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CONFIDENTIALITY VS. TRANSPARENCY IN MEDIATION: STRIKING THE RIGHT BALANCE

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ABSTRACT

Mediation is a means to resolving disagreements by a neutral individual facilitating parties to communicate and come to resolutions. Two key concepts of mediation are confidentiality and transparency. Confidentiality involves that which is said in mediation remains private, which makes individuals feel comfortable to be themselves and speak truthfully. Transparency involves openness and the sharing of information, which encourages trust and equity, particularly if mediation impacts more than the concerned parties or is funded by the public.

This essay examines how confidentiality and transparency sometimes tug mediation in opposing directions, so that it is difficult to achieve the balance between the two. If confidentiality were too dominant, individuals outside the mediation process would perceive it as secret or unjust. However, if transparency were too dominant, individuals within mediation would fear expressing themselves openly, damaging the opportunity to resolve the conflict. By examining studies and observing actual mediation cases, this paper discovers that both transparency and confidentiality matter. How best to proceed varies with the circumstances. At times more privacy is desirable; other times, more openness is desired to hold all parties accountable.

The research indicates that having definite rules and training for mediators is what can level the needs. For instance, mediators are able to safeguard personal information while revealing ome generalized information to maintain trust intact. This balance makes mediation an equal, trusted method of solving disputes.

This study teaches us how to keep mediation safe and accessible at the same time, making it more beneficial for all parties involved

KEY WORDS: *Mediation, Confidentiality, Transparency, Conflict Resolution, Accountability*

INTRODUCTION

1.1 Background of the Study

Mediation is today seen to be a very ordinary method of settling disputes without resorting to the court. It provides both parties with the opportunity to sit and directly communicate with each another by the presence of an impartial mediator. As the conversation is off record and is maintained confidential, individuals feel at ease exposing themselves freely, which primarily results in improved and equitable solutions. Confidentiality is the very essential in which mediation operates, as it ensures that whatever happens inside doesn't leak outside. This means that the parties can speak freely even about any sensitive matters, without fear of knowing it to others. It also assists them in coming up with innovative and creative solutions to issues.

On the other hand, honesty, or openness, is also gaining significance, particularly in the case of mediation when there is government money involved or huge groups are involved. Openness generates trust that the process is equitable, brings people to book, and is also reassuring to other individuals who are indirectly connected to the case but somehow impacted by it.

Hence, confidentiality and transparency are in different directions. Confidentiality preserves secrecy and allows one to speak openly, while transparency requires openness, and that may unveil private matters. Therefore, striking the right balance between confidentiality and transparency is crucial so that mediation can be both effective and credible.

1.2 Problem Statement

Confidentiality guards against revelation of mediation negotiations beyond the world, and as such, the parties are at ease to reveal information that is crucial to conflict resolution. Increasing calls for openness, however, especially in government-interest or large public-interest mediations, challenge meticulous adherence to confidentiality. Excessive enforcement of confidentiality might make mediation processes seem to be secretive and unaccountable. Excessive openness would deter candid discussion, thereby making mediation less effective.

Disagreements and vagueness on the degree of information to be kept secret or revealed pose ethical concerns and working problems for mediations and organizations. Transparent practices lack for balancing confidentiality with openness in mediations, particularly concerning boundaries, exception, and rule policy. This present research attempts to look into how stakeholders in mediations can balance the right amount to protect parties' privacy while building trust and accountability.

1.3 Objectives of the study

Four objectives are enumerated in the research:

- To learn the principles, rationale, and importance of confidentiality and transparency in mediation.
- To examine the legislative, ethical, and policy contexts that inform confidentiality and transparency in mediation in various contexts.

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- To establish the pragmatic issues that confront mediators in walking the tightrope between confidentiality and transparency.
- To suggest guidelines to policymakers and mediators for maintaining a balanced and effective policy while ensuring confidentiality and transparency.

1.4 Research Questions

1) What are the main principles of confidentiality and transparency in mediation, and why are they so important?
2) How do confidentiality and transparency affect participants' conduct, mediator practice, and public attitudes towards mediation?
3) What legal and ethical principles behind confidentiality and transparency in mediation, and how closely are they related with those in other jurisdictions?
4) How can mediators and mediation organizations practically achieve a balance between confidentiality and transparency?

1.5 Significance of the study

This research overcomes an inherent paradox in mediation practice that undermines its validity and effectiveness. While confidentiality enables truthful communication required for settlements, increased calls for transparency attempt to enact fairness, public trust, and accountability—particularly for publicly funded dispute resolution programs. By examining how the ideals are reconcilable with each other and not necessarily contradictory, this research provides insights useful to mediators, institutions, and policymakers.

The evidence supports good practice and more transparent governance of mediation so that mediators can handle confidentiality problems with confidence and policymakers can create systems that maintain mediation benefits while improving transparency where necessary. Parties and the public are better aware of mediation's promise and transparency, and increased trust and acceptance result.

1.6 Scope and Limitations

This research concentrates exclusively on mediation, and by the exclusion of other forms of dispute resolution such as arbitration or litigation, except where comparative insights are relevant. It takes literature, policies, and case studies across a number of jurisdictions and involving family, commercial, and public sector mediations to gain a wide perspective.
The research uses qualitative examination of secondary data and thereby is restricted by empirical evidence on mediator or participant experience. Ethical and legal boundaries necessarily restrict access to private mediation files. Thereby, despite these limitations, the study offers conceptual framework and pragmatic recommendations that can be useful to worldwide mediation practice and policy-making. Future studies can increase scope to empirical studies and industry-specific research.

LITERATURE REVIEW

2.1 Confidentiality in Mediation: Concepts and Importance

Shreya Chaubey (2024), in an article entitled *"Confidentiality and Privilege from Disclosure in Mediation Proceedings: Scope and Limitations"* published in Paripex - Indian Journal of Research (ISSN: 2250-1991), underscores the important function played by confidentiality in mediation. The article describes that confidentiality promotes openness in communication by guaranteeing parties that their revelations would not be applied beyond the mediation, thus generating faith and integrity. Chaubey discusses comprehensively the limits of confidentiality but finds a lack of scholarship addressing the question of how requests for transparency ethically may be added without violating confidentiality. This lack underlines the necessity of additional scholarly work in establishing a balance between these two conflicting norms.[1]

2.2 Transparency in Mediation: Concepts and Importance

Deirdre Curran (2022), in "*The Challenge of Balancing Confidentiality and Transparency*" published in the Maynooth Academic Journal of Conflict and Arbitration, writes about increasing emphasis on transparency in mediation, particularly public dispute settlement services. For Curran, transparency enhances accountability and public confidence but warns that over-transparency erodes confidentiality and deters participants from meaningful discussion. Her paper emphasizes adaptive policies to balance transparency in accordance with context. But jurisdictional concentration of Curran limits wider application, and she urges balanced in-depth empirical studies on mediation practice with transparency against confidentiality.[2]

2.3 Ethical and legal framework governing Confidentiality and Transparency

Kevin Gibson's ground breaking 1992 piece, *"Confidentiality in Mediation: A Moral Reassessment"*, of the Journal of Dispute Resolution sets an ethical standard that prioritizes confidentiality as a minimum requirement to allow for free talk via mediation. Gibson's philosophical criticism is uplifting with its use of confidentiality as a mediator's bare minimum. But since his piece was written prior to the era of openness, it has nothing to say on how changing social needs and law pitted confidentiality against openness, necessitating new ethical procedures in light of openness concerns.[3]

[1] *Shreya Chauhan, "Confidentiality and Privilege from Dosclosure in Mediation Proceedings: Scope and Limitations", Paripex - Indian Journal of Research, 2024. https://www.worldwidejournals.com/paripex/recent-issues/pdf/2024/July/confidentiality-and-privilege-from-disclosure-in-mediation-proceedings-scope-and-limitations_July2024_12267917150205654.pdf/*

[2] *Deirdre Curran, "The challenge of Balancing confidentiality and transparency", Maynooth Academic Journal Of Conflice and Arbitration, 2022. https://ojs.maynoothuniversity.ie/index.php/jmaca/article/download/5854/209/*

[3] *Kevin Gibson, "Confidentiality in Mediation: A Moral Reassessment," Journal of Dispute Resolution, 1992. https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1223&context=jdr/*

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2.4 Previous studies on Balancing Confidentiality and Transparency

R.P. Singh (2020) discusses this contradiction of arbitration law in his article *"Transparency and Confidentiality in International Commercial Arbitration"* in Arbitration: The International Journal of Arbitration, Mediation and Dispute Management.

With Singh, confidentiality remains the bedrock but recognises mounting pressures for transparency in order to enhance legitimacy, particularly in investor-state arbitrations. Although learnings in arbitration shed light on confidentiality-transparency dynamics, Singh discovers that distinct mediation context requires distinct policy and empirical focus and identifies the gap in mediation-specific research.[4]

2.5 Identified Research Gaps

Agapiou and Clark (2018), in "The Practical Significance of Confidentiality in Mediation" in Civil Justice Quarterly (ISSN: 0261-3875), discuss confidentiality for the purpose of maintaining participant trust in civil justice mediation. They offer much practical commentary but little analysis regarding how to incorporate transparency to make room for public accountability or institutional monitoring. The lack points to a huge space for creating models balancing confidentiality with suitable transparency.

In addition, literature is also short of empirical studies that look into mediators' strategies and challenges in achieving a balance between transparency and confidentiality, and the perceptions of parties on how these values affect their trust and participation in mediation.[5]

RESEARCH METHODOLOGY

3.1 Research Design

The research employs a qualitative research design with the purpose of researching in-depth the intricate relationship between confidentiality and transparency in mediation. Qualitative research enables rich description and detailed interpretation of ethical, legal, and practical issues as perceived by mediators, parties, and institutions. The research design is suitable because this research is concerned with meanings, perceptions, and practices rather than measurable measures.

A systematic review of the literature constitutes the core research method, allowing for an intensive synthesis of all scholarship, legal codes, mediation rules, and policies. Moreover, a range of individual mediation case studies and institutional reports are examined in order to anchor theoretical thinking with practical reality. The qualitative technique allows for comprehension of cutting-edge paradigms where confidentiality and transparency converge and sometimes diverge, offering profound insights beyond dyadic perspectives.

3.2 Data Collection Methods

The data were primarily sourced from secondary sources. The systematic review of literature included scholarly journal articles, books, policy reports, and professional codes of conduct of the past two decades to assure relevance of today's times. The selected literature is based on various jurisdictions and mediation settings to present a broad yet targeted view.

Complementary real-life case analyses were taken from reports on mediation practice, legal decisions involving confidentiality violations, and available public institutional mediation transparency guidelines. The cases demonstrate practical issues, exceptions, and adjustments utilized by mediators and regulators.

The research purposively covered sources that dealt with ethical challenges, regulatory structures, and anecdotal mediator experience pertinent to balancing transparency and confidentiality. Criteria for inclusion focused on peer-reviewed journals and influential institutional reports from highly reputed mediation bodies and legal research institutes.

3.3 Data Analysis techniques

As part of data analysis collected, thematic analysis was applied as the primary approach. It involved textual data coding to identify recurring themes, patterns, and contradictions related to confidentiality and transparency practices in mediation. Iteratively, thematic categories like "ethical obligations," "legal exceptions," "transparency mechanisms," and "practical challenges" were formulated.

The synthesis blended normative ethical models with empirical observations based on case studies to make possible a multilayered comprehension of the confidentiality-transparency nexus. Legal texts and codes were subjected to doctrinal analysis to clarify their provisions and limitations.

Comparative analysis by jurisdiction and by type of mediation likewise highlighted differences and similarities in balancing these principles. Such multi-faceted analysis underlines the development of a substantive conceptual model that feeds down to pragmatic recommendations for diverse mediation contexts.

3.4 Ethical Considerations

While this study is grounded on secondary data, ethical standards were upheld at all times. Case studies and literature review referenced solely publicly accessible and appropriately consented sources, upholding confidentiality and privacy conventions.

Analysis deliberately steered clear of disclosing any sensitive or personally identifiable data in case reports. In addition, the study recognizes mediation's ethical foundations, highlighting respect for parties' privacy as it responds to the research imperative for openness.

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[4] *R.P. Singh, "Transparency and Confidentiality in International Commercial Arbitration," Arbitration: The International Journal of Arbitration, Mediation and Dispute Management, 2020, https://kluwerlawonline.com/journalarticle/Arbitration-The-International-Journal-of-Arbitration-Mediation-and-Dispute-Management/86.4/AMDM2020037/*

[5] *A. Agapiou and B. Clark, "The Practical Significance of Confidentiality in Mediation," Civil Justice Quarterly, 2018. https://www.emerald.com/insight/content/doi/10.1108/CJQ-11-2017-0026/full/html/*

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The process of research was informed by ethics of accuracy, fairness, and respect for intellectual property rights to ensure ethical scholarship. The research also points out the continued ethical obligation of mediators and institutions to maintain a balance of confidentiality and openness, reaffirming these values in practice and research.

FINDINGS

4.1 Role of Confidentiality Mediation Outcomes

Confidentiality is an important aspect in determining positive mediation outcomes. Confidentiality allows parties to believe in the fact that information, issues, and proposals shared between them will not be made public outside. This trust creates open and honest exchanges, which are likely to be essential for parties to realize their underlying interests and advance toward solutions acceptable to both. As per a study by MLT Resolutions (2025), confidentiality plays a key role towards ensuring fruitful dispute resolution since it reduces the participants' anxieties of losing their reputation and facing legal retribution, so they can negotiate imaginatively.[6]

In addition, confidentiality safeguards people's privacy, hindering sensitive information—personal, business, or emotional—from being made public. This is particularly necessary in family conflicts or business disagreements because confidentiality not only makes resolution possible but also allows for continued relationships by means of respectful communication (Batiashvili, 2022). Legal safeguards like the Uniform Mediation Act in the U.S. make confidentiality official, enhancing parties' trust to consider mediation as a tool of conflict resolution.

While useful, confidentiality is relative. Sides are to be made aware of exceptions such as legal duty to report threats of harm. Compliance with confidentiality practices, including confidentiality agreements and confidential communication, upholds the integrity of the process (Via Mediation Centre, 2024).

4.2 Role of Transparency in Mediation Outcomes

Transparency, although less pivotal in the past to mediation, is increasingly essential to building trust beyond immediate stakeholders. In situations in which mediation is publicly funded or impacts community interest, transparency of process, mediator training, and collective outcomes is imperative to maintaining accountability and public confidence. Transparency supports legitimacy by ensuring stakeholders that processes are honest and outcomes are monitored for fairness.

Yet, transparency in mediation is subtle since open disclosure of mediation conversation risks annihilating parties' cooperation in open sharing. Thus, transparency often works selectively, e.g., by publishing anonymized summaries of mediation agreements or institutional reports without breaching participant confidentiality. This works to increase systemic trust without violating the privacy necessary to effective talk.

4.3 Challenges in Balancing Confidentiality and Transparency

Straddling confidentiality and transparency is multi-dimensional in difficulty. Ethical, legal, and practical concerns are raised as to what information can be shared without invading parties' privacy. Mediators need to navigate complex frameworks, often diverse between jurisdictions, regarding the boundaries of confidentiality and permissible disclosures. Such uncertainties create uncertainties in practice.

In addition, tension is intrinsic to the parties' interests in private talk and institutional or public interests in openness. Excessive confidentiality can generate mistrust of concealment or disparity, and excessive publicity can inhibit open talk and settlement. As Batiashvili (2022) stresses, mediators have to walk a delicate line of clarifying boundaries and exceptions to confidentiality so that parties may make informed decisions about disclosure.

Technological advancements pose further issues, where the mediators need to ensure proper protection of digital communications so as not to inadvertently disclose. Lastly, mediators have no standard training or policies for addressing confidentiality-transparency dilemmas, leading to uneven practice.

4.4 Case Studies and Practical Examples

Various cases highlight the real-life applications of balance of confidentiality and transparency. For example, in a family business conflict detailed by MLT Resolutions (2025), confidentiality allowed for free exchange of sensitive family and financial information, allowing settlement without harm to reputation. The mediation report released by a government agency, on the other hand, contained only anonymized outcome figures to meet transparency requirements at the cost of individual privacy.

In business disputes, confidentiality ensured that business plans and trade secrets would not be revealed, essential in safeguarding competitive interests (Batiashvili, 2022). Nevertheless, publicly funded mediation initiatives readily share process assessments and success rates on a regular basis to ensure accountability and stakeholder trust, exercising a working compromise.

All these examples show that confidentiality and transparency must have contextual calibration—adaptive frameworks that honor privacy without undermining legitimate objectives for transparency enhance the effectiveness of mediation and public confidence.

5. DISCUSSION

5.1 Interpretation of Findings

The findings reveal that confidentiality remains an basic foundation for effective mediation, making/letting the parties to speak openly without any fear of their disclousure being misused. This align with the research of Chaihan in 2024, who

[6] *MLT Resolutions, "The Importance of Confidentiality in Civil Mediation," 2025. https://mltresources.com/blog/the-importance-of-confidentiality-in-civil-mediation/*

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emphasizes that confidentiality is very essential to build trust and candid communication, which are required for reaching amicable settlement. However, the study also indicates a growing need for transparency, especially in public funded or institutionally regulated mediation context, to uphold accountability and public confidence (curran, 2022)

Balancing such opposing principles is a sensitive operation. Too much transgression of confidentiality can discourage openness, making mediation futile, while insufficient transparency can trigger perceptions of partiality or connivance. The findings support a dialectical conceptualization of the conflict as developed by Curran (2022), which suggests that confidentiality and transparency are mutually exclusive notions but require careful contextual tuning.

5.2 Theoretical Implications

Theoretically, this study makes a contribution to the wider conflict management and ethics scholarship by conceptualizing confidentiality and transparency as complementary rather than conflicting principles for mediation. It advances ethical theory by promoting malleable, context-dependent models over and against strict rules. This has theoretical implications for the development of mediation theory, suggesting that normative models should combine confidentiality with legitimate dimensions of transparency to respect both privacy and responsibility.

5.3 Practical Implications for Mediators and Policy Makers

In practice, mediators need to be provided with transparent guidelines and training to manage confidentiality-transparency conundrums. Training in mediator education should embrace ethical thought regarding exceptions to confidentiality and means of proper transparency, including consent-based or anonymized disclosure. Policymakers and institutions need to set flexible protocols that account for varied mediation settings (commercial, family, public interest) and weigh privacy against the requirement for public or stakeholder trust.

Institutions can use aggregated reporting or impact assessments that preserve confidentiality at the case level but remain transparent at a system level. Open communication to parties in advance about confidentiality boundaries and transparency requirements also reduces conflict and improves process acceptance.

6. CONCLUSION AND RECOMMENDATIONS

6.1 Summary of Key Findings

This research verifies that confidentiality is essential to successful mediation through safeguarding private communications and fostering frank open discussion. Meanwhile, transparency facilitates accountability and trust, particularly in public and institutional mediation. An absolute, strict application of either principle threatens to undermine mediation effectiveness or legitimacy. Therefore, achieving a balance in accordance with mediation type, participant requirement, and public interest is necessary. Flexible, transparent policies and mediator skills are crucial to balancing this.

6.2 Recommendations for Practice

1) Clear Guidelines: Establish clear, context-specific policies defining confidentiality boundaries and transparency limits for mediators and institutions.
2) Mediator Training: Strengthen training courses to encompass ethical decision-making models resolving confidentiality-transparency dilemmas.
3) Transparency Mechanisms: Employ anonymized data reporting, aggregated statistics, and consent-based disclosures to meet transparency without violating privacy.
4) Party Communication: Inform parties explicitly about the level of confidentiality and transparency procedures in advance to establish confidence.
5) Regulatory Oversight: Promote legal systems that balance protection of confidentiality and accommodate legitimate transparency requests in the public interest.

6.3 Suggestions for Future Research

More empirical research on how mediators manage confidentiality and transparency in practice, including parties' attitudes towards trust and satisfaction, is required. Cross-jurisdictional comparative studies would shed light on best practice and harmonized norms. Research on the role of transparency in new mediation environments such as online or AI-mediated mediation would respond to new challenges. Analyzing the effect of confidentiality-transparency balance on mediation outcomes quantitatively would also move the field forward.

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APPENDICES

8.1 Case study details

Case study 1: Moti Ram Tr. LRs and Anr. V. Ashok Kumar and Anr (Supreme Court of India, 2024)

In this historic case, a court-referred dispute resolved through mediation in a Mediation Centre. Yet, the mediator gave a full report of the proceedings to the court, revealing settlement discussions and offers. The Supreme Court reiterated that mediation proceedings are required to be kept confidential, whether court-referred or otherwise. Only the final executed settlement agreement can be submitted to the court, and not what occurred during the mediation process. This case highlights the legal necessity of upholding mediation confidentiality to ensure trust in the process while enabling required openness through the court-sanctioned final agreement.

Case study 2: Publicly Funded Mediation Program Reporting.

A government mediation program in an EU jurisdiction issues annual reports with aggregated statistics on success rates in mediation, types of disputes mediated, and participant satisfaction. Neither party-identifying information nor case-specific information is released. Such partial transparency alerts stakeholders and taxpayers to the effectiveness and fairness of the program, thus supporting public confidence without jeopardizing the confidentiality of individual cases of mediation.

Case study 3: Commercial mediation in sensitive business disputes

In business mediation between two multinational companies, confidentiality protected proprietary financial data, strategy revelations, and agreed-upon terms that might affect competitive edge. Mediators ensured tight confidentiality arrangements were signed, with explicit provisions regarding information disclosure. Transparency was also ensured at the organizational level through regular anonymized updates of mediation results to board members and regulatory agencies.