Community Mediation:
Resolution of the People, by the People and for the People

A Sociological Enquiry about People's Perceptions and
Experiences of Mediation Boards: Northern, Eastern and Uva Provinces, Sri Lanka

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About the CEPA

The Centre for Poverty Analysis (CEPA) is an independent, Sri Lankan think-tank promoting a better understanding of poverty related development issues. At CEPA, our emphasis is on providing independent analysis, capacity building of development actors, and seeking opportunities for policy influence. We are influenced by a strong orientation towards service provision that is grounded in sound empirical evidence while responding to the needs of the market. CEPA maintains this market orientation through client requests, and also pursues a parallel independent research agenda focusing core functions of Research, Advisory and Policy. These functions are carried out across seven broad thematic areas of: Social Protection & Basic Services, Sustainable Development, Livelihoods & Employment, Labour Migration, Diaspora & Development, Social Cohesion and Urban and Rural Transformations (which explore the broader aspects of poverty and vulnerability). Communications and Research Quality & Learning are integral functions of the thematic areas.

Acknowledgements

List of Acronyms

ADR   Alternative Dispute Resolution

AGA   Assistant Government Agent

CBO   Community Based Organisation

CEPA   Centre for Poverty Analysis

CMB   Community Mediation Board

CPC   Civil Protection Committee

DS   Divisional Secretariat

FJS   Formal Justice Systems

GN   Grama Niladhari

IJS   Informal Justice Systems

KPI   Key Person Interview

LTTE   Liberation Tigers of Tamil Eelam

MB   Mediation Board

MSEs   Micro and Small Enterprises

NGOs   Non Governmental Organisations

RADA   Rehabilitation of Alcohol and Drug Addicts

RDS   Rural Development Society

TAF   The Asia Foundation

WIN   Women in Need

WRDS   Women's Rural Development Society

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Executive Summary

Community based mediation, a commonly known community based dispute resolution mechanism has a long history in Sri Lanka. These mechanisms existed in the form of village councils or Gam Sabas during the pre-colonial times. Although mechanisms approximating these councils continued to function throughout the Portuguese and Dutch colonial rule, they became largely defunct during the British rule. If the enactment of the Village Communities Ordinance in 1871 by the British marked their colonial reconstitution, the Rural Courts Ordinance of 1945 laid the foundation for postcolonial attempts to reactivate community-centric mediation, particularly through the replacement of rural courts by Conciliation Boards (Gunawardana, 2011). While there were several attempts to formalise community mediation during British rule and in the early post-independence period, it was established as a formal mechanism within Sri Lanka under the Community Mediation Boards Act 72 of 1988 as part of resolving community level disputes and minor offences. Thereby, the first Mediation Boards were established in July 1990 in selected divisional secretariat divisions around the country. The then ongoing war constrained the establishment of Community Mediation Boards in the Northern and Eastern Provinces except in Uhana and Dehiattakandiya DS Divisions in Ampara District. At present, there are 329 Community Mediation Boards with approximately 8500 mediators functioning in the country.

A brief review of published literature on Community Mediation Boards points towards a gap of in-depth understanding of the mechanism through the disputants' perspective, including in the hitherto under-studied Northern Province. This sociological inquiry, therefore, first aims to address this research gap. Next it aims to synsthesise the learning from selected districts in three provinces of Northern, Eastern and Uva, by bringing out the commonalities and differences between the three provinces in terms of people's experiences and expectations in accessing mediation boards. Thirdly, the report also attempts to situate the analysis within the current theoretical debates on mediation. Further, the revival or establishment of Community Mediation Boards in the Northern Province are relatively more recent, with the boards in Mullaitivu being established as recently as 2014 and therefore, this study brings an understanding of the mechanisms in the Northern Province through peoples' perspectives into this analysis. This current study is followed by a qualitative study commissioned by the Asia Foundation in 2015 sought to understand the disputants' perspectives about Community Mediation in the Northern Province specifically.

The main research question guiding this study was: How do those who access Community Mediation Boards perceive and experience Community Mediation Boards in the Northern, Eastern and Uva Provinces? The study adopted the following three sub-research questions to explore the main research question stated above:

- Who accesses mediation boards?

- What are people's expectations of Community Mediation Boards with regard to dispute resolution?

- What factors explain people's satisfaction/ dissatisfaction with the mediation process and outcome?

Given the objective of adopting an inductive, ground-up approach, the study opted for a qualitative approach, focusing on purposively selected cases/complaints and disputants. The study used qualitative, open-ended questionnaires to gather information.

The following districts from each province were selected for the study:

Northern Province	Eastern Province	Uva Province
Mannar	Trincomalee	Monaragala
Mullaitivu	Batticaloa	
Jaffna		

Disputants were purposively selected to capture variations in terms of type of complaint, gender, stage of dispute, socio-economic conditions, ethnicity and language spoken. In order to avoid any possible biases in the sample and the sampling process, the study team avoided using any records available with the mediators and Community Mediation Boards. As a result, identifying the disputants for the research became a challenge and the study team devised a strategy, based on their previous experience in working in these provinces. The study team made multiple visits to the field locations to identify the key issues and sample. In order to capture a wide range of disputes and avoid biases in the sample, the team made every effort to obtain information about complaints from more than one source.

Key findings

Overall, disputants were of the perception that accessing Community Mediation Boards was a more dignified option than accessing the formal mechanisms such as the Police or courts. In the Northern Province, based on the limited study sample, it seems that people of all socio-economic strata access the Community Mediation Boards. This trend is confirmed by the fact that, irrespective of socio-economic status, the disputants clearly preferred the Community Mediation Boards over the formal mechanisms such as the Police or courts.

Overall, the study found that people of all three ethnic groups access the Community Mediation Boards. However, in the Northern Province, the predominantly Tamil and Muslim disputants clearly stated that they prefer going to the Community Mediation Boards instead of the formal mechanisms, especially the Police. The Police was clearly seen to have a language bias in the Northern Province and the Community Mediation Boards are playing a critical role in making justice accessible with perceived fairness, to the Tamil speakers. In the Eastern Province, all three ethnic groups accessed the Community Mediation Boards and there were no particular trends that stood out. The same was seen in the Uva Province.

Overall, the women seem much more comfortable in approaching Community Mediation Boards for their disputes in comparison to the formal mechanisms such as Police and courts. Gender wise, both men and women approached Community Mediation Boards, in all three provinces. The men were of the opinion that they were more comfortable with their wives or female relatives going to the Community Mediation Boards, in comparison to the formal mechanisms because of presence of women mediators and the space given for women to express themselves. In contrast, the Police was perceived by both men and women as a corrupt, aggressive and often biased institution.

Satisfaction

According to our study, generally, the level of satisfaction in relation to Community Mediation Boards is higher when compared to formal dispute resolution mechanisms. Disputants' perceptions about satisfaction is relative and coloured by their experience with other dispute resolution mechanisms that the disputants accessed in the past as well as their past experience with Community Mediation Boards, if any. The perceived attributes of Community Mediation Boards such as being listened to, the participatory settlement process, the ability to articulate their problems during the settlement, use of local languages in communication and a non-threatening setting, influence their levels of satisfaction.

Economy and cost

The direct cost associated with accessing Community Mediation Boards is negligible as opposed to the courts where they are required to pay for lawyers' fees. The Community Mediation Boards do not charge for their services. Moreover, conducting the mediation at times which is convenient to all the parties, such as operating on weekends makes accessing Community Mediation Boards easier and minimises the opportunity cost. However, the opportunity cost of participating at Community Mediation Boards also merits attention. Moreover, people perceive the opportunity cost of accessing the courts as high because the total cost of accessing Community Mediation Boards is insignificant as opposed to the cost associated with courts. Though the study did not look into the cost of administering the Community Mediation Boards, this is also an important factor that needs to be addressed when discussing cost. Community Mediation Boards in Sri Lanka operate with very little cost because the mediators lend a voluntary service.

Interpersonal climate

The interest-based mediation principle uses the 'process' at the core of mediation. Process here means various stages that a case faces; i.e. being invited, attending mediation, setting, discussion with mediators, documentation of discussion, depth of discussion, arriving at a settlement, issuing (non) settlement certificates and (non) compliance to the settlement. Disputants valued various aspects of the process such as being listened to, being respected, the equal opportunity given to discuss the disputes, ability to articulate in own language and participatory decision making. Moreover, the Community mediation boards also factor the contextual elements such as culture and religion in the area. However, even though people tend to be more open to discussion, the tendency to compromise and give into an 'unsatisfactory' decision, especially in the presence of religious figures, may hamper the sustainability of the settlements.

Improvement in relationships

Alternative dispute resolution mechanisms have greater impact on people-to-people relationships by dealing with disputes in a non-coercive manner compared to the formal mechanisms which are seen as inhibiting inter-personal interactions. Disputants who participated in the discussion admitted to relatively higher levels of communication, as they are permitted and encouraged to discuss the problem. However, this argument does not hold for certain disputes such as complaints of family disputes or domestic violence.

Commitment to settlement

The disputants valued the quality of the discussion, which does not take place within formal mechanisms such as the Police or the Courts. All disputing parties are given an opportunity to present their grievances in detail, in a less constrained manner compared to the formal mechanisms.

The fact that the disputants participate in discussing and arriving at a settlement means that there is some level of commitment from the disputing parties. The reflective technique used during mediation helps the disputants understand each other's viewpoints which may lead to relatively higher levels of compliance to the settlement. However, it would be too simplistic to conclude that the complaints that went through in-depth analysis translates into higher levels of compliance.

Quality of outcome

People's perceptions and experiences about outcome vary greatly. It ranges from comprehensive mutually agreeable settlements to 'no show' or to the issuing of a non-settlement certificate by the Community Mediation Boards. At times, people settle half-heartedly because of the fear of the other party taking the complaint to the formal system when a settlement is not reached. This fear is mostly about the cost, time, language, coercive inquiry and intimidating inter-personal climate in the formal system.

Each complaint that comes before a Community Mediation Board is unique and there is no standard solution for complaints. Community Mediation Boards do not follow a standard set procedure for all the complaints handled and lack formal rules and regulations as opposed to the formal system. Rather, Community Mediation Boards use an individualised approach to each complaint by adopting complaint-specific processes where values and beliefs are respected and accepted. Therefore, there is a better platform created for arriving at a more long lasting solution to community level disputes.

Durability of the settlement is a critical factor that determines the quality of outcome in Community Mediation Boards. Though settlement is viewed as an immediate outcome of mediation, it may lead to compliance with the agreement and improving inter-personal relationship between disputing parties. Some disputes re-emerge due to lack of compliance, lack of follow up and also because adjudication is not a mandate of Community Mediation Boards. People often situate the Community Mediation Boards at a higher satisfaction level as a result of their negative experience or perceptions of the formal system in dealing with disputants. These negative experiences and perceptions of the formal mechanisms include language used, lack of discussion, disrespect, partiality or corrupt institutional practices.

Dichotomy of social embeddedness

Mediators, disputants and the process followed by the Community Mediation Boards to settle the disputes are embedded in the same, shared social fabric. As a result, mediators are able to factor the local, cultural differences in settling disputes and foster accountability to the community. On the contrary, people may not share sensitive matters with known mediators due to reasons of privacy and a fear that intimate matters may be exposed to the wider society. Moreover, misunderstanding of the sense of responsibility and accountability to the community could lead to 'forced settlements'.

Power

The power to institutionalise the community mediation boards lies with the state. State support of mediation in Sri Lanka provides it much needed legitimacy and a sense of authority to carry out its duties. The power of mediators, disputants and parties outside mediation and the mediation process can exert influence on the mediation process. Unequal power relations that exist within a society can be reproduced within the mediation process as the mediators and disputants share the same social fabric. The mediators' socio-cultural position affects the dynamics of mediation and this may result in disputants reaching settlements with the lowest acceptable standards. On the other hand, the sense of accountability and responsibility of the mediators may push them to go beyond the mandate towards forced settlement, unintentionally or intentionally.

When a disputing party lacks power and is vulnerable such as in domestic violence complaints, it may make the women even more vulnerable when mediation does not provide sufficient protection for the affected women, exerting undue pressure on the vulnerable parties to settle. Similar scenarios can be expected when banks enter into mediation for debt recovery. Also, when the mediators and the disputant are from the same caste group or class, there is a tendency to subvert the purpose of community mediation and discriminate against one party.

In conclusion, this research sets out to explore the nature of justice sought and delivered by Community Mediation Boards in six districts of the country, through the perceptions and experiences of disputants. In the research team's qualitative in-depth exploration, what became clearly apparent was that the disputants' understanding of justice was much more complex and broader than a fair and just outcome in the form of a settlement. Rather, for the disputants, justice is very much related to the process that is followed as much as outcome.

විධායක සාරාංශය

ප්‍රජා පාදක ආරවුල් නිරාකරණ යන්ත්‍රණයක් ලෙස පොදුවේ ප්‍රචලිත ප්‍රජා පාදක සමථකරණයට ශ්‍රී ලංකාව තුළ දීර්ඝ ඉතිහාසයක් ඇත. පූර්ව යටත් විජිත යුගවල දී මෙම යන්ත්‍රණයන් විද්‍යමාන වූයේ ගම් සභා (Village Councils) ස්වරූපයෙනි. මෙම සභාවන්ට ආසන්න වශයෙන් සමාන යන්ත්‍රණයන් පෘතුගීසි හා ලන්දේසි යටත් විජිත පාලන සමයන් පුරා ද අඛණ්ඩව ක්‍රියාත්මක වූ නමුත් බ්‍රිතාන්‍ය පාලන සමයේ දී ඒවා බොහෝ දුරට අභාවයට ගියේය. බ්‍රිතාන්‍යයන් විසින් 1871 දී ගම් කාර්ය සභා ආඥා පණත (Village Communities Ordinance) නීතිගත කරනු ලැබීමෙන් ඒවායේ යටත් විජිත ප්‍රතිවුනගතකරණය සනිටුහන් වූ අතර 1945 ගම්බද උසාවි ආඥා පණතින් (Rural Courts Ordinance) මඟින් විශේෂයෙන් ම ගම්බද උසාවි වෙනුවට සමථ මණ්ඩල ආදේශ කිරීම හරහා ප්‍රජා කේන්ද්‍රීය සමථකරණය යළි සතිය කිරීම සඳහා දරන ලද පශ්චාත් යටත් විජිත ප්‍රයත්නයන්ට පදනම වැටිණ (Gunawardana, 2011). බ්‍රිතාන්‍ය පාලන සමයේ දී සහ නිදහසින් පසු මුල් කාල පරිච්ඡේදයේ දී ප්‍රජා සමථකරණය විධිමත් කිරීම සඳහා ප්‍රයත්නයන් කිහිපයක් දරන ලද නමුදු ප්‍රජා මට්ටමේ ආරවුල්වලට හා සුළු අපරාධවලට විසඳුම් සම්පාදනය කිරීමේ කොටසක් ලෙස එය ශ්‍රී ලංකාව තුළ විධිමත් යන්ත්‍රණයක් ලෙස ස්ථාපනය කරන ලද්දේ 1988 අංක 72 දරණ ප්‍රජා සමථ මණ්ඩල පණත යටතේය. ඒ අනුව 1990 ජූලි මාසයේ දී රට පුරා තෝරා ගත් ප්‍රාදේශීය ලේකම් කොට්ඨාස ගණනාවක ප්‍රථම සමථ මණ්ඩල ස්ථාපනය කරන ලදි. ඒ වන විට පැවති යුද්ධය උතුරු නැගෙනහිර පළාත්වල ප්‍රජා සමථ මණ්ඩල පිහිටුවීමට බරපතළ බාධාවක් වූ අතර අම්පාර දිස්ත්‍රික්කයේ උහන හා දෙහිඅත්තකණ්ඩිය ප්‍රාදේශීය ලේකම් කොට්ඨාසවල පමණක් සමථ මණ්ඩල පිහිටුවනු ලැබිණ. වර්තමානයේ දී රට තුළ ප්‍රජා සමථ මණ්ඩල 329ක් පවත්නා අතර ආසන්න වශයෙන් සමථකරුවෝ 8,500ක් පමණ ක්‍රියාත්මක වෙමින් සිටිති.

ප්‍රජා සමථ මණ්ඩල පිළිබඳව ප්‍රකාශයට පත්ව ඇති සාහිත්‍ය සම්බන්ධයෙන් කරනු ලබන කෙටි සමාලෝචනයකින් පෙන්නුම් කෙරෙන්නේ ආරවුල්කරුවන්ගේ දෘෂ්ටිකෝණයෙන් යන්ත්‍රණය පිළිබඳව ප්‍රමාණවත් පුළුල් අවබෝධයක් ඇති කර ගෙන නැති බව සහ උතුරු පළාත තුළ මේ දක්වා ප්‍රමාණවත් අධ්‍යයනයක් කර නැති බව යි. එම නිසා මෙම සමාජ විද්‍යාත්මක විමර්ශනයේ ප්‍රථම අභිප්‍රාය වන්නේ පර්යේෂණ කටයුතු සම්බන්ධයෙන් පවත්නා මෙම හිදැස පියවීම යි. එහි ඊළඟ අභිප්‍රාය වන්නේ සමථ මණ්ඩල වෙත යාම ආශ්‍රිත මහජන අත්දැකීම් හා අපේක්ෂාවන් සලකන විට පළාත් තුන අතර පවත්නා පොදු ලක්ෂණ හා වෙනස්කම් අනාවරණය කිරීම මඟින් උතුරු, නැගෙනහිර හා ඌව පළාත් තුනෙහි තෝරා ගත් දිස්ත්‍රික්කවලින් උගත් පාඩම් විශ්ලේෂණය කිරීමයි. තෙවනුව මෙම වාර්තාව මේ වන විට සමථකරණය සම්බන්ධයෙන් සිදු වෙමින් පවත්නා න්‍යායික වාද විවාද තුළ සිය විශ්ලේෂණය ස්ථානගත කිරීමට ද ප්‍රයත්න දරයි. එපමණක් නොවේ. උතුරු පළාත තුළ ප්‍රජා සමථ මණ්ඩල යළි පණ ගැන්වීම හෝ ස්ථාපනය කිරීම සිදු වූයේ වඩාත් මෑතක දී ය. මුලතිවුහි සමථ මණ්ඩල පිහිටුවන ලද්දේ 2014 තරම් මෑතක දී ය. එම නිසා මෙම අධ්‍යයනය මෙම විශ්ලේෂණය තුළට මහජන දෘෂ්ටිකෝණ රැගෙන එමින් උතුරු පළාත තුළ ක්‍රියාත්මක යන්ත්‍රණයන් පිළිබඳව අවබෝධයක් සම්පාදනය කරයි. මෙම අධ්‍යයනයෙන් පසුව 2015 දී ආසියා පදනම විසින් නියම කරන ලදුව ගුණාත්මක අධ්‍යයනයක් සිදු කෙරුණු අතර එහි දී විශේෂයෙන් ම උතුරු පළාතේ ප්‍රජා සමථකරණ කටයුතු පිළිබඳව ආරවුල්කරුවන්ගේ දෘෂ්ටිකෝණ අවබෝධ කර ගැනීමට උත්සාහ දරන ලදි.

මෙම අධ්‍යයනයට මග පෑද ප්‍රධාන පර්යේෂණ ගැටලුව වූයේ ප්‍රජා සමථ මණ්ඩල වෙත යන අය උතුරු, නැගෙනහිර හා ඌව පළාත්වල ප්‍රජා සමථ මණ්ඩල දැක ගන්නේ හා අත්දකින්නේ කෙසේ ද යන්නයි. මෙම අධ්‍යයනය ඉහත දක්වන ලද ප්‍රධාන පර්යේෂණ ගැටලුව විමසා බැලීම සඳහා පහත දැක්වෙන උප පර්යේෂණ ගැටලු තුන යොදා ගත්තේය:

- සමථ මණ්ඩල වෙත යන්නෝ කවරහු ද?

- ආරවුල් නිරාකරණය සම්බන්ධයෙන් ගත් විට මහජනයා ප්‍රජා සමථ මණ්ඩලවලින් අපේක්ෂා කරන්නේ මොනවා ද?

- සමථකරණ ක්‍රියාවලිය හා අවසන් ප්‍රතිඵලය ආශ්‍රිත මහජන තෘප්තිය/අතෘප්තිය පැහැදිලි කරන සාධක මොනවා ද?

පහළ සිට ඉහළට දිවෙන්නා වූ ප්‍රවිශ්ටයක් යොදා ගැනීමේ අරමුණ ඇතිව මෙම අධ්‍යයනය සඳහා ගුණාත්මක ප්‍රවිශ්ටයක් තෝරා ගත් අතර හිතාමතා තෝරා ගන්නා ලද සිද්ධි/පැමිණිලි හා ආරාවුල්කරුවන් කෙරෙහි අවධානය යොමු කළේය. අධ්‍යයනය තොරතුරු රැස් කිරීම සඳහා ගුණාත්මක, විවෘත ප්‍රශ්නාවලි යොදා ගත්තේය.

අධ්‍යයනය සඳහා ඒ ඒ පළාතෙන් පහත දැක්වෙන දිස්ත්‍රික්ක තෝරා ගන්නා ලදි:

උතුරු පළාත	නැගෙනහිර පළාත	ඌව පළාත
මන්නාරම	ත්‍රිකුණාමලය	මොණරාගල
මුලතිවු	මඩකලපුව	
යාපනය		

පැමිණිලි වර්ගය, ස්ත්‍රී පුරුෂ භාවය, ආරාවුලේ අදියර, සමාජාර්ථික තත්ත්වය, ජනවාර්ගිකත්වය හා කතා කරන භාෂාව ආශ්‍රිත වෙනස්කම් ග්‍රහණය කර ගැනීම සඳහා ආරාවුල්කරුවෝ හිතාමතා තෝරා ගන්නා ලදහ. අධ්‍යයන කණ්ඩායම නියැදිය සහ නියැදිකරණ ක්‍රියාවලිය තුළ දී පක්ෂපාතීකම් ඇති වීම වැළැක්වීම සඳහා සමථකරුවන් හා ප්‍රජා සමථ මණ්ඩල සතු වාර්තා යොදා ගැනීමෙන් වැළකිණ. මෙහි ප්‍රතිඵලයක් ලෙස අධ්‍යයනය සඳහා ආරාවුල්කරුවන් හඳුනා ගැනීම අභියෝගයක් බවට පත් වූ අතර අධ්‍යයන කණ්ඩායම මෙම පළාත් තුළ තමන් මීට පෙර සිදු කළ වැඩ කටයුතුවලින් ලත් අත්දැකීම් පදනම් කර ගනිමින් ක්‍රමෝපායක් සකසා ගත්තේය. අධ්‍යයන කණ්ඩායම ප්‍රධාන ගැටලු හා නියැදි හඳුනා ගැනීම සඳහා අවස්ථා කිහිපයක දී ම ක්ෂේත්‍ර ප්‍රදේශවල චාරිකා කළේ ය. විවිධ ආරාවුල් ග්‍රහණය කර ගැනීම හා නියැදිය තුළ පක්ෂපාතීකම් ඇති වීම වැළැක්වීම සඳහා මූලාශ්‍ර එකකට වැඩි ගණනකින් පැමිණිලි පිළිබඳ තොරතුරු ලබා ගැනීමට කණ්ඩායම සෑම පරිශ්‍රමයක්ම දැරීය.

ප්‍රධාන සොයා ගැනීම්

සමස්තයක් ලෙස ගත් විට ආරාවුල්කරුවන්ගේ අදහස වූයේ ප්‍රජා සමථ මණ්ඩල වෙත යාම පොලීසිය හෝ උසාවි වැනි විධිමත් යන්ත්‍රණයන් වෙත යාමට වඩා ගෞරවනීය විකල්පයක් වූ බවයි. සීමිත අධ්‍යයන නියැදිය පදනම් කර ගෙන උතුරු පළාත තුළ කරන ලද අධ්‍යයනයෙන් පෙනී ගියේ සියලු සමාජාර්ථික ස්තරයන්හි ජනයා ප්‍රජා සමථ මණ්ඩල වෙත යන බවයි. ආරාවුල්කරුවන්ගේ සමාජ ආර්ථික තත්ත්වය කුමක් වුවත් පැහැදිලි ලෙසම ඔවුන් පොලීසිය හෝ උසාවි වැනි විධිමත් යන්ත්‍රණයන්ට වඩා ප්‍රජා සමථ මණ්ඩලවලට කැමැත්තක් දක්වන්නේය යන කරුණෙන් මෙම ප්‍රවණතාව තහවුරු වේ.

සමස්තයක් ලෙස ගත් විට අධ්‍යයනය සොයා ගත්තේ ජනවාර්ගික කණ්ඩායම් තුනේ ම ජනයා ප්‍රජා සමථ මණ්ඩල වෙත යන බවයි. කෙසේ වුව ද උතුරු පළාතේ දී ප්‍රධාන වශයෙන් දෙමළ හා මුස්ලිම් ආරාවුල්කරුවන්

ප්‍රකාශ කළේ විධිමත් යන්ත්‍රණයන්ට විශේෂයෙන් ම පොලිසියට වඩා ප්‍රජා සමථ මණ්ඩල වෙත යාමට තමන් කැමැත්තක් දක්වන බවයි. උතුරු පළාතේ දී පොලිසිය භාෂා පක්ෂපාතීකම් පෙන්නුම් කරන බව පැහැදිලි ලෙස දැක ගන්නා ලද අතර දෙමළ කතා කරන ජනයාට ප්‍රත්‍යක්ෂ සාධාරණයක් ඉටු වන පරිදි යුක්තිය වෙත ප්‍රවේශ වීමට අවස්ථාව සැලසීමේ දී ප්‍රජා සමථ මණ්ඩල තීරණාත්මක කාර්ය භාරයක් ඉටු කරමින් සිටියි. නැගෙනහිර පළාතේ දී ජනවාර්ගික කණ්ඩායම් තුන ම ප්‍රජා සමථ මණ්ඩල වෙත ගිය අතර විශේෂ ප්‍රවණතා දැක්නට නොවීය. ඌව පළාතේ තත්ත්වය ද එය ම විය.

සමස්තයක් ලෙස ගත් විට තම ආරාවුල් විසඳා ගැනීම සඳහා පොලිසිය හා උසාවි වැනි විධිමත් යන්ත්‍රණයන්ට සංසන්දනාත්මකව ප්‍රජා සමථ මණ්ඩල වෙත යාම කාන්තාවන්ට අනල්ප පහසුවක් බව පෙනී යයි. ස්ත්‍රී පුරුෂ භාවය අනුව ගත් විට පළාත් තුනේ දී ම පිරිමින් හා කාන්තාවන් යන දෙපාර්ශ්වය ම ප්‍රජා සමථ මණ්ඩල වෙත ගියහ. පිරිමින්ගේ අදහස වූයේ කාන්තා සමථකරුවන් සිටීම සහ කාන්තාවන්ට තමන්ගේ අදහස් ප්‍රකාශ කිරීමට ලැබෙන අවකාශය නිසා සිය භාර්යාවන් සහ කාන්තා ඥාතීන් විධිමත් යන්ත්‍රණයන්ට සංසන්දනාත්මකව ප්‍රජා සමථ මණ්ඩල වෙත යාම තමන්ට වඩාත් පහසුවක් බවයි. පිරිමින් හා කාන්තාවන් යන දෙපාර්ශ්වය විසින්ම පොලිසිය දූෂිත, ආක්‍රමණශීලී සහ බොහෝ විට පක්ෂපාති ආයතනයක් ලෙස දැක ගනු ලැබිණ.

තෘප්තිය

අපගේ අධ්‍යයනය අනුව විධිමත් ආරාවුල් නිරාකරණ යන්ත්‍රණයන්ට සංසන්දනාත්මකව ප්‍රජා සමථ මණ්ඩල පිළිබඳ තෘප්තිය සාමාන්‍යයෙන් ඉහළ මට්ටමක පැවතිණ. තෘප්තිය පිළිබඳ ආරාවුල්කරුවන්ගේ අදහස් සාපේක්ෂ වන අතර තමන් අතීතයේ දී යොදා ගත් ආරාවුල් නිරාකරණ යන්ත්‍රණයන් සම්බන්ධයෙන් ආරාවුල්කරුවන් සතු අත්දැකීම් සහ ප්‍රජා සමථ මණ්ඩල වෙත ගොස් ඇත් නම් ඒ සම්බන්ධයෙන් ලබා ඇති අත්දැකීම් අනුව වෙනස් විය. ප්‍රජා සමථ මණ්ඩල සතු බවට ප්‍රත්‍යක්ෂ කර ගන්නා ලද සවන් දෙනු ලැබීම, සහභාගිත්ව විසඳුම් ක්‍රියාවලිය, විසඳුම අතරතුර දී තමන්ගේ ගැටලු ප්‍රකාශයට පත් කිරීමට තිබෙන හැකියාව, අදහස් හුවමාරුවේ දී ප්‍රාදේශීය භාෂාවන් යොදා ගැනීම සහ තර්ජනකාරී නොවන වාතාවරණය වැනි ලක්ෂණ ඔවුන්ගේ තෘප්තියේ මට්ටම කෙරෙහි බලපායි.

ආර්ථිකය හා පිරිවැය

නීතිඥ ගාස්තු ගෙවීමට සිදු වන උසාවි මෙන් නොව ප්‍රජා සමථ මණ්ඩල වෙත යාමේ දී දැරීමට සිදු වන සෘජු පිරිවැය ඉතා අවමය. ප්‍රජා සමථ මණ්ඩල සිය සේවාවන් සඳහා ගාස්තු අය නොකරයි. එපමණක් නොව සති අන්තය වැනි සියලු පාර්ශ්වයන්ට පහසු වේලාවල දී සමථකරණ කටයුතු සිදු කිරීම නිසා ප්‍රජා සමථ මණ්ඩල

වෙත යාම වඩාත් පහසු වන අතර ඒ සඳහා දැරීමට සිදු වන අවස්ථානුකූල (ආවස්ථීක) පිරිවැය අවම වේ. කෙසේ වුව ද ප්‍රජා සමථ මණ්ඩලවලට සහභාගි වීමේ දී දැරීමට සිදු වන ආවස්ථීක පිරිවැය ද අවධානයට ලක් විය යුතු ය. එපමණක් නොව උසාවිවලට යාම ආශ්‍රිත පිරිවැයට සංසන්දනාත්මකව ප්‍රජා සමථ මණ්ඩල වෙත යාමේදී දැරීමට සිදු වන මුළු පිරිවැය ඉතා සුළු නිසා උසාවි වෙත යාමේ දී වැඩි ආවස්ථීක පිරිවැයක් දැරීමට සිදු වන බව ජනයා ප්‍රත්‍යක්ෂ කර ගනිති. අධ්‍යයනය ප්‍රජා සමථ මණ්ඩල පරිපාලනය කිරීමේ පිරිවැය විමසා නොබැලූ නමුත් එය ද පිරිවැය පිළිබඳව සාකච්ඡා කරන විට අවධානය යොමු කළ යුතු වැදගත් සාධකයකි. සමථකරුවන් සිය සේවාවන් ඉටු කරන්නේ ස්වේච්ඡාවෙන් නිසා ශ්‍රී ලංකාවේ ප්‍රජා සමථ මණ්ඩල ක්‍රියාත්මක වන්නේ ඉතා සුළු පිරිවැයකින්.

අන්තර් පුද්ගල වාතාවරණය

අවශ්‍යතාව පදනම් කර ගත් සමථකරණ මූලධර්මය සමථකරණයේ හරය ලෙස සලකන්නේ 'ක්‍රියාවලිය' යි. මෙහි දී ක්‍රියාවලිය යන්නෙන් අදහස් වන්නේ සිද්ධියක් මුහුණ පාන විවිධ අවධීන්ය; එනම්, ආරාධනා කරනු ලැබීම, සමථකරණයට සහභාගි වීම, පසුබිම සකසා ගැනීම, සමථකරුවන් සමග සාකච්ඡා කිරීම, සාකච්ඡාව ප්‍රලේඛනය කිරීම, ගැඹුරින් සාකච්ඡා කිරීම, විසඳුමකට එළඹීම, (නො)විසඳු බවට සහතික නිකුත් කිරීම සහ විසඳුමට එකඟ (නො)වීමයි. සවන් දෙනු ලැබීම, ගරු කරනු ලැබීම, ආරාවුල් සාකච්ඡා කිරීම සඳහා සමාන අවස්ථාවක් ලබා දීම, තමන්ගේ භාෂාවෙන් කරුණු ඉදිරිපත් කිරීමේ හැකියාව සහ සහභාගිත්ව තීරණ ගැනීම යනාදි ක්‍රියාවලියේ විවිධ පැතිකඩවල් ආරාවුල්කරුවන් විසින් අගය කරනු ලැබිණ. එපමණක් නොව ප්‍රජා සමථ මණ්ඩල ප්‍රදේශය තුළ පවත්නා සංස්කෘතිය හා ආගම යනාදි වාතාවරණය ආශ්‍රිත අංග ද සැලකිල්ලට ගනියි. කෙසේ වුව ද ජනයා සාකච්ඡාවට වඩාත් විවෘත වීමට ඉඩ තිබෙන නමුත් විශේෂයෙන් ම ආගමික නායකයන් හමුවේ සම්මුතියක් ඇති කර ගැනීමට හා 'අතෘප්තිමත්' තීරණයකට එකඟ වීමට තිබෙන ඉඩකඩ විසඳුම්වල තිරසර භාවයට බාධාවක් විය හැකිය.

සම්බන්ධතා වැඩි දියුණු වීම

අන්තර් පුද්ගල සම්බන්ධතාවන්ට බාධාකාරී යැයි දැක ගනු ලබන විධිමත් යන්ත්‍රණයන්ට සංසන්දනාත්මකව බලාත්කාරී නොවන ආකාරයකින් ආරාවුල් සම්බන්ධයෙන් කටයුතු කරන නිසා විකල්ප ආරාවුල් නිරාකරණ යන්ත්‍රණයන් ජනයාඅතර සම්බන්ධතාවන්ට වැඩි බලපෑමක් කර ඇත. සාකච්ඡාවට සහභාගි වූ ආරාවුල්කරුවන් ගැටලුව සාකච්ඡා කිරීමට තමන්ට අවකාශ සලසා දෙනු ලැබීම හා තමන් දිරි ගන්වනු ලැබීම නිසා අදහස් හුවමාරුවේ මට්ටම සාපේක්ෂ වශයෙන් ඉහළ තලයක පැවති බව පිළිගත්හ. කෙසේ වුව ද පවුල් ආරාවුල් හෝ ගෘහස්ථ ප්‍රචණ්ඩත්වය පිළිබඳ පැමිණිලි යනාදි සමහර ආරාවුල් සම්බන්ධයෙන් මෙම

තර්කය අදාළ නොවේ.

විසඳුම සඳහා කැප වීම

ආරාවුල්කරුවන් සාකච්ඡාවේ ගුණාත්මකත්වය අගය කළ අතර පොලීසිය හෝ උසාවි වැනි විධිමත් යන්ත්‍රණයන් තුළ එබඳු ගුණාත්මකත්වයක් දැක ගත නොහැකිය. ආරාවුලේ සියලු පාර්ශ්වකරුවන්ට විධිමත් යන්ත්‍රණයන්ට සංසන්දනාත්මකව අඩුවෙන් පාලනය කරන ලද ආකාරයකින් තමන්ගේ දුක් ගැනවිලි සවිස්තරාත්මකව ඉදිරිපත් කිරීමට අවස්ථාවක් ලැබේ.

ආරාවුල්කරුවන් සාකච්ඡා කරමින් සහභාගි වී විසඳුමකට එළඹෙන්නේ ය යන කරුණෙන් අදහස් වන්නේ ආරාවුලේ පාර්ශ්වකරුවන් වෙතින් කැප වීමේ යම් මට්ටමක් විද්‍යමාන වන බව යි. සමථකරණය අතරතුරදී යොදා ගැනෙන සිතා බැලීමේ ශිල්ප ක්‍රමය එකිනෙකාගේ දෘෂ්ටිකෝණ අවබෝධ කර ගැනීමට ආරාවුල්කරුවන්ට උදව් වන අතර විසඳුමට එකඟ වීමේ වඩාත් ඉහළ මට්ටම විද්‍යමාන වීමට හේතු විය හැකිය. කෙසේ වුව ද පැමිණිලි ගැඹුරු විශ්ලේෂණයකට බඳුන් කිරීම එකඟ වීමේ වඩාත් ඉහළ මට්ටම්වලට තුඩු දෙන්නේ යැයි නිගමනය කිරීම කාරණය පමණ ඉක්මවා සරල කිරීමක් වනු ඇත.

අවසන් ප්‍රතිඵලයේ ගුණාත්මකත්වය

අවසන් ප්‍රතිඵලය සම්බන්ධයෙන් ජනයා සතු අවබෝධයන් හා අත්දැකීම් අතිශයින් ම විවිධය. අනෝන්‍ය වශයෙන් එකඟ විය හැකි පුළුල් විසඳුම්වල සිට 'විසඳුමකට ලඟා නොවීම' හෝ ප්‍රජා සමථ මණ්ඩල විසින් නොවිසඳු බවට සහතිකයක් නිකුත් කරනු ලැබීම දක්වා පරාසය තුළ ප්‍රතිඵලයක් ලැබිය හැකිය. සමහර අවස්ථාවල දී විසඳුමකට නොඑළඹුණ හොත් අනෙක් පාර්ශ්වය පැමිණිල්ල විධිමත් පද්ධතිය වෙත රැගෙන යා හැකිය යන බිය නිසා උදාසීනත්වයට පත්ව ජනයා කවර හෝ විසඳුමකට එකඟ වෙති. බොහෝ විට මෙම බියට හේතු වන්නේ විධිමත් පද්ධතිය ආශ්‍රිත පිරිවැය, කාලය, භාෂාව, බලාත්කාරී විමර්ශනය හා තැති ගන්වන අන්තර් පුද්ගල වාතාවරණයයි.

ප්‍රජා සමථ මණ්ඩලයක් හමුවට පැමිණෙන සෑම පැමිණිල්ලක්ම සුවිශේෂී වන හෙයින් පැමිණිලි සඳහා සම්මත විසඳුම් නොපවතී. ප්‍රජා සමථ මණ්ඩල තමන් කටයුතු කරන කිසිදු පැමිණිල්ලක් සම්බන්ධයෙන් සම්මත ක්‍රියා පටිපාටියක් අනුගමනය නොකරන අතර විධිමත් පද්ධතිය තුළ පවත්නා විධිමත් නීති හා රෙගුලාසිවලින් තොරය. ප්‍රජා සමථ මණ්ඩල ඒ ඒ පැමිණිල්ලට විශේෂිත වූත් සාරධර්ම හා විශ්වාසයන් ගරු කරන හා පිළිගන්නා වූත් ක්‍රියාවලි යොදා ගනිමින් ඒ ඒ පැමිණිල්ල සම්බන්ධයෙන් ඊට ම විශේෂිත ප්‍රවිෂ්ටයක් මත කටයුතු කරයි. එම නිසා ප්‍රජා මට්ටමේ ආරාවුල්වල දී වඩාත් කල් පවත්නා විසඳුමකට එළඹීම සඳහා යොදා ගත හැකි වඩාත් හොඳ වේදිකාවක් ගොඩ නගා තිබෙන බව කිව හැකිය.

විසඳුමේ කල් පවත්නා බව ප්‍රජා සමථ මණ්ඩලවලින් ලැබෙන අවසන් ප්‍රතිඵලයේ ගුණාත්මකත්වය තීරණය කරන ඉතා වැදගත් සාධකයකි. විසඳුම සමථකරණයේ ක්ෂණික ප්‍රතිඵලයක් ලෙස දැක ගනු ලබන නමුත් එකඟතාවට අවනත වීමටත් ආරාවුලේ පාර්ශ්වයන් අතර අන්තර් පුද්ගල සම්බන්ධතා වැඩි දියුණු වීමටත් එය තුඩු දිය හැකිය. අවනත නොවීම, පසු විපරමක් සිදු නොවීම මෙන් ම විනිශ්චයක් දීමේ විධි නියෝග්‍යක් ප්‍රජා සමථ මණ්ඩල සතුව නොතිබීම නිසා ද සමහර ආරාවුල් නැවත ඇති විය හැකි ය. ආරාවුල්කරුවන් සමග කටයුතු කිරීමේදී විධිමත් පද්ධතිය සම්බන්ධයෙන් ලබා ඇති ඍණාත්මක අත්දැකීම් හෝ අවබෝධයන් නිසා ජනයා බොහෝ විට ප්‍රජා සමථ මණ්ඩල සම්බන්ධයෙන් තෘප්තියේ වඩාත් ඉහළ මට්ටම් පෙන්නුම් කරති. විධිමත් යන්ත්‍රණයන් සම්බන්ධයෙන් ලබා ඇති මෙම ඍණාත්මක අත්දැකීම් හා අවබෝධයන් අතරට ඇතුළත් වන්නේ යොදා ගන්නා භාෂාව, සාකච්ඡාවක් නොමැතිකම, ගරු නොකිරීම, පක්ෂග්‍රාහී වීම හෝ දූෂිත ආයතනික භාවිතයන්ය.

සමාජීය හැඟීම දෙකඩ වීම

සමථකරුවන්, ආරාවුල්කරුවන් සහ ආරාවුල් විසඳීම සඳහා ප්‍රජා සමථ මණ්ඩල අනුගමනය කරන ක්‍රියාවලිය යන සියල්ල ම පවතින්නේ එකම, පොදු සමාජ ව්‍යුහයක් තුළය. එම නිසා ආරාවුල් විසඳීමේ දී ප්‍රාදේශීය, සංස්කෘතික විවිධතාවන් සැලකිල්ලට ගැනීමටත් ප්‍රජාවට වග වීම ප්‍රවර්ධනය කිරීමටත් සමථකරුවන්ට හැකියාව ලැබේ. එහෙත් පෞද්ගලිකත්වය පිළිබඳ හේතු නිසා සහ කුලුපග කාරණා වඩාත් පුළුල් සමාජයට අනාවරණය වේ ය යන බිය නිසා ජනයා තමන් දන්නා හඳුනන සමථකරුවන් සමග සංවේදී කාරණා බෙදාහදා නොගැනීමට ඉඩ ඇත. එපමණක් නොව ප්‍රජාව වෙත පවත්නා වගකීම හා වග වීම පිළිබඳ හැඟීම වරදවා වටහා ගැනීම නිසා 'බලාත්කාරී විසඳුම්වලට' තුඩු දිය හැකිය.

බලය

ප්‍රජා සමථ මණ්ඩල ආයතනගත කිරීමේ බලය තිබෙන්නේ රජයට ය. ශ්‍රී ලංකාවේ දී රජය සමථකරණයට දෙන සහාය නිසා එම මණ්ඩලවලට එතරම් ම අවශ්‍ය කරන්නා වූ නීත්‍යනුකූල භාවය ද සිය රාජකාරී ඉටු කිරීම සඳහා පැවතිය යුතු අධිකාරය පිළිබඳ හැඟීම ද සම්පාදනය වේ. සමථකරුවන්, ආරාවුල්කරුවන් හා සමථකරණයෙන් පරිබාහිර පාර්ශ්වයන් සහ සමථකරණ ක්‍රියාවලිය සතු බලය සමථකරණ ක්‍රියාවලිය කෙරෙහි බලපෑ හැකිය. සමථකරුවන් හා ආරාවුල්කරුවන් එක ම, පොදු සමාජ ව්‍යුහයක කොටස්කරුවන් වන නිසා සමාජය තුළ පවත්නා අසමාන බල සම්බන්ධතාවන් සමථකරණ ක්‍රියාවලිය තුළදී ප්‍රකාශයට පත් විය හැකිය. සමථකරුවන්ගේ සමාජ සංස්කෘතික තත්ත්වය සමථකරණ ක්‍රියාකාරකම්වලට බලපාන අතර මෙහි ප්‍රතිඵලයක් ලෙස ආරාවුල්කරුවන් තමන්ට අඩුවෙන් ම එකඟ විය හැකි ප්‍රමිතීන් යටතේ විසඳුම්වලට ළඟා විය හැකිය. අනෙක් අතට වගකීම

හා වග වීම සම්බන්ධයෙන් සමථකරුවන්ට පවත්නා හැඟීම නිසා තමන් සතු විධිනියෝග්‍ය ඉක්මවා යමින් අවේතනිකව හෝ සවේතනිකව බලාත්කාරී විසඳුම් පැටවීමට සමථකරුවන් පෙළඹිය හැකිය.

ගෘහස්ථ ප්‍රචණ්ඩත්වය පිළිබඳ පැමිණිලිවල දී මෙන් ආරාවුලේ පාර්ශ්වයකට බලය නොමැති විට සහ එම පාර්ශ්වය ගොදුරු වීමට ඉඩ තිබෙන විට, විසඳුමකට එළඹෙන ලෙස ගොදුරු වීමට ඉඩ තිබෙන පාර්ශ්වය මත අනිසි පීඩනයක් යොදමින් සමථකරණ ක්‍රියාවලිය පීඩාවට පත් කාන්තාවන්ට ප්‍රමාණවත් රැකවරණයක් සම්පාදනය නොකරන්නේ නම් කාන්තාවන් වඩාත් ගොදුරු වීමට ඉඩ ඇත. ණය ආපසු අය කරවා ගැනීම සඳහා බැංකු සමථකරණයට පිවිසෙන විට ද මීට සමාන තත්ත්වයක් ඇති විය හැකිය. සමථකරුවන් හා ආරාවුල්කරුවා එකම කුලයකට හෝ පන්තියකට අයත් වන විට ද ප්‍රජා සමථකරණයේ අහිමතාර්ථය යටපත් වී එක් පාර්ශ්වයකට වෙනස්කම් කරනු ලැබීමේ ප්‍රවණතාවක් පවතී.

අවසන් වශයෙන් කිව යුත්තේ රටේ දිස්ත්‍රික්ක හයකදී ප්‍රජා සමථකරණ මණ්ඩලවලින් අපේක්ෂා කෙරෙන හා සම්පාදනය කෙරෙන යුක්තියේ ස්වභාවය ආරාවුල්කරුවන්ගේ අවබෝධයන් හා අත්දැකීම් පදනම් කර ගෙන විමසා බැලීම මෙම පර්යේෂණයේ අභිප්‍රාය වූ බවයි. පර්යේෂණ කණ්ඩායම විසින් සිදු කරන ලද පුළුල් ගුණාත්මක ගවේෂණයේ දී අතිශයින්ම පැහැදිලි වූයේ යුක්තිය පිළිබඳව ආරාවුල්කරුවන් සතු අවබෝධය විසඳුමක ස්වරූපයෙන් ලැබෙන සාධාරණ හා යුක්ති සහගත අවසන් ප්‍රතිඵලයකට වඩා බෙහෙවින් සංකීර්ණ හා පුළුල් බව යි.

சமூக அடிப்படையிலான இணக்கப்பாடு என்பது, இலங்கையில் நீண்ட வரலாற்றைக் கொண்ட சமூக அடிப்படையிலான பிரச்சினைகளுக்குத் தீர்வு காணுகின்ற ஒரு பொறிமுறையாகும். காலணித்துவத்திற்கு முற்பட்ட காலப்பகுதியில் இப்பொறிமுறைகளானவை கிராம சபைகள் அல்லது கம் சபைகளின் வடிவில் காணப்பட்டன. போர்த்துக்கேயர் மற்றும் ஒல்லாந்தர் காலணித்துவத்தின் போது இவ்வாறான பொறிமுறைகள் காணப்பட்ட போதிலும், பிரித்தானிய ஆட்சியின் போது அவை பெரும்பாலும் செயற்படவில்லை. 1871 ஆம் ஆண்டில், பிரித்தானியரால் அமுல்படுத்தப்பட்ட கிராமிய சமூக கட்டளைச் சட்டமானது அவர்களின் காலணித்துவ மறுசீரமைப்பினை குறித்து நிற்கின்ற அதேவேளை, காலணித்துவத்திற்குப் பின்னர் 1945 ஆம் ஆண்டின் கிராமிய நீதிமன்ற கட்டளைச் சட்டமானது, குறிப்பாக இணக்கச் சபைகள் மூலமாக கிராமிய நீதிமன்றங்களில் ஏற்பட்ட மாற்றத்தின் ஊடாக சமூகத்தை மையமாகக் கொண்ட இணக்கப்பாட்டினை மீளவும் செயற்படுத்துவதற்கான முயற்சிகளுக்கு அடித்தளமாக அமைகின்றது (குணவர்தன, 2011). பிரித்தானிய ஆட்சியின் போதும், சுதந்திரத்திற்குப் பின்னரான காலப்பகுதியிலும் சமூக இணக்கப்பாட்டினை உருவாக்குவதற்கான பல முயற்சிகள் மேற்கொள்ளப்பட்டிருந்த அதேவேளை, சமூக மட்டத்தில் ஏற்படுகின்ற மோதல்கள் மற்றும் சிறிய குற்றங்களை தீர்க்கக்கூடியவகையில் 1988 ஆம் ஆண்டின் 72 ஆம் இலக்கச் சட்ட சமூக மத்தியஸ்த சபைகளின் கீழ் இலங்கைக்குள்ளே ஒரு முறையான பொறிமுறையாக இது நிறுவப்பட்டது. இதன் மூலம், 1990 ஆம் ஆண்டு ஜூலை மாதம் நாடு முழுவதிலும் இருந்து தேர்ந்தெடுக்கப்பட்ட பிரதேச செயலகப் பிரிவுகளில் முதலாவது மத்தியஸ்த சபை நிறுவப்பட்டது. அம்பாறை மாவட்டத்தின் உஹன மற்றும் தெஹியத்தகண்டிய பிரதேச செயலகப் பிரிவுகளைத் தவிர வடக்கு மற்றும் கிழக்கு மாகாணங்களில் யுத்தம் நடைபெற்றதன் காரணமாக சமூக மத்தியஸ்த சபைகள் உருவாக்கப்படவில்லை. தற்போது, நாட்டில் 8500 மத்தியஸ்தர்களுடன் 329 சமூக மத்தியஸ்த சபைகள் செயற்படுகின்றன.

சமூக மத்தியஸ்த சபைகள் தொடர்பாக ஏற்கனவே வெளியிடப்பட்ட ஆய்வுகளின் சுருக்கம் மற்றும் வடமாகாணத்தில் மேற்கொள்ளப்பட்ட ஆய்வு என்பன சமூக மத்தியஸ்த சபைகள் தொடர்பாக பிணக்குதாரர்களின் மத்தியில் காணப்படுகின்ற கண்ணோட்டத்தின் ஆழமான புரிதலில் உள்ள இடைவெளியை சுட்டிக்காட்டுகின்றது. எனவே இந்த ஆய்வு இடைவெளிகளை அடையாளங் காண்பதே இச்சமூகவியல் ரீதியான விசாரணையின் முதல் நோக்கமாகும். மத்தியஸ்த சபைகளின் அணுகல் குறித்த மக்களின் அனுபவங்கள் மற்றும் எதிர்ப்பார்ப்புகள் அடிப்படையில் மூன்று மாகாணங்களுக்கிடையிலான வேறுபாடுகளையும், ஒற்றுமைகளையும் வெளிக்கொண்டுவருவதன் மூலம் வடக்கு, கிழக்கு மற்றும் ஊவா மாகாணங்களில் தேர்ந்தெடுக்கப்பட்ட மாவட்டங்களில் இருந்து கற்றுக்கொண்ட பாடங்களை ஒன்றுதிரட்டுவதே இதன் அடுத்த நோக்கமாகும்.

மூன்றாவதாக, மத்தியஸ்தம் தொடர்பான தற்போதைய கோட்பாட்டு ரீதியான விவாதத்தில் இப்பகுப்பாய்வினை நிலைப்படுத்துவதற்கும் ஆய்வானது முயற்சிக்கின்றது. மேலும், வடமாகாணத்தில் இச்சமூக மத்தியஸ்த சபைகள் அண்மை காலத்திலேயே நிறுவப்பட்டுள்ளதுடன், முல்லைத்தீவு மாவட்டத்தில் இச்சபைகள் 2014 ஆம் ஆண்டளவிலேயே நிறுவப்பட்டுள்ளது. இதன் காரணமாக, மக்களின் கண்ணோட்டங்களின் ஊடாக வடமாகாணத்தில் உள்ள பொறிமுறைகள் பற்றிய ஒரு புரிந்துணர்வினை இந்த ஆய்வானது வழங்குகின்றது. குறிப்பாக வடமாகாணத்தில் உள்ள மத்தியஸ்த சபைகள் பற்றி விவாதிப்பவர்களின் கண்ணோட்டங்களை புரிந்துகொள்வதற்காக, 2015 ஆம் ஆண்டில் ஆசிய நிதியத்தினால் (Asia Foundation) நடாத்தப்பட்ட பண்புசார் ஆய்வினைக் கொண்டு தற்போதைய ஆய்வானது மேற்கொள்ளப்படுகின்றது.

வடக்கு, கிழக்கு மற்றும் ஊவா மாகாணங்களில் உள்ள சமூக மத்தியஸ்த சபைகளை அணுகுபவர்களின் எண்ணப்பாடுகள் மற்றும் அனுபவங்கள் என்ன? என்பதே இந்த ஆய்வின் பிரதான ஆய்வு வினாவாகும். மேலே குறிப்பிட்ட பிரதான ஆய்வு வினாவை ஆராய்வதற்காக பின்வரும் துணை வினாக்கள் அடையாளம் காணப்பட்டன:

- மத்தியஸ்த சபைகளை அணுகுவர்கள் யார்?

- முரண்பாடுகளை தீர்த்து வைப்பதில் சமூக மத்தியஸ்த சபைகள் தொடர்பாக மக்களின் எதிர்பார்ப்புகள் யாவை?

- மத்தியஸ்த செயல்முறை மற்றும் விளைவுகள் குறித்த மக்களின் திருப்தி/அதிருப்தியை விளக்குகின்ற காரணிகள் யாவை?

உய்த்தறிமுறையிலான, அடிப்படை அணுகுமுறை ஒன்றினை வேண்டி, ஆய்வானது தேர்ந்தெடுக்கப்பட்ட விடயங்கள்/முறைப்பாடுகள் மற்றும் மோதல்களை கவனத்தில் கொண்டு, ஒரு பண்புசார் அணுகுமுறையை தெரிவு செய்துள்ளது. ஆய்வானது தகவல்களை சேகரிப்பதற்காக பண்புசார்ந்த, திறந்த வினாக்களை பயன்படுத்தியுள்ளது.

ஆய்விற்காக ஒவ்வொரு மாகாணத்தில் இருந்தும் பின்வரும் மாவட்டங்கள் தேர்ந்தெடுக்கப்பட்டன:

வட மாகாணம்	கிழக்கு மாகாணம்	ஊவா மாகாணம்
மன்னார்	திருகோணமலை	மொனராகலை
முல்லைத்தீவு	மட்டக்களப்பு	
யாழ்ப்பாணம்		

பிணக்குதாரர்கள் முறைப்பாடுகளின் வகை, பாலினம், மோதல் நிலை, சமூகப் பொருளாதார நிலைமைகள், இனம் மற்றும் பேசப்படும் மொழி போன்றவற்றின் அடிப்படையில் வேறுபாடுகளை வெளிப்படுத்தும் நோக்கில் வாதிடுபவர்கள் தேர்ந்தெடுக்கப்பட்டனர். மாதிரி மற்றும் மாதிரி தெரிவுமுறை போன்ற செயன்முறையின் போது பக்கச்சார்பு நிலை ஏற்படக்கூடிய சாத்தியக்கூறினை தவிர்க்கும் பொருட்டு, மத்தியஸ்தர்களிடமும், சமூகமத்தியஸ்த சபைகளிடமும் கிடைக்கக்கூடியதாக இருக்கின்ற பதிவுகளை பயன்படுத்துவதை ஆய்வுக் குழுவானது தவிர்த்தது. இதன் காரணமாக, ஆய்விற்கு தேவையான பிணக்குதாரர்களை அடையாளம் காண்பது ஒரு சவலான விடயமாக இருந்ததோடு, இம்மாகாணங்களில் ஏற்கனவே பணியாற்றிய அவர்களின் அனுபவங்களை அடிப்படையாகக் கொண்டு ஆய்வுக்குழு ஒரு மூலோபாயத்தை உருவாக்கியது. முக்கிய பிரச்சினைகளையும், மாதிரியையும் அடையாளம் காண்பதற்கு ஆய்வுக் குழுவானது பலமுறை ஆய்வுக் களத்திற்கு சென்றுள்ளமை குறிப்பிடத்தக்கது. பிணக்குதாரர்கள் அதிகளவில் பங்கு கொள்வதற்கும், மாதிரியில் ஏற்படக்கூடிய பக்கச்சார்பினை தவிர்ப்பதற்கும், ஒன்றுக்கு மேற்பட்ட மூல ஆதாரங்களில் இருந்து முறைப்பாடுகள் பற்றிய தகவல்களைப் பெற்றுக்கொள்ளும் முயற்சியினை ஆய்வுக்குழுவானது முன்னெடுத்தது.

முக்கிய கண்டறிவுகள்

ஒட்டு மொத்தமாக, பிணக்குதாரர்களின் மத்தியில் பொலிஸ் அல்லது நீதிமன்றங்கள் போன்ற முறைசார்ந்த பொறிமுறைகளை அணுகுவதை விட சமூக மத்தியஸ்த சபைகளை அணுகுவது மிகவும் கௌரவமான தெரிவாகும் என்ற ஒரு கருத்து இருந்தது. வடமாகாணத்தில், வரையறுக்கப்பட்ட மாதிரி ஆய்வின் அடிப்படையில், அனைத்து சமூகப் பொருளாதார தரப்பினரும் சமூக மத்தியஸ்த சபைகளை அணுகுவதாக தெரிகின்றது. சமூக - பொருளாதார நிலைமைகளைப் பொருட்படுத்தாமல், பொலிஸ் அல்லது நீதிமன்றங்கள் போன்ற முறைசார் பொறிமுறைகளை விட சமூக மத்தியஸ்த சபைகளுக்கே பிணக்குதாரர்கள் முன்னுரிமையளிக்கின்றனர் என்பதை இதன் போக்கு வலியுறுத்துகின்றது.

ஒட்டுமொத்தமாக, மூன்று இன குழுக்களும் சமூக மத்தியஸ்த சபைகளை அணுகுவதை ஆய்வானது கண்டறிந்துள்ளது. இருப்பினும், வடக்கு மாகாணத்தில் உள்ள தமிழ், முஸ்லிம் பிணக்குதாரர்கள் முறைசார் பொறிமுறைகளை குறிப்பாக காவல்துறையினரை அணுவதற்கு பதிலாக சமூக மத்தியஸ்த சபைகளுக்குச் செல்லவே விரும்புவதாக தெரிவித்தனர். வடமாகாணத்தில் உள்ள பொலிஸ் அதிகாரிகள் மொழிதொடர்பில் பக்கச்சார்புடையவர்களாக காணப்படுவதால் தமிழ் பேசும் மக்களுக்கு நியாயமான முறையில் நீதியைப் பெற்றுக்கொள்வதில் சமூக மத்தியஸ்த சபைகள் முக்கிய பங்குவகிக்கின்றன. கிழக்கு மாகாணத்தில் மூன்று இனக்குழுக்களும் மத்தியஸ்த சபைகளை அணுகுவதோடு, குறிப்பிடத்தக்க போக்குகள் எதுவும் காணப்படவில்லை. ஊவா மாகாணத்திலும் இது போன்ற நிலையையே அவதானிக்க முடிகின்றது.

ஒட்டுமொத்தமாக, பொலிஸ் மற்றும் நீதிமன்றங்கள் போன்ற முறைசார் பொறிமுறைகளோடு ஒப்பிடுகையில் பெண்கள் தாம் எதிர்நோக்குகின்ற சச்சரவுகளுக்கு மத்தியஸ்த சபைகளை நாடுவதிலேயே அதிகளவு சௌகரியத்தினை உணர்கின்றார்கள். பாலின அடிப்படையில், மூன்று மாகாணங்களிலும் ஆண், பெண் இருவருமே சமூக மத்தியஸ்த சபைகளை நாடுகின்றனர். முறைசார் பொறிமுறைகளோடு ஒப்பிடுகின்றபோது, பெண் மத்தியஸ்தர்கள் காணப்படுகின்றமை மற்றும் தமது உணர்வுகளை வெளிப்படுத்துவதற்கு பெண்களுக்கு வழங்கப்படுகின்ற இடம் போன்றன காரணமாக ஆண்கள் தங்களுடைய மனைவிமார்கள் அல்லது பெண் உறவினர்கள் சமூக மத்தியஸ்த சபைகளை நாடுவதால் மிகவும் சௌகரியத்தை உணர்கின்றார்கள் என்ற கருத்தினை தெரிவித்தார்கள். மாறாக, ஆண்கள் மற்றும் பெண்கள் மத்தியில் பொலிஸ் அதிகாரிகள் ஊழல் நிறைந்தவர்களாகவும், பக்கச்சார்புடையவர்களாகவும் கருதப்படுகின்றனர்.

திருப்தி

எமது ஆய்வின் படி, பொதுவாக, பிரச்சினைகளை தீர்க்கும் முறைசார் பொறிமுறைகளோடு ஒப்பிடுகின்ற போது சமூக மத்தியஸ்த சபைகள் தொடர்பான திருப்தியின் அளவு உயர்வாக காணப்படுகின்றது. பிணக்குதாரர்களுக்கு கடந்த காலத்தில் அணுகக்கூடியதாக இருந்த மோதல்களை தீர்க்கின்ற ஏனைய பொறிமுறைகள் தொடர்பாக கொண்டுள்ள அனுபவங்கள் அதேபோல சமூக மத்தியஸ்த சபைகள் தொடர்பாக அவர்கள் கொண்டுள்ள கடந்தகால அனுபவங்கள் மூலமாக திருப்தி பற்றிய பிணக்குதாரர்களின் கண்ணோட்டங்கள் ஒப்பிட்டு பார்க்கப்பட்டு, சுட்டிக்காட்டப்பட்டன. தீர்வு காணுகின்ற செயன்முறையை அவதானித்தல், தீர்வு காண்கின்ற போது அவர்களது பிரச்சினைகளை வெளிப்படுத்துவதற்கான திறமை, தொடர்பாடலின் போது உள்ளூர் மொழிகளின் பயன்பாடு, அச்சுறுத்தாத அமைப்பாக செயற்படுதல், போன்ற சமூகமத்தியஸ்த சபைகளின் பண்புகளானது, அவர்களின் திருப்தி மட்டங்களில் செல்வாக்குச் செலுத்துகின்றது.

பொருளாதாரம் மற்றும் செலவு

நீதிமன்றங்களில் வழக்கறிஞர்களுக்கு கட்டணம் செலுத்துவதை விட சமூக மத்தியஸ்த சபைகளை அணுகுவதற்கு ஏற்படுகின்ற நேரடிச் செலவுகள் குறைவாகவே இருக்கின்றன. சமூக மத்தியஸ்த சபைகளால் வழங்கப்படுகின்ற சேவைகளுக்கு கட்டணங்கள் விதிக்கப்படுவதில்லை. மேலும், வார இறுதி நாட்களில் செயற்படுவது போன்ற அனைத்து தரப்பினருக்கும் வசதியான நேரங்களில் மத்தியஸ்த செயற்பாடுகளை நடாத்துவது என்பது, சமூக மத்தியஸ்த சபைகளை அணுகுவதற்கு இலகுவாகவும், அமையச் செலவுகளை குறைப்பதாகவும் அமைகின்றது. இருப்பினும், சமூக மத்தியஸ்த சபைகளில் பங்குபெறுவதற்கு ஏற்படுகின்ற அமையச் செலவும் முக்கியத்துவம் வாய்ந்ததாக காணப்படுகின்றது. மேலும், நீதிமன்றங்களை அணுகுவதற்கு ஏற்படுகின்ற சந்தர்ப்பச் செலவுகள் உயர்வாக இருப்பதாக மக்கள் கருதுகின்றனர் ஏனெனில், நீதிமன்றம் தொடர்பாக ஏற்படுகின்ற செலவுகளை விட சமூக மத்தியஸ்த சபைகளை அணுகுவதற்கு ஏற்படுகின்ற செலவு குறைவாகவே காணப்படுகின்றது. சமூக மத்தியஸ்த சபைகளை நிர்வகிப்பதற்கு ஏற்படுகின்ற செலவினை ஆய்வானது கவனத்தில் கொள்ளவில்லை என்றாலும், செலவினங்கள் தொடர்பாக கலந்துரையாடுகின்ற போது கவனத்தில் கொள்ளவேண்டிய முக்கிய விடயமாக இது காணப்படுகின்றது. மத்தியஸ்தர்கள் தன்னார்வ சேவையில் ஈடுபடுவதால் இலங்கையிலுள்ள சமூக மத்தியஸ்த சபைகள் மிகவும் குறைந்த செலவுடன் இயங்குகின்றன.

தனி நபர்களுக்கிடையிலான தொடர்புகளின் சூழ்நிலை

ஆர்வம் அடிப்படையிலான மத்தியஸ்த கொள்கையானது மத்தியஸ்த சபைகளின் செயன்முறையின் போது பயன்படுத்தப்படுகின்றது. எதிர்கொள்கின்ற வழக்கொன்றின் பல்வேறு நிலைகளையே இச்செயன்முறை கருதுகின்றது. அதாவது, அழைப்புவிடுத்தல், மத்தியஸ்த/ நடுநிலை செயற்பாடுகளில் கலந்துகொள்ளுதல், மத்தியஸ்தர்களுடனான கலந்துரையாடலை ஒழுங்குசெய்தல், கலந்துரையாடல்களை ஆவணப்படுத்துதல், கலந்துரையாடலின் ஆழம், தீர்வுகாணுதல், இணக்கப்பாடு (அல்லாத) சான்றிதழ்களை வழங்குதல் மற்றும் தீர்மானத்திற்கு உடன்படுதல் போன்ற செயன்முறைகளை குறிப்பிடலாம். கவனம் செலுத்துதல், மரியாதை, இத்தகைய சச்சரவுகள் தொடர்பாக கலந்துரையாடுவதற்கு சமமான வாய்ப்புகள் கொடுக்கப்பட்டமை, சொந்த மொழியில் கலந்துரையாடுகின்ற திறன், மற்றும் தீர்மானம் மேற்கொள்ளும் செயன்முறையில் பங்குபற்றுதல் போன்ற செயன்முறைகளின் வேறுபட்ட அம்சங்களை பிணக்குதாரர்கள் மதிப்பிட்டுள்ளனர். மேலும், சமூக மத்தியஸ்த சபைகள், பிரதேசத்தில் உள்ள கலாசாரம் மற்றும் சமயம் போன்ற சூழ்நிலைக் கூறுகளை பாதிப்பதாகவும் அமைகின்றது. மக்கள் வெளிப்படையாக கலந்துரையாடுவதற்கு தயாராக இருந்தாலும், சமரசம் செய்வதற்கான போக்கு, குறிப்பாக, மதப்பிரமுகர்களின் முன்னிலையில் 'அதிருப்தியான' தீர்மானம் ஒன்றினை வழங்குதல் போன்றன தீர்மானங்களின் நிலைத்திருக்கும்

தன்மைக்கு தடையாக இருக்கலாம்.

தொடர்புகளின் முன்னேற்றம்

தனிநபர் இடைத்தொடர்புகளை தடுக்கும் முறைசார் பொறிமுறைகளோடு ஒப்பிடுகின்ற போது ஒரு நிர்ப்பந்தமற்ற முறையில் சர்ச்சைகளை கையாள்வதன் மூலம் மக்களுக்கிடையிலான தொடர்புகள் மீது சர்ச்சைகளுக்கு தீர்மானம் காணக்கூடிய மாற்றுவழிமுறைகள் அதிக தாக்கத்தை ஏற்படுத்துகின்றன. கலந்துரையாடலில் பங்குபற்றிய பிணக்குதாரர்கள் பிரச்சினை தொடர்பாக கலந்துரையாடுவதற்கு அனுமதிக்கப்பட்டு, ஊக்குவிக்கப்பட்டதால் அதிகப்படியான தகவல் பரிமாற்றத்திற்கு அவர்கள் ஒப்புதல் அளித்தனர். இருப்பினும், குடும்பச்சரவுகள் தொடர்பான முறைப்பாடுகள் அல்லது வீட்டுவன்முறை போன்ற குறிப்பிட்ட சில சிக்கல்களுக்கு இந்த கலந்துரையாடல் பொருந்தாது.

இணக்கப்பாடுகளை பெற்றுக்கொடுப்பதற்கான பொறுப்பு

காவல்துறை, நீதிமன்றங்கள் போன்ற முறைசார் பொறிமுறைகள் மூலம் நடைபெறாத கலந்துரையாடலின் தரத்தை தர்க்கவாதிகள் மதிப்பிட்டுள்ளனர். முறைசார் பொறிமுறைகளோடு ஒப்பிடுகின்ற போது குறைவான கட்டுப்பாட்டில், அனைத்து பிணக்குதாரர்களுக்கும் தமது குறைகளை விவரிப்பதற்கு வாய்ப்பு வழங்கப்பட்டுள்ளது.

பிணக்குதாரர்கள் கலந்துரையாடலில் பங்கேற்று ஒரு தீர்மானத்திற்கு வருவதானது, பிணக்குதார்களுக்கு சில பொறுப்புகள் இருக்கின்றன என்பதை கருதுகின்றது. மத்தியஸ்த செயன்முறையின் போது பிரதிபலிக்கக்கூடிய உத்தியை பயன்படுத்துவது பிணக்குதாரர்கள் ஒவ்வொருவருடைய கருத்துக்களையும் புரிந்துகொள்ள உதவுவதோடு இது, தீர்மானத்திற்கான இணக்கப்பாட்டின் அளவை அதிகரிப்பதற்கு வழிவகுக்கும். இருப்பினும், ஆழமான பகுப்பாய்விற்கு உட்படுத்தப்பட்ட முறைப்பாடுகள் உயரந்தளவான இணக்கப்பாட்டிற்கு வழிவகுத்துள்ளது.

விளைவுகளின் தரம்

விளைவுகள் தொடர்பான மக்களின் உணர்வுகள் மற்றும் அனுபவங்கள் பெரிதும் வேறுபடுகின்றன. சமூக மத்தியஸ்த சபைகளால் இணக்கப்பாடற்ற சான்றிதழ் வழங்கப்படுவதற்காக அல்லது வெளிப்படுத்தப்படாமல் இருப்பதற்காக, பரஸ்பர உடன்பாடுடைய இணக்கப்பாடுகளில் இருந்து இது பரவலாக்கப்படுகின்றது. சில நேரங்களில், பிரச்சினைகளுக்கு தீர்வு எட்டப்படாத போதும் முறைசார் பொறிமுறைக்கு ஏனைய தரப்பினர் முறைப்பாடுகளை எடுத்துச் செல்லக்கூடும் என்ற பயத்தினால் மக்கள் அரை மனதுடன் ஒரு இணக்கப்பாட்டிற்கு வருகின்றனர். இந்த பயம் பெரும்பாலும் முறைசார் வழிமுறையினால் ஏற்படுகின்ற செலவு, நேரம், மொழி, கட்டாய விசாரணை மற்றும் தனிப்பட்ட சூழ்நிலை தொடர்பான அச்சுறுத்தல் போன்றவற்றின் காரணமாக ஏற்படுகின்றது.

சமூக மத்தியஸ்த சபைக்கு கிடைக்கப்பெறுகின்ற

ஒவ்வொரு முறைப்பாடுகளும் தனித்தன்மை வாய்ந்ததாக இருப்பதோடு பெறப்படுகின்ற முறைப்பாடுகளுக்கு நிலையான/தரமான தீர்வு எட்டப்படுவதில்லை. சமூக மத்தியஸ்த சபைகள் முறைப்பாடுகளை கையாளுவதற்கு ஒரு முறையான நடைமுறையினை பின்பற்றுவதில்லை மற்றும் முறைசார்ந்த பொறிமுறைகளில் காணப்படுவது போன்ற விதி மற்றும் ஒழுங்குமுறைகள் பற்றாக்குறையாகவே காணப்படுகின்றது. மாறாக, பெறுமதி மற்றும் நம்பிக்கைகளை மதித்து, ஏற்றுக்கொள்கின்ற, முறைப்பாடுகள் குறித்த செயன்முறைகளை பின்பற்றுவதன் மூலம் ஒவ்வொரு புகாரிற்குமான ஒரு தனிப்பட்ட அணுகுமுறையை சமூக மத்தியஸ்த சபைகள் பயன்படுத்துகின்றன. இதன் காரணமாக, சமூக மட்டத்தில் ஏற்படுகின்ற மோதல்களுக்கு நீண்ட காலம் நிலைத்திருக்கக்கூடிய தீர்வுகளைப் பெற்றுக்கொள்வதற்கான ஒரு சிறந்த அடித்தளம் உருவாக்கப்படுகின்றது.

சமூக மத்தியஸ்த சபைகளின் விளைவுகளின் தரத்தை தீர்மானிக்கின்ற ஒரு முக்கிய காரணியாக தீர்வுகாண்பதற்கு எடுக்கின்ற காலம் காணப்படுகின்றது. மத்தியஸ்த சபையின் உடனடி விளைவாக இத்தீர்மானம் எடுக்கும் முறை பார்க்கப்பட்டாலும், இது ஒப்பந்த அடிப்படையிலான இணக்கப்பாட்டிற்கு வழிவகுப்பதோடு, பிணக்குதாரர்களுக்கிடையிலான தனிப்பட்ட தொடர்பினை மேம்படுத்துகின்றது. இணக்கப்பாடின்மை, தொடர்ந்து கவனிக்கப்படாமை மற்றும் பெறப்பட்ட தீர்வானது சமூக மத்தியஸ்த சபைகளின் பணிப்பாணைக்குட்படாமை போன்ற காரணங்களால் சில மோதல்கள் மீண்டும் தோற்றம் பெறுகின்றன. மக்கள் முறைசார்ந்த வழிமுறைகள் தமது பிரச்சினைகளை கையாண்ட விதத்தின் மூலம் அவர்கள் பெற்றுக்கொண்ட எதிர்மறையான அனுபவங்கள் அல்லது அது குறித்த அவர்களின் எதிர்மறையான கண்ணோட்டங்களின் விளைவாக சமூக மத்தியஸ்த சபைகள் குறித்த அவர்களின் திருப்தி மட்டம் உயர்வாக காணப்படுகின்றது. பயன்படுத்தப்படும் மொழி, கலந்துரையாடல்களின் பற்றாக்குறை, அவமதிப்பு, பாகுபாடு அல்லது நிறுவனம் சார் நடைமுறைகளில் ஏற்படுகின்ற ஊழல் போன்றவற்றை இந்த எதிர்மறையான அனுபவங்கள் மற்றும் எதிர்மறையான கண்ணோட்டங்கள் உள்ளடக்குகின்றன.

சமூக உட்பொதித்தலின் இரட்டைத்தன்மை

மோதல்களை தீர்ப்பதற்கான மத்தியஸ்தர்கள், தர்க்கத்துக்குரியவர்கள் மற்றும் சமூக மத்தியஸ்த சபைகளால் பின்பற்றப்படுகின்ற செயன்முறை போன்றன ஒரே சமூகத்தில் உட்பொதிக்கப்பட்டு பகிர்ந்து கொள்ளப்படுகின்றன. இதன் விளைவாக, மோதல்களை தீர்க்கின்ற போது ஏற்படுகின்ற பிராந்திய மற்றும் கலாசார வேறுபாடுகளை மத்தியஸ்தர்களால் அடையாளப்படுத்த முடிவதோடு, சமூகத்தின் பொறுப்புணர்வினை ஊக்குவிக்கின்றது. மாறாக, மக்கள் தமது தனிப்பட்ட மற்றும் தங்களுக்கு நெருங்கிய விடயங்கள் பரந்த சமூகத்திற்கு வெளிப்படுத்தப்படலாம் என்ற அச்சத்தின் காரணமாக நன்கறிந்த மத்தியஸ்தர்களிடம் கூட தமது முக்கிய விடயங்களை பகிர்ந்துகொள்வதில்லை. மேலும்,

சமூகத்திற்கான பொறுப்புடைமை மற்றும் கடமைப்பாடு போன்றன தொடர்பான தவறான புரிந்துணர்வானது, 'கட்டாய தீர்மானங்களுக்கு' வழிவகுக்கின்றன.

அதிகாரம்

சமூக மத்தியஸ்த சபைகளை நிறுவனமயப்படுத்துவதற்கான அதிகாரம் அரசாங்கத்திடம் காணப்படுகின்றது. இலங்கையில் மத்தியஸ்த செயற்பாடுகளை மேற்கொள்வதற்கான அரசாங்கத்தின் ஆதரவானது, அவசியமான சட்டப்பூர்வ அதிகாரத்தை சமூக மத்தியஸ்த சபைக்கு வழங்குகின்றது. மத்தியஸ்தர்கள், பிணக்குதாரர்கள், நடுநிலைக்கு அப்பாற்பட்ட தரப்பினர்கள் மற்றும் மத்தியஸ்த செயன்முறை போன்றவற்றின் அதிகாரமானது மத்தியஸ்த செயற்பாடுகள் மீது செல்வாக்குச் செலுத்துகின்றன. ஒரு சமூகத்தில் நிலவுகின்ற சமனற்ற அதிகாரத் தொடர்புகள் மத்தியஸ்த செயன்முறைக்குள் மீள் உருவாக்கப்படலாம், ஏனெனில் மத்தியஸ்தர்களும், பிணக்குதாரர்களும் ஒரே சமூகத்தினையே பிரதிநிதித்துவப்படுத்துகின்றனர். மத்தியஸ்தர்களின் சமூக-கலாசார நிலைமையானது, மத்தியஸ்த பரிமாணங்களில் தாக்கம் செலுத்துகின்றது இதனால், பிணக்குதாரர்கள் குறைந்த மற்றும் ஏற்றுக்கொள்ளக்கூடிய தரநிலையுடன் கூடிய தீர்மானங்கள் பெற்றுக்கொள்ளப்படலாம். மத்தியஸ்தர்களின் பொறுப்புணர்வு மற்றும் கடமைப்பாடு ஆகியவற்றினால் அவர்கள் எதிர்பார்த்த/ எதிர்பார்க்கப்படாத கட்டாய தீர்மானத்தினை மேற்கொள்ளும் நிலைக்கு ஆளாக்கப்படலாம்.

பிணக்குதாரர்கள் குறைந்தளவான அதிகாரத்தை கொண்டிருக்கின்ற போதும், வீட்டு வன்முறை தொடர்பான முறைப்பாடுகளை வழங்கிய பாதிக்கப்பட்ட பெண்களுக்கு போதுமான பாதுகாப்பினை மத்தியஸ்த சபைகள் வழங்காத போதும், பெண்கள் மேலும் பாதிக்கப்படுகின்றனர் அத்தோடு இணக்கப்பாட்டினைப் பெற்றுக்கொள்வதற்கு பாதிக்கப்பட்ட தரப்பினர் அதிகளவான அழுத்தத்திற்குள்ளாகின்றனர். கடனை மீளப்பெற்றுக்கொள்வதற்காக மத்தியஸ்த சபைக்குள் வங்கிகள் பிரவேசிக்கின்ற போது, இதேபோன்ற சூழ்நிலையை எதிர்பார்க்க முடிகின்றது. மேலும், மத்தியஸ்தர்களும், பிணக்குதார்களும் ஒரே சாதி அல்லது வகுப்பினைச் சேர்ந்தவர்களாக இருக்கின்ற போது, மத்தியஸ்த சபையின் நோக்கத்திற்கு தடையாக அமைகின்ற மற்றும் ஒரு குறிப்பிட்ட தரப்பினருக்கு எதிரான பாகுபாட்டினை கொண்ட ஒரு போக்கினை அவதானிக்க முடிகின்றது.

இறுதியாக, பிணக்குதாரர்களின் கண்ணோட்டங்கள் மற்றும் அனுபவங்களின் ஊடாக நாட்டில் ஆறு மாவட்டங்களில் உள்ள சமூக மத்தியஸ்த சபைகள் மூலம் வலியுறுத்தப்பட்டு,வழங்கப்படுகின்ற நீதியின் தன்மையை ஆராய்வதற்காகவே இவ்வாய்வு உருவாக்கப்பட்டுள்ளது. தீர்வொன்றின் நியாயம் மற்றும் விளைவுகளை விட நீதி குறித்து தர்க்கவாதிகளின் புரிதலானது மிகவும் சிக்கலானதாகவும், பரந்துபட்டதாகவும் காணப்படுவதை ஆய்வுக் குழுவின் ஆழமான பண்புசார் ஆய்வானது, தெளிவாக விளக்குகின்றது. மாறாக, தர்க்கவாதிகளுக்கு நீதியானது, பின்பற்றப்படுகின்ற செயன்முறையோடு

1. Introduction

Community based dispute resolution in Sri Lanka has a long history dating back to pre-colonial times, with an Alternative Dispute Resolution process - commonly known as mediation being used as a method of settling minor offences. While there were several attempts to formalise community mediation during British rule and in the early post-independence period, it was established as a formal mechanism within Sri Lanka under the Community Mediation Boards Act 72 of 1988 as part of resolving community level disputes and minor offences. Thereby, the first Mediation Boards were established in July 1990 in the Divisional Secretariat Divisions of Moratuwa, Kaduwala (Colombo District), Chilaw, Anamaduwa (Puttalam District), Ududumbara (Kandy District), Warakapola (Kegalle District), Bope-Poddala, Habaraduwa, Hikkaduwa (Galle District) and Matara (Matara District). Despite the active ethnic-conflict in the Northern and Eastern Provinces from the early 1980s to 2009, Mediation Boards were established in several districts with the first being established in Uhana and Dehiaththakandiya in the Ampara District as early as November 1990. The first Community Mediation Board (CMB) for the Northern Districts, was established in Nallur in November 2005. Thereafter mediation boards were established until 2011 in the Jaffna District, between 2010-2013 in the Vavuniya District, 2012-2013 in the Kilinochchi and Mannar Districts and finally 2013 and 2014 in the Mullaitivu District. At present, there are 329 Community Mediation Boards with approximately 8500 mediators functioning in the country.

1.1 Rationale and Justification

The first comprehensive evaluation of the Community Mediation Programme, since it began operations in the early 1990s, was carried out in 2009-2010 (Siriwardhana, 2011). However, only a selective amount of data for the Northern Province was collected under this quantitative evaluation due to the existing post-war situation and because

the functioning boards had only been established relatively recently. In 2013, Valters carried out a study based on secondary and primary data, to understand how Community Mediation Boards (Community Mediation Boards) have contributed to strengthening social harmony in Sri Lanka. While this study had collected primary data from the Northern Province, specifically the Jaffna and Kilinochchi Districts, along with Batticaloa and Trincomalee in the Eastern Province, the scope of the study did not include disputants as part of the sample. A few other studies (Gunawardana, 2011; Alexander, 2001) on Community Mediation Boards do not specify the methodology or the scope. This review of published literature on Community Mediation Boards points towards a gap of in-depth understanding of the mechanism through the disputants' perspective, including in the hitherto under-studied Northern Province. This sociological inquiry, therefore, aims to address this research gap.

As stated above, the revival or establishment of Community Mediation Boards in the Northern Province are relatively more recent, with the boards in Mullaitivu being established as recently as 2014. Therefore, unlike the boards in the rest of the country, there was a gap in knowledge and understanding about the Community Mediation Boards in the Northern Province. Specifically, there is a dearth of information on people's perceptions of Mediation Boards. Knowledge of how users perceive Mediation Boards is critical if we are to understand the usefulness and effectiveness of the mediation mechanism. This is particularly salient in conflict-affected areas where formal law and order and justice mechanisms were either non-functional or alternative mechanisms were in place.

1.2 Research Questions and Objectives

The aim of this study is to explore how people who have used Mediation Boards for dispute resolution evaluate their experiences. The objectives of this report are two fold; first it aims to synsthesise the learning from three provinces by bringing out

the commonalities and differences between the three provinces in terms of people's experiences and expectations in accessing mediation boards. Secondly, the report also attempts to situate the analysis within the current theoretical debates on mediation.

The main research question guiding this study was: How do those who access Community Mediation Boards perceive and experience Community Mediation Boards in the Northern, Eastern and Uva Provinces? The study adopted the following three sub-research questions to explore the main research question stated above:

1. *Who accesses mediation boards?*

   Community Mediation Boards have undergone certain changes in response to contextual factors such as the ending of the war, especially in the Northern and Eastern Provinces which were directly affected by war. Given the mixed ethnic demographics, language used and the socio-economic status of the districts or the Divisional Secretariat (DS) Divisions, it is important to understand who uses Community Mediation Boards in these areas. The Uva Province on the other hand has a different demography in comparison to the Northern and Eastern Provinces while it also has some of the oldest Community Mediation Boards in Sri Lanka. Hence we attempted to see what kind of people access Community Mediation Boards in this Province. These groups can be defined by socio-economic factors such as ethnicity, class, gender and caste. We assumed that these factors play a role in shaping peoples' expectations and also their satisfaction levels in relation to the mediation boards and the study sampling was influenced by this assumption.

2. *What are people's expectations of Community Mediation Boards with regard to dispute resolution?*

   This question explored people's expectations in resolving their disputes through the Community Mediation Boards. The study assumed that people's perceptions of Community Mediation Boards are largely shaped by their expectations regarding the nature of justice sought from the Community Mediation Boards. The extent to which a given CMB resolves a dispute, as subjectively assessed by the disputing parties throughout the mediation process, would determine whether or not their expectations were met. This question explored what people expect of Community Mediation Boards in terms of resolving their own dispute(s).

3. *What factors explain people's satisfaction/ dissatisfaction with the mediation process and outcome?*

   Satisfaction or dissatisfaction with Community Mediation Boards is contingent on people's expectations of 'justice' as well as their experiences and perceptions of 'processes' and 'outcomes'. This sub-research question assumes that conceptualisations of 'process' and 'outcome' may be derived inductively based on perceptions of the disputing parties.

2. Background and Context

Alternative dispute mechanisms were institutionalised by pre-colonial kings in the form of *Gam Sabhas* (village council) with village elders to achieve amicable settlements for minor offences taking place at village level. It was held in public places like the village temple or even under the shadow of a tree. Though these *Gam Sabhas* existed during the colonial period they disappeared during the British era. Although the British attempted to reintroduce a similar system through the rural courts ordinance of 1945, they did not succeed due to the ineffectiveness of the system. In 1958 the Conciliation Boards Act was introduced again to amicably settle minor disputes with the assistance of impartial conciliators. The main weaknesses in this mechanism were cited as the politicisation of the selection process of the mediators and the jurisdiction of the boards going beyond the capacity of lay persons, in that these boards included legally binding decisions and lacked training for the conciliators (Gunawardana, 2011). As a result, this Act was repealed in 1978 by the Judicature Act No. 02 of 1978 and after careful research, planning and taking into account of the factors that led to the failure of the conciliation boards, Community Mediation Boards were introduced in 1988.

The enactment of the Community Mediation Boards Act 72 of 1988 lead to the establishment of the first Community Mediation Boards in 1991 under the administration of the Ministry of Justice in a few districts as mentioned above.

The Act was amended in 1997, 2011 and 2016 to enable the facilitation of voluntary settlement of minor disputes (Siriwardhana, 2011). Unlike the previous alternative dispute resolution mechanisms set up by the State, the Community Mediation Boards showed relatively high levels of success owing to their acceptance by the people and a wide reaching network which gave easy access. These Community Mediation Boards operate on the principle of interest-based negotiation or facilitated negotiation where the mediators guide the disputants to understand the root cause/s of the conflict and reach a solution that is acceptable to the parties involved while also factoring the interests of disputing parties.

Community Mediation Boards in the study districts were at different stages of evolution as Table 2.1 illustrates. The study captured Community Mediation Boards established as recently as 2014 in Mullaitivu and the others established in the 1990s in Monaragala. Community Mediation Boards in former LTTE controlled areas such as Mullaitivu, were established in the aftermath of war. Post-war, the mediation boards were gazetted and newly established, excepting for a few boards in the Jaffna and Vavuniya Districts. In contrast, the Community Mediation Boards in Monaragala are relatively older and most of them were constituted during 1990s. The revival of the Community Mediation Boards in the Northern and Eastern Provinces may have led to high levels of awareness among people in comparison to Monaragala.

Table 2.1 Year of establishment and number of Community Mediation Boards by study district

District	Year of establishment	Number of Community Mediation Boards
Jaffna	2005/2006/2009/2011/2012	15
Mannar	2012/2013	5
Mullaitivu	2013/2014	5
Trincomalee	1998/2002/2004/2009/2010/2013/2015	11
Batticaloa	1997/1999/2004/2008/2009/2013/2014	14
Monaragala	1990/1991/1995/2001	11

Background to the Programme

The Asia Foundation has supported the Community Mediation Boards through the Ministry of Justice since 1990, particularly in strengthening the technical capacity of the mediators. In 2015, the Asia Foundation approached the Centre for Poverty Analysis with the intention of carrying out an in-depth, qualitative study to understand the disputants' perspectives about Community Mediation in the Northern Province. Following the successful completion of this study, the same methodology was applied to two other provinces; the Eastern Province and the Uva Province.

3. Methodology and Approach

The overall objective of the study is to understand people's perspectives on the nature of "justice" that is delivered by Mediation Boards in the above provinces and the nature of "justice" sought by the people. Following this objective, the proposed study was designed as an inductive sociological enquiry of which, the outcome will provide bottom-up conceptualisations of justice both delivered and sought in relation to people's experiences of accessing mediation boards in the Northern, Eastern and Uva Provinces. This report synthesises the analysis and findings from all the three Provinces with specific references to the different Provinces or districts, where warranted.

The study used a mix of secondary data and primary qualitative data for this analysis. Given the objective of adopting an inductive, ground-up approach, the study opted for a qualitative approach, focusing on purposively selected cases/complaints and disputants as primary data, through qualitative semi structured questionnaire guides.

3.1 Identifying the Districts and Divisional Secretariats

At the district level, the aim was to capture a mix of Community Mediation Boards that had been in operation for varying lengths of time and ensure representation from both ethnically homogenous and heterogeneous (wherever possible) districts. Based on this, the following districts from each province were selected for the study.

Table 3.1 Study districts

Northern Province	Eastern Province	Uva Province
Mannar	Trincomalee	Monaragala
Mullaitivu	Batticaloa	
Jaffna		

At the DS level, the criteria were: distance from the district town centre, gender composition of the boards, and ethnic homogeneity. At the GN level, criteria such as number and types of complaints handled by Community Mediation Boards, types of disputes reported as well as variations in livelihood and ethnic background (wherever possible) of disputants were used (see Figure 3.1).

Figure 3.1: Sampling criteria at different administrative levels
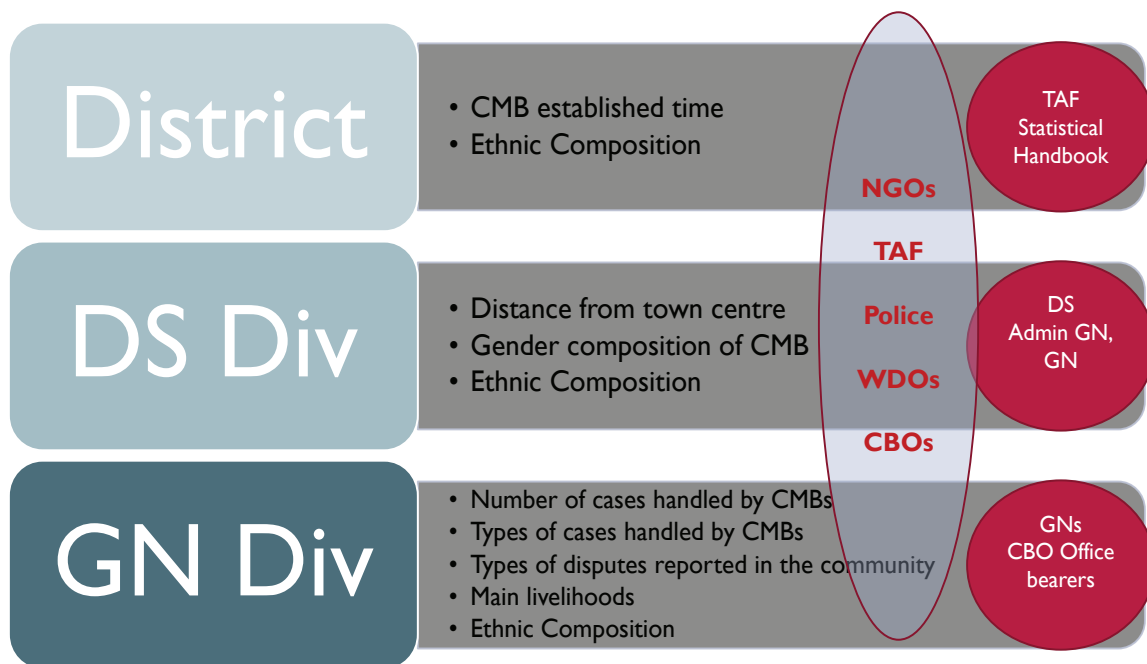
3.2   Identifying the Disputants

Disputants were purposively selected to capture variations in terms of type of complaint, gender, stage of dispute, socio-economic conditions, ethnicity and language spoken. In order to avoid any possible biases in the sample and the sampling process, we avoided using any records available with the mediators and Community Mediation Boards. As a result, identifying the disputants for the research became a challenging task and the study team devised a strategy, based on their previous experience in working in these provinces.

In order to deal with this situation, the study used a wide range of techniques. Fieldwork for instance took place in two stages which involved a scoping visit and a case-study visit at a later stage. The scoping visit which lasted 2-3 days in a province helped the research team identify the key issues dealt with by Community Mediation Boards in the study locations and potential sources of information that could be used to identify the disputing parties. The scoping visit also helped the team to identify and speak to the key persons who assisted in selecting the village

or GN division for the case-study visits such as the Divisional Secretary, or his or her representatives, Administrator of Grama Niladharis, Grama Niladharis, Community Based Organisations (CBOs), Non-governmental Organisations (NGOs) and the Police.

In order to capture a wide range of disputes and avoid biases in the selected groups, the team made every effort to obtain information about complaints from more than one source. For instance, the information received from the police was triangulated with the GN and the information received from the community leaders was also triangulated with the GN and other CBOs. The sampling framework (Figure 3.1) shows the sources the study used to identify the sample.

Following each scoping visit, the study team, including the field team met to discuss the progress, issues and learning. The information gathered was documented, processed and analysed to further fine-tune the selection criteria, identify the Grama Niladari Divisions, disputes or offences and to strategise the next phase of data collection from the disputants.

The case study visits followed by scoping visits consisted of intense fieldwork where the research teams spent 5 -7 days speaking to the disputing parties.

3.3 Data Sources and Study Respondents

To support the study, the research team used secondary sources, such as published literature, secondary information published by Ministry of Justice, the Sri Lanka Police, the Department of Census and Statistics, and district statistical handbooks published by the District Secretariats. This information was used for the sampling decisions (i.e. such as the demographic composition of the DS), to inform the background sections of the report and also to situate the findings of the study on broader established theoretical discussions on Community Mediation.

However, the study was predominantly dependent on primary data collected through informal interviews using open-ended qualitative research instruments. The team interviewed persons from Divisional Secretariats - such as the Divisional Secretary, Admin-GN coordinator,

Grama Niladaris, women and child desk officers and social services officers, representatives of CBOs working on settling disputes at local level, religious leaders, NGO representatives and police officers - to collect contextual and factual information on disputes in the respective divisions. It should also be noted that the research team did not interview or gather information from mediators, chairpersons and mediator trainers to avoid any influence from them in the sample and sampling process and to strengthen the findings. The study was carried out independent of official mediators or officials involved in the Community Mediation Boards.

The main sources of data were the information gathered from the semi-structured interviews with disputants who have participated in Community Mediation and experienced the mediation process first hand. Table 3.3 illustrates the type of disputes studied and the gender breakdown of the respondents. The typology used in Table 3.2 is derived by the authors for ease of understanding and classification.

Table 3.2 Number of cases by type by districts

Type of Issue	Mannar	Jaffna	Mullaitivu	Trinco	Batticaloa	Monaragala
Land	03	01	05	05	07	00
Money matters	07	10	06	23	10	06
Boundary	02	01	00	00	00	00
Assault	00	01	00	04	00	20
Business	00	02	00	00	00	02
Domestic Violence	00	03	02	01	09	02
Multiple	01	00	01	00	00	03
Total	**14**	**17**	**14**	**33**	**26**	**33**

Table 3.3 Number of cases by district by gender

Location-District	Number	Sex	
		Male	**Female**
Mannar	14	04	10
Mullaitivu	15	06	09
Jaffna	17	10	07
Trincomalee	33	07	26
Batticaloa	26	09	17
Monaragala	33	20	13
Total	**138**	**56**	**82**

3.4 Data, Data Management and Confidentiality

The qualitative data that was collected was transcribed by the field research team and checked by the field supervisors for content accuracy, completeness and flow of discussion. The Senior Researchers from CEPA who led the studies were part of these field research teams. Transcribed data were thematically coded using Nvivo qualitative analysis software. Data from each province was coded separately in Nvivo and analysed by one or more researchers. As in other conflict studies, in this study too, people shared most intimate stories which need attention with regard to confidentiality. The research team does not make any reference to individuals or illustrate any case that can divulge information about individuals.

3.5 Demography of Study Districts

The districts in the study sample showed a great variation in demographic and socio-economic characteristics such as poverty as shown in Table 3.4. Jaffna District stood out in most indicators, being one of the most densely populated districts in the country; seventh out of 25 districts. This dense population pattern tends to translate into land related disputes, particularly in the post-war phase with those who got displaced over the last 30 years returning to their lands. In terms of ethnic composition, Jaffna District is almost completely homogenous, with 98.9 percent of the population being Tamil. Jaffna also showed

the lowest poverty head count, indicating the lowest percentage of population living below the poverty line out of the study districts, and is the district with the least proportion of poor of the war affected Northern and Eastern provinces.

Mullaitivu District stands in direct contrast to Jaffna, within the same province, being the least densely populated district in the country and showing the second highest poverty head count ratio, making it one of the poorest districts in the country. Further, the total population of Mullaitivu is categorised as living in rural areas. In contrast to Jaffna, Mullaitivu District shows a slightly more diverse ethnic composition with a population that is about 85 percent Tamil and 10 percent Sinhalese. Given the low density of population and the rurality of the district, access to town centres for state services, including justice needs, remains a challenge for the people in Mullaitivu and the presence of high proportions of economically poor, make these challenges even more acute. In such contexts, relatively easily accessible alternative dispute resolution mechanisms such as Community Mediation Boards have an important role to play.

The Mannar District is also one of the least densely populated districts in the country, with a high poverty head count index, and is the third poorest district in the country, followed by Mullaitivu and Monaragala. Mannar District is also relatively diverse in terms of ethnic composition with a population that is about 80 percent Tamil and 16 percent Muslim. The Monaragala District on the

other hand is ethnically homogenous, with about 95 percent of the population being Sinhalese. Monaragala District is the second poorest district in the country, with a high poverty headcount ratio and has shown signs of chronic poverty over the years. Although identified as one of the most economically backward districts, as shown by the lack of centres categorised as urban, with 100 percent of its population living in rural areas, Monaragala continues to receive minimum State support. Similar to Mullaitivu, accessing State services remains a challenge to the people of Monaragala, especially for those who are economically poor.

The two districts in the Eastern Province in the study sample, Trincomalee and Batticaloa show medium levels of population density with relatively higher percentages of the population living in the urban areas. Trincomalee is one of the few districts in the country, where the three main ethnic groups are more or less equally represented; about 41 percent Muslims, 30 percent Tamil and 26 percent Sinhalese. Batticaloa District comprises the 2nd highest percentage of people living in urban areas in the whole country. However, in terms of poverty, Batticaloa shows a high incidence of poverty whereas Trincomalee shows relatively low levels. The population in Batticaloa District, although ethnically less diverse than Trincomalee, comprises about 72 percent Tamils and 25 percent Muslims.

Table 3.4 Demographic composition by district

District	Total Population	Population Density	Ethnicity			Urban	Rural	Headcount Index
			Muslim	Tamil	Sinhalese			
Jaffna	585, 882	629	0.4	98.9	0.4	20.1	79.9	8.3
Mannar	99,570	53	16.5	80.4	2.3	24.5	75.4	20.1
Mullativu	92,238	38	2.0	85.8	9.7	0	100	28.8
Trincomalee	378,182	150	41.8	30.7	26.7	22.4	77.6	9.0
Batticaloa	525,142	202	25.4	72.3	1.3	28.7	71.3	19.4
Monaragala	448,000	82	2.1	1.8	94.9	0	100	20.8

(Source: Department of Census and Statistics 2012, 2015)

4. Conceptual Thinking on Alternative Justice Mechanisms and Community Mediation

4.1 Alternative Dispute Resolution

Mnookin (1998:1) defines Alternative dispute resolution (ADR) as "a set of practices and techniques aimed at permitting the resolution of legal disputes outside the courts. It is normally thought to encompass mediation, arbitration, and a variety of "hybrid" processes by which a neutral facilitates the resolution of legal disputes without formal adjudication". In General, an ADR is facilitated by a 'neutral third party' to arrive at a mutually agreeable settlement by parties involved. These third party mediators are not from the formal judiciary as established by law (UN Women, UNICEF and UNDP, 2009).

The need for ADR arose owing to several shortcomings of traditional state regulated formal litigation mechanisms. Many scholars argue that deficiencies of the formal system such as high cost and economic concerns, ineffectiveness and delays (Alberts et al., 2005), adversarial relationships (Cheung et al., 2002), increasing caseloads in courts and the inability to factor local cultural, religious and customary beliefs (Mnookin, 1998) pushed for the need of an alternative dispute resolution method. Concerns with regard to perceived inequalities in the traditional formal justice system pushed for development of an 'alternative' dispute resolution mechanism (Tylor, 1989). In contrast to formal systems, ADR mechanisms use flexible protocols and procedures, give more priority to the interests of people than the rule of law and apply minimal monitoring or control by formal dispute settlement mechanisms by providing more appropriate case-specific processes and efficient services to citizens (Mnookin, 1998; Edwards, 1986; Hedeen 2004).

The popularisation of Community Mediation also triggered a series of critiques, mainly linked to the idea of the privatisation and informalisation of the delivery of justice (Sternlight 2007). Some of these criticisms include the elimination of public accountability by individualising the process, the possibility of undermining human rights by not elaborating the law and publishing the decisions taken, weakening the position of the less powerful in society such as single women, providing space for the more powerful such as private companies to skew the privatised process in their favour and the possibility of social prejudices seeping into the privatised proceedings (Sternlight 2007).

As ADR becomes popular among dispute resolution methods, a number of techniques are adopted around the world to resolve a wide range of disputes such as private, domestic disputes to public disputes. While arbitration and mediation are the most popular mechanisms used, various hybrid techniques are also used in settling disputes (Mnookin 1998; Edwards 1986). Stone (2004) outlines other mechanisms such as conciliation, fact-finding, summary jury trials, court ordered arbitration, ombudsman, small claims court and rent-a-judge (for a comprehensive historical timeline of alternate justice mechanisms globally, refer to Barret and Barret, 2004: XXV). Though these mechanisms are not popular, they are used to settle disputes in suitable, specific instances.

In general, there is a preference for non-court dispute resolution in Asia, which is driven by both cultural as well as pragmatic reasons (Pryles, ed. 2006). While Asian cultures are perceived to prefer harmonious forms of dispute resolution on the one hand, the under-resourced formal justice systems that are not conducive to efficient dispute resolution also reinforces the preference of alternative mechanisms (Bath and Nottage, eds., 2011). Arbitration takes the form of Panchayat and conciliatory boards in India. Community mediation has a long tradition in Malaysia and Singapore too. Singapore has well established community mediation centres while community mediation programmes are popular in Malaysia (Khan, H.A., 2013). In Chinese tradition, mediation has been used to settle a

variety of disputes ranging from community to international level disputes (Wall and Blum, 1991).

4.2   Mediation and Community Mediation

On the other hand, mediation is a widely used, well established method used to settle an array of community level disputes where a neutral third-party aids the disputants to arrive at a settlement (Saul, 2012). The third party involved in the mediation has no authority to impose outcomes, rather they assist disputing parties to reach a goal of a settlement (Wall et al, 2001) and assist disputing parties to reach a mutual agreement on settlement of their own dispute. Mediation is a voluntary process and the disputants are allowed to choose the third-party mediator (Mnookin 1998). Moreover, the settlement reached is private, not subject to judicial review and not legally binding. Mediation recognises the differences in each dispute, pays attention to the process of dispute settlement without having rigid standard rules of procedure (Mnookin, 1998). It encourages interactions, inter-personal communication and reconciliation between the disputant parties by helping them understand their own and others' underlying interests (Pincock, 2013). Scholars consider mediation a preventive measure which prevents subsequent conflicts as it solves current disputes. As the mediation involves people's participation in dispute resolution, it yields sustainable agreements while helping reduce community tensions in the long run (Wallet al., 1993; Saul, 2012). This people centred dispute settlement mechanism results in high compliance rates as opposed to formal justice mechanisms (Wall et al., 1993; Kressel and Pruitt, 1989; Roehl and Cook 1989; Pearson and Thoennes, 1989). Mediation may lead to social transformations such as changes in thinking about dispute resolution, enhancement of skills, capacity and knowledge at community level on disputes and dispute resolution mechanisms.

Saul (2012) outlines the limitations and constraints of using mediation in resolving disputes. The lack of clarity of mediators on the process to be followed, confusion in differentiating mediation and court led processes, mediator influence on parties in settling disputes such as persuasion and use of coercive techniques may defeat the purpose of using mediation in dispute settlement. The fact that the mediation research shows high levels of user satisfaction prompts scholars to question whether people's expectations with regards to the mediation process is low.

The following broad themes are used by scholars to study the mediation process from the users' perspectives (Tylor, 1988; Hedeen 2004; Wall et al., 1993). These criteria form the framework for analysis and presentation of the findings of this study in the sections below.

1. ***Economy, cost and time factor -*** the ability of the mediation process to respond to the disputes faster, in a timely, cost-effective manner.

2. ***Inter-personal relationship -*** ability of the mediation process to create an environment for communication between parties, creating a platform for interaction, creating a non-threatening environment for discussion.

3. ***Outcome quality -*** Following a varying approach to arrive at case-specific solutions, aiming at durable settlements and an ability to prevent disputes in the future.

4. ***Community education and empowerment -*** How effective mediation processes are in analysing disputes in a participatory way for people to learn and transmit learning on dispute management to others in the society.

5. ***Power -*** how different actors involved in mediation use their powers positively or negatively.

5. The Community Mediation Board Model in Sri Lanka

As mentioned above, although Community Mediation Boards in Sri Lanka are clearly categorised as an alternative form of justice mechanism, it bears symbols of State support in the sense that the boards are established by the Mediation Boards Commission of the Ministry of Justice. Further, the Mediation Boards Commission, appointed by the President (Mediation Boards Act, No. 72 of 1988, Section 2), supervises and controls the performance of mediators (Mediation Boards Act, No 72 of 1988, Section 3). In the day to day running of the Community Mediation Boards and where the disputants meet the Community Mediation Boards, State symbols can be seen on the invitation letter and settlement formats that are issued to the disputants for example. Further, the current study shows that the invitation letter carrying the government emblem, the public nature of the setting and the seating arrangements all seem to have contributed to an image of formality and a sense of Community Mediation Boards as being part of the State justice mechanisms, as the table below shows. In most cases, the disputants have accessed other forms of justice mechanisms to resolve their problem, both formal and non-formal, and this has resulted in a blurring of borders between the formal mechanisms and non-formal mechanisms such as Community Mediation Boards.

Multiple factors have come together to create an image of a hybrid formal-non-formal nature with regards to Community Mediation Boards in the 'meaning making' process of the disputants. Literature suggests that characteristics such as 'legal or normative framework, state recognition, appointment and interaction, control and accountability mechanisms, and systems of monitoring and supervision, including the maintenance of case records and the implementation of referral procedures' (UN Women, UNICEF and UNDP, 2009: 8) determine the (in)formality of justice mechanisms. Additionally, the current study respondents identified other characteristics to understand how Community Mediation Boards are positioned on the formal-informal spectrum. These include the setting and the procedures followed as well as identities or social standing of the mediators, for example, a retired senior government functionary acting as a mediator tends to add to the aura of formality of the Community Mediation Board. This blurring of distinction between the formal and non-formal mechanisms influences the expectations and satisfaction levels of disputants in relation to Community Mediation Boards as discussed below.

Table 5.1: Disputants' perceptions of formal and informal characteristics of Community Mediation Boards

Formal characteristics	Non-formal characteristics
Invitation letter and documentation	The mandated interest based mediation approach results in mediation boards not passing judgments or decisions
The setting: The way the board members are seated and the way the disputants are seated	The sessions which are more like a discussion in general than adhering to a rigid protocol.
The regular, set meeting schedule	
Location of the mediation board sessions: outside the village	A public space which is not associated with formal justice processes such as court premises
The mediators (in general) are respected key people within the community	Mediators are from the communities and people who in most cases are known to the disputants
Recognised and referred to by the formal mechanisms such as the Police and Courts	

Source: Compiled by authors based on primary data

Based on reviews and lessons learnt from the Conciliation Boards experience - the predecessor to Community Mediation Boards in the country - the latter is not mandated to deliver a court of decree. Based on principles of interest based mediation, the mediation process does not attempt to determine guilt. The objective of this approach is to get to a detailed understanding of the root causes of the problem or dispute along with the disputing parties and to find a solution that is agreeable to both parties. Lack of punishment and non-coercive tactics are fundamental in ensuring this objective and this quality translates into dependence on rhetoric rather than force (Abel 1981). This in-depth discussion was clearly appreciated and valued by the disputants as the sections below discuss in detail and they clearly contribute to sustainable solutions, according the experience of the disputants.

However, the flip side of the coin of interest based mediation is the lack of a court of decree and punitive action taken against those who do not comply with invitations of the Community Mediation Board or the settlement agreed at the mediation. In practice, this translates into several scenarios: those disputant parties who know the mandated role of the Community Mediation Boards, when they think it is favourable to them, tend to avoid the invitations. On the other hand, subsequent to reaching a settlement at the Community Mediation Board, they tend to flout the agreed terms. For example, in disputes on money matters, disputants do not pay the agreed amount or they do not stick to the agreed payment schedule. In such instances, the disputing parties that lose out stated that, "This is why some people don't turn up when they are called. There must be some penalty / punishment for not turning up when you are invited". Therefore, the lack of punitive action, which is in general regarded as a great strength in the Community Mediation mechanism in Sri Lanka, in certain cases is also regarded as one of its weaknesses. This perception links back to

the perceptions of a hybrid form and non-formal system that the disputants seem to expect from the Community Mediation Boards.

5.1 Composition of Community Mediation Boards

Ethnic composition

The mediators are always selected from within the Divisional Secretariat area that the Community Mediation Board operates in. This almost by default means that the demographic characteristics of the area that the Community Mediation Boards serve are represented in the same. In the Sri Lankan context, ethnicity is also closely tied to language, and these two aspects were discussed almost always concurrently by the disputants. Further, given the recent history and experience of war in the country, especially in the studied Northern and Eastern Provinces, ethnic and language based grievances still bear an importance.

In the study overall, disputants were satisfied with the ethnic composition of the Community Mediation Boards. The exception was one complaint in Jaffna, from a Muslim disputant expressing his deep dissatisfaction with the Community Mediation Board in his area, for lacking a Muslim mediator at the time of the study data collection, and also perceptions that this same Board was biased against Muslims (Munas and Lokuge, 2016). In the other areas of Northern, Eastern and Uva Provinces, the disputants did not express any such concerns. However, the complaint from Jaffna clearly illustrates that these negative perceptions and experiences in terms of ethnic composition or language used, will lead to disputants questioning the legitimacy of the whole process and may lead to them undermining the outcomes and the process of Community Mediation Boards.

Further, the importance given to the ethnic composition and the language used, is especially important, in districts such as Trincomalee, where the three main ethnic groups, who use Sinhalese

and Tamil languages are sometimes present within one Divisional Secretariat area. There were a few instances in Trincomalee, where the disputants stated that although the discussions at the Community Mediation Board took place in the language that they are comfortable with, the documentation was done in the other language. However, instances like this seemed to be rare, and this is indeed commendable, given the ethnic diversity in areas such as Trincomalee.

Women's representation

In terms of the balance between women and men mediators, a somewhat mixed picture emerged from the study and it is difficult to draw any generalising patterns from the present study because considerable differences were observed within provinces. For example, in the Eastern Province, the Community Mediation Board in Kaaththankudy appeared to comprise of almost 50% women an exceptional case among the Community Mediation Boards studied and in contrast, in Kalmunai in the Eastern Province, the ratio of women mediators was very low. These trends seem to have an impact on the way the women disputants engaged with the Community Mediation Boards and their perceptions of satisfaction. A few trends that emerged both from the study disputants and the KPIs are presented below.

There seems to be considerable improvement, in terms of women's representation in Community Mediation Boards in certain areas of the Eastern Province in the recent past. The evaluation conducted in 2011 (Siriwardhana) called for a greater representation of women in the Eastern Province, and the present study finds that there has been considerable improvement as shown by the Kaaththankudy example mentioned above, however, there is still room for improvement. A KPI with an organisation working with women in Batticaloa suggested that there have been focused attempts to improve the inclusion of women mediators in Community Mediation Boards. As a result of which areas like Kiran and

Pattipalai in Batticaloa now have an improved women's representation, whereas earlier it was almost nil.

Awareness levels of Community Mediation Boards

Without a representative sample, it is not possible to make generalised statements about levels of awareness about Community Mediation Boards in the three provinces. However, a general trend of higher levels of awareness in terms of the existence of the Community Mediation Boards and their general functions, in the Northern Province and to relatively lower level in the Eastern Province could be observed. This was followed by Uva Province where the research team felt that the general awareness levels on Community Mediation Boards was lowest among the three provinces. This observation is based on the quality of information received from the KPIs on the functions of the Community Mediation Boards such as the officers of the administrative services as well as on information that the disputants shared with the research team. A possible explanation for this trend is the time elapsed since establishment of the respective Community Mediation Boards. The Northern Boards were revived from 2006 up to 2014 and this revival process would have contributed to raising awareness about them in those areas, both among government representatives as well as the general public. In contrast, the Community Mediation Boards in Uva have been in operation since 1990, some of the oldest functioning boards in the country, and this may mean that the functions of the Community Mediation Boards have become completely internalised within the system, and may therefore be taken for granted.

Deviations in practice

Apart from differences in the Community Mediation Boards based on composition and geographical locations as described above, the study identified some deviations which were more specific to the respective boards. For example, in the Community Mediation Board

of Kayts, disputants were allowed to select one mediator each with the third being appointed by the Chairman, while in Mannar, the disputants were not given the choice of selecting a mediator for all the types of cases that were studied. In a few rare cases, the number of mediators also seemed to vary, with some disputants claiming that they had only two mediators in their panel.

5.2   Profile of the People Accessing Community Mediation Boards

Socio economic status

Although the study cannot provide generalisable statements as to the profile of people accessing Community Mediation Boards across the island, a few common trends that emerged will be explained in this section, paying attention to regional differences. Overall, disputants were of the perception that accessing Community Mediation Boards was a more dignified option than accessing the formal mechanisms such as the Police or courts. However, in the Eastern Province, particularly in Trincomalee, there seemed to be a trend of wanting to take the other party to the courts, as a sign of showing power. This trend was confirmed by the KPIs too, as the following extract shows.

"There are people who will take the case to court no matter what happens, once the case is presented to the Mediation Board because of personal pride and arrogance. They insist on going to court because they will only accept a court ruling instead of a solution given by the Mediation Board."

(KPI, Trincomalee)

In terms of regional variation, in the Northern Province, the socio-economic profile of the respondents who accessed Community Mediation Boards showed a wide range. In terms of economic activities, the respondents belonged to households where the members were engaged in daily wage work, agriculture activities on their own lands, fishing and own retail businesses. In the Eastern Province, the disputants in the sample were primarily from the lower income groups. Disputants were mostly casual labourers, farmers, fishermen, small business owners, the unemployed or women relying on their husbands for maintenance payments. The study also came across a school teacher and an influential Urban Council member who had accessed the Community Mediation Board. In the Uva Province the disputants in the sample showed a diverse range of livelihood activities, with farming and daily waged labour being the most common. Driving three-wheelers on hires, small retail shops, employment in garment factories, employment in the Middle East and employment in the education sector were some of the income generating activities mentioned.

In the Northern Province, based on the limited study sample, it seems that people of all socio-economic strata access the Community Mediation Boards. This trend is confirmed by the fact that, irrespective of socio-economic status, the disputants clearly preferred the Community Mediation Boards over the formal mechanisms such as the Police or courts. Further, the KPIs also did not contradict this trend. In contrast, in the Eastern Province, especially in Trincomalee, the KPIs clearly indicated that those groups who belonged to lower socio-economic status in the society accessed mediation boards more, whereas those who belonged to the higher categories preferred the formal mechanisms such as the courts.

"Urban people are educated and know that the Mediation Board does not have the authority make decisions therefore they go directly to Human Rights Commission, Governor or write to president's secretary."

(KPI, Trincomalee)

Ethnic differences and language used

Overall, the study found that people of all three ethnic groups access the Community Mediation Boards. However, in the Northern Province, the disputants clearly stated that they prefer going to

the Community Mediation Boards instead of the formal mechanisms, especially the Police. The Police was clearly seen to have a language bias in the Northern Province and the Community Mediation Boards are playing a critical role in making justice accessible with perceived fairness, to the Tamil speakers. In most cases, the Police officers could not understand Tamil. This became aggravated when one party to the dispute could speak Sinhalese, and the other party could not. The result was a perception of bias from the Police towards those who spoke Sinhalese.

> *"I sold the boat to my brother in law and he agreed to pay the balance 40,000. Someone has cut his ear last night and they are searching for me also for keeping him at my house for safety. Cannot go to the hospital and we called the GS and he informed the police. But they did not come. The police came only after calling 119. We cannot go to the police directly due to many reasons. We can't speak Sinhalese. Police officers do not know Tamil."*

(Disputant, Kayts)

Further, the respondents in the Northern Province in general felt that the mediators in the Community Mediation Boards were 'our people' and felt more comfortable and confident in dealing with them rather than the Police. In the Eastern Province, all three ethnic groups accessed the Community Mediation Boards and there were no particular trends that stood out. The same was seen in the Uva Province. In Monaragala, although the Community Mediation Boards were conducted in Sinhalese, there were Tamil disputants who had accessed the Community Mediation Boards and on a few occasions, the disputants complained that although they understand spoken Sinhala, the older generations particularly could not read Sinhalese. The invitation letter being in Sinhalese might cause inconveniences for disputants in such instances.

Gender

Overall, the women seem much more comfortable in approaching Community Mediation Boards for their disputes in comparison to the formal mechanisms such as Police and courts. Gender wise, both men and women approached Community Mediation Boards, in all three provinces. The men were of the opinion that they were more comfortable with their wives or female relatives going to the Community Mediation Boards, in comparison to the formal mechanisms. The often cited reason for this was the presence of women mediators, the space provided for the woman to select a woman mediator if she wished to do so and the ability to talk to the women mediator alone, if the woman disputant felt the need to do so. In contrast the Police was perceived by both men and women as a corrupt, aggressive and often biased institution. Further, women, especially in the Northern Province were of the opinion that going to the courts and the Police would harm their social dignity and reputation within the community whereas accessing the Community Mediation Boards were not perceived in the same light.

However, some women had concerns about accessing Community Mediation Boards specifically in relation to instances of domestic violence and there were instances where women, particularly from singled headed families felt disadvantaged and ill-treated at the Community Mediation Boards. This issue will be discussed at length below. In certain instances, the women disputants of domestic violence cases felt that the men were reluctant to access organisations and institutions that offer counselling services such as Women in Need for example, reasoning that these institutions tend to support women and their side of the story. In comparison to these institutions, the women felt that the men preferred approaching Community Mediation Boards. Our interviews with Women in Need in the Northern Province confirmed this trend.

5.3   Types of Complaints

Table 5.2 shows the types of disputes brought to Community Mediation Boards in the six study districts in the year 2015. Some general trends

common to all districts as well as a few trends that are unique to some of the study districts can be drawn based on these statistics. In terms of total number of complaints mediated, Mannar shows the lowest with just 463, whereas all the other districts show a total of more than 1000 complaints, with Batticaloa being the highest among the study districts, reporting 5710 complaints. Interestingly, Mullaitivu, the district in which the Community Mediation Boards were established last, shows a higher number of total complaints than Mannar.

In general, in terms of types of complaints handled by the Community Mediation Boards, complaints on money matters clearly dominate more than 50 percent of the total complaints, with Monaragala reporting the highest proportion of complaints of money matters with 74 percent and Trincomalee being the lowest with just 56 percent among the study districts. This phenomenon seems common at the national level as well. Given

the importance of money matters, Box 2 below analyses the related issues. The next dominant type of complaint, across the study districts is land related disputes, with a percentage range of 5-9 percent of complaints being land disputes, except in Monaragala where the percentage of land disputes is just 2 percent. Instead, in Monaragala the second dominant type of dispute is complaints related to assault, reporting 6 percent of the total complaints. In Trincomalee and Mannar, assault complaints follow money matters, showing a high prevalence, with 17 percent and 9 percent reported respectively from the two districts. In terms of absolute numbers, Batticaloa District shows an interesting trend in handling family disputes, where all three categories of family disputes show a markedly higher prevalence compared to the other districts. Given the sensitivities attached to mediation of domestic violence complaints specially, these complaints are discussed in Box 1 below.

Table 5.2: Types of disputes by study district in 2015

Type of Dispute	Batticaloa	%	Trincomalee	%	Jaffna	%	Mullaitivu	%	Mannar	%	Monaragala	%
Assault	460	8	533	17	459	9	40	4	43	9	212	6
Causing hurt	372	7	50	2	184	4	20	2	14	3	108	3
Misappropriation of property	178	3	88	3	46	1	42	4	06	1	71	2
Criminal intimidation	201	4	54	2	74	1	10	1	02	0	53	2
Breach of the peace	105	2	232	7	36	1	03	0	02	0	297	9
Family disputes	155	3	78	2	115	2	57	6	19	4	30	1
Family disputes - property related	169	3	23	1	59	1	34	3	22	5	14	0
Family disputes - domestic violence	108	2	28	1	78	2	35	3	05	1	20	1
Disputes / offenses involving minors	10	0	160	5	09	0	00	0	01	0	09	0
Money matters	3460	61	1780	56	3294	66	698	69	3016	68	2527	74
Land disputes	492	9	154	5	671	13	72	7	33	7	64	2
Total	5710	100	3180	100	5025	100	1011	100	463	100	3405	100

Source: Mediation Boards Commission, via TAF, 2015

6. Satisfaction

A discussion on satisfaction in Community Mediation may vary depending on the type of case. Satisfaction is often formed as relative to experiences with other dispute resolution mechanisms, the stage at which the dispute enters the mediation process and the process followed. After introducing the factors that form the basis for a discussion on satisfaction, the subsection that follows discusses the key themes emerging from the analysis that explains satisfaction.

According to our study, generally, the level of satisfaction in relation to Community Mediation Boards is higher when compared to formal dispute resolution mechanisms. This trend concurs with a large body of literature that supports the claim that levels of satisfaction about overall procedure in ADR are higher than for the courts. Disputes resolved through ADR are more likely to be accepting of solutions and compliance (McEwen and Maiman, 1981; Vidmar, 1984; Person and Thoennes 1989). People from all three provinces expressed high levels of satisfaction with regard to Community Mediation Boards, especially relating the process of mediation than merely outcome/s.

Disputants' perceptions about satisfaction is relative and coloured by their experience with other dispute resolution mechanisms that the disputants accessed in the past as well as their past experience with Community Mediation Boards, if any. As stated in the following interview excerpt, their experience with traditional state dispute resolution mechanisms such as courts or police has greater influence in their levels of satisfaction.

"The Mediation Board is a much better than the police station. We have an opportunity to talk about our issue whereas when you go to the police they won't give you an opportunity talk and discuss. When you go to the police, other people will ask why you went to the police. Then you feel ashamed."

(Disputant, Monaragala)

Moreover, the perceived attributes of Community Mediation Boards such as being listened to, the participatory settlement process, the ability to articulate their problems during the settlement, use of local languages in communication and a non-threatening setting, influence their levels of satisfaction. The outcome of the mediation process may or may not be a factor that determines the levels of satisfaction.

In certain cases, disputants also expressed their dissatisfaction of Community Mediation Boards in relation to the process and settlement attained. Perceived unfair treatment, forced settlements without disputants' participation in discussion especially when a uniform formula is applied in settling money matters, the Community Mediation Boards' lack of authority to settle disputes and lack of legally binding solutions are stated as key reasons by the disputants for their dissatisfaction.

"I don't think the solution that was given to me was fair although I explained to the Mediation Board about my difficulties, and asked for some leniency to pay back only the principal amount. The Mediation Board does not provide you any leniency. I felt their decision was biased."

(Disputant, Trincomalee)

"MB does not have power. They sent the letter but people do not respond them. Mediation Board tries to resolve the problem in Mediation Board. Have to take action against people who were not present at the enquiry."

(Disputant, Trincomlaee)

Understanding satisfaction

A variety of measures are used in literature to evaluate any alternative dispute resolution mechanism. As stated in section three above, rate of settlement, the issue of economy, cost and time; interpersonal climate; assessment of outcome quality; sustainability of settlement; community perspectives/empowerment; perceptions of fairness and use of power are key

factors used by several scholars to critically analyse the effectiveness of ADRs (Tyler, 1988; Hedeen, 2004). All these factors are inter-dependent and hard to isolate one from the other. Using certain factors to measure the success of effectiveness of Community Mediation Boards could defeat the values of Community Mediation Boards. Measuring the success of Community Mediation Boards with the rate of settlement can impede the process, which is the core of mediation. This can affect the quality of settlement as well as lead to forced settlements as witnessed in the study. In the following sections, the research team attempts to understand disputants' perceptions and experiences with Community Mediation Boards and how they coloured their satisfaction levels with the process and outcome.

6.1   Economy and Cost

The higher affordability of Community Mediation Boards, in terms of cost was not disputed by any of the disputants. The direct cost associated with accessing Community Mediation Boards is negligible as opposed to the courts where they are required to pay for lawyers' fees. This has been mentioned by communities from all three locations.

"The distance to the school from my home is about 7km. I went there by my three wheel. It didn't cost me a lot to go there."

(Disputant, Monaragala)

"It was held in the school nearby. The Mediation Board holds its meetings in the school near the Sevanagala Police station. We did not incur much expenses going to the Mediation Board."

(Disputant, Sevanagala)

The Community Mediation Boards do not charge for their services and the cost of filing a complaint is only Rs. 5.00 which makes it more accessible and possible for any individual to invite another. Inviting or participating in the mediation process does not require hiring lawyers. The cost associated with accessing Community Mediation

Boards is mainly for transportation to the venue of the mediation. In order to maximise the access, the Community Mediation Boards are located centrally in each Divisional Secretariat, and so easily accessible by public transport. The cost stated by study participants ranges from as little as Rs. 20.00 to Rs. 600.00 for a visit which includes transportation and other incidentals. Because Community Mediation Boards are located in close proximity, many disputants travel on bicycle which does not incur any cost. The fact that the Community Mediation Boards are located at the DS level clearly provided ease of access to those living in rural remote areas. Further, even though in certain areas, where the venue of the Community Mediation Board was relatively far, such as in Kiran in Batticaloa, Thunukkai in Mullaitivu and Analatheevu in Kayts, disputants did not cite the distance as a constraint for access. For example, disputants in extremely remote Grama Niladhari Divisions in Kiran explained how they cross the river using small rafts and go to Community Mediation Board hearings because of the lack of public transport in their villages and bad road conditions. The fact that the disputes could be taken to Community Mediation Boards for resolution at the earliest stage of conflict allow the disputes to be settled on time and minimises the associated cost.

"We go to Mediation Board by cycle. I went to the Mediation Board alone once, but I went with my wife to all the other inquiries. Go in the bicycle. We go there every Sunday."

(Disputant, Mullaitivu)

"The Mediation Board meeting was held in the Moneragla town in a temple there. It is about 10 Km from here. I went on my bike so I did not have any big expenses. I was asked to be there at 9.00 and everything commenced on time."

(Disputant, Monaragala)

However, the opportunity cost of participating at Community Mediation Boards also merits attention. In most instances, the disputants

lose a day's wage which is significant for many daily wage labourers who come from the lower socio-economic strands of the society. Though this is the case when accessing the court as well, people perceive the opportunity cost of accessing the courts as high because the total cost of accessing Community Mediation Boards is insignificant as opposed to the cost associated with courts.

Conducting the mediation at times which are convenient to all the parties, such as operating on weekends makes accessing Community Mediation Boards easier and minimises the opportunity cost. The ability of alternative dispute resolution mechanisms to reduce the cost and time involved in seeking justice is a major attribute that has been researched by many scholars. These studies suggest that ADR contributes to modest savings in terms of cost (Tylor, 1988; Kressel and Pruitt, 1989). Though our study found that the direct access cost is significantly lower for Community Mediation Boards, the concerns related to durability of the settlement found at Community Mediation Boards may affect cost when disputants opt for other dispute resolution mechanisms or re-enter the Community Mediation Board to settle the same dispute for the same or a different reason. Another exception is, when land related disputes enter Community Mediation Boards for instance, they can be costlier to the disputants as the process entails the generation of complicated evidence such as surveyor reports or proof of title.

The cost of administering the Community Mediation Boards is also an important factor that needs to be addressed when discussing cost. Though the study did not look into this matter, it is evident that Mediation Boards in Sri Lanka operate with very little cost because it uses voluntary Mediators throughout the island with only Rs. 500 paid as a contribution to the travel cost per sitting (Brown at al., 1998). This amount does not cover the actual cost of time contributed by the mediators. Overall, operational costs of mediation boards are insignificant compared to the operation of formal justice mechanisms available in the country.

6.2 Interpersonal Climate

The study found that the 'process' is at the core of mediation, using interest-based mediation in the Sri Lankan case. Process here means various stages that a case faces; i.e. being invited, attending mediation, setting, discussion with mediators, documentation of discussion, depth of discussion, arriving at a settlement, issuing (non) settlement certificates and (non) compliance to the settlement. Disputes usually go through all these stages and there are varying levels of importance with regard to each stage. Disputants valued various aspects of the process such as being listened to, being respected, the equal opportunity given to discuss the disputes, ability to articulate in own language and participatory decision making.

For example, the following extract illustrates, the importance of using language as a factor which needs to be given due consideration in the process of resolving disputes. As stated above, the language of mediation has greater influence on the depth of discussion and quality of process. A good quality process in mediation will lead to a good quality outcome that is agreeable and durable settlements which demonstrate high levels of satisfaction (Tylor 1988; Cook at al., 1980; Hedeen, 2004).

"The Police officers spoke to me in Sinhalese, I spoke to the higher officer and requested for a Tamil speaking Female officer to inquire me. I went to the police inquiry for three months. Once I cried because I could not express myself in my own language. Sometimes the police officers speak in humiliating manner. The Mediation Board members are our own people so we can speak freely. Police got bribe from my husband and released him. I was hospitalised for three months and was in ICU but he came out within few hours."

(Disputant, Trincomalee)

The respondents in our study valued the fact that the process takes into consideration the context in which the Community Mediation Boards operate. For instance, the Community Mediation Board in Sewanagala DS Divison, a Sinhala Buddhist majority division, began each sitting by observing the five precepts of Buddhism, the Community Mediation Board in Kattankudy, a Muslim Majority division, takes an Islamic approach when handling loan interest payments. These aspects are valued by the disputants irrespective of the satisfactory outcome.

"First we all were asked to come to a large hall to observe Pansil (five precepts). Then we were given some advices by the monk. After that I waited 10 minutes until they called by name. There was enough space for the people to have their meetings in the school."

(Disputant, Monaragala)

The general perception among the disputants was that people tend to be more open to discussion, negotiation and even compromise in the presence of a religious figure such as a Buddhist monk, out of respect. In heterogeneous contexts such as Trincomalee, disputants explained to us how they observed even non-Buddhist mediators accepting the opinion of the Buddhist monks who are members of the Community Mediation Boards. However, this reverence may lead to a dilemma for the disputants in that, even though they agree to a settlement out of respect to the religious figure, they may not in fully agree with the settlement. This in turn, may lead to questions about the sustainability of the settlements.

Another question that needs attention is whether there should be a variation in the process depending on the type of dispute mediated. As stated by Tylor (1988), this too can affect the quality. Through the disputants' experiences, it seemed that the benchmark for quality of the process followed kept changing depending on the type of complaint being discussed. For instance, the debt complaints were not given attention during the discussion while family disputes or land disputes were discussed in many sittings, in-depth. The assumption here seems to be that the cash disputes do not warrant the same level of discussion as other disputes. As a result, the study came across a few instances where the mediation has gone to the extent of settling money matters in the absence of the opponent as the extract below shows.

"They asked me why you came. I said a loan issue. Mediators asked how much I brought with me. Then I said I brought Rs. 1000. I asked when I should pay the balance amount, they said this your first instalment Amma, you have to pay the amount and she wrote balance amount. When I finished enquiry there were other people who came with cash issues, interest cash issues and assault issues. Women society was my opponent but they did not come for the enquiry."

(Disputant, Batticaloa)

This excerpt highlights several aspects of a process involved in dispute settlement. The mediators using the term 'Amma' to call the disputant brings out how people are respected during the discussion. But the extract also shows certain shortcomings related to the process such as mediating in the absence of the opponent. Moreover, this example illustrates how easily a money matter is resolved without much due attention and mediators acting like agents for the lenders privileging the formal lender and the claims they make, in this case a women's society. These variations across different cases create a perception that mediation boards are incapable of treating disputants in an equal manner and are not capable of handling certain types of complaints.

Improvement in relationships

Within the interest based mediation approach, two types of interpersonal relationships can be identified; between disputants and mediators and among disputants (Wall et al, 1993). Both these types of relationships influence and in turn are influenced by the mediation process.

A significant question asked about informal dispute resolution mechanisms is how they contribute to inter-personal relationships during and post-settlement or non-settlement. The popular expectation is that the ADR mechanisms have greater impact on people-to-people relationships due to a number of characteristics of ADR. Mediation Boards deal with disputes in a non-coercive manner compared to proceedings at courts or the police as the following extract illustrates. The formal mechanisms are seen as inhibiting inter-personal interactions whereas ADR mechanisms such as Community Mediation Boards enhance the relationship between the parties (Tyler, 1988).

"If someone else has an issue I will tell them to take the issue to the police or the Mediation Board based on their preference. But I will also tell them that the Mediation Board will look at both sides and make an impartial decision to resolve the issue. The Mediation Board also gives you an opportunity to talk things over and discuss your issue at length, without arguing."

(Disputant, Monaragala)

Disputants who participated in the discussion admitted to relatively higher levels of communication, as they are permitted and encouraged to discuss the problem. Simple things such as eye contact and the fact that they speak to each other may lead to some level of positive interaction. On the contrary, the formal system often prevents this communication and compartmentalises the disputants which reinforces the grievances further.

"I am sure I will go to the mediation board again if I have a problem. I have a good relationship with that person now. They even visit us during new year time. I am glad everything went well and we become friends."

(Disputant, Monaragala)

However, improved relationships are not common for all types of complaints. For instance, the study found mixed evidence when it comes to the complaints of family disputes or domestic violence. This questions Kressels and Pruitt's (1989) argument whether improved interaction between the disputants, especially in family disputes lead to better interpersonal relationships. For example, in the extract below, the female respondent who has been to the Community Mediation Board seeking justice over intimate partner violence states that the mediation has made no improvement in the relationship with her husband.

"We went for three inquires. Each time they asked us to go home and speak to each other and come to an agreement. They advised us. They told me to live with him considering the future of children but I refused. I never spoke to him even after coming home. I requested them to refer this complaint to courts because I wanted to divorce him."

(Disputant, Trincomalee)

Commitments to settlement

Study respondents valued the extent of the discussion that takes place in the Mediation Boards. In general, a discussion lasted for at least 15 minutes, if not more. Irrespective of the duration of the discussion, the disputants valued the quality of the discussion, which does not take place within formal mechanisms such as the Police or the Courts. All disputing parties are given an opportunity to present their grievances in detail, in a less constrained manner compared to the formal mechanisms. In most instances, the disputants explained to us that the interruptions from the opponents are handled well by mediator interventions. There is a variation in the amount of time spent for each complaint, and it differs by nature of the dispute too. This difference arises based on the complications involved, such as generation of evidence, willingness of the disputants to cooperate and extent of compromise the parties reach. Land complaints typically require lengthier discussions than some disputes over cash. (For a detailed discussion on depth-of discussions at Community Mediation

Boards, refer to Munas and Lokuge, 2016).

The study found that the depth of discussion taking place at Community Mediation Boards has positive effects on people's commitment to settlement. The fact that the disputants participate in discussing and arriving at a settlement means that there is some level of commitment from the disputing parties. The reflective technique used by the mediators to lead the discussions in instances of lack of trust between the parties helps the disputants understand each other's viewpoints and the underlying issues of respective complaints. This may lead to relatively higher levels of compliance to the settlement. However, it would be too simplistic to conclude that the complaints that went through in-depth analysis translates into higher levels of compliance.

"They spoke to me well. They did not scold me. They asked me how much I am able to pay per month and asked to settle my debt. The Treasurer from the Women's Society was also there to discuss the issue. The Mediation Board was good. They were sympathetic towards me."

(Disputant, Trincomalee)

6.3 Outcome Quality

In the discussion on outcome of the mediation process, the different parties may view and experience outcome in different ways, even within the same complaint (Wall et al, 2001). For example, the outcome of the mediation of a particular complaint for the mediators would be different from that of the disputants. The outcome for the two or more parties to the disputants may also mean different things. We focus on the outcomes for the disputants in this section.

People's perception and experience about outcome varies greatly. It ranges from comprehensive mutually agreeable settlements to 'no show' or to the issuing of a non-settlement certificate by the Community Mediation Boards. Emphasis given by Community Mediation Boards on the importance of the mediation process may lead to positive, unintended outcomes such as generating documentation for undocumented, informal transactions between two individuals. People change their expectations during the mediation process, as they realise the strengths and weaknesses of the Community Mediation Boards.

"One major benefit I obtained by going to the Mediation Board is getting the entire incident documented. I gave the jewelleries based on trust; I did not get any written document signed from them. If I went to the police station directly, I would not have had any evidence to prove that I gave my jewelleries to them. The Mediation Board documented everything and got signatures from both parties".

(Disputant, Kayts)

The study came across instances where people agree on settlements half-heartedly due to various circumstances. Fear of taking the complaint to the formal system when a settlement is not reached, mostly reinforced by the peers or even by the mediators, often forces people to a settlement. This fear is mostly about the cost, time, language, coercive inquiry and intimidating inter-personal climate in the formal system. Instances where the people are made to settle on religious grounds could also lead to this situation. The extract below illustrates such an instance, where the disputant is quoting what the mediators had said to the disputing parties.

"We are Muslims and should not lie, so please tell the truth and we will solve the issue"

(Disputant, Batticaloa)

Improved inter-personal relationships between the disputing parties, discussed above in detail is also an outcome from the perspectives of people as the extract below shows. People gain a clear understanding of their own disputes. This may result in a reduction in the severity of the present conflict as well as in prevention of conflicts in the future. Though the study did

not focus on the meso/macro level, reduction in court congestions is an important outcome of Community Mediation Boards.

"I think the case was settled in a good way. Now we talk to each other. The monk at the Mediation Board gave some advice and it helped to me think twice before engaging in such activities again. I will go to the Mediation Board again if I have to solve a problem."

(Disputant, Monaragala)

The mandate and motivation of the Community Mediation Boards is to facilitate a discussion which will ultimately lead to an agreeable settlement. Though this has been the objective, the outcome is not the same for all the complaints. Settlement can be considered an outcome of the dispute. It is contingent upon various factors such as the stage of conflict, available resources, skills of mediators, type of conflict and so on. As discussed above, the outcomes vary, and the quality of outcome can also vary. It is hard to assess the quality of outcome because it is not one size that fits all.

Each complaint that comes before a Community Mediation Board is unique and there is no standard solution for complaints. Community Mediation Boards do not follow a standard set procedure for all the complaints handled and lack formal rules and regulations as opposed to the formal system. Rather, Community Mediation Boards use an individualised approach to each complaint by adopting complaint-specific processes where values and beliefs are respected and accepted. However, these values and beliefs do not carry universally normative ascriptions of good or bad and may impact different complaints differently. For example, the value of arriving at a negotiated settlement would ensure longer term community cohesion in an assault complaint between two neighbouring parties. However, whether the same value of negotiation can be applied to a complaint of domestic violence where the victim is physically and psychologically abused is a question. Therefore, one measure cannot be used to measure the quality of the

outcome of different types of disputes that go through the mediation process.

Durability of the settlement is a critical factor that that determines the quality of outcome in Community Mediation Boards. Pruitt (1995) outlines two determinants of a mediation outcome, short term and long-term. A short-term outcome is referred to as the immediate outcome of the settlement such as reaching an agreement while long-term means satisfaction with the agreement reached in the long-run such as compliance with the agreement and the improving inter-personal relationship between disputing parties. The author states that the agreements that satisfy the most important goals of disputants in the short-term may breed long term success. The study found that despite mutually agreed, satisfactory settlements, the disputes may re-emerge due to reasons such as lack of compliance from one party, lack of follow up with the Community Mediation Board and lack of legal authority of Community Mediation Boards; since adjudication is not a mandate of Community Mediation Boards. In certain instances, the complaints that are settled by the Community Mediation Boards are taken up at other dispute resolution mechanisms. Depending on the type of dispute, the durability varies. For example, the study found that the chances of re-emergence of land disputes is often higher than the re-emergence of money matters.

People often situate the Community Mediation Boards at a higher satisfaction level as a result of their negative experience or perceptions of the formal system in dealing with disputants. These negative experiences and perceptions of the formal mechanisms include language used, lack of discussion, disrespect, partiality or corrupt institutional practices. These perceptions, in turn, will lead the disputants to lower the bar on their expectations of the quality of the output and settle for outcomes with high levels of compromise, especially when there is a power imbalance during the mediation process. For example, irrespective of the influence of external

factors such as crop failures or floods which are beyond their control, disputants are often made to feel that there are no other options for settling an agriculture loan, because the opposing disputant tends to take an unwavering position about money matters as shown by the example below. These decisions could be harmful for those who lack power in terms of bargaining and negotiating. Hedeen (2004) problematises this situation and asks whether the justice delivered through ADRs is second class. This question should be given consideration with the positive intention of improving the quality of justice delivered through Community Mediation Boards in the future.

"They told me to pay back the loan in whichever way I can and settle my debt. They explained that the interest will accumulate if I do not pay it off. I agreed to pay it off. The fault is mine."

(Disputant, Trincomalee)

6.4 Community Empowerment

Dichotomy of social embeddedness

Mediators, disputants and the process followed by the Community Mediation Boards to settle the disputes are embedded in the same, shared social fabric. This embeddedness has both positive and negative impacts on the expectations and experiences of people. (These effects on the Northern Province have been discussed in the report published by Munas, Lokuge, 2016). Mediators are able to factor the local, cultural differences in settling disputes and foster accountability to the community. Disputants feel more comfortable and trustworthy in discussing their problems with mediators who are from the same community and are known to them. On the contrary, people may not share sensitive matters with known mediators due to reasons of privacy and a fear that intimate matters may be exposed to the wider society. Similarly, identity can play a negative role by exacerbating and reinforcing existing divisions when one group is discriminated against, for instance on the basis of caste, at

the mediation processes. Further, mediators subscribing to and using discriminatory dominant socially accepted norms and practices during the mediation process may divert disputants from achieving the justice that the disputants expect from mediation. While complaints like these seem rare, the following extract illustrates one such discriminatory gendered norm.

"If your husband does not beat, who else would beat you, he has the authority to hit you because you are his wife".

(Disputant, Kalmunai)

Moreover, this study came across instances where the sense of social responsibility and accountability to the community could be misunderstood and used by the mediator to settle disputes which are not mutually agreeable and which might even be 'forced settlements'.

The mediation literature states that mediation has a community empowerment objective too. Pincock (2013) states that this community empowerment objective is seldom met. The community's capacity to analyse and handle future conflicts should be ideally enhanced as parties should collectively arrive at settlements. Further, the sense of ownership and control over the alternative dispute resolution mechanism may lead to a prevention of future conflict (Pruitt at al, 1993; Wittmer et al. 1991). Though the study methodology did not attempt to assess the levels of community empowerment as a result of community mediation processes, the research team believes that community empowerment could take place in the long run as the Community Mediation Boards are extensively used to settle a wide range of disputes in the study locations. In addition, the mediators who are provided with routine training, coaching and mentoring by high level State officers retain their capacities within the community.

6.5 Power

Power is defined as one's ability to influence the behaviour, perceptions, actions or emotion

of others. Power in mediation is understood as one's capacity to further his/her interests to achieve the goal, by creating an undue influence in the process of mediation and the settlement reached. A person gaining control over the other in accessing resources such as economic, physical or emotion (Mayer, 1987; Baylis and Carroll, 2004). In a broader sense, power is defined as one's ability to get what he/she wants. Power plays a critical role at all levels of mediation such as conceptualisation, institutionalisation and governances, and operationalisation.

When mediation was conceptualised as an alternative dispute resolution mechanism, its architects assumed that certain types of disputes in the society qualify to be dealt through mediation. The main critique of this assumption comes from the social justice angle; the individualising nature of the mediation processes, the extent of informality and absence of formal rules built into the procedure could take away the severity of the problem (Bush & Folger, 2012). In the case of Sri Lanka, the State holds the power to institutionalise mediation in the form of Community Mediation Boards and govern it under the State facilitated justice system. The State provides recognition and creates legitimacy to the Community Mediation Boards by placing them in the State facilitated dispute resolution apparatus. Moreover, the State supports the system by providing necessary resources, skills enhancement and training through an established process and monitors them to improve performance. In addition, the State or formal system takes authority to direct certain types of disputes to the mediation process and exercising this authority may take away people's rights to access the formal justice system.

This study looked into the operationalisation elements of the mediation process and it witnessed the influence of power in the process. The power of mediators, disputants and parties outside mediation and the mediation process can exert influence on the mediation process. Unequal power relations that exist within a

society can be reproduced within the mediation process as the mediators and disputants share the same social fabric. The mediators' socio-cultural position affects the dynamics of mediation and this may result in disputants reaching settlements with the lowest acceptable standards. The study found that when a religious leader - a Buddhist monk or an Imam - mediates, and preaches religious text or ideology, the chances of reaching a settlement is high. However, the quality and durability of such a settlement is disputable. Moreover, the sense of accountability and responsibility of the mediators towards their own society can push them to find creative ways of reaching an agreeable settlement. This push has the tendency to go beyond the mandate towards forced settlement, unintentionally or intentionally, when mediators attempt to thrive as legitimate problems solvers in the community.

Power differences between the disputing parties also claim a role in influencing the mediation process and affect the outcome. When a disputing party lacks power, is vulnerable or from a disadvantaged group the settlement reached may be harmful and might be unfair. For instance, in domestic violence complaints it may make the women even more vulnerable when mediation does not provide sufficient protection for the affected women putting pressure on the vulnerable parties. When banks enter into mediation for debt recovery, their power derived from institutional formality over borrowers, dominates the entire process and a settlement will be invariably reached. Most often the lenders dictate the settlements to be reached and the borrowers have little power to negotiate or discuss the repayment or settlement.

In certain other instances the social position of the disputants is used to influence the mediation process. For example, if the mediators and the disputant are from the same caste group or class, there is a tendency to subvert the purpose of community mediation and discriminate against one party. Disputants from the same or a higher social position than the mediators can disregard

the mediation. For example, within this study, a local politician who presented his complaint to the Community Mediation Board found that the mediators were incapable, unqualified and biased. The fact that the people in his constituency approached him for settling disputes and for reporting their day-to-day problems created an inferiority complex in this powerful individual discouraging him from approaching a known mediator who the politician assumed lacked power to settle his dispute. The study team found that this attitude towards mediators and mediation was further reinforced based on the particular individual's previously strained interactions with the mediator who handled this particular complaint. This perception and attitude led him to approach other forms of dispute resolution mechanisms available in the community. The following excerpts from the interview with the politician illustrates how powerful disputants can influence the mediation process.

"I have solved many problems which are not solved by Khathy (Quasi) Courts such as marital issues, transaction issues.

I got to know that I have been invited for Mediation Board even before I received the invitation letter. A mediator in the Community Mediation Board called me and told that I have been invited.

There were two mediators who were biased and acted against me 100% during the mediation process. I scolded them. I requested to replace those two mediators. Then I forwarded the documents I had. There were four mediators for our case. Two of them were against me due to personal reasons. I had issues from the beginning"

(Disputant, Batticaloa)

Power is not always negative, the State support of mediation in Sri Lanka provides it much needed legitimacy and a sense of authority to carry out its duties. However, when powerful individuals or

institutions within society use the power they hold originating from their elevated social position in society, asymmetrical power dynamics enter the mediation process, which may impact not only disputing parties, but also the mediators. Groups that are recognised as vulnerable, such as single women and those who belong to marginalised castes will be the worst affected by these negative power dynamics. This tendency, may ultimately undermine the integrity and the independence of the whole mediation process.

Box 2: Mediating money matters

The following table, derived from the data published by the Mediation Boards Commission in 2015, illustrates the proportion of money matters presented to Community Mediation Boards in the study districts during the first half of the year of 2015. While Mannar District records the highest proportion of complaints on money matters, Community Mediation Boards from all study districts report that over 55% of the complaints are on money matters. Money matters in this instance means any financial transaction related issues channelled and mediated by Community Mediation Boards. This could range from informal *seettu* transactions to formal commercial disputes.

Table 6.1 Percentage of money matters dealt by Community Mediation Boards in 2015

District	Money matters	Total disputes	% of money matters
Monaragala	762	1073	71
Jaffna	1090	1723	63
Mannar	131	173	75
Batticaloa	1095	1941	56
Trincomalee	543	916	59
Mulativu	244	403	60

(Source: Mediation Boards Commission, 2015)

The study found clear evidence of Community Mediation Boards being congested with the increasing demand to settle money matters. Given the fact that Community Mediation Boards provide a free service, these money matters start dominating the Community Mediation Boards. The following figure illustrates that banks and financial institutions referred close to 50% of all the complaints that the Mediation Boards handled in 2013.

Figure 6.1 Disputes referred to Community Mediation Boards in 2013
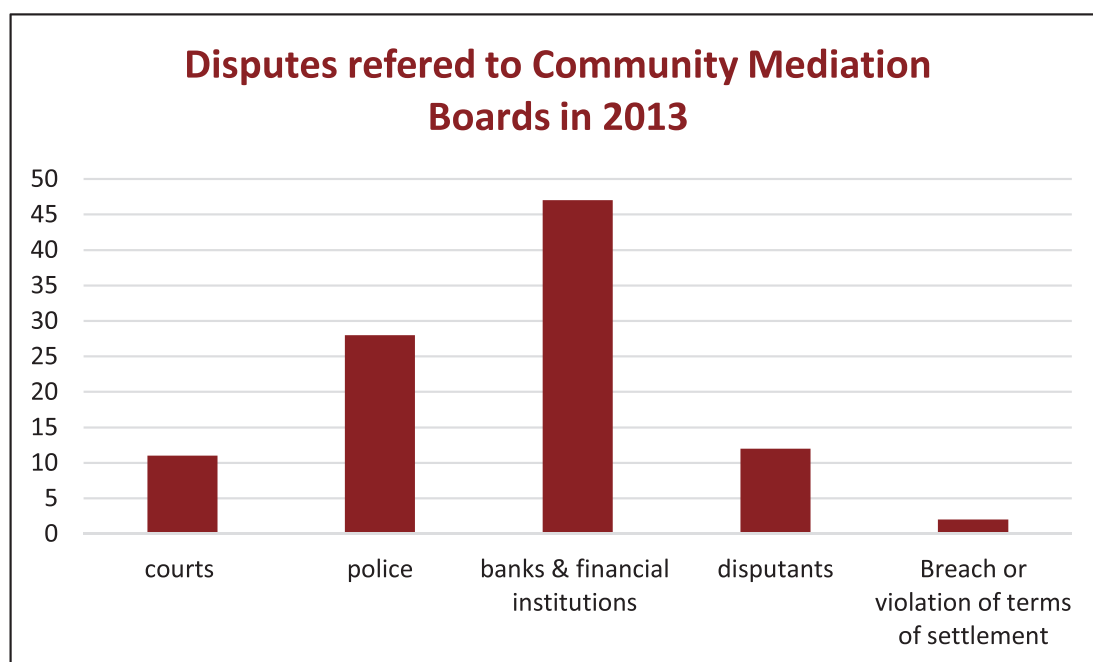
Source: Mediation Boards Commission, 2015

The study found qualitative evidence from all three provinces on serious concerns when Community Mediation Boards mediate money matters. Power asymmetry among the lender, borrower and the mediator skews the mediation process towards lenders propositions. Given the prevalence of indebtedness in post-war Northern and Eastern Provinces and Monaragala being one of the poorest districts in the country, the probability of defaults in these areas is very high. Further, in instances where mediators are borrowers, this can lead to serious accountability issues. The lenders as the more powerful party may cause the mediators to behave in certain ways which undermines the impartial independent nature of the mediation process. The study came across many instances where powerful individuals, lenders and banks negatively influence and dominate the mediation process to meet their own interests and objectives. The powerful banks often push the mediators to a position to prescribe a standard, non-negotiable formulaic repayment rather than achieving a mutually agreeable settlement. We found that money matters are settled faster than other disputes presented to the Community Mediation Boards because it seems to us that as a practice, there is less space provided to the disputants to present the grievances related to their complaint. It is even more detrimental when settlement happens in the absence of lenders, by providing a list of borrowers to mediators with a prescribed repayment plan. We found this type of behaviour more prevalent in the Eastern Province than in the Northern or Uva Provinces. There is very little attempt made to look into the underlying reasons of default and capacity to repay, especially when it comes to defaults related to entrepreneurial loans.

"Everyone knew that people were affected by the floods and that even the water from the lagoon came inland and flooded the place. So we asked the Agrarian Services Farmers' Society (through the President of the Farmers Society) to give us some leniency in paying back what we owed. There are people in the Agrarian Services Farmers' Society office who understood our plight and they wanted to give us a fair solution. But the officials above them were not willing to do so. They forced the farmers' society to recover the money somehow."

(Disputant, Trincomalee)

This begs the questions as to whether Community Mediation Boards are the best mechanism to settle money matters, whether Community Mediation Boards possess the capacity to handle money matters, whether there should be some sort of control of money lenders accessing Community Mediation Boards, whether the Community Mediation Boards should charge a fee from the institutional lenders such as banks for its services and whether there should be separate mechanisms to resolve money matters. These questions become even more important with the decision to increase the threshold of debt being considered by Community Mediation Boards from Rs. 250,000 to Rs. 500,000 which will result in financial institutions and lenders increasingly reaching out to Mediation Boards for debt recovery.

7. Conclusions

This research set out to explore the nature of justice sought and delivered by Community Mediation Boards in six districts of the country, through the perceptions and experiences of disputants. In the research team's qualitative in-depth exploration, what became clearly apparent was that the disputants' understanding of justice was much more complex and broader than a fair and just outcome in the form of a settlement. Rather, for the disputants, justice is very much related to the process that is followed as much as 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. These aspects of the process clearly contribute to the feeling of justice being delivered. This is more enhanced when, at times, irrespective of the outcome of the mediation, the disputants feel that they were treated fairly and with respect. They clearly valued the tenets of the interest based mediation approach used by the Community Mediation Boards in Sri Lanka.

The nature of justice that the disputants seek, and their perceptions about this being delivered through the Community Mediation Board is mediated by their experiences of seeking justice through formal as well as informal mechanisms. For example, the experience with the Police as a formal mechanism was often a point of comparison in all the districts studied. Their experiences with the Police was in direct contrast to their process related experiences with the Community Mediation Boards, with the disputants often referring to the former as a mechanism where ill-treatment, corruption and in certain cases, especially in the Northern Province, the language used clearly marked out the Police as not delivering the form of justice that the disputants desired. Therefore, in relative terms, the disputants felt that the process followed by the Community Mediation Boards was more conducive to delivering the type of justice that they desired.

The complexity inherent in understanding justice by the disputants is also reflected in their expectations of a hybrid form of justice from the Community Mediation Boards. While treating the participatory and relatively non-formal nature of the interest based mediation process with high regard, disputants often expected legally binding forms of justice. These concurrent expectations which seem in opposition, are in a sense the reality that forms the nature of justice that is expected by the disputants, and in turn how their satisfaction levels with the nature of justice that is delivered by the Community Mediation Boards is measured. This in turn, will influence the way success rates of Community Mediation Boards are measured through the perceptions of the disputants, for the purposes of monitoring and evaluation.

In terms of differences among the districts, from the limited sample of disputants and KPIs, it was apparent that awareness levels about the Community Mediation Boards were in general higher in the newly revived areas of the Northern Province and some areas in the Eastern Province in comparison to the Monaragala District. Further, from the disputants' perspective, the Community Mediation Boards seem to be in general able to take the ethnic heterogeneity and the language needs of the locals that they were serving into consideration in their operations. There were a few isolated cases in Jaffna and Trincomalee that deviated from this trend, however, overall the disputants seem satisfied. Specially in the Northern Province, where the Police - one of the first points of contact for disputes - was regarded as not speaking the local language, disputants expressed clear preference for the Community Mediation Process, that they also regarded as 'our people', often in direct contrast to the Police. Hence, the role alternative justice mechanisms can play in communities that are emerging from deep social and political divisions such as war and related violent history becomes clearly apparent

in this instance.

The embeddedness of the Community Mediation Boards within the same social fabric that they serve, has formed a dichotomous effect. On the one hand, being familiar with the cultural practices, social norms, people and the problems that people face has opened up spaces for seeking justice for disputants tremendously. For example, for disputants of lower socio-economic levels or socially and economically vulnerable people such as single women, Community Mediation Boards in general provided access to some form of justice. There are exceptions to this trend, as was discussed in the sections above, however overall the disputants esteem this quality with high regard. On the other hand, this same quality of being embedded in the same locale meant the power structures and discriminatory social and cultural norms that pervade the wider society gets transferred to Community Mediation setting as well. The instances where women are encouraged to reconcile their differences with their spouses, for the sake of saving the family, despite abusive treatment was an issue that kept emerging during the research. In terms of power structures, powerful corporate actors such as lending institutions attempting to dominate discussions and seeking to recover their loans, free of charge, is also emerging as a concern, that undermines the spirit of mediation.

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Community based mediation in Sri Lanka has a history that pre-dates the nation's colonial period. However, Community Mediation Boards as a formal mechanism for administering justice were established as recently as 1990, beginning with selected Divisional Secretariat Divisions in the country. Today there are 329 Mediation Boards in operation with approximately 8500 mediators.

This working paper researches the mechanism from the perspective of the disputants who use Community Mediation Boards, and covers selected Districts of the Eastern and Uva Provinces as well as Districts of the Northern province, where the mechanism was established more recently. The study explores who accesses the mechanism, what their expectations regarding dispute resolution are, and the factors that contribute to their satisfaction/dissatisfaction with the process. It also synthesises the learning from the three provinces to bring out commonalities and differences between them, while situating the analysis within current theoretical debates on mediation.