International Journal of Business and
General Management (IJBGM)
ISSN(P): 2319-2267; ISSN(E): 2319-2275
Vol. 6, Issue 6, Oct - Nov 2017; 29-36

International Academy of Science,
Engineering and Technology
Connecting Researchers; Nurturing Innovations

THE EFFECTIVENESS OF ADJUDICATION MACHINERIES IN KERALA

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ABSTRACT

The Constitution of India declares that, all judicial functions shall be done independently, by the judiciary. The existence of quasi judicial forums, through the process of delegation by the legislature, causes many obstacles for protecting the civil rights of the employees. The working pattern of the adjudication machineries in the industrial field is considered as quasi - judicial in nature. The study was mainly intended to gather the various limitations and clogs, in the adjudication process. The respondents of the enquiry consisting of profound personalities, from a cross section of industrial society, such as MLAs, MPs, judges, lawyers, executives of the Labour Department, management representatives, employees and trade union leaders, acknowledged their desire for reconstruction of the present adjudication process. The main shortcome precipitated through the study, relates to the arbitrary control of the appropriate government, in the adjudication process, relating to industrial disputes. Among the various conclusions drawn up, the vital was the one which advocates the necessity of an independent judicial system. Enhancement of the number of presiding officers. With appropriate skills, modification of industrial policy with much concern for the absolute protection of the employees, were the significant responses evolved from the study.

KEYWORDS: 'Effectiveness', Adjudication, Machinery, Industrial Dispute'

INTRODUCTION

The industrial field in India faced a serious setback during the 1970's, when the jute industries in Gujarat and West Bengal faced a national labour dispute. It was the first time after Independence, the juries and the legislative experts thought of bringing up substantial amendments, to the labour laws. In 1996, the Union Government introduced the Arbitration and Conciliation Act, which provides statutory recognition for the labour conciliation process. The working of labour courts and industrial tribunals, invariably depends on the rules framed thereto. A substantial portion of the rules framed for the working of industrial tribunals, provides for the necessity of the arbitration process. Since, the central statutes is introduced bypassing the long standing adjudication machinery, provided under the Industrial Disputes Act, the need to study the present working pattern of such adjudication machinery, its shortcomings and necessary aspects to be restructured get much significance. The industrial relation revolves around the healthy labour relations climate, existing in the field. If either the employer or the employee is provided with an option, away from the long standing statutory adjudication process, by adopting the same, an attempt will be committed to flout of the provisions of the Industrial Dispute Act and other labour laws. It is the urge of the juries, to examine the impact of statutory arbitration on the industrial sector, when compared with the existing adjudication process under industrial laws.

The statute for adjudicating labour dispute, shall be evaluated periodically. In India, the substantial period is over, after the introduction of the Industrial Dispute Act 1947, but has not undergone any changes in its adjudication machinery. The very crux of industrial relation is a speedy Redressal of probable industrial dispute. The effectiveness of adjudication process thus, shall be necessarily reviewed and restructured. The labour law, which was in existence in the neighboring countries, including the Great Britain has been reformulated before, through decades. But, the Labour Law in India is flowing, as it is for the past 68 years. The ageing of the Industrial Dispute Act, with substantial changes in the work pattern of adjudication machineries, will cause many hardships to a healthy labour climate in the State.

Part III of the Constitution of India, provides a Fundamental Right for all citizens in India, to carry on any profession, trade or business of their own. These rights inter alia provide, a right to approach the courts for its evaluation. The adjudication process under industrial laws, provides condition precedents for approaching the courts. The mandatory provision for reference, by appropriate government was placed as an incident of legislative control, over the judicial process. By the introduction of the Arbitration and Conciliation Act, recognized arbitration process came into existence, even in labour fields. The effect of this law is badly affecting the work pattern of the adjudication machinery. Thus, it is high time to conduct a study on the effectiveness of the adjudication process, in respect of industrial disputes in Kerala.

The time to review, and scrutiny of the outputs of adjudication machineries in industrial fields in Kerala is not yet done by the appropriate government, or any of the constitutional authorities. It is necessary to have a look into the dependent and independent variables, which control the effectiveness of the adjudication process. The word effectiveness used in the topic, is intended to measure out the shortcomings of the present condition and to point out the results of the study. Reactive mechanisms, to address industrial dispute includes negotiation, conciliation, arbitration and adjudication. When a difference of opinion between management and employee, or trade union grows out of proportion to an industrial dispute, one or more of the affected parties go to conciliation. When conciliation officer fails to arrive at an amicable settlement, within 14 days of taking up the dispute, the appropriate government may ‘refer’ the issue to adjudication mechanisms, upon its subjective satisfaction.

Adjudication authorities include labour courts, industrial tribunal and national tribunal. Prima facie, the reason for the ineffectiveness of adjudication, seems to be the mandatory reference procedure by the appropriate government, with a vested interest, time lags in obtaining an award and the inability of the machinery to effectively implement the award. Among the prevailing machineries and mechanism, available for the settlement of industrial dispute, code of discipline, grievance procedure, collective bargaining and industrial relations committee will make all its endeavors, to prevent the conflict between employers and employees, hence this mechanism can be called as preventive mechanism. These have a vital part to play, to prevent the transformation of industrial dispute from individual differences. The other mechanism like conciliation, arbitration and adjudication have a considerable role to play, only when the industrial dispute apprehends or arrives in the industrial relm and thereby, termed as dispute settlement machineries.

REVIEW OF LITERATURE

Adjudication in labour field means, mandatory settlement of industrial dispute by labour courts, industrial tribunals or national tribunals, under the Act or by any other corresponding authorities, under the analogues state statutes with specialized jurisdiction, in the labour management field. The line between the scope of adjudication and arbitration in this country, is rather blurred. The central theme of the industrial Act is adjudicated. From its scheme, it is clear that, the Act does little more than lip service, to collective bargaining, relegates the conciliation to the position of a mere

stepping stone to adjudication and gives step motherly treatment, to voluntary arbitration. Sec7, 7-A and 7-B deals with the constitution of adjudicating authorities like labour courts, industrial tribunal and national tribunals. Sec 10 deals with the reference of dispute to labour courts, industrial tribunals and national tribunals. How so ever, severe one may be in the criticism of industrial adjudication, the contribution of the industrial adjudication, in the development of the industrial jurisprudence of the country, cannot be over looked. (Srivastava K.D, 2003)

The Law commission of India in its 122nd, report on "Forum for National uniformity in Labour adjudication" pithily observed: "In fact, it is a trite saying that, labour law such as the one that can be found in the Industrial Dispute Act – 1947, was not enacted as a measure of socio-economic justice, but it was in fact a law and order measure". It is this law and order measure, that still regulates the labour management relations in the country today (Law Commission of India, 1987).

It is really painful that, after a sufficiently long time was spent on the adjudication of the dispute and an award was rendered, the courts quash the award on such jurisdictional grounds, because the Government, which initially referred the dispute for adjudication was not the appropriate government, in the opinion of those courts. Until the definition is suitably amended to provide for such situations, it is better that, the principle of simultaneous jurisdiction of two appropriate government is recognized, so that awards made by the tribunals shall not be quashed on such technical grounds, although many may strongly oppose this view. In the opinion of O.P.Malhotra, who opposes this view and advocated that, there can be and should be only one appropriate government and says that, the opinion of the High court's that, there cannot be two appropriate governments for the same dispute (O. P Malhotra, 1998).

The First National Commission on Labour, reviewing the whole situation prevailing in the area of Labour management relations, has cautioned that, the dismantling of the adjudicatory system under Act, would be an unwise step (Report of First National Commission on Labour (1969) and the same is also endorsed, by the Second National Commission on labour in India. Report of Second National Commission on Labour (2002).

"The adjudication machinery has exercised considerable influence of several aspects of conditions of work and labour management relations. Adjudication has been one of the instruments for the improvement of wages and working conditions and for securing allowances for maintaining real wages for standardization of wages, bonus and introducing in benefits and amenities. It has also helped to avert many work stoppages by providing an acceptable alternative to direct action and to protect and promote the interests of the weaker sections of the working class, who were not organized or were unable to bargain on an equal footing with the employer".

The present adjudication mechanisms, such as labour courts and industrial tribunals, which were charged with the duty of expeditious adjudication of industrial disputes, for ensuring social justice and Industrial peace, have been functioning as an appendage or sub-system, of the main Judicial system. Consequently, all the defects and drawbacks of the judicial system in the country, have infiltrated into the industrial adjudication. These drawbacks, abnormal delays, mounting arrears, the excessive cost of litigations procedural technicalities and court formalities, etc. have made the adjudication system ineffective and inefficient.

OBJECTIVES OF THE STUDY

- To analyse the legal procedure of labour courts and Industrial tribunals in Kerala.
- To analyse the necessity for the reconstitution of labour courts and industrial tribunals for speedy disposal of disputes.
- To assess the contributions of labour courts and industrial tribunals to the welfare of employees In Kerala.
- To examine the legal necessity of reference by the appropriate government under labour laws and its consequences in redressal of labour disputes by labour courts and Industrial tribunals.
- To compare the mode of enforcement of awards, passed by the labour courts and industrial tribunals and limitations for the enforcement procedure.

METHODOLOGY

The descriptive type of research method is used for this study, which implies a fact finding investigation, with adequate explanation. Field data collection took around 30 days, using an interview schedule. Respondents for the study includes 5 discrete categories, MLAs, MPs, judges and lawyers, executives of labour department, management representatives, employees and trade union leaders. Judgment sampling was used to select respondents. The study was confined to labour courts, in 3 cities of Kerala – Kollam, Ernakulum and Kozhikode. A pilot study was conducted at Kollam, to examine and assess the scope of the study. In addition to the primary data, secondary sources like Labour law journals, various publications, reports available from Labor department and websites were utlilsed for the study. Separate schedules were used for each category of respondents, of which, the one to the employee was in mother tongue. Non-hypothesis testing methods are used in the study. From each category of the respondent, except MLAs/MPs, 20 sample units each, were selected for the study and in the case of MLA's and MP's, the sample size selected was 10. The sample units were selected, based on experience and knowledge of the respondents, in the field of the adjudication process.

RESULTS AND DISCUSSION

Factors affecting the effectiveness of the adjudication mechanism in Kerala:

Five point rating scale was used for processing the responses. Results can be described as follows: Mean score 4-5 as full agreement, 3-4 as part agreement, less than 3 as not agreeing.

Table 1

Sl. No	Statement	Mean Score	Result
1	Penal provisions contained in labor legislation sufficient to deter labor offence	2.7	Not agreeing
2	Labour disputes are handled by advocates who have expertise in handling such matters	3.5	Part agreement
3	Labour legislations are truly welfare legislation	3.6	Part agreement
4	Adjudication process under Industrial dispute Act requires reconstruction	4	Full agreement
5	Management in Kerala is hostile to collective bargaining	2.5	Not agreeing
6	Labor courts & Industrial tribunals in Kerala are dying due to the introduction of parallel, arbitration mechanisms and forums.	2.3	Not agreeing
7	Trade union shall litigate on behalf of employees	4.1	Full agreement

In addition, enquiries were tactically posed using an interview schedule, to assess and get insights regarding the following broad areas. The researcher has stated against each statement, whether the majority of respondents agree with the statement or not.

- A positive level of satisfaction of all categories of respondents, towards the prevailing adjudication procedure. - Disagree
- The presence of a felt need among respondents in reconstituting the existing process towards timely resolution of disputes. - Agree
- A felt need among respondents towards amendment of Industrial Dispute Act. - Agree
- Excessive legislative control on adjudication machinery. - Agree
- A need to ensure more employee participation in the adjudication process, and the benefits thereof. – Agree
- The mandatory provision for the reference by appropriate government is a real clog towards the perceived inefficiency of adjudication machineries. - Agree
- The ministerial duties of adjudication machineries adversely affect the value added judicial functions. - Agree
- Employees hold an optimistic perception regarding the ability of the adjudication machinery in meeting the rights of employee in Kerala. – Agree

SUMMARY OF THE FINDINGS

- 72 percent of the respondents are of the opinion that, industrial field in Kerala is satisfied with the present adjudication process.
- Insufficient number of adjudicating forums and lack of expertise of presiding officers are the major reasons that, the industrial field in Kerala is not satisfied with the present adjudication process.
- 78 percent of the respondents are of the view that, there is a need for reconstitution of Labour courts and industrial tribunals.
- The main suggestion for reconstitution of labour courts and Industrial tribunals, include in increasing the number of the presiding officers, the application of the mind of the experts, in labour fields in decision making and reconstituting the structure of labour courts and industrial tribunals.
- The present legal formality of reference, by the appropriate government is the main obstacle in bringing an Industrial or labour dispute, before the adjudication machinery.
- The majority of the respondents opined that, there is the need for amendment for the Industrial Dispute Act and Rules.
- The legislative control on adjudicating machineries under Industrial law, is not in favour of the welfare of employees.
- It was found that, the mandatory provision for the reference by the Government is a clog to a certain extent, for the enforcement of labour rights.

- It is revealed that, there is no need of work experience as an advocate, for practicing labour courts and industrial tribunals.
- It is revealed that, advocates who have expertise in handling such matters handle the labour disputes.
- 70 percent majority of the respondents opined that, there are certain financial difficulties in approaching and prosecuting, before the adjudication machineries.
- The response of the workmen / trade union leaders is against the opinion that, the labour courts and industrial tribunals are dying in Kerala, by the introduction of parallel arbitration machineries and forums.
- 64 percent of the management representatives opined that, the effectiveness of the remedy they got from labour courts and industrial tribunals, was upto a certain extent.

SUGGESTIONS

- The long pending mandatory provision of "reference", by the appropriate government has to be taken off and all the workmen and other components in industrial field, should be allowed to defend their industrial disputes directly, in the appropriate forums.
- The labour offences should be remould as serious cognizable offences, with a view to deter the probable violation of labour statutes.
- The provision for arbitration and conciliation, shall be given statutory backing with mandatory compliance, by a litigant who raises a dispute before any one of the adjudication machineries, under industrial laws.
- The presiding officers of the adjudication machineries shall be equipped, to meet the scientific and technical aspects of the disputes and the role of assessors, under the act may be avoided and the number of presiding officers, shall be enhanced.
- The reconstruction of the adjudication machineries, including the labour courts and industrial tribunals is required with immediate measures. The number of presiding officers shall be in odd numbers. This recommendation may fetch unanimous awards, from labour courts.
- The gestation period of 30 days, for enforcing an award after its publication may be taken off, for ensuring speedier relief to the parties.
- The constitution of courts under labour laws, through the notification process shall be amended and such courts shall be formed, by direct courses of establishment by the judiciary. Judicial control over labour courts and Industrial tribunals, may enhance the chance for legal awards.
- The role of trade unions shall be approved judicially, and representatives from trade unions shall be made, as a member of the presiding forums.
- The number of industrial and labour courts, shall be increased in proportion to the number of employees and industries in the state. This measure will offer speedy disposal of industrial disputes.

CONCLUSIONS

This study to find out the effectiveness of the adjudication process, with respect to industrial dispute in Kerala, could be able to reach with satisfactory findings and suggestions. All the statutory forums, including labour courts and industrial tribunals, were within the band of academic scrutiny. The available data was not too sharp, but was helpful for setting the questionnaire to respond. The response collected was valuable and informative. The suggestions and recommendations were derived, on the basis of factual data. The adjudication machineries in industrial field, are subject to duel control of the legislature and judiciary. The limitation of these forums came out at the time of evaluation of responses. The contractual working pattern of the adjudication machineries in industrial field, requires reconstruction.

This study paved way, for recommending the possible way outs for accelerating the effectiveness of the adjudication process, in industrial fields. Among the major suggestions, the most recommendable was the one regarding removal of legislative control, on such courts and forums. The legal requisite of the reference by appropriate government was the main clog, for lack of effectiveness of the adjudication process. The three constitutional components, such as legislature, executive and judiciary should be given equal powers, to control the adjudication machineries. The study emphatically precipitated the fact that, as the matter stands the control of appropriate government on such adjudication machinery is greater, when compared with other two components, executive and judiciary. The probability of ineffective awards, biased awards and injustice in procedure is much, due to this control of appropriate government.

This study has brought out a good number of hidden facts, touching the domestic obstacles in the adjudication process. The lack of expertise of presiding officers, the minimum number of courts and tribunals, the presence of unskilled agents to defend the disputes are some of the reasons for the ineffective results of the adjudication process. The findings and suggestions of the study coverage, to an accepted fact for the reconstruction of the present adjudication machineries in industrial field. All possible effects were applied to find out the real cause and clog, which minimize the effectiveness of the adjudication machineries. The realm of labour legislations requires periodic scrutiny and review.

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