INDIAN JOURNAL OF LEGAL REVIEW

VOLUME 5 AND ISSUE 5 OF 2025

INSTITUTE OF LEGAL EDUCATION

INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN - 2583-2344

(Open Access Journal)

Journal's Home Page – https://ijlr.iledu.in/

Journal's Editorial Page - https://ijlr.iledu.in/editorial-board/

Volume 5 and Issue 5 of 2025 (Access Full Issue on - https://ijlr.iledu.in/volume-5-and-issue-5-of-2025/)

Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 - info@iledu.in / Chairman@iledu.in

© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer https://ijlr.iledu.in/terms-and-condition/

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 5 AND ISSUE 5 OF 2025

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

A COMMENTARY ON SECTION 10 OF THE INDUSTRIAL DISPUTES ACT

AUTHOR – ANNAPURANNI RAMESH & ABHINEETH SARAVANAN, STUDENTS AT SCHOOL OF EXCELLENCE IN LAW, THE TAMILNADU DR. AMBEDKAR LAW UNIVERSITY

BEST CITATION - ANNAPURANNI RAMESH & ABHINEETH SARAVANAN, A COMMENTARY ON SECTION 10 OF THE INDUSTRIAL DISPUTES ACT, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (5) OF 2025, PG. 276-281, APIS – 3920 – 0001 & ISSN - 2583-2344

INTRODUCTION

§ 10 of the Industrial Disputes Act **("ID Act")** plays a multi-purpose role within the context of Industrial Disputes. It specifies the many criteria and circumstances under which the appropriate government may make or refuse to make a reference. The provision states that if the appropriate government believes an industrial dispute exists or is imminent, it may refer the issue to a board, a court of enquiry, or a labour court for settlement, enquiry, or adjudication at any time through a written order.[489] The pivotal position of the section begs many questions which this paper seeks to answer through established holdings of the Indian Judiciary. Some of the several issues that will remain the key topics of discussion are:

(i) Is it possible for the government to refuse to refer a labour dispute?

(ii) Is there any time-based limitation on when an industrial dispute can be referred?

These questions revolve around the primary question of how much discretionary power does the government have and how much should it have?

[489] The Industrial Disputes Act, § 10, No. 14, Acts of Parliament, 1947.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 5 AND ISSUE 5 OF 2025
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

Before delving into these, it is relevant to look into the background of § 10 of the ID Act. The historical reason for the discretionary power being vested with the government is that back during the Second World War, in an attempt to ensure continuous industrial production and check unnecessary industrial unrest, the Central Government was conferred these powers through Rule 81-A of the Defence of India Rules as a war time measure. The success of the initial rule helped secure it a place within the modern labour law framework of India.[490]

WHAT DEFINES AN APPROPRIATE GOVERNMENT?

According to § 10 of the Industrial Disputes Act, only the appropriate government has the authority to refer a dispute to a tribunal, labour court, or similar forum for adjudication.

In *Secretary, Indian Tea Association v. Ajit Kumar Barat,*[491] the Supreme Court outlined key principles regarding the power of the appropriate government:

1. The government must assess, based on the facts presented, whether an industrial dispute exists or is likely to arise before making a referral under Section 10.
2. Any decision made by the appropriate government under this section is considered administrative in nature, rather than judicial or quasi-judicial.
3. The parties involved in the dispute are entitled to challenge the validity of the reference by arguing that no industrial dispute, as defined by the Act, exists.

§ 2(a) of the Act specifies which authority qualifies as the *"appropriate government"*:

- The Central Government is deemed the appropriate authority in cases involving industries operated or managed by it, or where the industry is under its direct control. This includes sectors such as railways, banking, insurance, major ports, mines, and oilfields.

In *Delhi International Airport (Pvt) Ltd v. Union of India,*[492] the Supreme Court held that when an industry is under the control of the Central Government such as those associated with the Airport Authority of India or air traffic services—the Central Government is the appropriate authority.

In all other cases, where the industrial dispute does not fall under the categories mentioned above, the State Government assumes the role of the appropriate government.

CIRCUMSTANCES UNDER WHICH THE APPROPRIATE GOVERNMENT CAN REFER INDUSTRIAL DISPUTES

§ 10(1) states that if the appropriate government believes an industrial dispute either exists or is likely to arise, it has the authority, at any point in time and through a written order, to:

a. Forward the dispute to a Board to encourage a resolution between the parties; or,
b. Direct any issue that seems related to the dispute to a Court for investigation; or,
c. Submit the dispute or any related matter concerning issues listed in the Second Schedule to a labour court for adjudication or,
d. Refer the dispute, or any matter connected to or relevant to it—whether it involves items in the Second or Third Schedule—to a Tribunal for final decision.

The Rajasthan High Court held in *Mukesh Kumar v. Union Of India And Others,*[493] that the appropriate Government cannot adjudicate the matter while referring the dispute to any Authority.

Further, *in O.A.T Bar Association, Cuttack v. Union of India,*[494] a reference was made to the Supreme Court's decision in *State of Bihar v. D.N. Ganguly,*[495] about the finality and continuity of

[490] Santokh Ram, Government's Discretion to Refer Industrial Disputes for Adjudication, Indian Journal of Industrial Relations, Oct., 1979, Vol. 15, No. 2 (Oct., 1979), pp. 307-322
[491] Secretary, Indian Tea Estate v. Ajit Kumar Barat, (2003) SCC 93.
[492] Delhi International Airport (P) Ltd v. Union of India, (2011) 12 SCC 449.
[493] Mukesh Kumar v. Union of India and Ors., 2024 (8) TMI 1096.
[494] Orissa Administrative Tribunal Bar Assn. v. Union of India, (2023) 18 SCC 1.
[495] State of Bihar v. D.N. Ganguly, 1958 AIR 1018.

reference orders made by the appropriate government. The key holding was that once the appropriate government refers an industrial dispute to a Labour Court, Tribunal, or other adjudicatory body under § 10(1), the process is legally deemed to have commenced, and it continues until the award becomes enforceable under § 17A.

In *State of Madras v. C.P. Sarathy,*[496] the Supreme Court clarified that the individuals or groups involved in an industrial dispute cannot directly initiate proceedings before a judicial or quasi-judicial body. Instead, they must rely on the government to make a formal reference, which acts as the gateway to such forums. The Court also emphasized that this power of reference plays a critical role under the Industrial Disputes Act, 1947, as it is essential for resolving conflicts and promoting harmony in industrial relations

DISCRETIONARY POWERS OF THE GOVERNMENT

Under § 10(1) of the ID Act, 1947, the government is vested with wide and insurmountable discretionary power in respect to referring or refusing to refer an industrial dispute for adjudication.[497] An appropriate government has the authority to refer a dispute for adjudication not only when an industrial dispute has really occurred, but also when there is mere suspicion of such occurrence.[498] An industrial tribunal or a labour court to which the dispute has been referred for adjudication must stay within the confines of the points indicated in the order of referral.[499]

However, this discretionary power appointed to the government cannot be exercised arbitrarily. The same should be done without corrupt reasons and ulterior motives. It is well settled that the appropriate government ought to state and communicate its reasons for refusing to refer that particular dispute.[500]

The *raison d'etre* of the ID Act is speedy resolution of Industrial Disputes. The referential powers conferred by the section do not limit the speedy nature of the issue but rather helps improve and streamline the process. The provisos allow the government to fix the primary issues and points of discussion, hence assisting the labour courts and the tribunals to improve efficiency.

However, to what extent does the discretionary powers go? The work of the government is considered as purely administrative in this particular case.

INTERPLAY WITH THE PRINCIPLES OF NATURAL JUSTICE

It is well settled in law that administrative entities are to keep in mind the principles of natural justice when discharging their duties. The precedent was established as far back in English Common Law in the case of *Ridge vs. Baldwin*.[501] Even if an order solely exercises administrative power, it must be made in accordance with natural justice principles if it impacts the rights of the parties.

Further discretionary power is held by the appropriate government as it has the choice to discern the existence of a particular industrial dispute.

If the dispute is an industrial dispute, the factual existence of the dispute and the appropriateness of making such a reference in the circumstances of a particular case are matters entirely for the appropriate government to decide, and the courts are not competent to hold the reference invalid and quash the proceedings for lack of jurisdiction merely because the government had no material on which to base its decision on those matters, in

[496] State of Madras v. C.P. Sarathy, 1953 AIR SC 53.
[497] State of Bombay v. K.P. Krishnan, (1960) II L.L.J. 592; B.N. Press, Madras v. Its Workmen, (1954) I L.L.J. 320.
[498] The Industrial Disputes Act, § 10(6), No. 14, Acts of Parliament, 1947.
[499] Id. § 10(8).
[500] Rohtas Industries Ltd. v. S.D. Agarwal, A.I.R. 1969 S.C. 707; R.C. Cooper v. Union of Indian A.I.R. 1970 S.C.
[501] Ridge vs. Baldwin, AIR (1964) A.C. 40; State of Orissa v. Bina Pani Dei, AIR 1967 S.C. 1269. In this case, the Supreme Court observed that where administrative authorities made an order affecting the rights of private parties, they must observe the rules of natural justice; further, in A.K. Kraipak v. Union of India, AIR 1970 S.C. 150, the Court observed that is the purpose of the rules of natural justice was to prevent miscarriage of justice, one failed to see why those rules shaped be made inapplicable to administrative enquiries.

the court's opinion. This viewpoint has been expressed in several well-established decisions.[502]

It has been reiterated on multiple occasions that when the government forms an opinion about the existence of an industrial dispute and decides whether or not to send the dispute to the courts, it is neither a judicial or quasi-judicial act.

However, the second proviso of sub-section (1) places a limit on the competent government's discretion. The appropriate government is required to make a referral in the event of an industrial dispute involving a public utility service or if a notification under § 22 of the Industrial Disputes Act has been issued.

In *Ramchandra Abaji Pawar v. State of Bombay*, it was made crystal clear that the wording of § 10 (2) expressly allows the government to make the reference discretionary in some situations and mandatory in others.[503] Of course, it goes without saying that the appropriate government must exercise its discretion wisely and without malice.[504]

The Labour Courts are required thereafter to adjudicate the matter referred to them by the appropriate government.

CONSEQUENCES AND LIMITS OF THE DISCRETIONARY POWER

The Courts have also held on several occasions that the Labour Courts and other tribunals to whom the government refers the matter to, cannot refuse the reference made with regards to any dispute on the grounds of delay and laches.[505] The reasoning for this is that the appropriate government has a firm grasp on what issues are relevant to maintaining industrial peace. Hence adjudication of the same even if the initial dispute arose 11 years ago and still was continuing.

When the government discovers that an industrial dispute exists, a referral is usually made in a huge portion of cases. There are circumstances when a dispute is merely apprehended, or where a dispute occurs but only some of it is apprehended. To avoid an order of reference being challenged on this basis, the government would be prudent to indicate one or the other in its order of reference. When the reference order is challenged on this point, the government should file a reply to clarify the position and remove the uncertainty.

The various intricacies of the section allow for extended discretionary powers to the appropriate government not only in deciding whether a matter is worth referring, but also the primary issue of the industrial dispute, controlling the points of discussion and requiring the courts to deal with the same disputes in an efficient and effective manner. This is also done under the pretext of protecting the interest of the parties

The State Government refused to refer a labour dispute for adjudication in *Workmen v. I.I.T.I. Cycles of India Ltd.,*[506] and others on the grounds that there was an agreement between the management and the recognized union under § 18(1) of the Industrial Disputes Act, 1947, and the Industrial Tribunal accepted the terms of the settlement as reasonable and just when the validity of the settlement was called under question by two other minority unions.

The Supreme Court ruled that the government was not required to make a dispute referral in every case. In this case, the Government's refusal to issue a referral does not need intervention because a settlement was reached with the majority of employees' support and was declared fair and just by the Industrial Tribunal. In the interest of industrial peace, the government has the option to reject reference. The government has not refused because the dispute was brought up by a minority union.

[502] Royal Calcutta Golf Club Mazdoor Union v. State of West Bengal & Ors., (1957) I L.L.J. 218.
[503] Ramchandra Abaji Pawar v. State of Bombay, AIR 1952 BOM 293.
[504] Madura Sugar Staff Union v. State of Madras, (1968) 2 L.L.J. 422.
[505] Satish Sharma v. Union of India and Ors., 2002 (3) WLC 656.
[506] Workmen v. I.I.T.I. Cycles of India Ltd., 1995 Supp (2) SCC 733.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 5 AND ISSUE 5 OF 2025
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

The most of the government's decisions as to the referrals made are on the primary reason to maintain industrial peace. But there always exist scope for over-exertion of discretionary powers/arbitrary exercise of discretionary powers.

Another important aspect of the government's power to refer an industrial dispute is the question of when a reference can or should be made. Is there a time restriction for creating such a reference?

By referring to the section's text, which states that the government may make a reference at any time in writing, it is evident that there is no time restriction on making a reference. This is due to a number of reasons that may be summarised as follows:

For a variety of reasons, there is sometimes a delay in deciding whether or not to make a referral. In terms of the time component of making a reference, the procedural legislation does not contain any time limits or directions that can be applied. As a result, it is a well-established principle in this regard that once an appropriate government makes a referral, the relevant authorities are obligated to begin proceedings and seize the matter, regardless of how long it took the concerned government to make the referral.

The tribunals are unable to inquire into the issue of the delay in making the referral, and it has no bearing on the legitimacy of the referral.[507] It is also established that the courts may take note of a delay in making such a referral if the delay is excessive and unjustifiable, as the Supreme Court did in *Wazir Sultan Tobacco Compony v. State of Andhra Pradesh*, when the government delayed more than six years to make such a referral.[508]

When a reference is made, the government's power is said to have been exercised; but, if no reference is made, the government's power is said to be unexercised. It follows naturally that if the government initially declines to refer an industrial dispute but then changes its mind and does so, the government is completely within its rights to do so.

As previously stated, the power to refer is not a judicial or quasi-judicial act on the part of the government, and thus the earlier decision not to refer does not serve as res judicata because the principle of res judicata does not apply to administrative decisions. Because the order of reference under § 10(1) is an administrative act, the government's new resolution of the question of the expediency of making a reference does not constitute a judicial review of a previously decided question. It is up to the competent authorities to determine whether the circumstances of the case have changed enough to warrant a referral.

And a government decision made in light of new circumstances is not subject to judicial review. In another recent decision, *Avon Services Pvt. Ltd. v. Industrial Tribunal*,[509] the Supreme Court reiterated this premise. The aforementioned principle has the inevitable implication that, because making or refusing to make a referral is an administrative act, the relevant government can examine the merits of the case prima facie but cannot arbitrate the disputed factual and legal issues.

No doubt, the appropriate government must consider all relevant aspects of the problem, including the question of fact and law, when forming an opinion about the existence or apprehension of an industrial dispute; however, this does not mean that the said government, if it makes a referral, has the authority to decide and adjudicate on the merits of each case. As a result, it must be held that the prima facie examination of the merits cannot be said to be outside the scope of the inquiry that the appropriate government is entitled to conduct in dealing with a dispute under §10(1), and that this does not imply that it has overstepped its bounds and gone beyond its jurisdiction in making the referral.

[507] Gandhara Transport Co. Pvt. Ltd. v. State of Punjab, (1968) I LLJ 456.
[508] Wazir Sultan Tobacco Compony v. State of Andhra Pradesh, 1981 (4) SCC 435.
[509] Avon Services Pvt. Ltd. v. Industrial Tribunal, 1979 SCR (2) 45.

CONCLUSION

There are several disadvantages that come along with the undue discretionary power provided to the Government.

Firstly, it causes delay in the settlement of disputes as the request made by the parties is put into an almost unnecessary screening and scrutinization of the issue by the appropriate government.

Secondly, the powers of discretion may be used discriminatorily to benefit the interest of the government over the rights of the parties.

Thirdly, it unduly prolongs the time-lag for the start of adjudicatory proceedings in an industrial dispute. It manifestly runs counter to the expeditious settlement of disputes and dispensation of justice to the working class. Time expended by the government in referring a dispute for adjudication can be profitably utilized by the labour tribunals for adjudication of such disputes.

Fourthly, it hinders the decision-making powers of the Industrial Tribunals and Labour Courts.

In conclusion, the discretionary making powers of the government are tantamount to a middle man in any agreement between parties. The courts have to be empowered to more freedom on dictating the points of discussion that are to be contemplated in the industrial disputes brought before it. This would further renew the public and the labourer's respect for the court while also upholding the dignity of the government. An amendment to restrict the role of the Appropriate government is one that the author prays is included in future changes made to the Industrial Disputes Act.

REFERENCES

- Sanlokh Ram, A Note on Government's Discretion to refer Industrial Disputes for Adjudication, Journal of the Indian Law Institute , October-December 1980, Vol. 22, No. 4 (October-December 1980), pp. 568-582.
- T.C. Phadtare, Government's Power in Relation to Industrial Disputes. Journal of the Indian Law Institute , July-September 1981, Vol. 23, No. 3 (JulySeptember 1981), pp. 421-430