



ADR: A Catalyst of Change?

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Conflict and Society

Life is nasty, brutish, and short, according to Thomas Hobbes¹. Men, according to him, are basically "selfish, driven by fear of death and the hope of personal gain"². Thus, by the nature of human design, we seek power to overpower others for survival and self-preservation. In his book entitled, *Leviathan*, he pointed out that men should be governed by a sovereign and a parliament, whereby men will enter into a social contract to surrender some of their rights to the government for the sake and safety of all. Without a governing body, society would be chaotic in the pursuit of power. Thus, conflicting interests will arise and divide the people in factions which, if not treated in accordance with law and order laid down by the government, would tear the very foundation of the society.

In the Philippines today, the theory of social contract is no longer transcendental. It is a reality in the perspective of our political system whereby some of men's rights are surrendered and subject to the least limitable police power of the state. In return, the state protects its people as *parens patriae*, that is, "the father of his country and the ultimate guardian of all people"³.

In reality, it is impossible to live in a society harmoniously and without conflict. Conflicting interests will surely arise sooner or later, between and among men. Whatever the causes may be, the end sought to be achieved is to reach an agreement where everyone is given an opportunity to speak and be heard based on terms agreeable with one another, in the name of justice and equity.

Theory and Purpose

"The primary mechanism of the government to settle conflicts is the Judiciary. One of the organs of the state, which has the duty to settle actual controversies involving rights which are legally demandable and enforceable"⁴. However, due to high number of cases lodged in our Courts, delays are imminent. The legal maxim that 'justice delayed; justice denied'

becomes more apparent. It also results in expensive litigation preying on a poor man's pocket.

To address this issue, the Congress, passed a law entitled, 'Alternative Dispute Resolution Act of 2004' ("ADR"). This law, without prejudice to the adoption of the Supreme Court of any ADR system, such as mediation, conciliation, or arbitration, is purposely to, in furtherance of State policy, "actively promote party autonomy in the resolution of disputes or the freedom of the party to make their own arrangements to resolve their disputes"⁵. "The State shall encourage and actively promote the use of Alternative Dispute Resolution as an important means to achieve speedy and impartial justice and declog court dockets"⁶.

Appreciation In Judicial Reform

The Alternative Dispute Resolution is recognized as part of our judicial reform because it greatly helps in the administration of justice in the country. Sec 2 of R.A. 9285 provides that, "the State shall provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases." The State greatly recognized the passage of this law for it is timely, speedy, cost-effective, and affords the parties the right set their own terms and conditions to agree upon. Unlike in court litigation, where parties are bound to adhere to the judgement of the court.

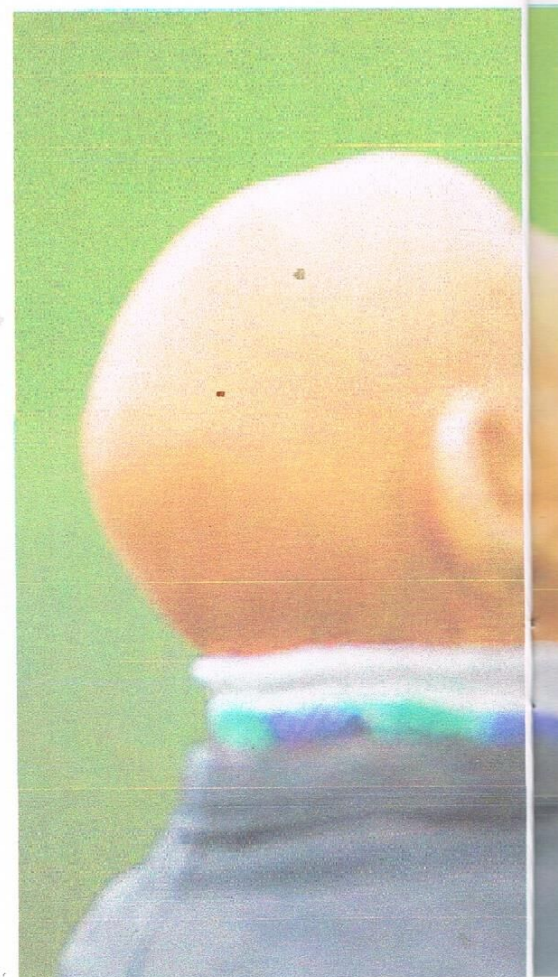
In applying and interpreting the law, Section 8 of R.A. 9285 provides that, consideration must be given to the need to promote candor or parties and mediators through confidentiality of the mediation process, the policy of fostering prompt, economical, "and amicable resolution of disputes in accordance with the principles of integrity of determination by the parties, and the policy that the decision-making authority in the mediation process rests with the parties"⁷. This provision means that, the parties are given a wide latitude of discretion as to the terms and conditions, within the bounds of law, with the help of the mediator in providing the most reasonable and equitable resolution, to arrive at an agreement.

Thus, conflicts, whether legal standing is present or not or whether

a right legally demandable and enforceable is in attendance or not, wantonly filed to harass, intimidate, influence, or forcefully subdue the opponent without legal basis, is prevented from ripening into becoming a court docket. It gives the parties speedy resolution of their conflicting interests because it is not obliged to follow strict formalities and procedures and keeps the parties away from costly adversarial litigation.

The Innovation

The ADR has made innovations and open new methods of dispute resolution. It is true that court litigation bounds the parties as to the determination and resolution of their disputes. On the positive, ADR expounds these boundaries and drastically reforms the judicial system, to say at least, to settle conflicts in court-annexed mediation or outside the bench, through third-party mediators and helps the system



into a judicial innovation.

By these, ADR is recognized not only as an alternative but as a primary option because parties, without prejudice to their right to file necessary actions, and as a policy of the State, is encouraged settle their issues at this level thereby recognizing the ADR as tool in reforming the judicial system of the country.

ADR: A Catalyst of Change

In line with the foregoing discussions, it is apparent that ADR is a catalyst of change in our judicial system, or is it? To the writer's mind, the adaptation of ADR is noble and just. While it is true that the primary function of ADR is to achieve speedy and impartial justice and declog court dockets,⁸ these ends sought to be achieved do not come easy without paying a price.⁹ Hence, some questions need to be answered.

Rights of the Parties

Does it trample the rights of the parties? The answer is in the affirmative. ADR can be used as a stalling tactic¹⁰, that is, something that someone does intentionally in order to delay taking action or prevent someone

from doing something for a period of time¹¹ and can be weaponized to delay, hamper, or prevent the speedy and impartial disposition of cases within and outside the bench. Thus, the rights of the parties may not be protected by alternative dispute resolution.¹² It resolves only issues of money or civil disputes. Alternative dispute resolution proceedings will not lead to injunctive orders. They cannot result in an order requiring one of the parties to do or cease doing a particular affirmative act.¹³ In reality, to achieve its goal of declogging court dockets, and for the mediator to have a high mediation rating, it forces the parties to settle their conflict based on their terms even without regard to the legal tenet thereby violating some, if not all, of the rights of the parties.

Deprivation of Substantial Justice

Is providing a speedy and impartial justice violate substantial justice itself in ADR? The answer is in the affirmative. On the first hand, one of the goals of R.A. 9285 and court-annexed mediation, is to achieve speedy and impartial justice.¹⁴ That is, the expedient disposition of cases or prevent or avoid delays in the administration of justice.

On the second hand, however, these goals, "speedy" and "impartial justice", are but legal fictions, an idealistic goal. Common logic would dictate that, things done speedily would not always result in absolute perfection and absolute perfection would not always result from things done speedily. Thus, speedy trial does not always result to providing impartial justice nor shall impartial justice be always the result of speedy trial. Thus, the existence of one derogates the effectivity of the other. There must be a careful treating of facts and application of law. A keen eye that considers all the circumstances necessary so as not to deprive the parties of substantial justice.

The consideration of facts in ADR is limited to the civil aspect of the issue.¹⁵ Generally, it does not apply to criminal cases for the offended party in crimes is the State and it does not bargain. In ADR, parties may have limited bargaining power. Parties do not have much of a say.¹⁶ While it is true that they are given the right set-up their own terms and conditions, this right is not absolute. It must be within the legal limits. The mediator has always

► 21





the final say and recommendation. Thus, when a Mediator forcibly resolves the issue by providing resolutions not amenable to the parties or that any of them would be directly or indirectly be injured, grounded on his wide latitude of discretion, they are deprived with substantial justice.

Declogging Court Dockets or Inability to Expand and Increase Courts?

Declogging court dockets may not be, in essence, the primary purpose of ADR. Rather, it is an incidental effect to the speedy and impartial administration of justice outside the bench or even in court-annexed mediation, conciliation, or arbitration, or disposition of cases in court. Thus, the more issues settled without repining into actual court cases, the lesser the number of cases filed in court thereby declogging the court dockets. It may be true, that this is just

“Common logic would dictate that, things done speedily would not always result in absolute perfection and absolute perfection would not always result from things done speedily.”

an incidental effect, but it is truer that this is a manifestation of the inability of the judicial branch of the government to expand and increase courts, a problem that needs to be addressed by the government itself. This goal is mechanical in nature. To lessen the burden of judges due to high number of cases being lodged. Thus, it is a diversion from our judicial system's weakness to address conflicts by resorting to an alternative dispute tool, which reliance of the people is not always attracted to for it does not guarantee resolution nor provide any legal precedent, and differs as to procedures or methods applied in

a case-to-case basis. Thus, its dynamism is susceptible to many negative factors that may result in an impasse or unresolved conflicts.

Power Imbalance

In resolving conflicts in ADR, one of the methods is the “take it or leave it” principle.¹⁷ This principle leaves the parties no choice but to accept the resolve offered or deprives the parties to set their own agreement by providing resolution not amenable to the parties, or would leave them analogous to what their situation were. In the perspective of power and influence, it is always the weak who will suffer from the judgement. It will always work in favor of the richer and more influential party. Thus, the laws of nature shall apply, the apex predator will always stay on top of the food chain and the prey will always stay at the bottom. In other words, the weak shall die, the strong shall live.

Note: A Tiger is an Apex Predator! So, it shall live.

Lack of Transparency

The hearings in ADR are generally held in private, rather than being held in a public and open courtroom. Thus, the facts presented by the parties, the procedures taken, and the judgement, cannot be accessed by the public. By this fact, it is susceptible to bias and partiality. Section 9, paragraph (a) of R.A. 9285 provides that, information obtained through mediation shall be privileged and confidential.¹⁸ By this fact of confidentiality, judgement rendered therein is kept away from scrutiny by public opinion or even away from frequent review by courts. Since the mediation solely relies on the agreement by the parties, even if those agreements are unreasonable, they may be obligated to agree. Hence, unreasonable judgement may be rendered, wanton and deliberate in character, and tainted with abuse of power and judgment.

In Summary

The purpose of ADR is sacred and noble. It keeps peace and serves justice. Although achieving these goals pose danger and repercussions, which if left unchecked, would in the future bear

more chaos than peace.

The foregoing discussions, in reality, is only a part and parcel of the negative impact of ADR in the administration of justice. The writer cannot deny the fact that it relieves would-be-litigants from anxiety and unreasonable expenses in achieving impartial justice. But the process of achieving such greatly affects the rights of the parties and substantial justice due to power imbalance and lack of transparency, to mention a few. However true this may seem, the question remains, is ADR really a catalyst of change?

1 Yale Books. (APRIL 5, 2013). THOMAS HOBBS: ‘SOLITARY, POOR, NASTY, BRUTISH, AND SHORT’.

2. Ibid

3 The People's Law Dictionary. (January 1, 2002).

4 Bernas, S.J., (2009). 1987 Constitution of the Republic of the Philippines: A Commentary. 2009 Edition p.946

5 R.A. 9285

6 Festin, G.L. (2021). Alternative Dispute Resolution and the Arbitration Law. 2021 Edition p.1.

7 Kumar A. (September 09, 2021). Alternative Dispute Resolution System: Global and National Perspective

8 Twelfth Congress. (April 02, 2004). Republic Act No. 9285 AN ACT TO INSTITUTIONALIZE THE USE OF AN ALTERNATIVE DISPUTE RESOLUTION SYSTEM IN THE PHILIPPINES AND TO ESTABLISH THE OFFICE FOR ALTERNATIVE DISPUTE RESOLUTION, AND FOR OTHER PURPOSES.

9. Ibid

10 Lawyers & Jurists. (2017). EXPLAIN THE ADVANTAGES AND DISADVANTAGES OF ALTERNATIVE DISPUTE RESOLUTION. 11 Cambridge Dictionary. (2022) Stalling tactic.

12 Ibid.

13 Ibid.

12 Ibid.

13 Ibid.

14 Ibid.

15 Ibid.

16 Ibid.

17 Miller, B. (July 31, 2016). 6 Pros and Cons of Alternative Dispute Resolution.

