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The Scope of 'Industry': What Falls within the Ambit of the word 'Industry'?

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Sophocles once said, 'Without Labour, nothing prospers'[1]. The earlier age of imperialism reminds us of the adverse situation of the working class. As time passed, there was a need that was felt to enact legislation to uphold the rights of the working class and the dignity of labour. From the pre-independence era labour legislations gained importance for the rights of workers and employees. Labour legislation paved the way for interactions between employers and employees and tried to build harmonious relations between them. Laws were enacted to facilitate employment relations through dialogues and to stress upholding fundamental rights in workplaces. The Industrial Disputes Act 1947 is one such legislation that was enacted for the settlement and investigation of industrial disputes. It includes provisions relating to industry, industrial disputes, authorities, their powers and procedures, etc. While considering matters under this Act, the judiciary has also played a crucial role in broadly interpreting certain definitions.

Keywords: *labour law, industry, industrial disputes, employee, employer.*

[1] 'Labour Day Quotes' (*Jesuit Research*) <https://www.xavier.edu/jesuitresource/online-resources/quote-archive1/labor-day> accessed 21 April 2024

INTRODUCTION

With the increasing number of establishments being formed in India, the number of people working for such establishments is also increasing. Thus, Labour Laws are gaining more and more importance considering the issues faced by employees daily. The Industrial Disputes Act 1947 is one such Act that was enacted to make provisions for the investigation and settlement of Industrial Disputes. Disputes arising in industries can be resolved with the help of the provisions and procedures given in this Act through the various authorities that are provided under it.

The term 'industry' under the Industrial Disputes Act 1947 has been subject to various interpretations by the courts over the years, but it broadly encompasses any business, trade, undertaking, manufacture, or calling of employers, including any service, employment, handicraft, or industrial occupation or avocation of workmen. This broad definition ensures that a vast array of establishments and their employees are covered under the Act's protective umbrella.

The Act establishes several authorities to handle disputes, such as Works Committees, Conciliation Officers, Boards of Conciliation, Courts of Inquiry, Labour Courts, Tribunals etc. Each of these bodies plays a specific role in investigating and adjudicating disputes, ensuring a systematic and fair resolution process. The procedures laid out by the Act are designed to maintain a balance between the interests of employers and employees, thus fostering a conducive environment for industrial growth and stability. For any activity or establishment to be able to apply the provisions given in this act, it must first fall into the scope of 'industry' as laid down by the Act.

INDUSTRY

Section 2 (j) of the Industrial Disputes Act 1947[2] states: ''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.'

[2] Industrial Disputes Act 1947, s 2(j)

In 1982, this section was amended to state: 'Industry' means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), regardless of whether—

i. any capital has been invested to carry on such activity; or
ii. such activity is carried on with a profit motive and includes-

(a) any activity of the Dock Labour Board established for a port or group of ports (Section 5A, Dock Workers (Regulation of Employment) Act 1948).

(b) any activity for the promotion of sales, business or both carried on by an establishment,

but does not include:

(1) any agricultural operation unless it is carried on with another activity which is the predominant one and is an industry as per the given definition

(2) hospitals or dispensaries

(3) educational, scientific, research, training institutions

(4) charitable institutions, social service, philanthropic service

(5) khadi or village industries

(6) sovereign functions of the Government including defence research, atomic energy, and space

(7) any domestic service

(8) any profession practised by an individual or body of individuals, with less than ten people employed

(9) any activity of a co-operative society or a club or any other like body of individuals, with less than 10 people employed

Although the definition has been amended in 1982, the enforcement date of it has not been specified. Thus, the original definition remains in force.

Over the years, the scope of the term industry was decided based on various cases. The courts have time and again emphasized that while dealing with industrial disputes, industrial adjudication should avoid laying down any general principles or strictly following specific doctrines.[3] The Apex Court considered it preferable to deal with such issues as and when they arise so that solutions can be based on the pleadings arising out of the particular issue at hand. It is contented in certain cases that while construing a definition, we must adopt the rule of construction - *noscuntur a sociis*, which means that 'the meaning of an unclear or ambiguous word (as in a statute or contract) should be determined by considering the words with which it is associated in the context.'[4] But this rule cannot prevail in cases where wider words have been deliberately used to broaden the scope of the word. It cannot be invoked where the legislation is clear and free of any ambiguity.

In the case of Corporation of the City of Nagpur v Employees,[5] while considering the definition of the industry as per the *C.P. and Berar Industrial Disputes Settlement Act, 1947* the Supreme Court laid down certain key principles that can be summarized as follows:

(1) The definition of 'industry' in the Act is given in two parts- one from the point of view of the employer and another from the point of view of the employee. Any activity that falls under any of these, becomes an industry.

(2) For an activity to be considered as an industry it must not be private or personal and must be an organized activity.

(3) Regal and sovereign functions that are primary and inalienable functions of the state are not included under the scope of industry.

[3] *Harinagar Cane Farm and Ors v State of Bihar & Ors* (1963) 2 SCWR 169
[4] 'noscuntur a sociis' (*Merriam-Webster*) <https://www.merriam-webster.com/legal/noscitur%20a%20sociis> accessed 08 April 2024
[5] *Corporation of the City of Nagpur v Employees* (1960) SCR (2) 942

(4) Any service carried on by an individual or private person which would be considered an industry, would also be considered an industry if carried on by a corporation.

(5) If the services carried on by a corporation fall under the scope of industry, then the employees of that corporation are also entitled to the benefits of this Act.

(6) If a municipality department carries on many functions, some being industrial functions and some not, then the predominant functions shall decide whether that municipality department comes under the scope of the term industry.

Further, in 1978, the Bangalore Water Supply Case[6] tried to clear the ambiguity and laid down certain principles, overruling the earlier cases, which can be summarized as:

'Industry' has a wider scope -

(a) 3 requirements for any activity to fall under the ambit of industry are: '(i) the activity must be a systematic activity, (ii) it must be organized by co-operation between employer and employee (iii) and it must be carried out for the production and/or distribution of goods and services calculated to satisfy human wants and wishes which are not spiritual or religious'.

(b) Whether the activity in question is carried out with a profit-making motive or not is not a relevant question here.

(c) The nature of the activity carried on and the relations between the employees and employers are important characteristics.

(d) Any activity that is carried out as a trade or business will be considered the same irrespective of whether it looks into people's welfare or other such welfare and philanthropic activities.

Thus, this case played a pivotal role in clarifying and expanding the definition of 'industry' under the Industrial Disputes Act, 1947. The case introduced three essential criteria for an activity to qualify as an industry: systematic operation, cooperation between employers and employees, and production or distribution of goods and services for human satisfaction

[6] *Bangalore Water Supply and Sewerage Board v Rajappa* (1978) 2 SCC 213

excluding any spiritual or religious pursuits. Notably, the profit motive was deemed irrelevant, and the nature of the activity and the dynamics between employers and employees were emphasized. The judgement also affirmed that any activity that is initially categorized as a trade or business will retain this classification, regardless of subsequent incorporation of welfare or philanthropic motives. This comprehensive analysis extended legal protections to a broader spectrum of workers and industries, promoting industrial peace and safeguarding employee rights in diverse sectors.

WHAT IS NOT AN INDUSTRY?

Section 2(j)[7] of the Act includes certain activities that cannot be included in the scope of the definition of industry. An agricultural operation not being carried out with any other activity, which is the predominant one, is not an industry. On the other hand, companies formed for carrying out agricultural operations cannot take the plea that they are solely carrying out trade or business for the purposes of agricultural operations. These companies shall fall within the ambit of the definition of industry.

In State of Bombay v Hospital Mazdoor Sabha,[8] the Supreme Court asserted that in deciding whether an activity is an undertaking, the doctrine of quid pro quo would not have any application. The Apex Court observed that education is more of a mission and a vocation than merely a trade or business.[9] Thus the work of teaching carried on by educational institutions cannot be termed to be an industry.[10]

The Bangalore Water Supply Case,[11] overruling earlier cases laid down the 3 requirements that cleared the ambiguity of what falls under section 2(j). These three requirements together form the Triple Test. They are: '(i) systematic activity, (ii) organized by co-operation between employer and employee (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious).'

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[7] Industrial Disputes Act 1947, s 2(j)
[8] *Hospital Mazdoor Sabha v The State of Bombay* (1956) 58 BOMLR 769
[9] *University of Delhi v Ram Nath* (1963) 2 LABLJ 335
[10] *Ibid*
[11] *Bangalore Water Supply and Sewerage Board v Rajappa* (1978) 2 SCC 213

When the court was to decide the question of charitable institutions, it categorized them as:[12]

- An institution that yields profits but these profits are siphoned off for altruistic or welfare purposes. This kind of institution would be an industry.

- An institution that hires services of employees but does not yield any profits and makes its produce available to the deprived or needy for minimum or no cost. Such an institution is also an industry.

- An institution where the men working are employed not merely to earn wages but because they passionately support the cause they are working for and attain fulfilment and satisfaction from it. Such an institution would not amount to an industry.

No matter how extensive the definition of industry may be, it does not include sovereign or regal functions.[13] Functions carried out by All India Radio and Doordarshan are not just sovereign functions as they carry on commercial activity to earn profit by broadcasting advertisements and serials and thus are industries.[14] An activity becomes an industry when it is a systematic one and not a casual one.[15]

After many judgements of the courts, the triple test laid down by the Honourable Supreme Court in the Bangalore Water Supply Case[16] somehow proved to be legitimate in determining the scope and ambit of the term industry. But cases arising after this case also faced the issue of the ambiguity of the definition. Even after amending the section, the non-enforcement of it further heightened the uncertainty of demarcating what falls under its scope and what does not.

INTERPRETATIONS POST BANGLORE WATER SUPPLY CASE

Although the definition of the term industry was amended in the year 1982, there was no specified enforcement date for it. The judicial interpretation of the term industry in the Bangalore Water Supply Case was probably an inhibiting factor in the enforcement of the

[12] *Ibid*
[13] *Corporation of the City of Nagpur v Employees* (1960) SCR (2) 942
[14] *All India Radio v Shri Santosh Kumar & Anr* (1998) 3 SCC 237
[15] *Secretary, Madras Gymkhana Club v Management of The Gymkhana Club* (1967) 2 LABLJ 720
[16] *Bangalore Water Supply and Sewerage Board v Rajappa* (1978) 2 SCC 213

amended definition. There have been various instances where judges have stated the need to interpret the definition clearly and reconsider the decision of the Bangalore Water Supply Case wasn't a unanimous one which was delivered without having a proper opportunity to go through the opinions given by the other judges.

In 1990, a two-judge bench of the Supreme Court stated the necessity to look into the decision of the Bangalore Water Supply Case as the sweeping test given in it was not contemplated by the Industrial Disputes Act.[17] The bench directed that the matter should be placed before the Honourable Chief Justice of India to consider whether there was a need to constitute a larger bench to reconsider the decision given by the Supreme Court in the Bangalore Water Supply Case. In 2000, a three-judge bench stated that the judgement delivered in the Bangalore Water Supply case did not require any reconsideration as the decision by a seven-judge bench is binding on a smaller one.[18]

In the decision of the Bangalore Water Supply Case, Justice VR Krishna Iyer had favoured a worker-oriented approach in interpreting the definition of industry and had termed this statute a 'worker-oriented statute'.[19] In 2005, Justice D. M. Dharmadhikari opined that such an approach in construing the definition of industry was a one-sided approach considering that the main purpose of the statute as seen from its preamble is to regulate and harmonize relationships between employees and employers.[20] He reiterated that industrial matters should be dealt with as and when they arise rather than having fixed principles.

In the year 2020, the extensive Industrial Relations Code was passed to consolidate and amend laws relating to the investigation and settlement of industrial disputes amongst other objectives.

This code defined 'industry' under section 2(p)[21] as: ''Industry' means any systematic activity carried on by cooperation between an employer and worker (whether employed directly or through a contractor) for the production, supply or distribution of goods or services to satisfy

[17] *Coir Board Ernakulam v Indira Devi P.S* (1998) 3 SCC 259
[18] *Coir Board Ernakulam Kerala State v Indira Devai P.S* (2000) 1 SCC 224
[19] *Bangalore Water Supply and Sewerage Board v Rajappa* (1978) 2 SCC 213 [12]
[20] *State of UP v Jai Bir Singh* (2005) 5 SCC 1
[21] Industrial Relations Code 2020, s 2(p)

human wants or wishes that are not spiritual or religious. This definition is regardless of whether –

i. any capital has been invested to carry on such activity,
ii. any such activity is carried on with a profit motive and includes -

but does not include —

i. charitable institutions, social services or philanthropic service
ii. sovereign functions of the Government including defence research, atomic energy, space
iii. domestic service
iv. any activity expressly specified.

Anyhow, cases under the Industrial Disputes Act, 1947 continue to define industry and its scope. In a recent judgement of 2024 by the Allahabad High Court[22] of an issue of 1990, the question that was before the court was whether the Forest Department was an industry or not and thus the men working as 'mali' were employees or not according to the Industrial Disputes Act. In this matter, the petitioners had challenged the award of the Industrial Tribunal that directed the petitioners (employers) to pay the same wages to 15 workmen. They contended that departments of the State Government perform sovereign functions and thus cannot be termed as industries. On the other hand, the respondents claimed that the Tribunal had rightly declared it to be an industry as the employees were functioning in systematic activities. Justice Alok Mathur considered the arguments of both parties, the cases cited by them, and the nature of the work where the workmen were working as 'malis' and were performing duties that included plantation work and production and distribution of such produce. Based on this he decided that the activity in question was a 'systematic activity' and that the workmen were not daily or casual employees. Thus, the writ petition was dismissed and the order of the tribunal was upheld.

[22] *Prabhagiya Nideshak Van v Van.Evam Sangik Vanki Karmachari* (2024) LiveLaw (AB) 37

AUTHOR'S ANALYSIS

Martin Luther King Jr. once said, 'Law and order exist for the purpose of establishing justice and when they fail in this purpose they become the dangerously structured dams that block the flow of social progress.'[23]

While this act was established to resolve disputes arising out of industrial relations it failed to explicitly lay down the requirements of an industry. Over the years, the judiciary dealt with a plethora of cases to determine the scope of the term industry. The role of the judiciary was key in interpreting the term through various viewpoints as needed. The stand taken by the courts to resolve such issues as and when they arise rather than adopting fixed principles was commendable and praiseworthy as it ascertained thorough consideration of facts and circumstances in depth. Although resolving such issues on an 'as and when they arise' basis was noteworthy, the state of uncertainty that occurred due to it hampered the effective resolution of industrial disputes arising continuously. While some judges like Justice VR Krishna Iyer advocated a worker-oriented approach as seen in the Bangalore Water Supply Judgement[24], others like Justice D.M Dharmadhikari emphasized the need for a balanced view. This shows how the Industrial Disputes Act, 1947 was interpreted with contrasting views by the judiciary and was not quite efficient in providing consistent guidelines for resolving labour disputes. All of this thus led to many interpretations of the same term which gave rise to even more debates and further calls for reconsideration.

In the year 1997, the Supreme Court in the case of Physical Research Laboratory v K.G. Sharma,[25] cited the Bangalore Water Supply Case stating that the principles laid down in that case were formulated due to the 'vague and rather clumsy, vaporous definition'. However, the Court also cautioned that such principles should not be seen as exhaustive. This judgement furthermore widened the scope of the term industry as it reintroduced the uncertainties and complexities of

[23] 'Letter from a Birmingham Jail [King, Jr.]' (*African Studies Center - University of Pennsylvania*) <https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html> accessed 08 April 2024
[24] *Corporation of the City of Nagpur v Employees* (1960) SCR (2) 942
[25] *Physical Research Laboratory v K.G. Sharma* (1997) 4 SCC 257

the definition. This decision emphasized the need for a nuanced approach to define the industry, considering the evolving nature of activities that can fall under the ambit of the word industry.

RECOMMENDATIONS

With the consolidation of earlier Acts and the enactment of the Industrial Relations Code, 2020 there is a hope that the judiciary will aptly interpret the term industry. Given the clear definition of the term in the Act and the elimination of ambiguity surrounding its meaning, it is suggested that the judiciary interpret it precisely and accurately. Further, it is the role of the judiciary to adhere to these interpretations in upcoming issues and subsequent judgements. Doing this will ensure that industrial disputes are resolved with uniformity and fairness, thereby increasing our trust and confidence in the judiciary as well as the labour law framework.

Moreover, to address any more arising ambiguities in the terminology, legislative amendments or clear principles should be implemented regularly according to the evolving trends and activities. To enhance the clarity and effectiveness, definitions and provisions need to be clarified and clear guidelines should be provided. Additionally, the language of the statute should be aligned with contemporary practices. Policymakers and labour authorities should regularly review and update the definition to close any potential gaps and maintain its relevance in safeguarding the rights and well-being of a diverse workforce. By taking such steps, the arising ambiguities and potential loopholes can be reduced. This will ensure that the rights of employees are protected and they are treated with dignity and respect.

CONCLUSION

Decisions rendered by courts of the matters of the past continue to shape the classification of activities as industries or not. However, the recently enacted Industrial Relations Code has consolidated all previous labour legislations into a unified framework. This comprehensive code aims to streamline industrial relations laws, providing clarity and consistency in defining industries and regulating labor practices. By giving a clear definition of the term industry, this Code has offered a glimmer of hope for addressing the underlying complexities. With the consolidation and enactment of the new Code, there is an anticipation that the ambiguity related

to the term industry will now be reduced. We also hope that the Industrial Relations Code of 2020 will help elucidate and establish what comes under the purview of the term industry and what does not. Moving forward, it is the judiciary that plays a very important role in further interpreting and analysing the legal framework surrounding industrial relations. This role played by the judiciary will foster a dynamic and labour law framework that will perfectly adapt to the evolving labour dynamics.