

## Use of Alternative Dispute Resolution (ADR) in Labour Disputes in India: An Analysis

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### I. Introduction:

Resolving individual labour rights disputes in recent years has taken new significance and prominence for both domestic and multinational corporations, especially in a country like India, wherein traditional justice delivery mechanism is overburdened, time consuming and costly. Alternative Dispute Resolution (ADR) has evolved as a perfect alternative in such a situation, for speedy and cheaper settlement of the disputes. Considering the delay in resolving the dispute Abraham Lincon has once said:

*"Discourage litigation. Persuade your neighbors 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".*

### II. Meaning of Alternative Dispute Resolution (ADR):

Alternative Dispute Resolution is a term that refers to several different methods of resolving business-related disputes outside traditional legal and administrative forums.

According to World Bank Group, "ADR is a wide range of means to resolve conflicts that are short of formal litigations."

### III. Brief History of Labour Laws in India:

The *Indian Factories Act, 1881* is the first Labour Legislation in the sub-continent which was passed on the basis of a report of Major Moore. This Act was repealed after 10 years. A Commission was made by the British government in 1890 that submitted a report to the government. The report stated enactment of new law. Based on the report of the Commission, the *Factories Act, 1891* came into being. In 1911 another Act named *Indian Factories Act, 1891* was passed. In 1929 the King Emperor appointed "Royal Commission on Labour" that submitted a report in 1931. *The Factories Act, 1934* came into being on the basis of the recommendations of the Royal Commission on Labour.<sup>2</sup>

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<sup>2</sup> Anurug Chakma, *Alternative Dispute Resolution under Labour Law in Bangladesh*, available at, <http://ssrn.com/abstract=2096949>, accessed on 2<sup>nd</sup> Oct. 2013.

#### IV. Brief History of Alternative Dispute Resolution (ADR) in India.

Arbitration has a long history in India. In ancient times, people often voluntarily submitted their disputes to a group of wise men of a community—called the *sabhasandsamitis*, who were identical to panchayats—for a binding resolution. Submission of disputes to these groups was voluntary and there was no compulsion, like today's arbitration system.

In Panchayats, Panchas were chosen by virtue of their personal qualities of being fair-minded, impartial and knowledgeable. The panchayats were held in great veneration. They proceeded in an informal way, untrammelled by technicalities of procedure and laws of evidence. Also, arbitration was governed by social sanctions. But, the simple and informal system of arbitration through the Panchayats, though useful, was ineffective to deal with the complexities arising out of advancement in social and economic spheres.<sup>3</sup>

Likewise, commercial matters were decided by Mahajans and Chambers. The resolution of disputes through the panchayat was a different system of arbitration subordinate to the courts of law. The arbitration tribunal in ancient period would have the status of panchayat in modern India.<sup>4</sup>

#### V. Industrial Disputes Act, 1947 and Alternative Dispute Resolution (ADR):

Industrial Disputes Act, 1947 was the first legislation in India to introduce concept of ADR in labour disputes. Conciliation has been statutorily recognized as an effective method of dispute resolution in relation to disputes between workers and the management. The provision in the I.D. Act makes it attractive for disputing parties to settle disputes by negotiation and failing that through conciliation by an officer of the Government, before resorting to litigation. Several provisions in the Act get the scene for conciliation to be more successful.

The long title of the act underlines the goal of the act, which says, "An Act to make provision for the investigation and settlement of industrial disputes..." for achieving this object, Act has included certain provisions for amicable settlement of the dispute. Some of them are as follows;

Section 4: Conciliation officers.

This section grants authority to "appropriate govt." to appoint conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.<sup>5</sup>

<sup>3</sup><http://lawmin.nic.in/la/consultationpaper.pdf>, pg. 138, Accessed on 14<sup>th</sup> January, 2013 2.30 pm

<sup>4</sup> Ibid.

<sup>5</sup> For details see, Sec. 4 (1), Industrial Disputes Act, 1947

### Section 5. Boards of Conciliation.

Section 5 on the line of section 4, also grants authority to "appropriate govt." to constitute a Board of conciliation, for promoting the settlement of an industrial dispute.

### Section 12 Duties of conciliation officers.

Subsection 2 of this section casts a duty on The conciliation officer, to investigate the dispute and matters affecting the settlement of such disputes. It also grants authority to the conciliation officer, to do all necessary things that are necessary for the amicable settlement of the dispute.<sup>6</sup>

The section further lays down the procedure in case of settlement<sup>7</sup> as well as non- settlement<sup>8</sup> of the disputes.

The award arrived at in the course of conciliation proceedings under this Act, is a binding instrument and has same value as the decree of court, by virtue of section 18 of the Act. The award binds all the parties to the disputes as well as their successors.<sup>9</sup>

## VI. The Bombay Industrial Relations Act, 1946 and Alternative Dispute Resolution (ADR):

The Bombay Industrial Relations Act, 1946, has also recognized conciliation for settlement of labour disputes. The Act defines the term conciliation proceedings<sup>10</sup>, Conciliator.<sup>11</sup>

Sec. 6 authorizes the state government to appoint chief conciliator and additional conciliators for resolution of labour disputes.

Sec. 7 (1) authorizes the establishment of Board of Conciliation for resolution of industrial dispute.<sup>12</sup>

<sup>6</sup> For details see, Sec. 12 (2), Industrial Disputes Act, 1947

<sup>7</sup> For details see, Sec. 12 (3), Industrial Disputes Act, 1947

<sup>8</sup> For details see, Sec. 12 (4), Industrial Disputes Act, 1947

<sup>9</sup> For details see, Sec. 18 (3), Industrial Disputes Act, 1947

<sup>10</sup> Sec 2 (10), "Conciliation proceeding" means any proceeding held by a Conciliator or a Board under this Act

<sup>11</sup> Sec 2 (11), "Conciliator" means any Conciliator appointed under this Act and includes the Chief Conciliator [and Additional Chief Conciliator] or a Special Conciliator

<sup>12</sup> Sec.7. Board of Conciliation - (1) When an industrial dispute arises the [State] Government may, by notification in the Official Gazette, constitute a Board of Conciliation for promoting the settlement of such dispute.

## VII. Use of Alternative Dispute Resolution (ADR) in Labour Disputes in USA:

For *individual* employees in the U.S., employment contract disputes have traditionally been taken to the courts to be resolved.<sup>13</sup> In recent years, however, the courts in USA, have allowed employees to accede to employer demands to contractually substitute a private labour arbitration forum for the judicial forum on both contractual and statutory claims.<sup>14</sup>

In 2009, the U.S. Supreme Court allowed unions, under a collective contract, like those under an individual labour contract, to agree to substitute a private labour arbitration forum for the court forum, foreclosing the usual administrative review and resulting in court deference to the arbitration decision.<sup>15</sup>

Wittenberg mentioned that more and more disputants, courts, public agencies and legislatures in the USA are embracing the use of ADR in employment disputes.<sup>16</sup>

Slate indicated that the American Arbitration Association is dedicated to the promotion of specifically the mediation process for dispute settlement. Mediation is seen as a fast, cheap and effective way to resolve disputes. The settlement rate achieved through mediation was as high as 85% in the USA.<sup>17</sup>

## VIII. Use of Alternative Dispute Resolution (ADR) in Labour Disputes in UN:

Since 2009, internal resolution of UN labour disputes has taken place through the UN Internal Justice System, which is managed by the *UN Office of Administration of Justice*.

In this system, UN employees who have a dispute are encouraged to use ADR methodologies, rather than litigation, to resolve their work-disputes, which is facilitated by the UN Ombudsman and Mediation Services.<sup>18</sup>

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<sup>13</sup> Donald J. Farole, Jr., *Contract Bench and Jury Trials in State Courts*, 2005, BUREAU JUST. STAT. BULL., Sept. 2009, available at, <http://bjs.ojp.usdoj.gov/content/pub/pdf/cbajts05.pdf>.

<sup>14</sup> *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991).

<sup>15</sup> *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247 (2009).

<sup>16</sup> Wittenberg, C.A., Mackenzie, S.T. & Shaw, M.L., *ADR Flexibility in Employment Disputes*, *Journal of Collective Negotiations in the Public Sector*, Vol. 26, Part 2, 1997, American Arbitration Association, New York.

<sup>17</sup> Slate, W.K., *The Mediation Solution*, *Dispute Resolution Journal of the American Arbitration Association*, Vol. 53, Part 2, 1998, American Arbitration Association, New York.

<sup>18</sup> Available at, <http://guides.library.harvard.edu/content.php?pid=442479&sid=3799578>, Accessed on 5<sup>th</sup> Oct. 2013.

**IX. Need of Alternative Dispute Resolution (ADR):**

- The legal procedures are very much complex
- Many labours in India are economically weak and cannot afford to traditional judicial machinery which has become costly because of huge amount of fees charged by the lawyers.
- Delays in disposal of cases and dispensing justice, procedural wrangles, multiplicity of appeals, revisions, and reviews are some factors that make litigants frustrated. Especially in disputes like strikes and lock-outs, the amount of economic interest is very high and delay in justice leads to higher economic damage.

**X. Advantages of Alternative Dispute Resolution (ADR) in Labour Disputes:****X. I. Less formal**

Process of ADR is not technical and complex as it is in traditional court system. For example, depositions, document requests, interrogatories, request for admissions and the like are so often abused in the litigation process that parties, by mutual agreement, can control discovery either in the arbitration clause in the pre-dispute contract or by agreement after arbitration has commenced.<sup>19</sup> Parties have freedom to choose the manner of proceedings, time and place for resolution of disputes.<sup>20</sup> Parties are also free to choose the rules and procedure to be applied for resolution of disputes.<sup>21</sup> It gives flexibility to the process of ADR, which raises its importance in labour disputes. Parties to the labour disputes can settle their dispute at their workplace itself and need not go in court, thereby saving time and money. Traditional litigation is not flexible and necessarily has been described as a "one size fits all" model.<sup>22</sup>

**X. II. Faster**

As the parties have been given the freedom to determine the procedure, time and place for settlement of the dispute, it saves a lot of time compared to traditional courts, wherein years of time is consumed for settlement of disputes. In ADR disputes can be settled even within a week.

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<sup>19</sup> *Id.*

<sup>20</sup> For details see Section 20, The Arbitration And Conciliation Act, 1996

<sup>21</sup> For details see Section 19, The Arbitration And Conciliation Act, 1996

<sup>22</sup> William G. Paul, *Arbitration vs. Litigation in Energy Cases*, Presentation at the First Annual Energy Litigation Program (November 7-8, 2002) (transcript available at <http://www.adrforum.com/articles/pdfs/Paul-pdf.pdf>).

### **X. III. Cost saving**

Labour disputes may affect the process of manufacturing. This results in huge economic losses. The court fees and mounting charges of lawyers, adds to the cost factor. This can be avoided through application of ADR. Dispute can be settled in times other than work hours.

### **X. IV. Win-win situation**

In ADR, unlike court system, parties discuss and co-operate each other with the help of third neutral party. There is no winner and loser. It therefore maintains the good relationship between the parties, which is the key to run efficiently any business, industry or factory.

### **X. V. Neutral, expert determination**

In ADR, the dispute is determined by the person who is neutral and does not have any interest in subject matter of the dispute.<sup>23</sup> The person who is expert in labour dispute resolution may be appointed for labour disputes.

### **X.V I. Privacy and prestige maintained**

When a labour dispute goes in court, it becomes public and hampers the reputation of industry in public. In ADR the process of dispute resolution is within four walls and only in presence of parties and expert. It therefore maintains the privacy and preserves the reputation of industry.

### **X. VII. Higher success rates**

As per the estimates of the local court in Australia<sup>24</sup>, the success rate in ADR cases is 85%, which is higher than courts.

### **X. VIII. Party autonomy**

ADR is completely based on the concept of party autonomy. It puts parties in control by giving them an opportunity to tell their side of the story and have say in final decision.

## **1. Multi layer ADR System**

Multi layer system of ADR, is also an important option available in system of ADR. System of mediation and conciliation may be implemented for petty

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<sup>23</sup> For details see Section 11 and 12 (3), The Arbitration And Conciliation Act, 1996

<sup>24</sup> Available at,

[http://www.localcourt.lawlink.nsw.gov.au/localcourts/adr/benefits\\_adr.html](http://www.localcourt.lawlink.nsw.gov.au/localcourts/adr/benefits_adr.html),  
accessed on 1<sup>st</sup> Oct. 2013

matters such as dispute regarding work times and other petty matters relating to employment. Such use of multi layer ADR is also recognized by the law.<sup>25</sup>

#### **XI. Conclusion:**

Use of ADR in labour disputes may be helpful for speedier and effective settlement of dispute without hampering the relations of persons employed in industry. Because of the various benefits and characteristics of ADR system, even international institutions like UN and ILO are promoting the use of ADR in labour disputes. ADR may not produce the result in each case, but it will definitely be helpful in reducing the disputes. Therefore in country like India, wherein, courts are over burdened with thousands of cases, and majority of labour class is poor (especially in unorganized sector) there is strong case for enhanced use of ADR mechanism for resolution of labour disputes.

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<sup>25</sup> Section 30 (1), The Arbitration And Conciliation Act, 1996

It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.