The social value of mediation

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ABSTRACT : *Society is increasingly fractured by the costly and lengthy trials every time there is conflict with someone else. Added to this is the physical and emotional wear and tear that litigation brings with it, which does not ensure the satisfaction of the solution either.*
This research has the purpose of showing the benefits of mediation, as well as the need for its dissemination and training of private facilitators.

KEYWORDS *-Mediation, flexibility, utility, cost-benefit.*

I.   INTRODUCTION

There have been efforts to provide all sectors with the opportunity to have access to justice on an equal level, with lower costs and taking into account not only situations of fact, but also taking into account emotions, perceptions, feelings and interests, as is the case with the alternative means of conflict resolution, even so, there is considerable ignorance of the existence of these alternatives that allow citizens to solve their problems peacefully, economically and quickly, addressing intra and interpersonal issues.
The Draft Declaration on the Human Right to Peace states that the right of "every human being to peace constitutes the foundation of the culture of peace", and that the right to peace is inherent in human dignity and that violence in all its forms it is "intrinsically incompatible with the human right to peace." (Arango, V.)
Mediation is a means of peaceful settlement of disputes, where through dialogue, techniques and tools, peace is fostered, to resolve conflicts by promoting peace among those involved.

II.   HEADINGS
1.   Substantive Values of Mediation
Mediation is a procedure through which people in conflict have the opportunity of resolving their conflict on their own with the help of an impartial third party that will promote communication, guide the procedure and formalize the consensual decision of those involved.
That is why the need to know the values that support mediation is latent, however many authors or laws establish them as principles:

- Volunteer: It is a procedure where users accept this method for themselves and without obligation.
- Confidential: What was said or shown in the sessions and / or hearings is exclusive of mediation and cannot be used in another process.
- Impartial: The third party that helps the communication establishes a balance between the users, without benefiting one more than the other.
- Neutral: Same participation and opportunities within the sessions.

In addition, it is also important to point out the following values that are part of the mediation procedure:

- Interdependence: participants need each other to reach a dialogue agreement.
- Honesty: A successful agreement depends on the sincerity with which the parties participate.
- Integrity: Be related to the principles and values
- Equity: Equality of situations and opportunities is promoted
- Transparency: Everything is done in person and in front of the participants

For Alejandro Nató in his book Community Mediation, the following is established: "We must then examine the values and principles that the mediator must put into action. Thus, we find those who can be considered foundations of Mediation: neutrality, confidentiality and voluntariness" (Nató, A., 2006).
Nató says regarding neutrality "we must pay attention primarily to the respect and recognition of the otherness and freedom of individuals", which is precisely as analyzed in the reading of the neighbor has died, the need to

consider our fellow men and relate to them, respecting their ideologies, culture, preferences and religion, recognizing them as individuals close to us with diverse interests and needs.

Neutrality is a virtue and value that must be observed in the impartial third party that aids mediation communication, called mediator.

Confidentiality is the "transfer of all information expressed in this framework and that contributes to maintaining a more relaxed dialogue with and among the participants. Likewise, it protects the mediator from the obligation to act as a witness in an eventual judicial process in which the situation set forth in this space is exposed". (Nató, A., 2006)

It is said that everything acted and said in the mediation sessions is confidential, and no participant (mediator or mid) can ventilate the issues discussed there.

In the case of voluntariness, it is the pillar of mediation, since without will it would be impossible to reach a fair and convincing agreement for both parties, since it would be endowed with all vice by not having the consent of any of those involved in the mediation process.

We can also mention as essential values of mediation the following:

- Co-responsibility: The shared responsibility and obligation acquired by those involved in initiating the mediation process, regarding communication, respect, participation, observance and compliance with the rules and principles.
- Inclusivity: everyone, regardless of sex, race, condition or customs, can access mediation.
- Complementarity: it is not a process outside the jurisdiction, it can be processed intra or extrajudicially, in addition to not excluding certain disciplines in its process, but it is enriched by the knowledge and expertise of various areas of knowledge.
- Transparency: There are no vices or issues that are made behind the backs of those involved, everything acted and agreed upon is in the presence of the users and by their decision.
- Flexibility: if the process gets stuck at some point, it is possible to go back to one of the previous stages in order to investigate or get more information about a topic.

Then, we see that it has been used by some authors, as a synonym for the principles and values of mediation.

When talking about substantive values, we refer to the real essence of something, in this case of mediation and how these values distinguish it from other existing procedures.

Mediation has come to change the social paradigm of injustice, lack of opportunities and little access to the administration of justice where 1 person decides the controversy, even sometimes, due to procedural failures or errors, thus tearing apart the social fabric.

A. What is the contribution or usefulness of mediation regarding society?

Mediation provides the possibility for people to access justice in a peaceful and dialogic manner, giving them the opportunity to decide the agreement or end of the dispute, having real and valid legal effects.

The usefulness of mediation in society is precisely that in addition to the benefits mentioned above, it allows intervenors to express feelings, emotions, needs and interests, which in a judicial process are irrelevant.

This contributes to the emotional and social peace of the mediation process participants, being those who have control of the solution, and above all, that emotional issues are taken into account.

It is essential to heal the social fabric, peaceful coexistence, solidarity and empathy among our neighbors, and this can be achieved through mediation.

2. *THE SOCIETY AND ITS SOCIALIZING INSTITUTIONS*

"The purpose of society is to create members in their image varies over time and space is a product of society." (Tabares, 2015)

Human beings are social beings by nature, since our beginnings of life in forests and caves, men saw the need to live with other tribes and exchange satisfiers.

Likewise, the family appears as the first and main socializing institution, as the central nucleus of development of human beings and the first human interactions since we were born.

"The family as the main agent is in fact the most important because the family with which we socialize first are the main socializing agents, they are the first education we receive, they teach us the basics but important for society and everything that they (family) teach are the main values of coexistence for society ". (Tabares, 2015)

The values and principles of each person's formation are primarily given through their family; however, the social dynamics have varied today, as there are too many dysfunctional families that care more about material issues than personal issues of the family itself.

"Precisely because of the complexity of each human being, it is necessary to produce a synergy between authorities and citizens that allows us to approximate and, if possible, merge the duty to be with reality.

To get closer to the duty to be, the family, the school and the community as basic socializing institutions are assigned a fundamental role, of course, always under the generation of consensus and the guidance of public organizations". (PESQUEIRA, 2010)

Then, we have in principle, as socializing institutions to the family, the school and the community, which is where the human being naturally develops with his peers.

2.1. The Family

"As regards the family, section III of article 16 of the Universal Declaration of Human Rights, establishes that it is a natural and fundamental element of our society." (PESQUEIRA, 2010)

It also contemplates the impact that the family must have through the Universal Declaration of the Rights of the Child, Convention on the Rights of the Child and in the Declaration on the Promotion between the Youth of the Ideals of Peace, Mutual Respect and Understanding.

"… The family is the nucleus of society, and as such it plays a fundamental role in it. Within the multiple functions that the institution of the family has, we find that it is in it where the first experience of socialization of individuals is presented, there the skills that allow us to live in community are developed, social roles are transmitted and understood". (AUDE &AGUILERA, 2017)

2.2. The school

"Article 26 of the Universal Declaration of Human Rights states that education will aim at the full development of human personality and the strengthening of respect for human rights and fundamental freedoms, will favor understanding, tolerance and friendship between all nations and all ethnic and religious groups and will promote the development of United Nations activities for peacekeeping. "(PESQUEIRA, 2010)

Likewise, in the Universal Declaration of the Rights of the Child, and in the Declaration on the Promotion between the Youth of the Ideals of Peace, Mutual Respect and Understanding, the need for the teaching of values such as peace, justice, freedom, fraternity, etc.

2.3 The community

Article 29 of the Universal Declaration of Human Rights states: "that every person has duties with respect to the community, since only in it can he freely and fully develop his personality". (PESQUEIRA, 2010)

The community can be seen in the neighborhood, associations, religious groups, colonies, city, state, etc.

"Social reality influences the development of being from its development process in the apparently peaceful womb of its mother, because the influence exerted by the living conditions and the environment of its parent, are always present and will influence their physical and mental health.

Associating is due to an inner force of being that as a person leads him to break with sometimes suffocating individuality, but that inclines him to the relationship with other beings. Individuality is static. The relationship is dynamic. The association is a complementary balance between the two". (PESQUEIRA, 2010)

It is natural to associate and complement each other for a better coexistence and social interaction

A. Social Capital

When we hear the word capital, we usually relate it to the economic sense of something or someone, however, when we talk about social capital we mean social welfare produced by equitable circumstances where trust and reciprocity are generated.

"Bourdieu (sociologist, 1985): Social capital is" The aggregate of real or potential resources linked to the possession of a durable network of more or less institutionalized relationships of mutual recognition." Coleman (sociologist, 1990): Social capital is "The socio-structural resources that constitute a capital asset for the individual and facilitate certain actions of individuals who are within that structure." Like other forms of capital, Coleman points out, social capital is productive, enabling the achievement of certain ends that would not be attainable in his absence". (Durston)

That is to say, that social capital refers to the activities that only human beings with their intervention can perform, and with them real or potential resources will be obtained, it refers to the accumulation of human beings that constitute a whole in a society.

"The paradigm of social capital (and that of the neo-economic institutionalism on which it is based in part) states that stable relationships of trust, reciprocity and cooperation can contribute to three types of benefits:
• Reduce transaction costs
• Produce public goods, and

• Facilitate the establishment of effective grassroots management organizations, social actors and healthy civil societies". (Durston)

Certain benefits are manifested that are obtained as a product of the individuals acting in community, such as the production, constitution of societies, reducing costs and being the social actors.

"It is important to consider social capital as an innovation scheme within the MASC, that the meaning of this is to generate social conditions that had not previously been considered as observable within the social future, its effects, generate changes, generate conditions not provided for in the organization of a particular social group, so when identifying elements of social capital, we identify changes and usually positive, since its effect has that meaning, if it is social capital is welfare, when this last element is present then no it's social capital. "(BARRERA)

Human beings, and above all who have been involved in the science of mediation, being part of the social capital of Mexican society, we create bonds of trust, fraternity, solidarity and social change within our community.

B. Cohesion

"Those of us who live in the world today and each of its regions, were born in a world, whose distinctive sign is violence, in which socio-economic systems exalt individualism and relative values as a result of an alienating and alienated culture, which far from cohesive face us exacerbating the existential conception of the first me, then me and then me"(PESQUEIRA, 2010)

When we talk about cohesion we mean that link that we create as a product of human relationships, in search of positive effects.

Culture according to Kliksberg is a decisive factor of social cohesion, so that people can recognize each other, cultivate, grow together and develop collective self-esteem by translating a lifestyle into a culture and is in turn in values, and these in development. (GORJÓN)

In the different types of cultures that subsist in our country, we see a strong cohesion among its members, since they have the same customs, ideologies and ways of living.

"Community cohesion is defined as the integral process through which people and communities reach their full potential" (cohesióncomunitaria.org)

When we manage to act with solidarity, trust, empathy, assertiveness, tolerance and respect, we can achieve a social cohesion that benefits all social interaction, without distinction.

C. Common good

It is a set principle of conditions, which makes it possible to achieve and achieve its end; the common good establishes that it is not possible to sacrifice a community for the sake of the individual. The common good is above the particular good, the whole above the part. Personal dignity is above all, it is unthinkable to ask an individual to renounce their human dignity. There is talk of "not doing to others what you don't like to be done to you" (Putnam)

Everything that happens in the life course of a human being will have a positive or negative impact on his being, the way to deal with his problems and find solutions are derived from the praxis he has had throughout his life.

"Social support as a basic need seeks to be satisfied in terms of well-being, the same essential qualities of being constitute the particularity of needing to complement each other.

If the socializing institutions fulfill the mission entrusted to them, the conflicts will always be addressed by finding in them an opportunity to put into practice principles, values and cognitive abilities inherent in our common humanity (human nature)". (PESQUEIRA, 2010)

The common good is to renounce certain benefits or individual situations, to protect the collective well-being, the satisfaction of goods and services of all and for all.

"In order for the environment in the family, at school and in the community to be conducive to the profile of the human being to which we aspire, radical changes in relationships and in addressing conflicts are necessary. A new conception and vision of how we interact, as well as a new conception and vision of conflicts that allow us to understand the ingredients of the latter and address them, always taking care and strengthening our relationships, is the first step towards moving towards the construction of a culture of peace". (PESQUEIRA, 2010)

There are many situations that have been triggered by globalization, many material and banal perceptions and desires, which are directly affecting the relationship between individuals, issues of violence and lack of satisfaction of needs that are distorting the search for the common good.

3. MEDIATION AND SOCIETY

We have been addressing the substantive values of mediation and the relevance of socializing institutions in the life of every human being.

It is necessary to relate in a timely manner as the 3 socializing institutions relate to each other to articulate mediation and society.

We all seek to have a happy and full life, however, to achieve this it is necessary the intervention of the State and society, and act in tune for a collective and common welfare.

Jorge Pesqueira and Soto La Madrid rightly point out:

> "… Today we find a frank divorce between the duty to be contained in the regulatory framework of our country and a reality in which the State fails, both in the design and implementation of public policies aimed at that purpose, while that, as a society, we do not fully assume the obligation to approximate human behavior to the aforementioned must be.
>
> Peaceful coexistence, mutual help and shared responsibility, often move away from daily work, opening space to behaviors in which violence is privileged through behaviors, sometimes subtle and imperceptible and sometimes so explicit, that openly damage rights fundamentals of citizenship. "(Pesqueira, J. & Soto)

We agree that society has failed with its human behavior, demanding that the State be the one who solves all its problems without doing the part that touches us as citizens.

The State is obliged to create the basic conditions for the welfare of society, however, if we continue to be immersed in the world of consumerism, of obtaining material things and indifference to social contexts, the State can hardly solve only problems.

It is necessary for citizens to do our part within the social nuclei in which we operate, where, regardless of whether there is legislation in this regard; we act correctly and with mutual help.

> "Even in contemporary democratic societies, citizens have not been enabled in the institutions responsible for our socialization to address conflicts through dialogue, flexibility, tolerance, deliberation and the search for consensus. On the contrary, individualism and a reduced tolerance for frustration are erratically exacerbated when our conception of how something should be is contradicted." (Pesqueira, 2016)

So, it is when we have to question ourselves, what is the role that mediation plays in social cohesion? How are mediation and society articulated to reintegrate the social fabric?

To answer the above questions, it is essential to first analyze each of the 3 concentric circles of society:

(Nelson)

We have analyzed the importance of each of them and the social and legal recognition that they have been given by the State itself and by International Organizations.

However, we have seen how the coexistence within these 3 environments has been distorted.

In the family, family disintegration, the lack of teaching principles and values within the home, and above all the teaching and example of primary values such as respect and honesty are increasingly common.

For its part, the school has privileged legal reforms in education, which only bureaucratize what teachers do and neglect teaching, and even though the teaching is good academically speaking, teaching is neglected of values and attitudes essential to life.

And finally, in the community as a whole, the desire to have a lot of money, success and a life full of luxuries, has led to the neglect of children, that there is a feeling of loneliness, that we seek to satisfy needs with psychotropic substances without taking into account the real problem.

We have grown up in a society where the example has been to be the best, taking us through whom we cross, confronting those who are not on our side, and seeing only for our well-being.

We´re looking for1 governor and leader to solve the country's problems, when we are not willing to comply with traffic signs, we do not comply with the laws, we avoid taxes, we want the greatest benefit with the least effort.

The State through public policies that have a positive impact on rescuing the abilities and positive qualities of being is essential to regenerate the social fabric.

Mediation plays a very important role in social cohesion, rewarding positive attitudes and qualities of being, motivating empathy, solidarity and harmony among the participants and encouraging that the behavior achieved in the sessions does not stay in the procedure, but rather replicate in daily life.

This is how society showing their positive abilities that distinguish them as human beings, can generate a peaceful coexistence, with mutual help and empathy.

Mediation and society are articulated in a positive way by directly influencing the resolution of conflicts in a peaceful manner and privileging positive aspects that are rescued from being, such as goodness, compassion, forgiveness and tolerance.

This is how society is concentrated, from the beginning and as a primary nucleus, we have the family, then the training and social interactions that we have when attending school and in the end the community that is where all the social relationships occur, which can be benefited or harmed based on our behaviors.

That is why the need to promote mediation as an essential pillar of conflict resolution, not only as a public policy, but as a way to privilege the culture of peace and the pacification of society in its 3 fundamental and functional axes that They are Family, school and community.

III.   CONCLUSION

The overcrowding of ordinances to access justice, distort it, since people feel that access to justice is only for some and that it is costly and economically and socially exhausting.

Alternative means provide this new economic option, effective and less expensive for citizens of access to justice, where in some cases it is offered free of charge by the powers of the State.

In spite of the efforts that have been made in Mexico for the use of Mediation, it has been difficult, since only a small percentage of the population knows about their existence.

It is necessary to publicize mediation and restorative justice with a tendency first to rebuild the social fabric, secondly to restore the credibility of justice to society and thirdly to decongest the courts.

For this, training in the field of alternative means, principles and techniques that make them up is essential, so that they are developed properly and not as another business, since this would jeopardize their credibility.

We need to reward the positive qualities and abilities of being.

REFERENCES

JournalPapers:

[1] AUDE, R., &AGUILERA J.(Noviembre 2017), «La familia como realidad social y su importancia.» *Lecturas Jurídicas*: 143-164.

[2] BARRERA, F. s.f.*google*. 18 de febrero de 2016. <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwid1IbY1P_cAhWp6YMKHfXhDhYQFjAAegQIABAC&url=http%3A%2F%2Fwww.facdyc.uanl.mx%2Fassets%2F4.-la-mediaci%25C3%25B3n-como-factor-de-generaci%25C3%25B3n-de-capital-social-para-el-estado-d>.

[3] DURSTON, J., s.f.*reseachgate.net*. 20 de noviembre de 2015. <https://www.researchgate.net/publication/40941529_Que_es_el_capital_social_comunitario>.

[4] GORJÓN, F., s.f.,*cienciajuridica.ugto.mx*. 13 de mayo de 2016. <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwjev8Hr7__cAhUJZKwKHUzhBxIQFjAAegQIARAC&url=http%3A%2F%2Fwww.cienciajuridica.ugto.mx%2Findex.php%2FCJ%2Farticle%2Fdownload%2F175%2F165&usg=AOvVaw2QoTP1URVhCAfQHN1zwy9>.

[5] PESQUEIRA, J., & SOTO, M. *Justicia Alternativa y el Sistema Acusatorio*. Secretaría de Gobernación, s.f.

[6] PUTNAM, R., s.f.*www.youtube.com*. 06 de diciembre de 2012. <https://www.youtube.com/watch?time_continue=143&v=9PEChN4nAYs>.

[7] Tabares, M. s.f., *blogspot.com*. Septiembre de 2015. <http://marialejandra23.blogspot.com/2015/09/ensayo-agentes-socializadores-y-su.html>.

Books:

[1] ARANGO, V., 2007., «PAZ SOCIAL Y CULTURA DE PAZ.» *CORTE INTERAMERICANA DE DERECHOS HUMANOS*.<www.corteidh.or.cr/tablas/30445.pdf>.

[2] NATÓ, A., 2006. *Mediación Comunitaria*. Buenos Aires: Universidad S.R.L

[3] PESQUEIRA, J. 2016. *La Justicia Restaurativa en el marco del procedimiento penal acusatorio en México y reforma al Código Nacional de Procedimientos Penales*. MÉXICO: INSTITUTO DE MEDIACIÓN DE MÉXICO.

[4] PESQUEIRA, J., 2010. *MEDIACIÓN ASOCIATIVA Y CAMBIO SOCIAL: EL ARTE DE LO POSIBLE*. SONORA: OJINAGA COMUNICACIÓN S.C.

Others:

[1] Nelson, T. (2016). Parent, Family, and Community Involvement in Education. Febrero 5, 2020, de wordpress Sitio web: https://mrsnelsonteaches.wordpress.com/2016/08/17/parent-family-and-community-involvement-in-education/