CHAPTER – V

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5.1 Introduction

The adjudicatory authorities, viz., Labour Courts, Industrial Tribunals and National Tribunals, as provided under the Industrial Disputes Act are specialized Tribunals functioning outside the hierarchy of ordinary courts and are entrusted with the task of adjudication of industrial disputes. Although, mainly they have to adjudicate upon the disputes that are referred to them by the appropriate Governments, in exceptional cases, the parties also may make application to these bodies for adjudication of certain claims.

The Chief objective of the I.D.Act is to ensure peaceful settlement of industrial disputes through the compulsory adjudication method as an alternative to strikes and lockouts, which are inherent in the process of collective bargaining. Compulsory adjudication may be considered as the soul of the I.D.Act. Majority of the provisions of the I.D.Act, as originally enacted, deal with the adjudication machinery and the related aspects. Malthotra rightly commented, “the central theme of the Act is adjudication”. By and large, adjudication of disputes for bringing about a mandatory settlement is resorted to as the ultimate remedy for disputes unsettled through negotiation or conciliation.

Since the adjudication of disputes is to be undertaken at the initiative of the Government, without any regard to the consent of the parties to the disputes, it is considered as compulsory adjudication, also known as compulsory arbitration in some jurisdictions, as for example in Australia, where the system is very popular.

Justice D.A. Desai very aptly described the nature and philosophy of compulsory adjudication in his judgment in *Workmen of Hindustan Lever Ltd v. Hindustan Lever Ltd.*² in the following words:

"The concept of Compulsory adjudication was statutory ushered in with a view to providing a forum and compelling the parties to resort to the forum for arbitration so as to avoid confrontation and dislocation in industry. The Legislature considered it wise to arm the Government with the power to compel the parties to resort to arbitration with a view to avoid confrontation or trial of strength which are considered wasteful from national and public interest point of view. For assuring uninterrupted production, peace and harmony, industrial relations is necessary."

The main objective of the present work being to assess and evaluate the efficacy of these adjudicatory authorities, this Chapter is devoted to a detailed critical study of their structures, the procedures, jurisdiction and the specific powers and duties of these authorities.

5.2 Composition and Qualification of adjudicatory authorities

Originally the *I.D. Act* provided only for the constitution of Industrial Tribunals for adjudication of all industrial disputes. It is through the 1956 Amendment, the present three-tier machinery of Labour Courts, Industrial Tribunals,

and National Tribunal, is provided. Since a National Tribunal is to be constituted by the Central Government in exceptional situations, viz., to resolve disputes of national importance or disputes relating to industrial establishments situated in more than one State, the Labour Courts and National Tribunals are the normal adjudicatory bodies constituted by all the appropriate Governments i.e., the State Governments and the Central Government, for adjudication of industrial disputes. The 1956 Amendment Act made a clear bifurcation of matters specified in Second Schedule are stated to be “matters within the jurisdiction of Labour Courts “ and those in the Third Schedule are matters within the Jurisdiction of Industrial Tribunals”.

5.2.1 Composition of Labour Courts and Qualifications

Sec.7 of the I.D. Act provides for the constitution of Labour Court and specifies the qualifications for the Presiding Officer of a Labour Court. The person shall not be qualified for appointment as the presiding officer of a Labour Court unless-

i) he is, or has been a judge of a High Court; or

ii) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or

iii) he has held any judicial office in India for not less than seven years; or

iv) he has been the presiding officer of a Labour Court constituted under any provincial Act or state Act for not less than five years.

The qualifications prescribed clearly indicate that the choice is restricted only to persons with sufficient judicial experience.
5.2.2 Composition of Industrial Tribunals and Qualifications

Sec.7–A provides for the constitution of one or more Tribunals by an appropriate Government for Adjudication of industrial disputes relating to any matter, whether specified in the Second or Third Schedule, and for performing such other functions as may be assigned to them under this Act. A Tribunal shall consist of one person only to be appointed by the appropriate Government.

A person shall not be qualified for appointment as the presiding officer of a Tribunal unless:

i) he is, or has been a judge of a High Court; or

ii) he has, for a period of not less than three years, been a District Judge or an Additional District Judge.

The appropriate Government may also appoint two persons as assessors to advise the Tribunal in the proceeding before it. The matters specified in the Third Schedule, which are normally referred to Tribunals for adjudication are disputes arising out of demands of workmen for better service conditions i.e, interests disputes.

5.2.3 Composition of National Tribunal and Qualifications

As per Sec.7-B, the Central Government may constitute one or more National Industrial Tribunals for the 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.
A National Tribunal shall consist of one person only to be appointed by the Central Government. A person shall not be qualified to be appointed as the Presiding Officer of the National Tribunal unless he is or has been, a judge of a High Court. The Central Government may also appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

5.2.4 Disqualifications

Sec.7-C lays down the following two disqualifications for the appointment or continuation of a person as the Presiding Officer of any of the above three adjudicatory bodies.

i) He is not an independent person; or

ii) He has attained the age of sixty-five years.

Sec. 2 (i) of the Act defines an independent person as follows: "a person shall be deemed to be "independent" for the purpose of his appointment... if he is unconnected with the industrial dispute referred or with any industry directly affected by such dispute." The proviso to the definition says that no person shall cease to be independent by reason only of the fact that he is a shareholder of an incorporated company, which is connected with or likely to be affected by such dispute. But in such a case he shall disclose to the appropriate Government the nature and extent of the shares held by him in such company.

5.2.5 State Amendments on Qualifications

Since the qualifications prescribed by the Central Act are restrictive and permit only judicial officers of certain experience to be appointed as presiding officer
of a Labour Courts or National Tribunal, some State Legislatures made local amendments extending the choice of selection also to administrative officers with certain years of experience in Labour department and to advocates having certain years of practice in a High Court or National Tribunals or Labour Courts.3

5.3 Judicial Officers as presiding officers of Labour Tribunals

Although it is generally agreed that judicial officers, by nature of their office and training, can be expected to be more independent and objective in their approach and functioning, doubts are expressed on the suitability of judicial officers to preside over Labour Tribunals, which have the function of resolving expeditiously industrial disputes with less formality and upon taking into account not the legal technicalities but the socio-economic factors underlying the industrial conflicts. Judges, no doubt can claim expertise in deciding disputes according to law, but industrial adjudication involves not merely the administration of justice according to law, but of reconciling and adjusting the conflicting claims of Labour and capital with the paramount considerations of maintaining industrial peace and harmony and rendering social justice. There may be no difficulty in accepting that a judicial officer is a suitable authority for resolving rights or legal disputes, but in the case of arbitration of interests disputes, where the authority is not strictly bound by the law and as such he has to travel beyond the realm of law in order to create new standards in service conditions for the disputing parties, it may be asserted that persons with knowledge of industrial relations and Labour problems may be better suited to be the decision

3 The States of Maharastra, Punjab, Haryana and U. P. made such amendment.
makers, either by themselves or along with persons having judicial experience. But commenting on the suitability of judicial mind for resolving industrial disputes through arbitration, Kahn Freund, the renowned jurist, observed as under.

"Arbitration, on the other hand, i.e., the formal hearing of a case and the formulation of an award, can only function if the arbitrator's mind is by the parties considered as an informed but nevertheless an open mind, that is if his knowledge of the facts of the particular case as (distinguished from that of industrial conditions in general) is like that, of a judge, derived not from his own experience but from the evidence placed before him, and if his own attitude towards the problems of the industry has not previously been revealed by too close an association with it in the past. In other words, arbitration requires the "judicial mind" not the "administrative mind", and a permanent arbitration services as part of a hierarchical civil service organization would, in contradistinction to a conciliation services, almost be a contradiction in terms."

It may be noted that Kahn Freund was asserting the need of a "judicial mind" for resolving industrial disputes as contrasted with the "administrative mind" in the context of constituting "arbitration service as part of a hierarchical civil service organization," which he said "would almost be a contradiction in terms".

But the Indian experience with the 'one person only' judicial officers, as Labour judges have not been quite satisfactory. It is true that the industrial justice dispensation in this country is at least free from the charge of bias towards any

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particular party—Labour or Capital, unlike the compulsory arbitration system in Australia, which has been accused of favouring the trade unions as against employers.\(^5\) However, the experience as a whole shows that far reaching changes in the structures and operation of the system are the need of the day. Besides complete jurisdiction of industrial relations, the adjudication of disputes is consuming so much time that the relief’s granted often lose their relevance. The ideal of providing a speedy, informal, inexpensive and effective industrial justice through separate adjudicatory forums has not been realized in practice.

5.3.1 Restructuring of Labour Tribunals

The experience of judicial officers as labour judges during the last half a century has not been a happy one and therefore one has to be hesitant to recommend the continuation of the present structures, particularly in view of the delays that occur in the adjudication and their formal approach to Labour problems. Expeditious settlement of industrial, disputes being the most important objective of industrial adjudication, if this objective cannot be achieved with the judicial officers functioning as Labour judges, it is time to have a rethinking on this aspect.

It is pertinent here to note that the Labour Law Review Committee, appointed by the Government of Gujarat in 1973 took notice of the deficiencies of appointing persons only with judicial experience as presiding officers of Labour tribunals. The Committee observed:

"The Judges so drawn from the civil judiciary do carry with them their life long experience of administration of civil and criminal justice. Undoubtedly, they were the officers who had the perspective and objectivity of a judge and their experience had taught them to look each dispute or problem coming before them from an objective standpoint. While administering socio-economic justice in Labour and Industrial Courts, their approach may not be very helpful. The principal object of Labour laws is to smoothen the passage of state, having sole object of maintaining law and order, to welfare state. For achieving the ideal of a welfare state, foundation of which is socio-economic justice, new norms of industrial relations have to be formulated, shaped and enforced. Targets set out in various Five Year Plans have to be kept in view. In other words, social philosophy of the day is to be fully imbibed and given legal form by devising norms of socio-economic justice. The officers must have training and aptitude to understand how persons consigned to miserable existence are lifted and taken to tolerable existence, if not wholly civilized existence, which should be the ideal. The judges who have worked for their whole active life in civil judiciary undoubtedly, with notable exceptions, may not be able to rise to the occasion and stand up to the requirement. No attempt has been made over a quarter of a century to create Labour Judicial Service."\(^6\)

The Law Commission of India, under the Chairmanship of Justice D.A. Desai, in its 122nd Report on "Forum For National Uniformity In Labour Adjudication",

submitted to the Government of India in the year 1987, did not find favour with the existing structures and recommended a system of participatory justice model. Explaining the undesirable consequences of having “one person only” labour tribunals with judicial officers presiding over them, the Law Commission observed:

“The qualifications prescribed for a person to be eligible to be appointed as the presiding officer of the Labour Court (It is valid for Industrial Tribunals also) are such as would almost make it impelling necessity to select persons from civil judiciary and therein lies the potentiality for spill over of all the technicalities, dilatoriness and formal approach quite evident in administration of civil justice,”7 Commenting that adjudication of industrial disputes, in particular interests disputes, requires also a “non judicial” bent of mind, which is too much to be expected from the persons drawn from civil judiciary, the Law Commission commented as under:

... (t)he fact remains that those who had spent their whole active life in courts administering civil justice are prone to be precedent oriented, technical, traditional and impervious, if not blind, to the utter inequalities of parties appearing before them when functioning as members of tribunals set up to resolve industrial disputes. If in their journey through life as judges, they were accustomed to find out what the contract is and sincerely believed that parties must be held to their own contracts, it would be expecting too much from them to say that when taking up industrial adjudication they will be looking at the unfairness of contracts and devise what contract ought to be, that is, what ought to be a fair relation between the employer and

the workmen. This historical perspective is to be kept in view while devising a forum for resolution of industrial disputes, both at the state level and national level.⁸

Dealing extensively with the drawbacks of the present structures of adjudicatory authorities under the J.D. Act, the Law Commission entirely devoted its 122nd Report for suggesting radical reforms in their structures.

The Law Commission, as stated in its report, had two important objectives in recommending reforms in this area. The first was "modelling justice system on participatory basis." The Law Commission extolled the virtues of participatory model of justice and commented that non-participatory model failed to generate confidence in the consumers of justice. "The non-participatory model over a course of time became very formal, legalistic, professionally manned, dilatory, technical and prolix. A yawning chasm developed between those who have to render justice and the consumer of the system."⁹ Therefore the Commission unhesitatingly recommended a participatory model in place of existing structures.

The second objective that influenced the approach of the Commission was to introduce decentralization in the system of administration of industrial justice. According to the Commission, it would ensure specialist courts in the real sense and the consequent expeditious disposal of cases and controversies coming up before the tribunals manned by specialists. The present structures did not satisfy the requirements of specialist tribunals as the only qualification prescribed is the requisite

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⁸ Ibid., p.51.
⁹ Ibid., p.42.
judicial experience, and knowledge of industrial relations, Labour problems or even of Labour laws is not a prerequisite. It is not an exaggeration, but a fact known to all concerned, that often times District Judges, who did not even study labour laws as one of the subjects in their LL.B. and consequently have very little knowledge of labour laws are appointed as presiding officers of labour tribunals. They actually start learning the labour laws from then on from the advocates appearing before them and by reading the relevant portions of statutes and judgments cited by the advocates. It is also true in many cases that by the time the presiding officer acquire a reasonable knowledge of the relevant laws; he is transferred back to the civil judiciary.

Emphasizing the need for specialist tribunals in the real sense, for expeditious disposal of disputes, the Law Commission observed as follows:

“If therefore, a body for industrial adjudication can be devised in which, apart from those conversant with legal norms and formulations, there are other participants who are well-versed in economic planning, industrial relations, norms of socio-economic justice and allied subjects, not only the ideal of participatory justice would be achieved but this inter-action amongst such adjudicators would certainly help in expeditiously resolving the industrial disputes.”

For the reasons stated above, the Law Commission recommended, “the judge of the Labour Court should be assisted by two lay judges drawn from rank of workmen and employers.” The Law Commission opined that the matters set out in Second Schedule are better dealt with by interaction of all the three members

10 Ibid., pp. 42-44.
11 Ibid., p.53.
constituting the Labour Court. Similarly, the Law Commission recommended that the present Industrial Tribunals and National Tribunals should be replaced by Industrial Relations Commissions (IRCs) at both state level and national level on the same principle of participatory justice. The details of these recommendations of the Law Commission are briefly enumerated here, as they are highly relevant for any reform in this area.

The IRCs at the Central and State level would be composed of a president drawn from the rank of a retired Judge of the Supreme Court for the Central Commission and retired Judge of a High Court for the State Commission. There will be equal number of members drawn from the rank of trade union leaders and employers' organizations constituting the Commission. These members need not have a degree in law or a background of legal training. But they must have knowledge of industrial relations, management of industries and of Labour and economic policies of the Government.

It may also be noted in this regard that the National Commission on Labour in 1969 recommended the constitution of multi member independent ICRs in place of the present Industrial Tribunals and National Tribunals. But the NCL did not recommend any change in the composition of the Labour Courts. However, the IRCs exercising other functions in addition to the adjudication of interest's disputes were to consist of judicial and non-judicial members. The non-judicial members were to be selected from those “eminent in the field of industry, Labour or management.”
Later the Sanat Mehta Committee in 1982 recommended the multi member IRCs for adjudication of interest’s disputes. The Trade Unions and the Industrial Disputes (Amendment) Bill, 1988 proposed diluted versions of the NCL and Law Commission recommendations. The IRCs were to function only as adjudicatory bodies and not as independent entities conceived by the NCL. The IRCs were to consist of judicial and “technical” members drawn from eminent persons in the field of economics, Labour and management.

Later in 1990, the Ramanujam Committee, by a majority, recommended participatory three member IRCs both at the State and Central level. Each Bench of IRC shall comprise a judicial member as presiding officer and two technical members, one from among the eminent persons in the field of Labour and the other from management. But the Committee felt that the Labour Courts can continue with the present composition of “one person only” judicial officers as presiding officers, since they essentially deal with the legal disputes.

Further, the Second National Commission on Labour in 2002, recommended the multi-member Labour Relations Commissions at the State and Central level, consisting of judicial member as a President and other members from among distinguished persons in the field of labour law, industrial relations, trade union movement, representing management and workmen in equal number. It is also recommended for constitution of National Labour Relations Commission to deal with the matters of national importance and to hear appeals against the awards of State and Central Labour Relations Commissions. The Commission has further recommended
for continuation of the Labour Courts and besides appointment of persons with judicial experience, proposed for appointment of advocates with seven years practice experience and persons distinguished in the field of industrial relations or human resource management and officials put in not less than 10 years experience in handling industrial relations matters, as presiding officers of Labour Courts. It is also proposed to oust the jurisdiction of High Courts and other Civil Courts in all matters relating to industrial relations. It is further provided for appeal to State or Central Labour Relations Commissions against the award of Labour Courts.¹²

5.3.2 The Need for an Appellate Forum

As the matters stand at present, there is no appeal over the awards of the adjudicatory forums. The Law Commission commenting on this legal position observed:

"It is only in the field of labour adjudication that the stature under which adjudication could be ordered did not provide for any appellate forum. In all other jurisdictions, ordinarily every decision can be appealed against. There will be an appeal on facts; there will be second appeal on questions of law. "¹³

In view of this peculiar situation, where the statute does not provide for even one appeal writ petitions against the awards of adjudicatory authorities are generally entertained on the plea that there is no alternative efficacious remedy.


Occasionally, even a writ of prohibition may be sought on the preliminary contention that the reference is either incompetent or bad in law. The Law Commission also testifies this when it observed that "cases are not unknown where the High Courts and the Supreme Court have entertained the writ petition even at any interlocutory stage and stayed further proceedings with the result that a final adjudication of the dispute suffered inordinate delay."\textsuperscript{14}

The Law Commission was of the opinion that the absence of a labour appellate forum has resulted in huge pendency of labour cases in High Courts and Supreme Court.\textsuperscript{15}

The discussion of the structures of the adjudicatory bodies may be summed up with the note that the preponderance of opinion is in favour of participatory model, as recommended by the Law Commission, the Ramanujam Committee, and Second National Commission on Labour for adjudication of interest disputes. The IRCs/LRCs shall function independently of the executive, exercising even the functions of providing conciliation and arbitration services and dealing with the questions of recognition of trade unions.

The idea of constituting separate labour judiciary is worth considering in this regard. If persons with adequate knowledge of labour laws, labour problems and industrial relations are appointed to man the labour tribunals, many of the drawbacks in the present adjudication system can be overcome.

\textsuperscript{14} Ibid., p.68.

\textsuperscript{15} At the end of 1982, the labour matters pending in 18 High Courts were 5,766. by 31-12-85 these pending matters rose to 17,250 (See, Annexure to Appendix -V of the Law Commission Report).
It is pertinent here to note that the former Chief Justice of India, Justice E.S. Venkataramaiah, who during his tenure as the Chief Justice of India wrote letters to all the Chief Ministers and the Chief Justices of the High Courts urging them to rejuvenate the labour adjudication, had pleaded for an "An All India Industrial Tribunal Service" to be selected from among advocates who have put in ten years of service, civil judges, and so on." While delivering a special lecture at the four-day conference of Regional Labour Commissioners and other labour and Conciliation Officers organized by the ILO at Bangalore, he opined that the present system of appointing district judges as presiding officers of Labour Courts/Industrial Tribunals was responsible for ad-hocism in labour tribunals. He observed in this regard: "It had been noticed that district judges who had no scope to become High Court Judges or those found wanting in efficiency, were selected to head these tribunals ... the ad-hocism in the postings to Industrial Tribunals had resulted in the presiding officers being transferred from these tribunals even before they acquired knowledge of the principles of labour jurisprudence."\(^{16}\)

5.4 Procedures in Adjudication

Sec. 11 of the I.D.Act, which deals with the procedure and powers of adjudicatory authorities, among others, lays down that "subject to any rules that may be made in this behalf", the adjudicatory authorities shall follow such procedure as the concerned authority may think fit. The Central Government and the State

Governments have made rules prescribing certain minimum procedural norms to be followed by these authorities in adjudication proceedings.

The Supreme Court and the High Courts have clearly laid down in a number of cases that the functions of the adjudicatory authorities under the *I.D.Act* are very much similar to those of the bodies discharging judicial functions, though they cannot be consider as "Courts in the strict sense of the term. As quasi-judicial authorities, they have to discharge their functions in conformity with the principles of natural justice. The Supreme Court considered the nature of functions of these authorities, as far back as in 1950; in the case of *Bharat Bank Ltd. v. Employees of Bharat Bank Ltd.* It was held in this case that the I.Trs. was a "Tribunal" within the meaning of Art. 136 of the Constitution and therefore the Supreme Court may entertain appeals by special leave from the decisions of I.Trs. It was as a result of this decision that the Supreme Court subsequently entered the arena of industrial adjudication. The Court in the instant case compared the functions of the I.Tr. with the judicial functions of ordinary courts. Explaining the nature of function of an I.Tr., the Court observed: "there can be no doubt that the Industrial Tribunal has, to use a well known expression, all the trappings of a Court and performs functions which cannot but be regarded as judicial. This is evident from the rules by which the proceedings before the Tribunal are regulated."
It is significant to note in this context the opinion of Mukherjee. J., in the instant case, which was not shared by majority judges. He very aptly observed:

"An industrial dispute as has been said on many occasions is nothing but a trial of strength between the employers on the one hand and the workmen's organizations on the other and the Industrial Tribunal has got to arrive at some equitable arrangement for averting strikes and lock-outs which impede production of goods and the industrial development of the country. The tribunal is not bound by the rigid rules of law. The process it employs is rather an extended form of the process of collective bargaining and is more akin to administrative rather than to judicial function".

Had this opinion been accepted, the course of industrial adjudication proceedings would have taken a different turn, perhaps, for the better, with less technicalities and procedural formalities.

Further, the rules framed by the Governments have also been responsible for introducing, in substance, the court like procedures, paving way for the delays. It is submitted that so far the adjudicatory authorities follow the judicial procedures, it is rather difficult to avoid the delays, which are inherent in the procedure itself. Therefore this is one area of focus in industrial adjudication where innovation in procedures, keeping broadly to the principles of natural justice, is the need of the times. The rules framed by the Governments prescribing major stages in the procedure on lines of court procedures and the pronouncements of courts that although the C.P.C. and the Evidence Act are not applicable, the substance of those procedures and principles are still applicable, leave little room for the adjudicators "to
follow such procedures as they think fit," as contemplated by Sec. 11(1) of the *I.D. Act.*

The Rules of procedure provide specific forms and different stages and details of procedure to be followed, such as service of notices to the parties, filing claim statements, written statements and rejoinders, fixing the dates for evidence, examination and cross-examination of witnesses, filing of affidavits, recording of evidence, granting of adjournments, expert proceedings, hearing of oral arguments and the submission of award. The rules, interestingly, provide time limits for each stage of the proceedings and if the rules are strictly adhered to the adjudication of any dispute should be completed within four months and in respect of Sec.2-A disputes within three months.¹⁹

It is common knowledge that time limits prescribed are never adhered to and perhaps cannot be adhered to in the traditional atmosphere created in the labour tribunals by the civil court procedures. The rules, it appears, are only directory and they leave a lot of leeway to the presiding officers to extend the time limits are followed or that the reasons recorded are proper. In practice, the time limits prescribed by the rules have lost their meaning and nobody bothers or insists on them.

### 5.4.1 Procedure and Practice

After the issuance of notices to the parties, the following order of a proceeding is usually followed.

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¹⁹ See *Industrial Disputes (Central) Rules, 1957, Rule 10-B* (amended in 1984, after the insertion of Sec. 10 (2-A) in the Act).
1. The claimant files his claim statement;
2. The respondent files his reply to the claim statement;
3. The claimant may file his rejoinder to the reply of the respondent;
4. On the basis of these pleadings the adjudicator frames issues, which may include preliminary issues, if any preliminary objections are raised;
5. The claimant opens his case either personally or through his representative (normally an advocate) and examines his witnesses, who may in turn be cross-examined by or on behalf of the respondent;
6. The respondent opens his case, either personally or through his representative and examines his witnesses, who may be cross-examined by or on behalf of the claimant;
7. The claimant or his representative addresses his oral arguments to the adjudication;
8. The respondent or his representative address his arguments to the adjudicator;
9. The claimant may reply to the arguments of the respondent;
10. The adjudicator then considers the material before him and prepares his award.  

The sum and substance of all this elaborate procedure is that both the parties must be given a reasonable opportunity of presenting their respective cases. The procedure and practice outlined above is not substantially dissimilar to the procedure followed by civil courts and therefore, it cannot be described as informal or simple. It

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20 Supra note 1, p.834.
is umpteen times repeated by everyone concerned with the industrial adjudication, including the judges of Supreme Court and High Courts, that the industrial adjudicators should follow procedures, which are simple and informal so that the proceedings can be expeditiously determined in the interests of industrial peace and social justice to the parties. But no serious attempts are made to devise alternative simple procedures conducive for quick disposal.

5.4.2 Adjournments

The Rules of Procedure\textsuperscript{21} provided that the adjudicatory authorities “shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely, discovery and inspection, granting adjournments and reception of evidence taken on affidavit...” But, sub-rule (8) of Rule 10-B, which seeks to restrict this general power in respect of granting adjournments lays down as follows:

“The Labour Court, Tribunal or National Tribunal, as the case may be, shall not ordinarily grant an adjournment for a period exceeding a week at a time but in any case not more than three adjournments in all at the instance of the parties to the dispute.

Provided that the Labour Court, Tribunal or National Tribunal, as the case may be, for reasons to be recorded in writing, grant adjournment exceeding a week at a time but in any case not more than three adjournments at the instance of any one of the parties to the dispute.”

\textsuperscript{21} See Rule 24 of the Industrial Disputes (Central) Rules, 1957.
Almost all the State Governments make similar Rules. If this rule is considered mandatory, there cannot be more than six adjournments in all at the instance of both the parties. However, it is submitted that this Rule is not adhered to in practice. Adjournments are very freely granted even for reasons, which are not substantial, and often times for a period exceeding a month.

5.4.3 Representation of Parties

A party to an industrial dispute may conduct his case in person or through a representative as permitted by Sec. 36 of the Act. Sec. 36 (4) provides, “In any proceeding before a Labour Court, Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be.”

In practice, however, it is only in a very few cases that objection is taken by a party for the representation of the opposite party by a legal practitioner as both parties will be in need of engaging legal practitioners. The proceedings before the tribunals, over the years, have become so technical and formal and legalistic that it is rather difficult for a person not having adequate knowledge of law to conduct a case. That is why in industrial centres, the trade union “leader” have become “pleaders” and the trade union movement is converted into “brief-case Trade Unionism.”

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Though, the cost of litigation from the point of view of workmen, often times, becomes unbearable and the proceedings may be delayed by the presence of legal practitioners, but given the narrow legalistic bias of adjudication proceedings before the labour tribunals it is not possible for laymen to effectively plead before them. Therefore, engaging legal practitioners or other law knowing persons in adjudication proceedings under the Act becomes inevitable in most cases.

5.5 Jurisdiction of Adjudicatory Authorities

The word “jurisdiction” means authority to decide or the legal authority to do certain things. In the context of the I.D.Act, the word “jurisdiction” may be used in three different senses; namely: i) The jurisdiction by the constitution of the adjudicatory authority or the qualifications of the presiding officer; ii) local or territorial jurisdiction; or iii) the jurisdiction with respect to the subject-matter of the dispute.

The adjudicatory authorities being the creatures of a statute, the provisions of the Act limit their jurisdiction. The authorities have no jurisdiction to decide any dispute to which the Act does not apply. In other words, unless the dispute is an “industrial dispute” within the meaning of Sec. 2 (k) of the Act, the labour tribunals have no jurisdiction to adjudicate. If the Tribunal has no jurisdiction to entertain a particular matter by reason of any limitation imposed by the Act, neither acquiescence nor consent of the parties can confer jurisdiction on it. Lack of jurisdiction goes to the root of the matter. The absence of jurisdiction deprives the award or any decision of any conclusive effect. In other words, where the Tribunal lacks jurisdiction, any
decision or award on such matter will be a nullity and it will not have any legal force. Similarly the mere fact that no objection was taken before the Tribunal would not give it jurisdiction, which it inherently lacked.

5.5.1 Constitution of adjudicatory authorities and Jurisdiction

If the authority is not properly constituted in accordance with the provisions of Secs.7, 7-A or 7-B, it will have no jurisdiction to proceed with the adjudication of any dispute. These Sections also lay down certain qualifications for the appointment as presiding officers and if a presiding officer does not satisfy these qualifications, the appointment itself would be void and he will have no jurisdiction to adjudicate under the Act. Again Sec. 7-C lays down two disqualifications and if a person appointed as a presiding officer suffers from any one of these disqualifications, he will have no jurisdiction to adjudicate. The fact that the appropriate Government had appointed or that order of reference has been made by it does not confer jurisdiction if the provisions of these Sections are not complied with.

5.5.2 Territorial Jurisdiction

The jurisdiction of the Tribunal to adjudicate stems from the order of reference made by the appropriate Government. The appropriate Government may be the Central or State Government. Every State has territorial limitations and only disputes occurring within the territory of that State concerning industrial establishments with respect to which it is the appropriate Government can be referred for adjudication to the Tribunals constituted by it. Therefore, the awards of Tribunals constituted by State Government are binding only within the territories of that State.23

5.5.3 Subject matter of the Dispute

The jurisdiction of a Tribunal is confined to the adjudication of industrial disputes referred to it for adjudication by the appropriate Government and of other claims as specified by the provisions of the Act. Sec.10 (4) of the Act, which seeks to restrict the jurisdiction of the adjudicatory authorities, as regards the subject matter of adjudication, provides as follows:

"Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this Section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court, Tribunal or National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto."

(i) The points specified in the reference

The scheme of the I.D.Act is that Tribunal constituted under the Act has no general power and it has to determine only the disputes that are referred to it. The Tribunal has no power to decide any of the disputes that are raised by the parties in the pleadings, unless they are contained in the order of reference. It cannot enlarge the scope of the dispute, however important it may be, even for complete resolution of the dispute. Consent of the parties is irrelevant for this purpose and the Tribunal cannot go beyond the order of reference. The idea is that it is for the appropriate Government and not for the Tribunal or parties to decide what dispute should be adjudicated.
In Delhi Cloth & General Mills Co. Ltd v. Their Workmen\textsuperscript{24} the Supreme Court took note of the fact that the appropriate Government may not always specify the points upon which a reference is made and that an order of reference may be made in a very general way. The Court in this context observed:

"In most cases, the order of reference is so cryptic that it is impossible to cull out there from the various points about which the parties are at variance, leading to the trouble." In such cases the Tribunal can ascertain the points of dispute from the pleadings of the parties to find out the exact nature of the dispute. But the Tribunal cannot allow the parties to go a stage further and contend that the foundation of the order of reference was non-existent and that the dispute was something else. Even where a reference is made on a wrong assumption, it is not open to the Tribunal to alter the very basis of the order of reference by looking into the pleadings of the parties.

The parties could not be allowed to argue that the order of reference was wrongly worded and that the very basis of the order of reference was open to challenge.

Similarly in Jaipur Udyog (Pvt.) Ltd v. Cement Works Karmachari Sangh\textsuperscript{25}, the dispute referred for adjudication was, whether the action of the management in terminating the services of a workmen w.e.f., a particular day (July 9, 1968) on the grounds of superannuation was legal and justified? The concerned workman was at

\begin{itemize}
\item \textsuperscript{24} (1967) I. L. L. J. 423 (S.C.).
\item \textsuperscript{25} (1972) I. L. L. J. 4337 (S.C.).
\end{itemize}
the relevant time employed in a quarry of the cement company and the standing orders applicable to him stipulated the retirement age of 55. According to a separate set of standing order applicable to the workmen employed in the cement company, the age of retirement was 58. The Tribunal held that the superannuation was not legal and justified on the ground that the quarry and the cement company were two units of the same establishment and that consequently there should be only one set of service conditions for the workmen of the company as a whole. The Supreme Court quashed the award of the Tribunal on the ground that the Tribunal had not actually decided the point referred to it for adjudication, i.e., whether the workman had actually reached the age of 55 at the relevant date. Instead, the Tribunal enlarged the scope of its jurisdiction by going into the question of legality of two sets of standing orders, which was not referred to it specifically for adjudication. Since the Tribunal had adjudicated upon a dispute, which was not referred to it, the award of the Tribunal was held to be incompetent.

To the same effect was the decision of the Supreme Court in *Pottery Mazdoor Panchayat v. Perfect Pottery Co. Ltd.*, where the reference being limited to the narrow question as to whether the closure was proper and justified, the Tribunal had no jurisdiction to go behind the fact of closure and enquire into the question whether the business was, in fact, closed down by the management.

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(ii) Incidental Matters

The word “incidental” according to Webster’s New World Dictionary means: “happening or likely to happen as a result of or in connection with something more important: being incident, casual, hence secondary or minor, but usually associated.” In the words of Mittal, J in Delhi Cloth General Mills case,27 “something is incidental to a dispute must, therefore, mean something happening as a result of or in connection with the dispute or associated with the dispute. The dispute is a fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct”.

A point is incidental to another point, when the former necessarily depends upon the other. An incidental matter is always a matter, which is secondary or subsidiary and related to some other main or principal thing. Incidental matters which can be adjudicated upon by a Tribunal are those on which the decision of the Tribunals is necessary for giving full and effective relief with respect to the main matter under adjudication. Therefore, matters, which require independent consideration, cannot be treated as incidental to the adjudication of another matter depends upon the facts of each case. Mostly they depend upon the pleadings of the parties and the questions of full and complete adjudication so as to give effective relief in the matter.

27 Supra note 24, p. 247.
For example, when the dispute referred for adjudication was the legality and justification of punishment of discharge or dismissal, the matters relating to awarding back wages and continuity of service are incidental issues and the Tribunal can adjudicate on such issues even though the reference did not specifically include them. The preliminary or jurisdictional issues such as whether the establishment in relation to which the dispute is referred is “industry” or not, whether the dispute is an “industrial dispute” or not, or whether the employee concerned is a “workman”, or not within the meaning of the *I.D.Act* are all considered as matters incidental to the main dispute. Similarly the question whether any interim relief should be granted by the tribunal pending final adjudication of the main dispute is an incidental issue.

But when the question referred for adjudication was “leave facilities”, the issue of festival holidays was held to be not incidental to the main dispute.\(^{28}\) Similarly where the dispute referred was “fixation of working hours, the issue of granting overtime allowance at a particular rate could not be considered as an incidental matter”.\(^{29}\) When the dispute referred was fixation of gratuity the issue of age of superannuation was held to be not incidental to the main dispute.\(^{30}\) In cases, illustrated above, the Court considered the two issues as independent and separate and not one depending on the other and therefore they could not be treated as incidental issues.


In determining the exact points referred for adjudication and also matter, which are incidental to the main dispute, the proper construction of the order of reference assumes importance. Often times the orders of reference are far from satisfactory and are not carefully drafted. In such cases the Tribunal has to interpret and find out the real meaning of the order of reference as it stands. In the words of Krishna Iyer, J., "Industrial jurisprudence is an alloy of law and social justice and one cannot be too pedantic in construing the terms of reference of a dispute for industrial adjudication." In *Express Newspapers Ltd v. Their Workmen,* Justice Gajendragadkar, in this context, observed that the Tribunal "must attempt to construe the order of reference not too technically or in a pedantic manner but fairly and reasonably. Even if the phraseology of the order of reference is inelegant, the Tribunal should look to the substance rather than the form of the order of reference."

5.6 General Principles of Industrial Adjudication

The general principles of industrial adjudication that have been evolved by courts over the years took note of the specific nature of industrial adjudication whose object is to ensure peaceful settlement of industrial disputes as an alternative to strikes and lock-outs. Therefore, whatever the parties could do in the process of collective bargaining has been considered as the proper domain of industrial adjudication. In this sense, the true nature of industrial adjudication may be considered as legislative, particularly in interest’s disputes. The Tribunal has to create new and general norms

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32 (1962) II L.L.J.227 (234) S.C.
of industrial relationship by abrogating or reforming the existing norms wherever necessary. The function of the Tribunal is not necessarily limited to interpreting the existing norms formulated by the parties, but it may in appropriate cases involve creation of new terms in the contract of employment. It is recognized right from the beginning that the jurisdiction of the Tribunals under the Act is something extraordinary and it extends to doing things, which the ordinary courts cannot do.

The Courts have accepted the oft-quoted statement of law by Ludwig Teller about the nature of industrial arbitration as correct principle enunciating the true scope of industrial adjudication in India. Distinguishing industrial arbitration from commercial arbitration Ludwig Teller pithily observed:

"...Industrial arbitration may involve the extension of existing agreement, or making a new one, or in general creation of new obligations or modifications of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements."

In Western Automobile Association vs. Industrial Tribunal, Bombay, within two years of the enactment of the I.D. Act, the Federal Court recognized the power of Industrial Tribunals to order reinstatement of workmen as an essential relief to be provided with a view not merely to ensure justice to the workmen illegally dismissed but in the interests of industrial peace. Without such power, the Court observed, the industrial adjudication cannot be effective. This was the first recognition of the extra-

ordinary jurisdiction of I.Trs to do certain things necessary for maintaining industrial 
peace, which the ordinary civil courts could not do. Explaining the nature of industrial 
adjudication, Mahajan, J. observed:

"Industrial adjudication does not in our opinion mean adjudication according 
to the strict law of master and servant. The award of the Tribunal may contain 
provisions for the settlement of a dispute which no court could order if it was 
bound by ordinarily law, but the Tribunal is not fettered in any way by these 
limitations".35

After saying these words the Judge approvingly quoted the above-referred 
passage of Ludwig Teller.

The Supreme Court in Bharat Bank Ltd v. Its Employees36 approved the above 
observations of the Federal Court. Mahajan, J., who happened to be on the Bench in 
this case also, repeated the earlier observations and said that a Tribunal can do what 
no court can, namely, add to or alter the terms and conditions of the contract of 
employment. Justice Mukherjee in a separate judgment in the instant case observed:

"In settling industrial disputes between the employers and the workmen, the 
function of the Tribunal is not confined to administration of justice according 
to law. It can confer rights and privileges on either party, which it considers 
reasonable and proper, though they may not be within the terms of any 
existing agreement. It has not merely to interpret or give effect to the 
contractual rights and obligations of the parties. It can create new rights and 
obligations between them which it considers essential for keeping industrial 
peace".37

35 Ibid., p. 256
37 Ibid., p. 948.
To the same effect is the observation of S.K. Das, J, in *Rohtas Industries Ltd v. Brijnandan Pandey.* A Court of law proceeds on the footing that no power exists in the Courts to make contracts for people, and the parties must make their own contracts. The Courts reach their limit of power when they enforce contracts, which the parties have made. An industrial Tribunal is not so fettered and may create new obligations or modify contracts in the interests of industrial peace, to protect legitimate trade union activities and prevent unfair practice or victimization.

The Tribunals have power to abrogate unfair terms of contract of employment, though “agreed” by the parties earlier, is well illustrated by the decision of the Supreme Court in *Bombay Labour Union v. International Franchises Ltd.* According to one of the conditions in the contract of employment in the respondent company, unmarried women employees in a particular department had to resign their jobs on getting married. When raising an industrial dispute challenged the validity of this condition, the Court had no hesitation in abrogating this condition in the interests of social justice. To the employer’s plea of freedom of contract, Justice Wanchoo replied: “It is too late in the day now to stress the absolute freedom of employer to impose any condition which he likes on the labour. It is always open to industrial adjudication to consider conditions of employment of labour and to vary them if it is found necessary, unless the employer can justify an extra-ordinary condition by reasons, which carry conviction”.

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In industrial adjudication, the adjudicators have to constantly bear in mind the reality that the so-called freedom of contract as far as employer and workmen are concerned is only a myth and the employer by virtue of his strong economic power virtually dictates the terms of contract of employment, which the workmen had no alternative but to accept. The ubiquitous unemployment situation compels an employee to accept even adverse conditions of service and therefore the freedom of contract in employment relationship is often an illusion. Therefore, it is the task of industrial adjudicators to play an activist role in prescribing just and fair norms that regulate the industrial relations.

The basic principle involved in industrial adjudication is harmonizing the conflicting interests between the employer and workmen. In other words, what is expected of an industrial adjudicator is "social engineering", i.e., he must try to strike a balance between various competing interests. The labour adjudication is, in a broad sense, guided by the principles of sociological jurisprudence, which have been adopted by the Indian Constitution in the Chapter on Directive Principles of State policy.

In the absence of any binding legal norms for adjudication of important claims of workmen for higher wages, bonus, etc., the High Courts and the Supreme Court have laid down certain basic general principles which should guide the adjudicators. The Supreme Court of India in the early years performed a pioneering role by evolving certain basic principles of industrial adjudication.
i) **Principle of Social Justice in industrial adjudication:** The fundamental principle, emphasized by the Supreme Court that should guide industrial adjudication is social justice. In fact other principles only flow from this basic postulate. Social justice is an application of the fundamentals of the sociological jurisprudence in the realm of labour laws. The principle of social justice broadly connotes the adjustment or balancing of conflicting interests between capital and labour with a view to securing the basic idea of socio-economic equality. In fact the principle of social justice became the “articulate major premise”, upon which the whole edifice of industrial adjudication is constructed and developed. Although there is no widely accepted definition of the concept of social justice, the Supreme Court gave a more positive role to the concept. It did not rather leave it as “an inarticulate major premise, which is personal and individual to every court and every judge,” as observed by Justice Holmes.

The Supreme Court had pointed out in many cases that social justice mandates the implementation of the Directive Principles of State Policy and that its basis is socio-economic equality. Justice Bhagwati speaking for the Supreme Court in *Muir Mills Ltd v. Suti Mill Mazdoor Union*\(^\text{40}\) said,“.. the concept of social justice does not emanate from the fanciful notions of any particular adjudicator but must be founded on a more solid foundation”. Justice Gajendragadkar, known for his attachment, or “bias” towards social justice, persistently emphasized “social and economic justice is

the ultimate ideal of industrial adjudication, and that "social and economic justice has been given a place of pride in our Constitutions".

The Supreme Court in later cases pointed out that the doctrine of absolute freedom of contract has to yield to the higher claims of social justice. In *J.K. Cotton Spinning and Weaving Mills Ltd v. Labour Appellate Tribunal*, Justice Gajendragadkar emphasized the role of social justice in industrial adjudication and articulated it in the following words:

"The argument that the considerations of social justice are irrelevant and untenable in dealing with industrial disputes has to be rejected without any hesitation. The development of industrial law during the last decade and several decisions of this Court in dealing with industrial matters have emphasized the relevance, validity and significance of the doctrine of social justice. Indeed the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can and should ignore the claims of social justice in economic equality and its aim is to assist the removal of socio-economic disparities and inequalities".

Articulating further, he recommended a pragmatic approach in implementing this principle and said, ".. in dealing with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a

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realistic pragmatic approach. It, therefore, endeavours to resolve the competing claims of employers and employees by finding solution which is just and fair to both parties with the object of establishing harmony between capital and labour, and good relationship”.

The social justice mandates the Tribunal to strike a balance between the conflicting claims of employers and workmen. While the employer has a fundamental right to carry on his business, the right of the employer has to be adjusted with the claims of workmen for social justice.

ii) Peaceful Industrial Relations: The ultimate aim of industrial adjudication is to ensure peaceful industrial relations, which are a sine qua non for economic growth. The Courts have emphasized the significance of industrial peace and harmony as the ultimate goals of industrial adjudication. Through the system of adjudication, the adjudicators assist the state in ensuring industrial peace by resolving the dispute to the satisfaction of both the parties, as far as possible. Since industrial peace cannot be established and sustained without social justice, the Courts had emphasized the significance of socio-economic justice, not merely as an end, but also as the means. Since the whole community is interested in industrial peace and harmony, the interests of the community also have to be harmonized with the interests of employers and workmen.

iii) Employer’s Right to manage his business: While emphasizing the principle of social justice, the industrial adjudication simultaneously recognized the right of the
employer to carry on his business in any manner he likes, so far he acts bonafide. Shelat, J., speaking for the Supreme Court in *Party & Co. Ltd v. P.G.Pat*\(^{44}\) observed:

"It is well established that it is within the managerial discretion of an employer to organize and arrange his business in the manner he considers best. So long as that is done bonafide it is not competent to the Tribunal to question its propriety".

Acting bonafide, on the part of the employer, in this context means that the employer’s actions should not be motivated with the ulterior object of victimizing the employees. If the employer’s action is bonafide in arranging or reorganizing his business, any consideration as to its reasonableness or propriety would be extraneous to industrial adjudication.

The Supreme Court had also recognized the employer’s fundamental right to close down his industrial establishment according to his own discretion, subject, of course, to reasonable restrictions that may be imposed by the law. This right of the employer was implied from fundamental right to carry on any business or trade guaranteed under Article 19 (1)(g) of the Constitution.\(^{45}\)

iv) Employer’s financial capacity to pay: The Courts have always insisted that except in the matter of payment of minimum wages and other statutory benefits, the Tribunal must necessarily keep in mind the employer’s capacity to pay. No burden may be imposed on an employer, which he is unable to bear, if the industry is closed due to the inability to pay the extra financial burden, the workers too will be losers.

v) **Industry cum Region Principle:** Another important general principle that should guide the industrial adjudicators in awarding benefits to workmen is the industry-cum-region principle. The Courts have emphasized that the benefits claimed by workmen have to be adjudicated on the basis of what obtains in similar industries in that region. The application of the principle, the Courts considered, is necessary not as a rigid dogma but for the purpose of maintaining industrial harmony. If some similar industries are giving a particular benefit to workers in that region, then it is in the interests of industrial harmony that the workers raising the demand should also get the benefit.

vi) **Principle of Justice, equity and good conscience:** The Courts have also asserted that in absence of law guiding the adjudicator, he should adjust the claims and counter claims of the parties by applying the principles of justice, equity and good conscience.\(^\text{46}\)

Industrial adjudication should not attempt to answer questions in the abstract in order to evolve any general and inflexible principle. In attempting to solve industrial disputes industrial adjudication should not adopt a doctrinaire approach. It may evolve some working principles, but should generally avoid formulating or adopting abstract generalizations.\(^\text{47}\)

The best course is to consider each case on its merits. Reasonable adjustment between two competing claims in a fair and just manner is the ultimate guideline for

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industrial adjudication. One of the objectives of adopting adjudication as the ultimate method of resolving industrial disputes in India is to counteract the imbalance in the bargaining power of employer and workmen. To create parity in bargaining power, in the long run, should be the motto of industrial adjudication, because that alone can ensure industrial peace based on social justice.

5.7 Powers of Adjudicatory Authorities

With a view to ensuring peaceful and expeditious settlement of industrial disputes, the adjudicatory authorities under the I.D.Act have been invested with wide powers. Here it is attempted to enumerate and analyse critically the specific powers of these authorities.

The Tribunals being created by a special statute, they deprive powers from the statute. Like the ordinary courts, they do not enjoy any inherent powers. Apart from powers expressly conferred on them by the statute, they have powers, which are incidental or ancillary, which may be derived either from the express statutory provisions or by necessary implication. Although Sec.11 of the Act specifically adverts to ‘Powers and Duties’ of these authorities, there are many other provisions in the Act which deal with their specific powers.

1. Power to decide the Procedure to be followed

To mitigate the rigours of the technicalities of the procedural law and for ensuring expeditious investigation and settlement of industrial disputes, the Act contemplates flexible and convenient procedure to be followed by the ad judicatory authorities. Therefore, discretion is vested in the authority to follow “such procedure
as the authority may think fit". But, this wide power is subjected to the Rules that may be made by the appropriate Government. Both the Central and State Governments have prescribed certain minimal procedural requirements and these are binding on the adjudicatory authorities.

The system of dispute settlement adopted by these bodies, which are quasi-judicial in nature, is essentially adversarial as distinguished from inquisitorial. Therefore, the procedure followed by these authorities, which are vested with the part of the sovereign's judicial power, is nearly similar to that which is followed by the ordinary civil courts. The rules made by the Central and State Governments specifically provide certain elements of adversary system.

Subject to these rules, the conduct of adjudication is entirely within the control of the adjudicator. But a perusal of these rules indicates that not much leeway is left to the adjudicator. It is only where the rules are silent with regard to any particular matter; it is open to the adjudicator to follow "such procedure as he thinks fit". The provisions of the C.P.C or the Evidence Act, in their strict sense, do not apply to the proceedings before these authorities. However, these authorities have to exercise their discretion in a judicial manner and according to the general principles of law and the rules of natural justice. In practice, the adjudicators generally follow the civil court procedures to a large extent.

2. Power to enter premises of the establishment

Sec.11 (2) of the Act empowers the adjudicatory authorities, "for the purpose of inquiry into any existing or apprehended dispute, after giving reasonable notice, to
enter the premises occupied by any establishment to which the dispute relates". But in practice, the authorities very rarely resort to this power.

3. Powers of civil courts in certain matters

The adjudicatory authorities have been vested with certain basic powers of the civil courts, which are necessary for the collection of relevant evidence on matters under adjudication. Sec.11 (3) of the Act lays down that the adjudicatory authorities “shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit in respect of a) enforcing the attendance of any person and examining him on oath, b) compelling the production of documents and material objects, c) issuing commissions for the examination of witnesses, and d) in respect of such other matters as may be prescribed. Further, the Central Rules provide matters such as a) discovery and inspection, b) granting adjournments and c) reception of evidence taken on affidavit.

4. Power to appoint assessors

In addition to the power of the appropriate Government and the Central Government under Secs. 7-A and 7B, to appoint two persons as assessors to advise the I.Tr. and N.Tr. respectively, Sec. 11(5) empowers all the adjudicatory authorities to “appoint one or more persons as assessor or assessors to advise it in the proceedings before it”.

The power to appoint assessors enables the adjudicator to have the advice of an expert on any technical matter like engineering, accountancy etc. Rule 25 of the Central Rules clarifies that the advice of the assessor/s shall not be binding on the
adjudicator. Further, this provision relating to appointment of assessors was intended to guard against excessive legislation of adjudicatory proceedings. Emphasizing this aspect as one of the basic postulates of adjudication under the I.D.Act, Prof. Debi S. Saini observed under:

“the qualifications for assessors were neither prescribed nor was their status identified, but the understanding was that they may be industrial relations experts, labour economists or other social scientists. That is how assessors have been appointed to help tribunals on other industrial relations systems”.

But in practice, the adjudicators do not generally make use of this provision. “Because of their obsession with the civil court procedures, they have ceased to be aware that they enjoy the freedom to reach expert-assisted solutions” of industrial relations problems.

5. Power to award costs

Sub. Se. (7) of Sec. 11 decades that subject to any rules made under this Act, the costs of, and incidental to any proceeding before the adjudicator shall be in the discretion of the authority and the authority shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid and to be given all necessary directions for this purpose. It may be noted that the adjudicator may by proper use of this power deter the parties from seeking unreasonable adjournments.

49 See Ibid., p. 28.
6. Power to decide matters *ex-parte*

The Industrial Disputes Rules, both Central and those made by the State Governments, expressly provided that in case any party defaults or fails to appear at any stage of the proceeding, the authority may proceed *ex-parte* and decide the matter in the absence of the defaulting party. The relevant rules also permit the adjudicator to revoke the *ex-parte* order, if the defaulting party applied before the submission of the award and satisfied the authority that the absence of the party was on justifiable grounds.

7. Power to grant appropriate relief to the parties

The power to grant appropriate relief in relation to the matters that are referred to or brought before the adjudicatory authorities under the other provisions of the Act is the most important substantive power of these authorities. As discussed earlier, disputes both of individual and collective nature, which may be rights or interests disputes, may be referred to these authorities for adjudication. These disputes which may be referred include most important service and working conditions like wages, other allowance, hours of work, leave with wages, bonus, classification by grades, rules of discipline, retrenchment, closure etc. Although these are generally matters to be settled through collective bargaining agreements, in case of failure of negotiations, they may be referred for adjudication. Upon such a reference, the adjudicatory authorities have full powers to settle the disputes and grant appropriate relief to the parties by their awards. The power to grant appropriate relief in such cases cannot be said to be administration of justice according to law, because there is no existing law
that governs the Tribunal and the decision of the Tribunal itself lays down the law for the parties. In one sense, this power of the Tribunals to decide such disputes creating new rules relating to the service conditions may be considered as a legislative power. The Tribunal may by its award provide everything that is possible for the parties to agree though collective bargaining.

The only considerations that the Tribunal has to take into account in providing relief are ensuring peaceful industrial relations and social justice. Further, in exercising this power, it is necessary as per Sec. 10 (4) of the Act that the Tribunal shall confine its adjudication only to the matters that are specifically referred to it and to the incidental matters.

Subject to these limitations, as explained by various decisions of higher judiciary, the power of the Tribunal to award appropriate relief on such references is the essence of the adjudication method for the settlement of industrial disputes. Thus the Tribunals in course of adjudication have awarded enhanced wages and different types of allowances, formulated bonus gratuity or provident fund schemes, fixed working hours, provided promotional opportunities and granted various other amenities and facilities to the industrial workmen. The higher judiciary has only laid down broad general principles and the Tribunals have been empowered to grant relief that is appropriate in the circumstances of each case.

8. Power to grant interim relief

Although there is no specific provision in the I.D.Act conferring power on the adjudicatory authorities to grant interim relief, pending final adjudication, the
Supreme Court in *Hotel Imperial, New Delhi v. Hotel Workers' Union*\(^5^0\) carved out such a power through interpretation of the words, "matters incidental thereto" in Sec. 10 (4) of the Act. The Court observed that the power to adjudicate on incidental matters includes power to grant interim relief in appropriate cases. Therefore, during the pendency of adjudication proceedings, the adjudicator can grant interim relief, wherever he thinks it appropriate. The Supreme Court reiterated this position in Delhi Cloth and *General Mills v. Rameshwar Dayal*.\(^5^1\)

In *Jeewan Lal (1929) Ltd v. State of West Bengal*,\(^5^2\) Justice Sabyasachi Mukherjee explained the legal position very aptly when he observed that the question of right to get interim relief was implied in the order of reference and that interim determination of that question was part of the question referred for adjudication. This way of looking at the matter clears many doubts on this question.

In granting interim relief, the adjudicator must determine that there is a good prima facie case in favour of the workmen for final adjudication and that on the facts of the particular case interim relief is necessary in the interests of justice. Further, the Supreme Court in the above-referred cases observed that ordinarily the interim relief should not be the whole relief that the workmen would get if they succeeded finally. Interim relief must be a relief something carved out of the main relief claimed by the workmen. For example, in cases of discharge or dismissal, the adjudicator cannot

\(^{50}\) (1959) II *L.L.J.* 544 (S.C.).


\(^{52}\) (1975) *Lab. I. C.* 1161 (Cal).
order reinstatement as an interim relief, for that would be giving the workman the very relief which he could get only when he succeeds in his claim finally. Similarly payment of full wages in lieu of reinstatement cannot be granted as interim relief, where the validity of the order of discharge or dismissal is pending adjudication.\textsuperscript{53} In such cases the adjudicator may grant part of the wages payable to the workman as interim relief, pending final adjudication.

In order that the order granting interim relief shall be an interim award, it in incumbent on the adjudicator to make an interim determination of the issue by applying its judicial mind to the facts of the case. The Patna High Court in \textit{Management of Bihar State Electricity Board v. The Workmen}\textsuperscript{54} held that the adjudicator has to find a prima facie case in favour of the workmen before granting interim relief and the fact that the workman concerned was undergoing great hardship cannot be a ground for the grant of interim relief.

In practice, it is observed that the adjudicators do not generally exercise this power. This is so particular in case of rights disputes connected with individual workman. It is submitted that granting interim relief of part of the wages in cases of discharge or dismissal in appropriate cases will help expedite the adjudications, as the employer will then be under some pressure to cooperate for the expeditious disposal of the cases. It is common knowledge that the employers normally would make all

\textsuperscript{53} See \textit{Supra} note 50, p. 552.

\textsuperscript{54} (1971) I. \textit{L. L. J.} 389 (Pat.).
attempts to delay the completion of the adjudication process. But appropriate use of this power may thus help in quick settlement of the disputes.

With a view to clarifying the matters and to allow the adjudicators to make use of this power of granting interim relief more frequently, the Trade Unions and Industrial Disputes (Amendment) Bill, 1988 (now lapsed) sought to make a specific provision in this regard. The Bill proposed to insert sub-sec. (2) to Sec. 5 of the *I.D. Act* in the following terms:

"Where an industrial dispute has been referred to a Labour Court or IRC or a special IRC for adjudication, it shall upon hearing the parties to the dispute by order determine the quantum of interim relief, if any, and require the employer or workmen or both to observe such terms as may be specified in the order."

It may be hoped that as and when the overdue amendments are taken up in future, this specific provision will find a place in the statute. It would then pave the way in favour of exercising this power more frequently by the adjudicators. It is of interest to note that the industrial Disputes (West Bengal Amendment) Act, 1980 provided, by insertion of Sec. 15 (2), that "the Tribunal shall determine the interim relief admissible to the workmen within 60 days or within such period as may be specified in the order of reference under Sec. 10 (1) of the Act." This provision is very pertinent in view of the long delays that have already become endemic in industrial adjudication.

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55 *West Bengal Act, 57 of 1980.*
9. Power to determine the date of commencement of award

Sec. 17-A (4) of the I.D. Act provides, “... the award shall come into operation from such date as may be specified therein, but where no date is so specified, the award shall come into operation on the date on which the award becomes enforceable...”

This provision clearly indicates that the adjudicator has discretion to decide the date from which the award shall be brought into operation. The provision also contemplates a situation where the adjudicator does not specify such date in the award. In that case the award shall come into operation from the date of its enforceability, i.e., on the expiry of thirty days from the date of its publication by the appropriate Government.\(^{56}\) If the adjudicator exercises the discretion and specifies another date for the commencement of the award, then the two dates, viz., the date of enforceability and the date from which the award shall come into operation, differ. This is a clear indication of the intention of Parliament that the adjudicator be entrusted with the power to give, wherever necessary, retrospective operation to the award.

The industrial adjudication has generally treated the date of the demand and the date of the award as two extreme points for fixing the date from which the award can be brought into operation. The Supreme Court in *Wenger & Co v. Their Workmen*\(^{57}\) observed that retrospective operation implies operation of an award from a date prior

\(^{56}\) See Sec.17 (1) of the *I.D.Act*.

\(^{57}\) (1963) II *L. L. J.* 403 (S.C.).
to reference and the word "retrospective" cannot apply to the period between the date of reference and that the award. In \textit{Jharkhand Collieries (P) Ltd v. Central Government Industrial Tribunal}\textsuperscript{58} the Supreme Court fixed an overall limit on the retrospective operation. The court held that no retrospective operation could be given to an award for any period previous to the date on which any demands in question were made. In the instant case, where the Labour Appellate Tribunal modified the original award of the I.Tr. and gave a direction that the benefit of increment awarded to the employees should be given effect from a date prior even to the date of the demand, the direction was set aside by the Supreme Court on the ground that it was a clear error of law.

The power to give retrospective operation to an award can be exercised by the adjudicator even in the absence of a specific mention in the order of reference in this regard. The adjudication on this question will be considered as one on an incidental matter and the adjudicator has power to decide it under Sec. 10 (4) of the Act.

The Courts that would guide the adjudicator’s discretion in this regard have laid down no general principles and the date for the commencement of the award has to be fixed by taking into consideration the totality of the facts and circumstances of the case. However, the adjudicator has to specifically consider the factors like the length of the operation of the previous award, if any, the nature and reasonableness of the demand, the conduct of the parties during the course of the dispute, annual financial burden on the employer and other relevant factors in deciding whether to

\textsuperscript{58} (1960) \textit{II L. L. J.} 71 (S.C.).
give retrospective operation and extent of such operation. The normal rule is that for justifying retrospective operation of an award some special case has to be made out. For instance, it should be shown that if retrospective operation is not given, it would cause some deprivation to the workmen. The adjudicator has to exercise the discretion in a judicial manner and unless it is shown that the adjudicator has exercised the discretion unreasonably, the Courts while exercising the power of judicial review would not interfere with such discretion.

10. **Power to decide the question of reduction of the period of operation of an award**

According to Sec.19 of the *I.D.Act* normally an award, which by its nature, terms and other circumstances imposes continuing obligations on the parties bound by it, shall remain in operation for a period of one year from the date on which the award becomes enforceable. In other words, the period of operation of an award is statutorily fixed, as one year from the date of its enforceability and the adjudicators has no discretion in this regard. However, the one-year's period of operation of an award is subject to appropriate Government's power either to enhance or reduce, dependent on certain limitations. The power of the appropriate Government to reduce the period of operation is subject to the other provisions of this Section.

Reading of both sub-sections (3) and (4) to Sec.19 together makes it clear that before the appropriate Government decides to reduce the statutory period of operation

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60 See Sec.(19)(3) of the *Industrial Disputes*
of an award, viz., one years, it shall make a reference of that question to the Labour Court or Tribunal as contemplated in sub-sec (4). Since the decision of the adjudicator on such questions is declared final, the appropriate Government has to exercise its power only on the basis of the decision of the adjudicator.

The use of the word “decision” in Sec. 19 (4) instead of “award” indicates that the decision of the adjudication in this regard is not an award and so it does not require publication. It may be interest to note that the Trade Unions and Industrial Disputes (Amendment) Bill, 1988 sought to amend the law in this regard through insertion of a new sub-sec (3) to Sec. 19 of the Act. Through this provision, it was proposed, first to confer a discretionary power on the adjudicator to decide the period for which the award shall remain in operation, and secondly, if the period is not so decided by the adjudicator, the award is to remain in operation for a period of three years from the date on which it becomes enforceable.

11. Power to add parties to the adjudication

Under Sec. 18 (3) of the I.D. Act, an award is binding not only on “all the parties to the industrial dispute,” but also on “all other parties summoned to appear in the proceedings as parties to the dispute, unless … (the authority) records the opinion that they were so summoned without proper cause.”

The original parties to the dispute are those parties that are mentioned in the order of reference and in cases where there is direct access to the authority, as in case of Sections 2A (2) (in some State Amendment,) 33, 33-A or 33-C (2), the applicant

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61 See Sec. 18 (3)(b) of the Industrial Disputes Act.
and the respondent parties mentioned in the application, unless the inclusion of any such respondent was held later to be not necessary. The I.D. Act does not contain any express provision empowering the adjudicator to add parties to the proceeding. But such power is necessarily to be implied from Sec. 18 (3)(b). The power impliedly so conferred on the adjudicator under this provision is to summon parties, other than the original parties to the reference, to appear in the proceedings before the adjudicator as parties to the dispute. This has reference to proper and necessary parties, who need not necessarily belong to the category of employer and workmen.

The Supreme Court in *Hochtief Gammon v. Industrial Tribunal*\(^2\) held that if it appeared to the Tribunal that a party to an industrial dispute named in the order of reference does not completely or adequately represent the interest either on the side of the employer, or on the side of employees, it might direct that other persons should be joined who would be necessary to represent such interest. This implied power of the adjudicator to implied parties may be exercised either at the instance of one of the parties or *so motu*. The award in such a case will also be binding on the parties so summoned, unless the adjudicator records that the said party was summoned without proper cause.

In the above-mentioned case, the Supreme Court further held that this power is limited only to cases where the joiner of parties is necessary to make the adjudication complete, effective and enforceable. Such power, obviously, cannot exercise to extend

\(^2\) (1964) 1. L. L. J. 460 (S.C.).
the scope of the reference and to bring in matters which is not the subject matter thereof, and which cannot be incidental to the dispute referred.

12 Power of a Tribunal to adjudicate on granting of permission to lay-off, retrenchment or closure

Industrial Disputes (Amendment) Act, 1976 introduced Chapter V-B containing more stringent restrictions on the employer’s right to lay-off or retrench workmen or closure of large industrial establishments employing hundred or more than hundred workmen. The substantial restriction imposed on these establishments through the provisions of this chapter is that before any lay-off, retrenchment or closure is affected; the employer shall have to obtain the prior permission of the appropriate Government. On an application being made by the employer in this behalf, the appropriate Government, after conducting such enquiry as it thinks fit and after giving reasonable opportunity of hearing to the concerned parties, may grant or refuse to grant the permission. The order granting or refusing to grant permission shall remain in force for one year from the date of such order. The appropriate Government has power to review its order either on its own motion or on the application made by the employer or any workman.

The Government may either review its order by itself or 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. Once a

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64 See Sections 25-M (7), 25-N (6) and 25-O(5) of I.D. Act.
reference is made to the Tribunal, it shall acquire power to decide whether the earlier order of the Government should be continued or not. In other words, after such a reference, the question of granting or refusing permission shall be decided by the Tribunal. The provision for such review by the Tribunal was enacted in view of the Supreme Court’s decision in Excel Wear Vs. Union of India. In this case the Court held unconstitutional on the ground, among others, struck down the earlier version of Sec. 25-O relating to closure that the decision of the Government was not subject to review by any independent tribunal.

A Division Bench of the Bombay High Court in Association of Engineering Workers v. Indian Hume Pipe Co. Ltd. held that the requirement that the Tribunal “shall pass an award within thirty days from the date of such reference” is merely directory and not mandatory. Hence, on the expiry of this time limit the reference will still survive for adjudication and it will not lapse.

13. Power to give appropriate relief in termination disputes

The most prominent industrial disputes that come up for adjudication under the I.D. Act, relate to discharge, dismissal, retrenchment or other termination of the services of individual workmen.

The power of the adjudicators in the adjudication of these disputes has been a subject of considerable interest in the arena of industrial relations, particularly because the cases of discharge or dismissal as a punishment for misconduct involve

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66 (1986) Lab I.C. 749 (Bom).
problems of preserving discipline in industry. Similarly from the point of view of workmen, these disputes are crucial as they affect their right to continue in job, which in most cases is a question of life and death to the workmen. A synthesis of these conflicting positions resulted in the law that is administered by the adjudicators under the Act.

In *Western India Automobile Association v. Industrial Tribunal, Bombay* the Federal Court in 1949 held that in disputes relating to the termination of the services of a workman, the Tribunal had power to award reinstatement and back wages, if the termination was held to be wrongful. It may be noted that in common law the court could not force an unwilling employer to retain the services of an employee even where the termination was held to be wrongful. A contract of employment was considered as one, which could not be specifically enforced. But this common law principle was jettisoned in industrial adjudication, which can, in appropriate cases, compel the employer to reinstate workman whom he does not desire to employ.

This power of the industrial adjudicator to grant reinstatement with back wages is intended on the one hand, to provide security of employment and protection against wrongful terminations and on the other to secure industrial peace and harmony. The Tribunal enjoys discretion in the matter of granting reinstatement with full or part of the back wages and in granting continuity of service. The normal rule is that if the misconduct for which the workman has been discharged or dismissed is not proved in the domestic enquiry or before the Tribunal, the order of punishment will not stand

67 (1949) *L. L. J.* 245 (F. C).
and the Tribunal is bound to award reinstatement of the workman with all the consequential benefits. But in cases where there is a determination of apportionment of blame or where the workman was gainfully employed during the period between the termination and the award, the adjudicator may exercise discretion on the question of granting the consequential benefits.

Conceptually, the relief of reinstatement is on the same footing as the relief of restitution. Reinstatement implies restoration to the original position as if the workman’s services were not terminated and therefore the reinstated workmen would be entitled to all consequential benefits. But, in industrial adjudication it is recognized that an order of reinstatement need not involve the conferment of all consequential benefits and the adjudicator has discretion in deciding these matters. In appropriate cases the adjudicator may also order reemployment, i.e., fresh employment, which need not carry with it any consequential benefits.

And in exceptional cases, even where the adjudicator finds the termination wrongful, he may still have to consider whether in the interests of the industry itself, it would be desirable or expedient not to order reinstatement. Where the adjudicator considers reinstatement not desirable for valid reasons, he may award adequate monetary compensation in lieu of reinstatement.

In Buckingham and Carnatic Co. (P) Ltd v. Their Workmen, the LAT held that in case of wrongful dismissal, reinstatement is the normal relief. The LAT also recognized certain exceptions where reinstatement would not be proper. It was
observed that in considering the question of reinstatement, "the Tribunal is expected to be inspired by a sense of fair play towards the employee on the one hand and consideration of discipline in the concern on the other." In *Punjab National Bank Ltd v. Their Workmen* he Supreme Court endorsed the above opinion and observed that no hard and fast rule could be laid down in dealing with this problem and that each case must be considered on its own merits and in reaching a final decision, an attempt must be made to reconcile the conflicting claims made by the employee and the employer. It was further observed that the employee is entitled to security of service and should be protected against wrongful dismissal and so the normal rule would be reinstatement in such cases. But the question whether reinstatement should be awarded or not, has to be decided after balancing the relevant factors and without adopting legalistic or doctrinaire approach. The Tribunals and Courts have adopted these principles in subsequent cases.

The above discussion clearly reveals that in cases of termination disputes the adjudicator has ample power to mould the relief to be granted to the workman on the basis of the facts and circumstances of each case.

a. **Power to interfere with the punishment of discharge or dismissal**

The *I.D.Act* originally did not contain any specific provision delineating the Tribunal’s jurisdiction to interfere with the punishment of discharge or dismissal. Till

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69 (1959) II *LLJ. 666* (S.C.)

then it was considered as one of the managerial prerogatives to initiate disciplinary action against an individual workman and to decide upon the quantum of punishment where the workman was found guilty of any misconduct. Although the power of the Tribunal to order reinstatement in cases of illegal discharge or dismissal was recognized by the Federal Court in 1949 in the Western India Automobile Association Case, the exact jurisdiction of the Tribunal and the nature of power it is expected to exercise against the management’s action of imposing the punishment of discharge or dismissal were discussed for the first time by the LAT in Buckingham and Carnatic Co. Ltd. v. Workers.71 The LAT in this case laid down the principle of limited jurisdiction of the Tribunal over the management’s power to discharge or dismiss a workman on punishment and held that the Tribunal could set aside the punishment only in four distinct circumstances. The Supreme Court, with slight modification, in Indian Iron and Steel Co. Ltd. Vs, later approved this decision of the LAT. Their Workman72 The Supreme Court in the instant case authoritatively pronounced that the power of the Tribunal to interfere with the managerial prerogative of taking disciplinary action was only of a supervisory nature and that the Tribunal could not exercise appellate jurisdiction over the exercise of disciplinary power of the management.

Therefore, the Tribunal could not go into the merits of the case and it could not substitute its own judgment for that of the management either with regard to the finding

\[\text{71 (1952)} \ L.A.C. \ 490.\]
\[\text{72 (1958)} \ I \ LL.J. \ 260 \ (S.C.)\]
of the guilt of the workman or on the question of quantum of punishment. While specifically endorsing the decision of the LAT in *Buckingham and Carnatic Co. Case*, the Supreme Court declared. The law as follows:

"in cases of discharge or dismissal or misconduct, the Tribunal does not, however, act as a Court of appeal and substitute its own judgment for that of the management. It will interfere i) where there is want of good faith, ii) when there is victimization or unfair Labour practice. iii) When the management has been guilty of a basic error or violation of a principle of natural justice; and iv) when on the materials, the finding is completely baseless or perverse.\(^{73}\)

The postulates (i) and (ii) above related to the bonafides of the employer in initiating the disciplinary action as well as in inflicting the punishment. In both these matters the employer should act in good faith and his action must be fair by any reasonable standards. If the employer's action is malafide or smacks of victimization or is motivated by an ulterior purpose, it can be set aside by the adjudicator. The postulates (iii) and (iv) are address to the domestic enquiry and a prima facie evidence of guilt. It is necessary that (a) the enquiry officer must be an unbiased person (b) the delinquent employee must get a reasonable opportunity of being heard and (c) his decision should not be baseless or perverse.\(^{74}\)


\(^{74}\) *Supra* note 1, Vol. 2 p. 1045.
The Supreme Court in a later decision in *Hind Construction and Engineering Co.Ltd v. Their Workmen*\(^75\) held that even where the enquiry was proper and valid, if the punishment was shockingly disproportionate to the proved misconduct, victimization or unfair labour practice could be inferred and the extreme punishment of dismissal could be set aside by the Adjudicator. The Court, however, added that in the absence of such infirmities, the Tribunal could not interfere with the management’s action and that the quantum of punishment too was a managerial prerogative and could not normally be interfered with if the misconduct was proved.

The limited supervisory jurisdiction of the Tribunal, explained above, was applicable only to cases where the disciplinary action of discharge or dismissal was based on a valid domestic enquiry. But, in cases of defective enquiry, the Supreme Court in *Sasamusa Sugar Works Ltd v. Shobrata Khan*\(^76\) recognized the original jurisdiction of the Tribunal, where it can go into the merits of justifiability of the action of discharge or dismissal. In such cases, the employer will be permitted to adduce evidence before the Tribunal to justify his action. The workman also will have an opportunity to adduce evidence and attack the order of the management on all infirmities. The Tribunal will then have power to go into the merits of the case on the basis of the evidence adduced before it. The entire matter will then be open before the Tribunal, which has to satisfy itself on its own evaluation of the evidence whether the discharge or dismissal is justified. The Tribunal in such a case has to determine

\(^{75}\) (1965) *I. L.L.J.* 462 (S.C.).

both guilt and punishment\textsuperscript{77} for itself and the employer would not have the benefit of determining these issues, which he could do in case of a valid domestic enquiry.

In \textit{Workmen of Motipur Sugar Factory (P) Ltd v. Motipur Sugar Factory (P) Ltd.}\textsuperscript{78}, a case where the employer had not held the domestic enquiry before imposing the punishment of dismissal, the Supreme Court recognized the right of the employer to justify his action before the Tribunal, by adducing evidence for the first time and also the right of the workman to rebut such evidence. In this case the Supreme Court did not agree with the contention of the workman that since the employer did not hold any enquiry, the Tribunal should automatically set aside the order of dismissal and award reinstatement of the workman. The Court observed that ordering reinstatement in such a case, without giving an opportunity to the employer to adduce evidence before the Tribunal in support of his action, would neither be just to the management nor fair to the workman himself. Because, of reinstatement is order on the ground that the employer did not hold an enquiry, the employer would soon conduct an enquiry and take the very same action once again. It would then result in another industrial dispute, which could come before the Tribunal for the second time. Further


\textsuperscript{78} (1965) II L. L. J. 162 (S.C.).
this would also deprive the workman of the benefit of the Tribunal itself evaluating
the evidence adduced before it in arriving at a finding as to the guilt of the workman.79

This was the position of law when the Parliament by an Amendment in 1971
inserted Sec. 11-A brining about far reaching changes in the power of the adjudicators
in cases of disputes relating to discharge or dismissal as a punishment. Since the
power of the adjudicator is now delineated in Sec. 11-A, which forms the basis of
intervention in the management's power to take disciplinary action of discharge or
dismissal of a workman, the Section is extracted here before attempting an
explanation of the same.80

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

79 See for further discussion on this point: Bharath Sugar Mills Ltd. v. Jai Singh, (1961) II L.L.J.644
(S.C.); Ritz Theatre (P) Ltd. v. Workmen, (1962) II L.L.J. 498 (S.C.); State Bank of India v. R. K.
(S.C.).
80 Inserted by I.D. (Amendment) Act, 1971 (45 of 1971); S.3 w.e.f 15-12 71.
“Provided that in any proceeding under this Section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

The statement of Objects and Reasons appended to the Bill referred to the position of law laid down by the Supreme Court in Indian Iron and Steel Co. Case and the I. L. O recommendation No.119, adopted in June, 1963, to the effect that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination to a neutral body, which should be empowered to examine the reasons given in the termination of employment and other circumstances and to render a decision on the justification of the termination. In pursuance of this recommendation, the Section seeks to enlarge the limited jurisdiction of the tribunal in cases of disciplinary discharges or dismissals.

It may be noted that the language of the Section makes it clear that the extended power of the adjudicatory is applicable to only cases of discharge or dismissal imposed on a workman as a measure of punishment. The Section does not, therefore, apply to cases of simple discharge or retrenchment, as they cannot be considered as punishment. But in cases of purported discharge simpliciter, if the workman challenges it on the ground that it is, in fact, penal in nature, the Tribunal can go behind the order to see its substance rather than its form and if satisfied that
the discharge in fact is by way of punishment referable to some misconduct, it will have jurisdiction to adjudicate upon the dispute under this Section.\textsuperscript{81}

Sec. 11-A now vests very wide discretionary power on the Tribunal. First, the limited jurisdiction delineated by the Supreme Court in Indian Iron and Steel Co. case has now been enlarged into an appellate jurisdiction. In \textit{Workmen of Firestone Tyre and Rubber Co. of India Pvt. Ltd v. Management} \textsuperscript{82} the Supreme Court construing the words, "in the course of adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, in satisfied that the order of discharge or dismissal is not justified," used in the Section, held as follows:

"The Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against workman. What was originally a plausible conclusion that could be drawn by the employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. An employer can, no longer invoke the limitation imposed on the power of Tribunal by the decision in Iron and Steel Co. Ltd. case. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by the employer is correct, but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has

\textsuperscript{81} See \textit{Supra} note .78
\textsuperscript{82} (1973) \textit{1 L.L.J.278} (S.C).
ceased to be so, and now it is the satisfaction of the Tribunal that finally decides the matter.\footnote{83}{Ibid., p. 295.}

This holding of the Court clearly establishes that the powers of the Tribunal are no more limited and it can sit in appeal over the decision of the management by going into the merits of the case. It can re-appreciate the evidence and substitute its own opinion to that of the management. In other words, it is the Tribunal, which has to decide finally whether the workman is guilty of the misconduct alleged against him.

Secondly, the Section also expressly confers power on the Tribunal to interfere with the quantum of punishment imposed by the employer, even in cases where the Tribunal upholds the finding of misconduct. Prior to Sec. 11-A, the Tribunal could not interfere with the managerial discretion on the nature and quantum of punishment. But now the nature and quantum of punishment are within the realm of powers of the Tribunal. It may in appropriate cases award any “lesser punishment in lieu of discharge or dismissal, as the circumstances of the case may require,” Thus the Tribunal is empowered to mould the relief as may be warranted by the circumstances of each case.

Although the proviso to Sec. 11-A unambiguously provides that” in any proceeding under this Section, “the adjudicator “shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter”, the Supreme Court in the instant case held that the employer’s right to sustain the disciplinary
action taken by him by adducing evidence before the Tribunal again (in case of defective enquiry) or for the first time (in case of no enquiry) survives even after the enactment of Sec. 11-A. In case of defective enquiry or no enquiry, there is no material on record for the Tribunal to rely upon in adjudicating upon the dispute and in as much as it is expressly forbidden from taking “any fresh evidence” by the proviso, the Tribunal should automatically set aside the discharge or dismissal as unjustified and order reinstatement. But the Court did not approve this plea of the workman and it was held that in such cases the employer’s right to adduce fresh evidence before the Tribunal is still in tact. This is rather a forced interpretation placed on the construction of the Section, which virtually amounts to deleting the proviso from the Section. But, as explained earlier, this interpretation helps in resolving the dispute by the Tribunal once for all instead of allowing the dispute to come up again before it at a later stage after the employer had conducted another enquiry or enquiry for the first time. The result of this holding, which is the law at present, is that even if the employer dismisses a workman without conducting any enquiry or after conducting a farcical enquiry, in gross violation of principles of natural justice the workman is not entitled to reinstatement. The employer still has been given the right to adduce evidence before the Tribunal in justification of his ex-facie, arbitrary and unilateral action.
The Supreme Court reiterated this position later in *Cooper Engineering Ltd. v. P.P. Mundher*\(^8\) where the Court observed that the Tribunal has to first decide as a preliminary issue whether the domestic enquiry was conducted in accordance with the principles of natural justice. And if the Tribunal held the enquiry to be defective, it would be for the management to decide whether it would adduce any evidence before the Tribunal. Again in *Shankar Chakravarthi v. Britannia Biscuit Co. Ltd*.\(^8\) while endorsing the earlier holding, the Supreme Court observed that the right to adduce additional evidence must be availed of by the employer by making a proper request for permission either in the pleadings or any time before the proceedings are concluded.

Thus, the law as it stands today does not make it obligatory on the part of the employer to conduct a fair enquiry before he imposes even the most drastic punishment of dismissal of a workman.

However, the Supreme Court in *Firestone Tyre and Rubber Co. case* made certain harmless observations like, “as before, even now, the employer is expected to hold a proper enquiry according to the standing order and principles of natural justice,” and “by holding a proper enquiry, the employer will also escape the charge of having acted arbitrary or *malafide*”. The Court also added that it should not be understood as laying down that there is no obligation on the part of the employer to hold an enquiry before passing an order of discharge or dismissal. But these

\(^8\) (1975) II L. L. J. 379 (S.C.).
\(^8\) (1979) II L. L. J. 194 (S.C.).
observations mean nothing when the employer has been given the right to adduce independent evidence before the Tribunal to justify his arbitrary action of dismissing a workman without holding any enquiry at all. Then the question arises, why should the employer hold an enquiry at all? The managements as most inconvenient have always considered holding a domestic enquiry strictly in accordance with the principles of natural justice and when there is no legal sanction for not holding such an enquiry the managements would prefer to avoid it. The Supreme Court has not posed to itself this vital question nor attempted to explain the anomaly arising from its holding, which is quite contrary to the express language of the proviso to Sec. 11-A.

Prior to the enactment of Sec. 11-A when the Tribunal’s power in cases of proper enquiry was merely that of a supervisory nature, the employers were persuaded to hold a proper enquiry so as to avoid the re-appreciation of evidence by the Tribunal. But, after Sec. 11-A, when the Tribunal’s power is enlarged into one of going into the merits, the employer does not derive any such benefit nor suffers any loss if he did not hold proper enquiry, except, as observed by the Supreme Court, that he would “escape the charge of having acted arbitrary or malafide.” In cases where the employer is confident that he can justify the dismissal with cogent evidence, he can rebut the charge of having acted arbitrarily. Therefore, it is submitted that to ensure that an employer holds proper enquiry before imposing the punishment of discharge or dismissal it is absolutely necessary that there must be an independent legal sanction for it.
Some of the observations made and the dicta laid down by the Supreme Court in some cases on this aspect of the law present a very confusing picture. These cases concerned the question of entitlement of a dismissed workman to back-wages from the date of dismissal to the date of award. It can be argued that where the employer did not hold any enquiry at all or the one held by him was declared to be defective, the original order of discharge or dismissal is invalid, even if the Tribunal on the basis of the evidence adduced before it justifies the action. This means that the dismissal order in such a case does not relate back to the date of dismissal by the employer but only to the date of award, which justifies the dismissal, and therefore, the workman should be entitled to back-wages from the date of dismissal to the date of award. The rulings of the Supreme Court on the point are quite confusing and they are further confounded by the fact that the cases of discharge or dismissal come up for adjudication under the Act not only upon a reference under Sec. 10 of the Act but also under Sec. 33 for “permission” or “approval” sought by the employer and under Sec. 33-A in the form of a complaint by the workman for contravention of Sec. 33.

Since this question relates to the power of the adjudicator to grant back-wages, a brief survey of the cases decided by the Supreme Court on the doctrine of relation back and the entitlement of the workmen for back-wages is attempted here. In *Rampur Colliery v. Bhuban Singh*\(^8^6\), Where the employer held a proper enquiry but suspended the workman without pay before obtaining permission under Sec. 33 (1), the Supreme Court held that if permission is granted by the Tribunal, the dismissal

\(^8^6\) (1959) II L. L. J 231 (S.C.).
relates back to the date of suspension without pay and therefore the workman would not be entitled to wages. The Supreme Court gave this ruling despite the express statutory provision under Sec.33 that the employer shall not dismiss the workman ‘save with the prior permission’ of the adjudicator. But in Sasa Musa Sugar Works Pvt. Ltd v. Shobrati Khan\textsuperscript{87} the employer suspended the workman without conducting an enquiry and applied to the Tribunal for permission under Sec.33 (10). On the basis of the evidence adduced before the Tribunal, it came to the conclusion that the misconduct of the workman was proved and accordingly permission was granted. However, the Supreme Court held that “the management is bound to pay the wages of the workmen till a case for dismissal is made out in the proceedings under Sec. 33”. According to this holding, since the employer did not hold any enquiry, the dismissal was valid only from the date of the order of the Tribunal granting permission, and therefore, the workmen were entitled to back wages till the date of the order of the Tribunal.

Then in Phullbari Tea Estates v. Its Workmen\textsuperscript{88}, dealing with a case of reference under Sec. 10 where the enquiry conducted by the employer was found to be invalid being in gross violation of natural justice and employer also did not lead proper evidence before the Tribunal, the Supreme Court upheld the award of Tribunal granting compensation in lieu of reinstatement. Thus, in this case the question of application of the doctrine of relation back did not arise. Even then this case was

\textsuperscript{87} (1959) II L. L. J. 388 (S.C.).
\textsuperscript{88} (1959) II L.L.J 663 (S.C.)
referred in some later cases for certain observations made in it to the effect that the doctrine of relation back does not apply to cases of defective enquiry. In *Hotel Imperial v. Hotel Workers' Union*, the Supreme court referred to the Phulbari Tea Estates case and held that "if there was any defect in the enquiry by the employer, he could make good that defect by producing necessary evidence before the Tribunal; but in that case he will have to pay the wage up to the date of the award of the Tribunal, even if the award went in his favour".

It was held in this case that this position of law applied also to normal adjudication of reference cases under Sec. 10. It may be noted that all the above four cases were decided by the Supreme Court with a very short gap of time and all the four judgments were delivered by the same judge, namely Justice Wanchoo.

Later *P.H. Kalyani v. Air France* a five-judge Bench of the Supreme Court reviewed all the above dicta and held that in case of defective enquiry, if the employer subsequently justified the dismissal by adducing evidence before the Tribunal, the dismissal order relates back to the date of original dismissal and therefore, the employer need not pay back wages up to the date of the order of the Tribunal. This was a case under Sec. 33 (2) 2 (b) for approval of the dismissal order passed by the employer. In effect the Court held that for dismissing a workman after a defective enquiry, the employer shall not suffer any consequences, if only he could justify his action later on by adducing independent evidence before the Tribunal. It may be

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89 (1959) II *L.L.J.* 544 (S.C.)
90 (1963) II *L.L.J.* 697 (S.C.)
added that Justice Wanchoo in this case also delivered the judgment. It is really difficult to make out any rational principle that influenced the Court in the above cases. Similarly in D.C. Roy v. Presiding Officer, M.P. Industrial Tribunal the Supreme Court applied the Kalyani's ratio and held that even in case of defective enquiry, if the dismissal order is upheld by the Tribunal on the basis of fresh evidence adduced before it, the dismissal relates back and the workman would not be entitled to wages. However, the D.C. Roy judgment contained the following caution to the employers.

"The decision in P.H. Kalyani's case (Supra) is not to be construed as a charter for employers to dismiss employees after the pretense of an enquiry. The enquiry in this case does not suffer from the defects serious or fundamental as to make it non-est. On an appropriate occasion, it may become necessary to carve out an exception to the ratio in Kalyani's case so as to exclude from its operation at least that class of cases in which under the faced of domestic enquiry, the employer passes an order gravely detrimental to the employee's interest like an order of dismissal. An enquiry blatantly and consciously violating the principles of natural justice may well be equated with the total absence of enquiry so as to exclude the application of the relation back doctrine. But we will not pursue this point beyond this as the facts before us do not warrant a closer consideration thereof."

This obiter observation seems to be indicating that the doctrine of relation back does not apply to cases of no enquiry and so the workman would be entitled to wages

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from the date of dismissal till the date of award, although the award upholds the punishment of dismissal on the basis of the independent evidence adduced before it. The import of this obiter observation was clarified by a three judge Bench of the Supreme Court in *Gujarath Steel Tubes v. G.S.T. Mazdoor Sabha*\(^2\) in the following words:

"Where no enquiry has preceded punitive discharge, and the Tribunal for the first rime upholds the punishment this court in *D.C. Roy v. Presiding Officer (Supra)* has taken the view that full wages be paid until the date of the award. There cannot be any relation back of the date of dismissal when the management passed the void order."

However, this observation of the Court was also obiter, since in this case the dismissals ordered by the employer were not found to be justified by the Court. Later in *Desh Raj Gupta v. Industrial Tribunal*\(^3\) a two judge Bench of the Supreme Court dealing with a case of defective enquiry and relying on Gujarath Steel Tubes case, held:

"If the order of punishment passed by the management is declared illegal and the punishment is upheld subsequently by a Labour Tribunal, the date of dismissal cannot relates back to the date of the illegal order of the employer. The appellant is therefore entitled to salary from 16-8-1976 (date of dismissal) to 20-7-1980” (date of award).


First, it is doubtful whether in a case where the Tribunal finds the enquiry defective it would “declare” the dismissal order illegal before accepting fresh evidence from the employer. Secondly, it may be argued that this two-Judge Bench decision is not in conformity with the ratio of the five judges Bench in Kalyani’s case and that of the three judge Bench in D. C. Roy’s case and therefore it may be considered per incurium. The Court did not refer to these two binding precedents in this case. In the light of the above discussion, it is submitted that the law on this point is still unsatisfactory leading to conflicting judgments by High Courts.  

It may incidentally be noted that after the I.D. (Amendment) Act, 1984, discharging or dismissing a workman “in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste” is declared as an unfair Labour practice, an offence punishable under the Act. But like all other offences punishable under the act, no court shall take cognizance of this offence, save on a complaint made by or under the authority of the appropriate Government.

The Power of the adjudicator to award reinstatement and back wages in case of illegal discharge or dismissal was summed up by Justice D.A. Desai with his realistic approach to the Labour problems in the Supreme Court’s decision in Hindustan Tin Works v. It’s Employees in the following words:

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95 Sub-Clause 5 of the Clause I of Schedule V, read with Sections 25-T and 2-U.
96 See Sec. 34 of the Industrial Disputes Act.
“It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service; the spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt this branch of law. The relief of reinstatement with continuity of service can be granted where the termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If the employer is found to be in the wrong as a result of which the workman is directed to be reinstated the employer could not shirk his responsibility of paying wages, which the workman had been deprived of by the illegal or invalid action of the employer. Speaking realistically, where the termination of services is questioned as illegal or invalid and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when law’s proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately it is to be held that though he will be reinstated, he will denied the back wages which would be due to him, the workman would be subject to a sort of penalty for no fault of his and it is wholly underserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the force idleness. That is the
normal rule. Any other view would be a premium on the unwarranted litigative activity by the employer. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances."

b) **Power of the Tribunal to grant relief in case of illegal or invalid retrenchments**

Another kind of termination of service specified in Sec. 2A is retrenchment. In view of the interpretation of the term “retrenchment” as defined in Sec. 2 (00) of the I.D. Act, giving it a very comprehensive meaning, this type of disputes that come up before the adjudicators is numerically considerable. These disputes are also important from the point of view of the right to work and unemployment benefits to retrenched workmen. That is the reason why the Parliament had given a very wide meaning to the term “retrenchment” and laid down certain condition precedent and procedure to be followed by the employer at the time of retrenching the workmen. In most cases of termination of service otherwise than as a punishment, the workmen claim the statutory protection available to retrenched workmen and if the employer fails to comply with the conditions precedent, the termination itself becomes void.

Since the definition of retrenchment contained very wide language, it gave rise to a considerable divergence of judicial opinion. The first major decision of the Supreme Court on the interpretation of the definition was *Hariprasad Shiv Shankar*
Shukla v. A.D. Diwekar\textsuperscript{98} (also reported as Barsi Light Railway Co. v. K.N. Joglekar). In this case, a five judge Constitution Bench of the Supreme Court held that the termination of services of workmen on account of closure or transfer of ownership of an undertaking was not retrenchment within the meaning of Sec.2 (OO). The Court held that retrenchment can take place only in an existing or running industry., Construing the words “for any reason whatsoever” in the context of the concept of retrenchment, the Court observed:

“On our interpretation, in no case is there any retrenchment, unless there is discharge of surplus Labour or staff in a continuing or running industry.”

Later in Workmen of Subong Tea Estate v. Subong Tea Estate\textsuperscript{99} the Supreme Court held that though the management has the right to retrench workmen, it should be for proper reasons. Upholding the powers of an industrial adjudicator to go into the reasons for the retrenchment, the Court observed:

“Though the right of the management to effect retrenchment cannot normally be questioned, when a dispute arises before an Industrial Court in regard to the validity of any retrenchment, it would be necessary for industrial adjudication to consider whether the impugned retrenchment was justified for proper reasons. It would not be open to the management either capriciously or without any reason at all to say that it proposes to reduce its labour force for no rhyme or reason. This position cannot be seriously disputed.”

\textsuperscript{98} (1957), I. L. L. J. 243 (S.C.).

Till 1976 it was accepted that retrenchment connotes only discharge of surplus labour and termination of service for any other reason could not be comprehended within the meaning of retrenchment. But, in *State Bank of India v. Sundara Money*¹⁰⁰ a three judge Bench of the Supreme Court preferred a literal interpretation of the definition and held that every type of termination of service other than those which are specifically excluded would amount to retrenchment. In this case automatic termination of service, consequent to a “preemptive provision as to the temporariness of the period of employment” was held to be retrenchment. The Court construed the words, “for any reason whatsoever” occurring in the definition, literally and held that these words are very wide and do not admit any exception. The earlier decision of the Court in Hariprasad case does not appear to have been brought to the notice of the Court and accordingly the Sundar Money judgment does not have any reference to that case. Justice Krishna Iyer, speaking for the Court, observed that the provision relating to retrenchment in the Act have a “workers’ mission.” He added, “Court considers welfare legislation with an economic bias.” Since the provisions relating to retrenchment are meant to confer unemployment benefit on the retrenched workmen, the definition was construed liberally so as to benefit as many workers as possible, in particular casual labourers, whose employment is temporary or is for a fixed period. With this objective the Court held that “termination within the definition embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. A termination takes place where a term expires either by the active step of

the master or the running out of the stipulated term." Through this decision the Supreme Court provided some protection to the million of casual labourers in this country, who are thus far given employment at the mercy of the employer and continue to be “casual labourers" for years, some times even for decades.

The Supreme Court hereafter followed the ratio of Sundar Money and held that every termination of service, save for the reasons specified in the definition itself, would amount to retrenchment and unless the employer complies with the conditions precedent laid down in Sec. 25-F, namely, one month's prior notice with reasons or pay in lieu of notice and retrenchment compensation, the retrenchment is void and illegal.

In *Hindustan Steel Ltd. v. State of Orissa* the Supreme Court held that termination by efflux of time stipulated in the order of appointment amounted to retrenchment. The Court, in this case, without any elaborate reasoning rejected the contention that Sundar Money was inconsistent with Hariprasad's case.

In *Delhi Cloth & General Mills Ltd. v. Shambunath Mukherjee* the Court followed the ratio of Sundar Money and held that striking-off the name of workman from the rolls by the management for continued absence as per the standing order was retrenchment. To the same effect was another decision of the Court in *L. Robert D'Souza v. Executive Engineer, Southern Railway* In *Santosh Gupta v. State Bank*

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of Patiala\textsuperscript{104} the Supreme Court applied the Sundar Money ratio literally and held that the termination on the ground of the workmen’s failure to pass prescribed test, which was necessary for confirmation in service, amounted to retrenchment.\textsuperscript{105} Again in \textit{Mohan Lal v. Management of Bharat Electronics Ltd.}\textsuperscript{106} the Supreme Court held that termination on account of unsatisfactory work (simple discharge) amounted to retrenchment. Further in \textit{K.S.R.T.C. v. Shaik Abdul Kahder}\textsuperscript{107} the Supreme Court held that even termination of the services of a probationer for unsatisfactory work amounted to retrenchment. In \textit{Management of K.S.R.T.C. v. M. Boraiah},\textsuperscript{108} Justice Ranganath Misra, speaking for the Supreme Court observed:

“We are inclined to hold that the stage has come when the view indicated in Sundar Money’s case has been “absorbed into consensus” and there is no scope for putting the clock back or have anti clockwise operation.” In all the above cases, since the employer did not comply with the mandatory conditions precedent to retrenchment, the terminations were declared void and illegal. Some of the above decisions like Santosh Gupts, Mohanlal and Shaik Abdul Khader have created an anomalous situation, which is somewhat inconsistent with the other provisions

\textsuperscript{108} \textit{AIR} 1983, S.C. 1320.
relating to retrenchment in the Act like the one on reemployment of the retrenched workmen.\(^{109}\)

It was at this time that Parliament through an amendment in 1984 included a new exception to the definition of retrenchment in the following words:

"(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein".

Perhaps a literal interpretation of this exception would not only exclude all the above cases from the definition of retrenchment, but an employer, may, by stipulating terms in the contract of employment covering all conceivable cases of termination, including that of discharging surplus labour, defeat the very purpose of the provisions of retrenchment in the Act. There is no decision of the Supreme Court so far on the scope of this exception. But the A.P. High Court in Chenchaiah v. Divisional Engineer, A.P.S.R. Corporation\(^{110}\) refused to construe this exception literally and took the view that a stipulation in a contract of service that the services of the workmen can be terminated "at any time and without assigning any reason therefore" (a typical simple discharge clause) was not the kind of stipulation contemplated by the second part of the sub-clause (bb) of sec.2(00). Justice Jeevan Reddy in his judgment observed that literal or liberal construction of this clause would practically render the

\(^{109}\) See Sec. 25-H of the Industrial Disputes Act.

protection sought to be extended by the Act to the workmen nugatory and it would make it easy for the employer to insert or introduce such a clause in the contract of employment and defeat the rights of workmen conferred by the statute. The Court has thus read down this exception, which was not intelligibly drafted so as to manifest the intention of the Parliament. The A. P. High Court again in *R. Sreenivasa Rao v. Labour Court, Hyderabad*¹¹¹ held that “in the absence of clear intention, the first part of the sub-cl (bb) cannot be interpreted to take in the termination of the services of the causal Labour on daily wages.” Any other view, the Court observed, would reduce the content of the main part of Sec. 2 (00) to such a state of shrinkage, which the legislature would never have contemplated.

Finally, on the main part of the definition, a five judge Bench of the Supreme Court in 1990 in *Punjab Land Development and Reclamation Corporation v. Labour Court*¹¹² disposing of as many as seventeen appeals by special leave that got piled up till 1980's, approved the interpretation placed on the definition by *Sundar Money's case* and the other in line. The Court distinguished *Hari Prasad's case* and held that the *ratio decidendi* of *Hariparasad's case* was that the termination on account of closure or transfer of an undertaking would not amount to retrenchment. The Court reviewed all its earlier decision on the definition and concluded:

¹¹² (1990) *77 FJR.* 17 (S.C).
“We hold that retrenchment means the termination of/by the employer of the service of a workman for any reason whatsoever except those expressly excluded by the Section.”

The Court in this case clarified all the confusion that was prevalent on the interpretation of the definition of retrenchment by holding that Sundar Money and the subsequent decision in line cannot be said to be per incurrium as Hariprasad’s case is not an authority for the proposition that Sec. 2 (OO) only covers cases of discharge of surplus labour or staff. The Court preferred the literal interpretation as distinguished from the contextual interpretation adopted by the Court earlier in Hariprasad’s case.

Once the Tribunal comes to the conclusion that the termination of service of a workman is retrenchment within the meaning of Sec.2 (OO), it has to further adjudicate upon its validity with reference to Sec.25-F of the Act, which lays down conditions precedent for any retrenchment. They are, first the employer should have given one month’s notice to the workman indicating the reasons for the retrenchment or should pay in lieu of such notice wages for the period of notice. Secondly, the workman should have been paid retrenchment compensation, which shall be equivalent to fifteen day’s average pay for every completed year of continuous service or any part thereof in excess of six month. Simultaneously, the employer must have served a notice on the appropriate Government. The first two conditions, viz., notice to the workman and payments of retrenchment compensation were held to be

113 See Sec. 25-B, which defines “continuous service for a period of one year or six months.”
mandatory and unless the employer had complied with them before the retrenchment, the retrenchment would be void *ab initio* and illegal.

The object of these conditions precedent is to soften the rigour of hardship resulting from a workman’s is being thrown out of employment for no fault of his. Through Sec. 25-F, Parliament had also standardized the amount of compensation to be paid to the retrenched workmen. The Supreme Court in *Indian Hume Pipe Co. Ltd. v. The Workmen* 114 explained the object of Sec. 25-F o in the following words:

“The retrenched workman is, suddenly and without his fault, thrown on the street and has to face the grim problem of unemployment. At the commencement of his employment a workman naturally expects and looks forward to security of service spread over a long period but retrenchment destroys his hopes and expectations. The object of retrenchment compensation is to give partial protection to the retrenched employee and his family to enable him to tide over the hard period of employment.”

In *State of Bombay v. Hospital Mazdoor Sabha*, 115 the Supreme Court categorically rules that non-compliance with the mandatory provisions of Sec. 25-F would render the retrenchment invalid and inoperative. Further, in *Mohanlal’s case* 116 Justice D.A. Desai pointed out in clear terms that where the retrenchment is found to be illegal and invalid for non-compliance of Sec. 25-F, it is imperative for the Tribunal to award the relief of reinstatement with full back wages and that it has no

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114 (1959), II L. L. J. 830 (S.C.).
116 Supra note 106.
discretion to award any other relief. The judge added that an invalid retrenchment couldn’t bring about a severance in the employer-employee relationship, as retrenchment will be void ab initio. The Court in this case further observed:

“If the termination of service is ab initio void, and inoperative, there is no question of granting reinstatement, because there is no cessation of service and a mere declaration follows that he continues to be in service with all consequential benefits”.117

However, in Surendra Kumar Varma’s case118 Justice Chinnappa Reddy took a pragmatic view of the matter, when he observed: “invalid retrenchment must ordinarily lead to reinstatement of the services of the workman … it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages.” Elaborating this aspect further the Court recognized in this case certain exceptions, like the closure of the industry itself; the workman had secured better employment elsewhere, etc., where the Tribunal may mould the relief.

The conditions precedent discussed above have been modified with regard to industrial establishments in which not less than one hundred workmen were employed by insertion of new provisions in Chapter V-B. Under Section 25-N, the notice period has been enhanced to three months and the employer shall not retrench any workman

117 Ibid., p. 815.
118 Supra note. 106, p. 389.
until the prior permission of the appropriate Government has been obtained. The measure of compensation has remained same. Therefore in industrial establishments to which Chapter V-B applies, any retrenchment without prior permission of the appropriate Government shall be deemed to be illegal and the workman shall be entitled to all the benefits, as if he was in service\textsuperscript{119}

Further, Sec. 25-G of the Act lays down the general rule “last come first go” to be observed by the employer while retrenching the workmen belonging to any category. In case of any violation of this rule, the Tribunal has power to decide the justification of departure from the rule. Similarly Sec. 25-H provides that after retrenchment, if the employer proposes to employ any persons in the same category; the employer is bound to offer re-employment to the retrenched workmen. The Tribunal has also to ensure that the employer complies with this provision, when a dispute in that regard is referred to it. However, it is submitted that the law relating to the rule “last come first go” and the obligation of the employer to reemploy can be applied in cases where retrenchment takes place on account of surplus labour or staff and obviously they cannot be applied to the other cases of retrenchment.

(c) Power of the Tribunal to grant relief in case of simple discharge

Another category of termination of services of workmen prior to the Supreme Court’s decision in \textit{Central Inland Water Transport Corporation Ltd v. B.N.}

\textsuperscript{119} See Sec. 25-N (7) of the Act.
Ganguly, in 1986, was simple discharge or discharge under the contract of employment. The Tribunals and the Courts, including the Supreme Court, till has this historical decision recognized the employer's right to terminate the services of even a permanent employee, without even the requirement to disclose the reasons for such termination, by just giving the employee a notice of prescribed period or by payment of salary for the notice period in lieu of such notice. This the employer could do by inserting a clause in the contact of employment to that effect. This power of the employer to terminate the services simpliciter on some broad and inarticulate grounds such as, "loss of confidence," "unsuitability to the job", "inefficiency", "gross negligence", etc., was recognized as valid on the ground that it was not a punishment, and as such there was no stigma attached to the employee, and that the parties had "agreed" to such a term in the contract of employment. Since such a clause also generally conferred a right on the employee to resign from service by a similar notice, it was considered that it conferred "equal right" on the parties and so there was mutuality. For discharging an employee under this clause, it was not necessary for the employer to comply with the principles of natural justice nor was it necessary for the employer to disclose the reasons to the employee at the time of termination.

The law relating to the adjudication of discharge simpliciter was to be found in the decision of the LAT in Buckingham and Carnatic Co. Ltd., v. Their Workmen, decided in the year 1951, wherein the L.A.T recognized the employer's right to

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120 (1986) 3 S.C.C. 156.
121 (1951) I. L. L. J. 314 (LAT).
terminate the services of an employee in accordance with the contract of service, but insisted that the employer should act *bonafide* in the exercise of this power. If the termination were a colourable exercise of power or was a result of victimization or unfair labour practice, the Tribunal would have jurisdiction to intervene and set aside such a termination. The Supreme Court, the High Courts, had consistently followed these principles and the Tribunals till the Supreme Court in 1986 finally ruled that the clause itself was illegal.

In *West Bengal State Electricity Board v. D.B. Ghosh*[^122^], the Supreme Court for the first time considered the constitutional validity of a simple discharge clause contained in the service regulations of the appellant Board, which was "state" within the meaning of Article 12 of the Constitution and, therefore, was accountable to the fundamental rights. Declaring this unilateral clause as unconstitutional for violation of Articles 14 and 16 of the Constitution, Justice Chinnappa Reddy observed:

"On the face of it the regulation is totally arbitrary and confers on the Board a power which is capable of vicious discrimination. It is a naked 'hire and fire' rule, the time for banishing, which from employer-employee relationship is fast approaching. Its only parallel is to be found in the Henry VIII clause so familiar to the administrative lawyers."

By this decision the simple discharge clause was abolished from public employment, i.e., where the employer is 'state', answerable to fundamental rights. But later in *Ganguly's case* (Supra) the Supreme Court held that the simple discharge clause...

clause in a contract of employment, apart from its unconstitutionality, is void under
Sec. 23 of the Indian Contract Act, 1872, as it is opposed to public policy. Holding
the clause as unreasonable and unfair and that it conferred an arbitrary power on the
employer, Justice Madon, speaking for the Court observed:

"The Courts will not enforce and will, when called upon to do so, strike down
an unfair and unreasonable contract, or unfair and unreasonable clause in a contract,
entered into between parties who are not equal in bargaining power."\textsuperscript{123}

Repelling the argument that the clause conferred equal rights and that there
was mutuality, Justice Madon observed:

"It is true that there is mutuality... the same mutuality as in a contract between
the lion and the lamb that both will be free to roam about in the jungle and each will
be at liberty to devour the other. When one considers the unequal position of the
corporation and its employees, the argument of mutuality becomes laughable."\textsuperscript{124}

Now that there cannot be any legally valid simple discharge or termination
after the \textit{Ganguly's case}, whether in public or private employment, any such
termination will have to be declared illegal by the Tribunals. Since the termination is
void \textit{ab initio}, the Tribunal will have to declare that there was no severance of
employment relationship. Therefore, the workman will have to be reinstated with all
consequential benefits.

\textsuperscript{123} \textit{Supra} note 121, p.169.
\textsuperscript{124} \textit{Ibid.}, p. 223
14 Power to grant ‘permission’ or ‘approval’ under Sec. 33

Sec. 33 (1) of the I.D. Act imposes prohibition on the employer not to alter the service conditions applicable to the workmen concerned in any dispute, to their prejudice, in regard to any matter connected with the dispute, during the pendency of proceedings, inter alia, before the adjudicating authorities. Similarly during such pendency the employer shall not, for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. But, under Sec. 33 (2) the employer may, in accordance with the standing orders or the terms of contract, alter, in regard to any matter not connected with the dispute, the conditions of service of such workmen. Similarly, the employer may also discharge or punish, whether by dismissal or otherwise such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. Notwithstanding the above concession given to the employer to take action with regard to matters not connected with the pending dispute the employer shall not alter the service conditions applicable to protected workmen,¹²⁵ nor shall he discharge or punish by way of dismissal or otherwise any such protected workman

¹²⁵ Protected workmen are generally trade union leaders, recognized as such for the purpose of this Section, as per the Rules made by the Government. The protected workmen shall be one per cent of the total number of workmen employed subject to a minimum of five and a maximum of one hundred. See Sec.33 (4) of the Act.
during the pendency of proceedings, save with the express permission in writing of
the authority before which the proceeding is pending.

The jurisdiction of the adjudicator under Sec. 33 was first considered by the
Supreme Court in *Atherton West and Co.Ltd., v. Suti Mill Mzdoor Union*,126 wherein
the Court laid down a two-fold test for the guidance of the adjudicator dealing with a
permission application. First, the employer should make out a prime facie case for the
proposed action and secondly, he must be acting *bonafide*. Thus the Court held that
the power of the adjudicator under Sec. 33 is limited to deciding whether to grant or
withhold permission, i.e., “whether to lift or maintain the ban” imposed by the
Section.

The adjudicator cannot go into the merits and substitute his own opinion to that
of the management with regard to the guilt of the workman or the quantum of
punishment. But the Supreme Court starting with the case of *Sasa Musa Sugar Works
Pvt. Ltd v. Shobrata Khan*127 recognized the original jurisdiction of the Tribunals in
cases of no enquiry or defective enquiry, as in the cases of reference under Sec. 10. In
such cases the entire matter is open before the Tribunal, which will have powers to
satisfy itself on the facts before it, whether the proposed action is justified. In cases of
no enquiry or defective enquiry, the employer will have a right to adduce independent
evidence before the Tribunal and justify his action. But it is not clear from the many
decisions of the Supreme Court on the point whether the Tribunal acting under Sec.

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33 can exercise the powers conferred on it. Under Sec. 11-A if permission is granted or refused by going into the limited questions of prima facie case and the bonafides of the employer, the decision of the Tribunal is not final, in the sense, an industrial dispute may be raised by the workman on the justifiability of the discharge or dismissal and the appropriate Government may refer the same for adjudication so that the Tribunal can exercise its powers under Sec. 11-A.

15. Power to adjudicate on a complaint of violation of Sec. 33

Sec. 33-A contains a special provision for adjudication as to whether the conditions of service, etc., were altered by the employer during the pendency of proceedings in violation of Sec. 33. According to this Section, where an employer contravenes the provisions of Sec. 33 during the pendency of proceedings before the adjudicatory authorities, any employee aggrieved by such contravention may make a complaint in writing to such authority and on receipt of such complaint the authority shall adjudicate upon the complaint "as if it were a dispute referred to or pending before it," and "shall submit its award to the appropriate Government".

Before giving any relief to the aggrieved employee under this Section, the adjudicator has to enquire and arrive at a conclusion that the employer had contravened any of the prohibitions contained in Sec. 33. The words in the Section, "shall adjudicate upon the complaint as if it is a dispute referred to or pending before it, in accordance with the provisions of this Act," clearly indicate that the jurisdiction of the adjudicator under Sec. 33-A is same as the one conferred on him when a reference is made under Sec. 10 read with Sec. 11-A of the Act.
The above discussion clearly brings out that the law on the powers of the adjudicators, while dealing with the disciplinary action disputes under Sections 10, 33, 33-A, is very much complicated. Commenting on the state of affairs as quite unsatisfactory, Malthotra reflected as follows:

“'The law with respect to the scope of jurisdiction of Labour Courts and Tribunals, while dealing with disciplinary action disputes and other individual grievances, is a maze of confusion worst confounded. The procedures that have been evolved by the dicta of the Supreme Court leave a person not only in a state of bewildering perplexity but also tend to create unnecessary multiplicity of litigation'. Therefore he suggests, “it is also necessary that Ss. 2A, 11-A, 33, 33-A and 33-C should be completely deleted from the Act and in their place some simple provisions should be enacted which should enable an aggrieved workman to seek redress of his individual grievances... by directly moving the relevant Tribunals.”

It is submitted that simplification of the law and the procedures with regard to the disciplinary jurisdiction of the Tribunals is the need of the hour not only in the interest of expeditious justice to the aggrieved workmen but also to avoid “protracted and expensive litigation which the workers can ill-afford, and the employers ultimately do not benefit by”.

128 Supra note, 1 Vol.2, p. 17
129 Ibid.
16. Power to decide claims for the recovery of money due from an employer

Sec. 33-C (2) of the Act empowers a specified Labour Court to decide claims by workmen for recovery of money due from employers. This provision reads with the relevant rules, enables a workman to directly approach a Labour Court for the recovery of money due to him from his employer. The object is to provide a speedy and inexpensive remedy for the enforcement of the rights of a workman, without recourse to Governmental reference or without having to wait for the union to espouse his cause of converting his grievance into an industrial dispute.

The proceedings under Sec. 33-C (2) are analogous to execution proceedings. A workman can claim not only any benefit which is capable of being computed in terms of money, but also any money due from the employer such as arrears of wages, salary or other allowances which may have been withheld by the employer. The prerequisite for the exercise of power by the Labour Court under this Section is that the workman must have an existing right to the money or the benefit, as the case may be, under any settlement or award or the existing service conditions or any statute. Secondly, a question should have arisen as to the amount of money actually due or the amount at which the benefit should be computed. A claim which is not based upon an existing right and which can appropriately be the subject matter of an industrial dispute requiring adjudication under Sec.10 cannot be entertained by a Labour Court under this provision. For example, a workman who is dismissed or whose services are otherwise terminated cannot bring a claim under this Section for wages on the ground that the dismissal or the termination was illegal. The dispute as to the validity
or justification of dismissal or termination is an independent industrial dispute, which
can be adjudicated under Sec.10. However, if the right accrued to the workman under
an award or settlement or any statutory scheme or otherwise under the existing service
conditions, a mere denial of such right by the employer is not sufficient to reject the
claim under this provision. The examination of the claim by the workman might in
some cases involve an enquiry into the existence of the right. But such enquiry has to
be incidental to the computation of the money or benefit under an existing right. It is
competent for the Labour Court to interpret an award or settlement on which the
workman’s right rests, although the claim be disputed, Similarly the Labour Court
may also decide the question, whether there was the relationship of employer and
employee before computing the claim of the workman.

Despite many Supreme Court judgments interpreting the scope of this
 provision, “the law relating to the jurisdiction of the Labour Court under Sec. 33-C
(2) seems to be far from clear. It requires thorough reconsideration and
restatement.”130

17 Power to grant leave to the parties to be represented by a legal practitioner

According to Sec. 36 (4) in any proceeding before the adjudicatory authorities,
“a party to a dispute may be represented by a legal practitioner with the consent of the
other parties to the proceeding and with the leave of the” adjudicator. A legal
practitioner deals this aspect with here in the context of the adjudicator’s power to
grant or refuse leave for the representation of the parties. For the representation of a

130 Ibid., p. 1767.
party by a legal practitioner, both the consent of the opposite party and the leave of the adjudicator are necessary. Although the purpose of this provision is to discourage legal practitioners in adjudication proceedings, over the years the adjudication proceedings have turned out to be so technical that most of the industrial relations issues have been converted into legal issues and therefore, in practice, normally the parties are represented by legal practitioners or other law knowing persons in different capacity. When legal practitioners represent both sides, the question of consent of the other party does not arise and adjudicator’s leave may also be taken for granted. Refusal to grant leave in certain cases may result in denial of reasonable opportunity to represent one’s case. Therefore, generally the question of adjudicator’s refusal does not arise, more so when the adjudicator depends on the legal practitioners for throwing light on the legal issues involved in the case. All the same in appropriate cases to ensure an equal legal battle the adjudicator may refuse leave. For example, if a workman who is unable to engage a legal practitioner conducts his own case, leave may be refused to the employer to engage a legal practitioner. In simple cases with a view to avoid technicalities, the adjudicator may refuse leave to both the parties to be represented by legal practitioners.  

18. Power to interpret awards and settlements

Sec. 36-A of the *I. D. Act* empowers the adjudicatory authorities to interpret the provisions of any award or settlement, if the appropriate Government refers that issue for a decision. "If, in the opinion of the appropriate Government any difficulty or

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doubt arises as to the interpretation of any provision of any award or settlement, it may refer the question to such "adjudicatory authority "as it may think fit". "The adjudicator to whom such question is referred shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties".

The power of the adjudicator under this Section is limited only to clarify or expound the meaning and thus interpret the award or the settlement, as the case may be, and the adjudicator cannot modify or alter the provisions of the award. To the extent necessary the adjudicator may reopen the earlier proceedings.

19. **Power of the adjudicator to execute the awards**

The *I. D. Act* does not contain any specific provision for the execution of awards. The only methods of enforcement of awards contemplated under the Act are: first, if the award confers monetary benefits on workmen, they may make an application to the appropriate Government under Sec. 33-C (1) for the recovery of money due. Secondly, if any question arises as to the amount of money due or as to the amount at which the benefit conferred by the award is to be computed, an application may be made by the workmen under Sec.33–C (2) to a specified Labour Court for a decision on such a question. The decision of the Labour Court shall be forwarded to the appropriate Government. In both the above cases the appropriate Government shall issue a certificate for that amount to the Deputy Commissioner who shall proceed to recover the same in the same manner as an arrear of land revenue. However this procedure of execution of awards is cumbersome and dilatory and as
such is required to be modified to facilitate the quick implementation of the awards. It may be noted in this connection that the Trade Unions and Industrial Disputes (Amendment) Bill, 1988 sought to confer the right to prosecute for offences under the Act on the parties themselves. This would enable the workmen aggrieved by the non-implementation of the award to prosecute the employer in a criminal court. Such a provision would act as a deterrent and might ensure prompt implementation of awards and settlements.

5.8 Duties of Adjudicatory Authorities

After examining the specific powers of the Tribunals, it is proposed to discuss briefly their duties in the adjudication process. Although the powers enumerated earlier give an indication of some of the duties, emphasis is laid on certain duties of the adjudicators. Some of the duties listed hereunder are of a general nature.

1. Duty to adjudicate upon the dispute

The fundamental duty of the adjudicators under the Act is to adjudicate upon the disputes referred to them or brought before them under the provisions of the Act. The word 'adjudication' implies that the authority has to act as a judge to resolve the competing claims of the parties. Acting as a judge or judicial determination of issues requires that the person deciding the issues should be impartial and neutral towards the parties as well as issues. If there are any circumstances which are likely to influence his decision, it is the fundamental duty of the adjudicator to keep himself away from the decision making process. An adjudicator again has to make an objective determination of issues, irrespective of his personal opinions and prejudices.
The adjudicator should also allow a reasonable opportunity to the parties to put forward their case. The determination of issues requires the application of mind of the adjudicator to the facts before him. The adjudicator has to prepare his award by giving proper reasons for his decision.

2. Duty to adjudicate upon the whole dispute

The definition of “award” in Sec. 2 (b) read with Sec. 10 (1) and 10 (4), gives a clear indication that it is duty of the adjudicator to adjudicate upon the whole dispute referred to him. In other words, the adjudicator cannot leave any part of the dispute unresolved or to be resolved by the parties. The word “determination” in the definition of award implies that the adjudicator has to determine the whole dispute as referred and also all matters incidental thereto. The Supreme Court held that partial adjudication of a dispute is not the determination as contemplated by the definition of ‘award’.132

3. Duty to hold proceedings expeditiously and submit the award within the specified time

Sec. 15 of the Act, captioned, “Duties of Labour Courts, Tribunals and National Tribunals,” casts the all important duty on adjudicators “to hold the proceedings expeditiously” and to submit the award to the appropriate Government “within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to sub Se sec. (2A) of S. 10”

Industrial adjudication having been chosen as the means for achieving industrial peace and harmony in industrial relations, the Act contemplates expeditious resolution of industrial disputes. As these bodies are not encumbered with the procedural technicalities of the provisions of the Evidence Act, they are expected to hold their proceedings without the delays that are common in the civil courts. But, unfortunately, this important objective of the Act could not be realized and delays have become a common place due to a variety of factors. Therefore, the Parliament attempted to improve the things by bringing about specific amendment towards this end. Sub-Sec (2-A) was inserted Sec. 10 requiring the appropriate Government to specify in the order of reference the time within which the adjudicator shall complete the adjudication and submit the award. The time to be so specified shall not exceed three months in case of industrial disputes connected with an individual workman. However, if the adjudication cannot be completed within the time so specified and the adjudicator considers it expedient or necessary to extend such period, either on the application of the parties to the dispute or for any other reason, he “may, for reasons to be recorded in writing, extend such period by such further period as he may think fit”. From the main Section and proviso, it may be inferred that it is the duty of the adjudicator to complete the adjudication within the specified time as far as possible, and only in exceptional cases the time may be extended for reasons to be recorded in writing. But, in practice completion of adjudication within the specified time is an exception and extending the time has become a general thing.
Similar time schedules have been prescribed for adjudication of specific matters under other provisions of the Act. The provisos to SS. 25- M (7), 25-N (6) and 25-0(5) prescribe one-month period for adjudication of reference relating to granting of permission for lay-off, retrenchment or closure in industries to which Chapter V-B is applicable.

Sec. 33(5) lays down that an application by an employer for approval under Sec. 33 (2)(b) shall be heard by the adjudicator without delay and an order passed “within a period of three months from the date of receipt of such application”. Here also the proviso empowers the adjudicator to extend the period for reasons to be recorded in writing.

Similarly, Sec. 33-C (2) prescribes three months time for adjudication of claims by workmen for recovery of money due from an employer. This period may, in a similar way, be extended by the Labour Court for reasons to be recorded in writing.

4. Duty not to exceed jurisdiction

It is the duty of the Tribunal to confine its jurisdiction within the limits specified by the I. D. Act. The Tribunal being the creature of a special stature, it has no general or inherent jurisdiction. Sec. 10(4) permits the Tribunal to decide only disputes or points referred to it and matters incidental thereto. Therefore, the Tribunal cannot go behind the order of reference, even if the parties consent to it. Similarly, the jurisdiction of the Tribunal in regard to granting different types of relief has been conditioned by much decision of the Supreme Court and High Courts and the
Tribunal would be committing an error of law if it exceeds its jurisdiction in granting those reliefs. If the parties raise any jurisdictional issues, normally the Tribunal has to decide those issues as preliminary issues.

5. **Duty to follow procedures laid down in the Rules**

The Tribunal’s discretion to follow convenient procedures is subject to the Rules made by the appropriate Government prescribing the procedural requirements. Therefore, the Tribunal is under a legal obligation to follow the procedures prescribed in the Rules. As discussed earlier, the Central and State Rules prescribed elaborate procedure and the Tribunal is bound to follow such Rules of procedure. The Rules also prescribe time limits for each stage of adjudication. The number and length of the period of adjournments that can be granted are also prescribed in the Rules. As the Rules made by the appropriate Government under the Act have statutory force, the Tribunals have to follow the time limits prescribed by the Rules.

6. **Duty to comply with the principles of natural justice**

Since the adjudicatory authorities under the Act are quasi-judicial bodies discharging functions, which are similar to judicial functions, it is obligatory for them to comply with the principles of natural justice. The adjudicator has to ensure that the parties to the dispute are afforded a reasonable opportunity of presenting their case. The Rules of procedure allow the Tribunal to exercise its discretion in certain cases and such discretion has to be exercised in conformity with the principles of natural justice. The Tribunal should receive all relevant evidence, allow the parties to cross-
examine the witnesses deposing against them, rely only on the evidence that is brought to the notice of the parties, duly giving them an opportunity to rebut the same and finally render a reasoned decision.

8. **Duty to apply its mind to the evidence on record and made an objective determination**

The duty of the Tribunal to adjudicate upon a dispute clearly implies that it should make an objective determination of the issues before it. The word “determination” in the definition of ‘award’ indicates that the Tribunal should adjudicate on merits, i.e., upon relevant materials. This necessarily involves the application of mind of the adjudicator to the problem before it. The findings of fact by the Tribunal should be based on relevant evidence available on record. If the Tribunal arrives at a finding without any legal evidence, the Tribunal’s decision is liable to be quashed on the ground that it is perverse decision, i.e., based on no evidence at all. Although the writ courts exercising only supervisory jurisdiction do not interfere with the findings of fact of the Tribunal on the ground of adequacy or sufficiency of evidence, the Tribunal’s findings can be set aside if they are based on no legal evidence at all.

9. **Duty to exercise discretion in a judicial manner**

The Tribunal enjoys very wide discretionary powers in the matter of granting relief to the parties. And similarly the Tribunal has discretion in many other matters like granting adjournments, permitting amendments to pleadings etc.
The term 'judicial discretion' indicates that such discretion is not absolute or unqualified. The Tribunal must exercise its discretion in good faith, reasonably and properly by taking into account all relevant matters. It should not act arbitrarily or capriciously in the exercise of discretion. The exercise of judicial discretion imports a duty to be, in the words of Lord Mansfield, “fair, candid, and unprejudicial, not arbitrary, capricious or biases; much less warped by resentment, or personal dislike.” Judicial discretion implies acting according to justice and reason and not according to one’s private opinion.

10. Duty to adjudicate upon disputes with a view to ensure social justice and industrial peace

It is the primary duty of the Tribunals under the Act to assist the State by helping it in finding just solutions to industrial disputes. Healthy industrial relations are of paramount importance and therefore the basic function of the Tribunal is to resolve the disputes in such a way that it ensures social justice and industrial peace.

11. Duty to act in conformity with the law and Rules and binding decision

In the course of adjudication of industrial disputes of diverse nature, the Tribunals are free to apply the principles of justice, equity and good conscience in the absence of any binding statutory provisions. The wide powers conferred on the adjudicatory authorities have to be exercised in conformity with the provisions of the Constitution and the law of the land. The provisions of the I.D. Act and other statutory standards limit the powers of the Tribunals. The awards of the Tribunal cannot be in violation of any statutory provisions. Similarly, the Tribunal has to act in conformity
with the Rules made by the appropriate Government under the Act, which have a statutory force. Again the law declared by the Supreme Court and the relevant High Court having jurisdiction is binding on the Tribunal. If the Tribunal’s decision or award is contrary to the statutory law or the binding precedents, it is liable to be quashed as per in curium. It will be considered as an error of law apparent on the face of the record.

12. Duty not to include in award any confidential information

According to Sec. 21 of the I. D. Act, if any information is obtained by the adjudicator in the course of any investigation or enquiry as to a trade union or as to any individual business of a person, firm or company, and such information would not have been available, otherwise than through evidence given before the adjudicator, and the trade union or the person, firm or company in question has made a request in writing that such information shall not be included in the award. The adjudicator shall not also disclose any such information without the consent of the secretary of the trade union or the person, firm or company in question, concerned.

5.9 Conclusion

The perusal of structures, procedures and jurisdictions of adjudicatory authorities under I.D.Act reveals that the participatory model tripartite body i.e, one independent judicial person as chairman and two others representing employers and workmen, has many advantages. This model based upon the principle of “participatory justice” will provide solutions to many drawbacks from which the labour adjudication system is suffering at present. In addition to infusing more
confidence in the parties that justice will be done, the body can be more informal and less technical with minimum procedural formalities. The representation on the body from employers and workmen would ensure that the problem is deliberated from points of view of both parties. This would also ensure that the main objective of expeditious and effective settlement of disputes is realized.

Further, a careful examination of the powers and duties of the adjudicatory authorities gives a clear indication that they enjoy very wide and extraordinary powers, which are not available to the ordinary civil courts. The Tribunal’s power to give appropriate relief to the parties as part of its adjudicatory function is mainly in the nature of creating new contracts for the parties. The industrial adjudicators have been entrusted with the function of assisting the state in finding satisfactory solution to industrial disputes, which is essential for the maintenance of industrial peace. The Tribunal has to reconcile the conflicting interests and competing claims of employer and workmen by keeping in mind the need to ensure social justice, and enduring industrial peace and harmony.

The wide discretionary powers conferred on the Tribunal in case of disciplinary terminations create a sense of security of job in the minds of industrial workmen. But the Tribunal cannot ignore the need for the maintenance of discipline in industry as a prerequisite for its efficient functioning. However, the law relating to the powers of the Tribunal while dealing with disciplinary action disputes under Section 11-A, 33 and 33-A and the power of the Labour Court under Sec.33-C (2) requires more clarity and restatement. Simplification of the law in this area will go a
long way in avoiding unnecessary and protracted litigation, which the workmen can ill afford.

The Tribunals must be given express power to grant interim relief and the power to execute the awards by following simple procedures through a suitable statutory amendment. The power to award costs can be more advantageously be used by the Tribunals to restrict the number of adjournments. Similarly the power to grant interim relief may be exercised more frequently so that the employers would be under some pressure to co-operate with the Tribunal for expeditious disposal of the cases. Since the Tribunals have no power to grant interim stay order against even patently illegal order of employers, the power to grant interim relief can be used as an alternative. The Tribunals must be more circumspect in adhering to the time schedule provided in the rules and must complete adjudication expeditiously.