CHAPTER III

THE INDUSTRIAL DISPUTES ACT, 1947:
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A. INTRODUCTION

'Clarity' is the destination of all 'definitions'. Sketching out the frontiers and alienating the terminology used in a particular Statute from the realm of its common usage where it may have multi-dimensional meanings and to ascribe one, in a particular context, is the fundamental purpose a definition serves. That is, a word might have a very wide meaning in its conventional sense. By qualifying such word under the 'definition', the wide meaning of that particular word can be narrowed down or enlarged according to the existing needs. A well-worded definition, thus, is fairly comparable to a neatly stitched garment by a proficient tailor where as the general meaning of the same word can be compared to yards of cloth yet to be stitched.

Being an enemy of ambiguity, a 'definition' normally fights against it. Legal definition, a fortiori, is the “crystallization of a legal concept” which seeks to promote “precision” and helps in “rounding off blurred edges”. Incorporation of a Chapter on definitions in a Statute provides “a type of insurance against certain risks of confusion”. Whatever “mischief
a statute seeks to suppress may reign supreme if the definitions given in the statute create more problems than they seek to resolve”. Therefore, “clarity and consistency without burdensome repetition”\(^1\) should be the basic tenet of definitions.

Although the *Industrial Disputes Act*, 1947 defines several pivotal words namely, “Industry”, “Industrial Dispute”, “Workmen”, “Appropriate Government”, “ Strikes”, “Lockouts”, “Layoff”, “Retrenchment”, “Closure”, etc., the discussion is confined to the first three terms, i.e., “Industry”, “Industrial Disputes”, and “Workmen” since the focus of this Thesis is not a critical evaluation of the definitions in the Act but the dispute-settling machineries there-in.

We shall first take up the definition of ‘Industry’ because unless the activity being carried on is an ‘Industry’, as defined under the Act, the disputes, that may arise therein would not be ‘industrial disputes’. Then the machineries provided under the Act cannot be set in motion for the resolution of such disputes.

**B. “INDUSTRY”**

According to section 2(j), “industry” “*means* any business, trade, undertaking, manufacture or calling and *includes* any calling, service,

\(^1\) Read Dickerson, *Legislative Drafting* 89 (1954).
employment, handicraft or industrial occupation or avocation of workmen”. The Australian definition\(^2\) is an inclusive definition. The Indian definition, however, uses both “means” and “includes”. Therefore, it is both restrictive and enlarging. Probably, when the Act was passed, the immediate requirement was a workable definition of ‘industry’ and it was taken care of by imitating the Australian definition without due regard for the interpretations placed upon the definition by the Australian Courts.

It may be submitted, at the outset, that the definition of “industry” under Section 2(j) of the Act has been a hard nut to crack as a plethora of cases decided by the Supreme Court establishes. The statutory definition defies some of the ordinary notions associated with “industry” or an industrial activity. When it is said that a person or a group of persons has/have established an industry, one would assume, probably, rightly, that there has been capital investment and that the industrial activity has been undertaken to produce goods on a large scale for selling the same to the public or for rendering material services to the community for a price with a view to make profits. But, the Courts have ruled that neither capital

\(^2\) S.4 *Commonwealth Conciliation And Arbitration Act*, 1904 – Industry includes-

(i) Any business, trade, manufacture, undertaking or calling of employers on land or water;
(ii) Any calling, service, employment, handicraft or industrial occupation or avocation of employees on land or water.
(iii) A branch of industry and a group of industries.
investment nor profit motive is a *sine qua non* while determining whether an activity is an industry or not.\(^3\)

A scrutiny of case law bearing upon the definition of “industry” establishes that an “industry” is a systematic activity carried on by the employer with the co-operation of his workmen to produce goods or provide services with a view to satisfy material human wants or needs.\(^4\)

While the Courts have consistently ruled that spiritual activity cannot be brought within the compass of the definition of ‘industry’,\(^5\) the same cannot be said as regards Judicial Opinions in respect of the questions, like, whether the activities of Hospitals, Universities, Solicitors’ Firms, Charitable Institutions or Clubs, to mention a few are industrial activities. The following brief outline would establish the confusion generated by contradictory Judicial Opinions of our Supreme Court.


i) Hospital Activity : "Industry"
Not an "industry"

ii) University : Not an "industry"
"Mother of Industries"

iii) Solicitor's Firm : Not an "industry"
"Industry"


8. University of Delhi v. Ramnath, A.I.R. 1963 S.C. 873, 875-76. But see Bangalore Water Supply and Sewerage Board v. A Rajappa, id., at 581, 573: Ahmedabad Textile Industries Research Association v. State of Bombay, A.I.R. 1961 S.C. 484, 485-86. However, in Safdarjung Hospital, the Research activity undertaken by the cluster of Hospital was considered as one of the grounds for deciding them as non-industries, supra note 3 at 278.


iv) Charitable Institutions : "Industry"\textsuperscript{12}

v) Social Clubs : Not "industries"\textsuperscript{13}

"Industries".\textsuperscript{14}

In \textit{Rajappa},\textsuperscript{15} a Constitution Bench of the Supreme Court, after a reappraisal of the decisions rendered earlier by the Apex Court bearing upon the definition of industry, crystallized the important features an activity should possess before the same could be classified as one falling within the ambit of the definition. According to \textit{Rajappa} Court, an activity would be "industry",

i) if it is a systematic activity,

ii) if it is organised by co-operation between employer and employees and


\textsuperscript{15}. \textit{Supra} note 3.
iii) if the underlying purpose is the production and or distribution of goods and services calculated to satisfy human wants and wishes (not wants or wishes of a spiritual or religious nature).

Incidentally, requirement of capital investment and profit motive have been declared to be inconsequential.

Heeding the Supreme Court’s exhortation in *Rajappa*, the Indian Parliament amended the definition of “industry” in 1982. The amended definition reads as under:

‘[I]ndustry’ means any systematic activity carried on by co-operation between any employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), 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 gain or profit, and includes –

(a) any activity of the Dock Labour Board…;

(b) any activity relating to the promotion of sales or business or both carried on by an establishment, but does not include-
(1) any agricultural operation except, where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation – For the purposes of this sub-clause, 'agricultural operation' does not include an activity carried on in a plantation ...; or

(2) hospitals or dispensaries; or

(3) educational, scientific, research or training institutions; or

(4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) Khadi or village industries; or

(6) 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

(7) any domestic service; or

(8) any activity, being a profession practiced by an individual or body of individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or

(9) any 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 individuals in relation to such activity is less than ten...\footnote{16}

It should be noted that the amended definition for reasons best known to the Executive has not been brought into force until today.

Incidentally, it has to be pointed out that Rajappa's interpretation of "industry" and the consequent Amendment of the definition do not appear to have eliminated the confusion and the controversy surrounding the definition. Because, in Coir Board,\footnote{17} a Two Judge Bench of the Supreme Court, by pointing out the "uncertainty" surrounding the definition of "industry", suggested that Rajappa's Decision be reconsidered by a larger Bench. While not entertaining the suggestion or the plea, the Supreme Court has ruled: "The judgement delivered by seven learned judges of this Court in [Rajappa] does not, in our opinion, require any reconsideration on a reference made by a two Judge Bench of this Court, which is bound by the Judgement of the larger Bench".\footnote{18}

\footnote{16}{S.2. The Industrial Disputes (Amendment) Act, 1982.}
\footnote{18}{(1999) 1 L.L.J. 1109 (S.C.)}
C. "INDUSTRIAL DISPUTES"

The term "Industrial Dispute" is 'a key concept of literally central importance"\(^\text{19}^\) in the area of Labour Laws which regulate the most delicate labour-management relations. A cordial relationship between employer and employees could exist only when 'Collective Bargaining' blooms. On the contrary, if the same fails "Industrial Disputes" germinate.

Section 2(k) of the Act defines 'industrial dispute' as follows:

"'industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person".

The definition of 'Industrial Dispute' has been divided into the following three parts by the Supreme Court in the significant *Dimakuchi Tea Estate* Case.\(^\text{20}\)

(a) Factum of the dispute;

(b) Parties to the dispute; and

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(c) Subject-matter of the dispute.\textsuperscript{21}

(a) Factum of the Dispute

The 'dispute' or 'difference' must be fairly definite and real in substance and not a mere personal quarrel or a grumbling or an agitation.\textsuperscript{22} According to Lord Denning, "a trade dispute exists, whenever a 'difference' exists and a 'difference' can exist long before the [disputants] become locked in a combat. It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening".\textsuperscript{23} The term 'Industrial Dispute', thus, connotes "a real and substantial difference having some element of persistency and likely if not adjusted to endanger the industrial peace".\textsuperscript{24}

'Industrial Dispute' involves controversy between the disputants in connection with the items specified in the definition but does not include metaphysical or spiritual or ideological controversies or controversies relating to formulation of defence policy, foreign treaties \textit{etc}. This, apart,

\begin{itemize}
\item \textsuperscript{21} \textit{Id.}, at 503-04.
\item \textsuperscript{22} \textit{Convey v. Wade}, (1909) A.C. 506, 509.
\item \textsuperscript{23} \textit{Beetham v. Trinidad Cement Ltd.}, (1960)1 All E.R. 274, 279 (P.C.)
\item \textsuperscript{24} \textit{Shambhu Nath Goyal v. Bank of Baroda}, (1978)1 L.L.J. 484, 486 (S.C.)
\end{itemize}
disputes between workmen and non-workmen or between government and employers do not fall within the ambit of the definition.

An 'industrial dispute' cannot exist unless a demand has been made by the workmen and rejected by their employer. Thus, both the processes, *i.e.*, putting forth the demand by one party and the rejection of the same by the other, are like 'subverse' and 'reverse' of the same coin and unless both are present there could not be any 'industrial dispute'.

It is *essential* that the disputants must have direct and substantial interest in the dispute. Moreover, the subject-matter of the dispute need not always relate to "economic" issues. It may also be a "conflict of rights" *i.e.*, the dispute may relate to the interpretation of the existing terms in the Collective Bargaining Agreement or the enforcement of rights created under such an Agreement.

(b) Parties to the Dispute

Section 2(k) speaks of three pairs which could be parties to an 'industrial dispute'. They are –

(i) Employers and Employers;

(ii) Employers and Workmen; and

(iii) Workmen and Workmen.
Invariably, it is the disputes between employers and workmen that have been almost always the subject-matter of either Conciliation or Arbitration or Adjudication under the Act.

(c) **Subject-matter of the Dispute**

The subject-matter of an ‘industrial dispute’, under the definition, should relate to “employment, non-employment, terms of employment or conditions of labour of any person”.

The term “any person” found in the last part of the definition does not mean “any body and every body in this wide world”.

In *Dimakuchi Tea Estate*, a Medical Officer, who was not a workman under the Act, was terminated on the ground of “Medical Incompetency”. Subsequently, *Assam Chah Karmachari Sangh*, a trade union functioning in the Estate, espoused his cause. It was contended by the union that the expression “any person” is of wide import and should not be equated with ‘any workman’.

But, the Apex Court held that “the expression ‘any person’ must be read subject to such limitations and qualifications as arise from the

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context".26 According to the Court, the two crucial limitations in this context are:

1) the dispute must be a real and substantial one in respect of which one of the parties to the dispute can give relief to the other, and

2) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment or conditions of labour, as the case may be, the parties to the dispute must have a direct and substantial interest.27

In the opinion of the Court, the workmen, as a class, must have a “community of interest in the cause which they have espoused” and this element was missing in the present Case. Thus, the expression ‘any person’, here, covers past, present and future workmen. The Court averred that it is the “community of interest of the class as a whole which furnishes the clear nexus between the dispute and the parties to the dispute”.

Even after a lapse of nearly five decades, the “Dimakuchi Doctrine” continues to retain its vitality. Following this Doctrine, Justice

26. Id., at 504.

27. Id., at 507. (Emphasis mine).

28. Id., at 510.
Hidayatullah has, in *All India Reserve Bank Employees’ Association*, ruled that “the direct interest must be a real and positive ... and not fanciful or remote”.

What number of workmen are required to espouse the case of an individual workman in order to convert an individual dispute into an industrial dispute is not clear from the available judicial verdicts. Courts have, often, used phrases like “a substantial number of workmen”, “appreciable number of workmen” etc., which give rise to a lot of uncertainty. Because, to decide what number could be substantial etc., one has to necessarily go by the facts and circumstances of each Case which, in all probabilities, would not be the same.

The Supreme Court, in *Western India Match Company*, has ruled that the community interest must be established through ‘espousal’ on or before the date of reference and not necessarily on the date when the cause occurred.

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29. *All India Reserve Bank Employees’ Association v. Reserve Bank of India*, (1965) 11 L.L.J. 175 (S.C.)

30. Id., at 188.

The present summary discussion on the definition of 'industrial dispute' would remain incomplete without reference to section 2-A inserted in 1965 under the Act. Section 2-A reads:

... [W]here any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workmen, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workman is a party to the dispute. [Emphasis added.]

By incorporating this provision, the legislature has done away with the requirement of 'espousal' by a trade union to convert an 'individual dispute' into an 'industrial dispute'. It should, here, be specified that in situations not expressly covered by section 2-A, 'espousal' of the cause of an individual workman is still a mandatory requirement.

D. "WORKMAN"

Section 2(s) defines "workman" as follows:

[W]orkman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceedings
under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

(a) who is subject to the Air Force Act, … or the Army Act, … or the Navy Act, …; or

(b) who is employed in the police service or as an officer or employee of a prison; or

(c) who is employed mainly in a managerial or administrative capacity; or

(d) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

The definition consists of three parts. The first part provides the statutory meaning. This part determines “workman” by reference to a person (including an apprentice) who is employed in any industry to do any “manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward”. This part may be considered as the “signification or denotation part”. The second part which is said to be an “extended connotation” of the word “workman” is designed to include something more than what it primarily denotes. That is, persons who have been dismissed,
discharged or retrenched in connection with or as a consequence of an industrial dispute and also persons whose dismissal, discharge or retrenchment has led to such a industrial dispute are also included in this part of the definition. On the contrary, in the third part of Section 2(s), certain categories of persons specified in clauses (i) to (iv) are expressly excluded. Hence, even if a person satisfies the requirements of the first two parts, he can not be declared as a ‘workman’ under the Act.\textsuperscript{32}

A person must have been employed in any kind of work listed out under section 2(s) before he can be designated a “workman”. The term “manual” work which appears first in the row under the definition comprises of work involving physical exertion as distinct from mental or intellectual exertion. “Unskilled” work, means, for example, the work of peons, dafteries, sweepers, etc. The category of “skilled” work includes the work of a bench chemist carrying out chemical analysis and recording results, work of a compounder, grinder etc. It should be pointed out that till recently the work of an artiste was also regarded as “skilled work”. A Division Bench of the Supreme Court, in a recent Case, where certain artistes had claimed relief under the Industrial Disputes Act against one of

\textsuperscript{32} See, Everestee v. District Labour Officer, 1999 (83) FLR 151, 155 (Ker.) (D.B.) (per Laxshmann, J.)
the premier art institutes, Bharat Bhawan Trust, Bhopal, has ruled that artistes engaged in production of drama or in the theatre management or to participate in a play can by no stretch of imagination be termed as ‘workmen’ because in performing their work, they have to bring in their artistic ability, talent and a sense of perception etc.\textsuperscript{33} Thus, the work done by the artistes, the Court added, is “essentially creative and freedom of expression [being] an integral part of it” can only be managed by “a person with an artistic talent and requisite technique”.\textsuperscript{34} Therefore, the question of any work being assigned by some other to an artiste does not arise at all. The other work, apart from acting, entrusted to artistes, as per the Court, is only “ancillary to the main work” and therefore, it is “inappropriate”\textsuperscript{35} to designate artistes as skilled workers to bring them under the definition of “workman”. The Supreme Court through this interpretation has given a new dimension to the world of creative art and, at the same time, restricted the meaning of the term “workman”.

The work termed as “technical” depends upon the special mental training or scientific or technical knowledge of the person employed.

\begin{itemize}
\item \textsuperscript{33} Bharat Bhawan Trust v. Bharat Bhawan Artistes’ Association, 2001-11-L.L.J 1064, 1067-68 (S.C.) (D.B.) (per Rajendra Babu, J.)
\item \textsuperscript{34} Id., at 1068.
\item \textsuperscript{35} Ibid.
\end{itemize}
Moreover, persons employed to undertake technical work fall within the parameters of the definition of “workman” irrespective of the amount drawn by them by way of wages.36

The word “operational”, inserted through an Amendment in 1982 has introduced superfluity and ambiguity37 in to the existing definition because the categories of work stated above subsume “operational” work also.

“Clerical” work, as ordinarily understood, is synonymous with routine, stereotype work which does not involve any initiative or creativity.

Supreme Court’s decisions establish that in deciding whether a person is a workman or not what matters is the nature of the actual work performed by an employed person and not his “glorious designation”.

In Reserve Bank of India38 the Supreme Court observed:

The question whether a particular workman is a supervisor within or without the definition of ‘workman’ is ultimately a question of fact, or, at least one of mixed fact and law... and will... depend upon the nature of the industry, the type of work in which he is engaged, the organizational set up of the

36. A fitter designated as “Technical Supervisor” drawing wages Rs.2500 per month would be a workman within section 2(s), see Keshod Nagar Palika v. Pankajgiri Tavargiri, 2000 (85) FLR 488, 490 (Guj.) (per Bhatt, J.)
37. Supra note 19 at 593.
38. All India Reserve Bank Employees’ Association v. Reserve Bank of India, supra note 29.
particular unit of industry and like factors. No doubt ... the work in a Bank involves layer upon layer of checkers and checking is hardly supervision....

Likewise, in *Arkal Govindraj Rao*, the Apex Court has reiterated:

Difference in salary is hardly decisive, nor the designation of a clerk by itself is decisive. Focus has to be on the nature of the duties performed... [The] high-sounding nomenclatures are adopted not only to inflate the ego of the employer but primarily for avoiding the application of the Act. They apart from being misleading are not in tune with free India's Constitutional culture...

Hence, “the dominant purpose of the employment must be first taken into consideration and gloss of some additional duties must be rejected while determining the status and the character of a person”.

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39. *Id.*, at 187.


41. *Arkal Govindraj Rao..., id.*, at 988.

42. *Id.*, at 987.
The expression “employed in any industry” under the Act, would thus take in the employees who are employed in connection with operations incidental to the main industrial activity.\footnote{J.K.Cotton Spinning and Weaving Co. Ltd v. Labour Appellate Tribunal, A.I.R. 1964 S.C. 737, 748.}

We may now turn to “Court of Inquiry”, the Report of which can, if acted upon at least, substantially reduce the incidence of industrial disputes which means, greater prospects for better economic development.