

HOMEWORK

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ADR in Labor Act 2006:

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 conciliation, mediation and adjudication.

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.

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 conciliation, mediation and 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.

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 otherwise. 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.

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. 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.

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 Brahmanbaria has to go the Labour Court of Chittagong to file cases for their grievance, unpaid wages and compensation. 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 analyzing 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.

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.