

ARBITRATION

Arbitration is a means of securing an award on a conflicting issue by reference to a third party.

It is a process in which a dispute is submitted to an important outsider who makes a decision, which is usually binding on both the parties.

It is a judicial in character

Arbitration is supposed to produce justice and fair approach to a dispute.

APPROACHES TO ARBITRATION

- The judicial approach emphasizes that arbitration should not be confused with conciliation and mediation.
- The parties submit a dispute for arbitration not for reaching a compromise, but for vindication of the steps taken by them.
- The non judicial approaches emphasizes that the arbitrator cannot isolate himself from reality of the situation. In search of a workable solution, the most important consideration is that the decision should reduce the conflict between the contending parties and it must be conducive to harmonious industrialization.

THE PARTIES ARE FORCED TO ARBITRATE ON BEHALF OF THE STATE UNDER THE FOLLOWING CIRCUMSTANCES.

When the parties failed to arrive at a settlement by voluntary method.

When there is a national emergency, which requires that production not be obstructed.

When the countries passing through grave economic crisis.

When there is a grave, public dissatisfaction with the existing industrial relations.

When industries of strategic importance are involved.

When the parties are ill balanced.

Where public interest and the working conditions are desired to be safeguarded and regulated by the state.

QUALITIES OF AN ARBITRATOR

- Understanding the complexities of the labor management and relationship.
- Knowledge of collective bargaining, the operation of procedure, skill and experience in the interpretation of collective agreements and familiarity with personnel policies industrial discipline and human relations.
- His integrity, non – partisan and a deep sense of impartiality
- Commitment to maintenance of harmonious labor management relations.

NATIONAL ARBITRATION PROMOTION BOARD

Govt of India, appointed in July 1967, a National Arbitration Promotion Board with a Tripartite composition

To renew the position periodically.

To examine the factors inhibiting under acceptance of this procedure and suggest to make it popular.

To compile and maintain up-to-date panels of suitable arbitrators in different areas and industries.

To evolve principles, norms, and procedure for guidance of arbitrators and the parties.

To advise parties in important cases, to accept arbitration for resolution of disputes

To look into the causes of delay and expedite arbitration proceedings wherever necessary

EVALUATION OF WORKING OF VOLUNTARY ARBITRATION

The following factors are responsible for the slow progress of arbitration

Easy availability of adjudication in case of future negotiation

Dearth of suitable arbitrators who command the confidence of both parties.

Absence of recognized unions, which could find the workers common agreements

Delay in the settlement for disputes are to legal obstacles

Absence of simplified procedure to be followed in voluntary arbitration.

Lack of enthusiasm in the parties to disputes to as it is a close affair, particularly to workers.

ADJUDICATION

The ultimate legal remedy for settlement of an unsolved dispute is reference to adjudication by the govt.

Adjudication involves intervention in the dispute, by a third party appointed by the government for the purpose of deciding the dispute in final settlement.

THREE TIER SYSTEM OF ADJUDICATION

Industrial Dispute Act 1947 provides for three-tier system of adjudication. They are

- Labour Courts**
- Industrial Tribunals**
- National Tribunals**

LABOUR COURT

A Labour Court consists of person only. Such a person Is or has been a Judge of High Court or a period of Has been for not less than 3 years District Judge or Has held any judicial office in India for not less than 7 years. For this purpose, any judge below the age of 65 years will be schedule.

The jurisdiction of the Labour Courts extends to adjudication of following disputes relating to matters specified in the second schedule.

- The legality of an order passed by employer under the standing orders.**
- The application and interpretation of standing order**
- Discharge of dismissal of workers(including re-instatement of/or grant of relief to workers wrongfully dismissed)**
- Withdrawal of any customary concession or privilege.**
- Illegality or otherwise of a strike or lockout, and**
- All matters other than this specified in the third schedule to the Act.**

INDUSTRIAL TRIBUNAL

The appropriate government may appoint one or more Industrial Tribunals for adjudication of Industrial disputes. A Tribunal shall consist of one or more persons. Such person-

- Is or has been Judge of High Court, or
- Has been a district Judge for a period not less than 3 years, or Has held the office of the Chairman or any other member of the Labour Appellate Tribunal or any Tribunal for a period of not less than 2 years.
- Has held the office of the Chairman or any other member of the Labour Appellate Tribunal or any Tribunal for a period of not less than 2 years.

- The functions and duties of Tribunal are similar to that of Court. The second or Third schedule of the Act which are as follows;
- Wages, including the period and mode of payment
- Compensatory and other allowances
- Hours of work and rest intervals
- Leave with wages and holidays
- Bonus Profit sharing, PF and gratuity
- Shift working otherwise than in accordance withstanding orders
- Classification of trades
- Rules of discipline
- Rationalization
- Retrenchment of workers and closure of an establishment and
- Any other matter that may be prescribed.

National Tribunal

**A National Tribunal consists of one person only. He will be appointed by the Central; Government such person-
Is or has been a Judge of High Court
Has held the office of the chairman or any other two persons as Assessors to advise the National Tribunal in its proceedings.**

MODEL PRINCIPLES FOR REFERENCE OF DISPUTES ADJUDICATION

Indian Labour Conference (held in Madras in July 1969) evolved model principles for reference of disputes to adjudication, which is mentioned below.

All disputes may ordinarily be referred to adjudication on requests.

Disputes may not, however, be ordinarily be referred to adjudication

Unless efforts at conciliation have failed and there is no further scope for conciliation and parties are not agreeable to arbitration.

If there is a strike or lockout which was declared illegal by a court.

If the issues involved are subject matter of recent judicial decision.

If other legal remedies are available, for example, matters covered by the Factories Act Workmen's Compensation Act, Minimum Wages Act, Payment of Wages Act etc.

Industrial disputes relating to individual cases of dismissal, discharge, or any other action of management or disciplinary grounds may be referred to adjudication especially-

If there is a case of victimization or unfair labour practice

If the standing orders in force or the principles of natural justice have not been followed and

If the conciliation machinery reports that injustice has not been done to the workman

Conclusion

In India adjudication has been one of the instruments of wages and working conditions and for security allowances for maintaining real wages. It has helped to avert many work stoppages by providing an acceptable alternative to direct action. However, it is not free from criticism. It is time consuming and expensive.