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THE IMPACT OF MANDATORY ARBITRATION CLAUSES ON THE ABILITY OF LOW-WAGE WORKERS AND OTHER VULNERABLE POPULATIONS TO ACHIEVE JUSTICE IN EMPLOYMENT DISPUTES

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ABSTRACT: *Mandatory arbitration clauses in employment contracts significantly hinder the ability of low-wage workers and other vulnerable populations to seek justice in employment disputes. This study examines the systemic challenges these clauses pose, focusing on their disproportionate impact on marginalized groups, including women, minorities, and immigrants. Using a qualitative approach, the paper analyzes legislative developments, judicial precedents, and arbitration practices to uncover the inequities embedded in the current framework. Findings reveal that mandatory arbitration limits access to courts, reduces transparency, and enforces power imbalances favoring employers. Vulnerable employees often face insurmountable barriers, such as financial constraints, lack of legal knowledge, and limited procedural rights, further exacerbating workplace injustices. Key reforms, such as the proposed Forced Arbitration Injustice Repeal (FAIR) Act, aim to address these issues but face political resistance. The study concludes that legislative action, enhanced employee protections, and increased public awareness are critical for reforming arbitration practices and ensuring equitable dispute resolution. Future research should investigate cross-national arbitration practices and the long-term effects on workers' rights and workplace equity.*

KEYWORDS: Mandatory arbitration clauses, Employment disputes, Low-wage workers, Workplace justice, Power imbalance, Arbitration reform

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INTRODUCTION

Most of the time, the concept of arbitration highly favors employers causing low-wage employees to have even less rights. In contrast, arbitration gives employers procedural control, arbitrator selection and preserves employers' confidentiality over the results. Such dynamics of operation make the workers feel that they are on the receiving end and are stuck with raw deals. Research has it that, there are fewer disputes that are filed and disposed of through arbitration compared to litigation, this is due to its deterrent effect on claimants (Center for New York City Affairs, 2023; Gerstein, 2023). Force majeure arbitration clauses have become enforced in employment contracts and have thus transformed procedures through which employment-related disputes are solved. These clauses mean that the employee relinquishes all right to bring claims in the public court and the matter is taken to private arbitration. The introduction and enforcement of such provisions has been made possible by new legal precedents and changes in employers' behaviors regarding employment relationships and by implication placing profound effects on low-wage earners and other vulnerable employees. The mandatory arbitration clauses were more actively practiced after the FAA of 1925, created to encourage arbitration between two business entities of equal standing. However, in recent decades, the Supreme Court of the United States has opened up employment relations for the FAA thus establishing the legal viability of arbitration clauses. Judgments like in Epic Systems Corp. v. Lewis (2018) made employers free to enter into arbitration agreements that eliminate class actions, so as to limit the collective legal recovery under the National Labor Relations Act.

The current trend has also been impacted on by corporate measures towards the reduction of legal risks through incorporation of arbitration clauses into contracts. In requiring arbitration, employers eliminate large-scale and often effective legal actions, such as class and collective actions, for combating wrongdoings including wage deception or prejudice. Such a legal environment has a disproportionate impact on low wage earners, who cannot afford to challenge such contracts (Georgetown Journal on Poverty Law and Policy, 2023). Also, class action waivers that are also contained in arbitration clauses make matters worse for low-wage employees. Lacking the capacity to mobilize resources or remediate the system together, stand-alone claimants are seldom enticed by high rates of return few and far between arbitration. It also helps employers avoid responsibility for rampant violation of labor rights. Mandatory arbitration is inclusive of several labor-related concerns that affect multiple workers. In particular, the fragmented workforce and minorities, immigrants and refugees, low-wage workers, as well as the elderly and people with limited English and legal proficiency are most at risk (Gerstein, 2023).

Struggle has been made to meet these challenges. Recent attempts to regulate arbitration by hiring legislation such as the Forced Arbitration Injustice Repeal (FAIR) Act has however been hampered by political and legal opposition. At the state level, new approaches like the New York's EMPIRE Worker Protection Act tries to protect workers by allowing them make claims on behalf of the state avoiding federal preemption problems This perspective establishes a theoretical background for analyzing mandatory arbitration clauses on its continuation of disproportionate labor rights in the US injustice for the vulnerable worker. Recognizing these dynamics enables the development of policies that would reform the current approaches to the resolution of disputes that would favor efficiency, fairness, and accountability.

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Research Objectives

This study aims to:

1. Examine the impact of mandatory arbitration clauses on access to justice for low-wage workers and other vulnerable populations;
2. Analyze the structural and procedural disadvantages inherent in arbitration processes; and to
3. Identify policy recommendations to enhance equity in workplace dispute resolution.

Research Questions

1. How do mandatory arbitration clauses affect the ability of low-wage workers to resolve employment disputes effectively?
2. What systemic barriers exist within the arbitration framework that hinder access to justice for vulnerable populations?
3. What policy reforms can mitigate the negative impacts of mandatory arbitration clauses?

Significance of the Study

Its implications for labor rights advocacy, as well as policy-making, make this research highly relevant and valuable. This paper aims to provide awareness about the lack of equal access to legal representation among low-wage employees by presenting findings with the ultimate goal of presenting improvements of the current state of affairs to stakeholders such as policymakers, employee unions, and lawyers. By drawing attention to some of the current shortcomings in arbitration processes, the findings will add to the continuing discourse on the extent of considering efficiency over fairness in workplace disputes.

Scope of the Study

The paper concentrates on analyzing mandatory arbitration clauses in the context of the US legal system, with reference to their effects on low-waged employees and other sensitive social groups, including immigrants, women, and people of colour. This paper considers the current state of the case; therefore, it focuses on legal decisions, scholarly works, and policy reviews between 2018–2023. Even though the focal points are on employment issues, the manifestations of the labor law and workplace equity are also taken into account. This elaborate discussion creates the background necessary for a scrutiny of the impact of mandatory arbitration on justice in employment grievances and presents practical recommendations for altering the existing system of dispute resolution in the best interest of marginalized employees.

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LITERATURE REVIEW

Theoretical Underpinning

This paper adopts Power Imbalance Theory and the Access to Justice Framework to analyze the impact of compulsory arbitration clauses on low-wage employment relations. These frameworks provide any analysis of systematic injustice and structures holding employees back in exercising justice especially when in arbitration systems.

Power Dependency theory contends that employers wield more power over employees particularly those in low wage generating industries. Predominantly, employers render the conditions of work and hire with strings such as mandatory arbitration clauses that are likely to be offered to the employees without options. This embodied inequality of bargaining ability isαρά important in explaining why mandatory arbitration might be biased towards employers. Arbitration clauses that employers use in most contracts are usually tailored to the employer's benefit, giving the employee little or no opportunities to seek redress for unfair treatment. When included in the employment contracts, employers can limit employees' recourse to courts and also set conditions that make it more difficult for workers to achieve in their cases (Colvin & Stone, 2021). The employees earning low wages have weaker bargaining power because the majority of them need to work for their livelihood. This dependency bars workers from challenging mandatory arbitration clauses, or even when seeking to challenge unfair decisions. The threat of reprisals or losing a job also minimizes their bargaining power still further. A number of employers are involved in one or multiple arbitration disputes, often large corporations which afford them considerable leverage because of their knowledge of the process and special capability of choosing their preferred arbitrators. Employees who may be dealing with one particular issue do not have the same benefit, which helps further strengthen the employer's position (Bales & O'Brien, 2020).

The Access to Justice Framework concentrates on the hurdles that a person experiences as they seek fair legal redress. This means the percentage for the availability of structures that enable the workers to solve his/her problems, cost affordable structures for solving workers' problems where cases such as bearing personal costs such as arbitration fees arise, and the extent to which the workers have the knowledge of their rights and the procedures to follow when enforcing the same. Arbitration tends to involve technical processes which may not be familiar to employees; especially those in low wage employment. Usually, arbitration clauses are written into contracts and are hard to notice, and the clauses are barely explained; workers are often unaware of the effect of signing arbitration, through which they are locked out of meaningful channels of seeking redress. In arbitration, therefore, it is claimed that this system is cheaper than a court trial; the truth of the matter is that the workers end up paying a lot of money, for example, paying arbitrators or a lawyer. These financial constraints are some of the reasons that make arbitration a preserve of those who can afford it thus deepening inequalities.

Arbitration differs from such a judicial process in that certain procedural rights are not available, for example, right to an appeal trial or the right to know how his/her case was decided. Since arbitration is conducted in private the employers can easily avoid accountability and can control the results of the process. The mixture between Power Imbalance Theory and the Access to Justice Framework enriches the understanding of the effects of mandatory arbitration. They mention the fact that the inequalities at the workplace level are contributing to the dysfunction of justice as defined by using the Access to Justice Framework. Since the

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arbitration process is determined by the employers, they have ensured that the employees' chance to seek justice in unfair workplace practices is highly limited. Furthermore, the paperwork and the costs associated with arbitration deepen the power relations, on top of which many workers, especially vulnerable ones, cannot enforce sufficient legal help. These frameworks are used as the foundation through which the authors discuss how mandatory arbitration clauses systematically harm low-wage and vulnerable workers. The study seeks to argue that: the current structure and practice of arbitration does not provide a fair way to resolve disputes in addition to elevating the ranks of flexibility of other weak groups. Correcting these disparities involves establishing how arbitration works on the basis of theory as well as recognizing the guarantors' realities of arbitration for workers, especially if they are not rich enough to challenge unfair arbitration procedures.

Review of Previous Research

Colvin et al. (2021) also state that what is even worse is the fact that arbitration clauses serve to enshrine the employer's power to quash the claims rather than working towards a fair arbitration process. The researchers discovered that while at work under binding arbitration, the employees have a 19 percent chance of winning against an average of 36 percent they have in court litigation. The average award given was 64 percent less than those given in judicial proceedings. Such a split points to systematic unfairesses in the arbitral processes. In the same vein, Bales and O'Brien (2020) also focus the discussion on procedural justice. Arbitration does not ensure that the discovery rights are similar to that of the court in terms of evidence tends to favour the employer as employees are likely to struggle in proving their cases. Even arbitrators – who are usually selected from employer recommended lists – may have implicit bias that then swings the balance in the employers' favour.

Deitch (2022) shows that it has a worse effect on women, racial minorities, and immigrant employees as they are most affected by the low wages offered in different industries. They may also have language issues, cultural prejudices and extra legal issues in dealing with arbitration while it confronts them with numerous challenges. Arbitration clauses in this and the other cases examined in this paper perpetuate the existing power relations in workplaces and limit employees' rights to fight discrimination. Recent works have also looked at the relationship between mandatory arbitration and anti- gender and racism movements. Fitzgerald and Nguyen (2023) suggested that while female and minority employees work in sectors that have been targeted for wage theft and harassment and while the use of mandatory arbitration clauses is commonplace within these sectors, women and minorities are often less likely to achieve positive results.

In recent years, we have seen the Ending Forced Arbitration for Sex Discrimination Act 2020 and more recently the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2022 both of the United States of America acknowledging the problem. Yet, the critics claim that the mentioned reforms are ineffective without deeper shifts within structures that contribute to arbitration bias (Taylor & Schmidt, 2023).

Critical Analysis

Thus, although the existing literature is rather useful in criticizing mandatory arbitration, some issues are left uncovered. For example, the long-term effects of arbitration specifically to low-wage workers and to non-unionised workers in particular are empirically understudied. However, a literature review on the effectiveness of the function of the other methods of civil

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justice in preventing these problems is also called for. The literature is also silent when it comes to cross national comparisons that could generate information on best practices for fairness in arbitration.

METHODOLOGY

This study relies on a qualitative research methodology to analyze extant data and case laws and arbitration policies. The study includes cases touching on low wage earners and other disadvantaged groups of people including women, minorities and immigrants from legal databases and operational reports. The information used in this report was collected from decisions made on employment arbitration, cases filed against employment arbitration clauses and the legislative materials. Descriptive analysis involved comparing qualitative findings regarding fairness, access or outcomes to similar occurrences previously discovered.

RESULTS

The conclusion of this research shows that the requirements for mandatory arbitration clauses are particularly disadvantageous to low-wage employees and other marginal groups in employment-related issues. Specifically:

1. **Disparate Impact:** Here, low wage workers who may not have legal literacy or financial might than employers with robust legal counselors and resources are again disadvantaged by arbitration processes. This makes them less likely to come out of the process with positive results.

2. **Reduced Transparency:** Arbitration processes also provide the procedure, which means they are not held in public unlike court cases. This practice hinders awareness of systematic problems in employers, reduces the responsibilities of employers and hinders the development of legal requirements that may benefit other employees.

3. **Lower Success Rates and Awards:** The study finds that employees who opt for arbitration lose more cases and get far less settlement amount than those people who go to the court. A study provided information that the success rate in arbitration was 21 % as compared to 47% in litigation and the average amount provided for by the arbitral award was only 46 % of the amount provided for by the court decision.

These findings indicate that arbitration continues structural inequality in labour relations and has negative impacts on already disadvantaged individuals or groups as influenced by socio economic or demographic status.

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DISCUSSION

The outcomes of this research support that compulsory arbitration clauses are prejudicial to low-waged employees and others in the workplace relations. This discussion builds on these results by connecting them to theoretical underpinnings, prior studies and policy implications. Compulsory arbitration only makes these asymmetrical power relations worse and are especially unfair to low-wage workers, women, and people of colour. From Colvin (2019), workers who had to agree to arbitration mechanisms stand lower chances of success than when they go to court, a probability of success standing at between 21 % as compared to 36 % of the jury. Further, compensation in arbitration is normally lower, with median awards of $21,000 which is 16% of the mean awarded in court related forums. The Power Imbalance Theory explains this difference further The Power Imbalance Theory explains this difference further. Many vulnerable workers are not in a position to take legal advice, to know their rights and are often financially unable to confront their employers properly in arbitration forums. While employers also prefer understanding of arbitration procedures the latter often chooses arbitrators considered to be pro-corporation (Alexander & Prasad, 2021). It increasingly affects women and members of the minority, as those individuals often experience both discrimination and economic risk. According to Gilles and Friedman (2020), the use of compulsory arbitration agreements in conjunction with NDAs conceal systemic prejudice and preserve inequalities.

Contrary to trial, arbitration may be confidential, as some decisions are not reported or even reviewed in any manner. This lack of transparency disproportionately impacts vulnerable workers by avoiding setting legal precedents which could be used by other employees, and masking patterns of employer wrongdoing. For instance, Stone and Colvin (2020) on the role of private arbitration as undermining institutional reforms explain how these systems protect employers from reputational losses, therefore discouraging change. Another disadvantage of arbitration is the fact that it is private in nature and hence cannot support the type of consolidation that would allow workers to band together in a common complaint. Consequently, the Access to Justice Framework describes this system as an inequality of justice by law. Mandatory arbitration clauses privatise dispute resolution and prevent cases from being seen by the public and official bodies lest the employers sneak away from the governing bodies that are so instrumental in properly structured justice systems (Gilles & Friedman, 2020).

The economic factors add up to the difficulties faced by low wage earners. These costs make up for filing fees and lawyer fees, and these hurdles deter employees from filing for their claims in the first place. A poll done by the Economic Policy Institute (EPI) in 2021 identified that of the low wage workers trapped by the agreements only 28% actively seek arbitration because of the high fees involved. Also, claimants are prejudiced procedurally by arbitration procedures. Although, arbitration offers fewer discovery materials than court litigation, hence discouraging workers from further proving their allegations. Thus, Colvin (2020) remarks that the lines create a disadvantage to workers who are not conversant with legal procedures.

As such, the findings also show that it is high time policy makers look for ways on how to reduce the negative impact of mandatory arbitration clauses on vulnerable citizens. Several policy recommendations emerge from the analysis: Laws, which are still to be passed include the Forced Arbitration Injustice Repeal (FAIR) Act that aims at banning pre-employment arbitration agreements. This corresponds with research urging for the creation of a framework that is optional where workers have the option to go for arbitration (Stone & Colvin, 2020). Enhancements to procedural fairness may involve increased reporting of arbitration results and

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increased requirements of neutrality from arbitrators. Two, another way to mitigate the economic factors is to increase public access to legal assistance for low-wage employee claims. Another example is Legal Aid at Work Initiative in California as such support helps vulnerable groups to fight for their rights.

Comparison with Previous Research Results

The current research supports previous work that was being conducted while also pointing out the shortcomings of the current discourse. For example Alexander and Prasad (2021) assert the systemic prejudices in mandatory arbitration yet there is a paucity of studies on potential effective and efficient flex ADR strategies on dispute resolution. To this end, the present research advances the literature by arguing for modifications that embrace public supervision as a component of arbitration procedures. Employers get short-term gains while using mandatory arbitration but such acts have long term impacts such as low morale and trust of the employees. According to Estlund (2020). firm employees who deal with a fairer approach to the dispute resolution practices are less likely to quit and express higher levels of satisfaction. Another reason that calls for change is that workers need to have their rights protected from the unfair arbitral systems. Challenging employment structures could be made fair by supporting minorities through legal changes for procedures and policies.

CONCLUSION

Employment contracts with mandatory arbitration clauses thereby constitute a major barrier to preventing injustice especially to low wage earners and other vulnerable employees. Such clauses bar people from seeking justice through the court, but instead must seek private remedy associated with the nature that will always favor the employer. The results of the present research indicate that such clauses worsen the power relations, decrease the levels of openness and decrease the chances for obtaining a positive result for an employee.

These forced arbitration clauses actually disallow employees from filing cases in civil court, in many cases being forced to go through arbitration—a process that has little in the way of legal and procedural protections compared to a court trial. Employees that are at the bottom of the wage distribution, women, minorities, and immigrants are again the worst of it when it comes to arbitration since they cannot afford to retain lawyers, hire expert witnesses or conduct discovery, and most likely do not get justice since the arbitrator and the employer have similar biases. Research evidence indicates that employees get the worst of both worlds as they receive smaller compensation in arbitration as compared to litigation while attaining lower win rates in arbitration as compared to litigation by an employee. Arbitration benefits employers because it eliminates public oversight by masking complaints from the public eye, thus prevalence of discrimination, harassment and wage theft in workplaces remains unchecked.

Therefore, mandatory arbitration provisions are yet another obstacle that low-wage employees and those who are in general, vulnerable groups have to overcome. They continue to support systematic discrimination, erode the workers' protections, and conceal employers. To bring about equity as far as the resolution of employment disputes is concerned, the approach to these clauses has to be re-considered by putting a lot of focus on issues of fairness as well as the issue of contract readability. That is why legislative changes and collective action, when used

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collectively, can significantly contribute to building a fairer system of organizing labour relations and provide every worker with the experience to demand justice in the best format.

RECOMMENDATIONS FOR PRACTICE AND POLICY

Changes to the inequalities of the mandatory arbitration clauses need legislative and policy reforms as matters of urgency. Key recommendations include:

1. **Prohibiting Mandatory Arbitration Clauses:** Proponents of changed policies on mandatory arbitration clauses in employment contracts should put into consideration the following policies for banning contracts' use of mandatory arbitration clauses which deny the access of employment to seek justice in the court.
2. **Ensuring Procedural Fairness in Arbitration:** This means the ability to carry out reforms such as independent arbitrators, and equality in representation and all the processes so that they do not profit from bias.
3. **Enhancing Employee Protections**: Governments and advocacy organizations should ensure they avail information to employees so that they can protect their own selves and or get an affordable lawyer when need be.
4. **Promoting Public Awareness:** Awareness creation can be enhanced meaning more campaigns that make the workers know the consequences of arbitration clauses and ways of seeking change or rejecting unfair pegs.

SUGGESTIONS FOR FUTURE STUDIES

Evidence that could have been analysed in this study so as to further understand the effects of mandatory arbitration clauses abound, limiting the study. The way reliance is made on literature and case data may not give an idea about the worker's problems occurring in different industries and regions. Further research should involve quantitative and qualitative approach for questioning the harried employees directly on their situations. Further, multi-country cross-sectional research on best practices that exist with regard to the divergent arbitration regimes could also prove useful in determining how proper equilibrium in the Employment Dispute Systems could be achieved.

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