

# ADR---A SEARCH FOR HARMONY IN INDUSTRIAL ERA: AN APPRAISAL

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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.

Industrial relations have two faces, co-operation and conflict.<sup>1</sup> The relationship starting with co-operation soon changes into conflicts and after settlement again changes into co-operation. This process of changing becomes a continuous feature in industrial democracy. When conflicts arise, they result in undesirable consequences: total stoppage of work, loss of production, loss of wages, and loss to the community which affects national income and create nuisance by uncontrollable law and order in the society.

It is true that the economic progress of any country must be depended on the doctrine of industrial growth. Industry will progress economically only when the relations between the labour and management are strong and at harmony. An industry is an association of variety of people not only influences the labour management relations but also the social, economic and political lives of the whole community. The main aspects of industrial relations are to development of healthy labour-management relations, maintenance of industrial peace and development of industrial democracy.

Now a days labour constitutes one of the powerful parts of any industry. Various state policies related to class of labour are emphasized in the Directive Principles of State Policy. Labour legislation is one of the most progressive and dynamic instruments for achieving socio-economic progress. Labour laws were enacted to achieve industrial harmony and peace to ensure uninterrupted production, national progress and justice

For nurturing a healthy industrial climate, the responsibility lies with the management, the union and the government. Effort has been made to reduce the gap between labour and management. The conflict of interest between labour and management is inherent in the present industrial system. When conflict arises, it results in undesirable consequences:- stoppage of work, loss of wages, loss of production and in turn affects the national income. A proper handling of industrial disputes requires effective techniques for improving and maintaining smooth relations. Labour conflict resolution is essential to achieve high settlement rates. To resolve the labour dispute to maintain cordial industrial relations, there is a growing demand for alternative dispute resolution mechanism. Healthy interaction between the labour and management based on trust, respect and co-operation can facilitate amicable and effective settlement of conflicts without disturbing the atmosphere of workplace. Many changes have taken place in dispute resolution system through voluntary process. A group of negotiation by highlighting persuasive techniques tries to convince the parties for settlement. Conciliation is a non-interventionist process to solve the disputes. Mediation, with the intervention of neutral third person, actively assists parties to reach a mutually acceptable agreement. Another important dispute resolution system is arbitration – a neutral third party plays a directive, decisive role in resolution of dispute.

A.D.R. – an informal process that allows parties to have a negotiation and to discuss to resolve their disputes. Our Hon'ble President Dr. A.P.J. Abdul Kalam<sup>2</sup> supports A.D.R. system to settle the disputes in the following words:

“Mediation and Conciliation is a faster method of dispute resolution compared to the traditional court process. This system is definitely an effective system for the needy”.

Alternative dispute resolution systems are not new to India and have been in existence since the days before colonial British rulers introduced the modern justice delivery system. A.D.R. in labour disputes aims at encouraging amicable settlement of disputes by providing speedy, inexpensive and quality justice to the parties. Employer and Employees relationship is a sensitive one and any conflict between them can create disturbing situations. Development of A.D.R. in employment matters through internal conciliation and mediation helpful in creating conflicting free atmosphere in industry. The Industrial Disputes Act, 1947 is a special statute devoted to the investigation and settlement of industrial disputes by providing necessary methods. The Act is intended to be a self-contained one. It seeks to achieve social goals on the basis of collective bargaining, conciliation, arbitration and compulsory adjudication. In *Hindustan Hosiery Industries v. F. H. Lolo*<sup>3</sup>, the Supreme Court held that Industrial Disputes Act, 1947 provides the machineries that are informal in nature, free from cumbersome technicalities of ordinary laws.

The dispute resolving machinery provided under the Industrial Disputes Act, 1947 are Negotiation, Conciliation, Arbitration and Adjudication by Labour Court and Tribunals. Modern industrialization and the economic growth envisaged in our planning would be necessarily call for increased use of legislation not for solving economic and social problems but also for creating healthy industrial conditions. In spite of all the efforts made by government, still the labour management relations are not improving to the satisfaction. It is very clear from the following statistics of industrial disputes.

YEAR	Number of Industrial Disputes	Number of workers involved in Industrial Disputes	Number of Mandays lost in Industrial Disputes	Production loss in Industrial Disputes (In Rs )
2007	389	724,574	27,166,752	2,67,40,78,927
2008	334	525,923	16,060,146	2,95,67,01,963
2009	345	1,867,204	17,622,055	5,97,08,08,614

<sup>1</sup> R.C. Singh, “Determinants of Industrial Relations”, XII, Indian Journal of Labour Economic, Page no.78

<sup>2</sup> 12<sup>th</sup> Justice SunandaBhandare Memorial Lecture – Judiciary and its multi-dimensions – on 1<sup>st</sup> November, 2006

<sup>3</sup> LLJ – 1974 (I) Page no.348

2010	371	1,074,473	23,130,527	1,70,18,96,486
2011	370	734,763	14,458,038	4,22,32,44,745

Source: Various Issues of Pocket Books of Labour Bureau, Shimala

From above table we can come to conclusion that though the number of disputes reduced on an average during the period, the rate of workers involvement and maydays lost has increased tremendously. Due to industrial conflicts the loss of output has increased which ultimately affect our national income which needs urgent action.

Though the ADR systems provided in Industrial Dispute Act 1947, are of international standard, but suffer from certain inherent drawbacks. Coming to the negotiation, where disputes are settled with the help of collective bargaining. Collective bargaining is an instrument of joint action between labour and management. But the situations prevailing in our industrial jurisprudence are not suitable for development of this concept. Multiplicity of trade unions, poverty and illiteracy of workers and dominance of outsiders in the unions weakens the growth of trade unions which is the main drawback of our ADR system.

As for as works committee is concerned it was observed that it is considered as purely consultative body. The decision is only in suggestive nature without binding effect. It does not have authoritative value and merely persuasive in nature. This observation raised the doubts on the credibility of works committee.

Illiteracy and lack of understanding among the workers, is the major cause for failure of committee. Most of the trade unions are under misconception that the committees are supplant the unions for collective bargaining. Therefore, they deliberately opposed for the formation of these committees for all these reasons, the Works Committee has not been working successfully. Despite the various problems faced, the Works Committee still has a predominant role to play in industrial relations. Hence it needs a relook because it is a workers oriented committee to settle their grievance

Coming to the conciliation machinery constituted under Industrial Disputes Act, 1947, it is clear that is an extension of collective bargaining for the resolution of conflicts by bringing them together. It is a very democratic technique tries to reconcile the differences by giving suggestions. A third party intervention in industrial disputes to assist the parties through persuasion, advice to resolve the conflicts to arrive at a voluntary settlement. But unfortunately, the parties to the disputes regard that conciliation process is mere a hurdle which inevitable faced to cross in order to have the disputes adjudicated by either by labour court or by industrial tribunal. Due to excessive workload on officers and procedural difficulty, delay occurs in conciliation process. Absence of well-organized conciliation process, inability of the officer to enforce their decisions, and unwillingness of the parties to approach the process, rendered the conciliation machinery defective to achieve the goal.

There is an urgent need to tone up the services provided by conciliation machinery to meet the various challenges. Through some changes and reorientation of this settlement machinery, the effectiveness of conciliation process can be enhanced.

The above failure even does not spare the Arbitration procedure under Industrial Dispute Act. It is a voluntary process widely accepted and recognized as a settlement process under ADR system. Several factors are accounted for the slow progress of voluntary arbitration in India.

- \* Non availability of qualified arbitrator.
- \*Absence of recognized trade unions.
- \*Lethargic attitude of arbitrator.
- \*It is time consuming process.
- \*Lack of knowledge.
- \*possibility of bias.

Because of these drawbacks the party prefers the adjudication system for deciding labour disputes. The Industrial Disputes Act, 1947 is compulsory adjudication oriented with wide scope for government interference<sup>4</sup>. Too much intervention of the government has gone against the spirit of the Act, which was actually enacted to promote bipartism for resolution of disputes. There may be possibilities where the government armed with extensive power, can arbitrarily be used it. Even there is no time limit prescribed within which the government should make a reference. It is suggested that the Act be amended so that a period of limitation be prescribed for making references.

Alternate dispute resolution system in labour law was implemented years before but it was over burdened by its own complex and unwritten formalities, traditions and technicalities. The methods provided under The Industrial Dispute Act 1947 to resolve industrial conflicts are no doubt of international standards but still it has got its own drawbacks. We discussed the problems faced by these resolving machineries hence there is need for the early settlement of not only the pending disputes but also the future disputes. The existing system is not able to cope up with the ever increasing burden of litigations and even many Indians cannot afford litigation expenses.

It is observed that it is an open secret that The Industrial Dispute Act 1947 is the first legislation in maintaining harmonious relation in industrial era.. The ADR methods like negotiation, meditation, conciliation and arbitration plays a vital role in dispute settlement process but with the above discussion it is clear that these alternative dispute resolution system becomes simply an alternative to the courts system for ending disputes. It's no longer about resolving disputes. In order to regain the lost vigour, it is necessary to make special provision in our constitution to enable the workers to settle the dispute through ADR as a fundamental rights. There should be co ordination between labour and management on one hand and governm on the other hand. Amendments should be made under Industrial dispute Act of 1947 to enable the parties to settle their conflicts through the bodies incorporated in Arbitration and Conciliation Act of 1996 and Legal Services Authority act 1987.

It is suggested to adopt full-fledged ADR system matching the international standards to settle the labour disputes in a very effective manner. Unless and until the reforms are made as per the suggestions the ADR mechanism will not become a search engine for achieving industrial harmony and industrial peace and the aim of achieving social justice would be mere dream forever in the eyes of the employees.

<sup>4</sup> Sec.10A of Industrial Dispute Act,1947.