CHAPTER VII

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A. INTRODUCTION

It may be safely asserted that one of the fundamental prerequisites for economic advancement in any State, whatever be its ideological preferences or commitments, is industrial harmony; that is, 'peace' on the industrial front and absence of 'strife'. Any industry in any region where industrial strife is absent would be the cynosure of the community. Alas, taking into account the competing interests of the industrial employers and their workforce, any pragmatic person would conclude that industrial disputes cannot be wished away. Therefore, any Government in power must ensure to preempt industrial disputes and endeavour to evolve appropriate mechanisms to resolve them whenever they occur or, are apprehended. This fundamental obligation of the Government assumes greater significance in the era of Liberalisation, Privatisation and Globalisation “characterised by de-licensing, de-regulation and de-control in order to make [our economy] competitive ... and to integrate the [same] with global economy...”¹

In such an environment, should the partners in production demonstrate their might, resort to strikes and lockouts or realize and appreciate that in order to survive, flourish and serve the community, they should evolve mechanisms to resolve their disputes as expeditiously as possible?

The disputants would be aware of the causes for the industrial dispute that has surfaced. They alone can ensure the resolution of their dispute expeditiously. Of course, they can opt for Collective Bargaining to thrash out their differences. If the Collective Bargaining Process fails, they can seek the assistance of Conciliation Service. However, the drawbacks that are inherent in the Conciliation Machinery contemplated under the Act, namely, the non-availability of Conciliation Officers possessing the requisite attributes, lack of faith on the part of the parties in the system of Conciliation under the Act and the feeling that “Conciliation is a hurdle to be crossed to have the dispute referred to adjudication” and the inter-union rivalries, may prompt us to consider whether the system of Voluntary Arbitration would provide a more efficacious machinery for the resolution of the industrial disputes.

“Voluntary Arbitration”, as a method for settling industrial disputes, is preferable since it is founded upon the principle of “Voluntarism” and
provides an opportunity to the parties to choose their own trusted person or a group to resolve their dispute and provide, probably, a longer lease of life for industrial peace. Some may express that the very fact that the parties have preferred 'Voluntary Arbitration' establishes that the Collective Bargaining Process has failed. However, the fact that the parties, instead of imploring the Appropriate Government for reference of their dispute to adjudication, have opted for 'Voluntary Arbitration', should itself establish that mutual trust and confidence among the parties still persist and are getting a boost through their preference for 'Voluntary Arbitration'.

'Voluntary Arbitration', it is averred, must not only concentrate on deciding a specific dispute but also, more importantly, upon the development and maintenance of friendly, co-operative labour-management relations. Parties through this process seek to "arrive at an apparently mutually satisfactory pre-arranged decision handed down by a third person". Such third person i.e., the arbitrator, while arriving at a decision, relies heavily on the facts presented to him by the parties. Without harping too much upon the legal technicalities, the Arbitrator, in the light of his experience and expertise in the concerned field, would prefer to decide the

issue logically and, at the same time, pragmatically. Arbitrator’s honesty, integrity, impartiality and expertise over the matter before him can easily win the confidence of the disputants. This would ultimately contribute to the success of the Arbitration Process.

The role of an arbitrator in the arena of industrial disputes is complicated because he can neither act like a judge of a court of law vested with the sovereign’s inherent judicial power nor is he guided by a stream of precedents carefully coded or indexed for ready reference. Further, unlike legislators, the arbitrators are not “empowered singly or in groups to translate the attitudes of a constituency into general rules of conduct”. Nor, they are “investigators armed with subpoena powers and possessed of great amounts of time to search out obscure facts and resolve deep contradictions”. They, more often than not, are private citizens called upon by the parties to terminate a particular dispute on the basis of evidence and agreements and in the light of the existing laws, customs and contracts. But, ironically, at present, the labour arbitrator is “functioning at

4. Ibid.
5. Ibid.
a frontier of industrial society beyond the area of settled rules for behaviour
and his guide posts for decision are few and uncertain.6

With this background, let us turn to the Voluntary Arbitration
Machinery under the Act to determine whether it has been successful in
promoting the statutory objects. In the meanwhile, it would be helpful to
know what the term ‘Arbitration’ signifies.

B. I. ARBITRATION: MEANING OF

According to *Encyclopedia Britannica*:

Arbitration is a process for the settlement of disputes on the
consent of the parties in conflict. By their agreement, the
controversy is referred to a third party for a final decision or
award. It is to be contrasted with conciliation or mediation in
which the role of the third party is to persuade the parties to
the dispute to [arrive at a] settlement, rather than to impose
upon them a binding decision.7

‘Arbitration’, as per the Oxford Dictionary, involves “a settlement of
disputes by an arbitrator and an arbitrator is a person appointed by both
parties to settle the dispute”. In the words of Nolan, “arbitration is a
procedure in which parties to a dispute voluntarily agree to be bound by the

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6. Ibid.
decision of an impartial person outside of the normal judicial process".8

Following is the meaning ascribed to the word ‘Voluntary Arbitration, in
the Bouvier’s Law Dictionary.

The system of voluntary arbitration works out by mutual and
free consent of the parties. It usually takes place in pursuance
of an agreement (commonly in writing) between the parties,
termed as ‘submission’; the person to whom the reference is
made is an arbitrator and the determination of the arbitrator is
called an award... Arbitrators are judges chosen by the parties
to decide matters submitted to them, finally and without appeal
and ... [their decisions] must be taken as they are with their
weaknesses and frailties, and their action if honest and fair, is
binding.9

Further, “the function of the arbitration”, Francis Kellor says “is to destroy
the disputes”.10

‘Voluntary Arbitration’ is a method adopted for resolving industrial
disputes with a view to maintain peace and order over a longer period in an
industry. To set this machinery into motion, the disputants should express
their “free consent” through a written agreement demonstrating their desire

10. Raman Rao, Mediation, Conciliation and Arbitration, U.S.A. And India: A
Comparative Study 49 (1963).
for Voluntary Arbitration. Such an agreement ought to contain the name/s of a person or persons chosen to arbitrate upon the industrial dispute. Arbitrators need not be learned in law but may be lay men. But, they should be persons recognized and honoured for their attributes, like, impartiality, honesty, integrity, expertise and experience over the matter referred to them.

II. TYPES OF ARBITRATION

At this point, we may refer, though briefly, to the different forms of labour Arbitration. They are:

i. "Conventional" or "Voluntary Arbitration";

ii. "Compulsory Arbitration" and

iii. "Final Offer Arbitration" or "Last Offer Arbitration" or "Pendulum Arbitration [either compulsory or voluntary]".

i. Conventional or Voluntary Arbitration

Under this method, it is for the disputants to decide whether they should opt for Arbitration. That is, neither the Law, nor the Government compels them to have recourse to Arbitration. But, law can dictate or prescribe the time limit within which the parties should choose Arbitration for the resolution of their dispute. Thus, for example, under the Act, once the Appropriate Government decides to refer the industrial dispute to an
adjudicatory authority, the parties' right to opt for Voluntary Arbitration vanishes. Some of the major countries where this method is prevalent are; the U.S.A., Canada and England. In U.S.A., and Canada, the Conventional or Voluntary model is that of Grievance Arbitration which operates in private sectors to resolve contested dismissals and Rights' Disputes involving application or interpretation of collective agreements.\(^{11}\)

ii. Compulsory Arbitration

Here, law would require the disputants to go in for Arbitration or the Government would insist for the incorporation of a clause in the contract of employment which would oblige the parties to have recourse to Arbitration. Compulsory Arbitration, in many aspects, resembles Compulsory Adjudication. The Government, in its discretion, can make this method applicable to certain industries only. Normally, in industries covered by the Arbitration clause, workers are legally prohibited from resorting to strike. At the same time, the Government would also be reluctant to refer the dispute to adjudication.

iii. Final Offer Arbitration or Last Offer Arbitration or Pendulum Arbitration requires the arbitrator to choose between the employer's final offer and the union's final claim. It prohibits a compromise between these two positions or indeed any solution other than the final offer or claim. The Pendulum Arbitration theory, it is said, is based on two implicit assumptions: the reference to Arbitration is compulsory and it is "a specific alternative to the right to strike".

'Pendulum Arbitration', it is averred, provides an "impasse deterrent": the possibility of a total defeat in arbitration creates an effective incentive for the parties to engage in genuine bargaining leading to an agreement. Deterrence is also thought to be necessary in order to avoid some major disadvantages that Arbitration system might otherwise involve. These are the "chilling" and the "narcotic" effects. The former is manifested when the parties become reluctant to bargain realistically because they believe that the Arbitration Award will be based on a compromise between their final position and the latter signifies that the

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14. Ibid.
14A. Ibid.
disputants have become dependent on Arbitration and are no longer willing or able to negotiate their own agreements.\textsuperscript{14B} However, if the deterrent fails to work and neither side moderates its position, there is the lurking danger that awards under Pendulum Arbitration may be one sided, unworkable and damaging to long term industrial relations.\textsuperscript{15}

\section*{III SUBJECT MATTER OF ARBITRATION}

At the outset, it should be noted that all industrial disputes do not possess the same characteristics. This raises the question: Are there different kinds of industrial disputes? Further, since we are dealing with the machinery of Voluntary Arbitration for the resolution of industrial disputes, an other incidental but important question would be: what kinds of disputes are referable to Voluntary Arbitration under our \textit{Industrial Disputes Act}? In this context, let us find out how industrial disputes have been classified and whether under our Act “Arbitration” includes Grievance Arbitration also.

Industrial Disputes have been broadly classified under four heads. They are: “Economic Disputes”; “Grievance Disputes”; “Recognition Disputes” and “Disputes over Unfair Labour Practices”.

\textsuperscript{14B}. \textit{Ibid.}
“Economic Disputes” are also referred to as “Collective Labour Disputes” or “Conflicts of Interests”. These disputes seek to establish new terms and conditions of employment or rewrite the existing terms and conditions. The subject matter in these disputes may relate to demands for wage increases, “fringe benefits”, better working conditions, job security, etc. If the disputants do not adopt the “policy of Give and Take” in the Collective Bargaining Process, a dead-lock would be imminent. Disputants may have recourse to the Conciliation Machinery to pave the way for the settlement of the extant dispute. It is said that the issues in Interest Disputes “are greatly ‘compromisable’ and therefore, lend themselves best to conciliation”. It should, however, be noted that although the terms and conditions prevailing in comparable industrial units may provide guidelines in the negotiation process, the disputants “cannot refer to any definite, mutually binding standards”.

“Conflict of Rights” arise during the implementation of the Collective Bargaining Agreement, that is, at the “Contract Administration Stage”.

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16A. Ibid.
These disputes are also known as "Grievance Disputes" or "Legal Disputes". The grievance may be that of an individual worker or a group of workers who are similarly situated and aggrieved and may relate to an act or acts of the employer, for example, suspension, retrenchment, discharge, dismissal of a worker which the worker or his trade union regards as Unfair Labour Practice on the part of the employer.

Grievance Disputes may also arise over the conflicting interpretations accorded to certain clauses in the Collective Bargaining Agreements by the parties. These disputes, therefore, are also branded as "Interpretational Disputes".

It has to be noted that workers' grievances stem from "an alleged violation of an existing right or an alleged unfair treatment by the employer, as judged by certain rules". In order to determine whether an existing right has been infringed or the 'treatment' meted out by the employer is 'unfair', the provisions in the Collective Bargaining Agreement, the established customs, practices and 'usage' in the industrial unit concerned, may provide the norms or standards. Therefore, in the area of Grievance or Right Disputes, unlike in respect of "Interest Disputes",

\[17\] Id., at 15.
"there is some more or less a definite standard for settling [the dispute]."\textsuperscript{17A}

Trade Unions, today symbolise workers’ right to organize and to put-forth their demands collectively. When freedom to organize is interfered with, the workers may raise a dispute alleging violation of their organizational rights and accuse the employer of "Unfair Labour Practices". Further, when a representative union is denied Recognition for the purposes of Collective Bargaining, the union aggrieved may raise a Recognition Dispute. It may be argued that denial of Recognition to a majority union smacks of Unfair Labour Practice on the part of an employer who is hostile to workers’ organization. Thus, "Organizational Disputes", "Unfair Labour Practices Disputes" and "Recognition Disputes" do seem to overlap.

It is difficult to state categorically the stage at which the system of Arbitration can be pressed into service. Thus, in U.S.A., Arbitration is invoked at the contract implementation stage, that is, when the parties to the collective bargaining agreement raise disputes asserting rights or compelling the performance of obligations arising out of the provisions in the collective bargaining agreement. Arbitration in those circumstances may be regarded as Grievance Arbitration because the subject matter

\textsuperscript{17A} Ibid.
revolves around “Grievance” or “Interpretation” of the collective bargaining agreements.

However, in the Indian context, the parameters within which the machinery of labour Arbitration works is very wide when compared to U.S.A. Because, in India, there is no categorization of industrial disputes and an arbitrator’s assistance may be sought both at the stage of Contract Negotiation and Contract Implementation.

C. VOLUNTARY ARBITRATION UNDER THE ACT: SOME HISTORICAL PERSPECTIVES

The Industrial Disputes Act, as enacted in 1947, had not incorporated provisions relating to Voluntary Arbitration. Consequently, the Government’s main endeavours for maintaining and restoring industrial peace were through references of ‘existing or apprehended’ industrial disputes to the adjudicatory authorities contemplated under the Act. Consequent upon the establishment of the Planning Commission and the launching of the First Five Year Plan, there was a rethink over the mechanism/s to be preferred for the resolution of industrial disputes.

During the First Five Year Plan, the Government approached the labour policy from two angles, namely, the welfare of the working class and
the country’s economic stability and progress.\(^\text{18}\) The Plan, *inter alia*, stated that “differences should be resolved by impartial investigation and arbitration”.\(^\text{19}\) But, despite the professed governmental policy and anxiety to encourage collective bargaining and Voluntary Arbitration, no legal sanctity was given to Voluntary Arbitration until 1956.

Severe criticisms\(^\text{20}\) against the machineries of conciliation and adjudication led to the introduction of section 10A relating to Voluntary Arbitration through the *Industrial Disputes Miscellaneous Provisions (Amendment) Act*, 1956. This Amendment sought, though to some extent, to accord legal sanctity to the system of Voluntary Arbitration. However, the ‘Award’ of the Arbitrator still stood on a lower pedestal than the ‘settlement’ arrived at in the course of conciliation proceedings and the Award of an adjudicator, like the Industrial Tribunal, in so far as their binding nature was concerned.


\(^{19}\) Ibid.

\(^{20}\) A somewhat similar scheme of settlement operating in Australia was severely criticized as early as 1929 by a British Economic Commission in that it intended to consolidate the contesting parties into two opposing camps See, Rustomji R.F., *Law of Industrial Disputes In India* 484-85 (2\(^{\text{nd}}\) ed. 1964). The I.L.O. gave renewed emphasis to such criticism. In 1951, it recommended Voluntary Arbitration as a better method of settlement See, Sharma G.S., “Labour Law And Labour Relations” 179 (I.L.I., 1968).
Whatever the Government had stated in its First Five Year Plan Manifesto in regard to its labour policy was reiterated when it embarked upon the Second Five Year Plan. Since the Constitutional Objective has been the establishment of a socialistic pattern of society, suitable modifications in our labour policy had to be necessarily effected. Consequently, there was a shift in emphasis in the Plan from statutory to non-statutory code of discipline and greater emphasis was placed on 'Voluntary Arbitration' for the resolution of industrial disputes in the event of a deadlock in the collective bargaining process. The Code of Discipline,\textsuperscript{21} 1958, therefore, reflected the faith of the employers and workmen in the system of Voluntary Arbitration and enjoined them to resort to it in case the collective bargaining and conciliation processes failed. The 1964 Amendment\textsuperscript{22} sought to place the arbitrator’s award at par with the award of an adjudicator and also the settlement arrived at in the course of conciliation proceedings.\textsuperscript{23}

\begin{itemize}
\item \textsuperscript{21} The Code enjoins on parties to refrain from taking unilateral action in connection with any industrial matter, to utilize the existing machinery for settlement of disputes with the utmost expedition, and to abjure strikes and lock-outs without notice and without exploring all avenues of settlement. It also discourages recourse to litigation and recommends that disputes not mutually settled should be resolved through voluntary arbitration, see \textit{Report of National Commission on Labour 346} (1969). For details regarding the Code of Discipline in Industry, see Appendix IV, \textit{id.}
\item \textsuperscript{22} S.10A (3A).
\item \textsuperscript{23} S.18 (3).
\end{itemize}
The Third Five Year Plan sought to ensure that the Voluntary Arbitration as a mode of settlement of industrial disputes was taken to greater heights. The Plan laid stress on "more intensive efforts at securing agreement for reference of dispute to voluntary arbitration" by emphasizing that it should ultimately replace adjudication. It was stated that "ways [would] be found for increasing the application of the principles of voluntary arbitration". Further, it was asserted that "employers should show much greater readiness to submit disputes to arbitration than they have done hitherto [and] this has to be the normal practice in preference to recourse to adjudication [being] an important obligation accepted by the parties under the Code". A survey of labour policy during the Third Plan reveals that the Plan laid greater emphasis on Voluntary Arbitration as a mode for settling industrial disputes.

The reiteration of the Government's labour policy enunciated in the Third Plan is easily discernible in the Fourth Five Year Plan. Emphasising the significance of Voluntary Arbitration in the settlement of industrial disputes, the draft outline of the Plan stated:

24. See, the proposal on Labour Policy suggested for inclusion in the Third Five Year Plan as approved by the Standing Committee at its 18th Session.
25. See, Planning Commission, Third Five Year Plan 254.
26. Ibid.
While the provisions of ... [the Act relating to adjudication] ... are available as a last resort, it is recognized that greater emphasis should be placed on collective bargaining and on strengthening the trade union movement for securing better labour management relations, supported by recourse in the large measure to voluntary arbitration. The Code of Discipline... stressed the need to avoid unilateral actions by employers as well as workers [and exhorted the parties] to settle disputes and grievances through mutual negotiations, conciliation and voluntary arbitration....

Further, the settling up of the National Arbitration Promotion Board [herein after “NAPB”], on the recommendation of the National Commission on Labour, in 1969, is a vital development in the field of labour policy and administration in general and Voluntary Arbitration in particular. Encouragement for mutual settlement through Collective Bargaining and Voluntary Arbitration has been emphasised in the Report by the Commission. The Indian Labour Conference, in 1962, reiterated the need for a wider acceptance of this method. Further, the Industrial Truce Resolution, in the same year, while re-emphasising the importance of Voluntary Arbitration, also specified certain items as amenable to the arbitration process, namely, complaints pertaining to dismissal, discharge,

27. See, The Fourth Five Year Plan Draft Outline.
victimization and retrenchment of industrial workmen when the same could not be settled mutually.

In spite of all these efforts, Voluntary Arbitration has not taken deep roots in the industrial arena. Factors responsible, as cited by the Commission, are:

a. easy availability of adjudication in case of failure of negotiations;

b. dearth of suitable arbitrators who could command the confidence of both the parties;

c. absence of recognized unions which could bind the workers to common agreements;

d. legal obstacles;

e. the fact that in law no appeal was competent against an arbitrator’s award;

f. absence of a simplified procedure to be followed in voluntary arbitration; and

g. cost to the parties, particularly, workmen.28

The National Arbitration Promotion Board, a tripartite body, has been assigned the task of reviewing the system of Voluntary Arbitration, examine factors that have come in the way of its wider acceptance and suggest measures to make the system more popular. It has to draw up a Panel of arbitrators and evolve and lay down the norms and procedures for the guidance of the arbitrators and parties to the arbitration agreement. It has to examine the causes for delay in the pronouncement of the arbitration awards and endeavour to eliminate the same. Further, it has to, in the light of tripartite agreements, periodically revise and prepare the list of disputes amendable to resolution by arbitrators.29

The National Commission on Labour has observed that the development of collective bargaining, the general acceptance of the principle of Recognition of representative unions and a change in the management’s attitude may pave the way for wider acceptance of Voluntary Arbitration. The NAPB may have a better chance of success in the task of promoting the idea. It should pay special attention for preparing and building up suitable and acceptable panels of arbitrators for different sectors like jute, textile, transport, insurance, banking industries, etc., and publicise the same among the interested parties and groups.

29. Ibid.
During the Fifth Plan period, no major or significant change in the Government's Labour Policy is noticeable. However, an account of governmental efforts, in the development, progress, working and administration of the NAPB is discernible. Thus, most of the State Governments and the Union Territory administrations have set up Arbitration Promotion Boards and the States of Assam, Orissa and Himachal Pradesh have made some other institutional arrangements such as State level implementation and evaluation Committees and Labour Advisory Committees to popularize the system of Voluntary Arbitration.30

Till 1977-78, the Ministry of Labour was maintaining a panel of arbitrators consisting of 422 names as recommended by the State Governments, employing Ministries, Central Labour Commissioners' Organisation, Employers and Workers' Organisations, etc. This panel provided detailed information relating to the qualifications and work experiences of the panelled arbitrators.31

It should be pointed out that in the Sixth and Seventh Five Year Plan Reports and, also, in the Draft Outline pertaining to the Eight Five Year Plan, the Government has not expressed its views over the merits or

otherwise of the system of Voluntary Arbitration. The silence on the part of the Government in the Reports, referred to, in respect of Voluntary Arbitration cannot be, it is submitted, interpreted as signifying that the Government has, after second thoughts, pushed Voluntary Arbitration into an obscure place. On the other hand, it would be sensible to infer that the Government, having repeatedly asserted about the merits and advantages of the system of Voluntary Arbitration, has not found it necessary to repeat its views which are, by now, so well-known.

The observations of the Government in its Draft (Ninth Five Year Plan, 1997-2002) warrant attention and critical examination. It has been stated that the Government has, increasingly, donned the role of arbitrator after Independence and that it could be effective only in organized sectors. It has been further averred that Government’s role as an arbitrator in respect of industrial disputes arising in the public sector industries should be drastically reduced.

As already pointed out, the Act provides for Voluntary Arbitration and the disputants may choose the presiding officer of an adjudicatory body set up under the Act as an Arbitrator. These adjudicatory bodies are

32. Supra note 1 at 408.
33. Ibid.
independent quasi judicial bodies which would acquire jurisdiction to adjudicate, normally, on a written reference of an industrial dispute by the Appropriate Government. The referral power the Appropriate Government enjoys does not confer upon it any jurisdiction to play the role of an arbitrator. So, the statement that after Independence the Government has increasingly played the role of an arbitrator should only mean the exercise of its power under the Act to refer industrial disputes to compulsory arbitration which, in the context, should mean compulsory adjudication. This conclusion is buttressed by the exhortation in the Draft to the effect that “[b]oth the employers and employees can select a mutually acceptable arbitrator, independent of the Government, on a case to case basis”. So, the Government's desire and preference for Voluntary Arbitration as an expedient machinery for resolving industrial disputes is easily discernible.

Further, the disinvestment policy being advocated and pursued by the Government pursuant to its resolve to implement the New Economic Policy heralding Liberalisation, Privatisation, Globalisation has paved the way for the establishment and growth of manufacturing and service units in the

34. S.10 (1).
35. Supra note 32.
Private Sectors which would not have work-forces of the size or the strength of organized labour forces noticed in public sector industries like Banking, Insurance, Communication, Transport etc. This, probably, explains the Governmental exhortation to the partners in production to adopt and encourage Voluntary Arbitration for resolving disputes that may erupt in the industrial units.

D. VOLUNTARY ARBITRATION: STATUTORY PROVISIONS VIS-À-VIS JUDICIAL DICTA

In 1956, for the first time, the provisions relating to 'Voluntary Arbitration' were incorporated under the Act through an Amendment. Section 10A (1) provides that the employer and the concerned workmen, may, at any time, by a written agreement, refer their dispute, existing or apprehended, to an arbitrator. It should be noted that mere consent of the parties to refer a non-industrial dispute to Voluntary Arbitration under section 10A (1) cannot validate the reference. So, existence or apprehension of an industrial dispute is a *sine qua non* to set the machinery of Voluntary

36. S.10A (1). Further, suppose the parties in the course of conciliation arrive at an agreement to refer their dispute to Voluntary Arbitration. Such an Agreement, the Orissa High Court has declared, does not amount to a settlement. It can only be an agreement to refer the dispute to arbitration. It is so, because, the Court has observed, the dispute subsisted even after the parties agreed to refer the same to Arbitration. *See Rasbehary Mohanty v. Presiding Officer*, (1974) 11 L.L.J. 222, 226 (Ori.).
Arbitration into motion. The term "at any time" in section 10A (1) does not mean that reference to 'Voluntary Arbitration' can be subsequent to a reference made by the Appropriate Government to an adjudicatory body under section 10 (1) of the Act. So, the implication is, if the parties desire to have recourse to Arbitration, they should act prior to the exercise of the referral power by the Appropriate Government under section 10.

The Legislature by imposing restriction upon the time within which the parties can exercise their right to refer the dispute to Voluntary Arbitration under the Act, it is argued, has placed this machinery on a lower footing, because, under the Act, if the parties intend to opt for Voluntary Arbitration, they should act before the Appropriate Government refers the same to one of the adjudicatory authorities provided under section 10 (1). But, section 100 (3) of the Industrial Relations Bill, 1978, which has lapsed, had sought to place Voluntary Arbitration at par with compulsory Adjudication. The Bill had provided that despite a reference made by the Appropriate Government under section 10 (1), the disputants could still invoke section 10A and get their dispute arbitrated upon. Incidentally,

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37. S.10 (1), (1-A), (6).
39. Ibid.
under section 143 of The Indian Labour Code, 1994, the time-bound restriction, referred to above, has been done away with. Here, the question would be: can there be parallel proceedings both before the Tribunal and 10A Arbitrator on the same issue and at the same time? That is, suppose a DA dispute is raised by a Trade Union and is referred to a Tribunal by the Appropriate Government. In the meantime, the disputants on their own volition refer the same dispute to 10A Arbitrator also. In such a situation, whether 10A Arbitrator’s Award should be allowed to prevail over the Adjudicator’s Award or vice versa? The principle of 'voluntarism' underlying the Arbitration Process compels the discerning to conclude that 10A Arbitrator’s Award should necessarily have precedence over the Adjudicator’s Award. Thus, if the phrase “at any time”, in section 10A is to be deleted then the law should expressly provide that the Arbitrator’s Award shall have precedence wherever Adjudicator’s Award is at variance or not in conformity with the award of the Arbitrator.

However, in the light of the existing law on the point, referred to above, it would be more appropriate to argue that even in the absence of the

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40. S.143 (1) “where any dispute exists or is apprehended and the employer and the employees agree to refer the dispute to arbitration they may, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons as an arbitrator or arbitrators as may be specified in the arbitration agreement...,” The Indian Labour Code, 1994 (Draft). pp 100, 101.
provisions mentioned above, top priority has been given under the Act not
for adjudication but for Arbitration as the parties are at liberty to choose
Arbitration first and if they act promptly i.e., before the Appropriate
Government exercises its discretionary power under section 10 (1), there
would not arise any necessity for the Appropriate Government to act under
section 10. Moreover, the Appropriate Government would be reluctant to
act in the absence of a real threat to industrial peace which affects the
community at large. This argument is further substantiated when we refer
to the provision41 of the 1988 Amendment Bill which also lapsed due to the
fall of the Government. The provision, being referred to, forbid the
disputants from resorting to strike or lockout even when one of the parties
was willing to opt for Voluntary Arbitration while the other one was not so
inclined.

The disputants may opt for the services of the Presiding Officer of
one of the adjudicatory bodies under the Act to act as an Arbitrator. If the
parties fail to agree over the choice of the arbitrator/s, they may authorise
the National Arbitration Promotion Board to nominate one or more
arbitrators. As per the recommendations of the National Commission on

41. See, e.g., S.23-“General Prohibition of Strikes and Lockouts” in The Trade
Unions And The Industrial Disputes (Amendment) Bill, 1988.
Labour, this task should be entrusted to the Industrial Relations Commission to be established through a suitable enactment.⁴²

If the parties have chosen an even number of arbitrators, the Act mandates that they shall provide for the appointment of an umpire, whose decision, when arbitrators are equally divided in their opinion, shall prevail.⁴³ Prior to the insertion of sub-section (1-A) under section 10A, there was no provision to resolve the matter if the arbitrators were equally divided in their opinion. The only alternative was to refer the issue to one of the adjudicatory authorities under the Act.

It is incumbent upon the parties to obtain the consent of the arbitrators in writing and forward the same to the concerned authorities mentioned in the Act.⁴⁴

The Arbitration Agreement should not only be in writing but also it should be in ‘Form-C’.⁴⁵ Further, the Arbitration Agreement should, specifically, contain the name of arbitrator(s)⁴⁶ and be signed in the

⁴². Supra note 28 at 334.
⁴³. S.10A (1-A).
⁴⁴. S.10A (1) read with Rule 7 of the Industrial Disputes (Central) Rules, 1957.
⁴⁵. Ibid.
⁴⁶. Ibid.
prescribed manner\textsuperscript{47} by the parties to the industrial dispute. Rule 8A of the *Industrial Disputes (Central)* Rules, 1957 provides that the Arbitration Agreement should be signed by the employer and any officer of a trade union and five authorised representatives of the workmen. There are clouds of conflicting opinions over this issue which need be discussed in the light of judicial pronouncements.

According to a provision of the *Industrial Disputes (Bihar) Rules*, 1961, which is in *pari materia* with the *Industrial Disputes (Central) Rules*, 1957, the Arbitration Agreement on behalf of the workmen was required to be signed both by the President and the Secretary of a trade union.\textsuperscript{48} In *State of Bihar v. Nathuni Pandey*,\textsuperscript{49} the issue before the Patna High Court was, whether the attestation of the Arbitration Agreement by the President alone on behalf of the trade union would suffice to validate the agreement. The High Court ruled that the agreement was invalid for non-compliance with the mandatory provisions of the Act.\textsuperscript{50}

\textsuperscript{47} *Id.*, Rule 8.

\textsuperscript{48} Rule 8 (b) of the *Industrial Disputes (Bihar) Rules* 1961.

\textsuperscript{49} (1973) Lab. I.C. 1492 (Pat.).

\textsuperscript{50} *Id.*, at 1495.
But, in *Faridabad Glass Works (P) Ltd., v. Presiding Officer, Industrial Tribunal*,\(^{51}\) on an identical issue, the Punjab High Court has taken an entirely different view. In the instant case, the Arbitration Agreement, which had to be signed both by the President and Secretary of the trade union, was signed only by the General Secretary. The Court observed that this defect could be removed by getting the agreement signed by the President also.\(^{52}\)

Similarly, a liberal approach was adopted by the Delhi High Court in *Mineral Industry Association v. Union of India*,\(^{53}\) where the Court has declared that in case the employer is a body corporate, there would be "sufficient compliance" if the agreement is signed by an agent of such an employer or by an attorney or a duly authorised agent on behalf of the employer – a body corporate.\(^{54}\)

The Act mandates that a copy of the Arbitration Agreement be forwarded to the Conciliation Officer and to the Appropriate Government.\(^{55}\)

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52. *Id.*., at 502.
53. *(1970) Lab. I.C. 837 (Del.).*
54. *Id.*, at 841.
55. *S.10A (1).*
The Appropriate Government is required to publish the same within one month from the date of its receipt in the Official Gazette.  

A plain reading of the statutory provision, that is 10A (3), indicates that the statutory requirements are mandatory in nature. Do the judicial opinions support this view? Let us examine. To start with, in *Landra Engineering and Foundry Works v. Punjab State*, the Punjab and Haryana High Court, relying on *Remington Rand of India v. The Workmen*, ruled that although the Arbitration Agreement has been published two weeks beyond the time prescribed in the Act, i.e., after the expiry of thirty days, such delay would not matter because “the provisions as to publication within one month are directory and not mandatory”.

The Madhya Pradesh High Court, however, in *Modern Stores v. Krishnadass*, has held that the requirements of section 10A (3) are partly mandatory and partly directory. The Court declared that on a proper construction of the section the condition regarding publication of the Arbitration Agreement in the Official Gazette is a *sine qua non* but the

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56. S.10A (3).
59. *Supra* note 57 at 54. [Emphasis supplied].
other requirement, namely, its notification within one month from the date of its receipt, is only directory and not mandatory.\textsuperscript{61}

On the contrary, in \textit{K.P. Singh v. Gokhale},\textsuperscript{62} the Madhya Pradesh High Court has held that "arbitration agreement between employer and employees regarding industrial dispute could not be a private arbitration agreement but would necessarily be one under section 10A (1), specially when form 'C' was used ...."\textsuperscript{63} Further, according to the Court, "an award passed there-under would be invalid if the mandatory procedure prescribed by sub-section[s] (3) and ... (4) of section 10A of the Act is not followed".\textsuperscript{64}

Similarly, in \textit{Ved Prakash v. Ram Narain},\textsuperscript{65} the Madhya Pradesh High Court has held that section 10A can have no application to an Arbitration Agreement which does not comply with the statutory requirements laid down in sub-sections (2) and (3).\textsuperscript{66}


\textsuperscript{63}. \textit{K.P. Singh v. Gokhale}, id., at 1375.

\textsuperscript{64}. \textit{Ibid.}

\textsuperscript{65}. 1970 \textit{1 L.L.J.} 125 (M.P.)

\textsuperscript{66}. \textit{Ibid.}
The confusion engendered by the conflicting decisions of the High Courts, cited above, seems to have attracted the attention of our Apex Court in *Karnal Leather Karmachari Sanghatan*. In Karnal, certain disputed matters were referred to Voluntary Arbitration. The Arbitration Agreement, however, was not published by the Appropriate Government in the Official Gazette before the award was pronounced. In the meanwhile, the Government had also referred some of the disputed issues to a tribunal and a Letter Patent Appeal relating to the same was pending. In the circumstances, the Supreme Court, inter alia, directed that the Arbitration Agreement be published in the Official Gazette within four weeks. Further, the Court observed:

... When a dispute is referred to arbitration, it is ... necessary that the workers must be made aware of the dispute as well as the arbitrator whose award ultimately would bind them. They must know what is referred to arbitration, who is their arbitrator and what is in store for them. They must have an opportunity to share their views with each other and if necessary to place the same before the arbitrator. ... The arbitration agreement must therefore be published before the

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arbitrator considers the merits of the dispute. Non-compliance of this requirement would be fatal to the arbitral award.68

A scrutiny of the decisions, cited above, would make anyone wonder why the Courts, inspite of intelligible mandatory provisions in the Act, have, in the guise of interpretative endeavours, instead of clarifying the issue, have rendered it complicated. In the opinion of one High Court “time of publication of arbitration agreement is “irrelevant”, and an other declares, “publication is a must, especially, when Form ‘C’ is followed”, and, yet an other High Court, on the issue, whether Form ‘C’ has to be strictly abided by, declares that “ if substantial compliance is established it is sufficient”. In this context, the Apex Court’s ruling, in Karnal, that the “arbitration agreement should be published before the merits of the dispute are considered by the arbitrator”, appears to be more pragmatic.

It is submitted that the provision under10A (2) to the effect that the Arbitration Agreement should be in the statutorily prescribed form and signed by the appropriate parties and the requirement under section 10A (3) that the Arbitration Agreement should be published by the Appropriate Government in the Official Gazette within one month from the date of receipt are clear, unambiguous and do not permit the reviewing High Courts

68. Id., at 307 [Emphasis supplied.]
to go on an interpretational expedition. Insistence by the Courts that the parties to the Arbitration Agreement and the Appropriate Government are obliged to honour the statutorily prescribed conditions would not only have eliminated the avoidable confusion created by the Court’s Decisions, referred to above, but also, would have promoted the rule of law, that is, acting according to the intelligible statutory dictates, especially, when such compliance would never have frustrated the statutory objects.

Parties being aware of the nature of the dispute in which they are involved, should be genuinely interested in having their dispute arbitrated upon expeditiously and, at the same time, be concerned about the better functioning of Voluntary Arbitration machinery. But, the fact that the parties have often allowed their dispute to traverse to the High Court—the second highest judicial authority in the hierarchy of our judicial system—on trivial issues, may compel the concerned to question the integrity and honesty of the parties opting for Voluntary Arbitration. Prudence, therefore, dictates that the disputants should avoid unnecessary complications by complying with the statutory mandate without destroying the underlying legislative intent. For example, if the Statute dictates that ‘signature of both the Secretary and President of trade union are necessary’, or ‘signature of either of them would be sufficient compliance’, then, in the former case signatures of both must be taken and, in the latter, it would
suffice if either of them signs. Because, if the Arbitration Agreement is attacked inspite of non-compliance with clear statutory dictates, the main object of expeditious resolution of the dispute would remain illusive.

Section 10A (3A) is of much significance in the Arbitration process carved out under the Act. It reads:

... Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within [one month from the date of the receipt of the arbitration agreement], issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrators[s]....

When the above sub-section read with section 18 (3), quoted below, one should conclude that the legislature has sought to equate the arbitrator's award with that of an adjudicator in certain situations. The relevant portion of section 18 (3), from the point of view of our present study reads:

... [A]n arbitration award in case where a notification has been issued under sub-section (3A) of Section 10A ... shall be binding [like the award of the adjudicatory machinery] on:
(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the ... arbitrator ... records ... that they were so summoned without a proper cause;

(c) where a party referred to in clause[s] (a) or ... (b) is an employer, his heirs, successors or assigns ...;

(d) where a party referred to in clause[s] (a) or ... (b) is composed of workmen, all persons ...employed in the establishment or part of the establishment ... to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

Thus, the Act provides an opportunity to workers who are not parties to the Arbitration Agreement but are concerned in the dispute to present their case before the arbitrator. Such workers, by virtue of section 10A (3A), would be bound by the Arbitration Award.

The principle of ‘Voluntarism’ is the foundation on which the machinery of Labour Arbitration is built. Therefore, can it be argued that with a view to extend the scope of Arbitration Award through a 10A (3A) notification an element of compulsion in respect of the other minority
unions functioning in the industrial establishment has been introduced? Would not such 'compulsion' run counter to the underlying spirit of voluntarism? This line of argument is dismissible in the light of the object of the Act, in general, and the underlying purpose behind the incorporation of sub-section (3A), in particular. Moreover, in the modern state of affairs, even the Fundamental Rights guaranteed under the Constitution are subjected to reasonable restrictions. It is, therefore, incorrect to consider the right conferred upon the disputants in section 10A of the Act to opt for Voluntary Arbitration as an absolute, unbridled and unchannelised right.

Apart from the above, what has to be pointed out is, the substantive provision, viz, 10A (3A) uses 'may', while Rule 8A, a piece of Delegated Legislation, uses the word 'shall'. Rule 8A reads:

"Where an industrial dispute has been referred to arbitration and the central government is satisfied that the persons making the reference represent the majority of each party, it shall publish a notification...."

The use of the word "shall" in Rule 8A should be acceptable since the Appropriate Government would not be able to exercise its power to forbid
the continuance of a strike or lockout under section 10A (4A) unless 10A (3A) notification has been issued.

With a view to prevent the parties from being exposed to the cumbersome, lengthy and expensive civil litigation, the legislature, under section 10 (5), declares that the provisions of The Arbitration Act, 1940 are inapplicable to ‘Voluntary Arbitration’ contemplated under the Act. A Division Bench of the Calcutta High Court, in Hindustan National and Glass Industries, has ruled that an application under section 30 of the Arbitration Act challenging the award of an arbitrator under section 10A is

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69 “Where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (3-A), the appropriate Government may, by order, prohibit the continuance of any strike or lockout in connection with such dispute which may be in existence on the date of the reference”. Thus, 10A (3A) notification should precede the order for prohibiting the continuance of strike or lockout and to issue 10A (3A) the persons making the reference to the arbitration should represent the majority of each party. But the irony is neither the Industrial Disputes Act, 1947 nor the Trade Unions Act, 1926 provides for a mechanism to determine the majority status or the representative character of a trade union. Also, there is no consensus over the method to be followed to carry on this task. The Indian National Trade Union Congress- a mouthpiece of Congress-I party strongly supports “Verification of Fee-paying Membership”, whereas, the All India Trade Union Congress along with other left wing Trade Union Organizations recommend the “Secret Ballot”. In the Trade Union And The Industrial Disputes Amendment Bill, 1988, the Parliament did seek to provide for both “Verification by the Fee Paying Membership” and “Secret Ballot” methods in certain situations under sub-section 6 of section 14A. Due to change in the Government, the Bill lapsed. Consequently, the matter has remained unsettled. A prompt meaningful legislative response is needed, at the earliest.

70 Hindustan National and Glass Industries v. S.N. Singh, 1982 1 L.L.J. 168 (Cal.)
not amenable to any provisions of the civil law but is subject only to the provisions of the *Industrial Disputes Act, 1947*.\(^{71}\)

At this juncture, it should be noted that the *Arbitration Act, 1940*, has been repealed and replaced by the *Arbitration and Conciliation Act, 1996*.

**E. A REVIEW OF 10A ARBITRATOR’S PROCEDURES, STATUS AND POWERS**

At the outset, certain queries need be raised. Since the Act, under certain circumstances, equates the award of the 10A Arbitrator with that of the adjudicatory authority, can we presume that the 10A Arbitrator is at par with the adjudicator? Does he enjoy the same powers under the Act as the Presiding Officer of Labour Court, etc.?\(^{72}\) Can 10A Arbitrator, in the case of disciplinary dismissals, order reinstatement with or without back wages?\(^{72}\)

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\(^{71}\) *Id.*, at 170.

\(^{72}\) S.11-A. *Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen*- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment, in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.
since 10A Arbitrator does not find a place in the scheme of section 11A? Is the 10A Arbitrator invested with the state’s inherent judicial power? Whether the Arbitrator’s award is amenable to the appellate jurisdiction of the Supreme Court under Article 136? Should the Arbitrator’s award be accompanied by reasons? Does the Appropriate Government enjoy the power under the Act to modify the Arbitrator’s award or shorten or lengthen the period of operation of such an award, as it can, in respect of an award rendered by an adjudicatory authority?

In order to find out the answers to some of the foregoing questions, one has to necessarily refer to sections 11 and 11A of the Act.

Section 11 (1) grants procedural flexibility to the 10A Arbitrator. It lays down that 10A Arbitrator shall follow such procedure “as he may think fit”. In *K.P.Singh v. Gokhale*, a Division Bench of the Madhya Pradesh High Court has observed that section 11 prescribes the procedure to be followed by the Conciliation Officer, Board, Labour Court and Tribunal but

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73. Art. 136 “Special Leave to appeal by the Supreme Court-(1)... the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any... tribunal in the territory of India...”, quoted in Seervai, H.M., *Constitutional Law of India* A-39 (vol.1, Fourth (Sliver Jubilee)edn, 1991.)

74. *Supra* note 59.
permits the Arbitrator to follow his own procedure. Further, according to the Hon’ble Court, “it is certainly in consonance with the principles of arbitration”. 76

Justice Rohatagi, in *Daily Aljamiat v. Gopinath*, 77 has opined that the arbitrator is not bound by any particular procedure... In the last analysis he is master of procedure and on law and facts”. 78

No doubt, under the Act, the Arbitrator is free to evolve his own procedure. But, such procedure should not only conform to the statutory provisions and the relevant Rules made thereunder, but also, should be in consonance with the principles of Natural Justice. The question then would be: Whether the 10A Arbitrator’s Award can be quashed on procedural grounds?

The 10A Arbitrator’s Award, according to a Division Bench of the Patna High Court, in *N.P.C.. Corporation v. Their Workmen*, 79 cannot be called in question either on procedural grounds or on the fact that a particular criterion has not been kept in view by the arbitrator while making

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75. *Supra* note 59 at 128.
77. (1977)Lab. I.C. 1353 (Del.)
78. *Id.*, at 1356.
the award. The reason is, it is the joint agreement arrived at by the parties that invests the arbitrator with the authority to settle the dispute. The arbitrator, undoubtedly, is expected to do substantial justice to the parties. Therefore, his Award would be vitiated if he is guilty of misconduct or has exceeded his jurisdiction or has not heard the parties or failed to determine an important question referred to him.80

It may be interesting to note that the Supreme Court, in *Nani Gopal Sarkar v. Heavy Engineering Corporation Ltd.*,81 has ruled that a petition challenging the 10A Arbitrator’s Award for non-compliance with the statutorily mandated procedure could be dismissed only when the parties have, at the outset, complained about the breach of procedure. Therefore, if a disputant wants to challenge the validity of the Arbitrator’s Award on procedural grounds, such a plea, according to the Supreme Court, ought to be taken at the initial stage; otherwise, the Court would not take into account this contention while deciding the case.82 Here, the question is, taking into account the ‘voluntary’ nature of the Arbitration Process that demands an informal procedure to be adopted in the course of Arbitration,

80. *Id.*, at 913.
82. *Id.*, at 1222.
how far is the Supreme Court right in *Nani Gopal Sarkar*? Because, when an informal procedure is being followed, naturally, some variance can be witnessed not only from case to case but also from person to person acting as arbitrator.

It may be noted that the parties’ preference to Arbitration implies the avoidance of adjudication. When they voluntarily opt for Arbitration and choose an arbitrator of their choice, the implication is that they recognize his procedural fairness, integrity and honesty. Hence, attacks on Arbitrator’s Awards on grounds of procedural infirmity should not, normally, be entertained unless the procedural format of the arbitrator is manifestly unfair. Further, it is respectfully submitted that the Judiciary’s reluctance to interfere with the Arbitrator’s Award impugned on the ground of non-compliance with the procedure, as demonstrated by the decision of the Patna High Court in *N.P.C. Corporation*, may provide a fertile ground for the Arbitration machinery to blossom in the arena of Labour-Management Relations.

The proceedings before the Labour Courts, Industrial Tribunals or National Tribunals, normally, should be held in public. If the situation so demands, the concerned authority may direct that the proceedings be held *in
Camera. But, such a power is not vested in the 10A Arbitrator. Further, the Presiding Officers of a Labour Court, etc., after serving reasonable notice upon the concerned, may enter the premises for the purpose of inquiry into any existing or apprehended industrial dispute. Such a power is not conferred upon the 10A Arbitrator under the Act.

Similarly, some of the powers of a Civil Court such as, enforcing the attendance of any person and examining him on oath; compelling the production of documents and material objects; issuing commissions for the examination of witnesses have been conferred upon the adjudicatory bodies, under section 11(3). Under this section, 'Arbitrator' is conspicuously missing. However, under the relevant Rules, the 10A Arbitrator may accept, admit or call for evidence at any stage of the proceedings before him and may also administer an oath. Further, according to Rule 17, the Labour Courts, etc., may issue summons which ought to be in Form-D. Although the word Arbitrator is expressly excluded under Rule 17, the same has found its way into Rules 18 and 20 which deal with the service of

83 R.30.
84 S.11 (2), read with R.23.
86 R.15.
87 R.16.
summons and the manner in which they have to be served in certain situations.

The Act empowers, *inter alia*, the Presiding Officer of the Labour Court, Tribunal, *etc.*, to appoint one or more persons having special knowledge of the matter under consideration as assessor/s to advise them but the Arbitrator does not have any such power under the present law.\(^8\) In this regard, it is pertinent to take note of section 26 of *The Arbitration And Conciliation Act, 1996* which empowers the Arbitral Tribunal to appoint one or more experts to report to it on specific issues to be determined by the authority in the absence of any agreement by the parties to the contrary. Because, at times, the disputants may choose a particular person to act as an Arbitrator for his integrity and impartiality despite his lack of expertise to deal with the matter referred to him. In such cases, if the Arbitrator has the power to appoint experts to advise him or to report to him on a specific matter under consideration, it would be easier for him to infuse accuracy and fairness into the award to be delivered by him.

The Conciliation Officers, Members of the Board of Conciliation, Court of Inquiry and Presiding Officers of various Adjudicatory Authorities under the Act are deemed to be "Public Servants" under section 21 of

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\(^8\) S.11 (5), read with R.25.
Indian Penal Code. It has to be noted that the 10A Arbitrator is not mentioned. Moreover, under the Act, unlike the Adjudicatory Authorities, the 10A Arbitrator is not deemed to be a Civil Court under the relevant provisions of the Code of Criminal Procedure.

Under the Act, it is left to the disputants to opt for Arbitration and to choose person/s of their choice to arbitrate upon their dispute. Once chosen, the 10A Arbitrator derives his jurisdiction to arbitrate from the Arbitration Agreement. Here the questions are: what status does the 10A Arbitrator enjoy? Whether he can be regarded as a statutory arbitrator or a private arbitrator? Whether the Arbitrator’s Award is amenable to the Appellate Jurisdiction of the Supreme Court under Article 136 of the Constitution? To find out answers to the foregoing questions, let us refer to the Case Law.

Prior to the Supreme Court’s decision in Engineering Mazdoor Sabha, various High Courts had expressed divergent opinions on the issues raised above.

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89. S.11 (6).
90. S.11 (8).
A Single Judge of the Kerala High Court, in *A.T.K.M. Employees' Association v. Musaliar Industries*,\(^91\) had held that 10A Arbitrator is not a statutory arbitrator but more or less a private arbitrator. This view was, later, upheld by the Division Bench of the same High Court.\(^92\)

On the contrary, the Bombay High Court in *Air Corporation Employees' Union v. Vyas*,\(^93\) had ruled that 10A Arbitrator would have all the essential attributes of a statutory arbitrator and, in substance, there would be no difference between a statutory arbitrator, as contemplated by section 10, and a voluntary arbitrator, as contemplated by section 10A of the Act.\(^94\)

In *Engineering Mazdoor Sabha*,\(^95\) the preliminary objection raised before the Supreme Court was that 10A arbitrator is not a tribunal and therefore, no appeal would lie under Article 136. So, it was the character of the authority which decided the dispute and not the character of the decision of the authority which was at issue before the Supreme Court in the above case. According to the Court, the 10A arbitrator can be described

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\(^91\) 1961 L.L.J. 81 (Ker.)
\(^92\) 1962 (5) F.L.R. 212 (Ker.) (D.B.)
\(^93\) A.I.R. 1962 Bom. 274.
\(^94\) *Id.*, at 279.
as a statutory arbitrator in a loose sense but not in a true sense *because he lacks the basic, essential and fundamental requisite that is, he is not invested with the State's inherent Judicial Power*96 Further, the Court added that 10A arbitrator is "higher above a private arbitrator and lower than a statutory arbitrator because a statutory arbitrator is appointed under the relevant provisions of a statute which also [require him] compulsorily [to resolve] certain classified classes of disputes".97 Hence, no appeal lies under Article 136 from his determination since he is neither invested with the state's inherent judicial power nor he is a tribunal.98

But, the Kerala High Court, in *Koru v. Standard Tile and Clay Works (P) Ltd*,99 has observed that the "jurisdiction exercisable by the 10A arbitrator is statutory".100

In *Singh v. Gokhale*,101 the Madhya Pradesh High Court has held:

[I]t would be futile to contend that an arbitration agreement between an employer and employee regarding an industrial dispute would be a private agreement outside the scope of

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96. *Id.*, at 882. [Emphasis supplied.]
99. 1964 1 L.L.J. 102 (Ker).
100. *Id.*, at 108.
S.10A of the Act... The ... Act does not contemplate any private arbitration in respect of questions of public importance involving industrial disputes. If that had been the intent of the legislature sub-section 5 of section 10A of the Act would not have excluded the operation of the Arbitration Act of 1940.102

Later, in Rohtas,103 a part of arbitrator’s award which had awarded damages against the trade union for resorting to an illegal strike and the consequent loss it had caused to the employer was challenged by the trade union. Although the status of 10A arbitrator was not directly at issue before the Supreme Court in this Case, the Court, while referring to 1964 Amendments, by way of an obiter, observed:

[Now] arbitrator has power to bind even those who are not parties to the reference or agreement and the whole exercise under section 10A as well as the source of the force of the award on publication derive from the statute. It is legitimate to regard such an arbitrator now as part of the methodology of the sovereign’s dispensation of justice, thus falling within the rainbow of statutory tribunals amenable to judicial review.104

Subsequently, the Madras High Court in R.K.Steel v. Their Workmen,105 has also observed that since there was a valid arbitration agreement under

102. Id., at 128.
104. Id., at 279.
105. 1977 1 L.L.J. 382 (Mad.).
section 10A, the arbitrator to whom the dispute was referred thereunder was a statutory arbitrator. 106

In the light of judicial interpretations bearing upon the status of the 10A Arbitrator, an other incidental question that has to be answered is: can the 10A Arbitrator order reinstatement with or without back wages in cases of disciplinary discharges, dismissals, which power, as per section 11A, has been expressly conferred only upon the Labour Courts, Tribunals, etc. 

Gujarat Steel Tubes 107 provides the answer to the question relating to 10A Arbitrator’s status and also judicially confers upon the 10A Arbitrator the power to order reinstatement in cases involving disciplinary dismissals, etc.

In the instant Case, the dispute related to the claim of about 400 workmen who had participated in an illegal strike for reinstatement. The dispute was referred to Arbitration. The Arbitrator’s award declared that the strike was illegal, that the workmen were guilty of misconduct and, therefore, the management’s action in terminating their services was justified. When the workers’ Mazdoor Sabha challenged the Management’s action, the High Court, while quashing the Arbitrator’s award, ordered

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106 Id., at 386.
107 Gujarat Steel Tubes Ltd., v. Gujarat Steel Tubes Mazdoor Sabha, 1980 1 L.L.J. 137 (S.C.)
reinstatement. The Management, aggrieved by the High Court's decision, appealed to the Supreme Court. One of the issues to be decided by the Apex Court was whether the Arbitrator is empowered under section 11A to interfere with the punishment awarded by the Management.

Answering in the affirmative, the Supreme Court ruled that "section 11A did clothe the arbitrator with similar powers as tribunals, despite the doubt created by the abstruse absence of specific mention of arbitrator in section 11A". Further, the Court added:

The entire scheme, from its I.L.O genesis, through the objects and reasons, fits in only with arbitrators being covered by S.11A, unless parliament cheated itself and the nation by proclaiming a great purpose essential to industrial justice and, for no rhyme or reason and wittingly or unwittingly, withdrawing one vital word. Every reason for clothing Tribunals with S.11A powers applies a fortiori to Arbitrators.

The Court was of the opinion that the adjudicatory bodies under the Act are not "functionally different" from the 10A Arbitrator. Thus:

... Section [11A] makes only a hierarchical, not functional, difference by speaking of Tribunals and National Tribunals. So we see no ground to truncate the natural meaning of "tribunal" and on the supposed intent of Parliament to omit irrationally

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108. Id., at 158.
the category of adjudicatory organs known as arbitrators. To cut down is to cripple and the art of interpretation makes whole, not mutilates, furthers the expressed purpose, not hampers by narrow literality. 110

The Court, further, emphasised that “[a] caste distinction between Courts, Tribunals, Arbitrators and others, is functionally fallacious and,... stems from confusion. [Thus] Functionally, Tribunals and Arbitrators belong to the same brood”.111 Hence, it can be concluded that what section 11A Labour Court can do, the 10A Arbitrator also can. Following this decision, in Rajinder Kumar Kindra v. Delhi Administration,112 the Supreme Court, has reiterated that the 10A arbitrator can reappreciate the evidence, reject findings which are perverse, based on no legal evidence and when the conclusion is one to which no reasonable man would come to.113

The seeds for judicial interpretations, just referred to, were, probably sown way back in 1962 itself, under the Industrial Truce Resolution.

109. Id., at 159.[Emphasis mine.]

110. Ibid.

111. Supra note 107 at158. But the forceful dissent of Justice Koshal in this case cannot be ignored. According to the learned Judge, S.10A Arbitrator is not clothed with the power to interfere with the punishment order of the employer under section 11A.

112. 1984 11 L.L.J. 517.

113. Id., at 524.
Because, while re-emphasising the importance of ‘Voluntary Arbitration’ in resolving industrial disputes, it was specified under the said Resolution that complaints pertaining to dismissal, discharge, victimization and retrenchment of individual workman which could not be settled by mutual negotiation should be settled by ‘Voluntary Arbitration’.

Incidentally, it is worth mentioning that in the American context, where this machinery is in full bloom, an opinion prevails to the effect that an Arbitrator should enjoy the same powers as do the Courts of Equity, like for example, ordering reinstatement of discharged, dismissed workmen in appropriate cases.\textsuperscript{114}

The majority decision in \textit{Gujarat Steel Tubes}, which is in tune with the above view, is of great consequence, in the light of the recommendation of the \textit{National Commission on Labour} and the Governmental desire to provide a pride of place for Arbitration in resolving industrial disputes. The Apex Court, undoubtedly, in this Case, has resorted to ‘Judicial Activism’ while interpreting the statue. Reed Dickerson has observed that one must not loose sight of the legislative intent and purpose behind the

\textsuperscript{114} Emanuel Stein, “Remedies in Labour Arbitration” in \textit{Challenges To Arbitration} 45 (Proceedings of 13\textsuperscript{th} Annual Meeting of NAA, 1960).
insertion of particular provisions in the statute. This view would be laudable provided the legislature enacts unambiguous laws, or, when it promptly responds to the shortcomings in the law enacted, when pointed out. Justice Krishna Iyer's pronouncement in Gujarat Steel Tubes need be commended in the Indian context since the legislative lethargy has been manifest, at times.

The next question which needs to be dealt with is: can the High Courts in the exercise of their inherent review jurisdiction under Article 226 of the Constitution quash 10A Award when there is an error of law apparent on the face of the Record or when the 10A Arbitration exceeds its jurisdiction or acts without jurisdiction etc.? The observation of Chief Justice Lord Goddard in, R.v. Disputes Committee of National Joint Council for the Court of Dental Technicians, offers the answer to the above question. According to Lord Goddard "[t]here is no instance of which I know in the books, where certiorari or prohibition has gone to any arbitrator, except a statutory arbitrator, and a statutory arbitrator is a person to whom, by a statute the parties must resort". It has already been established that 10A Arbitrator is a statutory arbitrator and his award is

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115. Read Dickerson, *The Interpretation And Application of Statutes*, passim.
117. *Id.*, at 328.
amenable to the Writ Jurisdiction. Under the law, a Writ of certiorari may issue against not only judicial but also quasi-judicial decisions. 10A arbitrator’s award has been held to be quasi-judicial in nature and, therefore, is amenable to the Writ of certiorari. In Engineering Mazdoor Sabha, it was rightly held that 10A Arbitrator being a quasi-judicial body is subject to the High Court’s surveillance under Article 226.

Later, Justice Krishna Iyer speaking for the Court in Rohtas Industries, has observed:

It is legitimate to regard ...[10A] arbitrator now as part of the methodology of the sovereign’s dispensation of justice, thus falling within the rainbow of statutory tribunals amenable to judicial review... Suffice it to say, an award under section 10A is not only not invulnerable but more sensitively susceptible to the writ lancet being a quasi statutory body’s decision.

If, therefore, an “arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises,..., the enquiry suffers from additional infirmity of non-

118 . Supra note 95.
119 . Supra note 95 at 881, 882.
120 . Supra note 103.
121 . Supra note 103 at 279.
application of mind, and stands vitiated". An important point to be taken note of is that the Court here acts in a supervisory capacity but not as an appellate capacity.

Judicial decisions establish that the Award of the 10A Arbitrator is amenable to judicial review under Article 226 of the Constitution. Judicial Review can be meaningful and efficacious when the 10A Arbitrator's Award is accompanied by reasons. We may now refer to the case law to determine whether the reviewing courts have consistently insisted upon the 10A Arbitrator to furnish reasons for the Award rendered by him.

In *Rohtas Industries*, the Supreme Court has observed that "[t]he need for a speaking order, where considerable numbers [of workmen] are affected in their substantial rights, may well be a facet of natural justice or fair procedure". The Court has further observed:

[T]he position of an arbitrator may affect not only the parties to the agreement but also those who are given opportunity of being heard under [sub] section 3A of [section] 10A. The award may affect thousands of workers in this background and it is legitimate to infer from S.10A an implied statutory

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122. Ibid.
123. Supra note 103.
124. Supra note 103 at 281.
obligation on the arbitrator to give his reasons in support of the conclusions of fact and law reached by him in the award...
Failure to give reasons when it is obligatory to do so constitutes an error of law apparent on the face of the record.\textsuperscript{125}

Controversy regarding reasoned awards permeated the judicial opinions of various High Courts. In \textit{Rohtak Delhi Transport v. Risal Singh},\textsuperscript{126} one of the issues was whether the Arbitrator's award should be a speaking order. Following \textit{Engineering Mazdoor Sabha}, the Punjab High Court held:

\begin{quote}
[T]he decisions of the arbitrator to whom industrial disputes are voluntarily referred under section 10A of the Act are quasi judicial decisions and not purely administrative or executive determinations. [Hence], [t]he award of the arbitrator exercising judicial functions should exfacie show the reasons on which the award is based... [Because], the law does not intend to confer on the arbitrator under the Act wholly uncontrolled and absolute powers to make the award completely bare of reasons so as to render it incapable of judicial scrutiny of the High Court under Article 226.\textsuperscript{127}
\end{quote}

\begin{footnotesize}
\begin{enumerate}
\item Supra note 103 at 279.
\item A.I.R. 1963 Punj. 472.
\item Id., at 474, 477, 478.
\end{enumerate}
\end{footnotesize}
But, in *Daily Aljamiyat v. Gopinath*, the Delhi High Court has deviated from the opinion of the Punjab High Court over the same issue. In this Case, the Court has held:

[A]n award of an arbitrator is not invalid merely because he has not given reasons for his decision. There is no provision in the Act which makes it obligatory on the part of the arbitrator under section 10A to give reasons for his decision. It would be putting an intolerable burden on the arbitrator if he were required to give reasons. The arbitrator may be a lay man or a lawyer. To say that a lay arbitrator must give reasons for his award when the statute does not require him will be too much to ask. He may find it difficult to articulate his ideas and mental processes. The Court cannot compel him to give reasons. Many persons decide by intuitive knowledge or instinct. They have a quick comprehension without orderly reason, thought or cogitation.

The Delhi High Court substantiated its holding further by adding:

[N]o where is there any requirement mandatory or directory that the arbitrator must give reasons for his award. Section 11 on the other hand points in the direction that the arbitrator is free to give or refuse to give reasons. He is not bound by any

128. *Supra* note 77.

129. *Supra* note 77 at 1355.
particular procedure... In the last analysis he is master of procedure and on law and facts.\textsuperscript{130}

The Court's observation that arbitrator is "a master of procedure and of law and facts", is however, debatable. More importantly, even his "masterhood" cannot, for sure, empower him to abandon the most essential Principle of Natural Justice, that is, no person can be condemned unheard.

Justice Rohatgi has observed that "a lay arbitrator does not know 'the lawyer's law'. But he knows how to accomplish a just result. His is a domestic forum. His award may be nothing but an expression of personal reactions and adhoc responses to the concrete fact situation without any reliance on general pointers and standards".\textsuperscript{131} The award of such an arbitrator has been characterised by the Delhi High Court as an act of "justice without law" and to substantiate this viewpoint, Justice Rohatgi, quoting Dean Roscoe Pound, argues that "there can be a concept of justice without law".\textsuperscript{132} The Court's interpretation and assimilation of Dean Pound's statement in the present context, probably, is, it is respectfully submitted, incorrect, because, according to Dean Pound: "[I]ntuitive actions have always reasons behind them. Persons while acting intuitively follow

\begin{footnotes}
\begin{footnote} \textit{Supra} note 77 at 1356. \end{footnote}
\begin{footnote} \textit{Supra} note 77 at 1360. \end{footnote}
\begin{footnote} \textit{Ibid.} \end{footnote}
\end{footnotes}
or base their behaviour on some principles and with the help of these principles reasons can be derived". So, reliance on Dean Pound by the Court, it is submitted, is inappropriate and unsound.

Later, over the same issue, the Madhya Pradesh High Court, in *M.G.Panse v. S.K.Sanyal*,\(^{134}\) has ruled that "the award of an arbitrator functioning under section 10A derives its authority not merely from the agreement but also from the other allied provisions [and, therefore,] failure to give reasons gives rise to serious infirmity in the award".\(^{135}\)

It is now well settled that the 10A arbitrator should spell out reasons underlying his award. This does not mean that he should provide exhaustive reasons. It is enough if the reasons given are precise and to the point. The Patna High Court's observation, in *N.P.C. Corporation v. Their Workmen*,\(^{135A}\) that an arbitrator's award cannot be challenged merely on the ground that it is not accompanied by elaborate reasons supports the view, expressed above.

The other persuasive reason for insisting upon a speaking award is that such an award may in future act as a precedent and thus help in the


\(^{134}\) (1980) Lab. I.C. 524 (M.P.)

\(^{135}\) *Id.*, 526.
development of 'the common law for the industry concerned'. However, the opinions over this view are not unanimous. One line of argument is:

[E]fforts to reduce uncertainty in the future administration of the contract by being able to rely on the dogma that like cases ought to produce like results is... one of the compelling reasons why many ... urged that awards ... be accompanied by reasoned opinions and that arbitrators be free to use past awards as and if the particular case before them warrants.\textsuperscript{136}

But, according to John Stone, "[l]abour and the world in general [have] made progress not because of precedent, but inspite of it".\textsuperscript{137}

But the views expressed by John H. Sembower are more moderate. He maintains:

[T]he regular reporting of decisions is a great service, and, so long as the parties do not object, is wholly desirable. Taking cognizance of past practices within the particular plant where an arbitration is being held is particularly pertinent. But [one] can be aware of the precedents, and even use them, without

\textsuperscript{135A} Supra note 70 at 913.


\textsuperscript{137} John Stone, T.A., Director General Motors Division, U.A.W.C.I.O. Proceedings, Conference on Labour Arbitration, University of Pennsylvania November 12, 1948, p.6 (Quoted in Raman Rao, op.cit., at 120).
erecting them as a great panoply of authorities without which no arbitration can be held, brief written, or award preferred.138

It can be deduced that the reported Arbitral Awards do have a persuasive value in deciding similar arbitration cases that may arise in future and provide guidance for their resolution by indicating how an arbitrator is likely to resolve a particular dispute.139

In the light of the preceding discussion, it would be safe to conclude that sticking to past awards rigidly is not highly desirable. However, to convince the parties as to why the arbitrator has arrived at a particular decision, he may be permitted to cite and rely on the past awards. That is, past awards may be used as a persuasive factor in the arbitration process.

Therefore, it is advisable, under the Act, to incorporate a provision similar to that of section 31 (3) of the Arbitration And Conciliation Act, 1996 which provides that the arbitral award shall state reasons upon which it is based, unless the parties have agreed that no reasons need be given or


139. Alvin L. Goldman, Labour Law And Industrial Relations In United States of America, supra note 11 at 321.
the award is an arbitral award on agreed terms or a consent award. Incidentally, it is worth mentioning that the 1996 Act, referred to above, under section 30 (1), has rightly provided that "... with the agreement of the parties, the arbitral tribunal many use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement". Thus, according to section 30 (2) of the 1996 Act, "[i]f, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms" or a consent award. This consent award has been accorded the same status and effect as any other arbitral award under the 1996 Act.

Section 17 (1) mandates the Appropriate Government to publish, inter alia, the Arbitrator’s Awards and the Adjudicatory Awards within thirty days from the date of their receipt in such manner as the Appropriate Government thinks fit. Further, on the expiry of thirty days from the date of publication, the Arbitrator’s Award would become enforceable according

141. S.30 (2) *ibid. [Emphasis mine.]*
142. S.30 (4) *ibid.*
to section 17A (1). The Adjudicatory Awards which have been published under section 17(1) also become enforceable on the expiry of thirty days except under the conditions mentioned in the provisos appended to section 17A.

(1) The conditions are –

(a) if the appropriate Government is of opinion, in any case, where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party; or

(b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal, that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate government may declare that the award shall not become enforceable on the expiry of the said period of thirty days.

Thus, the Appropriate Government is empowered to withhold the Adjudicatory Awards from becoming enforceable under the situations stated above.

Even after becoming operative, the Adjudicatory Awards under section 19 (3) of the Act can be modified and their period of operation can be shortened or lengthened by the Appropriate Government.
Considering the definitional meaning of the term 'Award', wherein the 'Arbitrators Award' is also included, can it be presumed that the Appropriate Government is empowered to modify or reject the Arbitrator's Awards as well?

If one goes by the Apex Court's ruling in *Gujarat Steel Tubes*, where, despite the absence of the word 'Arbitrator', the Supreme Court has read the same into section 11A, it is arguable that the word 'Arbitrator's Award' may also be read into the provisions of sub-section (1) of section 17A. But, this line of argument flies on the face of the very basic principle of 'voluntarism' on which the machinery of Arbitration is built.

On the contrary, it should be specifically pointed out that although the arbitrator's award has been included in the main clause of section 17A, the same is missing under the provisions that follow. There seems to be a powerful reason behind including 'arbitrator's award' under the main clause of section 17A but at the same time excluding it from the provisions which qualify the main clause. This, probably, establishes that in view of the spirit of "voluntarism" underlying the machinery of arbitration, the legislature might have thought it expedient not to leave arbitrator's award at the mercy of Appropriate Government to become operative.
The overall discussion in the preceding paragraphs establishes the following—

In the light of the Apex Court’s decision in *Karnal Leather Karmachari Sanghathan*, publication of Arbitration Agreement is mandatory.

Majority of the judicial decisions, referred to earlier, further, establish that 10A Arbitrator is a statutory arbitrator and that he enjoys section 11A powers along with the adjudicatory bodies like the Labour Courts, etc.

10A Arbitrator’s Award is amenable not only to the appellate jurisdiction of the Supreme Court under Article 136 but also to the supervisory jurisdiction of the High Courts under Articles 226, 227 of the Constitution. Consequently, 10A Arbitrator’s Award should be a speaking award although he is not required to give elaborate and exhaustive reasons.

In addition, as mentioned earlier, the Appropriate Government under section 17A is empowered to prevent the adjudicatory award from becoming operative in certain situations. The arbitrator’s award, though appears in section 17A (1), the same is missing in the provisions that follow. But taking into account the various path-breaking decisions of the Apex Court where 10A Arbitrator has been kept at par with the adjudicatory bodies, it can be argued that the Appropriate Government is equally empowered to withhold the 10A arbitrator’s award from becoming
operative and can also shorten or increase the life of arbitrator's award under sub-sections (3), (4) of section 19 of the Act. If this line of argument is heeded, the basic principle of 'voluntarism' underlying the Arbitration machinery would lose its relevance. Therefore, the Appropriate Government cannot prevent the 10A Arbitrator's Award from becoming operative. So also, such an award can not be modified or rejected by the Appropriate Government.

F. CONCLUSIONS AND SUGGESTIONS

The principle of 'voluntarism' underlying the system induces the disputants to opt for Voluntary Arbitration and to select person(s) of their choice to arbitrate upon their dispute. Having been set up by the parties themselves, 'Voluntary Arbitration', it is presumed, would be "potentially responsive to their values and concepts of justice".

Apart from being speedy, economical and a private method of resolution, the advantages of 'Voluntary Arbitration' are numerous. Despite repeated emphasis upon the importance and efficacy of the system of 'Voluntary Arbitration', by the Government in its various Five Year Plans, unfortunately, the method has failed to take deep roots in the arena of Labour-Management Relations in India for reasons, such as, easy availability of the adjudicatory machinery when negotiations fail, dearth of
suitable arbitrators who could command the confidence of both the parties, absence of recognised trade unions which could enforce discipline among its members and could bear the cost of Arbitration and absence of a simplified procedure.

Additionally, on the recommendation of the National Commission on Labour, the Government in 1969 constituted the N.A.P.B., which has been entrusted with the task of drawing the Panel of Arbitrators to enable the parties to select the right person(s) to arbitrate upon their disputes. Ironically, it is now on the verge of disappearance from the industrial scenario. Hence, revitalization of N.A.P.B. is the first and foremost step to be taken to encourage and promote the system of 'Voluntary Arbitration'. Along with the power of drawing the Panel of Arbitrators for particular industries, the N.A.P.B. should also be entrusted with the duty to list out the matters which fall under the jurisdiction of the 10A Arbitrators. Further, the Panels drawn should include Academicians who are Experts in Labour Laws and Industrial Relations. The Panelled Arbitrators must also include the representatives nominated by Non-Governmental Organisations having expertise in the areas of Human Rights and Labour Law matters. More importantly, the guiding principle for including a particular person on the Panel of Arbitrators ought to be his capacity to infuse confidence in both the parties through his established credentials, like, impartiality,
integrity, expertise, humane attitude etc. Refresher Courses and a system of continuing education should be introduced to enable the Panelled Arbitrators to become aware and appreciate the developing trends in Labour-Management Relations.

The existing lacunae, pointed out earlier in this Chapter, relating to the ambiguous and incongruous Statutory Provisions and the Rules bearing upon the 'Voluntary Arbitration', should be weeded out, at the earliest. Where the Statute mandates that the 'Arbitration Agreement' should be in Form-C and should be duly signed by persons authorised and that a copy of the same should be sent to the Conciliation Officer and the Appropriate Government, it would be prudent to adhere to these statutory requirements, despite contradictory judicial opinions, referred to, above. Because, it is a legislative choice made, probably, with an intention to safeguard the interest of the parties and not, for sure, to devitalise the importance of the vital machinery. It is, thus, easy to discern that in the absence of a written and a duly signed Arbitration Agreement, the possibility of invoking the Review Jurisdiction of High Courts by the disgruntled party affected by the arbitrator's award, can not be ruled out. Hence, bearing in mind the cost and delay aspects, it is advisable to have a clear-cut Arbitration Agreement which can substantially eliminate or at least reduce future complications. Likewise, the statutory purpose would be served better if the Appropriate
Government publishes the Arbitration Agreement within the statutorily stipulated period to eliminate unnecessary and unwarranted challenges. The basic objective underlying publication is to make the contents of Arbitration Agreement known to all those who are vitally interested in and concerned with the dispute though they may not be, initially, parties to the Arbitration Agreement. Hence, contents of the Arbitration Agreement may infuse the concerned to get involved in the arbitration process as interveners and this would probably make the Arbitration Award wholesome and effective.

Another flaw relating to section 10A is about the wordings used in sub-section (3A) that deals with the impleading of parties and the related Rule 8A which are in conflict with each other. While section 10A(3A) uses the word “may”, Rule 8A uses the word “shall”. The use of “may” under the substantive provision indicates that the Appropriate Government may or may not issue the 10A(3A) notification despite the fact that the parties “represent the majority....” But, if one goes by the word “shall” used in Rule 8A, then the implication would be that once the fact that the majority of each party is represented in a dispute is established, the Appropriate Government ought to issue (3A) notification. This statutory compulsion should be accepted since the Appropriate Government would not be able to exercise its power to forbid the continuance of a strike or lock-out under
section 10A(4A) unless 10A(3A) notification has been issued. The Legislature, therefore, has to remove the ambiguity through a suitable amendment to the extant law.

As mentioned earlier, the Appropriate Government may issue 10A(3A) notification if it is satisfied that the persons making the reference represent the majority of each party in a dispute. But, for the Appropriate Government to verify the majority character of a trade union, unfortunately, neither the Industrial Dispute Act, 1947 or the Rules made there under nor the Trade Unions Act, 1926 spellout any procedure. Central Trade Union Federations have not arrived at any understanding as regards the method to be employed for determining the representative character of a trade union in the industry. While the Indian Trade Union Congress (I.N.T.U.C) prefers 'Verification of Fee Paying Membership', the All India Trade Union Congress (A.I.T.U.C.), and other Left wing unions are of the view that 'Secret Ballot' would be an ideal method. In the 1988 Amendment Bill, the Government provided for both the methods but, regrettably, the Bill lapsed due to the fall of Government. It is high time for the Government to amend the law and provide for a suitable method to determine the representative character of a trade union functioning in the industrial establishment concerned.
Moreover, a responsible trade union with its strong membership would be in a position to act as an effective bargaining agent. Here, the question of recognition assumes significance. Hence, the Legislature should provide for the compulsory recognition of the most representative union in an industrial establishment. A recognised union certified as a bargaining agent would be able to act with responsibility and ensure that the collective bargaining agreement arrived at is properly implemented. It can build up its trade union funds, become financially strong and would then be in a position to bear the cost of Arbitration. When it has to bear the cost of Arbitration, the recognised union, in all probability, would act with greater caution while entering into Arbitration Agreement. It will also ensure that the issues to be arbitrated upon are spelt out with greater precision in the Agreement so that the Arbitrator can arbitrate over the dispute without any further delay. Such a recognised and responsible union would also be interested in doing all that is possible by cooperating with the arbitrator and the employer with a view to complete the arbitration process as quickly as possible so that the cost of Arbitration can be reduced to the minimum.

In order to reduce the cost etc., of Arbitration, the 10A Arbitrator should be provided with information relating to collective bargaining process that has taken place before his services are enlisted to arbitrate
upon the dispute referred. Where the Conciliation Officer or the Board has registered failure and the dispute is referred to a 10A Arbitrator, he should be provided with the Failure Report, sent by the Conciliation Officer or the Board. These Reports, probably, would enable the 10A Arbitrator to perform his job better. Further, without there being compelling reasons, the Arbitrator must not grant adjournments which strike at the very root of the Arbitration process, that is, providing speedy remedy.

Taking cue from the relevant provisions of the *Arbitration And Conciliation Act, 1996*, cited earlier in this Chapter, an Amendment should specifically mention that the 10A Arbitrator should give reasons on which his award is based unless there is an agreement between the disputants to the contrary or the award is an arbitral award on agreed terms or a consent award. Incidentally, it should be noted that the 1996 Act, referred to above, has also empowered the Arbitral Tribunal to use conciliation, mediation or other procedures with the consent of the parties at any time during the arbitral proceedings to encourage settlement. Further, realizing the importance of bipartite settlements in the realm of industrial relations, the 1996 Act has provided a free hand to the Arbitral Tribunal to terminate its proceedings and to record the settlement (arrived at by the parties during the pendency of Arbitral proceedings) in the form of an Arbitral Award on agreed terms or a consent award, if so requested by the disputants. There is
need for the incorporation of similar provisions under the *Industrial Disputes Act* too to ensure a better performance by the ‘Voluntary Arbitration Machinery’.

In the ultimate analysis, the Employers, the Trade Unions, the Government, the Judiciary and the Experts in the field of Labour-Management Relations have collectively contributed for the slow progress of the Voluntary Arbitration method. It is, therefore, time for each one to realize that “an acre of [proper] performance is worth the whole world of promise”. Only then, each one could perform his duties better instead of passing the buck. It is the foremost duty of all concerned to realise the importance of this machinery and enlighten the interested parties to realize the same. In this context, steps ought to be taken to boost mutual trust, confidence between the disputants and also to tune, specifically, the attitude of the management towards this machinery so as to clear the ground for wider acceptance of ‘Voluntary Arbitration Machinery’ in Indian industries.