table:

Table 1 . The methods and strategies used to resolve the cases (according to the different cases)

Nature of the dispute	Description	Measures taken for resolve
Land	A paddy field belonging to one party has been cultivated by the second party, who has later been deprived of his right to land. The Mediation Board assisted both parties to help settling this dispute within a period as short as two weeks.	A paddy field belonging to one party has been cultivated by the second party, who has later been deprived of his right to land. The Mediation Board assisted both parties to help settling this dispute within a period as short as two weeks.
Land	This dispute was related to a land boundary matter. The discussion went on for five weeks with both parties, at the end of which, as a result of the dexterity and experience of the mediators, the firm views and ideas of the parties could be changed, and they could	The wall, which gave rise to the subject matter of the case, was to be built as agreed by both parties. This being the main condition of the settlement, agreement to this condition involved many more factors that required the resilience, flexibility, and tolerance of

	be made to think of more plausible solutions.	both parties who finally came up with their own alternative solutions. * conciliation method has been used
Personal	Trespassing on the property and common scold, which has been referred to the Mediation Board as a personal dispute.	The parties were observed finding alternatives by themselves, which finally led to a settlement. The settlement order states the conditions of settlement as follows. The second party will at no time enter the land and premises of the first party, and the second party will not damage any property that belongs to the first party. * Using a fair decision reached by both the complainant and the accused parties
Minor dispute	This dispute was regarding an incident of unarmed attacks that caused injuries. In this case, the first party had attacked the second party, which was settled upon being referred to the Mediation Board.	The first party apologizes to the second party for attacking the first party, and the second party is willing to accept the apology on the condition that this dispute is settled in this manner. The conditions have been agreed to, and the dispute was settled in just one week. * conciliation method has been applied to resolve the dispute.
Financial dispute	This case is about a debt dispute, that arose out of the non-payment of a loan taken in instalments from a rural bank.	Accordingly, it has been decided to charge half of the payable amount from the amount in the debtor's account book at the bank, and a settlement has been made by promising to pay the remaining amount within 7 months. * A negotiable and fair decision has been reached with the consent of the parties.

The boards, which have been examined practically, faced particular difficulties. Thus, there is no proper place to conduct Mediation Board meetings and no adequate and proper support received by persons or institutions, providing legal support for such a process. Thus, according to the mediators, the lack of

support by relevant authorities was the main cause of this situation. It is also understood that approximately 65% of mediators are considerably elderly persons who suffer from several physical difficulties and weaknesses, i.e., lack of hearing ability, and weakness of eyesight, which is another reason for the

reduction of the efficiency of mediation boards.

4. Conclusion and Recommendations

Generally, the Mediation Board can be identified as an institution that should be evaluated socially, but is not subjected to such assessment. It can be concluded that more than 50% of the disputes presented to the mediation board (Hanwella, Kaduwela, and Maharagama) are resolved efficiently within a very short period. The same procedure has been practiced by all three mediation boards and, when considering the dispute resolution process, the mediation board offers more attractive solutions for each group without any bias. This research has identified similar findings to the previous studies (Sarenne and Gunathilaka, 2017), which prove the performance of the mediation board. Apparently, all mediation boards are functioning every weekend. Within the allocated time period, mediators were engaged to resolve the problems in an efficient way. According to the observations, the attendance of the disputants was very minimal, and it proves that acceptance and trust regarding the mediation board are very limited among the general public.

Participatory observations made in the study identified the fact that the mediators working on the mediation boards had a physical deficiency. Thus, some problems of hearing loss and loss of sight were observed, especially among the elderly members, and this is the reason for the decrease in the attraction of mediation boards. It was also observed that in some cases, the mediators did not consider the mediation techniques provided by the Ministry of Justice in practice. Mediation boards are also functioning with less infrastructure and stationery.

As per the recommendation, it is also essential that the government reserves an appropriate place to conduct and operate such institutions. As an example, Divisional

Secretariat Offices can be introduced. It is also an essential fact that, in establishing mediation boards, it is better to consider the proportion of the population in such areas. Similarly, parties' non-participation in mediation boards could have a significant impact on their ability to carry out their functions on a continuous basis. Moreover, if the community police officers in the police station can be appointed as interveners between the mediation board and the public, it would be easier to make connections among them, and the general public may be close to the mediation process. Also, community awareness programmes relating to the mediation board can be held focusing on the general public. Appointing experienced young and responsible middle-aged personnel for the mediation boards will help to enhance the efficiency of the service.

It is also significant to utilize the mediation process to prevent conflicts that arise at the corporate level, and raising awareness among the relevant parties regarding the functions of mediation boards is vital. Additionally, it is also crucial to provide knowledge concerning the process of mediation and mediation boards at the school level. It is more beneficial to create attitude changes about this within the public community by including basic conflict resolution approaches in the school curriculum.

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