CHAPTER- VI
THE DEFINITION OF INDUSTRY – THE CHANGING PERCEPTIONS
6.1. Introduction:

The history of exploitation of labour is as old as the history of civilization itself. There has been an ongoing struggle by labourers and their organizations against such exploitation but it continues in one form or the other. The Industrial Disputes Act, 1947 is an important legislation in the direction of attaining fair treatment of labour and industrial peace, which are the *sina qua non* for sustained economic growth of any country.\(^1\)

6.2. Definition of Industry [Section 2(j)]:

There was no definition of 'industry' in the Trade Disputes Act, 1929. The present definition continues to be as originally enacted in the Industrial Disputes Act, 1947 (herein called as the Act). This definition is based on the Australian Statue, i.e., Section 4 of the Commonwealth Conciliation and Arbitration Act, 1904.\(^2\)


'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".³

This definition is both exhaustive and inclusive. The words used are of widest amplitude. A considerable amount of difficulty was faced while interpreting these different words. No doubt, the task of interpretation is straightforward. But because of varied forms of industry, especially after rapid industrial progress and widest language used in the definition, the concept of industry expanded in all directions.⁴ The various tests laid down in galaxy of cases carry inherent contradictions among themselves.

The present definition continues to be as originally enacted in the Industrial disputes Act 1947. Though this definition has not undergone any amendment, it has undergone variegated judicial interpretations.⁵ Hence in constructing the definition and opinion making the Courts have

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³ See Section 2(j) of the Industrial Disputes Act, 1947.
⁵ The definition of Industry in Section 4 of the Commonwealth Conciliation and Arbitration Act, 1904-34 is;
   i. any business, trade, manufacture, undertaking or calling of employers on land or water,
   ii. any calling, service, employment, handicraft or industrial occupation or vocation of employees on land and water; and
   iii. a branch of an industry and group of industries.
been influenced by the Australian decisions, which have been sub rosa all the time.\textsuperscript{6}

The definition of 'industry' is in two parts. In its first part it means any business, trade, undertaking, manufacture or calling of employers. By this part 'industry' is determined by reference to the occupation of employers. The Second part views the matter from the point of view of the employees and is designed to include something more in what the term principally denotes. By the second part of the definition any calling, service, employment, handicraft or industrial occupation or avocation of workman is included in the concept of industry. This part gives an extended connotation to this term. If an activity can be described as an industry with reference to the occupation of the employer, its ambit, by virtue of the second part takes in the different kinds of activities of employees mentioned therein. But the second part standing alone cannot be defined as an industry. An industry is to be found in every case of employment or service. An individual who employs as domestic servant gets service from him; but as his activity is neither business, nor trade, nor an undertaking, nor manufacture, nor calling of an employer, there is no industry. By the inclusive part of the definition the labour force employed in industry is made an integral part of industry for the purposes of

\textsuperscript{6} Sub rosa it is Latin word which means “all time valid”.

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industrial disputes, although industry is ordinarily something, which employers alone create or undertake.\textsuperscript{7}

The definition of 'industry' is both exhaustive and inclusive and is ambivalently comprehensive in scope. It is in two parts. The first says that it means any business, trade, undertaking, manufacture or calling of employers\textsuperscript{8} and then goes on to say that it includes any calling, service, employment, handicraft or industrial occupation or vocation of workmen\textsuperscript{8}. Thus one part defines it from the standpoint of the employers; the other from the standpoint of the employees. The first part of the definition gives the statutory meaning of industry. Whereas, the second part, deliberately refers to several other items of industry and brings them in the definition in an inclusive way.\textsuperscript{9}

The first part of the definition determines an industry by reference of occupation of employers in respect of certain activities. The activities are specified by five words namely, 'business', 'trade', 'undertaking', 'manufacture', or 'calling'. These words determine what an industry is and what the cognate expression 'industrial is intended to convey.

\textsuperscript{7} P.R. Bagari, "Law of Industrial Disputes", published by Eastern Law House, Calcutta.1972. at.75.
\textsuperscript{8} Management of Federation of Indian Chambers of Commerce and Industry v/s. Mittal - 1971 II LLJ SC 630.
\textsuperscript{9} Madras Gymkhana Club Employee's Union v/s. Gymkhana Club - 1967 II LLJ 720.
'Business' is a word of wide import. This expression is wider than the term 'trade' and is not synonymous with it and means practically 'anything which is not occupation as distinguished from pleasure.\textsuperscript{10}

'Trade' is not only in the etymological or dictionary sense, but also in legal usage, a term of widest scope; it may mean the occupation of a smaller shopkeeper equally with that of commercial magnate and may also mean a skilled craft. The word 'trade' in its primary meaning is exchange of goods for goods for money\textsuperscript{11} and in its secondary meaning it is 'any business carried on with a view to profiting whether manual or mercantile, as distinguished from the liberal arts or learned professions or from agriculture.\textsuperscript{11}

The occupation of men in buying and selling barter or commerce is generally considered, as trade'. Occasionally the work especially skilled work is also considered as a 'trade', e.g., the trade of goldsmith. But in the other sense 'trade' would include only persons in a line of business in which persons are employed as workmen. An activity whether it is 'trade' or 'business' will be an industry because both have been included in the definition of industry.\textsuperscript{12}

\textsuperscript{10} Madras Gymkhana Club Employee's Union v/s Gymkhana Club – 1967 II LL.J. 720.
\textsuperscript{11} Halsbury's Laws of England, 3\textsuperscript{rd} Edn, Vol 38. at 9.
The word 'undertaking' is the most elastic of all used in the definition. According to 'Webster's Dictionary' 'undertaking means 'anything undertaken or any business, work or project which one engages in or attempts as an enterprise. The word 'undertaking' in the context of the definition has been understood to mean 'any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade".13

'Manufacture' is kind of productive activity in which the making of articles or materials (often on a large scale) is by physical labour or mechanical power.14

Till the period of 1978 the Supreme Court exhibited a trend of mixed reactions to the definition of industry. Though the issue relating to municipality was settled by the Supreme Court in D.N. Banerjee v. P.R. Mukherjee.15 The issue was again figured in Corporation of City of Nagpur v. It's Employees.16 The issue relating to Hospitals was a settled issue in State of Bombay v. Hospital Mazdoor Sabha,17 where the Supreme Court held that hospital run by the State is an industry. But the issue was again figured in a Larger Bench of the Supreme Court in Safdar

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15. 1953 I LL.J. 195. (Judges M. Pantnjali Sastri J. Bijan Kumar Mukherje J. N. Chandrashekhar
Iyer J. Vivan Bose J. and Ghulam Hasan J.).
Gupta JJ).
17. 1960 I LL.J. 251. (The Bench consisted of P.B. Gajendragadkar J. Suuba Rao J. and Das
Gupta JJ.).
Jung Hospital, New Delhi, v. Kuldip Singh Sethi,\textsuperscript{18} wherein Court disapproved the decision in the Hospital Mazdoor Sabha\textsuperscript{19} by holding that a hospital which was run and administered by the Government was a part of its sovereign functions and, therefore, it was outside the scope of 'industry' and thereby unduly curtailed the scope of the term industry. Likewise many activities namely, research institutions,\textsuperscript{20} social clubs,\textsuperscript{21} charitable institutions,\textsuperscript{22} solicitor's firm,\textsuperscript{23} educational institutions\textsuperscript{24} and other professional firms stood before the Court to decide the ambit of the nature of their activities. The net essence of outcome of these decisions is inconsistency. The inconsistency has prevailed not due to the reason of improper approach by the Court. But due to the reason of complexity involved in the definition of industry as defined under section 2(j) of the Act.

6.3. The Period of Halting:

Then comes in the history of labour jurisprudence a landmark judgment rendered by the Supreme Court in \textit{Bangalore Water Supply and}

\begin{footnotesize}
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\item Supra Note. 17.
\item Workmen of Indian Standards Institution v/s. Management of Indian Standard of Institution, AIR 1976 SC 145.
\item Madras Gymkhana Club Employees Union v/s. Management, AIR 1968 SC 554.
\item Bombay Pinjrapole v/s. Their Workmen, (1971) 2 LLJ. 393 (SC).
\item N.N.U.C. Employees v/s. Industrial Tribunal, AIR 1962 SC 1080.
\item University of Delhi v. Ram Nath, AIR 1963 SC 1873.
\end{enumerate}
\end{footnotesize}
Sewerage Board, v. A Rajappa and Others, which apparently put an end to the unending controversy with regard to the interpretation and application of the definition, but the saga has not ended.

The background reason for referring the Bangalore Water Supply case, was due to the apparent conflict posed by the Supreme Court in The Workmen of the Indian Standards Institution v. The Management of the Indian Standards Institution.

6.4. The Landmark Ratio in Rajappa case:

A seven Judge Bench was constituted to resolve the conflicting views expressed in several cases as cited above by the Supreme Court. Justice V.R. Krishna Iyer spoke for the majority. The Chief Justice Beg delivered a separate but concurring judgment. Justice Y.V. Chandrachud, Justice Jaswanth Singh, Justice V.D. Tulzapurkar J., and Justice D.A. Desai JJ., have respectfully agreed with the view expressed by Justice V.R. Krishna Iyer. The majority view delivered by Justice V.R. Krishna Iyer in Rajappa case was a landmark judgment in the history of labour

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26. Ibid.
28. Supra Note. 20.
29. Ibid.
jurisprudence in India. This Larger Bench decision has put an end to the conflicting era pertaining to the definition of 'industry'.

For the purpose of contentment the excerpts from the judgment delivered by V.R. Krishna Iyer J., speaking for the majority are produced below;

6.5. The Excerpts: 30

The rather zigzag course of the landmark cases and the tangled web of judicial thought have perplexed one branch of Industrial Law, resulting from obfuscation of the basic concept of 'industry' under the Industrial Disputes Act, 1947 (for short, the Act). This bizarre situation, 30 years after the Act was passed and Industrialization had advanced on a national scale, could not be allowed to continue longer. So, the urgent need for an authoritative resolution of this confused position which has survived -- indeed, has been accentuated by -- the judgment of the six-member bench in Management of Safdarjung Hospital, New Delhi v. Kuldip Singh Seth31, if we may say so with deep respect, has led to a reference to a larger Bench of this die-hard dispute as to what an 'industry' under Section 2(j) means.

30. The purpose of this exercise is to demonstrate the manner in which the Court has analysed the previous contra rulings and how the overruling took place in an orderly manner.
This obiter exercise is in discharge of the Court's obligation to inform the community in our developing country where to look for the faults in the legal order and how to take meaningful corrective measures. The Courts too have a constituency - the nation - and a manifesto - the Constitution. That is the validation of this divagation.

Back to the single problem of thorny simplicity: what is an 'industry'? Historically speaking, this Indian statute has its beginnings in Australia, even as the bulk of our corpus juris, with a colonial flavour, is a carbon copy of English law. Therefore, in interpretation, we may seek light Australasially, and so it is that the precedents of this Court have drawn on Australian cases as on English dictionaries. But India is India and its individuality, in law and society, is attested by National Charter, so that statutory constructions must be home-spun even if hospitable to alien thinking.

The reference to us runs thus:

"One should have thought that an activist Parliament by taking quick policy decisions and by resorting to amendatory processes would have simplified, clarified and de-limited the definition of "industry", and, if we may add "workman". Had this been done with aware and alert speed by the Legislature, litigation which is the besetting sin of industrial life could well have been avoided by a considerable degree. That consummation may perhaps happen on a distant day, but this Court has to decide from day to day disputes involving this branch of industrial law and give guidance by declaring what is an industry, through the process of interpretation and re-interpretation, with a murky accumulation of
case-law. Counsel on both sides have chosen to rely on Safdarjung\textsuperscript{32} each emphasizing one part or other of the decision as supporting his argument. Rulings of this Court before and after have revealed no unanimity nor struck any unison and so, we confess to an inability to discern any golden thread running through the string of decisions bearing on the issue at hand."

The functional focus of this industrial legislation and the social perspective of Part IV of the Paramount Law drive us to hold that the dual goals of the Act are contentment of workers and peace in the industry and judicial interpretation should be geared to their fulfilment, not their frustration. A worker-oriented statute must receive a construction where, conceptually, the keynote thought must be the worker and the community as the Constitution has shown concern for them, inter alia in Articles 38, 39 and 43.

A look at the definition, dictionary in hand, decisions in head and Constitution at heart, leads to some sure characteristics of an "industry", narrowing down the twilit zone of turbid controversy. An industry is a continuity, is an organized activity, is a purposeful pursuit - not any isolated adventure desultory excursion or casual, fleeting engagement motivelessly undertaken. Such is the common feature of a trade, business, calling, manufacture - mechanical or handicraft-based - service, employment, industrial occupation or avocation. For those who know English and are not given to the luxury of splitting semantic heirs, this conclusion argues itself. The expression "undertaking" cannot be torn off the words whose company it keeps. If birds of a feather flock together and noscitur a sociis is a commonsense guide to construction,

\textsuperscript{32} (1971) 1 SCR 177: AIR 1970 SC 1407.
'undertaking' must be read down to conform to the restrictive characteristic shared by the society of words before and after. Nobody will torture 'undertaking' in section 2(j) to mean meditation or musheira which are spiritual and aesthetic undertakings. Wide meanings must fall in line and discordance must be excluded from a sound system. From Banerji33 to Safdarjung34 and beyond, this limited criterion has passed muster and we see no reason, after all the marathon of argument, to shift from this position.

The relevant constitutional entry speaks of industrial and labour disputes (Entry 22, List III, Sch. VII). The preamble to the Act refers to 'the investigation and settlement of industrial disputes'. The definition of industry has to be decoded in this background and our holding is reinforced by the fact that industrial peace, collective bargaining, strikes and lock-outs, industrial adjudications, works committees of employers and employees and the like connote organized, systematic operations and collectivity of workmen cooperating with their employer in producing goods and services for the community. The betterment of the workmen's lot, the avoidance of outbreaks blocking production and just and speedy settlement of disputes concern the community. In trade and business, goods and services are for the community, not for self-consumption.

The penumbral area arrives as we move on to the other essentials needed to make an organized, systematic activity, oriented on productive collaboration between employer and employee, an industry as defined in section

33. 1953 SCR 302: AIR 1953 SC 58.
34. (1971) 1 SCR 177: AIR 1970 SC 1407
2(j). Here we have to be cautious not to fall into the trap of definitional expansionism bordering on reductio ad absurdum nor to truncate the obvious amplitude of the provision to fit it into our mental mould of beliefs and prejudices or social philosophy conditioned by class interests. Subjective wish shall not be father to the forensic thought, if credibility with a pluralist community is a value to be cherished. "Courts do not substitute their social and economic beliefs for the judgments of the legislative bodies." (See Constitution of the United States of America, Corwin, p. xxxi).

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."

Now let us itemise, illustratively, the posers springing from the competing submissions, so that the contentions may be concretized.

1. (a) Are establishments, run without profit motive, industries?
   (b) Are charitable institutions industries?
   (c) Do undertakings governed by a no-profit-no-loss rule, statutorily or otherwise fastened, fall within the definition in section 2 (j)?
   (d) Do clubs or other organisations (like the Y.M.C.A.) whose general emphasis is not on profit-making but fellowship and self-service, fit into the definitional circle?
   (e) To go to the core of the matter, is it an inalienable ingredient

of 'industry' that it should be plied with a commercial object?

2. (a) Should co-operation between employer and employee be direct in so far as it relates to the basic service or essential manufacture which is the output of the undertaking?

(b) Could a lawyer's chamber or chartered accountant's office, a doctor's clinic or other liberal profession's occupation or calling be designated an industry?

(c) Would a university or college or school or research institute be called an industry?

3. (a) Is the inclusive part of the definition in section 2 (j) relevant to the determination of an industry? If so, what impact does it make on the categories?

(b) Do domestic service drudges who slave without respite become 'industries' by this extended sense?

4. Are governmental functions, stricto sensu, industrial and if not, what is the extent of the immunity of instrumentalities of Government?

5. What rational criterion exists for a cutback on the dynamic potential and semantic sweep of the definition implicit in the industrial law of a progressive society geared to greater industrialisation and consequent concern for regulating relations and investigating disputes between employers and employees as industrial processes and relations
become more complex and sophisticated and workmen become more right conscious?

6. As the provision now stands, is it scientific to define 'industry' based on the nature - the dominant nature - of the activity, i.e. on the terms of the work, remuneration and conditions of service which bond the two wings together into an employer-employee complex?

Back to Banerji to begin at the very beginning. Technically, this Bench that hears the appeals now is not bound by any of the earlier decisions. Shri M. K. Ramamurthy, encored by Shri R. K. Garg, argued emphatically that after Safdarjung, the law is in trauma and so a fresh look at the problem is ripe. The learned Attorney General and Shri Tarkunde, who argued at effective, illuminating length, as well as Dr. Singhvi and Shri A. K. Sen who briefly and tellingly supplemented, did not hide the fact that the law is in Queer Street but sought to discern a golden thread of sound principle which could explain the core of the rulings which peripherally had contradictory thinking. In this situation, it is not wise, in our view, to reject everything ruled till date and fabricate new tests, armed with lexical wisdom or reinforced by vintage judicial thought from Australia. Banerji we take as good, and, anchored on its authority, we will examine later decisions to stabilize the law on the firm principles gatherable there from, rejecting erratic excursions. To sip every flower and change every hour is not realism but romance which must not enchant the Court. Indeed, Sri Justice Chandrasekhar Aiyar, speaking for a unanimous Bench, has sketched the

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38. (1953) SCR 302: AIR 1953 SC 58

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guidelines perceptively, if we may say so respectfully. Later cases have only added their glosses, not overruled it and the fertile source of conflict has been the bashyams rather than the basic decision. Therefore, our task is not to supplant the ratio of *Banerji*\(^\text{39}\) but to straighten and strengthen it in its application, away from different deviations and aberrations.

*Banerji*\(^\text{40}\): The Budge Budge Municipality dismissed two employees whose dispute was sponsored by the union. The award of the Industrial Tribunal directed re-instatement but the Municipality challenged the award before the High Court and this Court on the fundamental ground that a municipality in discharging its normal duties connected with local self-government is not engaged in any industry as defined in the Act.

A panoramic view of the statute and its jurisprudential bearings has been projected there and the essentials of an industry decocted. The definitions of employer [Section 2 (g)], industry [Section 2 (j)], industrial dispute [Section 2 (k)], workman [Section 2 (e)] are a statutory dictionary, not popular parlance. It is plain that merely because the employer is a Government department or a local body (and, a fortiori, a statutory board, society or like entity) the enterprise does not cease to be an 'industry'. Likewise, what the common man does not consider as 'industry' need not necessarily stand excluded from the statutory concept (and vice versa). The latter is deliberately drawn wider, and in some respects wider, and in some respects narrower, as Chandrasekhara Aiyar, J., has emphatically expressed:

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39. (1953) SCR 302 : AIR 1953 SC 58  
"In the ordinary or non-technical sense, according to what is understood by the man in the street, industry or business means an undertaking where capital and labour co-operate with each other for the purpose of producing wealth in the shape of goods, machines, tools etc., and for making profits. The concept of industry in this ordinary sense applied even to agriculture, horticulture, pisciculture and so on and so forth. It is also clear that every aspect of activity in which the relationship of employer and employee exists or arises does not thereby become an industry as commonly understood. We hardly think in terms of an industry, when we have regard, for instance, to the rights and duties of master and servant, or of a Government and its secretariat, or the members of the medical profession working in a hospital. It would be regarded as absurd to think so; at any rate the layman unacquainted with advancing legal concepts of what is meant by industry would rule out such a connotation as impossible. There is nothing however to prevent a statute from giving the world "industry" and the words "industrial dispute" a wider and more comprehensive import in order to meet the requirements of rapid industrial progress and to bring about in the interests of industrial peace and economy, a fair and satisfactory adjustment of relations between employers and workmen in a variety of fields of activity. It is obvious that the limited concept of what an industry meant in early times must now yield place to an enormously wider concept so as to take in various and varied forms of industry, so that dispute arising in connection with them might be settled quickly without much dislocation and disorganization of the needs of society and in a manner more adapted to conciliation and settlement than a determination of the respective rights and liabilities according to strict legal procedure and principles. The conflicts between capital and labour have now to be determined more from the standpoint of status than of contract. Without such
an approach, the numerous problems that now arise for solution in the shape of industrial disputes cannot be tackled satisfactorily, and this is why every civilized government has thought of machinery of conciliation officers, Boards and Tribunals for the effective settlement of disputes." (emphasis added.)

The dynamics of industrial law, even if incongruous with popular understanding in this first proposition we derive from Banerji41:

"Legislation had to keep pace with the march of times and to provide for new situations. Social evolution is a process of constant growth, and the State cannot afford to stand still without taking adequate measures by means of legislation to solve large and momentous problems that arise in the industrial field from day to day almost."

The second, though trite, guidance that we get is that we should not be beguiled by similar words in dissimilar statutes, contexts, subject matters or socio-economic situations. The same words may mean one thing in one context and another in a different context. This is the reason why decisions on the meaning of particular words or collection of words found in other statutes are scarcely of much value when we have to deal with a specific statute of our own; they may persuade, but cannot pressure.

We would only add that a developing country is anxious to preserve the smooth flow of goods and services, and interdict undue exploitation and, towards those ends, labour legislation is enacted and must receive liberal construction to fulfil its role.

41. (1953) SCR 302: AIR 1953 SC 58
Let us get down to the actual amplitude and circumscription of the statutory concept of 'industry'. Not a narrow but an enlarged acceptation is intended. This is supported by several considerations. Chandrasekhara Aiyar, J., observes:

"Do the definitions of 'industry', 'industrial disputes' and 'workman' take in the extended significance, or exclude it? Though the word 'undertaking' in the definition of 'industry' is wedged in between business and trade on the one hand and manufacture on the other, and though, therefore, it might mean only a business or trade undertaking, still it must be remembered that if that were so, there was no need to use the word separately from business or trade. The wider import is attracted even more clearly when we look at the latter part of the definition which refers to "calling, service, employment, or industrial occupation or avocation of workmen". "Undertaking" in the first part of the definition and "industrial occupation or avocation" in the second part obviously mean much more than what is ordinarily understood by trade or business. The definition was apparently intended to include within its scope what might not strictly be called a trade or business venture."

So 'industry' overflows trade and business. Capital, ordinarily assumed to be a component of "industry", is an expendable item so far as statutory "industry" is concerned. To reach this conclusion, the Court referred to "public utility service" (S. 2(n)) and argued:

"A public utility service such as railways, telephones and the supply of power, light or water to the public may be carried on by private companies or business corporations. Even conservancy or sanitation may be so carried on,
though after the introduction of local self-government this work has in almost every country been assigned as a duty to local bodies like our Municipalities or District Boards or Local Boards. A dispute in these services between employees and workmen is an industrial dispute, and the proviso to section 10 lays down that where such a dispute arises and a notice under section 22 has been given, the appropriate Government shall make a reference under the sub-section. If the public utility service is carried on by a corporation like a Municipality which is the creature of statute and which functions under the limitations imposed by the statute, does it cease to be an industry for this reason? The only ground on which one could say that what would amount to the carrying on of an industry if it is done by a private person ceases to be so if the same work is carried on by a local body like a Municipality is that in the latter there is nothing like the investment of any capital or the existence of a profit earning motive as there generally is in a business. But neither the one nor the other seems a sine qua non or necessary element in the modern conception of industry."

Absence of capital does not negative 'industry'. Nay, even charitable services do not necessarily cease to be 'industries' definitionally although popularly charity is not industry. Interestingly, the learned Judge dealt with the point. After enumerating typical municipal activities he concluded:

"Some of these functions may appertain to and partake of the nature of an industry, while others may not. For instance, there is a necessary element of distinction between the supply of power and light to the inhabitants of a Municipality and the running of charitable hospitals and dispensaries for the aid of the poor. In ordinary parlance, the former might be regarded as an industry but not latter. The very idea underlying the
entrustment of such duties or functions to local bodies is not to take them out of the sphere of industry but to secure the substitution of public authorities in the place of private employers and to eliminate the motive of profit making as far as possible. The levy of taxes for the maintenance of the service of sanitation and the conservancy or the supply of light and water is a method adopted and devised to make up for the absence of capital. The undertaking or the service will still remain within the ambit of what we understand by an industry though it is carried on with the aid of taxation, and no immediate material gain by way of profit is envisaged."

The contention that charitable undertakings are not industries is, by this token, untenable.

The two landmark cases, the *Corporation of the City of Nagpur v. Its Employees*[^42] and *State of Bombay v. The Hospital Mazdoor Sabha*[^43] may now be analysed in the light of what we have just said. Filling the gaps in the *Banerji*[^44] decision and the authoritative connotation of the fluid phrase 'analogous to trade and business' were attempted in this twin decisions. To be analogous is to resemble in functions relevant to the subject, as between like features of two apparently different things. So, some kinship through resemblance to trade or business is the key to the problem, if *Banerji*[^45] is the guide star. Partial similarity postulates selectivity of characteristics for comparability. Wherein lies the analogy to trade or business, is then the query.

[^42]: 1960 1 LLJ. 523 (SC).
[^43]: (1960) 2 SCR 866: AIR 1960 SC 610
[^44]: AIR 1953 SC 58
[^45]: AIR 1953 SC 58
Shri Justice Subba Rao, with uninhibited logic, chases this thought and reaches certain tests in *Nagpur Municipality*⁴⁶, speaking for a unanimous Bench. We respectfully agree with much of this reasoning and proceed to deal with the decision. If the ruling were right, as we think it is, the riddle of 'industry' is resolved in some measure. Although foreign decisions, words and phrases, lexical plenty and definitions from other legislations, were read before us to stress the necessity of direct co-operation between employer and employees in the essential product of the undertaking, of the need for the commercial motive, of service to the community etc., as implied inarticulately in the concept of 'industry', we bypass them as but marginally persuasive. The rulings of this Court, the language and scheme of the Act and the well-known canons of construction exalt real pressure on our judgment. And, in this latter process, next to *Banerji*⁴⁷ comes *Corporation of Nagpur*⁴⁸, which spreads the canvas wide and illumines the expression 'analogous to trade or business', although it comes a few days after *Hospital Mazdoor Sabha*⁴⁹ decided by the same Bench.

The wings of the word 'industry' have been spread wide in section 2(j) and this has been brought out in the decision in *Corporation of Nagpur*⁵⁰. That case was concerned with a dispute between a municipal body and its employees. The major issue considered there was the meaning of the much disputed expression "analogous to the carrying on of a trade or business". Municipal undertakings are ordinarily industries as *Baroda Borough Municipality*⁵¹ held.

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⁴⁶ AIR 1960 SC 675  
⁴⁷ AIR 1953 SC 58  
⁴⁸ AIR 1960 SC 675  
⁴⁹ AIR 1960 SC 610  
⁵⁰ (1960) 2 SCR 942: AIR 1960 SC 675  
⁵¹ 1957 SCR 33: AIR 1957 SC 110
Even so the scope of 'industry' was investigated by the Bench in the *City of Nagpur*\(^2\), which affirmed *Banerjee*\(^3\) and *Baroda*\(^4\). The Court took the view that the words used in the definition were prima facie of the widest import and declined to curtail the width of meaning by invocation of *noscitur a soclis*. Even so, the Court was disinclined to spread the net too wide by expanding the elastic expressions 'calling', 'service', 'employment' and 'handicraft'. To be over-inclusive may be impractical and so while accepting the enlargement of meaning by the device of inclusive definition the Court cautioned:

"But such a wide meaning appears to over-reach the objects for which the Act was passed. It is, therefore, necessary to limit its scope on permissible grounds, having regard to the aim, scope and the object of the whole Act."

The Court proceeded to carve out the negative factor, which, notwithstanding the literal width of the language of the definition, must, for other compelling reasons, be kept out of the scope of the industry. For instance, sovereign functions of the State cannot be included although what such functions are has been aptly termed 'the primary and inalienable functions of a constitutional government'. Even here we may point out the inaptitude of relying on the doctrine of regal powers. That has reference, in this context, to the Crown's liability in tort and has nothing to do with Industrial Law. In any case, it is open to Parliament to make Law, which governs the State's relations with its employees. Articles 309 to 311 of the Constitution of India, the enactments dealing with the Defence Forces and other legislation dealing with employment

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\(^2\) *(1960) 2 SCR 942: AIR 1960 SC 675*

\(^3\) *AIR 1953 SC 58*

\(^4\) *1957 SCR 33: AIR 1957 SC 110*
under statutory bodies may, expressly or by necessary implication, exclude the operation of the Industrial Disputes Act, 1947. That is a question of interpretation and statutory exclusion; but, in the absence of such provision of law, it may indubitably be assumed that the key aspects of public administration like public justice stand out of the circle of industry. Even here, as has been brought out from the excerpts of ILO documents, it is not every employee who is excluded but only certain categories primarily engaged and supportively employed in the discharge of the essential functions of constitutional government. In a limited way, this head of exclusion has been recognised throughout.

**Are charitable institutions industries?**

Can charity be 'industry'? This paradox can be unlocked only by examining the nature of the activity of the charity, for there are charities and charities. The grammar of labour law in a pluralist society tells us that the worker is concerned with wages and conditions of service, the employer with output and economies and the community with peace, production and steam of supply. This complex of work, wealth and happiness, firmly grasped, will dissolve the dilemma of the law bearing on charitable enterprises. Charity is free; industry is business. Then how? A lay look may scare; a legal look will see; a social look will see through a hiatus inevitable in a sophisticated society with organizational diversity and motivational dexterity.

If we mull over the major decisions, we get a hang of the basic structure of 'industry' in its legal anatomy. Bedrocked on the groundnorms, we must analyze the elements of charitable economic enterprises, established and
maintained for satisfying human wants. Easily, three broad categories emerge; more may exist. The charitable element enlivens the operations at different levels in these patterns and the legal consequences are different, viewer from the angle of 'industry'. For income-tax purposes, Trusts Act or company law or registration law or penal code requirements the examination will be different. We are concerned with a benignant disposition towards workmen and a trichotomy of charitable enterprises run for producing and/or supplying goods and services, organized systematically and employing workmen, is scientific.

The first is one where the enterprise, like any other, yields profits but they are siphoned off for altruistic objects. The second is one where the institution makes no profit but hires the services of employees as in other like businesses but the goods and services, which are the output, are made available, at low or no cost, to the indigent needy who are priced out of the market. The third is where the establishment is oriented on a humane mission fulfilled by men who work, not because they are paid wages, but because they share the passion for the cause and derive job satisfaction from their contribution. The first two are industries, the third not. What is the test of identity whereby these institutions with eleemosynary inspiration fall or do not fall under the definition of industry?

All industries are organized, systematic activity. Charitable adventures which do not possess this feature, of course, are not industries. Sporadic or fugitive strokes of charity do not become industries. All three philanthropic entities, we have itemised, fall for consideration only if they involve co-operation between employers and employees to produce and/or supply goods and/or services. We assume, all three do. The crucial difference is over the presence of
charity in the quasi-business nature of the activity. Shri Tarkunde, based on Safdarjung,
submits that, ex hypothesi, charity frustrates commerciality and thereby deprives it of the character of industry.

It is common ground that the first category of charities is disqualified for exemption. If a business is run for production and or supply of goods and services with an eye on profit, it is plainly an industry. The fact that the whole or substantial part of profits so earned is diverted for purely charitable purposes does not affect the nature of the economic activity which involves the cooperation of employer and employee and results in the production of goods and services. The workers are not concerned about the destination of the profits. They work and receive wages. They are treated like any other workmen in any like industry. All the features of an industry, as spelt out from the definition by the decisions of this Court, are fully present in these charitable businesses. In short, they are industries. The application of the income for philanthropic purposes, instead of filling private coffers, makes no difference either to the employees or to the character of the activities. Good Samaritans can be clever industrialists.

The second species of charity is really an allotropic modification of the first. If a kind-hearted businessman or high-minded industrialist or service-minded operator hires employees like his non-philanthropic counterparts and, in cooperation with them, produces and supplies goods or services to the lowly and the lost, the needy and the ailing without charging them any price or receiving a negligible return, people regard him as of charitable disposition and his enterprise as a charity. But then, so far as the workmen are concerned, it

boots little whether he makes available the products free to the poor. They contribute labour in return for wages and conditions of service. For them the charitable employer is exactly like a commercial-minded employer. Both exact hard work. Both pay similar wages, both treat them as human machine cogs and nothing more. The material difference between the commercial and the compassionate employers is not with reference to the workmen but with reference to the recipients of goods and services. Charity operates not vis-a-vis the workman in which case they will be paying a liberal wage and generous extras with no prospect of strike. The beneficiaries of the employer's charity are the indigent consumers. Industrial law does not take note of such extraneous factors but regulates industrial relations between employers and employers, employers and workmen and workmen and workmen. From the point of view of the workmen there is no charity. For him charity must begin at home. From these strands of thought flows the conclusion that the second group may legitimately and legally be described as industry. The fallacy in the contrary contention lies in shifting the focus from the worker and the industrial activity to the disposal of the end product. This law has nothing to do with that. The income-tax law may have, social opinion may have.

Some of the appellants may fall under the second category just described. While we are not investigating into the merits of those appeals, we may as well indicate, in a general way, that the Gandhi Ashram, which employs workers like spinners and weavers and supplies cloth or other handicraft at concessional rates to needy rural consumers, may not qualify for exemption. Even so, particular incidents may have to be closely probed before pronouncing with precision upon the nature of the activity. If cotton or yarn is given free to
workers, if charkhas are made available free for families, if fair price is paid for
the net product and substantial charity thus benefits the spinners, weavers and
other handicraftsmen, one may have to look closely into the character of the
enterprise. If employees are hired and their services are rewarded by wages -
whether on cottage industry or factory basis - the enterprises become industries,
even if some kind of concession is shown and even if the motive and project may
be to encourage and help poor families and find them employment. A
compassionate industrialist is nevertheless an industrialist. However, if raw
material is made available free and the finished product is fully paid for - rather
exceptional to imagine - the conclusion may be hesitant but for the fact that the
integrated administrative, purchase, marketing, advertising and other functions
are like in trade and business. This makes them industries. Noble objectives,
pious purposes, spiritual foundations and developmental projects are no reason
not to implicate these institutions as industries.

We now move on to economic activities and occupations of an altruistic
calendar falling under the third category.

The heart of trade or business or analogous activity is organisation with
an eye on competitive efficiency, by hiring employees, systematising processes,
producing goods and services needed by the community and obtaining money's
worth of work from employees. If such is the nature of operations and employer-
employees relations, which make an enterprise an industry, the motivation of the
employer in the final disposal of products or profits is immaterial. Indeed the
activity is patterned on a commercial basis, judged by what other similar
undertakings and commercial adventures do. To qualify for exemption from the
definition of 'industry' in a case where there are employers and employees and systematic activities and production of goods and services, we need a totally different orientation, organisation and method, which will stamp on the enterprise the imprint of commerciality. Special emphasis, in such cases, must be placed on the central fact of employer-employee relations. If a philanthropic devotion is the basis for the charitable foundation or establishment, the institution is headed by one who whole-heartedly dedicates himself for the mission and pursues it with passion, attracts others into the institution, not for wages but for sharing in the cause and its fulfilment, then the undertaking is not 'industrial'. Not that the presence of charitable impulse extricates the institution from the definition in section 2(j) but that there is no economic relationship such as is found in trade or business between the head who employs and the others who emotively flock to render service. In one sense, there are no employers and employees but crusaders all. In another sense, there is no wage basis for the employment but voluntarily participation in the production, inspired by lofty ideals and unmindful of remuneration, service conditions and the like. Supposing there is an Ashram or Order with a guru or other head. Let us further assume that there is a band of disciples, devotees or priestly subordinates in the Order, gathered together for prayers, ascetic practices, bhajans, meditation and worship. Supposing further, that outsiders are also invited daily or occasionally, to share in the spiritual proceedings. And, let us assume that all the inmates of the Ashram and members of the Order, invites, guests and other outside participants are fed, accommodated and looked after by the institution. In such a case, as often happens, the cooking and the cleaning, the bed-making and service, may often be done, at least substantially by the Ashramites themselves. They may chant in spiritual ecstasy even as material goods and services are made and served.
They may affectionately look after the guests, and, all this they may do, not for wages but for the chance to propitiate the Master, work selflessly and acquire spiritual grace. It may well be that they may have surrendered their lucrative employment to come into the holy institution. It may also be that they take some small pocket money from the donations or takings of the institution. Nay more; there may be a few scavengers and servants, a part-time auditor or accountant employed on wages. If the substantial number of participants in making available goods and services, if the substantive nature of the work, as distinguished from trivial items, is rendered by voluntary wageless sishyas, it is impossible to designate the institution as an industry, notwithstanding a marginal few who are employed on a regular basis for hire. The reason is that in the crucial, substantial and substantive aspects of institutional life the nature of the relations between the participants is non-industrial. Perhaps, when Mahatma Gandhi lived in Sabarmati, Aurobindo had his hallowed silence in Pondicherry, the inmates belonged to his chastened brand. Even now, in many foundations, centres, monasteries, holy orders and Ashrams in the East and in the West, spiritual fascination pulls men and women into the precincts and they work tirelessly for the Maharishi or Yogi or Swamiji and are not wage-earners in any sense of the term. Such people are not workmen and such institutions are not industries despite some menials and some professionals in a vast complex being hired. We must look at the predominant character of the institution and the nature of the relations resulting in the production of goods and services. Stray wage-earning employees do not shape the soul of an institution into an industry.
It now remains to make a brief survey of the precedents on the point. One case which is germane to the issue is *Bombay Panjarapole*[^56]. A Bench of this Court considered the earlier case-law, including the decisions of the High Courts bearing on humane activities for the benefit of sick animals. Let there be no doubt that kindness to our dumb brethren, especially invalids, springs from the highest motives of fellow feeling. In the land of the Buddha and Gandhi no one dare argue to the contrary. So let there be no mistaking our compassionate attitude to suffering creatures. It is laudable and institutions dedicated to amelioration of conditions of animals deserve encouragement from the State and affluent philanthropists. But these considerations have no bearing on the crucial factors which invoke the application of the definition in the Act as already set out elaborately by us. "The manner in which 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" is a pivotal factor in the activity-oriented test of an 'industry'. The compassionate motive and the charitable inspiration are noble but extraneous. Indeed, medical relief for human beings made available free by regular hospitals, run by Government or philanthropists, employing doctors and supportive staff and business-like terms, may not qualify for exemption from industry. Service to animals cannot be on a higher footing than service to humans. Nor is it possible to contend that love of animals is religious or spiritual any more than love of human beings is. A panjarapole is no church, mosque or temple. Therefore, without going into the dairying aspects, income and expenditure and other features of *Bombay Panjarapole*[^57], one may hold that the institution is an

[^56]: (1972) I SCR 202: AIR 1971 SC 2422
[^57]: (1972) I SCR 202: AIR 1971 SC 2422
industry. After all, the employees are engaged on ordinary economic terms and with conditions of service as in other business institutions and the activities also have organisational comparability to other profit-making dairies of Panjrapoles. What is different is the charitable object. What is common is the nature of the employer-employee relations. The conclusion, notwithstanding the humanitarian overtones, is that such organisations are also industries. Of course, in Bombay Panjrapole the same conclusion was reached but on different and, to some extent faulty reasoning. For, the assumption in the judgment of Mitter, J.; is that if the income were mostly from donations and the treatment of animals were free, perhaps such charity, be it a hospital for humans or animals, may not be an industry. We agree with the holding, not because Panjrapoles have commercial motives but because, despite compassionate objectives, they share business-like orientation and operation. In this view, section 2(j) applies.

We may proceed to consider the applicability of section 2(j) to institutions whose objectives and activities cover the research field in a significant way. This has been the bone of contention in few cases in the past and is one of the appeals argued at considerable length and with considerable force by Shri Tarkunde who has presented a panoramic view of the entire subject in his detailed submissions. An earlier decision of this Court, The Ahmedabad Textile Industries Research Association case has taken the view that even research institutes are roped in by the definition but later judicial thinking at the High Court and Supreme Court levels has leaned more in favour of exemption where profit-motive has been absent. The Kurji Holy Family Hospital was held not to be an

58 (1972) I SCR 202: AIR 1971 SC 2422
59. 1961 (2) SCR480: AIR 1961 SC 484
industry because it was a non-profit-making body and its work was in the nature of training, research and treatment. Likewise in *Dhanrajgiri Hospital v. Workmen*⁶⁰, a bench of this Court held that the charitable trust which ran a hospital and served research purposes and training of nurses, was not an industry. The High Courts of Madras and Kerala have also held that research institutes such as the Pasteur Institute, the C.S.I.R. and the Central Plantation Crops Research Institute are not industries. The basic decision which has gone against the *Ahmedabad Textile*⁶¹ is the *Safdarjung*⁶² case. We may briefly examine the rival view-point, although in substance we have already stated the correct principle. The view that commends itself to us is plainly in reversal of the ratio of *Safdarjung*⁶³, which has been wrongly decided, if we may say so with great respect.

**Research:**

Does research involve collaboration between employer and employee? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has

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⁶⁰ AIR 1975 SC 2032
⁶¹ 1961 (2) SCR 480 : AIR 1961 SC 484
been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into money aplenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which founded the institute itself, it can be regarded as an organization, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries.

True Shri Tarkunde is right if Safdarjung64 is rightly decided. The concluding portions of the decision proceed on the footing that research and training have an exclusionary effect. That reasoning, as we have already expounded, hardly has our approval.

Clubs:

Are clubs industries? The wide words used in section 2(f) if applied without rational limitations, may cover every bilateral activity even spiritual, religious, domestic, conjugal, pleasurable or political. But functional circumscription spring from the subject-matter and other cognate considerations already set out early in this judgment. Industrial law, any law, may insanely run amok if limitless lexical liberality were to inflate expressions into bursting point or

64. (1971) I SCR 177: AIR 1970 SC 1407
proliferate odd judicial arrows which at random sent, hit many an irrelevant mark
the legislative archer never meant. To read down words to yield relevant sense is
a pragmatic art, if care is taken to eschew subjective projections marked as
judicial processes. The true test, as we apprehend from the economic history and
functional philosophy of the Act, is based on the pathology of industrial friction
and explosion impeding community production and consumption and imperilling
peace and welfare. This social pathology arises from the exploitative potential
latent in organized employer-employee relations. So, where the dichotomy of
employer and workmen in the process of material production is present, the
service of economic friction and need for conflict resolution show up. The Act is
meant to obviate such confrontation and 'industry' cannot functionally and
defunctionally exceed this object. The question is whether in a club situation - or
of a co-operative or even a monastery situation, for that matter - a dispute
potential of the nature suggested exists. If it does, it is an industry, since the
basic elements are satisfied. If productive co-operation between employer and
employee is necessary, conflict between them is on the cards, be it a social club,
mutual benefit society, panjarapole, public service or professional office. Tested
on this touchstone, most clubs will fail to qualify for exemption. For clubs -
gentlemen's clubs, proprietary clubs, service clubs, investment clubs, sports
clubs, art clubs, military clubs or other brands of recreational association - when
x-rayed from the industrial angle, project a picture on the screen typical of
employers hiring employees for wages for rendering services and/or supplying
goods on a systematic basis at specified hours. There is a co-operation, the club
management providing the capital, the raw material, the appliances and
auxiliaries and the cooks, waiters, bell boys, pickers, barmaids or other servants
making available enjoyable eats, pleasures and other permissible services for
price paid by way of subscriptions or bills charged. The club life, the warm company, the enrichment of the spirits and freshening of the mind are there. But these blessings do not contradict the co-existence of an 'industry' in the technical sense. Even tea-tasters, hired for high wages, or commercial art troupes or games teams remunerated fantastically, enjoy company, taste, travel and games; but, elementally, they are workmen with employers above and together constitute not merely entertainment groups but industries under the Act. The protean hues of human organization project delightfully different designs depending upon the legal prism and the filtering process used. No one can deny the cultural value of club life; neither can anyone blink at the legal result of the organization.

The only ground to extricate clubs from the coils of industrial law (except specific statutory provision) is absence of employer-employee co-operation on the familiar luring-firing pattern. Before we explain this possible exemption and it applies to many clubs at the poorer levels of society we must meet another submission made by Counsel. Clubs are exclusive; they cater to needs and pleasures of members, not of the community as such and this latter feature salvages them from the clutches of industrial regulation. We do not agree. Clubs are open to the public for membership subject to their own bye-laws and rules. But any member of the community complying with those conditions and waiting for his turn has a reasonable chance of membership. Even the world's summit club - the United Nations has cosmic membership subject to vetoes, qualifications, voting and what not. What we mean is that a club is not a limited partnership but formed from the community. Moreover, even the most exclusive clubs of imperial vintage and class snobbery admit members' guests who are not specific souls but come from the undefused community or part of a community.
Clubs, speaking generally are social institutions enlivening community life and are the fresh breath of relaxation in a faded society. They serve a section and answer the doubtful test of serving the community. They are industry.

We have adverted to a possible category of clubs and associations which may swim out of the industrial pool - we mean self-serving clubs, societies or groups or associations. Less fashionable but more numerous in a poor, populous, culturally hungry country with democratic urges and youthful vigour is this species. Least there should be a rush by the clubs we have considered and dismissed to get into this proletarian brood, if we may so describe them to identify, not at all to be pejorative, - we must elucidate.

It is a common phenomenon in parts of our country that workers, harijans, student youth at the lower rungs of the socio-economic ladder, weaker sections like women and low-income groups, quench their cultural thirst by forming gregarious organizations mainly for recreation. A few books and magazines, a manuscript house magazine contributed by and circulated among members, a football or volleyball game in the evenings - not golf, billiards or other expensive games - a music or drama group, an annual day, a competition and pretty little prizes and family get-together and even organizing occasional meetings inviting V.I.Ps. - these tiny yet lucent cultural bulls dot our proletarian cheerlessness. And these hopeful organisms, if fostered, give a mass spread for our national awakening for those for whom no developmental bells yet toll.
Even these people's organs cannot be non-industries unless one strict condition is fulfilled. They should be - and usually are - self-serving. They are poor men's clubs without the wherewithal of a Gymkhana\(^6\) or C.C., which reached their Court for adjudication. Indeed, they rarely reach a Court being easily priced out of our expensive judicial market. These self-service clubs do not have hired employees to cook or serve, to pick or chase balls, to tie up nets or arrange the cards table, the billiards table, the bar and the bath or do those elaborate business management chores of the well-run city or country clubs.

The members come and arrange things for themselves. The secretary, an elected member, keeps the key. Those interested in particular pursuits organise those terms themselves. Even the small accounts or clerical items are maintained by one member or other. On special evenings all contribute efforts to make a good show, excursion, joy picnic or anniversary celebration. The dynamic aspect is self-service. In such an institution, a part-time sweeper or scavenger or multi-purpose attendant may sometimes exist. He may be an employee. This marginal element does not transform a little association into an industry. We have projected an imprecise profile and there may be minor variations. The central thrust of our proposition is that if a club or other like collectivity has a basic and dominant self-service mechanism, a modicum of employees at the periphery will not metamorphose it into a conventional club whose verve and virtue are taken care of by paid staff, and the members' role is to enjoy. The small man's Nehru Club, Gandhi Granthisala, Anna Manram, Netaji Youth Center, Brother Music Club, Muslim Sports Club and like organs often named after national or provincial heroes and manned by members themselves as contrasted with the upper bracket's Gymkhana Club,
Cosmopolitan Club, Cricket Club of India, National Sports Club of India whose badge is pleasure paid for and provided through skilled or semi-skilled catering staff. We do not deal with hundred per cent social service clubs which meet once in a way, hire a whole evening in some hotel, have no regular staff and devote their energies and resources also to social service projects. There are many brands and we need not deal with everyone. Only if they answer the test laid down affirmatively they qualify.

The leading cases on the point are Gymkhana\textsuperscript{66} and Cricket Club of India\textsuperscript{67}. We must deal with them before we conclude on this topic.

The \textit{Madras Gymkhana Club}\textsuperscript{68}, a blue-blooded, members' club, has the socialite cream of the city on its rolls. It offers choice facilities for golf, tennis and billiards, arranges dances, dinners and refreshments, entertains and accommodates guests and conducts tournaments for members and non-members. These are all activities richly charged with pleasurable service. For fulfilment of these objects the club employs officers, caterers and others on reasonable salaries. Does this club become an industry? The label matters little; the substance is the thing. A night-club for priced nocturnal sex is a lascivious 'industry'. But a literary club, meeting weekly to read or discuss poetry, hiring a venue and running solely by the self-help of the participants, is not. Hidayatullah, C.J., in Gymkhana\textsuperscript{69} ruled that the club was not an 'industry'. Reason? 'An industry is thus said to involve co-operation between employer and employees

\textsuperscript{66} AIR 1968 SC 554
\textsuperscript{67} AIR 1969 SC 276
\textsuperscript{68} AIR 1968 SC 554
\textsuperscript{69} AIR 1968 SC 554 (at pp. 564, 565).
for the object of satisfying material human needs but not for oneself nor for pleasure nor necessarily for profit.

It is not of any consequence that there is no profit motive because that is considered immaterial. It is also true that the affairs of the club are organised in the way business is organised, and that there is production of material and other services and in a limited way production of material goods mainly in the catering department. But these circumstances are not truly representative in the case of the club because the services are to the members themselves for their own pleasure and amusement and the material goods are for their consumption. In other words, the club exists for its members. No doubt occasionally strangers also take benefit from its services but they can only do so on invitation of members. No one outside the list of members has the advantage of these services as of right. Nor can these privileges bought. In fact they are available only to members or through members.

If today the club were to stop entry of outsiders, no essential change in its character vis-a-vis the members would take place. In other words, the circumstance that guests are admitted is irrelevant to determine if the club is an industry. Even with the admission of guests being open the club remains the same, that is to say, a members' self-servicing institution. No doubt the material needs or wants of a section of the community is catered for but that is not enough. This must be done as part of trade or business or as an undertaking analogous to trade or business. This element is completely missing in a members' club.
Why is the club not an industry? It involves co-operation of employer and employees, organised like in a trade and calculated to supply pleasurable utilities to members and others. The learned Judge agrees that "the material needs or wants of a section of the community is catered for but that is not enough. This must be done as part of trade or business or as an undertaking analogous to trade or business. This element is completely missing in a members' club.

'This element'? What element makes it analogous to trade? Profit motive? No, says the learned Judge. Because it is a self-serving institution? Yes? Not at all. For, if it is self-service then why the expensive establishment and staff with high salary bills? It is plain as day-light that the club members do nothing to produce the goods or services. They are rendered by employees who work for wages. The members merely enjoy club life, the geniality of company and exhilarating camaraderie, to the accompaniment of dinners, dances, games and thrills. The 'reason' one may discover is that it is a members' club in the sense that "the club belongs to members for the time being on its list of members and that is what matters. Those members can deal with the club as they like. Therefore, the club is identified with its members at a given point of time. Thus it cannot be said that the club has an existence apart from the members.'

We are intrigued by this reason. The ingredients necessary for an industry are present here and yet it is declared a non-industry because the club belongs to members only. A company belongs to the shareholders only; a co-operative belongs to the members only; a firm of experts belongs to the partners only. And yet, if they employ workmen with whose co-operation goods and services are made available to a section of the community and the operations are
organised in the manner typical of business method and organization, the conclusion is irresistible that an 'industry' emerges. Likewise, the members of a club may own the institution and become the employers for that reason. It is transcendental logic to jettison the inference of an 'industry' from such a factual situation on the ingenious plea that a club "belongs to members for the time being and that is what matters". We are inclined to think that that just does not matter. The Gymkhana\textsuperscript{70} case, we respectfully hold, is wrongly decided.

The Cricket Club of India\textsuperscript{71} stands in a worse position. It is a huge undertaking with activities wide-ranging, with big budgets, army of staff and profit-making adventures. Indeed, the members share in the gains of these adventures by getting money's worth by cheaper accommodation, free or low priced tickets for entertainment and concessional refreshments; and yet Bhargava, J. speaking for the Court held this mammoth industry a non-industry. Why? Is the promotion of sports and games by itself a legal reason for excluding the organization from the category of industries if all the necessary ingredients are present? Is the fact that the residential facility is exclusive for members an exemptive factor? Do not the members share in the profits through the invisible process of lower charges? When all these services are rendered by hired employees, how can the nature of the activity be described as self-service, without taking liberty with reality? A number of utilities which have money's worth, are derived by the members. An indefinite section of the community entering as the guests of the members also share in these services. The testimony of the activities can leave none in doubt that this colossal 'club' is a

\textsuperscript{70} AIR 1968 SC 554
\textsuperscript{71} 1969 (1) SCR 600: AIR 1969 SC 276
vibrant collective undertaking which offers goods and services to a section of the community for payment and there is co-operation between employer and employees in this project. The plea of non-industry is un-presentable and exclusion is possible only by straining law to snapping point to salvage a certain class of socialite establishments. Presbyter is only priest writ large. Club is industry manu brevi.

Co-operatives

Co-operative societies ordinarily cannot, we feel, fall outside section 2(j). After all, the society, a legal person, is the employer. The members and/or others are employees and the activity partakes of the nature of trade. Merely because co-operative enterprises deserve State encouragement the definition cannot be distorted. Even if the society is worked by the members only, the entity (save where they are few and self-serving) is an industry because the member-workers are paid wages and there can be disputes about rates and different scales of wages among the categories i.e. workers and workers or between workers and employer. These societies - credit societies, marketing co-operatives, producers' or consumers' societies or apex societies - are industries.

Do credit unions, organised on a co-operative basis, scale the definitional walls of industry? They do. The judgment of the Australian High Court in *The Queen v. Marshall Ex Parte Federated Clerks Union of Australia*\(^{72}\) helps reach this conclusion. There, a credit union, which was a co-operative association, which pooled the savings of small people and made loans to its members at low

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\(^{72}\) 1975 (132) CLR 595.
interest, was considered from the point of view of industry. Admittedly, they were
credit unions incorporated as co-operative societies and the thinking of Mason, J.
was that such institutions were industrial in character. The industrial mechanism
or society according to Starke, J. included

"All those bodies 'of men associated, in various degrees of competition
and co-operation, to win their living by providing the community with some
service which it requires". Mason, J., went a step further to hold that even if such
credit unions were an adjunct of industry, they could be regarded as industry'."

It is enough, therefore, if the activities carried on by credit unions can
accurately be described as incidental to industry or to the organized production,
transportation or distribution of commodities or other forms of material wealth. To
our minds the evidence admits of no doubt that the activities of credit unions are
incidental in this sense.

This was sufficient, in his view, to conclude that credit unions constituted
an industry under an Act, which has resemblance to our own. In our view,
therefore, societies are industries.

With the greatest respect to the learned Chief Justice, the arguments
strung together in this paragraph are too numerous and subtle for us to imbibe. It
is transcendental to define material service as excluding professional services.
We have explained this position at some length elsewhere in this judgment and
do not feel the need to repeat. Nor are we convinced that Gymkhana\textsuperscript{73} and

\textsuperscript{73} AIR 1968 SC 554
Cricket Club of India\textsuperscript{74} are correctly decided. The learned Judge placed accent on the non-profit making members' club are being outside the pale of trade or industry. We demur to this proposition.

Another intriguing reasoning in the judgment is that the Court has stated

"it is not necessary that there must be a profit motive but the enterprises must be analogous to trade or business in a commercial sense".

However, somewhat contrary to this reasoning we find, in the concluding part of the judgment, emphasis on the non-profit making aspect of the institutions. Equally puzzling is the reference to "commercial sense" what precisely does this expression mean? It is interesting to note that the word "commercial" has more than one semantic shade. If it means profit-making, the reasoning is self-contradictory. If it merely means a commercial pattern of organisation, of hiring and firing employees, of indicating the nature of employer-employee relation as in trade or commercial house, than the activity-oriented approach is the correct one. On that footing, the conclusions reached in that case do not follow. As a matter of fact, Hidayatullah, C.J., had in Gymkhana\textsuperscript{75} turned down the test of commerciality:

"Trade is only one aspect of industrial activity... This requires co-operation in some form between employers and workmen and the result is directly the product of this association but not necessarily commercial".

\textsuperscript{74}. AIR 1969 SC 276
\textsuperscript{75}. AIR 1968 SC 554.
Indeed, while dealing with the reasoning in *Hospital Mazdoor Sabha* he observes:

"If a hospital, nursing home or a dispensary is run as a business, in a commercial way, there may be found elements of an industry there."

This facet suggests either profit motive, which has been expressly negatived in the very case, or commercial-type of activity, regardless of profit, which affirms the test, which we have accepted, namely, that there must be employer-employee relations more or less on the pattern of trade or business. All that we can say is that there are different strands of reasoning in the judgment which are somewhat difficult to reconcile. Of course, when the learned Judge states that the use of the first schedule to the Act depends on the condition precedent of the existence of an industry, we agree. But, that by itself does not mean that a hospital cannot be regarded as an industry, profit or no profit, research or no research. We have adduced enough reasons in the various portions of this judgment to regard hospitals, research institutions and training centers as valuable material services to the community, qualifying for coming within section 2(j). We must plainly state that vis-a-vis hospitals, *Safdarjung* was wrong and *Hospital Mazdoor Sabha* was right.

Because of the problems of reconciliation of apparently contradictory strands of reasoning in *Safdarjung*, we find subsequent cases of this Court striking different notes. In fact, one of us (Bhagwati J.) in *Indian Standards*

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76. AIR 1960 SC 610; 1960 I LLJ 251 SC
77. AIR 1970 SC 1407
78. AIR 1960 SC 610; 1960 I LLJ 251 SC
79. AIR 1970 SC 1407
Institution (Workmen) v. Indian Standards Institution,\textsuperscript{60} referred, even at the opening, to the baffling, perplexing question, which judicial ventures had not solved. We fully endorse the observations of the Court in \textit{Indian Standards Institution}\textsuperscript{81} (at pp. 150, 151 of AIR):

\begin{quote}
"So infinitely varied and many-sided is human activity and with the incredible growth and progress in all branches of knowledge and ever widening areas of experience at all levels, it is becoming so diversified and expanding in so many directions hitherto unthought of, that no rigid and doctrinaire approach can be adopted in considering this question. Such an approach would fail to measure up the needs of the growing welfare State which is constantly engaged in undertaking new and varied activities as part of its social welfare policy. The concept of industry, which is intended to be convenient and effective tool in the hands of industrial adjudication for bringing about industrial peace and harmony, would loss its capacity for adjustment and change. It would be petrified and robbed of its dynamic content. The Court should, therefore, so far as possible, avoid formulating or adopting generalizations and hesitate to cast the concept of industry in a narrow rigid mould which would not permit of expansion as and when necessity arises. Only some working principles may be evolved which would furnish guidance in determining what are the attributes or characteristics which would ordinarily indicate that an undertaking is analogous to trade or business."
\end{quote}

\textsuperscript{60} 1976(2) SCR 138: AIR 1976 SC 145
\textsuperscript{81} 1976(2) SCR 138: AIR 1976 SC 145
Our endeavour in this decision is to provide such working principles. This Court, within a few years of the enactment of the salutary statute, explained the benign sweep of 'industry' in Banerji\(^6\) which served as beacon in later years - Ahmedabad Textile Research\(^8\) acted on it, Hospital Mazdoor Sabha\(^4\) and Nagpur Corporation\(^5\) marched in its sheen. The law shed steady light on industrial inter-relations and the country's tribunals and courts settled down to evolve a progressive labour jurisprudence, burying the bad memories of laissez faire and bitter struggles in this field and nourishing new sprouts of legality fertilized by the seminal ratio in Banerji\(^6\). Indeed, every great judgment is not merely an adjudication of an existing lis but an appeal addressed by the present to the emerging future. And here the future responded, harmonizing with the humanscape hopefully projected by Part IV of the Constitution. But the drama of a nation's life, especially when it confronts die-hard forces, develops situations of imbroglio and tendencies to back-track. And Law quibbles where life wobbles. Judges only read signs and translate symbols in the national sky. So ensued an era of islands of exception dredged up by judicial process. Great clubs were privileged out, liberal professions swam to safety, educational institutions, vast and small, were helped out, divers charities, disinclined to be charitable to their own weaker workmen, made pious pleas and philanthropic appeals to be extriated. A procession of decisions - Solicitors\(^7\) case, University of Delhi\(^8\), Gymkhana Club\(^9\), Cricket Club of India\(^10\), Chartered Accountants (Rabindranath

\(^{62}\) AIR 1953 SC 58
\(^{63}\) AIR 1961 SC 484
\(^{64}\) AIR 1960 SC 610
\(^{65}\) AIR 1969 SC 675
\(^{66}\) AIR 1953 SC 58
\(^{67}\) AIR 1962 SC 1080
\(^{68}\) AIR 1963 SC 1873
\(^{69}\) AIR 1968 SC 554.
Sen v. First Industrial Tribunal, West Bengal\textsuperscript{1}, climaxed by Safdarjang\textsuperscript{2}, - carved out sanctuaries. The six-member Bench, the largest which sat on this Court conceptually to reconstruct 'industry', affirmed and reversed, held profit motive irrelevant but upheld charitable service as exemptive, and in its lights and shadows, judicial thinking became ambivalent and industrial jurisprudence landed itself in a legal quagmire. Panjrapoles sought salvation and succeeded in principle (Bombay Panjarapole), Chambers of Commerce fought and failed, hospitals battled to victory [Dhanrajgiriji Hospital]\textsuperscript{3}, standards institute made a vain bid to extricate [I.S.I.\textsuperscript{4} case], research institutes, at the High Court level, waged and won non-industry status in Madras and Kerala. The murky legal sky paralysed tribunals and courts and administrations, and then came, in consequence, this reference to a larger Bench of seven Judges.

Banerji\textsuperscript{5}, amplified by Corporation of Nagpur\textsuperscript{6}, in effect met with its Waterloo in Safdarjung\textsuperscript{7}. But in this latter case two voices could be heard and subsequent rulings zigzagged and conflicted precisely because of this built-in ambivalence. It behaves us, therefore, hopefully to abolish blurred edges, illumine penumbral areas and overrule what we regard as wrong. Hesitancy, half-tones and hunting with the hounds and running with the hare can claim heavy penalty in the shape of industrial confusion, adjudicatory quandary and administrative perplexity at a time when the nation is striving to promote

\textsuperscript{90} AIR 1969 SC 276
\textsuperscript{91} (1963) 1 Lab LJ 567 (Cal).
\textsuperscript{92} AIR 1970 SC 1407.
\textsuperscript{93} AIR 1975 SC 2032.
\textsuperscript{94} AIR 1976 SC 145.
\textsuperscript{95} AIR 1953 SC 58.
\textsuperscript{96} AIR 1960 SC 675
\textsuperscript{97} AIR 1970 SC 1407.

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employment through diverse strategies which need, for their smooth fulfilment, less stress and distress, more mutual understanding and trust based on a dynamic rule of law which speaks clearly, firmly and humanely. If the salt of law loses its savour of progressive certainly wherewith shall it be salted? So we proceed to formulate the principles, deducible from our discussion, which are decisive, positively and negatively, of the identity of 'industry' under the Act. We speak, not exhaustively, but to the extent, covered by the debate at the bar and, to that extent, authoritatively, until overruled by a larger Bench or superseded by the legislative branch.

I. 'Industry', as defined in section 2(j) and explained in Banerji⁹⁸, has a wide import.

(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale or prasad or food), prima facie, there is an 'industry' in that enterprise.

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

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

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

⁹⁸ AIR 1953 SC 58.
II Although section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to over reach itself.

(a) 'Undertaking' must suffer a contextual and associational shrinkage as explained in Banerji and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra), although not trade or business, may still be 'industry' provided the nature of the activity, viz. the employer-employee basis, bears resemblance to what we find 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.

III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workman, the range of this statutory ideology must inform the reach or the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) professions, (ii) clubs, (iii) educational institutions, (iv) co-operatives, (v) research institutes (vi) charitable projects and

99 . AIR 1953 SC 58

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(vii) other kindred adventures, if they fulfil the triple tests listed in 1 (supra), cannot be exempted from the scope of section 2(j).

(b) A restricted category of professions, clubs, co-operative and even gurukulas and 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.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria 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 center or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at 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 eleemosynary or like undertaking alone are exempt - not other generosity, compassion, developmental passion or project.

The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi\(^{100}\) case or some departments are not

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\(^{100}\) AIR 1963 SC 1873.
productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur\textsuperscript{101}, will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

c) 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).

d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

IV. We overrule Safdarjung\textsuperscript{102}, Solicitors\textsuperscript{103} case, Gymkhana\textsuperscript{104}, Delhi University\textsuperscript{105}, Dhanraajgirji Hospital\textsuperscript{106} and other ruling whose ratio runs counter to

\textsuperscript{101} AIR 1960 SC 675
\textsuperscript{102} AIR 1970 SC 1407
\textsuperscript{103} AIR 1962 SC 1080
\textsuperscript{104} AIR 1968 SC 554
\textsuperscript{105} AIR 1963 SC 1873
\textsuperscript{106} AIR 1975 SC 2032
the principles enunciated above, and Hospital Mazdoor Sabha\textsuperscript{107} is hereby rehabilitated.

We conclude with diffidence because Parliament, which has the commitment to the political nation to legislate promptly in vital areas like Industry and Trade and articulate the welfare expectations in the 'conscience' portion of the Constitution, has hardly intervened to re-structure the rather clumsy, vapourous and tall-and-dwarf definition or tidy up the scheme although judicial thesis and anti-thesis, disclosed in the two-decades-long decisions, should have produced a legislative synthesis becoming of a welfare state and socialistic society, in a world setting where I.L.O. norms are advancing and India needs updating. We feel confident, in another sense, since Counsel stated at the bar that a bill on the subject is in the offing. The rule of law, we are sure, will run with the rule of life - Indian life - at the threshold of the decade of new development in which labour and management, guided by the State, will constructively partner the better production and fair diffusion of national wealth. We have stated that, save the Bangalore Water Supply and Sewerage Board appeal, we are not disposing of the others on the merits. We dismiss that appeal with costs and direct that all the others be posted before a smaller Bench for disposal on the merits in accordance with the principles of law herein laid down.

The judgment delivered by the Supreme Court in \textit{Rajappa Case},\textsuperscript{108} has put an end to many conflicting situations with regard to interpretation of definition of industry under the Industrial Disputes Act, 1947.

\textsuperscript{107} AIR 1960 SC 610
\textsuperscript{108} AIR 1978 SC 545.

The Parliament four years later made virtually an amendment to the existing definition of industry by excluding certain items from purview of the definition of industry as defined by the Supreme Court in *Rajappa Case*. The amendment has received President's assent and the final notification has not been issued till today due to the reason that the workmen employed in the excluded activities have no forum for the redressal of their grievances. So the amended definition was even today not brought into force. Hence, we are governed by *Rajappa* definition of industry under section 2(j) of the Act.

6.7. The Attitude Of The Judiciary During The Liberalization Era:

The situation went undisturbed for a period nearly two decades and it was only in the year 1998, the Two Judge Bench of the Supreme Court in *Coir Board, Ernakulam, Cochin and Another v. Indira Devi P.S. and Others*, passed an order urging the Chief Justice for constituting a Larger Bench of more than Seven Judges to re-examine the decision given by the Supreme Court in *Rajappa Case*. This is not a valid proposition in view of the prevailing norms under the jurisprudence. An

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109. Ibid.
111. AIR 1978 SC 545.
inferior judge bench is always bound by the ratio as laid down by a larger Bench.

6.8. An Attempt To Prevail Status Quo Anti-Era:

It was in the year 2005, a five Judge Bench of the Supreme Court in *State of U.P. v. Jai Bir Singh*,112 due to the reason of an apparent conflict between two previous decisions of Supreme Court namely, *Chief Conservator of Forests & Another etc., v. Jagannath Maruti Kondhare, etc.*, 112a and *State of Gujarat v. Pratamsingh Narsinh Parmar*,113 (a Two Judge Bench) with regard to the activities carried on by Forestry Corporation of the State as an industry or not. Again this is not a valid proposition in law. Justice D. M. Dharmadikari, J. delivered the majority view.

From

6.9. Excerpts The Judgment delivered by D.M. Dharmadhikari, J:

On the question of whether "Social Forestry Department" of State, which is a welfare scheme undertaken for improvement of the environment, would be recovered by the definition of "industry" under section 2(j) of the Industrial Disputes Act, 1947, the aforesaid Benches (supra) of this Court culled out

differently the ratio of the seven-Judge Bench decision of this Court in the case of

*Bangalore Water Supply and Sewerage Board V. A. Rajappa*\(^{114}\) (shortly referred to as Bangalore Water case). The Bench of three Judges in the case of *Chief Conservator of Forests V. Jagnath Maruthi Kondhare*\(^{115}\) based on the decision of *Bangalore Water*\(^{116}\) case came to the conclusion that "Social Forestry Department" is covered by the definition of "industry" whereas the two - judge Bench decision in *State of Gujarat V. Pratamsingh Narsinh Parmar*\(^{117}\) took a different view.

As the cleavage of opinion between the two Benches of this Court seems to have been on the basis of the seven-Judge Bench decision of this Court in the case of *Bangalore Water*\(^{118}\), the present case along with the other connected cases in which correctness of the decision in the case of *Bangalore Water*\(^{119}\) is doubted, has been placed before this Bench.

Various decisions rendered by this Court prior to and after the decision in *Bangalore Water*\(^{121}\) on interpretation of the definition of the word "industry" under the Industrial Disputes Act, 1947 have been cited before us. It has been strenuously urged on behalf of the employers that the expansive meaning given to the word "industry" with certain specified exceptions carved out in the judgment of *Bangalore Water*\(^{122}\) is not warranted by the languages used in the definition clause. It is urged that the Government and its departments while

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exercising "sovereign functions" have been excluded from the definition of "industry". On the question of "what is sovereign function", there is no unanimity in the different opinions expressed by the Judges in Bangalore Water\textsuperscript{123} case. It is submitted that in a constitutional democracy where Sovereignty vests in the people, all welfare activities undertaken by the State in discharge of its obligation under the principles of the State Policy contained in Part IV of the Constitution are "sovereign functions". To restrict the meaning of "sovereign functions" like law and order, legislation, judiciary, administration and the like is uncalled for. It is submitted that the definition of "industry" given in the Act is, no doubt, wide but not so wide as to hold it to include in it all kinds of "systematic organized activities" undertaken by the State and even individuals engaged in professions and philanthropic activities.

On behalf of the employers, it is also pointed out that there is no unanimity in the opinion expressed by the judges in Bangalore Water\textsuperscript{124} case on the ambit of the definition of "industry" given in the Act. Pursuant to the observations made by the Judges in their different opinions in the judgment of Bangalore Water\textsuperscript{125} the legislature responded and amended the Act by the Industrial Disputes (Amendment) Act, 1982. In the amended definition, certain specified types of activities have been taken out of the purview of the word "industry". The Act stands amended but the amended provision redefining the word "industry" has not been brought into force because notification to bring those provisions into effect has not been issued in accordance with sub-section

(2) of section 1 of the Amendment Act. The amended definition thus remains on
the statute unenforced for a period now of more than 23 years.

On behalf of the employers, it is pointed out that all other provisions of the
Amendment Act of 1982, which introduced amendments in various other
provisions of the Industrial Disputes Act have been brought into force by
issuance of a notification but the Amendment Act to the extent of its substitute
definition of "industry" with specified categories of industries taken out of its
purview, has not been brought into force. Such a piecemeal implementation of
the Amendment Act, it is submitted, is not contemplated by sub-section (2) of
section 1 of the Amendment Act. The submission made is that if in response to
the opinions expressed by the seven Judges in Bangalore Water\textsuperscript{126} case the
legislature intervened and provided a new definition of the word "industry" with
exclusion of certain public utility services and welfare activities, the unamended
definition should be construed and understood with the aid of the amended
definition, which although not brought into force is nonetheless part of the statute.

On behalf of the employees, learned counsel vehemently urged that the
decision in the case of Bangalore Water\textsuperscript{127} being in the field as binding precedent
for more than 23 years and having been worked to the complete satisfaction of
all the industrial field, on the principle of \textit{stare decisis}, this Court should refrain
from making a reference to a larger Bench for its reconsideration. It is

\textsuperscript{126} . (1978) 2 SCC 213: 1978 SCC (L & S) 215
strenuously urged that upsetting the law settled by Bangalore Water\textsuperscript{128} is neither expedient nor desirable.

It is pointed out that earlier an attempt was made to seek enforcement of the amended Act through this Court (see Aeltemesh Rein V. Union of India\textsuperscript{129}). The Union came forward with an explanation that for employees of the categories of industries excluded under the amended definition, no alternative machinery for redressal of their service disputes has been provided by law and therefore, the amended definition was not brought into force.

We have heard the learned counsel appearing on behalf of the employers and other side on behalf of the employees at great length. With their assistance, we have surveyed critically all the decisions rendered so far by this Court on the interpretation of the definition of “industry” contained in section 2 (j) of the Act. We begin with a close examination of the decision in the case of Bangalore Water\textsuperscript{130} for consideration whether a reference to a larger Bench for reconsideration of that decision is required.

What is to be noted is that the opinion of Krishna Iyer J. on his own behalf and on the behalf of Bhagwati and Desai, JJ. was only generally agreed to by Beg. C.J. who delivered a separate opinion with his own approach on interpretation of the definition of the word “industry”. He agreed with the conclusion that Bangalore Water Supply and Sewerage Board is an “industry” and its appeal should be dismissed but he made it clear that since the judgment

was being delivered on his last working day which was a day before the day he was to retire, he did not have enough time to go into a discussion of the various judgments cited, particularly on the nature of sovereign functions of the State and whether the activities in discharge of those functions would be covered in the definition of "industry". The Judges delivered different opinions in the case of *Bangalore Water*\(^{131}\) at different points of time and in some cases without going through or having an opportunity of going through the opinions of the Judges. They have themselves recorded that the definition clause in the Act is so wide and vague that it is not susceptible to a very definite and precise meaning. In the opinion of all of them it is suggested that to avoid reference of the vexed question of interpretation to larger Benches of the Supreme Court 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 Disputes Resolution Forums to the employees of specified categories of industries excluded from the amended definition. The legal position thus continues to be unclear and to a large extent uncovered by the decision of *Bangalore Water*\(^{132}\) case as well.

Krishna Iyer J. himself, who delivered the main judgement in *Bangalore Water*\(^{133}\) case at various places in his opinion expressed that the attempt made by the Court to impart definite meaning to the words in the wide definition of "industry" is only a workable solution until a more precise definition is provided by the legislature. See the following observations (SCC p. 228, paras 2-3):

\(^{132}\) (1978) 2 SCC 213: 1978 SCC (L&S) 215
\(^{133}\) (1978) 2 SCC 213: 1978 SCC (L&S) 215
“2... Our judgment here has no pontifical flavour but seek to serve the future hour till changes in the law or in industrial culture occur.

3... Law, especially industrial law, which regulates the rights and remedies of the working class, unfamiliar with the sophistications of definitions and shower of decisions, unable to secure expert legal opinion, what with poverty pricing them out of the justice market and denying them the staying power to withstand the multi-decked litigative process, de facto denies social justice if legal drafting is vagarious, definitions indefinite and court rulings contradictory. Is it possible, that the legislative chambers are too preoccupied with other pressing business to listen to court signals calling for clarification of ambiguous clauses? A careful prompt amendment of section 2 (j) would have pre-empted this docket explosion before tribunals and courts. This Court perhaps more than the legislative and executive branches, is deeply concerned with law’s delays and to devise a prompt delivery system of social justice.”

It is to be noted further that in the order of reference made to the seven-Judge Bench in Bangalore Water Supply and Sewerage Board case the Judges referring the case had stated this:

“...the chance of confusion from the crop of cases in an area where the common man has to understand and apply the law makes it desirable that there should be a comprehensive, clear and conclusive declaration as to what is an industry under the Industrial Disputes Act as it now stands. Therefore, we think it

necessary to place this case before the learned Chief Justice for consideration by a larger Bench. If in the meantime Parliament does not act, this Court may have to illumine the twilight area of law and help the industrial community carry on smoothly."

In the separate opinion of the other Hon'ble Judges in Bangalore Water case similar observations have been made by this Court to give some precision to the very wide definition of "industry". It was an exercise done with the hope of a suitable legislative change on the subject, which all the Judges felt, was most imminent and highly desirable. See the following concluding remarks (SCC p. 284, para 145):

"145.... We conclude with diffidence because Parliament, which has the commitment to the political nation to legislate promptly in vital areas like industry and trade and articulate the welfare expectations in the 'conscience' portion of the constitution, has hardly intervened to restructure the rather clumsy, vaporous and tall and dwarf definition or tidy up the scheme although judicial thesis and antithesis, disclosed in the two-decades-long decisions, should have produced a legislative synthesis becoming of a welfare State and socialistic society, in a world setting where ILO norms are advancing and India needs updating".

When the matter was listed before a three – Judge Bench (in the case of Coir Board V. Indira Devai P.S.) the request for constituting a larger Bench for

reconsideration of the judgement in *Bangalore Water* case was refused both on the ground that the Industrial Disputes Act has under gone an amendment and that the matter does not deserve to be referred to a larger Bench as the decision of seven Judges in *Bangalore Water* case is binding on Benches of this Court of less than seven Judges. The order refusing reference of the seven-Judge Bench decision by the three-Judge Bench in *Coir Board V. Indira Devi P.S.* reads thus: (SCCp. 224, para 1-3)

"1. We have considered the order made in Civil Appeals Nos. 1720-21 of 1990. The Judgment in *Bangalore Water Supply and Sewerage Board V. A. Rajappa* was delivered almost two decades ago and the law has since been amended pursuant to the judgment though the date of enforcement of the amendment has not been notified.

The Judgment delivered by seven learned Judges of this Court in the *Bangalore Water Supply* case does not, in our opinion, require any reconsideration on a reference being made by two - judge Bench of this Court, which is bound by the Judgment of the larger Bench.

The appeals, shall, therefore, be listed before the appropriate Bench for further proceedings."

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Thus, the reference sought by the two Judges to a larger Bench of more than seven Judges was declined by the three-Judge Bench. As has been held by this Court subsequently in the case of Central Board of Dawoodi Bohra Community V. State of Maharashtra\(^{142}\) it was open to the Chief Justice on a reference made by two Hon'ble Judges of this Court, to constitute a Bench of more than seven Judges for reconsideration of the decision in Bangalore Water Case\(^{143}\).

In any case, no such inhibitions limits the power of this Bench of five Judges, which has been constituted on a reference, made due to apparent conflict between Judgments of two Benches of this Court. As has been stated by us above, the decision in Bangalore Water\(^{144}\) is not a unanimous decision. Of the five judges who constituted the majority, three have given a common opinion but two others have given separate opinions projecting a view partly different from the views expressed in the opinion of the other three Judges. Be C.J. having retired had no opportunity to see the opinions delivered by the other Judges subsequent to his retirement. Krishna Iyer J. and the two Judges who spoke through him did not have the benefit of the dissenting opinion of the other two Judges and the separate partly dissenting opinion of Chandrachud J. as those opinions were prepared and delivered subsequent to the delivery of the judgment in Bangalore Water case\(^{145}\).

\(^{142}\) (2005) 2 SCC 673: 2005 SCC (L&S)246: 2005 SCC (Cri) 546
\(^{143}\) (1978) 2 SCC 213: 1978 SCC (L&S) 215
\(^{144}\) (1978) 2 SCC 213: 1978 SCC (L&S) 215
\(^{145}\) (1978) 2 SCC 213: 1978 SCC (L&S) 215
In such a case, it is difficult to ascertain whether the opinion of Krishna Iyer J. given on his own behalf and on behalf of Bhagawati and Desai JJ., can be held to be an authoritative precedent which would require no reconsideration even though the Judges themselves express the view that the exercise of interpretation done by each one of them was tentative and was only a temporary exercise till the legislature stepped in. The legislature subsequently amended the definition of the word “industry” but due to the lack of will both on the part of the legislature and the executive, the amended definition, for a long period of 23 years, has remained dormant.

Shri Andhyaarujna, learned Senior Counsel appearing for M/s National Remote Sensing Agency, which is an agency constituted by the Government in discharge of its sovereign functions dealing with defence, research, atomic energy and space falling in the excluded category in the sub-clause (6) of the amended definition of “industry” in section 2(j), relies on the following decisions in support of his submission that where the unamended definition in the Act is ambiguous and has been interpreted by the Court not exhaustively but tentatively until the law is amended, the amendment actually brought into the statute can be looked at for construction of the unamended provisions. [Cape Brandy Syndicat V. IRC\textsuperscript{146} followed in Yogendra Nath Naskar V. CIT\textsuperscript{147} referred to and relied in Kajori Lal Agarwal V. Union of India\textsuperscript{148}; State of Bihar V. S.K. Roy\textsuperscript{149} AIR at p. 1998 (para 6); Thiru Manickam and Co. V. State of T.N.\textsuperscript{150}, AIR at para 10].

\textsuperscript{146} \url{(1921) 2 KB 403: 90 LJKB 461 (CA)}

\textsuperscript{147} \url{(1969) 1 SCC 555: (1969) 3 SCR 742}

\textsuperscript{148} \url{(1966) 3 SCR 141: AIR 1966 SC1538}

\textsuperscript{149} \url{1966 Supp SCR 259: AIR 1966 SC 1995}

\textsuperscript{150} \url{(1977) 1 SCC 199; 1977 SCC (tax) 165: AIR 1977 SC 518}
Shri Andhyarujina further argues that by the Industrial Disputes (Amendment) Act of 1982, not only was the definition of "industry" as provided in the clause amended but various other provisions of the principal Act were also amended. Sub-section (2) of section 1 of the Amendment Act states that the Act "Shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint". It is submitted that either the whole of the Act should have been notified for enforcement or not at all. It is argued that such piecemeal enforcement of the Act is not permissible by sub-section (2) of section 1 of the Amendment Act.

Senior Advocates Ms. Indira Jaising and Mr. Colin Gonsalves, counsel appearing for the employees, very vehemently oppose the prayer made on behalf of the employers for referring the matter to a larger Bench for reconsideration of the decision in Bangalore Water Supply\textsuperscript{151} case. It is submitted that even though the definition in the Industrial Disputes Act had been amended in 1982, it has not been brought into force for more than 23 years and the reasons disclosed to the Court, when the enforcement of the Amendment Act was sought in the case of Aeltermesh Rein V. Union of India\textsuperscript{152}, is a sound justification. The stand of the Union of India was that for the category of industries excluded in the amended definition no Alternative Industrial Disputes Resolution Forums could be created. For the aforesaid reason the Central Government did not enforce the provisions of the Amended Act, which provided a new and restrictive definition of "industry". Learned counsel on behalf of the

\textsuperscript{152} 1988 4 SCC 54.
employees relied on A.K. Roy V. Union of India\textsuperscript{153} in support of their submissions that it is not open to the Court to issue a mandamus to the Government to bring into force the provisions of the Act. It is submitted that it is the prerogative of the Government in accordance with the provisions of sub section (2) of section 1 of the Amendment Act to enforce the provisions of the Act when it finds that there are conditions suitable to take out of the purview of the definition "industry" certain categories of "industries" in which the employees have been provided separate forums for redressal of their industrial disputes.

For the purpose of these cases, we need not go into the aforesaid side issue because neither is there any substantive petition nor has a prayer been made in any of the cases before seeking issuance of mandamus to the Government to publish notification in the Official Gazette for enforcement of the amended definition of "industry" as provided in the Amendment Act of 1982. The only question before us is as to whether the amended definition, which is now undoubtedly a part of the statute, although not enforced, is relevant piece of subsequent legislation which can be taken aid of to amplify or restrict the ambit of the definition of "industry" in section 2(j) of the Act as it stands in its original form.

On behalf of the employees, it is submitted that pursuant to the decision in \textit{Bangalore Water}\textsuperscript{154} case although the legislature responded by amending the definition of "industry" to exclude certain specified categories of industries from the purview of the Act, employees of the excluded categories of industries could not be provided with alternative forums for redressal of their grievances. The

\textsuperscript{153} (1982) 1 SCC 271: 1982 SCC (Cri) 152.
unamended definition of industry, as interpreted by Bangalore Water355 case has been the settled law of the land in the industrial field. The settled legal position, it is urged, has operated well and no better enunciation of scope and effect of the “definition” could be made either by the legislature or by the Indian Labour Organization in its report.

After hearing learned counsels for the contesting parties, we find there are compelling reasons more than one before us for making a reference on the interpretation of the definition of “industry” in section 2 (j) of the Act, to a larger Bench and for reconsideration by it, if necessary, of the decision rendered in the case of Bangalore Water supply & Sewerage Board56. The larger Bench will have to necessarily go into all legal questions in all dimensions and depth. We briefly indicate why we find justification for a reference although it is stiffly opposed on behalf of the employees.

In the judgment of Bangalore Water Supply157 Krishna Iyer J. speaking for himself and on behalf of the other two Hon’ble Judges agreeing with him proceeded to deal with the interpretation of the definition of “industry” on a legal premise stating thus: (SCC p. 230, para 12)

“A worker –oriented statute must receive a construction where, conceptually, keynote thought must be the worker and the community, as the Constitution has shown concern for them, inter alia, in Articles 38, 39 and 43.”

With utmost respect, the statute under consideration cannot be looked at only as a worker-oriented statute. The main aim of the statute as is evident from its preamble and various provisions contained therein, is to regulate and harmonise relationships between employers and employees for maintaining industrial peace and harmony. The definition clause read with other view interests of the employer, who has put his capital and expertise into the industry and the workers who by their labour equally contribute to the growth of the industry. The Act has a historical background of industrial revolution inspired by the philosophy of Karl Marx. It is a piece of social legislation opposed to the traditional industrial culture of open competition or laissez faire, the present structure of industrial law is an outcome of long term agitation and struggle of the working class for participation on equal footing with the employers in industries for its growth and profits. In interpreting, therefore, the industrial law, which aim at promoting social justice, interests both of employers, employees and in a democratic society, people, who are the ultimate beneficiaries of the industrial activities, have to be kept in view.

Ms. Indira Jaising fervently appealed that in interpreting industrial law in India which is obliged by the Constitution to uphold democratic values, as has been said in some other judgments by Krishna Iyer J. "the court should be guided not by 'Maxwell' but 'Gandhi' who advocated protection of the interest of the weaker sections of the society as the prime concern in democratic society. In the legal field, the Court always derived guidance from the immortal saying of the great Judge Oliver W. Holes that 'the life of law has never been logic, it has been experience'. The spirit of law is not to be searched in ideology or
philosophy, which have inspired it but it may be found in the experience of the people who made and put it into practice.

In the case of Coir Board\textsuperscript{158} Sujatha V. Manohar J. speaking for the Bench while passing an order of reference to the larger Bench for reconsideration of the judgement of Bangalore Water Supply & Sewerage Board\textsuperscript{159} has observed thus: (SCC p. 269, para 19)

"Looking to the uncertainty prevailing in this area and in the light of the experience of the last two decades in applying the test laid down in the case of Bangalore Water Supply\textsuperscript{160} it is necessary that the decision in Bangalore Water Supply\textsuperscript{161} case is re-examined. The experience of the last two decades does not appear to be entirely happy. Instead of leading to industrial peace and welfare of the community (which was the avowed purpose of artificially extending the definition of industry), the application of the Industrial Disputes Act to organization which were, quite possible, not intended to be so covered by the machinery set up under the Industrial Disputes Act, might have done more damage than good, not merely to the organizations but also to employees by the curtailment of employment opportunities."

The above quoted observations were criticized on behalf of the employees stating that for making them, there was no material before the Court. We think that the observations of the learned Judges are not without foundation.
The experience of Judges in the Apex Court is not derived from the case in which the observations were made. The experience was from the cases regularly coming to this Court through the Labour Courts. It is experienced by all dealing in industrial law that overemphasis on the rights of the workers and undue curtailment of the rights of the employers to organize their business, through employment and non-employment, has given rise to a large number of industrial and labour claims resulting in awards granting huge amounts of back wages for past years, allegedly as legitimate dues of the workers, who are found to have been illegally terminated or retrenched. Industrial awards granting heavy packages of back wages sometimes result in taking away the very substratum of the industry. Such burdensome awards in many cases compel the employer having moderate assets to close down industries causing harm to interests of not only the employer and the workers but also the general public who is the ultimate beneficiary of material goods and services from the industry. The awards of reinstatement and arrears of wages for past years by Labour Courts by treating even small undertakings of employers and entrepreneurs as industries is experienced as a serious industrial hazard particularly by those engaged in private enterprises. The experience is that many times idle wages are required to be paid to the worker because the employer has no means to find out whether and where the workman gainfully employed pending adjudication of industrial dispute raised by him. Exploitation of workers and the employers has to be equally checked. Law and particularly industrial law needs to be so interpreted as to ensure that neither the employers nor the employees are in a position to dominate the other. Both should be able to cooperate for their manual benefit in the growth of industry and thereby serve public good. An over expansive interpretation of the definition of “industry” might be a deterrent to private
enterprise in India where public employment opportunities are scarce. The people should, therefore, be encouraged towards self-employment. To embrace within the definition of "industry" even liberal professionals like lawyers, architects, doctors, chartered accountants and the like, which are occupations based on talent, skill and intellectual attainments, is experienced as a hurdle by professionals in their self-pursuits. In carrying on their professions, if necessary, some employment is generated, that should not expose them to the rigors of the Act. No doubt even liberal professions are required to be regulated and reasonable restrictions in favour of those employed for them can, by law, be imposed, but that should be the subject of a separate suitable legislation.

We also wish to enter a caveat on confining "sovereign functions" to the traditional so described as "inalienable functions" comparable to those performed by a monarch, a ruler or a non-democratic government. The learned Judges in Bangalore Water Supply case seem to have confined only such sovereign functions outside the purview of "industry" which can be termed strictly as constitutional functions of the three wings of the State i.e. executive, legislature and judiciary. The concept of sovereignty, which is, confined in "law and order", "defence", "law-making" and "justice dispensation". In a democracy governed by the Constitution the sovereignty vests in the people and the State is obliged to discharge its constitutional obligations contained in the directive principles of State policy in Part IV of the Constitution of India. From that point of view, wherever the Government undertakes public welfare activities in discharge of its constitutional obligations, as provided in Part IV of the Constitution, such activities should be treated as activities in discharge of sovereign functions falling

outside the purview of "industry". Whether employees employed in such welfare activities of the Government require protection, apart from the constitutional rights conferred on them, may be a subject of separate legislation but for that reason, such governmental activities cannot be brought within the fold of industrial law by giving an undue expansive and wide meaning of the words used in the definition of industry.

In response to the Bangalore Water Supply & Sewerage Board163 case Parliament intervened and substituted the definition of "industry" by including within its meaning some activities of the Government and excluding some other specified governmental activities and "public utility services" involving sovereign functions. For the past 23 years, the amended definition has remained unenforced on the statute-book. The Government has been experiencing difficulty in bringing into effect the definition. Issuance of notification as required by sub-section (2) of section 1 of the Amendment Act, 1982 has been withheld so far. It is, therefore, high time for the court to re-examine the judicial interpretation given by it to the definition of "industry". The legislature should be allowed greater freedom to come forward with a more comprehensive legislation to meet the demands of employers and employees in the public and private sectors. The inhibition and the difficulties which are being exercised (sic experienced) by the legislature and the executive in bringing into force the amended industrial law, more due to judicial interpretation of the definition of "industry" in Bangalore Water Supply164 case need to be removed. The experience of the working of the

provisions of the Act would serve as a guide for a better and more comprehensive law on the subject to be brought into force without inhibition.

The word “industry” seems to have been redefined under the Amendment Act keeping in view the judicial interpretation of the word “industry” in the case of *Bangalore Water*. Had there been no such expansive definition of “industry” given in *Bangalore Water* case it would have been open to Parliament to bring in either a more expansive or a more restrictive definition of industry by confining it or not confining it to industrial activities of the State and its departments. Similarly, employment generated in carrying on of liberal professions could be clearly included or excluded depending on social conditions and demands of social justice. Comprehensive change in law and/or enactment of new law had not been possible because of the interpretation given to the definition of “industry” in *Bangalore Water* case. The judicial interpretation seems to have been one of the inhibiting factors in the enforcement of the amended definition of the Act for the last 23 years.

In *Bangalore Water* Case not all the Judges in interpreting the definition clause invoked the doctrine of *noscitur a sociis*. We are inclined to accept the view expressed by the six-Judge Bench in the case of *Safdarjung Hospital* that keeping in view the other provisions of the Act and words used in the definition clause, although “profit motive” is irrelevant, in order to encompass the activity within the word “industry”, the activity must be “analogous to trade or business in

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a commercial sense. We also agree that the mere enumeration of "public utility services" in section 2(n) read with the first Schedule should not be held decisive. Unless the public utility service answers the test of it being an "industry" as defined in clause (j) of section 2, the enumeration of such utility service in the first schedule to the Act would not make it an "industry". The six-Judges also considered the inclusion of services such as hospitals and dispensaries as public utility services in the definition under section 2 (n) of the Act and rightly observed thus: (SCC p. 746, para 29).

"When Parliament added the sixth clause under which other services could be brought within the protection afforded by the Act to public utility services, it did not intend that the entire concept of industry in the Act, could be ignored and anything brought in. Therefore, it said that an industry could be declared to be a public utility services. But what could be so declared had to be an industry in the first place."

The decision in the case of Safdarjung Hospital\textsuperscript{170} was unanimous decision of all six Judges and we are inclined to agree with the following observations in the interpretation of the definition clause: (SCC p. 743, para 17)

"But in the collocation of the terms and their definitions these terms have a definite economic content of a particular type and on the authorities of this Court have been uniformly accepted as excluding professions and are only concerned with the production and availability of material services. Industry has thus been accepted to mean only trade and business, manufacture, or

\textsuperscript{170} Safdarjung Hospital v. Kuldip Sethi. (1970) I SCC 735
undertaking analogous to trade or business for the production of material goods or wealth and material services."

The six Judges unanimously upheld the observations in Gymkhana Club case (SCR p. 756 E-F): (SCC p. 744, para 22)

"... before the work engaged in can be described as an industry, it must bear the definite character of 'trade' or 'business' or 'manufacture' or 'calling' or must be capable of being described as a undertaking resulting in material goods or material services."

In constructing the definition clause and determining its ambit, one has not to lose sight of the fact that in activities like hospitals and education, concepts like right of the workers to go on "strike" or the employer's right to "close down" and "layoff" are not contemplated because they are services in which the motto is "service to the community". If the patients or students are to be left to the mercy of the employer and employees exercising their rights at will, the very purpose of the service activity would be frustrated.

We are respectfully inclined to agree with the observations of Shri. Justice P.B. Gajendragadkar (AIR at p.906) in the case of Harinagar Cane Farm (172) (SCR p. 466)

"As we have repeatedly emphasized in dealing with industrial matters, industrial adjudication should refrain from enunciating any general principles or

171. Secretary, Madras Gymkhana Club Employees' Union v. Gymkhana Club. (1968) I SCR 742; AIR 1968 SC 554
172. Harinagar Cane Farm V. State of Bihar AIR 1964 SC 903
adopting any doctrinaire considerations. It is desirable that industrial adjudication should deal with problems as and when they arise and confine its decisions to the points which strictly arise on the pleadings between the parties."

We conclude agreeing with the conclusion of the Hon’ble Judges in the case of Hospital Mazdoor Sabha173: (SCR p. 876)

"[T]hough section 2(j) used words of very wide denotation, a line would have to be drawn in a fair and just manner so as to exclude some callings, services or undertakings."

This Court must, therefore, reconsider where the line should be drawn and what limitations can and should be reasonable implied in interpreting the wide words used in section 2(j). That no doubt is rather a difficult problem to resolve more so when both the legislature and the executive are silent and have kept an important amended provision of law dormant on the statute-book.

We do not consider it necessary to say anything more and leave it to the larger Bench to give such meaning and effect to the definition clause in the present context with the experience of all these years and keeping in view the amended definition of “industry” kept dormant for long 23 years. Pressing demands of the competing sectors of employers and employees and the helplessness of the legislature and the executive in bringing into force the Amendment Act compel us to make this reference.

Let the cases be now placed before Hon'ble Chief Justice of India for constituting a suitable larger Bench for reconsideration of the judgment of this Court in the case of Bangalore Water supply\textsuperscript{174}.

6.10. A NOTE:

Thus the Supreme Court purely on the basis of self imagined societal scenario urged the Chief Justice of India for constituting a suitable Larger Bench for re-consideration of the decision in Bangalore Water Case\textsuperscript{175}. The labour legislations are welfare legislations aimed to further the Directive Principles of State Policy as speltout in Part IV of the Constitution. No doubt the initiation of globalization process in India have widened the gap between the rich and the weaker section. The exploitation of labour under various devises without any social security coverage is the order of the day, but this should not be encouraged or advanced by the apex Court, which is the guardian of social justice under the Constitution.

\textsuperscript{174} (1978) 2 SCC 213: 1978 SCC (L&S) 215
\textsuperscript{175} Ibid.