Future of law critical thinking examples

Technology, Development

Alternative Dispute Resolution

The future of the law is unpredictable and uncertain in character. This could be partially explained by the dynamic nature of events and factors which cumulatively fails to predict with future development and or trajectory of the law. However, over and above the normal practise, a lot of changes have been seen that point to a direction towards alternative dispute resolutions in the solution of problems and situations. In the modern divide, the increased costs of litigation, the formality of the legal system coupled with the time consuming nature of litigation is slowly compelling persons into using other avenues for the solution of problems and cases. It is on that premise that alternative dispute resolution has gotten currency and promises to have an immense role in the legal field. The paper seeks to examine the position and role of alternative dispute resolution with a future perspective of the law taken into consideration.

Alternative dispute resolution refers to the process through which legal and non-legal disputes are sorted through means other than the formal litigation. In other words, alternative dispute resolutions is the umbrella name for what the courts like to refer to as out of courts settlements. The alternative dispute resolution is less formal, is flexible and has a high degree of confidentiality. Alternative dispute resolution may assume three main forms although other alternative techniques still fall easily within that description as long as they lack the litigation process. The three are arbitration, mediation and negotiation. Arbitration entails the solution of a problem between parties through an arbiter who is often a neutral party with remarkable experience and knowledge on the topic causing the

disagreement. The arbitration is the process through which each party engages each other and the arbiter finally sets the award. The award refers to the recommended course of action imposed on all parties. The award is binding on the parties and can only be unenforceable with the backing of formal court permission.

On the other hand, mediation entails the engagement between conflicting or disagreeing parties often with the control of the mediator. Unlike in arbitration where the arbiter sets the award, in mediation, the mediator only suggests the recommendation. The rest if left for the negotiating parties to accept and ratify. The mediator plays much more of a facilitator role. He is there to cool tempers and ensures sanity by all parties. At the end of the day, the decision is arrived at by the parties.

Slightly in similarity with mediation is negotiation. In negotiation, the parties negotiate with among each other. Negotiation involves a moderator who controls and directs the negotiations. Like in mediation, the moderator merely provides a facilitating environment and is not allowed to decide or suggest any ideas for the negotiation. The overall role of the moderator is to build consensus by encouraging the negotiators to compromise.

All these alternative dispute resolution mechanisms come with the conveniences of informality, less costly, less time consuming and confidential. It is consequently recommended for cases to be solved expeditiously through these options. In addition, the law has the general tendency to consider the options as alternatives to the lengthy and rigorous judicial systems that often subjects parties to legal issues and formality that complicates cases and or simple situations. It is consequently the practise in

commercial, political and social processes to exploit alternative dispute resolutions before opting for litigation which suffices as the final arbiter with the force and formality of law.

It is the humble estimation of this paper that given the mentioned advantages and conveniences attendant to the alternative dispute resolutions, the legal trajectory would be towards the alternatives disputes resolutions. This supposition is equally premised on the fact that in the long run, the strengthening of regimes and the spread of information will lead to the consolidated approach in management of affairs. This approach is robust and entertains a solution of problems based on agreements predicated compromises among antagonising parties. This can be seen as a level of maturity which is facilitative of good relations both domestically and internationally. With increased globalization, the pressure to enable interaction of cross border systems also leads to a development of regimes that work complimentarily to one another and not one system being superior to the other. In such set ups, the best methods of dispute resolutions lie in the alternative dispute resolution.

In conclusion, it is consequently arguable to advance the fact that the future of the law lies in alternative dispute resolutions and that with the passage of time, people will prefer the alternative dispute resolutions to formal litigation. This urge shall be informed by the benefits attendant to alternative dispute resolutions which are absent in litigation. Over and above that, it is imperative to appreciate the role of litigation as the final arbiter in disputes. It thus should be left for the most contentious cases and the ordinary day to

day disagreements need to be subjected to less formal methods such as alternative dispute resolution.

References

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