

PHENOMENA OF CONFLICT AND ITS MOVING FORWARD VIA ALTERNATIVE AND ONLINE DISPUTE RESOLUTION (A/ODR)

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ABSTRACT: *Humans cannot run from involving in disputes. This is because they interact with one another in a social community. Disputes can occur in any situation be it the ones happening during a sale, commercial transactions, familial or related to your day-to-day activities. Thus, the community, in their efforts to solve the disputes they are facing, starts to find an authorized platform to help solve these disputes. As in this new world era where the internet has emerged as a global and borderless marketplace, the increase in consumer and entrepreneurship related business-use of the internet as a virtual marketplace gives rise to novel protection issues. Cross-border transactions raise novel questions with regard to choice of law issues, contract construction and interpretation, as well as what recourses may be available to the disappointed parties. This development brings into a special kind of redress mechanism needs of Alternative Dispute Resolution, namely Online Alternative Dispute Resolution (OADR) where the major part is implemented over computer networks. This paper aims to discuss the definition and parameters of conflict and its transformation into a dispute and to generally discuss the present technology which can be used to facilitate dispute resolution or to avoid disputes by providing dispute resolution services that are available on the internet aimed at solving problems related. Being a library based-research, reference will be made to relevant authoritative texts, case studies and applies the method of literature review through content analysis of documents. Overall, the study highlighted the rapid growth of the Online Alternative Dispute Resolution, which has been primarily directed at e-commerce, entrepreneurship business and consumer-based schemes that operate as first-tier complaints handling and dispute resolution mechanisms.*

Keywords: Alternative Dispute Resolution (ADR), Online Dispute Resolution (ODR), conflict, disputing parties, dispute

1. INTRODUCTION: THE THEORY OF CONFLICT AND DISPUTE

The word 'Conflict' stems from two Latin words, 'con' which is defined as 'together' and 'fligere flict' which means 'to strike' [1]. Conflict is also defined as 'a fight, struggle and collision' by Sykes [2]. Conflict is something natural and is therefore inevitable, especially in the context of social and community relations, trade relations and political relations of a country. It can occur in any stage of life to any party, for example, between individual/individuals (interpersonal), between groups (intergroup) and internationally. Basically, the fact is that conflict is everywhere, between and in every social group. In various literature, the definition of conflict is more focused towards the deviation of an issue or interests.

According to Wehr [3] and Schellenberg [4] conflict is the opposition of or the going against of a certain order. Hocker and Wilmot [5] defined conflict as the struggle that encompasses the ongoing intervention between conflicting parties in an effort to fight for their respective goals. Mitchell [6] defines conflict as "...any situation that involves more than one social entity or party who have assessed their interests and are aware that they have different goals". In a traditional sense, scholars and policymakers, such as Trollip, [7], assumed that "... the conflict is an extraordinary event or an unusual happening that takes place in the system of social life, and is the best example of an imbalance that needs to be resolved to restore the original social equilibrium". Lulofs and Cahn [8] were of the view that there exist various terms that define the various types of conflicts. These terms are connected to the differing definitions and understanding that

is can be associated with conflict and dispute. Some of the featured terms are as follows:

Confrontation, verbal opposition, disagreement, difference of opinion, avoidance of confrontation, avoidance of other people, changing the topic of conversation, problem-solving discussions, violence between parties, physical abuse, sexual abuse, verbal abuse, cold shoulder, accusations, pointing to one another (Shifting blame), indecent manoeuvres and actions, expression of anger, violent action, selfish action, bleak relationships, underestimation, indifference, involuntary action, mixed feelings, competition, negotiation, bargaining, mediation, unrest, fights and arguments, threatening and belittling someone.

The modern world is moving fast and requires all disputes to be solved quickly and delays definitely will bring a loss to the parties involved. Every individual wants all disputes involving them are solved immediately without inhibiting their activities.

According to Wertheim [9] there exist, scholars, who consider social conflict important and necessary in the forming of communities, as it works towards integration in society. In this situation, the conflicting parties actually do not encounter any problems nor misunderstandings regarding the norms that they should follow, however, they have differing opinions which then leads to the conflict that is faced. Whatever the process involved, the resolution method must be such that it makes possible the solving of conflicts and disputes in a short period of time. In any community, the scenario of conflict that waylays the social groups should not be allowed to be ongoing and should be urgently resolved in a way that pleases both or all parties in conflict [10]. In a

nutshell, an ongoing conflict will inevitably lead to disputes that will require immediate attention and resolution. This situation often exists in society, both in everyday life and in business dealings. Realizing this, the community and legal practitioners must find a way for societal disputes can be channeled to and settled through other methods. Hence, the out-of-court dispute resolution method is introduced and its effectiveness in solving disputes showed great potential.

2. THE TRANSFORMATION OF CONFLICT INTO DISPUTES

Disputes are often associated to those who have a judicial responsibility towards it; judiciary institutions, bodies and agencies that handle claims, complaints and disputes, judges, lawyers, legislatures and specific Acts as allocated by the law. For example, the courts and governmental bodies that handle claims are institutions that have been established to resolve any dispute impartially. Lawyers and neutral third parties are the means employed by conflicting parties to represent their interest and to run interventions on their part. The various definitions of disputes and its types need to be investigated and understood so as to maximize the application of existing laws in the resolution of disputes. Disputes can be thought of as an anomaly, which has its own limitations and specific pathology [11].

Bunker [11] stated that disputes occur when there are two or more persons who become aware of the fact that there are conflict and deviation of interest between them, where both parties want to enforce their respective interests but feel that it will be difficult to achieve. Felstiner, Abel, and Sarat [12] defined dispute as to the state of relationships categorized according to stages, namely naming, blaming and claiming. The emergence and transformation of disputes shed light on the fact that conflict was originally small but when not regulated and controlled, can cause both parties respectively claim inequality and injury due to an unwanted or harmful experience. As the situation goes on it leads to more critical action. The conflicting parties start blaming and accusing each other based on the issue at hand. The scenario leads to the legal action taken by the aggrieved parties to claim damages and compensation from the other. Conflicts transform into a real dispute between the two (2) or more parties through the passing of three stages which has been classified as 'naming, blaming and claiming'. Based on this transformation phenomenon, the dispute can be characterized as a conflict that has reached the stage where both parties are unable to find a solution to the issues raised. This scenario takes place when conflict turns into a dispute due to the tension in communication between conflicting parties that in turn require the intervention of a neutral third party such as a mediator, negotiator, arbitrator and/or judge.

3. ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

ADR begins to gain momentum during the late '60s in America. Since then, ADR begins to make its own mark and finally, becomes part of the judicial system and consequently because a mandatory subject to be studied by a law student. ADR processes are often linked to ancient traditional processes [1,13].

Modern justice systems are oriented towards fact-finding and deciding right and wrong, while traditional justice and modern ADR place more emphasis on repairing and maintaining relationships, and so are well-suited for parties that expect to continue to work together in the future [20,1]. Alternative dispute resolution (ADR) includes any process for resolving a dispute other than adjudication by a judge in a statutory court [13]. Modern commercial ADR is growing in importance worldwide, driven not by mainstream civil justice system reform but by businesses themselves seeking "commercially focused tailor-made dispute resolution mechanisms... a business-based solution, operated in and by the private sector, for its own benefit" [13].

While ADR processes can benefit from a supporting legal framework and integration with the court system, some processes can proceed fully independently of the courts, simply by agreement between the parties [13]. In comparison with litigation in court, ADR mechanisms typically offer lower cost, faster resolution, greater informality and flexibility, greater confidentiality, more control over the process, and a greater chance of preserving a harmonious relationship in the future [13]. Dispute resolution mechanisms can be arranged in a continuum, such as the processes like which are formal, inflexible, and adversarial, and which depend on neutral third parties to decide the outcome of the process, such as litigation in court, where the outcome is decided by a judge [14].

In simple words, ADR has one technical definition that refers to the method used as a facilitator in resolving disputes, especially outside of court, without involving legal litigation process, or it is one of the techniques used by dissatisfied parties to achieve a decision without involving any court processes. There are propositions among scholars, stating that ADR can be defined as a procedural scope used as an alternative initiative that is generally not compulsory but involving a neutral third party who can help involved parties to make a decision.

Generally, the following trends and innovations are apparent [15]:

- increasing interest in ADR generally, with governments in high- and low-income countries strengthening and encouraging ADR;
- increasing interest in mediation, compared with arbitration which appears to be becoming more formalized and maybe losing some of the features that distinguished it from litigation;
- global convergence on the Model Law developed by the United Nations Commission on International Trade Law (UNCITRAL) to provide the basis for harmonized national legal frameworks for ADR, with many countries either directly implementing the Model Law or drawing on it;
- increased interest in ADR mechanisms located wholly within the private sector, rather than being linked to the justice system;
- increased recognition in some jurisdictions of traditional dispute resolution mechanisms and in opening up a broader range of ADR mechanisms; and

- online dispute resolution opening up as a new area of activity, which is still in its infancy but which is likely to grow with the continued growth of online commerce.

4. EXAMPLES OF ADR PRINCIPLES

In **arbitration**, the disputing parties agree to settle their differences in a private process outside the court system by appointing a neutral third party to render a decision [1,13]. Arbitration is governed by national law and leads to a binding decision that is enforceable through the courts [13]. Arbitrators are frequently chosen for expert knowledge of the industry concerned in the dispute [13]. The process is flexible and adaptable. Parties typically commit to using an established arbitral organization with a fixed set of rules which serves as a buffer between the parties and helps preserve neutrality, uniformity, and efficiency [16]. The proceedings are less formal than litigation and aspects such as rules of evidence are more relaxed [1]. Arbitration is typically faster and cheaper than litigation (although this can depend on the complexity of the dispute and the willingness of the parties to cooperate). It offers the parties confidentiality and maybe more amicable than litigation [1,10,13].

Mediation is one of the informal methods that require the agreement of both parties and is very flexible as it requires the active participation of a neutral third party who helps in making the mediation process a success. A mediator or third party helps parties to identify dispute issues and if needed, find another alternative solution. It must be reminded that only the parties that have the authority can control the smoothness of the mediation process. A mediator chosen among them must have extensive knowledge about the disputed matter, such as a senior lawyer or any of the community leaders. A joint agreement is a result obtained from a mediation process but the results achieved do not bind anyone or can be enforced. Mediation and conciliation are useful for complex disputes, when the parties are willing to negotiate, and when the parties are seeking to maintain (or repair) a long-term relationship. Because the process is consensual and flexible, however, parties can withdraw at any time, and the rules of procedure are not predefined which may result in less predictability [1,13].

5. ONLINE DISPUTE RESOLUTION (ODR)

ODR is a new approach in which standard ADR procedures like arbitration and mediation are carried out online [16]. In general, it can be said that the platform provider or owner of this ODR system will provide the means that can be used by disputing parties be it through online consultation, online mediation of online arbitration. This method does not require the physical presence of disputing parties to a specific place or meditation center. ODR can either use technology to help parties resolve a dispute by themselves fairly and transparently, or can facilitate communication which may involve a neutral third party [18]. The ODR application is developed to assist in resolving disputes more quickly and effectively through the implementation of Alternate Dispute Resolution (ADR) concepts. By using the Internet and telecommunication technology the process of resolving conflicts can be accelerated and disputing parties gain a higher level of satisfaction. The achieving of a mutual decision and agreement is still done by a mediator, though it

is done online. The ODR platform is based on a document management system that manages the document cycle using appropriate software, tools, methods and processes.

ODR is being used to mediate commercial disputes in Latin America, including both business-to-business and business-to-consumer transactions. It appears to offer opportunities for quick and low-cost resolution of disputes, but there is not yet a clear legal framework for ODR, trust in online transactions is limited, and ICT infrastructure is weak [17].

ISSUES IN OADR

Among the important issues raised up in OADR are as follows:

- Trust (Identity and digital signatures, Data security and confidentiality)
- Privacy
- In the shadow of the law
- Compliance

TRUST

An essential aspect of ADR, whether online or offline is trust. In offline ADR such as mediation, it is essential for a good mediator to establish trust between himself and the disputing parties during the mediation sessions. However, where online mediation is concerned, it seems far more difficult, though no less important, to establish and maintain trust. The fact that there is no face-to-face contact as in offline mediation, but communication takes place via e-mail or real-time online, makes it difficult for the mediator to manage or temper the tone of the interactions or use his skills in reading body language.

PRIVACY

Privacy is another important issue that has to be addressed when setting the online procedure of settling disputes. Both parties should be made aware of how their privacy is protected. They should be given security of the ways their personal information is stored or used by the mediator or mediation company. Hence, any disputes that the company received via the website must be treated in accordance with rules of confidentiality. In line with this need, it is imperative that the mediation company should have a privacy policy.

IN THE SHADOW OF THE LAW

'In the shadow of the law' issue always takes place in the general ADR and offline mediation. It means that the parties in disputes that are trying to find a solution through ADR are aware of the legal rules governing the area of their disputes. Both parties will take the law into consideration when setting out a strategy in ADR procedures. However, this normally will not happen in OADR. For e-disputes, there is the problem that it is not obvious what law applies, especially with cross border e-disputes.

COMPLIANCE

Compliance is another important issue and it is closely linked with the concept of the shadow of the law. Where binding advice is used in ADR and offline mediation, the same mechanism should be used to achieve the same result in OADR. For example, in the eBay experiment, it proved not necessary to obtain a writ of execution to achieve compliance. The Squartrade initiative, which resulted from eBay experiment, uses the same basis of people not wishing to jeopardize their position in the eBay society.

BENEFITS OF OADR

ODR is very universal and can be applied to almost any type of dispute. ODR can also be applied using email, video conferencing, text services and other means to assist in solving problems. And due to the growing number of Internet users and computer literacy rates that are increasingly positive, it is desirable to create a system or application that can facilitate disputing parties through virtual dealings. A good indicator in applying the ODR system should be based on the implementation of a system that is quick and cost-effective. Hence generally, among the benefits and advantages of OADR are:

1. Online Dispute Resolution (ODR) appears to be more cost-effective than litigation in courts.
2. It is more efficient and swift in resolving disputes.
3. Conflicting parties using this method have the full freedom to determine the direction of the resolution.
4. They are free to resolve their disputes anywhere and anytime.
5. Geographical factors also play an important role because ODR can be implemented even across countries and continents.

6. CONCLUSION

Conflicts and disputes which occur in many places and trading environments require an immediate, simple, flexible and cheap resolution, this is achievable through ADR. In addition, the relationship between the disputing parties should also be maintained, particularly when it comes to valuable consumer issues and trade relationships. Although there are some questions and challenges brought up by a handful of scholars against ADR, it is apparent that the ADR mechanisms can be repaired and improved.

ADR possess a variety of advantages which makes it distinctive and better when compared to the means of resolution through the litigation system. In moving forward towards Online Alternative Dispute Resolution (OADR) and if OADR is to be in any way successful, all the obstacles need to be addressed carefully. That is the fact that even if OADR will prove to be successful, it will never completely replace litigation, but again, this OADR will complement the e-disputes without compromising seven principles that the European Commission mentions in the Recommendation on 'The out of court settlement of Consumer Disputes'. The said principles are minimum guarantees and better options by such out of court settlement bodies could offer to their users in settlement of the disputes. The guarantees are as follows: independence, transparency, respect of adversarial principles, effectiveness, legality, liberty and representation. The elements should be taken into account when setting up any form of OADR to assure visibility, ready to be accessed, timeliness and at the very reasonable costs of online dispute resolution to all. As understood and since ODR has successfully adapted traditional dispute resolution processes for online use, including negotiation, mediation, arbitration, and some other mechanism, and in line with current developments of ICT, the dispute settlement using Online Dispute Resolution process is seen to be significantly

effective in helping disputing parties accelerate the resolution process.

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