Title Page

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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>SERIAL NUMBER</th>
<th>TOPIC</th>
<th>PAGE NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td><em>INTRODUCTION TO THE PROJECT</em></td>
<td>4</td>
</tr>
<tr>
<td>2.</td>
<td><em>GROWTH OF INDUSTRIAL DISPUTE LEGISLATION</em></td>
<td>8</td>
</tr>
<tr>
<td>3.</td>
<td><em>‘INDUSTRY’ UNDER THE INDUSTRIAL DISPUTES ACT</em></td>
<td>9</td>
</tr>
<tr>
<td>4.</td>
<td><em>TRIPLE TEST (Bangalore Water Supply vs. A. Rajjappa)</em></td>
<td>13</td>
</tr>
<tr>
<td>4.1</td>
<td>Dominant nature test</td>
<td></td>
</tr>
<tr>
<td>4.2</td>
<td>Cases Overruled</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td><em>POSITION OF DIFFERENT BODIES WITH RESPECT TO THE I.D. ACT</em></td>
<td>19</td>
</tr>
<tr>
<td>5.1</td>
<td>Is Municipal Corporation an Industry?</td>
<td></td>
</tr>
<tr>
<td>5.2</td>
<td>Is Hospital an Industry?</td>
<td></td>
</tr>
<tr>
<td>5.3</td>
<td>Educational Institutions</td>
<td></td>
</tr>
<tr>
<td>5.4</td>
<td>Is government department an industry?</td>
<td></td>
</tr>
<tr>
<td>5.5</td>
<td>Clubs</td>
<td></td>
</tr>
<tr>
<td>5.6</td>
<td>Solicitor’s firm or Lawyer’s Office</td>
<td></td>
</tr>
<tr>
<td>5.7</td>
<td>Agricultural Operation and Immovable Property</td>
<td></td>
</tr>
<tr>
<td>5.8</td>
<td>Position of other bodies</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
</tbody>
</table>
| 6. | 6.1 | **AMENDMENT ACT 1982**  
**Definition of Industry** | 39 |
| 7. |   | **INDUSTRIAL DISPUTES**  
**AMENDMENT ACT, 2010** | 42 |
| 8. |   | **CONCLUSION** | 45 |
1. INTRODUCTION

The question as to what is an industry has baffled the courts ever since the enactment of the industrial disputes act, 1947. Though the act provides the definition of a ‘industry’ in section 2 (j), the definition is not precise and has defied consistent interpretation. As a result, judicial effort has been directed towards evolving tests with reference to characteristics regarded as essential for constituting an ‘industry’. The cases decided by the courts however show that these tests have not been uniform. The courts have been guided by an empirical rather than an analytical approach. At times these tests have been liberally conceived and at times rather narrowly.

The Industrial Disputes Amendment Bill, 1982 sought to put an end to the floating state of the definition of an industry but in the process however it narrowed the concept of an ‘industry’ and opened up a debate on the curtailment of the benefits and protection available to employees under the earlier definition.

Industry plays a vital role in building the economic structure of the society. Therefore, the importance of labour and industrial laws in shaping the economy of the country cannot be ignored. We, in our country, are mainly embarking upon the industrial and technological development but mere technological advancement is likely to widen the social imbalance, for there should be the protecting laws which are needed to balance the relationship.
In order to understand the philosophy and ideology enshrined in the Industrial Disputes Act, 1947 and its functional impact on the present day national economy and industrial society in our country, it will be desirable to cast some light on the evolution of the said Act which was taking shape during the period when the entire nation was plunged in the Independence War and struggling for its political existence against the mighty British Empire.

In India the process of industrialization started during the middle of the 19TH Century with the British. In the beginning, industrial workers had absolutely no status and were indiscriminately exploited. The workmen worked on nominal wages for long hours and under the most unhealthy working conditions. The management style was authoritative and exploitative. Labour legislation during this period, when the workers had no bargaining capability vis-à-vis the employer was enacted only to regulate labour, such as the Workmen’s (Disputes) Act, 1860, which rendered workmen liable to criminal penalties for breach of contract.

After the First World War, labour legislation in India took shape at a rapid rate. The reasons were:

i. The nationalist movement,

ii. The establishment of ILO in 1919,

iii. The birth of the first central organization of workers, viz, the All India Trade Union Congress (AITUC) in 1920,
iv. The growing consciousness amongst the workers through increased knowledge of general economic conditions,

v. Impact of the trade union movement in other countries,

vi. Recommendations of the royal commission on labour in 1931, and


Major thrust of labour legislation was to provide some relief-in terms of safety, health and welfare-to the industrial workers to ensure the flow of production and to maintain labour management relations through Indian Factories Act, 1911, Workmen’s Compensation Act, 1923, Trade Unions Act, 1926, and Trade Disputes Act 1929.

The Second World War led government to introduce the Defence of India (DI) Rules in 1942. Rule 81A of DI rules empowered government to make special orders prohibiting strikes and lockout in the industries. The impact of ILO’s recommendations and conventions and the tripartite regulation, resulted in enactment of a series of amendments to the existing legislation, and in the introduction of the Industrial Employment (Standing Orders) Act 1946 which requires larger industrial establishments to frame and adopt regular standing orders.

The two Great World Wars of 1914-1918 and 1938-1942 not only disrupted the national economy but also affected the entire social and political order in the country to a great extent, and many far
reaching evil consequences were seen in the post war period. One of the peculiar consequences of the World War - 1 which was then noticed was that a favourable atmosphere was gaining momentum for the recognition of the contribution of the workforce in the national reconstruction and it was also being realized that the role of workforce ought to be identified and recognized as one of the important factors of production.

Consequently, a need was felt to evolve some new industrial arithmetic in which labour should be treated as a coordinating factor instead of a sub-ordinate factor of production, meaning thereby, the relations between the employer and the employees so far governed by the dominant theory of hire and fire began to lose its force and importance as well In the changed circumstances. Whateoover may be the far reaching consequences of First World War one of the immediate effects of it was that it brought general awareness amongst the labour force which indeed, affected the future course of labour legislation in our country.

After independence, serious efforts were made to protect industrial labour from exploitation. Towards this end a number of labour legislations were enacted such as Industrial Disputes Act, 1947, Minimum Wages Act, 1948, Payment of Bonus Act, 1965, and the Payment of Gratuity Act, 1972.
2. **Growth of Industrial Disputes Legislation**

The law relating to the investigation and settlement of industrial disputes is known as ‘Industrial Law’ or ‘Labour Law’. In India, the terms ‘industrial law’ and ‘labour law’ are often used interchangeably. They cover not only settlement of industrial disputes but also state intervention for social control through law to directly protect the claims of workers --- to wages, bonus, retirement benefits such as gratuity, provident fund and pension schemes, social security measures such as workmen’s compensation, insurance, maternity benefits. Therefore, the core of the labour law relates to problems in dealing with the conflict between industrial employers and employees over employment and social security.

Industrial Disputes legislation in India started with the enactment of the Trade Disputes Act, 1929, to regulate the settlement of labour management disputes. It provided for the establishment of courts of enquiry and boards of conciliation, for investigation and settling of trade disputes. This act prohibited strikes and lockouts without notice to public utility services.
3. ‘INDUSTRY’ UNDER THE INDUSTRIAL DISPUTES ACT

Section 2(j) of the Industrial Disputes Act, 1947 defines the term ‘industry’ “Industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

It is to be mentioned here that according to the phraseology of this definition one can easily brand any business activity or trade as an industry in order to attract the provisions of the Industrial Disputes Act, 1947. Normally speaking by industry it is meant production of goods, and wealth and with the cooperation of labour and capital, but it is not so under this Act.

This definition is in two parts. The first says that industry means any business, trade, undertaking, manufacture or calling of employers and the second part provides that it includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen. “If the activity can be described as an industry with reference to the occupation of the employers, the ambit of industry, under the force of the second part takes in the different kinds of activities of employees mentioned in the second part. But the second part standing alone cannot define industry. By the inclusive part of the definition the labour force employed in any industry is made an integral part of the industry for the
purposes of industrial dispute although industry is ordinarily something which employers create or undertake.” However concept that “industry is ordinarily something which employers create or undertake” is gradually yielding place to the modern concept which regards industry as a joint venture undertaken by the employers, and workmen, an enterprise which equally belongs to both.

Further it is not necessary to view the definition of industry under section 2(j) in two parts. The definition read as a whole denotes collective enterprise in which employers and employees are associated. It does not consist either by employers alone or employees alone.\(^1\) An industry exists only when there is relationship employers and employees, the former engaged in business, trade, undertaking, manufacture or calling of employees and the latter engaged in any calling, service, employment, handicraft or industrial occupation or avocation. There must, therefore, be an enterprise in which the employers follow their avocations as detailed in the definition and employ workmen.

Thus, a basic requirement of ‘industry’ is that the employers must be ‘carrying on any business, trade, undertaking, manufacture or calling of employers.’ There is not much difficulty in ascertaining the meaning of the words business, trade, manufacture, or calling of employers in order to determine whether a particular activity carried on with the co-operation of employer and employees is an

\(^1\) Management of Safdarjang Hospital, Delhi vs. Kuldip Singh, AIR 1970 SC 1407
industry or not but the difficulties have cropped up in defining the word ‘undertaking’.

“Undertaking” means anything undertaken, any business, work or project which one engages in or attempts, or an enterprise. It is a term of very wide denotation. But all decisions of the Supreme Court are agreed that an undertaking to be within the definition in section 2(j) must be read subject to a limitation, namely, that it must be analogous to trade or business.2 Some working principles have been evolved by the Supreme Court in a number of decisions which furnish guidance in determining what the attributes are or characteristics which would indicate that an undertaking is analogous to trade or business. First of these principles was stated by Gajendragadkar, J. in Hospital Mazdoor Sabha case as follows:

“As a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organized or arranged in a manner in which trade or business is generally organized or arranged. It must not be casual, nor must it be neither for one’s self nor for pleasure. Thus the manner in which

2 Workmen, I.S. Institution vs. I.S. Institution, AIR 1976 SC 145
the activity in question is organized or arranged, the condition of the co-operation between the employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which section 2(j) applies.”
4. TRIPLE TEST LAID DOWN IN BANGALORE WATER SUPPLY VS. A. RAJAPPA

In *Bangalore Water Supply vs. A. Rajappa*; a seven judge’s bench of the Supreme Court exhaustively considered the scope of industry and laid down the following test which has practically reiterated the test laid down in *Hospital Mazdoor Sabha* case:

**Triple Test**: where there is systematic activity, organized by cooperation between employer and employee for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, prima facie, there is an “industry” in that enterprise. This is known as triple test.

The following points were also emphasized in the case:

1. Industry does not include spiritual or religious services or services geared to celestial bliss, example, making, on a large scale, Prasad or food. It includes material services and things.

2. Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

3. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

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3 *AIR 1978 SC 548*

4 *Supra*
4. If the organisation is a trade or business it does not cease to be one because of philanthropy, animating the undertaking.

Therefore the consequences of the decision in this case are that professions, clubs, educational institutions cooperatives, research institutes, charitable projects and other kindred adventures, if they fulfil the triple test stated above cannot be exempted from the scope of section 2(j) of the act.

4.1 Dominant Nature Test

Where a complex of activities, some of which qualify for exemption, others not, involve employees on the total undertaking some of whom are not workmen or some departments are not productive of goods and services if isolated, even then the predominant nature of the services and the integrated nature of the departments will be true test, the whole undertaking will be “industry” although those who are not workmen by definition may not benefit by status.\(^5\)

Exceptions:

A restricted category of professions, clubs, co-operatives and even little research labs, may qualify for exemption if in simple ventures, substantially and, going by the dominant nature criterion substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

\(^5\) Bangalore Water Supply vs. A. Rajappa, AIR 1978 SC 548
If in pious or altruistic mission, many employ themselves, free or for small honorarium or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services, clinic or doctors serving in their spare hours in a free medical centre of ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied at a free or nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical are hired. Such elementary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

Sovereign functions, strictly understood, alone qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies. Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within section 2(j).

It was further observed that:

“Undertaking must suffer a contextual and associated shrinkage, so also, service calling and the like. This yields to the inference that all organized activities possessing the triple elements abovementioned, although not trade or business, may still be industry provided the nature of the activity, viz, the employer-
employee basis, bears resemblance to what is found in trade or business. This takes into the fold of “industry” undertakings, callings and services, adventures analogous to the carrying on of trade or business. All features other than the methodology of carrying on the activity, viz, in organizing the co-operation between employer and employee, may be dissimilar. It does not matter if on the employment terms there is analogy.”

4.2 Cases Overruled

The decisions of Supreme Court in Management of Safdarjung Hospital, Delhi vs. Kuldip Singh⁶; N.U.C. Employees vs. Industrial Tribunal⁷; Madras Gymkhana Club Employees Union vs. Management⁸; University of Delhi vs. Ram Nath⁹; Dhanrajgiri Hospital vs. Workmen¹⁰; and such other rulings whose ratio runs counter to the principles enunciated in Bangalore Water Supply vs. A. Rajappa case have been overruled.

The Constitution Bench of five judges in State of U.P. vs. Jai Bir Singh¹¹ after considering the rival contentions and closer examination of the decision in Bangalore Water Supply, held that a reference to a

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⁶ AIR 1970 SC 1406  
⁷ AIR 1962 SC 1080  
⁸ AIR 1968 SC 554  
⁹ AIR 1963 SC 1873  
¹⁰ AIR 1975 SC 2032  
¹¹ 2005 (5) SCC 1
larger bench for reconsideration of the decision was required for the following amongst other, reasons:

a) The judges delivered different opinions in the case of Bangalore Water Supply at different times and in some cases without going through, or having had an opportunity of going through, the opinion of some of the judges on the Bench. They have themselves recognized that the definition clause in the Act is so wide and vague that it is not susceptible to a very definite and precise meaning.

b) In the opinion of all of them it would be better that the legislature intervenes and clarifies the legal position by simply amending the definition of ‘industry’. The legislature did respond by amending the definition of ‘industry’, but unfortunately 23 years were not enough for the legislature to provide Alternative Dispute Resolution Forums to the employees of specified categories of industries excluded from the amended definition.

c) The legal position thus continues to be unclear and to a large extent uncovered by the decision of the Bangalore Water Supply case. In its opinion the larger Bench will have to necessarily go into legal questions in all dimensions and depth, keeping in view all these aspects.

Further, the Court in *Jaibir Singh case* expected the larger Bench which would review Bangalore Water Supply to look at the statute under consideration not only from the angle of protecting workers’
interests but also of other stake holders in the industry- the employer and the society at large.\footnote{12}{Bushan Tilak Kaul; ‘Industry’, ‘Industrial Disputes’, and ‘workmen’; conceptual frame work and judicial activism, I.L.I. Vol. 50.1 Jan-Mar 2008.}

The Court also stressed the need to reconsider where the line should be drawn and what limitation can and should be reasonably implied in interpreting the wide words used in section 2 (j). It stated that no doubt it is rather a difficult problem to resolve more so when both the legislative and the executive branches are silent and have kept an important amended provision of law dormant on the statue book. It observed that pressing demands of the competing sectors of employers and employees and the helplessness of the legislative and the executive branches in bringing into force the Amendment Act compelled it to make the present reference for constituting of a suitable bench for reconsidering Bangalore Water Supply’s case.
5. POSITION OF DIFFERENT BODIES WITH RESPECT TO INDUSTRIAL DISPUTES ACT

5.1 Is Municipal Corporation An Industry?

For the first time such a situation arose in the case of *Budge Municipality Vs P.R. Mukerjee* when Mr. Justice Chandra Shekara Iyer of the Supreme Court was asked to decide whether the Municipality is an industry within the meaning of the Industrial Disputes Act, 1947. The fact of this case was that two employees of the Municipality who were the members of Municipality Workers Union were suspended by the Chairman on the charges of negligence, insubordination and indiscipline. The workers were dismissed from the service saying that their explanations were unsatisfactory. The union questioned the dismissal and the matter was referred by the Government of West Bengal to the Industrial Tribunal for adjudication. The Tribunal directed the workers reinstatement in their respective offices by making an award saying that suspension of two employees was of victimization. The Municipality under Article 226 of the Indian Constitution took the matter to the High Court. The petition was dismissed and leave was granted under Article 132(1) of the Indian Constitution to make an appeal to the Supreme Court.

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13 1953, I. LLJ 195.
The Supreme Court analyzed this situation in the light of the Australian Judgment given in *Federated Municipal and Shire Council Employees Union of Australia Vs Melbourne Corporation*\(^\text{14}\) and observed that through every activity in which the relationship of employer and employee existed commonly understood at an industry, but still a wider and more comprehensive interpretation has to be given to such words to meet the rapid industrial progress and to bring about industrial peace, and economy and a fair. It was observed that in ordinary or non-technical sense business or industry means an undertaking were the capital and labour co-operate with each other for the purposes of producing wealth in the shape of goods and for making profits. In the opinion of the court every aspect of the activity in which the relationship of master and servant or employer and employees exists or arises does not become an industry. There is nothing however, to prevent statute from giving the words ‘industry’ and ‘industrial dispute’ a wider and more comprehensive import in order to meet the requirements of rapid industrial progress and to bring about in the interest of industrial peace and economy, a fair and satisfactory adjustment of relations between employers and workmen in a variety of field of activity.

It was further observed that ‘undertaking’ in the first part and industrial occupation or avocation in the second part of the section 2(j) obviously mean much more than what is ordinarily understood

\(^{14}\) 23. CLR 508
by trade or business. The definition was apparently intended to include within its scope what might not strictly be called a trade or business. Neither investment of capital nor profit making motive is essential to constitute an industry as they are generally necessary in business. A public utility service such as Railways, Telephones and supply of power, light or water to the public may be carried on by private companies or business corporations and if these public utility services are carried on by local bodies like a Municipality they do not cease to be an industry.

For the reasons stated above, Municipal Corporation was held to be an industry. Subsequently in *Baroda Borough Municipality vs. Its Workmen*\(^{15}\) also the corporation was held to be an industry.

*Nagpur Corporation vs. Its Employees*\(^{16}\); is another important judicial decision on this point. In this case the question for consideration was the meaning of the expression ‘analogous to the carrying of trade or business’ and the issue whether all departments of a municipal corporation are induced in the definition of industry. Answering the first question Supreme Court explained that as far as the meaning of the expression “analogous to the carrying on of a trade or business’ is concerned the emphasis was more on “the nature of the organized activity implicit

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\(^{15}\) AIR 1957 SC 110

\(^{16}\) AIR 1960 SC 675
in trade or business than to equate the other activities with trade or business.”

The following observations were made by the honourable Supreme Court:

1) A corporation is an “industry”. But “industry” cannot include what are called the legal or sovereign functions of the state. The legal functions described as “primary and inalienable functions of the state” though delegated to a corporation are necessarily excluded from the purview of the definition. Such legal functions shall be confined to legislative power, administration of law and judicial power.

2) The definition cannot be confined to trade or business or activities analogous to trade or business. If a service performed by an individual is an industry, it will continue to be so even if it is undertaken by a corporation. It is not necessary that the service must be trade in a different grab.

3) Neither the investment of capital, nor the existence of profit making motive is a necessary element in the modern conception of industry. Monetary consideration for service is, therefore, not essential characteristic of industry in a modern state.

4) If a service rendered by a corporation is an “industry” the employees in that department connected with the service
whether financial, administrative or executive would be entitled to the benefit of the Act.

5) If a department of a municipality discharges many functions, some pertaining to industry as defined in the act and others non-industrial activities, the predominant functions of the department shall be the criterion for the purposes of this act.

The activity of the Octroi department of Municipality is not an industry.\textsuperscript{17} But the Fire Brigade service maintained by municipal committee is a “service” and also an ‘undertaking’ and therefore, an ‘industry’ within the meaning of section 2(j) of the Act.\textsuperscript{18} A city improvement trust falls within the definition of industry.\textsuperscript{19} Thus it is clear that all department of the municipal corporation are not industry. The above test has to be applied which is laid down by the Supreme Court for the purposes of determining which departments are industry and which are not.

**5.2 Is Hospital An Industry?**

The question whether hospital is an industry or not has come for determination by the Supreme Court on a number of occasions and the uncertainty has been allowed to persist because of

\textsuperscript{17} Abdul Sabir Khan vs. Municipal Council Bhandara, 1970 Lab IC 488 (Bom)

\textsuperscript{18} Workmen of Fire Brigade Section of the Municipal Committee, Faridabad vs. K.I. Gosain, AIR 1970 Punj 287

\textsuperscript{19} Subbramaniyam and Others vs. Nagpur Improvement Trust, (1960) 19 FJR 37
conflicting judicial decisions right from Hospital Mazdoor Sabha case to the Bangalore Water Supply vs. A. Rajappa.

In *State of Bombay vs. Hospital Mazdoor Sabha*\(^{20}\) case, the Hospital Mazdoor Sabha was a registered trade union of the employees of hospitals in the State of Bombay. The services of two of its members were terminated by way of retrenchment by the government and the union claimed their reinstatement through a writ petition. It was urged by the state that the writ application was misconceived because hospitals did not constitute an industry. The group of hospitals were run by the state for giving medical relief to citizens and imparting medical education. The Supreme Court held the group of hospitals to be an industry and observed as follows:

1. The State is carrying on an undertaking under section 2(j) when it runs a group of hospitals for purpose of giving medical relief to the citizens and for helping impart medical education.

2. An activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking.

3. It is the character of the activity in question which attracts the provisions of section 2(j). Who conducts the activity and

\(^{20}\) *Ibid*
whether it is conducted for profit or not makes a material difference.

4. The conventional meaning attributed to the words, “trade and business” has lost some of its validity for the purposes of industrial adjudication. It would be erroneous to attach undue importance to attributes associated with business or trade in the popular mind in days gone by.

Applying the above principles an Ayurvedic College of Pharmacy, manufacturing medicines for sale and for benefit of students of the college besides other activities of the college was held to be an industry.21

*Hospital Mazdoor Sabha* case was overruled by Safdarjung Hospital case. But Safdarjung Hospital and Dhanrajgiri Hospital cases have now been overruled in *Bangalore Water Supply vs. A. Rajappa* and *Hospital Mazdoor Sabha* case has been rehabilitated.

A group of hospitals at Bikaner attached to the Sardar Patel Medical College was held to be an industry and it was observed that the fact that hospitals are attached to the educational institution would not bring any material change in their character.22

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21 Lalit Hari Ayurvedic College of Pharmacy vs. Workers Union, AIR 1960 SC 1261
22 Hospital Employees Union vs. State; AIR 1971 Raj 65

*Shahir Issani*
In *Keraleeya Ayurveda Samajam Hospital and Nursing Home, Shoranpur vs. Workmen*\(^{23}\); the Ayurvedic institution was registered under the Registration of Societies Act. It was running a hospital, nursing home and an Ayurvedic School. It was held to be an industry for the following reasons: It was engaging employees in its different departments; the institution where Ayurvedic medicines were prepared was registered as a factory under the Factories Act; for services, rendered by way of treatment, fee was charged from citizens, and the establishment was organized in a manner in which trade or business was undertaken.

Thus on the analysis of the entire case law up to Bangalore Water Supply case on the subject it can be said that such hospitals as are run by the Government as part of its sovereign functions with the sole object of rendering free service to the patients are not industry. But all other hospitals, both public and private; whether charitable or commercial would be industry if they fulfil the triple test laid down in Bangalore Water Supply case.

### 5.3 Educational Institutions

In *University of Delhi vs. Ram Nath*\(^{24}\); the respondent Ram Nath was employed as driver by University College for Women. Mr. Asgar Mashih was initially employed as driver by Delhi University but was later transferred to the University College for women in 1949.

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\(^{23}\) (1979) I LLJ 115 (Kerala)

\(^{24}\) AIR 1963 SC 1873
The University of Delhi found that running buses for transporting the girl students of women’s college has resulted in losses and it therefore decided to discontinue that facility and consequentially the services of the above two drivers were terminated. The above termination was challenged on the ground that the drivers were workmen and the termination of their service amounted to retrenchment. They demanded payment of retrenchment compensation under section 25-F of the Act by filing petitions before the Industrial Tribunal. The tribunal decided the matter in favour of the drivers and hence the University of Delhi challenged the validity of the award on the ground that activity carried on by the university is not industry. It was observed by the Supreme Court that work of imparting education was more a mission and a vocation than a profession or trade or business and therefore University is not an industry. But this decision has been overruled by the Supreme Court in Bangalore Water Supply case in view of triple test laid down in that case. It was held that even a university would be an industry although its employees would not be workmen under Section 2(s) of the Act.

In *Brahmo Samaj Education Society vs. West Bengal College Employees Association*\(^{25}\); the society owned two colleges. A dispute arose between the society and non-teaching staff of the college. It was pleaded that society was purely an educational institution and

\(^{25}\) (1960) I LLJ 472 (Cal)
not an industry because there was no production of wealth with the co-operation of labour and capital as is necessary to constitute an industry. The Calcutta High Court observed that our conception of industry has not been static but has been changing with the passage of time. An undertaking which depends on the intelligence or capacity of an individual does not become an industry simply because it has a large establishment. There may be some educational institutions to which pupils go because of excellence of teachers; such institutions are not industry. On the other hand, there may be an institution which is so organized that it is not dependant on the intellectual skills of any individual; but it is a organization where a number of individuals join together to render services which might have a profit motive. Many technical institutions run on those lines. There are again institutions which do business by manufacturing or selling things and thereby making profit they certainly come under the definition of “industry”.

In Osmania University vs. Industrial Tribunal Hyderabad\(^{26}\); a dispute having risen between the Osmania University and its employees, the High Court of Andhra Pradesh, after closely examining the constitution of the University, held the dispute not to be in connection with any industry. The correct test for ascertaining whether a particular dispute is between capital and

\(^{26}\) (1960) I LLJ 593 (AP)
labor, is whether they are engaged in co-operation, or whether the dispute has arisen in activities connected directly with, or attendant upon, the production or distribution of wealth.

In *Ahmedabad Textile Industry’s Research Association vs. State of Bombay*\(^{27}\); an association was formed for founding a scientific research institute. The institute was to carry on research in connection with the textile and other allied trades to increase efficiency. The Supreme Court held that “though the association was established for the purpose of research, it main object was the benefit of the members of the association, the association is organized, and arranged in the manner in which a trade or business is generally organized; it postulates co-operation between employers and employees; moreover the personnel who carry on the research have no right in the result of the research. For these reasons the association was held to be an “industry”.

Since *University of Delhi vs. Ram Nath*; which has been overruled by the Supreme Court in Bangalore Water Supply case, the recent position is that the educational institutions including the university are industry in a limited sense. Now those employees of educational institutions who are covered by the definition of workman under section 2(s) of the Industrial Dispute Act, 1947 will be treated as workman of an industry.

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\(^{27}\) AIR 1961 SC 484
5.4 Is Government Department An Industry?

In *State of Rajasthan vs. Ganeshi Lal*\(^{28}\); the labour court had held the law department of Government is an industry. This view has been upheld by the single judge and division bench of the High Court. It was challenged by the state before the Supreme Court.

It was held that the Law Department of Government could not be considered as an industry. Labour Court and High Court have not indicated as to how the Law department is an industry. They merely stated in some cases certain departments have been held to be covered by the expression industry in some decisions. It was also pointed out that a decision is a precedent on its own facts.

5.5 Clubs

Clubs or self-service institutions or non-proprietary member's club will be industry provided they fulfil the triple test laid down in Bangalore Water Supply Case.

In *Cricket Club of India vs. Bombay Labour Union*\(^{29}\); the question was whether the Cricket Club of India, Bombay which was a member club and not a proprietary club, although it was incorporated as a company under the Companies Act was a industry or not. The club had membership of about 4800 and was employing 397 employees. It was held that the club was a self-
service institution and not an industry and “it was wrong to equate the catering facilities provided by the club to its members or their guests with a hotel. The catering facility also was in the nature of self-service by the club to its members. This case has now been overruled.

_Madras Gymkhana Club Employees Union vs. Management_\(^{30}\); is another case on this point. This was a member’s club and not a proprietary club with a membership of about 1200. Its object was to provide a venue for sports and games and facilities for recreation and entertainment. It was running a catering department which provided food and refreshment not only generally but also on a special occasion. It was held that the club was a member’s self-serving institution and not an industry. No doubt that the material needs or wants of a section of the community were catered but that was not enough as it was not done as part of trade or business or as an undertaking analogous to trade or business. This case has also been overruled.

Both Cricket Club of India and Madras Gymkhana are now ‘industry’ as they fulfil the triple test as laid in Bangalore Water Supply case. Both are systematically organized with the cooperation of employer and employee for distribution of service to satisfy human wishes.

\(^{30}\) AIR 1968 SC 554
5.6 Solicitor’s Firm or Lawyer’s Office

In *N.N.U.C. Employees vs. Industrial Tribunal*[^31^]; the question was whether a solicitor’s firm is an industry or not. It was held that a solicitor’s firm carrying on work of an attorney is not an industry, although specifically considered it is organized as an industrial concern. There are different categories of servants employed by a firm, each category being assigned by separate duties and functions. But the service rendered by a firm, each category being assigned separate duties or functions. But the service rendered by a solicitor functioning either individually or working together with parties is service which is essentially individual; it depends upon the professional equipments, knowledge and efficiency of the solicitor concerned. Subsidiary work which is purely incidental type and which is intended to assist the solicitor in doing his job has no direct relation to the professional service ultimately rendered by the solicitor. The work of his staff has no direct or essential nexus or connection with the advice which it is the duty of the solicitor to give to his client. There is, no doubt, a kind of cooperation between the solicitor and his employees, but that cooperation has no direct or immediate relation to the professional service which the solicitor renders to his client. This case has been overruled again in Bangalore Water Supply case and now a

[^31^]: AIR 1962 SC 1080
solicitor’s firm employing persons to help in catering to the needs of his client is an industry.

5.7 **Agricultural Operation and Immovable Property**

The carrying on of agricultural operations by the company for the purposes of making profits, employing workmen who contribute to the production of the agricultural commodities bringing profits to the company was held to be an industry within the meaning of this clause. Where a Sugar Mill owned a cane farm and used its produce for its own consumption and there was evidence that the farm section of the mill was run only to feed the mill, it was held that the agricultural activity being an integral part of industrial activity, the farm section was an industry.32

5.8 **Position of Other Bodies**

A Co-operative Milk Society33, an Oil Distribution Company34, a chamber of commerce35, a partnership firm of accountants36, a registered association of cloth merchants37, a business of loading

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32 Thiru Arcoran Sugars Ltd. vs. Industrial Tribunal Madras, (1970) II LLJ 249
33 Co-operative Milk Societies Union Ltd vs. State of West Bengal, (1958) II LLJ 61 (Cal)
34 Standard Vacuum Oil Company, Madras vs. Gunaseelam M.G., (1954) II LLJ 656 (LAT)
35 The Upper India Chamber of Commerce vs. S.N. Agarwal, (1951) II LLJ 200
36 Industrial Employer’s Union U.P. vs. Price Water House Peat and Co., Kanpur, (1963) II LLJ 273
37 Kanpur Kapra Committee Syndicate vs. Registered Kapra Committee, (1954) I LLJ 86
and unloading goods\textsuperscript{38}, book shop\textsuperscript{39}, a hair cutting saloon\textsuperscript{40}, Railways\textsuperscript{41}, A Pharmacy\textsuperscript{42} and a Dock Labour Board\textsuperscript{43} are all held to be industry within the meaning of the term under 2(j) of the Act.

In \textit{Bombay Panjrapole vs. Workmen}\textsuperscript{44}, the main income of Bombay Panjrapole Bhuleshwar was from immovable properties, donations and sale of milk. The Managing Committee of Trustees had decided some time back to upgrade the infirm cattle and rear them into good animals. The expenses incurred in connection with the treatment of the sick and infirm animals were also negligible compared to the total expenses of the institution. These activities were held to be an industry as their activity of maintaining cows and bulls could be considered as an investment. It was certainly carried on as a business although it was not pursued in the same way as absolute businessmen.

In \textit{Bhaskaran vs. S.D.O}\textsuperscript{45}, the Kerala High Court held that the Post and Telegraph Department was an industry. It was further held

\textsuperscript{38} Sri Duppada Venkateswarulu vs. Sri Seetharamaswami Naidu, (1953) II LLJ 742

\textsuperscript{39} P.C. Dwadesh Sheni and Co. vs. Its Workmen, (1954) II LLJ 539

\textsuperscript{40} Central Hair Cutting Saloon vs. Hrishikesh Pramanik, (1961) I LLJ 569

\textsuperscript{41} Somu Kumar Chatterjee vs. District Signal, (1970) II LLJ 179

\textsuperscript{42} Lalit Hari Ayurvedic College Pharmacy, Philibhit vs. Workmen, AIR 1960 SC 1261

\textsuperscript{43} Management of Dock Labour Board vs. Industrial Tribunal and Anr; (1996) I Lab LJ 5 (AP)

\textsuperscript{44} AIR 1971 SC 2422

\textsuperscript{45} (1982) II LLJ 248 (Kerala)
that the government employees, who are governed by service rules fall within the purview of the Industrial Disputes Act.

In *Om Prakash vs. Executive Engineer S.Y.L. Canal Division Co*\(^{46}\); an interesting question arose whether the irrigation department of the State Government can be termed as an industry? It was held that by mere fact that water was supplied by charging certain rates cannot warrant a finding that the state is indulging in trade or business activity. It is a kind of activity that cannot be left to the Private Enterprise and therefore, this department is not an industry under this section.

But in another case before the Supreme Court it was held that the irrigation department was an industry. The main function of this department when subjected to triple test as laid down in the Bangalore Water Supplies case, came within the ambit of industry.\(^{47}\)

In *Soundarajan and Ors vs. Secretary to Government of India, Ministry of Labour*\(^{48}\); the Ministry of Defence had two wings, namely the Defence Service and the Defence production. Ordinance factories were being run under the latter. It was held that the Ordinance depot is an industry. Merely because the Military Department is run by the Central Government in the exercise of its

\(^{46}\) (1985) I LLJ 16 (P&H)

\(^{47}\) Des Raj vs. State of Punjab and Ors; (1988) II Lab LJ 149 (SC)

\(^{48}\) (1994) II LLJ 665 (Mad)
sovereign functions, the ordinance depot will not cease to be an industry if it is severable from the other unit.

It was held in *Chief Conservator of Forest & Anr vs. Jagannath Moruti Kondhare*\(^{49}\); that the scheme of work undertaken by the Forest Department could not be regarded as a sovereign function of the state. Therefore, Forest Department is an industry.

It was held in *All India Radio vs. Santosh Kumar*\(^{50}\); that All India Radio and Doordarshan carry on commercial activity for profit by getting commercial advertisements telecast or broadcast. These functions carried on by them cannot be said to be of purely sovereign nature and hence these are industries within the definition of this Act. Similarly the Telecommunication Department of Union of India is also engaged in commercial activity and is not discharging any sovereign functions of state and hence is an industry.

In *R. Sreenivasa Rao vs. Labour Court, Hyderabad and Anr*\(^{51}\); the National Remote Sensing Agency was held to be an industry under section 2(j) of the Industrial Disputes Act as it does not perform any sovereign function. Some important functions of the Agency relate to consultancy services of survey facilities which are non-sovereign functions.

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\(^{49}\) (1996) II LLJ 1223 (SC)  
\(^{50}\) AIR 1998 SC 941  
\(^{51}\) (1990) II Lab LJ 577 (AP)
In *Karnani Properties Ltd vs. State of West Bengal*\(^{52}\); the Supreme Court held that the appellant company, a real estate company owning mansions and engaged in the activity of leasing those to tenants, which employed workers for their maintenance was an industry within the meaning of section 2(j).

In *A.S. Production Agencies vs. Industrial Tribunal Haryana*\(^{53}\); it was held that while ascertaining the amplitudes of the expression ‘undertaking’ in the definition of ‘industry’, a restricted meaning has to be assigned to it. Viewed in this light the painting section of factory was not an industry.

It was held in *H.K. Makwana vs. State of Gujarat and Ors*\(^{54}\); that the employment offered to persons of the scarcity relief work as undertaken by the state cannot be said to be employment in ‘industry’ as defined in Section 2(j) because it is the primary and inalienable function of the state to provide livelihood to persons who are affected natural calamities and secondly relief work is not a business or trade. It is not a systematic activity but is carried out casually at different places depending on the calamities in a particular area.

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\(^{52}\) (1990) 4 SCC 472

\(^{53}\) AIR 1979 SC 170

\(^{54}\) (1995) I LLJ 801 (Guj)
In *Bharat Bhawan Trust vs. Bharat Bhawan Artists Association and Anr*\(^5\), the Supreme Court observed that the trust was engaged only in the promotion of art and preservation of artistic talent. Such activities were not for large scale production of goods and services involving in systematic activity, the co-operation of the efforts of the employer and employee. Therefore the appellant trust was not an industry.

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\(^5\) (2001) II LLJ 1064 (SC)
6. **AMENDED DEFINITION OF ‘INDUSTRY’ UNDER THE INDUSTRIAL DISPUTES (AMENDMENT) ACT, 1982.**

6.1 **Industry**

‘Industry’ means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contract) for the production, supply or distribution of goods or services with a view to satisfy human wants or whether or not;

i) Any capital has been invested for the purpose of carrying on such activity; or

ii) Such activity is carried on with a motive to make any profit or gain and includes;

   a) Any activity of the Dock Labour Board established under Section 5-A of the Dock Workers;

   b) Any activity relating to the promotion of sales or business or both carried on by an establishment,

But it does not include:

a) Any agricultural operation except where such “agricultural operation” is carried on in an integrated manner with any other activity and such other activity is the predominant one.
Explanation: For the Purposes of this sub-clause “agricultural operation” does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantation Labour Act, 1951; or

1. Hospitals or dispensaries; or

2. Educational, scientific, research or training institutions; or

3. Institutions owned or managed by organization wholly or substantially engaged in any charitable, social or philanthropic service; or

4. Khadi or village industries; or

5. Any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the central government dealing with defence research, atomic energy and space; or

6. Any domestic service;

7. Any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by individual or body of individuals in relation to such profession is less than ten; or

8. Any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or
other like body of individuals also in relation to such activity is less than ten;

The Industrial Disputes (Amendment) Act, 1982 enacts altogether different definition of industry. This amended definition has not been enforced till now. It nullifies the effect of many judicial decisions and attempts to clarify conflicting views arising out of different interpretations of the word ‘industry’ adopted by the Supreme Court in various cases. On account of conflicting judicial decisions it had become difficult to understand the meaning of the word industry. The amended definition incorporates to a greater extent the views of the Supreme Court expressed in the case of Bangalore Water Supply vs. A. Rajappa.
7. THE INDUSTRIAL DISPUTES (AMENDMENT) ACT, 2010

The Industrial Disputes Act 1947 provides a framework for investigation and settlement of industrial disputes. The Industrial Disputes (Amendment) Bill, 2010 was finalized after detailed consultations with stake holders and the Government had formulated the amendment proposals mainly on the issues on which consensus were arrived at.

The Industrial Dispute (Amendment) Bill, 2009 was introduced in the Rajya Sabha on 26.2.2009. The Bill was referred to the Parliamentary Standing Committee on Labour. The Committee examined the Bill and made certain recommendations for further modifications to the amendments proposed in the Bill. The Government accepted some of its recommendations.

The amendment proposals in the Industrial Disputes (Amendment) Act, 2010 inter-alia, seek to amplify the definition of ‘appropriate Government’, enhance the wage ceiling prescribed for supervisors, provide direct access for workman to Labour courts or Tribunal in case of individual disputes, expand the scope of qualifications of Presiding Officers of Labour Courts or Tribunal, setting up of Grievance Settlement Machinery and empowerment of Industrial Tribunal-cum-Labour Courts to enforce decree.
The Bill proposed to make a specific provision in the Act by amending the Section 38(2) of the Act that Government may make rules to decide and review the salaries and allowances and other terms and conditions for appointment of Presiding Officers. Details will be worked out while framing the rules.

To Summarise, the main amendments in the I.D. Act are:

1. Amplification of the definition of ‘Appropriate Government’;
2. To enhance the wage limit from Rs.1600/- per month to Rs. 10,000/- per month to make the provision meaningful and in tune with the definition of workman in other labour laws such as Payment of Bonus Act, 1965, Payment of Wages Act, 1936 and Employees’ State Insurance Act, 1948.
3. To provide a grievance ventilation and redressal machinery within an establishment having 20 or more workmen with one stage appeal at the level of the Head of the Industrial Establishment in order to promote better industrial relations at the industrial establishment level.
4. To provide individual workman direct access to Labour Courts/ Tribunals in cases of retrenchment, discharge, dismissal or termination of services.
5. To make officers of the Central Labour Service/State Labour Service/Indian Legal Service eligible for the post of Presiding Officers in the Central Government Industrial Tribunals–cum-Labour Courts for addressing the problem of availability of Presiding Officers.
6. To empower Government to make rules to decide and review the salaries and allowances and other terms and conditions for appointment of Presiding Officers.

7. To empower Central Government Industrial Tribunals, Labour Courts and National Tribunals to execute their awards/orders/settlements as a decree of the civil court.
8. CONCLUSION

The decision of the Court in the *Bangalore Water Supply case* was a seminal moment as far as the question whether Recreational Clubs fall under the definition of Industry. The Court rejected the argument of exclusive nature of the clubs and the argument that they do not serve the community. These two arguments founded the basis of Justice Hidayathullah’s decision in the Madras Gymkhana Club Case.

The Court in the BWS case observed that the clubs are open to public for membership subject to their own rules. The court said that if there is productive cooperation between employer and employee then a conflict is bound arise between them, be it a social club, mutual benefit society, public service or professional office. Tested on this yardstick, most clubs will fail to qualify for exemption.

However the researcher feels that with the usage of such a sweeping test like the triple test, lot of institutions which were never envisaged to be industries have come under the purview of the Industrial Disputes Act. That the test is ‘sweeping’ has already been stated by the Apex court in the Coir Board Ernakulum Case. The researcher also does not subscribe the view of Justice Hidayatullah in the Madras Gymkhana Case that “size of the club or the largeness of its membership or the number or extent of there activities” should not be considered. On the other hand the researcher feels the size of the club should be made the sole criterion to base the decision as to whether a
club qualifies to be an industry or not. His arguments are substantiated by the fact that the Industrial Dispute (Amendment) Act 1982 prescribes the same.

It is hereby argued that there is a need to adopt a middle path between the two decisions. It is submitted that a strict adherence to Justice Hidayatullah’s position in Madras Gymkhana case will put every club outside the purview of the term industry and thereby will confirm the concern of Justice Krishna Iyer that it is not reasonable to allow such an organized institution to be outside the bounds of the Act.

At the same time, the application of the triple test in the case of industries will bring every club under the purview of the term industry. There exists countless recreational clubs both in Rural and Urban India catering to various sections of the people. While some of them, the larger ones and the ones run on a grand scale have the character of industry the others are merely an association of people in pursuance to a collective interest in a particular activity that possess little or no attributes of an industry. A sweeping test on the likes of the ‘Triple Test’ will needless to say prove counterproductive thus depriving a sizeable section of the populace of an important source of entertainment or recreation or academic knowledge.
The ‘collateral damage’ as result of the triple test can be avoided by making the number of personnel the club employs as the criterion to distinguish the Clubs.

Having said that, the researcher concludes by placing reliance on Lord Denning’s words that The duty of the court is to interpret the words that the legislature has used; those words may be ambiguous, but even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited’.

Additionally the researcher feels that an over-expansive definition of the word `industry’ might be a deterrent to private enterprises in India where employment opportunities are scarce. Needless to say, a worker-oriented approach in construing the definition of industry, unmindful of the interest of the employer, would be a one-sided approach and not in accordance with the provisions of the Act. There is an urgent necessity to interpret industrial law to ensure that neither the employers nor the employees were in a position to dominate the other.
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