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Industrial Dispute and Its Legal Provisions

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ABSTRACT
In this paper the focus of the research is arbitration and conciliation in industrial dispute and its legal provisions. As we see in the current scenario industries are booming and have reached their paramount stage of development and still continue to grow. However, with the development industrial disputes have also increased. The disputes and conflicts between the employees and the employers have caused adverse effects to the commercial development of these industries. With globalization and increase in complexities the responsibilities have shifted to the state to find an amicable way where the disputes are resolved quickly and efficiently with consuming a lot of cost.

Keywords: commercial, industrial disputes, resolution, arbitration etc.

The Arbitration and Conciliation Act, 1996 governs ADR in India. However, the legislation does not specify which sorts of conflicts or categories of disputes may be addressed using its techniques. The Indian judiciary will decide this subject. The courts have addressed this issue numerous times, but whether industrial or labour conflicts may be arbitrated under these laws has received less consideration.

However, there are many instances of arbitration throughout history, such as the Panchayat system in India. The textile industry in Ahmedabad employed arbitration to resolve disputes under Mahatma Gandhi's reign of influence and the provisions of the Bombay Act, Bombay Industrial Relations Act. The Indian government recognised its relevance and addressed it in its first three-five-year plan, which focused on collective bargaining and labour regulations. It was also included in the Code of Industrial Discipline, 1958. The Indian Arbitration Act, 1940, was the first statute to recognise ADR. The government formed a National Arbitration Board and included voluntary arbitration in 1956. For the Indian laws to be aligned with international standards, the government created the Arbitration and Conciliation Act in 1996. Let us now examine 2 Indian labour laws. There are 23 acts linked to work, split into 3 5 categories. We will look at these five categories, and although each act has particular conditions, such as the number of workers, profits, size, or sector, we will not go into depth about each one. But the Industrial Dispute Act is the most vital. The Workplace Dispute Act of 1947 was designed to investigate and resolve all industrial disputes. The Trade Union Act of 1926 establishes the method, roles, and regulations for trade unions, as well as some rights and protections.

ADR In Indian Context 4

In Indian legal framework, the disputes are resolved by the methods of conciliation, Arbitration and Adjudication under the Industrial Dispute Act. In current times due to evolution the concept of non-union firms has emerged but this new emergence has made no difference to the dispute resolution as under section 2(A) of the I.D. Act specifies that all disputes between the workman and the employer related to the termination, dismissal, retrenchment, or discharge would be

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deemed industrial disputes even if there are no class of workmen or unions a party to dispute. Here the requirement of union or class or group of people has been rendered invaluable and extended the scope of term industrial dispute. The alternative dispute resolution methods accepted under the I.D. Act tries to provide Procedural, Distribute and Interactional Justice to the workmen as well as the employers.

CAUSES OF INDUSTRIAL DISPUTES.

As in the structure of industries there are mainly three things related to disputes in industries, it is a group activity carried out under someone's control where they have to divide labour. Now when we study these fundamentals, we find there are mainly three causes of industrial disputes, them being: Economic, Managerial and Political.

- **Economic Causes –** As in a work environment where there is a huge difference between financial gains and incentives between the bottom level workers and the middle and the top, there would be economic unrest where the top would like maximum profits and the bottom minimum requirements. Some of the economic causes in industrial disputes are low wages, lack or denial of bonuses, allowances, retrenchments, inflation in markets or indiscipline of workers or union clashes.
- **Management Causes –** managerial causes or the inhuman nature of management or their genuine mistakes which creates unrest between the employer and the workmen's. Some of these are basic social and human requirements not fulfilled, not opportunity of expression of opinions of the workmen, lack of communication, managements apathetic attitudes towards workmen, denial of rights, unfair practice where the goal of management in maximum profits at the cost of workmen's by creating effective policies and ineffective actions etc.
- **Political Causes –** Many times political interference forces the industrial owner or the union of workmen to perform strikes or boycott to advocate a particular agenda. Political leaders and parties have influenced strikes and boycotts to demonstrate their agendas, to forward it or to oppose the legislation passed by the ministries and many times for the benefit of the workmen's like in scenarios of percentage distribution.

Conciliation and Arbitration in Industrial Dispute Act

In industrial disputes, the goal is to establish a scenario where both sides are happy and the judgement satisfies both parties' problems. In this scenario, ADR is the appropriate option to adopt, and the disagreement may be settled promptly via Arbitration and Conciliation. First Interest Disputes: This sort of conflict deals with issues such as pay, working conditions, minimum requirements, wages, etc. Concerning the interpretation, application and acceptance of current laws, policies and regulations established by Indian legislation in the field of Labour. Incentives, overtime, termination, layoffs, working time laws, safety and health standards and facilities are examples of second sorts of disagreements.

CONCILIATION – INDUSTRIAL DISPUTE ACT .

Conciliation is the process of resolving a conflict between workers and employers while keeping both sides' interests in mind. It is also known as mediation. As parties are not the best people to negotiate and reconcile, both parties appoint representatives who then present their arguments and grievances to a common mediator who then reconciles the matter in the benefit of both

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parties and tries to solve it amicably where both parties are heard and satisfied. The mediator's role is to help both parties resolve their issues peacefully. Encourage the parties to understand each other and create a common solution, the mediator uses his thoughts to settle each case on its own merits and circumstances, and is dynamic.

Section 4 of I.D. Act provides the provision of a Conciliation Officer which says that the conciliating officer or the conciliator has to be chosen and can be anyone who the government deems fit. This provision has given the conciliator the same powers and a Civil Court Judge. This provision provides a time period of 14 days where the conciliator has to give his decision and these decisions would be binding on the parties. Now let's see the functions of conciliators which can be interpreted by this section: To hold conciliation proceedings and to bring a amicable solution and settle the dispute between the parties, while conciliating the conciliator has to investigate the matter and the prepare a report and send it to the competent government authority, this report should consist the minutes of the proceeding and the initiatives and steps taken by the conciliator and at last a negative provision where the conciliator cannot force a settlement it should be freely.

Section 5 of the I.D. Act provides an approach to conciliation. This section provides for the provision of the Board of Conciliation. This section applies when the conciliation under section 4 fails, at that time the appropriate government can constitute this board to deal with the ail conciliation. The board is not permanent and created as per the need on ad hoc bases. The members of the board are nominated by the parties themselves where there is one chairmen and two or four members as per the nomination of parties. The board of conciliation deals only with those matters, which have been nominated by the government and have the same power as a conciliator under section 4 of the act and the prescribed time period given for resolving the matter is two months.

ARBITRATION – INDUSTRIAL DISPUTE ACT .

In this process, the unresolved dispute is referred to an arbitrator by the parties, the parties themselves can nominate an arbitrator or approach a court for his appointment. Here the person who has been approached for resolving the matter is known as an arbitrator who is a neutral party. Here the arbitrator has to give a speaking judgement and has to apply his mind. Arbitrators do not have the same powers as a judge but here the arbitrator after listening to the parties has to give a judgement in the context of the parties' viewpoint. Then once the arbitrator gives his judgement it is sent to the appropriate authority and then it is made enforceable and binding on the parties.

Arbitration Clauses

If the parties elect to include an arbitration provision, they must draught a formal agreement stating their disagreements, the arbitration clause, the power to nominate an arbitrator, the venue, etc. This agreement should be formed with the law's standards. The agreement is subsequently forwarded to the appropriate authorities and published in the official gazette. The parties may design their arbitration agreement to suit their interests, such as the number of arbitrators, the location of the dispute, the laws that will govern the hearing, and the time frame for referring and concluding the issue. If the topic or dispute is not industrial, then this clause and agreement are made inapplicable.

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Binding Arbitral Award under Industrial Disputes.

Section 18 of the I.D. Act provides for enforceability of the awards and makes it binding. Section 18 provides that once the parties have referred the dispute to the arbitrator the award becomes enforceable on the parties and thus makes it binding. It also provides that when the notification by the competent authority is issued under section 10-A then the award under the said arbitration becomes enforceable and binding to those parties. Section 18(3) provides that any settlement reached between the parties under these arbitration proceedings becomes enforceable and binding till the date the settlement is amicably altered or changed. Due to the provisions under section 18 if either of the parties do not comply with the award then the other party has the right to approach the court or the tribunal as prescribed for enforcing his right and can demand the award to be fulfilled by the other party.

Arbitrators Procedures, Regulations and Powers While Dealing with Industrial Disputes, Judicial Analysis.

In this section of the paper we will see whether the arbitrator under the I.D. act has the same power as an adjudicatory authority, or does he have the same power of the presiding officer at labour court or does an arbitrator under this act reinstate any parties with or without providing him with back wages, whether the arbitrator has the power of judiciary, whether the arbitral awards comes under the scope of judicial review, the provision for arbitrator awards whether it should be speaking or not. We will look into this entire question and will try to figure out these questions . 10

Arbitrators Procedural Aspect.

Section 11 of the I.D. Act provides utmost flexibility to the arbitrator under section 10-A. Here this section says that the arbitrator is free to formulate his own procedures and regulation as he may deem fit for deciding the dispute. The Supreme Court in the case of ***Daily Aljamiat v. Gopinath*** upheld section 11 and observed that the arbitrator is not bound by any procedure and ***11*** is free to formulate his own procedure and further added that the arbitrator is the master of the procedure, facts and laws while dealing with the dispute. The court added that though the arbitrator has undisputed and uninterrupted power while dealing with industrial disputes, the arbitrator should follow the principle of natural justice and cannot contravene the law of the land and its provisions.

Arbitrator's power and Labour Courts and Civil Courts.

Here we will try to deduce whether the power granted to the arbitrator under the act parallel the powers of the presiding officer of the labour court and the civil courts. First let's compare arbitrators power and the presiding officer of labour court, the now rule 30 of the Industrial Dispute Central Rules, 1957 gives the power to the tribunal that when it deems fit it can instruct the authorities to keep the trial in camera whereas the arbitrator do not have similar powers further while we read rule 23 with section 11 of the act we find that the tribunal or the presiding officer has the power to enter the premise and inquiry and investigate the dispute after serving notice where the arbitrator does not have these power. The presiding officer of the labour tribunal have many more powers which the arbitrator under the said act is missing some of the powers of the presiding officer are under rule 17 the labour court can issue summons and make the presence

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of the party compulsory; the labour court can also appoint one or more expert person for advising the court etc.

Arbitrators Power in Matters of Discharge and Dismissal.

Now when comparing the power of an arbitrator under section 10 A of the act and the power conferred to labour courts under section 11A. The question arises whether the arbitrator under 10A while dealing with industrial dispute has the power to deal with matters of dismissal, discharge and whether can the arbitrator reinstate and that to with or without back wages. The Supreme Court while dealing with a similar issue where the arbitrator had interfered with the decision of the management of the industry. In the case ***Gujarat Steel Tubes Ltd. V. Gujarat Steel Tubes Mazdoor Sabha*** The supreme court observed that though there is no specific ***13*** mention of arbitrator but section 11A of the act clothe the arbitrator with the same power given to labour courts or tribunal. Furthermore the court observed what a court or tribunal can do under 11A the arbitrator can also do the same. Therefore, while analysing this case we can interpret that the arbitrator has the same power under section 11A, which has been given to court or a labour tribunal, the arbitrator can deal with rectifying or changing the management's decision and can also take matters of dismissal, retrenchment, and discharge.

Arbitration Award and High Courts Inherent Jurisdiction.

Here the question arises whether any arbitral award which has an error of law on the face of hit then whether the high court can use its inherent jurisdiction under article 226 and quash the arbitration and award under section 10A of the act. The Supreme Court dealt with this issue in the case ***R. v. Disputes Committee of National Joint Council for the Court of Dental Technician*** where the Chief justice Lord Goddard in his obiter said that writ likes certiorari and 14 prohibitions can only be taken against judiciary as well as quasi-judicial authorities. In addition, it has already been decided by the Supreme Court that the arbitrator under section 10A is a statutory arbitrator. By interpreting the said precedents, we can suggest that the high court can by its use of inherent jurisdiction take the arbitration award under its judicial custody and even quash the award if it has an error of law.

Conclusion

We observed various labour laws and ADR methods. The Industrial Dispute Act and its Rule govern ADR in the industrial sector. We have seen their alternative dispute resolution provisions, especially conciliation and arbitration. At the end of the day, court precedent supports arbitration and conciliation in all economic conflicts. The last section of the report clarified the norms, regulations, processes, powers and responsibilities of the arbitrator, which are identical to those of a labour tribunal. The paper shows that the statute and the judiciary place a high value on ADR, but that the Indian legislation and bureaucracy keep forgetting that India lacks qualified arbitrators and a regulated procedure, and that arbitration is not taken seriously by either the parties or the authorities. Finally, the need for union recognition in some 10A arbitrations is a big issue. The present Indian labour law does not emphasise worker protection, rights, and concerns.

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