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Industrial Dispute to Arbitration and Conciliation as Other System of Alternate Dispute Resolution

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The current pandemic scenario has only worsened the problem of pending cases in India. the courts are flooded with files and people are having a hard time reaching the court because of the travel restriction and fear of coming in contact with the coronavirus. it is high time that the promotion of ADR mechanisms should be encouraged and the government can develop the state of ADR in the country by training personnel, laying down appropriate guidelines, incorporating legal support, etc. also, ADR mechanism can be coupled with the digital platform and conduction of ADR online can come in handy as it will encourage asynchronous communication between the parties all the way making it easier for reaching an amicable solution for the dispute. It is upon all the stakeholders to take a holistic approach to accomplish the appropriate change required in the process of alternate dispute resolution mechanisms and establish a peaceful, quick, and cost-effective resolution technique.

Keywords: *industrial dispute, arbitration, conciliation, adr mechanisms.*

INDUSTRIAL DISPUTE ACT 1947

The industrial dispute act came into existence in 1947. It formulates to regulate Indian working culture, the status of labours, trade unions as well as individual workmen in any industry. aim of the industrial dispute act 1947 is to settle disputes between employers and employees,

workmen and employers, or between workers[i] .reasons behind industrial disputes are mainly two: Financial disputes: it covers disputes of wages, bonuses, allowance, etc.

Non-financial dispute: disputes related to the mistreatment of workmen, workmen discipline, a victim of the workforce, political agenda, safeguard to the workers, etc. According to section 2(k) of an industrial dispute act 1947. "Industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen or between workmen and workmen, employment or non-employment or the term of employment or with the condition of labour, of any person; As per section 2(j) "industry" means any business trade, undertaking, manufacturing or calling of employers and includes any calling, service, employment,[1] handicraft or industrial occupation, or avocation of workmen.

Section 2(s) of the act defines workmen and section 2(q) of the act defines strike under the industrial dispute act 1947[2].

TYPE OF INDUSTRIAL DISPUTE

An industrial dispute is classified into two parts:

Interest dispute - it covers the area of new wages level, bonuses, perks, allowance, and others.

Right dispute - right dispute includes the legal right and obligation it includes unfavourable labour practice, breach of contract, employment agreement, or alleged collective bargaining agreement.

BENEFITS OF ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute resolution method help to take preventive measures or settle the dispute that may arise between employer and employee, union and employer, or between workers. It prevents taking the legal step and finding the other solution which is less costly and pocket friendly to settle the dispute, it forbids the parties from taking the matter to court. Various means

[1] Industrial Disputes Act 1947, s 2(j)
[2] *Ibid*

of alternative dispute resolution are – arbitration, negotiation, conciliation, etc. When negotiation breakdown it becomes problematic for both management and labour or worker, or workmen union. Arbitration avail a chance for both parties to sit and solve the dispute .it providing a win-win situation for both ends. As it saves money, time, and other hustle of the parties and saves them from serious economic losses. These processes are benefited employers as they reduce the chance of legal action, strike, and dharna, on the other part life saving for the employee too. As it allows and provides them more bargaining power which benefits them in a large aspect. It also prevents mass layoffs in a dispute.

MEANING OF ADR ALTERNATIVE DISPUTE RESOLUTION

ADR is a tool used for dispute resolution like arbitration, conciliation, mediation, and negotiation. It works outside the traditional legal method of court litigation or administrative practice. it is the perfect method for speedy and cheaper settlement of the dispute. Abraham Lincon once said, "Discourage litigation, Persuade your neighbour to compromise .whenever you can point out to them how the nominal winner is often a real loser, in fees expenses and waste of time".[3] According to the World Bank Group, "ADR is a wide range of means to resolve conflict that is short of formal litigation".

OTHER SYSTEMS OF ALTERNATIVE DISPUTE RESOLUTION:

Conciliation: The process of conciliation is used to resolve the dispute. It is a way to find an agreement between the parties involved in the dispute. A conciliator is someone who can reach an agreement. They do this by talking with both parties and finding out what they need and want from other parties from the end of a dispute. A conciliator does not decide for either party or tell them what they should do. The decision is up to them, but it must be something that both sides agree with, conciliation is often used where many issues need to be resolved. The industrial dispute act of 1947 has provision for conciliation. According to section 4government appoints a conciliation officer and assigns him the duty of mediating and promoting the settlement of an

[3] Vikrant Yadav, 'Use of Alternative Dispute Resolution in Labor Disputes in India: An Analysis' (2014) 5(1) Indian Journal of Law and Justice <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3761618> accessed 20 October 2022

industrial dispute. The officer may be appointed for a specified area or one or more specified industries either permanently or for a limited period.

DUTIES OF CONCILIATION OFFICERS

According to section 12(A) of the industrial dispute act 1947 the duties of a conciliation officer which he had to perform while disputing resolution.

- Where any dispute exists or is apprehended, the conciliation officer may, or where the dispute related to public utility service and a notice under section 22 has been given, shall hold conciliation proceedings in the prescribed manner.
- The conciliation officers shall, to bring about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such thing as they think fit for inducing the parties to come to a fair and amicable settlement of a dispute.
- If a settlement of the dispute or any of the matters in dispute is arrived at in the course of the conciliation officers shall send a report thereof appropriate government [or an officer authorized on this behalf by the appropriate government. together with a memorandum of the settlement signed by the parties to the dispute.
- If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement thereof, together with a full statement of such facts and circumstance, and the reasons on account of which, in his opinion, a settlement could not be arrived at.
- A report under this section shall be submitted within 14 days of the commencement of the conciliation proceedings or within a shorter period as may be fixed by the appropriate government.

ARBITRATION

The process is where a third party hears both sides of the dispute and makes a decision. Arbitration is generally used in the case where there is an issue between two parties eg; an employer and employee that cannot be resolved through negotiation or litigation .in this situation both parties agree to submit their dispute for arbitration before they meet with any representative from an outside organization such as law firm or union who are known as arbitrators. Arbitration and conciliation is kind of similar terms. But the method is entirely different from each other .as the judgment is given by the third party. The third party is chosen by the disputed party themselves. Later on, the party agrees. The work of an arbitrator is to listen to the viewpoint of the disputed parties and later give judgment according to the intelligence. The decision of the judgement is sent to the government which publishes it. After that, the judgements are enforceable and binding on both disputed parties.

TYPE OF ARBITRATION

Voluntary arbitration-: here the parties voluntarily and mutually agree to appoint a third party to settle their dispute. The major loophole in its judgement is not binding on both parties. There are also a few other factors that limit the scope of voluntary arbitration, like; legal issues, limited experience, trained arbitrators, tedious procedures, lack of appellate procedure in case of non-satisfactory awards, etc. According to section 10A of the industrial dispute act 1947 if the conciliation process fails it is advised that the parties opt for voluntary arbitration.

Compulsory arbitration -: here the government orders the parties to go for arbitration. The parties are required to accept arbitration without the willingness of the party. They do so as per the instruction of the parties. They do so as per the instruction of the government .it is also non-binding. It also has an advantage as it establishes mutual trust between the parties, is flexible, less time-consuming, and pocket-friendly as it provides justice at a minimum cost, and it creates healthy relationships between two parties.

TIER OF ADJUDICATION

In the dispute, the resolution government appoints a legal authority whose duty is to settle the dispute, there are 3adjudicating bodies under the Industrial dispute act 1947. The adjudicating body hears claims and makes just decisions. They work on the behalf of the state for the protection of the right of an oppressed person. As adjudication is the ultimate remedy of dispute resolution. When conciliation fails to give a satisfactory judgement. Adjudication takes charge and performs the judicial function to settle the dispute. There is a small difference between adjudication and arbitration in India.

Adjudication is also known as the compulsory method of dispute resolution .it consists of three adjudicating bodies under the Industrial dispute act 1947.

- Labour court
- Industrial tribunal
- National tribunal

LABOUR COURT

Under section 7 of the industrial dispute act 1947, there is a provision for a labour court. The 2nd schedule of the act mentions the jurisdiction of labour court matters. Labour court consists of one individual who may be a judge of the High court or the judge of the district court for not less than 3 years or has held any judicial office in India for not less than seven years. The judge who has 5 years prior experience in judgeship of the Labour Court is also eligible for the position of judge.

INDUSTRIAL TRIBUNAL

An important part of the industrial relation framework is the provision through the industrial tribunal, of a speedy and informal procedure for resolving individual disputes relating to employment. Tribunal deals with all matters regarding employment including unfair dismissal, redundancy appeal, unauthorized deduction from wages, fixed-term contracts, and claims of harassment. If the parties are dissatisfied with the conciliation and arbitration then they can

approach the tribunal as the door of the tribunal is always open for the oppressor to provide justice and to resolve the dispute matters. An industrial dispute is mentioned under section 7A of the industrial dispute act 1947. The industrial tribunal can be one or more than one according to the requirement and the need of the government as the jurisdiction of the industrial tribunal is wider as compared to the labour court. It is a temporary body that works on an ad-hoc basis for the issue covered under industrial tribunal the following:

- Salary and the mode of payment.
- Gratuity, bonus, and provident fund.
- A number of working hours and overtime.
- General leaves, medical leaves, and holidays are provided to the employee.
- All the matters which need to be heard on an urgent basis.

NATIONAL TRIBUNAL

Under section 7B of the industrial dispute act 1947 and in the 2nd, and 3rd schedules of the act tribunal is formed at the national level. It is done by the central government through an official gazette for more than one national tribunal. The adjudication of the dispute must be at the national level. When the matter reached the national tribunal then the jurisdiction of the labour court and industrial tribunal is completely lost over the concerned matter. The working of the national tribunal is done by the judge who may be the judge of the high court central also appoint two assessors whose work is to advise the proceeding officer as per the need of the tribunal. Section 10 (2A) of the act specifies the award of tribunal and court.

AWARDS

Awards are published by the government within 30 days of their being issued .award come into force from the date of publication and remain in function for one year[4].

[4] Kumar Harsh, 'Roles of Adjudicating Authorities in Settlement of Industrial Disputes' (*Legal Services India)* <https://www.legalserviceindia.com/legal/article-5349-roles-of-adjudicating-authorities-in-settlement-of-industrial> accessed 20 October 2022

Recent development in alternative dispute resolution:

Demand for ADR has increased in the present scenario, especially after the spread of COVID-19 [5].it create its place in general, as well as a legal fraternity, as earlier everything is on hold people, has no choice other than work from home. The importance of ADR let people aware of its advantage and disadvantage .during the pandemic online dispute resolution come as a life saviour for the public, industries, companies, and lawyers as well. but it also becomes troublesome for those who are not technologically active or well-versed in emerging technology. It also turns into a hard task because of improper connection. Nevertheless, it requires lawyers a rigorous continuous training to switch from offline to online mode.

ONLINE DISPUTE RESOLUTION

- It is a hassle-free resolution and does not require any party to travel across the nation for the arbitration seat.
- Communication between the parties can be done at any time through video conferencing. Which provides equal opportunity for both parties to hear and see each other.
- Now it become the 1st choice of the parties for dispute resolution as it is fast and pocket friendly.

AMENDMENT IN ARBITRATION AND CONCILIATION ACT 1996

The arbitration and conciliation act 1996 follow the footstep of the UNCITRAL "United Nations Commission on International Trade Law". 1996 act try to modernize the Indian arbitration law Amendment. India emerging as the world's top economy the demand for strong global arbitration practices is very much needed. India is emerging as a brand in which every foreign company is an investment. In the past 6-year, the arbitration act was amended 3 times showing the intention of the legislature to reform the arbitration act 1996. It aims to institutionalise arbitration in India. The Arbitration Council of India now grades arbitration institutions after

[5] Riya Dani, 'COVID- 19 AND ALTERNATIVE DISPUTE RESOLUTION' (*Vidya Mediation Centre*) <https://viamediationcentre.org/readnews/NDMz/COVID-19-and-Alternative-Dispute-Resolution> accessed 20 October 2022

the 2019 amendment. Grading is done on the following criteria related to "infrastructure, quality, and calibre of arbitrators, performance, and compliance of time limits for disposal of domestic or international commercial arbitration in such manner as may be specified by the regulation.'' The 2019 amendment widen the scope of qualification of arbitrators .2019 amendment was done in the principal act adding section 43 (j) this section directed the 8th schedule of the act. Here the minimum qualification of the arbitrator is mentioned. The arbitrator must have 10 years of experience in the technical or scientific domain. This section provides general norms like fairness, integrity, neutrality and impartiality, etc. an arbitrator must possess.

The 2021 amendment deleted eight schedules of the primary activity with a view that it brings flexibility to the arbitration council of India .as the qualification of the arbitrator is based on "regulation" defined under section 2(1)(j). This amendment provides the commission freedom to consider the foreign arbitrator. Hence made an appointment and backed the UNCITRAL model law provision. In 2021 section 34 was amended. On automatic stay of principal act awards. As in the 2015 amendment, an automatic stay would not be granted on an award merely by applying and setting it aside.

VIEWPOINT

The Hon'ble judge of Supreme Court justice Chandrachud give his view on the impact of online hearings in the past year. Online hearings help lawyers in maintaining digital files in one place, and the ability to make digital notes. Digital files are easily accessible by the parties. The future of arbitration in India is very bright. Arbitration is not the last choice of dispute resolution, hence turning a prior step. It takes proper steps to reduce the burden of the judiciary. It's a perfect example of a decentralised judiciary system. In the upcoming year India emerging as the global economy. Even Indian law keeps updating with the solution to emerging problems by continuous amendment. Legislation is always on its toes to meet the desired need of the global industries and modernization of arbitration law.

EMERGENCY ARBITRATION

It works to provide urgent relief to the parties by an arbitrator. During the period of the pandemic, people are in urgent need of this provision. The enforceability of emergency awards is uncertain in India. But in the 246th report, LCI (Law Commission of India) made a recommendation for recognition of the concept of emergency arbitration. In the 2015 amendment act, this recommendation was not incorporated. This issue again comes to light when a dispute between ***Future retails v Amazon***. Under SIAC rules, Amazon was successful in obtaining the interim order in this case. It prevents Future Group from going through with a contract for the privatization of retail operations for Rupee 24700 crore. The issue of whether or not an interim order was enforceable in India was brought up at the time. As a result, Reliance announced its decision to proceed with the sale publicly. according to the current emergency arbitrator decision, particularly in India, such an order can't be made against the non-parties, and emergency arbitration decisions, particularly in situations where the arbitration was conducted outside of India, cannot be directly enforced.

However, aside from this restriction, emergency arbitrator orders have generally been well-known and helpful. Future retails asserted that the emergency arbitrator's order, in this case, was invalid in India. Because Emergency arbitration is not recognized by the arbitration and conciliation act .as a result. An emergency arbitrator order is invalid under section 17(2) of the act since it does not follow Section 17(1) requirements. However, this issue has been brought up in two separate but connected lawsuits. ***Future Retails v Amazon*** and ***Amazon v Future Coupons***, before the High court of Delhi. The court recognises emergency arbitrators as genuine arbitrators under Indian law after carefully considering the grounds and the legality of the orders/awards delivered by the emergency arbitrators.

CONCLUSION

The use of ADR in Industrial disputes may be beneficial for a quicker and more amicable resolution of the conflict without harming the relationship of parties involved in the workforce or the industry. Due to the different features and advantages of ADR. Even global organizations

like the UN support USC or ADR for industrial conflicts. ADR might not always result in the desired outcome. But it will undoubtedly be beneficial in minimizing the conflict. Consequently, in a nation like India, where there are too many cases for the courts to handle and most workers in the industries are poor, particularly in the unorganized sector. There is a solid argument for the increased usage of the ADR mechanism for industrial dispute resolution.