

Functioning of Adjudication Machinery under the Industrial Disputes Act, 1947 in West Bengal

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Abstract

This study attempts to examine the functioning of adjudicating machinery under the Industrial Disputes Act, 1947 in West Bengal during the period from 1991 to 2015 i.e., entire post globalisation period. During the study period the mean rate of disposal per year is 16.4% which is quite low. Again, on an average, in 34 cases per year there are complaints regarding violation of award. If we deduct the cases of award violation, the effective rate of disposal comes to around 13.83%. During the same period the mean rate of award violation is 15.65% which is quite high. If the cases where the parties preferred appeal before higher Courts are considered the rate of disposal will fall further. The study shows that adjudication as a means of settling industrial disputes is not serving its purpose.

Key Words: *Industrial Jurisprudence, Industrial Relations, Labour Laws, Labour Disputes, Dispute Resolution*

1. Introduction

Industrial Disputes Act, 1947 provides machinery for peaceful resolution of industrial disputes and to promote harmonious relation between employers and workers. The Act seeks to pre-empt industrial tensions, provide the mechanics of dispute resolutions and set up the necessary infrastructure so that the energies of partners in production may not be dissipated in counterproductive battles and assurance of industrial peace may create a congenial climate. The Act enumerates the contingencies when a strike or lock-out can be lawfully resorted to, when they can be declared illegal or unlawful, conditions for laying off, retrenching, discharging or dismissing a workman, circumstances under which an industrial unit can be closed down and several other matters related to industrial employees and employers.

To create conducive industrial relation climate, recent HR practices stress upon replacing adversarial relation between the management and the workers and trade unions by a collaborative relation. Again, in many new

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industries there are no trade unions. Thus, the field of industrial relation is undergoing a sea change.

The mechanisms for handling industrial disputes can be preventive or curative. Most of the preventive mechanisms like code of discipline, Joint management councils, grievance handling procedure etc. are non-statutory and voluntary in nature. The provision for Works Committee is the only statutory preventive mechanism.

The Act provides for following Authorities for Investigation and settlement of industrial disputes:

- (i) Works Committee.
- (ii) Conciliation Officers.
- (iii) Boards of Conciliation.
- (iv) Courts of Inquiry.
- (v) Labour Courts.
- (vi) Industrial Tribunals.
- (vii) National Tribunal.

Among the authorities mentioned above Works Committee belongs to preventive mechanism of industrial disputes and rest are part of curative mechanism under the Act. Section 10-A of the Act also provides for joint reference of industrial disputes to voluntary arbitration which has hardly been used in India.

2. The Adjudication Machinery under the Industrial Disputes Act, 1947

The principal techniques of dispute settlement provided in the Industrial Disputes Act are collective bargaining, conciliation, investigation, arbitration and adjudication. Adjudication means a mandatory settlement of Industrial Disputes by Labour Courts, Industrial Tribunals or National Tribunals under the Act. By and large, the ultimate remedy of unsettled dispute is by way of reference by the appropriate government to the adjudicatory machinery for adjudication. The adjudicatory authority resolves the Industrial Dispute referred to it by passing an award, which is binding on the parties to such reference.

The composition of Labour Courts, Tribunals and National Tribunals are described in section 7, 7-A and 7-B of the Industrial Disputes Act, 1947 and their procedure, powers and duties are provided in Chapter IV of the Act. Disputes are referred to Labour Courts or Tribunals u/s 10 of the Act.

Usually, a dispute is raised by any of the affected parties before the conciliation officer. The conciliation officer may also intervene in case of apprehended dispute. If the dispute cannot be resolved by the conciliation machinery, it sends a failure report to the appropriate government u/12(4) of

the Act. After considering the report, the appropriate government may refer the dispute for adjudication to the Labour Courts or Tribunals.

In West Bengal, the Act has been amended to insert a new sub-section 10(1B) which empowers an individual workman to file an application directly before the Labour court or Tribunal if the individual dispute remains unresolved for 60 days before the conciliation officer.

3. Statement of the Problem

For designing efficient and effective dispute resolution machinery keeping pace with the globalised world and existing industrial relations scenario we need to understand the functioning of the existing mechanisms. Against this backdrop, this study attempts to examine the functioning of adjudicating machinery under the industrial Disputes Act, 1947 in West Bengal during the period from 1991 to 2015. The present study is both extensive and intensive though limited in coverage within the state of West Bengal and excludes central industrial relations machinery.

4. Research Gap and Objectives of the Study

In view of the Statement of Problem, the following has been observed:

- There is dearth of studies on industrial disputes resolution machinery in West Bengal.
- There is lack of studies on Adjudication mechanism.

In view of the research gap identified in this study an attempt for a detailed analysis of the adjudication of industrial disputes with the objectives to study the effectiveness of adjudication in resolving industrial disputes has been made in this research paper.

5. Hypotheses

H01= Adjudication is not effective in resolving industrial disputes

6. Methodology

The period of study is from 1991 to 2015 and covers the cases referred or filed before the Labour Courts or Industrial Tribunals under sections 10 and section 10(1B) of the Industrial Disputes Act, 1947 within West Bengal.

The data was collected mainly from 'Labour in West Bengal' published by the Labour Department, Government of West Bengal.

7. Analysis with Interpretation

There are nine Industrial Tribunals and two Labour Courts functioning in the State of West Bengal. Generally Industrial Tribunals are presided over by the officers of West Bengal Higher Judicial Service cadre deputed by the Hon'ble High Court at Kolkata. Occasionally a few of the

judges of Tribunals are appointed by the Labour Department by way of re-employment. The Labour Courts are also manned by the members of the West Bengal Judicial Service posted on deputation by the Hon'ble Court.

Industrial Tribunals and Labour courts are empowered to adjudicate various disputes covered under Industrial Disputes Act, 1947, Industrial Employment (Standing Order) Act, 1946, and Working Journalists (Miscellaneous Provisions) Act, 1955. Industrial Tribunals and Labour courts adjudicates matters under section 10, 10(1B)(d), 33A, 36A, 33(2)(d), 33(3)(b), 33C(2), 2A(2) of the Industrial Disputes Act,1947. However, for the purpose of this study we will consider the performance of Industrial Tribunals and Labour courts under section 10 and 10(1B)(d) of the Industrial Disputes Act, 1947 under which it directly adjudicates industrial disputes.

Under section 10 of the Industrial Disputes Act,1947, the state Government refers industrial disputes for adjudication and under section 10(1B)(d) the affected workman can directly approach the industrial tribunal or labour court for adjudication of its dispute.

The performance of the adjudication machinery for both types of disputes taken together is given below:

Table 1. Performance of Adjudication Machinery u/s 10 & 10(1B)(d) of I.D. Act, 1947

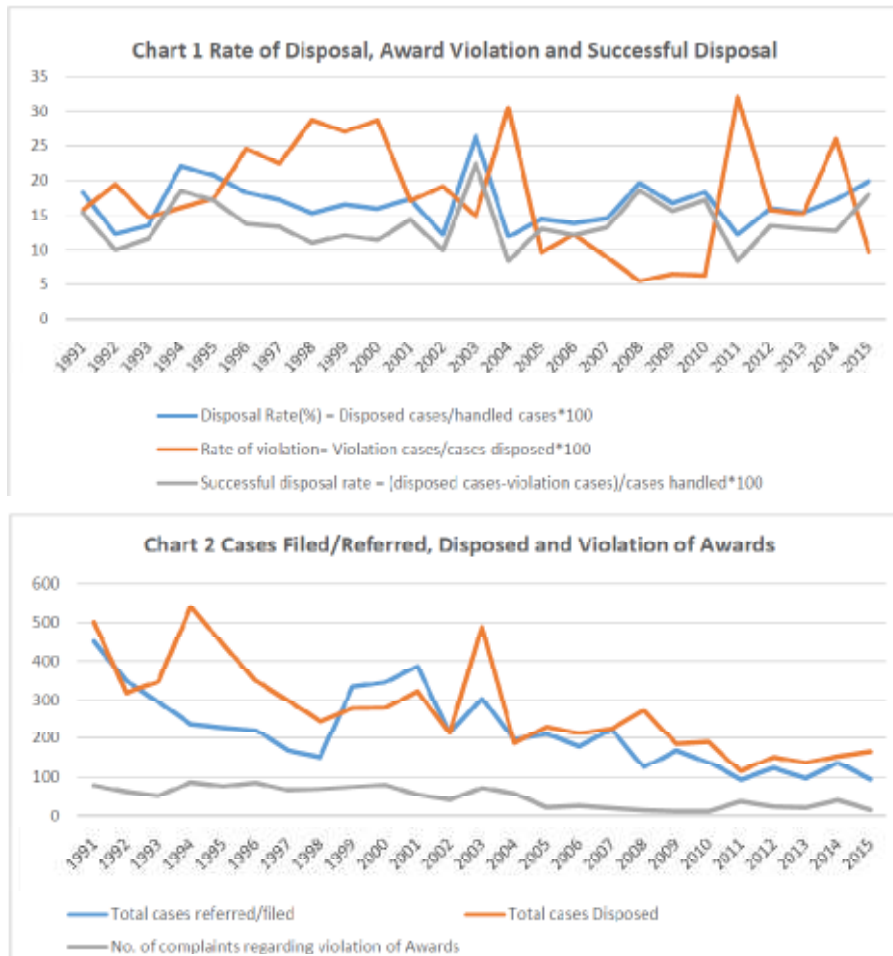
Year	Total cases Handled	Total cases Disposed	Total cases referred/ filed	No. of complaints regarding violation of Awards	Disposal Rate (%) = Disposed cases/handled cases*100	Rate of violation= Violation cases/cases disposed*100	Successful disposal rate = (disposed cases-violation cases)/cases handled*100
1991	2733	501	450	79	18.33	15.77	15.44
1992	2582	319	350	62	12.35	19.44	09.95
1993	2558	347	295	51	13.57	14.70	11.57
1994	2448	540	237	87	22.06	16.11	18.50
1995	2136	442	228	77	20.69	17.42	17.09
1996	1915	350	221	86	18.28	24.57	13.79
1997	1734	299	169	67	17.24	22.41	13.38
1998	1587	244	152	70	15.37	28.69	10.96
1999	1677	278	334	75	16.58	26.98	12.10
2000	1745	279	346	80	15.99	28.67	11.40
2001	1853	322	387	55	17.38	17.08	14.41
2002	1746	214	215	41	12.26	19.16	09.91
2003	1858	489	304	73	26.32	14.93	22.39
2004	1565	187	196	57	11.95	30.48	08.31
2005	1588	230	210	22	14.48	09.57	13.10
2006	1537	213	179	26	13.86	12.21	12.17
2007	1546	225	222	20	14.55	08.89	13.26
2008	1390	273	125	15	19.64	05.49	18.56

2009	1105	185	169	12	16.74	06.49	15.66
2010	1037	190	138	12	18.32	06.32	17.16
2011	941	115	094	37	12.22	32.17	08.29
2012	949	152	123	24	16.02	15.79	13.49
2013	894	138	097	21	15.44	15.22	13.09
2014	893	154	136	40	17.25	25.97	12.77
2015	834	166	095	16	19.90	09.64	17.99

Table 2. Descriptive Statistics of Performance of Adjudication Machinery u/s 10 & 10(1B)(d) of I.D. Act, 1947

	<i>Total cases Handled</i>	<i>Total cases Disposed</i>	<i>Total cases referred/ filed</i>	<i>No. of complaints regarding violation of Awards</i>	<i>Disposal Rate(%) = Disposed cases/handled cases*100</i>	<i>Rate of violation= Violation cases/cases disposed*100</i>	<i>Successful disposal rate = (disposed cases-violation cases)/cases handled*100</i>
Mean	1634.04	274.08	218.88	48.20	16.67	17.77	13.79
Median	1588.00	244.00	210	51.00	16.58	16.11	13.26
Standard Deviation	558.90	117.73	98.03	26.23	3.40	7.96	3.43
Kurtosis	-0.57	0.04	-0.25	-1.58	1.29	-0.95	0.25
Skewness	0.34	0.89	0.77	0.00	0.87	0.23	0.57
Range	1899.00	425.00	356	75.00	14.37	26.68	14.10
Minimum	834.00	115.00	94	12.00	11.95	5.49	8.29
Maximum	2733.00	540.00	450	87.00	26.32	32.17	22.39

During the 25 years' study period the state adjudication machinery handled on an average 1634 disputes per year and disposed of around 274 cases. The mean rate of disposal per year is 16.67%. A dispute when adjudicated upon results in award or no award. The parties have the option of preferring an appeal in higher courts. But in some cases, the parties neither go for appeal nor comply with the award. In such cases, the other party files complaint regarding violation of award. On an average, in 48 cases per year there are complaints regarding violation of award. Further, unlike conciliation, the adjudicating machinery has the power to dispose of the cases on its own. They do not need the consent of the parties to pronounce the award. Considering these, the rate of disposal by the adjudicating machinery is quite low. If we deduct the cases of award violation, the effective rate of disposal comes to around 13.79%.



From the above chart, it can be seen that till 2005 there is a relation between the number of disputes handled and the number of disputes disposed. However, after 2005 the number of disposals stabilised around 200 irrespective of the number of disputes handled and the number of disputes handled steadily declined over the years. The number of disputes handled declined because the number of disputes referred or filed for adjudication declined.

It is seen that even after adjudication in many cases the award is not honoured/implemented. Apart from violation of award the parties have the option of preferring an appeal in higher courts. However, data relating to cases where the parties preferred appeal is not available.

From the above chart, it is interesting to note that when the disposal rate showed an upward trend the violation rate showed downward trend and vice versa. One reason may be that there is a time lag between the two. Complaints of violation of award is filed not immediately after the case is disposed of by award. The affected party waits for some time and even pursues the case before the other party before filing a formal complaint.

8. Conclusion

During the 25 years' study period the state adjudication machinery handled on an average 1634 disputes per year and disposed of around 274 cases. The mean rate of disposal is per year is 16.67%. Again, on an average, in 48 cases per year there are complaints regarding violation of award which is around 17.77%. Further, unlike conciliation, the adjudicating machinery has the power to dispose of the cases on its own. Considering these, the rate of disposal by the adjudicating machinery is quite low. If we deduct the cases of award violation, the effective rate of disposal comes to around 13.79%. If the cases where the parties preferred appeal before higher Courts are considered the rate of disposal will fall further. The objective of this study was to evaluate the functioning of the adjudicating machinery under the Industrial Disputes Act, 1947 in West Bengal which shows that adjudication as a means of settling industrial disputes is not serving its purpose.

9. Limitations and Scope for Further Research

Examining the reasons behind low rate of disposal by the adjudicating machinery and considerable number of cases of Award violation are not within the scope of this study. Again, there is lack of data regarding number of appeals filed before higher courts. There is scope for further research in this area based on primary data. The functioning of the adjudicating machinery may be studied in details and perception and suggestions from the stakeholders may be gathered.