Though restrictions have been placed on the free sale of acid, this has not deterred people from buying acid which is still available quite freely. Serious rethinking needs to be done in this aspect.

An important point to be considered in acid attack cases is, whether justice will be rendered to the victims by punishing the perpetrators of the offence, even though compensation is provided to the victims. Punishment acts as a deterrent and, sends a strong warning to other like-minded people in the society to think twice before committing such an offence.

The States necessarily have to ensure that the precepts formulated by Supreme Court of India in *Laxmi v. Union of India* (supra), are meticulously followed.

Police must speed up their investigation and aid the Courts in disposing cases quickly.

Government must educate young people and try to bring a change in the attitude of people about patriarchy, equality for women, *etc.* The public must also be educated to treat acid attack victims as normal citizens and not to shun and treat them with contempt.

Victims of acid attacks should be given opportunities of employment and should be encouraged to pursue education.

Conclusion:—It becomes imperative then, that the society as a whole leads the path towards emancipation of women by displaying empathy towards acid attack victims, and wherever possible help should be rendered, to make life easier for them so that they are able to face the challenges which they encounter in every step of their life, with dignity and hope in their eyes.

VOLUNTARY ARBITRATION UNDER INDUSTRIAL DISPUTES ACT, 1947

By

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1. History :

Voluntary Arbitration is one of the effective modes of settlement of Industrial Dispute. It supplements collective bargaining when negotiations fail arbitration may prove to be a satisfactory and Enlighted method of resolving disputes.

The credit for introducing a unique method of settlement of industrial disputes goes to *Mahatma Gandhi* who for the first time applied it to settle the important dispute on the claim of the Dearness Allowance by the workers in the Ahmedabad Textile Industry in the year 1918.

Following the dispute, the workers of the Ahmedabad Textile Industry have gone on strike demanding 35% raise in D.A. on par with the Bombay Textile workers.

The strike had been guided by *Mahatma Gandhi* who considered the demand of the workers justified. On the other hand, the employees were bent upon to give only 20% raise in Dearness Allowance. This had led *Mahatma Gandhi* to undergo fast unto death which has created uproar in the rest part of the Country. Ultimately *Mahatma Gandhi* suggested to solve the dispute by referring it to the Arbitrators of the mutual choice which has been accepted by the employees.

Mahatma Gandhi acted as Arbitrator on behalf of the workers. Ambalal Sarabhai represented employers. Both the Arbitrators had agreed on the increase of the Dearness Allowance at the rate of 27-1/2% as against the 35% and 20% which was demanded by the workers and employers respectively.

Reasons for Inclusion of Section 10-A of the I.D. Act, 1947

Since the compulsory adjudication has been criticized as affecting the industrial peace and

making industrial relations more litigious Section 10-A has been inserted by an amendment to provide for the voluntary reference of industrial disputes to Arbitration. This section has been expected to function as an encouragement to the disputing parties to settle the dispute by referring them to the Arbitrator of their own choice.

In course of time Section 10-A was to help the parties to settle the dispute by voluntary means rather than compulsory, so that it may ultimately lead to the collecting bargaining.

2. *Statutory provisions :*

Section 10-A of the I.D. Act[1] was enacted with the object of enabling the employers and employees to voluntarily refer their disputes to arbitration themselves by a written agreement and for the enforcement of agreements between them reached otherwise than in the course of conciliation proceedings. The requirements of sub-section (1) are :

1. There should be an existing or apprehended industrial dispute.

2. The reference to arbitration should be by written agreement.

3. The reference should be made before the dispute has been referred under Section 10 to a Labour Court, an Industrial Tribunal or National Tribunal, and

4. The names of the person or persons to act as Arbitrator or Arbitrators must be specified in the arbitration agreement. Such persons may be presiding officers of Labour Courts, Tribunals or National Tribunals.

An agreement to refer an "*Industrial dispute*" to an arbitration to an arbitration under this section is not a "settlement" of the dispute postulated by Section 2(P) of the Act, because the dispute subsists after such an agreement and does not come to an end.

The Scope of the words "At any time" has been limited by the words that immediately follow *viz.*, before the dispute has been referred under Section 10 to a Labour Court, Tribunal or National Tribunal. It follows that after an industrial dispute has been referred to an Arbitrator under Section 10-A, it cannot be validly referred to a Labour Court, Tribunal or National Tribunal for adjudication.

The reference of a dispute to arbitration under Section 10-A can however, be made even if the conciliation proceedings before a conciliation officer are pending or a reference regarding that dispute under Section 10(1)(a) or (b) has already been made to a Board or a Court of inquiry. The working of Section 10(1) is enabling and confers the powers on the parties to enter into an arbitration agreement. But such agreement must be in the prescribed form and must specify the name of the Arbitrator or Arbitrators and a copy of the arbitration agreement should be forwarded to the appropriate Government on receipt of which the appropriate Government is required to publish the same in the Official Gazette. It means that all parties interested in the dispute should have notice of reference of the dispute to the arbitration and such of them might present their view point to the arbitration, as choice to do so. The procedure to be followed under Section 10-A is directly and the Government is required to adopt, if it wants to make the award of the Arbitrator binding on the parties or person, who have not joined the reference to arbitration. But sub-section (4) require that the award has to be submitted to the appropriate Government. It is after the parties have named the Arbitrator and entered into a written agreement in that behalf that the appropriate Government stops to assist further proceedings before the named Arbitrator.

However, when an industrial dispute is referred to an Arbitrator, in jurisdiction to arbitrate on the dispute will be under Section 10-A and under Section 10 and his award will not be governed by the provisions of the Act relating to the awards of the Labour Courts or Tribunals but will be governed only by provisions relating to the awards of the

[1] Inserted by Section 8 of the Industrial Disputes (Amendment and Miscellaneous Provision) Act, 1952

industrial Arbitrators. But this section will be governed only by provisions relating to the awards of the industrial Arbitrators. But this section will have no application to an arbitration agreement which is not in compliance with the requirement of sub-sections (2) and (3) thereof.

3. Procedure before the Arbitrator :

Section 11 lays down that an Arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the Arbitrator or any other others authorities may think fit. A Division Bench of the Madhya Pradesh High appears to have misread Section 11 in *K.P. Singh v. Gokhale*, 1970 (1) LLJ 125. The Court observed that Section 11 of the Act reserved the procedure to be followed by a Conciliation Officer, the Board, the Court or the Tribunal but leaves the Arbitrator to follow his own procedure. The observation is not in accordance with the clear language of sub-section (1). From this observation, the Court further deducted that "*That is certainly in consonance with the principles of arbitration*".

This observation is not correct as an Arbitrator has to follow the same procedure as Board, Court, Labour Court, Tribunal or National Tribunal has to follow. In otherwords, the Arbitrator has to evolve his own procedure in accordance, however, with the rules of natural justice. On the reference having been made to the Arbitrator, he has all the powers the terms of reference, to which both sides are party, conferred.

Before the Arbitrator acquires jurisdiction to arbitrate on the industrial dispute referred to it, it is imperative that the mandatory requirements of Section 10-A must be compiled with.

Sub-section (1-A) umpire : From a cursory glance of sub-section (1) and sub-section (1-A), it would appear that the parties can appoint an even number of Arbitrators. Previously there was no provision to resolve the matter if the Arbitrators were equally divided in opinion. In such a situation, the parties had to make a reference to an Arbitrator over again or to move the Government for making a reference under Section 10. The difficulty has now been removed by the Legislature by the insertion of sub-section (1-A), which makes an imperative provision for the appointment of an umpire in case an even number of Arbitrators is appointed by the parties. Wherein the course of such arbitration the Arbitrators are equally divided in their opinion, the award of the umpire shall prevail and shall be deemed to be the arbitration for the purpose of this Act.

4. *Relief under Article 136 of the Constitution from Arbitration Award :*

The question before Supreme Court was whether an appeal would life to it under Article 136[2] of the Constitution from arbitration award under Section 10-A of the industrial Dispute Act. The Supreme Court in *Engineering Mazdoor Sabha v. Hind Cycles*, AIR 1963 SC 874, the question in negative. Accordingly, the Court held that the decision of Arbitrator would not amount to determination or "order" for the purpose of Article 136. But the position appears to have been changed through *Rohtas Industries v. Rohtas Industries Staff Union*, AIR 1969 SC 707.

The Court in view of the amendment in 1964 of the I.D. Act appears to have extended the application of Article 136 to an award of arbitrator under Section 10-A. This view was reiterated in *Gujarath Steel Tubes v. Gujarath Steel Tubes Mazdoor Sabha*, 1980 (1) LLJ 137.

The view removes one of the stated hurdles in the progress of the arbitration, namely that in law no appeal is maintainable against the award of the Arbitrator[3].

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[2] Under Article 136 the Supreme Court is empowered to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India other than those constituted by or under any law relating to armed forces in the territory of India.

[3] *S.C. Srivastav*-Industrial Relations & Labour Laws, Vikas Publications, P.299.