IMPACT OF THE BARANGAY JUSTICE SYSTEM ON DECONGESTING COURT DOCKETS AND BROADENING ACCESS TO JUSTICE: LOOKING BACK AND FORWARD*

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I. INEVITABILITY OF CONFLICT AND DISPUTE IN SOCIETY[1]

In 1978, when work to establish a neighborhood justice system was began, there were about a little more than 40 million Filipinos living in the country. At the time of this writing in 2007, in just one generation or *less than 30 years later*, population has increased more than double to about 87 million. Except for some reclamation work from the sea, there has been no appreciable increase in the Philippine Territory that was established when Spain ceded the Philippines to the United States of America by the Treaty of Paris at the beginning of the 20th Century for US$20 million or at a price of about $1.00 for every Filipino then living.

The fact of an ever increasing population living in a finite territory, by itself, increases interaction and the inevitability of conflict among them.[2]

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[1] Much of the discussion made in this section are attributed to Hart and Sacks, *The Legal Process: Basic Problems in the Making and Application of Law* "Introductory Note on the Principle of Institutional Settlement", Handout in Harvard class (1958) p. 1-6.

[2] Recognition that rapid population growth "hampers the struggle against hunger and poverty" and delays achieving "adequate standards of living, including food, clothing, housing, medical care, social security, education and social services, thereby impairing the full realization of human rights" was made at the U.N. Conference on Human Rights at Teheran, UN Doc. A/Conf. 32/41 (1968).

Each one of the human beings living here has basic needs to be met, desires to be fulfilled and aspirations to be attained. Their varieties are infinite, ranging from the mundane urge to secure the basic necessities of life, such as food, clothing and shelter, to the spiritual desire to achieve heavenly bliss.

The unceasing pursuit to satisfy these needs and wants brings home the undeniable basic condition of human existence, that is, that people live in an interdependent world. For indeed it cannot be denied that, as the poet John Donne says "The death of any man diminishes me; for no man is an island, complete unto itself, each one is part of the main. Therefore, ask not for whom the bell tolls. It also tolls for you".[3] No individual, not even a family, can exist as a self-sufficient unit. They cannot individually or collectively, possibly grow, produce or manufacture everything they need even for mere survival alone. This fact of human interdependence is made even more self-evident in the pursuit to satisfy wants and desires that go beyond mere existence, such as the thirst for wealth and power, the desire for respect, and the need for love and companionship. They all need the appropriate response from other human beings for satisfaction.

Differing priorities and abilities or power to satisfy the foregoing varied needs and wants of individuals, inevitably produce conflict in such interdependent human relationship.

In sum, the conditions that make conflict in human society inevitable are: 1) increasing population; 2) living in a fixed geographical territory; 3) having differing needs and wants; 4) with greatly disparate priorities, capacities and power to satisfy those desires; 5) which can only be done with the voluntary or coerced cooperation of others.

II. NEED TO CREATE ORDER IN SOCIETY

Without some sort of arrangement as to how members of society are to conduct themselves in relation to each other, the weak will be downtrodden and oppressed while the innocent and gullible will be taken advantage of by the crafty. Valuable time and energy that may be more beneficially put to better use, is wasted in a self-help effort for individual protection and avoidance of oppression and exploitation. Under such conditions, no individual can realize his full potential, anarchy will prevail and society itself cannot long endure.

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[3] From his poem Mediation XVII.

In general, such substantive arrangements for societal living, seeks the safety and security of the life, liberty and property of individuals. This is done by restricting the free use of violence and deceit, and directing compliance with promises made. In addition to prohibiting undesirable conduct, such societal arrangements also set forth the kinds of affirmative conduct that are required of each community member as his due contribution to the common interest and welfare. These are, among many others, the payment of taxes that are necessary for the support of government or rendition of military service.

In traditional societies, as in Pre-Hispanic Philippines, such substantive arrangements are inferred from customary patterns of behavior that in time become respected traditions.[4] As society modernizes, such implied understanding or customs and traditions are made explicit in provisions of statutes[5] enacted by the legislature in representation of the people or dictated by a ruler[6] who may be benign or despotic.

III. MODES OF SOCIAL ORDERING[7]

It is a point that need not be belabored that the various human relationships in society must be brought into a workable and productive order if that society is not only to survive but to progress. Development, progress and the greatness of a nation depend upon first attaining *this basic pre-condition, that is, societal order.*

At the macro or national level, legislative enactments directly seeking to resolve the conflict between the landless and the landed sectors of society were done through the Land Reform Act[8] and the Urban Land Reform Act[9], both of which are, up to this writing, still being implemented. Another example is the Indigenous Peoples Rights Act of 1997 (Republic Act No. 8371) which seeks to solve the claim of indigenous people to their ancestral domain before they were displaced by the modern state.

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[4] *See* "Law and Custom" Chapter, Lloyd, *The Idea of Law* (1970); Fernandez, *Custom Law in Pre-"Conquest Philippines* (1976).

[5] Written in "virtually indestructible" clay tablets that exist to the present time, are the laws of ancient Mesopotamia, ca. 3000 BC. "Law in Ancient Mesopotamia", 27 Harvard Law School Bulletin No. 4, Summer (1976).

[6] Presidential Decrees issued by deposed President Marcos were treated as law.

[7] "Social Ordering" is a term used by Harvard Law Professor Lon Fuller in his article "Mediation", 44 Southern California Law Review, 305 (1971).

[8] Pres. Decree No. 2 (1976) proclaimed the entire country as a land reform area.

[9] Pres. Decree No. 1517 (1978).

At the micro or individual/personal level, negotiations to settle a dispute may result in some contractual arrangement to govern the future relationship of the parties. A collective bargaining agreement (CBA) between an employer and a labor union is a good example of this mode of societal ordering. Lawyers, who undertake to draft the terms and conditions of such a contract, in effect engage in what has been called "*private law-making*".[10] This is indeed an accurate observation. For it is a well known legal doctrine that: "*a contract is the law between the parties*". The contract aims to govern the future relations of the parties by terms that are carefully worked out and agreed upon for periods that may be short or long term. This then is another form of societal ordering at the micro level.

IV. MODES OF RESOLVING DISPUTES

All kinds of disputes may be resolved under three general categories – the unilateral mode, bilateral mode and third party intervention mode.

A. UNILATERAL MODE

As the term indicates, this is an action that is taken by one of the disputants without regard to the wishes of the other party. This could take the form of fight, flight or surrender and forgiveness. At the micro level, the more aggressive party can take some violent action against the other to cow the latter into submission. At the macro level, this could be like the decision of former President Estrada to wage war against the Muslim separatists resulting in the capture of Camp Abubakar. Unfortunately, such unilateral solutions only give rise to more problems.

Flight may be physical such as to run away from a fight or from a problem. Moving away from a pesky neighbor and re-locating to a more peaceful neighborhood is a good example. It could also be psychological flight. The latter is known as rationalization, that is, reasoning that there is really no problem in the first place. This is illustrated in Aesop's fable about a fox that couldn't reach a bunch of grapes and justifying its decision to give up by saying to himself that he did not want the grapes anyway as they looked sour.

Surrender or giving in to the demand of the other side is the third type of response under this unilateral category. Ill feelings arising from being exploited could lead to exacerbation of the problem. Another aspect of this

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[10] Fuller, *The Morality of Law*, (Rev. Ed., 1971)

response is to forgive whatever was done to the one extending the act of forgiveness. This gives a good feeling of being generous and magnanimous. At the national level, this could be in the form of a unilateral grant of amnesty by the national government to rebels or tax evaders. On the other hand, the rebel grantees skeptically view amnesty as a strategy of national government to unilaterally weaken the rebel cause without waiting for the result of negotiations for peace which should include a bilaterally agreed amnesty. On the part of tax evaders, it is also viewed as an effort to raise revenues in the guise of amnesty.

B. BILATERAL MODE

This second mode means direct negotiations between the disputants to arrive at a settlement of the dispute between the parties that could be mutually beneficial. The result at the micro level is a compromise agreement. At the national level, the result could be a peace pact to end a rebellion[11]. This could be the beneficial result of bargaining on the basis of interest and principle, not on hard and fast position.

C. THIRD PARTY INTERVENTION MODE

There are two forms – a facilitative intervention or an evaluative and decisional one. The first kind may take the form of conciliation or mediation where a neutral third party facilitates communication between the parties to analyze their true interest. This has often been called *assisted negotiations.* At the international level, this could take the form of a *"good offices"* intervention of a third nation for talks that it would host between a national government and a rebellious faction of its society.

The second kind of response under this third mode could be arbitration or judicial resolution of disputes. In this case, the arbitrator or judge decides the dispute as to who is right based on relevant standards of law or contract. It is based on the evaluation of the evidence presented by the parties and is thus classified as evaluative.

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[11] Government tried to enter into a peace agreement with the MILF, this was coined as the Memorandum of Agreement on Ancestral Domain (MOA-AD). Part of the negotiation was the recognition of the Bangsamoro Juridical Entity (BJE). The Supreme Court ruled in *Province of North Cotabato vs. GRP Peace Panel on Ancestral Domain* G.R. 183591 Oct. 14, 2008, that the agreement was void for being unconstitutional. For more discussions, please read *The Legal Significance of the MOA on the Bangsamoro Ancestral Domain*, 83 PHIL. L.J. 488 (2008) by former Supreme Court Associate Justice Vicente V. Mendoza.

V. DISTINCTIONS BETWEEN MEDIATION AND ADJUDICATION

While both methods involve processes for resolving disputes, they may be distinguished from each other in the following significant respects:

Standards	Mediation	Adjudication
1. Product	Compromise Agreement	Judgment
2. Maker of Product	Parties themselves	Judge
3. Focus	Person	Act
4. Outlook	Forward	Backward
5. Process	Flexible	Rigid
6. Result	Win-Win	Win-Lose

Each one of those distinctions shall be discussed separately, as follows:

The product of mediation is a compromise agreement while the product of adjudication is a judgment. As defined by the Civil Code, "*a compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced*".[12]

Although the judicial resolution of a dispute is often called a decision, there is a distinction that may be drawn between the two terms - decision and judgment. While a decision, such as to get married, may often be based on emotion like falling in love, judgment is based on a rational evaluation of evidence bearing upon an issue that relates to a relevant standard. Such standard distinguishes right from wrong, legal from illegal, moral from immoral, or ethical from unethical. Judgment is a product of the mind and emotion should not be allowed to becloud rendition of a clear judgment.

A compromise that settles a dispute is the product of both parties agreeing on the terms thereof. A judgment is the intellectual product of a

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[12] CIVIL CODE, Art. 2028.

judge or an arbitrator for deciding which of the contending parties was right or wrong in doing what is charged.

The focus of litigation is the act or omission that is complained of. It is thus rightly called an "*act-oriented process*". It is to prevent justice from being swayed erroneously when one considers the kind of person who committed the act charged, that the lady symbol of justice is blindfolded. Thus, evidence of character[13], such as the social rank, wealth or poverty, good or bad reputation, and the like, cannot be initially introduced as they are considered *prejudicial evidence.* That means evidence that may sway emotions and produce bias. After a judgment of conviction for the crime charged, the sentencing stage now becomes a "*person-oriented process*" so that the penalty may be tailor suited to the particular person to be sentenced. This is the case with the bifurcated trial of criminal cases under the American system. It is only after a verdict of guilty that the blindfold is literally removed to allow the imposition of a penalty suitable to the person of a convicted accused. Unfortunately, in Philippine criminal trials, a mix-up has taken place whereby evidence of mitigating and aggravating circumstances are considered together with evidence of guilt or innocence. It is like an accused saying "I am innocent but if you find me guilty, please be lenient in imposing my punishment". This kind of trial has been criticized as more prone to a miscarriage of justice than a bifurcated one.

In contrast, mediation is focused on the individual disputants and is therefore aptly called a "*person-oriented process*". Effort must be exerted on what values each party holds, what are their interests, their needs, their apprehensions and concerns. A good mediator, armed with this knowledge, would then be able to effect a "*trade-off of values*" in order to convince the parties to agree on a settlement.

Since the focus of litigation is on the act, it must necessarily be "*backward looking*". This is because the ultimate purpose of litigation is to punish for a wrong that was committed. While that purpose of punishment is plain enough in criminal prosecutions, it is less obvious in civil cases. Nevertheless, when one prays for "*punitive damages*" or "*exemplary or corrective damages*"[14] which are prayed for in the interest of the public good to deter others from doing what was charged, the punitive orientation of even civil litigation becomes obvious.

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[13] RULES OF COURT, Sec. 51 Rule 130.

[14] CIVIL CODE, Sec. 5 Art. 2229 to 2235.

Once an act has been committed, it becomes a past event. In criminal law, one can only be punished for an "*overt act*" that constitutes part of a criminal attempt to commit a crime. This is the earliest stage at which a crime may be punished. That no one may be charged, much less be punished for what he is *merely intending* to commit, is a sound principle in the administration of criminal law in democratic countries.

On the other hand, mediation is "*forward looking*" in the sense that its efforts are directed to reconciliation of the parties. The act charged is merely the starting point to mend the relationship that was broken or impaired because of it.

By reason of the foregoing distinctions, the mediation process must necessarily be informal, even friendly, casual and flexible. In contrast, the adjudicative process is formal, follows a rigid sequence, distant and aloof. This must be so in order to show the seriousness of the process that may result in a deprivation of property, liberty or even life itself.

The result of mediation may be a *win-win* agreement; that of litigation must always be a *win-lose* decision. The judgment is a clear condemnation of a wrong or the exoneration of innocence. It has been insightfully observed that we need the black and white judgment of litigation to keep alive our sense of right and wrong. Otherwise, the gray area of a compromise may serve to dull it.

VI. CONDITIONS FOR REFORM

The ADR movement is a reform measure. For it to succeed, it must satisfy the two conditions necessary for reform - – one, there must be a grave dissatisfaction with something in the present system; and second , a strong desire to change or to improve it. That is the basis for Action Program for Judicial Reform that was initiated by the Davide Court.

VII. DISSATISFACTIONS WITH THE JUDICIAL ADJUDICATIVE MODE

A. INTERMINABLE DELAY

The formal method of resolving disputes of all kinds, whether they are between individuals or between an individual person or an institution, is entrusted to the judiciary. In the course of time, this has been the most

overstressed mode, resulting in the problem of court docket congestion arising from the *"abuse, over-use and misuse of the courts".*[15] This litigious culture of society has overloaded the system beyond its capacity to handle. There are now about a million cases pending before the courts at all levels in the judicial hierarchy. This has prompted the characterization of judicial resolution of disputes as *"intergenerational justice"*[16]. This is used in a pejorative sense that is intended to convey the deplorable idea that one cannot obtain justice in the courts within one's own lifetime. This delay calls to mind that legal doctrine that *"justice delayed is justice denied."*

B. HIGH COSTS

The costs of judicial proceedings should be assessed not only in terms of financial disbursements, although that is already considerable. Docket fees have considerably increased to a hundredfold and even as much as by 500% with the amendment of Rule 141 to raise revenue for the increase of salaries of judges. When hefty lawyer's fees and litigation expenses are added, the constitutional prohibition that no one shall be denied access to the courts by reason of poverty is now being invoked.[17]

The expenditure of time for attending court trials, for conferring with lawyers, looking for witnesses and many others, must also be considered. This must be factored in relation to travel time from home to the court location in the town's centers of population called *poblaciones.* The average time for a civil case to be disposed of is about four years. That is the average. In the extreme, there are cases that have lasted for more than 30 years!

The emotional costs must also be taken into account. Somehow, being taken to court means the end of any meaningful relationship between the parties. Even the mere sending of a legal demand letter in this culture strains relationship to a breaking point. The scars of litigation seem to be forever.

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[15] Remark attributed to the late Chief Justice Fred Ruiz Castro

[16] Intergeneration justice as applied to environmental law positively recognizes the legal personality of unborn children to sue in court to prevent the degradation of the environment that they are meant to enjoy. *See* Oposa vs. Factoran, G.R. No. 101083, July 30, 1993.

[17] CONST. (1987) Art. III, Sec. 11

C. POPULAR INCOMPREHENSIBILITY OF JUDICIAL PROCEEDINGS

Court proceedings are conducted in English – a foreign language that is poorly comprehended by the general populace who are normally not comfortable with that language. This is compounded by the use of legal jargon that is understood only by lawyers. A party's narration of what happens using his own words, are cut short by objections of the opposing counsel that he must only answer questions that are propounded to him. An intimidating cross-examination that is designed to catch the witness lying or to expose his poor recall is a terrifying experience for most witnesses, even educated ones. This leads to popular frustration with judicial processes

D. RESTRICTED ACCESS, ACID

Former Chief Justice Artemio Panganiban focuses on four problems of the judiciary that he sought to address during his watch. He has code-named these corrosive problems as *ACID*. *"A"* stands for restricted *ACCESS* to the courts; *"C"* is for *CORRUPTION*; *"I"* is for *INCOMPETENCE*; and *"D"* stands for *DELAY* in the delivery of quality justice"[18] in judicial proceedings.

The problems of costs and popular incomprehensibility earlier discussed are factors that severely restrict access to judicial justice. These problems are what is being addressed in a positive way by the *Katarungang Pambarangay* Law.

The problem of judicial corruption or what has been called by ousted President Estrada as *"hoodlums in robes"* is sought to be minimized, if not eradicated, by better recruitment of judges and more effective disciplinary actions.

The problem of incompetence is sought to be reduced by the training programs being given to judges by the Philippine Judicial Academy (PHILJA). Former Chief Justice Panganiban envisions, with the construction of a new PHILJA Development Center in Tagaytay *"to establish a special school for young lawyers who aspire to become career judges"*.[19]

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[18] Address by C.J. Panganiban, November 30, 2006. See http://sc.judiciary.gov.ph/publications/benchmark/2006/03/CJ%20places%20high%20priority.php

[19] *Id.*

E. UNSUITABILITY OF ADJUDICATION FOR MINOR DISPUTES

The judicial process is outrightly punitive in the prosecution of criminal cases. But even the pursuit of civil litigation is also punitive. This can easily be seen from the prayer made by the plaintiff to be awarded punitive damages. The award of exemplary damages which the plaintiff also often prays: "for the good of the public so that they may be deterred from following the bad example given by the defendant", is undoubtedly punitive in nature.

The foregoing conclusion is inescapable because that is inherent in the judicial process. The end product is a judgment that is made in relation to the legal right asserted and the claimed failure to discharge the corresponding obligation to respect that right. This entails upholding one party as the "winner" and the other as the "loser". The imposition of the appropriate penalty is the necessary consequence of such conclusion.

Many times, however, a complainant is not really interested in having the respondent be jailed or pay a fine. This is true of many disputes involving close relatives, neighbors, friends or others with whom the complainant has some kind of a relationship, such as that between employer or employee. In these cases, the parties must continue with their relationship notwithstanding that it has been marred by the dispute. The parties must return to live in the same neighborhood, or to work in the same company. In these cases, what the complainant is really interested in is an opportunity to ventilate his grievance, explore the cause of the problem, get an assurance that the offending conduct will no longer be repeated and thereby restore the disrupted relationship.

The imposition of a penalty in the foregoing situations, damages the relationship between the disputants beyond repair. The moral condemnation implied from the penalty-imposition entails a "*loss of face*", a loss of pride and dignity that *amor proprio*, so important to a Filipino, cannot accept. As a result, the rift between the disputants is widened to a chasm that can no longer be bridged.

VIII. APPROACHES TO SOLVE COURT DOCKET CONGESTION

A. DIRECT APPROACH

The direct approach to reduce the clogged court dockets may be called "*output oriented*". It is focused on increasing the judicial disposition rate of pending cases. It involves making the judges more efficient in the performance of their function. Trainings on case analysis, simplification of issues, more efficient pre-trial, case flow management, decision writing and others, will contribute to judicial efficiency. Specialization of courts in distinct fields of law is hoped to increase case disposition because an expert judge can decide a case pertaining to his specialty much faster than a "generalist" judge. Filling up the many vacancies in courts will speed up case disposition of cases that are dormant because of the absence of a judge. Simplification of procedure will prevent a case from being stalled by reason of problems connected therewith and thereby allowing trial on the merits sooner.

Judicial efficiency is rated according to case disposal rate. A 100% efficiency that results in zero backlog is reached when case disposal within a given period equals the number of cases that are filed within the same period. The average disposal rate under this standard is about 65%. This means that 35% more cases are added to the mountain of backlog every year. The limits of judicial efficiency and human capacity have been reached without making a dent on the backlog of cases. A new approach to solving the problem becomes necessary.

B. INDIRECT APPROACH

This approach would decrease the indiscriminate filing of cases in court. It is also called the input-oriented approach.

1. Decriminalization of Offenses

The proliferation of offenses based on violations of regulatory and sumptuary legislation or ordinances may be seen as contributing heavily to the judicial workload. A logical step is, therefore, to decriminalize these violations as not being real or true crimes. A step in the right direction is to allow the voluntary payment of fines for traffic violations without court intervention. Administrative handling and not judicial processing would be good.

Another example could be the possible decriminalization of violations of the Bouncing Checks Law that is now heavily clogging the dockets of first level courts. A step towards this goal was taken when the Supreme Court issued a directive not to impose the prison sentences that is imposable under B.P. 22. A worthy move that was not pursued for some reason or another is to have this crime be made *"conciliable"* under the KB Law. The advantage of this move would be to add a ground for the extinction of its criminal liability in the event of a settlement. This is unlike the present situation where only the civil liability is extinguished.

2. Prior conciliation of family disputes

Although perhaps not deliberately intended at the time of their adoption to decrease the work load of judges, there are early efforts towards this end of imposing a procedural bar to judicial access of conciliable cases. One of them is the doctrine that mandates the exhaustion of administrative remedies before the courts can be resorted to. A second one was made in 1950 when the Civil Code of the Philippines was made effective. It included a provision that requires the exertion of *"earnest efforts"* to settle the dispute among *"members of the same family"*[20]. Unfortunately, a setback to this laudable effort was suffered by the decision of the Supreme Court[21] that held this provision to be not applicable if an in-law was involved in the dispute, as in-laws are not members of the same family. The author criticizes this holding as being culturally insensitive because it has turned our cherished in-laws into virtual outlaws.

3. The Katarungang Pambarangay Law

A revival of these earlier procedural screening devices was made in 1978 to weed out from the court workload cases that, from what experience has shown, would eventually be washed out by extrajudicial settlement.

The Presidential Commission created by President Marcos under P.D.1293 on 27 January 1978 was for the purpose of *"studying the feasibility of instituting a system of resolving disputes among family and barangay members at the barangay level, without recourse to the courts"*. The Commission headed by Chief Justice Fred Ruiz Castro and six other cabinet members, entrusted the actual task to a Technical Committee composed of the representatives of the 7

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[20] CIVIL CODE, Art. 222, *re-enacted* into the Family Code, Art. 150.

[21] Hontiveros v. RTC of Iloilo Branch 25, G.R. No. 125465, June 29, 1999.

Commission members. The working group includes the author, who went on to become a key member not only in the conceptualization but in the finalization of the law and its implementing rules. Instead of just making a study and recommendation, however, the Technical Committee went on to draft the law itself. The original design was expanded to include disputes not only between family members and barangay residents but residents of the larger city or town.

On 11 June 1978, President Marcos signed as law **P.D.1508**, known as the *Katarungang Pambarangay* Law. Then Chief .Justice Fred Ruiz Castro[22] predicted that "*P.D.1508 will play a role of historic proportions in the administration of justice*".

Simply put, the KB law is a procedural bar against direct judicial recourse by the disputants of the cases that are covered except upon performance of a pre-condition, which requires personal confrontation of the parties and failure of earnest efforts to arrive at a compromise agreement of their dispute.

C. COURT DIVERSION OF PENDING CASES

While the indirect approach would lessen the caseload of the judiciary, as already discussed, it does not affect the mountain of backlog of cases that are pending therein. A complementary approach to address this problem thus became necessary.

1. Court-referred, Court-annexed Mediation

In 1991, with funding from The Asia Foundation, the U.P. Office of Legal Aid under the direction of its Director, Professor Alfredo F. Tadiar, undertook a pilot project entitled *Court-Referral of Pending Cases to Mediation*[23]. The purpose of the experiment was to determine the feasibility of diverting pending court cases to outside mediation. The experiment was conducted in a provincial area represented by San Fernando, La Union, 270 kilometers away from the other project site in Quezon City. The results of the study show that the Provincial success rate of cases settled at 31.14 % was higher than the urban site at only 11.76%.

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[22] It is tragic that he did not live long enough to witness the fulfillment of his prediction.

[23] See *Final Report, Pilot Project on Court Referral for Mediation* (1993) undertaken in September, 1991 by Professor Alfredo F. Tadiar, then Director of the U.P. Office of Legal Aid. Its stated objective was to determine the practicability of using alternative means of settling pending court cases. *Available at* http://www.pmc.org.ph/downloads/ADR_Operations_Manual_-_TOC_and_Foreword.pdf

In 1999, after the establishment of the Philippine Judicial Academy in 1996, the idea of a court-annexed mediation system was revived with the training of mediators from two pilot sites – Mandaluyong and Valenzuela – both in Metro Manila. The training was conducted in Subic. With the successful result thereof, the Court Annexed Mediation (CAM) rapidly expanded to all regions in the country.

2. Judicial Dispute Resolution (JDR) Settlement – Pre-Trial Enhanced

This was an experiment that started in two pilot sites – one in Bacolod in the Visayas and another in San Fernando, Pampanga. Funding assistance came from the Canadian International Development Assistance (CIDA). Essentially, mediation is conducted at two levels – first at the CAM level and if not successful, the pre-trial judge makes another effort to settle the case, including neutral evaluation of the evidence. The innovation introduced under this experimental project is that the judge mediator is automatically disqualified from trying the case and is required to turn over to his pair judge or another one chosen by raffle, for the actual trial of the case. The reason for this is that conciliation may have induced the parties to divulge confidential information to the mediator-judge that may affect the neutrality of the judge if he were to try the case. If JDR mediation is not successful, and the mediator judge is allowed to conduct the trial of that case, his integrity as a neutral and detached judge may be compromised since it is impossible for him to compartmentalize his mind to exclude the privileged communication.

From the two initial project sites, JDR has expanded to include the entire province of Negros Occidental and Pampanga; new project sites were added in Cagayan de Oro, Benguet and La Union.

3. Appeals Court Mediation

Again with funding assistance from the US AID, a pilot experiment was conducted in 2002 to determine the feasibility of expanding trial court mediation to the appellate level. The 3 month experiment showed that the cases settled were the equivalent of the workload of an entire division of the Court of Appeals.

Because of the successful result, the Appeals Court Mediation (ACM) was institutionalized with the training of a corp. of trainers, recruitment and training of mediators, and an internship program.

4. Diversion of Construction Disputes

The passage of the ADR Act of 2004 (R.A.9285) gave impetus to the diversion of pending court case to an outside forum. Construction disputes that are filed in court despite an arbitration clause is authorized to be dismissed[24] so that it could be referred to arbitration before the Construction Industry Arbitration Commission (CIAC).

Section 39 of the Alternative Dispute Resolution Act of 2004 (R.A. 9285), provides as follows:

> *Court to dismiss case involving a construction dispute.*- A Regional Trial Court before which a construction dispute is filed shall, upon becoming aware, not later than the pre-trial conference, that the parties had entered into an arbitration agreement, dismiss the case and refer the parties to arbitration to be conducted by the CIAC , unless both parties, assisted by their respective counsel, shall submit to the Regional Trial Court a written agreement exclusively for the court, rather than the CIAC to resolve the dispute.

It is further provided by the second paragraph of Section 35 of the same law that the CIAC "shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" (as defined in Section 21 thereof) and "*notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission.*"[25]

5. Diversion of international commercial disputes

Similarly, it is mandated that international commercial disputes are to be resolved by arbitration, using the Model Law of the United Nations Commission on International Trade Law (UNCITRAL).[26]

IX. ADVANTAGES OF SETTLING UNDER THE KB LAW

The dissatisfactions over judicial resolution of disputes earlier discussed are being positively addressed by the *Katarungang Pambarangay* Law.

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[24] Rep. Act No. 9285 (2004), Sec. 34.
[25] CIAC Revised Rules of Procedures Governing Construction Arbitration (2005), Rule 4.1.
[26] Rep. Act No. 9285 (2004), Sec. 19.

On the matter of heavy costs entailed by judicial processing, KB dispute processing is the least expensive mode. A minimal filing of P20.00 is charged for filing a complaint. Accessibility is assured by making available dispute processing in every Barangay, thus bringing justice literally at the door step of everyone. Travel time to a centralized location, becomes inconsequential. Conciliation could be agreed upon, and often takes place at a venue or time most convenient to the parties and the mediator. Thus, time taken away from work is minimized.

On the matter of popular incomprehensibility of judicial proceedings, KB dispute processing are conducted in the vernacular or language understood by the parties. Parties are encouraged to tell their side of the dispute freely and unencumbered by legalities. In fact, it is important to stress that no lawyer is allowed to intervene in Barangay conciliation proceedings, much less to make obstructive objections on procedural grounds that would "judicialize" the dispute in the manner that lawyers are trained for.

On the matter of judicial delay, KB processing is restricted to thirty days, extendible to another period of the same limited duration.

Finally, when the parties agree on the terms of their compromise agreement, the KB law vests it with the force and effect of a court judgment. Thus, in the event of non-compliance or violation of their agreement, the aggrieved party may move for enforcement without having to go to court. This is one of the most significant innovations introduced by the KB law whereby *a contract is in effect converted into an enforceable judgment of a court of law.*

X. STANDARD TO DETERMINE SUITABILITY OF MEDIATION OR ADJUDICATION

After being convinced of the advantages of mediation over litigation, there is a danger that all disputes would be sought to be settled by compromise agreements secured by that mode. As defined by the Civil Code,[27] compromise is made by "making *reciprocal concessions*" and thereby avoid litigation or put an end to one already commenced. This authorizes a bargain where a diminution or waiver of rights is made by one party as a trade-off of a return favor by the other. This results in the oft-used

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[27] CIVIL CODE, Art. 2028.

characterization of a "win-win" agreement that is mutually beneficial to both parties.

The foregoing description of the process also infers the standard by which a determination should be made of what type of disputes is appropriate for mediation. And that is, a dispute that involves only the private interests of the parties, since that is a situation where they are authorized by law to waive their rights. The implication of this is that where public interest is involved in the dispute, it is better left to the judicial mode to resolve. Private individuals should have no business in compromising constitutional issues, for instance.

A good illustration of this divide is the case of a law student who sued his law professor for starting his class with a prayer that ends with "*in the name of Jesus Christ, our Lord, Amen.*" The plaintiff claims that this is a violation of the principle of Separation of Church and State and the freedom of religion[28] that are both constitutionally guaranteed, this was particularly aggravated because the dispute occurred in a State University subsidized by public funds. Thus, it was further argued that this violates the prohibition against the establishment of a religion made in the same constitutional provision. An offer to compromise by persuading the teacher to cease the offending prayer was correctly rejected on the ground that the plaintiff cannot waive the constitutional rights involved. For the guidance of all, a black and white ruling by the judiciary is necessary.

XI. ESSENTIAL FEATURES OF THE KB LAW

In a nutshell, there are three essential features of the KB Law, namely, 1) it provides for a conditional access to the formal adjudicative agencies of the Government[29]; 2) bar against legal representation[30] and 3) the compromise agreement or settlement under it is vested with the force of a judgment.[31]

Under the law, no dispute covered by it may be filed directly in "court or any other government office for adjudication unless there has been a confrontation of the parties before the *Lupon* Chairman or the *Pangkat* and no conciliation or settlement has been reached as certified by the *lupon* secretary or *pangkat* secretary as attested to by the *lupon* chairman or *pangkat*

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[28] CONST. (1987), Article III Sec. 5
[29] LOCAL GOV'T CODE, Sec. 412.
[30] LOCAL GOV'T CODE, Sec. 415.
[31] LOCAL GOV'T CODE, Sec. 416.

chairman." It is important to stress that the restriction against direct recourse is *not only with the courts but also before any adjudicative agency of the government.* Thus, a criminal complaint filed with the public prosecutor of a covered case that has not undergone prior barangay conciliation, may be suspended or dismissed until the condition has been complied with.

The evidence showing compliance with the condition required is the certificate to file action that is issued by the proper KB officials. It is usually attached to the complaint. Where a complaint is filed in court without undergoing the required KB conciliation, the case may be dismissed "*on the ground of lack of a cause of action or prematurity.*"[32]

The second feature of the KB Law is that representation of a party, particularly, by a lawyer is prohibited. Section 415 of the Local Government Code provides as follows:

> *Appearance of parties in person.* - In all *katarungang pambarangay* proceedings, the parties must appear in person without the assistance of counsel or representative, except for minors and incompetents who may be assisted by their next-of-kin who are not lawyers.

There is no other law that appears so outright discriminatory against lawyers than the above-quoted statutory provision. A minor who is a party to a dispute may not even be represented by his own parent if either of them happens to be lawyer. Surprisingly, the legal profession has not posed any challenge at all to this provision.

The third feature is that a successful mediation resulting in a compromise agreement is given the force and effect of a judgment of a court of law. This means that the terms of settlement can be executed or enforced like any court judgment.

Section 417 of the law provides as follows:

> *Execution.*- The amicable settlement or arbitration award may be enforced by execution by the *lupon* within six (6) months from the date of the settlement. After the lapse of such time, the settlement may be enforced by action in the appropriate city or municipal court.

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[32] Royales v. Intermediate Appellate Court, G.R. No. 65072, January 31, 1984.

Under the original law, the power of execution was denied to the barangay officials because of a perceived danger of abuse. Congress became convinced that said power could be safely entrusted to them after about a dozen years of experience.

XII. HOW THE KB LAW OPERATES

A. CONDITIONS FOR APPLICABILITY

For the KB Law to be applicable, the following conditions must concur: 1) the dispute is between natural persons;[33] 2) the disputants must live in the same city or town;[34] and 3) the dispute is not among those expressly excluded by the law.[35]

Since the law was designed for the resolution of interpersonal disputes, it excludes disputes involving corporations, partnerships and other artificial persons. This avoids problems related to sufficiency of authority to represent their principal. Further, the law requires the personal appearance of the disputants themselves so that decision to settle can be effectively implemented. Thus, no representation of a party is allowed except for a minor who may be represented by the next of kin who is not a lawyer.

The second condition is often erroneously interpreted as restricting KB application to the territorial limits of the barangay. Perhaps, the confusion is foisted by the title of the law and the original intent stated in the decree which was expanded to include residents of an entire city or town.

The third condition arose from the decision of the Technical Working Committee to vest jurisdiction not by enumerating the kinds of disputes that may be settled but including all kinds of disputes except those that are enumerated.

B. SUBJECT MATTER JURISDICTION

There are three (3) general categories of disputes that require resolution: 1) civil disputes; 2) criminal cases; and 3) administrative cases. Under the first category, there is no limit to the amount involved in order

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[33] LOCAL GOV'T CODE, Sec. 410.
[34] LOCAL GOV'T CODE, Sec. 409.
[35] LOCAL GOV'T CODE, Sec. 408.

that the KB law may be invoked. Popular misconception arising from a provision in the original law vesting jurisdiction to issue a writ of execution upon the first level courts is that the jurisdiction involved in KB disputes of civil cases is that it is similarly limited to the jurisdictional amount for courts of the first level. Clarification of the confusion, made it clear that jurisdiction in civil cases is unlimited as to amount. The reason for such broad grant of jurisdiction is that one case settled is one less case that will reach the courts.

For criminal cases, the penalty provided for by law must not exceed imprisonment of 1 year or a fine of not more P5, 000.00, or both such penalties. The reason for this restricted jurisdiction is that the higher interest of societal security must prevail over the private interests of the individual. To allow the compromise of more serious crimes would detract from the effective operation of the deterrent principle which is the cornerstone of societal security.

For administrative disputes that involve the performance of official functions of a government official, the law provides that the KB system has no jurisdiction. It is thus important to distinguish whether the act complained of against a public official was done in relation to the performance of his official duties or were done in his capacity as any ordinary citizen. The reason for this is that the development of a committed public service through effective disciplinary sanctions must override considerations of the convenience of the individual. A compromise would detract from this laudable objective.

C. VENUE

There are four (4) alternative venues[36] for filing a complaint under the KB Law.

(1) If both disputants are residents of the same barangay, the complaint shall be filed with *Lupon* of said barangay;

(2) If the parties reside in different barangays within the same city or town, it shall be filed in the barangay where the respondent or any of them resides, at the choice of the Complainant;

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[36] LOCAL GOV'T CODE, Sec. 409.

(3) If the dispute involves real property, it shall be filed in the barangay where the property is situated or where the greater portion thereof lies.

(4) If the dispute arose in the workplace where both parties are employed, it shall be filed in the barangay where such workplace is located.

(5) If the dispute arose in an institution where both parties are enrolled for study, it shall be filed in the barangay where such institution is located.

The principal reason for the venue is that Barangay Captain may be able to exert his influence more effectively to effect a settlement.

D. PROCEDURE FOR SETTLEMENT

Complaints are required to be filed in the proper barangay as stated above.

The Barangay Captain is the principal mediator under the KB system. As soon as the complaint is filed, he is required to *"summon the Respondent and his witnesses to appear before him for mediation of their conflicting interests."*[37] If he fails to settle the dispute, he is mandated to constitute the *Pangkat ng Tagapagkasundo*[38] – a panel of three conciliators which must make a second try to secure a compromise settlement of the dispute. The *Pangkat* is given fifteen (15) days from the date it convenes, extendible for a similar period, to persuade the parties to settle their differences[39].

It is only upon failure of these two steps conciliation process that a certificate to file action before the proper court is issued by the *Pangkat* Secretary attested by the *Pangkat* Chair.

E. SANCTIONS

The original law contains a provision on sanctions[40] that would impose the penalty *"as for indirect contempt of court* upon proper application" therefor by the concerned KB official. Further, if it is the complainant who refuses or wilfully fails to appear in compliance with the summons issued,

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[37] LOCAL GOV'T CODE, Sec. 410(a).
[38] LOCAL GOV'T CODE, Sec. 410(b).
[39] LOCAL GOV'T CODE, Sec. 410(e).
[40] Pres. Decree No. 1508 (1978), Sec. 4(d).

the complaint shall be disumissed and this fact shall be reflected in the records and in the minutes so as to *"bar the complainant from seeking judicial recourse for the same cause of action"*. On the other hand, if it is the Respondent who is at fault, he shall be barred *"from filing any counterclaim arising out of or necessarily connected therewith."*

F. ARBITRATION

Section 415 of the KB Law provides as follows:

> *Arbitration.* - a) The parties may, at any stage of the proceedings, agree in writing that they shall abide by the arbitration award of the *lupon* chairman or the *pangkat.*

Theoretically, the parties could appoint the *Punong Barangay* as the Sole Arbitrator or the *Pangkat* as the Panel of Arbitrators. In practice, this mode is rarely resorted to, perhaps because it is hardly suggested to the parties as an available alternative in either of these two stages. In a research study that the author conducted[41], the reason for this is that the arbitrational mode is not well understood. Further, the training of KB officials has been focused on the mediation mode with hardly any attention being paid to the arbitrational mode. Thus, the officials are not comfortable with the evaluation of evidence that is submitted to them as basis for making a decision or an arbitral award.

G. REPUDIATION

There are two kinds of repudiation that are available to an aggrieved party under the KB Law. One is the repudiation of the arbitration agreement that the parties may have agreed upon which must be done *"within five (5) days from the date thereof"*. . It is important to note that there is no remedy of repudiation of an arbitral award. The proper remedy is to *"a petition to nullify the award filed before the proper city or municipal trial court"*.[42]

The other kind is the repudiation of the compromise agreement that may have been secured. It must be filed by the aggrieved party *"within ten (10) days from the date of the settlement"* in the form of a written statement that must be sworn to before the *Lupon* Chairman on the ground his consent

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[41] *"Research Survey on the Conciliation of Disputes under the KB Law"*, UP Law Center, (1984).
[42] LOCAL GOV'T CODE, Sec. 416.

thereto was "*vitiated by fraud, violence or intimidation*"[43]. The ground for repudiation of the arbitration agreement is the same.

H. ENFORCEMENT OF SETTLEMENT OR AWARD

The KB Law provides as follows:

> Section 417. *Execution.*- The amicable settlement or arbitration award may be enforced by execution by the *lupon* within six (6) months from the date of settlement. After the lapse of such time, the settlement may be enforced by action in the appropriate city or municipal court.

XIII. CONCLUSION

Statistics from the Bureau of Local Government Supervision (BILGS) show that in the two decades and a half that the KB system has been operating since 1980, a cumulative total of *4,052,000 cases* have been settled that, it is concluded would have been otherwise filed in the judicial system. Based on the average amount of *P9, 500.00* that is estimated to cost the government for each of those cases to be resolved, the barangay justice system has saved the government the staggering sum of *P24, 663,435,660.00.* The estimated cost per case resolved is arrived at by adding the operating budget of the court for a year and dividing it by the number of cases disposed of during that year, Actually, the cost would be much more than that if the capital outlay costs (building the Halls of Justice, for instance) were added.

By lessening the workload of judges through preventing the filing of cases that would have been resolved judicially, the KB system has undoubtedly contributed to a great degree in lessening court docket congestion.

As to other objective of the KB system of broadening access to justice, referring to an empirical study that this author conducted in San Fernando, La Union, with funding assistance from The Asia Foundation, the conclusion was reached that the respondents surveyed placed great value on the KB system for having empowered them to resolve their own disputes. This has now been enshrined as a State Policy in the ADR Act of 2004 (R.A.No. 9285) when it explicitly expressed it as a state policy to respect

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[43] LOCAL GOV'T CODE, Sec. 418.

party autonomy or the freedom of the parties to make their own arrangement to resolve their own disputes.[44]

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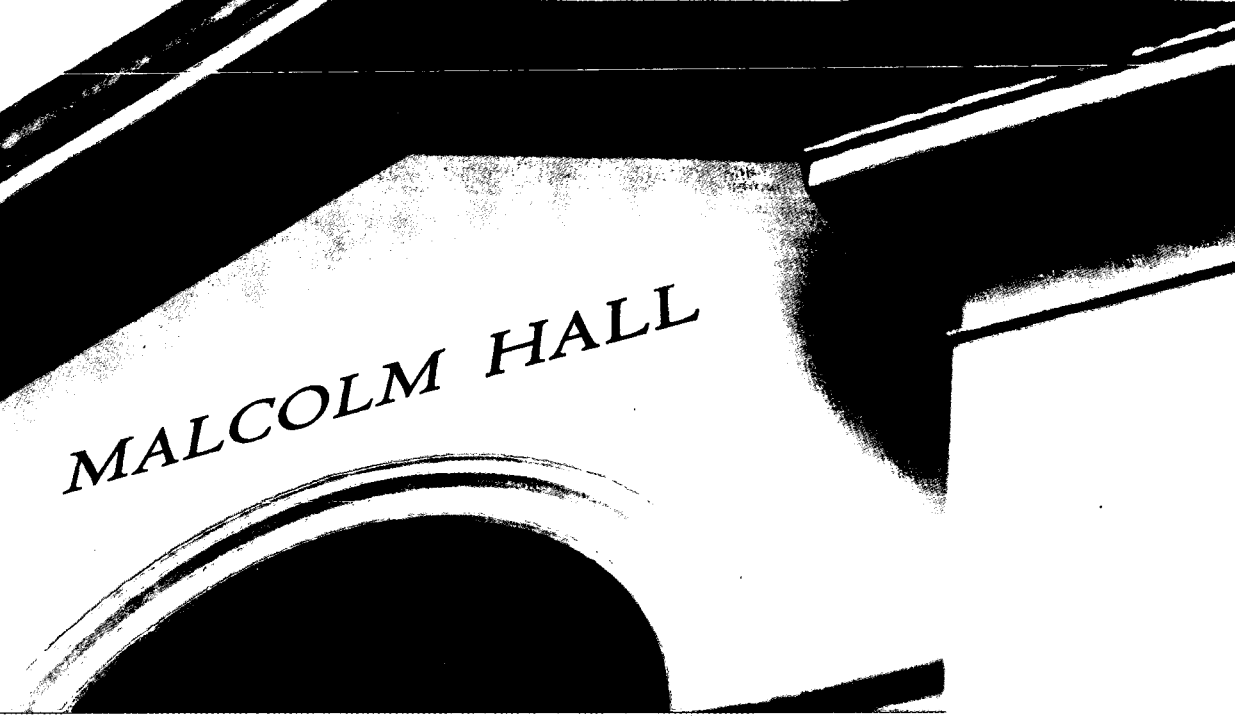
[44] Rep. Act No. 9285 (2004), sec. 2.



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