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Workers' Rights in Dispute Resolution: An Iranian Labour Law Perspective

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Abstract: The aim of this study is to critically discuss dispute resolution pertaining to workers' rights in Iran. The right to recourse to settlement forum in the Islamic Labour Council or Dispute Settlement Forum as provided in Articles 157 and 158 of the Labour Act is in practice, restricted. Based on Article 157 of the Labour Act, 1990 the first step in workplace disputes settlement requires parties to a conflict to seek a straight forward agreement failing this, they are referred to Islamic Labour Councils. Although, this function of the Islamic Labour Councils does not feature in the Law on Formation of Islamic Labour Councils, the Labour Act, 1990 Article 157 emphasizes it as the second level of conflict settlement. In this study, the researchers propose changes to Iranian labour law so that the law will be in conformity with the ILO standards.

Key words: Dispute settlement, ILO standards, Iran's labour law, agreement, workers rights, Malaysia

INTRODUCTION

It is the role of labour law to set standards for labour relations to protect human resources and thus, ensure a country's national interest, so as to help settle if not prevent, legal and corporate dispute between workers and employers, arising from competing and conflicting interpretations of legislation in general and contracts in particular. As such contradictory views on labour-related issues may lead to individual or collective labour disputes, labour law is best employed to examine and search for means of reconciling such differences peaceably. One of the best ways to implement such purposes is to enact enforceable labour laws which Iran has done by enacting the Labour Act, 1990. Its dispute prevention and resolution process seeks to assist parties in employment relationships to settle their grievances or disputes peaceably and orderly through agreed machinery with minimum disruption of work (http://www.pon.harvard.edu/category/daily/dispute-re-solution/?cid=8).

Dispute or conflict resolution is the process of dealing with a dispute or conflict by meeting at least some of each side's needs and addressing their respective interests, through negotiation, mediation, arbitration, legal collaboration or litigation. It is a relatively new field having emerged after World War II with scholars from the (UN-sponsored) Programme on Negotiation having taken the initial lead. Disputes between two parties arise when one asserts a particular position denied by the other. This may cover the entire range between genuine differences of opinion to fierce controversy. Arguments between parties whether or not arising out of any transaction entered between them are covered by the term dispute (Krishnan, 2008). A dispute can also be defined as a disagreement on a point of law or fact a conflict of legal views of interests between two persons (Grant and Barker, 2009). Dispute resolution then is a procedure for settling a dispute by means other than litigation such as arbitration or mediation. Conciliation and mediation form a major component in employment disputes resolution. Mohamed and Baig (2009) states that conciliation seeks to create harmony, compatibility, agreement or consensus and operates as a process where a third party intervenes to mediate between the disputing parties. Thus, mediation is considered an effective and affordable alternative to litigation. On the other hand, mediation is more gentle and facilitative in nature (Farland, 1997). A mediator does not recommend and prescribe the terms to the settlement whereas in conciliation, the conciliator adopts a rather strong stance in advising parties (Gulliver, 1979).

The word dispute has been legally defined by these sources, so that it can be held to occur in domestic, international, social and economic areas between two person, two groups of people, workers and employers, trade unions and employers, states and international organisations (Garner, 2009). Both domestic and international regulations exist on how to solve disputes. In Iranian (Article 1 of the Law of Formation the Dispute Resolution Councils in 2003) labour law for instance, those involving a breach of a contract or a claim for unpaid wages go to labour tribunals although, claims for breach of contract of employment can be brought to the General Dispute Resolution Board if the amount claimed is $5,000 or less (Article 1 of the Law of Formation the Dispute Resolution Councils in 2003).

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THE DISPUTE RESOLUTION'S METHODS IN LABOUR LAW

Whether disputes involve an individual worker (individual disputes) or a group of workers (collective disputes), methods to dispute resolution in labour law exist, based on the countries' legal system (Hassan, 2006). The following approaches are the most commonly used in labour and employment contexts; mediation and conciliation, negotiation, arbitration, Med-Arb and lawsuits (Katherine, 2000).

Unlike some other methods of dispute resolution which are often governed by complex rules such as litigation, arbitration and sometimes even mediation, negotiation is a simple concept and fundamental to the lives, hence its lack of complexity and acceptability amongst the community (Spencer, 2002) Mediation, one-private and Confidential-settlement Method used in law is a form of alternative resolutionof disputes between two or more parties (Wall and Lynn, 1993; Kurien, 1995). A third party, the mediator, helps parties negotiate their own settlement.

A mediator or conciliator will with his prowess and prior experience at times express a view on what might be a fair or reasonable settlement that being the rule when all parties agree for the mediator to engage in evaluative mediation (Boulle, 1996). In some cases, mediation may be mandatory for parties to use to settle disputes according to whatever resolution agreements have been signed by the parties (Rao, 2004). Mediation is appropriate when:

- The parties seek a solution or at least a change of status
- All important stakeholders, especially those with authority to make decisions, come to the table; this is essential because the mediator is not mandated to impose a solution
- The parties have the opportunity to express and explain their discomfort and distress
- The mediator is able to control and sustain the process
- The parties are capable of living up to their promises (http://quebeclabourlawblog.squarespace.com/blog/2011/4/25/alternate-dispute-resolution.html)

If the above mentioned conditions are met in a case, mediation and conciliation may be considered the best action. The process may involve the following; opening statement by the mediator. Deposition by each party without interruption by the other party; discussion between parties; identification of issues; agreement building, brainstorming to explore all acceptable solutions; draft agreement; closing statement by the mediator (http://quebeclabourlawblog. squarespace. com/blog/2011/4/25/alternate-dispute-resolution.html).

The success of mediation is not only measured by the final agreement but in the way, it helps parties improve their relationship and gain confidence in their ability to resolve conflicts.

The mediator may not impose a decision on parties his role is rather to facilitate their discussion and help them to find mutually satisfactory solutions. Arbitration is a Quasi-judicial Process to resolve labour disputes between management and employees with an impartial third-party, an arbitrator or an arbitration board hearing evidence from both the union and the employer on the issues in dispute and handing down a binding arbitration agreement. Arbitration is the process whereby labour disputes over rights and interests are resolved. There are two main types of arbitration in labour disputes; Grievance arbitration deals with disputes involving the interpretation and application of an existing collective agreement as well as disputes over the disciplining or dismissal of an employee.

The decision of the impartial arbitrator is binding on both disputing parties. Collective-agreement arbitration deals with disputes in the collective bargaining process while a collective agreement is being negotiated or renewed. The impartial arbitrator renders a decision on its content that will be binding on both parties (http://www.canadianlabourrelations.com/labour-arbitration.html).

INTERNATIONAL LABOUR ORGANIZATION (ILO) STANDARDS ON DISPUTE RESOLUTION

According to the ILO Constitution, conventions codify the principles of international labour law as adopted by the International Labour Conference with recommendations almost also having that sort of force since, they have regard to their formulation and adoption (Rubin, 2005). As these conventions are binding, recommendations under the ILO Constitution also place the governments of all member states under certain obligations (Rubin, 2005).

Convention No. 151 of the ILO in Labour Relation (Public Service), adopted in 1978, emphasizes negotiation, conciliation and arbitration to settle disputes, its Article 8th stating that:

> The settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought as may be appropriate to national conditions through, negotiation between the parties or 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 (The ICO CDs of conventions and recommendations)

The Convention on Collective Bargaining No. 98 and its recommendation also stress the value of negotiation between workers, trade unions and employers in order to determine working conditions and terms of employment and/or to regulate relations between employers and workers and/or to regulate relations between employers or their organizations and those of their workers. Under certain conditions, it also covers negotiations with workers' representatives other than trade union officials as defined in Convention No. 135.

IRAN'S LAWS IN ALTERNATIVE DISPUTE RESOLUTION

Before there was written legislation, religious men were as a rule, responsible for solving people's conflicts with Shari'ah law an early attempt at arbitration as an alternative dispute resolution. Although, they had not been appointed by the government and it was not compulsory for people to refer to them, people always accepted their judgements and suggestions. During the Pahlevy Dynasty, a system to solve conflicts between people was established in Iran, the so-called House of Justice (Khanaye Edalat), the act having been ratified by Iran's National Assembly Council in 1964. The House of Justice was established to find solutions for solving civil disputes between people in village society so as to end people's conflicts by reconciliation and peaceable approaches (Azarbaijani, 2003).

Freedom of Association is dealt with in Iranian legislation, in certain paragraphs of the 6th Chapter of the Labour Law Act, 1990 which contravene ILO Conventions No. 87 and 98 neither of which Iran has ratified. The ILO Committees of Experts and that of Freedom of Association have both declared Iranian labours at variance with principles enshrined in the ILO Constitution.

Although, Iran's Constitution recognizes the right to form parties, societies, political or professional associations as well as religious societies, the Labour Act, 1990 restricts the right to form trade unions and to conduct trade union activities only to those who are employees under that act. Problems arise when workers' organizations engage in a more generally disputed area an activity which government will consider an action against national security and refer to common criminal courts. The procedure for resolving individual labour disputes is laid down in Chapter Seven of the Labour Act, 1990, defining individual and collective labour disputes as occurring between an employer and an employee in relation to the execution, performance, amendment or termination of an employment agreement or in relation to compliance with labour legislation. The Labour Act, 1990 also refers to disputes between parties in collective agreements and workshop agreements. A provisional, non-exclusive list of matters of dispute is provided in Articles 157 and 158 of the act.

Based on Article 157 of the Labour Act, 1990 the first step in workplace disputes settlement requires parties to a conflict to seek a straightforward agreement, failing this, they are referred to Islamic Labour Councils. Although, this function of the Islamic Labour Councils does not feature in the law on Formation of Islamic Labour Councils, the Labour Act, 1990 Article 157 emphasizes it as the second level of conflict settlement (Article 157, Labour Act, 1990 stipulates that in the event of a dispute between an employer and a worker or trainee, concerning the application of this code or other labour law or in relation to a training contract, a workplace agreement or a collective agreement, a settlement shall in the first instance be sought directly between the employer and worker or trainee or his representative on the Islamic Labour Council if such a council does not exist in the workplace, agreement shall be sought by the employer and the workers' guild or association or the legal representatives of workers and the employer. In the absence of mutual agreement, the dispute shall be examined and settled by the Board of Inquiry or by the Disputes board). If such Islamic Labour Council do not exist in the workplace, the third level to settle conflict between employer and workers on may be guilds or associations, or fourthly, the legal representatives of workers and employers, respectively. Employer and workers are directed to any of these four stages by the Iranian legislator in order to seek agreement (http://www.pajoohe.com/fa/index.php?Page=definition &UID=29563).

The parties are typically an employer and a worker or trainee. Disputes must concern the application of the Labour Act, 1990 or some other regulation or be in relation to a training contract a workplace agreement or a

collective agreement. The final section of the Labour Act, 1990 directs workers and employers whose disputes are not to be solved by mutual agreement to seek a resolution from the Board of Inquiry or the Dispute board.

BOARD OF INQUIRY AND THE DISPUTE BOARD

As mentioned above, the Labour Act, 1990 of Iran refers parties to labour conflict resolution bodies which include the Board of Enquiry and of Dispute Resolution, respectively. Before the ratification of the Labour Act of 1990, labour disputes were solved by the same boards, titled Shopfloor Council and Dispute board, respectively under the Labour Act, 1958.

Board of Inquiry: The Board of Inquiry is to be competent to: Initially to deliberate and decide in individual disputes between workers or trainees and employers under the Labour Act as well as those arising from employment or training contracts and from shopfloor collective bargaining. Secondly to consider disputes arising from temporary and also specialised, employment contracts; thirdly to hear cases on derelictions of duty or breach of shopfloor discipline may be examined by the Board of Inquiry and fourthly to hear cases on workers' dismissal. The Board of Inquiry of the Iranian labour office is made up of three staff of the Department of Labour, Cooperation and Social Welfare including a Ministry of Labour representative, a worker and a member of the Federation of Industrial Managers. The worker representative is supposed to be elected by actual workers but the labour office appoints them in many provinces. Each board member has only one vote and its decisions to be reached after an investigation need an absolute majority of votes. Sessions are managed by the representative of the Ministry of Labour as chairman (Eraqi, 2007).

Although, each first formal board session needs to be attended by all three departmental staff any two staff including the ministry representative is qualified to reach a decision subsequently. Board decisions may be challenged by any of the parties as the board may meet and decide without the worker represented, so that workers may consider its rulings unfair nor are worker representatives legally trained as a rule even if present.

Procedure of the Board of Inquiry: Employment cases are examined in two stages an intitial and an appellate one. The first step to be undertaken by the Board of Inquiry board is a petition which needs to be formally completed for the board to consider and to consist of the following:

- Name, father's name, occupation, previous work record and address of complainant (worker, trainee or employer)
- Name, father's name and address of complainee
- Case subject and remedy sought
- Signature or finger print of complainant (Eraqi, 2007)

The petition along with attached documents must be submitted to the secretary of the Department of Labour and Social Affairs. It shall be put on record; the parties involved (complainee and complainant) must be notified of the sessions date by the Department of Labour according to the act in reality, it is generally done by the complainee or complainant not legitimately in fact as they are not legal or administrative professionals (Abazari, 2002).

The board decisions shall have the following items; name of the board and date of decision; name of parties or their representatives; the board's reasoning behind its rulings on either side of the argument; the relevant law for each part of its decision; appeal provisions and deadline of the decision.

The board's procedure is such that disputes can be solved through conciliation at each stage of its investigation. Boards of Inquiry may not appear effective enough to settle disputes between workers and employers since, one may appeal to the Board of Disputes against any decision and each will inevitably result in winning and losing parties, appeals by either party may be anti-cipated.

Moreover as legally-constituted trial courts are available in the Judiciary System and under the Civil Procedure Act, 2000 are authorized to issue rulings, some of which may be referred to appellate courts many such conflicts can be solved by court trial and judgment, the resulting judiciary decisions actionable on for parties (Beheshti, 2010).

Since the Labour Act, 1958 had recognised (Article 38 of the Labour Act , 1958) certain Board of Inquiry rulings such as on worker's dismissal and compensation as fine, researchers recommend that the Iranian parliament recognize certain Board of Inquiry rulings as un-appealable in their new draft of the Labour Act to render the Dispute board more effective as they would have no more appeals to consider.

Dispute board: Board of Inquiry rulings may be appealed against to the Board of Disputes within 15 days

of notification. Generally, the Board of Disputes board holds an investigative session, giving notice in writing to the parties. However, failure of either party to appear in person or to be properly represented does not bar the Board from investigating the matter and making a ruling, unless the board considers it essential that he be present or represented, his presence to be which it will request one more time. The board shall investigate the case within 1 month of the receipt of the appeal. Article 162 of Labour Act, 1990 stipulates that:

> The Dispute boards shall by written notice, request the parties to the dispute to appear at the investigation sessions. Failure of either party to appear in person or to be represented by a fully authorised person shall not bar the board from investigating the matter and making a decision unless the board considers his presence to be essential in which case the request shall be made only once again. In any event, the board shall if possible, investigate the case and make the necessary decision within one month of receiving an application

Dispute board rulings shall be binding and enforceable by the office for the Execution of Rulings under Judiciary power, it being considered equivalent by the Iranian parliament to a court decision, according to Article 166 of Labour Act, 1990. Article 166 of Labour Act, 1990 states that:

> Final decisions made by the dispute settlement authorities shall be binding and enforced by the office for the Execution of Judgements of the Ministry of Justice. The relevant standards shall be prescribed in regulations drawn up by the Ministry of Labour and Social Affairs and the Ministry of Justice and approved by the Council of Ministers

Majlis Shoraye Islami while the Dispute board decision is final, parties may appeal it in the Administrative Supreme Court, entitled Divan Edalat Edari. However, an application to appeal the boards decision shall not be a barrier to enforcement unless an injunction is issued by judicial authorities. Boards of Dispute are to exist in each province to consider all appeals to rulings by boards of Inquiry and to consist of nine members each, elected for 2 years as follows; three worker representatives; three employer representatives and three government officials (Director General of Labour Office, Governor and Provincial Chief Justice or their representatives) (http:// law. nww. co.ir/? I= DjEMOwViUmUBPV1p). The Board of Dispute rulings may be formally appealed against to the Supreme Administrative Court (Article 11 of the Law to establish Supreme Administrative Court) (called as Divan Edalat Edari).

COLLECTIVE LABOUR DISPUTES

Collective disputes are taken up in Iran's Labour Act in Chapter 7, Article 142 and others, dealing with general economic and specifically guild/association-related issues. Such disputes usually involve a challenge to workplace operations, leading to lockouts or strikes in order to decrease production or bring it to a halt. The Labour act steps provides the following to settle collective disputes:

- Direct negotiation between worker organization with employers or their federation (Article 139 and 140 of Labour Act, 1990)
- Settlement and recommendation by Dispute Resolution Boards (Article 142 of Labour Act, 1990)
- Decision by authorities such as the Minister of Labour and the Board of Ministry (Article 143 of Labour Act, 1990)

In alternative dispute resolution, arbitration is a most important tool to solve, especially workplace conflicts. That the Labour Act, 1990 stipulates negotiation including arbitration as desirable this may arguably be viewed studied as a defect of the Labour act however, much arbitrators are expected to solve conflicts based on principles of justice and on prevailing circumstances. Usage of arbitration may avoid turning a corporate crisis into a security and political dilemma.

JUDICIARY SYSTEM

The judiciary system is set to deal with two types of labour conflicts. Firstly, it will formally investigate cases from the Board of Inquiry following an appeal. Secondly, courts will investigate offences considered felonious in labour law to be punished under Articles 171, 172, 174, 176 and 183, respectively of the Labour Act, 1990. Article 171: Individuals violating their obligations stipulated in this law as the case may be shall be sentenced in accordance with following articles and in consideration of all circumstances, the scope and position of the offender, arid degree of offence to imprisonment, cash fine or both. Should the violation of legal obligations lead to an incident causing physical disability or death of a worker, the court shall be obliged in addition to the penalties, stipulated in this chapter to also decide on such

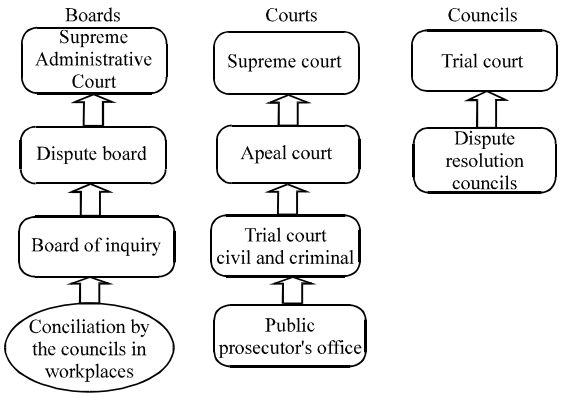

Fig. 1: The boards, courts and councils for dispute resolution in Iran

cases under the relevant provisions of the law. Courts are obliged to follow criminal procedure in such cases (Iran's Criminal Procedure Act, 1999) (Fig. 1).

CONCLUSION

In this study has shown, dispute resolution is the process of ending a dispute or conflict by addressing at least some of each side's needs and interests using different approaches to arguments between parties; these include negotiation, mediation, arbitration and litigation. Both Convention No. 151: Labour Relations and ILO's Recommendations on Collective Bargaining, 1981 as the international documents, stress negotiation to resolve disputes between parties, requiring member states to ensure that procedures for the settlement of disputes help parties find their own solution to disputes over how to negotiate, interpret and apply agreements.

While Iran an old member of the ILO has not ratified Convention No. 151, the Iranian Labour Act, 1990 recognizes negotiation and conciliation as a mechanism to settle dispute between parties whereas arbitration that most relevant Method of Dispute Resolution has not come under the Labour Act. The Dispute boards have been challenged as rulings by the Inquiry board may be appealed against to the dispute, Board of Disputes hence, both winning and losing parties may well do so. Moreover as there are civil courts based on the Judiciary System and having under the Civil Procedure Act, 2000 authority to issue rulings some of which are capable of being reviewed by appellate courts, many such conflicts can be solved by court trial and judgment such rulings being of value to all parties. Decisions by the Board of Dispute being final, parties are nonetheless, able to appeal against them to the Administrative Supreme Court called Divan Edalat Edari which may not keep them from being enforced, unless an injunction is issued by judicial authorities. It may be recommended that the Ministry of Labour with cooperation of Iran's parliament must provide a new draft for labour law in form of a new act whit provisions in freedom of association according to the ILO standards and the ILO convention and recommendation pertaining to the arbitration as most significant method of settlement labour disputes.

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