

ADR in the Malaysian courts: a short synopsis

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A social scientist once asked me "What do you think would make a good lawyer?" As an ADR practitioner, I told him a good lawyer is someone who not only can win your case in court but one who can win your case without having to go to court.

In Malaysia today, there are no formal process for people in dispute to solve their problem other than to go to court to litigate their matters. The other process in which disputes are resolved other than the courts are the Arbitration Tribunals, although many do not regard arbitration as a form of ADR because of their adjudicatory nature. Mediation and conciliation as a formal process of resolving disputes in Malaysian courts are still in their early stages.

That the court system in Malaysia today is overloaded with a backlog of cases is an understatement. I have been told it is sometimes not uncommon to take a few weeks just to extract the papers for court order that has been granted. To quote an old cliché "justice delayed is justice denied".

The public is generally dissatisfied with the machinery presently available to them for resolving their disputes mainly because of the high cost and the delay. Alternative method of resolving disputes other than litigation and arbitration should not only be encouraged but also should be vigorously promoted. The development of ADR in Malaysia should not be left in the hands of the legal profession alone as the public may get the wrong impression that the resolving of disputes remains the prerogative of the lawyers. The resolving of any disputes need not necessary and should not be dominated by the legal profession. Professionals and laymen from every discipline should be encouraged to acquire skills and practise the art and science of conflict resolution and management.

Although ADR processes such as mediation and conciliation are not promoted in a big way in the Malaysian Court, unlike their counter-part in the Singapore courts, however in the field of matrimonial disputes there are reconciliation tribunals created by statutes to help couples with marital problems resolved their disputes. Under Section 106 of the Law Reform Act 1976 disputing couples are not allowed to file their divorce petition for the dissolution of their marriage until they have made attempts at the reconciliation tribunals to resolve their problems and until a certificate stating that the dispute cannot be resolved has been issued by the tribunal. The tribunal usually consists of 3 persons chosen from respectable members of society together with a government officer. Practitioners of family law are of the view that the tribunal has not been very successful in helping disputing couples resolved their problems and this is supported by statistics which shows that the success rate for these reconciliation sessions are very low. It has been commented by some observers that the tribunals real function is more of providing a rubber stamp to slow down the disputing couples eagerness to obtain a quick divorce rather than a serious attempt to find a solution to the dispute.

When the Malaysian parliament enacted laws in 1976 creating changes in the family law to make divorces easier for married couples in dispute there were some fear in some quarters that the liberalising or loosening up of the divorce laws might caused a floodgate for disputing couples to get their divorces. Partly because of this concern the legislators decided to put in place a reconciliation body to help disputing couples find ways to resolve their marital disputes whilst at the same time provide a cooling off period for good sense to prevail. The objectives of the legislators were highly commendable. However it is sad to note that despite such noble objectives and with statutory backing and good infrastructure in place, the objectives of the legislators seems to have failed.

It is hoped that the relevant authorities in charge for the successful operation of these reconciliation bodies review the weaknesses and make recommendations to ensure that resources of the state are more effectively deployed to provide suffering couples with matrimonial disputes more meaningful avenues and facilities to solve their marital problems outside the courtrooms.