CHAPTER IV

COURT OF INQUIRY: NEED AND JUSTIFICATION FOR ITS RETENTION
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A. INTRODUCTION

In the panoramic world of industrial relations, we, often, experience suffocating situations emanating from industrial conflicts. Prudence dictates that labour and management should engage in a co-operative endeavour to achieve the desired goals. Both should bear the responsibility to ensure that the product manufactured reach the consumers on time, in excellent condition and at a very competitive price. Any developing economy, with planned targets, can ill-afford frequent and disastrous situations like indiscriminate strikes or offensive lock-outs. Because, these instruments of economic coercion reflect not harmony but disharmony, not co-operation but confrontation. The increase in the incidence of strikes or lock-outs cannot augur well for any developing country striving to achieve its planned targets and the era of self-sufficiency and prosperity would remain elusive.

The partners in production, therefore, should persevere to preserve industrial harmony which may be threatened because of lack of mutual understanding, trust and co-operation. Absence of these essential elements will not lubricate the wheels of industry. The parties should eschew their self-centred attitudes and adopt the principle of “give and take” in the larger interests of their
industry, community and country. The work-force should be provided with adequate opportunity to ventilate their pent-up grievances and frustrations. At the same time, workers must also consider the capacity and capability of their employers to redress the grievances, in the light of conditions prevailing in their industry. The management, in turn, must also endeavour to redress the genuine grievances of the workers to ensure that the production or productivity would not suffer.

All said and done, differences between the employees and the employed cannot be totally eliminated since the interests of both may not, at all times, be identical. It is, therefore, pertinent to evolve a mechanism that can help the government to understand the causes for internecine conflicts in a particular industry or industries so that it can evolve suitable measures to minimise industrial strife.

The predominant purpose of the Act is no doubt "to provide for the investigation and settlement of industrial disputes". But, aspiring for eternal peace on the industrial front would be an utopian craving. The framers of the Statute must have also envisioned that it would not be enough to set-up machineries to resolve conflicts after they occur and that there should be a machinery which would apprise the government, when necessary, why industrial peace is marred, often, in a particular industry so that it can devise suitable measures to eliminate the causes for strikes or lock-outs and thereby eliminate or minimise the
occurrence of industrial disputes. These factors persuade us to focus on the machinery of the “Court of Inquiry” [herein after “the Court”]. An inquiry into the objectives underlying the establishment of this body, its functions, etc., would, probably, establish that the Act, read as a whole, also seeks to prevent or, at least, minimise the incidence of industrial disputes through the mechanism of the Court.

A Court of Inquiry digs out the facts causing friction, breeding animosity, promoting industrial unrest. When the causes are taken care of by the appropriate government or when the appropriate government through suitable measures eliminates the causes responsible for the industrial disputes then, production and productivity would improve substantially.

The Act, also, confers certain rights upon the working class under Sections 9A, 25C, 25F, 25FF, 25FFF etc. When the statutorily conferred rights are not honoured by the industrial employers, industrial conflicts would be imminent. A Court of Inquiry may bring these facts to the surface which should enable the appropriate government to gear up its enforcement machinery so that the incidence of disputes may at least be minimised.

1. The employer is forbidden from inflicting change in the conditions of employment applicable to his workmen unilaterally without issuing notice as mandated under section 9A of the Act.


5. Ss. 25FFF, 250 – Right to 'Closure' Compensation.
A dispute establishes a cause. The cause may relate to what has been done or not done either by the labour or management. A Court of Inquiry may explicitly indicate the cause in its Report and thereby render the job of any other dispute-settling machinery like the adjudicatory body easier. An incontestable Report of the Court of inquiry would enable the adjudicator to administer an equitable award. It is indisputable that “an action taken in ignorance of full facts may not only fail to correct the given situation, but may even create more problems”.6 A policy maker can initiate effective remedial measures to deal with specific problems only when he is in full possession of the relevant facts and figures, and to collect these, inquiries and investigations become an inevitable tool in the hands of the Government.7 Keeping this in mind, the framers of the Act have provided for the machinery of the Court of Inquiry8- a fact finding body. This body “inquires into any matter appearing to be connected with or relevant to an industrial dispute”9 so that the concerned can, later, arrive at a proper decision. Thus, “the primary purpose of this technique is to collect information with a view to decide upon the further course of action to meet a given situation, or to find correctives to a specific problem”.10 It is pertinent to note that “[t]he administration, in the

7. Ibid.
8. S.6 (1).
9. Ibid.
10. Supra note 6.
context of to-day's complicated socio-economic life, has come to depend more and more on ascertainment of facts".\textsuperscript{11} Today, this assumption has proved to be correct and underlines the need for a machinery, like the Court of Inquiry - a Treasure Bank of Facts.

B. HISTORICAL ACCOUNT

It is said that "[t]he inquiry system is a prominent feature of British [A]dministrative [L]aw [which] makes elaborate provision for preliminary inquiries, on the principle that prevention is better than cure".\textsuperscript{12} Further, investigation and inquiries may ensure that the "administrative power is fairly and reasonably exercised...."\textsuperscript{13} In regard to matters concerning labour and management, "[t]he basic framework of ... non-coercive intervention was established way back in 1896 by enacting The Conciliation Act on the recommendations of the Royal Commission on Labour, 1891".\textsuperscript{14} The seeds regarding the idea of investigation and inquiry to find out reasons for a dispute through constitution of Court of Inquiry, were sown in the 19th Century itself.

Obviously, one of the courses of action that was open to the Board of Trade (later,

\textsuperscript{11} Ibid.
\textsuperscript{13} Id., at 829.
the Ministry of Labour) in a trade dispute under the Act of 1896 was to constitute
of a machinery to inquire into the causes for the trade dispute.\textsuperscript{15}

A specific provision for the constitution of 'Court of Inquiry'\textsuperscript{16} was found
for the first time in \textit{Industrial Courts Act}, 1919, passed by the British Parliament.
The very purpose behind the enactment of this Act was to provide for the
constitution of Industrial Courts and Courts of Inquiry and also to make provisions

\textsuperscript{15} Ibid.
\textsuperscript{16} S.4 Industrial Courts Act, 1919 that empowers the "Secretary of State" to constitute the
Court of Inquiry reads:

(1) Where any trade dispute exists or is apprehended, the Minister may, ... inquire into
the causes and circumstances of the dispute, and, if he thinks fit, refer any matter
appearing to him to be connected with or relevant to the dispute to a court of inquiry
appointed by him for the purpose of such reference, and the court shall, either in
public or in private at their discretion, inquire into the matters referred to them and
report thereon to the Minister.

(2) A court of inquiry for the purposes [of] this Act ... shall consist of a Chairman and
such other persons as the Minister thinks fit to appoint, or may, if the Minister thinks
fit, consist of one person appointed by the Minister.

(3) A court of inquiry may act notwithstanding any vacancy in their number.

(4) The minister may make rules regulating the procedure of any court of inquiry,
including rules as to summoning of witnesses, quorum, and the appointment of
committees and enabling the court to call for such documents as the court may
determine to be relevant to the subject-matter of the inquiry.

(5) A court of inquiry may, if and to such extent as may be authorised by rules made
under this section, by order require any person who appears to the court to have any
knowledge of the subject-matter of the inquiry to furnish, in writing or otherwise,
such particulars in relation thereto as the court may require, and, where necessary, to
attend before the court and give evidence on oath, and the court may administer or
authorise any person to administer an oath for that purpose.
for the settlement of trade disputes. Section 4 of the 1919 Act, thus, empowered the Minister to constitute a Court of Inquiry to inquire into the causes and circumstances that gave rise to the dispute. But, this power to constitute a Court of Inquiry was exercised as a last resort, that too, after a failure, both in conciliation and arbitration, was noticed. Further, neither of the parties to the dispute was having any say in arriving at a decision to constitute Court of Inquiry. On the contrary, it was the Minister alone who enjoyed this prerogative.

The framers of our Act were substantially influenced by the English Industrial Courts Act, 1919 and, as a consequence, provisions to constitute Courts of Inquiry were incorporated in the Indian Industrial Dispute Act, 1947.

Further, it was mentioned in the first Five Year Plan [1951-56] that “...in certain cases ...it may be useful ... to have recourse to an official enquiry for the purpose of avoiding disputes, eliciting information or educating public opinion regarding the merits of a dispute [and, for this purpose], [a] court or a commission of enquiry may be set up....” Unfortunately, subsequent Plans do not emphasise

19. Ibid.
20. Ibid.
21. Ibid.
22. See Planning Commission, the First Five Year Plan 578 (1952).
upon the importance of the Courts of Inquiry and the meaningful role they can play in reducing industrial strife. Precious little, in this regard, can be gathered from the Report of National Commission on Labour. However, in the light of this brief historical account, let us refer to the statutory provisions and the relevant Rules and examine whether these Courts of Inquiry could be regarded as an important aid to achieve the statutory objectives.

C. COURT OF INQUIRY : STATUTORY PROVISIONS VIS-À-VIS JUDICIAL DICTA

Ever since the enactment of the Industrial Disputes Act, 1947, the provisions relating to the Court of Inquiry have retained their pristine originality. The term ‘Court of Inquiry’ has been defined under section 2(f) of the Act which means a “court of inquiry constituted under the Act”. The Appropriate Government, through a Gazette Notification, can constitute these Courts as the occasion arises. The statutory object behind the constitution of a Court of Inquiry – an adhoc body is to inquire into “any matter appearing to be connected with or relevant to an industrial dispute”. Under the Act, the Appropriate Government is empowered to appoint one or more number of “independent” persons as the members of the Court of Inquiry. Where more than one person has been appointed, then, one among them should be appointed as Chairman by

23. Supra note 8.
24. Ibid.
25. S.6 (2). For definition of “independent” see S.2(i). See infra Chapter VIII pp 323-25 for the criticism of the statutory definition of ‘independent’ person.
the Appropriate Government. The Court, with the prescribed quorum, may act despite of the absence of the Chairman or any other member. But, if the Appropriate Government notifies the Court that the services of the Chairman have ceased to be available, then the Act dictates that the Court shall not function unless and until a new Chairman has been appointed by the Appropriate Government.

As stated above, the only qualification prescribed under the Act for a person to be appointed as a member or Chairman of the Court of Inquiry is to be an 'Independent' person. Then the question is, who can be regarded as an independent person for this purpose? Under section 2(i), a person is deemed to be an 'independent person' if he is unconnected with the industrial dispute or with any industry directly affected by such dispute. Further, under the law, if a person is a shareholder of an incorporated company in respect of which a dispute has been referred to the Court or if he is shareholder of a company which is directly affected by such dispute, such person cannot be disqualified from being appointed as a member or Chairman of such Court in case he discloses to the appropriate government the nature and extent of shares held by him. The law, undoubtedly, through this proviso widened the amplitude of the word "independent person" and, in the process, has added ambiguity and incongruity. Because, the question is,

26. Ibid.

27. S.6 (3) read with Rule 14.

28. Ibid.

29. S.2 (i) proviso added to the section through 1952 Amendment Act.
whether mere disclosure of the nature and extent of the shares held by a person likely to be appointed as member or Chairman of a Court would suffice to establish that he is *in fact* an independent person? The answer to this question will be in the negative. It is a well-established principle that pecuniary interest, however small, would disqualify a person from acting as a Judge. The argument that a Court is only a fact-finding body and not an adjudicatory body should be held untenable since what is required from a Court is an impartial, objective Report which shall enable the Appropriate Government to initiate appropriate measures to avoid, or, at least, reduce the incidence of industrial conflicts. Such an impartial, objective and dispassionate Report cannot be expected from a person or persons who is a Chairman or who are members of a Court when their pecuniary interest, even if trivial, is established. The Reports of Court are important documents since they help the Appropriate Government to decide whether a reference is warranted under section 10 of the Act and also in detecting the root cause for the continued industrial unrest in a particular industry. A tainted Report may not extend the required assistance to the Appropriate Government to decide about further course of action, it has to initiate to promote industrial peace. It is, therefore, submitted that through an amendment the proviso "... that no person shall cease to be independent by reason only of the fact that he is a shareholder of an incorporated company which is connected with or likely to be affected by, such industrial dispute, but in such a case, he shall disclose to the Appropriate
Government the nature and extent of the shares held by him in such company....” be deleted.

The Court under the Act, can function only after a reference by the Appropriate Government under section 10(1) (b). The Court of Inquiry is free to follow any procedure but its procedure should not contravene any Rules made in this behalf.\(^{30}\)

The Court is empowered to enter the premises of an industrial establishment for the purpose of inquiry into any existing or apprehended industrial dispute after giving reasonable notice.\(^{31}\) Further, it also has the powers of the Civil Court under the Code of Civil Procedure, 1908 in respect of –

a) enforcing the attendance of any person and examining him on oath;

b) compelling the production of documents and material objects;

c) issuing commissions for the examination of witnesses;

d) in respect of such other matter as may be prescribed.\(^{32}\)

Moreover, the Court is empowered to appoint one or more persons having special knowledge of the matter under consideration as assessor(s) to advise it in the proceedings before it.\(^{33}\) While conducting investigation and inquiry, the Court

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\(^{30}\) S.II (1).

\(^{31}\) S.II (2).

\(^{32}\) S.II (3).

\(^{33}\) S.II (5).
may proceed *ex parte*. Every inquiry or investigation by the Court under the Act shall be deemed to be a judicial proceeding and all members including the Chairman of the Court are deemed to be public servants.

The Court is required to inquire into the matters referred to it and submit a written Report signed by all the members of the Court and the Chairman to the Appropriate Government *ordinarily within a period of six months* from the date of reference. A member can enter his dissent. On receipt of the Report, the Appropriate Government shall within thirty days from the date of receipt publish the same together with any minute of dissent in an official Gazette. The Report so submitted by the Court may be utilised by the Appropriate Government to decide about the question of "expediency" before making a reference under section 10(1) to the Board of Conciliation or to one of the adjudicatory authorities. The Report may also help the Central Government to know whether the said dispute involves a question of national importance or the industrial establishments situated

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34. Rule 22.
35. S.11 (6). *See also* Ss. 193, 228 I.P.C.
36. S.16 (1).
37. S.14.
38. S.16 (1) proviso.
39. S.17 (1).
in more than one state are likely to be interested or affected by such dispute so that it can constitute a National Tribunal and refer the dispute for adjudication.\textsuperscript{40}

The statutory objects behind providing various machineries for resolving industrial conflicts is to restore industrial peace at the earliest. That is to say, time is considered to be the essence, especially, in resolving industrial disputes. But by providing for six long months for the Court to submit its Report, the time factor has not been, probably, taken into account by the law makers. Moreover, if persons with expertise in industrial relations are appointed they would know, who should be approached, and how the required information can be extracted within a limited period of time. It may be noted that the members of the Court, under the Act, can also seek the help of assessors who posses expertise in the matter referred to the Court. Ergo, in the light of the foregoing, it is pertinent to plead for reducing the time limit for submission of report to one month from the date of reference and, in exceptional situations, with the consent of the parties, such period may be extended, say, by not more than fifteen days. It may be noted that the Act imposes a duty upon the Court to keep certain information, obtained in the course of investigation or inquiry, confidential if so requested in writing by the persons providing it.\textsuperscript{41}

\textsuperscript{40} S.10 (1-A).

\textsuperscript{41} S.21.
Under the Act, pendency of proceedings before the Court imposes no fetters upon workers' right to strike nor employers' right to declare a lock-out.\textsuperscript{42} Also such pendency does not debar an employer from taking disciplinary action\textsuperscript{43} if a particular situation so warrants.

As regards the commencement and conclusion of proceedings before the Court, the Act, unfortunately, is silent causing considerable hardship to the concerned in knowing about the date on which the Court has commenced its Inquiry and when the proceedings before it have concluded. Relying upon section 10(1) (b), it can be argued that the date on which the Appropriate Government makes the reference to the Court may be deemed to be the date of commencement of inquiry. This line of argument is, probably, right in the absence of a specific provision that speaks about the exact date of commencement of the inquiry proceedings. Uncertainty, also looms large in deciding whether the date on which the Report is sent by the Court should be deemed to be the date of conclusion of proceedings or whether the date on which the Appropriate Government publishes such a Report should be considered as the date of conclusion. It is submitted that this confusion should be eliminated through an amendment specifying the dates of commencement and conclusion of proceedings before the Court as has been done

\textsuperscript{42} Ss. 22, 23.

\textsuperscript{43} Ss. 33, 33A.
in respect of proceedings before the Boards of Conciliation, arbitrators and adjudicators.

Suppose the Appropriate Government makes a reference of an industrial dispute to both an adjudicatory body and also a Court would the proceedings before Court come to an end when the adjudicatory body renders an award. This was one of the issues presented to the Calcutta High Court in Allen Berry and Co., Ltd., v. A. Das Gupta and others. The facts, in brief, are: An industrial dispute regarding the payment of closure compensation had been referred to the industrial tribunal. Simultaneously, a Court was also constituted by the Appropriate Government to find out the facts that lead to the closure of all the six depots in quick succession. Prior to the submission of the report by the Court the tribunal passed its award. Further, the parties approached the Labour Appellate Tribunal where all the outstanding disputes were settled. Later, the Court ordered the management to produce Account books, Statement of stocks etc. As a consequence, the disputants filed a joint petition before the Court to cancel or recall its order which was turned down on the ground that the award given by the tribunal did not touch the subject matter of the reference before the Court. Aggrieved by this refusal, the parties approached the Calcutta High Court. The Court ruled:

A.I.R. 1952 Cal. 850.
... The reference to a Court is not a subsidiary proceeding which is dependent upon the existence of any proceedings relating to the Industrial dispute before an industrial tribunal. It is an altogether independent proceeding which can be pursued to its conclusion whether the proceeding, if any, before the industrial tribunal in respect of the industrial dispute is pending or not. The only thing necessary for giving jurisdiction or power to the Government to set up a Court of Inquiry, is the existence of an industrial dispute....

Further, the *Allen Berry* Court ruled that “settlement of the dispute between the parties... does not divest the Court of its jurisdiction to make inquiry into the matter referred to it....” The Court also observed that the scope of the enquiry in the case was not merely to investigate into the reasons for closing down of one depot but of all the six depots in quick succession. The Court was of the view that “after the Court [of Inquiry] makes a report, the Government may find something in it that may lead it to take further steps in the matter”. One of the steps may be the withdrawal of the Appropriate Government’s order according permission for the closure of the establishment. As a consequence, the employer may be compelled to restart the business if he has obtained Government’s permission to close down his industry by making fraudulent representations.

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45. *Id.*, at 852 [emphasis mine].
In *M/s Hindustan General Electrical Corp Ltd v. State of Bihar*, the question before the Patna High Court was: Whether the referral power of the Appropriate Government under section 10(1) of the Act is in the alternative or cumulative in character? The Court's response was that the powers of reference given to the Appropriate Government under section 10(1) (a), (b) and (c) of the Act are in the alternative and not cumulative in character. Therefore, according to the Court, the State Government, “cannot at one and the same time refer an industrial dispute for adjudication to a Labour Court under section 10 (1) (c) of the Act and at the same time refer any matter connected with it or relevant to the identical industrial dispute to a Court of Inquiry under section 10 (1) (b) of the Act....”

It is interesting to note that a contrary opinion has been expressed by the Andhra Pradesh High Court in *Ushodaya Publications Pvt Ltd. v. Government of A.P. and others.*

In *Ushodaya*, the validity of the notification issued by the Andhra Pradesh Government constituting a Court to investigate the causes for the labour unrest in the Eenadu Establishment since 1977 and the steps to be taken to restore industrial

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49. A.I.R. 1964 Pat 381.
50. *Id.*, at 382.
51. *Ibid*.
52. 1983 Lab I.C. 580 A.P.
53. *Ibid*.
peace in the said establishment was challenged since the Andhra Government had already made a reference relating to the dispute to an Industrial Tribunal under section 10 (1) (a). Referring to the Calcutta High Court's decision in *Allen Berry and Co. Ltd.*, the Andhra Pradesh High Court ruled that there is nothing "in the language of the Act to warrant the submission that once an industrial dispute is referred to a tribunal, matters connected with the industrial dispute cannot be referred to a Court".

It should be pointed out, at this juncture, that both Patna and Andhra High Courts have relied for their rulings on *Niemla*. Let us find out which one of the rulings is in tune with *Niemla*.

In *Niemla Textiles*, the constitutional validity of section 10 of the Act was challenged on the ground that it is "discriminatory in its ambit" and is violative of Right to Equality guaranteed under Art. 14 of the Constitution. The Constitution Bench of the Supreme Court ruled:

...[T]he different authorities which are constituted under the Act are setup with different ends in view and are invested with powers and duties necessary for the achievement of the purposes for which they are set up. The Appropriate Government is invested with a discretion to choose one or the other of the authorities for the purpose of

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54. *Supra* note 44.
55. *Supra* note 52 at 595.
investigation and settlement of industrial disputes and whether it sets up one authority or the other for the achievement of the desired ends depends upon its appraisement of the situation as it obtains in a particular industry or establishment... [T]here is no scope, therefore, for the argument that the Appropriate Government would be in a position to discriminate between one party and the other [under section 10(1)].

As regards the question as to how the Appropriate Government can go about exercising its powers under section 10 of the Act, the Court declared:

... It is not necessary that all ... the steps which are contemplated in the manner indicated in Section 10 of the Act for reference of disputes to Boards, Courts or Tribunals ... should be taken seriatim one after the other. Whether one or the other of the steps should be taken by the Appropriate Government must depend upon the exigencies of the situation, the imminence of industrial strife resulting in cessation or interruption of industrial production and breach of industrial peace endangering public tranquility and law and order... No hard and fast rule can be laid down as to the setting up of one or the other of the authorities for the purpose of bringing about the desired end which is the settlement of industrial disputes and promotion of industrial peace and it is hardly legitimate to say that such discretion as is vested in the Appropriate Government will be exercised 'with an evil eye and an unequal hand'.

57. *Id.*, at 334, 335.
58. *Id.*, at 335, 336.
In the light of the foregoing, it is submitted that the decision of the Hon'ble Patna High Court is not tenable in view of the fact that the issue presented to the Supreme Court in Niemla Textiles\textsuperscript{59} was totally different from the one presented to the Patna High Court in M/s. Hindustan General Electrical Corp. Ltd.\textsuperscript{60} As already pointed out, in Niemla, the Supreme Court was called upon to decide about the Constitutionality of Section 10. But, the issue, whether the discretionary referral powers reposed in the Appropriate Government under various sub-clauses of Section 10 (1) of the Act are in the alternative or cumulative in character, was not at all presented to the Apex Court. Therefore, the decision of the Patna High Court, it is submitted, is not in tune with the ratio of Niemla. It is pertinent, here, to note that both the decisions of Calcutta High Court\textsuperscript{61} and Andhra Pradesh High Court\textsuperscript{62} are in tune with the spirit and purposes of the relevant provisions of the Act. Further, it should be pointed out that the Andhra Pradesh High Court, while deciding the issue raised before it, referred to the Supreme Court's decision in Niemla Textiles\textsuperscript{63} to highlight the main purpose behind a reference to a Court of Inquiry and not to seek support for its finding about the nature [cumulative or alternative] of the Appropriate Government's referral power under section 10 (1)

\textsuperscript{59} Supra note 56.
\textsuperscript{60} Supra note 49.
\textsuperscript{61} Supra note 44.
\textsuperscript{62} Supra note 52.
\textsuperscript{63} Supra note 56.
of the Act. To reiterate, whether the Appropriate Governments power to make a reference is “in the alternative” or cumulative was not at all an issue before the Supreme Court, in Niemla.

D. COURT OF INQUIRY: NOT A SUPERFLUOUS MACHINERY

Prudence demands that the defects found in any law should be eliminated through amendments and laws which have served no useful purpose be scrapped. Hence, it is not easy to understand as to why in the Amendments proposed in 1988 the Parliament thought it fit to dispense with the machinery of Court of Inquiry. Legislative endeavours should be directed towards the suppression of “mischief” and the advancement of the “remedy” in the situations envisaged by the legislature.

Some of the machineries under the Act can function effectively when the material facts relating to industrial unrest or conflicts are available, accessible and appraisable. It is in this context, the purpose a Court of Inquiry can serve and the value of its Report should be evaluated. The decision-making process of the Appropriate Government under section 10 is rendered easier and the ultimate decision of the Appropriate Government may be almost unimpeachable if the same is, *inter alia*, based on relevant material facts which a Court can provide in its Report. As the Calcutta High Court has observed:

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64. *Supra* note 52 at 993-95.
65. *Supra* note 56.
Section 10 (1) of the Act makes it quite clear that if an industrial dispute exists or is apprehended then the government can without referring the dispute to an Industrial Tribunal refer any matter connected with or relevant to the dispute to a Court for investigation and for coming to a finding thereon....

Therefore, "[i]t is manifest that the object of making a reference under section 10 (1) (b) .... [to a Court of Inquiry] is to enable the Appropriate Government to obtain materials for finally determining whether the industrial dispute should be referred for adjudication".68

Incidentally, it has to be noted that the Court an impartial fact finding body, by utilizing its expertise, can apprise the Appropriate Government of the whole gamut of facts that have given rise to continuous confrontation or perennial strife in an industry. Such valuable material would guide and prompt the Government to take appropriate corrective or curative measures. The Court thus, aids the Appropriate Government finally to decide whether the industrial dispute should be referred for adjudication. Further, it also enables the Government to make necessary amendments to suppress the "mischief" pointed out by the Court in its Report and to make the extant law more effective and purposeful.

The foregoing discussion establishes that the Court an ad hoc body, is indispensable in the realm of the Industrial Disputes Act, 1947. Its Report can

67. Supra note 44 at 852.
68. Supra note 49 at 383. [Emphasis mine].
pre-empt future disputes and pave the way for effective resolution of imminent or extant disputes. This factor strongly favours its retention. Therefore, it is difficult to understand why in the 1988 Amendments there was a move to dispense with this vital machinery. It has to be noted that this machinery “still [has] the function [though] not of making legally binding pronouncements, but ... of informing [the authority that constitutes it] and the public of the facts and underlying cause of dispute”.69 Thus, as McCarthy and Clifford have observed the Court of Inquiry can be a form of “public conciliation”.70

Situations, such as, the long standing labour unrest in Eenadu Establishments71 and the industrial strife that had dogged the Allen Berry and Co., Ltd 72 as a consequence of the closure of all the six depots in quick succession, should be primordial considerations to devitalise the argument that the machinery of Court is superfluous. When there is a need for inquiry into the facts and circumstances giving rise to an industrial dispute or series of industrial disputes, the paramount need for the constitution of Court for the excavation of the much needed material facts in the light of which the Appropriate Government may take further curative or remedial measures would become obvious. When an industrial dispute is referred to one of the adjudicatory authorities, the parties to the dispute

70. Ibid.
71. Supra note 52.
72. Supra note 44.
may bring to light the facts leading to the dispute. But, by adopting tactical means, the parties may also manipulate the facts in such a way to tilt the balance in their favour. In the process, they may also indulge in suppression of material facts that go against their interests. To prevent such deliberate concealment of material facts and manipulation, it would be prudent to rely on the Report of an impartial body. This body, undoubtedly, is the Court of Inquiry- A Treasure Bank of facts.