LAW REFORM

To improve ADR system under the labour law in Bangladesh

An independent ADR center may be established with powers, functions and necessary technological supports to deal with labour disputes. The proposed center, to be equipped with the right personnel and technology, should have the means and jurisdictions to dispose of all workplace disputes both in virtual and in-person modes considering complexities and intricacies involved in each case.

KAMAL HOSSAIN MEAHZI

For dispute resolution through alternative methods, prior to making a claim in courts, Bangladesh Labour Act, 2006 (herein after 'the Act') has provided for two mechanisms, one is available under section 33 of the Act (a complaint in writing to the employer) and the other is accessible only when it is an industrial dispute and raised by a collective bargaining agent or employer within the meaning of section 2(62) read with section 209 of the Act.

Sections 209-212 under Chapter XIV of the Act deal with ADR providing multi-step procedures with arbitration as the last step. If, an industrial dispute is likely to arise, one party shall communicate it to the other party. Upon receiving communication, a meeting shall be arranged for discussion with a view to reaching an agreement. It shall be the negotiation stage. If negotiation is not fruitful then the matter shall be referred to the conciliator who is appointed by the government. This is the beginning of a conciliation proceeding with the assistance of a third party. At this stage, if the parties fail to settle the dispute between them and arrive at an agreement in conciliation proceeding, the conciliator shall try to convince the parties to agree to settle the dispute through arbitration. If they go to the arbitration the arbitrator shall give a binding decision. If they do not refer the matter to the arbitrator, one party giving required notice to the other party may start strike or lock-out under section 211 of the Act and the party raising industrial dispute may make an application to a competent labour court for adjudication of the same.

It means that ADR is a mandatory first step before litigation for resolution of a dispute when the same is an 'industrial dispute' and raised by a Collective Bargaining Agent (CBA) or an employer. A CBA is an agent of workers, and it works as a representative to raise voice on behalf of the workers. Unless a dispute affects collective interest of workers, it remains untouched by a CBA. For example, CBAs hardly take it into account when an individual employee is unfairly treated in an annual performance appraisal. A CBA is reluctant to express its concern if an employee is bullied or harassed by a co-worker, if overtime is unfairly allocated to a worker, if a worker is asked to complete his work at an unreasonable speed, if he is punished for an alleged misconduct by suspension, reducing him to a lower rank, stopping his promotion, withholding his increment for a certain period. It does not concern a CBA when an individual worker is laid-off or retrenched, discharged, terminated, or dismissed on the ground of misconduct. In all these instances, an aggrieved worker either accepts it in fear of losing his job or attempts to remedy some of his grievances by filing a case under section 33 or 213 of the Act of 2006.

It may be argued that under section 33 of the Act, there exists a mechanism for settlement of a dispute before making any application to the court. As per the said section, a worker (after lay-off, retrenchment, discharge, termination, and dismissal) has statutory right to send his complaint in writing to the employer. It is a statutory obligation for an employer to dispose of any such complaint by affording the concerned worker an opportunity of being heard. However, in rare case, this mechanism results in success. In practice, upon receiving such complaint, the employer generally disposes of the same in a slipshod manner without giving due regard to the grievances of the concerned worker.

If an employer remains silent about the complaint and gives no decision or the concerned worker is dissatisfied with the decision when any such decision is given pursuant to a complaint, in both cases the only option available in law is to take the matter to courts for redress. More so, the out of court settlement procedures under this section is available only in a few specific situations. For numerous workplace conflicts, the court is the only resort.

In many instances, even a genuine industrial dispute does not receive proper importance. The concerned CBA often overlooks many such disputes to serve interest of the vested quarters. In Bangladesh perspective, CBAs, known as trade unions, in many instances, are found to be involved in a close relationship with the management or maintaining a close link with the political parties disregarding interest of workers. As a result, the grievances of workers, their collective interests or any grievance of an individual worker are hardly represented in the settlement with the employers. The only forum for an affected worker to remedy his grievances is the labour court.

Under the law, only seven labour courts have been established so far with powers, functions and jurisdictions to adjudicate the labour cases, three in Dhaka, two in Chittagong, and one each in Khulna and Rajshahi. For a sixty million labour force, the number of courts situated in a few major districts are far less than the necessity compared to the number of disputes and volume of cases. In most of the cases, an aggrieved employee has to travel far, sometimes hundreds of miles, to file a complaint before the labour court. Apart from lawyer's fees, court expenses, he needs to incur additional expenses for traveling to initiate a proceeding and, thereafter, pursue the same on regular basis.

In the light of the above discussion, it is imaginable how long it takes and how much it costs to resolve a labour dispute, even if it involves a trivial issue, by using the usual court system. Given the situation, the Bangladesh Labour Act, 2006 needs to introduce a fair and an efficient dispute resolution system for speedy disposal of cases through alternative means other than litigations. A fair and transparent procedure should be in place to enable an individual worker to resolve any workplace conflict and get the same heard by employers. Failing which, the law should provide means to penalise the employers.

An independent ADR center may be established with powers, functions and necessary technological supports to deal with labour disputes. The proposed center, to be equipped with the right personnel and technology, should have the means and jurisdictions to dispose of all workplace disputes both in virtual and in-person modes considering complexities and intricacies involved in each case.

In many countries, ADR is a mandatory first step for resolution of employment disputes that arise in workplace. Germany, France, Switzerland, Spain and the UK all have necessary law providing compulsory mediation or conciliation prior to making an employment tribunal or labour court claim, along with the possibility of conciliation and/or judicial mediation during the litigation. Bangladesh needs similar law to deal with labour disputes effectively, prior to making a claim to labour courts.

The writer is a Student of Advanced Masters in Compliance at the University of Fribourg, Switzerland, and an Advocate at the Supreme Court of Bangladesh.

RIGHTS ADVOCACY

Effectiveness of 'local settlement' practice for protection of Rohingyas

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Local settlement practice does not follow any limitation of time or ask for residence permit for the refugees. However, article 6 of the TPD prescribes a certain time limit to bring an end to temporary protection. And article 8 of the Directive provides residence permit to the asylum seekers for a definite time frame.

SAKHAWAT SAJJAT SEJAN

Since 2020, the Government of Bangladesh has been relocating the Rohingyas to Bhashan Char. The UN and other agencies initially criticised the relocation process. However, after agreement with the Bangladesh Government, the UN is all set to monitor the relocated Rohingyas in Bhashan Char. The UN agreed to do so after getting the Bangladesh Government's assurance of providing education, medical services and income generating activities to the Rohingyas. Bangladesh's move is defined as "local settlement" in the language of international refugee law. Local settlement practice is basically a temporary solution provided by the host country. It is also known as a follow up process after mass refugee influxes to handle the crisis immediately. The Organization of African Unity Refugee Convention 1967 introduced the practice in refugee protection worldwide. This practice is also considered as the temporary version of local integration.

This underdeveloped practice of the UNHCR resembles the Temporary Protection Directive (TPD) of the European Union (EU). The TPD solicits to provide temporary protection to the incoming refugees in European countries after large influxes. The EU introduced it during the Balkan crisis of 1990. It generally gives protection to the refugee for a definite time frame to create a sense of belongingness and security among the refugees. Article 4 of the Directive permits the refugees to stay for one year in the respective asylum-giving countries. The Directive has settled three separate criteria to invoke the protection mechanism, i.e., (i) there must be an armed conflict in the country of origin; (ii) the conflict disturbs the process of return; and (iii) an asylum seeker must remain within the borders of the EU countries. Activation of the TPD for Ukrainian refugees after Russian aggression on Ukraine is pursuant to these three standards.

Simultaneously, the Rohingyas' local settlement to Bhashan char is bringing coherence to the EU's TPD. After applying the customary principle of non-refoulement, local settlement or TPD is the most convenient way for comprehensive protection of the refugees. But strategically, TPD is more accurate comparing to local settlement. There are two distinct reasons for that, (a) firstly, local settlement did not receive written acceptance as a solution under the UN Refugee Convention or by the UNHCR; and (b) secondly, the TPD is an approved form of protection among the EU countries. The UN Refugee Convention itself created the gap by clustering the means of solution only as 'permanent solution'. Also, international refugee law scheme ingenuously undervalued temporary solutions of refugee protection and that diluted the importance of 'local settlement' practice. The practice remained irregular without getting recognition as a principle of international refugee law. At the same time, recognition of this practice as customary principle is undesirable, when every state is not a party to the Refugee Convention. The EU's assertion on similar type of principle should influence the global refugee protection mechanism. It will benefit both refugees and the host countries.

Local settlement practice does not follow any limitation of time or ask for residence permit for the refugees. However, article 6 of the TPD prescribes a certain time limit to bring an end to temporary protection. And article 8 of the Directive provides residence permit to the asylum seekers for a definite time frame. The TPD in terms of protection is more comprehensive than local settlement despite their similar nature. As a result, in pursuance to the Directive, the UNHCR has adopted a guideline in 2013 for temporary protection named as 'Temporary Protection or Stay Arrangements'. However, there is a dilemma between the two alternatives when there is a massive influx.

To end this dilemma, the TPD/TPSA might go hand in hand with local settlement. Local settlement being a temporary solution in contrast to local integration connects to the TPD/TPSA in various aspects. The UNHCR might cohere to these two principles aligning with the principle of non-refoulement. This will open a new era of protection mechanism for refugees. Additionally, local settlement might achieve the comprehensiveness of local integration in terms of providing temporary solution to a crisis.

The writer is Lecturer in Law, Feni University.