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Reframing Industrial Peace in Pakistan: Alternative Dispute Resolution, Collective Bargaining, and the Architecture of Labour Justice

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Abstract

Pakistan: A common discourse on industrial conflict in Pakistan is that it only gains any legal significance when a strike commences or when a dismissal case is presented in a labour court. The opinion is not complete. The majority of disagreements in the workplace start much earlier: in grievances that are not yet resolved, ineffective communication, inability to negotiate, ambiguity about the status of the workers, and the lack of reliable settlement mechanisms. This paper contends that the labour regime in Pakistan already has stratified architecture of settling industrial disputes by negotiation, conciliation, arbitration, and specialized adjudication but the architecture is not utilised and is not well co-ordinated. The main argument of this paper is that industrial peace in Pakistan relies not so much on the development of wholly new forums but on the timeliness, credibility and legal consistency of the existing alternative dispute resolution mechanisms.

Key words: Pakistan, industrial disputes, labour justice, collective bargaining, conciliation, arbitration, ADR

Introduction

Industrial conflicts can be viewed best as a symptom of tension in the employment relationship and not as a single legal event. They come up when the power of the employer with regard to production and discipline conflicts with the right of the worker to security, dignity, wages, representation, or integrity treatment. Such disputes are common in Pakistan in the context of dismissal, misconduct, regularisation of service, arrears of wages, allowances, retrenchment, unionisation, enforcement of settlements, and the lawfulness of a strike or lock-out. Since these disputes do not only impact the individual worker, but also the production, the social stability and the industrial policy, institutions, which are not that of ordinary civil litigation, have long been the subject of the labour law[1].

However, the pragmatic imagination of conflict management in Pakistan is too limited. Litigation is commonly seen as a defense mechanism that delays liability or divides worker claims. The workers and trade unions, on the other hand, often consider specialized forums as a last resort when all informal avenues are exhausted. In the middle of those two stands an undeveloped area to organize settlement. Bilateral negotiation, statutory conciliation, consent-based arbitration and adjudication in specialized labour forums are already enshrined in the Pakistani labour legislation. The issue is not the complete lack of ADR. The issue is that ADR is too frequently considered a procedural step that should be passed, but not the core mechanism as the basis of which industrial peace should be constructed.

Three related propositions are developed in this paper. To start with, in Pakistan, the labour laws already incorporate an ADR logic, although the terms of ADR are sometimes not used with contemporary doctrinal accuracy. Secondly, the applicability of that reasoning is determined by background legal issues, particularly whether or not the claimant is a part of the statutory definition of a worker and whether or not

1 International Labour Organization, *National Labour Law Profile: Islamic Republic of Pakistan*, discussing the structure of industrial-dispute resolution and restrictions on strikes or lock-outs during pending conciliation or arbitration.

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the case falls within the provincial or trans-provincial jurisdiction. Thirdly, Pakistan needs taking social dialogue and professionally administered conciliation with more seriousness in case it wants to decrease the adversarial labour conflict without undermining the legal rights. There is then a need to have a robust labour ADR system resolving early disputes when it can, but retaining adjudication in the event of power asymmetry, illegality or unsuccessful settlement.

The constitutional and statutory framework that regulates industrial disputes with a focus on the Industrial Relations Act 2012[2], the Punjab Industrial Relations Act 2010[3] and the Industrial and Commercial Employment (Standing Orders) Ordinance 1968. It also relies on official and academic sources relating to the labour-relations system of Pakistan[4], collective-bargaining, and the place of social dialogue. The paper asserts that ADR in the Pakistani labour law is not to be a soft alternative to formal adjudication; instead, ADR is to be the main channel to early settlement and the labour courts and the National Industrial Relations Commission should act as a right protection back up. The paper concludes that a rights-based ADR model in the case of Pakistan needs to be connected to collective bargaining, train conciliators, and be designed in more systematic procedural schedules in such a way that dispute resolution can be fair and more economically viable.

Constitutional and Statutory Background:

The constitutional background is important since the industrial disputes in Pakistan are not just the contractual disputes. Article 17 of the Constitution safeguards the right of association and Articles 18 the right to engage in legal professions, occupations and trades, which are regulated by the law[5]. These provisions, in combination, create the constitutional framework of trade union action, collective bargaining, and state control of economic relations. Labour conflict is thus placed in a constitutional compromise: workers should be allowed to have a collective voice, and the state should be allowed to control industrial order in the common good.

At the legislative level, the structure of Pakistan is separated into federal and provincial schemes. Since the Eighteenth Amendment, labour has been mostly provincial, although the federal Industrial Relations Act 2012 still applies to the Islamabad Capital Territory and trans-provincial establishments and industries. Trade union formation, collective bargaining, unfair labour practices, conciliation, arbitration, labour courts and industrial action in the provincial jurisdiction is provided by provincial statutes such as the Punjab industrial relations Act 2010. Among the industrial-relations laws is the Industrial and Commercial Employment (Standing Orders) Ordinance of 1968 which continues to play a key role in the questions of classification, termination, misconduct and conditions of service of covered workmen.

There are two implications of this architecture. On the one hand, it demonstrates that the Pakistani labour law does not rely on a single court based model. The laws themselves consider dispute prevention, face-to-face communication between the parties, conciliation by the authorities, consensual arbitration, and adjudication in speciality. Fragmentation on the contrary may lead to uncertainty. A dispute can cover standing orders, trade union law, collective bargaining arrangements, and jurisdictional issues simultaneously. The complexity of that may in itself be a source of delay. That is, ADR is already in the law, it just needs workers, employers, unions, conciliators, and tribunals to find their way around the system in procedural clarity.

2 Industrial Relations Act 2012, especially the definitions of “industrial dispute” and the provisions governing conciliation, arbitration, unfair labour practices, strikes, and lock-outs.

3 Punjab Industrial Relations Act 2010, including provisions on trade unions, collective bargaining, conciliation, labour courts, and industrial action.

4 International Labour Organization, *National Labour Law Profile: Islamic Republic of Pakistan*, discussing the structure of industrial-dispute resolution and restrictions on strikes or lock-outs during pending conciliation or arbitration.

5 Constitution of the Islamic Republic of Pakistan 1973, arts 17 and 18.

The Law Legal Idea of an Industrial Dispute:

A simple complaint by one employee is not as broad as an industrial dispute. Pakistan labour framework may encompass a difference between employer and worker, employer and trade union and between an organised group of workers where the dispute is over employment, no employment, employment terms, or terms of labour. The category thus encompasses individual complaints and joint scandals.

One of the common preliminaries is whether the individual who claims labour protection is a workman or a worker. The superior courts in Pakistan have time and time again ruled that this question cannot be answered solely by a designation on paper but the critical question is what exactly the duties are. This dogma is important since access to labour forums is frequently determined by statutory status. In the case where status is in dispute, the case may be changed to a threshold matter of forum and jurisdiction as opposed to the merits of dismissal or service terms. This issue has lingered thus justifying why industrial disputes in Pakistan tend to take procedural grounds before evolving into substantive disputes[6].

The second problem is whether individual grievance and collective dispute are different. Individual grievances are normally based on dismissal, punishment, denial of benefits or disciplinary action against a certain worker. Collective disputes, in contrast, may typically entail bargaining claims, recognition contests, unfair labour practices, settlement implementation, or more general issues impacting a group of workers. The difference is critical since various institutional streams might be activated by the nature of the conflict. Any legal system that does not appreciate such distinction is likely to be either an over-judging or under-protective system to collective disagreement or individual rights respectively.

Practically, industrial conflicts in Pakistan may be divided into a few common groups: termination of services and disciplinary cases; wage and benefit conflicts; registration and recognition of union, deadlocks in collective bargaining, and conflict associated with strike, anti-union lock-outs or retaliation. These disagreements do not necessarily necessitate an equal response[7]. There are those that require official adjudication. Others are particularly appropriate in conciliation or arbitration since the parties are likely to continue a working relationship once the current dispute has been settled. ADR in labour law should be designed in such a way that it is practical as opposed to being formal.

ADR Within the Pakistani Labour Law System:

Face-to-face negotiation and grievance management in the workplace:

The simplest and informal labour dispute resolution, which is direct engagement of parties, is the oldest. This can be done through grievance processes at work, unofficial meetings, one on one discussions, or a collective bargaining system. These processes are usually considered as non-legal, which is incorrect. The fact that it is the initial step where industrial peace can be either regained or lost is not legally irrelevant in the labour law. When internal mechanisms are open, employees might be listened to before mistrust solidifies into organized opposition. Provided they are opaque or punitive, even minor conflicts may grow exponentially.

The first layer has long been the foundation of the labour system in Pakistan, but the quality of it sharply varies in sectors and companies. Collective bargaining contracts may offer a regular system of complaints, clarifications and implementation in unionised premises. In non-unionised contexts, however, the employee can rely on discretion of the management alone, thus rendering the process of internal redress dubious or hollow. This is among the reasons why legal accessibility of conciliation is important: it provides a structured third-party procedure in case of a failure in direct negotiation.

6 *National Bank of Pakistan v Punjab Labour Court No 5, Faisalabad* 1993 SCMR 672, on worker status being determined by the nature of duties rather than title alone

7 Lahore High Court, 2017 PLC 96, discussing labour-forum jurisdiction and worker status in light of Supreme Court jurisprudence.

Conciliation as the focal civil procedure:

The most significant of state-sponsored ADR instruments in the industrial-relations system in Pakistan is conciliation. The federal and provincial regimes both offer conciliatory intervention to industrial disputes. Conciliation has a number of benefits in principle. It is faster than full adjudication, less adversarial than a tried trial, and more conducive to maintaining the employment relationship. It also suits the logic of labour law, which aims not only to determine rights following disruption, but to mitigate the disruption of the industrial before it becomes entrenched.

The importance of conciliation has also been identified in the literature on labour system in Pakistan. In his study of contemporary practice, Iftikhar Ahmad Tarar defines conciliation as a traditional element of industrial dispute settlement in Pakistan and highlights how, although there have been legislative changes over the years, the parties still resort to state-sponsored intervention to avoid broader conflict. The labour-law profile of the ILO[8], which relates to Pakistan, also mentions the fact that the limitations on strike and lock-out are also in place when it comes to conciliation and arbitration, emphasizing that these processes are not a simple form of informal dialogue, but are used as a legal tool of industrial peace.

However, there are grave institutional constraints to conciliation in Pakistan. It relies on the availability, training, impartiality and on-the-job powers of conciliators. In situations where conciliators are short of time, experience and even institutional backing, the process may be more ceremonial than solution-focused. There is also suffering of conciliation where parties come to fulfil a legal condition before litigation. There is a process there, but the conflict is not really being steered toward resolution. The Pakistani ADR policy should also be credible in ensuring that conciliation as a substantive process is reinforced and not maintained as a mere formality.

Arbitration and agreed determination:

The arbitration takes another place. It usually comes into play where parties agree to hand over the dispute to a neutral individual or panel to be determined. Arbitration can also be particularly applied in labour relations when the parties require an authoritative response and yet, they do not desire to incur all the expense, time or confrontation of protracted litigation. Arbitration is more structured and goal-oriented than conciliation; it can be more flexible and specialized than a court proceeding[9].

This is the problem in Pakistan: arbitration is not a new doctrine; the problem is that it has not yet become a regularly popular path in most industries. Other employers are reluctant since an authoritative outcome could limit managerial prerogative. Other unions are reluctant to do so, as they are worried that arbitration will de-politicise collective struggle or reduce the breadth of labour claims. However, in cases of contention over settlements interpretation, terms of service, classification, wage reviews or repetitive shop-floor wrangles, arbitration may provide a balanced solution between stalemate in bargaining and lengthy adjudication. It can be used to defend continuity of production when well designed and still render a sensible result.

Specialised adjudication as backstop corrective:

The argument that ADR should be employed in labour disputes does not mean that adjudication should not be employed. The presence of labour courts and the National Industrial Relations Commission is still necessary since some conflicts cannot be settled through consent or that one of the sides has such structural power that fair bargaining is not a feasible option. Anti-union discrimination, unlawful dismissal, victimisation, failure to enforce statutory protections and jurisdiction controversies are frequently issues of

8 International Labour Organization, *National Labour Law Profile: Islamic Republic of Pakistan*, discussing the structure of industrial-dispute resolution and restrictions on strikes or lock-outs during pending conciliation or arbitration.

9 Iftikhar Ahmad Tarar, 'Settlement of Industrial Dispute through Conciliation: A Study of Current Practices in Pakistan' (2017).

authoritative determination. The Government[10] of Pakistan provides the NIRC as a quasi-judicial tribunal on trans-provincial and Islamabad Capital Territory cases, and affirms it as an institutionally relevant contributor to labour redress.

It is not ADR vs. adjudication, but ADR preceding adjudication wherever the rights can be safeguarded without undermining fairness. The litigation must stand as an option, but it must be used as a protective measure, not the initial envisaged place in all the disagreements. This may solidify positions, harm future working relationships, and add costs on both sides in terms of labour law where a system that drives all into adversarial determination.

Social Dialogue, Industrial Peace and Collective Bargaining:

Without a strong collective bargaining, industrial disputes cannot be solved. ADR works best when workers are recognised in representation, when employers bargain in good faith and when settlement can be made using institutions that are stable. The ILO activities in Pakistan time and again reiterate that decent work and good industrial relations are based on collective bargaining and good negotiation skills. Its compilation of case-studies on Pakistan also recognizes collective bargaining as a viable tool in organizing relations between employers and unions and by eliminating conflict by dialogue instead of disruption.

This is a key point. The issue of ADR in labour relations is not merely a technical issue to do with the disposal of cases. It is part of a broader culture of social dialogue[11]. When there is no representative power among workers a mediated settlement can be a pressured effort instead of concession. When employers do not feel confident that negotiated agreements will be stable, then they might choose to go unilateral management action and then litigation. Industrial peace must go beyond procedure, however; it must include institutional trust, bargaining skills and power that is fairly balanced.

The post-devolution labour[12] structure in Pakistan poses challenges as well as opportunities in this respect. It may cause discrepancy between jurisdictions, particularly to those businesses that are based in more than one province. But it does allow provincial experimentation. Provinces can build more effective conciliatory services, more transparent grievance policies, online case-tracking, or industry-based bargaining models. The trick here is to make sure that decentralisation is not incoherent.

Pakistan Case Law Lessons:

Pakistani labour jurisprudence can teach a few things that can be applied to ADR. One is on the worker status. In a case in National Bank of Pakistan v Punjab Labour Court No. 5, Faisalabad the Supreme Court noted that it is the nature of the duties being done, rather than the title of the post that makes the difference between whether a person is in the statutory category of worker or not.[13] The principle remains of continuing importance since access to labour remedies will often rely on it.

The second lesson is about the relevance of specialised forums. Later judicial commentary has restated the unique role of the labour courts and labour laws in the workmen and labour relations. This reinforces the larger thesis of the current paper; industrial conflicts need institutions built upon labour facts, and not mere extrapolation of the normal civil process.

The third lesson, which is not explicit but rather implicit, is about timing. Settlement are harder when the conflicts have been solidified by jurisdictional arguments, years of service, or mounting mutual enmity.

10 Government of Pakistan, National Industrial Relations Commission FAQ page, describing NIRC as a quasijudicial forum for trans-provincial and ICT labour grievances

11 International Labour Organization, Pakistan office update on collective bargaining and effective negotiation skills for decent work.

12 International Labour Organization, *Good Practices in Collective Bargaining: A Compilation of Case Studies from Pakistan*.

13 *National Bank of Pakistan v Punjab Labour Court No 5, Faisalabad* 1993 SCMR 672, on worker status being determined by the nature of duties rather than title alone

In comparison, the sooner the parties are involved in the credible processes the more likely they are to retain the rights and continuity. Case law does not therefore discredit ADR; it demonstrates why ADR should be an institutional serious matter in case it will avert all labour disputes turning into a forum war.

Continued Weaknesses in the ADR Practice in Pakistan:

Despite the elements of ADR in the legal architecture of Pakistan, there are a number of practical flaws that restrict the effectiveness of ADR.

One, is a capacity issue. The conciliation needs seasoned officers who are knowledgeable of legal rights as well as the facts of the industry. In the absence of such skills, the process can degenerate into adjournments, back-room pressure, or hollow compromise.

Secondly, there are informational obstacles in many workers and smaller unions. They might not be aware of the specific forum, schedule or solution. Even procedural uncertainty is a deterrent to early settlement.

Thirdly, internal grievance systems are not even. Companies that do not have significant workplace complaint systems practically push conflicts out into confrontation.

Fourthly, fragmentation after the Eighteenth Amendment has made it harder to achieve procedural consistency across jurisdictions. The fundamental rationale of industrial peace can be common, but the pathways vary sufficiently to cause trans-provincial actors to be confused.

Lastly, it is a cultural problem. Until parties see the value of considering conciliation a box to be ticked prior to litigation, ADR will be there in legal form but ineffective in practice. Reform should thus focus on incentives and institutional design and not only on legislative language.

A Reform Agenda of a Pakistan-Centric ADR Model:

A feasible reform agenda of Pakistan ought to run on five fronts. Firstly, conciliation has to be professionalized. The conciliators are supposed to undergo systematic training on labour law, negotiation, bargaining dynamics and settlement drafting. Their involvement must be considered facilitative but informed by the law.

Secondly, the timelines concerning the procedures need to be more transparent and regularly applied. ADR that is unsuccessful is usually delayed ADR. Speed is important in the sense that industrial disputes are fast growing when the parties start to consider conflict as a strategic approach[14].

Thirdly, internal grievance mechanisms ought to be enhanced particularly where the medium and large establishments are concerned. Many issues to do with service can be addressed at the level of complaints at the workplace before they turn into a collective flashpoint.

Fourthly, ADR should be rights sensitive. Workers should not be pressured into giving away statutory protection or take settlements generated by inequality as opposed to actual consent through conciliation and arbitration.

Fifthly, collective bargaining and social dialogue should be associated with labor ADR. An independent settlement mechanism without representative structures will hardly contribute to long-lasting industrial peace. The long-term goal must thus be an approach of combination: grievance management on the job level, statutory conciliation in instances where bilateral attempts have failed, arbitration as a determination agreed where appropriate, and adjudication as a principled protection[15].

14 Iftikhar Ahmad Tarar, 'Settlement of Industrial Dispute through Conciliation: A Study of Current Practices in Pakistan'

15 International Labour Organization, *Good Practices in Collective Bargaining: A Compilation of Case Studies from Pakistan*

Conclusion

Pakistan must not view industrial disputes as something that only becomes legally important as it is dragged into a courtroom or even results in industrial action. The law system has already acknowledged the need to resolve the conflict in the workplace by first negotiating, conciliating, and arbitrating wherever possible. The more important problem is that such mechanisms do not tend to be endowed with that institutional strength, procedural clarity, and professional credibility that would enable them to be chosen as the preferred path in practice.

This paper has provided an argument that the answer is not to push out labour adjudication, but rather to rebrand it, labour courts and the NIRC must be left there as corrective institutions that cushion rights in case of failure in the bargaining process, abuse of power, and inability to settle. Courts are not the only thing needed to have a stable and internationally credible labour system in Pakistan. It needs credible conciliators, working bargaining arrangements, enlightened workers, improved procedures, and a culture of social discussion. In that regard, industrial peace is not the lack of discord. It is the existence of institutions that can resolve disagreement in a lawful, timely and just manner.

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