

INDUSTRIAL DISPUTE SETTLEMENT MECHANISM AND ITS EFFECTIVENESS IN BANGLADESH: A LEGAL STUDY

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ABSTRACT

Dispute is a natural matter in human life. Rationally, no industry is exception to it. It is natural that there would be some disputes between workers and management. Conflicts or disputes begin due to terms of employment contract, working conditions, wage structure and financial interests etc. According to section 209 of the Bangladesh Labour Act, 2006 no industrial dispute shall be deemed to exist unless it has been raised by an employer or a Collective Bargaining Agent (CBA) in accordance with the provisions of chapter 14 of the Act but it doesn't clarify what will be the procedure to settle an industrial dispute where there is no CBA because industrial owners are always uninterested in raising any dispute. In Bangladesh to make CBA, Trade Union is a must but if there is no Trade Union then no CBA can be formed and for the reason an Industrial Dispute cannot be settled. In the above mentioned situation, this paper will try to evaluate the present industrial dispute settlement mechanism and adjudication system of Bangladesh in order to make out an adaptable solution.

Keywords: *Labour, Industry, Disputes, Trade Union (TU), Collective Bargaining Agent (CBA).*

1. INTRODUCTION

Industrial relations may be harmonious or conflicting. Conflicts or disputes begin due to terms of employment contract, working conditions, wage structure and financial interests etc. In Bangladesh generally there are mainly, four parties involved in any industry: government, industrial owners, buyers, and workers (Khan, 2011). Of four parties, the first three are immense beneficiaries, while workers remain deprived. Government receives a handsome amount of revenue from this sector. Buyers, who get the products at the cheapest possible price, make huge profits in national and international markets. Most of the industrial owners make adequate money out of this business to

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build palatial houses in premium area of capital, have their children educated and treated abroad, use luxury cars, spend holidays at tourist resorts across the world. But workers, who make all these profits and benefits possible for other three parties, are to live a sub-standard life for years. The wages they get is low. Very often they do not get their salary, overtime bills and bonus in time. Their recruitment system is ‘hiring and firing’ as they do not get any appointment letter and at any time they can be dismissed by owners for any reason. Being maltreated by owners and mid-level officers, working long hours in a congested room without sufficient rest, lack of recreational opportunity, nutritious foods, medicine, right to legitimate protest against ruthless exploitations, etc are their daily destiny. They don’t have any access to the decision making process (Khan, 2011).

1.1 Statement of the Problem

In Bangladesh, disputes in industries, can be resolved by Bipartite Negotiation or Collective Bargaining, Tripartite Discussion or Conciliation, Arbitration and Adjudication by labour Court. Generally all these mechanisms are used for collective disputes but there is no alternative mechanism for settlement of individual disputes other than by the intervention of the Court. Individual disputes cannot be taken to court by the Collective Bargaining Agent (CBA) as industrial disputes. Although this issue has been raised several times before the Supreme Court of Bangladesh, the Court has made it clear that individual disputes cannot be entertained by the Labour Court as an industrial dispute (Faruque, 2009). Section 209 of Bangladesh Labour Act, 2006 clearly mentions that industrial disputes deemed to exist where it is raised by the Collective Bargaining Agent or by the employer but it doesn’t clarify what will be the procedure to settle an industrial dispute where there is no Collective Bargaining Agent. In Bangladesh to make Collective Bargaining Agent, Trade Union is a must but if there is no Trade Union then no Collective Bargaining Agent can be formed and for the reason an Industrial Dispute cannot be settled.

1.2 Research Questions

It is to be mentioned that there are little research contributions in the field of industrial dispute settlement mechanism in Bangladesh. This study is an attempt to mitigate the research gap. Given emphasis in these problems, the following research questions are found relevant to this study:

- What is the nature and extent of existing industrial dispute settlement mechanism of Bangladesh?
- Why the existing mechanism does not fulfill the present demanded situation?
- How can the industrial dispute settlement mechanism be made harmonious and standard for Bangladesh?

1.3 Study Objectives

The main objective of this article is to investigate critically the current status of dispute settlement mechanism of Bangladesh in order to succeed and to find out needs in the context of present demanded situation.

1.4 Review of Literature

Khan (2006), suggested that Non-Governmental Organizations (NGOs), civil society, trade unions and other stakeholders should work together to adopt the Code of Conduct for a viable and competitive Ready Made Garment (RMG) industry. The government, Non-Governmental Organizations, international agencies, buyers and other stakeholder groups promote full compliance with mandatory requirements as specified in the law.

Baral (2010), focuses that compliance of Ready Made Garment (RMG) factories is a key requirement for most of the reputable global garments buyers. It ensures labour rights and facilities according to the buyer's code of conduct. Every Ready Made Garment factory should try to be compliant not only for profit reasons but also for the protection of human rights.

Priyo (2010), express those late or irregular wage payments are common in the sector. Usually most of the factories do not provide any pay slip. The factories, which provide pay slips, don't have transparency.

2. RESEARCH METHODOLOGY

Content analysis method has been used to analyze the existing law. Necessary data is taken from both primary and secondary sources. Bangladesh Labour Act, 2006 and Constitution of the People's Republic of Bangladesh, 1972 is used as primary source whereas the secondary sources of data are taken from relevant books, journals, reports, published or unpublished thesis, dissertation, newspaper, different websites and data from various official and unofficial sources.

3. ANALYSIS AND FINDINGS

3.1 Settlement of Industrial Disputes through Adjudication

In 2006 Government of Bangladesh enacted Bangladesh Labour Act, 2006 in order to settle industrial dispute and to promote industrial peace and establish a harmonious and cordial relationship between labour and capital by means of conciliation, mediation and adjudication (Halim, 2007). The Act has been streamlined for some non-adjudicatory as well as adjudicatory authorities. Non-adjudicatory includes, bipartite negotiation, Conciliation and Arbitration, while adjudicatory (judicial) authorities include Labour Court, Labour Appellate Tribunal etc. The state provides machinery for the settlement of disputes which starts with conciliation and ends up with provision for the adjudication by court. Bi-partite negotiation and conciliation are two important methods of settlement of industrial disputes because they provide grounds for amicable settlement in a free and unfettered environment (Taher, 1994). As a third party the conciliators try to help the conflicting parties resolve their disputes amicably and restore good relationship between the disputants. In essence, bipartite negotiation and conciliation are complementary to each other and can, if successfully used, provide a solid foundation to industrial relations.

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|--------------|-----------------|---------------------------|
| Adjudication | Extra- Judicial | Bipartite Negotiation |
| | | Conciliation |
| | | Arbitration |
| | Judicial | Labour Tribunal |
| | | Labour Appellate Tribunal |

Table No.1

3.2 Bipartite Negotiation

Bipartite negotiation as a means to prevent and solve disputes helps develop harmonious relationship between the management and workers. Bipartite negotiation takes place between the employers and their employees over job-related affairs. The employees are usually represented by their elected representatives who form the CBAs, while the employers are allowed to participate in collective bargaining themselves or through their representative. The legal provisions relating to the process of bipartite negotiation need a brief discussion here. A trade union, which is elected as CBA, can raise a dispute in writing and place it before the management for settlement through negotiation. Similarly, the employers can also raise a dispute and place it before the CBA for negotiation. Bipartite negotiation starts within 15 days of submitting a written demand from either party. It has to be completed within 30 days after first meeting. If bargaining is successful, a memorandum of settlement is recorded in writing and signed by both the parties and a copy thereof is forwarded to the Government, Director of Labour and conciliator. It has been reported that though the law provides a favourable environment for bipartite negotiation, the scenario is different in practice. Bipartite negotiation is not as successful as is desired by the legislature in incorporating such mechanism for settlement of dispute. Unfavourable and authoritarian attitude of management towards trade unionism, bribing trade union leaders, lack of experience and leadership skill in trade union officers, interference of the government and the ruling party in the settlement of industrial dispute, multiplicity of trade unions having political rivalries, low level of class consciousness among workers as well as trade union leaders, inefficiency in applying bargaining techniques etc. are the main reason for making bipartite negotiation as useless tools in the settlement of industrial dispute in Bangladesh (Faruque, 2009).

3.3 Conciliation

In simple sense, conciliation means reconciliation of differences between persons. In fact conciliation can be taken as an extension of the function of collective bargaining or simply as “assisted collective bargaining” in which the conflicting parties can have a fair chance of settlement of industrial disputes through the services of expert negotiators. If bipartite negotiation fails, any of the parties concerned may request the conciliator in writing, to conciliate the dispute within 15 days from the date of the failure of collective bargaining. The practice of conciliation is compulsory in Bangladesh before resorting to industrial action. The role of the conciliator is to suggest solutions that can help find a compromise between workers and the management, but cannot impose a solution. The success of conciliation depends on the willingness of the two sides to resolve their

differences. If a settlement of the dispute is arrived at in the course of conciliation, the conciliator shall send a report thereof to the Government together with a memorandum of settlement signed by the parties to the dispute. If the conciliation fails, the conciliator shall try to persuade the parties to agree to refer the dispute to an Arbitrator for settlement. If the parties do not agree to refer to the dispute of an Arbitrator for settlement, the Conciliator shall, within three days of the failure of the conciliation proceedings, give a certificate thereof to the parties. The conciliation proceedings may continue for more than 30 days if the parties agree. The Director of Labour may, at any time, carry on with conciliation proceedings, withdraw the same from a conciliator or transfer the same to any other conciliator, and the other provisions of this section shall apply thereto.

In fact, conciliation is a weak machinery in the settlement of disputes. As per the annual report of Ministry of Labour and Employment 2012-13, only 172 industrial disputes which took place before the conciliator among them 166 disputes has been solved and the rests are pending (Annual Report of Ministry of Labour and Employment, 2013). There are some shortcomings in the process which prevent the parties from reaching at an agreement:

- i. The choice of conciliator (or the composition of conciliation boards or committees, where they are used partially of the conciliator either in favour of the employers or influenced by the labour front backed by the ruling party).
- ii. Tendency to bribe trade union leaders during conciliation.
- iii. Attendance at conciliation proceedings.
- iv. Time limits for conciliation.
- v. Showing of muscle power by trade union leaders during conciliation.

3.4 Arbitration

Arbitration is a process in which the conflicting parties agree to refer their dispute to a neutral third party known as 'Arbitrator'. Arbitration is a voluntary process for the settlement of industrial dispute. When conciliation fails, arbitration may prove to be a satisfactory and most enlightened method of resolving industrial dispute. The legal provisions relating to the process of collective bargaining needs a brief discussion. If the conciliation fails, the conciliator tries to persuade the parties to refer their dispute to an arbitrator. If the parties agree to refer the dispute to an arbitrator for settlement, they make a joint request in writing to the arbitrator agreed upon by them. Sub-section 12 to 17 of Section 210 of Bangladesh Labour Act, 2006 explains the rules regarding arbitration. The Arbitrator shall give his 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 by the parties to the dispute. After he has made an award, the Arbitrator shall forward a copy thereof to the parties and to the Government. The award of the Arbitrator is final and no appeal shall lie against it. An award shall be valid for a period not exceeding two years, as may be fixed by the arbitrator. In practice no dispute is referred to the Arbitrator due to the fact that either the dispute is settled at the time of conciliation or in failure the parties feel interested to go to the Labour Court rather going for arbitration (Faruque, 2009).

3.5 Adjudication by Labour Tribunal

The Adjudication system after the stages of bipartite negotiation and conciliation are exhausted, the disputant parties may resort to settling their dispute by referring it to the arbitrator or by a strike action or lock-out as discussed above or through the Labour Court. The Labour Court is constituted with a Chairman and two Members to advise him, however, in the case of trial of an offence or adjudication of any matter under Chapters Ten and Twelve it shall consist of the Chairman alone. The Members of the Labour Court are appointed by the Government in prescribed manner and to be the Chairman of the Labour Court, a person is to be the sitting District Judge or Additional District Judge. While trying an offence the Labour Court shall administer its proceedings without its members. The Labour Court has the power to dismiss the case or to decide the same ex-parte. The award, decision or judgment of the Labour Court shall be delivered, unless the parties to the dispute give their consent in writing to extend the time-limit, within sixty days following the date Section 33(1) of the Bangladesh Labour Act, 2006. Any individual worker including a person who has been dismissed, retrenched, laid-off or otherwise removed from employment who has a grievance in respect of any matter covered under this chapter and intends to seek redress thereof under this section, shall submit his grievance to his employer, in writing, by registered post within thirty days of the occurrence of the cause of such grievance; provided that, if the employer receives the grievance directly with acknowledgement in writing, there will be no need to send the grievance by registered post. The employer shall within fifteen days of receipt of such grievance, enquire into the matter, give the worker concerned an opportunity of being heard and communicate his decision, in writing to the said worker.

3.6 Adjudication by Labour Appellate Tribunal

Adjudication by Labour Appellate Tribunal, the Labour Appellate Tribunal has the power to hear or dispose appeals from the Labour Court. It consists of a Chairman or if the Government deems fit, of Chairman and such number of Members as determined by the Government. The Chairman shall be a former Judge or Additional Judge of the Supreme Court and any Member thereof shall have been a Judge or an Additional Judge of the Supreme Court or is or has been a District Judge for at least three years. The Labour Appellate Tribunal on appeal may set aside, vary or modify any award decision in judgment or sentence given by the Labour Court or send the case back to the Court for re- hearing; and shall exercise all the powers conferred by the Code on the Labour Court. The judgment of the Tribunal shall be delivered within a period of not more than 60 days following the filing of the appeal.

3.7 Loopholes of Existing Laws

The loopholes of existing laws and the weak performance of courts frustrate the aggrieved persons. Generally, the time limit to dispose a case in the Labour Tribunal is 60 days but about 50 percent of the cases took a time period ranging between 12 months to 36 months. The time required for 25 percent of the cases ranged between three years to five years. About 8 per cent of the cases took more than five years. The average time taken to decide the cases by the First Labour Court

and the Second Labour Court of Dhaka was more than 17.5 months and 31 months respectively (Faruque, 2009). The Annual Report of Ministry of Labour and Employment shows that up to August, 2013 only 274 cases have been solved among 14427 and the rest 14153 number of cases are pending in different Labour Courts of Bangladesh (Annual Report of Ministry of Labour and Employment, 2013). Inadequacy of Courts for dealing with labour disputes, huge cases under different laws specially under section 114 of the Code Criminal Procedure, absence of members cause unnecessary delay in disposing of the case, frequent time petitions which are applied by the practicing lawyers and lack of logistic support of the Tribunal is the reason behind the backlog of cases in the Labour Tribunal.

4. CONCLUSION AND RECOMMENDATION

The Bangladesh Labour Act, 2006 provides an important tool for minimizing industrial disputes at the very initial stage by the intervention of the Participation Committee. The Participation Committee is a bipartite mechanism comprising of equal number of representation of workers and employers. In an establishment where fifty or more workers are employed, the employer is bound to constitute a Participation Committee to his establishment. The main function of the Participation Committee is to inculcate and develop a sense of belonging and workers' commitment and in particular, to Endeavour to promote mutual trust, understanding and cooperation between the employer and the workers, to ensure application of labour laws, to foster a sense of discipline and to impose and maintain safety, occupational health and working condition and to adopt measures for improvement of welfare services for the workers and their families. However, the role of Participation Committee is very limited as such committee exists only in a very few industries and establishments Bangladesh Garment Manufacturers and Exporters Association (BGMEA) compliance team during the July-September 2012 period inspected 586 factories. They found that only 0.51 per cent have welfare committees (Islam, 2012). Some of them do not even operate regularly. Bangladesh is a country which ratified 7 ILO conventions out of 8 and those ratified conventions, specially Convention'87 and 98 are strongly relevant to the right of 'Freedom of Association' and 'Freedom of Choosing Leadership'. Therefore, it is an obligation of our government to make our national law compatible with concern ILO conventions. Despite government's ratification of such a big numbers of ILO conventions, the new Labour Act of the country still remains unfriendly to the workers, foreign buyers and sincere entrepreneurs. People who really want a stable industrial sector in Bangladesh always advocate for a Labour Law of international standard that provide possible maximum benefit for workers and ensure adequate work-place safety.

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