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Resolution of Labour Disputes via ADR

DEBALINA ROY[1]

ABSTRACT

"Every litigation has a moral and, these appeals have many, the foremost being that the economics of law is the essence of labour jurisprudence ."

-Justice V.R. Krishna

A world devoid of disputes is unimaginable. In every sector of the economy and every aspect of society, one will find disputes galore. The industrial sector is no different. With the growth of industrialization and modernization, emerged labour disputes. In today's time, the settlement of disputes through the traditional judicial system is an arduous, expensive, and drawn-out process. Thus, the present scenario calls for an alternative method of resolving labour disputes that is advantageous to both the parties involved and is bereft of the drawbacks of the court system. This is where Alternative Dispute Resolution (ADR) comes to the rescue.

At the outset, Alternative Dispute Resolution (ADR) has been portrayed as an efficient, speedy, and accessible means of attaining justice for all and the constitutional background of ADR and labour laws in India has been explicated. The reader will learn about the historical progression of labour legislation and ADR techniques in this research paper. The nature, causes, and types of labour disputes have been explained with illustrations. How the different forms of ADR, with a particular focus on Industrial Arbitration and Conciliation, are employed to settle industrial disputes has been elucidated. The salient features of these ADR methods have been enumerated with a view to enlighten the reader with the legal framework of available dispute resolution procedures in labour law. The process of Voluntary Arbitration and Conciliation in light of the Industrial Disputes Act, 1947, has been expounded. The researcher attempts to discern whether ADR is a viable option and a preferable choice to settle industrial disputes in India and abroad.

Keywords: *ADR, labour laws, labour disputes, industrial arbitration, conciliation, voluntary arbitration, industrial disputes.*

I. INTRODUCTION

Industrial harmony and the absence of conflict on the industrial front is one of the primary indicators of economic progress in any nation, regardless of its ideological inclinations or beliefs. Unfortunately, given the conflicting interests of the management and the labour, it is

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needless to say that labour disputes are inevitable. As a result, the aim of any government must be to ensure that industrial disputes are averted and to develop effective institutions to resolve them as and when they arise. Dispute resolution and labour management is a crucial aspect of a well-functioning and flourishing labour market and industrial relations system. There will always be labour conflicts and a pressing need to resolve them swiftly, effectively, and fairly for the benefit of all parties involved and the economy as a whole wherever there are industrial relations. The mechanism devised to resolve such disputes is an integral element of any nation's industrial relations system.

Unlike wine, disputes do not become finer with ageing. On that note, while there is a wide range of methods available to resolve industrial disputes, ADR mechanisms such as arbitration, conciliation, negotiation, etc. are being increasingly preferred. Litigation, which is the conventional path taken to settle conflicts, has been found to be mostly ineffectual in dealing with the unique nature of labour and trade disputes. Due to dispute resolution through courts being time-consuming, expensive and strenuous, these ADR mechanisms have emerged as a suitable alternative. ADR is a non-adversarial method of settling disputes, which assists parties in resolving an industrial dispute without resorting to litigation. The labour class of any nation is economically backward and in the event of labour disputes being dragged to court, bearing the litigation costs is immensely burdensome for them. ADR in labour relations aims to ensure industrial peace and security for the country's socio-economic development.

Economic interest is especially high in labour conflicts like strikes and lockouts, and delays in justice result in greater economic loss. Given these circumstances, ADR approaches like conciliation, mediation, arbitration, and so on appear to be apt ways to resolve labour disputes. Furthermore, ADR establishes the mechanisms required for their prompt resolution. This paper focuses on two major ADR mechanisms through which labour disputes can be resolved, namely, Arbitration and Conciliation. Both these mechanisms entail the intervention of a third party to settle an industrial dispute; however, the degree of intervention in the process differs.

Furthermore, traditional labour dispute resolution procedures have been impacted by recent developments in the global labour scenario. Unquestionably, adversarial rights-based systems like labour tribunals or arbitration are important, but conciliation and mediation are two excellent consensus-based dispute resolution techniques that are now widely recognised for their advantages. The Industrial Disputes Act[2], 1947 in India, contains laws and specifies guidelines for using arbitration and conciliation to settle labour disputes. While there are

[2] Industrial Disputes Act, 1947, No. 14, Acts of Parliament, 1947 (India),

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frameworks and provisions for the parties, i.e., the workers and the management, to opt for arbitration or conciliation instead of litigation, it is to be seen that, in reality, to what extent and how well ADR is being used in the field of resolution of labour disputes.

(A) Research Problem

The research paper aims to ascertain the implication of resolving labour disputes through ADR mechanisms such as Arbitration and Conciliation. The extent to which ADR has succeeded in resolving industrial disputes in India, as well as other countries, has been intended to be discerned.

(B) Research Methodology

The main method adopted for writing this research paper is doctrinal legal research. Interpretive and analytical methods have been used as well to ascertain and describe the role of ADR mechanisms in resolving labour disputes. The researcher has referred to case laws, legal articles, commentaries, law journals, books, news reports, blogs in the course of writing the paper.

II. CONSTITUTIONAL AFFILIATION OF ADR AND LABOUR LAWS IN INDIA

The Constitution of India envisages justice for all. All Indian nationals are conferred equal rights and liberties, in addition to fundamental rights enshrined in Part III of the Constitution. A wide range of social welfare laws and regulations provide various other legal rights to the individuals to disseminate social and economic justice to them. However, in the absence of means to ensure the enforcement of these rights, they are of no merit. Despite possessing equal rights, all individuals cannot avail the rights equally due to inaccessibility to the judicial system. Rights are meant to be enforced through courts, but the judicial system, especially in a developing nation like India, is extremely complex, sluggardly, and an expensive affair. The nature of the judicial system keeps the impoverished people at bay and therefore at a disadvantaged position.

Article 14 of the Constitution of India guarantees all individuals equality before the law[3], which in the current times has become somewhat of a dead letter as access to justice is not equal for all, pragmatically. The Supreme Court has expanded the interpretation of Article 21, which guarantees all individuals, the right to life and personal liberty[4], to incorporate the right to free legal aid and a speedy trial. In *Hussainara Khatun v. Bihar Home Secretary*[5], the Supreme Court observed that the right to free legal services is an essential component of a reasonable, fair, and

[3] INDIA CONST. art. 14.
[4] INDIA CONST. art. 39A.
[5] Hussainara Khatun v. Bihar Home Secretary, State of Bihar, AIR 1979 SC 1369.

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just procedure for a person accused of an offence[6], and it must be considered inherent in the right mentioned in Article 21.

The phrase "access to justice" refers to the two primary aims of the judicial system:

1. The system must be equally accessible to everyone.
2. It must provide results that are both individually and socially just.

The common perception of the expression "access to justice" is access to courts of law. However, due to many impediments such as poverty, social and political marginalisation, illiteracy, procedural formalities, and so on, the courts have become inaccessible. Illiteracy is abundant in India which renders an illiterate person who is ignorant about his rights or the judicial procedures incapable of attaining justice. As a result, the majority of Indian citizens are unable to exercise their constitutional or legal rights, resulting in inequality.

Article 39A directs the State to ensure that every individual is given a fair chance at justice. The law must enable the underprivileged, i.e., the people who do have the economic means, to fight their causes. Equal access to justice necessitates equal opportunity. Given the prevalent disparities, the law merely deeming all individuals as equal does not suffice. However, the law must function in such a way that all individuals, regardless of their economic status, have access to justice. The Parliament passed the Legal Service Authorities Act, 1987 in pursuance of the decision of the Supreme Court in *Center for Legal Research v. State of Kerala*[7]. Article 39-A laid a solid framework for the implementation of the ADR framework. Being relatively inexpensive, it provides a quicker remedy for those in need, it is a viable alternative to court proceedings. To give effect to the objective envisioned in Article 39A, States have established Lok Adalats, Legal Aid Camps, Mediation Centres, Consumer protection Forums, Commercial Arbitration, etc. which are various aspects of the ADR system. Article 40 of the Constitution directs the state to take steps to create village Panchayats and provide them with the power and authority necessary to function as a unit of self-government[8].

"We should expand the jurisprudence of Access to Justice as an integral part of Social Justice and examine the constitutionalism of court-fee levy as a facet of human rights highlighted in our Nation's Constitution. If the State itself should travesty this basic principle, in the teeth of Articles 14 and 39A, where an indigent widow is involved, a second look at its policy is

[6] Thakur, Yash, *Article 21 of Indian Constitution- Right to Life and Personal Liberty*, (Jul. 25, 2020), https://legalstudymaterial.com/article-21-right-to-life-and-personal-liberty/ (last visited. Nov. 3, 2022).
[7] Center For Legal Research v. State of Kerala, AIR 1986 SC 322.
[8] INDIA CONST. art. 40.

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overdue.[9]*"*

- *Justice Krishna Iyer*

The soul of a good government is access to justice for all individuals. The Preamble of the Constitution, therefore, accentuates tripartite aspects of economic, political, and social justice. To achieve these objectives mentioned in the Preamble, creation of modern infrastructure and manpower, new judicare technology and models and remedy-oriented jurisprudence[10]. With a view to accomplish the goal of the constitutional provisions that endeavour to ensure equal opportunity and disseminate timely justice, the different facets of ADR have been a valuable tool. In India, the Constitution of India is the fundamental basis of all laws. List III of the Constitution of India, known as the Concurrent List, comprises the subject of labour. Articles 39, 39A, 41, 42, 43 and 43A en masse may be deemed as the "Magna Carta of working class in India."

The purposes of labour laws are threefold:

1. To establish a legal system that fosters effective individual and collective employment relationships, and thus a productive economy.
2. To attain a sense of harmony in industrial relations premised on workplace democracy
3. To ensure fundamental principles and rights at work that have received widespread social acceptance and to establishes the processes by which these principles and rights can be executed and enforced.

The Industrial Disputes Act of 1947 paved way for shaping the course of the national labour laws, as independent India sought for a distinct collaboration between labour and capital. It is the chief statute for government intervention in labour conflicts. In 2019 - 2020, the Parliament of India brought remarkable Labour reforms by introducing four Labour Codes with a view to ensure the welfare of workers and to boost industrial and economic growth. With the introduction of the four Labour Codes, the Government annulled all the ineffective Labour Laws. The twenty-nine Labour Laws that were in effect have been into codified into 4 Labour Codes. The Central Government has consolidated four Acts in the Wage Code, nine laws in the Social Security Code, thirteen laws in the Occupational Safety, Health, and Working Conditions Code, 2020, and three laws in the Industrial Relations Code. The government has pledged the speedy disposal of cases through labour tribunals.

[9] Iyer, Krishna, State of Haryana v. Darshana Devi, 1979 AIR 855, 1979 SCR (3) 184.
[10] Bhagwati, P.N., *Social Justice – Equal Justice*, Chap VI, p. 33.

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III. ADR VIS-À-VIS LABOUR DISPUTES

Demand for higher wages, wage reductions, disregard for grievances of workers, employment losses and irresponsible trade unionism result in conflicts in the industrial sphere, to which workers retaliate in the form of strikes and lockouts. The employers' goal is to optimise profits, whereas the workers' aim is an increase in salary, employment security, skill protection, and an improvement in their situation and working conditions. Conflict of interest or disagreement between the employers and the workers leads to industrial disputes. Labour or Industrial disputes are of four major types, namely, interest disputes, grievance disputes, unfair labour practices disputes and recognition disputes[11]. Interest disputes refer to economic disputes that stems from demands for increase and enhancement of salary, benefit, job security, or employment terms or conditions. It is recommended that interest disputes be resolved through conciliation. Grievance disputes, also known as conflict of rights or legal disputes. are a form of protest by workforces against management actions that deprive them of their rights. Voluntary arbitration is an effective form of resolving grievance disputes. Unfair labour practices disputes are the most common and frequent form of labour dispute. Quite often, the management discriminates against employees due to their contribution as members of the trade union which leads to labour disputes. These disputes are capable of being settled through conciliation. Recognition Disputes befall when the management refuses to recognise a trade union for the purpose of collective bargaining or to represent its member employees in the event of a conflict or dispute.

While industrialization has been a boon in the form of employment, contribution to national income, exports, and economic development of a nation; it has also led to industrial disputes. Labour disputes are an impediment to the industrial development of the nation. Therefore, it is essential to swiftly and effectively handle labour issues. Resolving labour disputes through Alternative Dispute Resolution (ADR) mechanisms is beneficial for both the workers and the management and is gradually gaining prominence. ADR methods enables the parties to choose the mediator or arbitrator. Rather than relying on a third party, such as a judge, the employee and employer may be able to join forces to find a common ground. Decisions reached by the parties themselves are more likely to be adhered to and acknowledged than those imposed by a judge. Unlike court procedures, ADR methods are not onerous, expensive, or time-consuming. The labour class is usually financially backward and are unable to afford the traditional court system, which has become prohibitively expensive due to the high fees charged by advocates.

[11] Mohanlal Sukhadia University, Industrial Disputes, Labour and Industrial Laws, (2017) https://www.mlsu.ac.in/econtents/1238_Industrial%20disputes.pdf (last visited. Nov. 2, 2022)

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A few of the factors that exasperate litigants are delays in case resolution and the administration of justice, procedural turmoil, and the abundance of appeals, revisions, and reviews. The level of economic interest is particularly high in disputes such as strikes and lockouts, and delay in justice results in greater economic damage. In the light of these circumstances, ADR methods such as conciliation, mediation, arbitration, etc. appear to be an ideal way of resolving labour disputes. Artcile 8 of the Labour Relations (Public Service) Convention, 1978 of the International Labour Organization (ILO) provides that the settlement of disputes related to terms and conditions of employment is to be sought *"through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved."*

Arbitration, conciliation, mediation, all, involve the third-party intervention to resolve the industrial dispute, only what differs is the degree of intervention. Whilst conciliation and mediation both include the involvement of a neutral third party, a conciliator's role is to support the facilitation of conversation between the parties without proposing specific ideas to resolve the dispute. On the other hand, a mediator's responsibility may include keeping the lines of communication open as well as proposing settlement parameters that the parties are free to accept or reject. Arbitration may be required or optional, advisory or binding, depending on the law or the desires of the parties. In any scenario, arbitration involves the participation of a neutral third party who is permitted to consider the legal arguments, the evidence presented by both parties, and to provide a decision that is legally binding. Specialized labour adjudication is a process where any rights and obligations conflicts are resolved by both regular courts and special labour courts.

Section 7 of the Industrial Disputes Act[12], 1927, provides for the establishment of Labour Courts and specifies the constitution of such court and qualification of the presiding officer of a Labour Court. Section 7A of the Act envisages institution of Industrial Tribunals, comprising one person only by the appropriate government, for resolving labour disputes. It stipulates the prerequisites for being competent to be a presiding officer of an Industrial Tribunal. Further, Section 7A provides for the appointment of two assessors to assist the Tribunal in the proceedings. To resolve labour disputes, Central Government Industrial Tribunals-cum-Labour Courts (CGIT-cum-LCs) were formed in accordance with the stipulations of Section 7B of the Act. There are 22 CGIT-cum-LCs in various Indian states. The CGIT-cum-LC No. 1 in Mumbai and the CGIT-cum-LC No. 2 in Kolkata also serve as National Tribunals. The CGIT-cum-LCs

[12] Supra note 2.

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were established with the goal of ensuring industrial peace and harmony by the swift and efficient resolution of industrial disputes through adjudication, so that industrial progress does not suffer because of prevalent industrial turbulence.

IV. INDUSTRIAL ARBITRATION

Industrial Arbitration or Labour Arbitration refers to a process wherein there is a conflict between the management and the workers or a labour union under a collective-bargaining agreement and after all other attempts to resolve the issue have failed, the dispute is referred to an honest and objective third party for its resolution. Industrial Arbitration consists of two key arbitration elements, i.e., arbitration of rights and arbitration of interests. Whereas arbitration of interests refers to a dispute between labour and management during the negotiation of a new labour contract, arbitration of rights refers to the resolution of a dispute between labour and management over the application of an existing labour agreement.

Industrial Arbitration is a private mechanism discharging a public policy like national labour policy. There are three chief forms of industrial arbitration are Conventional/Voluntary Arbitration, Compulsory Arbitration, and Final Offer Arbitration/Last Offer Arbitration/Pendulum Arbitration. When forming an opinion, the arbitrator mainly depends on the facts submitted to him by the parties. Without going into legal jargon, the arbitrator would prefer to decide the case based on his experience and knowledge in the relevant subject, from a logical and pragmatic standpoint.

As he cannot act as a judge of a court of law with inherent judicial power, nor is he constrained by a stream of precedents painstakingly stored or catalogued for simple access, an arbitrator's role in the area of industrial conflicts is complicated. Arbitrators lack the authority of legislators to convert a constituency's opinions into broad standards of behaviour. Nor are they investigators equipped with summons powers and time to unearth obscure facts and settle complex inconsistencies[13].

V. ARBITRABILITY OF LABOUR DISPUTES IN THE INDIAN CONTEXT

The Arbitration and Conciliation Act[14], 1996 does not list the kinds of issues that can be arbitrated, or settled through the arbitration process. Since the legislation does not the question of arbitrability of disputes, the task has fallen into the hands of the judiciary and purview of judicial interpretation. The question of whether labour disputes are arbitrable or not under the

[13] Gabriel N. Alexander, *Evaluation Of Arbitrators: An Arbitrator's Point of View*, National Academy of Arbitrators, p. 99. https://naarb.org/proceedings/pdfs/1958-93.pdf (last visited. Nov. 3, 2022).
[14] Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

Arbitration and Conciliation Act, 1996 has arisen before the courts in many instances.

In *Kingfisher Airlines v. Captain Prithvi Malhotra*[15], the issue of arbitrability of industrial disputes first arose, wherein the several labour recovery proceedings initiated by former Kingfisher Airlines pilots and other employees. The cases were brought before specially constituted labour tribunals in order to recover unpaid pay and other salary perks. In the present case, Kingfisher Airlines challenged the labour court's jurisdiction by using the arbitration clause in the employment agreements. Kingfisher filed a request for reference to an arbitration agreement under Section 8 of the Arbitration and Conciliation Act of 1996. [16] The application was denied, and the labour court retained authority over the proceedings.

When Kingfisher Airlines appealed the labour court's ruling, the Bombay High Court affirmed the ruling and backed the argument that labour disputes are not subject to arbitration under the 1996 Arbitration and Conciliation Act. The Supreme Court in *Booz Allen & Hamilton v. SBI Home Finance*[17] had noted that the issue is whether the resolution of the dispute has been exclusively reserved for adjudication by a specific court or tribunal for reasons of public policy, not whether the claim is in personem or in rem. According to the Court, the Industrial Disputes Act of 1947's judicial fora are the only places where labour and industrial issues can be decided. The Industrial Disputes Act, according to the Bombay High Court, has a special arbitration procedure for labour disputes[18]. From the above judgement of the Bombay High Court in the Captain Prithvi Malhotra case, it can be inferred that claims under the Industrial Disputes Act, 1947 are not arbitrable under the Arbitration and Conciliation Act, 1996, and when they are arbitrable, they must strictly comply with the standards and procedures of the Industrial Disputes Act.

In another case, a similar view was endorsed. In *Rajesh Korat v. Innoviti*,[19] parties were directed to arbitration after a request to do so before the labour court was approved. According to the Karnataka High Court, there are compelling public policy arguments in favour of limiting the resolution of labour and industrial disputes to courts and tribunals established under the Industrial Disputes Act. The Court held that the Industrial Disputes Act is a self-contained code, and that the Arbitration and Conciliation Act has no relevance to subjects controlled by the Industrial Disputes Act. Thus, any arbitration of labour disputes must follow the method outlined in the Industrial Disputes Act of 1947, rather than the Arbitration and Conciliation Act,

[15] *Kingfisher Airlines v. Captain Prithvi Malhotra*, 2013 (7) Bom CR 738.
[16] The Arbitration and Conciliation Act, 119, § 8, No. 16, Acts of Parliament.
[17] *Booz Allen & Hamilton v. SBI Home Finance*, (2011) 5 SCC 532.
[18] Ibid.
[19] *Rajesh Korat v. Innoviti* , 7 IJAL (2018) 120.

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1996.

VI. VOLUNTARY ARBITRATION AND THE INDUSTRIAL DISPUTES ACT, 1947

The Government of India's industrial relations policy tries to prevent labour disputes, settle them amicably, and promote cordial working relationships. The idea of using Alternative Dispute Resolution (ADR) techniques to settle labour disputes was originally introduced in the Industrial Dispute Act of 1947, a piece of labour legislation. Section 2(k) of the Industrial Dispute Act[20], 1947 defines Industrial Dispute.

Because it is based on the "Voluntarism" principle", which suggests that it allows the parties to select their own reliable person or group to decide their issue and therefore open the path for industrial peace, voluntary arbitration is desirable as a technique of settling industrial conflicts. The decision to arbitrate voluntarily by the parties does not necessarily indicate that the failure of the collective bargaining process. The parties' decision to arbitrate their issue voluntarily, as opposed to asking a court to decide the matter, shows that they have confidence in one another. The parties want to reach a mutually agreeable pre-arranged conclusion made by a third party through voluntary arbitration. Industrial disputes can be resolved through voluntary arbitration in order to maintain harmony and peace in an industry for a longer period. To activate this machinery, the disputants must express their "free consent" through a written agreement expressing their intention for voluntary arbitration.

When enacted, the Industrial Disputes Act, 1947 is devoid of provisions for Voluntary Arbitration. The National Arbitration Promotion Board (NAPB) was founded in 1969 on the advice of the National Commission on Labour with the goal of promoting voluntary arbitration and collective bargaining as means of resolving disputes. In order to allow the parties to choose the best arbitrator(s), the NAPB has been tasked with drawing the Panel of Arbitrators. The Industrial Truce Resolution and the Indian Labour Conference both underlined the importance of widespread acceptance of voluntary arbitration as a means of resolving industrial conflicts.

The employer and the concerned employees may, at any time, by written agreement, submit their current or projected disagreement to an arbitrator, according to Section 10A (1) of the Industrial Disputes Act[21]. If the parties are willing to refer their dispute to arbitration, they must do so prior to the government exercising its referral power[22] under Section 10. Given that the parties must act before the government refers the dispute to one of the adjudicating bodies listed

[20] Supra note 2.
[21] The Industrial Disputes Act, 1956, § 10A, No. 41, Acts of Parliament, 1956.
[22] The Industrial Disputes Act, 1947, § 10, No. 14, Acts of Parliament, 1947.

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in Section 10(1) of the Act, it appears that the legislature has devalued voluntary arbitration by placing a deadline on when they must exercise their right to submit the dispute to arbitration[23]. However, Section 43 of the Indian Labour Code, 1994, has eliminated this flaw. If the parties disagree over the choice of arbitrator, they may authorize the NAPB to nominate one or more arbitrators. In the event of parties choosing an even number of arbitrators, the Act requires them to appoint an umpire as per Section 10A (1-A) of the Act.

An Arbitration Agreement is an integral instrument of the arbitration process. In case of voluntary arbitration in labour disputes, According to Rule 8A of the Industrial Disputes (Central) Rules, 1957, the Arbitration Agreement must be signed by the employer, any officer of a trade union, and five duly authorised representatives of the workers. The Patna High Court in *State of Bihar v. Nathuni Pandey*[24] decided on the matter of whether the Arbitration Agreement's certification by the Trade Union President alone was sufficient to uphold the contract. According to the Industrial Disputes (Bihar) Regulations, 1961, a trade union's president and secretary must sign the arbitration agreement on behalf of the workers. The Patna High Court declared the agreement to be void. However, a different view was adopted by the Punjab High Court in *Faridabad Glass Works (P) Ltd. v. Presiding Officer, Industrial Tribunal*[25]. The Delhi High Court in *Mineral Industry Association v. Union of India*[26] held that If the agreement is signed by an agent of the employer, an attorney, or another lawfully author ised representative on behalf of the employer (a body corporate), this would constitute "suffici ent compliance" if the employer is a body corporate.[27] Section 10A (3) commands that a that a copy of the Arbitration Agreement be forwarded to the Conciliation Officer and to the Appropriate Government, which it shall publish in the Official Gazette within one month's time.[28] In *Landra Engineering and Foundry Works v. Punjab State*[29], the Punjab & Haryana High Court held that the provisions of Section 10A (3) are directory and not mandatory.

Following the conflicting views of the different High Courts on the matter, the Supreme Court voiced its opinion on the matter in *Karnal Leather Karmachari Sanghatan v. Liberty Footwear Co*.[30] In this instance, the appropriate government did not publish the arbitration agreement in the official gazette prior to the declaration of the award. The Supreme Court ruled that failure

[23] Ibid.
[24] *State of Bihar v. Nathuni Pandey*, (1973) Lab. I.C. 1492 (Pat.)
[25] *Faridabad Glass Works (P) Ltd. v. Presiding Officer, Industrial Tribunal*, AIR 1965 P H 498.
[26] *Mineral Industry Association v. Union of India*, AIR 1971 Delhi 160, 1971 (22) FLR 363
[27] Ibid, para. 9.
[28] The Industrial Disputes Act, 1956, § 10A (3), No. 41, Acts of Parliament, 1956.
[29] *Landra Engineering and Foundry Works v. Punjab State*, (1969) Lab IC 52 (P & H).
[30] Karnal Leather Karmachari Sanghatan v. Liberty Footwear Co., 1990 AIR 247, 1989 SCR (3)1065.

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to comply with the legislative requirements renders the arbitral judgement null and void and ordered the Government to publish the Arbitration Agreement in the Official Gazette within four weeks.

Section 18 (3) of the Industrial Disputes Act states that an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A which has been enforced shall be binding on the parties of the industrial dispute[31]. Besides, Section 18 (3) also provides the categories of persons such award shall be binding on. In order to prevent parties from bearing the brunt of cumbersome litigation, the provisions of the Industrial Disputes Act, 1947 are the only statutory provisions applicable to voluntary arbitration of industrial disputes. Section 11 (1) of the Act provides procedural flexibility to the arbitrator, which implies that he is free to choose, follow or evolve the arbitration procedure. However, such a method must be in accordance with the applicable laws and the Act, and it must not violate the principles of natural justice. In *Nani Gopal Sarkar v. Heavy Engineering Corporation Ltd.*[32], the Apex Court held that a plea for challenging the validity of arbitral award on procedural grounds must be taken at the initial stage and not later. Challenges on Awards based on procedural flaws should not be entertained, unless the arbitrator's procedural structure is evidently unjust. Besides, the Judiciary's unwillingness to intervene in the disputed Arbitral Award enables the Arbitration apparatus to flourish in the field of Industrial Relations.

VII. ROLE OF CONCILIATION IN RESOLVING INDUSTRIAL DISPUTES

The Voluntary Conciliation and Arbitration Recommendation, 1951 of the International Labour Organization (ILO) dealing with dispute prevention and resolution, recommends that voluntary conciliation *"should be made available to assist in the prevention and settlement of industrial disputes between employers and workers."* Additionally, it suggests that these processes contain equal representation for both organizations and staff members, and are quick and free, and make opportunity for the parties to participate into conciliation voluntarily or at the initiative of the conciliation authority. The process of Conciliation in resolving in labour disputes entails the involvement of a third party, the conciliator, whose objective is to mediate between the parties and assist them in reaching a mutually beneficial solution., without making suggestions on a prospective solution. In theory, conciliation can be used to resolve both collective interest and rights disputes. In actuality, yet, when there are conflicts of interest during collective bargaining, conciliation is more frequently used. Conciliation is frequently carried out unofficially without

[31] The Industrial Disputes Act, 47, § 18 (3), No. 14, Acts of Parliament, 1947.
[32] in Nani Gopal Sarkar v. Heavy Engineering Corporation Ltd., (1990) 3 SCC 173.

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the assistance of government officials or specialist dispute resolution institutions. An agreement arrived at with the help of conciliation method is generally advantageous for all parties involved.

The Industrial Disputes Act, 1947, statutorily recognized Conciliation as a viable and effective method of conflict resolution arising between the workers and the management in the industrial arena. The provisions of the Act encourage use of negotiation to settle industrial disputes and if negotiation proves to be ineffective, then conciliation through a government officer is prescribed. The Act comprises various provisions that set the stage for conciliation to be a successful method for resolving disputes, before resorting to litigation. The Central or State Government may elect Conciliation Officers or, if necessary, a Board of Conciliation under Sections 4 and 5 of the Act. Typically, the State's Assistant Labour Commissioner or Labour Commissioner handles the conciliation. Their primary function is to check and monitor the execution of labour regulations. Government Labour Officers only mediate between firms with fewer than 30 employees, whereas Assistant Commissioner of Labour conciliate for industries with more than 30 employees. The Industrial Disputes Act forbids the presence or involvement if lawyers in conciliating proceedings to refrain the process from gaining legal and formal character.

The customary technique allows either side to file a written request to the Conciliation Officer to begin the procedure, even though it is the government's responsibility to refer an industrial dispute to conciliation. The Conciliation Officer may also on his own motion take up the case for conciliation when there is an existing conflict as well as when such a dispute is apprehended. When the complaint via the Trade union, the Conciliation officer verifies the legitimacy of the documents supplied with the originals. The employer then provides a statement of justification. The Conciliation officer then gathers the employer and employee representatives and conducts an investigation into the dispute in an effort to persuade the parties to achieve a just resolution.

The parties are not bound by the conciliation officer's resolution, nonetheless, if a settlement is reached through conciliation proceedings, it is a binding resolution. According to Section 12(3) of the Industrial Disputes Act[33], such agreements are referred to as settlements arrived at in the course of the conciliation proceedings and are on par with the award of a labour court, industrial tribunal, or national tribunal. The Conciliation Officer has to mandatorily provide a report to the government, together with a memorandum of the settlement signed by the parties to the dispute. The report Section 12 (4) states that if no settlement is at arrived at through the conciliation proceedings, then the Conciliation Officer must close the case and send a full report

[33] Supra note 2

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to the appropriate government. In light of the above, it appears that conciliation, when implemented right, can be a low-cost and speedy process.

VIII. LABOUR LOK ADALATS

Akin to the concept of zero, the concept of Lok Adalat is a unique Indian addition to the global jurisprudence. Lok Adalat, as the name implies, is an Indian institution that means People's Court. The term "Lok" means "people," while the term "Adalat" refers to "the Court." Lok Adalat (People's Court) is an alternate technique that is being adopted, where justice is disseminated speedily and without much focus on legal procedures[34]. It has proven to be a very efficient substitute for litigation. One of the most effective and well-known forums, Lok Adalat has been essential in resolving disputes. Lok Adalats have been given legal status by the Legal Services Authorities Act[35], 1987, that was enacted in view of the constitutional obligation present in Article 39A of the Indian Constitution. Section 21 of the Legal Services Authorities Act, 1987, deems an award passed by a Lok Adalat in par with a decree passed by civil court and provides that the award is final and binding on all the parties involved and that no appeal shall lie against the award[36]. Due to the ever-increasing number of industrial disputes, Lok Adalats were introduced as an alternate grievance redressal procedure within the Central Government Industrial Tribunal-Labour Court's adjudication system beginning with the 10th Five Year Plan[37].

Labour Lok Adalat has been recognised as a vehicle for speedy dispute settlement with no expense to the parties. This method administers justice through discussions, deliberations, counselling, persuasions, and compromises. Lok Adalats have contributed to the resolution of long-pending cases. Several Labour Lok Adalats have been established in the Central sphere. It should be emphasised that the most popular method for preventing and resolving labour disputes is conciliation. The people quickly came to favour the resolution of disputes in Lok Adalat, creating a new force for alternative dispute resolution., which would undoubtedly reduce the pendency in law courts. This process has now been extended to the resolution of labour conflicts with the establishment of Labour Lok Adalats[38].

92 industrial cases, that were pending for over 7 years and amounted to approximately 7 crores,

[34] India Filings, *Lok Adalat*, https://www.indiafilings.com/learn/lok-adalat/ (last visited. Nov. 6, 2022).
[35] Legal Services Authorities Act, 1987, § 21, No. 39, Acts of Parliament, 1987.
[36] Ibid.
[37] Government of India, Ministry of Labour and Employment, *Lok Adalat*, https://labour.gov.in/lok-adalat (last visited. Nov.6, 2022).
[38] Press Information Bureau, Government of India, *First Lok Adalat to settle Industrial Disputes held In Delhi*, (Nov.1, 2001), https://archive.pib.gov.in/archive/releases98/lyr2001/rnov2001/09112001/r091120019.html (last visited. Nov. 6, 2022).

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were resolved by six industrial and labour panels of the National Lok Adalat in Thane, Mumbai in December 2015. Over 1,000 industrial workers were relieved by the resolution of the disputes[39]. The initiative to resolve industrial disputes through Lok Adalat has been immensely applauded and should indeed be embraced. The goal of resolving industrial disputes through this parallel forum of Labour Lok Adalat is to reduce pending cases and increase case disposition rates. However, its success is dependent on the litigating parties' willingness to settle their claims through this approach[40].

IX. CONCLUSION

In the last decade or so, ADR mechanisms have accomplished their goal of devising an alternate approach for addressing and resolving issues that avoided the perceived overwhelming expense and inefficiency of the court system. The way ADR has incorporated and institutionalized into the very fabric of the judicial system of India is remarkable. In the arena of industrial relations, ADR mechanisms enable swift and efficient resolution without resolution of disputes more quickly and without jeopardising the relationship between the workers and the management. Thus, use of ADR in labour disputes ensures industrial peace and harmony. ADR mechanisms take into account the needs, interests, and solutions, and it has the potential to foster healing. It is voluntary, timely, confidential, and mutually agreed upon, which contributes to its success in effectively resolving labour disputes. Unlike traditional courts, it is intended to produce results that are tailored to the specific circumstances of individual cases, as opposed to imposing solutions through litigation.

Parties to ADR methods such as conciliation are more likely to reach an amicable settlement since they are actively partaking in the negotiation and settlement process. As a result, they are more likely to own the outcome. Owing to the numerous advantages and characteristics of ADR, many countries around the prefer ADR mechanism in labour disputes and even the International Labour Organization (ILO) encourages opting for ADR in resolving labour disputes, before resorting to litigation. ADR may not yield the desired outcome in every case but will certainly aid in the resolution of disputes. Moreover, litigation has turned out to be a high-risk blind bargain. The risks and expenditures associated are typically substantial and frequently needless. Unlike more limited ADR proceedings, which are likely to be limited to weeks and months, litigation might last several years. There is good reason to use ADR processes more often to

[39] The Economic Times, *National Lok Adalat settles 92 industrial, labour cases in Thane*, (Dec13, 2015), https://economictimes.indiatimes.com/news/politics-and-nation/national-lok-adalat-settles-92-industrial-labour-cases-in-thane/articleshow/50158776.cms?from=mdr (last visited. Nov. 6, 2022).
[40] *Supra* note 45.

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settle labour disputes in a country like India where the courts are overwhelmed with thousands of cases and the labour class is financially weak.

The ADR process is an effective, speedy, confidential, and technical method of resolving industrial disputes Implementing ADR mechanisms will offer stability to the business climate while also freeing up court dockets for situations that are more deserving of litigation. Consequently, ADR processes like arbitration and conciliation are used in labour disputes. must be given precedence and considered as the primary choice before contemplating litigation. Thus, for any well-advised client, litigation should be pis aller. Only when the ADR mechanisms fail to generate a satisfactory and amicable solution, which is quite rarely the case, should litigation be considered.

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