# A CRITICAL DISSECTION OF THE DISCRETIONARY POWER OF REFERENCE UNDER SECTION 10(1) OF THE INDUSTRIAL DISPUTES ACT, 1947

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**ABSTRACT**

Introduced as a colonial tool to control worker unrest but later retained to preserve industrial peace, Section 10(1) of the Industrial Disputes Act, 1947, continues to cause ambiguity in its application. This paper critically evaluates the scope and limitations of this discretionary power by delving into its colonial roots and its evolution within the statutory frameworks of the Industrial Disputes Act and the Industrial Relations Code. The paper also traces its evolution with judicial decisions like the C.P. Sarathy case and the K.P. Krishnan case. It addresses the research gap of a lack of commentary done on how the reference power got codified to how it was done away with by way of the Industrial Relations Code. In doing so, the paper discusses the relevant provisions in the Industrial Relations Code and then delves into the question of whether the removal of the power is enough and what applicability and enforcement constraints can the Code face given the lack of infrastructure in the country.

**Keywords:** Industrial Disputes Act, Section 10(1), Power of Reference, Discretion, C.P. Sarathy, K.P. Krishnan, Industrial Relations Code.

## Introduction

Imagine there is a group of workers constructing a huge irrigation project and in return, all they ask for is the same dearness allowance as other government employees and wages for a twenty day strike that they led. When they rightfully raise their demands through their union, instead of getting a chance to approach the tribunal, they are shunned away by the State government, not because their demands are an issue but because the State believes that granting them would be too expensive and might make other workers to ask for the same. Now every time the workers would try to get their side heard, the State government acting as an unnecessary flood gate, would not even let it reach the tribunal. This was the case of *M.P. Irrigation Karamchari Sangh v. State of M.P.*[1], and after a decade long legal fight, the Supreme Court finally directed the State to refer the dispute to the appropriate tribunal.

It is a well settled principle in most areas of law, that when a party is aggrieved, they have the right to approach the Court for redressal directly. However, this does not hold true when it comes to Industrial Disputes. Section 10 of the Industrial Disputes Act confers upon the appropriate government, the power to form an opinion on whether to refer an industrial dispute to the authorities under the Act and it is only then that the authorities get the jurisdiction to adjudicate on such disputes.[2] This raises an important question—why should an aggrieved party wait for a third person- the appropriate government, to form its opinion on whether their concerns are even worthy of adjudication? This provision is essentially the remains of India's colonial past where workers' rights were not about justice but about control and reformation. This paper seeks to analyse what the scope of the Appropriate Government's power should be by delving into why it was made the custodian of 'industrial peace' in the first place, in matters that directly affect workers and their livelihoods, how its wide powers can prove to be a model which undermines the autonomy of the workers, and how the judiciary put a stop to its wide discretion with some restrictions.

## Historical Context

The British passed the Trade Unions Act in 1926 which if looked at superficially, seems to aim at legalising and regulating Trade Unions in India but in reality it was a response to the growing

[1] M.P. Irrigation Karamchari Sangh v. State of M.P. (1985) I LLJ 519.
[2] V. Nagaraj, 'The Relevance of the Appropriate Government's Power of Reference under Section 10(1) of the Industrial Disputes Act, 1947 in a Liberalised Economy' (1997) 9 *National Law School Journal* https://repository.nls.ac.in/nlsj/vol9/iss1/26/ accessed 8 July 2025.

unrest in cities like Madras, Calcutta and Bombay and the concerns about the influence of communist and socialist movements on Indian workers.[3] This 'reform' was nothing but a tool to control the workers by containing dissent, cloaked as a benevolent act of 'civilising' and 'domesticating' the Indian workers.

But they realised soon enough that mere recognition of trade unions was not enough to contain the growing resistance and three years later, they introduced the Trade Disputes Act which conferred upon the state, the power to interfere in industrial disputes without the consent of either party.[4]

And then came the next strike during World War II with the enactment of Rule 81-A of the Defence of India Rules, 1942 which gave the state the power to refer 'any' industrial dispute and at the same time, prohibit strikes and lockouts.[5] By calling it a wartime necessity, they essentially silenced workers' voices in the name of national security. Now it was 1947, the year of independence, but we still did not let go of the colonial remains and though a new legislation, the Industrial Disputes Act was enacted, it did not change much structurally and the appropriate government continued to enjoy the power of not just to form opinions and refer disputes but also to simultaneously prohibit strikes and lockouts. The rationale used this time was that of the five year plans and economic planning but the essence remained the same—it should be the state that decides what matter is worth adjudicating and not the aggrieved party.[6]

**Statutory Checks and Balances under Section 10(1) and Section 12(5)**

Section 10(1) of the Industrial Disputes Act confers upon the appropriate government, the power to refer an industrial dispute for adjudication.[7] This discretion functions in two layers—formation of an opinion and deciding on the expediency of reference.

For the first layer, the appropriate government must form an opinion on whether an industrial dispute 'exists' or is 'apprehended'. But on the pretext of prima facie evaluation of the issue, the government cannot just delve into the merits of the case like satisfying itself with things

[3] *Ibid.*
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*
[7] Industrial Disputes Act 1947, s 10(1).

like whether the organisation in question qualifies as an 'industry' or whether the individuals raising the question are 'workmen'.[8]

This was reaffirmed in the *Telco Convoy Drivers Mazdoor Sangh* case in which it was held that where the dispute is about whether the individuals raising the issue are workmen or not, the Appropriate Government cannot intervene and decide on the matter in exercise of its executive function under Section 10(1).[9] What it needs to decide is whether the dispute is current or foreseeable, and if it's the latter, whether there is a real and apparent threat of, or material and sufficient evidence of a dispute arising in the future.

Now after an opinion is formed and a valid industrial dispute is found to exist, Section 10(1) further equips the appropriate government with the second layer of discretionary power to decide whether it is even expedient and practical to refer it for adjudication.[10] Once the decision of reference is made after these two layers of discretion, the courts are not competent to hold the decision bad.[11] This discretionary power is purely an administrative power and not judicial or quasi-judicial, which has led to ambiguity surrounding its exercise.[12] While it may seem limitless, the second proviso[13] has limited its extent in cases where the dispute involves public utility services and where a proper strike notice under Section 22 has been served unless it is a vexatious or frivolous one. This proviso makes reference a 'statutory duty' instead of merely discretion reflecting the importance of public utility services.[14]

This is then complemented by the 'statutory check' on discretion in Section 12(5) when conciliation proceedings have failed. When conciliation proceedings are attempted and then failed, the conciliation officer is required under Section 12(4) to file a failure report to the appropriate government which may in turn, refer the dispute for adjudication. If the appropriate government decides not to refer, it is under a statutory obligation under Section 12(5) to record the reasons for refusal in writing and then communicate it them to the parties involved.[15]

[8] Avtar Singh and Harpreet Kaur, Introduction to Labour and Industrial Laws I (5th edn, LexisNexis 2022)
[9] Telco Convoy Drivers Mazdoor Sangh v. State of Bihar (1989) II LLJ 558 : AIR 1989 SC 1565
[10] T C Phadtare, 'Government's Power in Relation to Industrial Disputes' (1981) 23 Journal of the Indian Law Institute http://www.jstor.org/stable/43950761 accessed 8 July 2025 accessed 8 July 2025
[11] Ibid.
[12] Singh and Kaur (n 8).
[13] Industrial Disputes Act 1947, proviso to s 10.
[14] Singh and Kaur (n 8).
[15] Industrial Disputes Act 1947, s 12.

The reasons for refusal may include the claim itself being patently vexatious or frivolous—though what qualifies as either is very subjective in nature.[16] For instance, a worker uses a company's bicycle for personal use and then returns it and parks it back unharmed. The appropriate government might think of this matter as too trivial or frivolous to warrant adjudication. Another reason could be that the claim is clearly belated and has become stale or outdated such as regarding a policy that no longer exists. Other reasons may include that it believes that referring it for adjudication is likely to adversely impact the general relations between employers and employees in the region or if the dispute itself is covered by a subsisting settlement or award.[17] This is a classic case of statutory checks and balances as it makes the government accountable in case the refusal seems mala fide, irrelevant or politically motivated. Though the courts cannot question the contents of the appropriate government's decision on reference, what they can do is examining the procedure as stated under Section 12(5). Courts can challenge the refusal if it is on irrelevant, irrational or extraneous ground, if it is a result of the appropriate government examining the merits of the dispute or if it ignores the material available in the failure report of the Conciliation Officer and is not supported by any reasons as under S.12(5).

**Judicial Interpretation Over the Years**

The *C.P. Sarathy*[18] case discussed one pertinent question as to whether S.10 can be invoked on the basis of an 'apprehension' if the same is illustrated in the labour commissioner's failure report. Prabhat Talkies was a member of the South Indian Theatre Association and there arose some issues regarding wage disparity which were taken up to be resolved by conciliation proceedings. As some of the members who did not agree with the ongoing discussions on solutions went on a strike, a failure report was sent to the appropriate government which specifically mentioned that the strike might ultimately extend to all the associations in the South. Prabhat Talkies, the employer in this case, had argued that there was no actual dispute between its management and workers and hence the appropriate government had no power to refer the case to an industrial tribunal but the Supreme Court rejected this argument and held that a dispute need not 'exist' between a specific employer and the workmen and that it can be a broader dispute within the industry. The appropriate government may refer a dispute even if it is only apprehended, as long as it is backed by material on record, the failure report in this

[16] Singh and Kaur (n 8).
[17] Singh and Kaur (n 8).
[18] State of Madras v. C.P. Sarathy (1951) I LLJ 148 (Mad HC)

case, which was true here, as a larger dispute existed in the cinema industry leading to such apprehension. But for the purpose of this answer, we shall focus more on how broad the discretion of the appropriate government is, when it comes to referring a dispute. It was discussed that the appropriate government is the authority that alone decides whether a dispute 'exists' or is 'apprehended' and once it forms an opinion on the subject, its decision cannot be challenged in the courts. To substantiate this, the court focused on the nature of the act of reference by the appropriate government and called it performing an administrative function and not a judicial or quasi-judicial one. Consequently, courts cannot review or question whether the appropriate government had sufficient material before making such reference. Just because the appropriate government is supposed to form an opinion as to whether the dispute falls within the definition of an industrial dispute under the IDA, in other words, its factual existence, as a step precedent to making a decision, does not mean such a decision is any less administrative in its nature. C.P. Sarathy set a precedent for how wide the appropriate government's discretion is, when referring a dispute under Section 10.

In the *K.P. Krishnan*[19] case, the dispute was between the Firestone Tyre and Rubber Co. and its workmen who had staged a 'go-slow' strike which was considered misconduct as per the standing orders of the company and as a result of which, 58 workmen faced disciplinary action. The workmen had certain demands, especially regarding the payment of bonuses and they complained to the conciliation officer claiming that the company refused to recognize their trade union making direct negotiation impossible and hence they seek conciliation proceedings. The conciliation however failed and accordingly the CO formed a failure report under Section 12(4) of the IDA. In response to this the appropriate government refused to refer the dispute to the industrial tribunal citing the fact that the workmen had already engaged in a go slow strike as a justification. This was challenged in the HC which agreed with them and directed the government to reconsider their decision and then the decision was ultimately appealed to the SC, where two main issues were discussed. One was regarding whether a reference under Section 12(5) of the IDA could be made independently of S.10 which the court answered in negative saying that such a reference cannot be made under S.12(5) alone and must use S.10 as S.10(3) has additional powers like imposing an outright prohibito on the continuance of an ongoing strike or lockout which may be in existence on the date of the reference. The rationale behind it is that when there is a process of resolution going on, some breathing space needs to

[19] State of Bombay v. K.P. Krishnan & Ors (1960) II LLJ 592 (SC)

be provided to resolve the matter, which is in line with maintaining amity and industrial peace as mentioned in the preamble of the Industrial Disputes Act. If a dispute is only referred under S.12(5) without taking into account S.10, the government will not be able to stop an ongoing strike which is not the intention of the law and hence, references must be made under S.10(1) even if S.12(5) is invoked. The second issue was whether the only thing to consider for the appropriate government, while deciding on whether to refer a dispute, is the conciliation officer's report. The conciliation officer's report under S.12(4) contains all the findings about the dispute and the workmen had argued that the government must solely base its decision on this report while the government had argued that it could consider other facts as well. The SC decided that the government should consider the conciliation officer's report but it is not the only factor and the government can look at other relevant facts before deciding whether to refer the dispute but in doing so, they must act in a fair manner and in good faith. Their refusal to refer a dispute for unrelated or mala fide reasons can attract the courts' intervention and the court may even issue a writ of mandamus. In this case the appropriate government's decision was based on an irrelevant reason which was the go-slow strike as they had already been reprimanded for it and it had nothing to do with bonuses and thus, the HC was right in directing them to reconsider.

These two cases illustrate varying interpretations of the court regarding government discretion. The *C.P. Sarathy* decision viewed the appropriate government's discretion to be broad and emphasized how courts have limited power to intervene in such a reference under Section 10 as it is an executive order. While this supports the principle of federalism by restricting judicial intervention when it comes to administrative orders, courts can still step in when the reference is based on no relevant or inadequate quality material on record.

On the flip side, the *K.P. Krishnan* decision stated that courts can intervene if the appropriate government refuses to refer a dispute for unrelated or mala fide reasons or if it fails to record proper reasons. The appropriate government is under a statutory obligation to communicate and record the reasons for refusal. Over the years, with more and more judicial developments we can condense the grounds on which a refusal can be challenged as follows:

- The refusal is on irrelevant, irrational or extraneous grounds
- The refusal is a result of the appropriate government improperly examining the merits of the dispute instead of only deciding on the reference.

- The refusal disregards the material available in the failure report of the conciliation officer.

The K.P. Krishnan holding put a restriction on the wide powers that the C.P. Sarathy decision bestowed upon the appropriate government. The former puts a restriction on judicial review when a reference is made, calling it an administrative function and the latter expands judicial intervention when a reference is refused for improper reasons, as a way of keeping checks and balances.

The *Western India Match Company* case[20] further refined the interpretation of the reference power. The court acknowledged that though the AG performs an executive function, it is not a cloak that can hide it from judicial review. There is no such thing as an unspeaking order and anything can be challenged if there is no material on record. "No material" must be read as "no relevant material". There exists an invisible chain that the judiciary is using to control the executive and if after examination of the quality and relevance of this material, it is revealed that there is an absence of relevance or inadequacy in the quality, it can be challenged.

The *Ram Shiromani Yadav*[21] ruling talked extensively about Sections 10 and 12(5) and reaffirmed that while the government has to discretion to refer a dispute, it is not an absolute one. It cannot decide the dispute and can only form an opinion on its factual existence or apprehension. The appropriate government is only allowed to conduct a prima facie evaluation to eliminate frivolous claims and must not act as an adjudicatory body. The decision also stressed on how important it is to record and communicate the reasons for refusal to the concerned parties.

In the *The Management of M/S. Le Meridien Bangalore case*[22], a reference under S.10(1) was challenged. The Karnataka Star Hotels Employees Union had submitted a charter of demands and had also raised an industrial dispute but it was argued by the petitioner that this trade union no longer represented the majority of the workmen and hence, the dispute was invalid. But despite this, a failure report was issued and the dispute was referred by the government. The petitioner then argued that the government did not consider the minority status of the union and was not given a fair opportunity to get their side heard. This ruling in this case stated that the

[20] Western India Match Company Ltd. v. Workmen 1973 AIR 2650.
[21] Ram Shiromani Yadav v. The Conciliation Officer and Ors. (2012) WRIT-C No 2239 of 2008 (All HC)
[22] The Management of M/S. Le Meridien Bangalore v. The State of Karnataka (2017) WP No 51095/2015 (Kar HC)

government must form an opinion as to the existence or apprehension of an industrial dispute before making the reference and it cannot just agreed to the failure report without assessing additional facts. It reiterated that the government must provide reasons for referring or not referring a dispute and must consider other relevant material in addition to the failure report, citing the K.P. Krishnan case.

**The Industrial Relations Code, 2020**

The Industrial Relations Code, 2020 has done away with the reference requirement with respect to Section 10 of the Industrial Disputes Act, eliminating the element of government discretion. Though seemingly good as it might streamline dispute resolution, it raises some concerns. The reference requirement acted as a filtering process and ensured that only legitimate disputes actually went to the court but now it can potentially open the floodgates to frivolous and vexatious claims, and as a result, overburden the judiciary.

Additionally, it changed, in fact, improved upon Section 12 by introducing Section 53.[23] Under the Industrial Disputes Act, the conciliation officer has to submit a report to the government and it is their discretion whether to refer the dispute or not, which can lead to delays or let things like political considerations influence the decision. Section 53(6) of the Industrial Relations Code on the contrary, in case conciliation fails, allows the parties to directly approach the Tribunal within 90 days.[24] IRC also ensures that the report is also sent to the parties along with the government ensuring transparency and accountability unlike the IDA which only mandates sending the report to the government. IRC gives the concerned parties a direct route to the adjudicating bodies and they can legally bypass the reference requirement which leads to indefinite delays.[25] S.53 also has strict deadlines for the submission of the report ensuring effective dispute resolution, unlike S.12 in which though there exist limits, non-compliance with them will not invalidate the conciliation process as they are only directly not mandatory.[26] The IRC also improves efficiency by allowing reports to be submitted in an electronic form, again, thereby reducing paperwork related delays.

The IRC on its surface effectively does away with a lot of limitations of the IDA but its actual implementation is affected by several challenged like a lack of infrastructure. Many states are

[23] Industrial Relations Code 2020, s 53.
[24] Ibid.
[25] Ibid.
[26] Ibid.

yet to frame and notify their rules under the Code which can potentially create delays and inconsistencies across states. Though digital HR tools are being encouraged, many small businesses lack digital literacy or the infrastructure to access and use them.[27] Moreover, most of the Indian workforce is still in the informal sector and comprises of workers who don't gave formal contracts with their employers, making it harder to bring the disputes under the formal legal system even with the IRC in place.[28] To address these challenges, there need to be coordinated efforts from both the government and the industries themselves.

## Conclusion

There existed and still persists a power imbalance in the competing interests of employers and employees and to balance these interests, the appropriate government was empowered under Section 10(1) with the reference power, with the objective of promoting industrial peace. Though a seemingly good safeguard and the Act being a welfare legislation, in practice, this discretion unaccompanied by strict procedural limits, made it harder for workers to even get their disputes heard let alone get justice. Though the wide discretion is somewhat checked by the second proviso to Section 10 and Section 12(5), in practice, these checks are not adequate enough. There has been progressive effort to place checks on this discretion by way of judicial interpretation starting with the C.P. Sarathy case in which the court upheld the wide discretionary power. The K.P. Krishnan case acknowledged the same but at the same time curtailed the discretion, invoking Section 12(5). It held that the appropriate government cannot examine the merits of a case and act as an adjudicator and that its role is limited to determining the existence or apprehension of an ID and can only refuse reference if there is relevant and quality material. The Western India Match Co case further reaffirmed that even a refusal based on insufficient evidence can be challenged as "no material" must be read as "no relevant material". The Ram Shiromani Yadav case clarified that the government cannot delve into the merits of the case and can only form a prima facie opinion. The Le Meridien Bangalore case further stressed that even if the government accepts the failure report, it must independently assess the relevant facts and not just act blindly and refer the dispute. This ambiguity has now been addressed by the Industrial Relations Code which removed the reference power all together allowing the parties to directly access the Tribunal but also has its own disadvantages.

[27] TeamLease Regtech, 'Navigating the Hurdles: Possible Challenges in implementing India's New Labor Codes' (TeamLease, 19 August 2024) https://www.teamleaseregtech.com/blogs/108/navigating-the-hurdles-possible-challenges-in-implementing-indias-new-labor-codes/ accessed 8 July 2025.
[28] Ibid.

What the Industrial Relations Code has done is commendable but there is still a long way to go in terms of infrastructure as its more about capacity to ensure justice than ensuring access to justice.