



VOLUNTARY LABOUR ARBITRATION----A NEW PARADIGM OF ADR

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ABSTRACT

Stable industrial relations are the vital prerequisite for industrial progress. Industrial peace is not a negative concept stating the absence of industrial unrest or the reconciling the hostile actors in order to avoid conflicts but also considering the active presence of harmonious and amicable industrial relations between the parties to an industry. Voluntary Arbitration as a one of the modules for settling industrial dispute is preferable as it is based on the principle of voluntarism and provides an opportunity to the parties to choose their trusted, independent and neutral person to resolve their disputes and provide, probably, a longer lease of life for industrial peace. Attempt has been made in this article to present the status of voluntary arbitration with certain hidden drawbacks and to come with some suggestion.

KEY WORDS: *Stable industrial relations , harmonious and amicable industrial relations.*

INTRODUCTION

Modern Urbanisation and industrialization has created a gap between labour and management and the main reason is of the absence of ownership over the means of production. May be there are other different causes for the situations which leads in difference of opinion, This difference of opinion led to industrial conflicts and disharmony which results in stoppage of work turn in declaration of strikes and lockouts which affects the whole society.

Fair and independent machinery for the settlement of industrial dispute is an essential requisite for the maintaining harmonious relations in industry. The effective prevention and settlement of dispute is a cornerstone of sound industrial relations. Therefore it is essential to provide effective dispute settlement machineries to resolve the conflicts with minimum disruption of work. The Industrial Disputes Act, 1947 is a special statute devoted wholly to the investigation and settlement of Industrial Dispute. It provides the necessary methods for the settlement of disputes. In 1956 on the demand of the Trade Union Leaders the government of India introduced collective bargaining and voluntary arbitration as additional methods of dispute resolution. According to Justice Krishna Iyer, 'The Industrial Dispute Act is the beginning measures which seek to pre-empt industrial tensions, provided the machineries of dispute resolutions to assure industrial justice which in turn create a climate of goodwill'

The Act, therefore, was enacted to provide modules and forum for settlement of conflicts without disturbing the peace and harmony in the industry. In *DahyabhaiRanchoddas Shah v/s JayantilalMohanla* (Gujrat High Court – 1993 p.968.), the court emphasized the need of state intervention to settle the disputes by providing alternative methods. The provisions of the Act enable the state to compel the parties to resort to Industrial Arbitration and for that different forum has been setup to resolve the disputes. The Act is intended to be a self-contained one. It seeks to achieve social justice on the basis of collective bargaining, conciliation, arbitration and compulsory adjudication.

In *Modern Gymkhana Club Employees Union v/s Gymkhana Club*.(1967-II-LLJ-720.731 (SC).) Justice Hidaytullah observed that the whole paraphernalia of settlement, conciliation, arbitration, awards etc. shows that human labour has value beyond what the wages represent and therefore is entitled to corresponding rights in an industry and employers must give them their dues accordingly.

The essential object of the labour legislation is to ensure social justice by bringing harmony and cordial industrial relationship. To resolve industrial dispute that may erupt in industries, the Industrial Dispute Act, 1947 provides the machineries that are informal in nature, free from cumbersome technicalities of domestic laws. Thus this Alternative Dispute Resolution System encourages in settling the conflicts in an amicable manners.

The fundamental objectives of industrial jurisprudence are to achieve industrial peace and social justice. If both the capital and labour maintain harmonious relation then industrial development and nation's progress will not affect badly. At the same time it is true that the industrial disputes cannot be wished away. So it is necessary to provide effective mechanism for the speedy disposal of industrial dispute. Hence, it is the responsibility of the government to ensure that the industrial peace and justice can be the first priority and to establish the proper mechanism to settle this dispute. Parties can opt for collective bargaining and it is one of the best methods of regulating labour-management relations. If the collective bargaining process fails, they can seek the assistance of conciliation method. But there was a feeling among the parties that 'conciliation' is a hurdle to be crossed to have the dispute referred to adjudication because of inherent drawbacks of the conciliation process. When the negotiation fails, arbitration may prove to be a satisfactory and most enlightened method of resolving industrial dispute. Voluntary arbitration would consider as effective machinery for the resolution of the dispute. Voluntary arbitration supplements collective bargaining to come to the amicable settlement.

The Industrial Dispute Act, 1947 has incorporated proviso for voluntary arbitration under section 10-A. But this provision for arbitration did not receive any legal sanctity till 1956. It is clear that Voluntary Arbitration is one of the accepted and recognized modes for settling industrial dispute. Voluntary Arbitration is better in protecting the weaker section of the society and maintaining industrial peace and harmony.

CONCEPTUAL FRAMEWORK

Voluntary Arbitration as a one of the modules for settling industrial dispute is preferable as it is based on the principle of voluntarism and provides an opportunity to the parties to choose their trusted, independent and neutral person to resolve their disputes and provide, probably, a longer lease of life for industrial peace. This mechanism has provided a new focus for pent-up animosities. It provides an opportunity to dissipate hard feelings which creates the Industrial conflicts. Parties through this process seek to "arrive at an apparently mutually satisfactory pre-arranged decision handed down by a third person" Such third person *i.e.*, the arbitrator, while arriving at a decision, relies heavily on the facts presented to him by the parties. Without harping too much upon the legal technicalities, the Arbitrator, in the light of his experience and expertise in the concerned field, would prefer to decide the disputes.

Voluntary Arbitration concentrates not only on deciding conflicts but more on the development and maintenance of friendly labour management relations. The third person appointed by the parties without going through legal rigid formalities would prefer to decide the dispute logically. Thus, Arbitrator at present secures an important status in maintaining good labour-management relations. With this discussion it is helpful to know what the term 'Arbitration' signifies.

According to L. Teller 'Arbitration' is the procedure by which controversies are referred to the tribunal other than those which are constituted traditionally.

According to Encyclopedia Britannica; Arbitration is a process for the settlement of industrial dispute by referring it to a third party with the consent of the parties in conflict for a final decision.

Voluntary Arbitration is a method which is chosen for solving industrial disputes wherein arbitrators are judges appointed by the parties to decide matters finally and without alternative remedy to settle the dispute between labour and management.

CONCLUSION

The main object of Alternative Dispute Resolution in industrial era is to achieve the social justice. Thus it is seen that jurisdiction of the industrial arbitrator came from an agreement to adjudicate upon the dispute. The parties are bound by the award arbitrator. Thus we can say that now a day's arbitration as a voluntary concept proved as an effective alternative mechanism to solve the industrial conflicts.

The principle of 'voluntarism' underlying the system induces the disputants to opt for Voluntary Arbitration and to select arbitrator of their choice to adjudicate upon their dispute. Arbitration process set up by the parties themselves consider as a 'Voluntary Arbitration', it is presumed, would be "very responsive to their values and concepts of justice". Apart from being speedy, economical, informal, and impartial and a private method of resolution, the advantages of 'Voluntary Arbitration' are numerous. Despite repeated emphasis upon the importance and efficacy of the system of 'Voluntary Arbitration', government not interested in policy matter over ADR in various Five Year Plans and unfortunately, the method has failed to take deep roots in the arena of Labour-Management Relations in India. There are other reasons such as, easy availability of the adjudicatory machinery when negotiations fail, dearth of suitable arbitrators who could command the confidence of both the parties, absence of recognised trade unions which could enforce discipline among its members and could bear the cost of Arbitration and absence of a simplified procedure which will adversely affect arbitration machinery.

It is, therefore, time to realize that "an acre of [proper] performance is worth the whole world of promise". Only then, everyone could perform their duties better instead of passing the buck. It is the obligation of all concerned person to realise the importance of this machinery and enlighten the interested parties to realize the same. In this context, steps ought to be taken to boost mutual trust, confidence between the disputants and also to tune, specifically, the attitude of the management towards this machinery so as to clear the ground for wider acceptance of 'Voluntary Arbitration Machinery' in Indian industries.

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