New Labour Codes of India
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Lecture 12
Resolution of Industrial Disputes

Dear students, today we are going to discuss the Resolution of Disputes. The old Act, the Industrial Disputes Act of 1947 and now it is embedded in the resolution of disputes in the new code. So, the new code which provides specific dispute resolution mechanisms. So, dispute resolution is core to the implementation of any labour laws in the country.

If there is no efficient dispute resolution mechanism, then the workers are going to suffer and the industry is going to suffer, and employees are also going to suffer. So, under the new code elaborate provisions, or I would say simplified provisions are provided for the dispute resolution mechanism when compared to the Industrial Disputes Act. So, most importantly multiplicity of jurisdictions or multiplicity of tribunals is reduced or eliminated in the new code.

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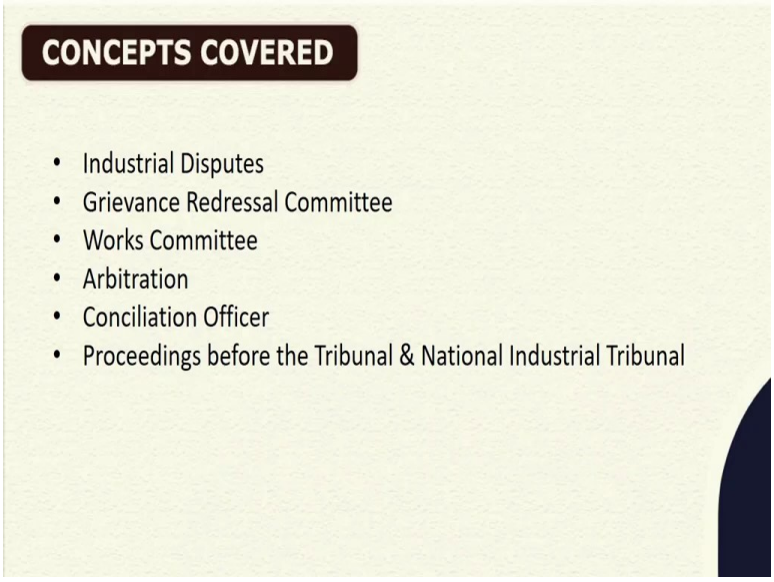

So, in this class, so, we are going to discuss how industry disputes are resolved in this particular country under the new code. And it can be divided into we can say that 3 or 4 systems. The first is the Grievance Redressal Committee within the establishment, Works Committee is also within the establishment and then the alternate dispute resolution mechanisms like arbitration, conciliation, and then the judicial intervention, the tribunals and national tribunals.

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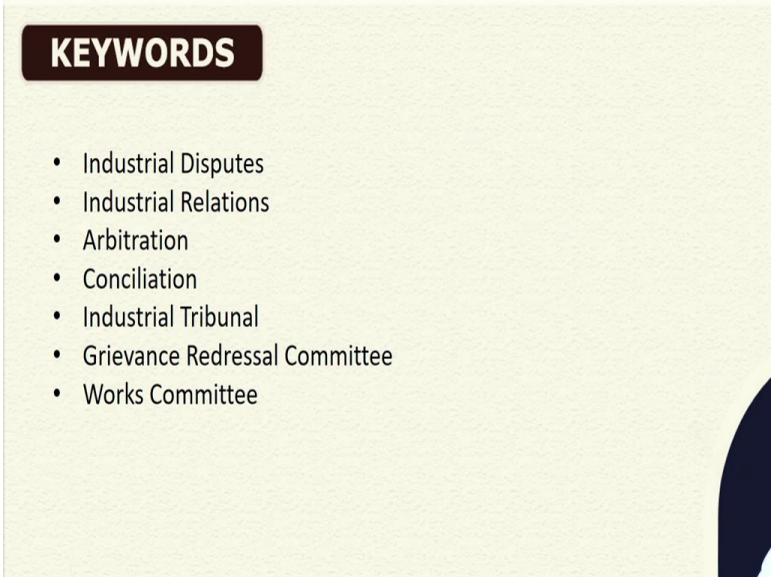

So, we can see that the interior set of industrial dispute settlement mechanism is through this particular various committees or we can say that various systems, these are the bipartite parties, you can see that employer-employee participation and sometimes there is government intervention as well government references, which we can see in the dispute resolution mechanisms.

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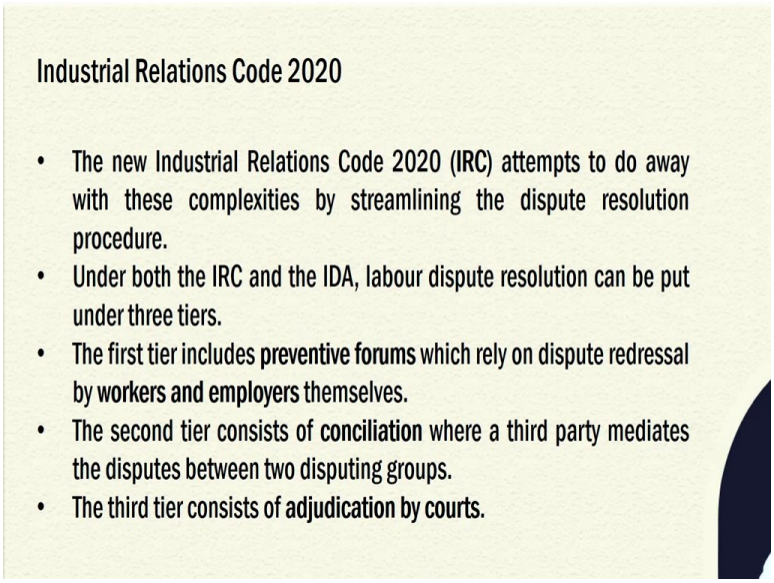

So, the IR code, the industrial relations code, very clearly stream light the industrial dispute resolution procedure when compared to the Industrial Disputes Act of 1947. So, under the

industry this IR code and Industrial Disputes Act, you can see almost three tire mechanisms. So, the first one is the preventive forums, the preventive forums are the dispute redressal committees or preventive dispute redressal committees and also the works committees between the workers and employees.

The second tire consists of conciliation and the conciliation officers are appointed, a third-party mediator and they try to resolve the dispute between two disputing groups that is the workmen and the employer. And the third main category is adjudication, the adjudication by tribunals, it can be state tribunals or national tribunals. And when compared to the Industrial Disputes Act, the labour codes are eliminated in the new IR code.

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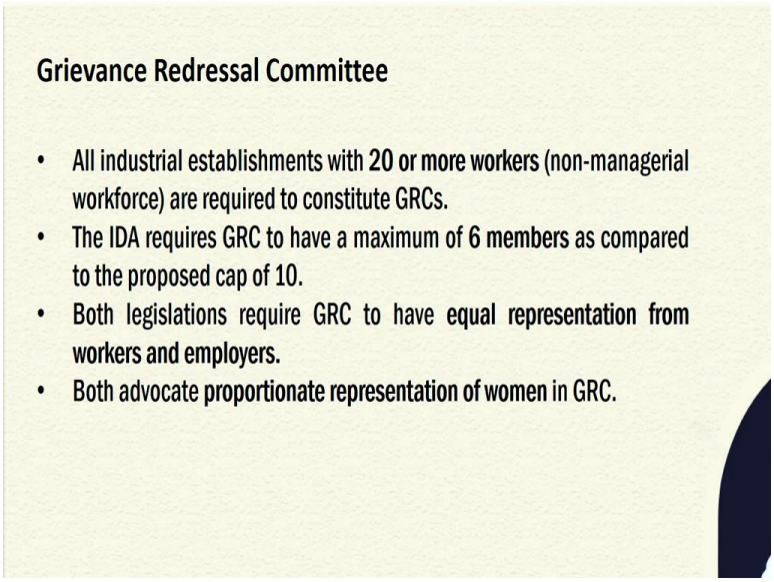

So, when we come to the first Grievance Redressal Committee of any establishment, all industrial establishments with more than 20 workers or more workers, other than managerial workers are required to constitute the Grievance Redressal Committees. So, these Grievance Redressal Committees are working as an equal representation of the workers and employees.

So, and also there is a provision for proportionate representation of women workers in the Grievance Redressal Committee. So, this is the statutory forum, the first form we can say that the Works Committee and Grievance Redressal Committees are the initial forums to resolve disputes by talking to each other.

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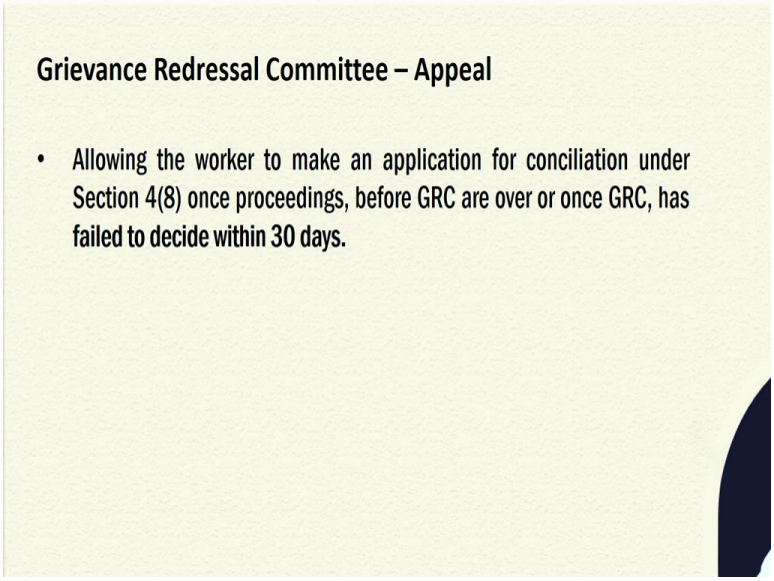

So, and also this after the Grievance Redressal Committee, if there is any appeal from the decision of the Grievance Redressal Committee, the parties can go for a conciliation officer appointed under the IR code. So, under these particular new provisions, and they can go for conciliation proceedings, under sections 4, 8. So, you can see that if the Grievance Redressal Committee fails to conclude within 30 days, then the parties can approach for conciliation, which we are going to discuss.

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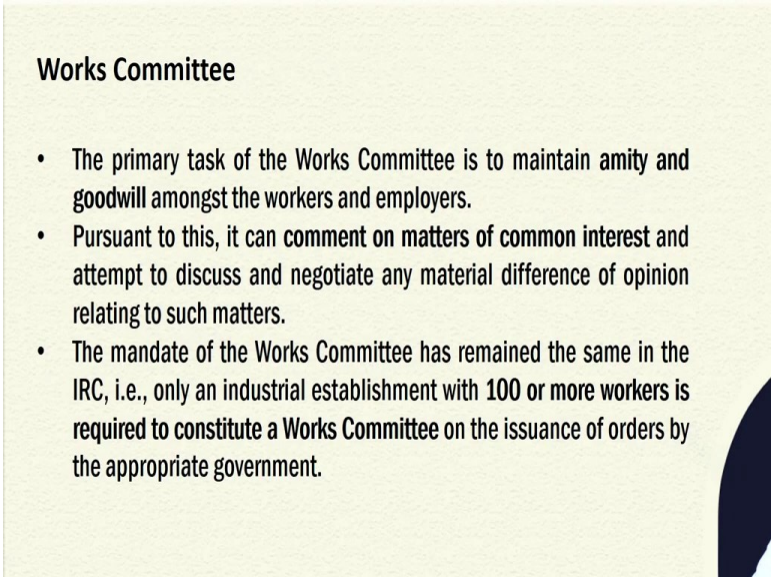

So, the second forum, the main forum at the industry level is the Works Committee. So, the Works Committee's five primary duty is to see that mainly the working environment or to maintain amity and goodwill among the workers and employees. So, this Works Committee can involve in or they can comment upon matters of common interest, and they can talk to the employees and attempt to discuss and negotiate and also express their opinion relating to any matters of interest to the workmen or the workers.

So, you can see that it is side by side, it is almost the mandate of the Works Committee is the same as that of the Grievance Committee, but, the Works Committee more look into the working environment to maintain the working environment of the establishment in a robust way or a healthy relationship between the employer and employee is maintained through the work of the Works Committee.

So, statutorily more than 100 workers are working, then they have to require to constitute Works Committee under the new code. So, it applies to more than 100 workers, then the question is, if less than 100 workers, then what is the forum for such kind of initial discussions between the employer and the workmen?

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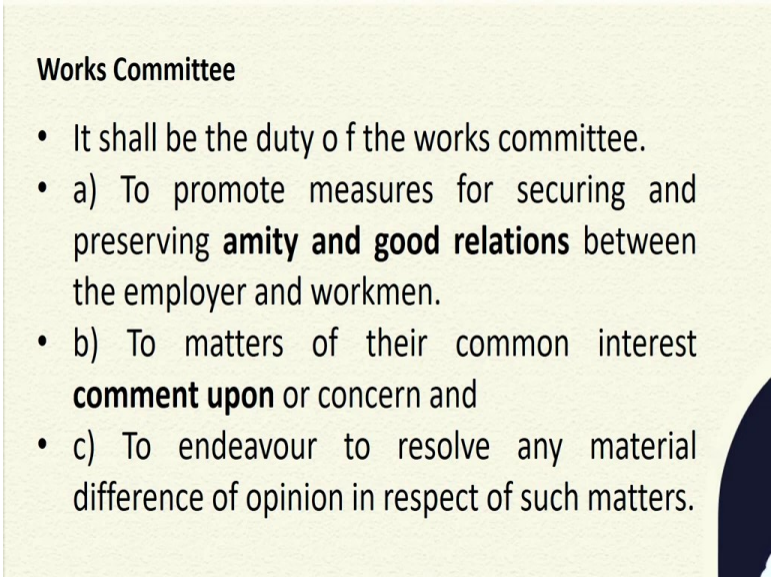

And the duty of the works committee is as I already said, to promote amity and good relations between the employer and workmen and they can comment upon, they can talk upon, and can express their opinion on matters of common interest. And also, they can see that to resolve any

kind of opinion or any kind of differences between the two parties. So, any difference between the two parties, the workmen and the employees. So, first of all, if you look into these two committees, the Grievance Committee and Works Committee, these are the creation of the workers and employees. So, they have to talk to each other and try to resolve the disputes themselves.

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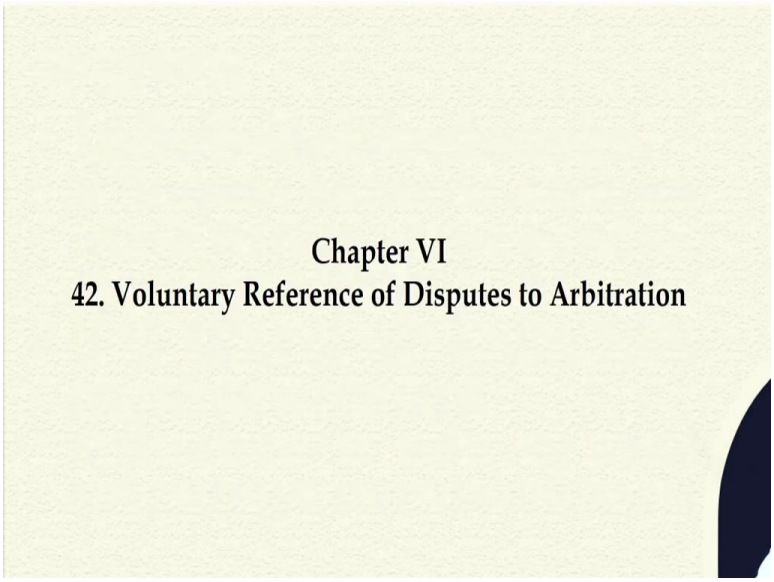

Now, we come to Chapter 6 of the IR code. So, what is the next level of dispute settlement? In the next level of dispute settlement, we can say that the parties can go on with the voluntary reference of disputes. So, arbitration is a more formal way of resolving disputes and the most common and popular form of alternate dispute resolution mechanism.

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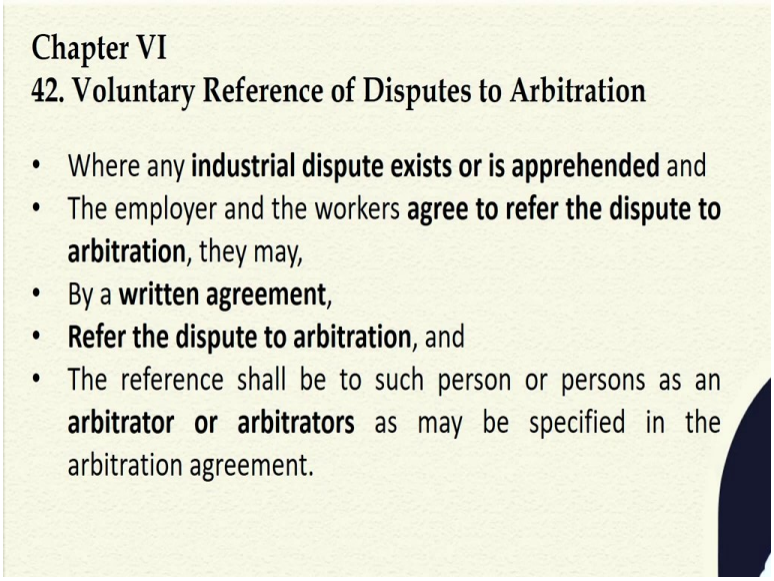

So, Section 42 talks about the voluntary reference of disputes for arbitration. So, if the disputes are not resolved, or the difference is not resolved within the Works Committee or Grievance Committee, they can go ahead with the voluntary reference of disputes. So, in the last class, we talked about what constitutes an industrial dispute. So, this is a voluntary mechanism, if both parties agree to refer a dispute to arbitration.

Remember, in the ID Act, Industrial Disputes Act, the parties refer the matter to the government and the government refers the matter to the tribunals, labour court or tribunals for dispute resolution, a reference is made by the government. So, the reference system is eliminated through the IR code.

Now, the parties can refer the dispute taken for arbitration through a written agreement. So, the consent of both parties is necessary in this case. So, the arbitrators can be appointed by the parties, the arbitrators are willfully appointed persons with the consent of both parties. So, it is the choice of the parties to decide who will be the arbitrator.

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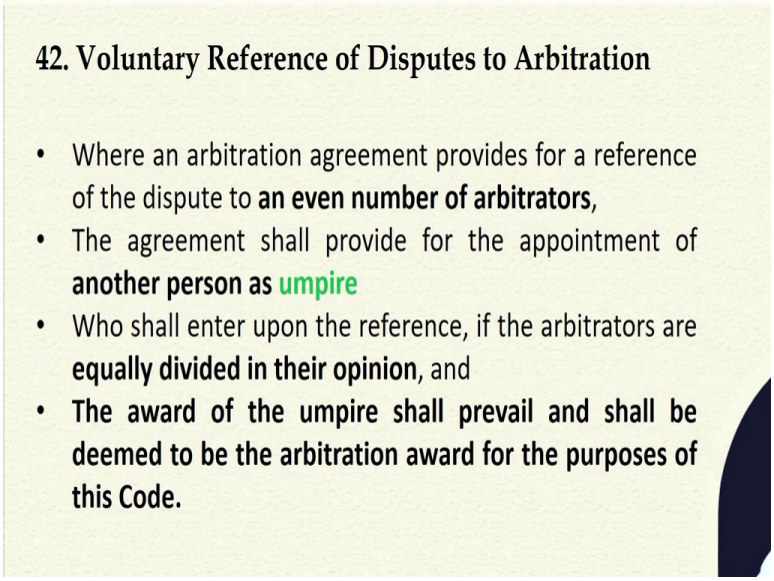

If both parties appoint an even number of arbitrators, so, there is an appointment of another person, a third person or the person known as the umpire. So, if the arbitrators are equally divided on their opinion, so, with the majority of the umpires voting, they can take a decision. And if two arbitrators are there and they take different decisions, then the umpire's decision will provide over the arbitrator as an award and it is final in nature.

So, here, both parties appoint their own arbitrators. So, the moment the arbitrators do not agree on the award or any point the parties again have to appoint an umpire. And the umpire's decision will be, as overruling the arbitrator's decisions. So, it is very expedient and also easy, arbitration is very expedient and very easy and the rules for the arbitration are also prepared by the parties. So, it is very easy to conduct and the privacy is kept by the parties.

And also, there is no appeal from the decision of the arbitrators. It is finally, the arbitrator's decisions are usually final on the question of fact. So, the Arbitration and Conciliation Act is nothing to do with the Industrial Disputes Act. The courts also express the same opinion. But the provisions in the Industrial Disputes Act are unique in nature. But the common provisions of arbitrators are applicable here as well.

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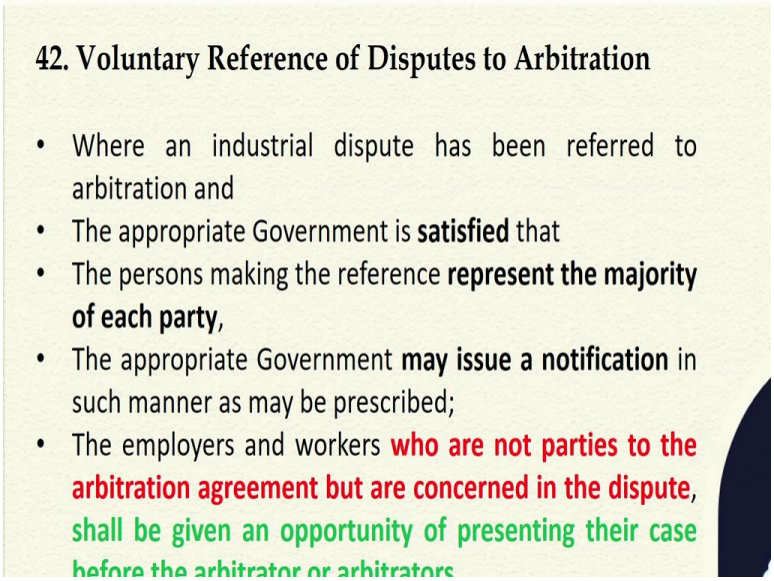

So, here we can very clearly say that arbitration is an easy way of resolving industrial disputes. And if the government, yes, definitely a copy of the report has to be sent to the government as well. And the parties can refer the dispute. So, the trade unions can also refer the disputes where the members are the majority. So, in the last class also which we talked about the negotiating units.

So, they can also refer the matter for arbitration. And also, if it is referred by the government, then the government will issue a notification. So, the government can also refer the matter for arbitration. And if anybody is not a party, if anybody is not a worker, then it is the parties to the arbitration can only participate in the arbitration proceedings and only a worker can initiate also a dispute.

So, the parties who are not directly parties to such proceedings, but whose interests are related to or are concerned about this particular arbitration, shall be given an opportunity or presenting this case before the arbitrator or arbitrators. So, they can also present but to what extent legally it is binding on the arbitrators is not very clear.

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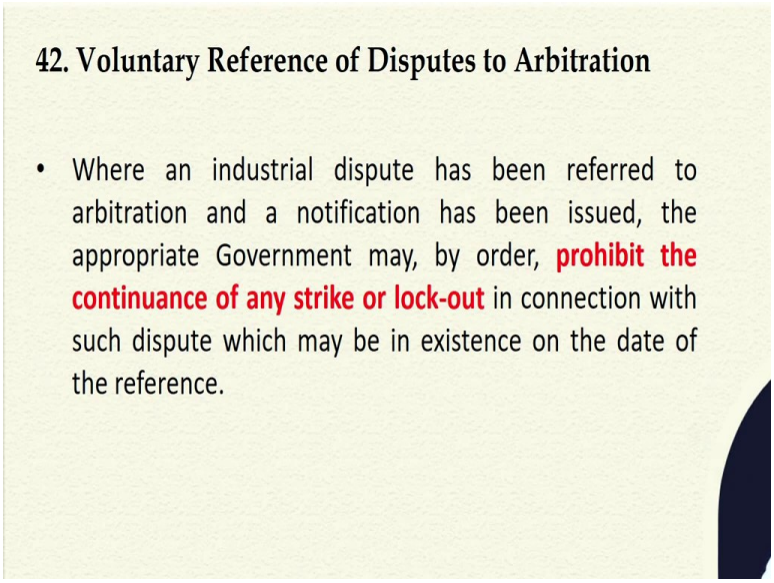

Here, are these voluntary references. So, here any industry disputes once it has been notified, so notified by the appropriate government over the refer the matter by the parties themselves for arbitration, then there should not be the continuance of any strike or lockout or even lay of connection with that particular dispute.

It means that once the parties refer a matter for arbitration, then you should not continue with the strike or you should not continue with the lockout. So, the employer should not continue with the lockout or layoff. So, once the matter is referred, this is a limitation for both parties to continue with the strike or lockout.

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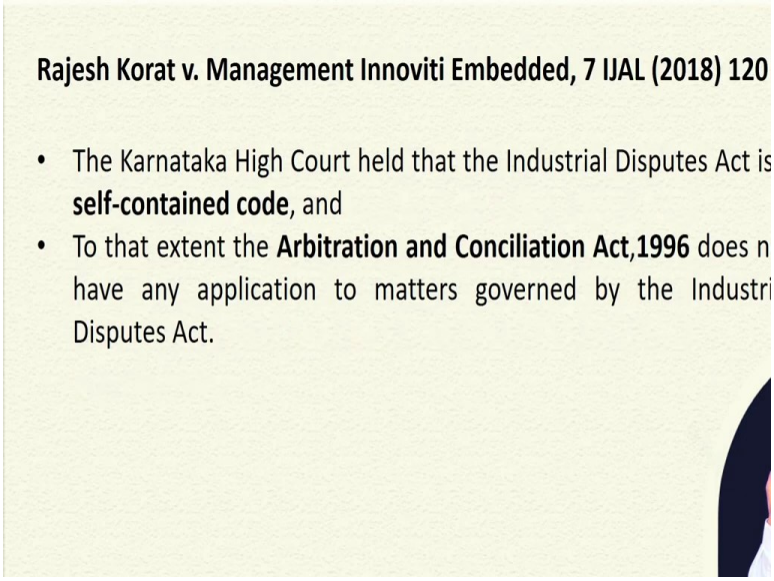

So, in this particular case, that is the Rajesh Korat versus Management of Innoviti Embedded in this very recent case of 2018. The Karnataka High Court very clearly said that this is just before commenting on the particular Act, the court said that the Industrial Disputes Act is a self-contained code.

And there is, to the extent the Arbitration and Conciliation Code 1996 does not have any application to matters governed by the Industrial Disputes Act because these are two specific different legislations. So, there is no application of the Arbitration and Conciliation Act, but arbitration can be done, and conciliation can be done under the Industrial Disputes Act. So, these particular rules apply to or ID Act and now the new codes.

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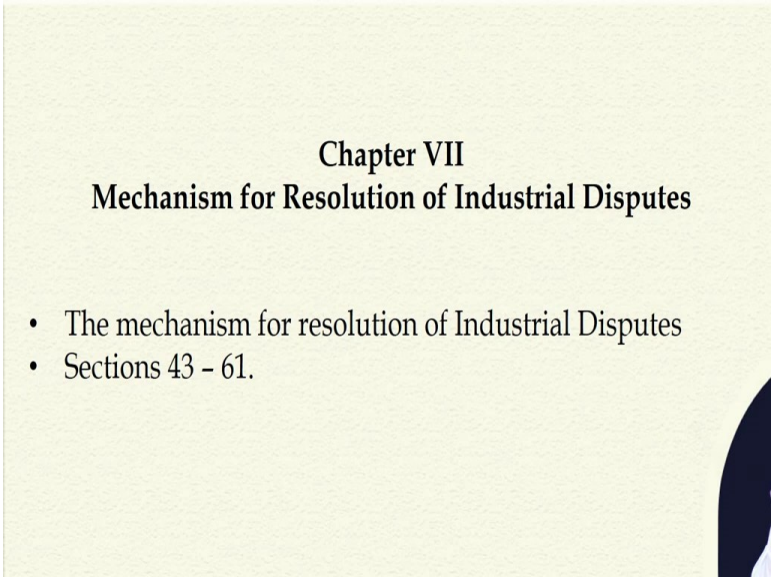

So, now, we look into the mechanism for other dispute resolutions.

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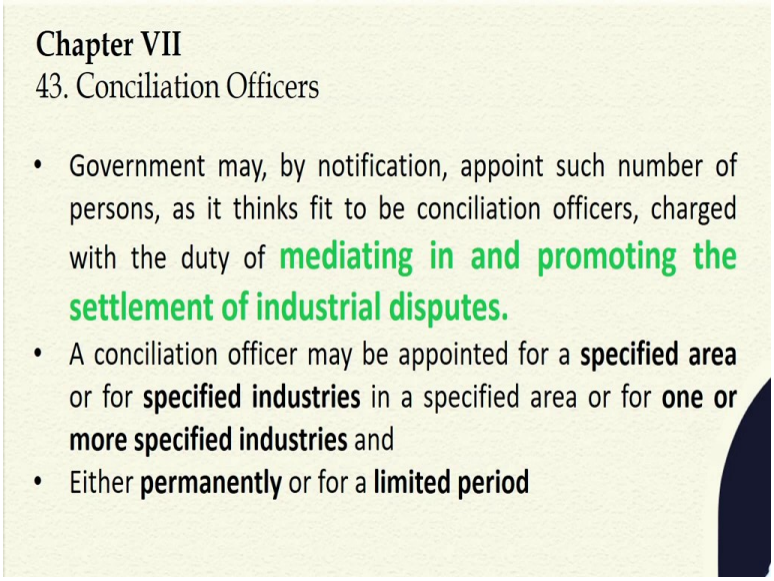

We are going to another method which is the conciliation officers. Conciliation is another method of alternate dispute resolution mechanism. And also, an easy way for a third party to be involved his name is the conciliation officers. So, they can talk to both parties and then comes to a settlement. Here, the government by notification appoints any number of conciliation officers charged with the duty of mediating and promoting the settlement of industrial disputes between the parties.

So, these conciliation officers are the statutory officers appointed by the respective governments. So, it can be by the state government or by the central government. So, the conciliation officer will be appointed for a particular specified area and also for specified industries or one or more specified industries.

So, usually, his jurisdiction is given, for example, one district is given for a particular conciliation officer and he can be appointed permanently or for a limited period of time. So, the conciliation officer is now under Section 43 and is going to be a very important role in resolving disputes in the coming days under the new IR code.

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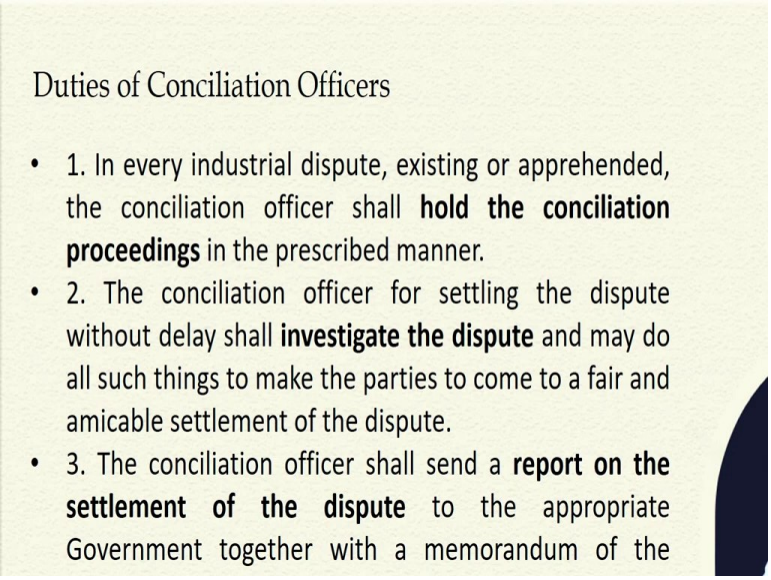

So, here, in conciliation proceedings, every industrial dispute is apprehended. So, the conciliation officer mandatorily has to conduct a conciliation proceeding between the parties. So, this is the statutory obligation not only on the conciliation officer but on the parties asked well, they have to undergo a mandatory conciliation procedure.

And without any kind of delay, the conciliation officer the particular provision says that within 30 days of raising a dispute, he has to conduct a conciliation proceeding. So, he can look into it, he can investigate the particular dispute and also, he can incur from both the parties and also, he tried to settle the dispute amicably. So, this is duty, one of the core and important duties of the conciliation officer.

And once the conciliation officer completed the conciliation proceedings, he will send a report on the settlement of disputes to the appropriate government and also together with a memorandum of settlement signed by the parties to the dispute to the particular government. So, even though most government references are avoided, the government is an important party in all labour-involved disputes. So, we can see that a report will be sent by this particular officer to the concerned government.

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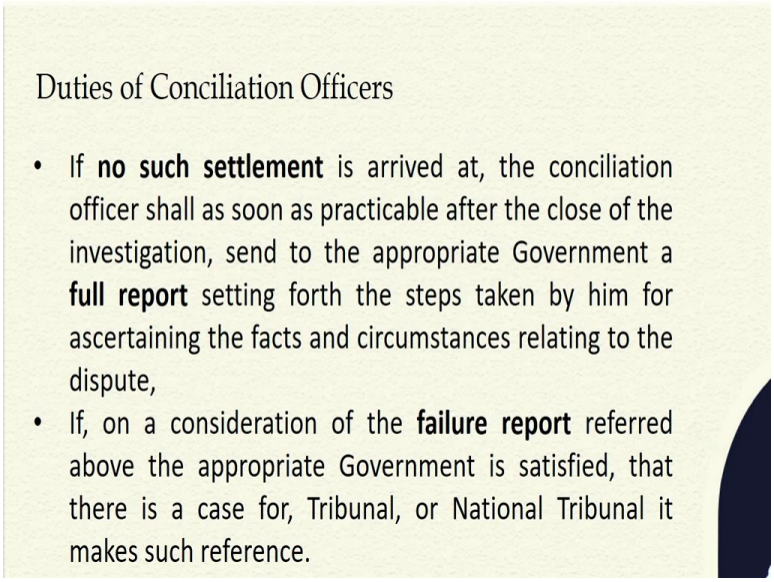

So, even if there is no settlement, no such settlement. Again, the conciliation officer has to make a full report or what are the circumstances under which the dispute is not resolved. So, what are the terms and conditions which they are not agreeing upon? So, even though there is a report, it is known as the failure report, so, the conciliation officer has to send a failure report to the appropriate government. So, if the government is satisfied, then it is the particular case can go to the tribunal or the State Tribunal or it is National Tribunal as the case may be. So, there will be a judicial intervention and a dispute resolution in the forums.

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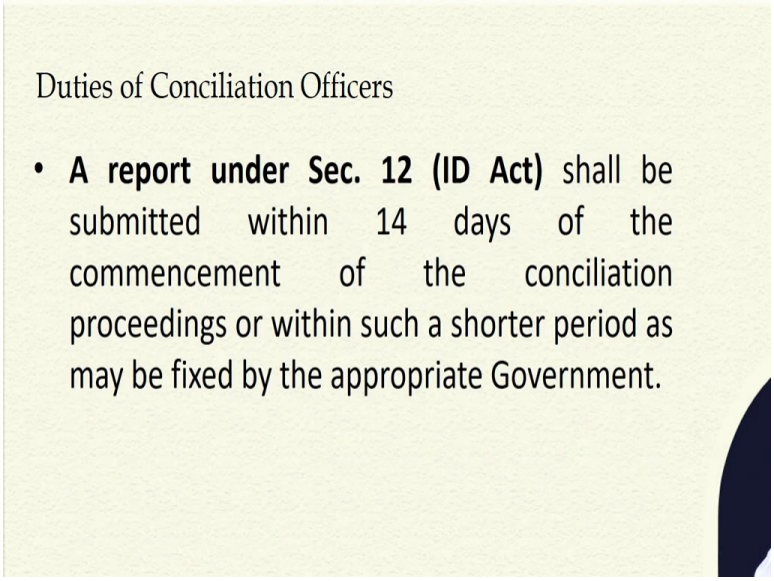

As I told you, the Industrial Disputes Act says that the report should be submitted within 14 days of the commencement of the conciliation proceedings. So, that means, a very small period was provided in the ID Act, now, it is extended to 30 days of time. So, they have to submit complete the process as soon as possible and submit a report to the appropriate government.

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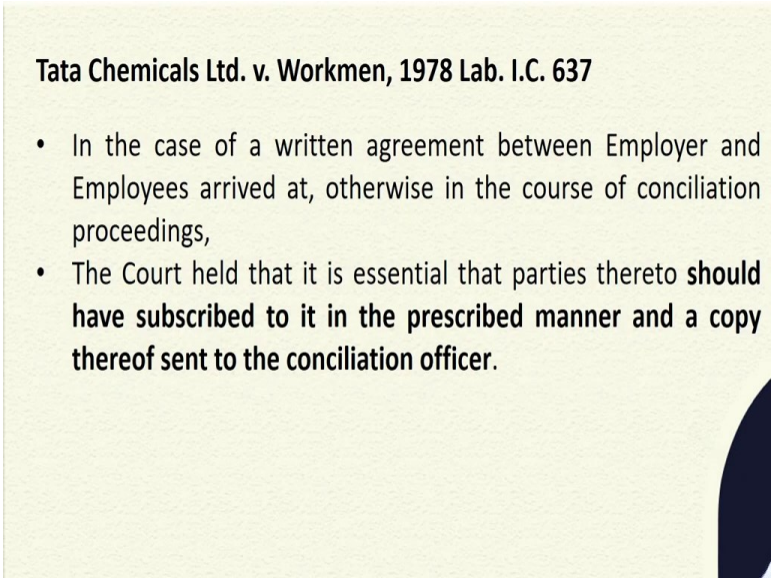

And we can see that once if you are subscribed, so, in Tata Chemicals versus the Workmen, this is a 1978 decision. So, if there is a, in case of a written agreement between the employer and employees in the course of conciliation proceedings. So, if the essential parties are both parties

and the court held that is essential that the party is there to show to have subscribed to it in the prescribed manner and a copy should be sent to the conciliation officer.

So, even at any point of time, the parties can come to a settlement. If the parties came to a settlement, then a report should be sent to the conciliation officer, and then the conciliation officer consequently will send a report to the appropriate government about the settlement of the dispute between the parties at any point of time.

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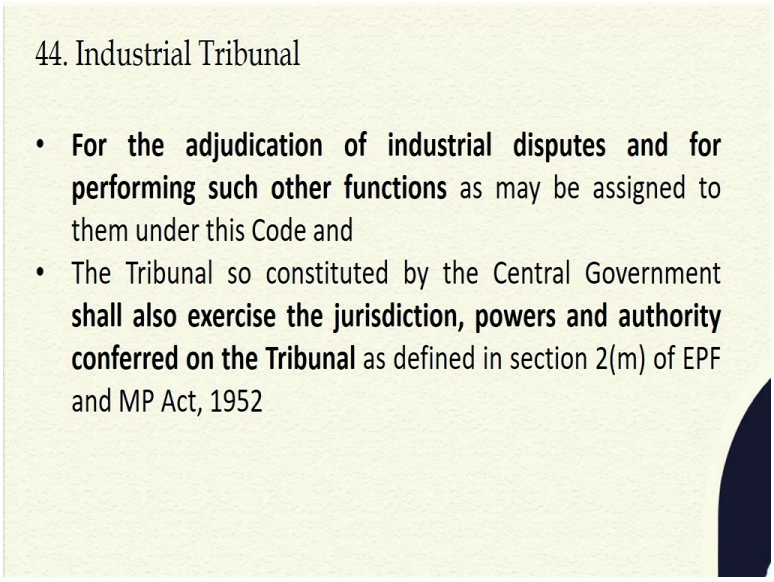

So, and also you can see that the tribunals constituted by the central government as well as the state government and their jurisdictions are also these conferred defied and also, we can find, the various dispute resolution mechanisms notably under these dispute resolution can be any labour legislation like the Employees Provident Fund and Miscellaneous Provisions Act, these specified tribunals can also be given the jurisdiction of any cases like the provident fund.

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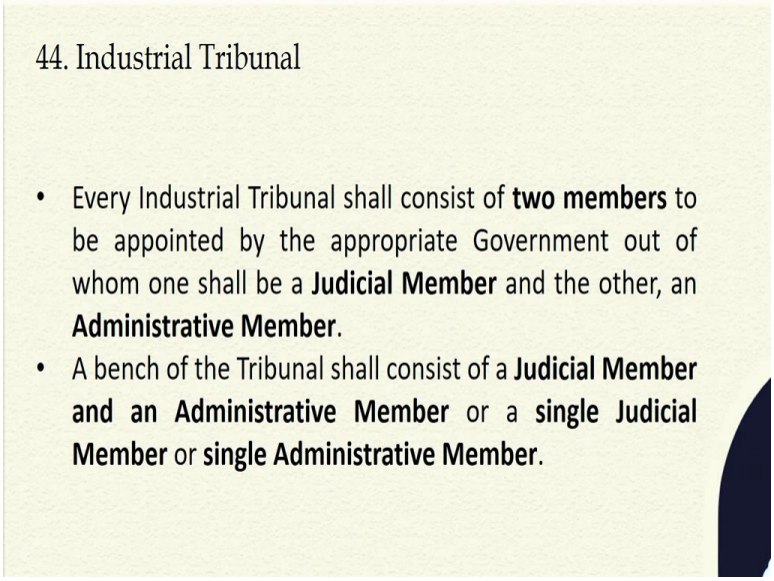

So, every tribunal, the Constitution of the tribunal is also now changed from different from the labour courts earlier. And you can see that here, every industry tribunal now consists of two members appointed by the appropriate governments, that is the state government and central government. And these two members, there must be a judicial member, and there must be an administrative member.

So, it is unlike the labour courts, and labour courts only there will be judicial members, now, there will be an administrative member. So, this administrative member, the judicial member can also sit as well as the administrative member can also sit as a bench of the tribunal. So, now, even though the court has changed the earlier judicial system, we can see that there is an administrative officer.

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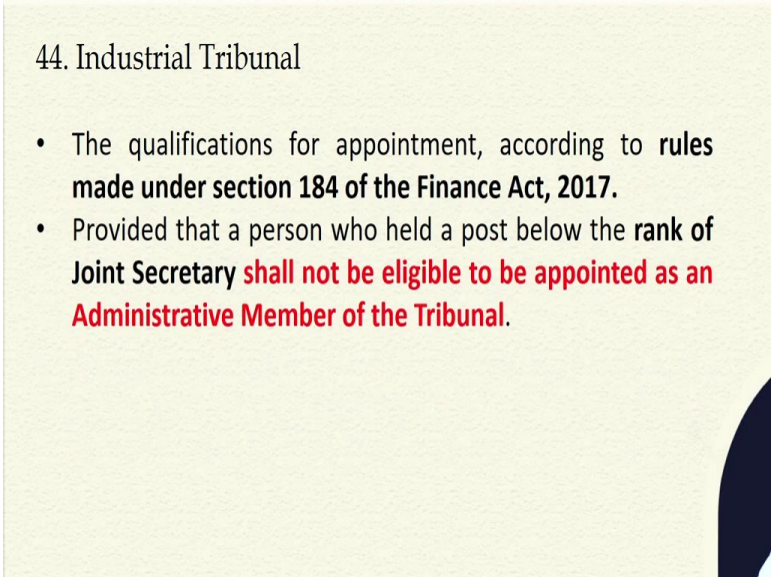

So, we can see the qualifications of judicial members are in accordance with the 2017 Finance Act, the appointment of judicial members. And the appointment of this administrative member not below the rank of joint secretaries. So, those not below the rank of joint secretaries are eligible to be appointed as an administrative members of a tribunal.

So, the question is big states like Uttar Pradesh or any other state, so, how many joint secretaries are available in the state or equal to the rank of joint secretaries can be appointed as an administrative member? Also, there is a huge number of judicial officers, and judicial members also to these particular tribunals.

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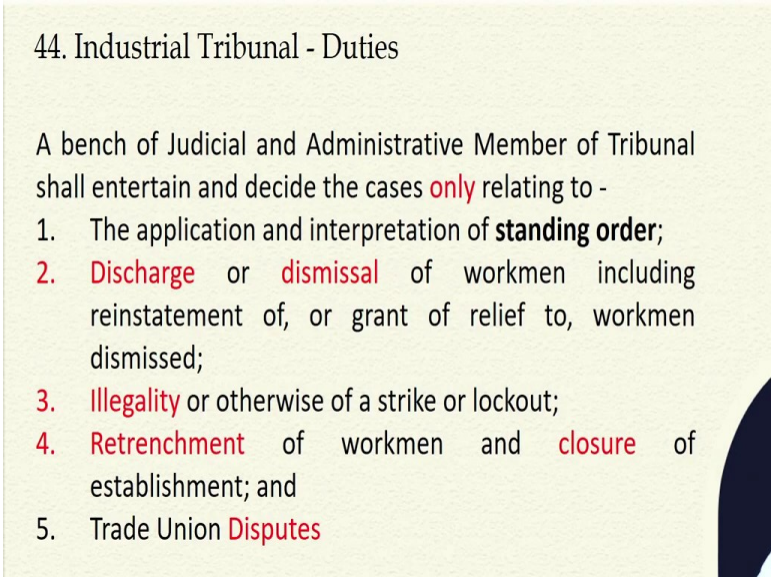

So, you can see that here on the bench, either the judicial member or administrative member can sit as a bench, they can decide the only cases relating to an industrial dispute where a workman or an employer is involved. This includes the interpretation of any standing order, discharge or dismissal of workmen, and which includes the restatement or any grant or relief, which is granted to the workmen in the case of dismissal. And also, to decide the legality or illegality of any strike or lockout.

And retrenchment of workmen closure of the establishment, and any other trade union disputes can be decided by these particular tribunals. So, tribunals when it comes to arbitration are wondering nature, conciliation, offices and involvement of conciliation officers, there is a third person who is appointed by the government and is trying to resolve the dispute. When it comes to the tribunals, it is more formal in nature, not formally formal, in the sense that judicial in nature. So, the addition is the administrative member in the new set of tribunals.

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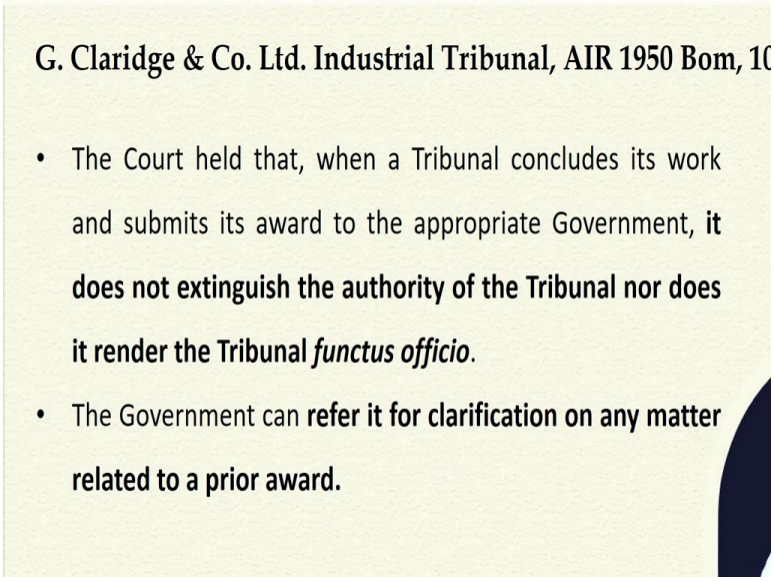

And we can see that in this particular case, the court said that, once the tribunals complete their work, so, they give the order that this particular tribunal is not functus officio. So, the government can even ask for any kind of clarification, which is related to the prior award. So, this particular panel is not really for that particular case. So, if there is any clarifications to be made by the government, they can refer back to the panel and clarify any kind of, points of law or points of fact, with regard to that particular judgment or award.

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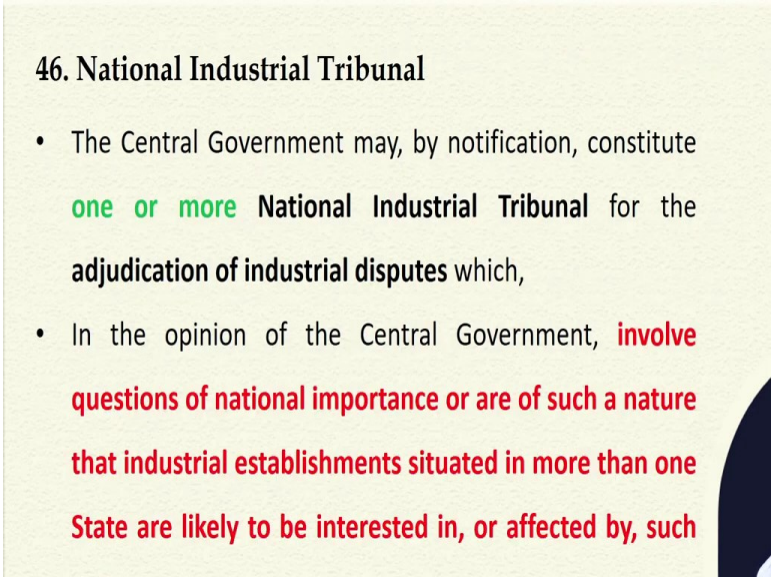

So, the appointment of national tribunals, so the central government is by notification, they have to notify the National Industrial tribunals for the adjudication of industrial disputes. So, here, the jurisdiction is very specific in nature. So, the National Industry Tribunals can entertain the disputes which involve questions of national importance, national importance or the veracity or the grave nature of that particular or a particular set of industrial establishments, which is working in more than one state, or they are likely to be affected or already affected, or their interests are going to be affected. Then such disputes can be referred back to these national industry tribunals even though the dispute may be from one state, but if it is going to affect the workers, a class of workers or an industry, which is all over India, it can be referred back for this particular national tribunal.

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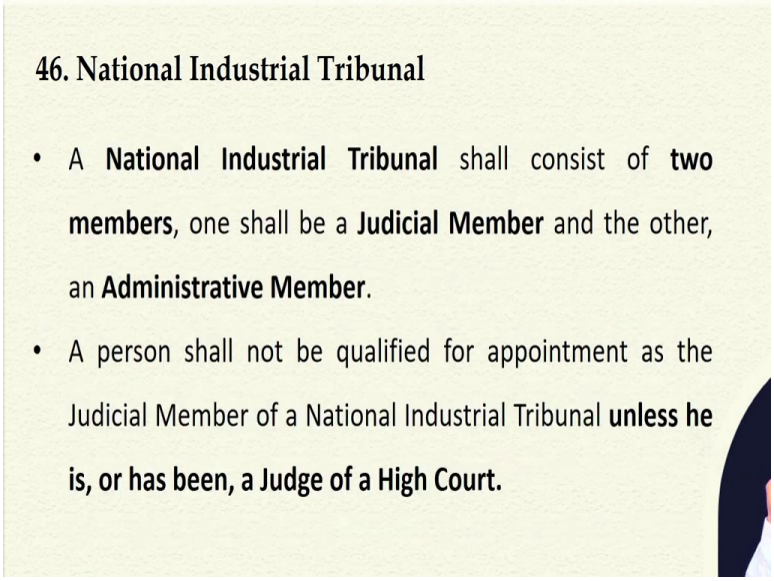

So, the National tribunal also has judicial members and administrative members. And the qualifications are different from the tribunals at the state level. And here, we can see that the judicial member may be appointed, as has been a judge of the High Court. So, in the National Industrial tribunal, the judicial member, is he must be a high court judge. So, again, the question comes, whether these judges will be available to be working in this kind of tribunals, that is also high court judges not below the rank of high court judges.

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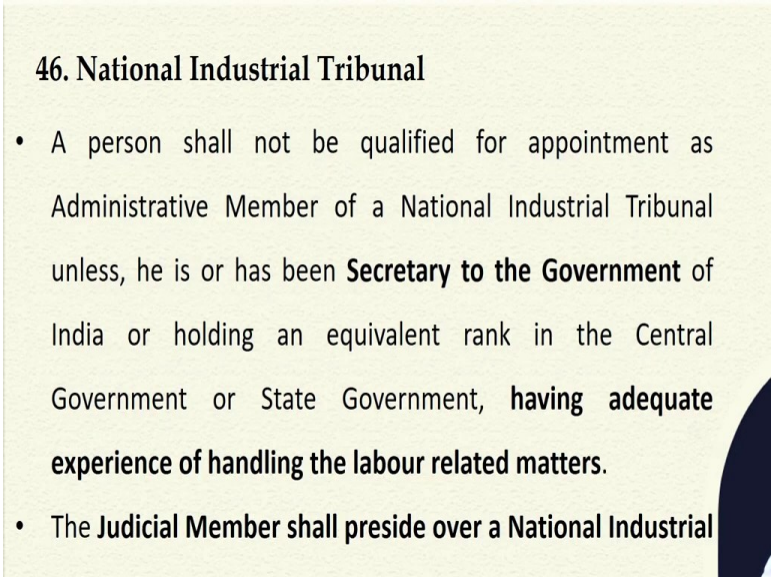

And also, the qualification of the administrative member is not below the rank of Secretary to the Government of India. So, and also, he must have adequate experience in handling labour-related matters. So, as I told you that the judicial member is going to preside over the National Industrial tribunal, and the other administrative member has to be at the rank of Secretary to the Government of India.

So, again, the practical question comes here that whether we have a sufficient number of secretaries to the level of, the rank of Secretary to the government to make them as administrative members So, all these are the practical aspects or the implementation aspects of the new tribunals, which are constituted under the IR code.

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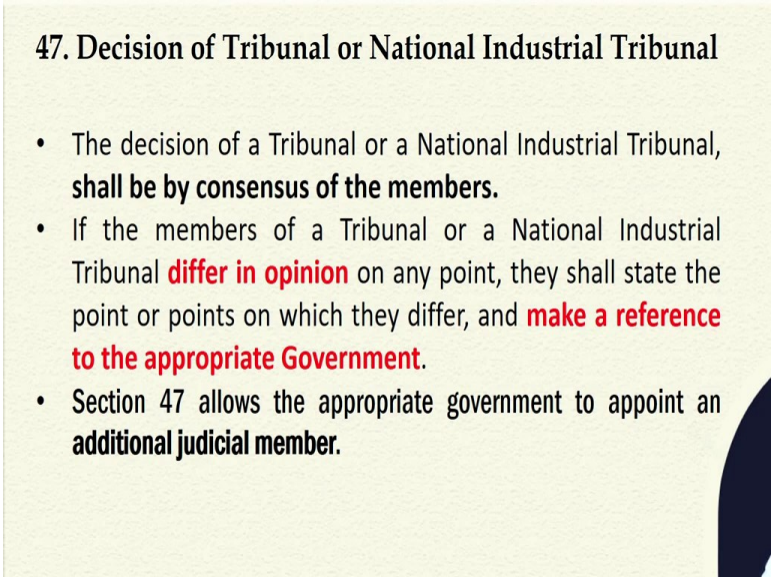

So, the decisions of the tribunals are by consensus. So, if they differ in their opinion on any point of law or point of fact the National tribunal can refer again to the appropriate government. So, if the two people cannot come to a conclusion, they can refer the matter to the appropriate government. So, again the appropriate government will appoint an additional judicial member.

So, then the decision will be on the majority opinion. So, again, the practical question comes that, once a particular bench is constituted, there is a difference of opinion, then again referring back to the government, and the government will appoint another judicial member, so, it may take more time, rather than the earlier labour courts or tribunals. So, here also the involvement of the government is very crucial.

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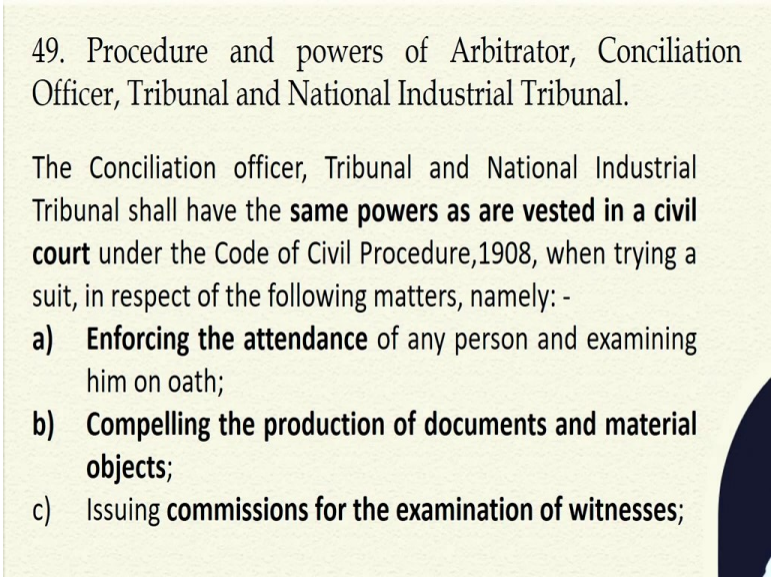

And if you look into the procedures of this arbitration, conciliation, tribunal and national tribunals. So, we can see that the conciliation officers or the National tribunals or tribunals have the same powers as a civil court, under the civil procedure, code 1908. To the extent of enforcing the attendance of a person, examining the people on oath. Compelling the production of documents and material objects of any persons involved, and issuing commissions for the examination of witnesses.

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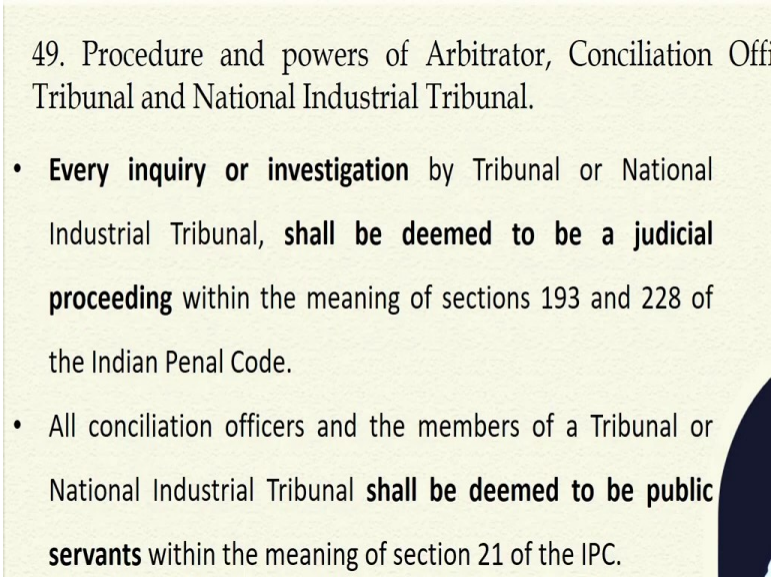

And also, we can see the other powers as every inquiry investigation by the tribunal is deemed to be a judicial proceeding also within the meaning of the Indian Penal Code. So, they have the powers of a civil court and also the proceedings will be considered as judicial proceedings. And also, we can say that all members of the tribunal, conciliation officers and will be deemed to be a public servant within the meaning of section 21 of IPC.

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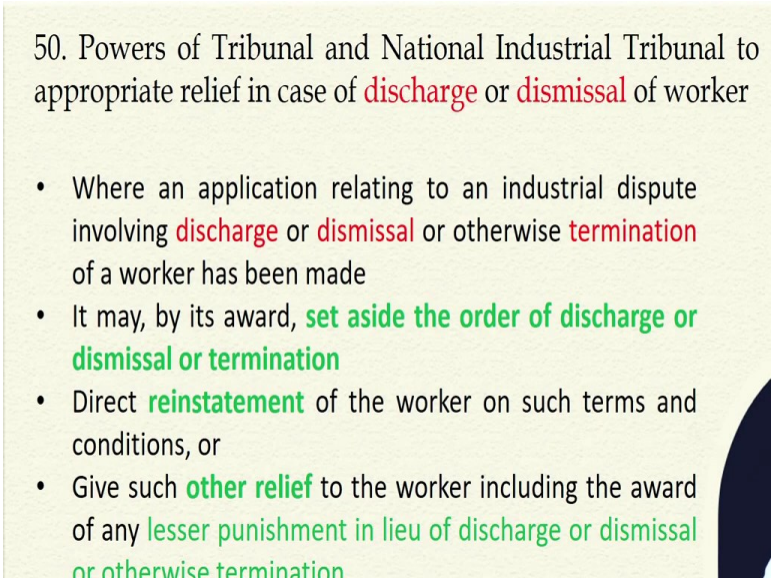

And also, we can see the tribunals, and what type of relief they can provide in case of discharge or dismissal or termination of workers. So, they can give awards and set aside or discharge or dismiss or terminate. So, they can set aside the orders of discharge or termination or dismissal.

And also, they can direct reinstatement of the workers provided such terms and conditions are fulfilled. And any other relief these tribunals can provide, or even they can suggest lesser punishment in lieu of discharge or dismissal or otherwise the termination. So, the discharge and termination are the final process, the final process or is at the last resort in case of all disputes.

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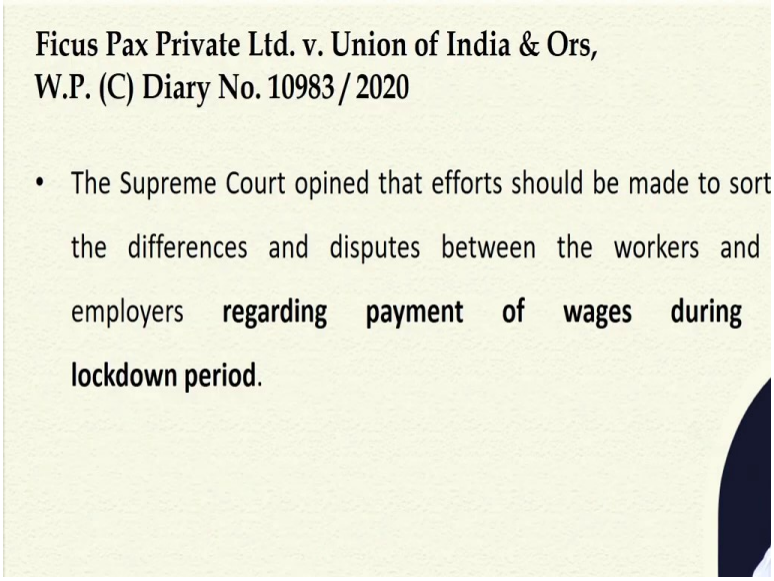

So, here you can see that even very recently in Ficus Pax Private Limited versus Union of India. So, the Court, the Supreme Court said that every effort must be made to sort out the difference between disputes between workers and employees during the pandemic time because the government has issued a notification under the order at that point of time. The employers are refused to pay wages under the notifications, so, as I told you that the Disaster Management Act, the notification was under the Disaster Management Act. So, the court said that there must be ways and means for amicable settlement of disputes.

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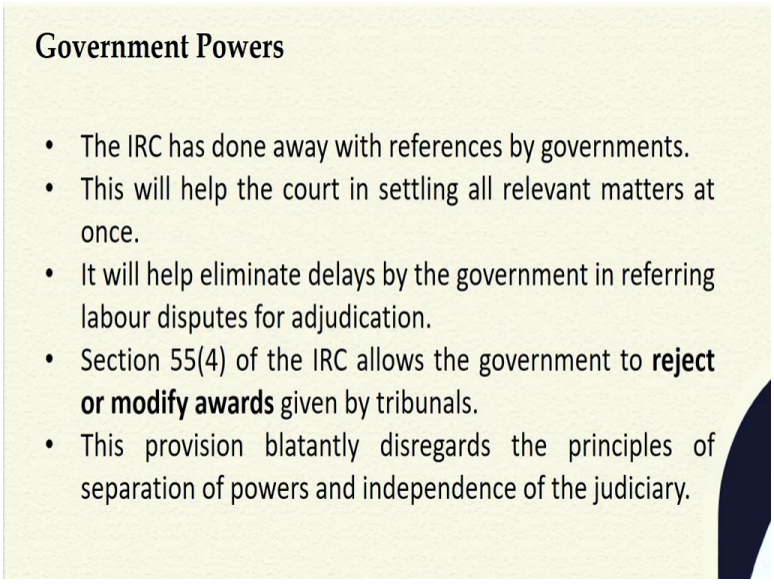

So, it is very clear that even the government also have very clear powers. So, the Industrial Relations Court has, first of all, they have done away with the earlier pauses of references by the governments, but in several cases, the governments also can refer but they are turned away completely. And also, so, the courts can settle directly. So, the conciliation officers also can refer the matter to these particular tribunals.

So, the delay in refereeing disputes is now eliminated through this Industrial Relations Code. And also, we can see that, but one provision which is added to the IR code is Section 55(4). So, once the tribunal is come out with an award, the award should be sent to the government. So, under this particular provision, the government have the power to reject or modify the awards by the tribunals.

I think this is a derogation of the earlier provisions Industrial Disputes Act or finality of the judgments of tribunals. So, the question is whether the Supreme Court and other courts are going to strike down this particular provision. Because once the tribunal has given or the central Tribunal has given a judgement, whether the government or the executive have the powers, I think this particular provision blatantly disregards the principle of separation of powers.

So, the government in a democratic society, in the separation of powers under the Constitution, the government does not have the power to overturn the decisions of tribunals and courts. But Section 55(4)very clearly gives the power of the government to reject or modify the awards of the tribunals. So, we have to wait and see what is the judicial response to this particular provision in future.

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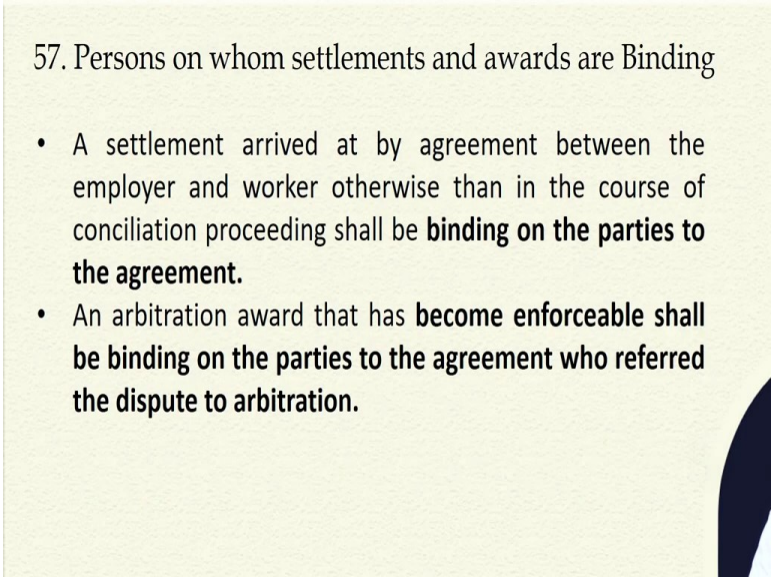

And also, here, the settlements between the arbitration, in case of arbitration or the case of conciliation, are binding on the parties. And also, this becomes enforceable and binding on the parties referred to the arbitration.

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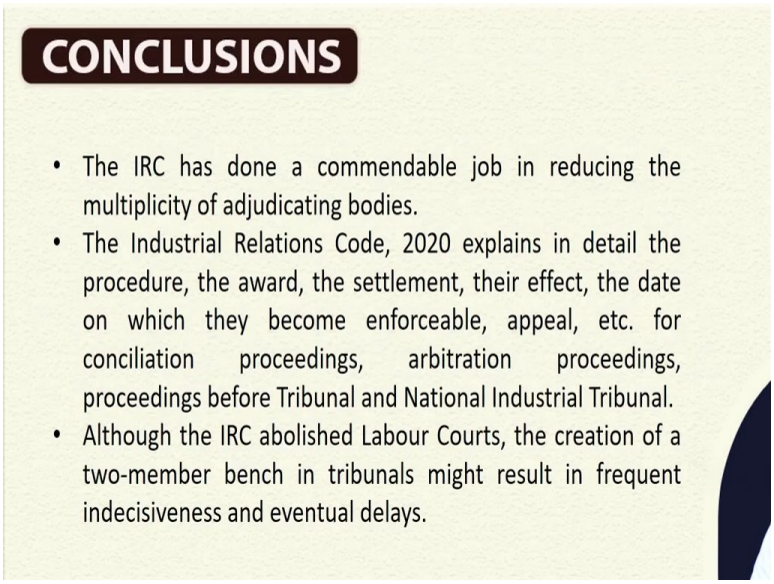

And in conclusion, we can say that the new IR code gives a very expedient system of resolution of disputes within a shorter period of time. And then, as I told you when compared to the Industrial Disputes Act 1947 the IR code has eliminated the multiplicity of adjudicating bodies, even labour courts are eliminated.

And also, the IR code has explained detailed procedures, detailed procedures for voluntary arbitration, conciliation officers, the duties of conciliation officers, and the process, expedient duties of the conciliation officers, and also the appointment and the administration of tribunals, the State tribunals and the National Tribunal. As I told you that the most important aspect is the abolishing of labour courts. But the two-bench system, how it is expeditiously or it is going to work we have to wait and see, the two-bench system how it is going to work.

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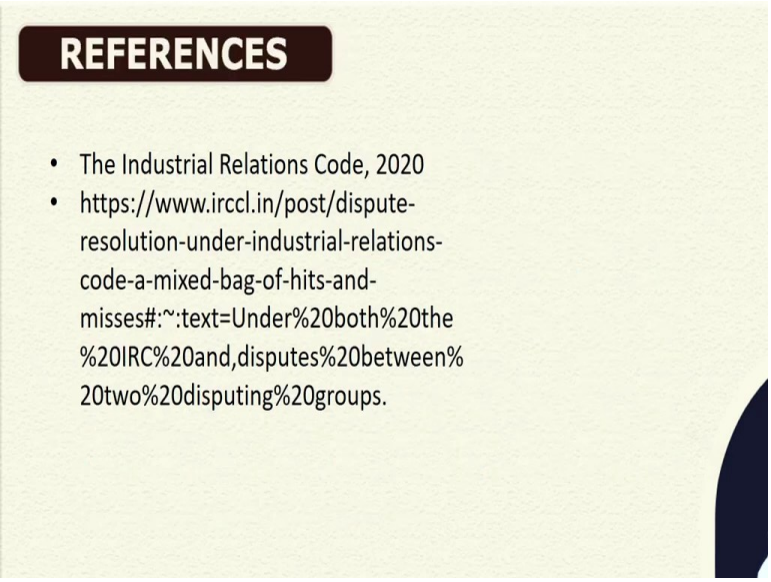

So, as I said, the IR code has contributed to the expeditious settlement of disputes. And the process is simplified. Thank you.