

An aerial photograph of a coastline, showing a mix of brownish land and blue water. The image is framed by a white border that is thicker at the corners, creating a square frame around the text.

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THE ROLE OF NEUROSCIENCE IN MEDIATION

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ABSTRACT

Understanding the nature of Neuroscience and studying how it works is a fundamental skill that every professional mediator or counsellor ought to embrace. Neuroscience basically refers to the study of the brain and nervous system and thereby, Neuroscience-informed mediation involves integrating principles from the structure and functions of the brain and nervous system to counselling practices. This integrative work in mediation and counselling is being used predominantly to treat behavioural and mental health challenges and it immensely facilitate reaching an effective dispute resolution, satisfying the just interests of both the clients and parties involved in the dispute. It is therefore a very important skill required by a professional mediator and a counsellor in their daily operations altogether. With the additional lens of neuroscience tackling such things as emotions, feelings, anger and thoughts among others, both the mediator and client can gain new understandings of the client's issues and improve the quality of the therapeutic relationships in harmony. The importance of integrating neuroscience into the profession of counselling and mediating thus, neuroscience-informed counselling, are being documented in the scholarly literatures today and a high sense of importance is being awarded to them. Therefore, this paper aims to basically analyse the concept, forms and impacts of neuroscience as a distinct academic discipline to mediation as an alternative mode of dispute resolution.

Key words: Mediation, Neuroscience, Neuro-informed mediation, counselling.

INTRODUCTION

In recent decades, professional counsellors and mediators during alternative dispute resolutions have increasingly focused on neuroscience to inform their case conceptualizations and treatment planning with every clients. Neuroscience basically refers to the study of the brain and nervous system and thereby, Neuroscience-informed mediation involves integrating principles from the structure and function of the brain and nervous system to counselling practices. This integrative work in mediation and counselling is being used predominantly to treat behavioural and mental health challenges and it immensely facilitate reaching an effective dispute resolution, satisfying the just interests of both the clients and parties involved in the dispute. It is therefore a very important skill required by a professional

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mediator and a counsellor in their daily operations altogether. With the additional lens of neuroscience tackling such things as emotions, feelings, anger and thoughts among others, both the mediator and client can gain new understandings of the client's issues and improve the quality of the therapeutic relationships in harmony. The importance of integrating neuroscience into the profession of counselling and mediating thus, neuroscience-informed counselling, are being documented in the scholarly literatures today and a high sense of importance is being awarded to them. Besides, information on integrating neuroscience-informed counselling and mediation into the legal domain and clearly understanding and implementing it on daily operations is equally a huge resource. This research paper describes the values of understanding how neuroscience works and placing emphasis on the adoption and usage of the same in Alternative Dispute Resolution by mediators, in negotiations and arbitrations.

a) OBJECTIVES

In view of the increasingly profound field of Alternative Dispute Resolution in the contemporary legal systems in several jurisdictions, Mediation and other forms of alternative dispute resolution has greatly earned the attention of scholars as well as researchers. This basicity of understanding has accordingly broadened the different features of alternative dispute resolution, its principles, and what I so intuitively call "Intrinsic factors" – factors inherently ascribed in all stages and ethics of mediation and other forms of dispute resolution. Therefore, understanding the nature and impacts as well as the future prospects of neuroscience in the field of academia being incorporated in resolving disputes in the legal fraternity altogether. Neuroscience immensely plays a great determining factor in anticipating the outcomes of mediation and an attempt of failure to recognise and handle it carefully shall definitely result into waste of human resources as well as time and its analogues.

To consider an easy understanding of the same, the Author has deduced two major questions whose answers in the paper can definitely ease the readings of the audience:

- What is the physiological composition of neuroscience and their associate triggers?
- How is mediation and neuroscience intertwined in amicably establishing justice and determining the favourable outcomes of mediation proceedings among aggrieved parties?

Accordingly, this paper aims to analyse the role and impacts of neuroscience in mediation by attempting to answer those critical questions and more elaborate analytical discussions on the same topic altogether.

b) MATERIALS AND METHODS

Systematic research and reviews have been concluded by the Author ranging from authored books, online learning resources, standard research papers as well as research articles from several publication houses via the internet. Majority of such resources have been accordingly cited in the footnotes accordingly herein for further perusal of the readers for this paper to enhance their learnings and research.

c) GENESIS OF NEUROSCIENCE AND MEDIATION

Neuroscience is an interdisciplinary science in the field of academia that operates keenly with other academic disciplines including philosophy, mathematics, linguistics, psychology, computer science, medicine as well as chemistry among others. Scholars in this filed study the cellular functions of the general biological organs, their behaviours, their computational ventures and the biomedical composition of the nervous system altogether. How the general biology of the body works and their sensory behaviours is directly the study of this domain.

Mediation, on the other hand, can be traced back to the history of the United States towards the end of the 19th century when several disputes increasingly spread mostly between workers and employers as a result, escalating pendency of cases in the courts reached an outburst. However, it was until the 20th century when the first institutionalisation of this form of dispute resolution was recognised under the United States laws as way of diversifying the means of justice delivery and minimize the excessive pendency of cases in the Courts. Thereafter, the congress in the United States enacted a federal cognate, the federal Arbitration Act and consequently, mediation as well as other forms of Alternative Dispute Resolution came into effect. Analysing the great benefits of this step, several other countries around the world embraced this concept and regulated accordingly including India through the Indian Arbitration Act of 1899 under the British Rule before Independence.

d) CONFLICT AND RESOLUTION

Clearly analysing these concepts shall definitely give us the intuition to promptly understand the basis of our discussion and thereby, giving us an elaborate explanation of the nature of

conflict and thereafter, we can deduce mechanisms to tackle them accordingly. Conflict involves the following:

- a) It is usually a battle between reason and emotion².
- b) It results from grief, loss, disappointment as well as perceived injustices.
- c) It usually have both rational elements that is associated with economic loss and emotional elements of anger, fear, stress and hatred.
- d) Emotions have agreeably very profound effect on mediation³, negotiation as well as other forms of conflict resolution.
- e) Usually emotions fails to control reasons uprightly for instance, am so furious and can't think any better.
- f) The higher the stakes, the higher the emotions and consequently, the higher the conflict.
- g) Emotions are directly connected to our values, believes, thoughts, perceptions, knowledge and sometimes wisdom.
- h) Therefore the exploration and control of emotions is the pioneering tool in conflict resolution altogether.
- i) And ultimately, rational decision making can only be successful when emotional issues are amicably resolved by both the parties to the conflict and the mediator.

j) STRESS AND ITS PHYSIOLOGICAL RESPONSE IN THE BODY

People normally involved in conflicts and in mediation specifically, generally encounter many events that initiate the physiological stress responses in their body. But what is actually this response and what triggers it? How does the stress response impact judgment, decision-making, and memory altogether? What can mediators do to minimize the deleterious and inimical effects of the stress response? Learning the answers to these questions can help to make a more effective professional mediator. Therefore, the physiological stress response and showing how this complex and nuanced response affects all parts of the body and brain and is driven by various hormones is pertinently pivotal⁴ in dispute resolution, say, mediation.

² An assertion by Dr. Paul R Gibson – Executive Director, Center for Conflict Management – Singapore.

³ A publication by Aleksander Jakobcic on mediation and ethics under the World Mediation Organisation – December 18, 2018.

⁴ Physiology, stress reaction by Brianna Chu, Komal Marwaha, Terrence Sanvictores and Derek Ayers under the National Library on Medicine – September 12, 2022.

There are knowledgeably two stress⁵ hormones triggered by conflict and they are adrenaline and cortisol. The adrenaline hormone and its response is commonly in the people's knowledge because we can easily and directly feel the increase in our heart beat rate and the sweaty palms that accompany this response. Cortisol, on the other hand, is subtler, and we are usually unaware of it and its impact on our judgments.

Adrenaline⁶ response ramps up very quickly and diminishes quickly too, meanwhile, cortisol uses a different, slower pathway in the body through the blood stream rather than through the nervous system and thus making it a unique hormone on its own nature. That simply means that even when cortisol begins to drop after a stress trigger, it can linger for up to two hours or even more in our body maintaining the stress impacts in the system. Unlike the Adrenaline hormone which perishes more quickly in a shorter gestation period, when individuals are subject to multiple stress triggers in a short time, the cortisol level builds on itself, thus getting higher and higher instantly. However, stress response prepares the body to instantly fight, take flight and where necessary freeze. Furthermore, moderate levels of cortisol helps people focus and sharpen physical as well as mental abilities in their functioning. Yet when the cortisol level builds up beyond this positive (also known as the eustress) stage, it accordingly begins to have negative impacts on mind and body (thus distress), problems arises thereafter.

k) STRESS TRIGGERS IN CONFLICT SITUATIONS

The stress response is utterly triggered by threats of physical danger, ranging from seeing the proverbial sabre-toothed tiger, to seeing a fast-moving car approaching as you cross the street – developing apprehension of danger to person's body. Besides, social threats equally triggers this response, such as feeling unsecured in an unfamiliar setting or crowd, feeling subordinate to more experienced opponents in a crew and fearing a loss of status as well as such feeling of disrespectfulness towards one's dignity. Also, high emotions trigger the stress response in our body such as emotions of pain, love, thoughts and imaginations.

Mediation equally creates many stress triggers⁷. Participants may feel unprepared or less competent than their opponent, and this will trigger stress and nervousness into their body as just seeing a person (opponent) with whom there is a history of conflict can be a trigger too.

⁵ The physiology of Stress by Jessica Suter, undergraduate of The Open University and Events Manger for Eaton Park Science day.

⁶ Understanding the stress response – Harvard health Publishing – July 6, 2020.

⁷ What is Stress? A Systems Perspective by Integrative and Comparative Biology – September 22, 2018.

Furthermore, thinking about a previous dispute, confrontation, or compromise is also a trigger to the human body and merely being in an unfamiliar setting can trigger stress, as does uncertainty about an unfamiliar process such as mediation altogether.

Therefore, other stress triggers can include a variety of things which may include such things as work deadlines, family conflicts, financial worries or health issues altogether. Besides, stress triggers can vary from person to person due to natural human differences, personality type, emotions, future expectations and copying of lifestyles among others. Technically, there are stress triggers which are obvious and predictable while others are so subtle and unexpected in nature but yet worth understanding and considering them equally by the mediator to the greater benefit. All such can cause both physical and emotional symptoms such as increased heartbeats, accelerated breathing, blood pressure and even sweating among others which easily prepares a person to fight. It is very pertinent therefore for a mediator to understand to all these forms of stress triggers and have a critical analysis of measures to curb them efficiently in order to ascertain a fruitful ending of the mediation process.

D) IMPACTS OF STRESS AND EMOTIONS IN MEDIATION

Considerably, a person's sensitivity to subtly angry faces and their perceived threat or danger increases when the stress response is triggered repeatedly over time, causing cortisol levels to rise and thus stress. People with elevated cortisol consider their opponents as being angrier⁸ and more threatening to them than they appear to a less stressed individual which tend to alter their perception and interests in accepting to sign into an agreement with them, thus reshaping most probably, their negative impressions against them altogether. Besides, Men with high cortisol levels often become more fixed in their positions and less likely to be able to see things from someone else's perspective, reiterating only their views to be considered at all. These changes occur basically without awareness that they are happening and that's to say, unconsciously.

In addition, stressed parties may have biased memories about events that started the conflict earlier and their minds tend to be tuned in a certain way, non-aligning to the opponent's interest altogether. A very high cortisol levels at the start of a mediation may definitely alter the memories of information, emotions and attitudes experienced during the mediation when they are recalled later in the day, causing persistent disagreement between the parties involved.

⁸ Anger –How it affects people by Better Health Channel.

Also, lashing out, irritability⁹ and dismissive behaviours are all common alternative results of stress in our body. It is therefore, these results that may lead to interpersonal conflicts among parties. Think about the last time your friend, a co-worker, or even spouse were overstressed and you tried to talk to them about a joint task project or concern of yours and memorise exactly their interests in your project, whether or not they interestingly seconded to your proposition. They might have either shut you out or said they didn't have enough time – giving excuses signalling their un-wellness at that particular point of time. Therefore, the stress itself obviously, doesn't cause any conflict, but rather the resultant behaviour might produce interpersonal conflicts among parties altogether.

In mediation also, a stressed party or attorney will be more likely to misinterpret the intentions of the other party and perceive more hostility than is actually present, engineering such feelings as partiality, biasness or even ineffective professional mediation duty exhibition. They may find it difficult to clearly see the interests of the other party as a more stressed party may overreact to an offer that she perceives is too low or a demand perceived as too high and this will definitely interfere with the effective negotiation procedure as well as the deductions that comes thereafter from the proceeding.

It is also clear that, People who are experiencing or undergoing stress are less able to participate in conflict resolutions, this is because they will have difficulty engaging in higher-level thinking while stressed in order to amicably settle such disputes. Besides, stress, more often, releases chemicals in the human brain that impair the prefrontal cortex, a point in the brain where higher-level thought takes place. When a co-worker or friend is stressed or hyper stressed, he becomes much more difficult to calm down and think rationally and creatively in a manner expected of him for the dispute resolution thereby, making such victims highly vulnerable to act in otherwise in an irreconcilable gesture – purporting dispute escalation instead of resolution (anger).

Finally, Stress equally tend to ignite such feelings as anxiety, hopelessness and boredom as well as physical reactions such as nausea, fatigue, or even sleeplessness of the body – a situation of persistent thought and freezing of the mind as well as the body altogether. It is natural that for most people conflict often causes stress, especially if you are a conflict avoider and an ingenious person to deal with conflicts. In situations when one conflict initiates another, people often get caught up in a destructive conflict which tends to spiral

⁹ Stress symptoms: effects on your body and behaviour by Mayo clinic staff.

around like a spinning wheel into their minds causing persistent apprehension and fear for the body. Further, destructive conflict takes place when one person falls into a habitual pattern of behaviour in response to conflict and thus develops a sense of immunity towards the same, making him eminently brave and solid for further conflicts. However, there is usually a triggering event that causes this pattern to take place which might consist of avoiding conflict entirely and withholding grievances due to fear of the other person's reaction and the threats of bodily injuries to the person. Alternatively, one or both parties may be so wrapped up in trying to win that there's no opportunity for constructive problem solving and such feelings tend prolong even further in the mediation process – making harmonious resolutions more unlikely.

m) ROLE OF A MEDIATOR¹⁰ IN MANAGING STRESS DURING MEDIATION

Starting mediations with a short caucus session with each party immediately before joint session to relieve both parties. Starting a mediation with Early Caucus helps minimize stress on the parties and maximize understanding by the mediator of the parties' current emotional states before proceeding further with the mediation process. Besides, brief meetings of 10 to 15-minute meetings with each party and their counsel immediately before joint session allows the mediator¹¹ an opportunity to assess the emotional state of the parties and start to deal with or prepare for strong emotional outbursts during the actual mediation session starts. Furthermore, Early Caucus also gives parties the opportunity to become familiar with their surroundings and the mediator as well. Parties can also ask questions about the mediation process which gives them a stronger sense of emotional control once the session commences. It also gives the mediator an opportunity to start to build trust and rapport with the parties and establish an atmosphere of security and calmness, maintaining the utmost confidentiality throughout the program. Therefore, each of these measures can efficiently reduce the stress experienced by the parties in the conflict resolution.

Secondly, Acknowledge and normalize stress as well as emotions between the both parties. Mediators have traditionally been taught to acknowledge emotions, however, it is equally important to acknowledge stresses too. Mediation parties are typically in a situation where many stress triggers will doubtlessly be present, ranging from coming to an unfamiliar location, to meeting the mediator for the very first time and during a conflicting moment, to

¹⁰ Physiological Effects In Mediation and the Role of the Mediator by Andrea Hartmann Piraudeau – February 25, 2022.

¹¹ A Matter of feelings: Mediator's Perceptions of Emotions in Hierarchical Conflicts by Mariem Kalter, Katalien Bollen, Martin Euwema and Alian-Laurent Verbeke – 2021.

also anticipating an encounter with their adversary party altogether – a reasonably fierce situation altogether. Mediators can further suggest methods to cope with stress for instance, taking a few deep breaths, calling for a break, or even journaling during caucuses with the other party so as to maintain a steadfast atmosphere and good mood of the parties therein.

Thirdly, Encouraging parties to name their own emotions rather than labelling them by yourself. This is a very important skill in a mediation process. Mediation training often suggests to mediators to acknowledge emotions as a way of reducing high emotions. Thorough studies show that strong emotions are most effectively diminished when the party names the emotion rather than when a third party labels them on their behalf. Whenever they name themselves such emotions, it frees their minds to interact with people and by this the sense of understanding to their other people is always ignited in the body. For instance, instead of saying, “it sounds like this is making you angry,” refrain and ask, “What emotion are you feeling right now?” This is the most appropriate technique of dealing with human emotions during mediation and client counselling altogether.

Fourthly, Make sure both parties have sufficient time to recover from strong emotions before engaging in decision-making activities at the end of the mediation session. This is because whenever, parties have been subject to repeated same stressors, they will need time for stress hormones to diminish before they can effectively make decisions in such negotiation or mediation forums. However, moderate stress levels help parties focus their attention, yet too much stress makes it difficult for them to effectively hear various viewpoints, reassessing options, and also make decisions consciously. Mediators should accordingly use time in caucus and breaks to make sure stressed parties have at least a minimum of 30 minutes of recovery from such stress before moving into decision-making activities of the mediation¹² or else, such decisions while parties are still stress shall never be a reasonable and equally harmonious decision and it has a high tendency of being disregarded by any of the parties so stressed.

Additionally, minimize venting in mediation as it serves to increase stress during the session. Though some mediation literature suggests that allowing parties to vent can release pent up emotion and allow parties to focus on solutions, however, this is not true in real sense. Scientifically, venting strong emotions is a powerful trigger of the stress response and can definitely lead to high cortisol levels which makes settlement less likely at the end of the

¹² The Role of Mediation in resolving workplace relationship by Donna Margaret Mckenzie under the International Journal of Law and Psychiatry.

session altogether. Therefore, although venting can sometimes reveal underlying interests of the parties, it is equally more likely to provoke a defensive response in the opposing side and thus may easily lead to higher stress levels for all parties involved in the mediation. Accordingly, Mediators should not encourage venting, but rather, when a party displays strong emotions and is determined to speak their mind during the session, it is best that it be done in a caucus with the mediator before joint session is initiated. This helps to give the mediator insights into the emotional level of the party, and provide an opportunity for the mediator to counteract the emotion as well as giving the party time to recover from high stress hormone levels in the body before getting to the decision-making portion of the process thereafter.

And finally, summarize as quick as possible to help improve the accuracy of memories during the session. Mediator's instructions, as well as statements made by other parties or attorneys in early stages of mediation, may be recalled inaccurately later in the process by parties with high stress levels as then tend to forget easily or pay very minimal attention during the session. Mediators should therefore, be prepared to summarize what was said earlier in the day as quick as possible in order to help stressed parties understand where the opposing party stands and to make sure parties have accurate information when weighing alternatives in the decision-making phase of the mediation without forgetting any crucial information stated by both parties while they decide for themselves.

CONCLUSION

Ultimately, Conflicts are considerable parts of human relationships and thus merely, cannot and should not always be avoided considering their other broader importance in shaping other societies and as a means of demanding for social, as well as individual rights and justice in total. However, we are definitely able to choose how we can address them and that is when mediation comes into the picture altogether. As part of our everyday lives, conflicts can open new possibilities as well as they can represent an onerous challenge which shall then be resolved in the best possible way. Moreover, conflicts can also be very intimate and when dealing with them or their aftermath, we are often exposed and vulnerable to greater misunderstandings due to emotions, anger, threats of fear and apprehensions of danger and so the way we choose to address our conflicts is very much important. These greater challenges is definitely due to the implications of the neuroscience and its interplay in the minds and the bodies of such victims of the conflict. Consequentially, whoever is trusted with resolution or

management of the conflict, preferably ought to be a judge, an arbitrator, or a mediator who then shoulders great responsibility and thereby, is in the position of power and trust of the parties involved in the conflict. Following that, a mediator must not only be an expert but should also be a trustworthy and ethical person who understands his or her responsibility being ethical, professional and also legal responsibility altogether.