CHAPTER – IV

GOVERNMENT’S ROLE IN THE ADJUDICATION SYSTEM
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4.1 Introduction

The government plays a vital role in the working of industrial adjudication system in India. In addition to enacting the laws for regulating specific conditions of service, the state intervenes directly in the process of settlement of industrial disputes through, mainly, conciliation and adjudication. The intervention of the Government in the process of compulsory adjudication is all-pervasive. Except the actual adjudication, every other incidental function necessary for the adjudication of industrial disputes is to be performed by the Government. From the initial function of constituting the adjudicatory mechanisms and referring disputes to them for adjudication, up to the ultimate function of ensuring the implementation of the awards of these authorities are entrusted to the appropriate government under the scheme of adjudication provided by the I.D.Act. In other words, the appropriate Government is involved in every matter of detail in the scheme of adjudication. The rationale for this is that it is the responsibility of the appropriate government to ensure industrial peace that is essential for maintaining an uninterrupted production, supply and distribution of goods and services within its territorial jurisdiction and therefore, it has to play a major and active role in the settlement of industrial disputes.

4.2 Definition of “Appropriate Government”

Sec.2 (a) of I.D.Act defines the term “appropriate Government” to include both the Central and State Governments and lays down their respective dominions in
relation to industrial disputes. The Constitution of India 1950 also envisage jurisdiction of both the Central and State Governments on all matters of labour and industrial disputes in respect of both legislative and executive powers. Further, the I.D.Act directs that the functions of the government under the act shall be discharged both by the Central Government and the State Governments.

Broadly, Central Government is declared to be the appropriate Governments "in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government," some specified Central Statutory Corporations, a Banking or an Insurance company, a mine, an oil field, a cantonment board or a major port. And in relation to any other industrial dispute, the State Government is the appropriate Government.

If the Government referring a dispute for adjudication is not the appropriate Government, within the meaning of this definition, the Tribunal to which the dispute is referred would not get jurisdiction to adjudicate upon the dispute and even if an award is rendered, it would be a nullity. Therefore, the parties in certain cases exploited this legal position by challenging the awards on the ground that the Government that referred the dispute for adjudication was not the appropriate Government. The phrase 'any industry carried on by or under the authority of the Central Government', occurring in the first part of the definition, has been construed by the Supreme court as including only the industries which are carried on by the

1 The Constitution of India—Seventh Schedule—List-III (the Concurrent list)—Entries 22, 23, & 24.
Central Government directly, such as Railways, Postal and Telegraphs, Telephones, etc., and those carried on "under the authority of" i.e., as an agent or servant of the Central Government.¹

According to this interpretation, no industry carried on by a private person or a limited company can be an industry carried on by or under the authority of the Central Government even when it is so carried on under a license granted or under a trust created by the Central Government.² Further the industries, which are carried on by incorporated commercial companies, viz., Central Public Sector Industries, which are governed by their own constitutions, cannot be considered as industries carried on by or under the authority of the Central Government. Therefore, the Central Government companies or corporations, which are not specified in the first part of the definition, do not fall within the jurisdiction of the Central Government. The Supreme court held that since these Government companies are independent legal entities and run the industries for their own purposes under their own constitutions, they cannot be brought within the meaning of the phrase "industry carried on by or under the authority of the Central Government". Even in case of industries in which the Central Government owns the entire share capital and thus exercises full control, it was held that they cannot be said to be industries carried on by or under the authority of the Central Government. The Courts refused to lift the corporate veil for this purpose.

The question whether a corporation is an agent of state, it was held, must depend upon the facts of each case.\(^5\) Further even if a Central Government company or a corporation is “State” for the purposes of Art.12 of the Constitution on the ground that it is state’s agent or instrumentality, it still may not be an “industry carried on by or under the authority of the Central Government”\(^6\).

The second part of the definition, which declares that the State Government is the appropriate Government in relation to all other industrial disputes, also gave scope for much of litigation in case of industrial concerns having establishments in more than one state. The Courts have generally relied upon the principles governing the jurisdiction of civil courts to entertain actions or proceedings. In particular, the principle of the cause of action has been pressed into service. In *Lalbhai Tricumlal Mills Ltd v. D.M.Vin*\(^7\) Chagla C.J. observed:

“Applying the well known principles of jurisdiction, a court or tribunal would have jurisdiction if the parties reside within its jurisdiction or if the subject matter of the dispute substantially arises within its jurisdiction. And, therefore, the correct approach to the question is to ask ourselves – where did the dispute substantially arise?\(^8\)

\(^5\) Ibid.


\(^7\) (1956) I.L.L.J. 557 (Bom)

\(^8\) Ibid., p. 558.
In *Indian Cable Company Ltd v. Its workmen* the Supreme Court echoing the voice of the Chagla C.J., observed that as the Act contained no provision bearing on this question, it must consequently be decided on the principles governing the jurisdiction of courts to entertain actions or proceedings. The court extracted the above quoted passage from *Lalbhai Tricumlal Mills case* and held that “these principles are applicable for deciding which of the States has jurisdiction to make a reference under section 10 of the Act”.

The principle established in the above two cases was followed by the Supreme Court in *Workmen of Sri Rangavilas Motors (P) Ltd v. Sri. Rangavilas Motors (P) Ltd*, and later in *Hindustan Aeronautics Ltd v. Their Workmen*. In *Sri Rangavilas Motors case* the Court laid down a test “Where did the dispute arise?. Ordinarily, if there is a separate establishment, and the workman is working in that establishment, the dispute would arise at that place... there would clearly be some nexus between the dispute and the territory of the state and not necessarily between the territory of the state and the industry concerning which the dispute arose.”

But doubts still persist on the question, whether the existence of a separate branch or establishment in State other than the State in which the head quarters of the industry is situate, is necessary to consider the former as the appropriate Government
with respect to disputes concerning the workmen employed in that State. In other words, for the application of the above principle, whether "the existence of a separate branch" is part of the ratio of the above two Supreme Court decisions? In *Association of Medical Representatives v. Industrial Tribunal*, the M.P. High Court held that in respect of a dispute relating to a workman employed in the State of M.P., where there is no separate establishment of the company, the appropriate Government was the State of Maharashtra in which the head quarters are situated. But in *Paritosh Kumar Pal v. State of Bihar*, a Full Bench of the Patna High Court considered that the existence of a separate establishment is not a necessary part of the ratio and therefore, in respect of a dispute relating to a workman employed in Bihar, where there was no separate establishment of the company, the appropriate Government was the State of Bihar and not the State of West Bengal, in whose territories the head quarters of the company is situated.

This confusion is further confounded by a new principle enunciated by some High Courts, according to which there can be two appropriate Governments for the same dispute and a reference by either of them can be valid. Although most of them are obiter observations, the Delhi High Court in *Gestetner Duplicators (P) Ltd. v.*

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16 See also *Spencer & Co. Ltd., v. Delhi Administration*, (1975) F.L.R 76 (Del.).
D.D. Gupta, had specifically taken this view and applied this principle to the facts in this case by validating reference made by the Delhi Administration, where the appropriate Government was, as per the principle enunciated earlier by the Supreme Court, the Karnataka State Government. The pragmatic approach of these courts deserves to be appreciated. But a separate line of cases exist where some other High Courts had entirely rejected this theory of two appropriate Governments on purely technical and legalistic considerations. It is really painful that after a sufficiently long time was spent on the adjudication of the dispute and an award was rendered, the courts quash the award on such jurisdictional grounds because the Government which initially referred the dispute for adjudication was not the appropriate Government in the opinion of those courts. Until the definition is suitably amended to provide for such situations, it is better that the principle of simultaneous jurisdiction of two appropriate Governments is recognized, so that awards made by the Tribunals shall not be quashed on such technical grounds, although many may strongly oppose this view.

The situation that exists now is such that in certain border line cases a Government itself might not be sure whether it is the appropriate Government in respect of such a dispute.

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21 See for instance, the opinion of O.P. Malhotra who opposes this view and advocated that there can be and should be only one appropriate Government and says that the opinion of the High Courts that there can be two appropriate Governments for the same dispute is not correct law; Malhotra, O.P. The Law of Industrial Disputes (1998) Vol. I. P.76.
4.3 Appropriate Government’s Power to Constitute the Adjudication Machinery

In addition to constituting other industrial relations machinery, like Conciliation Officers, Boards of Conciliation and court of Inquiry, the appropriate Government has the power of constituting the adjudication machinery, i.e., Labour Courts and industrial Tribunals. Besides, the Central Government has the power to constitute National Industrial Tribunals.

i) Constitution of Labour Courts:

Sec. 7(1) of the I.D. Act provides: “The appropriate Government may by notification in the Official Gazette constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.” Sub – Sec. (2) of this section lays down: “A Labour Court shall consist of one person only to be appointed by the appropriate Government”.

Thus, under this Section both the Central and State Governments, as appropriate Government, have power to constitute one or more Labour Courts, mainly, for the adjudication of Second Schedule matters, which are generally rights disputes. If for any reason there occurs a vacancy in the office of the Presiding Officer

\[22\] Section 4 of the I.D. Act.
\[23\] Section 5 of the I.D.Act.
\[24\] Section 6 of the I.D.Act.
of a Labour Court, the appropriate Government shall appoint another to fill the vacancy.²⁵

ii) Power to constitute Industrial Tribunals

According to Sec. 7-A (1) of the I.D. Act, “The appropriate Government may, by notification in the Official Gazette constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under the Act.” The Industrial Tribunal like the Labour Court shall consist of only one person to be appointed as the Presiding Officer of the Tribunal.²⁶

The appropriate Government also has power, if it so thinks fit, to appoint two persons as assessors to advise the Tribunal in the proceedings before it.²⁷ Under this Section the appropriate Government has power to constitute Industrial Tribunal for a limited time or for a particular case or number of cases or for a particular area. In other words, the appropriate Government may constitute Tribunals on an ad-hoc basis as and when the disputes arise and the Government decides to refer them to the Tribunal.²⁸

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²⁵ Section. 8 of the I.D. Act.
²⁶ Sub – Sec (2) of Sec. 7-A of the I.D. Act.
²⁷ Ibid., Sub-Sec. (4).
²⁸ See J.h. Mangharam & Co. v. Industrial Tribunal, AIR 1956 M.B 183.
iii) Central Government's power to constitute National Industrial Tribunal

As per Sec. 7-B (1), "The Central Government may by notification in the Official Gazette, constitute one or more National Industrial Tribunals for adjudication of industrial disputes, which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by such disputes".29 A National Tribunal shall consist of one person only to be appointed by the Central Government.30 Further, only a person who is or has been a judge of a High Court can be appointed as the Presiding Officer of a National Tribunal.31 The Central Government may also appoint, if it so thinks fit, two persons as assessors to advise the National Tribunal in the proceedings before it.32

This power of the Central Government to constitute National Tribunals is an overriding power and under Section 10 (1-A) of the I.D. Act the Central Government has power to refer such disputes to a National Tribunal, whether or not the Central Government is the appropriate Government in relation to such disputes.

The object of this provision is two fold: first, to get the disputes of national importance adjudicated upon by a higher tribunal, as only a person who is or has been a judge of a High Court can be appointed as the Presiding Officer; and secondly, as the Central Government need not be the appropriate Government in respect of

29 See also Sec. 10 (1-A) of the I.D. Act.
30 Sub.Sec (2) of Sec. 7-B of the I.D. Act.
31 Sub.Sec. (3).
32 Sub.Sec. (4).
industrial disputes relating to all-India establishments, the reference to National Tribunal can avoid reference by different State Governments and it also overcomes the limitations of territorial jurisdictions of Industrial Tribunals constituted by the respective State Governments.

4.3.1 Appropriate Government’s Power to Refer Industrial Disputes for Adjudication

In the realm of the Industrial Disputes Act, 1947, Sec.10 is of paramount significance. If the disputants are not able to arrive at a “settlement” or if they are disinclined to refer their disputes to an Arbitrator, then, the “ultimate legal remedy for the unresolved dispute is its reference to adjudication by the Appropriate Government.” The scheme of the I.D. Act envisages the exclusive power of the appropriate Government to refer disputes for adjudication, thereby rendering the adjudication conditional on its discretion. Excepting applications under Sec. 33, 33-(C)(2), all other matters will have to come before the adjudicatory authorities only through an order of reference by the appropriate Government. But now in some States like Karnataka, Tamilnadu and Andhra Pradesh in case of industrial disputes relating to discharge, dismissal, retrenchment or other termination of services, a workman may directly approach a Labour Court for the adjudication of

34 Application by employer for obtaining authority before which any proceeding is pending for altering service conditions or for discharging or punishing the concerned workmen.
35 Complaint by workmen for contravention of Sec.33.
36 Application by workmen for recovery of money due from employer (disputes coming within the purview of Sec. 2A).
such disputes under the relevant State amendments to the *I.D.Act*.\(^{37}\) This power of the Government disables the trade unions or the workmen to make use of the adjudicatory forums for the settlement of disputes and as an effective remedy for their grievances. There has been a constant demand by the trade unions to provide them and to the workers direct access to these adjudicatory authorities. Further, the controversy about the Government's power arises in the context of misuse of this discretionay power for partisan ends with political motives. This discretionary power affords an opportunity to the Government to unduly favour trade unions affiliated to the political party in power and thus to discriminate against other trade unions. Then there are also objections of delay and of the Government's reluctance to refer disputes to which it is a party. These aspects will be dealt with in detail in this Chapter.

(1) **Nature and extent of Government's power:**

Section 10 (1) *I.D.Act*, which confers power on the appropriate Government to refer disputes for adjudication, is couched in very broad terms. It lays down, "Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may, at any time, by order in writing" refer the disputes for adjudication. On the construction of this Section the Supreme Court in a number of decisions explained that this power of the appropriate Government is purely of an "administrative nature", as the expression is understood in contradistinction to quasi-judicial or judicial power. This implies that it is a discretionary function of the Government and, therefore, it does not admit the application of the principles of

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\(^{37}\) See Sec 10 (4) (A) of *Industrial Disputes (Karnataka) Amendment Act*, 1987.
natural justice. The Government need not give any notice or hearing to the parties before deciding to refer the dispute. Further implication of holding it an administrative power is that, it may review its decision at any time and it is also not necessary for the Government to record any reasons for the exercise of this power.

The only limitation on the Government is that it should exercise the power bonafide after application of its mind to the matter before it. It should also take all relevant matters into consideration and leave out all irrelevant considerations. In other words, the discretion must be exercised according to law, as established by the Courts in various cases. The discretionary power should be exercised to promote the statutory objects and that a discretionary decision founded upon irrelevant factors or grounds would be judicially reviewable and quashable. 38

In *State of Madras v. C.P. Sarathy*, 39 the first leading decision of the Supreme Court on the interpretation of Section 10, it was laid down that the Government should satisfy itself on the facts and circumstances brought to its notice in its subjective opinion that an industrial dispute exists or is apprehended. The factual existence of the dispute or its apprehension and the expediency of making a reference are matters entirely for the Government to decide. It was further observed that the order of reference passed by the Government cannot be closely examined by a writ court under Article 226 of the Constitutions to see if the Government had material before it to support the conclusion that the dispute existed or was apprehended. But

later in *Western India Match Co. v. Western India Match Co Workers’ Union*\(^\text{40}\) and in *Shambunath Goyal v. Bank of Baroda, Jullundur*,\(^\text{41}\) the Supreme Court insisted that the appropriate Government should first satisfy itself on the basis of the material available before it that an industrial dispute exists or is apprehended and it was held that such a satisfaction of the Government is a condition precedent to the order of reference. In other words, if there is no material before the Government that an industrial dispute exists or is apprehended, the Government has no power to make a reference. Of course, the Court observed, the adequacy or sufficiency of the material on which the opinion was formed is beyond the pale of judicial scrutiny. Once the Government forms an opinion with respect to the existence of an industrial dispute or its apprehension, the next question of expediency, i.e. whether to refer the dispute for adjudication or not, is left to the subjective satisfaction of the Government. However, where the appropriate Government refuses to make a reference on receipt of a failure report of a Conciliation Officer under Sec.12 (4), the Government is bound to give reasons for its refusal and communicate the same to the parties concerned.

It is now well established that the discretion of the appropriate Government under Sec. 10 (1) is neither unfettered nor arbitrary. The exercise of power by the Government or refusal to do so is subject to the well-recognized principles regarding the exercise of administrative desecration. There must, first, be real exercise of discretion bonafide, i.e. the power must be exercised honestly and not for any corrupt

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or ulterior purposes. Secondly, the appropriate Government must apply its mind to the relevant material before it and decide the question of expediency of referring the dispute in the interests of maintaining industrial peace in the concerned industry. It will be an absurd exercise of discretion, if, for example, the Government forms the requisite opinion on account of pressure by any political party. Within these narrow limits, the government's opinion is not conclusive and can be challenged in a court of law. The well-known grounds for challenging the exercise of administrative discretion, like malafides, irrelevant considerations, not taking relevant considerations into account, improper purpose, acting mechanically or under dictation, are also available for challenging the improper exercise of power by the appropriate Government under Section 10(1) of the Act.

For instance, in *Sindhu Resettlement Corporation Ltd v. Industrial Tribunal*. The Supreme Court quashed the order of reference on the ground that no industrial dispute relating to the dismissal of the workman was in existence between the parties prior to the reference by the appropriate Government. The workman raised the dispute raised by the workman before the employer was only with respect to payment of retrenchment compensation and the dispute regarding reinstatement for the first time before the Government. The court observed that in the absence of a formal demand by the workman on the employer to reinstate him, the dispute relating to reinstatement cannot be said to have existed dispute. The definition of "industrial dispute" also contemplates the factum of dispute. Although the court in the instant

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case did not consider the question whether on the facts the Government could have apprehended such a dispute, the case is an authority to the proposition that there must be some material before the Government regarding the specific dispute before it decides to make a reference.

2. Powers of High Courts & Supreme Court to direct the Government to make a reference

Where the Government exercises its power bonafide upon taking into account all relevant matters and such an exercise of power results in a reference, the order of the Government cannot be successfully challenged. But if the Government does not act bonafide or takes into account any extraneous or irrelevant considerations, the order of the Government referring the dispute or refusing to refer the dispute is amenable to judicial review. Practically the question of referring a dispute for adjudication arises after the Government has received the failure report from the Conciliation Officer According to Section 12 (5), if on a consideration of the failure report by a Conciliation Officer, the appropriate Government is satisfied that there is a case for reference, it may make such a reference. Where the appropriate Government does not make such a reference, it shall record and communicate to the parties concerned its reasons therefore. Similar obligation to record reasons for non reference and communicating the same to the parties concerned arises where the failure report is submitted by a Board of Conciliation only in case of public utility
services. The reasons given by the Government for not referring the dispute should stand the test of judicial scrutiny. In *State of Bombay v. K.P. Krishnan*, the Government on consideration of the failure report refused to refer the dispute and the reason given by the Government was that the workmen resorted to go slow during the year 1952-53, for which year the workmen claimed bonus. The Supreme Court held that the Government had taken into consideration altogether an irrelevant matter in refusing to refer the dispute and therefore, a writ mandamus was issued to the Government directing it to reconsider the matter by ignoring the irrelevant consideration. While so holding, the Court observed:

"The order passed by the Government under Section 12(5) may be an administrative order and the reasons recorded by it may not be justifiable in the sense that their propriety, adequacy or satisfactory character may not be open to judicial scrutiny; in that sense it would be correct to say that the Court hearing a petition for mandamus is not sitting in appeal over a decision of the Government, nevertheless, if the Court is satisfied that the reasons given by the Government for refusing to make a reference are extraneous and not germane, then the Court can issue, and would be justified in issuing a writ of mandamus even in respect of such administrative order."

The Supreme Court in *Bombay Union of Journalists v* further discussed the question.

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43 See Sec. 13 (4) of the *I.D. Act*.


The State of Bombay.\textsuperscript{46} Although it is difficult somewhat to reconcile this decision with that of K.P. Krishnan (Supra), the Court clearly pointed out that while the Government is not precluded from considering the prima-facie merits of the case before deciding as to whether a reference should be made or not, it cannot take final decisions on questions of law or disputed questions of fact which are within the jurisdiction of the Tribunal. The Court then reiterated its earlier stand that in entertaining an application for a writ of mandamus against an order made by the appropriate Government under Section 10 (1) read with Sec. 12 (5), the Court is not sitting in appeal over the order and is not entitled to consider the propriety, adequacy or the satisfactory character of the reasons given by the said Government.

The combined reading of the above two cases would show that the Government’s order refusing to refer the dispute is amenable to judicial review on the following grounds:

i) When the Government does not act bonafide;

ii) When the Government does not record reasons and communicate the same to the parties concerned;

iii) When reasons recorded by the Government under Sec.12 (5) are not germane or are irrelevant; or

iv) When in the guise of considering the prima facie case the Government embarks upon the adjudication of the dispute itself, i.e. the questions of law or disputed questions of fact, and thus transgresses its jurisdiction.

\textsuperscript{46} (1964) II \textit{L.L.J.} 351 (S.C.).
In such cases the writ court shall issue a writ of mandamus directing the Government to reconsider the question of referring the dispute and act according to law. It may also be inferred from the above two cases that writ court cannot direct the Government to refer a dispute for adjudication, as it was felt that such exercise of power by the judiciary would tantamount to sitting in appeal over the decision of the Government. It is a well-established principle of law that writ courts only exercise supervisory and not appellate jurisdiction. This premise was expressly recognized by the Supreme Court in *Mahabir Jute Mills Ltd v. Shibban Lal Saxena*,\(^4^7\) wherein the Court observed that even if the Court thought that the impugned order of the Government suffered from legal infirmity, all that it could have done was to direct the Government to reconsider the matter afresh, but it had no jurisdiction to direct the Government to refer the dispute for adjudication. A pre-emptory order directing the Government to refer the dispute for adjudication, the Court felt, would amount to circumventing the statutory discretion of the Government. The Supreme Court in *Govind Sugar Mills Ltd. v. Hind Mazdoor Sabha* reiterated this legal position.\(^4^8\)

However, the recent trend of the Supreme Court, starting from the case of *Sankari Cement Ali Thozhalalar Munnetra Sangam v. Government of Tamilnadu*\(^4^9\) in 1983, was in favour of a compelling direction to the appropriate Government to refer the dispute for adjudication within a specified time limit, in appropriate cases. From

\(^4^7\) (1975) II *L.L.J.* 326 (S.C.).  
\(^4^8\) (1975) II *L.L.J.* 370 (S.C.).  
this case onwards the Supreme Court made a departure from its earlier approach of only asking the Government to reconsider the matter afresh. In the instant case, the Court directed the Government to make a reference of the dispute for adjudication within four weeks from the date of its order. Although no reasons were given by the court for such activist stand taken by the Court, the facts reveal that the Court took into account the matter of abnormal delay and litigation involved even at the stage of deciding whether a dispute should be referred for adjudication or not. Judicial activism in this area of industrial relations law had manifested itself in he later cases also bearing upon this issue. The credit for such a bold and unconventional decision should go to Justice D.A.Desai who delivered the Judgment of the case. The Supreme Court again in Nirmal Singh v. State of Punjab,\textsuperscript{50} directed the Government to the Tribunal to dispose it of within two months from the date of its order. The Court in this case justified its order on the ground of abnormal delay even at the stage of deciding whether a reference should be made or not. The Court went further and indicated its inclination to go to the extent of deciding the question in dispute by itself, but found it difficult to do so for want of relevant material before it. Therefore, the court recommended to the employer bank to consider whether the workman should be reinstated without payment of back wages.

\textsuperscript{50} (1984) II \textit{L.L.J.} 396 (S.C.)
Similarly in *M.P. Karmachari Sangh v. State of Madhya Pradesh*, the Supreme Court directed the Government to refer all questions raised by the appellant to the appropriate tribunal. The Court observed that the refusal of the Government to refer the disputes for adjudication on the 'specious plea' that it could ill-bear the additional financial burden constitutes adjudication and it was a “usurpation of the power of a quasi-judicial body by the appropriate Government”. It was further observed that the decision in refusing to refer the disputes for adjudication by the Government was a “unilateral decision”, which amounted virtually to a “final adjudication” over the Sangh’s demands. In the opinion of the Court it “robbed the employees of an opportunity to place evidence before the tribunal and to substantiate the reasonableness of the demands.” It is significant to note that the reference directed by the Court here related to interests disputes, unlike the individual rights disputes in other cases. The disputes in this case related to the demands of workmen for dearness allowance and Chambal allowance (Forest area). The reason given by the Government in refusing to make a reference that it could not bear the additional financial burden virtually amounted to adjudication by the Government itself, which is also incidentally a party to the dispute.

Another case in the line with greater clarity, which virtually ruled out Government’s discretion to refer individual disputes relating to discharge or dismissal

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was Ram Avtar Sharma v. State of Haryana. The case related to two different appeals from the decisions of the Government of Haryana and the Central Government. In these cases the Governments refused to refer the disputes for adjudication on the grounds that the charges against the workmen were proved in a domestic enquiry which was fair and just and that the action of the management in imposing the punishment of removal from service was not unjustified. The reasons also stated that the punishment meted out to the workmen was proportionate to the gravity of misconduct established. The Supreme Court, speaking through Justice D.A. Desai, who initiated the process of directing the Government to refer, had absolutely no hesitation in holding that the reasons given by the Governments were not only irrelevant, extraneous and not germane, but also tantamounted to adjudication by the Government itself, which is a naked usurpation of power. The question whether the enquiry conducted by the management was valid or not and whether the punishment of dismissal or discharge awarded by the management was justified or not are questions to be adjudicated upon by the Tribunals under Sec. 11 A of the I.D. Act. “Sec 11. A confers power on the Tribunal”, clarified Desai, J, “to examine the case of the workman whose service has been terminated either by discharge or dismissal qualitatively in the matter of nature of enquiry and quantitatively in the matter of adequacy or otherwise of punishment. The question of legality and validity of the enquiry has to be adjudicated upon by the Tribunal in a quasi-judicial determination, but not by the Government and the Government cannot

usurp this field of adjudication”. Sec.11-A was inserted by an amendment in 1971 with a view to enlarge the jurisdiction of the Tribunals and for providing a remedy to the workmen who are dismissed or discharged to appeal to a neutral body. The Tribunal can now not only sit in appeal against the decision of the management, but it has also power to interfere and award a lesser punishment even in cases where the misconduct of the workman is proved.

Taking this position of law into account, the Court held that if the reasons given by the Government were to be accepted as valid, almost all cases of termination of services cannot go before the Tribunal and this would denude Sec.11-A of the Act, read with Sec.2-A, of all its content and meaning. Therefore, the Government of Haryana and the Central Government were ordered to make a reference, since, in the opinion of the Court, a “clear case” had been made out in each of the two appeals.

The implication of this judgement is that in case of dismissal of workmen, the Government’s discretion whether to refer or not is now almost transformed into a duty, because it is impossible to conceive of any valid reasons that can be given by the Government for refusing to make a reference. So on receipt of a failure report from the Conciliation Officer, the Government will have no alternative but to refer the dispute for adjudication. Following the above decisions of the Supreme Court the High Courts also stated directing the Governments to refer such disputes for adjudication. It is perhaps due to this reason, more than others, that some State Governments have come forward to amend Sec. 2-A to provide for direct access to the Labour Courts in respect of disputes covered by Sec. 2-A.
To the same effect is *Veer a Rajan v. Government of Tamilnadu*,\(^{53}\) whose facts are in all force with Ramavtar Sharma, where the Supreme Court directed the Government to refer the dispute for adjudication within one month from the date of the Court's order and further directed the Labour Court to dispose of the reference within four weeks from the receipt of the order of reference. The Court was initially indulgent towards the Government when it only directed the Government to reconsider the matter, as the reasons given by the Government tentamounted to adjudication. But the Government again refused to refer the dispute by repeating the very same reasons, which the Court held earlier as irrelevant and not germane. Again in *Telco Convoy Drivers Mazdoor Sangh v. State of Bihar*,\(^{54}\) the Supreme Court directed the State Government to make a reference under Sec. 10 (1) of the dispute relating to the dismissal of 17 workmen for adjudication. The workmen, in this case, "had to toil and suffer for almost 17 years, since 1973 to 1989, to get the dispute referred for adjudication, finally succeeding in their valiant effort in the apex Court."

Although all the cases referred above, except *M.P.Karmachari Sangh's case*, related to disputes of discharge or dismissal, the legal position in general appears to be the same even with regard to interests disputes and the Government's discretion in this regard whether to refer disputes for adjudication or not is now very limited and confined to consider only whether the demands are of a frivolous nature. Otherwise, the rule is that the Government shall refer the disputes for adjudication. The extent of


judicial review and the discretion of the appropriate Government under Section. 10 have thus undergone a sea change over the years. What was once considered as a very wide discretion has now come to be considered as a very limited and narrow one. The observations of Khalid, J. in *M.P. Karmachari Sangh's case* (Supra) are apposite. The Judge observed, “Therefore, while conceding a very limited jurisdiction to the State Government to examine patent frivolousness of demands, it is to be understood, as a rule that adjudication of demands made by workmen should be left to the Tribunal to decide. S. 10 permits the ‘appropriate Government’ to determine whether the dispute exists or is apprehended and then refer it for adjudication on merits.’

This position of law is again reiterated by the Supreme Court in its decision in *Rajasthan State Road Transport Corporation v. Krishnakant*55 While dealing with the question of whether the remedy provided by the *I.D.Act* can be considered as an effective one, Justice Jeevan Reddy, speaking for the Court, observed:

“It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that the access to the forum depends up on a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference, unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer not the power to decide, though it may be that the Government is

entitled to examine whether the dispute is ex-facie frivolous, not meriting an adjudication."\textsuperscript{56}

The Court in this case had recommended to the Parliament and State Legislatures "to make a provision enabling the workmen to approach the Labour Court / Industrial Tribunal directly i.e. without the requirement of a reference by the Government in case of industrial disputes covered by Sec. 2 A of the Industrial Disputes Act".\textsuperscript{57} The Court felt that "this would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act."

Whether this approach of the Court in compelling the appropriate Government to make a reference, which may virtually amount to exercising appellate jurisdiction over the discretionary orders of the Government, is justified or not from a strict administrative law view point, the activist stance in these decisions is quite welcome from the point of view of labour law. In justification of the above decisions of the Supreme Court, it may be stated, first, that the Court was very much concerned about the abnormal delay at the stage of reference by the Government. In many of these cases the delay was more than a decade. Although the Court was satisfied that a case for reference was made out, the Government's stand was considered to be patently unreasonable.

\textsuperscript{56} \textit{Ibid.}, p. 1726.

Secondly, the Court in these cases also took into account the fact that the appropriate Government had decided for itself the questions of fact and law, which ought to be determined by the Tribunal after adjudication. Thirdly, and this is most important from the point of view of the objectives of the *I.D. Act*, the Court was considering that the adjudication of industrial disputes by the Tribunals should be considered as a quasi-judicial remedy provided to the industrial workmen for the resolution of their grievances and demands which lead to disputes. This is particular importance with regard to disputes, which arise from the termination of service of workmen. The disputes relating to discharge, dismissal, retrenchment or other termination of service of workmen are industrial disputes within the meaning of Sec. 2–A and therefore the jurisdiction of civil courts is impliedly barred by the *I.D. Act*. Although disputes strictly relating to contract of employment may be taken before the civil courts for enforcement of contractual rights, the civil courts have no power to order reinstatement even in cases of illegal termination of service, not to speak of the delay and expense that go with the civil suits.

Under the circumstances, the remedy made available by the *I.D. Act* is the only remedy available to such workmen. And if the appropriate Government takes the stand that it has discretion whether to refer or not to refer such disputes, the workmen who are deprived of their livelihood would be at the mercy of the Government for justice. If the remedy depends upon the discretion of the Government, it cannot be considered to be a remedy at all, not to speak of an effective remedy.

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3 i) No Power to Withdraw, Cancel or Supersede a Reference

On the question whether the power of the appropriate Government to refer a dispute under Sec. 10 of the I.D. Act carries with it the power to cancel or supersede the reference, the Supreme Court in *State of Bihar v. D.N. Ganguly*59 ruled that the Government has no such express or implied power to either cancel or withdraw a reference after it has made the order of reference. The Court did not approve the contention of the Government that as per the provisions of the General Clauses Act a power to make an order includes in it a power to cancel the order. The Court arrived at this conclusion by taking into account the objectives for which this power was not conferred on the Government.

ii) Power to amend the Order of Reference: However, the appropriate Government acting under Sec. 10 will have power to add to or amplify or correct any clerical or typographical errors.60 But the Government under the guise amending or correcting cannot supersede the reference already made. The cardinal principle in determining the question, whether the amendment amounts to a mere correction of a clerical error or introduction of fresh material is, whether the relief claimed by the aggrieved party in the original notification can be granted in the proceedings which are to take place in pursuance of the amended notification. If the same relief can be granted, the mistake may be considered as clerical, which can be corrected by an amendment. But

60 Ibid.
if the same relief cannot be granted, then it means that the original notification has been cancelled and another notification has been issued in its place, which the appropriate Government is not competent to do.61

4. Appropriate Government may “at any time” refer

The words “at any time” preceded by the word “may” in Sec.10 (1) in dictate the intention of legislatures that the Government should have discretion to refer a dispute at any time, if it is of opinion that an industrial dispute exists or is apprehended and that it considers expedient to do so in the interests of maintaining industrial peace in the concerned industry.

a) Pendency of Conciliation Proceedings: The significance of the words “at any time” is that the reference can be made at any time even before or during the pendency or after the conciliation proceedings. In other words, though as a matter of practice conciliation proceedings by a conciliation officer are held before the government decides to refer a dispute for adjudication, it is not a condition precedent. In Western India Match Co. Ltd v. Western Match Co. Workers’ Union,62 the Supreme Court observed:

“Ordinarily the question of making a reference would arise after the conciliation proceedings have been gone through and the conciliation officer has made a failure report. But the Government need not wait until such a procedure has been completed. In an urgent case, it can “at any time”, i.e. even when such

proceedings have not begun or are still pending, decide to refer the dispute for adjudication. The expression “at any time” thus takes in such cases where the Government decides to make a reference without waiting for conciliation proceedings to begin or to be completed. This position is amply made clear by Sec.20 of the I.D.Act which states that the conciliation proceedings shall be deemed to be concluded, among others, when a reference is made to a Court of Inquiry, Labour Court, Tribunal or National Tribunal.

b) Reference after refusal on a previous occasion:

Refusal of the Government to refer a dispute on a previous occasion does not prevent it from reconsidering the matter afresh at a later date and deciding to refer the same under Sec.10 (1) of the I.D.Act. In other words, previous refusal is no bar for a subsequent reference. This has been the consensus of the judicial opinion. The Supreme Court in the Western India Match Co. case categorically stated that the words, “at any time” do not admit any period of limitation and that previous refusal is no bar for a subsequent reference. In this case the Government referred the dispute for adjudication after a lapse of about six years from the previous refusal. The Court explained the law on this aspect in the following words:

“When the Government refuses to make a reference it does not exercise its power; on the other hand it refuses to exercise its power. Consequently, the power to

\[63\text{Ibid., at p. 257-58.}\]
refer cannot be said to have been exhausted when it has declined to make a reference at an earlier stage.\textsuperscript{64}

The Court further pointed out that the Government may reconsider the matter either because some new facts had come to light or because it had misunderstood the existing facts or for any other relevant consideration. With regard to too old claims or the extraneous considerations, like pressure from unions, etc., the Court said, “there is no reason to think that the Government would not consider the matter properly or allow itself to be stampeded into making references in cases of old or stale disputes or reviving such disputes on the pressure of unions”. Later in \textit{Binny Ltd v. Their Workmen},\textsuperscript{65} the Supreme Court upheld the validity of a reference by the Government though the Government refused to refer the same dispute on two earlier occasions.

Another significantJudgement of Supreme Court on this question, which had clarified many doubts about the nature of power of the appropriate Government when it subsequently refers the dispute after initial refusal and about the need for any fresh material before the Government justifying the change in its opinion, in \textit{Avon Services (Production) Agencies Ltd. v. Industrial Tribunal, Haryana}.\textsuperscript{66} Justice D.A. Desai, speaking for the Court emphatically observed:

“Merely because the Government rejects a request for reference or declines to make a reference, it cannot be said that the industrial dispute has ceased to exist, nor

\textsuperscript{64} Ibid., at p. 262.
\textsuperscript{65} (1962) I L.L.J 418 (S.C.).
could it be said to be a review of any judicial or quasi judicial order or determination. The industrial dispute may none the less continue to remain in existence and if at a subsequent stage the appropriate Government is satisfied that in the interest of industrial peace and for promoting industrial harmony it is desirable to make a reference, the appropriate Government does not lack power to do so under Sec. 10 (1), nor is it precluded from making a reference on the only ground that on an earlier occasion it had declined to make a reference. A refusal of the appropriate Government to make a reference is not indicative of an exercise of power under Sec.10 (1), the exercise of power would be a positive act of making a reference. Refusal to make a reference does not tentamount to saying that the dispute, if at all existed, stands resolved. On the contrary, the refusal to make a reference, not compelling the parties to come to a talking table or before a quasi-judicial tribunal would further accentuate the feelings and a threat to direct action may become imminent and the Government may as well reconsider the decision and make the reference.  

This holding of the Court seems to confer on the Government the power to refer the dispute after a previous refusal and for such a reference the Government need not have any fresh material before it and the only paramount consideration is the maintenance of industrial peace. But such a blanket power may result in some absurd situations or may put the employer in an embarrassing situation when he had already arranged the affairs of his business on the basis of the Government’s refusal to make a reference.  

Ibid., p.5.
reference. It is also possible that such unlimited power may be exercised due to extraneous factors like political pressure. For example, in *Mahavir Jute Mills Ltd. v. Shibban Lal Sexena*[^68^], the Supreme Court itself noted that between the dismissal of 800 workmen, which was the subject matter of dispute, and the hearing of the appeal by special leave nearly twenty years have elapsed and an embarrassing situation had arisen for the employer, as the workmen employed in place of the dismissed workmen had already put in twenty years of service. Despite these facts, the Court upheld the order of reference following the ratio of WIMCO case.

In view of such possibilities, O.P. Malhotra suggests, “It is, therefore, desirable that when the Government, subsequent to its refusal to make a reference, decides to refer the same dispute for adjudication, it must state reasons, showing that new facts had come to light or there was misunderstanding as to the existing facts or there was any other relevant consideration including the threat to peace, in the order of reference. Alternatively these reasons may be stated in the counter affidavit in reply to the writ petition challenging the order of reference”[^69^].

Interestingly some High Courts had taken the view that when the Government wants to reconsider its decision, it must comply with the rules of natural justice and should give notice and hearing to the parties, because such an order, according to these High Courts, has “civil consequences” as it has the potential of disturbing the arrangements made by an employer on the reliance of the Government’s refusal to

[^69^]: Supra note 13, p.701.
make a reference. Many experts on labour laws have supported this view. But some other High Courts had expressly ruled that there is no need for compliance with the principles of natural justice even in such cases, because they felt that the subsequent decision of the Government is also an administrative act.

In the context of these conflicting judgments of various High Courts, the Supreme Court, in *Sultan Singh v. State of Haryana* clarified that there is no need for the appropriate Government to give notice and hearing to the employer before making a reference on a “second application”, after having refused to make a reference on a previous occasion. The Court observed that just because the appropriate Government refused to make a reference on an earlier occasion, the order of reference (subsequently made) under Sec. 10 (1) does not cease to be an administrative order. Further, the ratio laid down in the above mentioned case has been followed in *Lokamat News Papes Ltd v. Commissioner of Labour, State of Maharashtra and another* by Bombay High Court and held that since power to refer the dispute is an administrative order there was no need to issue notice to or hear the employer before passing the order making or refusing the reference.

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70 See (1979) 55. F J R. 389 (Mad); (1978) L. L. J.544 (Kant); (1983) Lab. I.C. 223 (Punj & Har) and (1979) ll. L. L J. 22(Cal).


74 (2003) I L L.J 767 (Bom).
Hoever, recently in Sapan Kumar Pandit, the Supreme Court was called upon to construe the words “at any time” occurring under Sec. 2-k of the U.P. Industrial Disputes Act, which is in pari materia with Sec. 10(1), of Industrial Disputes Act. The Apex Court ruled that:

The words “at any time”... prima facia indicate to a period without boundary. But such an interpretation making the power unending would be pedantic. There is inherent evidence in this section itself to indicate that the time has some circumspection. The words ‘where the Government is of the opinion that any industrial dispute exists or is apprehended’ have to be read in conjunction with the words ‘at any time’. They are, in a way, complimentary to each other. The Governments power to refer has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression ‘at any time’ terminates with the eclipse of the industrial dispute. It, therefore, means that if the dispute existed on the day when the Government made the reference it is idle to ascertain the number of years which elapsed since the commencement of the dispute to determine whether the delay would have extinguished the power of the government to make reference.

Further the contention that in making a reference the Government is performing an administrative function and not a judicial or a Quasi-judicial function and therefore, audi alterem partem is not invokable has become untenable in the light of the path breaking decisions of the Supreme Court in State of Orisa v Binapani

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Devi\textsuperscript{76}, \textit{Kraipak v Union of India}\textsuperscript{77} and \textit{Mohinder Singh Gill v Chief Election Commissioner}.\textsuperscript{78} In Mohinder Singh, The Supreme Court has observed, it is submitted, rightly, that “the dichotomy between administrative and quasi-judicial functions \textit{vis-a-vis} the doctrine of natural justice is presumably obsolescent after Kraipak in India and Schmidt in England.\textsuperscript{79} In Binapani, the Supreme Court has held that even an administrative order, which involves civil consequences, must be made consistently with the principles of Natural Justice.\textsuperscript{80}

\textbf{Period of Limitation for Reference}

There is no period of limitation within which the appropriate Government has to make an order of reference. The words “at any time” do not admit any such limitation. That is the express intention of the legislature and there should be no such restriction imposed on the Government’s power. The laws of limitation which might bar any civil court from giving a remedy in respect of lawful rights cannot be applied by an Industrial Tribunal.\textsuperscript{81} However, it is only reasonable that the Government shall refer disputes within a reasonable time after the fact of the existence of the dispute is brought to its notice, either through the parties directly or through the failure report of the Conciliation Officer.

\textsuperscript{76} AIR 1967 S.C 1269, 1272.
\textsuperscript{77} AIR, 1970 S.C, 150,156.
\textsuperscript{78} (1978) S.C.C 405, 433.
\textsuperscript{79} \textit{Supra} note-76 ( it should become 80)
\textsuperscript{80} \textit{Schmidt v. Secretary of State for Home Affairs}, (1969) All.E.R. 904,909, Per Lord Denning M.R. (it is 79)
However, the appropriate Governments’ power to make a reference is unbridled. But, any discretionary power cannot, nay, ought not to be regarded as absolute because absolute discretion is a fertile ground to breed arbitrariness or for arbitrary actions and strikes at the roots of Article 14\(^{82}\) of our constitution, which forbids discriminatory actions. The discretionary authority, is therefore, is obliged to act fairly, justly and in good faith.\(^ {83}\) Justice Gajendragadkar in *Jharkand Collieries (P) Ltd v. Central Government Industrial Tribunal*\(^{84}\) observed that the policy of industrial adjudication was that very stale claims should not be generally encouraged or allowed unless there was a satisfactory explanation for delay, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it was necessary also to take into account the unsettling effect which it was likely to have on the employer’s financial arrangement. In *Shalimar Works Ltd. v. Its Workmen*\(^ {85}\) the Supreme Court pointed out that though there is no period of limitation prescribed in making a reference of disputes, “even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed. The reference in this case was made after four years of the dispute having arisen. The Court held that the relief of reinstatement


\(^{84}\) (1960) II. L.L.J (S.C.).

\(^{85}\) (1959) II L.L.J. 26 (S.C.)
should not be given to the discharged workmen in such a belated and vague reference. The Court’s opinion in this case was very much influenced by the facts of the case, where the employer provided many opportunities to the workmen to rejoin their duties, which were not availed of by the workmen. Similarly in *Vazir Sultan Tobacco Co. Ltd. v. State of A.P.*\(^86\) the A.P. High Court held that the delay of nearly six years in making a reference was inordinate, unreasonable and unjustifiable. On the other hand, even the delay of 18 years was considered no unreasonable on the facts of the case by the Delhi High Court in *Ithad Motor Transport (P)Ltd. v. Bir Singh.*\(^87\) Further the delay of 9 years has been condoned by the Karnataka High Court in *Assistant Executive Engineer, Z.P Engineering Bagalkot v. Ashok Shivappa Kapali.*\(^88\) Thus there is no hard and fast rule regarding the time for making a reference. As to what is reasonable time within which the dispute should be refereed after the failure of the conciliation proceedings or whether a claim has become too stale or not will depend upon the facts and circumstances of each case.

### 5. Form and Contents of an Order of Reference

The only requirement of S. 10 (1) is that the order or reference should be in writing. No form is prescribed under the Rules for making such an order Government should make the order of reference in writing indicating clearly the parties to the dispute and the points of controversy. It is not necessary to specify in the order of

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\(^86\) (1964) I. L. L. J. 622 (A.P.).
\(^87\) 1974) II L. L. J. 243 (Del.).
\(^88\) 2004 Lab. & IC p 2551(Kar.).
reference the relief's to be given by the Tribunal nor is it necessary to state the reasons for making the reference. The opinion of the Government as to the existence of the dispute and the fact that the dispute is referred to the Tribunal for adjudication should be clear from the order of reference. Since the Jurisdiction of the Tribunal is confined to the points specified in the order of reference and matters incidental thereto, as per Sec. (4), it is necessary that the order of reference should be carefully drafted without giving room for unnecessary litigation. Justice Gajendragadkar in *Express News Papers Ltd. v. Their Workmen*\(^9\) observed that orders of reference hastily drawn or drawn in a casual manner often give rise to unnecessary disputes and they prolong the life of industrial litigation, which must always be avoided. Therefore, it is necessary that the Government must bestow great care so as to formulate the points of dispute clearly and should be so worded as to avoid ambiguity.

6. **Choice of the Forum**

Although a reference under Sec.10 (1) may be made to a Board of Conciliation, or a Court of Inquiry; or to a Labour Court or Industrial Tribunal for settlement/adjudication, the last two only are the adjudicatory authorities with which we are presently concerned.

i) **Labour Court**

Under Sec. 10 (1)(c) the appropriate Government may refer a dispute, if it relates to any matter specified in the Second Schedule, to the Labour Court for adjudication. The Second Schedule matters are all disputes of rights nature or what

are also known as, legal disputes. When workmen raise disputes with regard to their existing legal rights, the reference of such disputes by the Government should be a matter of routine, unless the claims of workmen are found to be frivolous or vexatious.

ii) Industrial Tribunal

Under Sec. 10 1(d), the appropriate Government may refer a dispute, whether it relates to any matter specified in the Second or Third Schedule, to a Tribunal for adjudication. The Third Schedule matters like wages, allowances, bonus, hours of work, etc are all interests disputes and they can be referred only to Industrial Tribunals. Thus the Tribunals enjoy greater jurisdiction than the Labour Courts.

iii) Reference of Third Schedule matters to Labour Court

Although as a general rule the Third Schedule matters are referable to Industrial Tribunals, the first provision to Sec. 10 (1) provides that where the dispute relates to any matter specified in the Third Schedule and it is not likely to affect more than 100 workmen, then the appropriate Government, if it so thinks fit, refer such dispute to a Labour Court for adjudication.

The object of this proviso is to empower the Government to refer even the interests disputes in small industrial establishments to Labour Courts, which are permanently constituted on an ad-hoc basis.
7. Constitutional validity of Section 10 (1)

In *Nirmala Textile Finishing Mills Ltd. v. Industrial Tribunal, Punjab* the constitutional validity of Sec. 10 (1) of the *I. D. Act* was upheld by the Supreme Court. The Court held that the provisions of Sec.10 are not unconstitutional, as there is no infringement of the fundamental rights guaranteed under Articles 14, 19 (1)(f) and (g) of the Constitution. It was observed that the discretion conferred on the Government was not unfettered or unguided, because the criteria for the exercise of such discretion are to be found within the terms of Act itself.

4.3.2 Reference in case of Public Utility Services

As discussed earlier, the I.D. Act has some special provisions with regard to public utility services to ensure that there shall be no dislocation of these services by sudden strikes or lock-outs. Compulsory conciliation immediately on receipt of a notice of strike or lock-out is the first measure. According to Sec. 20 (1) of the *I.D. Act*, conciliation proceedings shall be deemed to have commenced on the date on which the notice of strike or lock-out under Sec. 22 is received by the Conciliation Officer.

Second proviso to Sec. 10 (1) another such measure. According to this proviso, “where the dispute relates to a public utility service and notice of strike or lock-out under Sec. 22 is given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be

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inexpedient so to do, make a reference under this Section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced”.

The language of this proviso indicates that it is imperative for the Government to make a reference subject to the two exceptions specified in the proviso. Since conciliation proceedings are compulsory in case of public utility services on receipt of notice of strike or lock out, practically in all such disputes the Government will have to either refer the dispute or record its reasons for refusing to make a reference and communicate the same to the parties concerned under Sec.12 (5). Although the word used in this proviso is “shall” instead of “may” used in the main provision, the Government has still the power to consider the question of expediency of making a reference even in case of public utility services and therefore it is difficult to distinguish this proviso with the main provision of the Section. In both cases the Government has to consider the question of expediency before making a reference. But in as much as there is a separate special provision and the word used is ‘shall’, Government's discretion may be considered to be more limited in case of public utility services than in case of other industries.

4.3.3 Special Powers of Central Government

i) Power of Central Government to refer disputes to Labour Courts and Industrial Tribunals constituted by State Governments: The Third proviso to Sec. 10 (1) “where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer a dispute to Labour Court or an Industrial Tribunal, as the case may be, constituted by the State
Government”. According to this proviso, inserted by 1982 Amendment, it is not necessary that the Central Government shall refer disputes only to Labour Courts and Industrial Tribunals constituted by it. Instead, it may refer the disputes to a Labour Court or an Industrial Tribunal constituted by any State Government. This is aimed at facilitating the Central Government not to constitute separate ad judicatory authorities in areas where the disputes are not many in number, but all the same refer them to the authorities constituted by State Governments in those areas.

ii) Overriding power of Central Government to refer disputes to National Tribunal: According to Sec. 10 (1-A), Central Government may, at any time, refer any industrial dispute, if it is of opinion that the dispute involves questions of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by such dispute and that the dispute should be adjudicated by a National Tribunal, whether or not the Central Government is the appropriate Government in relation to such dispute and also whether the dispute relates to any matter specified in Second Schedule or Third Schedule. For adjudication of disputes of national importance or disputes in respect of inter-state industrial establishments, the Central Government has been empowered to invoke this provision to refer such disputes to a National Tribunal for adjudication. To invoke this provision, the Central Government need not be the appropriate Government in relation to such disputes.

As per Sec. 10(6), upon such reference being made by the Central Government, no Labour Court or Industrial Tribunal shall have jurisdiction to
adjudicate upon any matter contained in the reference to the National Tribunal. If any such matter referred to National Tribunal is pending in any proceeding before a Labour Court or Tribunal, such proceeding before the Labour Court or Tribunal shall be deemed to have been quashed. It shall also not be lawful for the appropriate Government to refer any matter under adjudication before a National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of proceedings in relation to such matters before the National Tribunal.

A combined reading of Sec. 10 (1-A) and 10 (6) clearly indicates that Central Government has an overriding power of reference to a National Tribunal, even with respect to disputes, which are already pending adjudication by a Labour Court or Tribunal. Once the Central Government shall be divested of its functions under the Act and thereafter the Central Government shall be deemed to be the appropriate Government in relation to that dispute for all legal purposes.91

4.3.4 Reference of disputes on an application by both parties

Sec. 10 (2) of the I.D. Act provides, “where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make a reference accordingly”.

This sub-section makes it obligatory for the Government to refer an industrial dispute if the parties themselves apply to it in the prescribed manner. In other words,

91 See Sec.10 (7) of the I.D. Act.
where the parties apply for a reference, the discretion of the Government is divested and it will be under an obligation to refer such dispute for adjudication. In such cases, the Government need not consider the question of existence of an industrial dispute or its expediency to refer. The only requirement is that Government should satisfy itself that the parties to the application represent the majority of each party. When on both sides of the dispute there are associations or unions, the requirement of majority on both sides arises. But if the dispute is between a single employer and his workmen, the question of majority with respect to the employer does not arise and the Government will have to be satisfied only with respect to the majority of workmen. In other words, the trade union, which makes such an application, will have to be a representative of majority of the workmen of that establishment. The appropriate Government before making a reference under this provision may hold such inquiry as it thinks necessary to satisfy itself about the representative character of the union, which is a party to the application.92

4.3.5 Duty of the appropriate Government to specify the period of adjudication

It is common knowledge that there are inordinate delays in the adjudication of industrial disputes by the Labour Courts and Tribunals. Parliament’s concern of these delays was manifested through an amendment to the to the I.D. Act in 1982, which has introduced sub–sec (2A) in sec.10. This amendment is aimed at reducing the delays in adjudication and ensuring a time-bound adjudication. This provision requires the appropriate Government to specify in the order of reference itself the

period within which the adjudication shall be completed and the award submitted to
the Government. According to this sub-section, “An order referring an industrial
dispute to a Labour Court, Tribunal or a National Tribunal under this Section
(i.e.Sec.10) shall specify the period within which such authority shall submit its award
on such dispute to the appropriate Government”. The first proviso to this sub-section
adds that, “where such industrial dispute is connected with an individual Workman,
no such period shall exceed three months.”

Having laid down this salient provision with a view to secure quick disposal of
cases, the next proviso whittles down its obligatory character when it empowers the
presiding officer to extend such period by such further period as he thinks necessary.
The presiding officer may extend the period specified in the order of reference either
on the application of both parties or for any other reason as the presiding officer
considers it expedient or necessary, If the presiding officer extends the period by such
further period as he thins necessary, he has to record reasons as to why such extension
became necessary. This leeway given to the presiding officer virtually negates the
very spirit with which this amendment was made. The last proviso introduces another
safety clause according to which the proceedings before the presiding officer shall not
lapse merely on the ground that any period specified under this sub- section had
expired without such proceedings being completed.

Except in case of individual disputes, the appropriate Government has
discretion to fix the necessary adjudication time. The Government has to decide this
period by taking into account the nature of dispute, the matters already pending before the concerned adjudicator, etc.

4.4 Objections to the Governments' discretion to refer disputes for adjudication

It is already noted that the main policy background of the industrial relations system in India is the Government intervention in industrial disputes through, mainly, conciliation and adjudication. The Government’s intervention even in the adjudication method is extensive. The Government retains in its hands the ultimate control of deciding which disputes should go for adjudication through the technique of Government reference of disputes for adjudication. As a general rule, parties to the dispute have no freedom to take their disputes to the adjudication machinery. In other words, they have no access to the adjudication machinery, even in case of disputes of legal or rights nature, which include very important disputes connected with dismissal or discharge of workmen. The discretion vested in the Government to refer or not to refer is counter productive and defeats the very purpose of peaceful settlement of disputes through adjudication. The trade unions, researchers and Commissions have voiced several objections on labour relations to this exclusive discretionary power of the appropriate Government. These specific objections are discussed hereunder.

1. Objections on the basis of Policy: The system of Governmental reference of disputes to Industrial Tribunals was started for the first time during the Second World War through Rule 81-A of Defence of India Rules in the year 1942 to meet the exigencies of war. Later even after the conclusion of war the system has been continued through the I.D.Act. Although the Government which takes upon itself
the responsibility of maintaining industrial peace and harmony should have power to refer certain disputes, which are likely to result in large scale industrial unrest, for adjudication, thereby prohibiting strikes and lock-outs, there is absolutely no justification to close the doors of the adjudication machinery to the parties—trade unions, individual workmen and employers—when they choose to settle their disputes peacefully through the help of adjudication machinery on their own initiative. It should not be forgotten that the adjudication system over the years has come to be seen by the workmen in certain cases, particularly regarding the rights disputes, as the only effective remedy with all its drawbacks. It is therefore quite objectionable as a matter of policy to deny free access to these bodies for the parties concerned. That is the reason why the trade unions have been demanding right from the beginning that the unions and the workmen should have the freedom to take their disputes to the Labour Courts and Tribunals for adjudication. The Government, as a matter of policy, is willing to consider this demand only to the extent of individual disputes, which are by their nature legal or rights disputes. The 1978 Industrial Relations Bill and the 1988 Trade Unions and Industrial Disputes (Amendment) Bill Proposed such liberalization which were to enable the individual workmen to approach Labour Courts directly in case of all individual disputes. But, unfortunately, these Bills could not be enacted into law and they were allowed to lapse. With the result the anachronistic and objectionable policy of exclusive Governmental discretionary referrals continues to be the law. As noted earlier, now some State Governments have come forward with amendments
permitting the individual workman to approach the Labour Courts directly in case of disputes relating to discharge, dismissal, retrenchment or other termination of service, i.e., Sec 2-A disputes. Necessary changes in law enabling the parties to approach the adjudicatory authorities are imperative even with regard to interests disputes, as recommended by the Ramanujan Committee (1990) and the Second National Commission Labour (2002) the Changes in law, it is submitted, should be on the following lines. First, the individual workmen should be empowered to approach directly the Labour Courts in case of all individual disputes, which are by their very nature rights disputes.

Secondly, a provision must be made for the recognition of a bargaining agent in each industrial establishment and such recognized unions should be given the option of taking interests disputes for adjudication directly to Tribunals.

Thirdly, in cases where the parties are not willing to approach the Tribunals for resolving their interests disputes and there is no prospect of settlement through collective bargaining or voluntary arbitration, and the dispute is likely to result in industrial unrest which the Government wants to avoid in view of the importance of the industry, the Government may also be given the power to compulsorily refer such dispute for adjudication. But such power must be exercised very sparingly and as an ultimate measure in public interest. The essence of this submission is that the parties must be given freedom to select the method or forum for settlement of their own disputes, with the Government intervention in-built into the system, wherever it comes
absolutely necessary. The proposed Labour Management Relations Bill recommended by Second NCL provides for some of these changes.93

2. Delay in making reference: One of the objectives of constituting separate labour tribunals for adjudication of industrial disputes is to ensure their speedy settlement. The procedure of Governmental reference adds to the delays, which are now almost endemic with the adjudicatory machinery itself. The Governmental reference involves in it, practically speaking, conciliation of the dispute first by the Conciliation Officer. Although the times specified by Sec. 12 (6) for completion of the conciliation proceedings before a Conciliation Officer is fourteen days, in practice the conciliation proceedings are prolonged beyond a reasonable time, many times lasting up to 6 months or more. The Conciliation Officer does this without officially commencing the conciliation on his records. In addition to this delay, after receipt of the failure report from the Conciliation Officer, the appropriate Governments very often take a pretty long time before a reference is made.

Various empirical studies conducted in different States revealed that the Government taken 6 to 24 months for making a reference after receiving the failure report. A study conducted in the State of Jammu and Kashmir by a researcher revealed that the average time taken by the appropriate Government to refer the dispute after receiving failure report was 9 months. Four out of Twenty cases examined took between 15 to 20 months94

In another study conducted by a Labour Law consultant and advocate in the State of U.P., he found that the time taken by the Government in many cases is more than a year. He maintained, "it is an irony that the appropriate Governments invariably take more than a year in making a reference after the Conciliation Officer submits his report". 95

Yet in another study conducted (in this case the Central Government is the appropriate Government) by a Trade Union leader at Dhanabad Coal Mines, he found that the delay was quite unreasonable. On the basis of his empirical investigation he found:

"On checking and verification, on random basis, of 50 references, which were made by the Central Government to the Industrial Tribunal at Dhanabad with respect to coal mines, which is a public utility service, for adjudication under s. 10(1) of the Act, it was found that 15 months to 3 years was ordinarily taken for getting the dispute referred, from the date the dispute was raised by the union of the workmen before the Conciliation Officer till it was referred to the Industrial Tribunals. The Central Government itself took one to two years to make a reference from the date of the receipt of the report of the failure of the conciliation submitted by the respective Conciliation Officers". 96

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It is already seen earlier in this Chapter under the caption, powers of Supreme Court & High Courts to direct the Government to make a reference", that in most of the cases where the Supreme Court had directed the Government to refer the dispute for adjudication, the matter was pending with the Government for more than a decade. And in *Telco Convoy Drivers Mazdoor Sangh v. State of Bihar*, the dispute relating to the dismissal of 17 workmen took 17 years for the reference. The union on behalf of the dismissed workmen had to toil since 1973 to 1989 to get the dispute refereed for adjudication, finally succeeding only through the intervention of the Supreme Court. If the parties are given the freedom to take the disputes for adjudication, this delay can be avoided. Hence recommendations of Second NCL providing for direct approach of parties to the Labour Court, conciliation, Arbitration Lok-Adalat or to Labour Relations Commissions in respect of all matters specified in Second Schedule of *I.D.Act*, is significant one. As such it needs serious considerations by the law making authority.98

3. Political Patronage and Discrimination: The exclusive power of the Government to refer disputes for adjudication is prone to be exercised in a discriminatory manner in some cases either to confer undue benefits on a trade union which may be affiliated to the ruling party or to deprive the benefit of adjudication to other trade unions affiliated to the opposition political parties. First National Commission on Labour (NCL), while recommending Independent Industrial Relations Commissions, which

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are to be entrusted with this function of deciding to make references of interests disputes for adjudication, categorically pointed out that there were many complaints by trade unions of such discriminatory referrals by the Governments. The Western and Southern regional study group constituted by the First NCL Pointed out that the Government’s commanding position was being misused to promote partisan ends. They also pointed out that Government’s discretionary power and the manner in which it was used was “seriously politicalising industrial relations problems”. Accepting that the discretion vested in the Government in the matter of reference of disputes as one of the weaknesses in the working of the industrial relations machinery, the NCL observed as under:

“There have been complaints of political pressures and interference. And this aspect cannot be entirely ignored in framing our recommendations”.  

This system of IRCs recommended by the First NCL seeks to do away with the existing exclusive discretionary power of the Government and instead the IRCs are to decide to take cognizance of disputes for adjudication, upon the failure of bipartite negotiations. As regards legal or rights disputes, the NCL favoured the retention of Labour Courts, where “proceedings instituted by parties asking for the enforcement of rights under the aforesaid categories will be entertained by Labour Courts....”

Even the Second NCL also has recommended for allowing the parties to directly approach the Labour Courts, Conciliation, Arbitration, Lok-Adalats or Labour

100 Ibid., p.335.
Relations Commissions in respect of all matters specified in Second Schedule of *I.D.Act* and to minimise the role of government in settlement of disputes.  

101 As such it needs serious consideration by the law making authority.

4. **State is the employer in many disputes:** State is the major employer in India, having undertaken many industrial and commercial activities. The Government directly or its agencies would happen to be a party to most of the industrial disputes with their employees. In such cases the Government, being a party to the dispute, cannot be expected to take impartial and fair decisions while exercising the discretionary power of making references for adjudication. There are a number of disputes pending for years between the public sector industries and their workmen, which the Government has been assiduously avoiding to bring them before the Tribunals for adjudication. Many cases that have come up before the Supreme Court complaining against the Government’s refusal to refer relate to industries, which are owned and managed by the Government  

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5. **Favourtism and Corruption:** The exclusive discretionary power of the Government naturally tends to breed corruption and favourtism. While some unions having clout with the Labour Minister or the concerned bureaucracy can manage a reference easily, it is almost impossible for others, even in many deserving cases, to get a favourable response from the Government. The money power and the capacity

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101 *Supra* note 98, p.46.

102 See for detailed discussion of the cases, under the caption: “Power of High Courts & Supreme Court to direct the Government to make a reference,” *Supra* in this Chapter.
and inclination to offer bribes by employers would also often times influence the
Government discretion, although it is difficult to establish by evidence such instances.

6. Bureaucrats and politicians are not experts to decide: The question of reference
is ultimately decided under the present system by the bureaucratic or political
administration, which lacks expert knowledge on labour problems. The IRCs
consisting of experts in the area, as recommended by the First NCL would be more
appropriate body to exercise such powers., in addition to the parties themselves
verify. The Second NCL has recommended for directly taking the case by aggrieved
worker in case of individual disputes and by the recognised union in case of collective
disputes within a period of one year from the date of arrival of the cause of action.

7. The Question of remedy vis-a-vis discretionary power: The adjudication
machinery has extra-ordinary powers to grant appropriate relief to the workmen,
which the ordinary Civil Courts do not have. Further, it is established law that the
Civil Courts have no jurisdiction to entertain cases where the enforcement of a right
or an obligation relates to those created by the I.D.Act. The I.D.Act, in addition to
conferring many benefits on workmen in cases of lay-off, retrenchment, transfer of
ownership or closure of an establishment, now empowers the adjudicators with
appellate jurisdiction to interfere with the managerial discretion to punish a workman
by discharge or dismissal, which power is considered essential for ensuring the all
essential job security of industrial workmen. Therefore, it is absolutely essential that
for enforcement of all rights created by the I.D.Act and other related laws, the
workmen should be able to approach the adjudicatory authorities without the
requirement of Governmental reference. There is an obvious inconsistency in the policy of the Act (particularly after the subsequent amendments), which confers certain crucial rights on workmen and places the enjoyment of these rights at the disposal of the Government, which is often the party against whom the rights are sought to be enforced. If the Government refuses reference, the aggrieved workmen are left with no remedy, except to move the writ court and very few among the ordinary workers can even think of reaching the precincts of High Court, for the cost of litigation, which is not within the reach of any common man in this country. It is significant to note that such a situation is not conducive to the maintenance of industrial peace and harmony.

8. **Frequent changes in the Government:** In a democratic set up, there is every possibility of a change of Government at the Centre and at the State level. A change in the Government may drastically bring about a change in its relations with the trade unions. As discussed earlier, previous refusal by the Government is no bar for subsequent reference. So the reference of disputes in certain cases depends upon the political party coming to power and its relations with the trade union sponsoring the dispute, in addition to a change in policy of the ruling party. Such a change in the decisions of the Government makes a mockery of the power of reference conferred on the Government under Sec. 10 (1) of the *I.D. Act.*

There is almost unanimity among researchers, academicians, lawyers and industrial relations experts that it is high time that this exclusive discretionary power
of the Government is done away with. After an exhaustive analytical study of Sec. 10 of the Act, a noted researcher concluded:

"With the passage of time, growth and expansion of industries and the increase in the number of industries run, controlled or dominated by government or semi-government bodies due to the advance from welfare state to a socialist state, it is no longer necessary (in fact, it is no longer desirable) to continue this domination of the State in the matter of industrial adjudication. It is quite possible that where the affected employer is the government itself, the reference order would not be easily forthcoming as it was evident in Hochtief Gammon (Supra). It is also possible that the appropriate Government may use the machinery of making a reference for furthering the cause of a particular union, though it may not be necessary in the interests of the working class.

"It is therefore submitted that it is now time to do away with this sole prerogative of the government to initiate the industrial adjudication. It would be desirable to give a right to move the labour courts and tribunals to the individual parties as regards the items under Schedule II of the Industrial Disputes Act, these are items with which individual workmen are vitally connected. As regards the items under Schedule III, it would be appropriate to give the right to move the adjudicating authority to the employer and the representative union of the employees as these are items with which the workmen are connected as a group."103

An empirical study conducted by Professor P.G.Krishnan of Delhi University, "generally found that the labour department in making a reference causes delay and functions in a routine casual manner, characteristically of the bureaucratic style with all its incidental malaise. It is found that various factors influence the exercise of governmental discretion at the reference stage. There are subjective factors, personal and political, which affect prejudicially the making or refusal of a reference. Further the majority of employers and employees in both public and private sectors would prefer to do away with the governmental reference as a system initiating adjudication. They would welcome a method that would permit the dispute to be brought before the settlement machinery straight."104

In the light of the project study conducted by the above researcher, a suggestion was made to the following effect: "It is desirable that the reference system as an intermediate stage be done away with, and the parties be enabled to take the matters directly before the adjudicatory machinery. In this regard, a new Section 10-B is to be enacted. It must provide that where the government fails to make a reference within fifteen days of the submission of the failure report of the Conciliation Officer, the parties are entitled to take the dispute before any of the adjudicative authorities competent to deal with it under the Act. In that case the dispute must be deemed to have been validly refereed to that authority."105

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105 Ibid., at p.276.
The recommendations of First and Second NCL for constitution of independent IRCs & LRCs who shall decide the question of adjudication of interests disputes, and for direct reference of rights disputes by the parties to the Labour Court were discussed earlier in this Chapter.

Finally, the Ramanujam Committee (Bipartite Committee on Industrial Relations Law), which submitted its report to the Government of India in 1990, while recommending the setting up of IRCs, suggested as follows:

“After failure of negotiation in the Negotiating Council and when arbitration is not available for any reason, the party which raises the dispute may refer the dispute for adjudication to the concerned IRC. At the same time, the appropriate Government will also have the power to refer any dispute for adjudication by the IRC on its own initiative in public interest and simultaneously prohibit any strike or lock-out.”

This suggestion was made with regard to interests disputes and Committee favoured direct access to Labour Courts in case of rights disputes. Even the same has received approval of the Second NCL.

In view of the above discussion, it may be concluded that the exclusive governmental discretion to refer disputes for adjudication should be done away with and in case of rights disputes the workmen be given direct access to Labour Courts and in case of interests disputes the recognized unions also must have the option of taking the disputes for adjudication, while the Government may continue to have the

power to refer disputes for adjudication in public interest, for ensuring industrial peace, in vital disputes.

4.5 Government's Power to prohibit the continuance of strikes or lockouts after making reference

As discussed in the previous Chapters, compulsory adjudication system in developing countries is seen as an alternative to strikes and lockouts. This is important objective of the *I.D.Act*, which seeks to promote the adjudication system and thereby restrict the strikes and lockouts. By a proper use of the adjudication system, the strikes and lockouts can be made illegal. Firstly, Sec.23 (b) prohibits any strikes or lockouts in any industrial establishment during the pendency of adjudication proceedings and for a period of two months after the conclusion of such proceedings. Secondly, once the award of the adjudicator comes into operation strikes and lockouts are prohibited by Sec.23 (c) during the period from which the award is in operation in respect of any of the matters covered by the award. Thirdly, if there is already inexistence a strike or lock-out, the appropriate Government, by referring the concerned disputes for adjudication, will acquire power to prohibit the continuance of any such strike or lockout. It is this power of the appropriate Government, which is sought to be discussed here, since in the first two cases Parliament itself declared the prohibition.

Sec 10 (3) lays down, "where an industrial dispute has been refereed to a Board, Labour Court, Tribunal or National Tribunal under this Section, the
appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of reference."

The object of this provision is to ensure the investigation and settlement of disputes in as peaceful atmosphere. Continuance of a strike or lock-out, even though commenced before the order of reference, during the pendency of adjudication proceedings is not conducive for effective adjudication of disputes. Therefore, the power is conferred on the Government to prohibit the continuance of any strike or lock-out that may have been in existence on the date of reference. Sec 24 of the Act declares that the strikes and lockouts continued in contravention of an order made by the Government under Sec. 10 (3) shall become illegal.

Although the intention of the Parliament is obvious, the language used in the sub-section gave rise to interpretational difficulties. The Supreme Court in *Delhi Administration v. Workmen of Edward Keventers*, reversing the decision of the Delhi High Court, held that the appropriate Government could prohibit "strikes or lock-out only in respect of the demands which were referred for adjudication". The result of this holding is that if the workmen raised certain demands and had gone on strike in respect of those demands, the Government can prohibit the continuance of the strike under this provision only if it had referred all the demands for adjudication. In other words, if the Government does not refer all those demands for adjudication, it cannot prohibit the strike in respect of the demands, which were not referred. The

words "such disputes which may be in existence on the date of reference" are read together as relating to the disputes referred. It was held that the words "which may be in existence on the date of reference" do not relate to strike or lockout but to the disputes. The Kerala High Court took the view that the power under Sec. 10 (3) is of a quasi-judicial nature and therefore an order there under cannot be passed by the Government without giving notice and hearing to those who would be affected by the order.  

On the other hand the Delhi and A.P High Courts were of the opinion that this power of the Government was purely administrative and therefore there was no need for the compliance with the principles of natural justice. The Supreme Court in *Niemla Textile Finishing Mills Ltd v. Industrial Tribunal Punjab* upheld the constitutional validity of this provision on the ground that the power is not arbitrary because it provides for the exercise of discretion for attaining the object of the Act, viz., peaceful settlement of industrial disputes.

4.5.1 Government's power to include similar establishments in a reference

Sec.10 (5) of the *I.D.Act* confers power on the appropriate government to include in an order of reference, either at the time of reference or thereafter but before the submission of award, any industrial establishment, group or class of establishments of a similar nature which are likely to be interested in or affected by

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such dispute, whether or not at the time of such inclusion any dispute exists or is apprehended in such establishments.

4.5.2 Government's power to make Rules regulating the procedure of Adjudicatory authorities

Sec. 11(1) of the *I.D.Act* lays down that the ad judicatory authorities shall follow such procedure as they think fit, subject to any Rules that may be made by the appropriate Government. In pursuance of this power the Central Government as well as the State Governments have made detailed Rules of procedure to be followed by the adjudicators. Similarly Sec. 38 of the *I.D.Act* also empowers the appropriate Government to make Rules providing for the powers and procedures of the adjudicators, appointment of assessors, ministerial establishment of these authorities, etc.

4.5.3 Publication of Awards

On completion of the adjudication of an industrial dispute, the adjudicatory authority shall submit its award to the appropriate Government. According to Sec. 17 of the Act, every award of a Labour Court, Tribunal or National Tribunal shall, "within a period of thirty days from the date of its receipt by the appropriate Government be published in such manner as the appropriate Government thinks fit". The language of the Section clearly indicates that a duty is cast on the appropriate Government to publish the award. According to Sec. 17-A the award so published

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112 Sec. 15 of the *I.D.Act*. 
shall become enforceable on the expiry of thirty days from the date of its publication. Therefore, an award unless published shall not come into effect.

The Statutory link between publication and enforceability makes it obligatory for the Government to publish the award. In *Sirsilk Ltd v. Government of A.P.* \(^{113}\) the Supreme Court held that publication of an award by the Government within 30 days from the date of its receipt is mandatory and not directory. Later in *Remington Rand of India Ltd v. The Workmen* \(^{114}\) Supreme Court clarified that publication of an award by the Government is mandatory, but the period of 30 days fixed for the publication is only directory, in the sense that an award published even after the lapse of 30 days shall not become invalid. In coming to this conclusion the Court took into account that there might be circumstances, like a strike in the Government press, etc., due to which the publication within 30 days might become impossible and this simple technical lapse should not affect the validity of an award.

### 4.5.4 Power to defer, reject or modify the award in certain cases

Section 17-A (1) provides that, as a general rule, an award shall become enforceable on the expiry of thirty days from the date of its publication. The proviso to this sub-section confers a drastic and unwholesome power, the constitutional validity of which is doubtful, on the appropriate Government to defer the enforceability of the award and then to either reject or modify the award. According to this proviso, “(a) if the appropriate Government is of opinion, in any case where the

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\(^{113}\) *(1963)* II *L.L.J.* 647 (S.C.).

\(^{114}\) *(1967)* II *L.L.J.* 866 (S.C.).
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, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.” Sub-Sec.(2) provides that where such a declaration has been made, the Government may within ninety days from the date of publication of the award make an order rejecting or modifying the award. A safeguard provided is that such an order along with the first available opportunity. When so laid the modified award shall become enforceable on the expiry of fifteen days from the date has been made in pursuance of its declaration deferring the normal enforceability, the original award shall become enforceable on the expiry of ninety days from the date of its publication.

It is submitted that, first, conferring such a drastic power on the Government to reject or modify an award by a quasi-judicial authority is in itself objectionable. Secondly, the Government by exercising this power can frustrate the very objectives of the Act, although the power may be exercised in favour of either the employer or the workmen. Thirdly conferring the power to reject or modify an award by the Government in relation to an industrial dispute to which it is a party is contrary to the basic principles of fairness and justice. This power given to one of the parties to the dispute to unilaterally reject or modify the award may be considered as arbitrary since
the grounds on which this power can be exercised, i.e. affecting national economy or social justice, are very broad. This power in effect means that the Government, which is one of the parties to the dispute, and also the one which has referred the dispute to a quasi-judicial forum, may declare after the adjudication that it is not bound by the award or that it will abide by it only subject to modification made by itself. It may be stated that this power of the appropriate Government is unconstitutional and void, for it confers an arbitrary power on the Government and it is also opposed to the fundamental cannons of justice. As such the 1988 Trade Union and Industrial Disputes (Amendment) Bill sought to omit this provision from the Act.

4.5.5 Power to reduce or extend the period of operation of an award

An award shall, as declared by Sec. 19 (3), remain in operation for a period of one year from the date on which the award becomes enforceable under Sec.17-A. However the two provisos added to this sub-section confer power on the Government to either reduce the said period and fix such period as it thinks fit or extend the period of operation by any period not exceeding one year at a time as it thinks fit, so however that the total period of operation of any award does not exceed three years from the date on which it came into operation.

a) Power to reduce the period of operation: Although the first proviso to Sec. 19 (3) seems to be conferring an absolute power on the Government to reduce the period of operation of one year, the words “subject to the provisions of this Section,” appearing in the sub-section indicate that when the Government wants to reduce the period of operation of an award, it has to comply with the requirements of Sub-sec (4)
of this Section. Sub.sec (4) contains a provision for adjudication of this question by a Labour Court or Tribunal upon a reference being made by the Government. The Government may make such reference when it considers that since the award was made there has been a material change in the circumstances on which the award was based. The decision of the Labour Court or the Tribunal upon such a reference is declared final.

b) Extending the period of operation of an award: Unlike in the case of reduction, the Section does not prescribe any procedure of referring the question of extension of the period of operation of an award of a Labour Court or Tribunal. The power has to be exercised by the appropriate Government "as it thinks fit". No guidelines have been laid down and no grounds are specified that should be taken into account by the Government while exercising this power. This Government's power is subject to the limitations laid down in the proviso itself. First, the Government should make an order extending the period of operation at any time before the expiry of the statutory period of operation of one year. Secondly, the period by which the operation of an award can be extended is "any period not exceeding one year at a time." Thirdly, the power of extension is subject to the overall limitation that the total period of operation of an award shall not exceed three years from the date on which it came into operation.

4.5.6 Power to secure the implementation of awards

It is not uncommon that the award made by the adjudicatory authorities is not implemented by the employers. The I.D.Act provides certain legal sanctions to secure
the implementation of awards. These legal sanctions also envisage the interference of
the Government. The parties aggrieved by the non-implementation of awards have to
approach the Government to apply these legal sanctions.

(i) Prosecution under Sec. 29 of the Act: Sec. 29 of the I.D.Act declares the breach
of any term of any settlement or award as a punishable offence. But Sec. 34 of the Act
has a general provision with regard to cognizance of offences under the Act.
According to this Section, “No Court shall take cognizance of any offence punishable
under this Act or of the abetment of any such offence, save on a complaint made by or
under the authority of the appropriate Government”. The object of this provision is the
prevention of frivolous and harassing prosecutions or of prosecutions, which on the
ground of policy should not be instituted. On this sole power of the Government to
launch prosecutions for the breach of awards, it may be commented that when the
Government itself is the culprit, which often times it is, it is rather impossible to get
the sanction of the Government for the prosecution.

It may be added that the Trade Unions and industrial Disputes (Amendment)Bill, 1988, which has since lapsed, proposed direct prosecution by the parties for the
offences under this Act.

(ii) Prosecution for unfair labour practice: Failure to implement award or
settlement or agreement” is declared as an unfair labour practice on the part of
employers or trade unions of employers under item.13 of fist part of the Fifth
Schedule appended to the I.D.Act, by 1982 Amendment. Section 25 T and U prohibit

the commission of any unfair labour practice and provides punishment, which may extend upto six months, for any person guilty of an unfair labour practice. But, again under Sec. 34, it is only the appropriate Government, which can launch prosecution for this offence.

(iii) Recovery of money due from an employer: Another method of implementation of an award, also through the intervention of the Government, is a provision similar to the execution proceedings. Under Sec.33-C (1), where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or V-B, the workman or his assignee or his heirs may make an application to the appropriate Government for the recovery of the money due to him, and if the Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Deputy Commissioner who shall recover the same in the same manner as an arrear of land revenue.

The application under Sec. 33-C (1) to the Government shall be made within one year from the date on which the money became due. However, even an application made beyond the said period of one year may be entertained by the Government, if it is satisfied that there is sufficient cause for the delay.

4.5.7 Power to refer for the review of permission for lay-off, retrenchment or closure

According to Sections 25-M, N and O of Chapter V-B, no lay-off, retrenchment or closure, respectively, can be effected save with the prior permission of the appropriate Government in industrial establishments to which this Chapter
applies i.e., the Factories, Mines and Plantations in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.\textsuperscript{116} Upon the consideration of an application made by an employer for permission, the Government is empowered to grant or refuse to grant permission. Such an order shall remain in force for a period of one year. After passing such an order the Government may review its order either in its own motion or upon an application made by the employer or any workmen. Instead of reviewing the order by itself, it may in its discretion refer the matter to a Tribunal for adjudication. Where such a reference is made to a Tribunal, it shall pass an award within a period of thirty days from the date of such reference.\textsuperscript{117}

**4.5.8 Government's power to transfer proceedings**

Sec.33-B (1) of the *I.D.Act* empowers the appropriate Government, through an order stating reasons, to withdraw any proceedings under the Act pending before any ad judicatory authority and transfer the same to another authority for disposal. The requirement of stating the reasons for the transfer was held by the Supreme Court in *Associated Electrical Industries (India) (P) Ltd. v. Its Workmen*\textsuperscript{118} as mandatory and not directory.

Further a pending proceeding under S.33 or S.33-A before a Tribunal or National Tribunal may also be transferred to a Labour Court. The Government may

\textsuperscript{116} See Sec. 25-K and L of the *I.D.Act*.

\textsuperscript{117} See Sections 25-M (7), 25-N (6) and 25-0(5) of the *I.D.Act*.

\textsuperscript{118} (1961) II *L. L. J.* 122 (S.C.).
also authorize the Tribunal or National Tribunal to transfer pending proceedings under S.33 or S.33-A to any Labour Court specified for the disposal of such proceedings by the appropriate Government.

4.5.9 Power to remove doubts as to the interpretation of an award

Occasionally, difficulties or doubts may arise as to the correct interpretation of any of the provisions of an award. Contemplating such a contingency Sec.36-A was inserted, by 1956 Amendment, empowering the appropriate Government to refer to any ad judicatory authority the question relating to correct interpretation of the award. The decision of the ad judicatory authority on such a question shall be final and binding on all the parties. The finality contemplated by this Section is meant to oust the jurisdiction of civil courts in this matter.

4.5.10 Government's power to exempt certain establishments

According Se. 36-B of the Act, the appropriate Government may exempt any industrial establishment or undertaking or any class of industrial establishments or undertakings carried on by a department of that Government from all or any of the provisions of this Act, conditionally or unconditionally, if it is satisfied that adequate provisions exist for the investigation and settlement of industrial disputes in respect of workmen employed in such establishments.
4.5.11 Government’s power to delegate

As per Sec. 39 of the Act, the appropriate Government may direct that any power exercisable by it under the Act or Rules made there under be exercisable also by such officer or authority subordinate to it. The Central Government may also delegate its powers to any State Government or to any officer or authority subordinate to that State Government.

4.5.12 Government’s power to amend Schedules

Sec. 40 of the Act has vested power in the appropriate Government to add to the First Schedule any industry so as to treat such industry a public utility service for the purposes of this Act. The Central Government has alone power to add to or alter or amend the Second or Third schedule.

4.6 Conclusion

The foregoing discussion clearly establishes that the Government has a major role to play in the working of the adjudication system. Its intervention is all-pervasive and certain drastic powers have been conferred on the Government to intervene in the adjudication process. From the initial function of constituting the adjudicatory bodies and referring the disputes to them for adjudication, the Government also exercises extensive powers after the adjudication of the dispute. Receiving the awards, publishing them and thus bringing them into effect, in exceptional cases even rejecting or modifying the awards, deciding the period of operation of awards, securing the implementation of the award, etc., are all within the domain of the
Government. As discussed earlier there are several objections for the extensive Government’s intervention and accordingly even the Second NCL has recommended for certain changes like the removal of the system of publication of award, providing execution power to the adjudicatory authority etc., with a view to reduce the Government’s interference in adjudication process and to make the system more efficient & effective to achieve the aim of speedy dispensation of Justice to the parties. Hence, any future amendments to the I.D.Act should seriously consider the question of reducing drastically the role of the Government in the adjudication system.