Alternative Dispute Resolution under Labour Laws of Bangladesh

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Introduction

►The Constitution of Bangladesh pursuant to Article 32 guarantees justice to all regarding equal right to life and personal liberty.

►In addition, Article 27 guarantees equality before the law and equal protection of law.

►But due to tremendous pressure on the court and due to long time process as well as lack of adequate number of judges, justice is not always established.

►Currently, there are 3.3 million cases pending, which may increase by 5.5 million by 2020.

Thus, the judicial process is failing to solve all of these cases at a time. This has created the necessity for applying alternative measures. The concept of ADR was first implemented in Bangladesh in 1985 in the Family Court Ordinance under section 11-13 to solve a dispute between parties. This led to the amendment of the Code of Civil Procedure (CPC) in 2003, incorporating ADR vide section 89A-89C. Although the process was slow at first, it became more prevalent later in civil matters.

Introduction (continued…)

In 2006, Government of Bangladesh enacted Bangladesh Labour Act 2006 to settle industrial disputes and to promote industrial peace and establish a harmonious and cordial relationship between labour and capital by means of

1.Conciliation,

2. Mediation and

3. Adjudication.

The Act states about some non-adjudicatory as well as adjudicatory authorities. Non-adjudicatory consists of bipartite negotiation, Conciliation and Arbitration while adjudicatory (judicial) authorities include Labour Court, Labour Appellate Tribunal, etc.

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Section 33 of The Labour Act 2006 prescribes the procedure for filing of a complaint by a worker. Section 33 was intended by the Parliament to allow the parties to resolve the matter amicably, before filing the dispute to the court. This section states that if any labour has any complain regarding lay-off, retrenchment, dismissal, removal, termination benefit and wants to get a remedy under the Act, then he must make a written complaint stating the required reason of complaint to the employer within thirty (30) days of removal/ being aggrieved. The employer shall investigate the matter of complaint within fifteen 30 days of receiving the complaint and shall summon the concerned labour and make a decision in consideration of investigation and summon of the matter and inform the decision to the concerned labour.

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If the labour is dissatisfied with the decision of the employer or if the employer fails to take any decision within 30 days from the date of the complaint, then the labour may begin within thirty (30) days after the completion of the process under subsection (2) file a complaint labour court.

The labour court shall, after receiving the complaint, shall summon both parties and decide as necessary and for the establishment of justice.

If any of the parties (employer or worker) is dissatisfied with the decision or verdict of the labour court, then they can file an appeal in the Appellate Tribunal within thirty days of the decision of the labour court and the decision of Appellate tribunal shall be final in this case.

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Nonetheless in high-level cases, against the decision of the Appellate Tribunal, the aggrieved party prefers Writ Petition before the Hon'ble High Court Division, which can further linger to Appellate Division of the Supreme Court of Bangladesh. Thus, the judicial process under section 33 of the Labour Act is time-consuming, and it cost money too, and it may have a balance of inconvenience also. In many cases, the expenses outreach the demand. If this process is solved in an alternative way outside court, it would not have wastage of time, and the decision will be balanced for both parties.

In this regard section 210 of the labour law states about alternative measure of solving dispute.

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►The section states that if at any time if the employer or CBA (Collective Bargaining Agent) observes that an industrial dispute is likely to arise between employers and workers, then the employers or the collective bargaining agent shall communicate his or its views in writing to the other party.

►Parties are first allowed to negotiate the matter and reach to a conclusion between themselves.

►In case the parties fail to reach a settlement within 30 days of the first meeting, any of the party may, within the next 15 days, refer the matter to an authorised conciliator.

►The conciliator fails to resolve the dispute within 30 days of referral (can be extended), the conciliator may propose dispute settlement through arbitration.

►The Arbitrator must declare an award within 30 days of referral or such extended period as agreed between the parties. The award of the Arbitrator shall be final and binding.

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Loopholes in judicial method: the loopholes of existing laws and the weak performance of courts frustrate the aggrieved persons. Generally, the time limit to dispose of a case in the Labour Tribunal is 60 days but about 50 per cent of the cases took a time period ranging between 12 months to 36 months. The time required for 25 per cent of the cases ranged between three years to five years. Until now, there are seven labour courts in Bangladesh. Three in Dhaka, two in Chittagong, and one each in Rajshahi and Khulna. There is only one Labour Appellate Tribunal at Dhaka. The Act mandated the Government to establish a required number of labour courts. Among these, Courts of Dhaka and Chittagong are situated in the divisional headquarters. Even there is no labour court at four divisions-Sylhet, Barisal, Rangpur and Mymensingh. As a result, a tea garden worker of Sylhet and a rice-mill worker of Brahmanbariahas to go the Labour Court of Chittagong to file cases for their grievance, unpaid wages and compensation.

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A worker from Syedpur has to go to the Labour Court of Rajshahi, and a worker from Barishal has to go Khulna for seeking labour justice. After travelling hundreds of kilometres and waiting months after months, remedies awarded by the labour courts becomes a mockery to the workers when their claims are so minimal. Hence why instead of going to courts for their redress, many workers have no other options but to embrace injustice. It is harassing the toiling masses and workers such a way in the name of delivering justice amount to exploitation by the state, which is contrary to the spirit of our Constitution. By analysing court registers, it is found that until September 2016: in the Labour Courts of Bangladesh, 15128 cases were pending among these 11272 cases were pending for more than six months. It is also found that the case filing rate is higher than the case disposal rate. As a result, backlog and delay in disposal of cases, both of which are increasing simultaneously causing great sufferings to the working masses.

Industrial Dispute Means

Section 2(62) of the Bangladesh Labour Act, 2006 defines-"the industrial dispute means any dispute or difference between employers and employers or between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment or the conditions of work.

Settlement of Industrial Disputes (U/S. 210)

(1) If, at any time an employer or a collective bargaining agent finds that an industrial dispute is likely to arise between the employer and workers or any of the workers, the employer, or, as the case may be, the collective bargaining agent shall communicate his or its views in writing to the other party.

(2) Within fifteen days of the receipt of a communication under sub-section (1), the party receiving it shall, in consultation with the representatives of the other party, arrange a meeting for collective bargaining on the issue raised in the communication with a view to reaching an agreement thereon, and such meeting may be held with the representatives of the parties authorized in this behalf.

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(3) If the parties reach a settlement on the issues discussed, a memorandum of settlement shall be recorded in writing and signed by both the parties and a copy thereof shall be forwarded by the employer to the Government, the Director of Labour and the Conciliator.

(4) If-

(a) the party receiving a communication under sub-section

(1) fails to arrange a meeting with the representatives of the other party for collective bargaining within the time specified in sub-section

(2), the other party, or

(b) no settlement is reached through dialogue within a period of one month from the date of the first meeting for negotiation, or, such further period as may be agreed upon in writing by the parties, any of the parties, may, within fifteen days from the expiry of the period mentioned in sub-section (2) or clause (b) of this sub-section, as the case may be, report the matter to the conciliator and request him in writing to conciliate in the dispute and the conciliator shall, within ten days of receipt of such request, proceed to conciliate in the dispute.

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(5) The Government shall, for the purposes of this chapter, by notification in the official Gazette, appoint such number of persons as it considers necessary, as conciliator for such specific area or any industrial establishment or industry, and the conciliator shall take up the conciliation to whom the request shall be made for conciliation under sub-section (4),

(6) The conciliator, upon receipt of the request as aforesaid, shall start conciliation and shall call a meeting of the parties to the dispute for the purpose of bringing about a settlement.

(7) The parties to the dispute shall appear before the conciliator in person or shall be represented before him by person nominated by them and authorized to negotiate and enter into an agreement binding on the parties.

(8) If any settlement of the dispute is arrived at in the course of the proceedings before him, the conciliator shall send a report thereof to the Government together with a memorandum of settlement signed by the parties to the dispute.

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(9) If no settlement is arrived at within the period of thirty days of receipt of request under subsection (4) by the conciliator, the conciliation proceedings shall fail or the conciliation may be continued for such further period as may be agreed upon in writing by the parties.

(10) If the conciliation proceeding fails, the conciliator shall try to persuade the parties to agree to refer the dispute to an Arbitrator.

(11) If the parties do not agree to refer the dispute to an Arbitrator, the conciliator shall, within three days of failure of the conciliation proceedings, issue a certificate to the parties to the dispute to the effect that such proceedings have failed.

(12) If the parties agree to refer the dispute to an arbitrator, they shall make a joint request in writing for reference of the dispute to an arbitrator agreed upon by them.

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(13) The arbitrator, to whom a dispute is referred under sub-section (12), may be a person borne on a panel to be maintained by the Government or any other person agreed upon by the parties.

(14) The Arbitrator shall give award within a period of thirty days from the date on which the dispute is referred to him or such further period as may be agreed upon in writing by the parties to the dispute.

(15) After he has made an award, the arbitrator shall forward a copy thereof to the parties and to the Government.

(16) The award of the arbitrator shall be final and no appeal shall lie against it.

(17) An award shall be valid for a period not exceeding two years as may be fixed by the arbitrator.

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(18) The Director of Labour may, if he deems fit in the interest of settlement of a dispute, at any time, take over any conciliation proceedings pending before any conciliator and proceed to conciliate in the dispute himself or transfer such proceedings to any other conciliator, and the provisions of the preceding subsections shall apply to such proceedings.

(19) Notwithstanding anything contained in this section, collective bargaining agent in the establishments in respect of which trade union of employers or federation of trade unions of employers have been registered shall communicate with such trade union or federation regarding any industrial dispute and a settlement between them shall be binding upon all the employers and workers of those establishments.

Industrial Dispute Settlement Procedure under Labour Law & ADR

Settlement means to arrive at a peaceful decision and it will be in writing as an agreement between the parties regarding the Industrial dispute.

Section 2(25) defines Settlement as a settlement arrived at in the course of conciliation proceeding and includes an agreement between an employer and his worker arrived at otherwise than in the course of any conciliation proceedings, where such agreement is in writing, has been signed by the parties thereto and a copy thereof has been sent to the director of labour and the conciliator.

Industrial dispute settlement procedure is divided into three steps:

(i) Negotiation

(ii) Conciliation

(iii) Arbitration

Dispute Settlement Procedure (Continued…)

Negotiation: If, at any time, an employer or a collective bargaining agent finds that an industrial dispute is likely to arise between the employer and the workers or any of the workers and the employer, the collective bargaining agent shall communicate its view in writing to the other party. The party receiving the communication shall arrange a meeting for collective agent on the issue raised in the communication with a view to reaching an agreement within fifteen days from the date on which it was received. If the parties reach a settlement, it shall be recorded in writing and signed by both the parties and a copy shall be forwarded by the employer to the government, the director of labour and the conciliator.

Dispute Settlement Procedure (Continued…)

Conciliation: if the party receiving communication fails to arrange a meeting within fifteen days or if the parties fail to do a settlement through negotiation within one month from the date of the first meeting for negotiation, any of the parties can apply to the conciliator within fifteen days from the expiry of the said fifteen days.

The conciliator shall proceed to conciliate the dispute within ten days from the receipt of such dispute. The conciliator shall be such a person who is appointed by the government by notification in the official gazette for a specific area or any industrial establishment.

The conciliator shall call a meeting of the parties to the dispute for the purpose of bringing about a settlement. If the parties reach a settlement, it shall be recorded in writing and signed by both the parties and a copy shall be forwarded by the conciliator to the government.

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►If the conciliator fails to settle the matter within thirty days from the date of the receipt of the dispute, it shall be deemed that the conciliation proceeding fails.

►If the conciliation proceeding fails, the conciliator shall try to persuade the parties to refer the dispute to the arbitrator.

►If the parties do not agree to refer the dispute to the arbitrator, the conciliator shall issue a certificate to the parties within three days that the proceedings have failed.

Dispute Settlement Procedure (Continued…)

Arbitration: arbitrator may be a person borne on a panel to be maintained by the government or any other person agreed upon by the parties.

►If the parties refer the dispute to the arbitrator than the arbitrator shall give award within a period of thirty days from the date on which it was referred to him.

►After giving an award, the arbitrator shall forward a copy to the parties and the government.

►This award shall be valid for two years and no appeal shall lie against it.

Dispute Settlement Procedure (Continued…)

Right to strike and lock-out: **After failing the conciliation proceeding, if the parties don't agree to refer the dispute to the arbitrator, in that case within three days the conciliator shall issue a certificate to the parties that the proceedings have failed. The party which raised the dispute may within fifteen days of the issue to it a certificate of failure, shall give to the other party a notice or make an application to the labour court for adjudication of the dispute.**

There is a condition that collective bargaining agent shall not serve any notice of strike, if three-fourths of its members give their consent to it through a secret ballot specially held for this purpose, under the supervision of the conciliator.

If a strike or lock-out is commenced, either of the parties to the dispute may make an application to the labour court for adjudication of the dispute.

Dispute Settlement Procedure (Continued…)

A strike or lack-out may last for thirty days.

After thirty days the government may prohibit the strike or lock-out and refer the dispute to the labour court.

The labour court, after hearing of both the parties, shall give an award within sixty days from the date on which the dispute was referred to it. This award shall be valid for not more than two years. This is the legal way to call strike or lock-out

Reason Behind Illegal Strike and non Observance of ADR:

It is the statutory provision of the labour act is that industrial dispute shall be raised by a collective bargaining agent or the employer. Most of the cases it is to be seen that employers do not allow the workers to form trade union in an industry or where there is trade union in an industry, the collective bargaining agent(CBA) is not strong there.

If CBA leaders raise their voice on behalf of the workers, they are threatened by the employer. There is a risk of lost of job, sometimes it is likely to cause death. So, there is no one on behalf of the workers to reach their demands to the employers. For this if any dispute arises regarding wages, bonus, allowances, and conditions for work, working hours, leave and holidays without pay , unjust lay offs and retrenchments, they cannot negotiate with the employer or the employer do not want to negotiate with the workers.

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As a result the workers become aggrieved and most of the times it causes strike. The workers thinking are that strike is the way to fulfill their demands. This strike is illegal strike, because of not following the procedure of settlement of industrial dispute. In this circumstance the employer shall close down the establishment. The employers not only refrain from fulfilling the demands of the workers but also close down the establishment. So the ultimate losers are the workers. On the creation of a movement by the workers of a ready made garment factory named Goldtex in Ashulia for overtime and increasing the allowance for lunch, the authority close down the factory.

Ways to Overcome…

Illegal strike took places which are defined in labour law and the employers get the scope lawfully to closure of the establishments. To improve this situation the following measures should be taken:

1. A strong and stable trade union in each industry is essential to represent the majority of the workers, to maintain good industrial relation and negotiate with the management about the terms and conditions of service.

2. Trade unions should persuade their members to work for the common objectives of the organization. Both the management and the labour unions should have faith in collective bargaining and other peaceful methods of settling dispute.

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3. Both the management and the labour should help in the development of an atmosphere of mutual co operation, confidence and respect.

4. The participation of the workers in the management of the industry shall improve communication between managers and workers, increase productivity and lead to greater effectiveness.

5. The employers must recognize the right of collective bargaining of the trade unions. Their approach must be of mutual “give and take” rather than “take and leave”.

6. The management should sincerely implement the settlements reached with the trade union as any agreement.

7. The government should play an active role for promoting industrial relations. It should make law for the compulsory recognition of the trade union and the CBA in each industry, where CBA is necessary to raise voice relating to any industrial dispute.

Benefits of solving Labour disputes through ADR:

there are many benefits to alternative dispute resolution (ADR), including complaints are processed more quickly and resolved earlier which leads to more creative solutions; savings in terms of attorneys, staff, and parties who are federal employees; quicker resolution than a hearing would offer and less time that the parties will spend under a cloud of pending litigation; creative resolutions acceptable to the parties, but which a third-party reviewer could not impose. Thus, if ADR is applied before judicial process then matter can be solved earlier, and the parties will be satisfied by the verdict as it is not any forced decision on them. Whereas in court it is time-consuming, lack of adequate number of judges and overall court settings delays the process in which the workers tend to suffer the most. Thus, in the long run the prospect of Alternative Dispute Resolution should have effectiveness over the judicial process.

'Law to be amended to make ADR mandatory in industry, labour cases'

Staff Correspondent

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Law Minister Shafique Ahmed yesterday said the government will amend relevant laws to make alternative dispute resolution (ADR) system mandatory in disposing of industry and labour related cases.

If the owners and labours settle their disputes through ADR system outside courts, peace and discipline will be restored in the society, leading the production of industries to increase, he said.

Shafique was speaking as the chief guest at a workshop on "Inclusion of ADR in Bangladesh Labour Act 2006", chaired by Dr Kamal Hossain.

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Questions Session