2026 INSC 897

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 897 / 2002

State of Uttar Pradesh **...Appellant(s)**

Versus

Jai Bir Singh **...Respondent(s)**

with

Civil Appeal No. 4646 / 2007

Civil Appeal No. 3647 / 2007

Special Leave Petition (Civil) No. 1112 / 2009

Civil Appeal No. 3920 / 2010

Civil Appeal No. 3119 / 2011

Civil Appeal No. 6114 / 2001

Civil Appeal No. 6108 / 2002

Civil Appeal No. 1276 / 2001

Civil Appeal No. 1279 / 2001

Civil Appeal No. 1278 / 2001

Civil Appeal No. 6471 / 2002

Civil Appeal No. 2506 / 2002

Civil Appeal No. 8597 / 2001

Civil Appeal No. 4569 / 2002

Civil Appeal No. 5101 / 2002

Civil Appeal No. 2409 / 2002

Special Leave Petition (Civil) No. 20982 / 2002

Civil Appeal Nos. 355-358 / 2003

Special Leave Petition (Civil) No. 14085 / 2004

Special Leave Petition (Civil) No. 11291 / 2004

Special Leave Petition (Civil) No. 14127 / 2004

Civil Appeal No. 7994 / 2004

Special Leave Petition (Civil) No. 4139 / 2005

Civil Appeal No. 1274 / 2007

Civil Appeal No. 1273 / 2007

Civil Appeal Nos. 1311-1312 / 2008

Special Leave Petition (Civil) No. 16301 / 2007

Special Leave Petition (Civil) No. 3107 / 2008

Special Leave Petition (Civil) No. 4327 / 2008

Special Leave Petition (Civil) No. 4329 / 2008

Special Leave Petition (Civil) No. 4328 / 2008

Civil Appeal No. 296 / 2008

Special Leave Petition (Civil) No. 16276 / 2008

Special Leave Petition (Civil) No. 17224 / 2008

Civil Appeal No. 5519 / 2012

Civil Appeal No. 5681 / 2010

Special Leave Petition (Civil).........CC No. 7990 / 2009

Civil Appeal No. 7757 / 2011

Civil Appeal No. 1131 / 2012

Civil Appeal Nos. 8149-8151 / 2012

Civil Appeal Nos. 4505-4506 / 2013

Civil Appeal Nos. 4507-4508 / 2013

Special Leave Petition (Civil) Nos. 12679-12682 / 2014

Special Leave Petition (Civil) No. 1857 / 2016

Special Leave Petition (Civil) No. 14156 / 2021

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JUDGEMENT

SURYA KANT, CJI. (on behalf of himself, Satish Chandra Sharma J., Alok Aradhe J. and Vipul M. Pancholi J.)

A. OVERTURE

1. The issue concerning the instant batch of appeals can be consolidated into a singular judicial inquiry, namely, whether the Social Forestry Department of the Appellant State, having been created as a welfare-oriented initiative aimed at environmental amelioration, falls within the ambit of the term 'industry' as defined under Section 2(j) of the Industrial Disputes Act, 1947 (**ID Act, 1947**).

2. More pointedly, the legal issue, particularly the interpretive scope of the abovementioned term 'industry', constitutes a question that has persistently engaged the attention of this Court over an extended temporal period. Indeed, it would not be inapt to characterise this conundrum as a proverbial albatross fastened to the Court's metaphorical neck, continuing to demand judicial clarification.

3. The question may appear at first blush disarmingly straightforward; yet, upon closer scrutiny, it discloses a far more intricate and layered inquiry. For decades, the manner of its definition has, in tangible and determinative terms, governed which entities fall within the statutory fold and, correspondingly, who may legitimately invoke the rights and protections it confers.

4. It becomes necessary at this juncture to acknowledge that subsequent legislative developments have altered the statutory landscape. The provision whose interpretation has, for years on end, engaged sustained judicial attention is no longer in force, and this, in itself, presents an additional question warranting adjudication. However, the present batch of petitions, having been instituted prior to these legislative changes, does not fall within the ambit of the regime now governing the field, namely the Industrial Relations Code, 2020 (**IR Code**).

5. These developments, it must be noted, transpired after the reference of the present matters to a Bench of Nine Judges, at a time when the interpretive contours of Section 2(j) of the ID Act continued to carry determinative significance. Yet, the considerable passage of time, coupled with the intervening statutory transformation, has resulted in a state of doctrinal and procedural liminality. These appeals stand in a precarious interstice, being neither governed by the new legislative framework nor conclusively resolved under the erstwhile definition of 'industry' contained in Section 2(j).

6. As the Court of last resort, we remain acutely conscious that the interpretive exercise now being undertaken may not, in the contemporary statutory context, yield consequences of far-reaching practical application. Nonetheless, the discharge of this function is neither optional nor contingent upon its immediate utility. It is a responsibility that inheres in the judicial office, particularly where a reference has been authoritatively made. The principle, long embedded in our jurisprudential tradition, that justice must not only be done but must manifestly be seen to be done, acquires particular salience in such circumstances.

7. When a reference has been entrusted to this Court by learned Judges, acting in view of the exigencies and uncertainties prevailing at the relevant time, it would be neither institutionally appropriate nor jurisprudentially sound to permit the matter to remain in abeyance. To do so would, metaphorically speaking, be akin to burying the body before conducting the post-mortem, leaving the very cause of the controversy forever unexplored. To defer or deny its resolution any further would be to countenance a state of avoidable indeterminacy. It is, therefore, incumbent upon us to finally adjudicate the issue and bring the matter to a reasoned and authoritative *quietus*.

8. We have, therefore, endeavoured to discharge our constitutional obligation by addressing the question referred to the Nine-Judge Bench. The exercise of this jurisdiction is not discretionary in character; it is anchored in the imperatives of the Constitution and the foundational precepts of the Rule of Law. The Court cannot resile from the performance of its duty merely because, in the subjective estimation of the adjudicator, the issue may appear to admit of gradations of importance.

9. The constitutional function entrusted to this Court admits of no such artificial hierarchies. Once a question is validly referred, it commands authoritative determination, and it would be contrary to settled principle for the Court to decline adjudication on the basis of perceived relative significance.

B. INTERPRETATIONAL HISTORY OF THE 'INDUSTRY' DEFINITION

10. In that view of the matter, before embarking upon an analysis of the issues that presently fall for our consideration, it is imperative to trace the trajectory traversed by this Court over time, and to examine the manner in which the definition in question has evolved through successive judicial pronouncements. A careful engagement with this evolutionary process will furnish the necessary analytical foundation and illuminate the interpretive choices that now confront us, thereby enabling a more coherent and methodical resolution of the questions at hand.

11. It is apposite at the outset to advert to the language employed in Section 2(j) of the ID Act, according to which, "*'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.*"

12. Section 2(j) defines 'industry' in a bifurcated manner, employing two distinct yet complementary limbs. The first proceeds from the standpoint of the employer and extends to "*any business, trade, undertaking, manufacture or calling of employers.*" The second is cast from the perspective of the workman and encompasses "*any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.*" The phraseology employed is of the widest amplitude, having been drawn in substantial measure from Section 4 of the Commonwealth Conciliation and Arbitration Act of Australia, and has, in consequence, invited sustained judicial engagement in the course of its interpretation.

B.1. Bangalore Water Supply (supra): A truly watershed moment

13. There can, of course, be no gainsaying that any meaningful consideration of the definition of the term 'industry' must necessarily entail an examination of the formulation articulated by a Seven Judge Bench in ***Bangalore Water Supply and Sewerage Board v. A. Rajappa***.[1]

14. The controversy therein originally arose when certain employees of the Bangalore Water Supply and Sewerage Board (**Board**) were subjected to penalties in the form of fines for alleged misconduct. Aggrieved thereby, they instituted proceedings before the Labour Court under Section 33C (2) of the ID Act. In response, the Board therein raised a preliminary objection to the maintainability of the proceedings, contending that it was engaged in the discharge of essentially 'regal' or governmental functions by providing basic civic amenities to the public and, consequently, could not be regarded as an 'industry' within the meaning of Section 2(j). It was argued that, if the Board itself fell outside the ambit of the Act, the employees could not claim the status of 'workmen' thereunder and, correspondingly, the Labour Court would lack jurisdiction to entertain or adjudicate their claims.

15. The dispute thereafter traversed first before the Karnataka High Court and subsequently before this Court. By that stage, the question concerning the meaning and scope of 'industry' under Section 2(j) had already become the subject of substantial judicial

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[1] (1978) 2 SCC 213.

debate, with divergent strands of authority emerging from different decisions of this Court. In light of this interpretative discordance and the significance of the issues involved, the matter ultimately came to be placed before a larger Bench for an authoritative determination of the law.

16. It was in these circumstances that the judgment now universally recognised as ***Bangalore Water Supply (supra)*** came to be rendered, a decision that would sagaciously influence the course of industrial jurisprudence in India and remain the focal point of reference in debates concerning the meaning of the term 'industry' for decades thereafter.

17. To state briefly, in that decision, a majority of Five Judges, speaking through the seminal exposition authored by Krishna Iyer, J. and comprising himself, P.N. Bhagwati, J. and D.A. Desai, J., adopted an expansive construction of the term by propounding what has since come to be recognised as the '***Triple Test***'.

18. The leading judgment was accompanied by a concurring opinion authored by M. H. Beg, C.J., together with a brief order delivered by Y. V. Chandrachud, J. (*as he then was*), on behalf of himself, Jaswant Singh, J. and V. D. Tulzapurkar, J., which was delivered on 21.02.1978, clarifying that their detailed reasoning would follow. *Vide* the main judgment, the learned concurring Judges recorded their respectful agreement with the principal opinion authored by Krishna Iyer, J., agreeing with the ultimate conclusion that the matter ought to be dismissed, while observing that reasons would be furnished subsequently to delineate the areas of concurrence and divergence, if any, on the questions in controversy addressed in the leading judgment.

19. Thereafter, on 07.04.1978, Y. V. Chandrachud J. (*as he then was*), delivered his detailed reasons, while Jaswant Singh J., speaking for himself and V. D. Tulzapurkar J., rendered a partly dissenting opinion, thereby crystallising the effective majority of the judgment at 5:2.

B.1.1. Reasons prompting reference to a larger Bench

20. The reference to a Bench of Seven Judges was itself occasioned, as explained by Krishna Iyer, J., by "*the urgent need for an authoritative resolution of this confused position which has survived indeed, has been accentuated by-the judgment of this six-member bench in Safdarjung, if we may say so with deep respect, has led to a reference to a larger bench of this diehard dispute as to what an 'industry' under Section 2(j) means.*"

21. The respected Judge, speaking with his characteristic candour, noted that the prevailing uncertainty had necessitated what had become a persistent and intractable dispute as to the meaning of industry under Section 2(j) of the ID Act.

22. There thus appears to have been no divergence of opinion among the learned Judges on this aspect, namely, that the persistent deviation in judicial interpretation ought to be clarified immediately. It was also broadly acknowledged that, in an ideal course, legislative intervention by Parliament, through an appropriate amendment, would have been desirable to bring clarity and resolution to the prevailing state of ambiguity.

B.1.2. Laying down the Triple Test

23. The majority, in the leading judgment, having undertaken an exhaustive survey of the preceding authorities that had shaped the interpretation of the expression 'industry', proceeded to articulate the Triple Test as the governing standard for determining whether a particular body or entity would fall within its ambit.

24. The Triple Test postulates the existence of: (***i***) a systematic and organised activity; (***ii***) cooperation between employer and employee in the conduct of such activity; and (***iii***) the production or distribution of goods and services directed towards the satisfaction of human wants and wishes. The formulation was consciously designed to avoid an unduly restrictive construction and to capture within its ambit a wide spectrum of organised economic and quasi-economic undertakings.

25. It is of particular significance that, in explicating the element of cooperation between employer and employee, the Court rejected the necessity of establishing any direct or proximate nexus of a rigid character, regarding such a requirement as illusory and normatively untenable. Further, the phrase "*goods and services calculated to satisfy human wants and wishes*" was construed in a manner that excluded activities of a purely spiritual or religious character, while encompassing material goods and services intended to confer tangible, temporal benefit. Illustratively, activities such as the large-scale preparation and distribution of food, including prasad, were held to fall within the inclusive sweep of the definition of industry.

26. The absence of a profit motive or any gainful objective was held to be immaterial, and it was clarified that an enterprise could fall within the ambit of 'industry' irrespective of whether it operated in the public, joint, private, or any other sector. The emphasis, therefore, was placed squarely on the functional character of the activity, with the decisive inquiry centring on its nature, particularly as manifested through the relationship of cooperation between employer and employee.

27. The Triple Test appears to have secured broad acceptance among all seven learned Judges, with the divergence being confined not to its formulation, but to the manner and extent of its application. Thus, while the foundational elements of the test were not in serious dispute, differences arose as to the manner in which particular factual settings ought to be treated. For instance, Chandrachud J. (*as he then was*), agreed with the activity test but highlighted that the determinative inquiry ought to instead be based on "*whether the activity, considered objectively, is organised or arranged in a manner in which trade or business is normally organised or arranged.*"

28. Even in the dissenting opinion of Jaswant Singh J., for himself and Tulzapurkar J., substantially accepted the three constituent elements of the Triple Test, but proceeded to superimpose an additional requirement. According to the learned Judges, the activity in question must further be carried on "*on commercial lines by private entrepreneurs.*"

<u>B.1.3 Reading down 'Undertaking'</u>

29. An important facet of the decision in ***Bangalore Water Supply (supra)*** lies in the illumination it provides on the scope and ambit of the term 'undertaking'. The leading opinion made it clear that the construction of Section 2(j) of the ID Act could not be extended to the point that it ‘skids into a domain too rarified to be realistic’. Put in more lucid terms, while the provision was to be accorded a broad and purposive interpretation, it was not to be so unbounded as to assume an all-encompassing character that would indiscriminately draw every conceivable activity within its sweep.

30. This ultimately resulted in the recognition of the second guideline that:

> *“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, 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. … 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.”*

31. The logical corollary of this guideline was thus that any organised activity satisfying the constituent elements of the Triple Test, though not strictly amounting to trade or business, may nevertheless qualify as an ‘industry’, provided that the essential character of the activity, particularly the employer–employee relationship, bears a discernible resemblance to that which ordinarily obtains in trade or business. The consideration thus lies in the manner in which the activity is organised, specifically the structured cooperation between employer and employee.

32. The majority decision further emphasized that the application of these guiding principles must not be curtailed by subjective considerations, whether arising from ideological predilections, institutional character, or perceived incongruity between the nature of the activity and its economic consequences. The interpretive exercise must remain faithful to the statutory purpose, namely, the promotion of industrial peace and the orderly regulation and resolution of disputes between employers and workmen.

33. On this basis, it was made clear that a wide range of organised activities, including professions, clubs, educational institutions, cooperatives, research bodies, charitable undertakings, and other analogous ventures, cannot be excluded from the ambit of Section 2(j) merely by reason of their form or avowed purpose, so long as they satisfy the requirements of the Triple Test.

34. At the same time, a limited category of such institutions may stand outside the definition where, applying the dominant nature test, the activity is essentially carried on without the employment of a substantive workforce, and only minimal or marginal engagement of labour is involved. In such cases, the absence of a structured employer–employee relationship of any real significance would preclude their characterisation as an ‘industry’.

35. Thus, as a manner of illustration, the decision put forth that institutions founded upon a fundamentally altruistic or eleemosynary basis may fall outside the ambit of ‘industry’ in narrowly circumscribed circumstances. Where the activity is carried on predominantly by individuals who associate themselves with the endeavour out of a sense of service, commitment to a cause, or spiritual or ideological motivation, and who render their services either gratuitously or for nominal honoraria, the essential metric of an employer–employee relationship may be absent.

36. This would also encompass situations such as voluntary legal aid initiatives, free medical services rendered by professionals in their spare time, or institutions sustained by individuals working in furtherance of a shared spiritual or charitable purpose. In such cases, where services are provided free of charge or at nominal cost, and those engaged are not employed on terms indicative of a master–servant relationship, the organisation would not qualify as an ‘industry’, notwithstanding the engagement of a limited number of ancillary or technical staff.

37. This exemption, however, was confined to such genuinely charitable or eleemosynary undertakings. It does not extend to activities merely because they are animated by generosity, compassion, or developmental objectives, where the organisational structure otherwise satisfies the criteria of the statutory definition or the Triple Test.

B.1.4. The creation of the Dominant Nature Test

38. Krishna Iyer J., in his lead judgment, further articulated what has come to be recognised as the 'dominant nature test' in order to address situations involving a composite or multifaceted undertaking.

39. Where an organisation comprises a complex of activities, some of which may, if viewed in isolation, fall outside the definition, while others clearly fall within it, the determinative inquiry must centre on the predominant character of the enterprise as a whole. If the dominant nature of the activity, viewed in its integrated form, satisfies the criteria of an 'industry', the entire undertaking would ordinarily be so characterised, notwithstanding that certain components or personnel may not independently meet the statutory definition.

B.1.5. The Sovereign Functions Exception

40. The Court also clarified that the exemption carved out for sovereign functions must be narrowly construed and confined to functions strictly understood as sovereign in character. Welfare activities or economic ventures undertaken by the State or its instrumentalities do not, merely by reason of their governmental provenance, attract such immunity.

41. Further, even within departments discharging sovereign functions, distinct and severable units which independently satisfy the indicia of an 'industry' may fall within the ambit of Section 2(j) of the ID Act. Lastly, it was recognised that the Legislature, acting within its constitutional competence, retains the authority to expressly exclude categories of activities from the operation of the Act, even if they would otherwise fall within its definitional scope. While this is only a brief synopsis of the ratio in ***Bangalore Water Supply (supra)***, the reasoning buttressing its findings has been dealt with in greater detail in the later part of this judgment.

42. That being so, the decision in ***Bangalore Water Supply (supra)*** was by no means the first occasion on which this Court undertook an authoritative exposition of the term 'industry'. The interpretive enterprise predates that pronouncement and is marked by a series of decisions that sought to delineate the contours of the definition in varying factual settings. In order to bring analytical coherence to this body of precedent, it is both convenient and conceptually sound to classify the trajectory of the case law into two distinct phases: ***first***, the jurisprudence preceding ***Bangalore Water Supply (supra)***; and ***second***, the jurisprudence that has developed in its aftermath.

<u>B.2. The Pre-Bangalore Water Supply (supra) Jurisprudence</u>

43. Prior to the authoritative pronouncement of ***Bangalore Water Supply (supra)***, the construction of the provision 'industry' exhibited a marked oscillation between two competing interpretive approaches. On the one hand, a liberal construction sought to bring within its sweep a broad spectrum of organised activity; on the other, a more restrictive approach endeavoured to confine its application to undertakings of a predominantly commercial character.

<u>B.2.1. Casting the Net Wide: The Early Expansion of the term 'Industry'</u>

44. One of the earliest decisions in this line of authority is that of ***D.N. Banerji v. P.R. Mukherjee***,[2] wherein a Five-Judge Bench held that a municipal body could fall within the ambit of 'industry', and in doing so articulated what has come to be described as the 'analogous to trade or business' test. The Court observed that it is sufficient if the activity in question bears a functional resemblance

[2] AIR 1953 SC 58.

to the carrying on of trade or business and is carried on through cooperation between employers and employees.

45. This approach marked a deliberate departure from a narrow, profit-centric understanding. It was held that an activity need not be undertaken by a private enterprise, nor must it be strictly commercial in character or profit-generating, in order to attract the statutory definition. In a significant interpretive move, the Court also rejected the contention that the expression 'undertaking' must take its colour *ejusdem generis* from the preceding words 'business, trade, manufacture or calling'. Such a construction, it was reasoned, would unduly constrict the scope of the provision and render both the term 'undertaking' and the second limb of the definition otiose.

46. The expression 'undertaking', within the meaning of Section 2(j), was accordingly construed in expansive terms to denote any business, work, or project that is undertaken as an enterprise, so long as it is analogous in its organisation and operation to trade or business.

47. Thereafter, the decision in ***State of Bombay v. Hospital Mazdoor Sabha***[3] marked a significant stage in the evolution of the

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[3] AIR 1960 SC 610.

jurisprudence. In that case, a Three Judge Bench held that a government-run hospital would fall within the ambit of an 'industry', while simultaneously refining the principles earlier enunciated in ***D.N. Banerji (supra)***. It articulated a more structured formulation of what would constitute an 'undertaking' within the meaning of Section 2(j). Accordingly, an activity would so qualify where: (***a***) it is systematically or habitually undertaken; (***b***) directed towards the production or distribution of goods, or the rendering of material services to the community, whether in whole or in part; (***c***) carried on with the assistance of employees; (***d***) organised in a manner analogous to trade or business; and (***e***) not of a casual character, nor undertaken for personal consumption or pleasure. Significantly, the presence of a profit motive or the investment of capital was held to be non-essential to the characterisation.

48. This Court was, however, careful in emphasising that the amplitude of the definition was not without limits. A principled line of demarcation was recognised, excluding from its ambit activities that are purely domestic, personal, or casual in nature.

49. Following closely on the heels of ***Hospital Mazdoor Sabha (supra)*** was the judgment rendered in ***Corporation of the City of Nagpur***

v. Its Employees,[4] wherein a municipal corporation was construed to be an 'industry' with two qualifications justifying such categorisation. The ***first*** was a narrow sovereign function exception, confined to the 'primary and inalienable functions of a constitutional government', namely, the legislative power, the administration of law, and the exercise of the judicial power; these were held to remain excluded even when statutorily delegated to a corporation. The ***second*** was the predominant function test for composite departments, under which a department discharging both industrial and non-industrial activities takes its character from its predominant nature of function. On the anvil of that test, the Octroi Department was held not to be an industry, whereas the Fire Brigade service of a municipal committee was. Once again, it was observed that neither investment of capital nor a profit motive is a necessary element in the modern conception of industry, and that monetary consideration for service is not an essential characteristic of industry in a modern State.

50. Soon after, the decision in ***Ahmedabad Textile Industry's Research Association v. State of Bombay***,[5] following the ratio laid down in ***Hospital Mazdoor Sabha (supra)***, classified a Research Association set up by the textile mills of Ahmedabad to

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[4] AIR 1960 SC 675
[5] AIR 1961 SC 484.

be an ‘industry’. It founded its decision on the basis that: (***i***) the activity of the research association had been systematically taken; (***ii***) it rendered material services to a part of the community by discovering manufacturing processes to improve efficiency and reduce costs; and (***iii***) it was carried out with the help of technical personnel. The Court further imbued that the association’s activities did not have much in common with the activities of what may be construed to be a purely educational institution, thereby leaving the legal status of ordinary educational institutions open.

B.2.2. The Turning of the Tide: The retrenchment of the expansive approach

51. In ***National Union of Commercial Employees v. M.R. Meher***,[6] this Court held a firm of solicitors not to be an ‘industry’, and thereby inaugurated the restrictive turn, marking a turn in the tide. The third prong of the working principle in ***Hospital Mazdoor Sabha (supra)*** was qualified by the further requirement that the cooperation between employer and employee must have a ‘direct’ nexus with the goods or services produced. To that end, the court reasoned that a solicitor’s output depends on his personal professional equipment, knowledge and efficiency; the clerical work of his staff is incidental and has no direct or essential nexus with

[6] AIR 1962 SC 1080.

the advice rendered to the client. On that reasoning, the learned professions more generally were excluded from the definition.

52. In a similar vein, this Court in ***University of Delhi v. Ram Nath***,[7] held a university to not be an 'industry' within the bounds of Section 2(j) of the ID Act. The work of imparting education was, the Court observed, more of a 'mission' and a vocation than a profession or trade or business. Moreover, it was held that the majority of a university's employees (the teachers) do not qualify as 'workmen' under the Act. The Court stated that its decision was not to be understood as laying down a general proposition, but the effect of the ruling was to take educational institutions as a class out of Section 2(j).

53. Thereafter, in ***Madras Gymkhana Club Employees' Union v. Madras Gymkhana Club***,[8] a Three Judge Bench of this Court held that a self-serving members' club, albeit organised on a substantial scale and comprising approximately 1,200 members with a fully equipped catering department, would not fall within the ambit of an "industry." The Court proceeded on the basis that, notwithstanding the provision of material services to a defined

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[7] AIR 1963 SC 1873.
[8] AIR 1968 SC 554.

section of the community, such activities were not undertaken in the course of trade or business, nor were they analogous thereto.

54. In arriving at the aforesaid conclusion, the Court declined to adopt the formulation articulated in ***Hospital Mazdoor Sabha (supra)***, particularly insofar as it introduced the criterion of whether the activity in question could, in principle, be carried on by a private individual. This qualification was regarded as conceptually unsound, on the footing that there exist few, if any, activities incapable of being undertaken by private enterprise. The interpretive consequence of this approach was to accord primacy to the first limb of the definition contained in Section 2(j), thereby substantially attenuating the independent significance of the second limb and narrowing the scope of the provision.

55. A similar view was then taken in ***Cricket Club of India v. Bombay Labour Union***,[9] wherein the Cricket Club of India was held not to be an industry.

56. Thereafter came the decision in ***Safdarjung Hospital v. Kuldip Singh Sethi***,[10] which can be safely regarded as inscribing the high-water mark of the restrictive approach. In that case, a Six-Judge Bench of this Court expressly overruled the earlier decision in

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[9] AIR 1969 SC 276.
[10] (1970) 1 SCC 735.

Hospital Mazdoor Sabha (supra) and significantly narrowed the scope of the definition of 'industry'. The Court was concerned with three institutions: the Safdarjung Hospital, which operated as a governmental department; the Tuberculosis Hospital, functioning as a wholly charitable and research-oriented institution; and the Kurji Holy Family Hospital, a charitable establishment expressly precluded from generating profit. All three were held not to fall within the ambit of an 'industry'.

57. The central proposition articulated was that, although the presence of a profit motive is not determinative, an activity must nonetheless bear a close analogy to trade or business in a commercial sense in order to qualify as an 'industry'. It must be directed towards the production of material goods or the provision of material services possessing commercial value. In this context, 'material services' were understood to denote organised activities carried on through the cooperation of employers and employees to provide the community with the use of essential utilities, such as electricity, water, transportation, postal services, and telecommunication. This formulation imposed a distinctly higher threshold, reintroducing, albeit in a nuanced form, a commercial character as a limiting principle, and thereby consolidating the restrictive trajectory in the interpretation of Section 2(j) of the ID Act.

58. The judicial path thus reveals that different Benches of this Court adopted a multiplicity of distinct and, at times, divergent approaches in determining whether particular institutions, such as Hospitals, Clubs, Universities, and Governmental Departments, would satisfy the substantive import of the definition of 'industry' under Section 2(j) of the ID Act.

B.3. The Post-Bangalore Water Supply (supra) jurisprudence

59. In the aftermath of the decision in ***Bangalore Water Supply (supra)***, the jurisprudence appeared, for a time, to attain a measure of doctrinal stability, if not complete finality. This interlude of relative calm was, however, short-lived. Subsequent developments once again unsettled the field and rekindled debate regarding the correctness, scope, and continuing viability of the interpretation accorded to the term 'industry'.

60. These developments may, for analytical clarity, be organised into four broad categories: (***i***), the initial legislative response; (***ii***), the contestation surrounding the ambit of the sovereign functions exception; (***iii***), the treatment and status of research institutions; and (***iv***), the recurring judicial calls for a reconsideration of the principles laid down in ***Bangalore Water Supply (supra)*** itself.

B.3.1. The Initial Legislative Response

61. The Parliament, by way of the Industrial Disputes (Amendment) Act 46 of 1982, amended Section 2(j). The amendment retained the core of the Triple Test enunciated in ***Bangalore Water Supply (supra)***, clarified that the employer-and-employee relationship includes workmen employed through a contractor, though it carved out exceptions, such as: (1) agricultural operations (save where integrated with industrial activity); (2) hospitals and dispensaries; (3) educational, scientific, research or training institutions; (4) institutions engaged in charitable, social or philanthropic service; (5) khadi or village industries; (6) activities of the Government relatable to its sovereign functions, including the departments dealing with defence research, atomic energy and space; (7) domestic service; (8) professions practised by an individual or body of individuals employing fewer than ten persons; and (9) cooperative societies, clubs or like bodies employing fewer than ten persons.

62. Although the above-quoted amendment was passed on 21.08.1984, the amended definition of 'industry' was never notified and thus the amended provision did not see the light of day.

B.3.2. The discord regarding the Sovereign Function Exception

63. Subsequently, a phase of friction emerged in relation to the exceptions carved out for sovereign functions as articulated in ***Bangalore Water Supply (supra)***. This divergence was occasioned by the coexistence of two distinct judicial approaches: one line of authority adhered to the narrow construction adopted in ***Bangalore Water Supply (supra)***, while another sought to expand the contours of the exception, thereby enlarging the category of activities insulated from the definition of 'industry'.

64. To explicate, the narrow construction of the sovereign functions exception found early articulation in ***Chief Conservator of Forests v. Jagannath Maruti Kondhare***,[11] wherein a Three Judge Bench held that the State's Social Forestry Department would fall within the ambit of an 'industry'.

65. However, such divergence became manifest when a Two Judge Bench, in ***Sub Divisional Inspector of Post, Vaikam v. Theyyam Joseph***,[12] adopted a broader construction of the exemptions provided to sovereign functions and held the Postal Department would fall within the domain of welfare functions envisaged under Part IV of the Constitution. Such functions, being sovereign in

[11] (1996) 8 SCC 489.
[12] (1996) 2 SCC 293.

character, were held to lie outside the ambit of an 'industry'. This line of reasoning was subsequently followed by another Two Judge Bench in ***Bombay Telephone Canteen Employees' Association v. Union of India***,[13] wherein the departmental canteen attached to the Prabhadevi Telephone Exchange was likewise held not to constitute an 'industry'.

66. Indeed, in the latter decision, the Court went on to observe that a strict and unqualified application of the ratio laid down in ***Bangalore Water Supply (supra)*** could potentially give rise to consequences of a far-reaching and, perhaps, catastrophic nature.

67. However, this dissonance came to be resolved by a Three Judge Bench in ***General Manager, Telecom v. A. Srinivasa Rao***,[14] which held that the Telecommunication Department of the Union would fall within the ambit of an 'industry', having regard to the fact that it was engaged in activities of a commercial character and was not discharging functions of a sovereign nature.

68. In the course of its analysis, the Court unequivocally declined to endorse the broader construction of the sovereign functions exception. It observed that such an approach stood in direct conflict with the binding authority of the Seven-Judge Bench

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[13] AIR 1997 SC 2817.
[14] (1997) 8 SCC 767.

decision in ***Bangalore Water Supply (supra)***, which continued to hold the field. The Court emphasised that it would be impermissible for a Bench of lesser strength to either depart from or circumvent a binding precedent of a larger Bench. The decisions in ***Theyyam Joseph (supra)*** and ***Bombay Telephone Canteen (supra)*** were accordingly held not to lay down the correct position in law.

69. The decision in ***Srinivasa Rao (supra)*** was subsequently followed and reaffirmed firstly by a Two Judge Bench in ***All India Radio v. Santosh Kumar***,[15] which held that All India Radio and Doordarshan would qualify as 'industries'. The reasoning assigned was that the broadcasting of commercial advertisements for profit could not be characterised as a purely sovereign function. Similarly, in ***Agricultural Produce Market Committee v. Ashok Harikuni***,[16] another Two Judge Bench held that a Market Committee constituted under the Karnataka Agricultural Produce Marketing (Regulation and Development) Act, 1966 would fall within the ambit of an 'industry', noting that none of its functions could be regarded as sovereign or inalienable, and that the presence or absence of profit-making was not determinative.

[15] (1998) 3 SCC 237.
[16] (2000) 8 SCC 61.

70. What emerges from this line of authority is a consistent recognition that merely because an activity is undertaken by the State, whether in furtherance of welfare objectives or through departmental organisation, does not, by itself, attract the sovereign functions exception, particularly where such activity bears the *indicia* of organised service or commercial engagement.

B.3.3. The treatment and status of Research Institutions

71. The expansive construction accorded to the term 'industry' in ***Bangalore Water Supply (supra)***, particularly in its application to research institutions, proved to be a significant point of inflection in jurisprudence. The proposition that such bodies could, in principle, fall within the statutory definition if they satisfied the governing criteria introduced a degree of latitude that subsequently invited reconsideration.

72. This came to the fore in the Two Judge Bench decision in ***Physical Research Laboratory v. K.G. Sharma***,[17] where the Court held that the Physical Research Laboratory would not constitute an 'industry'. The determination rested on the footing that the institution was engaged in pure research, discharging functions of

[17] (1997) 4 SCC 257.

a governmental character, notwithstanding the fact that it employed personnel in furtherance of its objectives.

73. The reasoning in ***Physical Research Laboratory (supra)*** thus stood in discernible tension with the ratio of ***Bangalore Water Supply (supra)***, and sought to be an early indication of the judicial unease that began to surface with respect to the prevailing dictum.

B.3.4 The calls for reconsideration of the decision in ***Bangalore Water Supply (supra)***

74. A Two Judge Bench in ***Coir Board, Ernakulam v. Indira Devi P.S***,[18] while adjudicating the question as to whether or not the Coir Board constituted an industry, referred the decision in ***Bangalore Water Supply (supra)*** for reconsideration by a larger bench, pointing to the '*damaging effect*' of the extended meaning given to 'industry' and dissenting from the view laid down in that case.

75. The Bench observed that the experience of the two decades since ***Bangalore Water Supply (supra)*** had done more damage than good, not merely to the organisations but also to the employees by the curtailment of employment opportunities. It noted that the elimination of the profit motive had caused a large number of philanthropic and charitable activities to be unable to cope with

[18] (1998) 3 SCC 259.

their requirements, with the consequence that welfare activities were discontinued, the community was deprived of their benefit and the employees of their livelihood. As to the Coir Board itself, the Bench observed that its function was to promote the coir industry, not to run one, and that it would not be an "industry" on a predominant-purpose test, though it would have to be so characterised on the sweeping test in ***Bangalore Water Supply (supra)***.

76. Thereupon, a Three-Judge Bench of this Court, presided over by the then Chief Justice, declined the reference on the basis that ***Bangalore Water Supply (supra)*** did not require reconsideration merely because of a reference made by a Two-Judge Bench, which was bound by the larger bench.[19]

77. Nonetheless, ***Bangalore Water Supply*** **(supra)** was subsequently referred for reconsideration to a larger Bench initially by a Three-Judge Bench on 31.01.2001 in ***State of Uttar Pradesh v. Jai Bir Singh***.[20] This reference was founded upon an apparent conflict in precedent. On one hand, the Three-Judge Bench in ***Jagannath Maruti Kondhare (supra)*** had taken an expansive view, holding that a Social Forestry Department would fall within the ambit of an

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[19] Coir Board Ernakulum State of Kerala v. Indira Devi P.S. (II), (2000) 1 SCC 224.
[20] (2005) 5 SCC 1.

‘industry’. On the other hand, the Two-Judge Bench in ***State of Gujarat v. Pratamsingh Narsinh Parmar***[21] adopted a more restrictive interpretation. The divergence between these decisions necessitated authoritative clarification by a larger Bench.

78. The Five Judge Bench in ***State of Uttar Pradesh v. Jai Bir Singh***,[22] while considering the issue, held that there were various competing interests which would make it prudent to reconsider the correctness of ***Bangalore Water Supply (supra)*** and refer it to a larger bench. ***First***, the decision in ***Bangalore Water Supply (supra)*** was not unanimous; within the majority of five, three joined in the opinion of Krishna Iyer J., while Beg C.J. and Chandrachud J. (*as he then was*) wrote separately, with views partly different from the other three. ***Second***, the majority itself had recorded that the definition clause was ‘so wide and vague that it is not susceptible to a very definite and precise meaning’, and had described its interpretation as tentative and temporary, till the legislature stepped in. ***Third***, the Act being social legislation, the interests of employers, employees and the public, as the ultimate beneficiaries of industrial activity, must be kept in view; a worker-oriented approach unmindful of employer and public interest is one-sided. ***Fourth***, experience had shown that the majority view

[21] (2001) 9 SCC 713.
[22] (2005) 5 SCC 1.

had produced large awards of reinstatement and back-wages, which compelled employers of moderate means to close down their industries, harming employers, workers and the public alike. ***Fifth***, though the Act was amended in 1982, the amendment had remained unenforced. ***Sixth***, an over-expansive interpretation was a deterrent to private enterprise in a country of scarce public employment, and the engulfing of liberal professions (lawyers, architects, doctors, chartered accountants) within the definition was experienced as a hurdle; such professions require regulation, but by separate legislation. ***Seventh***, the concept of a sovereign function ought not, in a constitutional democracy, be confined to its traditional compass; rather it should comprehend the public welfare activities which Government undertakes in discharge of its constitutional obligations under Part IV, and such activities should fall outside 'industry'.

79. The cases were thus directed to be placed before the Chief Justice of India for the constitution of a suitable larger bench. Thereupon, on 02.01.2017, a Seven-Judge Bench led by the then Chief Justice of India directed that a Nine-Judge Bench would hear the matter.

80. The matter was thereafter listed on 12.10.2023 for final hearing. In that regard, this Court issued directions for the preparation of a common compilation of pleadings, written submissions, documents and precedents, to be filed on or before 20.11.2023. However, no further progress ensued in the matter thereafter.

81. In the *interregnum*, the IR Code, 2020, was brought into force on 21.11.2025, and on 02.02.2026, the ID Act was formally repealed.

82. Subsequently, this Court, by order dated 16.02.2026, with a view to bringing *quietus* to the instant controversy, framed the following questions for consideration:

- **i.** Whether the Triple Test, as laid down in ***Bangalore Water Supply (supra)***, is correct law;

- **ii.** Whether the Industrial Disputes (Amendment) Act, 1982 and the Industrial Relations Code, 2020 (**IR Code, 2020**) have any legal impact upon the interpretation of "industry" as contained in the Principal Act;

- **iii.** Whether the social welfare activities and schemes of Government Departments or their instrumentalities can be construed to be "industrial activities" for the purpose of Section 2(j); and

- **iv.** What are the "sovereign functions" of the State that fall outside the purview of Section 2(j).

83. The matter was thereupon heard continuously on 17.03.2026, 18.03.2026 and 19.03.2026, and consequently reserved for judgment.

C. <u>**THE PREFATORY QUESTION OF MAINTAINABILITY**</u>

84. The issue concerning the correctness of the reference itself was neither considered germane nor framed as a question for determination, as is evident from paragraph 82 above.

85. However, during the course of the hearing, learned senior counsel(s) and counsel(s) appearing for the Respondent-workmen raised a preliminary objection to the maintainability of the present reference to a Nine-Judge Bench. It was submitted that the appeals instituted by the State, its instrumentalities, and other employers were liable to be rejected at the threshold on the ground of maintainability. Consequently, according to the Respondents, this Court was not required to venture into the merits of the controversy or answer the questions formulated by the order dated 16.02.2026.

86. The Respondents further contended that, having held the field for nearly five decades, the decision in ***Bangalore Water Supply (supra)*** has attained a degree of jurisprudential stability that squarely attracts the principle of *stare decisis*. It was submitted that there exists no compelling necessity to reopen or reconsider the interpretation adopted therein, and that the mere existence of divergent judicial opinions or subsequent expressions of doubt does not, by itself, constitute sufficient justification for a comprehensive reappraisal of the correctness of the decision.

87. The Appellants, in response, supported the reference made to a Nine Judge Bench *vide* judgments dated 05.05.2005 and 02.01.2017, contending that it was done as per procedure, especially given that the Chief Justice of India had appropriately constituted larger benches to deal with the issues raised.

88. Having regard to these rival asseverations, we deem it appropriate to address this aspect, notwithstanding that no issue was framed to this effect on 16.02.2026 nor intended to be considered as a distinct issue. In view of the fact that several of the learned counsels have engaged with it and have relied upon it as a basis to decline the reference, it becomes necessary for us to examine the matter and record our reasons as well.

89. We have thus given our thoughtful consideration to the preliminary objection regarding the maintainability of the reference. We are, however, unable to accept the same and are inclined to reject it at the outset, *inter alia,* on two principal grounds, namely: (***i***) the procedure adopted and the correctness of the reference; and (***ii***) the broader considerations of institutional propriety that must rationally govern the adjudication of such matters.

C.1. Correctness of the manner in which Reference was made

90. Before proceeding to examine the correctness of the instant reference, it is necessary to advert to the general principles that govern the manner in which a Bench of lesser strength may refer questions for consideration by a larger Bench. The contours of this procedural mechanism are neither uncertain nor obscure. There exists a consistent line of authority that illuminates the governing norms and provides a principled framework within which such references are to be made and adjudicated.

C.1.1. The framework governing Larger Bench References

91. One need not set out on an odyssey to appreciate the governing principle. It would suffice to advert to the seminal Constitution Bench decision in ***Central Board of Dawoodi Bohra Community v. State of Maharashtra***,[23] wherein the Court authoritatively and conclusively settled the legal position governing references to a larger Bench in the following explicit terms:

> *"12. (1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.*

[23] (2005) 2 SCC 673.

(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co-equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions:

(i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and

(ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing."

[Emphasis supplied]

92. What has been so cogently articulated in ***Dawoodi Bohra (supra)***, and which continues to hold the field on the manner in which references to a larger Bench are to be made, is sufficiently clear and admits of no further elaboration. There is no gainsaying that ***Dawoodi Bohra (supra)*** was occasioned by a series of instances that struck at the very foundation of judicial propriety and institutional discipline. The Five-Judge Bench therein sought to clarify that any challenge to the decision rendered in ***Sardar Syedna Taher Saifuddin Saheb vs The State of Bombay***,[24] which pertained to a case on excommunication, would have to be heard by a Five-Judge or larger bench.

93. It was in that backdrop that the Constitution Bench therein considered it necessary to formulate comprehensive principles governing references to larger Benches, which in turn were firmly anchored in the doctrines of precedent, judicial decorum, and institutional discipline. In essence, the judgment reaffirmed that a Bench of lesser strength cannot disregard or depart from the law declared by a Bench of greater strength. If a smaller Bench entertains doubts as to the correctness of a larger Bench decision, the proper judicial course is not to overlook or sidestep the binding precedent, but to refer the matter to the Chief Justice for constitution of an appropriate larger Bench to authoritatively consider the issue.

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[24] 1962 AIR 853.

94. Indeed, one of us (Surya Kant, J. (*as he then was*)) relied upon ***Dawoodi Bohra (supra)*** in his dissenting opinion in ***Aligarh Muslim University v. Naresh Agarwal***[25] to reject the maintainability of the reference therein. To elucidate, in ***Aligarh Muslim University (supra)***, the issue concerned a Two-Judge Bench, having expressed reservations regarding the correctness of an earlier decision rendered by a Three-Judge Bench, directly referred the matter for reconsideration by a Seven-Judge Bench. This course of action was viewed, with the utmost respect, as constituting a clear departure from the settled discipline governing judicial precedents and the procedure for references.

95. In the dissenting opinion in ***Aligarh Muslim University (supra)***, it was held that such a reference by a Two-Judge Bench directly to a Seven-Judge Bench was not maintainable. It was observed that a Bench of lesser strength could not, of its own accord, bypass the established institutional procedure for constituting larger Benches.

96. There can thus be no doubt with respect to the robust foundations upon which the principles illustrated in ***Dawoodi Bohra (supra)*** are built.

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[25] (2025) 6 SCC 1.

C.1.2. Testing the Reference on the anvil of ***Dawoodi Bohra (supra)***

97. When one turns to the path traversed in the present matter before it ultimately came to be placed before a Bench of Nine Judges, it becomes evident that the reference has travelled through a long and somewhat layered judicial course, engaging different Benches of varying strength at multiple stages before culminating in the present proceedings. The question that consequently arises is whether this journey was undertaken in a manner consistent with and known to established judicial discipline, or whether, at any stage, procedural deviations or perhaps, to put it colloquially, 'shortcuts' were resorted to, that may be said to have contravened the principles authoritatively enunciated in ***Dawoodi Bohra (supra)***. In this regard, we propose to examine the course of referral adopted at each stage of the proceedings and to assess whether the procedure so employed by the respective Benches conforms to the said underlying principles.

98. To begin with, the seeming tranquillity and clarity ushered in by ***Bangalore Water Supply (supra)*** gradually began to exhibit fissures owing to the divergence that emerged between the decisions rendered by a Three-Judge Bench in ***Chief Conservator of Forests (supra)*** and a Two-Judge Bench in ***Pratamsinh***

Narsinh Parmar (supra), in the context of whether the Forest Department of the State could be construed as an 'industry'. While the former held that the Social Forestry Department would fall within the ambit of the definition notwithstanding its welfare-oriented functions, the latter adopted a contrary position.

99. In view of this apparent discordance, a Bench of Three Judges while dealing with a similar question of law in ***State of U.P. v. Jai Bir Singh (I)***,[26] considered it appropriate to observe that the issue as to whether a governmental welfare scheme, such as the Social Forestry Department, could be regarded as an 'industry' was a question of considerable public importance warranting consideration by a larger Bench. The matter was accordingly, *vide* order dated 31.01.2002, directed to be placed before the then Chief Justice of India for appropriate orders.

100. If one were then to examine the procedure adopted by the Three-Judge Bench in ***Jai Bir Singh (I) (supra)***, it becomes apparent, at the very threshold, that the Bench merely took cognisance of the conflicting views expressed by Benches of Two and Three Judges, as referred to in paragraph 98. In light of the fact that a substantially similar issue had arisen for consideration before it, coupled with the evident jurisprudential discordance, the Bench,

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[26] SLP (C) No. 10411/2001, Order dated 31.01.2002.

being of co-equal strength, was fully justified in expressing doubt as to the correctness of the view taken by the Bench in ***Chief Conservator of Forests (supra)***.

101. We may hasten to add that at that juncture, the correctness of ***Bangalore Water Supply (supra)***, partially or in entirety, was not the subject matter of consideration in ***Jai Bir Singh (I)***.

102. In all fairness, it was argued on behalf of the workmen that the Three-Judge Bench in ***Jai Bir Singh (I) (supra)*** should have adhered to the binding precedent established in ***Bangalore Water Supply (supra)***, to determine that the Social Forestry Department would fall within the scope of Section 2(j) of the ID Act. They contended that, given the larger bench size in ***Bangalore Water Supply (supra)*** compared to ***Jai Bir Singh (I) (supra)***, the former constituted a binding precedent for the latter. However, we find no merit in this submission.

103. We say so for the reason that ***Bangalore Water Supply (supra)*** has not issued any comprehensive declaration that the Social Forestry Department of any State or Union shall automatically be regarded as an 'industry'. Difficulties subsequently arose in applying the test laid down in ***Bangalore Water Supply (supra)***, particularly where a Three-Judge Bench interpreted the law in support of its conclusion that the Social Forestry Department qualifies as an ‘industry’, whereas a Two-Judge Bench arrived at a different conclusion. Faced with this dilemma of diverging views, particularly in re: the treatment of the Social Forestry Department, the Three-Judge Bench in ***Jai Bir Singh (I) (supra)*** appropriately referred the matter to a Five-Judge Bench.

104. It was only when ***Jai Bir Singh (I) (supra)*** came to be placed before a bench of Five Judges that the said Bench observed that the central issue concerned whether a governmental welfare scheme fell within the scope. It may thus be observed that the singular issue regarding whether the Social Forestry Department was an industry or not was expanded by the Five-Judge Bench, thereby broadening the scope of the issue, namely, as to whether all such governmental welfare schemes would be classified as industry or not within the meaning of Section 2(j) of the ID Act.

105. Additionally, ***Jai Bir Singh (I) (supra)*** did not itself purport to depart from or overrule the ratio in ***Bangalore Water Supply (supra)***, but merely directed that the matter be placed before the Chief Justice of India for appropriate orders. Consequently, notwithstanding that the decision in ***Dawoodi Bohra (supra)*** came to be rendered subsequent to the order dated 31.01.2002 passed in ***Jai Bir Singh (I) (supra)***, the procedure adopted cannot be said to have departed from the generally prevailing norms of judicial discipline and propriety.

106. This is what prompted the Five-Judge Bench in ***State of Uttar Pradesh v. Jai Bir Singh (II)***[27] to observe that the judgment in ***Bangalore Water Supply (supra)*** did not exhibit complete unanimity in its reasoning. It further observed that certain portions of the majority opinion appeared to suggest that the formulation adopted therein was intended to operate as an interim judicial arrangement until such time as Parliament enacted an appropriate legislative amendment clarifying the scope and meaning of the term 'industry'. Proceeding on that basis, the Bench expressed reservations as to whether the majority opinion could, in all respects, be treated as laying down a fully conclusive and binding precedent.

107. Further, the Five-Judge Bench supplemented this line of reasoning by expressing concern over the fact that the separate opinions in ***Bangalore Water Supply (supra)*** had been delivered by different learned Judges at different points in time, with the majority opinion having preceded the dissenting opinions and,

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[27] (2005) 5 SCC 1.

therefore, having been rendered without the benefit of considering the reasoning subsequently advanced therein.

108. In addition to these reservations, the Five-Judge Bench in ***Jai Bir Singh (II)*** also articulated broader concerns regarding the substantive approach adopted in ***Bangalore Water Supply (supra)***. It observed that the decision appeared to proceed from an unduly worker-centric perspective, without according sufficient consideration to the competing public interest in safeguarding the viability of industry and the legitimate concerns of employers. The Bench further opined that, within the framework of a constitutional democracy, the conception of 'sovereign functions' ought not to be narrowly confined, particularly when the State undertakes a wide range of welfare-oriented and value-generating activities in furtherance of its constitutional obligations under Parts III and IV of the Constitution.

109. Bearing these considerations in mind, the Five-Judge Bench observed that there existed "***compelling reasons more than one….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 (supra).***" Accordingly, it directed that the matters be placed before the Chief Justice of India for the constitution of an appropriate larger Bench to reconsider the judgment in ***Bangalore Water Supply (supra)***.

110. Once again, irrespective of the ultimate correctness or persuasive force of the reasons assigned by the Five-Judge Bench, the significant point is that it unquestionably possessed the authority to direct that the matter be placed before the Chief Justice of India for the constitution of an appropriate larger Bench to reconsider the decision in ***Bangalore Water Supply (supra)***. Indeed, not only did the Five-Judge Bench faithfully follow it, but it has also made express reference to the principles crystallised in ***Dawoodi Bohra (supra)***.

111. There is, therefore, no occasion for us to doubt the procedural propriety adopted by the Five-Judge Bench, particularly having regard to the following circumstances: ***First***, the Bench had originally been constituted to resolve the divergence that had arisen between ***Chief Conservator of Forests (supra)*** and ***Pratamsingh Narsinh Parmar (supra)*** on the question concerning the status of governmental welfare schemes under Section 2(j). ***Second***, in the course of undertaking that exercise, it traced the source of the divergence to the interpretation of 'industry' adopted in ***Bangalore Water Supply (supra)*** and furnished reasons for entertaining doubts as to its correctness. ***Third***, recognising that it was a Bench of lesser numerical strength than the Seven Judge Bench in ***Bangalore Water Supply (supra)***, it adhered to the discipline mandated by ***Dawoodi Bohra (supra)*** and merely directed that the matter be placed before the Chief Justice of India for the constitution of a larger Bench.

112. Thereupon, pursuant to the reference made by the Five-Judge Bench in ***Jai Bir Singh (II)***, the then Chief Justice of India constituted a Bench of Seven Judges to consider the matter. Upon an anxious consideration of the submissions advanced by the parties, the Seven-Judge Bench *vide* its order dated 02.01.2017 observed that, having regard to the "***serious and wide ranging implications of the issues that fall for determination as also the fact that serious doubts have been expressed in the reference order about the correctness of the view taken in Bangalore Water Supply's case (supra), we are of the opinion that these appeals need to be placed before a Bench comprising Nine Judges to be constituted by the Chief Justice.***"

113. Accordingly, the papers were placed before the then Chief Justice of India for the constitution of an appropriate Bench of Nine Judges to answer the questions raised in the reference order rendered by the Five-Judge Bench in ***Jai Bir Singh (II) (supra)***.

114. In this specific scenario, the Bench of Seven Judges observed that, in view of the serious reservations expressed regarding the correctness of ***Bangalore Water Supply (supra)***, the matter warranted reconsideration by a larger Bench. The Bench consequently directed that the papers be placed before the Chief Justice of India for the constitution of a larger Bench. It is pertinent to note that the Seven-Judge Bench, as well as the subsequently constituted Nine-Judge Bench, were both presided over by the then Chief Justice of India.

115. It needs no emphasis that under Order VI Rule 2 of the Supreme Court Rules, 2013, the then Chief Justice of India was vested with absolute power to constitute a larger bench for the hearing of the matter upon reference. Even in the absence of a formal reference to the larger bench by a smaller bench, the matter could thus be placed before a bench of Five to Seven Judges or Seven to Nine Judges by the Chief Justice of India in exercise of his plenary power.

116. Viewed thus, the order of reference squarely satisfies the principles governing judicial discipline and institutional propriety as elucidated in ***Dawoodi Bohra (supra)***. There can, therefore, be no legitimate doubt that the reference in hand has been made fully in accordance with law and incorruptible adherence to the settled norms regulating references to larger Benches.

C.1.3. The *Res Judicata* conundrum?

117. We may now deal with the objection raised by some of the learned counsel(s) that the initial reference from Three Judge to Five Judge Bench was barred by the principle of *Res Judicata*. The submission is premised on the fact that earlier a Two-Judge Bench in ***Coir Board, Ernakulam (I) (supra)***, sought reconsideration of ***Bangalore Water Supply (supra)*** by a larger Bench. However, such an opinion was turned down by a Bench of Three Judges, according to whom the issue already stood concluded by a Seven-Judge Bench in ***Bangalore Water Supply (supra)***. This opinion by the Three-Judge Bench, according to the representatives of workmen, constitutes *res judicata*.

118. *Res judicata* refers to the doctrine that issues and claims decided between competing parties ought not to be re-adjudicated. While this postulate finds legislative recognition in the context of civil suits through Section 11 of the Code of Civil Procedure, 1908, this Court has consistently recognised *res judicata* as a general principle of jurisprudence, applicable to all kinds of disputes adjudicated by different fora in India.[28] It is also a settled position that the principle would apply only when the 'matter in issue' in the subject case is necessarily and substantially decided on a prior occasion by a Court of competent jurisdiction. Here, the 'matter in issue' comprises the rights and claims of the parties to the dispute, originating from the specific cause(s) of action involved. In other words, to successfully raise a plea of *res judicata*, the litigant must demonstrate that the parties involved are the same, the rights and entitlements claimed are the same and they arise from the same cause of action, and that the previous Adjudicating Authority had jurisdictional competence to decide the same.

119. These requirements inevitably lead to the conclusion that *res judicata* would only apply to decisions made *in personam*, i.e., to the rights and claims *inter se* the parties involved in the litigation. The claim of right inherently depends upon the identification of material facts and the application of relevant law thereto. This would include questions of fact, while also involving determination of questions of law. However, the determination made on the question of law does not, in itself, constitute the decision on the 'matter in issue', which necessarily flows from the factual context

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28 Raj Lakshmi Dasi v. Banamali Sen, (1952) 2 SCC 219.

of a cause of action and the specific claims in a case.[29] Rather, such determination of law would amount only to a precedent in law.[30]

120. In the present scenario and as already elucidated in the segment titled "*The Calls for Reconsideration of the Decision in* ***Bangalore Water Supply (supra)***," the Two-Judge Bench in ***Coir Board, Ernakulam (I) (supra)*** sought reconsideration of the interpretation of 'industry' propounded in ***Bangalore Water Supply (supra)***. While adjudicating upon the question whether the Coir Board would fall within the ambit of Section 2(j), the Bench expressly recorded its disagreement with the broad and expansive construction accorded to the definition in ***Bangalore Water Supply (supra)***.

121. The Bench went so far as to observe that the experience of the two decades following ***Bangalore Water Supply (supra)*** had, in its perception, produced consequences more detrimental than beneficial, not only for institutions and organisations but also for employees themselves, owing to the contraction of employment opportunities. This conclusion was founded upon the view that the elimination of the profit motive as a relevant consideration had

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[29] State (NCT of Delhi) v. BSK Realtors LLP, (2024) 7 SCC 370 ***(including 3 of us – Surya Kant, J. (as he then was), Dipankar Datta, J. and Ujjal Bhuyan, J.)***.
[30] Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy, (1970) 1 SCC 613; Malook Singh v. State of Punjab, (2022) 17 SCC 765 ***(including one of us – B.V. Nagarathna, J.)***; State of Rajasthan v. Nemi Chand Mahela, (2019) 14 SCC 179.

rendered numerous philanthropic and charitable bodies incapable of complying with the obligations arising under industrial law. According to the Bench, this had led, in several instances, to the discontinuation of welfare-oriented activities, thereby depriving communities of their benefits and employees of their means of livelihood.

122. In regard to categorising the Coir Board itself, the Two-Judge Bench, having considered that the purpose of the Coir Board was to improve the marketing of coir products and promote its exports by maintaining show rooms and sales depots, held that it was not an industry on a predominant purpose test, although it would have been so characterised on the expansive test laid down in ***Bangalore Water Supply (supra)***. Accordingly, a reference was made to a larger bench by directing that the matter be placed before the Chief Justice of India for consideration.

123. However, a subsequent Three-Judge Bench, presided over by the then Chief Justice of India in ***Coir Board, Ernakulam (II) (supra)***, declined the reference vide its order dated 10.11.1998, stating that ***Bangalore Water Supply (supra)*** does not require reconsideration on a reference made by a Two-Judge Bench, which is itself bound by the larger Bench.

124. The course adopted in ***Coir Board, Ernakulam (I)*** and ***(II) (supra)*** did not pass unnoticed and was expressly adverted to by the Five-Judge Bench in ***Jai Bir Singh (II)***. However, there existed nothing in law that precluded the Constitution Bench in ***Jai Bir Singh (II)***, which had itself been independently constituted to resolve a distinct divergence arising from the interpretation of 'industry' in ***Bangalore Water Supply (supra)***, from examining the matter on its own footing. The proceedings in ***Jai Bir Singh (II) (supra)*** cannot, by any stretch, be regarded as a mere continuation of what had earlier commenced in Coir Board.

125. Although both lines of authority ultimately converged upon concerns relating to the consequences and practical implications of the expansive definition adopted in ***Bangalore Water Supply (supra)***, the foundations upon which such concerns were raised remained materially distinct.

126. Consequently, the refusal by the Three-Judge Bench in ***Coir Board (II) (supra)*** to reconsider ***Bangalore Water Supply (supra)*** cannot be construed as exerting any binding or preclusive effect upon the Five-Judge Bench in ***Jai Bir Singh (II)***, which had been constituted in the context of an altogether different jurisprudential conflict.

127. There can be no occasion to invoke the doctrine of *res judicata* in the present context. To hold otherwise would run counter to the well-settled principles governing judicial precedents, references, and the exercise of constitutional adjudicatory power, as consistently recognised in a catena of decisions of this Court. The doctrine, conceived to lend finality to *inter partes* adjudication, cannot be transposed indiscriminately into a setting involving the determination of pure questions of law by Benches of varying strength.

128. Indeed, any such approach would also militate against the principle of '*fundamental determination*', which has been aptly elucidated by this Court in ***Yadaiah and another v. State of Telangana and others***,[31] wherein this principle was explained in the following terms:

> *45. The effective test to distinguish between a fundamental or collateral determination is hinged on the inquiry of whether the concerned determination was so vital to the decision that without which the decision itself cannot stand independently.* ***Any determination, despite being deliberate or formal, cannot give rise to applicat ion of the doctrine of res judicata if they are not fundamental in nature****.*
>
> [Emphasis supplied]

[31] 2023 INSC 664.

C.1.4. Stare Decisis and the Doctrine of Overruling

129. A passing reference, as already iterated above, was also made to the applicability of the doctrine of *stare decisis*, to buttress the contention that the instant reference is not maintainable. To briefly address this assertion, the doctrine of *stare decisis* is a jurisprudential tenet that underpins consistency in judicial decisions. While many foreign jurisdictions may apply it as an unwritten norm, the Constitution of India embodies it within Article 141, postulating that the law laid down by this Court must be binding in nature. It, thus, follows that when this Court passes judgments, there is some finality in the declaration of law made therein.

130. Be that as it may, this Court has unequivocally held that the doctrine of *stare decisis* does not imply that a judicial decision, once rendered by this Court, is binding for eternity and cannot be subjected to reconsideration by this Court.[32] No historic precedent, however widely used, can be said to have supplied an unalterable decision on the interpretation of law.

131. A judicial pronouncement, although made with the binding force of this Court, may be required to be recalled, overturned, or

[32] Sajjan Singh v. State of Rajasthan, 1964 SCC OnLine SC 25; S. Nagaraj v. State of Karnataka, 1993 Supp (4) SCC 595.

modified due to extraordinary, compelling circumstances. In some cases, such modification has been occasioned due to temporal changes in the social structure and realities of this Country, whereby existing law is framed into the newer contexts.[33] In other cases, erroneous interpretation of statute has been rectified by larger benches of this Court, invoking the inherent power of this Court to review its own decisions.[34] However, the reiteration of this exception to the traditions of precedent is consistent with the doctrine of *stare decisis*. As long as the reconsideration is reasoned and within the norms of judicial procedure, the doctrine of *stare decisis* and the precedential value of the previous decision does not prevent this Court from assessing the correctness of its prior decisions.

132. In this light and on an application of this principle to the present context, there can be no question of any impermissible overlap, nor can it be contended that the issue concerning the reconsideration of ***Bangalore Water Supply (supra)*** was conclusively addressed by ***Coir Board (II) (supra)*** so as to operate as a bar to the reference made in ***Jai Bir Singh (II) (supra)***.

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[33] Supreme Court Advocates-on-Record Assn. v. Union of India, (1993) 4 SCC 441.
[34] Bengal Immunity Co. Ltd. v. State of Bihar, (1955) 1 SCC 763.

133. The two proceedings represented distinct and independent lines of inquiry, each arising from separate jurisprudential concerns, albeit converging upon the common legal question concerning the scope of the term 'industry' under Section 2(j) of the ID Act. The mere existence of such convergence cannot justify the conclusion that the outcome of one proceeding necessarily foreclosed or exhausted the jurisdictional basis for the other. To hold otherwise would be to conflate distinct references founded upon different causes of judicial doubt and directed towards the resolution of different controversies.

134. In any case, the Five-Judge Bench in ***Jai Bir Singh (II)***, being of superior numerical strength, was not bound by any finding or opinion expressed by the Three-Judge Bench in ***Coir Board (II)***.

135. Accordingly, the decision in ***Coir Board (II) (supra)*** cannot be construed as constituting a definitive impediment to the reference subsequently made in ***Jai Bir Singh (II) (supra)***, nor as depriving the latter Bench of the authority to entertain and examine the questions that arose before it. Therefore, we find no infirmity in the manner in which the present matter came to be referred to a Nine-Judge Bench.

C.2. Treading the razor's edge between technicality and quietus

136. While this conclusion on maintainability necessarily places us at variance with the views that the reference is fundamentally misconceived and not in conformity with the procedure contemplated by law, we are unable, for the reasons already recorded, to subscribe to that view.

137. Having held that the present reference is neither barred by *res judicata* or *stare decisis* nor does it lack maintainability, we also find that there exists a broader institutional consideration that merits articulation. Not every question that reaches a Bench of such exceptional strength is best left unanswered, particularly where it concerns an issue that has occupied judicial attention for decades and has generated substantial uncertainty.

138. In that light, it would be somewhat incongruous if a reference that has traversed multiple Benches over a considerable period of time, and which now stands before a Bench of Nine Judges, were to be terminated solely on the basis of procedural objections of a technical character. Such considerations undoubtedly have their place and must be respected; however, they ought not to become a convenient fig leaf cover behind which the Court declines to engage with a question whose resolution has long awaited authoritative determination. Where the occasion presents itself to settle an issue of recurring importance and bring certainty to the law, institutional prudence may sometimes favour a decision on the merits rather than a retreat into procedural abstention.

139. It is therefore our solemn duty, especially keeping the extraordinary passage of time in view and the considerable expenditure of judicial effort across successive Benches, not to retract from our institutional responsibility that accompanies the exercise of our constitutional jurisdiction.

140. We now proceed to examine the substantive questions that arise for consideration and to set out, in a structured and systematic manner, our views and conclusions thereon.

D. CONTENTIONS OF THE PARTIES

141. Prior to entering into the substantive merits of the controversy, it would be apposite to first delineate the principal submissions advanced by the parties.

D.1. Contentions on behalf of the Appellants

142. We have heard Mr. R. Venkataramani, learned Advocate General for India, Mr. K.M. Nataraj, learned Additional Solicitor General of India, Mr. Shadan Farasat and Mr. Sridhar Potaraju, learned Additional Advocates General, and Mr. Shekhar Naphade and Mr. Sanjay Hegde, learned Senior Counsel appeared on behalf of the

Union of India, and the various States and other entities. Mr. Jaideep Gupta, learned Senior Counsel, and Mr. Saket Sikri, Mr. Anand Verma, and Mr. Krishna Kumar, learned Counsel, represented the other Appellants and Intervenors supporting the Appellants. Mr. Alok Sangwan, learned Senior Additional Advocate General appeared for the State of Haryana. The principal submissions canvassed by them before this Court are as follows:

a. There is a pressing need to reinterpret Section 2(j), since it must draw its meaning from modern Constitutional realities and India's position as a welfare state. In this sense, the ID Act must be interpreted by balancing the interests of the employee and the employer, without permitting either side to dominate the other;

b. This Court in ***Bangalore Water Supply (supra)*** has kept in sight the objectives of worker protection to interpret Section 2(j). It would not be proper to base the interpretation on such considerations de hors the textual contents of the provision. Furthermore, ***Bangalore Water Supply (supra)*** went beyond filling the legislative gaps, amounting to judicial rewriting of the provisions. Hence, the interpretation in ***Bangalore Water Supply (supra)*** warrants reconsideration;

c. The key factor that ought to govern what is included in 'industry' is whether the activity, at its core, involves commercial objectives, in line with trade and business. Reliance in this regard has been placed on ***Safdarjung Hospital (supra)*** to submit that the entity must have a commercial or an analogous objective, notwithstanding the existence of a profit motive. Applying the principle of *noscitur a sociis*, it was urged that the intention of the Legislature was not to include all activities, but only those collectively falling within the import of "business, trade, undertaking, manufacture or calling of employers";

d. The scope of the Triple Test established in Krishna Iyer, J.'s erudite opinion in ***Bangalore Water Supply (supra)*** is very expansive, having the potential to include various essentially non-industrial activities like charity, public research, and government welfare activities. The breadth of the Triple Test is required to be restricted, keeping in mind the over-inclusion. Alternatively, exceptions must be introduced to address the issues raised in the application of ***Bangalore Water Supply (supra)*** in the facts of particular cases;

e. The understanding of 'sovereign functions' as made out in ***Bangalore Water Supply (supra)*** is based on foreign jurisprudence and does not properly reflect the duty-bound role played by the State under the Constitution of India. Activities like forestry, irrigation, education, etc., which are undertaken in light of Part IV of the Constitution or as a statutory duty, do not involve any commercial or commerce-like objectives and ought not to be included within the definition of 'industry'. This is especially so because of the growing welfare legislation and regulatory activities, which are not intended to be included within the scope of 'industry';

f. In the context of Universities, the functions performed by such institutions are to confer degrees and diplomas. It is, essentially, a function emanating from the State's role, involving a regulatory scheme through the University Grants Commission. The undertaking of teaching is also an intellectual and enlightening exercise, not comparable to material services. Thus, the engagement of a University in enabling education and conferring degrees inherently indicates the functions performed by a State, not a commercial activity commensurate to be included within 'industry'; and

g. With reference to temples and private charitable institutions, the law laid down in ***Bangalore Water Supply (supra)*** would also include temples and charitable organisations within 'industry' only because of 'systematic activity involving an employer and employee cooperation', without taking into account the inherent dissonance between the spiritual and philanthropic nature of the establishment and the commercial underpinnings of the ID Act. The test gives no impetus to the predominant nature of the activities undertaken and only pertains to the relationship between the workmen and the employer.

D.2. Contentions on behalf of the Respondents

143. *Per contra*, Ms. Indira Jaising, Mr. Bharat Sangal, Mr. C.U. Singh, Mr. Vijay Hansaria, Mr. Gopal Sankarnarayanan, Mr. PV Surendranath, Ms. Jayana Kothari, Mr. K.S. Chauhan, learned Senior Counsel, and Mr. Ashok Kumar, Mr. Shivam Singh, Ms. Sangeeta Bharti, and Ms. Nidhi, learned Counsel, represented the Respondent-workmen and the Intervenors supporting the Respondents. In a nutshell, they opposed the reference and argued that the majority opinion in ***Bangalore Water Supply (supra)*** is good law:

a. The decision in ***Bangalore Water Supply (supra)*** was rendered by a bench of seven Judges. It is irrelevant whether the bench was unanimous or split in its views. The view of the majority shall carry the weight of the entire bench and has to be treated as a decision of Seven Judges.

b. It must be kept in mind that the Five Judge bench, *vide* ***Jai Bir Singh (II) (supra)***, has only questioned the formulation of the interpretative test for 'industry', not the principles underlying ***Bangalore Water Supply (supra)***.

c. The ID Act is inherently a beneficial legislation. This Court in ***Bangalore Water Supply (supra)*** rightly applied the usual principles of statutory interpretation which would be used for a beneficial legislation.

d. By adopting an expansive and inclusive approach to interpreting the expression of 'industry', the Seven-Judge Bench has ensured that benefits available to workmen under the ID Act, such as job security and remedy of reinstatement, are available to all workmen. If the definition of 'industry' is narrowed or the exceptions to it are expanded, many workmen therein would be deprived of a welfare legislation, the protection of which the Civil Court would not be able to extend to them.

e. The core determinative factor to identify an 'industry' is the character of the activity. The nature of the entity carrying out such activity or the motive behind the same is irrelevant. This is well discernible from Chandrachud, J.'s (*as he then was*) separate concurring opinion in ***Bangalore Water Supply (supra)***.

f. The words in Section 2(j) cannot be understood through their 'common sense' meaning. It is a settled principle of statutory interpretation that words must be treated as deliberate and technical so as to derive character from the preceding and succeeding expressions. The definition of 'industry' will thus draw its colour from the other provisions of the ID Act.

g. As long as the functions carried out by the workmen are similar and are performed in a similarly structured environment, there is no rhyme or reason to discriminate among workmen on the basis that the enterprise is charitable, governmental, or religious rather than commercial. Similarly, if the decision in ***Safdarjung Hospital (supra)*** is to be accepted, the statutory protection envisaged under the ID Act for not only the workers but also the employers and the common public, would only be available in private hospitals, not government or charitable healthcare institutions. While welfare activities, especially those which draw inspiration from Part IV of our Constitution, are aimed at protecting and uplifting weaker sections of society, they cannot be allowed to lead to the deprivation of employment rights of another section of society.

h. There cannot be an absolute bar on governmental activities from being included within 'industry'. The ID Act expressly recognises 'public utility services' under Section 2(n).

i. Since the policy of liberalisation, privatisation, and globalisation has been effected in 1991, many spheres which were earlier restricted to government entities have now been opened to the private sector. In such circumstances, the government cannot claim that these activities, irrespective of whether performed by a private entity or the government, fall beyond the realm of 'industry'.

j. While certain activities performed by the government bear the hallmarks of a sovereign function, such other activities which do not pertain to the sovereign function must be severed from such function and still ensure the benefit of the ID Act to the workmen. In the context of the Sovereign Mint, for example, a workman not concerned with minting of coins need not be excluded from the protections under the ID Act and the test of dominant nature ought to be applied in such cases.

D.3. Contentions on behalf of the Amicus Curiae

144. Mr. Jamshed P. Cama and Mr. Parthasarathi Sengupta, Senior Advocates, were requested to assist this Court as *Amici Curiae*. They graciously agreed and enlightened us exponentially, although their positions on the issues at hand differed substantially.

145. Mr. Cama's submissions focussed on the textual framework of Section 2(j) and submitted that the identification of an 'industry' can only be from the nature and motive behind the activities undertaken. He urged that:

a. The Triple Test, as laid down in ***Bangalore Water Supply (supra)***, is expansive because of its focus on the employer-employee relationship, without any attention towards the nature of activity being undertaken. It does not take into account the actual text of the provision and is guided by the purported intention of the ID Act.

b. The import of the word 'undertaking' has to be derived from the context of "*business, trade, undertaking, manufacture or calling of employers*." Anything can be an undertaking, but only the undertakings having some commercial underpinnings would amount to 'industry'.

c. An industry would, as such, necessarily involve some semblance of commercial activity. Mere charitable distribution of goods and services or operation of a club for its members would not amount to an industry. The majority opinion in ***Bangalore Water Supply (supra)***, would permit such undertakings to be included within 'industry', solely based on the employment of workmen to facilitate a non-industrial activity. The existence of an employee-employer relationship has no bearing on whether the activity amounts to an industry or not.

d. In this context, the interpretation of Section 2(j) must involve an appraisal of the character and intention behind the activity involved, especially in the context of fully altruistic charities and government welfare activities. An intention of revenue and/or profit must belie an industrial activity.

e. Once the nature of activity is considered, the character of the employer becomes irrelevant. The government can also be running an industry, but not all government undertakings will have industrial features.

146. Mr. Sengupta, on the other hand, called attention towards the perspective of the worker to make out a case that the motive behind the activity should not be the determinative factor and vehemently submitted that:

a. The ID Act as a whole consistently recognises that the government can and does operate industries.

b. The coverage under the ID Act is not replaceable by granting remedies before other fora. The Industrial Tribunals and Labour Courts are *sui generis* Authorities and their powers in respect of employers as well as workmen cannot be available to any coordinate authority.

c. The intention of the ID Act being to promote industrial harmony and workman upliftment, the interpretation of Section 2(j) thereof must be guided by these principles.

d. The core identification factor for an industry is the economic relationship between the employee and the employer. So long as such relationship exists, there is no change in the labour expended by the employee, irrespective of whether the employer was motivated by generosity/philanthropy or by commercial gain. There would, thus, be no reason for distinguishing the coverage by the ID Act on the basis of underlying intention behind the activity.

e. The decision in ***Bangalore Water Supply (supra)*** was rendered by a Bench of Seven Judges. It is irrelevant whether the bench was unanimous or split in its views. The view of the majority shall carry the weight of the entire bench and has to be treated as a decision of Seven Judges.

E. ISSUES FOR CONSIDERATION

147. This Court, by its order dated 16.02.2026, crystallised the controversy by formulating four questions for consideration, with a view to securing a final and authoritative resolution of the issues arising in the present reference (*see paragraph 82 where these questions have been reproduced*).

148. Upon a perusal of the questions so framed, it appears to us that the principal analysis on the merits may proceed by addressing Issue Nos. 1, 3, and 4 conjointly. These questions, though differently worded, substantially converge upon the broader inquiry concerning the meaning and scope of the term 'industry' under Section 2(j) of the ID Act, and the nature of the activities and entities that may legitimately fall within its ambit.

149. Issue No. 2, on the other hand, stands on a somewhat distinct footing and may appropriately be dealt with separately at a later stage. This is because both the Industrial Disputes (Amendment)

Act, 1982 and the IR Code, 2020, represent subsequent legislative developments, the relevance and effect of which necessarily depend upon the conclusions reached on the antecedent questions relating to the interpretation of Section 2(j). Their consideration would, therefore, be more appropriately undertaken after the foundational questions arising under Issue Nos. 1, 3, and 4 have been addressed.

F. AT THE HEART OF THE MATTER: WHAT CONSTITUTES AN 'INDUSTRY'?

150. As we embark on an analysis of the merits, it would be apposite to set out the statutory provision that lies at the nucleus of the present controversy and has, over the decades, generated such sustained judicial debate. Section 2(j) defines 'industry' to mean '***any business, trade, undertaking, manufacture or calling or employers and includes any calling, service, employment, handicraft, or industrial occupation of avocation of workmen***'.

151. What becomes perceptibly obvious from the above definition is that the ID Act does not leave the term 'industry' rigid or undefined. On the contrary, it is an inclusive clause enshrined within Section 2(j) that furnishes an express catalogue of activities, each of which constitutes an 'industry'. The difficulty, therefore, has never lain in the absence of a definition; rather it is in determining the true scope and reach of the one that the Legislature intended to enact.

152. The controversy arises when one is confronted with the task of discerning which activities or nature thereof fall within the embrace of the definition and which stand beyond its limits. The language employed in Section 2(j) is cast in terms of considerable breadth, lending itself to competing interpretive possibilities. The central inquiry, therefore, is not whether 'industry' has been defined, but how that definition is to be understood and applied. Is it to receive a broad and expansive construction, or a more confined and restrictive one? Is the statutory scheme to be understood as implicitly requiring identifiable categories of inclusion and exclusion? Is the focus to be upon the organisation as an integrated whole, or upon its constituent units viewed in isolation? These are the questions that have persistently engaged judicial attention and have shaped the evolution of the jurisprudence on Section 2(j).

153. All the questions subsumed within Issue Nos. 1, 3, and 4 are, in essence, ancillary to the central task of ascertaining the true meaning, scope, and import of the definition of 'industry' under Section 2(j). They represent different facets of the same overarching inquiry and ultimately converge upon the interpretive exercise that lies at the heart of the present reference. This necessarily entails an examination of the construction adopted in ***Bangalore Water Supply (supra)***, the question whether social welfare and public-oriented organisations fall within the ambit of the definition, and the extent to which the 'sovereign functions' exception operates to exclude certain entities or activities from its reach. Each of these issues is not an end in itself, but rather a constituent element in the broader endeavour of determining what the term 'industry' was intended to encompass.

154. Our analysis shall, therefore, proceed along four broad and interconnected lines of inquiry. ***First***, we shall examine the true meaning and import of the language employed in Section 2(j), viewed in the context of the ID Act as an integrated statutory scheme. ***Second***, we shall undertake a close examination of the ratio laid down in ***Bangalore Water Supply (supra)***, with particular emphasis on the formulation and underlying rationale of the Triple Test. ***Third***, we shall consider the practical and jurisprudential consequences that have flowed from the application of the Triple Test over the years. ***Fourth***, on the basis of the foregoing analysis, we shall determine whether there ought to be a change in the manner in which Section 2(j) is construed and applied.

F.1. The meaning of 'Industry' as encapsulated in the ID Act

155. It may be seen from the definition of 'industry' in Section 2(j) that the term means:

a. Any business, trade, undertaking, manufacture or calling of employers;

b. And it includes any calling, service, employment, handicraft or industrial occupation;

c. Or avocation of workmen.

156. The inclusion of the term 'includes' further characterises the definition as exhaustive; therefore, an activity, regardless of its not being explicitly listed within the definition, but it otherwise satisfies the criteria of an industrial activity, shall also be considered as industry.

157. Further, the provision appears to define a seemingly straightforward concept. However, upon closer examination, it becomes apparent that the definition is itself constructed through a constellation of broad and inherently elastic expressions, many of which are capable of admitting multiple shades of meaning and consequently invite further interpretive inquiry.

158. Expressions such as “business,” “trade,” “undertaking,” “calling,” “service,” “employment,” and “industrial occupation” are not terms of narrow or technical import. Read literally, and in isolation, they are capable of encompassing an extraordinarily wide spectrum of human activity. Be that as it may, a proper understanding of the definition necessarily requires a closer examination of the content and connotation of these constituent expressions.

159. Indeed, the terms are not mere surplusage. Each appears to have been deliberately chosen to capture a distinct facet of organised human endeavour, and it is through their collective interplay, rather than through any one expression in isolation, that the true legislative conception of ‘industry’ emerges. An inquiry into their meaning is, therefore, not an exercise in semantics alone, but an indispensable step in understanding the expanse, limits, and underlying purpose of Section 2(j). Accordingly, we have taken the opportunity to individually delineate the meaning of each of these terms as follows:

a. The expression ‘business’, though not defined in the ID Act, is one of considerable breadth. Its expansive character is evident from the definition contained in Section 2(13) of the Income-tax Act, 1961, which defines it to mean “*any trade, commerce or manufacture, or any adventure or concern in the nature of* *trade, commerce or manufacture.*" This broad character is further evidenced by the manner in which its meaning has been expounded in the Oxford English Dictionary, wherein the term business means: (***i***) a person's regular occupation; (***ii***) commercial activity; (***iii***) a commercial organization; (***iv***) work to be done or matters to be attended to; and (***v***) a person's concern.

b. The term trade, similarly, is a fairly wide term with a capacious connotation and has been defined in Black's Law Dictionary as "*the act or business of exchanging commodities by barter; or the business of buying and selling for money; traffic; barter.*" Trade, too, has been broadly interpreted to refer to any organised, continuous activity of either buying, selling or exchanging goods and services with a profit motive in mind and encompasses a spectrum of commercial endeavours.

c. Next, the word 'undertaking' has been mentioned in multiple Statutes including Section 2(35) of the Income Tax Act, 2025, where it has been defined as "*any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity".* It has further been clarified by this Court to mean "*a going* *concern with all its rights, liabilities and assets as distinct from the various rights and assets which compose it… is an amalgam of all ingredients of property and are not capable of being dismembered. That would destroy the essence and innate character of the undertaking. In reality, the undertaking is a complete and complex weft and the various types of business and assets are threads which cannot be taken apart from the weft."*[35]

d. The expressions 'manufacture', 'calling of employers', and 'calling' are likewise couched in broad and open-textured language. While 'manufacture' is generally understood to refer to the process of producing, making, or transforming goods into a commercially recognisable form, the remaining expressions are far less precise and are capable of embracing a diverse range of activities. The term 'calling' ordinarily denotes an occupation, vocation, pursuit, or line of endeavour to which a person devotes their labour, skill, or attention. Similarly, the expression 'calling of employers' is not confined to any particular category of enterprise and may extend to a wide spectrum of undertakings, professions, occupations, and organised activities pursued by employers.

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[35] Rustom Cavasjee Cooper v. Union of India, AIR 1970 SC 564.

e. The phrases ‘service’, ‘employment’, ‘handicraft’, and ‘industrial occupation’ are, likewise, terms of broad import, each capable of encompassing a wide range of human activity. None of these formulations is inherently self-limiting, nor do they possess a singular or narrowly confined meaning. ‘Service’ is perhaps among the most expansive of these terms, potentially extending to any organised activity undertaken for the benefit of another. ‘Employment’ is equally broad, denoting the engagement of labour or skill in the performance of a task, occupation, or vocation. ‘Handicraft’ traditionally refers to activities involving manual skill or craftsmanship, while ‘industrial occupation’ is capable of embracing a diverse spectrum of occupations connected with productive or organised economic activity. Viewed either individually or collectively, these expressions are sufficiently capacious to encompass an extensive variety of undertakings.

f. The diction ‘industrial occupation’, as its very wording suggests, appears at first glance to be largely self-explanatory. It ordinarily connotes an occupation, vocation, or line of work connected with an industrial activity or undertaking. Yet the term does little to dispel the ambiguity that surrounds the definition as a whole. Rather, it risks reintroducing the very question that it seeks to answer.

g. Finally, one arrives at the expression 'avocation of workmen'. The term 'avocation', in its ordinary and colloquial sense, is capable of referring to an occupation, pursuit, or activity to which an individual devotes time and effort. Since the term 'workman' has been defined in Section 2(s) of the ID Act itself, there is little need to resort to external aids of interpretation. The said term provides that a workman "*means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—*

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

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

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

(iv) who, being employed in a supervisory capacity, draws wages exceeding 3 [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

160. The foregoing examination of the constituent expressions employed in Section 2(j) read with Section 2(s) does little to resolve the interpretive dilemma before us. If anything, it serves to reinforce the conclusion that the statutory definition is cast in language of exceptional width and that the individual terms comprising it are themselves marked by a considerable degree of elasticity. Their dissection aids in understanding the textual components of the provision, but offers limited guidance in identifying the principled boundaries of what the Legislature intended the term 'industry' to encompass.

161. The exercise further reveals that the definition, viewed in isolation, is incapable of administering a complete answer to the question(s) before us. The dimensions of the language employed are such that the provision does not, by itself, provide a clear mechanism for distinguishing activities that fall within its ambit from those that lie beyond it.

162. Viewed in this manner, the definition seemingly possesses an almost boundless amplitude, which is capable of bringing within its fold nearly every organised human activity. If one were to adopt a purely literal construction and focus solely on the words employed in Section 2(j), it may plausibly be argued that entities ranging from a solitary street vendor selling fruits and vegetables to sprawling multinational corporations would all fall within the compass of an 'industry'.

163. Yet, such a construction would carry the provision far beyond the realm of plausibility. Statutory interpretation does not proceed on the assumption that Parliament legislates in terms so sweeping as to obliterate all meaningful distinctions between vastly different forms of economic and social activities. If a definition is construed with such extraordinary elasticity, on its literal interpretation, it would risk rendering the concept of 'industry' virtually limitless and, in the process, depriving the provision of any coherent boundaries. It is difficult to conceive that the legislative intent was to cast the net so wide as to encompass every conceivable organised activity without regard to its nature, purpose, or context. The definition undoubtedly does not intend to create unmanageable situations.

164. It is in this context that it becomes necessary to turn to the construction adopted by this Court in various decisions, including in ***Bangalore Water Supply (supra)***. An examination of those formulations and the rationale supplanting them is therefore the logical next step in our analysis.

F.2. The judicial interpretation accorded to 'Industry'

165. Of course, this exercise of closely examining the expressions employed in Section 2(j) and culling out their contextual meaning was undertaken with considerable depth and rigour in ***Bangalore Water Supply (supra)***. The interpretation accorded to the term 'industry' under Section 2(j) by the Seven-Judge Bench in ***Bangalore Water Supply (supra)*** has already been examined in considerable detail in the segment titled "*Bangalore Water Supply (supra): A Truly Watershed Moment*." That being so, it is equally important to appreciate the considerations that informed the Court's reasoning, which ultimately led to the formulation of the ratio and the Triple Test.

166. To properly understand the decision in ***Bangalore Water Supply (supra)***, one must begin with the factual controversy that confronted the Bench. The principal question was not an abstract inquiry into the meaning of the term 'industry', but whether a statutory body engaged in providing essential public amenities and discharging functions traditionally associated with governmental responsibility could nevertheless fall within the ambit of Section 2(j). More specifically, the Court was required to determine whether such activities, notwithstanding their public character and their connection with the discharge of civic obligations, were to be regarded as lying outside the definition on the footing that they partook of a governmental or regal character.

167. Indeed, the judgment opens with the concurring opinion of Beg, C.J., who embarked upon much the same exercise that presently confronts us, namely, an examination of the language employed in Section 2(j) and an inquiry into whether the assortment of expressions comprising the definition could, by themselves, furnish a satisfactory understanding of what Parliament intended by the term 'industry'. Despite this industrious exercise, Beg, C.J. ultimately arrived at a conclusion not dissimilar to the one that emerges from our own examination.

168. However, Krishna Iyer, J. dealt with it in far greater detail in his majority opinion, wherein he has taken a '*panoramic view of the statute and its jurisprudential bearings*'. In that endeavour, he sought to examine the contextual import of expressions such as 'trade', 'business', and 'undertaking', not as isolated terms, but as constituent elements of a composite statutory scheme intended to regulate industrial relations in a welfare State.

169. In ensuring that he went beyond the mere semantics, considerable reliance was placed upon earlier authorities, particularly the decision in ***D. N. Banerji v. P. R. Mukherjee***,[36] which had, decades earlier, laid the foundations for a broader understanding of the term 'industry'. Drawing upon this jurisprudential lineage, the learned Judge proceeded on the premise that the Industrial Disputes Act is fundamentally a piece of social welfare legislation enacted with the object of securing industrial peace and protecting labour. Consequently, according to this line of reasoning, any interpretive exercise under the Act ought to remain informed by, and aligned with, its welfare-oriented and worker-protective character.

170. This nuanced and purposive analysis ultimately culminated in several landmark interpretive conclusions. Among the most

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[36] 1953 AIR 58.

significant was the treatment of the word 'undertaking', which was held not to be a term of unbounded amplitude. It was observed that, even upon applying the principle of *noscitur a sociis* as a commonsense guide to construction, the meaning of 'undertaking' could not be divorced from the company it keeps, namely, expressions such as 'business', 'trade', 'manufacture', and 'calling'.

171. Accordingly, 'undertaking' was understood as being subject to a contextual limitation, such that it would conform to the restrictive characteristics shared by the associated terms appearing both before and after it in the definition of 'industry' under Section 2(j). The Seven Judge Bench thus rejected an interpretation that would permit the aforesaid term to assume an unrestricted or all-encompassing meaning divorced from its statutory setting.

172. Equally, the Court emphasised that the ID Act, being a social welfare legislation, ought to be construed in harmony with the constitutional vision embodied in Part IV of the Constitution.

173. Drawing sustenance from the ratio in ***Banerji (supra)***, the approach adopted in ***Bangalore Water Supply (supra)***, particularly in the lead decision authored by Krishna Iyer, J., gradually crystallised around the centrality of the employer-employee relationship. The emphasis shifted from the intrinsic nature of the activity undertaken by an enterprise to the organisational structure through which such activity was carried on and, more particularly, to the existence of systematic cooperation between employer and employee.

174. Proceeding on this footing, the judgment took the view that the concept of 'industry' was not to be confined within the conventional boundaries of trade or commerce as ordinarily understood. Rather, it was conceived as a term of considerably wider import, one whose reach extended beyond the narrow confines of commercial enterprise. The expressions 'trade' and 'business', though forming part of the statutory definition, were not regarded as limiting the amplitude of the term 'industry', but merely as illustrative of the broad range of activities that could fall within its ambit.

175. The consequence of this approach was that factors such as the absence of capital investment, profit motive, or commercial gain were held not to be determinative of the inquiry. It was reasoned that an activity may still constitute an 'industry' notwithstanding that it is undertaken on charitable or philanthropic lines, provided that the essential *indicia* of organised activity and employer-employee cooperation are present. In similar terms, educational, vocational, and cultural institutions were held not only to bear an intimate nexus with industrial activity but also to fall squarely within the ambit of 'industry'. Indeed, the majority opinion went so far as to proclaim that '*education is the nidus of industrialization and itself is industry*'.

176. A considerable degree of reliance also appears to have been placed upon the interpretation of the term 'industry' undertaken by this Court in ***Nagpur Corporation (supra)*** and ***Hospital Mazdoor Sabha (supra)***, with these decisions serving to fill the interstitial gaps left by ***Banerji (supra)***. Both these decisions followed ***Banerji (supra)*** in reiterating that the principle of *noscitur a sociis* ought not to be applied so rigidly as to restrict or circumscribe the magnitude of the term 'industry'.

177. These decisions assume added significance, particularly since the same Bench that decided ***Hospital Mazdoor Sabha (supra)*** subsequently also resolved ***Nagpur Corporation (supra)***, wherein it grappled with the question whether 'sovereign functions' fall within the ambit of Section 2(j) and sought to delineate the litmus test for determining which governmental activities may stand excluded from the bounds of 'industry'.

178. In ***Hospital Mazdoor Sabha (supra)***, this Court was called upon to determine whether a government-run hospital, established to provide medical relief to the public and also discharging substantial educational and training functions, could be brought within the ambit of 'industry'. The Court then broadly defined 'industry' saying:

> ***"Thus the manner in which the activity in question is organised or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which s. 2(j) applies."***
>
> [Emphasis supplied]

179. This Court thus declined to extend the exemption accorded to 'sovereign' or 'regal functions' under Section 2(j) to the myriad welfare activities undertaken by the State in discharge of its obligations as a welfare State. It clarified that only those functions which are primary, inalienable, and inherently governmental in character may properly be described as 'sovereign' or 'regal functions' for excluding from the definition of 'industry'. In light of this understanding, the Court finally held that the subject hospital, notwithstanding its welfare-oriented objective, would nonetheless constitute an 'industry'.

180. The contours of what constitutes an 'industry', as well as the limits of the sovereign or regal functions exception, were further refined in ***Nagpur Corporation (supra)***, wherein a Three-Judge Bench formulated the following broad guidelines:

“31. The result of the discussion may be summarized thus : (1) The definition of "industry" in the Act is very comprehensive. It is in two parts : One part defines it from the standpoint of the employer and the other from the standpoint of the employee. If an activity falls under either part of the definition, it will be an industry within the meaning of the Act. (2) The history of Industrial disputes and the legislation recognizes the basic concept that the activity shall be an organized one and not that which pertains to private or personal employment. (3) The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power. (4) If a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation. (5) If a service rendered by a corporation is an industry, the employees in the departments connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act. (6) If a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purposes of the Act.”

181. However, it appears that the Bench in ***Bangalore Water Supply (supra)***, while substantially endorsing the reasoning in both these decisions, departed from the caution sounded in ***Hospital Mazdoor Sabha (supra)*** that some line must be drawn with respect to the inclusion of ‘service’ within the wide sweep of ‘industry’, and that limiting principles were necessary to prevent the definition from assuming boundless amplitude.

182. This concern appears to have found some resolution in the ***Solicitors Case (supra)***, wherein this Court postulated that '***the distinguishing feature of an industry is that for the production of goods or for the rendering of service, cooperation between capital and labour or between the employer and his employees must be direct and must be essential***'. Applying this test, the Court held that a liberal profession such as that of an attorney could not have been intended by the Legislature to be encapsulated within the definition of 'industry' under Section 2(j).

183. The exclusion of liberal professions from the ambit of 'industry' was similarly echoed in ***Secretary, Madras Gymkhana Club Employees' Union v. Management of the Gymkhana Club***,[37] though the reasoning adopted therein was somewhat different. The Court examined the definition through the prism of the employer's occupation, proceeding on the footing that if the employer's activity constituted an 'industry', those employed in aid thereof would ordinarily be workmen for the purposes of the Act. This interpretative exercise was found to be broadly consonant with the analysis undertaken by the majority in ***Bangalore Water Supply (supra)***, which proceeded on the premise that '*efficient collectivity*

[37] (1968) 1 SCR 742.

is the essence of professional success' to hold that liberal professions cannot seek exclusion from the operation of the ID Act.

184. Having sealed the fate of liberal professions, the majority in ***Bangalore Water Supply (supra)*** turned its attention to the status of Education and Educational Institutions under the ID Act. As already noted, the majority opinion unequivocally went on to hold that education could constitute an 'industry'. This conclusion was founded, ***first***, on the premise that the predominant nature of the activity is determinative and that imparting education constitutes a service rendered to the community. ***Second***, it was observed that educational institutions, particularly universities, engage in several other activities which are demonstrably industrial in character and, though ancillary to the principal educational enterprise, are capable of severance and independent consideration. Consequently, the decision in ***University of Delhi (supra)*** was held to be wrongly decided.

185. The majority thereafter examined whether Charitable Institutions are capable of constituting an 'industry'. In addressing this issue, the majority adopted a tripartite classification of charitable undertakings, delineating the circumstances in which such institutions would, or would not, fall within the ambit of Section 2(j):

> *"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 man who work, not because they are paid wages, but because they share the passion for the cause and derive job satisfaction from their contribution."*

186. Having laid out this trichotomy of Charitable Institutions, the majority opined that the determination of whether such an institution constitutes an 'industry' depends broadly on two considerations: ***first***, whether there exists cooperation between employers and employees in the production or supply of goods or services; and ***second***, the extent to which charity permeates the quasi-business character of the activity.

187. In this regard, the first category of charitable institutions was held to constitute an 'industry', since such institutions engage in the production or supply of goods or services with an eye on profit. The second category was likewise held to be within the scope of 'industry', the Court observing that the charitable object of the enterprise makes little difference to a workman who contributes labour in return for wages in much the same manner as in a commercial undertaking. It was only the third category that was held to stand exempt from the aegis of 'industry', there being no real economic relationship or employer-employee nexus, thereby placing such institutions outside the ambit of Section 2(j).

188. A similar exercise was undertaken to ascertain the status of 'Research Institutions' and whether research activity involves the requisite cooperation between employer and employee. The majority answered the question in the affirmative, proceeding on the footing that the institution itself constitutes the employer, while scientists, para-scientists, and other personnel function as employees. Their discoveries and research, it was observed, are capable of being translated into intangible goods and valuable services for which there exists a market, particularly in the case of technological inventions and innovations that may be patented and commercially exploited. Accordingly, it was concluded that research institutions, notwithstanding the absence of a profit motive, are capable of constituting an 'industry'.

189. Next was the question of whether 'Clubs' are industries. At this juncture, the majority once again reiterated its principle that any area where a dichotomy between employer and workmen could exist would be an industry and thus, clubs also would be no exception to this rule. The only exception that could however be carved out would be in the case of dominantly self serving clubs, wherein the central thrust of the club itself has a dominant self service mechanism, with only a modicum of employees at the periphery. Resultantly, the decisions in ***Madras Gymkhana Club (supra)*** and ***Cricket Club of India (supra)*** were held to be wrongly decided.

190. The same reasoning was extended to 'Cooperative Societies'. The Court observed that where the activity partakes of the nature of trade and is carried on through employer-employee cooperation, such societies would constitute an 'industry'. Since member-workers are generally paid wages and may raise disputes concerning service conditions against the society, the latter assumes the position of employer and the workers occupy the position of employees, thereby attracting Section 2(j).

191. Having examined each of these categories in turn, the Court ultimately distilled its reasoning into the formulation of the Triple Test:

> *"I. 'Industry', as defined in Sec, 2 (j) and explained by Banerji, has a wide import.*
> *(a) Where (i) systematic activity, (ii) organized by cooperation 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 e.g. making, on a large scale, 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 the employer-employee relations.

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

II. Although sec. 2(j) uses, words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach 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 adventure '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 off 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 other 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 workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) professions, (ii) Clubs (iii) educational institutions (iiia) co-operatives, (iv) research institutes (v) charitable projects and (vi) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of sec. 2 (j).

(b) A restricted category of professions, clubs, cooperatives and even Gurukuls and little research labs, may qualify for exemption if 283 in simple ventures substantially and going by the dominant nature criterion substantively, in single simple ventures, no employees are entertained but in minimal matters, marginal employees are hired without destroying the nonemployee character of the unit.
(c) If in a pious or altruistic mission many employ themselves, free or for small honoraria, or likely return mainly by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre 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 undertakings alone are exempt-not other generosity, compassion, developmental passion or project.

IV 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 Case or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur, will be 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 sec. 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."

192. Consequently, the decisions in ***Safdarjung Hospital (supra)***, ***Solicitors' Case (supra)***, ***Madras Gymkhana Club (supra)***, ***Delhi University (supra)***, and other cognate rulings came to be overruled, while the principles enunciated in ***Hospital Mazdoor Sabha (supra)*** were substantially restored and reaffirmed.

193. As already noticed, while Beg, C.J. concurred with the majority opinion, Chandrachud, J. (*as he then was*) penned a separate concurring opinion that largely echoed the reasoning of the majority. The learned Judge was, however, emphatic in observing that considerations of motive have no bearing on the determination of whether an undertaking constitutes an 'industry', a proposition that applies with equal force to factors such as profit motive, capital investment, or pecuniary gain.

194. However, Jaswant Singh, J., writing on behalf of himself and Tulzapurkar, J., parted ways with the majority on both its reasoning and its treatment of the principle of *noscitur a sociis*. In their view, discarding that principle had led to an interpretation of 'industry' of excessive range, bringing within its fold charitable institutions, schools, universities, and research laboratories. The learned Judges instead advocated a more restrictive construction, observing that the definition ought to be confined to activities "***systematically or habitually undertaken on commercial lines by private entrepreneurs with the cooperation of employees for the production or distribution of goods or for the rendering of material services to the community at large or a section thereof.***"

195. Be that as it may, there can be no gainsaying that ***Bangalore Water Supply (supra)***, has held the field for more than four decades, despite its correctness having come under the clouds hardly within twenty years of its pronouncement. No doubt, the judgment is the product of a painstaking and deeply deliberative exercise, where every word and provision was dissected and interpreted in an attempt to ascertain the true meaning of 'industry' under Section 2(j). The result was a seminal decision which has come to occupy a distinguished place in our industrial jurisprudence, authored by some of the most eminent jurists to have adorned this Court, whose scholarship and mastery of the law are reflected throughout its pages.

196. We may, however, with utmost respect and considerable reluctance, hasten to add that ***Bangalore Water Supply (supra)*** has survived in its entirety not merely because it represents a visionary judicial approach, but also because of institutional realities. Its status as a decision rendered by a Bench of Seven learned Judges undoubtedly accorded it formidable precedential force. Equally, although the correctness of the decision stood referred to a Nine-Judge Bench, that reference remained unheard for decades. Whether by reason of institutional priorities, administrative exigencies, or other circumstances, the consequence was that the opportunity for authoritative reconsideration never materialised until the present proceedings.

197. Over time, however, as circumstances evolved and the currents of industrial jurisprudence continued to shift, a degree of excoriation began to emerge in relation to the construction of the Triple Test, the ratio laid down in ***Bangalore Water Supply (supra)***, and, more generally, the expansive sweep accorded to the definition of 'industry' coupled with the narrow channel of exceptions carved out therefrom. What had once proclaimed itself to be a settled course increasingly came to be questioned as the river of the law flowed into newer terrains and even newer landscapes.

F.3. The Ripple Effects of Bangalore Water Supply (supra)

198. The decades following ***Bangalore Water Supply (supra)*** have witnessed profound changes in India's economic and regulatory landscape. The era of liberalisation, privatisation, and globalisation has fundamentally altered the manner in which enterprises are structured, managed, and operated. The distinction between public and private economic activity has become increasingly nuanced, while the organisational forms through which services are delivered have grown considerably more complex.

199. The role of the State in the economy, too, has undergone a marked transformation. Activities once predominantly undertaken by the State and its instrumentalities have, in several sectors, been transferred to private participation through disinvestment and privatisation. At the same time, the State has increasingly confined itself to functions that are constitutional, regulatory, and governance-oriented in character. In this changed economic milieu, often dictated by the operation of market forces and private enterprise, the assumptions that informed industrial relations jurisprudence in the decades immediately following Independence and during the period in which ***Bangalore Water Supply (supra)*** was decided can in no circumstances align seamlessly with synchronic realities.

200. In contemporary India, virtually every organised activity, irrespective of its scale or objective, possesses some degree of institutional structure. Whether it be a small family-run enterprise, a large commercial undertaking, a charitable organisation, a shelter for the destitute, or a community-based welfare institution, the realities of modern governance, regulation, and compliance require varying levels of organisation, record-keeping, and administrative management. If the Triple Test is applied in its broadest possible form, the consequence may well be that an extraordinarily wide range of activities become susceptible to classification as an 'industry'.

201. It is difficult to accept that Parliament intended such an all-encompassing result. The breadth of the interpretation risks drawing within the fold of Section 2(j) not just large commercial enterprises, but also modest undertakings, social initiatives, charitable institutions, and small-scale economic activities that operate with limited resources and personnel. While such an approach undoubtedly advances the protective objectives of labour welfare legislation, the inquiry cannot be one-sided. The law must remain cognisant of the realities of a modern and enterprising economy, in which countless individuals seek to establish small businesses, social enterprises, charitable ventures, and community institutions.

202. The concern, therefore, is not whether workers ought to be protected, for they must always be protected, but whether the existing formulation of the Triple Test has expanded to a point where it risks encompassing activities that Parliament never intended to characterise as 'industry'. If every organised endeavour involving a modicum of employer-employee cooperation is brought within Section 2(j), difficult questions inevitably arise as to where the line is to be drawn. For example, we could scarcely describe the proprietor of a neighbourhood kiosk as an industrialist, just as we could not characterise the heads of large manufacturing enterprises and commercial conglomerates as mere shopkeepers. To do so would ignore the obvious distinction in both scale and character of the activities undertaken.

203. It is therefore imperative to reconsider whether the Triple Test, in its present form, requires a more carefully calibrated application so as to preserve the balance between labour welfare and the legitimate functioning of small enterprises, charitable institutions, and community-oriented activities.

F.4. Manner in which the term 'industry' under Section 2(j) ought to be interpreted

204. We are conscious of the fact that the above illustrated considerations by themselves can hardly furnish a sufficient basis to doubt the correctness of a decision rendered by a Seven-Judge Bench of this Court. The stature of the precedent demands a far more exacting inquiry. However, having been constituted as a Bench of larger strength to examine its continued correctness, it is our earnest duty to scrutinise the legal foundations upon which the decision rests and to ascertain whether its reasoning continues to withstand scrutiny.

205. The majority opinion in ***Bangalore Water Supply (supra)*** itself opens with the observation that "***the rather zigzag course of the landmark cases and the tangled web of judicial thought have perplexed one branch of Industrial Law, resulting from the obfuscation of the basic concept of 'industry' under the Industrial Disputes Act, 1947.***" On this much, there can be little disagreement. The question of what constitutes an 'industry', despite its apparent simplicity, has engaged and divided judicial opinion for decades.

206. It may well have been expected that ***Bangalore Water Supply (supra)***, rendered after an exhaustive consideration of the law, would bring a measure of finality and be the silver bullet to this long-standing controversy. Yet the very fact that a series of doubts have repeatedly resurfaced for the last thirty years as to the amplitude and application of the principles laid down therein, sufficiently demonstrates that the debate was not laid entirely to rest and any such proclamation is a mere overestimation.

F.4.1. The *Noscitur a Sociis* Principle

207. A substantial part of the majority opinion rested upon its interpretation of the definition contained in Section 2(j). In the process, it formulated the Triple Test, a framework that is arguably more elaborate and comprehensive than the statutory definition itself, while consciously declining to apply the principle of *noscitur a sociis* as an aid to interpretation.

208. Before we advert to the correctness of that view, it is necessary to briefly examine the principle of *Noscitur a Sociis*. To begin with, every word has two meanings: (***i***) Denotation - the literal or actual meaning of the word, and (***ii***) Connotation - the contextual meaning derived from the word's association with surrounding words. The principle of *Noscitur a Sociis* uses both these meanings to interpret statutory language. It is a secondary rule of statutory interpretation. The Latin expression derives from '*noscitur*' (to know), '*a*' (with), and '*sociis*' (associates), meaning 'it is known by its associates!'

209. The rule of construction *Noscitur a Sociis* means "*the meaning of a word is to be judged by the company it keeps.*" It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them.

210. It must be borne in mind that *Noscitur a Sociis* is merely a rule of construction and cannot prevail in cases where it is clear that wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only when the intention of the legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear, that the present rule of construction can be usefully applied.

211. In ***Hospital Mazdoor Sabha (supra)***, the principle of *Noscitur a Sociis* was explained in the following terms: "***when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take their colour from each other, that is, the more general is restricted to a sense analogous to a less general.*** (*sic*)"

212. A further reference was made to Words and Phrases (Vol. XIV, P.207), which defined the expression in the following terms:

> *"Associated words take their meaning from one another under the doctrine of noscitur a sociis, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim Ejusdem Generis."*

213. This Court in ***Hospital Mazdoor Sabha (supra)*** placed reliance on the English case of ***Glasgow v. Glasgow Tramway and Omnibus Co. Ltd.***,[38] to emphasise that *Noscitur a Sociis* is merely a rule of construction and cannot prevail where it is evident that the Legislature has deliberately employed words of wide import in order to correspondingly broaden the scope of the expression being defined. The rule, as explained in ***Glasgow (supra)***, is attracted only where the legislative intention behind the use of wider words alongside words of narrower significance becomes doubtful or is otherwise unclear. Similarly, it may be invoked where the meaning of the broader expression itself admits of uncertainty. Where, however, the legislative purpose underlying the use of words of wide amplitude is clear and unambiguous, the rule has no application and cannot be pressed into service to cut down the natural meaning of the statutory text.

[38] Glasgow v. Glasgow Tramway and Omnibus Co. Ltd., 1898 A. C. 631.

214. In essence, both ***Hospital Mazdoor Sabha (supra)*** and ***Bangalore Water Supply (supra)*** proceeded on the footing that the principle of *noscitur a sociis* had little application in the interpretation of Section 2(j). The underlying rationale was that the ID Act is a piece of beneficial social welfare legislation, enacted to protect the interests of workers and to further the constitutional vision of a welfare State, particularly as reflected in Part IV of the Constitution. In such a context, it was considered inappropriate to employ a rule of construction that would unduly curtail the expansiveness of the statutory definition.

215. Consequently, after undertaking an exhaustive examination of the language of Section 2(j), the Court concluded that while expressions such as 'undertaking' must be understood in their proper statutory context and not in their widest conceivable sense, the term 'industry' itself was intended to receive a broad and expansive construction. It was this interpretive approach that ultimately culminated in the formulation of the Triple Test and the wide amplitude accorded to the definition under ***Bangalore Water Supply (supra)***.

216. In our considered view, and we say so with due circumspection, the reasoning underpinning this conclusion is not entirely free from difficulty. By doing away with the *Noscitur a Sociis* rule, the legislative intent appears to have been construed by ***Bangalore Water Supply (supra)*** in a manner that accords an exceptionally broad meaning to the term 'industry', while at the same time substantially severing it from its traditional commercial and economic connotations. Whether the text and scheme of the Act genuinely support such a departure is an issue that requires careful examination.

217. A perusal of the Preamble, the Short Title, and the scheme of the ID Act indicates that the enactment was designed to provide a framework for the investigation and settlement of industrial disputes. The statute thereafter proceeds to regulate matters concerning industrial relations, including retrenchment, lay-offs, compensation, and other protections afforded to workmen engaged in such enterprises.

218. Perhaps the principal difficulty with the interpretation adopted in ***Bangalore Water Supply (supra)*** lies in the extraordinary broadness of its reach. We say so because the expulsion of the *Noscitur a Sociis* rule of construction appears to have had the cascading effect of substantially diminishing the relevance of the nature and character of the activity undertaken. In its place, the inquiry came to be centred almost exclusively upon the existence of an employer-employee relationship, which emerged as the focal, if not decisive factor in determining whether a particular entity or undertaking constitutes an 'industry'.

219. The consequence of this shift is that the focus moves away from what the enterprise does and towards how it is organised. As a result, activities that are fundamentally distinct in purpose, character, and function may nevertheless be brought within the same statutory fold merely because they involve a structured relationship between employers and employees. It is this displacement of the nature of activity from the centre of inquiry that, in our considered view, gives rise to much of the difficulty that has subsequently shrouded the application of the Triple Test.

F.4.2. A fresh look at the interpretative approach

220. With great respect, we are unable to persuade ourselves to accept either the reasoning behind this approach or the consequences that flow from it. In our considered opinion, the test, as formulated in ***Bangalore Water Supply (supra)***, introduces an undue degree of subjectivity and open-endedness into the inquiry, owing both to its structure and to the foundational assumptions upon which it rests.

221. Nor is this conclusion founded solely upon our own analysis of the law. The practical consequences of the expansive construction adopted in ***Bangalore Water Supply (supra)*** are equally apparent.

Courts across the country have continued to grapple with litigation concerning the scope of the definition of 'industry', and the controversy has remained far from settled despite the authoritative pronouncement of a Seven-Judge Bench.

222. As already noticed, the persistence of this debate is reflected in the fact that, on more than one occasion, this Court has considered it necessary to revisit the correctness of ***Bangalore Water Supply (supra)*** through references to larger Benches. Such repeated calls for reconsideration do not arise in the ordinary course. They are often indicative of a deeper jurisprudential unease, where subsequent experience reveals difficulties in application, competing strands of reasoning emerge, or substantial doubts are expressed regarding the continued soundness of the principles laid down. The history of the present reference is itself demonstrative of that reality.

223. In our respectful view, the interpretation adopted in ***Bangalore Water Supply (supra)*** has carried the definition of 'industry' far beyond its natural statutory boundaries. The cumulative effect of the reasoning employed therein has been the emergence of a concept considerably wider than the one the language of the statute intended. Indeed, it may be said that the decision has fashioned an interpretive construct that operates in a manner not readily discernible from the text itself.

224. At this juncture, it is therefore apposite to recall the observation of Lord Denning, extracted by Beg, C.J. at the commencement of his concurring opinion.:

> *"When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give 'force and life' to the intention of legislature.*
> *A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases".*

225. We wholeheartedly subscribe to the concern reflected in the foregoing observation. There can be no quarrel that ***Bangalore Water Supply (supra)*** is a work of immense scholarship, marked by a painstaking examination of the text, history, and purpose of the ID Act. Yet, with equal respect to the learned Judges who authored the majority opinion, we are more than certain that the decision, in its anxiety to expand the protective reach of the legislation, ventured beyond the confines of interpretation and entered territory more appropriately reserved for legislative policy.

226. The difficulty does not lie in the formulation of the Triple Test itself, which remains a useful and largely workable indicator for determining whether a particular undertaking bears the characteristics of an 'industry'. Rather, it is the cumulative effect of the reasoning to draw within the fold of Section 2(j) an ever-expanding range of activities, institutions, and undertakings, many of which bear only a tenuous connection to what would ordinarily be understood as 'industrial activity'.

227. In our considered view, it is difficult to attribute to the Legislature an intention that every organised venture, enterprise, institution, or activity involving some degree of employer-employee cooperation should lock, stock and barrel stand encompassed within a single statutory definition. Such an interpretation risks extending the reach of the Act beyond the purpose for which it was enacted, namely, to provide a framework for the regulation and resolution of industrial disputes and allied matters arising in the context of industrial employment.

228. Be that as it may, ***Bangalore Water Supply (supra)*** has managed to hold the field for nearly five decades and has become deeply embedded in the fabric of our industrial jurisprudence, regardless of the persistent doubts questioning its correctness. Considerations of certainty, stability, and institutional continuity therefore counsel against any wholesale departure from the framework that it has established. Our endeavour is not to unsettle settled positions, nor to fundamentally reconstruct the jurisprudence that has developed around Section 2(j), for that would be akin to throwing the baby out with the bathwater.

229. Rather, our objective is a more modest one: to address the difficulties that have emerged in the application of the decision and to ensure that future adjudication under the ID Act proceeds in a manner consistent with established principles of statutory interpretation and legal coherence. We are not called upon to reinvent the wheel; nor is there any occasion to discard the Triple Test in its entirety. The task before us is one of calibration rather than reconstruction. Against that backdrop, our endeavour is confined to examining whether certain components of the framework laid down in ***Bangalore Water Supply (supra)*** could have benefitted from some refinement.

230. To our mind, the aspect that calls for the greatest degree of calibration is whether commercial character should be restored as a relevant consideration in the application of the Triple Test. Such a consideration may operate as a principled sieve, separating those undertakings that truly partake of the nature of an 'industry' from those which, despite exhibiting some degree of organisational structure and employer-employee cooperation, were never intended to be brought within the ambit of Section 2(j).

231. In this regard, we turn to the operative portion of ***Safdarjung Hospital (supra)***, which emphasised the meaning of 'material services', and observed as follows:

> *What is meant by 'material services' needs some explanation too. Material services are not services which depend wholly or largely upon the contribution of professional knowledge, skill or dexterity for the production of a result. Such services being given individually and by individuals are services no doubt but not material services. Even an establishment where many such operate cannot be said to convert their professional services into material services. Material services involve an activity carried on through co-operation between employers and employees to provide the community with the use of something such as electric power, water, transportation, mail delivery, telephones and the like. In providing these services there may be employment of trained men and even professional men, but the emphasis is not on what these men do but upon the productivity of a service organised as an industry and commercially valuable.* ***Thus the services of professional men involving benefit to individuals according to their needs, such as doctors, teachers, lawyers, solicitors etc. are easily distinguishable from an activity such as transport service. The latter is of a commercial character in which something is brought into existence quite apart from the benefit to particular individuals. It is the production of this something which is described as the production of material services****.*
>
> ……..
>
> *It, therefore, follows that before an industrial dispute can be raised between employers and their employees or between employers and employers or between employees and employees in relation to the employment or non-employment or the terms of*

employment or with the conditions of labour of any person, there must be first established a relationship of employers and employees associating together, the former following a trade, business, manufacture, undertaking or calling of employers in the production of material goods and material services and the latter following any calling, service, employment, handicraft, or industrial occupation or avocation of workmen in aid of the employers' enterprise. It is not necessary that there must be a profit motive but the enterprise must be analogous to trade or business in a commercial sense.

[Emphasis supplied]

232. The rationale set out above, in our humble opinion, accords more closely with both the text and structure of the statute. Industrial activity cannot be wholly divorced from its commercial character. We say so because we are unable to agree with the majority in ***Bangalore Water Supply (supra***) insofar as it declined to apply the principle of *Noscitur a Sociis* on the basis of what was perceived to be the broader legislative objective underlying the enactment.

233. When these expressions are read together, they appear to convey a common thread: that an 'industry' is an undertaking carried on in an organised and systematic manner, involving cooperation between employers and employees, and rooted in an activity possessing some degree of commercial or economic character. It is difficult for us to subscribe to the proposition that the commercial nature of the activity is wholly irrelevant to the inquiry and may be disregarded altogether.

234. At the same time, we consider it necessary to clarify that we are in agreement with the majority opinion in ***Bangalore Water Supply (supra)*** to the extent that the presence or absence of a profit motive ought not to be determinative. An activity may possess a commercial character without necessarily being animated by the pursuit of profit. The inquiry, therefore, is not whether the undertaking seeks to maximise gain, but whether the nature of the activity undertaken bears the indicia of an organised economic or commercial enterprise.

235. If commercial character is to be recognised as a relevant consideration in determining what constitutes an 'industry', the converse must necessarily follow. Activities that lack any discernible commercial or economic character, and which are neither undertaken in pursuit of commercial objectives nor bear any meaningful analogy to trade, business, or economic enterprise, would ordinarily fall outside the ambit of the definition contained in Section 2(j).

236. This is not to suggest that every undertaking must be profit-driven or commercially successful in order to qualify as an 'industry'. Rather, the inquiry is directed towards the nature and character of the activity itself. Where an activity is wholly divorced from commercial or economic enterprise and cannot reasonably be analogised to trade, business, or kindred undertakings, we would be hard pressed to justify its inclusion within the statutory conception of 'industry'.

237. Equally, we find no basis to conclude that according a limited role to commercial character within the framework of the Triple Test would in any manner undermine the beneficial object of the legislation. The introduction of such a consideration does not denude workmen of statutory protection, nor does it dilute the welfare orientation of the ID Act. Rather, it serves to ensure that the definition of 'industry' remains tethered to the nature of the activity undertaken, thereby preventing the concept from expanding beyond its intended statutory bounds.

238. While the welfare character of the ID Act is beyond dispute, that consideration alone cannot justify disregarding a settled principle of statutory construction where the language of the provision reasonably admits of its application.

239. It is our considered opinion that some distinction based upon the commercial character of the activity is both necessary and unavoidable. The boundaries of the concept of 'industry' are already sufficiently diffuse; it would be neither prudent nor doctrinally sound to render them altogether indistinguishable. The modern landscape presents a host of entities that may outwardly share organisational structures and employer-employee relationships, yet differ fundamentally in their purpose, character, and mode of operation.

240. Healthcare, for instance, provides a useful illustration. Today, healthcare services are delivered through a wide spectrum of institutions, ranging from large corporate hospital chains and specialised diagnostic centres operating on commercial lines, to charitable hospitals and welfare-oriented medical establishments that primarily serve those unable to afford treatment. There are even Government Hospitals, some of which were established pre-Independence, with no discernible profit motive. To treat all such institutions identically merely because they satisfy the formal requirements of employer-employee cooperation would be to overlook the significant differences in the nature and objectives of their activities.

241. Such an approach, in our considered view, is liable to occasion serious disservice to society at large. To take but one illustration, if a charitable or government hospital is constrained, in matters of engagement, retrenchment, or workforce management, to apply rigid industrial principles without due regard to the specialised nature of healthcare delivery, the consequences may well be detrimental to the very public interest the institution exists to serve. The engagement of an X-ray technician, a laboratory technician, or a nursing officer cannot always be reduced to a purely mechanical application of principles such as 'last come, first go', where considerations of merit, expertise, and continuity of patient care may assume overriding significance.

242. The same may be said of Research Institutions. While some undertake research with a view towards commercial exploitation, patent generation, and market participation, others engage in research principally for educational, academic, charitable, scientific or public welfare purposes.

243. The point is not that charitable or welfare-oriented activities should automatically stand excluded from the ambit of the Act. Rather, it is that the nature and character of the activity undertaken is extremely relevant to the inquiry. A framework that fails to distinguish between activities carried on predominantly along commercial lines and those pursued primarily for public welfare, educational, charitable, or humanitarian purposes risks collapsing fundamentally different undertakings into a single category. We are of the clear view that the consideration of commercial character assumes significance, serving as an important indicator in determining whether an undertaking truly partakes of the nature of an 'industry' within the meaning of Section 2(j).

244. The same holds true in the context of governmental entities discharging sovereign or regal functions. Without delving too deeply into that aspect, we believe that no straitjacket formula can be devised which either excludes all such entities from the ambit of 'industry' or, conversely, brings every governmental activity within its fold. The functions performed by the State today are far too varied and nuanced to permit such a simplistic categorisation.

245. In the same breath, we do not propose to repeat the very error that, in our respectful view, has contributed to the present difficulty by prescribing exhaustive categories, rigid exemptions, or inflexible criteria. The inquiry necessarily involves an evaluation of the nature, purpose, and character of the activity in question and is therefore incapable of being reduced to a mechanical formula. Ultimately, the determination ought to be undertaken on a case-to-case basis, having regard to the totality of the circumstances and the principles set out.

F.4.3. Calibrating the Triple Test

246. In light of the foregoing discussion, we have undertaken a careful examination of each constituent element of the Triple Test and identified certain limited aspects which, in our considered view, might have served the law better had they formed part of the framework from the outset. These observations are no more than a reflection of our own reading of Section 2(j), informed by its text, scheme, and underlying semantics. Our endeavour is not to reconstruct the jurisprudence, but merely to refine it in those limited respects where we perceive a divergence in our understanding of the scope and contours of the definition of 'industry', while preserving the essential framework that has governed the field for decades.

247. The Triple Test, per our careful consideration, should have been reformulated in the following terms:

> *"(a) Where there exists: (i) a systematic activity; (ii) organised through cooperation between employer and employee; and (iii) the production, distribution, or provision of goods or services* ***possessing a discernible commercial character that is analogous to trade or business*** *and calculated to satisfy material human wants and wishes (as distinguished from activities that are purely spiritual or religious in nature, though not excluding the provision of material goods or services merely because they are associated with a religious objective), a prima facie presumption shall arise that the undertaking constitutes an 'industry' within the meaning of Section 2(j)."*

248. The next component of the Triple Test, pertaining to the irrelevance of profit motive, is retained in its existing form.

Accordingly, it would continue to read as follows: "***(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private, or any other sector.***" We see no reason to depart from this aspect of the formulation, for the presence or absence of profit motive does not, by itself, furnish a reliable indicator of whether an undertaking constitutes an 'industry'. In our view, the focus must remain on the nature and character of the activity undertaken, rather than any surplus that may or may not be generated.

249. Insofar as the third component of the test is concerned, we are of the view that the special emphasis hitherto placed upon the existence of an employer-employee relationship requires moderation. While such a relationship undoubtedly remains an important indicator, it cannot be elevated to the status of the sole or predominant determinant. The inquiry must instead proceed on a conjunctive basis, taking into account both the nature and character of the activity undertaken as well as the existence of organised employer-employee cooperation. It is only through a consideration of both these elements in tandem that a principled determination may be made as to whether an undertaking constitutes an 'industry' within the meaning of Section 2(j).

Accordingly, this portion of the test could have been considered in the following terms:

> *"**(c) The true focus is functional and the decisive test is the nature of the activity and the existence of employer-employee relations.**"*
>
> [Emphasis supplied]

250. While the following aspect may have diminished significance in view of the role now accorded to commercial character within the inquiry, it nevertheless serves as a useful clarification. The mere prescription of charitable, philanthropic, or benevolent motives cannot alter the essential character of an undertaking that is otherwise commercial in nature. It would thus be in line with our sensibilities to suitably modify this proposition in the following terms: "***(d) If the organisation is a trade or business, it does not cease to be one merely because philanthropy animates the undertaking in its official documentation but on enquiry it is found otherwise***."

251. We now turn to another important facet of the decision, namely the reading down of the expression 'undertaking', as enshrined in the second guideline. At first blush, we do not perceive any fundamental difficulty in retaining this aspect of the reasoning assigned in ***Bangalore Water Supply (supra)***. However, we find that, once again, it could have certainly been enriched with some clarification and recalibration.

252. In our respectful view, the travail lies in the manner in which the majority opinion appears, at certain points, to conflate the nature of the activity undertaken with the existence of employer-employee relations, or at the very least to accord the latter such predominance that the former recedes into the background. This, in our opinion, is the principal source of much of the confusion in the application of the Triple Test.

253. The nature and character of the activity on the one hand, and the existence of organised employer-employee cooperation on the other, are distinct considerations serving different purposes within the inquiry. While both are relevant, neither can be collapsed into the other. Rather, they operate as independent yet complementary pillars supporting the determinative scaffolding of whether a particular undertaking constitutes an 'industry'. To treat them as interchangeable is akin to saying that apples and oranges are the same fruit. It overlooks the separate function that each performs in the analysis and risks reducing a multi-faceted inquiry into a single-factor test. Accordingly, it is our view that this portion perhaps could have been recorded in the following manner:

> *II. Although section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach 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* ***taken together with*** *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 cooperation between employer and employee, may be dissimilar. It does not, matter, if on the employment terms there is analogy.*

254. The effect of this clarification is that the expression 'undertaking' continues to retain a broad sweep and is capable of encompassing a wide variety of activities. The mere fact that an activity may qualify as an undertaking, however, does not inexorably lead to the conclusion that it constitutes an 'industry'. Such an activity must still satisfy the requirements of the reformulated Triple Test. Once these principles are recognised, we do not consider it necessary to delve any further into the meaning of the term 'undertaking'. The safeguards against over-inclusion are already embedded within the reformulated test itself, which provides the necessary framework for determining, on a case-by-case basis, whether a particular 'undertaking' falls within the ambit of Section 2(j).

F.4.4. Reconsidering Institutional Categorisation

255. We now approach a somewhat more contentious aspect of the decision, namely the treatment accorded to specific categories of institutions and the application of the guidelines to them. Once again, we are of the view that while certain portions of this segment may be retained, others nonetheless warrant reconsideration.

256. We say so because a substantial period of time has elapsed since the pronouncement of ***Bangalore Water Supply (supra)***, and the institutional and economic landscape has undergone profound transformation in the intervening decades. The difficulty with highly specific illustrations and categorical classifications is that they have been products of the circumstances prevailing at a particular point in time. What may once have served as a useful guide risks becoming an inflexible rule when applied to contemporary realities.

257. Entities today are increasingly multifaceted and frequently undertake a diverse range of functions that cannot readily be reduced to a single label or category. A university may engage in research, consultancy, technology transfer, and commercial collaboration; a hospital may combine charitable healthcare with highly specialised commercial services; and a research institution may simultaneously pursue academic, public welfare, and market-oriented objectives. In such circumstances, an approach that proceeds primarily by reference to predetermined categories risks pigeonholing institutions without adequately examining the true nature and dominant character of the activity undertaken.

258. It may have thus been sufficient to have only postulated Guideline III(a), while omitting Guidelines III(b) and III(c). In our considered view, the illustrations and narrowly tailored exceptions contained therein have, over time, contributed to the very difficulties that have beset the application of the definition. By carving out specific categories and prescribing highly particularised exemptions, they risk transforming what ought to be a principled inquiry into an exercise in classification.

259. We believe that the strength of a legal test lies in its ability to withstand application across a range of factual scenarios without the need for exhaustive elaboration or an ever-expanding catalogue of inclusions and exclusions. A test that requires a growing list of illustrations, qualifications, and exceptions to sustain itself is, in our view, a test that risks obscuring rather than clarifying the inquiry. The law ought not to descend into an exercise of prescribing, in advance, what must or must not constitute an 'industry'. Such determinations are best left to the application of the governing principles to the facts and circumstances of each case.

260. It is in this spirit that we deemed fit that the limited purpose of the third guideline could have been put forth in the following terms:

> ***"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 workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.***
> ***(a) The consequences are (i) professions, (ii) clubs (iii) educational institutions (iv) cooperatives, (v) research institutes (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of section 2(j)."***

261. Finally, insofar as the final guideline pertaining to the dominant nature test is concerned, we consider it necessary to clarify the scope and contours of the sovereign functions exception. In ***Bangalore Water Supply (supra)***, the exemption accorded to sovereign functions was construed in a markedly narrow manner. The principal rationale advanced was that the State, in the modern welfare era, had entered a multitude of fields traditionally associated with industry and commerce, and that it would therefore be inappropriate to exclude governmental undertakings merely because they were carried on by the State or its instrumentalities.

262. The majority accordingly reasoned that only those functions which are governed by distinct constitutional or statutory regimes, such as the service conditions of civil servants protected under Articles 310 and 311 of the Constitution, ought, strictly speaking, to stand outside the ambit of the definition of 'industry'. It was further observed that several public utility services performed by governmental agencies and statutory corporations are themselves treated by the ID Act as falling within the industrial sphere. Consequently, where the relationship between the State and its employees is not regulated by a separate constitutional or statutory framework, no compelling reason was perceived to artificially exclude such activities from the operation of the ID Act merely because they are undertaken by the State.

263. It was on this reasoning that the sovereign functions exception came to be confined to a narrow category of activities, with the overwhelming majority of governmental functions remaining subject to examination under the broader framework of the Act.

264. In our assessment, this aspect too warrants a measure of recalibration, or perhaps more accurately, simplification. Experience has shown that excessive elaboration often carries with it the unintended consequence of constraining rather than clarifying. In the quest to define every conceivable category and exception, one risks making the camel pass through the eye of the needle.

265. We are, however, entirely *ad idem* on two aspects of the reasoning in ***Bangalore Water Supply (supra)***. ***First***, governmental functions governed by distinct constitutional or statutory frameworks, including those falling within the ambit of Articles 310 and 311 of the Constitution, stand on a separate footing and are ordinarily outside the operation of the Industrial Disputes Act. ***Second***, public utility services, which the Act itself expressly contemplates and regulates, are, by virtue of the legislative scheme, amenable to its operation. On both counts, we find no reason to depart from the position adopted therein.

266. Where we part ways with the reasoning in ***Bangalore Water Supply (supra)*** is in the suggestion that, save for these narrowly circumscribed exceptions, virtually every governmental entity, enterprise, or undertaking must necessarily fall within the ambit of the definition of 'industry'. In our respectful view, such an approach once again risks extending the concept beyond its natural limits and drawing within its sweep a host of activities that may bear little resemblance to what Parliament intended to regulate under the ID Act.

267. The mere fact that an activity is undertaken by the State and does not fall squarely within the traditional understanding of a sovereign function cannot, by itself, compel the conclusion that it constitutes an 'industry'. To adopt such a position would be to presume inclusion as the rule and exclusion as the rarest of exceptions, thereby enlarging the definition in a manner that is neither mandated by the statutory text nor required by principle.

268. The State today undertakes a vast array of functions in furtherance of the Fundamental Rights guaranteed under Part III of the Constitution and the Directive Principles embodied in Part IV. It would be difficult to accept the proposition that every such undertaking, merely by virtue of being organised and involving employer-employee cooperation, must necessarily be characterised as an 'industry'. Many governmental activities are undertaken primarily to discharge constitutional obligations, advance public welfare, or fulfil social objectives, and may not possess the commercial or economic character contemplated by the reformulated Triple Test.

269. Equally, the realities of the contemporary economic landscape cannot be ignored. With the increasing participation of private actors in sectors once dominated by the State, the range of governmental activities carried on predominantly along commercial lines has diminished considerably. The activities undertaken by the State that are truly analogous to trade, business, or economic enterprise would undoubtedly fall for consideration under the reformulated test and, where its requirements are satisfied, would be amenable to the operation of the ID Act. However, it does not follow that every activity undertaken in the discharge of constitutional, welfare, or public obligations must necessarily be drawn within the same net.

270. The distinction, in our view, lies not in the identity of the actor, but in the nature and character of the activity itself. It is that inquiry, rather than any presumption of universal inclusion, that must govern the application of Section 2(j).

271. In our view, governmental undertakings, no less than private entities or those that were delineated in Guideline III, must thus be assessed on the touchstone of the reformulated test. The inquiry remains one of substance rather than form. It is the nature and character of the activity undertaken, viewed in conjunction with the other indicia set out herein, that must guide the determination, rather than any presumption that all governmental activity is destined to fall within the broad sweep of 'industry'.

272. Insofar as the remaining facets of the dominant nature test formulated in ***Bangalore Water Supply (supra)*** are concerned, we find no reason to depart from such interpretation. It is entirely conceivable that a single undertaking may engage in a complex array of activities, some of which may point towards inclusion within the ambit of 'industry', while others may suggest the contrary. In such circumstances, it remains necessary to look beyond form and examine the true character of the enterprise as a whole.

273. The dominant nature test continues to provide a useful analytical tool for this purpose, enabling the Court to ascertain the principal character of the undertaking and determine whether any exemption is warranted or whether, notwithstanding the presence of ancillary or incidental activities of a different character, the entity as a whole would continue to constitute an 'industry' for the purposes of the ID Act. We therefore see no occasion to disturb this specific aspect of the framework laid down in ***Bangalore Water Supply (supra)***. This particular guideline therefore warranted no particular change and would continue to read thus:

> *"IV. 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 case or some departments are*

not 'productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur, 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 may qualify for exemption, not the welfare activities of 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 sec. 2(j).
(d) Constitutionally and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby."

274. Accordingly, when our interpretative permutations and combinations are read in conjunction with the modifications and clarifications set out hereinabove, the Triple Test and the accompanying guidelines would hypothetically stand reformulated and read as follows:

"I. Industry under Section 2(j) will be defined as:
(a) Where there exists: (i) a systematic activity; (ii) organised through cooperation between employer and employee; and (iii) the production, distribution, or provision of goods or services ***possessing a discernible commercial character that is analogous to trade or business*** *and calculated to satisfy material human wants and wishes (as distinguished from activities that are purely spiritual or religious in nature, though not excluding the provision of material goods or services merely because they are*

associated with a religious objective), a prima facie presumption shall arise that the undertaking constitutes an 'industry' within the meaning of Section 2(j).
(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private, or any other sector.
(c) The true focus is functional and the decisive test is the nature of the activity and the existence of employer-employee relations.
(d) If the organisation is a trade or business, it does not cease to be one merely because philanthropy animates the undertaking ***in its official documentation but on enquiry it is found otherwise****.*

II. Although section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach 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 ***taken together with*** *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 cooperation 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 workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.
(a) The consequences are (i) professions, (ii) clubs (iii) educational institutions (iv) cooperatives, (v) research institutes (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of section 2(j).

IV. 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 case or some departments are not 'productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur, 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 may qualify for exemption, not the welfare activities of 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 sec. 2(j).
(d) Constitutionally and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

275. It is pertinent to clarify at this juncture that the foregoing is only a hypothesis, and we do not propose, at this stage, to disturb the application of the Triple Test to proceedings that remain pending. To do so would risk creating new and unnecessary distinctions between similarly situated parties, and consequently generate entirely new classes of 'haves' and 'have-nots'. Our decision is informed not only by the possibility of creating such an artificial and narrowly defined class by retrospectively altering the manner in which the Triple Test is to be applied, but also by the fact that Section 2(j) of the ID Act is no longer in operation and has since been succeeded by the legislative framework contained in the Industrial Relations Code.

276. It goes without saying that we are not in complete agreement with the ratio laid down in ***Bangalore Water Supply (supra)***. Had we been in complete agreement, there would have been little reason for us to undertake the detailed examination of its reasoning, formulations, and constituent elements that has occupied the preceding pages. Our endeavour has instead been to identify, with the benefit of hindsight and experience, those aspects which may merit refinement, without unsettling the legal position governing matters that have already entered the judicial stream.

277. In similar vein, we do not consider it either necessary or desirable to revisit the factual conclusions reached in each of the numerous decisions that have applied ***Bangalore Water Supply (supra)*** over the last several decades. To embark upon a case-by-case reassessment of whether a particular institution was correctly classified as an 'industry' would be an exercise of little practical utility and would serve only to unsettle a substantial body of jurisprudence that has long since attained finality. Judicial correction must be tempered by judicial restraint, particularly where settled rights and obligations have crystallised over time.

278. The present interpretation and modifications shall thus operate only prospectively in that sense and shall not reopen, disturb, or otherwise affect proceedings that have attained finality, or that presently remain pending. Judgments, awards, settlements, and determinations that are no longer subject to challenge shall remain undisturbed, notwithstanding the reformulation of the test set out in this judgment. The same also applies to proceedings, appeals and other hearings that are presently in the process of being adjudicated by various fora.

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279. We also do not propose to enter into an examination of the definition of 'industry' as it presently exists under the IR Code. Submissions were advanced before us to the effect that the definition contained therein draws inspiration from, or substantially reflects, the principles embodied in the Triple Test. Be that as it may, we consider it neither necessary nor appropriate to express any opinion on that aspect.

280. The IR Code is an independent legislative enactment and must be interpreted on its own terms, having regard to its text, scheme, and object. Nothing stated in this judgment should therefore be construed as an expression of opinion on the validity, interpretation, scope, or constitutional legitimacy of any provision contained therein.

281. It follows, therefore, that in view of the clarification and reformulation of the principles laid down in ***Bangalore Water Supply (supra)***, the said decision shall not be regarded as the sheet anchor for the interpretation of the IR Code or any of its provisions, should such a question arise in the future. Any issue arising under the IR Code shall necessarily fall to be determined on the basis of its own text, scheme, object, and legislative framework, uninfluenced by the reformulation of the Triple Test undertaken in the present judgment.

282. Insofar as the Industrial Disputes (Amendment) Act, 1982 is concerned, it is an undisputed position that the amendment was never brought into force. In the absence of a notification effectuating its commencement, the amendment never acquired operative legal effect and therefore does not govern the controversy before us.

283. Consequently, it is neither necessary nor appropriate for this Court to examine its correctness, applicability, wisdom, or potential impact. Any such exercise would be wholly academic and would travel beyond the scope of the issues that arise for determination in the present reference. We accordingly refrain from expressing any opinion on the merits or consequences of the said amendment.

284. Our observations are confined exclusively to the interpretation of Section 2(j) of the ID Act and the jurisprudence that has evolved around the Triple Test as formulated in ***Bangalore Water Supply (supra)***. Any questions arising under the IR Code are left open for determination in an appropriate case.

H. CONCLUSION

285. As we conclude this judgment, we return to the metaphor that formed the overture to this journey: the albatross around the mariner's neck. The controversy surrounding the definition of 'industry' has, for many years, weighed heavily upon this branch of industrial jurisprudence, resurfacing time and again despite repeated attempts at resolution. It is our sincere hope that the present judgment finally lifts that burden and permits the law to move forward unencumbered.

286. The voyage, however, has not been a short one. Having called at many ports and traversed long stretches of uncertain and often mist-laden waters, this Court has repeatedly been required to navigate competing currents of thought in its search for a principled and workable understanding of Section 2(j). As that journey now draws to a close, it is our earnest hope that the present adjudication serves as a reliable beacon for courts and tribunals at various levels, bringing a greater measure of coherence, certainty, and finality to a question that has engaged judicial attention for decades.

287. Before parting with the matter, we consider it appropriate to briefly recapitulate the principal conclusions that emerge from the foregoing analysis:

i. The present reference has been validly made and rightly entertained. No legitimate doubt can be cast upon its maintainability, and the reference is accordingly answered on the merits.

ii. In our considered view, certain aspects of the Triple Test and the accompanying guidelines formulated in ***Bangalore***

Water Supply (supra) were susceptible to further refinement. While the essential framework laid down therein has stood the test of time, we are of the opinion that some of its constituent elements could have been articulated differently in that judgment so as to better reflect the scope and contours of Section 2(j). Accordingly, in our view, the Triple Test would have been more appropriately structured, hypothetically speaking, in the following terms:

> *"I. Industry under Section 2(j) will be defined as:*
> *(a) Where there exists: (i) a systematic activity; (ii) organised through cooperation between employer and employee; and (iii) the production, distribution, or provision of goods or services* ***possessing a discernible commercial character that is analogous to trade or business*** *and calculated to satisfy material human wants and wishes (as distinguished from activities that are purely spiritual or religious in nature, though not excluding the provision of material goods or services merely because they are associated with a religious objective), a prima facie presumption shall arise that the undertaking constitutes an 'industry' within the meaning of Section 2(j).*
> *(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private, or any other sector.*
> *(c) The true focus is functional and the decisive test is the nature of the activity and the existence of employer-employee relations.*
> *(d) If the organisation is a trade or business, it does not cease to be one merely because philanthropy animates the undertaking* ***in its official documentation but on enquiry it is found otherwise****.*

II. Although section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach 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 ***taken together with*** *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 cooperation 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 workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.
(a) The consequences are (i) professions, (ii) clubs (iii) educational institutions (iv) cooperatives, (v) research institutes (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of section 2(j).

IV. 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 case or some departments are not 'productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur, 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 may qualify for exemption, not the welfare activities of 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 sec. 2(j).*
> *(d) Constitutionally and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.*

iii. In view of the foregoing, the reformulated Triple Test articulated in this judgment is to be understood as no more than our considered opinion on the proper interpretation of Section 2(j) of the Industrial Disputes Act, 1947. It is not intended to displace the governing legal position in respect of pending proceedings. Consequently, all matters presently pending before courts, tribunals, labour authorities, or other fora under the Industrial Disputes Act may be adjudicated in accordance with the Triple Test laid down in ***Bangalore Water Supply (supra)***.

iv. The present clarification shall operate prospectively in that sense and shall not reopen, disturb, or otherwise affect proceedings that have attained finality. Judgments, awards, settlements, and determinations that are no longer subject to challenge shall remain undisturbed, notwithstanding the reformulation of the test set out in this judgment. The same also applies to proceedings, appeals and other hearings that are presently in the process of being adjudicated by various fora;

v. We refrain from entering into an examination of the definition of 'industry' as it presently exists under the IR Code or the Industrial Disputes (Amendment) Act, 1982; and

vi. In view of the opinion expressed herein and the hypothetical reformulation of the principles laid down in ***Bangalore Water Supply (supra)***, the said decision shall not be regarded as the sheet anchor for the interpretation of the IR Code or any of its provisions, should such a question arise in the future.

288. We further clarify that the present judgment is confined to disputes arising under the ID Act and the interpretation of Section 2(j) thereof. Nothing contained herein shall be construed as governing disputes arising under any other enactment, nor shall these observations be treated as determinative of questions that fall to be decided under a different statutory framework.

289. Ordered accordingly. Pending interlocutory applications, if any, stand disposed of in the above terms.

290. There shall be no order as to costs.

..CJI.
[SURYA KANT]

... J.
[SATISH CHANDRA SHARMA]

... J.
[ALOK ARADHE]

... J.
[VIPUL M. PANCHOLI]

NEW DELHI
DATED: 20.08.2026

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.897 OF 2002

STATE OF U.P. ... APPELLANT

VERSUS

JAI BIR SINGH ... RESPONDENT

WITH

CIVIL APPEAL NO.1276 OF 2001

CIVIL APPEAL NO.1278 OF 2001

CIVIL APPEAL NO.1279 OF 2001

CIVIL APPEAL NO.6114 OF 2001

CIVIL APPEAL NO.8597 OF 2001

CIVIL APPEAL NO.2409 OF 2002

CIVIL APPEAL NO.2506 OF 2002

CIVIL APPEAL NO.4569 OF 2002

CIVIL APPEAL NO.5101 OF 2002

CIVIL APPEAL NO.6108 OF 2002

CIVIL APPEAL NO.6471 OF 2002

SLP(C) NO.20982 OF 2002

CIVIL APPEAL NOS.355-358 OF 2003

CIVIL APPEAL NO.7994 OF 2004

SLP(C) NO.11291 OF 2004

SLP(C) NO.14085 OF 2004

SLP(C) NO.14127 OF 2004

SLP(C) NO.4139 OF 2005

CIVIL APPEAL NO.1273 OF 2007

CIVIL APPEAL NO.1274 OF 2007

CIVIL APPEAL NO.3647 OF 2007

CIVIL APPEAL NO.4646 OF 2007

SLP(C) NO.16301 OF 2007

CIVIL APPEAL NO.296 OF 2008

CIVIL APPEAL NOS.1311-1312 OF 2008

SLP(C) NO.3107 OF 2008

SLP(C) NO.4327 OF 2008

SLP(C) NO.4328 OF 2008

SLP(C) NO.4329 OF 2008

SLP(C) NO.16276 OF 2008

SLP(C) NO.17224 OF 2008

SLP(C) ... CC NO.7990 OF 2009

SLP(C) NO.1112 OF 2009

CIVIL APPEAL NO.3920 OF 2010

CIVIL APPEAL NO.5681 OF 2010

CIVIL APPEAL NO.3119 OF 2011

CIVIL APPEAL NO.7757 OF 2011

CIVIL APPEAL NO.1131 OF 2012

CIVIL APPEAL NO.5519 OF 2012

CIVIL APPEAL NOS.8149-8151 OF 2012

CIVIL APPEAL NOS.4505-4506 OF 2013

CIVIL APPEAL NOS.4507-4508 OF 2013

SLP(C) NOS.12679-12682 OF 2014

SLP(C) NO.1857 OF 2016

SLP(C) NO.14156 OF 2021

I N D E X

O P I N I O N

NAGARATHNA, J.

I have perused the erudite opinions of learned Chief Justice Surya Kant and learned Brothers Narasimha, Dipankar Datta and Joymalya Bagchi, JJ. However, I have authored a separate opinion indicating as to why reconsideration of the judgment of this Court in ***Bangalore Water Supply & Sewerage Board vs. A. Rajappa, AIR 1978 SC 548 ("Bangalore Water Supply")*** is not warranted. I have also stated that the reference made by a five-Judge Bench of this Court in ***State of U.P. vs. Jai Bir Singh, (2005) 5 SCC 1***, ***("Jai Bir Singh")*** was unnecessary.

Nevertheless, I have analysed the judgment of this Court in ***Bangalore Water Supply*** and have concluded that the same does not call for any interference or modification. Accordingly, I have answered the questions referred to this nine-Judge Bench.

1.1 What is the meaning and interpretation to be given to the expression "industry" in Section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as "I.D. Act" for the sake of convenience)? This question has resurfaced after a seven-Judge

Bench answered it in the case of ***Bangalore Water Supply*** nearly half a century ago. **At this stage itself, I observe that Section 2(j) of the ID Act cannot be interpretated from the prism of Section 2(p) of the IR Code on "hypothetical basis"**.

Reframed Questions:

1.2 In ***State of U.P. vs. Jai Bir Singh, (2005) 5 SCC 1***, ***("Jai Bir Singh")***, a five-Judge Bench of this Court referred for reconsideration the judgment of this Court rendered by a seven-Judge Bench in ***Bangalore Water Supply***. This judgment concerned the interpretation of the expression "industry" as defined in Section 2(j) of the I.D. Act. Consequently, a seven-Judge Bench was constituted and by order dated 02.01.2017, the matter was referred to a nine-Judge Bench. That is how this Bench of nine Judges has been constituted. By order dated 16.02.2026, the following four questions have been reframed for the consideration of the nine-Judge Bench:

> "(i) Whether the test laid down in paragraphs 140 to 144 in the opinion rendered by Hon'ble Mr. Justice V.R. Krishna Iyer in <u>Bangalore Water Supply and Sewerage Board's case (supra)</u> to determine if an undertaking or enterprise falls within the definition of "industry" lays down correct law? And whether the Industrial Disputes (Amendment) Act, 1982 (which seemingly did

not come into force) and the Industrial Relations Code, 2020 (with effect from 21.11.2025) have any legal impact on the interpretation of the expression "industry" as contained in the principal Act?

(ii) Whether social welfare activities and schemes or other enterprises undertaken by the Government Departments or their instrumentalities can be construed to be "industrial activities" for the purpose of Section 2(j) of the ID Act?

(iii) What State activities will be covered by the expression "sovereign function", and whether such activities will fall outside the purview of Section 2(j) of the ID Act?

(iv) Any other issue(s) that may arise during the course of hearing before the Nine-Judge Bench."

1.3 The reason for the reference was a perceived conflict between two decisions of this Court in ***Chief Conservator of Forests vs. Jagannath Maruti Kondhare, (1996) 2 SCC 293 ("Jagannath Kondhare")*** (three-Judge Bench) and ***State of Gujarat vs. Pratamsingh Narsinh Parmar, (2001) 9 SCC 713 ("Pratamsingh Parmar")*** (two-Judge Bench). The question before both the aforesaid Benches was, whether Social Forestry activities of the State, through a welfare scheme undertaken for the improvement of the environment, would be covered within the scope and ambit of the definition of "industry" under Section 2(j) of the I.D. Act. In ***Jagannath Kondhare***, the three-Judge Bench held that the Social Forestry Department was covered within the definition of "industry" as interpreted by this Court in ***Bangalore Water Supply***, whereas in ***Pratamsingh Parmar***, the two-Judge Bench held that the Social Forestry Department did not come within the ambit of the definition of "industry".

1.4 Further, different views were expressed with regard to the understanding of the decision of the seven-Judge Bench in ***Bangalore Water Supply***. Therefore, the matter was referred to a five-Judge Bench in ***Jai Bir Singh*** and pursuant to the order dated 05.05.2005, ***Bangalore Water Supply*** was referred to a larger Bench of seven Judges and thereafter, this nine-Judge Bench was constituted.

Definition of "Industry":

1.5 The centre of controversy in these cases is the interpretation to be given to the expression "industry" in Section 2(j) of the I.D. Act. For immediate reference, the said definition is extracted as under:

> "**2. Definitions**.—In this Act, unless there is anything repugnant in the subject or context,—
>
> xxx
>
> (j) "industry" <u>means</u> any business, trade, undertaking, manufacture or calling of employers <u>and includes</u> any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;"
>
> (underlining by us)

1.6 The aforesaid definition represents a two-fold perspective: from the point of view of an employer, it means any business, trade, undertaking, manufacture or calling of employers. The use of the expression “means” implies that it is exhaustive. From the point of view of an employee or the workman, the expression “industry” includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The use of the expression “includes any” implies that from the workman’s point of view, the expression “industry” is not an exhaustive definition but an expansive one. The two limbs of the definition are connected by the word “and”.

1.7 Business, trade, undertaking and manufacture are relatable to employers’ enterprises in the aforesaid forms wherein there is employment of workmen. It could also be a calling of the employers relatable to a service and not necessarily production of goods. Therefore, production or manufacture of goods or making available various kinds of services is “industry” from the employers’ point of view.

1.8 Similarly, from the workmen’s point of view, when they are engaged in <u>any</u> service, employment, calling or any handicraft, industrial occupation or avocation, they would be working in an "industry". But, the interpretation of the word "industry" must be wholesome and realistic and not in an abstract or from a doctrinal perspective.

1.9 Having regard to the objects and purposes of the I.D. Act, the definition of "industry" in Section 2 of the I.D. Act has to be interpreted in a broad and comprehensive manner and not in a narrow and myopic way. This is because the I.D. Act is essentially a social welfare legislation for the protection of workmen as well as for the protection of those who run the "industry". Hence, what is the meaning to be ascribed to the word "industry" is of vital significance while implementing the I.D. Act and its provisions.

1.10 Section 2(j) was substituted by Section 2(c) of the Industrial Disputes (Amendment) Act, 1982. This was nearly four years after the judgment in ***Bangalore Water Supply*** was pronounced. However, the said amendment was not notified and therefore not enforced. By the said amendment made to the I.D. Act, the definition of "industry" was sought to be amended in the following terms:

"**(j) "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 with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,—

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

(ii) such activity is carried on with a motive to make any gain or profit, and includes—

(a) any activity of the Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);

(b) any activity relating to the promotion of sales or business or both carried on by an establishment, but does not include—

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation:—For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951); or

(2) hospitals or dispensaries; or

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

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

> (5) khadi or village industries; or
>
> (6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or
>
> (7) any domestic service; or
>
> (8) any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or
>
> (9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten."
>
> (underlining by us)

As the said definition had not yet been enforced, a five-Judge Bench of this Court in ***Jai Bir Singh*** thought it necessary to refer the matter to a larger Bench.

1.11 It is also necessary to take note of the fact that recently, the Parliament has enacted the Industrial Relations Code, 2020 ("IR Code", for the sake of convenience), wherein Section 2(p) defines the word "industry" as under:

"**2. Definitions. —** In this Code, unless the context otherwise requires, —

xxx

(p) "industry" <u>means</u> any systematic activity carried on by co-operation between an employer and worker (whether such worker is employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,—

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

(ii) such activity is carried on with a motive to make any gain or profit, <u>but does not include</u> —

> (i) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or
>
> (ii) any activity of the appropriate Government relatable to the sovereign functions of the appropriate Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or
>
> (iii) any domestic service; or
>
> (iv) any other activity as may be notified by the Central Government;"

(underlining by us)

1.12 In the case of ***Coir Board, Ernakulam, Cochin vs. Indira Devi P.S., (1998) 3 SCC 259, ("Coir Board")*** the question was, as to whether, the appellant-Coir Board, Ernakulam Cochin, that had been established under the Coir Industry Act, 1953 (for short, “1953 Act”) was an “industry” or not, to determine the applicability of Chapter V-A of the I.D. Act. A perusal of the Statement of Objects and Reasons of the said 1953 Act revealed that the functions of the Board under Section 10 included promotion of the exports of coir products; regulating the production of husks; coir yarn and coir products; encouraging and assisting scientific, technological and economic research into the coir industry; collecting relevant statistics; fixing standards and inspecting coir products; improving the marketing of coconut husk and coir products; setting up or assisting in the setting up of marketplaces for coir products; ensuring remunerative returns for coir products; promoting cooperative organisation among producers of coir products; licensing of spaces to store and sell the coir products; advising on matters relating to the coir industry and other ancillary matters as may be prescribed. It was noted that the Coir Board maintained showrooms and sales depots for the purpose of marketing of coir products and contained samples of coir products for potential manufacturers/merchants to consider. Certain temporary clerks and typists who had been employed by the Coir

Board were discharged. They alleged wrongful termination that was not in accordance with the provisions of the I.D. Act. The two-Judge Bench of this Court, as opposed to applying the test laid down by the seven-Judge Bench of this Court in ***Bangalore Water Supply***, which was binding on it, to the given factual matrix instead proceeded to note the existence of prevailing uncertainty in the application of the said test for over two decades, making a re-examination of ***Bangalore Water Supply*** necessary. It was then directed that the matter be placed before the Hon'ble Chief Justice to determine if a larger Bench was to be constituted to reconsider the decision of this Court in ***Bangalore Water Supply***. In my view, such a reference was entirely unwarranted and unnecessary.

1.13 Subsequently, a three-Judge Bench of this Court in ***Coir Board, Ernakulam, Kerala State vs. Indira Devai P.S, (2000) 1 SCC 224 ("Coir Board-II")*** rightly held that the judgement in ***Bangalore Water Supply*** did not require any reconsideration on a reference made by a two-Judge Bench of this Court, which was bound to follow it having regard to the facts of the case.

Submissions:

2. We have heard learned Attorney General Sri R. Venkataramani, learned ASG and learned senior counsel appearing for the respective States contending the necessity of reconsidering the judgment of this Court in ***Bangalore Water Supply***. We have also heard learned senior counsel Ms. Indira Jaising, Sri Chander Uday Singh as well as other counsel who have contended that the said judgment would not call for any reconsideration at this point of time. We have also heard learned senior counsel and *amicus curiae* Sri Partha Sarathi Sengupta and Sri J.P. Cama who have made their submissions which are diametrically opposed to each other.

2.1 On behalf of the Union of India, learned Attorney General for India submitted that to determine what constitutes "industry" under Section 2(j) of the I.D. Act, one has to explain the meaning of all the terms in the definition, such as "business", "trade", "manufacture", etc. Thus, it becomes important to gather principles common to all such terms and activities. The principles and tests (including the "triple test") expounded in paragraphs 140 and 141 of ***Bangalore Water Supply*** is thus an expression of factors and attributes that are common to all these activities. These principles and tests do not seem to suffer from any inconsistencies or fallacies.

2.2 Section 2(j) of the I.D. Act does not by itself provide any guidance as to how inclusions or exclusions within the provision must be considered. In this sense, Section 2(j) was a skeletal statutory provision leaving it open to contextual interpretation by the judiciary. In ***Bangalore Water Supply***, the Supreme Court gave such an exposition of the meaning of "industry" in its understanding of what the object and purpose of the I.D. Act is.

2.3 Therefore, it was submitted that the principles laid down in ***Bangalore Water Supply*** are not in conflict, or inconsistent, with the definition of "industry" in Section 2(j) under a social justice premise underlying the I.D. Act. The "triple test" is good law. However, simultaneously, the definition of "industry" under the 1982 Amendment may be used as an interpretative tool to circumscribe an overbroad application of the "triple test". This Amendment may be used in interpreting cases pending or filed as on 21.11.2025, after which the IR Code shall apply.

2.4 With regard to the exclusion of sovereign functions of the State, learned Attorney General submitted that the nature of sovereign functions is inherently linked to the evolving role of the State. While activities that were once sovereign in nature could move to the realm of private enterprise, newer forms of governmental responsibility could also emerge due to technological, economic or institutional developments.

2.5 However, it was submitted that an indiscriminate application of the “triple test” to sovereign/government functions has led to an over broad interpretation of “industry” that blurs the distinction between commercial activities and constitutionally mandated sovereign functions. Social welfare programmes are undertaken in discharge of the State’s constitutional and sovereign obligations to promote public welfare and socio-economic development. Therefore, they differ fundamentally from economic undertakings engaged in trade, business or the commercial production of goods and services.

2.6 It was contended that in the 1982 Amendment to the I.D. Act, as well as the IR Code, the legislative policy indicated is an intention to exclude welfare and sovereign governmental functions from the scope of the definition of “industry”. Therefore, such activities must remain outside the scope of “industry” even under the original definition under the I.D. Act.

2.7 It was submitted that some functions are inherently and inalienably sovereign, namely (i) defense of the nation; (ii) maintenance of public order; (iii) administration of justice; (iv) legislative and policy-making authority; (v) citizenship and naturalisation; (vi) passports and visas; and (vii) core regulatory and coercive powers of the State, which may relate to public purpose or common good fields. All governance functions are all public purpose functions. Beyond these categories, the classification of sovereign and governmental functions is to be contextually determined.

2.8 It was submitted that the Executive is better-positioned to make an initial determination of whether the State considers functions to be sovereign or of a public purpose. Judicial review would be available to make sure that this determination is not arbitrary or violative of constitutional provisions or principles. However, it was submitted that judicial review should not extend to constructing an exhaustive definition of sovereign functions.

2.9 Learned Attorney General further contended that it is important to have an element of 'severability' in assessing sovereign functions, i.e., that there may be activities in furtherance of State policy that do not themselves carry a sovereign function element. However, severability must not be applied in an overbroad manner, which would lead to an artificial fragmentation of governmental functions. This might restrict the State's ability to implement welfare programmes. It was urged that the Court must accord importance to the functional identity of an organisation or enterprise to determine whether it is performing a sovereign function.

2.10 Learned Additional Solicitor General (ASG) Sri KM Nataraj, appearing on behalf of the State of Uttar Pradesh, submitted that the Parliament had made an attempt through the Industrial Disputes (Amendment) Act, 1982 to redefine the expression "industry" so as to remove the ambiguities that arose on account of the expansive interpretation given to the term in ***Bangalore Water Supply***. This indicates a legislative intent to restrict a broad interpretation of "industry". It was submitted that this amendment may be relied upon as an interpretive aid to adopt a purposive construction that restricts government departments performing sovereign functions from being brought within the purview of “industry”.

2.11 It was further submitted by learned ASG that the IR Code removes interpretational ambiguities through its definition of “industry” under Section 2(p). One of the exceptions provided in this definition is for activities “relatable to the sovereign functions of the appropriate Government”. The phrase “relatable to” expands the scope of the exception to include activities that bear a nexus with sovereign functions. The exclusion is not only of primary or inalienable sovereign functions. The definition also excludes institutions owned or managed by organisations wholly or substantially engaged in a charitable, social or philanthropic service. It further excludes domestic services from the purview of “industry”, and also allows the Central Government to notify additional activities that may be excluded from the ambit of “industry”. This provides flexibility to exclude certain sectors or activities from the ambit of regulation.

2.12 Learned ASG submitted that the British-colonial concept of ‘sovereign function’ viewed the State as an authority responsible for maintaining order, administering justice and protecting territorial integrity. Under this framework, welfare activities like education, healthcare and social security were not under the ambit of government functions. However, learned ASG submitted that this understanding is at odds with India being a welfare State in which the State is enjoined to perform various functions in the fields of education, healthcare, social welfare, etc. in accordance with the Directive Principles of State Policy in Part IV of the Constitution of India. It was submitted that wherever the government undertakes public welfare activities in discharge of its Constitutional obligations under Part IV, such activities must be treated as "sovereign functions" and must thus be outside the purview of the definition of "industry".

2.13 Learned ASG contended that public employment under the Government is governed by a distinct legal framework. Recruitment, service conditions, as well as safeguards against arbitrary dismissal, removal or reduction in rank, are governed by Articles 309 and 311 of the Constitution. In addition to these provisions, Parliament has enacted specific statutes such as the Administrative Tribunals Act, 1985. It provides a structured legal mechanism for service disputes involving government employees. Therefore, it was submitted that even if sovereign functions are excluded from the ambit of the I.D. Act, government employees remain protected through Constitutional and statutory mechanisms.

2.14 Learned ASG argued that treating government departments and welfare institutions as "industry" would have negative consequences, such as making essential public services subject to strikes and bargaining conflicts. Further, the services of government employees would be governed by mechanisms under the I.D. Act, which are incompatible with Constitutional service protections.

2.15 In sum, learned ASG submitted that the IR Code must be viewed as a clarificatory and remedial legislation, which reflects the deliberate intention of Parliament to restrict the expansive definition of "industry" adopted in ***Bangalore Water Supply*** and to exclude sovereign functions including statutory obligations and welfare responsibilities of the State from the ambit of the I.D. Act.

2.16 Sri Sanjay Hegde, learned senior counsel appearing on behalf of the State of Karnataka at the outset submitted that an expansive definition of the term “industry” would include the activities of Government departments which would result in entities that could never have been covered by the I.D. Act now being covered by its broad sweep. Therefore, by applying the principle of *noscitur a sociis*, the words “industry” and “undertaking” must be read in the context of the words that appear alongside them, namely “trade, business and manufacture or calling”.

2.17 It was contended that the decision of six Judges of this Court in the case of ***Management of Safdarjung Hospital, New Delhi vs. Kuldip Singh Sethi, AIR 1970 SC 1407 (“Safdarjung Hospital”)*** is right. That the said decision rightly interpreted the phrase “industry” based on a sound analysis of the text of the definition under Section 2(j) of the I.D. Act.

2.18 Further, the sovereign function exception to the definition of the term “industry” as laid down by the majority in ***Bangalore Water Supply*** is too limited, as the Government undertakes a wide variety of activities such as regulation and planning that may include acts such as laying down a road or acquiring property. That acts such as these cannot be termed an “industry” when performed by the Government, even if they may constitute an "industry" otherwise.

2.19 Sri Shadan Farasat, learned senior counsel appearing on behalf of the State of Punjab submitted that the "triple test" as laid down in the case of ***Bangalore Water Supply*** is too expansive. That the overbreadth of the judgment can be corrected by including the existence of a commercial objective as well as that of physical or manual labour, as opposed to intellectual services, as prerequisites in the "triple test" to consider an activity to be an "industry" within the meaning of Section 2(j) of the I.D. Act.

2.20 That various other categories of employees already receive protection under various specific statutory frameworks with distinct modes of grievance redressal, thereby rendering an expansive definition of the term "industry" under the I.D. Act unnecessary.

2.21 Learned senior counsel Sri J.P. Cama, *amicus curiae*, invited our attention to the definition of "industry" under Section 2(j) of the I.D. Act, submitting that the definition comprised two parts: the first, in the context of employers and the second, in the context of workmen. In ***D.N. Banerji vs. P.R. Mukherjee, AIR 1953 SC 58***

("Banerji"), this Court held that the length and breadth of the definition was reinforced by the second part. Subsequently, learned *amicus curiae* drew our attention to the definition of "industrial dispute" under Section 2(k) of the I.D. Act, submitting that it encompasses disputes between employers and employers, employers and workmen or between workmen and workmen. In sum, it was argued that the I.D. Act covers a dispute between workmen *inter se* as much as it means a dispute between workmen and employers.

2.22 With respect to charitable organisations, learned *amicus curiae* submitted that pure and simple charities, such as the government supplying free education, is not "industry". However, any charitable institution which contains an employer-employee relationship is otherwise covered by the definition of "industry". It was contended that what is relevant is "what" the activity performed is, rather than "who" performs the activity.

2.23 With respect to the exclusion of "regal functions", learned *amicus curiae* submitted that the element of regality itself does not lead to a complete ouster. There might be elements of regal or sovereign functions that are 'industrial'. If so, then it is possible to conclude that these elements are also included within the purview of “industry”. However, in cases concerning the Defence, which is governed by a dedicated separate law, i.e., the Armed Forces Tribunal Act, 2007, the I.D. Act would not apply.

2.24 With respect to the “triple test” propounded by Krishna Iyer, J. in ***Bangalore Water Supply,*** learned *amicus curiae* disagreed with the principle that an employer-employee relationship is a determinative factor. This is because even an altruistic establishment which is clearly outside the purview of “industry”, may have an employer-employee relationship. Instead, learned *amicus curiae* submitted that the test must be two-fold, corresponding to the separate parts of the definition of “industry”; first, the entity must be an “industry” in the sense of the terms used in Section 2(j), i.e., business, trade, manufacture, undertaking or calling of employers and second, the people employed therein must be ‘workmen’ in order to fall under the second part of Section 2(j) of the I.D. Act. These two elements – the ‘management’ and ‘labour’ elements must co-exist. An entity that is a ‘business’, but whose employees are not ‘workmen’ (for instance, if they are sales representatives) is not an “industry”, and *vice-versa*.

2.25 Learned *amicus curiae* contended that not every “employee” is a ‘workman’. To be a ‘workman’ under Section 2(s) of the I.D. Act, an employee must be engaged in at least one of the specific categories of labour mentioned in the definition – manual, unskilled, skilled, technical, operational, clerical or supervisory work. In this vein, learned *amicus curiae* submitted that Sections 2(j) and 2(s) must coalesce. Mere employer-employee relations are insufficient, since they exist even in non-industrial or altruistic entities.

2.26 Learned *amicus curiae* contended that Krishna Iyer, J. was not right in holding that profit motive is an irrelevant consideration in determining whether an entity is an “industry”. *Per contra*, he submitted that profit motive is a *sine-qua-non* for the existence of a business, trade, etc., which are the terms under the definition of “industry”. In this vein, learned *amicus curiae* contended that to be an “industry”, an entity must fall under one of the categories specified in the definition, i.e., business, trade, undertaking, etc. In this regard, the doctrine of *ejusdem generis* would apply in determining whether an entity is an "industry" in the context of the terms specified in Section 2(j). In sum, it was submitted that Krishna Iyer, J. erred insofar as the "triple-test" would include activities that are not in the nature of a trade or business, such as clubs and research institutions. The crux of the test cannot be the existence of an employer-employee relationship, since that would be over inclusive.

2.27 With respect to social welfare activities and schemes undertaken by government departments, learned *amicus curiae* submitted that if the intention is to make money and pay the people concerned, it is an "industry". However, if it is done altruistically and without any element of financial intention or profit, then it is not an "industry".

2.28 Learned senior counsel, Ms. Indira Jaising, on behalf of the Respondents at the outset submitted that there was no need to reconsider the judgment of this Court in the case of ***Bangalore Water Supply*** and that the reference ought to be rejected. This is because there is no conflict between the judgments of the three-Judge Bench of this Court in ***Jagannath Kondhare*** and the two-Judge Bench of this Court in ***Pratamsingh Parmar***, as the latter was confined to the facts of the case and it was further held therein that no contention had been raised that the concerned entity was an "industry".

2.29 It was contended that the judgment of this Court in the case of ***Bangalore Water Supply*** was a judgement of seven Judges of this Court, notwithstanding the dissents of Jaswant Singh and Tulzapurkar JJ. In this context, reliance was placed on the judgment of this Court in the case of ***Trimurthi Fragrances Private Ltd. vs. Government of NCT of Delhi, (2024) 20 SCC 709 ("Trimurthi Fragrances")***.

2.30 It was further submitted that there was no basis to reconsider the decision in the case of ***Bangalore Water Supply*** given that all future cases would be determined by the newly enacted IR Code. That owing to the non-enforcement of the 1982 Amendment of the I.D. Act, the interpretation in the case of ***Bangalore Water Supply*** is the authoritative position of law that cannot now be challenged.

2.31 It was urged that the definition of the term "industry" in the case of ***Bangalore Water Supply*** is well-founded and based on the classical principles of interpretation of statutes, particularly beneficial statutes. These principles are to consider the plain meaning of the section, to look at the object of the I.D. Act, read the Preamble to the Constitution, to see how the I.D. Act achieves that object and to interpret the words according to those principles.

2.32 It was submitted that the definition of the term “industry” as propounded in the case of ***Bangalore Water Supply*** serves the purpose of providing workmen with a means to address their grievances in relation to the conditions of their employment and assail unfair treatment. That it serves the purpose of providing a grievance redressal mechanism for swathes of employees who otherwise do not have any form of remedy. This is because filing a civil suit is not a suitable substitute to the remedies available under the provisions of the I.D. Act, as a civil court can only order that sufficient damages must be paid to the workman in question and cannot award reliefs such as reinstatement.

2.33 As regards the sovereign function exception, it was contended that only those inalienable functions which could not be subject to judicial review would be narrowly excepted. That this could not extend to all the welfare activities of the State.

2.34 That in the case of charitable purposes, the exclusion of profit motive as a determinative criterion in the definition of the term "industry" under Section 2(p) of the IR Code, evinced the Parliament's acquiescence to the judgment in the case of ***Bangalore Water Supply.*** That upon the application of the "triple test", if an entity was found to be an "industry", its involvement in charitable or social welfare activities would not be a reason to exclude the entity from the applicability of the definition.

2.35 That the Liberalisation, Privatisation and Globalisation (LPG) policy adopted by the State has resulted in the strategic disinvestment of the Government from many sectors, thereby opening these up to the private sector. In this context, the need for an expansive definition of the term "industry" so as to encapsulate those who would be affected by such acts of privatisation and concomitantly, would be without remedies that they were earlier entitled to, was emphasised.

2.36 It was vehemently contended that the judgment of this Court in the case of ***Bangalore Water Supply*** is necessary to ensure the possibility of access to justice to all categories of employees, including those who are not covered by either the Constitution or specific statutes.

2.37 Learned senior counsel for the intervenor – New Trade Union Initiative in I.A No.4/2016 in Civil Appeal No.897/2002, Sri Chander Uday Singh, reiterating some of the contentions raised by Ms. Indira Jaising, at the outset submitted that the judgment of this Court in the case of ***Bangalore Water Supply*** has held the field for over forty-eight years and that the reference to a nine-Judge Bench of this Court was entirely unwarranted. That on the basis of the said decision, a large number of matters have been decided and have attained finality. That it is well-established that the reopening and reconsideration of otherwise validly decided cases must be desisted from, except in rare cases of manifest errors or inconsistencies.

2.38 It was submitted that reasons such as the judgment of this Court in ***Bangalore Water Supply*** and its interpretation of the I.D. Act being too “worker-oriented” resulting in “industrial hazards” for those engaged in private enterprise do not pass muster as reasons to revisit a validly decided decision of this Court.

2.39 It was contended that there was unanimity as on the date of pronouncement of the said judgment among the seven Judges of this Court that the appeal should be dismissed. That all the seven Judges of this Court further signed the said order. It was only a desire to record some areas of convergence and divergence that caused Chandrachud C.J., Jaswant Singh and Tulzapurkar JJ. to indicate that they would do so later. That the mere factum of there being subsequently written opinions, wherein there were some disagreements with parts of the opinion of Krishna Iyer, J., do not on their own indicate a lack of a clear majority.

2.40 It was submitted that there was no conflict between the decisions of a three-Judge Bench of this Court in the case of ***Jagannath Kondhare*** and a two-Judge Bench of this Court in ***Pratamsingh Parmar*** which could have led the five-Judge Bench to refer the reconsideration of the judgment in ***Bangalore Water Supply*** to a larger Bench in ***Jai Bir Singh***.

2.41 Learned senior counsel Sri Vijay Hansaria, on behalf of the respondent in Civil Appeal No.358 of 2003, submitted that the “triple test” laid down in paragraph 140 of ***Bangalore Water Supply*** expresses characteristics that are inherent, essential and necessary for any business, trade, undertaking, manufacture or calling of employers mentioned in Section 2(j) of the I.D. Act. Therefore, the judgment in ***Bangalore Water Supply*** does not travel beyond the legislative wording or intent.

2.42 Learned senior counsel further submitted that ***Bangalore Water Supply*** does not require reconsideration due to the principle of *'stare decisis'*. It was contended that binding precedents may only be reconsidered in narrow circumstances, i.e., clear and compelling reasons, manifest incorrectness, erroneous beyond all reasonable doubt, etc., and that no such circumstance arises with regard to the judgment in ***Bangalore Water Supply***. It was urged that after the enforcement of the IR Code on 21.11.2025, any interpretation of Section 2(j) of the I.D. Act would only have a bearing on pending litigation and a restrictive interpretation would affect the vested rights of workmen.

2.43 Learned senior counsel Gopal Sankaranarayanan, on behalf of the All India Trade Union Congress, adopted the arguments of learned senior counsel Ms. Indira Jaising and Mr. Chander Uday Singh. However, he also specifically submitted that the following approach may be adopted in considering whether an activity is "industry" within the meaning of Section 2(j) of the I.D. Act – (i) to examine only the activity to see whether it comes within the words "undertaking", "calling" or "avocation", which are the widest phrases in the provision; (ii) to ignore who is carrying out the activity concerned; and (iii) to ignore the motive behind the activity as long as it is legal, since a charitable activity cannot be unregulated. In this sense, it was contended that it is the judgment of Chandrachud, C.J. that provides the most logical and consistent approach to interpreting the definition of "industry" in Section 2(j) of the I.D. Act.

2.44 Learned senior counsel further contended that with the repeal of the I.D. Act and enactment of the IR Code, any answer to the reference would be largely academic, since most legacy cases have already been answered by applying Krishna Iyer, J.'s judgment in ***Bangalore Water Supply*** and therefore any change in the interpretation of the definition of "industry" under the repealed I.D. Act cannot be to the disadvantage of the workmen.

2.45 It was also submitted that the distinction between governmental/non-governmental or sovereign/non-sovereign is entirely artificial and irrelevant. The objective of regulating the relationship between employers and workers is to ensure harmonious cooperation, which is critical even in entities performing sovereign functions. Further, if such entities are not included within the ambit of “industry”, there would be no alternative remedies or equivalent mechanisms for resolving the grievances of the workers, which was in fact why the 1982 Amendment was not enforced by the Central Government.

2.46 Learned senior counsel Sri Partha Sarathi Sengupta, who has rendered his assistance as an *amicus curiae* in this matter submitted that the test laid down in the case of ***Bangalore Water Supply*** should continue to be applied, considering that the said case has held the field for about half a century. In this context, reliance was placed on the judgment of this Court in the case of ***Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha, (1980) 2 SCC 593, (“Gujarat Steel Tubes Ltd.”).***

2.47 That as the Industrial Disputes (Amendment) Act, 1982 has not been brought into effect, it cannot in any way supersede or affect the interpretation of Section 2(j) of the I.D. Act as propounded in the case of ***Bangalore Water Supply.*** Also, the IR Code cannot have any effect on the definition contained in the I.D. Act, as the said Code can only have a prospective effect.

2.48 It was further contended that the definition of the term "industry" as laid down in the case of ***Bangalore Water Supply*** is in line with the Preambular values contained in the Constitution.

Whether reconsideration of Bangalore Water Supply is necessary?:

3. At the outset, I state that at this point of time, the present reference would not call for a reconsideration of the judgment in ***Bangalore Water Supply*** for the following reasons:

Firstly, the I.D. Act has been repealed w.e.f. 21.11.2025. Therefore, the definition of "industry" as per Section 2(j) of the repealed I.D. Act would be applicable only to those cases which are pending either before the Labour Courts, Industrial Tribunals, High Courts or this Court, or those which may arise up to the said date. Depending upon the nature of the activity, the decision as to whether the activity would fall within the scope and ambit of the definition of "industry" under Section 2(j) of the I.D. Act would have to be taken and each case would depend on the facts and circumstances on which it is premised.

Secondly, on the repeal of the I.D. Act, a new enactment by way of the IR Code has now been enforced with effect from 21.11.2025. Section 2(p) of the IR Code contains the definition of "industry" and the same has been extracted earlier. On a comparison of the definition of "industry" as found in the I.D. Act (since repealed) and the definition of "industry" under the IR Code, we find that there are certain distinctions as well as commonalities. However, we are not required to opine on the definition of "industry" under Section 2(p) of the IR Code so as to interpret Section 2(j) of the I.D. Act and to reconsider the judgment of this Court in ***Bangalore Water Supply***.

Thirdly, the judgment of the seven-Judge Bench in ***Bangalore Water Supply*** has held the field for nearly half a century (forty-eight years). The Tribunals and Courts have been deciding disputes on the touchstone of the said judgment. The new law containing a new definition cannot at all influence the interpretation of the repealed definition of "industry" or for that matter be a reason for a reconsideration of the judgment of this Court in ***Bangalore Water Supply***.

The doctrine of *stare decisis* meaning literally "to stand by decided cases" is a cornerstone of legal systems. It requires courts to follow prior judicial decisions when the same points of law arise in future cases.

Bangalore Water Supply is not an isolated case. It has become the foundation upon which both public and private actors have structured their conduct for about five decades. Administrative frameworks, commercial arrangements, and individual rights have all taken form in accordance with the understanding ***Bangalore Water Supply*** provides. Over the years, this reliance has only deepened and spread, giving rise to a web of settled expectations that now permeate the legal and practical order. This is evidenced by the fact that the judgment has been cited in at least 84 Supreme Court cases. Of these, 31 clearly follow ***Bangalore Water Supply*** in a labour dispute, 20 follow it in the context of principles of statutory interpretation, 10 distinguish it on facts, 18 refer to it in varying contexts while not substantially engaging with it but approvingly citing it, and only 5 appear to doubt its correctness. Of these five, one ***(Bombay Telephone Canteen Employees' Association vs. Union of India,***

(1997) 6 SCC 723, ("Bombay Telephone Canteen Employees' Association") has been overruled; one ***(Coir Board),*** made a reference for reconsideration which was later declined; two are the orders passed in the present proceedings, and the last one ***(Physical Research Laboratory vs. K.G. Sharma, (1997) 4 SCC 257), ("Physical Research Laboratory")*** notes that ***Bangalore Water Supply*** is not exhaustive law on the question of sovereign functions. Therefore, ***Bangalore Water Supply*** is woven into the warp and weft of labour law. To disturb ***Bangalore Water Supply*** now would neither advance the law nor serve any prospective purpose. It would merely reopen settled questions within a framework that the Legislature itself has chosen to leave behind. In these circumstances, fidelity to *stare decisis* is not an adherence to the past for its own sake, but a practical and principled recognition that continuity, in this case, is itself justice.

Fourthly, any challenge to the definition of "industry" under the IR Code has to be dealt with on its own merits and on the basis of commonality with the repealed definition and on the basis of the judgment of this Court in ***Bangalore Water Supply*** only to the extent it is applicable to the definition of "industry" under the IR

Code. Therefore at this stage, the judgment of this Court in ***Bangalore Water Supply*** need not be interfered with.

Fifthly, this nine-Judge Bench has been called upon to reconsider the dictum of ***Bangalore Water Supply*** rendered by a seven-Judge Bench containing four separate opinions but with a broadly concurring majority. The said reconsideration would be only for the purpose of deciding the cases which are pending before various fora, i.e., the legacy cases inasmuch as the I.D. Act has itself been repealed. When once the Act has been repealed and has been substituted by a new enactment, it would not be necessary or prudent for this nine-Judge Bench to pronounce on the correctness or otherwise of the judgment of this Court in ***Bangalore Water Supply*** which is a seven-Judge Bench decision, only for the purpose of reconsidering the definition of "industry" under Section 2(j) of the I.D. Act which has since been repealed. In other words, assuming for the sake of argument that the reference is answered to hold that ***Bangalore Water Supply*** has not been correctly decided in as much as the ratio is not correct, it would be applicable only to the pending cases as the definition in the repealed I.D. Act and its interpretation may not be useful once the pending cases are decided. This is because the definition of "industry" in Section 2(p) of the IR Code has to be interpreted on its own text and context.

The question, therefore, is not whether, ***Bangalore Water Supply*** should continue to regulate future conduct because that function has already been overtaken by the IR Code. The only question is if ***Bangalore Water Supply*** should be unsettled for the limited class of disputes to which it still applies. It is in this altered context that the rationale for overruling ***Bangalore Water Supply*** is further weakened. The usual justification for departing from precedent, namely, the need to correct the law going forward, has little purchase where the old governing law (in this case, the ID Act) has itself been superseded by a new law (in this case, the IR Code). As such, any reconsideration of ***Bangalore Water Supply*** would operate almost entirely retrospectively, unsettling rights and liabilities that arose under the ID Act regime which is no longer in force.

I find that in the above circumstances, it would be appropriate on our part to not interfere with the dictum in ***Bangalore Water Supply*** and instead, leave it to the Labour Courts, Tribunals, High

Courts and, where cases are pending before this Court, to be decided on the basis of the said judgment as applicable to the facts and circumstances of each case and without being influenced by the definition of "industry" under Section 2(p) of the IR Code.

Sixthly, I find that any pronouncement on the correctness or otherwise of the judgment of this Court in ***Bangalore Water Supply*** would definitely cast its shadow on the definition of "industry" under Section 2(p) of the IR Code. Rather, we find that it would be appropriate for the IR Code to be interpreted having regard to the wording of Section 2(p) therein which defines "industry". The new definition of "industry" in Section 2(p) of the IR Code cannot result in a reconsideration of the judgment of this Court in ***Bangalore Water Supply*** so as to tailor an interpretation to suit the definition of "industry" under the Section 2(p) of the IR Code. I also wish to add the caveat that I have not said anything on the definition of "industry" under Section 2(p) of the IR Code.

Seventhly, I am also of the view that the interpretation of the definition of "industry" under Section 2(j) of the I.D. Act in ***Bangalore Water Supply*** has held the field for almost half a century (48 years) since the year 1978. Any reconsideration of the said dictum at this stage when the definition of "industry" is at the cusp of being in a new avatar under Section 2(p) of the IR Code would only unsettle the law applicable under Section 2(j) of the I.D. Act to the pending cases. Such a situation may result in remand of cases to the original forum for a reconsideration of the applicability of the I.D. Act to the pending disputes and consequently result in fresh revisions, etc., to the higher forum only on the aspect of the application of the interpretation to be given to Section 2(j) of the repealed I.D. Act. This would not be in the interest of the parties engaged in industrial disputes under the repealed I.D. Act as delay, costs and uncertainty, owing to the reconsideration of the judgment in ***Bangalore Water Supply,*** are not in the interest of any party or industrial peace. Therefore, only the question of application of the said interpretation to pending cases would not entail a reconsideration of the said dictum, particularly having regard to the fact that the definition of "industry" in Section 2(j) of the I.D. Act itself is no longer on the statute book and has been repealed w.e.f. 21.11.2025 and the IR Code has been enforced. Why should this larger bench of nine Judges embark upon an exercise of interpreting the definition of “industry” under Section 2(j) of the I.D. Act which itself has been repealed? I am of the view that the entire exercise is now rendered wholly academic and for this reason also, the reference need not be answered.

Eighthly, there is one more aspect to be taken note of. When the definition of “industry” was interpreted under Section 2(j) of the I.D. Act, there were a considerable number of activities which were undertaken by the Central or State Governments but were not sovereign functions *stricto sensu.* On the other hand, Chandrachud, C.J. in his opinion has expressed that although running a mint is an activity which is solely within the realm of the Central Government and is a sovereign function, nevertheless it would fall within the definition of “industry” under Section 2(j) of the I.D. Act. This means that many activities of the Central or State Governments which are in the nature of welfare activities or activities being carried out in a commercial sense or even with or without profit motives have also been included in the definition of “industry” under Section 2(j) of the I.D. Act, and only certain activities which are *stricto sensu* sovereign functions of the State have been excluded. Therefore, merely because certain activities are being performed by the State does not mean that they are *ipso facto* to be excluded from the reach of the said definition. This would be contrary to the object and purpose of the I.D. Act.

Ninthly, if the Parliament had indeed wanted a different interpretation than the one offered by this Court in ***Bangalore Water Supply***, it could have inserted/substituted a new provision or amended the existing one, to such effect. Keeping precisely this in mind, the Parliament passed the Industrial Disputes (Amendment) Bill, 1982, which sought to enact a restrictive definition of industry, one excluding nine categories of establishment that would otherwise qualify as "industry" under the 'triple test' laid down in ***Bangalore Water Supply***. Yet, even after the passage of the Bill, it was not notified and the 'triple test' laid down in ***Bangalore Water Supply*** has effectively remained untouched. This, by itself, should be taken to mean that ***Bangalore Water Supply*** and the interpretation of "industry" taken therein had the implicit approval of the Executive and the Parliament. I say so for two reasons: first, a law that remains unnotified is, in effect, inchoate. It is, at best, an expression of legislative intent that has not ripened into operative command.

Until such time as it is brought into force, it lacks the capacity to displace the earlier law declared by this Court. The field, therefore, continues to be governed by the binding pronouncement of the Court in ***Bangalore Water Supply*** which remains the only effective statement of law on the point till such time. Second, the Executive, having consciously refrained from notifying the enactment, must be taken to have acquiesced to the continuance of the judicial determination in ***Bangalore Water Supply***. The power to bring a statute into force is not incidental to its passage. It is a distinct and separate power. It is for that reason statutes are often brought into force on a date appointed by the Executive, to allow, for example, the creation of subordinate legislation or administrative preparedness. The Parliament has also not debated about the amendment not being enforced all these decades. Therefore, where such power to notify is not exercised, the resulting inaction reflects a deliberate decision to allow the *status quo* to endure.

Tenthly, in ***Bangalore Water Supply,*** this Court considered a variety of activities in the backdrop of the state of the economy, the mood of the nation and the object and purpose of the I.D. Act, which has been discussed above. Moreover, a watershed moment in the Indian economy was in the year 1991, when the Union Government headed by the then Prime Minister Sri P.V. Narasimha Rao initiated a slew of reforms in the economy and in the administration so as to bring about Liberalisation, Privatisation and Globalisation (LPG). This could be aptly discussed at this stage. This is relevant because many of the activities earlier performed by the State/Central Governments have since been privatised and private players by themselves or by a public-private partnership arrangement have been carrying on a variety of developmental and welfare projects/schemes/ programmes. These activities in the hands of, *inter alia*, private parties, would employ employees/workmen and their interests have to be protected under the I.D. Act by giving the meaning to the word "industry" as interpreted in the judgment of this Court in ***Bangalore Water Supply***. Therefore, for this reason also, the said judgment cannot be watered down to the detriment of the employees/workmen.

"From 1950 to 1991: Planned economy to Liberalisation, Privatisation and Globalisation ("LPG"):

4. Like many countries attaining liberation from colonial rule, the immediate task before independent India was to alleviate its

population from poverty and systematically organise its economy. To that end, India adopted a mixed economy model wherein both public and private sectors could coexist. Turning to command economies, the Indian State sought to triumph over inter-regional disparities in resources and development through economic planning, an approach that had proven successful in command economies to bring sustained transformation of resources and implementation of plans in national interest rather than inefficient allocation of resources.

4.1 Buttressed by the Bombay Plan, proposed by influential industrialists, the Industrial Policy Resolution of 1948 and the over-expansive vision of the State shared by nearly every political party, the early years of the Indian Government saw it play a dominant role in the setting up of heavy enterprises, thereby being a controller of the economy and resources. Consequently, the market was not merely strongly regulated but also led by the public sector, which manifested as State interventions and regulations with the aim of protecting indigenous industries.

4.2 With that insight, the Planning Commission was set up in the year 1950 to oversee the entire range of planning, including resource allocation, implementation and appraisal of five-year plans under the leadership of the first Prime Minister Jawaharlal Nehru. In 1951, deterred by the significant loss of foreign reserves on food imports, India's First Five-Year Plan focused on agriculture and irrigation to boost farm output. Some scholars tout this as a success as the economy grew at 3.6%, instead of the target of 2.1%. Soon thereafter, the Second Plan, launched in 1956, saw deficit financing as an acceptable tool for much needed rapid industrialisation and self-reliance focusing on heavy industries and capital goods. Coupled with the Industrial Policy Resolution of 1956, the Second Plan initiated the development of the public sector and ushered in the *Licence Raj*. The resolution, adopted by the Parliament in 1956, enumerated as a national objective the establishment of a socialistic pattern of society and categorised industries into three groups:

- Schedule A: Industries which were to be exclusively in the public sector. These were industries of basic and strategic importance;
- Schedule B: Industries that were to be progressively State owned and the State would generally set up new enterprises

but in which private enterprise would only be expected to supplement the State effort; and

- Schedule C: All the remaining industries, and their future development was, in general, left to the initiative and development of the private sector. However, it was left open to the State and the private sector was still subject to the *Licence Raj*.

4.3 This over-expansion of State control enabled it to undertake large-scale projects without either reliance on, negotiations with, or even competition from, the private sector. The construction of the Bhakra-Nangal Dam, Hirakund Dam, etc., as well as steel plants in Rourkela, Bhillai and Durgapur were touted by the State as new "temples of a modern India".

4.4 However, the substantial peril of curbing the invisible hand of the economy and enterprising spirit of the private sector was that the economic policy restricted India to the earmarked industries and ignored new technologies, innovations and domains that, though transforming, were not in the horizons of the bureaucracy. On the other hand, funds were also substantially reallocated away from agriculture, thereby causing food shortages and a spike in inflation. Furthermore, the State was forced to import foodgrains which depleted foreign exchange reserves.

4.5 Under the leadership of Prime Minister Lal Bahadur Shastri, the Indian Government was convinced that in the domain of agriculture, it needed to loosen its tight strings on centralised planning and price controls and instead focus on technological development. With India transforming into a food-sufficient and self-reliant entity after the Green Revolution and introduction of the Minimum Support Price regime, the role of the Planning Commission was trimmed.

4.6 In the second half of the 1960s, the severe drought of 1965 increased food grain imports and consequently exacerbated the balance of payments crisis. To counter the same, in June 1966, the Union Government devalued the Indian rupee by a sharp 57%, thereby accelerating inflation although it was aimed at boosting exports.

4.7 Monumentally, to expand the sources of credit and monitor the banking system as per the control of the Government's planning and economic policy, the Government nationalised fourteen private banks on 20.07.1969. It was thought that the aim of financial inclusion and ready access to credit for small agriculturalists could be achieved by State control of the banking system. Agnostic of immediate profit motive and credit-worthiness, Banks operated and expanded to the 'un-banked'. However, in due course, it has been observed that limited competition and poor credit assessment severely hampered the efficiency and health of the banking system.

4.8 Around the 1980s, there was a rising realisation of the harm from protectionist policies and the merits of a market-led economy. Therefore, the Sixth Five-Year Plan marked the beginning of economic liberalisation in India and outlined a series of measures aimed at boosting the economy's competitiveness. Notable steps included removal of large-scale price controls; reductions in import duties and the beginning of the end of the *Licence Raj*. In the following years, large-scale efforts were undertaken to usher in information technology and telecom revolutions in the country along with promoting exports and the utility of foreign investment and capital goods.

4.9 The political economy of the country from the 1950s till the late 1980s had made it apparent that the underlying political current and rhetoric of an idyllic but industrial society based on a socialistic pattern had been failing to deliver on the hopes of a modern lifestyle and Indians' entrepreneurial spirit. This is despite the five technological missions initiated in the mid-1980s. It is not uncertain that the deficit spending of the 1980s led by high external debt, double-digit inflation, short-term debt reaching 147% of foreign exchange reserves, etc., led to a macroeconomic crisis that India found itself in at the end of the 1980s. In this backdrop, amidst a series of negotiations and policy reforms, Prime Minister P.V. Narasimha Rao spoke to the nation on 09.07.1991 of the impending need to bring in far-reaching changes and reforms that would bolster the economy and take it to a modern globalised world. Recounting the difficulties, he said:

> "…For the last eighteen months, there has been paralysis on the economic front. The last two governments postponed taking vital decisions. The fiscal position was allowed to deteriorate. The balance-of-payment crisis became unmanageable. Non-resident Indians and foreign leaders became more and more reluctant to lend money to India.
>
> Consequently, India's external reserves declined steeply, and we had no foreign exchange to import even such essential commodities as diesel, kerosene, edible oil, and fertiliser. The net result was that when we came to power, we found the financial position of the country in a terrible mess. …"

4.10 The New Industrial Policy of 1991 put an end to the shackles that bound the Indian industry into inefficiency and non-competitiveness. While the opening up of the economy was gradual, the Monopolies and Restrictive Trade Practices Act, 1969 was diluted, allowing market players to scale up without government approval and automatic approvals for Foreign Direct Investment (FDI) with majority holding and qualifiable foreign technological agreements were assured along with many other solutions. One of the many recognisable inflection points in India was the Budget Speech of 1991 delivered by India's then Finance Minister, Dr. Manmohan Singh on 24.07.1991 who later became the Prime Minister of India, who, whilst paraphrasing Victor Hugo said, "No power on earth can stop an idea whose time has come".

4.11 The reforms that were to follow have been colloquially termed as Liberalisation, Privatisation and Globalisation (LPG). In practice, the country saw the dismantling of the *Licence Raj*, some years later an active disinvestment framework and quite openly, an expression of willingness to let globalised market forces signal directions to the economy.

4.12 Having seen India's potential and political commitment to a modern market economy, the International Monetary Fund (IMF) provided assistance leading to macroeconomic stabilisation. In the years since, several policies such as import liberalisation, unrestricted FDI inflows in some sectors, tax exemptions, promotion of exports, etc., have been adopted, which would have seemed antithetical to the very idea and core of the Indian economy to the most earnest well-wishers of India only two decades prior thereto.

4.13 While the status of health or inequity indicators is not being used as an aid for constitutional interpretation, we must also note that the Liberalisation, Privatisation and Globalisation Policy ("LPG policy" of 1991) can also be credited for providing the much needed impetus to the Central and State Governments for fulfilling several goals set out in the Directive Principles of State Policy which had earlier been difficult to achieve.

4.14 The golden thread throughout India's economic history post-independence has been to focus on a transformative socio-economic growth of the people of India by way of experimentation through various plans, projects and pipe dreams. The mid-1980s was a turning point when the need for innovation, modernisation and concomitant avenues for development through five major technology reforms ushered in the Reforms of 1991 as the country faced shortages in foreign exchange reserves and there was a crisis in balance of payments. There has been no looking back since then including ushering in various schemes/programmes for the welfare of the people which earlier had not really percolated to deserving and eligible citizens.

4.15 It is in the period between the late 1960s and early 1980s that this Court gleaned the thrust to the economic policies of the State and sought to provide a judicial imprimatur for the success of the economic policies. Thus, bank nationalisation, road transport nationalisation, amendments to Land Reforms laws, urban land ceiling laws, acquisition of lands, abolition of land tenures, etc. were upheld by this Court while at the same time tightening the powers of amendment of the Constitution. This was by the evolution of the basic structure doctrine which found its voice in ***Kesavananda Bharati Sripadagalvaru vs. State of Kerala, AIR 1973 SC 1461 ("Kesavananda Bharati")*** and was perpetuated in ***Minerva Mills Ltd. vs. Union of India, AIR 1980***

SC 1789 ("Minerva Mills") and ***Waman Rao vs. Union of India, AIR 1981 SC 271, ("Waman Rao")***. Recently, in ***Property Owners' Association vs. State of Maharashtra, (2024) 18 SCC 1, ("Property Owners' Association")*** a nine-Judge Bench of this Court has affirmed the judgment in ***Minerva Mills***.

4.16 One cannot lose sight of the precarious condition that India was in when it gained Independence in August, 1947 and at the dawn of the Republic in January, 1950. The provisions of the Constitution have hence sought to achieve a transformation in the socio-economic conditions of the people of India given the situation as it emerged in the colonial period. The transition of the Indian economy towards privatisation and liberalisation is ultimately for the welfare of the people of India. Heavy capital investment in the public sector in the early decades after Independence and its failure to yield good results in the subsequent decades and the move towards disinvestment and privatisation are all experiments in achieving the constitutional goals which are constant, but the path to achieve them may vary with the passage of time. It is in the above backdrop that the judgments of this Court must be viewed.

4.17 In the context of this Reference, what has to be distilled from the aforesaid discussion is the fact that the growth of "industry" in India and its contribution to the economy must be viewed with the development of the economy along with the industrial policies being implemented from time to time. At the dawn of independence, the thinking was that State-propelled industry was the requirement and there was hardly any private capital investment in industry except limited to certain industrial families and oligarchies. Further, with the entrenchment of State control through the *Licence Raj,* there was hardly any incentive for industrial investment. The stringent financial position which the State was faced with in the 1980s ultimately led to the opening of the economy. Liberalisation, Privatisation and Globalisation (LPG) was embraced by the Indian economy with the view to, *inter alia,* privatise all those State-sponsored or State-managed industries by handing over of certain industrial units, entities and the production of goods and services to private hands.

4.18 This significant development in the Indian economy has resulted in not only private investment in Indian industry but also growth of industrial production of goods as well as proliferation of the service sector in the Indian economy. Privatisation, *inter alia*, implies that whatever activities were undertaken by the State as a State-owned or State sponsored project or programme is now being conducted by private entities or under a public-private partnership. Therefore, workmen or employees who were working for public sector units were transformed as workmen or employees of the private sector. It is in this context that protection of workmen as envisaged under the I.D. Act assumes relevance and significance.

4.19 If the provisions of the I.D. Act have to apply to workmen, it could be only to those who are employed in an "industry" within the meaning of Section 2(j) of the I.D. Act. If that is so, a narrowly tailored definition of "industry" would not assist in maintaining industrial peace, protection of workmen and employers which are envisaged under the scheme of the I.D. Act. If this singular factor is to be borne in mind, then, the interpretation of the definition of "industry" in Section 2(j) of the I.D. Act has to be broad-based as per the majority opinion of the Judges of the seven-Judge Bench and not narrowly tailored.

Industrial Policies from 1951 onwards: A Bird's eye view:

5. In this regard, it would be useful to have a bird's eye view of the industrial policies from the year 1951 onwards which have been enunciated in India.

5.1 The first Industrial Policy in 1948 delineated industries into four categories. The first (arms and ammunitions, atomic energy and rail transport) was under the exclusive monopoly of the Central Government, the second (6 basic industries) was reserved for the State unless private cooperation was deemed necessary; the third (18 industries) was open to the private sector albeit under State regulation and control; and the fourth, i.e., the rest of the industries were left to private enterprise.

5.2 A significant step was the enactment of the Industrial (Development and Regulation) Act, 1951, which introduced the 'licensing' power of the State to regulate industrial development in a centralised manner so as to benefit industrial development under a regulatory regime.

5.3 The next Industrial Policy in 1956 proceeded on the premise that Parliament had accepted the socialistic pattern of society as the objective of social and economic policy. In its estimation, it was essential to develop 'heavy' and 'machine-making' industries, to expand the public sector and to build up the cooperative sector. In accomplishing this, the State would assume a predominant responsibility for setting up industries and transport facilities. An increasing proportion of private sector activities were to be developed along co-operative lines.

5.4 Concomitant with these principles was the classification of industries into three categories:

a) Schedule A: Industries, the future development of which would be the exclusive responsibility of the State.

b) Schedule B: Industries which would be primarily State-owned. However, the private sector would supplement the effort of the State.

c) All remaining industries would fall <u>in the third category</u>, in which it was expected that their development would take place by the private sector, although the State was also open to start any such "industry".

5.5 An extension of this Policy was subsequently brought forth in the form of the Industrial Policy Statement of 1977, which focused on the promotion of small and cottage industries in rural areas and small towns.

5.6 Subsequent policies saw a turn towards liberalisation. The Industrial Policy Statement of 1980 saw policy changes reflecting liberalisation. For instance, licensed capacities were allowed to be automatically expanded up to 25% and 'broadbanding' was permitted in some industries, i.e., industries were allowed to produce other items in a similar category, without having to apply for a separate license. The year 1985 saw the delicensing of twenty five broad industrial categories. For many of the remaining industries, broadbanding was extended as a benefit.

5.7 These gradual relaxations culminated in the watershed New Economic Policy of 1991, whose effects have been described earlier. By 2020, only a few industries such as electronic aerospace, defence equipment, hazardous chemicals, etc., remained under the licensing regime. Ten out of the eighteen industries previously reserved for the public sector were now opened to the private sector.

5.8 In view of the aforesaid discussion, in my view, the decision of the seven-Judge Bench in ***Bangalore Water Supply*** would not call for any reconsideration. I am of the view that the same continues to hold the field and is more relevant in the present scenario.

5.9 Despite the aforesaid reasons and discussion, we however wish to answer the reference by analysing the judgment of this Court in ***Bangalore Water Supply***.

5.10 Apart from there being a perceived conflict of opinion as to, whether, Social Forestry activity comes within the expression "industry", as interpreted by the seven-Judge Bench of this Court in ***Bangalore Water Supply***, another reason was indicated by the five-Judge Bench in ***Jai Bir Singh***. The five-Judge Bench was of the opinion that the interpretation given to the word "industry" in Section 2(j) of the I.D. Act was not clear as there were four separate opinions rendered by the seven-Judge Bench and therefore, a larger Bench must settle the law. Hence, at this juncture, we distill the separate opinions rendered by the seven-Judge Bench. This is in order to ascertain whether the reference to a Larger Bench was necessary or not. Also, the correctness or otherwise of the judgment in ***Bangalore Water Supply*** could also be gone into for the purpose of answering the questions framed on 16.02.2026.

Bangalore Water Supply:

6. By order dated 21.01.1976 passed in the case of ***Bangalore Water Supply*** (a copy of which has been made available to the Court by learned Attorney General), a three-Judge Bench of this Court presided by Krishna Iyer, J., the other two Judges being A.C. Gupta and N.L. Untwalia, JJ. referred the question, as to whether, the judgment in ***Safdarjung Hospital*** which is a decision of six Judges was correct or not, to a larger Bench. It was in the above backdrop that a larger Bench of seven-Judge was constituted in the case.

6.1 In ***Bangalore Water Supply***, which is a seven-Judge Bench decision, Krishna Iyer, J. (for himself, Bhagwati and Desai, JJ.) penned an opinion and Beg, C.J., while generally being in agreement with the line of thinking adopted and the conclusions reached by Krishna Iyer, J., nevertheless added his own reasons for his agreement. These opinions were delivered on 21.02.1978. However, thereafter on 07.04.1978, Chandrachud, C.J. (as the learned Chief Justice who succeeded Beg, C.J.), while agreeing with Krishna Iyer, J., nevertheless elaborated on the areas of concurrence with the judgment rendered by Krishna Iyer, J. Further, Jaswant Singh, J. (for himself and for Tulzapurkar, J.) rendered a separate opinion indicating their areas of concurrence and divergence and opined that the Legislature must step in with a comprehensive bill to clear up the fog and remove the doubts and set at rest once and for all the controversy which crops up from time to time in relation to the meaning of the term "industry", rendering it necessary for larger benches of this Court to be constituted, which are driven to the necessity of evolving a working formula to cover particular cases.

6.2 However, the thinking that there was no consensus arrived at on the interpretation to be given to the definition of the word "industry" under Section 2(j) of the I.D. Act by the seven-Judge Bench was one of the reasons for the reference to a larger Bench in ***Jai Bir Singh***.

6.3 In the above backdrop, it would be useful to distill the opinions of the respective Judges in ***Bangalore Water Supply*** in order to ascertain the necessity for a reference to a nine-Judge Bench.

Opinion of Krishna Iyer, J. (for himself, Bhagwati and Desai, JJ.):

7. On considering the submissions advanced at the bar in paragraph 46 of ***Bangalore Water Supply***, the following questions were raised:

> "46. ...
>
> (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 cooperation between employer and employee be direct insofar as it relates to the basic service or essential manufacture which is the output of the undertaking?
>
> (b) Could a lawyer's chambers 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 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?"

7.1 While surveying the decisions of this Court right from ***Banerji; Corporation of the City of Nagpur vs. Employees (in CA No.143 of 1959), AIR 1960 SC 675 ("Corporation of the City of Nagpur"); State of Bombay vs. Hospital Mazdoor Sabha, AIR 1960 SC 610 ("Hospital Mazdoor Sabha"); Baroda Borough Municipality vs. Workmen, AIR 1957 SC 110, ("Baroda Borough Municipality")*** as well as cases arising from overseas jurisdictions, Krishna Iyer, J. affirmed the view that monetary considerations for service is not an essential characteristic of an "industry" in a modern State. It was further observed that services, so long as they form a part of the wealth of a nation, such as educational services as a form of wealth, are industrial in nature. This was observed by relying on the dictum of Isaacs, J. in ***Federated State School Teachers' Association at Australia vs.***

State of Victoria, (1929) 41 CLR 569, **(*"School Teachers' Association at Australia")*** which was also quoted by Subba Rao, J. (as the learned Chief Justice then was) in ***Corporation of the City of Nagpur***.

7.2 While referring to the judgment of this Court in ***Corporation of the City of Nagpur*** and with particular reference to Subba Rao, J.'s opinion, it was observed by Krishna Iyer, J. that two seminal guidelines of great moment flow from this decision: (i) the primary and predominant activity test; and (ii) the integrated activity test. The concrete application of these tests is illustrated in the case of ***Corporation of the City of Nagpur***. Subba Rao, J.'s views in the aforesaid case were extracted which, for immediate reference, are extracted as under:

> "17. …
>
> 'The result of the discussion may be summarized thus:
>
> (1) The definition of 'industry' in the Act is very comprehensive. It is in two parts: one part defines it from the standpoint of the employer and the other from the standpoint of the employee. <u>If an activity falls under either part of the definition, it will be an industry within the meaning of the Act</u>.
>
> (2) The history of industrial disputes and the legislation recognizes the basic concept <u>that the activity shall be an organized one and not that which pertains to private or personal employment</u>.

(3) The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power.

(4) If a service rendered by an individual or private person would be an industry, it would equally be an industry in the hands of a corporation.

(5) If a service rendered by a corporation is an industry, the employees in the departments connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act.

(6) If a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purpose of the Act."

(underlining by us)

7.3 In paragraph 91, Krishna Iyer, J. observed as under:

"91. Running right through are three tests:

(*a*) the paramount and predominant duty criterion (p. 971);

(*b*) the specific service being an integral, non-severable part of the same activity (p. 960), and

(*c*) the irrelevance of the statutory duty aspect."

7.4 Referring to Gajendragadkar, J.'s, interpretation of the definition "industry" in ***Hospital Mazdoor Sabha***, the same was extracted by Krishna Iyer, J. as under:

"94. …

> The positive delineation of "industry" is set in these terms:
>
> > "… as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organised or arranged in a manner in which trade or business is generally organised or arranged. It must not be casual nor must it be for oneself nor for pleasure. Thus the manner in which the activity in question is organised or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which Section 2(*j*) applies. Judged by this test there would be no difficulty in holding that the State is carrying on an undertaking when it runs the group of hospitals in question."
> >
> > Again,
> >
> > "It is the character of the activity which decides the question as to whether the activity in question attracts the provision of Section 2(7); who conducts the activity and whether it is conducted for profit or not do not make a material difference."

(underlining by us)

7.5 However, the aforesaid definition was not quite accepted by Krishna Iyer, J.

7.6 Also, in the context of liberal professions, callings, services, or undertakings, two reasons given by Gajendragadkar, J. in ***Hospital Mazdoor Sabha*** were adumbrated as under:

i. Doctrine of direct co-operation and the features of liberal professions were given as good reasons to barricade professional enterprises from the militant clamour for more by lay labour; and

ii. That the very concept of the liberal professions has its own special and distinctive features which do not readily permit the inclusion of the liberal professions into the four corners of industrial law. The essential basis of an industrial dispute is that it is a dispute arising between capital and labour in enterprises where capital and labour combine to produce commodities or to render service.

7.7 That this essential basis would be absent in the case of liberal professions.

7.8 While examining the aforesaid two tests, it was observed by Krishna Iyer, J. that the established professions namely law, medicine and the clergy held or continued to hold estate-like positions. However, in paragraph 110, it was observed that the exclusion of the professions would adversely affect the statutory intent and effect. In this context, paragraph 110 of the judgment of Krishna Iyer, J. reads as under:

> "110. Many callings may clamour to be regarded as liberal professions. In an age when traditions have broken down and the old world professions of liberal descent have begun to resort to commercial practices (even legally, as in America, or factually, as in some other countries) <u>exclusion under this new label will be infliction of injury on the statutory intent and effect</u>."
>
> (underlining by us)

7.9 Consequently, it was held that the ***National Union of Commercial Employees vs. M.R. Meher, Industrial Tribunal, Bombay, AIR 1962 SC 1080 ("Solicitors' Case")*** was wrongly decided. It was also observed that ***University of Delhi vs. Ram Nath, AIR 1963 SC 1873, ("Ram Nath")*** was wrongly decided, as education can be and is, in its institutional form, an "industry".

7.10 In the context of charitable institutions, three categories of charitable institutions were identified as under:

> "126. The <u>first</u> is one where the enterprise, like any other, yields profits but they are siphoned off for altruistic objects. The <u>second</u> 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 <u>third</u> 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. <u>The first two are industries, the third not.</u>"
>
> (underlining by us)

7.11 There was also a discussion on whether research institutes involve collaboration between employers and employees, and it was observed that even though such institutes are run without a profit motive, they are nevertheless "industries".

7.12 In the case of clubs, it was held that even though there may be an absence of employer-employee cooperation in clubs and they are exclusive and cater to the needs and pleasures of the members and not the community as such, nevertheless, they come within the definition of "industry".

7.13 It was further observed that ***Secretary, Madras Gymkhana Club Employees' Union vs. Management of the Gymkhana Club, AIR 1968 SC 554 ("Gymkhana Club")*** and ***Cricket Club of India Ltd. vs. Bombay Labour Union, AIR 1969 SC 276, ("Cricket Club of India Ltd.")*** were not decided correctly.

8. Cooperative Societies too were held to be industries under Section 2(j) of the I.D. Act.

8.1 A reading of paragraphs 159-160 encapsulating the earlier decisions rendered by this Court also makes for interesting reading and the relevant part is extracted as under:

> "160. ...It behoves 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 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 lose its savour of progressive certainty 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."
>
> (underlining by us)

8.2 Ultimately, in paragraph 161, Krishna Iyer, J. observed as under:

> "161. "Industry', as defined in Section 2(*j*) and explained in *Banerji (AIR 1953 SC 58)*, 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 e.g. making, on a large scale *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 the 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.

II. Although Section 2(*j*) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach 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, 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 the 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 workmen, the range off this statutory ideology must inform the reach of 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 (vii) other kindred adventures, if they fulfil the triple tests listed in I, cannot be exempted from the scope of Section 2(j).

(b) A restricted category of professions, clubs, co-operatives 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 centre 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 undertakings alone are exempt — not other generosity, compassion, developmental passion or project.

IV. 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 case* [*University of Delhi* v. *Ramlfath*, (1964) 2 SCR 703 : AIR 1963 SC 1873 : (1963) 2 Lab LJ 335] or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the *Corporation of Nagpur* 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."

V. We overrule *Safdarjung, Solicitors' case*, *Gymkhana*, *Delhi University*, *Dhanrajgirji Hospital* and other rulings whose ratio runs counter to the principles enunciated above, and *Hospital Mazdoor Sabha* is hereby rehabilitated."

(underlining by us)

8.3 Paragraph 161(a) extracted above is the "triple test" enunciated by Krishna Iyer, J.

8.4 Consequently, the appeal filed by ***Bangalore Water Supply*** was dismissed.

Opinion of Beg, C.J.:

9. While stating that he was generally in agreement with the line of thinking adopted and the conclusions reached by Krishna Iyer, J., Beg, C.J. observed that Krishna Iyer, J. had not discarded the tests of "industry" formulated earlier by this Court. In fact, the tests

laid down by this Court in ***Banerji, Corporation of the City of Nagpur*** and ***Hospital Mazdoor Sabha*** were restored to their "pristine glory".

9.1 Further, Beg, C.J. stated that it is likely that a person would have a subjective notion about "industry" but for objectivity, it is necessary to first look at the words used in the statute defining "industry" in an attempt to find the meaning. If the meaning is clear, then there is no controversy at all. However, if the meaning of a word is not readily discernible as in the instant case, then a need for interpretation becomes necessary by discerning the true meaning and intent of the word "industry". Beg, C.J. was of the view that, *"Progressive, rational and beneficial modes of interpretation import and fit into the body of the old what may be new. It is a process of adaptation for giving new vitality in keeping with the progress of thought in our times. All this, however, is not really novel, although we may try to say it in a new way.... Indeed, even in a modern statute, the meaning of a term such as "industry" may change with a rapidly changed social and economic structure*". Dwelling on the methods of interpretation of a statute in paragraph 13, Beg, C.J. cautioned against any interpretation of the definition of "industry" which would cut down on its sweep. Hence, according to him, the "*noscitur a sociis* rule" or the "*ejusdem generis* rule" are not really useful in defining the term. Paragraph 13 of his judgment is extracted as under:

> "13. It seems to me that the definition was not meant to provide more than a guide. It raises doubts as to what could be meant by the "calling of employers" even if business, trade, undertaking or manufacture could be found capable of being more clearly delineated. It is clear that there is no mention here of any profit motive. Obviously, the word "manufacture" of employers could not be interpreted literally. It merely means a process of manufacture in which the employers may be engaged. It is, however, evident that the term "employer" necessarily postulates employees without whom there can be no employers. But, the second part of the definition makes the concept more nebulous as it, obviously, extends the definition to "any calling, service, employment, handicraft or industrial occupation or avocation of workmen". I have already examined the meaning of the term "workmen" which refers us back to what is an "industry". It seems to me that the second part, relating to workmen, must necessarily indicate something which may exclude employers and include an "industry" consisting of individual handicraftsmen or workmen only. At any rate, the meaning of industrial disputes includes disputes between workmen and workmen also. <u>Therefore, I cannot see how we can cut down the wide ambit of last part of the definition by searching for the predominant meaning in the first part unless we were determined, at the outset, to curtail the scope of the second part somehow. If we do that, we will be deliberately cutting down the real sweep of the last part. Neither "*noscitur a sociis*" rule nor the "*ejusdem generis*" rule are adequate for such a case</u>."
>
> (underlining by us)

9.2 Beg, C.J. was also not satisfied with the use of the phrase "analogous to "industry"" which was used in the ***Safdarjung Hospital*** case. This was because such a test would exclude the types of services which are rendered purely for the satisfaction of spiritual or psychological urges of persons rendering those services which cannot be bought or sold. For persons rendering such services, there may be no "industry". However, for persons who want to benefit from the services rendered, it could become an "industry". But when services are rendered by groups of charitable individuals to themselves or others out of missionary zeal and purely charitable motives, there would hardly be any need to invoke the provisions of the I.D. Act to protect them.

9.3 Beg, C.J. considered another test, namely, that the nature of the activity will be determined by the conditions which give rise to the likelihood of occurrence of such disputes and their actual occurrence in the sphere. <u>This was called a "pragmatic test"</u>. For instance, the relationships between a doctor and his assistant and a lawyer and his clerk were considered to be ones which would not enter the field of "industry". However, if there is an organised and systematic form of a business or trade, employing a number of persons, in which disputes could arise between employers and their employees, it would be termed an industrial activity.

9.4 On sovereign functions, Beg, C.J. observed that instead of using the expression “sovereign” in relation to the activities of the State, the expression “governmental functions” was more appropriate. Therefore, only those services which are governed by separate rules and constitutional provisions, such as Articles 310 and 311 of the Constitution of India should be excluded from the sphere of “industry” by necessary implication. Further, certain public utility services which are carried out by governmental agencies or corporations are treated by the I.D. Act to be within the sphere of “industry”. If particular rules treat the employers and employees of such public utility services to be outside the scope of the I.D. Act, then the special excludes the applicability of the general. However, the meaning of the term “industry” has to be determined in the context of, and for the purposes of, matters provided for under the I.D. Act.

9.5 Referring to ***State of Rajasthan vs. Vidhyawati**, **AIR 1962 SC 933, (“Vidhyawati”)*** and ***Rajasthan State Electricity Board, Jaipur vs. Mohan Lal, AIR 1967 SC 1857***, **(*“Mohan Lal”)*** Beg, C.J. observed that the State today increasingly undertakes commercial functions and economic activities and services as part of its duties in a welfare State. That Article 12 of the Constitution comprehends and includes bodies created for the purposes of promoting educational and economic interests of the people. As per Part IV of the Constitution of India, the Directive Principles of State Policy (Article 46) also deals with the powers of the State to promote with special care, the educational and economic interests of the weaker sections of the people. Article 298 of the Constitution enables the State to carry on any trade or business. Therefore, the learned Chief Justice opined that to artificially exclude State-run industries from the sphere of the I.D. Act, unless statutory provisions expressly or by necessary implication have that effect, would not be correct. He was also of the view that the question is one which can only be solved by a more satisfactory legislation on it.

Opinion of Chandrachud, C.J.:

10. On 07.04.1978, Chandrachud, C.J. gave his opinion, the gist of which is that ***Hospital Mazdoor Sabha*** was correctly decided insofar as it held that the J.J. Group of Hospitals was an “industry”

within the meaning of Section 2(j) of the I.D. Act. With regard to the exceptions carved out by the Court in favour of activities undertaken by the Government in the exercise of its inalienable functions under the Constitution (call it regal, sovereign or by any other name), Chandrachud, C.J. said that he sees no justification for excepting these categories of public utility activities from the definition of "industry". Thus, according to him, the test is to consider the <u>nature of the activity</u> and <u>not who engages in it</u>, regardless of whether the activities undertaken are towards the fulfilment of the State's constitutional obligations or in discharge of its constitutional functions. That the nature of the activity is the determining factor, which does not change according to who undertakes it. Citing certain examples, Chandrachud, C.J. observed that a defence establishment, mint or security press can be an "industry" even though these activities are, ought to be and can only be undertaken by the State in the discharge of its constitutional obligations or functions.

10.1 Therefore, a systematic activity which is organised or arranged in a manner in which trade or business is generally organised or arranged would be an "industry", despite the fact that it proceeds from charitable motives. He opined that the twin considerations of profit motive and capital investment are irrelevant for determining whether an activity is an "industry". Thus, activities which are dominated by charitable motives, either in the sense that they involve the rendering of free or near-free services, or in the sense that the profits which they yield are diverted to charitable purposes, are not beyond the pale of the definition. That, it is only the legislature which can exempt the learned and liberal professions of lawyers, atts, doctors, engineers, chartered accountants and the like from the operation of industrial laws. Hence, it is difficult by judicial interpretation to create exemptions in favour of any particular class. Similarly, clubs are also squarely covered by the definition except to the limited extent indicated by Krishna Iyer, J. in his judgment.

10.2 Elaborating on the aforesaid aspects, Chandrachud, C.J. rightly questioned whether the definition should be permitted to have its full sway, embracing within its wide sweep every activity which squarely falls within its term or, whether some limitation ought not to be read into the definition so as to restrict its scope as reasonably as one may, without doing violence to the supposed intention of the legislature. Touching upon the principles of statutory interpretation, he opined that the principle known as "*noscitur a sociis*" was rejected by Gajendragadkar, J. speaking on behalf of the Court in ***Hospital Mazdoor Sabha***. This was on a consideration of the definition of "industrial dispute" in Section 2(k), "wages" in Section 2(rr), "workman" in Section 2(s) and "employer" in Section 2(g) as well as the definition of "public utility service" in Section 2(n) which categorised six public utility services. Therefore, in running a hospital, the State was running an "industry". In ***Hospital Mazdoor Sabha***, it was opined that "*it is the character of the activity which decides the question as to whether the activity in question attracts the provision of Section 2(j); who conducts the activity and whether it is conducted for profit or not do not make a material difference".*

10.3 However, it was felt that Section 2(j) of the I.D. Act used words of a very wide denotation and therefore a line had to be drawn in a fair and just manner so as to exclude some callings, services or undertakings from the scope of the definition, otherwise all services and all callings would come within the purview of the definition, including services rendered by a person in a purely personal or domestic capacity or in a casual manner. Opining that the interpretation of the word "industry" in Section 2(j) was a problem far too policy-oriented to be satisfactorily settled by judicial decisions, Chandrachud, C.J. opined that the Parliament must step in and legislate in a manner which would leave no doubt as to its intention.

10.4 Considering the reasoning in ***Hospital Mazdoor Sabha*** and the definition sought to be given to the expression "industry" in Section 2(j) by the Court, Chandrachud, C.J. opined that during the course of time, many categories of activities were exempted from the operation of the definition clause. But in ***Hospital Mazdoor Sabha****,* it was observed that a Government-run hospital was an "industry" by rejecting the test of *noscitur a sociis,* as the said test was applicable in cases of doubt, but if the language was clear, the definition had to be given the meaning which the words conveyed and there could be no scope for seeking exceptions. Chandrachud, C.J. found that there was a contradiction in the approach of this Court while deciding ***Hospital Mazdoor Sabha*** insofar as this Court rejected the test of "association of words" while deciding whether the Government-run hospital was an "industry", but accepted that very test while indicating which categories of activities would fall outside the definition. The question thus asked was *"if there is no doubt either as to the meaning of the words used by the legislature in Section 2(j) or on the question that these are words of amplitude, what justification can one seek for diluting the concept of "industry" as envisaged by the legislature?"* Consequently, Chandrachud, C.J. held that ***Hospital Mazdoor Sabha*** was correctly decided insofar as it held that the J.J. Group of Hospitals was an "industry", but the same could not be said with regard to the view of the Court that certain activities ought to be treated as falling outside the definition clause.

10.5 Discussing the exceptions carved out by the Court in favour of the activities undertaken by the Government in the exercise of its inalienable functions under the Constitution, Chandrachud, C.J. found no justification for excepting these categories of public utility activities from the definition of "industry". It was his view that to concede the benefit of an exception to the State's activities which are in the nature of sovereign functions is really to have regard not so much to the nature of the activity as to the consideration of who engages in that activity; for, sovereign functions can only be discharged by the State and not by a private person. Holding that the question of who conducts the activities is irrelevant, and rather, the nature of the activity ought to determine whether they are industries or not, it was opined that if water supply and sewerage schemes or fire-fighting establishments run by a Municipality can be industries, so ought to be the manufacture of coins and currency, arms and ammunition and the mining of oil and uranium. The fact that these latter kinds of activities are, or can only be, undertaken by the State does not furnish any answer to the question of whether these activities are industries, as when undertaken by a private individual, they are industries. Hence, when undertaken by the State, they must be industries as well. Thus, the nature of the activity is the determining factor and that does not change according to who undertakes it. This is also supported by Items 8, 11, 12, 17 and 18 of the First Schedule read with Section 2(n)(vi) of the I.D. Act. These provisions were considered "very significant" in ***Hospital Mazdoor Sabha***. It was opined that the State does not trade when it prints a currency note or mints a coin. And yet, considering the nature of the activity, it is engaged in an "industry" when it does so. It was observed that the question of who conducts an activity is not relevant to determining whether the activity is an "industry", so also the fact that the activity is charitable in nature or is undertaken with a charitable motive.

10.6 According to Chandrachud, C.J., the subjective motive force of an activity can be charity, but for the purpose of deciding whether an activity is an "industry", one has to look at the process involved in the activity objectively. The argument that he who does charity is not doing trade or business misses the point because the true test is, whether the activity, considered objectively, is organised or arranged in a manner in which trade or business is normally organised or arranged. If so, the activity would be an "industry" no matter whether the employer is actuated by charitable motives in undertaking it. It was opined that the jural foundation of any attempt to except charitable enterprises from the scope of the definition can only be that such enterprises are not undertaken for profit. But the concept of profit has been rejected consistently over the years. It is settled law in this "vexed field" that the twin considerations of profit motive and capital investment are irrelevant for determining whether an activity is an "industry".

Therefore, activities which are dominated by charitable motives, either in the sense that they involve the rendering of free or near-free services, or in the sense that the profits which they yield are diverted to charitable purposes, are not beyond the pale of the definition in Section 2(j). Similarly, it was opined that who the employer is, and an inquiry into that, is also irrelevant. The inquiry must be as to why the activity is undertaken and what the employer does with his profits, if any.

10.7 Further, in order to exempt the liberal professions from the operation of law, it would require only an amendment by the Parliament and till then, it would be difficult by judicial interpretation to create exemptions in favour of any particular class.

10.8 With regard to clubs, it was observed that the definition squarely covers them, except to the limited extent indicated by Krishna Iyer, J. in his judgment. The structure and functioning of a club, according to Chandrachud, C.J., could not be the relevant aspect to be considered, and the true test could only be whether the activity is organised or arranged in a manner in which a trade or business is normally organised or arranged.

10.9 Giving the aforesaid opinion, Chandrachud, C.J. stated that on the remaining aspects of the case, he had nothing useful to add to the analysis made by Krishna Iyer, J. in his judgment.

Opinion of Jaswant Singh, J. (on behalf of himself and Tulzapurkar, J.):

11. Jaswant Singh, J. speaking for himself and Tulzapurkar, J. at the outset stated that he and Tulzapurkar, J. were in agreement with the view expressed by Krishna Iyer, J. that the appeal by ***Bangalore Water Supply*** should be dismissed. However, it was indicated by their earlier order along with Chandrachud J. (as the learned Chief Justice then was) dated 21.02.1978 that areas of concurrence and divergence, if any, would be pronounced later.

11.1 Consequently, Jaswant Singh, J. (along with Tulzapurkar, J.) by a separate order dated 07.04.1978 reiterated what had been stated by Beg, C.J. and Krishna Iyer, J., i.e., that the definition of the word "industry" in Section 2(j), which was in two parts, was too vague and wide and therefore, determining the true scope and ambit in light of a plethora of decisions which had laid down fresh tests from time to time was an uphill task. That, despite the width of the definition, it could not be the intention of the legislature that:

(i) Categories 2 and 3 of charities alluded to by Krishna Iyer, J. in his judgment; (ii) hospitals run on charitable basis or as a part of the functions of the Government or local bodies like municipalities; (iii) educational and research institutions, whether run by private entities or by the Government; and (iv) liberal and learned professions like that of doctors, lawyers and teachers, the pursuit of which is dependent upon an individual's own education, intellectual attainments and special expertise, should fall within the pale of the definition.

11.2 Jaswant Singh, J. further opined that the definition of "industry" is limited to those activities systematically or habitually undertaken on commercial lines by private entrepreneurs with the co-operation of employees for the production or distribution of goods or for rendering material services to the community at large or a part of such community.

11.3 That, in the case of liberal professions, the contribution of the employees is very minimal in the manner of discharge of their professional work and hence, the entities pursuing liberal professions cannot be treated as industries.

11.4 It was also felt in various decisions that certain activities, callings, services and undertakings had to be excluded from the purview of the definition of "industry". In this regard, Gajendragadkar, J.'s observations in ***Hospital Mazdoor Sabha*** were quoted. All services and all callings would not come within the purview of the definition. For instance, service rendered by a servant purely in a personal or domestic matter or even in a casual way could not fall within the definition. Thus, the difficulty was expressed in defining the true connotation of the term "industry" and therefore, the divergence of opinion in regard thereto on certain aspects.

11.5 Hence, Jaswant Singh, J. suggested that the legislature has to take steps with a comprehensive bill to clear up the fog and remove the doubts and set at rest once and for all the controversy which would crop up from time to time in relation to the meaning of the aforesaid term, rendering it necessary for larger Benches of this Court to be constituted for working out a formula to cover particular cases.

Analysis of the Opinions in Bangalore Water Supply:

12. I have closely perused the four opinions rendered in ***Bangalore Water Supply***. Although there are four authors, I find that the said opinions speak in one voice regarding certain components or aspects, as far as the definition of "industry" is concerned.

"Triple Test":

12.1 I find that three out of the four opinions (representing five out of the seven judges) speak in one voice insofar as the "triple test" for the definition of "industry" is concerned. The "triple test", is the enunciation expressed by Krishna Iyer, J. (on behalf of himself, Bhagwati and Desai, JJ.) when an enterprise takes the character of an "industry". It posits that an enterprise is *prima facie* an "industry" if there is:

(i) systematic activity,

(ii) organised by cooperation between employer and employee;

(iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes.

12.2 In paragraph 165 of Beg, J.'s judgement, it was stated that he was in agreement with the conclusions of Krishna Iyer, J. and that he *"endorses his reasoning almost wholly"*. This line of explicit agreement with Krishna Iyer, J., in conjunction with the fact that he did not specifically opine on the "triple test", leads to the conclusion that he was in concurrence with the same.

12.3 He disagreed with the scope of the exceptions for entities performing sovereign functions (as will be discussed later).

12.4 Similarly, Chandrachud, C.J. also did not express any disagreement with the "triple test". Rather, he expressed his opinion on specific categories of proposed exceptions. He entirely disagreed with the blanket sovereign function exception, as also any exception for charitable institutions, observing that the "process" involved in an activity was relevant and not its "subjective motive force". He also opined that there was no justification for amending the I.D. Act so as to exclude 'clubs' from the operation of industrial laws. In his conclusion, he stated that *"on the remaining aspects of the case,"* he had *"nothing useful to add to the penetrating analysis of the problem made by Brother Krishna Iyer".* Thus, it is clear that he was also in concurrence with the expression of the "triple test".

12.5 Jaswant Singh, J., speaking on behalf of himself and Tulzapurkar, J., while agreeing with the conclusion reached by Krishna Iyer, J., did not express agreement with the reasons expressed by him. *Per contra*, they proposed an alternative understanding, i.e., that the definition of "industry" was *"limited to those activities systematically or <u>habitually undertaken on commercial lines by private entrepreneurs</u> with the co-operation of employees for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community".*

12.6 Nonetheless, despite this diversion from the path of the "triple test", the opinions of Krishna Iyer, J. (for himself, Bhagwati and Desai, JJ.), Beg, C.J. and Chandrachud, C.J together account for five out of the seven Judges on the Bench. Hence, there was majority support for the concept of the "triple test" as a *prima facie* indicator of "industry" under Section 2(j) of the I.D. Act.

Overruling of Safdarjung Hospital:

13. There is also unanimity of judicial opinion with regard to overruling of the judgment of this Court in ***Safdarjung Hospital***

as the tests laid down by this Court in the said case have not been approved by the larger bench in ***Bangalore Water Supply***.

13.1 In ***Safdarjung Hospital***, this Court had to determine whether a hospital could be regarded as an "industry". The Court accepted the conclusion in ***Gymkhana Club***, namely that *"…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 an undertaking resulting in material goods or material services".* Following this, this Court diverged from the earlier ruling in ***Hospital Mazdoor Sabha***, holding that the three hospitals under consideration were not industries, as follows:

(i) With respect to the ***Safdarjung Hospital***, it was held that it was not engaged in any economic activity analogous to trade or business. It is only a place where persons can get treated. Further, it is run as a Department of the Government as part of the functions of the Government. Therefore, it was not an "industry".

(ii) The Tuberculosis Hospital, as a wholly charitable and dominantly research-based institute, was also held to not be an “industry”.

(iii) Similarly, the Kurji Holy Family Hospital was also held to be not an “industry”, since its objects were entirely charitable and distribution of surplus as profit was prohibited.

13.2 In ***Bangalore Water Supply***, Krishna Iyer, J. opined that ***Safdarjung Hospital*** had been erroneously decided, meriting a reversal of its ratio. According to him, a hospital, which is a welfare activity and not a sovereign function, cannot be said to be incapable of being an “industry”. The absence of profit, or its functions of training and research, do not take the institution out of the scope of “industry”. Hospitals, research institutions and training centres are valuable material services to the community, qualifying for coming within the ambit of Section 2(j) of the I.D. Act. Therefore, all the three hospitals above were held to be industries.

13.3 With respect to hospitals, the judgment in ***Safdarjung Hospital*** was declared to be incorrect, and ***Hospital Mazdoor Sabha*** correct by Krishna Iyer, J. Beg, C.J. concurred with the overruling of ***Safdarjung Hospital***, observing that it is not the motive of an activity, but the *possibility of making it marketable* if desired, that should determine whether it lies within the domain of "industry". With Chandrachud, C.J.'s concurrence with the "penetrating analysis" by Krishna Iyer, J. on the parts on which he did not specifically opine, we can conclude that the overruling of ***Safdarjung Hospital*** was with a majority support of five-Judge of the Bench.

Solicitors' Case:

14. In ***Solicitors' Case***, a three-Judge Bench of this Court had to decide whether the respondents therein, a firm of solicitors, was an "industry" within the meaning of Section 2(j) of the I.D. Act. Gajendragadkar, J. (as the learned C.J. then was) referred to his decision in ***Hospital Mazdoor Sabha***, wherein this Court had observed as follows:

> "17.....as a working principle, it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the cooperation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organised or arranged in a manner in which trade or business is generally organised or arranged. It must not be casual nor must it be for oneself nor for pleasure. Thus, the manner in which the activity in question is organised

> or arranged, the condition of the cooperation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which Section 2(j) applies."

14.1 In the ***Solicitors' Case***, Gajendragadkar, J. elaborated on the criterion of "cooperation" as follows:

> "8. When in the Hospital Case, AIR 1960 SC 610 this Court referred to the organisation of the undertaking involving the cooperation of capital and labour or the employer and his employees, it obviously meant the cooperation essential and necessary for the purpose of rendering material service or for the purpose of production.....It cannot be suggested that every form or aspect of human activity in which capital and labour co-operate or employer and employees assist each other is an industry. <u>The distinguishing feature of an industry is that for the production of goods or for the rendering of service, cooperation between capital and labour or between the employer and his employees must be direct and must be essential</u>."
>
> (underlining by us)

14.2 Viewed this way, Gajendragadkar, J. opined that the service rendered by a solicitor, functioning either individually or together with partners, was essentially an "individual service" that depended on the professional equipment, knowledge and efficiency of the concerned solicitor. Subsidiary work which was purely incidental had no relation to the professional service ultimately rendered by the solicitor. A typist, stenographer or servant employed to keep a solicitor's chamber clean were not directly concerned with the services rendered by a solicitor to their client, and therefore did not satisfy the necessary test of 'cooperation'. Neither did the work of a clerk who typed correspondence or an accountant who kept accounts had any direct or essential connection to the advice rendered by a solicitor to a client. There was thus cooperation between a solicitor and his employees, but not one that had a direct or immediate relation to the professional service rendered. Observing thus, Gajendragadkar, J. concluded that the work of solicitors carried on by a firm was not "industry" under Section 2(j) of the I.D. Act.

14.3 Gajendragadkar, J. further opined that in a more general sense, the Legislature could not have intended that such "liberal professions" would fall within the definition of "industry". The "essential basis" of an industrial dispute, i.e., that it was a dispute between capital and labour in enterprises where they combined to produce commodities or rendered services, was absent in the case of liberal professions. A person following a liberal profession did not carry on his work with active cooperation of his employees.

Rather, the principal, if not sole, capital that he brought to the profession was his own special or peculiar intellect and education.

Gymkhana Club:

15. A three-Judge Bench of this Court in ***Gymkhana Club*** subsequently considered whether the ***Gymkhana Club***, a members' club, was an "industry" under the I.D. Act. After further reviewing prior precedents, Hidayatullah, J. (as the learned Chief Justice then was) disagreed with the degree of insistence on partnership between employers and employees in the ***Solicitors' Case***. According to him, what must be established is *"the existence of an "industry" viewed from the angle of what the employer is doing and if the definition from the angle of the employer's occupation is satisfied, all who render service and fall within the definition of workman come within the fold of "industry" irrespective of what they do".* Each person doing his appointed task will be a part of the "industry", *"whether he attends to a loom or merely polishes door handles".* If a solicitor's work requires him to take help from people who are assigned duties, this does not alter the character of his work. The nature of his work, i.e., the nature of the employer's

occupation, is determinative. Subsequently, Hidayatullah, J., held as follows:

> "20. The definition of 'industry' is in two parts. In its first part it means any business, trade, undertaking, manufacture or calling of employers. This part of the definition determines an industry by reference to occupation of employers in respect of certain activities. These activities are specified by five words and they determine what an industry is and what the cognate expression 'industrial' is intended to convey. This is the denotation of the term or what the word denotes. We shall presently discuss what the words "business, trade, undertaking manufacture or calling" comprehend. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By the second part of the definition any calling, service, employment, handicraft or industrial occupation or avocation of workmen is included in the concept of industry. This part gives the extended connotation. If the activity can be described as an industry with reference to the occupation of the employers, the ambit of the industry, under the force of the second part, takes in the different kinds of activity of the employees mentioned in the second part. But the second part standing alone cannot define 'industry'. … "
>
> (underlining by us)

15.1 The test, therefore, was to find out whether there is an "industry" under the first part of the definition in Section 2(j) and then look at the second part, which would show what would be included from the angle of the employees. As an example, Hidayatullah, J. observed that while an individual who employed a cook got a service from him, the activity of the individual was not a business, trade, undertaking, manufacture or calling of an employer. Therefore, it is not an "industry" within the first part of the definition. The "inclusive part" of the definition, i.e., the second part, makes the labour force employed in an "industry" an "integral part" of the same for the purposes of industrial disputes. However, "industry" is ordinarily something created or undertaken by employers.

15.2 Therefore, according to Hidayatullah, J., the relevant test for "industry" is only to gauge the nature of the activity from the perspective of the employer. Subsequently, he observed as follows:

> "23. …Primarily, therefore, industrial disputes occur when the operation undertaken rests upon cooperation between employers and employees with a view to production and distribution of material goods, in other words, wealth, but they may arise also in cases where the cooperation is to produce material services. …
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> 25. It is, therefore, clear that before the work engaged it 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 an undertaking resulting in material goods or material services. <u>Now in the application of the Act, the undertaking may be an enterprise of a private individual or individuals. On the other hand, it may not. It is not necessary that the employer must always be a private individual who carries on the operation with his own capital and with a view to</u>

> his own profit. The Act in terms contemplates cases of industrial disputes where the Government or a local authority or a public utility service may be the employer.
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> 26.The expansion of Governmental or municipal activity in fields of productive industry is a feature of all developing welfare states.....Therefore, the word 'undertaking' must be defined as "any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade". This is the test laid down in *Banerji's case* [(1952) 2 SCC 619 : (1953) SCR 302] and followed in the *Baroda Borough Municipality case* [(1957) 1 LLJ 8] . Its extension in the *Corporation case* [(1960) 2 SCR 942] was unfortunate and contradicted the earlier cases.
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> 27. Next where the activity is to be considered as an industry, it must not be casual but must be distinctly systematic. The work for which labour of workmen is required, must be productive and the workmen must be following an employment, calling or industrial avocation. The salient fact in this context is that the workmen are not their own masters but render service at the behest of masters. This follows from the second part of the definition of industry. ..."
>
> (underlining by us)

15.3 Holding thus, Hidayatullah, J. turned to the question whether the ***Gymkhana Club*** was an "industry" according to the above principles. By the second part of the definition, the activities of the Club are certainly conducted with the aid of employees. However, the relevant test is whether the Club performs activities that bring it within the first part of the definition of "industry". Specifically, since the Club was not a trade, business, manufacture or calling of its members or managing committee, the only question was whether the Club was an ‘undertaking’.

15.4 According to Hidayatullah, J., it was not. Although the lack of profit motive was irrelevant, and it was simultaneously true that the affairs of the Club are organised akin to a business with the production of material services, all such material goods and services were for the consumption of the Club’s own members. Therefore, the Club was said to exist for its members, and it thus is a self-serving institution. The entry of guests or “outsiders” was not relevant because if their entry was stopped, there would be no change in the Club’s essential character.

15.5 While the Club catered to the material needs and wants of a section of the community, Hidayatullah, J. observed that this was not enough. It ought to be done as part of a trade or business or as an undertaking analogous to trade or business, which is completely absent in the case of a members’ club. The Club was held to have no existence apart from its members at any given point of time, and was thus held to be outside the purview of “industry” under Section 2(j) of the I.D. Act.

Why did Bangalore Water Supply Overrule Both Cases?:

15.6 In ***Bangalore Water Supply***, Krishna Iyer, J. observed that a "focal point of contest" before the Bench was as to, whether, liberal professions are *ipso facto* excluded from the purview of "industry". In this context, he referred to the ***Solicitors' Case*** and the "two grounds" which Gajendragadkar, J. found to be determinative, i.e., the doctrine of direct co-operation and the features of liberal professions.

15.7 Krishna Iyer, J. disagreed with the doctrine of direct co-operation as a governing test, observing that in the *"sophisticated, subtle, complex, assembly-line operations of modern enterprises, the test of "direct" and "indirect", "essential" and "inessential", will snap easily. In an American automobile manufactory, everything from shipping iron ore into and shipping cars out of the vast complex takes place with myriad major and minor jobs. A million administrative, marketing and advertising tasks are done. Which, out of this maze of chores, is direct?"*

15.8 As an example, Krishna Iyer, J. observed that an engineer may lose a competitive contract if his typist were to err. Therefore, he is in this sense a "direct contributory". Similarly, no lawyer or doctor can impress a client if his public relations job or home work were poorly done. According to him, the theory of direct co-operation was an unimpressive improvisation.

15.9 He then referred to Hidayatullah, J.'s opinion in ***Gymkhana Club***, observing that while both ***Gymkhana Club*** and the ***Solicitors' Case*** were in agreement that "learned professions" must be excluded, they "flatly contradicted each other" on the question of direct or effective contribution. Krishna Iyer, J. observed that the reasoning adopted in ***Gymkhana Club*** *vis-à-vis* the doctrine of cooperation was appealing. Consequently, he held that there was no need for insistence upon principles of partnership, direct nexus, or the contribution of values by employees. Every employee in a professional office has a role in its success. Therefore, a member of a "learned or liberal profession" cannot *ipso facto* be self-excluded from the operation of the I.D. Act.

15.10 Krishna Iyer, J. also disagreed entirely with the generalised exclusion of the "liberal professions" that was propounded in the ***Solicitors' Case***. He observed that the "professional immunity from labour's demand for social justice because learned professions have a halo" stands on a shaky foundation. The "halo" around the professions does not necessarily mean that they are "de-industrialized". The plea of "profession" is irrelevant for industrial law, unsupported by any legal principle. Krishna Iyer, J. further held that there was a need for the "decanonisation of the noble professions". According to him, the "paradigms of professionalism" which centred around individual doctors, lawyers, etc. have been replaced by large solicitors' firms, architects' offices, etc., where one finds a "humming industry". For instance, the practice of a physician or surgeon is dependent on the good performance of their attendant or clerk. Similarly, a lawyer is dependent on the specialised support of secretaries, librarians and steno-typists. The modern sophisticated organisation of expert services has melted the "mystique of professionalism". Since the contribution to the success of the institution comes from everyone's excellence in their respective positions and not merely from the professional, such professions are not exempted from the scope of "industry". To exempt them would be to open the floodgates for exemptions under the I.D. Act according to Krishna Iyer, J.

15.11 In conclusion, Krishna Iyer, J. held that the ***Solicitors' Case*** was wrongly decided and needed to be overruled. While doing so, he provided the caveat that some categories of such professionals may still be exempted – *a single lawyer, a rural medical practitioner or urban doctor with an assistant*. This is because there is no *organised labou*r in such circumstances. "Industry" requires a plurality of workmen and not isolated assistants/attendants. This in my view is a realistic understanding of the definition.

15.12 In his opinion too, Chandrachud, C.J. disagreed with the broad exemption to solicitors' establishments from being industries. He opined that there was nothing in the language of Section 2(j) of the I.D. Act that evinced an intention to exclude liberal professions from the ambit of "industry". The test of direct or proximate co-operation was also not warranted by the words of the definition. Further, the test of whether employer-employee cooperation is the proximate cause of the ultimate product is impossible to ascertain with assurance or certitude. In fact, without the active assistance and cooperation of his assistant, managing clerk, librarian and typist, it will be impossible for a solicitor to function effectively. Although the legislature might eventually exempt such professions from the operation of industrial laws, it is difficult to provide exemptions by judicial interpretation under Section 2(j) of the I.D. Act.

15.13 Beg, C.J. too, in his concurring opinion, provided his assent to the overruling of the ***Solicitors' Case*** through his endorsement of the opinion and conclusions of Krishna Iyer, J. He also noted the test that suggests an entity's status as an "industry" is the likelihood of occurrence of industrial disputes within it. Whenever such a dispute could arise, it should be considered within the sphere of "industry", but not otherwise. For instance, the personal relationship between a doctor and his assistant or a lawyer and his clerk may be such that it requires complete harmony in the productive activity. Therefore, unless the operations of the solicitor, lawyer or doctor take on the form of an organised/systematised business or trade, employing a number of persons in which a dispute could arise between employers and employees, they would not enter the field of "industry". This aligns broadly with Krishna Iyer, J.'s view, insofar as entities which do not have a system of organised labour are excluded from the purview of "industry" under Section 2(j) of the I.D. Act.

15.14 Jaswant Singh, J. (on behalf of himself and Tulzapurkar, J.) disagreed with the inclusion of "liberal and learned professions like that of doctors, lawyers and teachers, the pursuit of which is dependent upon an individual's own education, intellectual attainments and special expertise" within the definition. According to him, in the case of liberal professions, the contribution of the usual type of employees to the value of the end product is "so marginal that the end product cannot be regarded as the fruit of the co-operation between the professional and his employees".

15.15 Nonetheless, the opinions of Krishna Iyer, J., (for himself and Bhagwati & Desai, JJ.), Beg, C.J. and Chandrachud, C.J. speak for a majority of five-Judges on the Bench and therefore, the ***Solicitors' Case*** was conclusively overruled.

15.16 Krishna Iyer, J. also conclusively overruled the opinion rendered in ***Gymkhana Club***, observing that even a members' club like the Gymkhana Club involves cooperation between employers and employees, organised like a trade and supplying "pleasurable utilities to members and others". Further, he disagreed entirely with the characterisation of the said Club as a self-serving institution, insofar as if it were self-service, then there would not be an expensive establishment and high-paid staff. The members of a club do nothing to produce these goods or services. Rather, they are provided by employees who earn wages.

15.17 Krishna Iyer, J. also rejected Hidayatullah J.'s holding that the Club was a non-industry because it belonged to its members. According to Krishna Iyer, J., a club may belong to its members the same way a company belongs to its shareholders and a cooperative belongs to its members. Nonetheless, if they employ workmen with whose cooperation goods and services are made available to a section of the community and the operations are organised in a manner typical of business method and organisation, then it would be an "industry".

15.18 Chandrachud, C.J., while lending his concurrence to Krishna Iyer, J.'s overruling of ***Gymkhana Club***, opined that not only are such clubs squarely covered by the definition, but there was also no justification for amending industrial laws so as to exclude them from their operation. According to him, it was irrelevant that *"the running of clubs is not a calling of the club or its* *managing committee, that the club has no existence apart from its members, that it exists for its members though occasionally strangers also take the benefit of its services and that even with the admission of guests the club remains a members' self-serving institution".* Rather, the true test is whether the activity is organised or arranged in the usual manner of a trade or business.

15.19 Jaswant Singh, J. (on behalf of himself and Tulzapurkar, J.) did not agree with the overruling of ***Gymkhana Club***, observing that over time, the need for excluding some callings, services and undertakings from the purview of "industry" has been recognised by the Court in multiple cases, including ***Gymkhana Club***. Nonetheless, with Beg, C.J.'s broad concurrence with the reasoning and conclusions of Krishna Iyer, J., the overruling of ***Gymkhana Club*** also received majority support of five-Judges on the Bench.

15.20 I find force in the overruling of the ***Solicitors' Case*** and ***Gymkhana Club*** by the seven-Judge Bench in ***Bangalore Water Supply***.

15.21 With regard to "liberal professions", Krishna Iyer, J. astutely observed that in their modern forms, they are practised through sophisticated organisations that involve cooperation between several categories of employers. Indeed, writing in 1978, his view was simultaneously contemporary and prescient. Because today, these professions are practised with organisations that are even larger and more layered than before. A lawyer's chamber may consist of secretaries, researchers, typists, clerks, etc. Can it be said that they have no role to play in the professional relationship between a lawyer and his client? We do not think so. It is difficult to imagine how one could separate the public-facing work of a lawyer/solicitor from the crucial background work performed in their office. If an entity otherwise fulfils the relevant test for determining "industry", then there is no question of being exempted merely because of the nature of one's profession. Such *ipso facto* exclusions do not find any legislative support in the provisions of the I.D. Act.

16. Similarly in the case of members' clubs, we once again find that ***Gymkhana Club*** was rightly overruled by this Court in ***Bangalore Water Supply***. As held by Chandrachud, J., the relevant test is whether the activity is organised in the manner of a trade or business. We agree with Krishna Iyer, J. that providing

an *ipso facto* exclusion for clubs that are owned by members has no basis in fact or law. Merely because a club is owned by its members does not make the nature of its employees any different, nor does it impact the test of whether such employees are involved in cooperation that produces material goods and services. Rather than ownership of an entity, the activities performed by it, along with their organisation or arrangement, are relevant.

Further Analysis:

17. In the order passed in ***Jai Bir Singh*** seeking reference of the judgment in ***Bangalore Water Supply*** to a larger Bench, one of the reasons assigned was that Beg, C.J., who was to retire on the day following the pronouncement of the judgment in ***Bangalore Water Supply*** did not have the opportunity to read the opinions of Chandrachud, C.J. and Jaswant Singh, J. (speaking for himself and Tulzapurkar, J.). However, we note that the opinion rendered by Krishna Iyer, J. (for himself, Bhagwati and Desai, J.J.) was categorically approved by Beg, C.J. Therefore, even on the aspect of numerical strength, four judges shared unanimous opinions. This is evident from the opinion of Beg, C.J. Even otherwise, after the retirement of Beg, C.J., Chandrachud, C.J., while analysing the

definition of “industry”, has fully concurred with the opinion of Krishna Iyer, J. and in my view, has in fact strengthened it by giving it a jurisprudential interpretational basis.

17.1 Further, Jaswant Singh, J. (for himself and Tulzapurkar J.) opined that they were in agreement with the view expressed by Chandrachud, C.J. but expressed certain reservations on the “triple test”.

17.2 Thus, a combined reading of the separate opinions gives rise to a single interpretation of the meaning of the word “industry” in Section 2(j) of the I.D. Act.

17.3 In this regard, I must hold that on the aspect of separate opinions rendered by Judges of a larger Bench, the judgment of this Court in ***Trimurthi Fragrances*** is instructive. Indira Banerjee, J. speaking for the Constitution Bench observed as under:

> “19....In view of Article 145(5) of the Constitution of India concurrence of a majority of the Judges at the hearing will be considered as a judgment or opinion of the Court. It is settled that the majority decision of a Bench of larger strength would prevail over the decision of a Bench of lesser strength, irrespective of the number of Judges constituting the majority.”

17.4 On an analysis of the opinions of the respective Judges, we find that there was majority support among the Judges of the seven-Judge Bench on the following aspects:

I. To overrule the judgment of this Court in ***Safdarjung Hospital*** rendered by a Bench of six-Judges.

II. The "triple test" for the definition of "industry" as interpreted by Krishna Iyer, J. (for himself, Bhagwati and Desai, J.J.) has been expressly approved by Beg, C.J., and Chandrachud, C.J.

Jaswant Singh, J. and Tulzapurkar, J. expressed an alternative formulation to "triple test".

III. The question whether the *noscitur a sociis* principle of interpretation has to be applied while interpreting the definition of "industry" as found in Section 2(j) of the I.D. Act, has been considered in the following manner:

  i. Krishna Iyer, J. (for himself, Bhagwati and Desai, JJ.) did not find it appropriate to apply the said principle.

  ii. Beg, C.J. stated that neither the *noscitur a sociis* rule nor the *ejusdem generis* rule are adequate for the case at hand.

iii. Chandrachud, C.J. observed that the reasoning in the case of ***Hospital Mazdoor Sabha*** was that there is no ambiguity in the language of the definition under Section 2(j) of the I.D. Act so as to warrant the invocation of the principle of *noscitur a sociis.* However, the very fact that there is a need to identify exceptions belies the allegedly unambiguous nature of the definition and hence, there is scope to apply the said principle.

iv. Jaswant Singh, J. (for himself and Tulzapurkar, J.) opined that by applying the principle of *noscitur a sociis,* the definition of "industry" under Section 2(j) could not be held to include Categories 2 and 3 of the charities described in the opinion of Krishna Iyer, J. Further, hospitals run on a charitable basis or as a part of the functions of the Government or local bodies like municipalities and educational and research institutions, whether run by private entities or by the Government, as well as liberal professions could not be included within the scope and ambit of the definition of "industry" under Section 2(j) of the I.D. Act.

17.5 Be that as it may. The point that emerges is that there was unanimity on the definition of "industry" insofar as <u>what was to be included in the said definition</u>.

17.6 Insofar as what activities have to be excluded from the said definition, it is noted that with regard to sovereign functions/regal functions or governmental functions:

i. Krishna Iyer, J. (for himself, Bhagwati and Desai, JJ.) quoted with approval Subba Rao, J.'s observation in ***Corporation of the City of Nagpur*** that sovereign functions of the State are the "primary and inalienable functions of a constitutional government". He further stated that "*Articles 309 to 311 of the Constitution of India, enactments dealing with the Defence Forces and other legislation dealing with employment under statutory bodies may, expressly or by necessary implication, exclude the operation of the Industrial Disputes Act, 1947*". In his conclusion, he held that only strictly understood sovereign functions qualify for the exclusion, <u>rather than welfare activities or "economic adventures" that are undertaken by governments or statutory bodies.</u>

Further, he invoked the concept of 'severability', whereby even if a department discharges a sovereign function, it may contain units which are industries, and if such units are also "substantially severable", then they are not excluded from being "industry".

ii. Beg, C.J. expressed his displeasure with the term 'sovereign function', opining that the term "sovereign" should be reserved for the sphere of ultimate decisions. Rather, in relation to the activities of the State, 'sovereign functions' can be understood more appropriately as "governmental" functions, insofar as only those services which are governed by separate rules and constitutional provisions, such as Articles 310 and 311 of the Constitution, should be excluded from the definition of "industry".

iii. Chandrachud, C.J. disagreed entirely with the exclusion of activities undertaken by the Government in the exercise of its inalienable functions, be it "regal, sovereign or by any other name", from the purview of the definition of "industry". He opined that if the nature of the activity is relevant, and not who performs it, then, it is irrelevant to enquire whether the activity is conducted by the State, or if it is conducted in fulfilment of its constitutional obligations or constitutional functions. According to him, if the State's inalienable functions are excluded from the definition of "industry", it amounts to rejecting the "fundamental test" of whether an entity is an "industry", i.e., the nature of the activity performed. The learned Chief Justice, therefore, suggested that a strict interpretation of what can be included within sovereign functions of the State must be made.

iv. Jaswant Singh, J. (for himself and Tulzapurkar, J.) did not opine on the sovereign function exception.

17.7 With regard to the exclusion of charitable institutions from the definition of "industry":

i. Krishna Iyer, J. (for himself, Bhagwati and Desai, JJ.) held that while industries are systematic and organised activities, charities which do not possess this feature are not "industry". He established a "trichotomy" or a three-fold classification of charitable enterprises as under:

> (a) The first category comprises businesses where a whole or substantial part of the profits are diverted

to charity. Krishna Iyer, J. held that if a business is run for the production and supply of goods and services with a profit motive, it is an “industry”, irrespective of whether the whole or a substantial part of such profit is diverted for purely charitable purposes.

(b) The second category comprises goods and services produced for supply to the needy without charging a price or receiving a negligible return. Once again, according to Krishna Iyer, J., this does not take the unit out of the purview of “industry”, since as far as the workmen are concerned, it does not matter whether the products produced are delivered free to the poor.

(c) The third category comprises entities where “philanthropic devotion” is itself the basis for the establishment. If the institution is headed by someone who is dedicated to a mission and passionately pursues it, while attracting others to the institution, not for wages but for sharing in the cause, then the undertaking is not "industrial". In such cases, there is no economic relationship between the head of an institution and those who are attracted to the mission. Krishna Iyer, J. illustrated this concept through the example of an *'Ashram'*, with a *'guru'* as its head along with a band of disciples, devotees and priestly subordinates. Here, even if the subordinates perform duties such as cooking and cleaning among others, the nature of the relations is such that the *Ashram* is not an "industry" within the meaning of Section 2(j) of the I.D. Act.

ii. Beg, C.J. opined that services which are rendered purely for the satisfaction of spiritual or psychological urges of the persons rendering them, are excluded from the purview of "industry". When services are rendered by groups of charitable individuals out of missionary zeal and purely charitable motives, there would hardly be any need to invoke the provisions of the I.D. Act to protect them.

iii. Chandrachud, C.J. did not agree with the exclusion of charitable institutions from the purview of "industry". He opined that a systematic activity which is organised or arranged akin to a trade or business would be an "industry" despite the fact that it proceeds on charitable motives. While the "subjective motive force" of an activity may be charity, to decide whether the activity is an "industry", one has look at the *process* involved in the activity objectively.

iv. Jaswant Singh, J. (for himself and Tulzapurkar, J.) opined that the second and third categories of charities delineated by Krishna Iyer, J. are not included within the definition of "industry".

17.8 Thus, what emerges on a reading of the opinions expressed in the four opinions of ***Bangalore Water Supply*** can be summarised as under:

(i) There was consensus among the five Judges who constituted the majority regarding the "<u>triple-test"</u> and its applicability to determine if an entity was an "industry" or not within the meaning of Section 2(j) of the I.D. Act.

(ii) As to whether the <u>legal maxim *noscitur a sociis*</u> would apply to the definition of "industry" under Section 2(j) of the I.D. Act, Krishna Iyer, J (speaking for himself, Desai and Bhagwati JJ) and Beg, C.J held that the principle would not apply so as to restrict the definition, whereas Chandrachud, C.J., and Jaswant Singh J. (speaking for himself and Tulzapurkar, J.) held that the maxim would apply.

(iii) With respect to the exclusion of 'sovereign functions', there was an explicit disagreement between Chandrachud, C.J., who held that no such exclusion should be granted and the opinions of Krishna Iyer, J. and Beg, C.J. However, there was unanimity with regard to certain types of sovereign functions which have to be excluded. Even between the opinions of the Krishna Iyer, J. and Beg, C.J., there are certain differences. Beg, J. limited the exclusion to cases where services are governed by separate rules and constitutional provisions. Krishna Iyer, J. provided a broader scope for exclusion through his observation that apart from Articles 309 and 311 of the Constitution, *other legislation* dealing with employment under statutory bodies may also exclude the operation of the I.D. Act. This is under the State Education enactments providing for separate tribunals for remedies to persons working in educational institutions covered under the said enactments.

Further, lending another nuance, he opined that even within bodies that perform inalienable functions of the State, certain departments may be severable and separately considered as "industries".

(iv) Regarding the exclusion of charities and charitable institutions, Chandrachud, C.J. once again disagreed entirely with the exclusion. Krishna Iyer, J. propounded the "trichotomy" of charitable institutions where only the third category, i.e., where philanthropic devotion is itself the basis of the establishment, was excluded from the purview of "industry". Beg, C.J. also appeared to agree with the exclusion of the third category, insofar as services rendered out of "missionary zeal and purely charitable motives" and "purely for the satisfaction of spiritual or psychological urges" were held to be outside the scope of "industry". *Per contra*, Jaswant Singh and Tulzapurkar, JJ. held that the second category was also excluded, i.e., where production is for the needy without charging a price or a negligible price, since it did not constitute production on commercial lines.

According to Jaswant Singh and Tulzapurkar, JJ., the definition is limited to those activities systematically undertaken on commercial lines by private entrepreneurs with the cooperation of employees for the production of goods or services for the community. Jaswant Singh, J. did not indicate any disapproval of the majority's view that profit should be irrelevant to the inquiry as to what qualifies as "industry". Yet, at the same time, he insisted that "industry" must mean activities undertaken "*on commercial lines*". In my view, this requirement of commerciality is conceptually unsound to the extent it divorces commerciality from the very feature that ordinarily defines it, namely profit. If profit is irrelevant, it is unclear what work the requirement of commerciality is intended to perform. To insist that commerciality survives independently of profit deprives the term of its content, leaving no basis on which to distinguish commercial from non-commercial activities. The dissenting opinion of Jaswant Singh, J. provided no criteria for identifying when an activity is commercial to constitute an "industry" thereby introducing ambiguity particularly when the majority's opinion itself says that that an activity should resemble trade or business. While at first blush, the requirement appears to narrow the definition, commerciality, actually, is a vague and subjective standard and leaves courts to determine its content on a case-by-case basis without any coherent doctrinal foundation. In this sense, it ends up complicating, rather than clarifying, the definition of "industry".

***Application of the ratio of Bangalore Water Supply and reference to a larger Bench*:**

18. However, difficulty may have arisen in the application of the said judgment to various activities undertaken by the Government or by private entities despite there being a broad consensus between the opinions of the Judges of the seven-Judge Bench. It is in the above backdrop that subsequently in the cases of ***Jagannath Kondhare*** and ***Pratamsingh Parmar***, with regard to the activity of social forestry undertaken by the State, there was an alleged divergent opinion on whether it would be "industry" within Section 2(j) of the I.D. Act.

18.1 A three-Judge Bench of this Court in ***Jagannath Kondhare*** opined that the Pachgaon Parwati Scheme undertaken by the Forest Department was outside the 'sovereign function' exclusion. The Court noted that if the exclusion is applied to all welfare activities, then the ratio in ***Bangalore Water Supply*** would be eroded. Hansaria, J., speaking for the Court, expressed reluctance to do so in view of Krishna Iyer J.'s holding in ***Bangalore Water Supply*** that sovereign functions should be strictly understood and also that units may be 'severed' and considered industries. Accordingly, since the concerned Scheme involved the selection of an area for the creation of a park for the benefit of the urban population, the Court held that such work could have been undertaken by an agency which is not an instrumentality of the State. The same was held not to be an inalienable/inescapable State function, and hence outside the purview of the 'sovereign function' exclusion.

18.2 On the other hand, in ***Pratamsingh Parmar***, which was a two-Judge Bench decision concerning the question of whether the Forest Department in the State of Gujarat could be held to be an "industry", it was observed that ordinarily a Government Department cannot be held to be an "industry", as the sovereign function exception would apply. It further held that on the basis of the <u>factual pleadings of the said case</u>, the decision of this Court in ***Jagannath Kondhare*** would not be applicable, i.e., that there was no pleading with regard to the nature of the Forest Department and the duty being discharged by the appellant in relation to the activities undertaken by the said entity. Hence, the Forest Department was held not to be an "industry" by virtue of the sovereign function exception.

18.3 On a closer examination, however, I find that there was in fact no apparent conflict between the decisions in ***Jagannath Kondhare*** and ***Pratamsingh Parmar***. In the former, it was held that if the sovereign function exception were applied to include all welfare activities, this would erode the ratio of ***Bangalore Water Supply***. The concerned Scheme was deemed not to be an inalienable/inescapable State function and that it could have been conducted by an agency which was not a State instrumentality. Hence, the Forest Department was held, in the facts of that case, to be within the purview of "industry". In ***Pratamsingh Parmar***, however, the ratio of ***Jagannath Kondhare*** was held not to apply because the respondent had made no assertion of fact in establishing that the establishment to which he had been appointed was an "industry". In the absence of any assertion by the respondent indicating the nature of duty discharged as well as the nature of the establishment where he had been recruited, the principles in ***Jagannath Kondhare*** could not and should not be applied.

18.4 Therefore, what we infer is that clearly, contrary to what was observed by ***Jai Bir Singh***, i.e., the 2005 reference order, there was no "cleavage of opinion" between the two cases with regard to the applicability of ***Bangalore Water Supply***. It was therefore unnecessary on the part of the Bench in ***Jai Bir Singh (5-J)*** to hold that the cases had "culled out differently" the ratio of ***Bangalore Water Supply***. The conclusion of ***Pratamsingh Parmar***, i.e., that the Forest Department of the State of Gujarat was not an "industry", was based on lack of a specific pleading of facts warranting the extension of ***Jagannath Kondhare***'s reasoning to the case. It is indeed trite to say that each case turns on its facts. Therefore, the finding that the factual pleadings on record failed to make out a case for application of ***Jagannath Kondhare***, does not imply that the cases were divergent in their application or understanding of the ratio of ***Bangalore Water Supply***.

18.5 In order to reconcile the opinions of the two-Judge Bench and the three-Judge Bench, a five-Judge Bench in ***Jai Bir Singh*** thought it appropriate to refer the matter to a larger bench. One of the premises for the reference was that there was no consensus between the Judges of the seven-Judge Bench, which we find to be an incorrect inference. Therefore, I wonder why at all the five-Judge Bench referred the matter to a larger Bench. In other words, whether the reference to a larger Bench was necessary at all?

18.6 In fact, the five-Judge Bench ought to have appreciated the fact that the earlier judgment of this Court in the case of ***Jagannath Kondhare*** proceeded only on the facts of the said case and it was held that the activity involved therein was covered within the definition of "industry" under Section 2(j) of the I.D. Act for which reasons were assigned. In ***Pratamsingh Parmar***, the Forest Department of the State was held not to be an "industry" based on the factual pleadings of the case. In ***Jai Bir Singh***, the five-Judge Bench being a larger Bench could have either reconciled the aforesaid two decisions or overruled one of them in case of necessity. Instead, the five-Judge Bench adopted a third and strange path of questioning the correctness of the judgment of the seven-Judge Bench in ***Bangalore Water Supply***.

18.7 The five-Judge Bench ought to have applied the ratio of ***Bangalore Water Supply*** to the facts of the case in ***Jai Bir Singh.*** Instead, in ***Jai Bir Singh***, the five-Judge Bench took note of the fact that Krishna Iyer, J. (speaking for himself, Bhagwati and Desai, JJ.) had observed in ***Bangalore Water Supply*** that the principles applicable for interpreting the expression “industry” under the I.D. Act were formulated. However, the same was subject to being overruled by a larger Bench or superseded by legislation. But the aforesaid statement nowhere indicates any doubt raised by Krishna Iyer, J. on his opinion. In fact in paragraphs 140 to 144 of his opinion, it was categorically stated that the principles including the “triple test” as well as ‘the dominant nature test’ would be applicable to the facts of every case in order to determine whether the entity is an “industry” within the meaning of Section 2(j) of the I.D. Act. Merely because Jaswant Singh, J. (for himself and Tulzapurkar, J.), through their separate opinion, stated that the definition of “industry” in Section 2(j) of the I.D. Act covered only such activities *“systematically and habitually* *carried on"* commercial lines *"for production of goods or for rendering material services to the community"*, which was a dissenting opinion and in line with the opinion of Gajendragadkar, J. in ***Hospital Mazdoor Sabha*** *,* (wherein it had been stated that the definition of the I.D. Act was very wide and "a line has to be drawn in a fair and just manner" to exclude some callings, services or undertakings which do not fit in with the provisions of the I.D. Act), could not have resulted in *per se* questioning the correctness of the judgment of this Court in ***Bangalore Water Supply****.*

18.8 In fact, Jaswant Singh, J. also opined that the legislature should step in with a comprehensive bill to remove doubts and set at rest once and for all the controversy in relation to the meaning and interpretation of the word "industry" under Section 2(j) of the I.D. Act. The same has happened only recently when the IR Code has been given effect to since November 2025.

18.9 Therefore, the interpretation of the expression "industry" as made by Krishna Iyer, J. as well as by other Judges of the seven-Judge Bench who formed the majority would hold the field and apply to all pending cases.

18.10 Since the I.D. Act has now been repealed and IR Code has been enacted, which has a detailed definition of "industry" in Section 2(p) of the IR Code, it would also be unnecessary to also go into the correctness or otherwise of the reasons assigned by the five-Judge Bench in ***Jai Bir Singh*** so as to consider the definition of "industry" in the pending cases particularly when I have analysed the judgments in ***Bangalore Water Supply*** and am in agreement with the majority opinions.

18.11 Moreover, merely because there was difficulty in the application of the judgment of this Court in ***Bangalore Water Supply*** to the facts of a particular case before a Bench, is no reason to question the correctness of the judgment in ***Bangalore Water Supply*** by making a reference to a larger Bench.

Why an expansive definition of "Industry" is necessary ?:

19. Reconnecting with the discussion made earlier, I observe that domestic economic reforms in India in the year 1991 were also accompanied by globalisation and trade liberalisation. As an example, import licensing was first abolished for capital and intermediate goods, and subsequently altogether. The foreign investment policy of the country was also progressively liberalised.

Along with the increased worker-vulnerability owing to privatisation and the consequent lack of statutory service rules, the pressure to reduce costs may result in companies attempting to structure themselves outside the purview of "industry", enabling them to escape regulatory laws and associated labour costs. This further amplifies the need for an expansive definition of "industry".

19.1. Further, the industrial activities which were being carried out by the State through Public Sector Units (PSUs) have been privatised, and private entities and individuals are now carrying forward those activities in their individual names or in the names of their entities or corporates. Thus, certain activities which were being undertaken by the State such as production of goods and services are now being undertaken by private persons, whether individuals or corporates. Therefore, the changes in the nature of the economy, economic thinking and the drastic consequences flowing from the same including the initiation of Reforms in the year 1991, which have continued for the last thirty-five years, have also to be borne in mind.

19.2 If the above historical perspective is kept in mind and the changes in the form of Reforms brought about in the Indian economy over three decades are also taken into consideration, I am of the view that the definition of "industry" under Section 2(j) of the I.D. Act must be given a broad but realistic meaning so as to not curtail the object and purpose of the I.D. Act. The object and purpose of the I.D. Act have been discussed above. What the I.D. Act ultimately intends is to ensure industrial peace in the country and to ensure harmony in industrial relations, not only between employers and employees, but between employers and employers and workmen and workmen, so that the nation as a whole develops economically and socially.

19.3 In the above backdrop, what should be the approach in the interpretation to be made to the definition of "industry" under Section 2(j) of the I.D. Act? Should it be narrowed down or should it be maintained in terms of what was interpreted by this Court in ***Bangalore Water Supply***?

19.4 The salience and necessity of an expansive definition of "industry" under Section 2(j) of the I.D. Act is exemplified through a consideration of the nature and scheme of the I.D. Act. A perusal of the I.D. Act reveals its breadth in the multitude of issues it is intended to regulate, in its attempt to harmonise labour relations in India. Enacted a few months prior to Indian Independence, it was anticipated that as the country embarked on a path towards economic development and embraced industrialisation, that the interests of the working class would not always align with those of their employers. There was thus a need for mechanisms to prevent the exploitation of workers and the guarantee of fair working conditions while also ensuring speedy and efficient resolution of disputes, the prevention of strong-arming by collectives of workers, to resolve disputes between various employers and to ensure modes for the State to intervene when necessary. It is indubitable that the purpose of the I.D. Act in establishing a tripartite stakeholder model of intervention and dispute resolution is to serve as a balancing force, wherein a check is kept to prevent excesses by any one stakeholder, be it the workmen, employer or the State. This tripartite structure is reflected under Section 2(k) of the I.D. Act, where the term “industrial disputes” is defined expansively so as to include disputes between various stakeholders, including disputes between workmen and employer, employer and employer and workmen and workmen, so long as the dispute is relatable to the employment or non-employment of any person, the terms of their employment or the conditions of labour, with the State serving as an enabling and modulating force.

19.5 Chapter II of the I.D. Act concerns the constitution of various authorities under the I.D. Act, including the Works Committees, Conciliation Officers, the Board of Conciliation, Courts of Inquiry, Labour Courts and Tribunals. Chapter III concerns the process by which disputes may be referred to the relevant adjudicatory authority. Chapter IV details the powers and duties of the aforementioned authorities under Chapter II. Chapter V concerns strikes and lock-outs and the stipulations that must be adhered to for these to be considered valid modes of redressal of grievances. Chapter VA concerns lay-offs and retrenchment and the entitlements of workmen to compensation and other benefits if they are subject to either. Chapter VC concerns unfair labour practices. Chapter VI concerns the penalties to be imposed for various infractions of the provisions of the I.D. Act, including conducting illegal strikes and lock-outs, instigation and closure without notice among others.

19.6 Thus, any definition of the term "industry" under Section 2(j) involves a consideration as to, whether, the range of protections accorded under the I.D. Act to all stakeholders and not merely the workmen, the various modes of dispute resolution, the procedural formalities that must be complied with as well as the penalties to be imposed would apply to a particular entity or not. In light of this, the need for an expansive definition so that the widest array of entities and all the stakeholders involved therein may avail of the protections under the I.D. Act and also be bound by its restrictions becomes critical and necessary.

19.7 I also reiterate that having regard to privatisation of industries being rigorously implemented by the State and the transfer of many activities of the State including social welfare activities into the hands of private persons and entities, the definition of "industry" under Section 2(j) of the I.D. Act cannot be curtailed or given a restricted meaning. That would not, in my view, enhance the object and purpose of the I.D. Act which is very much relevant for considering the cases pending before the Tribunals or the Courts concerning employers as well as workmen.

19.8 A consequence of the advent of the liberalisation, privatisation and globalisation (LPG) reforms in India is the bolstering of the bargaining power of one stakeholder in the tripartite stakeholder model envisioned under the I.D Act in particular, namely, the employers in the private sector. With a decrease in regulation, with disinvestment and the retreat of the State from various industries, the protections available to workmen who were earlier protected by virtue of being employed by the State have now been eroded. The corollary to this is that employers possess what could be termed as a supercharged version of the bargaining power that was sought to be kept under check earlier, wherein market forces along with concomitant pressures on the State to ensure economic growth and development results in an augmented form of worker vulnerability. An expansive definition of the term "industry" thus serves the purpose of acting as a mitigating force and a bulwark against this skewed bargaining power turning especially exploitative, by allowing for the State to not completely abdicate its obligations as a stakeholder to intervene when necessary.

Any other issue(s) that may arise during the course of hearing before the nine-Judge Bench:

20. In the realm of statutory interpretation, a provision of law and the judgment of the Apex Court interpreting the same would definitely have a bearing while considering another provision which

has substituted the earlier provision which was interpreted by the Apex Court, either by way of repeal of the Act in which that provision was found or the substitution of that provision by way of an amendment in the very same Act. Prospective overruling of an interpretation given to a provision of law by a judgment of this Court, on the basis of a new substituting enactment containing a similar provision, is not permissible. The interpretation of the earlier provision governs the period during which that provision is in force and its replacement by a similar provision does not retrospectively nullify the interpretation of a Court. A later enactment may change the law but it cannot retrospectively change what the earlier enactment or a provision therein was judicially interpreted to mean.

20.1 In the instant case, Section 2(j) of the ID Act and the judgment in respect thereof, namely ***Bangalore Water Supply*** will necessarily have to be taken into consideration while interpreting Section 2(p) of the IR Code where there are commonalities or similarities in the two provisions. But we are now considering whether the interpretation of Section 2(j) of ID Act in ***Bangalore Water Supply*** is correct or not. For that purpose, Section 2(p) of the IR Code cannot form the basis for narrowing down the scope and ambit of Section 2(j) of the ID Act.

20.2 In the present case, we are placed in a unique position as a provision in a repealed enactment is coming up for reconsideration in the face of a substituted statute namely the IR Code. If the intention of the Parliament is to give a restrictive meaning to the word “industry” in Section 2(p) of the IR Code, that cannot cloud our interpretation of Section 2(j) of the ID Act. This nine-Judge bench is unanimous in observing that we have not opined anything about Section 2(p) of the IR Code which gives the definition of “industry”. If that is so, the same cannot be the basis or rationale for narrowing down the definition of “industry” in Section 2(j) of the ID Act. In other words, Section 2(p) of the IR Code cannot be considered hypothetically and be at the back of our minds while interpreting Section 2(j) of the ID Act. It is one thing to refrain from observing anything on Section 2(p) of the IR Code but it is quite another and not right, to state that while interpreting the said provision, the judgment of this Court in ***Bangalore Water Supply*** interpreting Section 2(j) has to be given a go-by. In fact, the earlier case law on the corresponding provision is relevant and may be highly persuasive, even binding, if the statutory language is, after judicial determination, found to be identical. This cardinal principle of interpretation has been observed by Lord Justice James in ***Greaves v. Tofield (1880) 14 Ch. D. 563 at 571*** as follows:

> "If an Act of Parliament uses the same language which was used in a former Act of Parliament referring to the same subject, and passed with the same purpose, and for the same object, the safe and well-known rule of construction is to assume that the legislature when using well-known words upon which there have been well-known decisions uses those words in the sense which the decisions have attached to them."

As also noted in Justice G.P. Singh, Principles of Statutory Interpretation, 15th Edition, the application of this rule of construction has the merit of allowing the use of the earlier statute to throw light on the meaning of the same expression used in the later statute.

20.3 My learned Brother Narasimha, J. in paragraph No.23 of his opinion has opined as under:

> "23. My primary concern is that the litigation that has surrounded the interpretation of Section 2(j) should not cast its shadow on the new Industrial Code. We need to break away from the perpetuating interpretative cycle that

has afflicted Section 2(j) and protect the Industrial Relations Code, 2020, from any preconceived notions. For effective and efficient interpretation and development of the industrial law, Section 2(p) of the Industrial Relations Code, 2020, must be freed of the bondage of ratio in *Bangalore Water Supply* (supra) or any new definitions that we may propose while deciding the Reference. In fact, Hon'ble Chief Justice as well as my sister and brother Judges have categorically stated that the views of the nine-Judge Bench should not have a bearing on the interpretation that may subsequently be given to the definition of Industry under Section 2(p) of the Industrial Relations Code, 2020. I am in full agreement with such a declaration. I think it is necessary."

(underlining by me)

I emphatically say that if the above declaration is to apply then the entire exercise of giving a new interpretation to Section 2(j) of the ID Act is wholly unnecessary and only academic in nature. Then the reformulation of the Triple Test would also have no bearing.

SUMMARY OF CONCLUSIONS:

21. In view of the aforesaid discussion, I am of the opinion that the Reference to a nine-Judge Bench was not necessary in view of my reasoning in paragraphs 18 to 18.11. Secondly, the reference need not be answered at the present juncture.

Even otherwise, on a deep analysis of the judgment of this Court in ***Bangalore Water Supply,*** I find that it ***does not call for reconsideration.***

A. That the Reference made by the five-Judge Bench to this nine-Judge Bench on a perception that there was a conflict in the decisions of this Court in ***Jagannath Kondhare*** (three-Judge Bench) and ***Pratamsingh Parmar*** (two-Judge Bench), for the purpose of reconsideration of the seven-Judge Bench judgment in ***Bangalore Water Supply***, was misconceived, and therefore the Reference itself was uncalled for.

B. I have summarised the ten reasons why the Reference need not be answered at this juncture:

a. The I.D. Act itself has been repealed w.e.f. 21.11.2025.

b. A new enactment by way of the IR Code has been enforced w.e.f. 21.11.2025, containing a new definition of “industry” in Section 2(p) thereof.

c. The judgment of the seven-Judge Bench in ***Bangalore Water Supply*** has held the field for nearly half a century (48 years).

d. In ***Bangalore Water Supply***, there is broad consensus of opinion expressed in the concurring judgments of Krishna Iyer, J. (for himself, Bhagwati and Desai, JJ.), Beg, C.J. and Chandrachud, C.J., who together comprised the majority of five Judges. The points of convergence and divergence discussed by Jaswant Singh, J. (for himself and Tulzapurkar, J.) do not in any way dilute the ratio of the judgments interpreting the definition of "industry" in Section 2(j) of the I.D. Act, by the majority of five Judges.

e. Any pronouncement on the correctness or otherwise of the judgment of this Court in ***Bangalore Water Supply*** would definitely cast its shadow on the definition of "industry" under Section 2(p) of the IR Code and for this reason also, the judgment in ***Bangalore Water Supply*** does not require reconsideration.

f. The application of the ratio of the judgment in ***Bangalore Water Supply*** in respect of various activities in order to ascertain whether such activities come within the definition of the word "industry" in Section 2(j) of the I.D. Act, cannot result in a reconsideration of the correctness of the judgment of the seven-Judge Bench in ***Bangalore Water Supply***.

g. When the judgment of the seven-Judge Bench of this Court in ***Bangalore Water Supply*** was rendered in the year 1978, there were innumerable activities which were embarked upon by the State itself. However, the ushering in of the reforms of 1991 in the form of liberalisation, privatisation and globalisation has resulted in a total change in the policy of the Union and the State Governments, whereby several activities of the Union and State Governments have now been privatised, liberalised or globalised. Hence, it is in the interest of the employers, workmen and industrial activity, as well as the Indian economy itself, that the definition of "industry" in Section 2(j) of the I.D. Act as interpreted by this Court in ***Bangalore Water Supply*** be followed insofar as the pending cases before the Labour Courts, Industrial Tribunals, High Courts and this Court are concerned.

h. The Industrial Disputes (Amendment) Bill, 1982, passed by the Parliament to overcome the judgment in ***Bangalore Water Supply***, remained unnotified and thereby inchoate to this date. The judgment in ***Bangalore Water Supply***, therefore, should be taken to have received the acquiescence even of the Parliament and the Executive and, therefore, no interference by this Court is called for.

i. Any reconsideration of the judgment in ***Bangalore Water Supply*** will cause the disputes pending under the erstwhile I.D. Act to be now remanded to their original fora for reconsideration in light of a change in law under the I.D. Act. Such re-consideration will not be in keeping with the declared objectives of the I.D. Act, namely, industrial peace and certainty and relief for parties under the said Act.

j. The State undertakes many functions which are not *stricto senso* sovereign. Merely because a function is performed by the State ought not to mean that it qualifies for being exempted from the definition of "industry" under the I.D Act. Therefore, no reconsideration of the dicta in ***Bangalore Water Supply***, insofar as the "sovereign functions exception" is concerned, is called for.

C. However, on reconsideration of the judgment of this Court in **Bangalore Water Supply** as above, I hold that the majority judgments of the seven-Judge Bench is good law and therefore, binding. Consequently, I am of the view that the questions referred for the consideration of this Bench would have to be answered in the following manner:

S. No.	Questions	Answers
1.	Whether the test laid down in paragraphs 140 to 144 in the opinion rendered by Hon'ble Mr. Justice V.R. Krishna Iyer in ***Bangalore Water Supply*** to determine if an undertaking or enterprise falls within the definition of "industry" lays down correct law? And whether the Industrial Disputes (Amendment) Act, 1982 (which seemingly did not come into force) and the Industrial Relations Code, 2020 (with effect from 21.11.2025) have any legal impact on the interpretation of the expression "industry" as contained in the principal Act?	Yes, the test laid down in paragraphs 140 to 144 in the opinion rendered by Krishna Iyer. J. in ***Bangalore Water Supply*** to determine if an undertaking or enterprise falls within the definition of "industry" lays down the correct law. The opinions of Beg, C.J. and Chandrachud, C.J. are an elaboration of the reasoning of Krishna Iyer, J, as they elaborate on points of concurrence. Both the learned Chief Justices explicitly voiced their concurrence with the majority of Krishna Iyer, J.'s reasoning and conclusions. Hence, on a comprehensive reading, the majority formed by the opinions of Krishna Iyer, J. (for himself, Bhagwati and Desai, JJ.); Beg, C.J. and Chandrachud, C.J. would not call for any reconsideration.

S. No.	Questions	Answers
		The Industrial Disputes (Amendment) Act, 1982 and the IR Code, 2020 (w.e.f. 21.11.2025) do not have any legal impact on the interpretation of the expression "industry" as contained in Section 2(j) of the I.D. Act (since repealed and substituted by Section 2(p) of the IR code, 2020 w.e.f. 21.11.2025).
2.	Whether social welfare activities and schemes or other enterprises undertaken by the Government Departments or their instrumentalities can be construed to be "industrial activities" for the purpose of Section 2(j) of the I.D. Act?	Social welfare activities and schemes or other enterprises undertaken by the Government Departments or their instrumentalities can be construed to be "industrial activities" for the purpose of Section 2(j) of the I.D. Act depending upon the nature of the activities. The mere fact that many social welfare activities and schemes or other enterprises are undertaken by Government Departments or their instrumentalities *per se* do not exclude them from the definition of "industry" under Section 2(j) of the I.D. Act. In fact, many such activities are now being carried out by private enterprises, entities and individuals or in the form of public-private partnerships. Hence, the test of who carries

S. No.	Questions	Answers
		out the activity is not relevant. Rather, what the nature of the activity is and all other relevant factors of the activity have to be considered to determine whether the activity is an "industrial activity" within the meaning of Section 2(j) of the I.D. Act.
3.	What State activities will be covered by the expression "sovereign function", and whether such activities will fall outside the purview of Section 2(j) of the I.D. Act?	The determination of State activities which would be covered by the expression "sovereign function", and whether such activities will fall outside the purview of Section 2(j) of the I.D. Act would again depend upon the nature of the activity. The interpretation given to the aforesaid provision in ***Bangalore Water Supply*** excludes certain activities from the operation of the "sovereign function exception" and consequently, places them within the scope of the definition of "industry". The dominant nature of the activity rather than the dominant purpose of the activity is a relevant factor.
4.	Any other issue(s) that may arise during the course of hearing before the nine-Judge Bench.	The issue that arose during the course of hearing before this Bench was, whether, the interpretation of

S. No.	Questions	Answers
		the word "industry" in Section 2(p) of the IR Code could be applied to reconsider the seven-Judge Bench decision of this Court in ***Bangalore Water Supply***, by giving a narrow interpretation to Section 2(j) of the I.D. Act? In other words, whether Section 2(p) of the IR Code could cast its shadow on Section 2(j) of the I.D. Act so that the interpretation of Section 2(j) of the I.D. Act could be aligned with Section 2(p) of the IR Code? In my view, the interpretation of the word "industry" in Section 2(j) of the I.D. Act may have a bearing on the interpretation of Section 2(p) of the IR Code and not *vice versa.* There can be no interpretation given to Section 2(j) of the ID Act on the basis of the definition under Section 2(p) of the IR Code.

22. The Reference is answered accordingly in the aforesaid terms.

I place on record my sincere appreciation of the valuable assistance rendered by learned Attorney General, learned senior counsel, learned counsel and learned instructing counsel as well as learned *amicus curiae* appearing for the respective parties.

……………………………………J.
(B.V. NAGARATHNA)

NEW DELHI;
AUGUST 20, 2026

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 897 OF 2002

STATE OF U.P. ...APPELLANT(S)

VERSUS

JAI BIR SINGH …RESPONDENT(S)

With

CIVIL APPEAL NO. 4646 OF 2007

CIVIL APPEAL NO. 3647 OF 2007

SLP (C) NO. 1112 OF 2009

CIVIL APPEAL NO. 3920 OF 2010

CIVIL APPEAL NO. 3119 OF 2011

CIVIL APPEAL NO. 6114 OF 2001

CIVIL APPEAL NO. 6108 OF 2002

CIVIL APPEAL NO. 1276 OF 2001

CIVIL APPEAL NO. 1279 OF 2001

CIVIL APPEAL NO. 1278 OF 2001

CIVIL APPEAL NO. 6471 OF 2002

CIVIL APPEAL NO. 2506 OF 2002

CIVIL APPEAL NO. 8597 OF 2001

CIVIL APPEAL NO. 4569 OF 2002

CIVIL APPEAL NO. 5101 OF 2002

CIVIL APPEAL NO. 2409 OF 2002

SLP (C) NO. 20982 OF 2002

CIVIL APPEAL NOS. 355-358 OF 2003

SLP (C) NO. 14085 OF 2004

SLP (C) NO. 11291 OF 2004

SLP (C) NO. 14127 OF 2004

CIVIL APPEAL NO. 7994 OF 2004

SLP (C) NO. 4139 OF 2005

CIVIL APPEAL NO. 1274 OF 2007

CIVIL APPEAL NO. 1273 OF 2007

CIVIL APPEAL NOS. 1311-1312 OF 2008

SLP (C) NO. 16301 OF 2007

SLP (C) NO. 3107 OF 2008

SLP (C) NO. 4327 OF 2008

SLP (C) NO. 4329 OF 2008

SLP (C) NO. 4328 OF 2008

CIVIL APPEAL NO. 296 OF 2008

SLP (C) NO. 16276 OF 2008

SLP (C) NO. 17224 OF 2008

CIVIL APPEAL NO. 5519 OF 2012

CIVIL APPEAL NO. 5681 OF 2010

SLP (C)… CC NO. 7990 OF 2009

CIVIL APPEAL NO. 7757 OF 2011

CIVIL APPEAL NO. 1131 OF 2012

CIVIL APPEAL NOS. 8149-8151 OF 2012

CIVIL APPEAL NOS. 4505-4506 OF 2013

CIVIL APPEAL NOS. 4507-4508 OF 2013

SLP (C) NOS. 12679-12682 OF 2014

SLP (C) NO. 1857 OF 2016
SLP (C) NO. 14156 OF 2021

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. A statute that creates Conciliation Officers, Labour Courts and Industrial Tribunals and hands them the power to order reinstatement and compel settlements needs to say with precision who falls within its reach. Section 2(j) of the Industrial Disputes Act, 1947, was Parliament's attempt to say so. However, it neither settled its boundaries nor specified its constituents with certainty. It opened it. For more than 30 years, hospitals, universities, co-operative societies, gymkhana clubs and Government departments went to court to argue whether they are covered or not under that definition. The dispute persisted for over four decades, ultimately assuming such proportions as to warrant reference to a seven-judge Bench of the Supreme Court, which rendered its decision in *Bangalore Water Supply & Sewerage Board v. A. Rajappa*.[1]

2. Section 2(j), read literally, is wide enough to describe a factory and a family kitchen in the same breadth, and, on other readings, narrow enough to exclude workers it clearly meant to protect. So, the litigation

[1] (1978) 2 SCC 213.

continued despite the verdict of the seven-judge Bench. This nine-Judge Bench is now assembled to resolve the persisting eight-decade uncertainty.

3. The process of adjudication that we have undertaken is no different from the process undertaken by any of the Benches that delivered their judgments, till, of course, overruled by later determinations. The process of references, reconsiderations, reconstructions and then judgments cancelling each other continued, and may even continue before an eleven-Judge Bench to reconsider the views expressed by us. The problem, as I understand is not so much in our understanding of the definition of "Industry", but in the way the definition is formulated. It suffers from certain structural errors.

4. We are told that this Court has no option except to keep interpreting and delivering its verdict. There is also a great disconnect between the legislature and the courts, i.e., between laws formulated by the parliament and interpretations rendered by the Courts. Justice Benjamin N. Cardozo, while addressing the Bar Association of New York, said;

> *"The Courts are not helped as they could and ought to be in the adaptation of law to justice. The reason they are not helped is because there is no one whose business it is to give warning that help is needed.... We must have a courier who will carry the tidings of distress.... Today Courts and legislature work in separation and aloofness. The penalty is paid both in the wasted effort of production and in the lowered quality of the product. On the one side, the judges, left to fight against anachronism and injustice by the methods of Judge-made law, are distracted by the conflicting promptings of justice and logic, of consistency and mercy, and the output of their labours*

bears the tokens of the strain. On the other side, the Legislature, informed only casually and intermittently of the needs and problems of the Courts, without expert or responsible or disinterested or systematic advice as to the workings of one rule or another, patches the fabric here and there, and mars often when it would mend. Legislature and Courts move on in proud and silent isolation. Some agency must be found to mediate between them."[2]

5. There must be some way out of this perpetuating cycle. In *Yash Developers v. Harihar Krupa Coop. Housing Society Ltd.*[3], this Court recognised the obligation of the executive government to conduct performance audits of statutes. This Court declared that reviewing and assessing the implementation of a statute is an integral part of the Rule of Law. It is in recognition of this obligation of the executive government that the Court held that constitutional courts can direct Governments to carry out a performance audit of statutes. The reasoning of the Court is as follows;

***"58.** Four aspects for achieving justice are well founded and articulated as: (i) distribution of advantages and disadvantages of society, (ii) curbing the abuse of power and liberty, (iii) deciding disputes, and (iv) adapting to change.*[4] *Adapting to change is important for achieving justice, as failure to adapt produces injustice and is, in a sense, an abuse of power. Thus, failure to use power to adapt to change is in its own way an abuse of power. In fact, the issue is not one of change or not to change, but of the direction and the speed of change and such a change may come in various ways, and most effectively through legislation. Legal reform through legislative correction improves the legal system and it would require assessment of the working of the law, its accessibility, utility and abuse as well.*

***59.** The Executive branch has a constitutional duty to ensure that the purpose and object of a statute is accomplished while implementing it. It has the additional duty to closely monitor the working of a statute and must have a continuous and a real time assessment of the impact that the statute is having. <u>As stated above, reviewing and assessing</u>*

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[2] Also cited by Krishna Iyer, J. in *Bangalore Water Supply (supra).*
[3] (2024) 9 SCC 606.
[4] See: "Justice in Adapting to Change", in R.W.M. Dias, *Jurisprudence*, pp. 305-327 (5th Edn., 2013).

> *the implementation of a statute is an integral part of Rule of Law. The purpose of such review is to ensure that a law is working out in practice as it was intended. If not, to understand the reason and address it quickly. It is in this perspective that this Court has, in a number of cases, directed the Executive to carry a performance/assessment audit of a statute or has suggested amendments to the provisions of a particular enactment so as to remove perceived infirmities in its working.*[5]

6. If proceedings initiated under the Industrial Dispute Act, 1947, are interdicted at the very threshold on the ground of a *jurisdictional fact* that the entity in question is not an industry as per the definition, and this question is raised frequently, and judicial review Courts keep staying the proceedings, then the very purpose and object of the beneficial legislation is lost. This Court cannot be a silent spectator of this phenomenon. Addressing such a situation arising due to legislative and executive actions, this Court recognised the role of judiciary in the following terms;

> ***60.*** *Constitutional courts are fully justified in giving such directions as they are in a unique position of perceiving the working of a statute while exercising judicial review, during which they could identify the fault-lines in the implementation of a statute….*
>
> ***61****….Though cases are decided on their own merit and the lis disposed of, what is left behind is the institutional memory of the Court about the working of the statute and its interpretation preserved as precedents. Over a period of time, a critical mass of adjudicatory determinations on the working of the statute is built. This critical mass, coupled with the experiences gained by the Judges and the Court on the working of the statute, is of immense value for auditing the working of the legislation. It enables the court to assess whether the purpose and object of the Act is being achieved or not.*
>
> ***(…)***
>
> ***64.*** *… In such circumstances, the judicial role does encompass, in this Court's understanding, the power, nay the duty to direct the executive*

[5] *State of Haryana* v. *Mukesh Kumar*, (2011) 10 SCC 404; *Pravin Electricals (P) Ltd.* v. *Galaxy Infra & Engg. (P) Ltd.*, (2021) 5 SCC 671; *Preeti Gupta* v. *State of Jharkhand*, (2010) 7 SCC 667; *Arif Azim Co. Ltd.* v. *Aptech Ltd.*, (2024) 5 SCC 313; *Public Interest Foundation* v. *Union of India*, (2019) 3 SCC 224.

> *branch to review the working of statutes and audit the statutory impact. It is not possible to exhaustively enlist the circumstances and standards that will trigger such a judicial direction. One can only state that this direction must be predicated on a finding that the statute has through demonstrable judicial data or other cogent material failed to ameliorate the conditions of the beneficiaries. The courts will also do well, to arrive the very least, at a prima facie finding that much statutory schemes and procedures are gridlocked in bureaucratic or judicial quagmires that impede or delay statutory objectives. This facilitative role the judiciary compels audit of the legislation, promote debate and discussion but does not and cannot compel legislative reforms."*[6]
>
> *(emphasis supplied)*

7. Following the above mandate, on an empirical examination, we find that Benches of varied quorum – four-judge,[7] to a five-judge,[8] to six[9] and a seven-judge[10] bench of this Court attempted to find certainty in the meaning of the expression 'industry'. Further, there are at least 14 three-judge bench decisions and more than 27 two-judge bench verdicts of this Court grappling with the same issue. It is in this context that the interpretation clause, i.e., the definition of Industry under Section 2(j), needs to be examined.

8. Section 2(j) opens with the standard phrase of a legal definition: "industry means…." But the mere grammatical form of a definition does not guarantee that the sentence following it actually performs the function a definition is supposed to perform. Law needs a definition, not an explanation. Telling a labour officer *why* industrial disputes need to be

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[6] Yash Developers (supra).
[7] Baroda Borough Municipality v. Workmen, (1956) 2 SCC 535.
[8] D. N. Banerji v. P. R. Mukherjee, (1952) 2 SCC 619.
[9] Management of Safdarjung Hospital, New Delhi v. Kuldip Singh Sethi, (1970) 1 SCC 735.
[10] Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213.

resolved expeditiously, or how to prioritise either the labour or the capital on a certain philosophy, does not tell him whether the hospital in front of him is, or is not, within his jurisdiction. Section 2(j) is written in the grammatical shape of a definition; whether it actually behaves like one has been the question. What then is a good definition?

9. Definitions have a purpose to subserve. Every act of communication, spoken, written or argued in a court, relies on a shared understanding of what the words mean. In legal reasoning, this shared understanding is not an informal assumption but the very ground on which arguments are built, precedents applied, and judgments rendered. It is therefore compelling that we must have a rigorous and testable framework for what a definition must do and what disqualifies it.

10. To start with, a definition is neither an explanation nor a description of the subject; it is a *precision instrument,* whose function is to mark the boundary of a concept. It is not usage or convenience, but a matter of epistemological precision.

11. The structure of a definition consists of three elements: *the subject matter-* for example, "Industry" as in this very case, its *properties* - that is, the characteristic qualities or features that reside in the subject matter and then the *relationship* or connection between the two, i.e., the subject matter and its properties. If any one of these elements is uncertain, then cognisance of the subject matter becomes indeterminate. This

indeterminacy arising due to uncertainty in/of the property(ies) of an ‘industry’ and their relationship with the subject matter has, in my opinion, been the fundamental problem in the definition of Industry.

12. The definition of a definition can be explained as comprising of two parts. In the first place, a definition must *convey a property or a character held in common with nothing else*. In other words, the defining property must be unique to the class – present in every genuine member and absent in everything that is not a member. Secondly, the property or quality of the subject matter of the definition must survive three independent tests: free from *overextension*, free from *underextension*, *and* also *avoid structural impossibility*.

13. Cognition of similar properties residing in all members of the defined class, coupled with exclusion of everything outside the defined class, and including every genuine member of the class, is the basis for certainty. The dual test of *exclusion of dissimilar* and *inclusion of similar properties* is integral to a valid definition. Any definition must be tested against both purposes independently. Passing one test while failing the other produces a definition that is either over-broad or over-narrow and is termed ineffective; in fact, it results in a defective definition.

14. The discussion about the compelling need to have a correctly formulated definition is only to indicate that the resolution of a dispute concerning a jurisdictional fact based on a defined term does not flow out

of the interpretations when fundamental defects of over-inclusion, under-inclusion and certain improbabilities come to be associated with definitions. This problem cannot be brushed away on the grounds that the solution is within the legislative province.

15. However, a detailed analysis of the definition in Section 2(j) is not necessary as the Industrial Disputes Act, 1947, along with the definition of 'industry' under Section 2(j), is now repealed. In its place, w.e.f. 21.11.2025, the Industrial Relations Code, 2020 has come into force and "industry" stands redefined under Section 2(p) of the 2020 Code. It is far more important to deal with the consequences of such repeal on the Reference to this nine-judge Bench for authoritative pronouncement.

16. On the preliminary issue, I believe there is no illegality in the procedure adopted for referring the ratio in *Bangalore Water Supply (supra)* to the bench of nine judges. The Reference is not in violation of the principles laid down by the *Dawoodi Bohra*[11]. I am also of the opinion that, but for the repeal, it would have been necessary to examine the merits of the matter, as I have no doubt in mind that the definition of 'industry' under Section 2(j) of the repealed Act, as it stood, had certain core as well as peripheral linguistic problems leading to uncertainty throughout its lifetime. I need not elaborate on this as Justice Krishna Iyer

[11] Central Board of Dawoodi Bohra Community v. State of Maharashtra, (2005) 2 SCC 673.

himself mentioned about the need for a better definition as also the *judicial struggle for certainty* about the scope and content of 'industry' from the very commencement of the Act. In his erudite opinion, Hon'ble Chief Justice has also referred to a number of decisions of this court after *Bangalore Water Supply (supra),* seeking settlement and certainty about the core and content of the definition. Therefore, the need to address the issue relating to the accurate scope of 'industry' under Section 2(j) was compelling when the Reference was made; however, for the reasons to follow and the position that has been taken, it is not necessary to answer the questions referred on merits. I will, in short, first refer to the perspective in which Hon'ble Chief Justice and my sister and brother judges have viewed the Reference on.

17. Hon'ble Chief Justice has suggested that the focus on interpreting the repealed Section 2(j) should shift towards the activity of the enterprise rather than the relationship between various actors and the organisational structure of the enterprise per se. In construing the text and structure of the statute, it was felt that industrial activity cannot be wholly divorced from commercial character. Thus, industrial activity can be seen as an undertaking carried on in an organised and systematic manner, involving cooperation between employer and employee, possessing some degree of commercial character. The Hon'ble Chief Justice has concluded that the commercial nature of the activity has to be a relevant factor and cannot

be disregarded altogether. At the same time, the opinion reiterates the well-established position that the presence and absence of a profit motive is not a determinative criterion and hence, even charitable and welfare-oriented activities would not automatically stand excluded from the ambit of the Act, depending on the nature and character of the activity undertaken. Further, the subtle distinction between activities carried on predominantly along commercial lines and those pursued primarily for public welfare, education, charitable, or humanitarian purposes is highlighted. A similar approach is suggested for construing sovereign functions performed by the State. In the ultimate analysis, a closer scrutiny and a case to case approach for classification of entities as 'industry', having regard to totality of circumstances is suggested.

18. In this perspective, the triple test could be calibrated, introducing commerciality as the primary test. As far as the reconsideration of institutional categorisation is concerned, it was felt that an approach that proceeds primarily by reference to pre-determined categories risks pigeonholing institutions without adequate examination of the true nature and dominant character of the activity undertaken. As regards the inquiry is concerned, it is based on substance rather than form, i.e., it is the nature and character of the activity undertaken in conjunction with other indicia that will guide the interpretation.

19. On the other hand, Sister Nagarathna has categorically held that the majority judgment in *Bangalore Water Supply* (supra) is good law and binding. She has also given detailed reasons as to why the Reference need not be answered at the present juncture, by also holding repeal of Industrial Disputes Act, 1947, and introduction of Industrial Relations Code, 2020, w.e.f. 21.11.2025 as reasons for not answering the Reference.

20. Brother Datta has reiterated the above position by holding the Reference not maintainable and the judgment in *Bangalore Water Supply* (supra) being good law. He has observed that the statutory framework under Section 2(j) of the Industrial Disputes Act, 1947, and its judicial exposition in *Bangalore Water Supply* (supra) are in complete harmony and without any quarrel.

21. On the other hand, Brother Bagchi, in agreement with Hon’ble Chief Justice, has held the Reference valid and maintainable. However, on merits of the matter, Brother Bagchi finds the ratio in the seven-Judge judgment a good law which ought to be retained for the reason that the Industrial Relations Code is enforced w.e.f. 21.11.2025. He also observes that any pronouncements on the correctness or otherwise of the judgment in *Bangalore Water Supply* (supra) would cast its shadow on the definition of Industry under Section 2(p) of the Industrial Relations Code, 2020, which should rather be interpreted independently.

22. I have no difficulty in appreciating and understanding the perspectives in which interpretations on repealed Section 2(j) are given by the majority in *Bangalore Water Supply* (supra), as well as the opinions of Hon'ble Chief Justice, and my sister and brother Judges' while answering the Reference. Section 2(j) is open-textual, and interpretations based on the wording of repealed Section 2(j) permit wide and narrow constructs. It is about this very text that, while noting the *"zig-zag course of the landmark cases and the tangled web of judicial thought…, resulting from obfuscation of the basic concept of 'industry'…"*, Justice Krishna Iyer suggested that "*a careful, prompt amendment of Section 2(j) would have pre-empted this docket explosion before tribunals and courts*". The impact of interpreting the repealed definition of Section 2(j) is writ large, and the litigation that it has generated during its lifetime, commencing its birth on 11.03.1947, to its repeal on 21.11.2025, is self-evident.

23. My primary concern is that the litigation that has surrounded the interpretation of Section 2(j) should not cast its shadow on the new Industrial Code. We need to break away from the perpetuating interpretative cycle that has afflicted Section 2(j) and protect the Industrial Relations Code, 2020, from any preconceived notions. For effective and efficient interpretation and development of the industrial law, Section 2(p) of the Industrial Relations Code, 2020, must be freed of the bondage of ratio in *Bangalore Water Supply* (supra) or any new definitions that we

may propose while deciding the Reference. In fact, Hon'ble Chief Justice as well as my sister and brother Judges have categorically stated that the views of the nine-Judge Bench should not have a bearing on the interpretation that may subsequently be given to the definition of Industry under Section 2(p) of the Industrial Relations Code, 2020. I am in full agreement with such a declaration. I think it is necessary.

24. Section 2(j), along with the entirety of the Industrial Disputes Act, 1947, on 21.11.2025, was repealed, lock, stock and barrel and from the very same day, the new Industrial Relations Code, 2020, has come into force. Section 2(p) of the Code defining "Industry" is not given retrospective effect. For transactions involving industrial disputes prior to 21.11.2025, it is only the repealed Section 2(j), as interpreted in *Bangalore Water Supply* (supra), that would hold the field. The ratio in *Bangalore Water Supply* (supra) alone would apply for disposing of all the pending cases in which the interpretation of 2(j) of the Industrial Disputes Act, 1947, is involved.

25. If by answering the Reference, the nine-Judge Bench modifies the ratio in *Bangalore Water Supply* (supra), then it will have the effect of creating the third category that would apply exclusively to the pending cases. After the decision in *Bangalore Water Supply* (supra) in 1978, thousands of cases would have been disposed of in accordance with the ratio laid down therein, and I see no justification for not applying the said

ratio to the pending cases. It is not advisable to modify the ratio in *Bangalore Water Supply* (supra) only for the purpose of disposing of the few pending cases, particularly when we are making it clear that the principles that the nine-Judge Bench will have no bearing on the interpretation of the Industrial Relations Code, 2020.

26. Yet another reason for the nine-Judge Bench to refrain from modifying the ratio in *Bangalore Water Supply* (supra) is that an interpretation that restricts the scope and ambit of expression 'Industry' in the repealed Section 2(j) will have the effect of excluding certain entities from being an 'Industry'. Such an interpretation will have the direct consequence of a number of pending cases moving out of the regulatory regime of the Industrial Disputes Act, 1947. In such an event, industrial disputants who have been contesting the case for years would have to seek ordinary civil remedies. It would be a sad story if we were to ask them to file fresh suits before the Civil Court. The consequences are serious, unnecessary, and contrary to the fundamental principle of easy, effective, and expeditious judicial remedies, an integral part of access to justice.

27. In conclusion, the questions referred for consideration of this bench are answered as follows:

i. The procedure by which the ratio in *Bangalore Water Supply (supra)* has been referred for reconsideration to a bench of nine judges is valid.

ii. The endeavour of various decisions of the Court after *Bangalore Water Supply* (supra), leading to the Reference by Jai Bir Singh to bring about certainty about what 'industry' entails, is justified. The Reference can be answered on merits.

iii. While an authoritative interpretation of the definition "Industry" was compelling at the time of the Reference, such a determination has now become unnecessary, with the repeal of the said provision with effect from 21.11.2025.

iv. With the advent of the Industrial Relations Code, 2020, with effect from 21.11.2025, the ratio in *Bangalore Water Supply* (supra) is now confined to cases arising under the repealed Act. It is prudent to dispose of the pending cases on the basis of the ratio laid down in *Bangalore Water Supply* (supra) without attempting to create a third set of principles applicable only to pending cases.

v. It is important to ensure that the future interpretation of the definition of 'Industry' under Section 2(p) of the Industrial Relations Code, 2020, is not burdened by the existing interpretations based on the repealed Section 2(j) of the Industrial Disputes Act, 1947. The

Industrial Relations Code, 2020, should be interpreted on its own text and in its context alone.

vi. Further, if the Nine-Judge Bench modifies and restricts the ratio laid down in *Bangalore Water Supply* (supra), it will have the serious effect of excluding certain entities from the fold of the "Industry" as defined under Section 2(j) of the repealed Act. This will have the consequence of excluding long-pending disputes from the regulatory regime of the Industrial Disputes Act, 1947, and the parties will be relegated to remedies before the Civil Court. It is therefore necessary to dispose of the disputes arising under the repealed Act on the basis of the ratio laid down in *Bangalore Water Supply* (supra).

…………………………………....J.
[PAMIDIGHANTAM SRI NARASIMHA]

NEW DELHI;
AUGUST 20, 2026

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 897 OF 2002

STATE OF U.P. **... APPELLANT**

VS.

JAI BIR SINGH **... RESPONDENT**

WITH

C.A. No.4646/2007, C.A. No.3647/2007, SLP(C) No.1112/2009, C.A. No.3920/2010, C.A. No.3119/2011, C.A. No.6114/2001, C.A. No.6108/2002, C.A. No.1276/2001, C.A. No.1279/2001, C.A. No.1278/2001, C.A. No.6471/2002, C.A. No.2506/2002, C.A. No.8597/2001, C.A. No.4569/2002, C.A. No.5101/2002, C.A. No.2409/2002, SLP(C) No.20982/2002, C.A. Nos.355-358/2003, SLP(C) No.14085/2004, SLP(C) No.11291/2004, SLP(C) No.14127/2004, C.A. No.7994/2004, SLP(C) No.4139/2005, C.A. No.1274/2007, C.A. No.1273/2007, C.A. Nos.1311-1312/2008, SLP(C) No.16301/2007, SLP(C) No.3107/2008, SLP(C) No.4327/2008, SLP(C) No.4329/2008, SLP(C) No.4328/2008, C.A. No.296/2008, SLP(C) No.16276/2008, SLP(C) No.17224/2008, C.A. No.5519/2012, C.A. No.5681/2010, **SLP(C) .... CC No.7990/2009, C.A. No.7757/2011,** C.A. No.1131/2012, C.A. Nos.8149-8151/2012, C.A. Nos.4505-4506/2013, C.A. Nos.4507-4508/2013, SLP(C) Nos.12679-12682/2014, SLP(C) No.1857/2016, AND SLP(C) No.14156/2021

<u>J U D G M E N T</u>

<u>DIPANKAR DATTA, J. (FOR HIMSELF AND UJJAL BHUYAN, J.)</u>

This judgment is divided into the following sections:

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PRELUDE

1. A single definition in a pre-independence statute, since repealed after a little less than 8 (eight) decades of its existence, has troubled the Supreme Court of India without end. Prior to its repeal by the Industrial Relations Code, 2020[1], the Industrial Disputes Act, 1947[2] had defined "industry" in Section 2(j): a definition which has, perhaps, been the most litigated word in Indian labour jurisprudence, as would unfold hereafter.

2. Though the ID Act was enacted as a tool for securing industrial peace and harmony, what counts as an industry – private business, welfare work or government service – has been the focal point of discussion since long. Benches have differed time and again in deciding, what should the law cover – is it only business, or also schools, hospitals, and government services? Even today, this Court remains engaged with the same question it faced in 1952: "what is an industry?", and a split verdict is on the anvil.

3. Such engagement began with *D.N. Banerji v. P.R. Mukherjee*[3] *[5-J]*, where a municipality's conservancy department was held to be an industry. Close on the heels followed *Baroda Borough Municipality v. Workmen & Ors*[4] *[4-J]*, where it was held that municipal undertakings can constitute an "industry" if their activities are analogous to trade or business. In *State of Bombay v. Hospital Mazdoor Sabha*[5] *[3-J]*,

[1] 2020 Code
[2] ID Act
[3] AIR 1953 SC 58
[4] AIR 1957 SC 110
[5] (1960) 2 SCR 866

the Court held that a government-run hospital can constitute an "industry". It emphasised that profit motive is irrelevant; what matters is systematic activity organised through employer–employee cooperation. A broad interpretation of "industry" was adopted, extending it to welfare and service-oriented institutions like hospitals. The decision in *Corporation of the City of Nagpur v. Its Employees*[6] *[3-J]*, rendered a couple of months after *Hospital Mazdoor Sabha* (supra) by the same bench, held *inter alia* that the definition of the word "industry" is very comprehensive and if a department of a municipality discharges many functions, some pertaining to industry as defined in the ID Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purposes of the ID Act. In *Madras Gymkhana Club Employees' Union v. Gymkhana Club*[7] *[3-J],* this Court referred to *D.N. Banerji* (supra), distinguished it and held that the Madras Gymkhana Club does not constitute an "industry" as it was not carrying on activities analogous to trade or business for the public. Later, *Safdarjung Hospital v. Kuldip Singh Sethi*[8] *[6-J]* excluded hospitals from "industry". Then came *Bangalore Water Supply and Sewerage Board v. A. Rajappa*[9] *[7-J]*, which rehabilitated *Hospital Mazdoor Sabha* (supra) while overruling *Madras Gymkhana Club Employees' Union* (supra), *Safdarjung*

[6] (1960) 2 SCR 942
[7] (1968) 1 SCR 742
[8] (1970) 1 SCC 735
[9] (1978) 2 SCC 213

Hospital (supra) and certain other decisions. It laid down the triple test and dominant-nature doctrine for identification of an industry. Interpretation of the word "industry" made in *Bangalore Water Supply* (supra), however, started gathering doubt towards the end of the last century and ultimately, *State of Uttar Pradesh v. Jai Bir Singh*[10] *[5-J]* considered it appropriate to make a reference by a detailed judgment[11].

4. Curiously, despite the Parliament amending the definition of "industry" in Section 2(j) by the Industrial Disputes (Amendment) Act, 1982 (Act No. 46 of 1982)[12], it was not enforced and, thus, remained a dead letter ever since.

5. Reading of each of the aforesaid precedents would reveal that this Court has swung between text and purpose, thereby veering between narrow and broad constructions, creating a body of law that is simultaneously landmark and labyrinthine. The phases of conflict can be captured by observing that while *D.N. Banerji* (supra) in 1952 advocated expansion, *Safdarjung Hospital* (supra) in 1970 imposed tests that were restrictive, *Bangalore Water Supply* (supra) in 1978 authoritatively felt inclined towards laying down the expansive triple test, thereby walking the path of re-expansion, *Jai Bir Singh [5-J]* (supra) preferred to make a reference in 2002 and now, in 2026, the

[10] (2005) 5 SCC 1
[11] the referring judgment, wherever the context requires
[12] 1982 amendment

present 9-Judge Bench is constituted to reconsider all the precedents on the point and to settle the law, hopefully, once and for all.

<u>CONSTITUTION BENCH – A QUESTION OF WHAT, NOT HOW MANY</u>

6. *Jai Bir Singh [5-J]* (supra) opens by recording that the "*... appeal along with other connected cases has been listed before this Constitution Bench of five Judges on a reference made by a Bench of three Hon'ble Judges ...*". It is this reference to itself as a Constitution Bench that triggers the need for a clarification, given the fact that this 9-Judge Bench too is referred to in the "NOTE" portion of the cause-lists published for 17th, 18th and 19th March, 2026 (i.e., the days when the reference was heard) as a Constitution Bench.

7. Article 145 of the Constitution provides for "Rule of Court, etc". Clause (3) thereof stipulates the minimum number of judges who are to sit "*for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under Article 143*". On its own terms, the minimum number shall be five. The proviso to clause (3) guides the course of action where the Court, consisting of less than 5 (five) Judges may, refer the question arising for opinion in an appeal under the Part, other than an appeal under Article 132, to a Court to be constituted in terms of clause (3) upon recording the requisite satisfaction. Thus, it seems to be plain that a reference to a Constitution Bench can originate from clause (3), the strength of which shall not be less than five, when such reference necessarily involves either a <u>substantial question of law as to</u>

the interpretation of the Constitution or for the purpose of hearing any reference under Article 143 (emphasis supplied). Also, in a case covered by the proviso to clause (3) of Article 145, a Bench of 5 (five) Judges may be required to be constituted. Thus, it is only when a Bench consisting of no less than 5 (five) Judges is constituted in the scenarios contemplated in clause (3) of Article 145 can such Bench be validly regarded as a Constitution Bench.

8. Not every Bench of 5 (five) or more judges, therefore, is a Constitution Bench. As is evident from the preceding discussion, Article 145(3) makes the test one of subject matter: a minimum of 5 (five) Judges must sit only when the case involves "a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under Article 143". Cases covered by the proviso have an additional requirement. The determination of the substantial question of law as to the interpretation of this Constitution must be necessary for the disposal of the appeal. The strength alone does not satisfy the clause. Benches of 5 (five) or more could also be constituted for other reasons – to resolve conflicts of opinion between decisions of smaller Benches, to settle important questions of law (not necessarily requiring constitutional interpretation) or to reconsider the opinion of an earlier Bench of equal strength. This power flows from the Supreme Court's inherent jurisdiction and is regulated by Rule 2[13] of Order VI of the

[13] Where in the course of the hearing of any cause, appeal or other proceeding, the Bench considers that the matter should be dealt with by a larger Bench, it shall refer the matter to the Chief Justice, who shall thereupon constitute such a Bench for the hearing of it.

Supreme Court Rules, 2013[14]. Whenever a Bench doubts an earlier decision and refers the question requiring an answer to the Hon'ble the Chief Justice of India[15] for constitution of a "*larger Bench*" (emphasis supplied) and if, in fact, such larger Benches are constituted, such Benches though numerically large are not Constitution Benches within Article 145(3) unless a substantial question as to the interpretation of the Constitution arises for an answer. They are, properly, to be regarded as larger Benches. The difference is etymological: a Constitution Bench takes its name from the Constitution it interprets; a larger Bench takes its name from the size needed to settle precedent. To put it differently, a Constitution Bench speaks for the Constitution while a larger Bench speaks for certainty in the law. Thus, strength alone does not make a Bench a Constitution Bench.

9. It is important to remember that the power of this Court to interpret the Constitution is not dependent on the numerical strength of the Bench. As the guardian of the Constitution, even a Single Bench may interpret a constitutional provision where the issue arising so demands, yet, designating every bench of 5 (five) or more Judges as a Constitution Bench – irrespective of whether any constitutional question falls for determination – detracts from the term's constitutional purpose.

10. In the present reference, this Bench of 9 (nine) Judges is primarily tasked to decide a reference under Rule 2 of Order VI of the 2013 Rules

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[14] 2013 Rules
[15] Chief Justice

and, therefore, in the detailed opinion that follows, we would consciously not refer to any Bench consisting of 5 (five) or more Judges (which had the occasion to deal with the issue of meaning of the word "industry") as a Constitution Bench.

GENESIS OF THE REFERENCE

11. This Bench of 9 (nine) Judges has been constituted by the Chief Justice pursuant to the order dated 2nd January, 2017 of a bench of 7 (seven) Judges in *State of Uttar Pradesh v. Jai Bir Singh*[16] *[7-J]*. *Jai Bir Singh [7-J]* (supra), considering the serious and wide ranging implications of the issue that fell for determination as also the fact that serious doubts had been expressed in *Jai Bir Singh [5-J]* (supra) about the correctness of the view taken in ***Bangalore Water Supply*** (supra), was of the view that the said decision requires reconsideration and, accordingly, ordered the matter to be placed before the Chief Justice for constitution of a 9-Judge Bench.

12. The seed for the reference to the 5-Judge Bench, as aforesaid, was however sown by a Bench of 3 (three) Judges in its order dated 31st January, 2002 in *State of Uttar Pradesh v. Jai Bir Singh*[17] *[3-J]*. The said order reads as follows:

> Leave granted.
>
> One of the contentions which arises for consideration is whether the Social Forestery ("sic forestry") Department, which is a Welfare Scheme of the Government, is an 'Industry' or not? Our attention has been drawn to the two decisions of this Court. The first decision is reported as Chief Conservator of Forests and Anr. vs. Jagannath Maruti Kondhare and Anr.

[16] (2017) 3 SCC 311
[17] C.A. No. 897 of 2002

> (1996) 2 SCC 293 in which a three-Judge Bench of this Court held that the Forest department of the State was an 'Industry' even when it was undertaking a Welfare Scheme of Social Forestery ("sic forestry") Department. On the other hand, another Bench of this Court (though of two-Judges) in the case of State of Gujarat & Ors. vs. Pratamsingh Narsinh Parmar JT 2001 (3) SC 26 has taken a different view and has sought to distinguish the earlier decision in Chief Conservator of Forests case (supra). In our opinion, it is an important question of law as to whether the Welfare Scheme of the Government, like the Social Forestery ("sic forestry"), would be regarded as an 'Industry'. The matter is of considerable public importance, to be decided by a larger Bench. We, therefore, direct that the papers be laid before Hon'ble the Chief Justice for appropriate orders.
>
> In the meanwhile, we direct that the respondent would be reinstated w.e.f. 1st February, 2002 but for the time being no back wages need to be paid. Back wages will be subject to the outcome of the appeal.
>
> (underlining in original)

13. Prior to constitution of this 9-Judge Bench, a 3-Judge Bench presided over by the Chief Justice of India considered the issue of case management required for final hearing of the appeals connected with *Jai Bir Singh [3-J]* (supra). We find that by an order dated 16th February, 2026, the 3-Judge Bench framed certain issues for consideration of the 9-Judge Bench, presumably because no question was framed in the referring judgment by the 5-Judge Bench. The issues framed by the order dated 16th February, 2026 are reproduced hereunder:

> 1. The instant appeals have been referred to a Nine-Judge Bench to consider the correctness of the judgment rendered by a Seven-Judge Bench in Bangalore Water Supply and Sewerage Board vs. A. Rajappa, (1978) 2 SCC 213 and concomitantly to also re-consider the interpretation of the expression "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947 (for short, `the ID Act'). A Nine-Judge Bench, to be constituted by Hon'ble the Chief Justice of India separately, through an administrative order, in our considered opinion, will have to adjudicate the following broad issues:
>
> (i) Whether the test laid down in paragraphs 140 to 144 in the opinion rendered by Hon'ble Mr. Justice V.R. Krishna Iyer in Bangalore Water Supply and Sewerage Board's case (supra) to determine if an undertaking or enterprise falls within the definition of "industry" lays

> down correct law? And whether the Industrial Disputes (Amendment) Act, 1982 (which seemingly did not come into force) and the Industrial Relations Code, 2020 (with effect from 21.11.2025) have any legal impact on the interpretation of the expression "industry" as contained in the principal Act?
> (ii) Whether social welfare activities and schemes or other enterprises undertaken by the Government Departments or their instrumentalities can be construed to be "industrial activities" for the purpose of Section 2(j) of the ID Act?
> (iii) What State activities will be covered by the expression "sovereign function", and whether such activities will fall outside the purview of Section 2(j) of the ID Act?
> (iv) Any other issue(s) that may arise during the course of hearing before the Nine-Judge Bench.

BEYOND LABOUR LAW – A QUESTION OF CREDIBILITY

14. The long pendency of the reference arising out of ***Bangalore Water Supply*** (supra) and the uncertainty that has followed does adversely reflect on institutional resolve. Parliament's 1982 amendment to the ID Act sought to introduce a modified definition of "industry" in response to the Court's broad interpretation. Sadly, it was never brought into force. For years together, the amendment remained dormant creating uncertainty instead of settling the law. The later references in 2005 and 2017, both seeking reconsideration, only extended this period of indecision. As a result, there has been no final ruling and the legal position has remained unclear. Even when born of judicial caution, delay of this order diminishes the Court's institutional credibility.

15. If a settled precedent is doubted, the Court must offer a clear and workable alternative. Doubt, without direction, only compounds uncertainty. The law ought not to oscillate indeterminately, for, when a question of this magnitude remains undecided for decades, it erodes both the finality of judicial pronouncements and the stability an institution like this Court is meant to secure. Neither the mere passage of time nor the constitution of a 9-Judge Bench can, *ipso facto*, justify reopening settled law; yet, considerations of institutional credibility require this Bench to authoritatively settle, one way or the other, whether the interpretation of "industry" in ***Bangalore Water Supply*** (supra) should be left untouched or be diluted as ***Jai Bir Singh [5-J]*** advocates.

16. In fine, this Bench must do more than settle the meaning of "industry": it must restore confidence that the Court speaks with clarity, authority, and finality.

17. Bearing in mind that institutional credibility is non-negotiable, the lingering uncertainty around ***Bangalore Water Supply*** (supra) must now be set to rest.

WHAT DID *BANGALORE WATER SUPPLY* (SUPRA) PRECISELY LAY DOWN?

18. It would be most appropriate at this stage, to remind ourselves of what *Bangalore Water Supply* (supra) laid down. The conclusions from the lead judgment are quoted first, followed by a resume of what the other Hon'ble Judges in their respective opinions had expressed.

OPINION OF HON'BLE KRISHNA IYER, J. (FOR HIMSELF, HON'BLE BHAGWATI AND HON'BLE DESAI, JJ.)

19. Hon'ble Krishna Iyer, J. in *Bangalore Water Supply* (supra) summed up the discussion in the manner following:

I

140. 'Industry', as defined in Section 2(*j*) and explained in *Banerji*, 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 e.g. making, on a large scale *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 the 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."

II

141. Although Section 2(*j*) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach 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, 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 the 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

142. 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 workmen, the range off this statutory ideology must inform the reach of 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 (*vii*) other kindred adventures, if they fulfil the triple tests listed in I, cannot be exempted from the scope of Section 2(*j*).

(*b*) A restricted category of professions, clubs, co-operatives 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 centre 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 undertakings alone are exempt — not other generosity, compassion, developmental passion or project."

IV

143. *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 case*_(AIR 1963 SC 1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the *Corporation of Nagpur* 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."

(emphasis supplied)

CONCURRENCE OF HON'BLE BEG CJ.

20. Hon'ble Beg, CJ. while concurring with Hon'ble Krishna Iyer, J. observed that where statutory language is imprecise or admits of ambiguity, the Court may legitimately discharge a quasi-legislative function; however, such an exercise, must remain within well-defined limits so as not to trench upon the exclusive domain of the legislature. His Lordship appeared to favour a constructive and creative approach to interpretation, not dissimilar to that adopted by Lord Denning, albeit tempered by judicial restraint.

a) Hon'ble Beg, CJ. further opined that the judgment of Hon'ble Krishna Iyer, J. did not discard the earlier judicial tests for determining "industry", but rather reaffirmed those principles as enunciated in precedents such as *D. N. Banerji* (supra), *Corporation of the City of Nagpur* (supra), and *Hospital Mazdoor Sabha* (supra).

b) On the approach to statutory interpretation, Hon'ble Beg, CJ. underscored that where the literal meaning proves inadequate, the interpretative process must necessarily travel beyond the text, with the statute being read as a whole rather than in isolated fragments.

c) The inherently dynamic character of the term "industry", it was ruled, by Hon'ble Beg, CJ. is a concept that evolves in tandem with societal developments. Thus, modern welfare legislation such as the ID Act warrants a progressive, and not a narrow or pedantic, construction.

d) Hon'ble Beg, CJ. remarked upon the lack of precision and circular nature of the definition of "industry", particularly in view of the interdependence between "industry" and "workman" under Section 2(s). The definition was intended to serve as a guiding framework rather than an exhaustive delineation and did not predicate the existence of "industry" upon a profit motive.

e) Traditional canons of construction such as *ejusdem generis* and *noscitur a sociis* would not, according to Hon'ble Beg, CJ., furnish a complete or satisfactory solution. Expressions such as "manufacture" were indicative of processes in which employers are engaged, the concept of an "employer" necessarily presupposing employee.

f) Hon'ble Beg, CJ. cautioned against employing the phrase "analogous to industry" as a restrictive device and indicated that earlier narrow interpretations warranted reconsideration. Finally, His Lordship held that services governed by distinct constitutional or statutory regimes, particularly those under Articles 310 and 311 of the Constitution, ought to be excluded from the purview of "industry" by necessary implication. In conclusion, it was observed that the meaning of "industry" must be ascertained contextually, having due regard to the scheme and object of the ID Act, and confined to the purposes for which the legislation was enacted.

OPINION OF HON'BLE SINGH, J. (FOR HIMSELF AND HON'BLE TULZAPURKAR, J.)

21. Taking a nuanced stand, Hon'ble Singh, J. observed that the definition of "industry" ought to be confined to those activities which are systematically or habitually undertaken on commercial lines by private entrepreneurs, in cooperation with employees, for the production or distribution of goods or for rendering material services to the community or a section thereof.

a) Hon'ble Singh, J. took the view that such a definition would necessarily exclude charitable institutions, hospitals run on a charitable basis or as part of governmental or municipal functions, educational and research institutions, and liberal professions such as those of doctors, lawyers, and teachers. It was reasoned that in the case of such professions, the contribution of employees to the ultimate service rendered is minimal and cannot be said to constitute the product of meaningful cooperation between employer and employee.

b) In support of this restrictive construction, reliance was placed upon the judgment of Hon'ble Gajendragadkar, J. in *Hospital Mazdoor Sabha* (supra), wherein it was emphasised that a line must be drawn in a fair and reasonable manner within the wide statutory definition under Section 2(j), so as to exclude certain categories of services. Particular reference was made to services rendered in a purely personal, domestic, or casual capacity which, it was held, ought not to be brought within the sweep of the definition. Accordingly, it was cautioned that the words employed in Section 2(j) ought not to be accorded their widest possible meaning.

CONCURRENCE OF HON'BLE CHANDRACHUD, J.

22. In His Lordship's concurring opinion with Hon'ble Krishna Iyer, J. and Hon'ble Beg, CJ., Hon'ble Chandrachud, J. observed that His Lordship was unable to concur with the dissenting opinion of Hon'ble Singh and Hon'ble Tulzapurkar, JJ. While expressing partial disagreement with the decision in *Hospital Mazdoor Sabha* (supra), His Lordship acknowledged that the conclusion therein - that the J.J. Group of Hospitals managed by the State Government constituted an "industry" - was correctly arrived at. However, His Lordship did not approve of the judicially crafted exceptions engrafted upon the statutory definition in that decision.

a) Hon'ble Chandrachud, J. reiterated that the interpretative principle of *noscitur a sociis* stood expressly rejected by Hon'ble Gajendragadkar, J. in *Hospital Mazdoor Sabha* (supra). In that context, the interrelated statutory definitions of "industrial dispute" under Section 2(k), "wages" under Section 2(rr), "workman" under Section 2(s), and "employer" under Section 2(g), along with "public utility service" under Section 2(n), were required to be read conjointly and affirmed that it is the intrinsic character of the activity that determines whether it falls within Section 2(j), and not the existence of profit motive, capital investment, or a *quid pro quo* element, all of which were held to be irrelevant considerations.

b) At the same time, Hon'ble Chandrachud, J. noted that the Court, in *Hospital Mazdoor Sabha* (supra), had proceeded to carve out exclusions from the otherwise wide amplitude of Section 2(j) by delineating certain callings, services, or undertakings as falling outside its scope. Such an exercise, it was observed, was overly policy-oriented and more appropriately within the legislative domain. In particular, the exclusion of sovereign functions of the State was regarded as judicially unwarranted.

c) Hon'ble Chandrachud, J. proceeded to articulate that any activity which is systematically or habitually undertaken on commercial lines by private entrepreneurs, with the cooperation of employees, for the production or distribution of goods or for rendering material services to the community or a segment thereof, would fall within the ambit of an "undertaking" under Section 2(j).

d) According to Hon'ble Chandrachud, J., sovereign functions are not automatically excluded from Section 2(j); the decisive test is the nature of the activity, not the identity of the actor. Even inherently State activities like currency manufacture could qualify as an "industry" if hypothetically performed by private persons, as supported by the First Schedule and Section 2(n)(vi).

e) Consistent with this approach, Hon'ble Chandrachud, J. reiterated that the presence or absence of profit motive is immaterial in determining whether a given activity constitutes an "industry".

f) On the inclusion of professions, Hon'ble Chandrachud, J. held that liberal professions such as those of lawyers and doctors would also fall within the ambit of "industry". The test that the production of goods or material services must be the direct and proximate result of cooperation between employer and employee was characterised as inherently subjective and likely to engender uncertainty in the application of the law.

g) Hon'ble Chandrachud, J. also expressed agreement with the inclusion of clubs within the fold of "industry", broadly in line with the reasoning adopted by Hon'ble Krishna Iyer, J.

ARGUMENTS BY ATTORNEY GENERAL

23. Mr. Venkataramani, learned Attorney General for India, appearing for the Union of India, took us extensively through Jai Bir Singh [5-J] (supra) and sought to highlight the reasons for the reference. He submitted that the core principles laid down in *Bangalore Water Supply* (supra), viz. the triple test of systematic organised activity, employer-employee cooperation, and production or distribution of goods

and material services geared to satisfy human wants, represent a correct exposition of law under Section 2(j) of the ID Act and call for no reconsideration. He, however, urged that the application of the test requires caution. Charitable institutions, sovereign functions and State welfare schemes cannot be mechanically brought within the definition merely because they involve organised labour; such an approach would ignore the constitutional character of a modern welfare State. Further, he submitted that the un-notified 1982 Amendment (by which the Parliament indicated its disagreement with the expansive approach to define the term industry as proposed in *Bangalore Water Supply* (supra) and sought to narrow down the scope of the definition by excluding several welfare and non-commercial institutions) and the 2020 Code [which retains the triple test in principle, however excludes charitable/philanthropic institutions, sovereign government functions (including defence, atomic energy, space), domestic services and other activities notified by the Central Government] reflects the parliamentary intent to exclude non-commercial and welfare activities from the ambit of "industry". Even though the 1982 Amendment was not notified, it and the 2020 Code can still serve as an interpretative aid to understand legislative intent – which is a more restrictive reading of "industry". Next, it was submitted that social welfare activities and schemes undertaken by Government departments or their instrumentalities should not be construed as industrial activities. Lastly, as regards "sovereign function", after referring to various precedents, it was submitted that this Court has consistently refused to give an exhaustive definition of the word. Building on this argument, it was submitted that the same must remain flexible and not attempted to be exhaustively defined. At the same time, certain functions remain inherently and inalienably sovereign, forming the core attributes of Statehood, such as defence of the nation, maintenance of public order, administration of justice, legislative and policy-making functions, and matters relating to citizenship, passports, and other coercive or regulatory powers. Beyond this limited core, however, the classification of governmental activities must be contextual and capable of severability, bearing in mind the expanding role of the State in a welfare framework. The executive is best placed to identify such functions, subject to limited judicial review to prevent arbitrariness. In fine, while the triple test remains sound, its application must be tempered by legislative intent and constitutional context so that welfare and sovereign functions remain outside the purview of industrial adjudication under the Act.

PRELIMINARY OBJECTION TO THE REFERRING JUDGMENT, WHETHER VALID?

24. Ms. Indira Jaisingh, learned senior counsel, opposing the reference contended, at the outset, that there was no conflict of views between the opinions expressed in *Chief Conservator of Forests v. Jagannath Maruti Kondhare*[18] and *State of Gujarat v. Pratamsingh Narsinh Parmar*[19]. Though *Jai Bir Singh [3-J]* (supra) recorded that the latter

[18] (1996) 2 SCC 293
[19] (2001) 9 SCC 713

decision took a view different from the one in the former and distinguished it, the ground for such distinction, i.e., deficiency in pleadings, was not taken note of and, as such, no doubt was cast on the proposition laid down by the former decision. In any event, whether or not the Social Forestry Division could be regarded as an "industry" was the limited question that was referred by *Jai Bir Singh [3-J]* (supra) and not that *Bangalore Water Supply* (supra) requires reconsideration. According to her, *Jai Bir Singh [5-J]* (supra) while making a further reference to a 7-Judge Bench trenched beyond its jurisdiction and this Court ought to return the reference as incompetent.

25. This particular contention necessitates recording of a full and complete satisfaction that a conflict of opinion did exist, which required resolution by a larger Bench. Notwithstanding that a 9-Judge Bench is presently seized of the matter to reconsider the opinion expressed in *Bangalore Water Supply* (supra), we have to enter a caveat. In our considered opinion, any reference made by a Bench of lesser strength to a larger Bench in course of hearing a legal issue is in furtherance of and/or to facilitate the core judicial function of the apex court of the country to expound the law authoritatively for the same to be binding on all in terms of Article 141 of the Constitution. Indubitably, a reference to a larger Bench requires careful deliberation, not a casual or routine exercise. If the Bench referring an issue for reconsideration by a larger Bench, in its order of reference, fails to consider all relevant aspects and, consequently, the larger Bench hearing the reference finds the same to

be flawed and, thus, incompetent, it is well within the authority and competence of the larger Bench, upon hearing the parties, to return the reference without answering it. Merely because the reference has spiralled up to a larger Bench of 9 (nine) Judges over the years ought not to be considered an overriding factor, particularly when *Bangalore Water Supply* (supra) has held the field for a little less than half a century and a new legislation is in place today defining "industry" for the purpose of the 2020 Code, with effect from 7th February, 2026.

26. We find substance in the contention of Ms. Jaisingh that there was, indeed, no conflict between *Jagannath Maruti Kondhare* (supra) and *Pratamsingh Narsinh Parmar* (supra). This, we say, for the reason that the latter decision of a bench strength of 2 (two) Judges while neither doubting nor disputing the principle of law enunciated in the former decision of 3 (three) Judges held, on facts, that the principle so enunciated does not apply in the facts owing to omission on the part of the respondent in the civil appeal to assert relevant facts in his writ petition before the high court. We can do no better than reproduce the relevant paragraphs from *Pratamsingh Narsinh Parmar* (supra) hereunder:

> 5. If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes "an industry". Ordinarily, a department of the Government cannot be held to be an industry and rather it is a part of the sovereign function. To find out whether the respondent in the writ petition had made any assertion that with regard to the duty which he was discharging and with regard to the activities of the organisation where he had been recruited, we find that there has not been an iota of assertion to that effect though, no doubt, it has been

contended that the order of dismissal is vitiated for non-compliance with Section 25-F of the Act. The State in its counter-affidavit, on the other hand, refuted the assertion of the respondent in the writ petition and took the positive stand that the Forest Department cannot be held to be an industry so that the provisions of Section 25-F of the Act cannot have any application. In the absence of any assertion by the petitioner in the writ petition indicating the nature of duty discharged by the petitioner as well as the job of the establishment where he had been recruited, the High Court wholly erred in law in applying the principles enunciated in the judgment of this Court in *Jagannath Maruti Kondhare* to hold that the Forest Department could be held to be "an industry".

6. The learned Single Judge as well as the Division Bench of the High Court have failed to carefully examine the ratio of this Court's judgment in *Jagannath Maruti Kondhare case* inasmuch as in para 15 of the said judgment, the Court has quoted the assertions made in the affidavit of the Chief Conservator of Forests and then in para 17, the Court held that the scheme undertaken cannot be regarded as a part of the sovereign function of the State. We are afraid that the aforesaid decision cannot have any application to the facts of the present case where there has not been any assertion of fact by the petitioner in establishing that the establishment to which he had been appointed is "an industry". In this view of the matter, we have no hesitation to come to the conclusion that the learned Single Judge as well as the Division Bench committed serious error of law in holding that to the appointment in question, the provisions of the Act apply. We would accordingly set aside the judgment of the Division Bench as well as that of the learned Single Judge and hold that the writ petition would stand dismissed.

(emphasis supplied)

27. A reading of the above passages would leave none in doubt that the principle of law laid down in *Jagannath Maruti Kondhare* (supra) was not applied in *Pratamsingh Narsinh Parmar* (supra) because of deficient pleadings. The 2-Judge Bench in *Pratamsingh Narsinh Parmar* (supra) was perfectly justified in its approach having regard to the settled law that one additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts. *Jai Bir Singh [3-J]* (supra) though did not advert to any existing conflict of opinion, required the larger Bench's consideration limited to the point indicated in such

order, i.e., whether the Welfare Scheme of the Government, like the Social Forestery, would be regarded as an industry.

28. Nonetheless, once the matter moved to the larger Bench in *Jai Bir Singh [5-J]* (supra), it did not restrict its scrutiny to the point referred but broadened the scope of discussion not strictly in line with what was referred. The opening paragraphs of the referring judgment read as follows:

> 1. This present appeal along with other connected cases has been listed before this Constitution Bench of five Judges on a reference made by a Bench of three Hon'ble Judges of this Court finding an apparent conflict between the decisions of two Benches of this Court in the cases of *Chief Conservator of Forests* v. *Jagannath Maruti Kondhare* of *three Judges* and *State of Gujarat* v. *Pratamsingh Narsinh Parmar* of *two Judges*.
> 2. On the question of whether "Social Forestry Department" of State, which is a welfare scheme undertaken for improvement of the environment, would be covered by the definition of "industry" under Section 2(*j*) of the Industrial Disputes Act, 1947, <u>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 & Sewerage Board* v. *A. Rajappa*</u> (shortly hereinafter referred to as *Bangalore Water case*). <u>The Bench of three Judges</u> in the case of *Chief Conservator of Forests* v. *Jagannath Maruti Kondhare* <u>based on the decision of *Bangalore Water 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* took a different view</u>.
> 3. 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*, the present case along with the other connected cases, in which correctness of the decision in the case of *Bangalore Water* is doubted, has been placed before this Bench.
>
> (emphasis supplied)

29. We may, at once, notice that from the very inception, *Jai Bir Singh [5-J]* (supra) proceeded on the premise as if there was a cleavage of opinion between *Jagannath Maruti Kondhare* (supra) and *Pratamsingh Narsinh Parmar* (supra) which, for reasons assigned in the aforesaid paragraphs, is incorrect.

30. The preliminary objection of Ms. Jaisingh, therefore, appears to be of substance and valid.

REFERRING JUDGMENT – OTHER REASONS FOR THE REFERENCE

31. *Jai Bir Singh [5-J]* (supra), thereafter, proceeded to assign multiple reasons why *Bangalore Water Supply* (supra) merits reconsideration. Rather than extensively quoting from the opinion expressed in the referring judgment, we consider it appropriate to encapsulate the same hereunder:

(i) The decision in *Bangalore Water Supply* (supra) is not based on the unanimous opinion of the Judges comprising the Bench. The majority comprised of 5 (five) Judges. While 3 (three) Judges had agreed to a common opinion, 2 (two) of the Judges comprising the majority had given separate opinions projecting a view partly different from the views expressed in the common opinion. Hon'ble Beg, CJ., who was presiding over the Bench having retired, had no opportunity to see the opinions delivered by the other Judges subsequent to his retirement. The author of the lead opinion (Hon'ble Krishna Iyer, J.) and the two Judges (Hon'ble Bhagwati and Hon'ble Desai, JJ.) who spoke through him did not have the benefit of the dissenting opinion of the other two Judges (Hon'ble Singh and Hon'ble Tulzapurkar, JJ.) and the separate partly dissenting opinion of another Judge (Hon'ble Chandrachud, J.), as those opinions were prepared and delivered subsequent to the delivery of the judgment in *Bangalore Water Supply* (supra). In such a situation, the referring judgment opined that it is difficult to ascertain whether the opinion of Hon'ble Krishna Iyer, J. given on his own behalf and on behalf of Hon'ble Bhagwati and Hon'ble Desai, JJ., can be held to be an authoritative precedent which would require no reconsideration even though the Judges themselves expressed 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.

(ii) The worker-oriented approach in construing the definition of "industry" by the Bench in *Bangalore Water Supply* (supra), unmindful of the interest of the employer or the owner of the industry and the public, who are the ultimate beneficiaries, is a one-sided approach and not in accordance with the ID Act.

(iii) The notion of sovereign functions ought to expand to encompass public welfare initiatives undertaken by the Government in fulfilment of its constitutional responsibilities, thereby excluding them from the ambit of "industry". Despite the 1982 Amendment having amended the definition of "industry", the amended definition remains unenforced, perpetuating uncertainty. The judicial interpretation of the term "industry" in *Bangalore Water Supply* (supra) appears to be a hindrance to implement the amended definition. Bearing in mind the object of the ID Act, interpretation of the word "industry" must be a balanced one having regard to the interest of the workers, the employers as well as the public.

(iv) The view expressed by a 6-Judge Bench in *Safdarjung Hospital* (supra) [which was overruled in *Bangalore Water Supply* (supra)] was unanimous. It was held in *Safdarjung Hospital* (supra) that although profit motive is irrelevant, in order to encompass the activity within "industry" the "activity must be analogous to trade or business in a commercial sense" and mere enumeration of "public utility service" in Section 2(n) of the ID Act read with the First Schedule thereof should not be held decisive. This interpretation was affirmed, suggesting that *Bangalore Water Supply* (supra), not being a unanimous decision, was not quite right in overruling *Safdarjung Hospital* (supra).

(v) In *Coir Board, Ernakulam v. Indira Devi P.S.*[20] *[2-J]*, an order for reference to a larger bench of more than 7 (seven) Judges was made to reconsider *Bangalore Water Supply* (supra). A Bench presided over by the Chief Justice, however, expressed in *Coir Board Ernakulam State Kerala v. Indira Devai P.S.*[21] *[3-J]* that, in its opinion, *Bangalore Water Supply* (supra) does not require any reconsideration on a reference being made by a 2-Judge Bench, which is bound by the larger Bench judgment. Thus, the reference sought by the bench of two Judges to a larger Bench of more than 7 (seven) Judges was declined in *Coir Board Ernakulam [3-J]* (supra). The workers argued before *Jai Bir Singh [5-J]* (supra) that

[20] (1998) 3 SCC 259
[21] (2000) 1 SCC 224

the observations in paragraph 19 of *Coir Board Ernakulam [2-J]* (supra) were unsupported by any material on record. However, *Jai Bir Singh [5-J]* (supra) rejected this criticism and held that the observations in *Coir Board Ernakulam [2-J]* (supra) did have a valid basis. Further, it was held that 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 before it through the Labour Courts. According to *Jai Bir Singh [5-J]* (supra), past experience indicated the majority view in *Bangalore Water Supply* (supra) having led to numerous awards passed by industrial tribunals/labour courts favouring reinstatement of workmen and significant amounts on account of back wages, ultimately forcing employers with limited resources to shut down, adversely affecting employers, workers and the public.

(vi) Though the legislature, subsequent to *Bangalore Water Supply* (supra), amended the definition of the word "industry", 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 (twenty-three) years, has remained dormant. It was pointed out to the Bench, as recorded in paragraph 8 of the referring judgment, that *"... earlier an attempt was made to seek enforcement of the amended Act through this Court"* and reference was made to *Aeltemesh Rein* v. *Union of India*[22]. The referring judgment records, the Union came forward with an

[22] (1988) 4 SCC 54

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. 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, were seen as compelling reasons in *Jai Bir Singh [5-J]* (supra) to make the reference (see: paragraph 45).

WHEN CAN A REFERENCE BE MADE TO A LARGER BENCH – JUDICIAL GUIDANCE

32. It is considered apposite to first refer to *Keshav Mills Co. Ltd. v. CIT*[23] *[7-J]*, a precedent which was available for *Jai Bir Singh [5-J]* (supra) to follow. Certain principles were enunciated in *Keshav Mills Co. Ltd.* (supra) with regard to what constitutes grounds for a valid reference or review of prior decisions of the Supreme Court. Arising out of a tax matter, this Court rejected the revenue's contention that its earlier decisions in ***New Jehangir Vakil Mills v. CIT***[24] ***[2-J]*** and ***Petlad Turkey Red Dye Co. Ltd, Petlad v. CIT***[25] ***[5-J]*** required reconsideration. In so rejecting, Hon'ble Gajendragadkar, CJ. speaking for the 7-Judge Bench held that:

> 23. In dealing with the question as to whether the earlier decisions of this Court in *New Jehangir Mills case* [AIR 1959 SC 1177], and *Petlad Co. Ltd. case* [AIR 1963 SC 1484] should be reconsidered and revised by us, we

[23] AIR 1965 SC 1636
[24] AIR 1959 SC 1177
[25] AIR 1963 SC 1484

ought to be clear as to the approach which should be adopted in such cases. Mr Palkhivala has not disputed the fact that in a proper case, this Court has inherent jurisdiction to reconsider and revise its earlier decisions, and so, the abstract question as to whether such a power vests in this Court or not need not detain us. In exercising this inherent power, however, this Court would naturally like to impose certain reasonable limitations and would be reluctant to entertain pleas for the reconsideration and revision of its earlier decisions, unless it is satisfied that there are compelling and substantial reasons to do so. It is general judicial experience that in matters of law involving questions of construing statutory or constitutional provisions, two views are often reasonably possible and when judicial approach has to make a choice between the two reasonably possible views, the process of decision making is often very difficult and delicate. When this Court hears appeals against decisions of the High Courts and is required to consider the propriety or correctness of the view taken by the High Courts on any point of law, it would be open to this Court to hold that though the view taken by the High Court is reasonably possible, the alternative view which is also reasonably possible is better and should be preferred. In such a case, the choice is between the view taken by the High Court whose judgment is under appeal, and the alternative view which appears to this Court to be more reasonable; and in accepting its own view in preference to that of the High Court, this Court would be discharging its duty as a court of appeal. But different considerations must inevitably arise where a previous decision of this Court has taken a particular view as to the construction of a statutory provision as, for instance, Section 66(4) of the Act. When it is urged that the view already taken by this Court should be reviewed and revised, it may not necessarily be an adequate reason for such review and revision to hold that though the earlier view is a reasonably possible view, the alternative view which is pressed on the subsequent occasion is more reasonable. In reviewing and revising its earlier decision, this Court should ask itself whether in the interests of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised. When this Court decides questions of law, its decisions are, under Article 141, binding on all courts within the territory of India, and so, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the Court must be satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions. It would always depend upon several relevant considerations:—What is the nature of the infirmity or error on which a plea for a review and revision of the earlier view is based? On the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to

> any relevant and material statutory provision, or was any previous decision of this Court bearing on the point not noticed? Is the Court hearing such plea fairly unanimous that there is such an error in the earlier view? What would be the impact of the error on the general administration of law or on public good? Has the earlier decision been followed on subsequent occasions either by this Court or by the High Courts? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief? These and other relevant considerations must be carefully borne in mind whenever this Court is called upon to exercise its jurisdiction to review and revise its earlier decisions. These considerations become still more significant when the earlier decision happens to be a unanimous decision of a Bench of five learned Judges of this Court.
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> ****
>
> 25. .... The principle of stare decisis, no doubt, cannot be pressed into service in cases where the jurisdiction of this Court to reconsider and revise its earlier decisions is invoked; but nevertheless, the normal principle that judgments pronounced by this Court would be final, cannot be ignored, and unless considerations of a substantial and compelling character make it necessary to do so, this Court should and would be reluctant to review and revise its earlier decisions. ....
>
> (emphasis supplied)

33. The *ratio decidendi*, when culled out, is that for revising or reviewing its earlier decisions multifarious considerations must arise which *inter alia* include i) whether it is in the interests of public good; ii) the nature of the infirmity or error on which a plea for a review or revision of the earlier view is based; iii) whether the earlier decision has been followed on subsequent occasions by the Supreme Court or the High Courts; iv) whether on the earlier occasion some patent aspects of the question before the Court remained unnoticed; and v) would the reversal of earlier decision result in public inconvenience, hardship or mischief. Furthermore, the Court held that it is imperative on it to maintain a certain degree of certainty, consistency and continuity in the interpretation of law in the country. Therefore, before a previous decision is pronounced to be erroneous, the Court must be satisfied that

a revision of such a decision is justified and there are valid and compelling reasons for the same.

34. Not too long ago, in ***Dr Shah Faesal v. Union of India***[26] ***[5-J]***, a specific issue was framed:

*"**16.1.**(i) When can a matter be referred to a larger Bench?"*

In answer thereto, this Court speaking through Hon'ble N.V. Ramana, CJ. observed:

> 17. This Court's jurisprudence has shown that usually the courts do not overrule the established precedents unless there is a social, constitutional or economic change mandating such a development. The numbers themselves speak of restraint and the value this Court attaches to the doctrine of precedent. This Court regards the use of precedent as indispensable bedrock upon which this Court renders justice. The use of such precedents, to some extent, creates certainty upon which individuals can rely and conduct their affairs. It also creates a basis for the development of the rule of law. As the Chief Justice of the Supreme Court of the United States, John Roberts observed during his Senate confirmation hearing, "*It is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and even-handedness*". [Congressional Record—Senate, Vol. 156, Pt. 7, 10018 (7-6-2010).]
>
> 18. Doctrines of precedents and stare decisis are the core values of our legal system. They form the tools which further the goal of certainty, stability and continuity in our legal system. Arguably, Judges owe a duty to the concept of certainty of law, therefore they often justify their holdings by relying upon the established tenets of law.
>
> 19. When a decision is rendered by this Court, it acquires a reliance interest and the society organises itself based on the present legal order. <u>When substantial judicial time and resources are spent on references, the same should not be made in a casual or cavalier manner.</u> <u>It is only when a proposition is contradicted by a subsequent judgment of the same Bench, or it is shown that the proposition laid down has become unworkable or contrary to a well-established principle, that a reference will be made to a larger Bench</u>. ...

(emphasis supplied)

[26] (2020) 4 SCC 1

35. This Court cautioned that a reference *"should not be made in a casual or cavalier manner"* and, *inter alia*, should be made only when it is shown that the proposition laid down in a case has become unworkable or is contrary to a well-established principle.

36. A few months before the decision in *Shah Faesal* (supra), this Court in *Srimanth Balasaheb Patil v. Speaker, Karnataka Legislative Assembly*[27] *[3-J]* had reiterated the same law. It was held:

> **157.** There is no doubt that the requirements under Article 145(3) of the Constitution have never been dealt with extensively and, more often than not, have received mere lip service, wherein this Court has found existence of case laws which have already dealt with the proposition involved, and have rejected such references. Normatively, this trend requires consideration in appropriate cases, to ensure that unmeritorious references do not unnecessarily consume precious judicial time in the Supreme Court.
>
> **158.** In any case, we feel that there is a requirement to provide a preliminary analysis with respect to the interpretation of this provision. In this context, we need to keep in mind two important phrases occurring in Article 145(3) of the Constitution, which are, "substantial question of law" and "interpretation of the Constitution". By reading the aforesaid provision, two conditions can be culled out before a reference is made:
>
> (*i*) The Court is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution;
>
> (*ii*) The determination of which is necessary for the disposal of the case.
>
> 159. We may state that we are not persuaded for referring the present case to a larger Bench as the mandate of the aforesaid Article is that this Court needs to be satisfied as to the existence of a substantial question of law on the constitutional interpretation. However, this does not mean that every case of constitutional interpretation should be compulsorily referred to a Constitutional Bench.
>
> 160. Any question of law of general importance arising incidentally, or any ancillary question of law having no significance to the final outcome, cannot be considered as a substantial question of law. The existence of substantial question of law does not weigh on the stakes involved in the case, rather, it depends on the impact the question of law will have on the final determination. If the questions having a determining effect on the final outcome have already been decided by a conclusive authority, then such questions cannot be called as "substantial questions of law". In any case, no substantial question of law exists in the present matter, which needs reference to a larger Bench. The cardinal need is to achieve a judicial

[27] (2020) 2 SCC 595

balance between the crucial obligation to render justice and the compelling necessity of avoiding prolongation of any lis.

(emphasis supplied)

37. In short, the Court emphasized that references to a larger Bench (for matters involving substantial question of law as to interpretation of Constitution) should be made only in exceptional circumstances and not as a matter of routine. It cautioned that unmeritorious references unnecessarily consume judicial time. Moreover, a question that has already been settled by an authoritative decision cannot be regarded as a substantial question of law.

EXAMINING *JAI BIR SINGH [5-J]* – A FALTERING REFERENCE

38. We have the highest of regard for the Hon'ble Judges who comprised the Bench in *Jai Bir Singh [5-J]* (supra). Nonetheless, upon threadbare examination of the referring judgment, we cannot but regret our inability to concur therewith. None of the reasons noted above appear to us at all convincing and/or compelling requiring a reference to be made. For reasons more than one, the referring judgment is not free from fundamental flaws. Painfully, we venture to say why each of the reasons assigned by the 5-Judge Bench, noted by us in the six sub-paragraphs of paragraph 31, are not justified and/or acceptable. Our answers are given hereunder, *seriatim*.

(i) Decision in *Bangalore Water Supply* (supra), not unanimous?

a) It seems that *Jai Bir Singh [5-J]* (supra) missed the woods for the tree. A major portion of the referring judgment (paragraphs 11 to 21) is devoted to the thought process germinating in the mistaken conclusion that *Bangalore Water Supply* (supra) was not a unanimous decision. The judgment in *Bangalore Water Supply* (supra) was pronounced on 21st February, 1978, a day prior to Hon'ble Beg, CJ. demitting office. Hon'ble Krishna Iyer, J. pronounced the lead judgment speaking for himself, as well as Hon'ble Bhagwati and Hon'ble Desai, JJ. Hon'ble Beg, CJ. also pronounced his supplementing/concurring judgment. From the opening paragraph of the judgment of Hon'ble Chandrachud, J. pronounced on 7th April, 1978 [paragraph 171 of the SCC report], it is found that His Lordship on 21st February, 1978 had dictated a short order on behalf of himself and his brethren, Hon'ble Singh and Hon'ble Tulzapurkar, JJ. [referred to in paragraph 170 of the SCC report] expressing agreement with the views of Hon'ble Krishna Iyer, J. and Hon'ble Beg, CJ. that the appeal of Bangalore Water Supply and Sewerage Board be dismissed. It was also recorded that the area of concurrence or divergence with the rest of the judgment, if necessary, would be indicated later. It was only on 7th April, 1978, much after Hon'ble Beg, CJ. had demitted office, that the judgments penned by Hon'ble Chandrachud, J. for himself and Hon'ble Singh, J. (for himself and Hon'ble Tulzapurkar, J.) were placed in the public domain. The opinion of Hon'ble Singh, J. was circulated first among the Hon'ble Judges, as it appears from the opinion of Hon'ble Chandrachud, J. His Lordship noticed "*divergent views expressed by Jaswant Singh and Tulzapurkar, JJ. on certain aspects of the matter*" and having "*given a further thought to the frustrating question as to what falls within and without*" the statutory concept of "industry", was "*unable to accept the basis on which Jaswant Singh and Tulzapurkar, JJ. have expressed their dissent*". Significantly, neither did Hon'ble Chandrachud, J. nor Hon'ble Singh, J. disagree with either Hon'ble Krishna Iyer, J. or Hon'ble Beg, CJ. insofar as the outcome (read: dismissal) of the appeal before the 7-Judge Bench.

b) Each Hon'ble Judge being a member of a Bench of the apex court has the freedom to express his own view regarding a specific question. It is well-nigh conceivable that multiple Judges on the Bench may arrive at a conclusion, which is congruent, but the line of thinking, the analytical pathways and the underlying reasoning employed to attain it exhibit some degree of variability. Therefore, in essence, disparate approaches could yield a singular, concordant result. Different shades of interpretation of the definition of "industry" by the Hon'ble Judges and the reasoning given in each of the individual opinions for reaching the same conclusion of the appeal deserving dismissal notwithstanding, to emphatically state that the 7-Judge Bench was divided in its opinion [with Hon'ble Krishna Iyer, J. speaking for the majority and Hon'ble Singh, J. speaking for the minority] or that Hon'ble Chandrachud, J., on the one hand, partly dissented with the majority and, on the other, that Hon'ble Singh and Hon'ble Tulzapurkar, JJ. dissented with the majority is, in our appreciation and analysis of what is evident, narration of a version of events that seem to diverge from factual accuracy. The starting point of discussion in *Jai Bir Singh [5-J]* (supra) [after the first three paragraphs which missed noting that there was no cleavage of opinion (as demonstrated above)] took off at a tangent, ignoring what was so very vital and important: the opening words of Hon'ble Chandrachud, J.'s opinion. In fact, it is conspicuous by its absence in the referring judgment. Thus, the very foundation of the referring judgment is tenuous and, unwittingly, has yielded an undesirable outcome of *Bangalore Water Supply* (supra) being doubted based on an untenable reason (emphasis supplied).

c) Discussion in the referring judgment to drive home the point that the judgment of Hon'ble Krishna Iyer, J. and the concurring opinion of Hon'ble Beg, CJ. were rendered without looking into the opinions of Hon'ble Chandrachud, J. and Hon'ble Singh, J. is, in our opinion, wholly irrelevant and serves no purpose at all for doubting the efficacy of *Bangalore Water Supply* (supra) as a binding precedent. It does not appear from the opinions of Hon'ble Chandrachud, J. and Hon'ble Singh, J., rendered subsequently, that Their Lordships had no occasion to peruse the judgment of Hon'ble Krishna Iyer, J. and the concurring opinion of Hon'ble Beg, CJ. before the same were pronounced. Their Lordships might have had genuine reasons impeding rendering of the respective opinions by 21st February, 1978; but any delayed rendering of opinions by Their

Lordships could not have formed the basis of a reference on the specious ground that neither Hon'ble Krishna Iyer, J. nor Hon'ble Beg, CJ. had the occasion to peruse such subsequent opinions.

d) Quite apart, labelling the judgment of Hon'ble Krishna Iyer, J. in *Bangalore Water Supply* (supra) as not unanimous and critically viewing it in light of the reasons assigned by Hon'ble Singh, J. for himself and Hon'ble Tulzapurkar, J. for expressing disagreement, and not doubt, with the purpose of making a reference for a reconsideration of the meaning of "industry" as propounded in *Bangalore Water Supply* (supra) proceeds on a patent ignorance of the dictum in *Union of India v. Raghubir Singh*[28] read with Article 145(5) of the Constitution.

e) Law seems to be well settled that it is the numerical strength of the Bench that matters and not whether an Hon'ble Judge or a couple of Hon'ble Judges on the Bench has/have differed forming the minority. <u>*Bangalore Water Supply* (supra) has to be seen as the judgment of a 7-Judge Bench and not as a split verdict</u> (emphasis supplied). This, possibly escaped the attention of the 5-Judge Bench.

f) To find a precedent, one need not travel too far back. *Aligarh Muslim University v. Naresh Agarwal*[29] is a decision of fairly recent origin where a 7-Judge Bench overruled *S. Azeez Basha v. Union of India*[30], a unanimous decision rendered by a 5-Judge

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[28] (1989) 2 SCC 754
[29] (2025) 6 SCC 1
[30] AIR 1968 SC 662

Bench. Incidentally, *Aligarh Muslim University* (supra) was decided by a majority of 4:3 and, thus, factually 4 (four) Hon'ble Judges overruled a unanimous 5-Judge Bench decision; yet, in law, the effect is that *Aligarh Muslim University* (supra) has to be seen as overruling the unanimous 5-Judge Bench decision in *S. Azeez Basha (supra)* because of the strength of the Bench (seven).

g) *Per* the law as it stands now, the numerical strength of the Bench irrespective of the differences in reasoning adopted by the Hon'ble Judges comprising such bench would be determinative of the binding nature of a judgment and not the number of Judges comprising the majority.

(ii) Worker-oriented approach?

a) A judgment should not and cannot be characterised as "worker-oriented", merely because its ultimate outcome happens to favour the working class. It is axiomatic that judicial determinations are founded on reasons; it is those reasons that sustain the conclusion. Where the reasons are sound, the ultimate conclusion has to be respected and not viewed with reproach simply because it follows a particular path. The proper course, if at all the judgment is to be doubted, is to test the reasoning on which the conclusion rests and then to explain why it calls for reconsideration. To question a judgment solely on the ground that its outcome is labour-centric is, in our considered view, not only untenable but an egregious breach of Article 141 discipline. Be that as it may!

b) The criticism of the opinion penned by Hon'ble Krishna Iyer, J. in *Jai Bir Singh [5-J]* (supra) as evincing a one-sided approach in favour of the workers, with respect, fails to comprehend that the ID Act is a social welfare legislation. Construing such a legislation in favour of labour is a settled canon. To fault *Bangalore Water Supply* (supra) for taking such a view is to fault the statute itself, which amounts to a glaring error of interpretive method.

c) The referring judgment also does not take into account precedents of this Court acknowledging that the ID Act is a social welfare legislation, which has been enacted in the interest of workmen.

d) *Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd.*[31] is a reminder of the settled law that in construing the provisions of a welfare legislation like the ID Act, the Courts should adopt what is described as a beneficent rule of construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the enactment and is more beneficial to the employees, has to be preferred. It was also emphasized that the ID Act, which intends to improve and safeguard the service conditions of an employee, demands an interpretation liberal enough to achieve the legislative purpose.

[31] (1973) 1 SCC 813

e) In *Workmen of Indian Standards Institution v. Management of Indian Standards Institution*[32] *[3-J]*, speaking for the majority, Hon'ble Bhagwati, J. after considering *Safdarjung Hospital* (supra) highlighted that the ID Act is a legislation intended to bring about peace and harmony between management and labour in an "industry" so that production does not suffer and at the same time, labour is not exploited and discontented; therefore, the tests must be so applied as to give the widest possible connotation to the term "industry". It was also observed that whenever a question arises whether a particular concern is an "industry", the approach must be broad and liberal and not rigid or doctrinaire; such an interpretation ought to be made which would advance the object and purpose of the legislation and give full meaning and effect to it in the achievement of its avowed social objective.

f) A few months before the referring judgment was delivered, this Court in *Steel Authority of India Ltd. v National Union Waterfront Workers*[33] *[5-J]*, though dealing with a different labour legislation, propounded that after the advent of the Constitution of India, the State is under an obligation to improve the lot of the workforce. Referring to Article 23 (prohibiting, inter alia, *begar* and other similar forms of forced labour), Article 38

[32] (1975) 2 SCC 847
[33] (2001) 7 SCC 1

(mandating the State to secure a social order for promotion of welfare of the people and to establish an egalitarian society), Article 39 (enumerating the principles of policy of the State which include welfare measures for the workers), Article 43 (requiring the State to endeavour to secure, by a suitable legislation or economic organisation or in any other way for all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities), Article 43-A (enjoining the State to take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishment, or other organisations engaged in any industry) and Articles 14 and 16 enshrining the guarantee of equality before law and equality of opportunity in public employment, with the Preamble to the Constitution as the lodestar guiding those who find themselves in a grey area while dealing with and interpreting a beneficial legislation enacted to give effect to the Directive Principles of State Policy which is otherwise constitutionally valid, it was held that the consideration of the Court cannot be divorced from those objectives. Should there be any ambiguity in the language of a beneficial labour legislation, the 5-Judge Bench was emphatically unanimous that the Courts have to resolve the quandary in favour of conferment of, rather than denial of, a benefit on the labour by the legislature but without rewriting and/or doing violence to the provisions of the enactment.

g) Notwithstanding the aforesaid observations, if one were to proceed further on this path of enquiring into what the ID Act ought to signify in terms of its perceived policy objectives, i.e., whether worker-centric or employer-centric, this Court would, in effect, be treading the very ground that invites criticism of the approach adopted in the referring judgment, as can be evinced from the paragraphs below:

> 32. In the judgment of *Bangalore Water* [(1978) 2 SCC 213:1978 SCC (L&S) 215] 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*."
>
> (emphasis supplied in original)
>
> 33. <u>With utmost respect, the statute under consideration cannot be looked at only as a worker-oriented statute</u>. 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 social harmony. The definition clause read with other provisions of the Act under consideration deserves interpretation keeping in 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. <u>The Act under consideration 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</u>. In interpreting, therefore, the industrial law, which aims 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.
>
> (emphasis supplied)

h) In this context, it must be observed that the decision in *Bangalore Water Supply* (supra) could not have been subjected to reconsideration in a reference merely on the basis of a perceived need to substitute the policy view that informed it. The exercise of reference jurisdiction is intended to correct defects in reasoning, not disagreement with policy. To entertain such a judicial course would be to traverse *de hors* the settled confines of judicial discipline, which proscribes questioning a precedent solely on the ground that an alternative policy perspective may seem more desirable.

i) Viewed through the prism of the above-referred decisions [referred to in sub-paragraphs (d) to (f)] and many others, which are not referred to here (to avoid prolixity), and considering the objective of the ID Act, we disagree with the departure made in the referring judgment from the earlier liberal interpretation without proper justification. The only justification that can reasonably be traced is to protect the industry, and by extension the employer. We propose to discuss these facets a little later while dealing with the sixth reason. In any event, the shift appears unwarranted given the way this Court previously interpreted legislations origin whereof is traceable to the Directive Principles of State Policy.

(iii) Sovereign Functions

a) In our view, the continued invocation of the idea of "sovereign functions" as a threshold device to exclude an activity from the definition of "industry" is misplaced. In *Bangalore Water Supply* (supra), Hon'ble Krishna Iyer, J. did recognise a limited exception for sovereign functions, but the judgment itself shows the difficulty in defining what exactly falls within that category. Furthermore, Hon'ble Krishna Iyer, J. had also acknowledged in his opinion that even the inalienable functions of the State might have some elements of "industry", which could be severable so as to bring them within the ambit of "industry" under Section 2(j)[34].

b) This lack of clarity was later noticed in the referring judgment, where it was pointed out that there was no unanimity amongst the Hon'ble Judges on the meaning and contours of "sovereign functions". Hon'ble Beg, CJ., in fact, expressed doubt about the use of the term altogether and suggested that exclusion should depend only on whether a service is governed by distinct constitutional or statutory rules, such as those under Articles 310 and 311 of the Constitution[35]. Hon'ble Chandrachud, J. went a step further and opined that sovereign function did not call for any exemption from the definition of "industry". His Lordship held that it is the nature of the activity that matters, not the identity of the employer. If an activity would be an industry when carried on by a private person, it does not cease to be so merely because it is undertaken by the State[36].

[34] [see paragraph 143(b) of *Bangalore Water Supply* (supra)].
[35] [see paragraph 163 of *Bangalore Water Supply* (supra)].
[36] [see paragraph 179 of *Bangalore Water Supply* (supra)].

c) The said reasoning is also fortified by the scheme of the ID Act itself. The First Schedule [which provides for a list of "industries which may be declared to be public utility services under sub-clause (vi) of clause (n) of section 2" when "public emergency or public interest so requires"] includes *industries* (emphasis supplied) such as "Defence establishment" (Entry 8), Fire Brigade Service (Entry 10), India Government Mints (Entry 11), India Security Press (Entry 12), Service in the Uranium industry (Entry 19) and Services in the Bank Note Press, Dewas (Entry 22) – areas which are ordinarily understood as sovereign functions. The legislative intent is clear and unequivocal. The legislature did not intend to exclude industries associated with sovereign functions from the definition of "industry".

d) These inclusions predate *Bangalore Water Supply* (supra). However, the legislative interventions that ensued the judgment further accentuate the same intent. Notably, these include the Currency Note Press (Entry 25), Services in the International Airports Authority of India (Entry 27), and Industrial establishments manufacturing or producing Nuclear Fuel and components, Heavy Water and Allied Chemicals and Atomic Energy (Entry 28).

e) This shows that the legislature did not intend to exclude such activities merely because they are performed by the State. The arguments noticed in the referring judgment, which seek either to expand "sovereign functions" to cover all welfare activities or to confine it narrowly to inalienable functions, only highlight the confusion surrounding the concept. In either case, what is "inalienable functions" becomes uncertain and subjective.

f) For these reasons, we are of the view that whether an activity is described as a "sovereign function" has little relevance in determining if it is an "industry" under Section 2(j). The correct approach, therefore, is to apply the functional test laid down in *Bangalore Water Supply* (supra), focusing on the nature of the activity and the employer-employee relationship. Any exclusion must emanate from a clear constitutional or statutory provision, and not from an uncertain and undefined notion of sovereignty.

(iv) Decision in *Safdarjung Hospital* (supra)

a) *Safdarjung Hospital* (supra) was expressly overruled by *Bangalore Water Supply* (supra) but, according to *Jai Bir Singh [5-J]* (supra), the former was rightly decided and presents the correct position of law as to what is and what is not comprehended within "industry".

b) Question arising for decision in *Safdarjung Hospital* (supra) was whether a hospital is an "industry" within the meaning of the ID Act. A restricted meaning was attributed to the word "industry" by observing that industry would mean only trade and business, manufacture or undertaking analogous to trade or business for the production of material goods or wealth or material services. It is not necessary that there must be a profit motive but the enterprise must be analogous to trade or business in the commercial sense.

c) Probing further, it is found that the 6-Judge Bench in *Safdarjung Hospital* (supra) discussed whether a public utility service is susceptible of being classified as an industry, merely by reason of its inclusion in the First Schedule by the Parliament or by the executive. Under consideration was Entry 9 of the First Schedule, viz. "service in hospitals and dispensaries". The Court rejected the contention that every public utility service included in the First Schedule would be classified as an "industry". In doing so, the Court first discussed Section 2(n)(vi) of the ID Act which states that any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service. The Court held that the services mentioned in the First Schedule have to answer the test of an "industry" run on commercial lines to produce something which the community can use. These goods are brought into existence in a commercial way analogous to a business where such production takes place. The Court also held that entries in the First Schedule are general in nature. For e.g. "Coal" by itself is not an industry; but certain aspects of dealing in it can be classified as an industry. However, the Parliament cannot add something which was not an industry in the first place. In conclusion, the Court held that mere notification in the First Schedule is insufficient to convert non-industries under the ID Act to industries.

d) With all the respect, reverence and admiration we have for the author of the decision in *Safdarjung Hospital* (supra) and the other Hon'ble Judges comprising the 6-Judge Bench, we find ourselves unable to subscribe to the line of reasoning that was adopted to rule in favour of the appellants/hospitals of not being covered by the definition of "industry". Why it does not commend to us is sought to be explained with reference to a simple illustration as well as the provisions of the ID Act.

e) Let us assume that a technician is employed by the management of a hospital pursuant to a service agreement on monthly wages in a hospital having an X-ray unit. Patients are advised by the doctor to undergo X-ray examination. The technician is required to position the affected part of the patient's body under the X-ray machine. Once the image is captured, the condition of the affected part is reflected on the plate which along with a report of the radiologist is made over to the patient. The technician is not concerned whether the hospital is run for profit or as a charity; his concern is confined to performing the work for which he has been hired to the best of his ability and the payment of wages due for the work performed by him. Can it be contended with any degree of conviction that the work performed by the technician is not part of a systemic activity[37]

[37] considered in greater details, at a later part of this opinion

carried on in cooperation between the employer and the workman and is, therefore, not covered by the expression "industry" as defined in Section 2(j) of the ID Act? We think not. It would, however, be an entirely different proposition if it is shown by the management that the technician, fully aware of the charitable nature of the hospital, did not intend to enter into and there was, in fact, no employer-employee relationship but agreed to put in gratuitous work for an honorarium.

f) Moving now to the statutory scheme of the ID Act, more particularly Sections 2(n)(vi) and 22 read with the First Schedule [the heading of which reads "INDUSTRIES WHICH MAY BE DECLARED TO BE PUBLIC UTILITY SERVICES UNDER SUB-CLAUSE (VI) OF CLAUSE (N) OF SECTION 2"], it transpires that the Parliament has been conferred power to include certain industries (emphasis supplied) falling under the ambit of public utility services as defined in the ID Act. It rightly presupposes that the other entries, including those noted in the previous segment, in the First Schedule are industries whether wholly or in part. To say that after inclusion, the entries would then have to satisfy the test of an "industry" under the ID Act in a separate inquiry based on whether production of goods is on commercial lines which the community can use or whether such goods are brought into existence in a commercial way analogous to a business where such production takes place, <u>that would run contrary to the express statutory scheme as mentioned hereinabove</u> (emphasis supplied). When the language of the statute is plain and clear and no absurd result is produced, it is not proper to read in the statute what does not appear or is not intended by its object. If one reads Section 2(n)(vi) with the First Schedule, the legislative intent is clear that the stated industries included in pursuance of such clause [clause (vi)] are providing public utility services and hence ought to be protected from strikes as in Section 22(1). Entry 9 is relatable to "services in hospitals and dispensaries". Though this entry was not there in the ID Act, as originally enacted, by a legislative amendment it was included in the First Schedule.

g) Rightly so, *Safdarjung Hospital* (supra) stands expressly overruled by *Bangalore Water Supply* (supra).

(v) Reliance on *Coir Board, Ernakulam [2-J]* (supra), misplaced

a) Reliance placed by *Jai Bir Singh [5-J]* (supra) on the decision of *Coir Board Ernakulam [2-J]* (supra) to draw support for the view that *Bangalore Water Supply* (supra) requires reconsideration to our mind, again, is quite unsound. The request for a reference having been declined in *Coir Board Ernakulam [3-J]* (supra) and the appeals having been directed to be listed before the appropriate Bench for further proceedings, the order attained finality insofar as the question of reference of *Bangalore Water Supply* (supra) to a larger Bench is concerned. However, in the process of its reasoning, the referring judgment resurrected the view in *Coir Board Ernakulam [2-J]* (supra) as if the Bench in *Jai Bir Singh*

[5-J] (supra) were exercising intra-court appellate jurisdiction over the order passed in *Coir Board Ernakulam [3-J]* (supra). This was plainly impermissible.

b) That apart, reference made by *Jai Bir Singh [5-J]* (supra) to past experience of the Supreme Court [since the time *Bangalore Water Supply* (supra) has been holding the field] being flooded with litigation arising from numerous awards of reinstatement with huge amounts as back wages, has left us disturbed and dazed, interminably, so to say. With respect, it is beyond our comprehension that such a ground could at all have weighed in the mind of the 5-Judge Bench as imperative, to make a reference. If the justice of a case before the tribunal/court arising out of an industrial dispute demands reinstatement of a workman/workmen with back wages, obviously upon a satisfaction being reached that the termination is illegal, and the same is reflected in the award, it is indeed unimaginable and sad that such awards were characterised as burdensome and a critical view thereof is taken to refer *Bangalore Water Supply* (supra) to a larger Bench. The overarching preambular promise to secure justice for all seems to have passed into oblivion while the 5-Judge Bench made the observation in paragraph 35 of the referring judgment that "*awards granting heavy packages of back wages, sometimes result in taking away the very substratum of the industry*". More than anything else, this clearly evinces a drift towards a "pro-employer/antilabour" approach without supporting reasons, which we find to be repugnant and odious.

(vi) Reference to *Aeltemesh Rein* (supra), untenable

a) Reference to *Aeltemesh Rein* (supra) by the 5-Judge Bench appears to be a plain and simple mistake. However, it is unknown to what extent such mistake had a bearing on the decision-making process. *Aeltemesh Rein* (supra) centred around non-enforcement of Section 30 of the Advocates Act, 1961 and had, not even remotely, anything to do with the ID Act. In any event, the observation made in paragraph 45 of the referring judgment that "*the pressing demands of the employers and the employees and the helplessness of the legislature and the executive in bringing into force the Amendment Act*", i.e., the amended definition of "industry" post-1982, is an imperative for a reference casts grave doubts about the acceptability of such a reason. *Aeltemesh Rein* (supra) and the decisions referred to therein are authorities for the proposition that even the Supreme Court cannot issue a mandamus to the Central Government to notify a particular law, enacted by the legislature. Once this proposition is accepted, it defies reason as to why (despite the legislature having amended the definition of "industry" accepting the interpretation placed on such word by the 7-Judge Bench) this Court should be goaded to revisit such interpretation. Certainly, the legislature and the executive are no pushovers. All three organs have their independent spheres of work and each organ must be left free to do what the Constitution ordains it to do. Mr. C.U. Singh, learned senior counsel for a particular trade union is right in contending that the gun is sought to be placed on the Court's shoulder to fire. We conclude by observing that the reason in paragraph 45 of the referring judgment falls far short of an acceptable reason for ordering a reference and is plainly unacceptable.

b) Moreover, the referring judgment records that in *Aeltemesh Rein* (supra), the Union of India had offered an explanation that, *"for employees belonging to categories of industries excluded under the amended definition, no alternative mechanism for redressal of service disputes had been provided, and that this constituted the reason for not bringing the amended definition into force"*. However, upon repeated reading of *Aeltemesh Rein* (supra), we are unable to locate any such observation, submission, or explanation attributed to the Union of India. The record of that decision does not reflect the reasoning ascribed to it in the referring judgment. In the absence of any such material in the original judgment, we are constrained to hold that the referring judgment proceeds on an erroneous premise in this regard, having attributed to *Aeltemesh Rein* (supra) a position that is not borne out from the text of the decision.

39. The short order dated 2nd January, 2017 in *Jai Bir Singh [7-J]* (supra), noticed above, did not go as far to examine the reasons for the reference in depth as we have undertaken; hence, no discussion is found there.

40. Moving ahead, there is one other aspect that bears serious consideration. It is premised on the observations made by this Court in *State of Tamil Nadu v. Nellai Cotton Mills Ltd.*[38] *[2-J].*

41. The genesis of the *lis* in ***Nellai Cotton Mills*** (supra) traces back to the enactment of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1982, which was brought into force with the object of conferring permanent status upon workmen who had rendered continuous service for a period of 480 days within 24 calendar months in an industrial establishment. Section 3 of the said enactment, being pivotal, not only mandated such conferment but also elaborated the concept of "continuous service" by including interruptions occasioned by sickness, authorised leave, strike, lockout, and other contingencies. The Explanation appended thereto bore significance inasmuch as it expanded the computation of days worked to include periods of lay-off, leave with wages, temporary disablement and maternity leave.

42. The constitutional validity of the said enactment came to be assailed before the High Court of Madras in a cluster of writ petitions by several industrial establishments. Upon consideration, the High Court partly

[38] (1990) 2 SCC 518

allowed the challenge, *inter alia*, holding the Explanation to Section 3 to be unenforceable and redundant, striking down a portion of Section 3(2) on the anvil that it imposes an unreasonable restriction on the employer's rights, and clarifying that apprentices and badli workers would not fall within the ambit of "workman" for the purposes of the provision. The High Court further held that the Act would neither supersede settlements between employers and workmen nor operate retrospectively.

43. Aggrieved thereby, the State preferred an appeal and, during its pendency, introduced amendments by way of Amending Act 44 of 1985 with a view to obviate the practical impediments highlighted in the judgment. The Amendment Act recalibrated the Explanation to Section 3 by deeming certain periods as amounting to continuous service and introduced an additional Explanation expanding the meaning of "law" to subsume awards, agreements and settlements as well. A validation clause was also incorporated *vide* the amending Act to retrospectively validate actions taken under the principal Act.

44. In this backdrop, the interpretative question arose as to whether the subsequent legislative amendments evinced an intention to depart from, or to endorse, the construction placed by the High Court.

45. It is in this milieu that the principle assumes relevance that subsequent legislative action/inaction, post any judicial engagement with the legislation, may furnish a legitimate indicator to discern legislative approval or disapproval of the ratio laid down in the judgment.

Interestingly, while the legislature therein addressed certain operational difficulties through the amendment, it did not re-enact or validate the portion invalidated by the High Court, thereby lending credence to the inference that the judgment of the High Court stood accepted to that limited extent.

46. It would be profitable for the present discussion to quote the relevant paragraph from such decision hereinbelow:

> **8.** When the Act has been judicially interpreted, courts may study the subsequent action or inaction of the legislature for clues as to legislative approval or disapproval of judicial interpretation. After the statute has been judicially interpreted in a certain way and if the legislature by taking note of the judgment amended the statute appropriately so as to give it a different meaning from the one asserted by the courts, or not giving any different meaning from the view taken by the court, it may be argued with some justification that the legislature has expressly or by implication ratified the judicial interpretation. In the instant case, the legislature has expressly taken note of the High Court verdict and removed the practical difficulties caused thereby in implementing the provisions of the Act, by appropriate amendments. No provision, however, was inserted to rewrite and validate the portion which was struck down by the High Court. It could therefore, be reasonably held that the legislature has accepted the judgment of the High Court to the extent indicated.
>
> (emphasis supplied)

47. The exposition of law in *Nellai Cotton Mills Ltd.* (supra) is that events transpiring after a judicial interpretation of a term in an opinion are material to ascertain the legislative approach of approval or disapproval of such interpretation. If approved, the legislature may not intervene; however, if it is disapproved, the legislature may step in with a legislation to remove the basis of such interpretation. With utmost respect, this exposition in *Nellai Cotton Mills Ltd.* (supra) does not appear to have engaged the attention of either *Jai Bir Singh [3-J]*

(supra) or *Jai Bir Singh [5-J]* (supra). Though *Nellai Cotton Mills Ltd.* (supra), being a 2-Judge Bench decision was not binding on Benches of larger strength, *Coir Board Ernakulam [2-J]* (supra) was certainly bound unless it differed. Nevertheless, the exposition in *Nellai Cotton Mills Ltd.* (supra) leaves its own imprint, particularly when read with the caveat in *Bangalore Water Supply* (supra) that its construction of "industry' was, *prima facie*, to endure till the legislature steps in to substitute it by a more precise definition. Parliament by the 1982 amendment did step in. It did not completely disapprove *Bangalore Water Supply* (supra): the triple test was approved but the definition of "industry" was calibrated by narrowing its width as explained therein by excluding hospitals, charitable institutions, clubs, etc. What none could scarcely have imagined was that, though the legislature did act and step in by partial approval and partial disapproval, the executive would stall the enforceability of the new/amended definition. It is evident from the Lok Sabha records that enforcement of the amended definition of "industry" was deferred pending review due to representations submitted by stakeholders, while all other provisions of the 1982 amendment were brought into force. For four decades thereafter, both the legislative and executive wings accepted the *status quo* - the 1982 amendment on paper, *Bangalore Water Supply* (supra) in practice till such time the 2020 Code was enacted and enforced quite recently. To equate such executive deferral with legislative acquiescence is to invert separation of powers. Thus, when legislative response had intervened to calibrate *Bangalore Water Supply* (supra), the will of the people did not translate into law for a reason not anticipated, and the political branches themselves acquiesced in the prevailing arrangement since 1985, it is indeed questionable whether the reference made by *Jai Bir Singh [3-J]* (supra) did clothe *Jai Bir Singh [5-J]* (supra) with the competence and authority to doubt *Bangalore Water Supply* (supra), rendering the reconsideration otiose.

48. Proceeding further ahead, we may observe that the doctrine of *stare decisis* enjoins that a precedent, particularly one laid down by a larger bench of 7 (seven) Judges and followed for decades, be revisited only upon satisfaction of exacting tests: manifest error, public mischief, or a conflict of decisions of coordinate Benches. Mere disagreement with a prior view or the mere passage of time requiring a relook does not warrant a reference to a larger Bench. Judged by that standard, *Jai Bir Singh [5-J]* (supra) carries chinks in its armour too prominently so as to justify unsettling *Bangalore Water Supply* (supra). *Jai Bir Singh [5-J]* (supra) neither identified any 'manifest error' nor inter-bench conflict; at its extreme, it only had a policy discomfort with the width of the triple test. Unfortunately, *Jai Bir Singh [5-J]* (supra) pointed to no alternative workable formulation to the triple test it faulted, and omitted in undertaking the inquiry required by *Keshav Mills Co. Ltd.* (supra) as to why a 27-years old rule settled across multiple Benches should be unsettled. Its reliance on *Safdarjung Hospital* (supra), a precedent

Bangalore Water Supply (supra) had expressly overruled, further offended settled canons of precedent. In seeking to pierce the patina of permanence that *Bangalore Water Supply* (supra) had acquired, *Jai Bir Singh [5-J]* (supra) fails the procedural discipline [emphasized in *Shah Faesal* (supra)] and the substantive discipline of *stare decisis*. Sadly, *Jai Bir Singh [5-J]* (supra) sought to destabilise the old order without erecting any jurisprudential structure to replace it.

49. In *Chandra Prakash v. State of U.P.*[39] *[5-J]*, this Court, after considering a series of precedents, reiterated the principle of binding precedent in following words:

> 22. A careful perusal of the above judgments shows that this Court took note of the hierarchical character of the judicial system in India. It also held that it is of paramount importance that the law declared by this Court should be certain, clear and consistent. <u>As stated in the above judgments, it is of common knowledge that most of the decisions of this Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court.</u> ... .
>
> (emphasis supplied)

50. We should not be misunderstood in our critique of the referring judgment as if, being part of the 9-Judge Bench that has been constituted, we are sitting in appeal thereagainst. This exercise has been necessitated solely for the limited purpose of ascertaining whether due process had been followed or not.

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[39] (2002) 4 SCC 234

51. Finally, the *raison d'être* behind the referring judgment to make the reference is captured in the first couple of lines of paragraph 24, reading thus:

> 24. In any case, no such inhibition 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* is not a unanimous decision.

52. We unhesitatingly conclude by recording that the reasoning in ***Jai Bir Singh [5-J]*** (supra) does not satisfy the aforementioned principles for reviewing earlier decisions of this Court as laid down in ***Keshav Mills Co. Ltd.*** (supra). To reconsider the definition of "industry" and giving it a narrower frame than what is elaborated in ***Bangalore Water Supply*** (supra) would run contrary to public good. It would result in defeating the purpose of the ID Act which, undoubtedly, is a social welfare and worker-oriented legislation. Furthermore, since 1978, the decision in ***Bangalore Water Supply*** (supra) has been followed/relied on by this Court in at least 84 decisions[40] and no compelling reasons do appear for disturbing the field set by it. We are also unable to accept the reasons given in ***Jai Bir Singh [5-J]*** (supra), which *inter alia* include the Government's difficulty and reluctance in bringing the amended definition of "industry" into force, as either valid or sufficiently compelling for the present reference. Lastly and most importantly, to reconsider the decision at this distance of time would inevitably result in tremendous public inconvenience and hardship for the workmen as well

[40] list furnished by Mr. C.U. Singh

as other parties embroiled in pending reference / litigation under the ID Act.

53. Having furnished our own reasons as to why the reasons given in ***Jai Bir Singh [5-J]*** (supra) and ***Jai Bir Singh [7-J]*** (supra) are insufficient to warrant a reference, we record having failed to find any discussion there on how the decision in *Bangalore Water Supply* (supra) has become unworkable. Not to speak of the tests laid down in ***Keshav Mills Co. Ltd.*** (supra), even in view of the principles laid down in ***Dr Shah Faesal*** (supra), there does not exist any valid ground which could justify referring ***Bangalore Water Supply*** (supra) to a larger Bench.

54. *Arguendo*, assuming for once, that *Bangalore Water Supply* (supra) has become unworkable, declaring it so at a point when the ID Act no longer survives in the same form, and when the number of pending cases before the Industrial Tribunals and the Labour Courts may not be substantial, is a factor that militates against the need for reconsideration. If reconsideration was indeed required, the same ought to have been undertaken soon after the opinion in *Jai Bir Singh [5-J]* (supra) was expressed in 2005; or even in 2017, soon after *Jai Bir Singh [7-J]* (supra) referred the issue to the Chief Justice for constituting a 9-Judge Bench. This reference has come before this 9-Judge Bench only 9 (nine) years after *Jai Bir Singh [7-J]* (supra). The numbers may be a mere coincidence but the coincidence ends there: the intervening years have hardened the law on the ground, and the Court now faces a test of doctrine and of institutional resolve.

55. When a reference itself lingers for more than 2 (two) decades, the doctrine of *stare decisis* is tested twice over – first against the standards set by *Keshav Mills Co. Ltd.* (supra) and second, against the Court's own inability to give finality. *Bangalore Water Supply* (supra) has been applied by smaller Benches of this Court, the high courts, the tribunals, and employers every day of that delay. To disturb it now without meeting the highest threshold would suggest that judicial doubt, not judicial reasoning, drives the law.

56. It is trite, no court should feel inhibited to do whatever the justice of a case demands, based on the principle of *ex debito justitiae*; but a little more introspection could have dispelled the unfounded notion that *Bangalore Water Supply* (supra) requires reconsideration and, thereby, clear the doubt as to its efficacy as a binding precedent.

57. In fine, while *Jai Bir Singh [5-J]* (supra) omitted to consider several precedents which is striking, the *coup de grace* is its failure to notice that *Bangalore Water Supply* (supra) was self-limiting.

58. We, thus, have no hesitation to reject the reference.

RESTORING CLARITY TO THE DEFINITION OF 'INDUSTRY' IN SECTION 2(j)

59. Having said thus, we intend to assign our brief reasons why the elaborate and enlightening opinion in *Bangalore Water Supply* (supra) on interpretation of the term "industry" in the ID Act requires no tinkering at all, much less any reconsideration.

60. Primarily the question before this larger Bench is, how to interpret Section 2(j) of the ID Act defining "industry"? Hence, it would be

profitable to begin by reading portions of the definition clause [Section 2 of the ID Act] and then some of the other provisions having a bearing on the said question. The need to navigate through the ID Act itself arises owing to scant reference being made to it by learned senior counsel/counsel for the parties advocating a reconsideration of *Bangalore Water Supply* (supra).

61. Relevant clauses of Section 2 read as under:

> "Section 2. - In this Act, unless there is anything repugnant in the subject or context,-
>
> (*j*) '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.
> (*g*) 'employer' means—
> (*i*) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
> (*ii*) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority.
> (*s*) 'workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—
> (*i*) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
> (*ii*) who is employed in the police service or as an officer or other employee of a prison; or
> (*iii*) who is employed mainly in a managerial or administrative capacity; or
> (*iv*) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.
> (*k*) 'industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;
> (*n*) 'public utility service' means—

(*i*) any railway service or any transport service for the carriage of passengers or goods by air;
(*i-a*) any service in, or in connection with the working of, any major port or dock or any industrial establishment or unit engaged in essential defence services;
(*ii*) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;
(*iii*) any postal, telegraph or telephone service;
(*iv*) any industry which supplies power, light or water to the public;
(*v*) any system of public conservancy or sanitation;
(*vi*) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification:
Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time, if in the opinion of the appropriate Government, public emergency or public interest requires such extension;
…".

62. Pausing for a moment, it would be worthwhile to understand what the objective of a definition clause is. Useful reference can be made to the decision in *SBI v. M.J. James*[41] where, after noting precedents and Bennion on Statutory Interpretation, this Court speaking through Hon'ble Sanjiv Khanna, J. ruled that:

"20. … The objective of definition clauses is to avoid frequent repetition in describing the subject-matter to which the word or expression is intended to apply. [Nahalchand Laloochand (P) Ltd. v. Panchali Cooperative Housing Society Ltd. : (2010) 9 SCC 536]. This is useful when the same word or expression is used more than once in the same enactment [Bhagwati Developers (P) Ltd. Peerless General Finance and Investment Co. : (2013) 9 SCC 584]. The *raison d'être* behind the definition clause is that while interpreting a provision, the defined word or expression would carry the same meaning as the defined words or expression are employed and used by the maker in the sense appropriate to the definition. The definition can be with the intent to attract a meaning already established by law; expand the meaning by adding a meaning; or narrow the meaning by exclusion [Part XII, Rules of Construction Laid Down by Statute, Sections 199 and 200 at p. 517, Bennion on Statutory Interpretation, Indian Reprint, 6th Edn.]. This general rule of construction laid down by the enactment is subject to the context. Albeit, the interpreter, to deviate from the defined meaning, should record reasons to show that the word/expression in that

[41] (2022) 2 SCC 301

particular provision carries a different meaning. Contrary context is not to be assumed or accepted easily, in the absence of indication and reason to differ from the defined meaning. The repugnancy will arise when the definition meaning does not agree with the subject in the context.

63. Now reverting to the definition of the word "industry" noted above, it means any business, trade, undertaking, manufacture or calling of employers; and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

64. To carry forward the discussion, one may trace what trade, business, undertaking, etc. appearing in Section 2(j) means in the common parlance.

(i) Trade means exchange of goods for goods or goods for money.

(ii) Business means an enterprise which is an occupation as distinguished from pleasure.

(iii) Undertaking is a word of variable meaning. As a noun, it can mean a formal promise or an assurance. The said word, as a noun, can be also used interchangeably with a project or enterprise or even business. However, when used in the sense of undertaking a business, it is a transitive verb. In the given context, the noun would fit into the second meaning.

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

(v) Calling denotes the following of a profession or trade.

(vi) Service again has different shades of meaning. Work done for somebody fits the context best.

(vii) Employment is a noun derived from the word 'employ', which is a transitive verb. The word 'employ' for the purpose of understanding employment would mean payment made by one to the other in *lieu* of work done by him. A common example would be, the company employs hundreds of persons.

(viii) Insofar as workmen are concerned, apart from calling, service and employment, we find the words "handicraft, or industrial occupation or avocation of workmen".

(ix) Handicraft is an activity needing skill with the hands as well as artistic ability. An object that is produced by this activity is also called handicraft. The first meaning is what seems apt in the context.

(x) Industrial occupations refer to jobs focused on transforming materials into finished products and are characterised by being manual-labour intensive.

(xi) Finally, avocation is some activity which is done for enjoyment and pleasure outside of one's regular profession; it is sort of a non-work interest.

65. We find no reason to deviate from the common parlance meaning of these words/nouns while construing the defined meaning of the noun "industry".

66. Now, the word "industry" wherever it is used in the ID Act has to be understood by tracing its meaning to Section 2(j) unless, of course, the

context otherwise requires. The word "industry" is used in various provisions of the ID Act[42] where it is to be read as a noun. However, at least in 3 (three) sections of the ID Act[43], the words "industry being carried out" have been used. While ascertaining the meaning of such a phrase, one needs to fall back on Section 2(j). Thus, "industry being carried out" would be akin to trade or business or undertaking or manufacture or employment or handicraft or industrial occupation being carried out. When the statute says "industry being carried out", the focus is on the action, making "industry" describe an activity in the sense of a verb. Similarly, when read like trade or business or employment or handicraft or industrial occupation being carried out, all these words which are nouns, i.e., trade, business, undertaking, employment, handicraft, industrial occupation, etc. are more like activities, focusing on the action involved in course thereof, thereby leaning towards a verb rather than a noun. Although Section 2(j) has a 'means' part as well as an 'includes' part, each such part is not to be read in isolation but both parts are to be read in conjunction to understand what the word "industry" connotes *qua* both employer and workmen.

67. It is this planned, organised, regular, interconnected and continuous activity carried out by the employer and the workmen in collaboration with each other according to a system or method – not a random or one-off – for an identified purpose is what is a systematic activity. According

[42] Sections 2(ee), 2(i), 2(j), 2(q), 2(n), 2(s), 9B, 10H, 25F, 36
[43] Sections 2(a)(i), 2(g), 2(ka)

to Hon’ble Krishna Iyer, J. the activity must be systematic in the sense of being organised as a system. Such prong is now read by courts as systemic activity. Though the word used was systematic, the meaning given was systemic. Core systemic activities in a typical industry would include procurement, production/manufacturing, quality control, human resources management, inventory and logistics, marketing and sales, finance and accounts maintenance, research and development, and compliance of statutory requisites. To wit, manufacture is a systemic activity which would ordinarily include procurement, processing and assembling of raw materials and distribution of the finished product through coordinated steps. When the Bench referred to systemic activity in *Bangalore Water Supply* (supra), it pointed to this web of organised, interdependent functions.

68. Thus, systemic activity is the foundation on which the legal concept of “industry” rests.

69. Though the ultimate object of undertaking such systemic activity resulting in the production of goods and materials, provision of services, generation of energy, and the like is to cater to human needs and fulfil desires, in reality as well as in law, the motive that drives an employer to run an industry and the object with which a workman puts his labour are distinct and different. At the advent of the ID Act in 1947, industries were synonymous with profit making establishments. However, over the course of decades, manufacturing and consequently, industries, have evolved in a dynamic manner. Profit no more remains the fulcrum of an

industry. Thus, as enunciated above, profit need not be a *sine qua non* for an industry and even a non-profit making establishment would be classified as an industry. To a poor workman, the employer's gains from the activity are immaterial; his concern is with the wages earned at the end of the day/month.

70. Leaving aside legal semantics and reading each word used in clause (j) of Section 2, it is clear that the several expressions which appear after 'means', viz. business, trade, undertaking, manufacture or calling, and after 'includes', viz. calling, service, employment, handicraft, industrial occupation, avocation, are activities <u>which satisfy the triple test as propounded by Hon'ble Krishna Iyer, J. and, therefore, are covered by the definition of "industry" in the ID Act</u> (emphasis supplied). In this context, the expressions business, trade, undertaking, manufacture, calling, service, employment, etc. have been used in the sense of a noun and the adjective 'any', qualifying such noun (the activities), <u>should be given its ordinary meaning; it cannot be given a restricted meaning so that the activities other than trade and business, if they do not align with or are not related with trade or business, would remain out of the purview of the word "industry</u>" (emphasis supplied).

71. In our considered opinion, the statutory framework engrafted in Section 2(j) of the ID Act and the judicial exposition for determining what constitutes an "<u>industry", namely, the triple test, operate in complete harmony, each reinforcing the other</u> (emphasis supplied).

72. Even, the learned Attorney did not find fault with the triple test but he only appealed for exercise of caution. The learned Attorney, in fact, expressly accepted the continued validity of the triple test as a sound exposition of law under the ID Act, and limited his submission to cautious application of the said test. Be that as it may, we advert to the concession of the learned Attorney only in passing, for it does not constitute the basis of our determination.

CONCLUSION

73. This briefly is our understanding of the word "industry" which, in our considered opinion, aligns with the meaning attributed to it in *Bangalore Water Supply* (supra).

74. The discussion on the topic would, however, remain incomplete without noticing paragraph 145 of *Bangalore Water Supply* (supra) where Hon'ble Krishna Iyer, J. made it clear that the meaning attributed to the word "industry" was transient in nature. The relevant passage reads:

> 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 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 ILO 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.

75. What was conceived as an interim judicial formulation, however, has, through more than four decades of executive inertia, acquired the character of settled law. Time, by itself, cannot confer permanence upon what was intended to be transient; yet, neither can the passage of time and consistent reliance upon a legal position be disregarded without compelling justification. In our considered view, the reference before us discloses no such justification.

76. To be clear: the reference made by *Jai Bir Singh [5-J]* (supra), followed by *Jai Bir Singh [7-J]* (supra), was not necessary and serves no practical, jurisprudential or doctrinal purpose. The reference seeks to disturb a quietus that has held the field for nearly half a century. The uninterrupted application of the law in *Bangalore Water Supply* (supra) having converted an arrangement, transient in origin, into the institutional and in light of the 2020 Code becoming operational since February, 2026, we conclude by observing that while the reference requires no answer, it must be said plainly: *Bangalore Water Supply* (supra) does not require reconsideration (emphasis supplied). Finality in law would be undermined without any corresponding public interest being served. We must remember: institutional credibility lies in respecting finality, not in perpetuating doubt; and, absent compelling justification, none of which exists here, the chapter must be treated as closed.

77. In light of the foregoing discussions, we answer the three questions framed by the 3-Judge Bench vide order dated 16th February, 2026 as follows:

Question (i) – The opinion rendered by Hon'ble Krishna Iyer, J. in *Bangalore Water Supply* (supra) [for 3 (three) of the member Judges of the 7-Judge Bench, with which Hon'ble Beg, CJ. and Hon'ble Chandrachud, J. concurred], correctly interprets "industry" as defined in Section 2(j) of the ID Act. The 1982 amendment and the definition of "industry" in the 2020 Code would have no impact on the interpretation of the expression "industry" as contained in the ID Act, which was to remain operational till legislature stepped in with a new legislation.

Question (ii) – The question has to be answered in the affirmative in view of our reasoning above.

Question (iii) – In view of the conclusions recorded in the precedents which were affirmed by *Bangalore Water Supply* (supra) and regard being had to our concurrence with the said decision, this question is redundant and we need not separately explore which of the activities would constitute "sovereign functions".

78. We, therefore, order that all pending references arising out of industrial disputes made under the ID Act ought to be taken to its logical conclusion in accordance with the law on interpretation of the word "industry" subsisting prior to operationalisation of the 2020 Code.

79. Since the Bench was informed of a likely challenge to the 2020 Code, nothing observed here shall have any effect on such challenge.

80. To conclude, we reject the reference for the reasons discussed above and hold that the term "industry" as interpreted and explained in *Bangalore Water Supply* (supra) requires no reconsideration.

81. All pending matters may now be placed before an appropriate Bench, upon obtaining orders from the Chief Justice.

82. We sincerely appreciate the efforts of the learned Attorney, all learned senior counsel/counsel for the parties and the learned amici curiae, Mr. Jamshed Cama and Mr. P.S. Sen Gupta, senior advocates for their wholehearted and erudite assistance in enlightening us to facilitate rendition of this opinion.

…………………………………J.
(DIPANKAR DATTA)

…………………………………J.
(UJJAL BHUYAN)

NEW DELHI;
AUGUST 20, 2026.

<u>REPORTABLE</u>

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

<u>CIVIL APPEAL NO.897 OF 2002</u>

State of Uttar Pradesh .....**Appellant(s)**

VERSUS

Jai Bir Singh .....**Respondent(s)**

<u>WITH</u>

Civil Appeal No.1276/2001

<u>AND</u>

Civil Appeal No.1278/2001

Civil Appeal No.1279/2001

Civil Appeal No.6114/2001

Civil Appeal No.8597/2001

Civil Appeal No.2409/2002

Civil Appeal No.2506/2002

Civil Appeal No.4569/2002

Civil Appeal No.5101/2002

Civil Appeal No.6108/2002

Civil Appeal No.6471/2002

SLP(C) No.20982/2002

Civil Appeal No.355-358/2003

Civil Appeal No.7994/2004

SLP(C) No.11291/2004

SLP(C) No.14085/2004

SLP(C) No.14127/2004

SLP(C) No.4139/2005

Civil Appeal No.1273/2007

Civil Appeal No.1274/2007

Civil Appeal No.3647/2007

Civil Appeal No.4646/2007

SLP(C) No.16301/2007

Civil Appeal No.296/2008

Civil Appeal No.1311-1312/2008

SLP(C) No.3107/2008

SLP(C) No.4327/2008

SLP(C) No.4328/2008

SLP(C) No.4329/2008

SLP(C) No.16276/2008

SLP(C) No.17224/2008

SLP(C) No.1112/2009

SLP(C) No.7990/2009

Civil Appeal No.3920/2010

Civil Appeal No.5681/2010

Civil Appeal No.3119/2011

Civil Appeal No.7757/2011

Civil Appeal No.1131/2012

Civil Appeal No.5519/2012

Civil Appeal No.8149-8151/2012

Civil Appeal No.4505-4506/2013

Civil Appeal No.4507-4508/2013

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SLP(C) No.14156/2021

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J U D G M E N T

Joymalya Bagchi, J.

1. I am in humble agreement with the opinions of the Hon'ble the Chief Justice and my revered brother Justice Narasimha, that the reference was validly made. But with the deepest respect and humility, I am unable to agree with the reformulation of the triple test propounded in *Bangalore Water Supply & Sewerage Board v. A Rajappa*[1] vis-a-vis the definition of "industry" by Hon'ble the Chief Justice. In this regard, I respectfully concur with the opinions of my revered sister Justice Nagarathna and revered brother Justice Datta, that the triple test propounded in *Bangalore Water Supply* (supra) correctly determines the scope and ambit of "industry" under the Industrial Disputes Act, 1947[2]. However, I am *ad idem* with the Hon'ble the Chief Justice and my revered colleagues on the final outcome that the ratio in *Bangalore Water Supply* (supra) would be confined to disputes pending under the repealed law, and the new law, namely the Industrial Relations Code, 2020[3] shall be independently interpreted.

2. With these prefatory words, I proceed to answer the reference.

INTRODUCTION

3. The present reference is the culmination of nearly five decades of judicial experiment with the definition of "industry" in Section 2(j) of the ID Act,

[1] (1978) 2 SCC 213
[2] Hereinafter "ID Act"
[3] Hereinafter "IR Code"

a provision situated within a legislative framework designed to preserve industrial peace, secure social harmony, and balance the competing claims of labour, capital, and the consuming public.

4. *Bangalore Water Supply* (supra) was an inclusive interpretive exercise to distil the true import of the word "industry". Speaking through Krishna Iyer, J., the majority articulated what has since come to be known as the "triple test", expanding the definition to cover any systematic activity organised through employer employee cooperation for the production or distribution of goods and services calculated to satisfy human wants[4]. Interrogating this expansive understanding of industry forms the backdrop of the present reference. Though for four decades *Bangalore Water Supply* (supra) sought to settle the law, its breadth continued to be a source of continuing debate. The definition, as interpreted, brought within the sweep of industry a wide range of activities in the nature of welfare schemes, Government departments, statutory bodies, hospitals, educational and religious institutions, clubs, research bodies and liberal professions. In doing so, it set into motion a series of judicial responses - some accepting, some refining, and others quietly resisting its reach.

TRACING THE REFERENCE

5. To understand how the reference questioning *Bangalore Water Supply* (supra) came into being, it is necessary to refer to the first inflection point

[4] See Para 140

in this long journey, namely, *Coir Board, Ernakulam, Cochin & Anr v. Indira Devai P.S. & Ors* (2J)[5]. A two Judge Bench, while applying *Bangalore Water Supply* (supra), recorded reservations as to its correctness and the matter was directed to be placed before the Chief Justice to consider whether a larger Bench should be constituted to reconsider the decision in *Bangalore Water Supply* (supra).

6. The proposed reference in *Coir Board* (2J) (supra) came to be placed before a three Judge Bench in *Coir Board, Ernakulam, Kerala State & Anr v. Indira Devai P.S. & Ors* (3J)[6]. The request for reference was declined on two grounds. First, the Bench was of the view that a two Judge Bench could not seek reconsideration of *Bangalore Water Supply* (supra), which had been rendered by a seven Judge Bench. Secondly, on merits, it found no occasion to reopen the issue, since the ratio in *Bangalore Water Supply* (supra) had held the field for more than two decades and Parliament had, in the meantime, introduced a new definition of "industry"[7], though the amended provision had not yet been brought into force.

7. The present reference stems from the doubt expressed with regard to the expansive formulation of the definition of industry in *State of Gujarat & Ors v. Pratamsingh Narsinh Parmar*[8], where the Court was called upon to consider whether the Forest Department is an "industry". The Bench

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[5] (1998) 3 SCC 259
[6] (2000) 1 SCC 224
[7] Industrial Disputes (Amendment) Act, 1982 (Act No. 46 of 1982)
[8] (2001) 9 SCC 713

noted that the High Court had erred in mechanically following an earlier case, namely, *Chief Conservator of Forests & Anr v. Jagannath Maruti Kondhare & Ors*[9] (where the same question had arisen), without examining the factual matrix that the employee had failed to assert the nature of duties discharged by him and the character of the establishment in which he had been recruited, so as to prove that the latter was an "industry". While distinguishing *Chief Conservator* (supra) on facts, the Bench observed that "*ordinarily, a department of the Government cannot be held to be an industry and rather it is a part of the sovereign function.*" This observation appears to sit uneasily with the ratio in *Chief Conservator* (supra), where the three Judge Bench had given a restricted meaning to sovereign functions, to be understood as such functions for which the State is not answerable in a Court of law, and not to include public and statutory duties. Noticing the cleavage between *Chief Conservator* and *Narsinh Parmar* (supra), the three Judge Bench in *State of U.P. v. Jai Bir Singh* (3J)[10] directed as follows:

> "*The matter is of considerable public importance, to be decided by a larger Bench. We, therefore, direct that the papers be laid before Hon'ble the Chief Justice for appropriate orders.*"

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[9] (1996) 2 SCC 293
[10] Order dated 31.01.2002 in SLP (C) No. 10411/2001 – *State of UP v. Jai Bir Singh*

8. The matter thereafter reached the five Judge Bench in *State of U.P. v. Jai Bir Singh* (5J)[11]. The Bench culled out several foundational reasons for doubting the *Bangalore Water Supply* (supra) ratio, namely:

I. *Bangalore Water Supply* (supra) was not unanimous, and the principal opinion of Krishna Iyer, J., did not have the benefit of the separate opinions delivered later by the other judges. Further, the judges themselves treated the interpretive exercise as provisional pending legislative intervention[12]

II. Parliament had amended the definition of industry by Act 46 of 1982, yet the amended provision had remained unenforced for more than two decades. This prolonged non-enforcement was viewed not merely as legislative inaction, but as reflecting the difficulty faced by the legislature and executive in bringing the amended law into force after *Bangalore Water Supply* (supra)[13]

III. The working experience of the law after *Bangalore Water Supply* (supra) had revealed practical difficulties, including proliferation of industrial claims, awards of heavy back wages, and the possible consequences of an overextended definition on employers, employees, and the public[14]

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[11] (2005) 5 SCC 1
[12] See Paras 24-25
[13] See Paras 21 & 40
[14] See Para 35

IV. A purely workman centric reading of the ID Act could not be accepted, since the statute was intended to harmonise employer employee relations in the larger interest of industrial peace[15]

V. The narrow treatment of sovereign functions in *Bangalore Water Supply* (supra) required reconsideration, particularly because welfare activities undertaken by the State in discharge of its obligations under Part IV may also bear a sovereign character in a constitutional democracy[16]

VI. The restrictive principle in *Safdarjung Hospital* (supra) had considerable force. Although profit motive may not be determinative, the activity must still be analogous to trade or business in a commercial sense, especially when applied to institutions such as hospitals and schools, where industrial action may frustrate their core public purpose[17]

9. On the cumulative force of these aforestated reasons, the Bench concluded as follows[18]:

> *"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"*

[15] See Paras 32-33 & 37
[16] See Para 38
[17] See Paras 41-42
[18] See Para 46

10. When the matter was placed before the Chief Justice, presumably bearing in mind the lesser strength in *Jai Bir* (5J), the Chief Justice placed the matter for reconsideration of the ratio in *Bangalore Water Supply* (supra) before a bench of co-equal strength, that is, a seven Judge Bench. The seven Judge Bench in *State of U.P. v. Jai Bir Singh* (7J)[19], presided over by the Chief Justice, accepted the doubts expressed by the five Judge Bench about the correctness of the view taken in *Bangalore Water Supply* (supra) and noted the issue that fell for determination had wide ranging implications. The appeals were directed to be placed before the Chief Justice for constituting an appropriate nine Judge Bench to answer the questions raised in the reference order passed by the five Judge Bench. Accordingly, the present nine Judge Bench came to be constituted.

11. Before turning to the arguments advanced during the course of hearing and examining the ratio in *Bangalore Water Supply* (supra) on merits, one preliminary objection may be noticed. Ms. Jaising strenuously argued that the two Judge Bench in *Narsinh Parmar* (supra) did not take a different view from that of the judgment in *Chief Conservator* (supra). According to her, *Narsinh Parmar* (supra) merely distinguished *Chief Conservator* (supra) on facts. It was, therefore, urged that the subsequent references made in *Jai Bir* by Benches of lesser strength, doubting the correctness of *Bangalore Water Supply* (supra), a seven Judge Bench decision, were not maintainable.

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[19] (2017) 3 SCC 311

12. I am unable to agree with this demurrer. The validity of the present reference cannot be tested solely by reference to the original trigger. When the matter reached the five Judge Bench in *Jai Bir* (5J) (supra), the Court did not rest the reference merely on the perceived tension between *Chief Conservator* (supra) and *Narsinh Parmar* (supra). It doubted the ratio in *Bangalore Water Supply* (supra) for various other reasons and directed that the papers be placed before the Chief Justice for constitution of a suitable larger Bench. Thereafter, the Chief Justice, keeping in mind that *Jai Bir* (5J) (supra) was a Bench of lesser strength than *Bangalore Water Supply* (supra), a seven Judge Bench decision, placed the matter before a Bench of co-equal strength for consideration. That seven Judge Bench, in turn, directed that the matter be placed before the Chief Justice for constitution of a nine Judge Bench. Such state of affairs squarely falls in line with the settled position of law governing references, as laid down in *Central Board of Dawoodi Bohra Community v. State of Maharashtra*[20].

13. In *Dawoodi Bohra* (supra), a two Judge Bench sought reconsideration of the five Judge Bench decision in *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay*[21], and directed that the case be listed before a seven Judge Bench[22]. Pursuant to such direction, the matter initially came up before a seven Judge bench and subsequently was placed before a five

[20] (2005) 2 SCC 673, See Para 12
[21] 1962 SCC OnLine SC 143
[22] WP (C) No. 740/1986, order dated 18.03.1994

Judge bench to consider the validity of such reference. While laying down the governing principle that a Bench of lesser strength is bound by the law declared by a Bench of larger strength and cannot dissent from or disregard such law, the five Judge Bench in *Dawoodi Bohra* (supra) underscored that where a Bench of lesser strength entertains doubt about the correctness of a larger Bench decision, it may only invite the attention of the Chief Justice to that doubt. The Chief Justice is not bound to constitute a larger Bench in every such case and, as master of the roster, retains the discretion to place any matter before a Bench of such strength as he considers appropriate. Applying that principle to the facts of *Dawoodi Bohra* (supra), the Bench held that the matter should first be placed before a Bench of five Judges, and not directly before a larger Bench of seven Judges. It was only if that co-equal Bench doubted the correctness of *Sardar Syedna* (supra) that it could opine in favour of a reference to a larger Bench of seven Judges, or such other strength as the Chief Justice, in exercise of his power to frame the roster, may deem fit to constitute.

14. The ratio in *Dawoodi Bohra* (supra) again fell for interpretation before a seven Judge Bench in *Aligarh Muslim University v. Naresh Agarwal*[23]. In *Aligarh Muslim University* (supra), the preliminary objection was that the two Judge Bench in *Anjuman-e-Rahmaniya v. District Inspector of Schools*[24] could not have directly referred the correctness of *S. Azeez*

[23] (2025) 6 SCC 1
[24] WPs (C) Nos. 54-57 of 1981, order dated 26-11-1981 (SC)

Basha v. Union of India[25], a five Judge Bench decision, to a seven Judge Bench. *Anjuman-e-Rahmaniya* (supra) concerned an institution founded in 1938 and registered under the Societies Registration Act, 1860 in 1940. A two Judge Bench found that the case raised questions as to whether an institution established mainly by a minority, but with participation from members of other communities, could claim the protection of Article 30(1), and whether subsequent registration as a society altered its minority character. Since certain observations in *Azeez Basha* (supra) bore upon these questions and its correctness had also been doubted, the Bench directed that the matter be placed before the Chief Justice for being heard by a Bench of at least seven Judges. The matter was thereafter tagged with *T.M.A. Pai Foundation v. State of Karnataka*[26] before an eleven Judge Bench, where a similar question on the indicia of a minority educational institution was framed, but left unanswered. The decision stated that a regular Bench would adjudicate the question. However, the regular Bench also disposed of the matter without answering the query[27].

15. When the question arose again in *Aligarh Muslim University v. Naresh Agarwal*[28], a three Judge Bench presided over by the Chief Justice noticed that *Anjuman-e-Rahmaniya* (supra) had already referred the correctness of *Azeez Basha* (supra) on the same issue to a seven Judge

[25] 1967 SCC OnLine SC 321
[26] (2002) 8 SCC 481
[27] *Shahal H. Musaliar v. Union of India*, 2003 SCC OnLine SC 1479
[28] (2020) 13 SCC 737

Bench, but no authoritative answer had yet been rendered. The three Judge Bench, therefore, directed that the matter be placed before a seven Judge Bench. It was in this backdrop that the majority in *Aligarh Muslim University* (supra) affirmed the ratio in *Dawoodi Bohra* (supra) and held as follows:

> *"**40.** In Central Board of Dawoodi Bohra Community, a Constitution Bench discussed the legal precepts which apply to orders of reference and reiterated the position of law as below*
>
> ***40.1.** Decisions of this Court rendered by a Bench of larger strength are binding on Benches of a less or equal strength;*
>
> ***40.2.** If a Bench of lower strength is doubtful about the correctness of a judgment delivered by a Bench of larger strength, it cannot disagree or dissent from the view taken by the larger Bench. In case of doubt, it can invite the attention of the Chief Justice of India to its opinion and request the Chief Justice to list the matter before a Bench, the strength of which is greater than that which delivered the judgment which has been doubted;*
>
> ***40.3.** The correctness of the view taken by any Bench can only be doubted by a Bench of equal strength. The matter will then be placed for hearing before a Bench of greater strength;*
>
> ***40.4.** There are two exceptions to the rules discussed above:*

(i) The discretion of the Chief Justice is not bound by the rules. As the master of the roster, the Chief Justice may list any case before any Bench of any strength;

(ii) Despite the rules discussed above, if a particular case has come up for hearing before a Bench of larger strength and that Bench is of the opinion that the judgment of the Bench of lower strength requires reconsideration or correction, or is otherwise doubtful of its correctness, it may dispense with the need for a reference in the terms described above or an order of the Chief Justice and hear the matter for reasons given by it.

41. *The position of law laid down in Central Board of Dawoodi Bohra Community is correct. The decisions of a larger Bench are binding precedent, and judicial discipline and propriety dictate that Benches of lower strength must adhere to such decisions. This will also avoid inconsistencies in the development of law. Questions concerning the correctness of judgments must ordinarily be referred only by a Bench which is equal in strength to the Bench whose judgment is doubted. We also agree with the two exceptions to this rule, as detailed by this Court in Central Board of Dawoodi Bohra Community. They must remain exceptions and not transmogrify into the rule itself."*

16. Interpreting the ratio in *Dawoodi Bohra* (supra) as aforesaid, the majority held that the reference in *Anjuman-e-Rahmaniya* (supra), while doubting but not dissenting from *Azeez Basha* (supra), a five Judge Bench decision, to the Chief Justice for constitution of a seven Judge Bench, fell within the permissible limits laid down in *Dawoodi Bohra* (supra), as explained in sub-para 40.2[29].

17. It may not be out of place to note that in *Aligarh Muslim University* (supra), the minority view did not doubt the ratio in *Dawoodi Bohra* (supra) but interpreted sub-para 40.2 differently. Kant, J. (as he then was)[30], and Sharma, J.[31], interpreted sub-para 40.2 to mean that a Bench of lesser strength, upon doubting the correctness of a decision rendered by a Bench of larger strength, could not request the Chief Justice to constitute a Bench larger than the Bench whose decision was doubted, unless the Chief Justice was himself a member of the referring Bench. Such Bench of lesser strength could only direct placing of the matter before the Chief Justice for appropriate directions. Datta, J.[32], understood sub-para 40.2 to mean that if a two Judge Bench doubts the correctness of a larger Bench decision, it may place the matter before the Chief Justice for constitution of a three Judge Bench, and the matter may thereafter move, if necessary, to Benches of progressively larger

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[29] See Para 42
[30] See Paras 259-268
[31] See Paras 646-660
[32] See Paras 400-413

strength, but not directly to a Bench larger than the Bench whose decision is under doubt.

18. If the course by which the correctness of the ratio in *Bangalore Water Supply* (supra) came to be referred is traced, it becomes clear that a Bench of lesser strength (*Jai Bir* (5J)) expressed doubt as to that ratio and placed the matter before the Chief Justice for constituting a larger Bench for reconsideration of the decision in *Bangalore Water Supply* (supra)[33]. The Bench did not specify the strength of the suitable larger Bench and left it to the discretion of the Chief Justice, who correctly placed the matter, in the first instance, before a Bench of co-equal strength, namely, a seven Judge Bench. Thereafter, the seven Judge Bench, which included the Chief Justice himself, considered it appropriate that the matter be referred to a nine Judge Bench. The course thus adopted does not run counter to *Dawoodi Bohra* (supra), understood in terms of the majority opinion in *Aligarh Muslim University* (supra). Even tested in the minority view expressed by Kant, J., (as he then was) and Sharma, J., in *Aligarh Muslim University* (supra), the reference by the seven Judge bench presided over by the then Chief Justice to the present nine Judge bench cannot be faulted. The reference, having travelled from a three Judge bench to a five Judge bench to a seven Judge bench and ultimately the present nine Judge bench, is also in consonance with the other minority view expressed by Datta, J.

[33] See Para 46

19. Given this situation, it would not be proper to decline to answer the reference at the threshold on account of the form or manner in which the matter came to be placed before this Bench. There is, in any event, a clear distinction between making a reference and answering one. A referring Bench only records why, in its view, the existing position of law may require reconsideration by a Bench of larger strength. The larger Bench is not bound by those reasons. It may accept them, reject them, or answer the issue on an altogether different footing. That inquiry belongs to the merits of the matter before the larger Bench.

DEFINITION OF INDUSTRY: PRE-BANGALORE MUSINGS

20. In light of the above discussion, I may now proceed to examine the ratio in *Bangalore Water Supply* (supra) on merits. That inquiry must begin, not with *Bangalore Water Supply* (supra) in isolation, but with the line of cases through which this Court grappled with the definition of industry and gradually identified the elements which later crystallised into the triple test.

21. Section 2(j) of the ID Act defines "industry" as follows:

> *"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"*

22. Historically, the statutory formulation of Section 2(j) of the ID Act may be traced to the definition contained in the 1911 Amendment of Section 4 of the Commonwealth Conciliation and Arbitration Act, 1904 of Australia which defined "industry" in the following terms:

> *"Industry includes-*
>
> *(a) any business, trade, manufacture, undertaking, or calling of employers, on land or water;*
>
> *(b) any calling, service, employment, handicraft, or industrial occupation or avocation of employees, on land or water; and*
>
> *(c) a branch of an industry and a group of industries"*

Consequently, this Court has consistently drawn inspiration from the observations of the highest Constitutional Court of Australia while determining the contours of Section 2(j) of the ID Act.

23. The first significant step in this interpretive discourse was *D.N. Banerji v. P.R. Mukherjee & Ors*[34], where the Court was faced with the question whether a municipality, while discharging its normal civic duties and not trade and business, could fall within the ambit of "industry". Rejecting a narrow understanding of "industry", Chandrasekhara Aiyar, J., construed Section 2(j) in light of the object of the ID Act, holding that the term could not be confined to profit-oriented trade or business,

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[34] (1952) 2 SCC 619

particularly when the separate use of undertaking and the latter part of the definition indicated a wider legislative reach covering the calling, service, employment, industrial occupation or avocation of workmen[35].

24. Relying on the decision of the Australian High Court in *Federated Municipal & Shire Council Employees' Union of Australia v. Melbourne Corporation*[36], the Bench held that profit motive or capital investment was not essential, and that the real test lay in the nature of the activity. Thus, if an activity would constitute an industry in the hands of a private person, it would not lose that character merely because it was carried on by a municipality without profit motive. What mattered was whether the activity involved systematic cooperation between employer and employees for the satisfaction of human wants, in a manner analogous to trade or business[37].

25. The principle that the nature of the activity must prevail over the character of the body performing it was carried further in *Corporation of the City of Nagpur v. Its Employees*[38], where Subba Rao, J., examined whether the activities of the Nagpur Corporation (including departments like tax collection etc.) fell within the definition of "industry". The Bench declined to apply the rule of *noscitur a sociis* to narrow the definition, holding that the legislative intention of preserving industrial peace mandated a broader construction. It further held that the definition was

[35] See Paras 13-17
[36] (1918) 26 CLR 508
[37] See Paras 23-26
[38] 1960 SCC OnLine SC 45

in two parts and both parts should be read independently. Its first part viewed industry from the standpoint of the employer, while the latter part from the standpoint of an employee. If an activity answered either part, it fell within the definition[39]. To deal with situations where the same municipal body or department discharged multiple functions, some industrial and others non-industrial, the Bench evolved the "predominant nature test", under which the undertaking was to be viewed as an integrated whole and classified according to its dominant function[40].

26. In *State of Bombay v. Hospital Mazdoor Sabha*[41], the Bench was required to address whether hospitals could constitute an industry under Section 2(j). The Bench referred to the dual-chambered character of the definition industry and held that both parts of the definition contained wide expressions which amplified one another, calling for an expansive interpretation, as opposed to a restrictive one[42]. The Bench emphasised that the inquiry turned on the nature of the activity, not the presence of profit, capital investment, or a strict commercial form[43]. Holding so, it proceeded to give an in-principle definition of the term undertaking to include (I) any activity systematically or habitually undertaken (II) with the co-operation of the employer and employees (III) for the production

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[39] See Paras 9-10 & 13-18
[40] See Paras 16-18
[41] 1960 SCC OnLine SC 44
[42] See Paras 8-11
[43] See Para 11 & 13

or distribution of goods or for rendering of material services to the community for the satisfaction of human needs[44].

27. It is also relevant to bear in mind that after giving a working definition of industry in *Hospital Mazdoor Sabha* (supra), Gajendragadkar, J., drew a "*fair and just line*" exempting certain activities, namely, personal or domestic services and primary inalienable sovereign functions of the State, from the ken of industry[45]. In fact, the decision in *Hospital Mazdoor* (supra) sowed the seed that ultimately sprouted into the comprehensive definition of industry in *Bangalore Water Supply* (supra).

28. Soon after the pronouncement of *Hospital Mazdoor Sabha* (supra), the wide definition of industry was questioned and liberal professions[46], education[47] and private clubs[48] were carved out of its definitional orbit. This restrictive trajectory finally reached its zenith when the ratio in *Hospital Mazdoor* (supra) was referred to a six Judge Bench in *Management of Safdarjung Hospital, New Delhi v. Kuldip Singh Sethi*[49].

29. In *Safdarjung Hospital* (supra), the question was whether Government and charitable hospitals could be treated as industries merely because they were organised undertakings rendering services with the assistance

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[44] See Para 17
[45] See Para 12 & 14
[46] *National Union of Commercial Employees & Anr v. M.R. Meher, Industrial Tribunal, Bombay & Ors*, 1962 SCC OnLine SC 132, Paras 12-14
[47] *University of Delhi and Anr v. Ram Nath and Ors,* 1963 SCC OnLine SC 117, Paras 5-17.
[48] *Secretary, Madras Gymkhana Club Employees' Union v. Management of the Gymkhana Club,* 1967 SCC OnLine SC 51, Para 19, 29-31; *Cricket Club of India Ltd. v. Bombay Labour Union,* 1968 SCC OnLine SC 132, Paras 4 & 7-10
[49] (1970) 1 SCC 735

of employees. Answering in the negative, the Bench dismantled the reasoning in *Hospital Mazdoor Sabha* (supra) which, according to it, had read two parts of the definition in Section 2(j) in isolation and not in an integrated manner as two counterparts of one industry. A workman could be regarded as employed in an industry only where his service was rendered in aid of an employer's undertaking which itself bore the character of trade, business, manufacture, undertaking or calling in the commercial sense.

30. The Bench further held that *Hospital Mazdoor Sabha* (supra) had misapplied the observations of Issacs and Rich, JJ., in *Melbourne Corporation* (supra) that the cooperation between capital and labour in producing goods or services for the satisfaction of human wants and desires would mean any activity where such goods or services were produced by a Government department or charitable institution since the same could be produced by a private person. As per *Safdarjung Hospital* (supra), this expression was used in *Melbourne Corporation* (supra) to merely distinguish the activities of the Government in industrial venture, though bereft of profit-making or absence of capital investments, and not to attribute the character of industrial activity to services undertaken by Government as public duties and even by individuals for charitable purposes[50].

[50] See Paras 24-25

31. It is against this background of doctrinal uncertainty that *Bangalore Water Supply* (supra) came to be decided. By then, the law under Section 2(j) had entered a difficult terrain. On one side stood *D.N. Banerji* (supra), *Corporation of the City of Nagpur* (supra), *Hospital Mazdoor Sabha* (supra), which had given the definition a broad and functional reach. On the other stood *National Union* (supra)[51], *University of Delhi* (supra)[52], *Madras Gymkhana Club* (supra)[53], *Cricket Club of India* (supra)[54], and finally *Safdarjung Hospital* (supra), which had sought to confine that reach by insisting upon an activity analogous to trade or business in a commercial sense. The task before the seven Judge Bench in *Bangalore Water Supply* (supra) was, therefore, to reconcile a body of precedent which had pulled the definition of industry in competing directions.

BANGALORE WATER SUPPLY – RATIO DECIDENDI

A. Opinion of Krishna Iyer, J.

32. Krishna Iyer, J., speaking for himself, Bhagwati and Desai, JJ., undertook that exercise by returning to the object and purpose of the ID Act, namely industrial peace and resolution of industrial disputes. The Hon'ble Judge opined that a narrow doctrinaire approach to fit the definition within the traditional frame of industry or business in a commercial sense would be a misfit for the ever-evolving activities of a

[51] Excluded 'Liberal Professions'
[52] Excluded 'Educational Institutions'
[53] Excluded 'Self-serving Clubs'
[54] *Id*

diverse nature that cater to the growing needs of a welfare State, and would ultimately defeat the very object of the legislation itself. To achieve this end, Krishna Iyer, J., while endorsing the broad formulation in *Hospital Mazdoor Sabha* (supra) proceeded to give a more comprehensive working definition which would "*abolish blurred edges, illumine penumbral areas and over-rule what we regard as wrong*"[55]. In doing so, the Court expressly overruled the restrictive line of authority represented by *Safdarjung Hospital* (supra), *National Union* (supra), *University of Delhi* (supra), and *Madras Gymkhana Club* (supra). The comprehensive working definition so formulated by Krishna Iyer, J., commonly referred to as the "triple test", may be best expressed in his own words:

> *"**140.** "Industry", as defined in Section 2(j) and explained in Banerji, 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 e.g. making, on a large scale, 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.*

[55] See Paras 137-139

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

141. *Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach 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, 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 the 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."

142. *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 workmen, the range of this statutory ideology must inform the reach of 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 (vii) other kindred adventures, if they fulfil the triple tests listed in I, cannot be exempted from the scope of Section 2(j).

(b) A restricted category of professions, clubs, co-operatives 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 centre 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 undertakings alone are exempt — not other generosity, compassion, developmental passion or project."

143. *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 case [University of Delhi v. Ram Nath], or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur 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.*
>
> ***144.*** *We over-rule Safdarjung, Solicitors' case, Gymkhana, Delhi University, Dhanrajgirji Hospital and other rulings whose ratio runs counter to the principles enunciated above, and Hospital Mazdoor Sabha is hereby rehabilitated."*

33. The central shift brought about by this formulation was that the expression analogous to trade or business was not to be searched for in the commercial object of the undertaking. The relevant resemblance lay in the manner in which the activity was carried on. An activity, though not trade or business in the ordinary sense, could still fall within Section 2(j) if it involved systematic activity organised through cooperation between employer and employee for the production or distribution of goods or services calculated to satisfy human wants and wishes. The analogy, therefore, was not in the motive which prompted the activity, nor in the destination of its output, but in the organisation of work and the relationship between labour and management. Once these elements were present, absence of profit motive, absence of a gainful objective, the public or private character of the venture, or the philanthropic object animating it, did not by itself take the activity outside the definition.

34. On this anvil, Krishna Iyer, J., rejected the cramped approach that had sought to place liberal professions, educational institutions, research

bodies, charitable establishments, clubs, and cooperatives beyond the purview of industries. The Court made it plain that no activity could claim exemption merely by virtue of its label. The focus must remain fixed on the nature of the activity itself. Therefore, the real question was whether the undertaking, in its actual working, satisfied the three elements identified by the Court. If it did, the institution could not claim immunity by invoking its purpose or description. If it did not, the statute would not apply merely because some persons were employed in its establishment.

35. At the same time, *Bangalore Water Supply* (supra) was equally conscious that industry could not be magnified to include casual or non-systematic activities. A simple venture would not become an industry where, substantially and by its dominant nature, it retained an unorganised or casual character and only a few employees were engaged. In liberal professions, Krishna Iyer, J., exempted individual professionals with marginal employee engagement in contradistinction to organised professional activity. Similarly, a pious or altruistic mission would not become an industry where those associated with it were themselves inspired by charity and served the cause free of remuneration, or for small honoraria, without being engaged on the basis of a master-servant relationship. In such cases, the presence of stray manual or technical staff was not decisive.

36. Krishna Iyer, J., then supplied the rule for composite undertakings through the dominant nature test, as explained in *Corporation of the City*

of Nagpur (supra). Where an undertaking consisted of several activities, some capable of exemption and others not, its character was not to be determined by breaking it into isolated departments or by treating incidental features as controlling. The true inquiry was into the predominant nature of the services rendered and the integrated character of the departments. If, so viewed, the undertaking bore an industrial character, it would fall within Section 2(j) as a whole, although persons who were not workmen within the meaning of the ID Act would not acquire that status merely because the undertaking was an industry.

37. The aforestated principle informed the treatment of Government departments. Sovereign functions, strictly understood, alone qualified for exemption, and not welfare activities or economic ventures undertaken by Government or statutory bodies. Even in a department discharging sovereign functions, a substantially severable unit bearing an industrial character could still be brought within Section 2(j). The formulation was also made subject to any constitutional or statutory provision[56] which, expressly or by necessary implication, removed particular categories from the operation of the ID Act.

38. The opinion of Krishna Iyer, J., however, was not the only voice in *Bangalore Water Supply* (supra). Beg, C.J., and Chandrachud, C.J., delivered separate opinions broadly agreeing with the ratio of Krishna Iyer, J., while Jaswant Singh, J., speaking for himself and Tulzapurkar,

[56] Articles 309 to 311 of the Constitution of India, the enactments dealing with the Defence Forces and other legislation dealing with employment under statutory bodies (See Para 50)

J., partly dissented. It is therefore necessary to notice those opinions and the concurrences, qualifications and disagreements with the formulation enunciated by Krishna Iyer, J.

B. ***Concurring opinions of M.H. Beg, C.J., and Y.V. Chandrachud, C.J.***

(i) ***M.H. Beg, C.J.***[57]

39. Beg, C.J., expressly agreed with the reasoning and conclusions of Krishna Iyer, J., and held that, having regard to the preamble, legislative history, constitutional setting, and socio-economic conditions in which the ID Act operates, *noscitur a sociis* was not an appropriate tool for construing the term "industry".

40. In relation to Governmental activity, Beg, C.J. was clear that the mere presence of the State could not exclude the application of the ID Act, since the modern State had entered fields of industry, trade, public transport, public utilities and welfare services. Exclusion would arise only where constitutional provisions such as Articles 310 and 311, separate service rules, or special enactments displaced the general law expressly or by necessary implication. The same functional approach informed his treatment of liberal professions and charitable institutions. If the work of a lawyer or doctor assumed an organised and systematised form comparable to business or trade, employed several persons, and generated conditions in which disputes could arise between employer

[57] See Paras 146-169

and employees, it could fall within Section 2(j). Likewise, when services rendered by individuals arise out of missionary zeal and purely charitable motives, they would be excluded from the ambit of the ID Act.

(ii) <u>Y.V. Chandrachud, C.J.</u>[58]

41. Chandrachud, C.J., accepted the definition formulated by Krishna Iyer, J., *in toto*, but observed that, once Section 2(j) was found to employ words of deliberate width, the task of identifying what limitations should be read into it was a matter of policy, and where the language was clear, the definition had to be given the meaning its words conveyed, leaving no scope for judicially devised exceptions. The Hon'ble Judge saw little justification for excluding even inalienable sovereign functions once the nature of the activity bore an industrial character. If municipal water supply, sewerage and firefighting establishments could be industries, there was no reason why activities such as manufacture of coins and currency, arms and ammunition, or winning of oil and uranium should stand excluded merely because they were carried on by the State.

42. Similarly, for liberal professions, Chandrachud, C.J., rejected any broad immunity. The test of direct and proximate cooperation between employer and employee was, in his view, too uncertain, since assistants, managing clerks, librarians or typists may not produce the final intellectual product, but without their active assistance the professional establishment may not function effectively. The same approach governed

[58] See Paras 171-183

charitable enterprises and clubs. Charity, membership structure, self-serving character, or limited access to members and guests could not be decisive. The real inquiry was whether the activity was organised or arranged in the manner in which trade or business is normally organised.

C. ***Dissenting opinion of Jaswant Singh, J.***[59]

43. Jaswant Singh, J., speaking for himself and Tulzapurkar, J., agreed with the dismissal of the appeal made by Bangalore Water Supply Board, but did not accept the wider formulation adopted by Krishna Iyer, J. In his view, Section 2(j) would be attracted only where the activity was systematically or habitually undertaken on commercial lines, with the cooperation of employees, for the production or distribution of goods or for rendering material services to the community or a section of it. This conclusion was reached by applying *noscitur a sociis*. The words in Section 2(j) had to take colour from their setting and from the associated expressions used in the definition.

44. Such an understanding had direct consequences for charitable and welfare institutions. Hospitals run on a charitable basis, or as part of the functions of Government, municipalities or local bodies, were not to be brought within the reach of Section 2(j). The same reasoning extended to educational and research institutions, whether run privately or by Government. Their object, structure and manner of functioning were

[59] See Paras 184-187

treated as insufficiently connected with activity undertaken on commercial lines for the production of goods or rendering of material services.

45. Liberal and learned professions were also placed outside the definition. The dissent treated professions such as those of doctors, lawyers and teachers as resting upon the individual's education, intellectual attainments and special expertise. In such cases, the work of the usual type of employees was considered too remote from the final service rendered to the client, patient or student. The end product could not, on this view, be treated as the result of industrial cooperation between the professional and his employees.

46. Krishna Iyer, J., in his principal opinion, had shifted the emphasis away from commercial analogy to the organised employer employee basis of the activity. However, the dissent insisted that Section 2(j) was not attracted unless the organised activity also bore the character of an undertaking carried on commercial lines.

47. Before proceeding further, it is imperative, at the very outset, to answer some arguments which were advanced to the effect that the opinions of Chandrachud, C.J., and Jaswant Singh, J., were delivered on a later date and Beg, C.J., did not have the benefit of going through the other two opinions. This is also one of the reasons for reference given in *Jai Bir* (5J) (supra). I am afraid that the retirement of Beg, C.J. before he could

peruse the deferred opinions does not affect the majority view or its binding effect.

48. Firstly, it is trite that when multiple opinions are handed down by a polyvocal Bench, the majority view binds the minority and constitutes the view of the Bench itself[60]. Secondly, the deferred opinion delivered by Chandrachud, C.J., concurs with the majority view. Even for argument's sake, if we were to assume that Beg, C.J. could have been persuaded by the minority opinion of Jaswant Singh, J., to alter his view, the opinion penned by Krishna Iyer, J., concurred in by Chandrachud, C.J., would nonetheless have remained the majority one.

LEGISLATIVE INTERVENTIONS POST BANGALORE WATER SUPPLY

49. Parliament, by the Industrial Disputes (Amendment) Act, 1982[61], amended the definition of "industry". The triple test was broadly retained to identify entities falling within the ambit of Section 2(j) of the ID Act, subject to exceptions enumerated therein. However, the 1982 Amendment Act was never brought into force.

50. The ID Act has since been repealed upon the coming into force of the IR Code, 2020[62], which defines "industry" under Section 2(p) in the following terms:

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[60] *Trimurthi Fragrances (P) Ltd. v. State (NCT of Delhi)*, (2024) 20 SCC 709, See Para 19
[61] Hereinafter "1982 Amendment Act"
[62] Enforced w.e.f. 21.11.2025, vide S.O. 5320(E)

*"**p)** "industry" means any systematic activity carried on by co-operation between an employer and worker (whether such worker is employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not, —*

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

(ii) such activity is carried on with a motive to make any gain or profit,
but does not include —

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

(ii) any activity of the appropriate Government relatable to the sovereign functions of the appropriate Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or

(iii) any domestic service; or

(iv) any other activity as may be notified by the Central Government"

51. It is at this cusp of transition from the ID Act to a new industrial law regime that this Bench has assembled to answer the following questions:

*“**(i)** Whether the test laid down in paragraphs 140 to 144 in the opinion rendered by Hon’ble Mr. Justice V.R. Krishna Iyer in Bangalore Water Supply and Sewerage Board’s case (supra) to determine if an undertaking or enterprise falls within the definition of “industry” lays down correct law? And whether the Industrial Disputes (Amendment) Act, 1982 (which seemingly did not come into force) and the Industrial Relations Code, 2020 (with effect from 21.11.2025) have any legal impact on the interpretation of the expression “industry” as contained in the principal Act?*

***(ii)** Whether social welfare activities and schemes or other enterprises undertaken by the Government Departments or their instrumentalities can be construed to be “industrial activities” for the purpose of Section 2(j) of the ID Act?*

***(iii)** What State activities will be covered by the expression “sovereign function”, and whether such activities will fall outside the purview of Section 2(j) of the ID Act?*

***(iv)** Any other issue(s) that may arise during the course of hearing before the Nine-Judge Bench.”*

ANALYSIS

A. Formulation of the triple test and interpretation of ‘Undertaking’ with respect to ‘Noscitur A Sociis’ in Bangalore Water Supply

52. In the aftermath of the Second World War, industrial unrest had begun to intensify, and the limitations of the existing legal framework had become impossible to ignore. It was in these circumstances that the ID Act came to be enacted, with the preamble making its legislative purpose unmistakably clear:

> *"An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes"*

53. The ID Act pursues this preambular object through a negotiated balance between the interests of labour, capital, and the State, ensuring that productivity is never chased in oblivion of the rights of workers. Though the ID Act preceded the Constitution, its welfare-oriented scheme reflects the social philosophy which the Constitution later institutionalised. Article 38 requires the State to secure a social order informed by political, economic and social justice, and to minimise inequalities in status, income and opportunity. Article 39 carries that commitment into the economic sphere by directing the State to ensure adequate means of livelihood and prevent concentration of wealth to the common detriment. Article 43 completes that vision by contemplating living wages, humane conditions of work and a decent standard of life for all workers. These directives ought to be read harmoniously with the fundamental rights to equality and human dignity, collectively embodying the constitutional promise that each individual is entitled to a dignified life rather than a mere animal existence. This acknowledgement while binding the State to

a particular economic philosophy[63], seeks a fine balance between the individuals' pursuit of higher productivity and wealth and the rights of employees to a fair and humane life, including effective access to justice through a responsive grievance redressal mechanism. Any interpretation of the ID Act must remain profoundly conscious of the reality that true industrial efficacy emanates from industrial peace, not from trampling the rights of a key stakeholder.

54. The salient features of the ID Act are as follows:

i) It establishes a structured institutional framework comprising Works Committees[64], Conciliation Officers[65], Boards of Conciliation[66], Courts of Inquiry[67], Labour Courts[68], Industrial Tribunals[69] and National Tribunals[70] for the investigation and settlement of industrial disputes

ii) It empowers the appropriate Government to refer industrial disputes for adjudication[71], while also permitting the parties to submit disputes to voluntary arbitration[72]

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[63] See *Property Owners Association & Ors v. State of Maharashtra & Ors*, (2024) 18 SCC 1
[64] Section 3, ID Act
[65] Section 4, ID Act
[66] Section 5, ID Act
[67] Section 6, ID Act
[68] Section 7, ID Act
[69] Section 7-A, ID Act
[70] Section 7-B, ID Act
[71] Section 10, ID Act
[72] Section 10-A, ID Act

iii) It regulates strikes and lock-outs, particularly in public utility services[73], and prohibits their commencement or continuance during specified stages of conciliation, arbitration and adjudicatory proceedings[74]

iv) It enables the appropriate Government to declare specified industries or services as public utility services where uninterrupted operation is necessary in the public interest[75]

v) It prescribes substantive and procedural safeguards governing lay-off, retrenchment, transfer and closure of undertakings, including requirements of notice, compensation and, in specified cases, prior Governmental permission[76]

vi) It accords binding force to settlements and adjudicatory awards upon the parties and other persons covered by the statute[77], and regulates the period for which such settlements and awards remain operative[78]

vii) It protects workmen against punitive or prejudicial action during the pendency of industrial proceedings[79] and empowers adjudicatory authorities to examine the legality and proportionality of discharge or dismissal[80]

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73 Section 22, ID Act
74 Section 23, ID Act
75 Section 2(n)(vi), ID Act
76 Chapter VA, ID Act
77 Section 18, ID Act
78 Section 19, ID Act
79 Section 33, ID Act
80 Section 11-A, ID Act

55. The ID Act achieves its purpose and ensures access to justice by providing a remedial framework that is far more efficacious, specialised, and socially responsive for resolution of industrial conflict and preservation of industrial peace than the labyrinth of ordinary civil law remedies, which a workman can ill-afford[81]. Section 2(s) of the ID Act defines 'workman' as follows:

> *"'Workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge, or retrenchment has led to that dispute..."*

56. Only an individual who classifies as a 'workman' engaged in an 'industry' in case of an 'industrial dispute'[82] can seek refuge under the protective garb of the ID Act and avail the unique remedies contemplated therein such as reinstatement, back-wages, regularisation, retrenchment

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[81] *Chandrakant Tukaram Nikam v. Municipal Corporation of Ahmedabad*, (2002) 2 SCC 542 (See Paras 5-6)

[82] As defined in Section 2(k) - "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person

compensation and collective settlements[83]. These stand in marked contrast with civil remedies, which move through the slower, adversarial grammar of private litigation. As correctly pointed out by Ms. Jaising, the 'security of tenure' guised as reinstatement under Section 11A of the ID Act has no true equivalent in ordinary civil law. By virtue of this provision, the Labour Courts can not only examine whether a dismissal is unfair or disproportionate but also, where necessary, direct reinstatement or substitute the punishment imposed with a lesser penalty. On the contrary, an ordinary Civil Court, constrained by the traditional common law conception of "master and servant", may at best award damages for wrongful termination. Constitutional remedies, too, cannot always serve as an adequate substitute, particularly where industrial conflicts involve disputed questions of fact.

57. Perhaps, the greatest achievement of the ID Act is in instilling a spirit of dialogue that starts at the workplace itself, through works committees[84], conciliation officers[85], and boards of conciliation[86], all intended to prevent industrial tensions from crystallising into open conflict. At the heart of this architecture lies collective bargaining, through which the otherwise scant bargaining power of an individual workman is strengthened by the representative voice of the union, and disputes concerning conditions of employment are resolved by agreement rather

[83] S. 11 & 11A, ID Act (Also see Chapter VA & VB, ID Act)
[84] S.3, ID Act
[85] S.4 & 12, ID Act
[86] S.5 & 13, ID Act

than coercion. Industrial democracy is the bedrock of the ID Act, with the individual workman receding into the background and the union espousing the common cause of the body of workmen.

58. Section 18 of the ID Act gives legal effect to voluntary collective bargaining by recognising settlements arrived at both within and outside conciliation proceedings. While a settlement arrived at otherwise than in the course of conciliation binds the parties to the agreement under Section 18(1), a settlement reached during conciliation is accorded an extended binding force under Section 18(3), encompassing not merely the immediate parties but all persons and workmen statutorily connected with the industrial dispute.

59. Even if matters reach the stage of adjudication in a courtroom, disputes are entrusted to Labour Courts[87] and Industrial Tribunals[88] possessing the requisite subject-matter expertise. The pro-welfare approach of the ID Act is further reinforced by the fact that post adjudication, if the workman is entitled to more favourable benefits under any other law, award, or contract of service than those already bestowed by the ID Act, he may avail the same[89].

60. The ID Act is not an ordinary commercial statute but a beneficial social legislation providing a complete code for resolution of industrial disputes. Its provisions must receive a purposive construction that advances the

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[87] S.7, ID Act
[88] S.10, ID Act
[89] Proviso to S. 25J, ID Act

remedy[90] and sustains the object of the larger legislative scheme[91]. To ensure that the ID Act baulks a restrictive definition of industry or industrial disputes, *Bangalore Water Supply* (supra) while approving the wide and inclusive interpretation adopted in *D.N. Banerji* (supra)[92], *Corporation of the City of Nagpur* (supra)[93] and *Hospital Mazdoor Sabha* (supra)[94], rejected the associational shrinkage of the term undertaking to a mere synonym of trade and business in the commercial sense.

61. Ld. Amicus, Mr. Cama, disputes such an expansive construction and contends that the legislature, by employing the expression "means" in Section 2(j), intended to provide an exhaustive definition confined only to activities answering a narrow commercial understanding of trade or business. Relying on the interpretation adopted in *Safdarjung Hospital* (supra), he further submits that unless an undertaking satisfies the commercial requirements contained in the first exhaustive part of Section 2(j), the latter part of the definition cannot be invoked.

62. I am unable to accept the interpretation canvassed by Mr. Cama, for the following reasons. *Firstly*, the definition clause, comprises two limbs. The first limb, though prefaced by the word "means" which ordinarily denotes an exhaustive definition, must be read holistically with the second limb which is couched in wide and inclusive terms. The usage of the word

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[90] *Ameer Trading Corporation Ltd. v. Shapoorji Data Processing Ltd.*, (2004) 1 SCC 702, See Paras 23-25 & 27
[91] *National Insurance Co. Ltd. v. Laxmi Narain Dhut*, (2007) 3 SCC 700, See Paras 27, 28, 30 & 33; *Poppatlal Shah v. State of Madras*, (1953) 1 SCC 492, See Para 9
[92] See Paras 13-17
[93] See Para 18
[94] See Para 10

"includes" followed by expressions of wide import such as calling, service, handicraft and industrial occupation and avocation of workmen in the second limb of the definition industry, indicates that the legislature did not intend the definition to remain confined within rigid or exhaustive limits of the first limb. Rather, it widened the scope of the expression so as to bring within its fold matters which may not be expressly enumerated in the definition clause. Read in this manner, the structure of Section 2(j) itself resists the restrictive interpretation advanced by Mr. Cama.

63. *Secondly,* Mr. Cama's argument that the two limbs of the word industry must be read conjunctively, i.e., an activity would fall within the definition of industry when it satisfies the exhaustive test qua the employer irrespective of the inclusive definition qua the employee, even if accepted, would not justify a restrictive reading of the first limb of the definition. The first limb of the definition itself employs expressions of considerable breadth. The term "undertaking", for instance, though undefined under the ID Act, is defined in the Oxford Dictionary[95] as follows:

> *"A task or project, especially one that is important and/or difficult"*

[95] *Oxford Advanced Learner's Dictionary* (2005) 7th Edn, Oxford University Press 1667

Hence, in common parlance, the term is not restricted to trade and commerce alone and may include any activity. Equally expansive is the term "calling". The dictionary meanings of the term read thus:

> *"A strong desire or feeling of duty to do a particular job, especially one in which you help other people; a profession or career."*[96]
>
> *"Carrying on a school is calling; the profession of teaching is a calling."*[97]

The lexical import of calling makes it clear that the expression carries an exceptionally broad sweep, which can be extended to diverse fields such as professions, spiritual pursuits, education and charitable activities. Thus, even in their ordinary and everyday sense, these expressions travel far beyond the narrow world of commerce and profit. It is for this very reason that this Court in *D.N. Banerji* (supra), *Corporation of the City of Nagpur* (supra) and *Hospital Mazdoor Sabha* (supra) recognised the inherently wide import of the term "undertaking". To confine such wide words within a commercial window would be to lose sight of the very object for which industrial law came into being.

64. Finally, the ID Act essentially deals with the terms of organised engagement between employer and employee for the production of goods and services that satisfy human wants and needs. Whether such goods

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[96] *Id*

[97] Greenberg D (ed), *Stroud's Judicial Dictionary of Words and Phrases* (8th edn, Sweet & Maxwell 2012)

or services (having material worth) are consumed on commercial or altruistic lines does not affect the relationship between the employer and employee engaged in bringing them into existence. The 'heart and soul' of the definition lies in this structured cooperation, and not in the profit motive or commercial character of the undertaking. The expression analogous to trade or business used in earlier judgments, starting from *D.N. Banerji* (supra), must necessarily mean any activity whose 'systematic and organised' cooperation between employer and employee is akin to trade and commerce. Viewed thus, Mr. Cama's argument, premised on *Safdarjung Hospital* (supra), that the expression industry must be confined to activities pursued for a commercial purpose, does not warrant acceptance. Krishna Iyer, J., by correctly shifting the focus from profit/business motive to the nature of the activity, has developed a formulation that wholly aligns with the object of the ID Act. In doing so, the definition rightly makes room for exclusion of casual, sporadic and unorganised activities, such as domestic service, small informal associations of persons, or individual professional practice, in contradistinction to social clubs or firms of professionals which are established and run systematically through an organised employer employee structure.

65. Petitioners have further argued that the expressions "business", "trade", "undertaking", "manufacture" and "calling" occurring in Section 2(j) must be interpreted in light of the maxim *Noscitur a Sociis*, under which associated words derive colour and meaning from one another. According

to them, the word "undertaking", being placed alongside "business" and "trade", cannot be construed in isolation so as to include every organised activity, but must be confined to undertakings bearing a commercial character.

66. The principle of *Noscitur a Sociis* stipulates that words derive meaning from the company they keep[98]. When words susceptible of analogous meanings are grouped together, the more general expression may legitimately draw colour from the narrower expressions surrounding it and may thus be confined to a cognate sense. However, this Court in *D.N. Banerji*[99] (supra), *Corporation of the City of Nagpur*[100] (supra) and *Hospital Mazdoor Sabha*[101] (supra) had declined to apply *Noscitur a Sociis* for confining the word "undertaking" only to commercial or profit-oriented activities. The prevailing understanding was that the wider phraseology of Section 2(j) was consciously adopted to ensure that the definition remained sufficiently broad to respond to the changing realities of organised industrial activity and the larger objective of preserving industrial peace in a welfare State. In *Bangalore Water Supply* (supra), the opinions of Beg, C.J.[102], and Chandrachud, C.J.[103], echoed the same sentiment and did not apply *Noscitur a Sociis* as an interpretive tool to read down the width of Section 2(j). Per contra, the partly dissenting

[98] Maxwell, *Interpretation of Statutes*, 11th edn, p. 321
[99] See Para 17
[100] See Paras 9-10
[101] See Para 13
[102] See Paras 147-169
[103] See Paras 170-183

opinion of Jaswant Singh, J., departed from this line of reasoning and applied *Noscitur a Sociis* in a far more restrictive sense so as to curtail the ambit of industry to activities bearing a distinctly commercial character.

67. It is relevant to note that Krishna Iyer, J., does not outrightly reject the application of *Noscitur a Sociis*, but adopts a far more nuanced stance. The Hon'ble Judge accepted that the expression undertaking must indeed "*suffer a contextual and associational shrinkage*" and should derive colour from the surrounding expressions like trade and business[104], which are to be understood as systematic activities producing goods and services through organised cooperation between employer and employee. But while invoking *Noscitur a Sociis*, the relevant enquiry was still anchored on the nature of activity and not the commercial motive of the employer. Therefore, if an undertaking answered the functional formulation of the triple test, it would be deemed to be analogous to trade or business and consequently, an industry.

68. The ratio in *Bangalore Water Supply* (supra), whether viewed through the approach of Beg, C.J., and Chandrachud, C.J., who declined to apply *Noscitur a Sociis* to define 'undertaking' in a restrictive manner, or through the more textured understanding adopted by Krishna Iyer, J., advances the object of the Act far more effectively than the narrow construction favoured by Jaswant Singh, J., which proceeds on the

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[104] See Para 13

assumption that undertaking must derive a purely commercial colour from the accompanying terms trade and business. *Noscitur a sociis*, being a tool of purposive interpretation, cannot be applied in a manner that defeats the very purpose of the legislation.

69. One must always bear in mind that a workman seldom enters the field of negotiation as an equal. Across the table, often stands an employer larger than him in every conceivable sense, armed with greater resources and bargaining strength. The ID Act attempts to soften that imbalance. It gives the solitary worker a language through which he may collectively speak, and a one-stop forum before which his grievance is effectively remedied. The legislation seeks to ensure that industrial relations do not harden into a landscape where unequal bargaining power alone determines outcomes. It was with this larger constitutional and social vision in mind that Krishna Iyer, J., formulated the triple test in *Bangalore Water Supply* (supra). The test was never intended to erase all limits upon the definition of "industry", but to preserve industrial peace through civilised dialogue and prompt adjudication wherever organised human effort and labour converge in a form capable of generating claims, demands, tensions and stress.

70. In light of such discussion, I hold that the test laid down in paragraphs 140 to 144 in the opinion rendered by Krishna Iyer, J., in *Bangalore Water Supply* to determine if an undertaking or enterprise falls within the definition of "industry" lays down correct law. Having affirmed the

triple test, the next stage of analysis would be its application vis-à-vis the different categories of activity, starting with sovereign functions.

B. ***<u>Do sovereign functions include 'welfare activities'?</u>***

71. Sovereign functions are not excluded by any express words in Section 2(j) of the ID Act. The exclusion has been recognised by judicial interpretation, because certain functions of the State are so closely tied to its core identity that they cannot be treated as ordinary industrial activity. The danger lies in allowing a narrow exception, meant for truly inalienable functions of the State, to expand into a general protection for every activity undertaken by the Government.

72. Traditionally, sovereign was understood as regal, that is, the King. From this perspective, Crown functions which cannot be delegated were understood as 'sovereign'. In a constitutional democracy, sovereign powers vest in the people and the State exercises them as a representative of the 'will of the people'. That is to say, the State is answerable to none but the people while exercising sovereign powers. Unlike statutory or even constitutional powers where the State is amenable to judicial review, in exercise of sovereign powers, the State as the representative of *vox populi* is only answerable to the *populus* in the political-democratic domain. The task is to then isolate that narrow inalienable and non-justiciable field of activities without letting sovereignty become a convenient shield for every public, statutory, or

welfare-oriented enterprise, and the cue for resolving this quandary lies in the opinion of this Court in *N. Nagendra Rao & Co. v. State of A.P.*[105].

73. Although born within the law of torts, the decision in *Nagendra Rao* (supra) serves as a vital compass for defining the modern content of inalienable sovereign functions. Writing for the Court, Sahai, J., held that only when a State was carrying on activities which are politically and jurisprudentially categorised as pure acts of State did they remain insulated from the jurisdiction of ordinary Civil Courts. A citizen cannot sue the Government for negligence in making a law or for policy decisions, because in this exclusive sphere, the jurisdiction of the Courts is impliedly barred as a matter of public interest. *Nagendra Rao* (supra) also sounds a profound caution by declaring that the immunity of the State terminates precisely where this narrow sovereign core ends[106].

74. The judgment in *Chief Conservator* (supra) serves as the vital bridge carrying the principles of *Nagendra Rao* (supra) directly into the specific terrain of industrial jurisprudence. When the State sought to extend the protective guard of sovereignty over the entire Forest Department, the three judge Bench drawing inspiration from *Nagendra Rao* (supra) confirmed that the sovereign shell covers only those core functions "which are indicative of external sovereignty and are political in nature"[107]. For these activities, the State is fundamentally not

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[105] (1994) 6 SCC 205
[106] See Paras 23-25
[107] See Para 12

answerable in an ordinary Court of law. Because this sovereign core is so uniquely confined, the vast expanse of the State's welfare activities irrespective of their public utilitarian import cannot fall within the immunized sovereign core.

75. Various public duties may be vested in the State through primary legislation or even under the Constitution. These statutory or constitutional duties, even those undertaken to achieve the lofty ideals of Part IV, do not, merely by the strength of their public character or welfare nature, constitute sovereign functions, unless such functions form the core of a nation's sovereign existence. Such reasoning draws a clear distinction between the inalienable sovereign powers of a nation, in exercise of which the State is answerable to the people, and its constitutional and statutory duties, including welfare activities, where the State is amenable to judicial review under the constitutional scheme. Importing such a narrow sovereign exception while testing whether a Governmental activity constitutes an industry fits well with the purposive interpretation of the ID Act, furthering its objective of ensuring industrial peace and the seamless adjudication of industrial disputes in all conceivable spheres of Governmental activity, welfare or otherwise. Even within the core sovereign area, *Bangalore Water Supply* (supra) was right to hive off substantial severable units that operate as industries under the law.

76. In such view of the matter, there is no wrong in saying that the contours of sovereignty have steadily contracted as the modern State has moved

from command to service, from prerogative to responsibility, and from a distant ruler to an everyday employer, regulator and provider. Two working tests may be invoked for locating that narrow sovereign core. The first is the test of non-justiciability and absolute immunity articulated in *Nagendra Rao* (supra) and applied to industrial law by *Chief Conservator* (supra), which looks at whether the state's action is purely political and completely insulated from the scrutiny of ordinary Civil Courts. The second is the private person test/inalienability test, which runs through *D.N. Banerji* (supra), *Nagpur Corporation* (supra), *Hospital Mazdoor Sabha* (supra), and *Agricultural Produce Market Committee* (supra). If the activity is of a kind that private persons or non-State agencies may perform, it cannot be described as essentially and inalienably sovereign in the strict sense, for such a function is one which is inseparable from the State and can be performed only by the State.

77. These tests point towards a restricted domain comprising functions such as defence, foreign affairs, war and peace, treaty making, legislation, taxation, eminent domain, core police power, justice, maintenance of law and order, internal and external security, repression of crime and grant of pardon. Even while indicating these categories, caution is necessary. The boundaries of sovereignty cannot be fixed by yesterday's assumptions. Frédéric Mégret, writing on "inherently sovereign functions"[108] traces how power once concentrated in the State has, in

[108] Frédéric Mégret, *Are There "Inherently Sovereign Functions" in International Law?,* American Journal of International Law, Volume 115, Issue 3, July 2021, pp. 452 - 492

modern times, been steadily unbundled into private hands, with privatisation reaching areas once instinctively associated with sovereignty, including policing, military activity, intelligence, prisons and border control.

78. Therefore, ordinary administrative, developmental or welfare activities of the State cannot, by any automatic rule, be treated as naturally immune. The question must always be whether the function is so bound to the constitutional personality of the State that it cannot be alienated, delegated, or made answerable in the ordinary course of civil adjudication or constitutional torts. Everything outside that small chamber must return to the discipline of Section 2(j).

79. Mr. Nataraj, ASG, attacks this premise by arguing that while *Bangalore Water Supply* (supra) purports to exclude primary and inalienable functions, it fails to provide a workable methodology for identifying them amid contemporary governance. He contends that the realities of the modern state involve deep layers of delegation, outsourcing, and incidental assistance, warning that reading inalienability with literal rigidity would inevitably reduce the sovereign exception to a vanishing point. Mr. Sanjay Hegde elevates this critique by submitting that in an Indian welfare setting, the focus must shift away from a narrow preoccupation with alienability, arguing instead that the Court must weigh the source of power, the gravity of constitutional obligations, and the breadth of public purpose. Taking a more cautious stance, Mr. Venkataramani, Attorney General, submits that the concept cannot be

frozen into a static catalogue and suggests that the executive remains better situated to determine what possesses a sovereign character in any given context.

80. These contentions undoubtedly identify a genuine operational complexity, because the category of sovereign functions cannot be reduced to a rudimentary checklist sealed for all time. However, the remedy for a fluid and evolving role of a welfare State cannot be to make sovereignty co-extensive with every statutory duty or constitutional aspiration. Environmental protection, irrigation, sanitation, hospitals, and public utilities may all be matters of deep constitutional importance, but the test remains whether the function belongs to the core, non-justiciable authority of the State. While primary inalienable political actions stand outside the ID Act, organised Government enterprises rendering public services, implementing schemes or pursuing welfare objectives through employees cannot be excluded merely because the work carries a public purpose or a constitutional duty. As correctly submitted by the Respondents, to dilute the decision of this Court in *Bangalore Water Supply* (supra) would be to create a large and unprincipled exemption for Government departments, unless such activities are governed by special laws which substitute for the ID Act by providing equally effective and efficacious remedies in the arena of employer employee disputes.

81. A careful reading of the post *Bangalore Water Supply* (supra) decisions shows that this Court has not permitted Government departments or

statutory bodies to claim immunity merely by invoking public character. In *Des Raj v. State of Punjab*[109], the Irrigation Department was held to fall within Section 2(j) on the application of the dominant nature test, and this position was later reaffirmed in *Agricultural Produce Market Committee v. Ashok Harikuni*[110], where this Court held that statutory creation, regulatory powers and levy of fees do not, by themselves, confer sovereign character on the market committee. The reliance placed by the Petitioners on *State of Madhya Pradesh v. Somdutt Sharma*[111], does not carry the matter further, since that case concerned the narrower question whether the Irrigation Department was a "factory" for the purposes of Chapter VB, and not whether it was an "industry" under Section 2(j). A department may not be a factory but could yet be an industry. Likewise, *General Manager, Telecom v. A. Srinivasa Rao*[112], restored the binding force of *Bangalore Water Supply* (supra) by overruling *Sub-Divisional Inspector of Post, Vaikam v. Theyyam Joseph*[113] and *Bombay Telephone Canteen Employees' Association, Prabhadevi v. Union of India*[114], to the extent they had treated postal and telecommunication functions as part of the inalienable sovereign core. These decisions serve as a persistent reminder that the promise of industrial justice must remain accessible to all those who labour within the vast and varied machinery of the welfare State.

[109] 1988 SCC OnLine SC 141
[110] (2000) 8 SCC 61
[111] (2021) 12 SCC 53
[112] (1997) 8 SCC 767
[113] (1996) 8 SCC 489
[114] (1997) 6 SCC 723

82. Ld. Amicus Mr. Partha Sarathi rightly reminds us that the legislature has left numerous footprints of its intent to bring State entities within the statutory fold. For example, Section 2(a) specifically contemplates industries carried on by or under the authority of the Central Government and Section 2(n), read with the First Schedule, explicitly weaves railways, major ports, defence establishments, and hospitals into the framework of public utility services.

83. *Safdarjung Hospital* (supra) noticed this scheme of public utility services but read it through the wrong lens. It held that an entry in the First Schedule does not itself make an activity an industry, and that the activity must first answer the test of “industry” before it can be declared a public utility service. The error lay in the test it applied. By insisting that the activity must be analogous to trade or business in a commercial sense, *Safdarjung Hospital* (supra) drained the First Schedule of its real significance. Once that commercial approach is rejected, as it must be, the inclusion of hospitals, defence establishments, fire brigade services, railways, ports and similar services shows that Parliament did not regard public or statutory character, Governmental control, absence of profit, or welfare purpose as reasons for exclusion. The statutory scheme treats such services not as strangers to industrial law, but as sensitive sectors requiring special regulation.

84. This legislative design carries its own safeguard. Having drawn public utility services into the ID Act, Parliament did not leave their regulation

unguarded. The ID Act itself subjects such services to a stricter discipline, requiring under Section 22 advance notice of any strike or lock-out and a mandatory cooling-off period before industrial action may commence, over and above the general restrictions in Section 23 that operate during conciliation, adjudication and arbitration across all industrial establishments. Where even this is found wanting, the Essential Services Maintenance Act, 1981 furnishes a further and more direct safeguard, empowering the appropriate Government to prohibit strikes in services it notifies as essential, so that the continuity of vital services is preserved without disturbing their underlying character as industries. The norm, therefore, is to treat these public utility services as industries under the ID Act. Relief from the ordinary incidents of industrial action is the exception, available only where the public interest so demands, and even then, it operates not by removing these services from the ID Act but by regulating the exercise of industrial action through the safeguards the law itself provides and the procedure it prescribes.

85. The repercussions of a contrary view are far from academic and they strike most heavily at those on the lowest rungs of public employment. Many of these workers endure severe occupational hazards and social vulnerability, yet a blanket exclusion of Government departments would mean that the very people who most require the protection of the law are the first to be denied it. It would be a profound irony if a doctrine intended to safeguard the State is used to unprotect labour. This also offends the equality principle enshrined in Article 14, for a gardener,

driver, or maintenance employee does not perform a different species of labour simply because their wage slip bears the seal of the State.

86. It is not a sufficient answer to suggest that Government employees are protected elsewhere by Articles 309 to 311 of the Constitution, as those provisions protect only those who hold civil posts and do not cover the vast army of daily wagers, casual workers, or contractual employees. Service rules, where they exist, do not occupy the same field as the ID Act, which provides a forum for conciliation, adjudication, protection against retrenchment, regulation of changes in service conditions, and scrutiny of unfair labour practices. To remove that field through an enlarged idea of sovereignty is not to preserve governance, but to close the statutory door on those who were meant to enter through it.

87. The apprehension of the Petitioners that the application of the ID Act will burden Government departments with litigation is also overstated, for the Act is not a hindrance to good administration, but a framework for redressing industrial conflict and ensuring industrial peace. Bringing an organised Government activity within the ID Act is a method of preserving order within administration, as public governance becomes more arbitrary, not stronger, when workers are pushed outside remedies. In *Bhola Nath v. State of Jharkhand*[115], this Court held that the State, as a model employer, bears a heightened obligation to act with fairness, dignity and constitutional responsibility towards those who serve it.

[115] 2026 SCC OnLine SC 129

Therefore, if the State organises labour and accepts the fruit of that work, it should not be eager to retreat into the sanctuary of sovereignty the moment statutory rights are asserted. A State which claims to be a model employer cannot wear the Crown when the worker asks for a remedy.

88. For these reasons, treatment of sovereign functions by Krishna Iyer, J., in *Bangalore Water Supply* (supra) calls for affirmation as a principled adjustment between State authority and State accountability. It leaves untouched the inalienable core of Government, but refuses to allow welfare, service and organised administration to be withdrawn from Section 2(j) merely by invoking public purpose. To side with the Petitioners would invariably convert sovereignty from a narrow inalienable core function into a convenient escape from labour law. That course must necessarily be rejected.

89. *Narsinh Parmar* (supra) runs counter to the ratio in *Bangalore Water Supply* (supra) and is not good law insofar as it casts a procedural burden on a workman to claim relief under the ID Act against a blanket presumption of sovereign immunity for all Government departments. This view is wholly erroneous as it traces sovereignty to the structure, i.e., to the State and not to the nature of the activity, i.e., which inalienable functions are accountable solely through democratic processes. To allow a general presumptive bias regarding the sovereign character of Government departments to become a governing rule would be to place a mask of immunity upon the State at the very threshold of litigation. This would effectively require the workman to break through a

wall of State privilege before the actual organisation of work is ever examined.

C. ***Charitable Undertakings***

90. In *Bangalore Water Supply* (supra), Krishna Iyer, J., identified three categories of charitable enterprises. The first comprises enterprises that earn profits in the ordinary course but divert the whole or a substantial part of such profits to altruistic objects. The second comprises institutions that make no profit but employ workers on ordinary economic terms to produce or supply goods and services that are made available, at low or no cost, to those who cannot afford them. The third comprises establishments oriented towards a humane mission, where persons work not for wages but out of shared devotion to the cause, such as ashrams or spiritual orders. The Court held that the first two categories are industries, since in both cases there exists a systemic and organised cooperation between employer and employee, and the destination of the profits or the presence of a charitable object makes no difference to that relationship. The third category alone falls outside the definition, not because of any charitable character, but because no economic relationship of employer and employee, as ordinarily understood, exists at all[116].

91. The aforesaid classification is reasonable and has a rational nexus with the object of the ID Act. What is decisive under the Act is the nature of

[116] See Paras 102-111

the relationship between the institution and those it employs to carry out its activity. So long as that relationship bears the hallmarks of ordinary employment, wages paid for work done, and an organised, systematic cooperation between employer and employee, the institution falls within the definition of industry, regardless of whether its object is charitable or its surplus is devoted entirely to public good. So far as the workman is concerned, it matters little whether the products of his labour are made available to the poor free of charge, for he contributes his labour in return for wages and conditions of service exactly as he would for any commercial employer. The fallacy in contending otherwise lies in shifting the focus from the worker and the industrial activity to the disposal of the end product, a consideration with which the ID Act has nothing to do.[117] It is only where an employer-employee relationship is absent and both the stakeholders combine in an altruistic manner to produce goods and services for charity, as in the third category identified in *Bangalore Water Supply* (supra), that the institution escapes the definition, and even then, the exclusion rests on the nature of employment itself being on charitable lines and not on the charitable nature of the enterprise.

92. One may be tempted to argue, at this stage, that charitable institutions ought to be accorded the same exemption under the ID Act as they are under other statutes, such as the Income Tax Act[118]. This argument, however, proceeds on a flawed equation of two enquiries that serve

[117] See Para 107
[118] Sections 11 to 13, The Income Tax Act, 1961

entirely different purposes. The Income Tax Act brings profits and gains to tax, and exemptions under Sections 11 to 13 thereof proceed on the footing that income applied towards charitable purposes such as relief of the poor, education or medical relief is not income retained for private gain and ought not to bear the same burden as commercial profit. The exclusion of charity from the rigours of that statute is for an enquiry into taxability and hence is necessarily an enquiry into the character of the income and the purpose to which it is applied. The ID Act, however, proceeds on an altogether different footing. Its object is not the taxation of income or the regulation of profit, but the resolution of industrial disputes and the maintenance of industrial peace between employers and employees. Viewed thus, the charitable or non-profit character of an institution, which is determinative of its treatment under the Income Tax Act, has no bearing whatsoever on the existence of an employer-employee relationship or on the organised cooperation between the two that the ID Act seeks to regulate.

D. ***Temples***

93. Petitioners have argued that temples should be kept outside the rigours of the ID Act as their main function is wholly spiritual and religious in character, directed solely towards the satisfaction of the devotional needs of worshippers, and incapable of being bought and sold in any commercial market. It was further urged that the right to close down an undertaking is not applicable to temples and that application of

principles of industrial law to temples would disrupt the daily conduct of worship for thousands of devotees.

94. Such contention is wholly misguided. Similar to charitable institutions, the object and motive of the employer to establish a temple for religious and spiritual pursuits is not the correct parameter with regard to its inclusion or exemption from industrial law. As rightly pointed out by Krishna Iyer, J., it would amount to an unreasonable and hostile classification if employees engaged in the preparation of *ladoos* are treated differently with regard to adjudication of their disputes on the criterion whether such *ladoos* are sold for profit or offered as *prasadam* to a deity. Further, inapplicability of the closure clauses under the ID Act to a temple would give little solace to the cooks, sweepers and watchmen engaged by the temple administration when they are subjected to unfair labour practices, including retrenchment. Inapplicability of certain provisions of the Act due to the peculiar nature of the establishment cannot be a criterion to defeat the applicability of the statute itself.

E. Educational Institutions

95. The absence of a profit motive, the vocational or charitable character of an activity, or the perceived social nobility of its object does not, by itself, remove an undertaking from the ambit of Section 2(j) of the ID Act. The inquiry must instead be directed towards the organised relationship between the institution and those engaged in carrying on its activities. It is this same focus on the character of the cooperation between employer

and employee that assumes significance in considering educational establishments. Educational institutions must not be judged from the relation between the undertaking and the consumers of their output, but from the nature of the relationship between the promoters or owners of such entity and their employees who directly or incidentally contribute to the production of such output. It is true educational institutions are established to impart knowledge and such activities are carried on by teachers who may not fall within the definition of “workman”. Notwithstanding such character, these institutions also engage various other employees who fall within the definition and participate in organised systematic activity, directly or incidentally contributing to creation of services catering to human needs.

96. In *T.M.A. Pai Foundation* (supra)[119], an eleven Judge Bench construing Article 19(1)(g) held that education falls within the expression "occupation", even where no element of profit is involved, since the establishment and running of an educational institution employing teachers and administrative staff to impart knowledge to students is an activity undertaken as a means of livelihood or a mission in life. In reaching that conclusion, the Court gave "occupation" a wide connotation embracing a calling, trade or business. The significance of this lies in the vocabulary employed, for these are the very expressions used in the definition of "industry" under Section 2(j), which, as already discussed, carry an exceptionally broad sweep extending well beyond

[119] See Paras 20-25

commerce and profit. If education, though long regarded as charitable and never treated as a trade or business for profit, nonetheless answers the description of "occupation" for the purposes of Article 19(1)(g), there is no reason in principle why the systematic and organised activity of running an educational institution, contributed directly or incidentally, through an employer employee (who is a workman) relationship, should not equally answer the description of industry under Section 2(j).

F. Clubs

97. Most clubs, whether gentlemen's clubs, service clubs or sports clubs, when examined from the industrial angle, project a picture typical of employers hiring employees for wages to render services and supply goods on a systematic basis at specified hours, with the club management providing the capital, raw material and appliances while cooks, waiters, bell boys and other staff render the services for which members pay by way of subscriptions or bills. The character of a club being exclusive of members and their families or friends, and run through their contributions and services, does not change the organised and systemic nature of activity undertaken in producing goods and services which may be solely for the consumption of its own members. The relationship between such club members and staff engaged by them bears the hallmark of an organised systematic engagement akin to an employer employee relationship in a commercial enterprise amenable to the ID Act.

98. *Madras Gymkhana Club* (supra) incorrectly applied the exclusivity test thus excluding clubs and similar institutions from the ambit of industry. The only exception, as rightly pointed out by Krishna Iyer, J., in cases of such clubs or self-serving institutions would be small entities like casual association of persons where engagement of employees is marginal. Large clubs, organised on corporate lines, maintaining big establishments with multitudinous employees and running in an organised, systematic manner would, by no means, be treated at par with the exempted casual associations. *Madras Gymkhana Club* (supra) has failed to appreciate that the scale of operation of such voluntary associations is a relevant criterion in determining whether the engagement of employees follows an organised and systematic structure.

G. ***Liberal Professions***

99. A solicitor's firm, a medical polyclinic or an architect's office, where a body of employees works in coordination to enable professional services to be delivered to clients and patients, displays every feature of an industry within the meaning of Section 2(j). The professional standing of the person at its head cannot place the establishment as a whole beyond the reach of the ID Act. Nor can it be said that the solicitor's clerk, the stenographer or the librarian contributes nothing merely because the legal advice ultimately rendered is the product of the solicitor's own skill, for without their assistance the solicitor could not function at all. The dignity or intellectual character of a profession has no bearing on the

only question the definition asks, which is whether the establishment functions through organised cooperation between employer and employee for the rendering of services to those it serves.

100. This conclusion must, however, be confined to establishments where such organised labour genuinely exists. A single practitioner, whether a lawyer, a rural doctor or a small-town engineer, working alone or with a solitary assistant, cannot be said to run an industry. This is not because that assistant's work is unimportant, but because the organisational structure which the concept of industry presupposes is simply absent. It is this distinction, between the organised professional establishment and the solitary practitioner, that ought to govern the application of the definition to liberal professions.

STARE DECISIS AND RECONSIDERATION OF BANGALORE WATER SUPPLY

101. Having approved the majority view in *Bangalore Water Supply* (supra), I shall now examine whether its ratio nonetheless calls for reconsideration when tested against the well settled principles of stare decisis.

102. Stare decisis, literally understood, requires Courts to stand by things decided and not to disturb what is settled. The underlying logic of the doctrine is to promote certainty and consistency in judicial decisions and enable an organic development of the law, while providing assurance to

the individual regarding the consequences of transactions forming part of daily affairs[120]. Yet, continuity does not require the Court to preserve demonstrable error or compel the law to remain fixed while the world to which it applies has materially changed. Stare decisis is a principle of continuity, not a command of immobility, and this Court has broadly recognised three exceptional situations in which departure from the doctrine is warranted.

103. In *Bengal Immunity Company Ltd. v. State of Bihar*, this Court held that nothing in the Constitution prevents it from departing from a previous decision if convinced of its error and its baneful effect on the general interests of the public[121]. It is not enough that the earlier decision is debatable, that some of its expressions are broad, or that another construction may appear preferable. The first exception to stare decisis is applicable only when the error is manifest in principle or method and sufficiently grave that its continuation perpetuates injury to the administration of law or the general public. As laid down in *Raghubir Singh* (supra), a legal rule, once authoritatively declared, does not remain open for reconsideration merely because another interpretation is also reasonably possible, or because a later Bench might have chosen differently had the question arisen before it in the first instance[122].

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[120] *Union of India & Anr v. Raghubir Singh (Dead) By Lrs. Etc*, (1989) 2 SCC 754, See Para 9
[121] 1955 SCC OnLine SC 2, See Para 22
[122] See Paras 21-24

104. The second exception is attracted where a rule, though sound when declared, has ceased to fit the conditions upon which it was premised. In *Maganlal Chhaganlal (P) Ltd. v. Municipal Corporation of Greater Bombay & Ors*[123], this Court observed:

> *"As in life so in law things are not static. Fresh vistas and horizons may reveal themselves as a result of the impact of new ideas and developments in different fields of life. Law, if it has to satisfy human needs and to meet the problems of life, must adapt itself to cope with new situations"*

Such adaptation is warranted when later experience demonstrates that the rule rests upon factual assumptions which no longer hold, has become incapable of consistent application, or frustrates rather than advances the purpose it was intended to serve. However, it must be borne in mind that although law must change with time, it cannot be so fickle as to change with every change of guard[124].

105. The third exception concerns the consequences of reversal. In *Keshav Mills Co. Ltd. v. Commissioner of Income Tax*[125], this Court held that an earlier decision should be reviewed only for compelling and substantial reasons. Among the matters which must enter that assessment are whether the earlier view has been followed in subsequent decisions, whether people and institutions have acted upon it, and whether its

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[123] (1974) 2 SCC 402, See Para 22

[124] *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*, (2005) 8 SCC 534, See Paras 171-174

[125] 1965 SCC OnLine SC 80, See Para 23

reversal would produce "public inconvenience, hardship or mischief". Therefore, the longer a rule has endured, the more closely it is integrated into the administration of a statute, and the greater the reliance placed upon it, the more compelling must be the justification for its displacement.

106. Therefore, three inquiries assume particular importance when reconsideration of a long-standing precedent is sought:

i. Whether the earlier ruling is patently erroneous, and its continued enforcement injurious to the public interest?

ii. Whether a substantial alteration in social, economic, technological or legal conditions has rendered the rule unworkable, outmoded or bereft of its original justification?

iii. Whether the dislocation, inequity and public harm likely to be caused by unsettling the decision would outweigh any juridical benefit secured by its reversal?

107. I shall now test the ratio in *Bangalore Water Supply* (supra) against these three considerations.

A. <u>Is Bangalore Water Supply ratio patently erroneous?</u>

108. For the reasons already discussed, the ratio in *Bangalore Water Supply* (supra) cannot be characterised as patently erroneous. It lies closest to the object of the ID Act, which is concerned not with the commercial

identity of an establishment but with the orderly resolution of industrial conflict wherever labour is organised under an employer in a systematic activity for the production of goods or the rendering of services.

B. <u>Does the ratio require reconsideration in light of changed circumstances?</u>

109. Tennyson's familiar lines capture the necessity which sometimes compels a settled rule to yield[126]:

> *"The old order changeth, yielding place to new,*
> *And God fulfils Himself in many ways,*
> *Lest one good custom should corrupt the world."*

A legal rule may require reconsideration where the circumstances to which it applies have so substantially altered that the rule now operates outside its original context. This too was among the reasons which prompted the five Judge Bench in *Jai Bir* (5J) (supra) to make the reference, for it took the view that the working experience of the law after *Bangalore Water Supply* (supra) had revealed practical difficulties, including the proliferation of industrial claims, awards of heavy back wages, and the possible consequences of an overextended definition on employers, employees and the public. Thus, the question is whether the economic and technological transformations since *Bangalore Water*

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[126] Alfred, Lord Tennyson, "The Passing of Arthur" in *Idylls of the King*

Supply (supra) have rendered its definition of industry outmoded or, on the contrary, reinforced the necessity for its continued application.

110. The advancement of technology has brought automation and computerisation into the means of production and has enhanced the efficiency and quality of goods and services. Such development is part of the march of science and civilisation and is most welcome. Its consequential impact, however, is a diminution of the role of human agency in the production of goods and services. Work once performed by a large body of labour may now be undertaken through machines, algorithms and automated systems requiring a substantially smaller workforce. Increasing shift of businesses to e-commerce platforms while enabling easier access to goods and services through e-aggregators has dismantled the organised labour sector and given rise to gig-employments with little or no employment rights[127].

111. Coupled with these transformative changes in commerce and means of production, the advent of a globalised economy has increased manifold the potential movement of capital across national boundaries. Capital has become more mobile, technologically amplified and capable of swiftly switching from one area of activity to another. Labour, by contrast, remains locally embodied, and its demand restricted by geographic and other limitations. This evolving matrix has increased the gradient

[127] As per 2025-26 Economic Survey of India, the workers in the gig sectors have increased to 12 million in F.Y. 2025 from 7.7 million in F.Y. 2021. They now represent 2% of the total workforce in India and are projected to constitute 6.7% of the workforce by 2029-30, contributing ₹ 2.35 lakh crore to India's GDP

between capital and labour and has produced a more unequal bargaining plane between the two in recent times. The displacement or increasing marginalisation of manual labour does not make industrial protection irrelevant. It makes the preservation of an effective remedial framework more imperative.

112. The response of the State to automation, liberalisation and globalisation is principally a matter of legislative and executive policy, in which Courts are ordinarily slow to intervene. The approach of the Court to these emerging challenges should not be to impede technology, arrest economic reform or choose between competing models of economic policy, but should essentially be rooted in constitutional obligations and sensitivities. It must ensure that constitutional guarantees of equality and human dignity, illuminated by the Directive Principles and particularly Articles 38 and 39, remain assured to those whose bargaining positions are becoming increasingly unequal.

113. The continued application of *Bangalore Water Supply* (supra) does not depend upon a socialistic pattern of State ownership or economic governance. It rests upon the more elementary proposition that where capital organises labour for the systematic production of goods or rendering of services, the law must provide a level and accessible field for resolution of disputes between them. The ID Act remains the surest statutory platform for such resolution. Its machinery enables disputes to be addressed through conciliation and adjudication before they harden into industrial unrest. That objective is as relevant to a liberalised

economy as it was to the economic order in which the statute was enacted.

114. It is often suggested that industrial legislation is unduly sympathetic to employees and thereby hinders commercial output, economic efficiency or the functioning of altruistic institutions. This misconception proceeds from an erroneous perspective that the rights of one stakeholder must be curtailed either to increase output or to relieve certain employers from industrial obligations. Such an outcome-oriented approach to beneficial legislation is fallacious. On a jurisprudential plane, Courts interpret legislation by reference to its object, purpose and the rights and obligations which it creates. They do not first select a desirable economic outcome and then constrict the statutory text to secure it.

115. Further, when a law provides access to justice and adjudication in disputes between stakeholders occupying unequal positions, their relative status cannot be ignored. Where the bargaining field is substantially lopsided, a beneficial enactment must receive a construction which extends its ameliorative sweep to the disadvantaged group rather than augmenting the position of the already powerful. This does not require every dispute to be decided in favour of the employee. It requires that the employee is not denied the statutory forum itself by an artificial narrowing of the jurisdictional threshold.

116. Seen against these changes, a rights-based approach giving the widest reasonable coverage to systematic and organised activity conducted

through cooperation between an employer and employees is not an anachronism. It is a means of ensuring smooth, effective and, where necessary, adjudicated resolution of industrial disputes. The reduction in the numerical strength of labour through automation cannot become a reason to weaken the protection available to those who remain. The law must not allow the rights of labour to be forgotten in the rush for greater efficiency and profit.

C. <u>Would unsettling the ratio cause greater public harm than good?</u>

117. The final consideration is the effect which overruling *Bangalore Water Supply* (supra) would have upon the administration of industrial law. Decisions construing statutes attract a particularly strong claim to continuity. Parliament may amend the provision if the judicial construction does not accord with its policy. Where the legislature has allowed an interpretation to govern for several decades and thereafter replaces the statute prospectively, a Court should be slow to alter the settled meaning of the former enactment for the residual class of matters governed by it.

118. It is all the more inadvisable, in the case of a sunset legislation like the ID Act, to unsettle the existing state of law and affect rights of individuals which are at various stages of adjudication. For nearly five decades, Courts, tribunals, employers, employees and trade unions have ordered their conduct and litigation upon the understanding that the triple test governs Section 2(j). References have been made, claims entertained,

settlements reached, awards rendered and remedies granted or refused on that basis. Numerous proceedings instituted under the ID Act remain at different stages of the judicial hierarchy. To substitute a new test at this stage would alter the jurisdictional premise upon which these proceedings were commenced and contested. No exceptional circumstances could be demonstrated to take recourse to such a drastic stance.

119. One has to keep in mind that the disputes arising after the commencement of the IR Code are governed by the new definition which Parliament has enacted in Section 2(p). The practical effect of altering the *Bangalore Water Supply* (supra) ratio would thus fall upon legacy rights, liabilities and proceedings arising under the repealed ID Act. It would change the goalposts after parties have travelled substantial distances through the adjudicatory process and would require pending matters to be reassessed under a standard of which the parties were unaware when the causes of action arose. The triple test in *Bangalore Water Supply* (supra) has, for nearly five decades, kept the doors of industrial adjudication open to those who labour within organised undertakings. Those doors I decline to close.

IMPACT OF LEGISLATIVE AMENDMENTS ON BANGALORE WATER SUPPLY

120. The final aspect to be considered is whether the provisions of an inert legislation can cast a shadow on adhering to the wide and inclusive interpretation of industry under the repealed ID Act.

121. A judgment interprets an existing law to further its object and purposes and *Bangalore Water Supply* (supra) seeks to achieve that end to the fullest extent. The narrow scope of the 1982 Amendment Act and the IR Code did not fall for interpretation in *Bangalore Water Supply* (supra). It may be argued that such amendment or new law is an expression of the legislative will to give a narrow interpretation to the expression 'industry'. The object and purpose of the ID Act, therefore, need to be reviewed and *Bangalore Water Supply* (supra) revisited.

122. A legislature has ample powers to amend/repeal an existing law to address present necessities. To achieve such end, the legislature may even delegate power to the executive to give retrospective operation to such amendment/repeal. In such cases, the substratum of the law changes retrospectively rendering the applicability of existing precedents to the relevant law subject to legislative changes. The delegated power to notify the date and manner of operation of an amendment is a legislative process. Courts do not have the power to give effect to an inert amendment which has not been notified, far less direct its retrospective operation[128]. Such power cannot be traced to judicial legislation in the occupied field as it would amount to encroaching on an existing law.

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[128] *Aeltemesh Rein, Advocate, Supreme Court of India v. Union of India & Ors*, (1988) 4 SCC 54, See Paras 5 - 6

123. Admittedly, the executive chose not to notify the 1982 Amendment Act for more than four decades. This merely shows the State's disinclination and lack of unanimity in giving effect to such amendment. The judiciary ought not use such inert provisions kept on the back burner as an interpretative tool to revisit a binding precedent. What the Court cannot do directly, i.e., issue a mandamus to notify an inert amendment, it cannot indirectly do by referring to a stillborn amendment to reconsider the *Bangalore Water Supply* (supra) ratio.

124. Parliament has now made its own prospective adjustment through Section 2(p) of the IR Code. It retained the systematic employer-worker cooperation test while expressly excluding certain charitable, social, philanthropic and sovereign activities. It would be incongruous for this Court to take exclusions designed for the new Code and project them backwards into Section 2(j) of the ID Act, especially when there is no provision which gives Section 2(p) of the IR Code retrospective operation over causes governed by the repealed ID Act. The new definition being wisely made prospective in operation ought not, by way of judicial rethinking, affect the contours of a binding precedent.

CONCLUSION

125. In light of such discussion, I answer the reference in the following manner:

I. The manner in which the ratio in *Bangalore Water Supply* (supra) has been referred for reconsideration is in conformity with the law declared in *Dawoodi Bohra* (supra), as affirmed in *Aligarh Muslim University* (supra). As such, the reference requires to be answered on merits.

II. On merits, I hold the triple test laid down by Krishna Iyer, J., in paragraphs 140-144 of *Bangalore Water Supply* (supra) exhibits a rare felicity in judicial interpretation. Through such triple test, *Bangalore Water Supply* (supra) while remaining faithful to the text, extended the beneficial object of the law to all employer employee disputes wherever the stakeholders are engaged in an organised systematic activity akin to trade and commerce to produce goods and services for the satisfaction of human needs and did not restrict it merely to activities which are run on commercial lines. The criticism that it converts every organised human endeavour into an industry is misplaced, for the triple test, in fact, carves out just and proper exceptions in cases of casual and non-systematic activities like domestic service, individual professionals, small and unorganised clubs/association of persons.

III. In a constitutional democracy, the concept of sovereignty has undergone a jurisprudential contraction and is restricted to core inalienable duties for which the State is not answerable to Courts of law but to the people in a political-democratic discourse. Viewed from this perspective, welfare activities of the State and schemes undertaken by Government departments and their instrumentalities are not, by reason only of their public, charitable or welfare character, placed beyond Section 2(j). Mere vesting of a duty in the State by statute or by the Constitution, even a duty undertaken to fulfil the lofty mandate of Part IV, does not clothe it with sovereign immunity from industrial law. Articles 309 to 311 give little solace as they cover a narrow sliver of civil posts. In these circumstances, unless appropriate legislation engrafting equally efficacious remedies for access to justice is passed, to exempt statutory or welfare activities discharged by Government departments or their instrumentalities from the beneficial scope of the ID Act on the specious plea of sovereign functions would leave a great multitude of workmen engaged in the organised undertakings of the State without the remedies which the said Act was enacted to secure.

IV. From the lens of industrial law, charitable undertakings, temples and educational institutions are all viewed not by the spiritual, religious or benevolent object they pursue, but by the character of the employer employee relationship through which they function. Where such activities are carried on through an organised and systemic relationship between employer and employee, they answer the triple test and the absence of profit or the presence of a benevolent object does not take them outside the ambit of the beneficial legislation.

V. The 1982 Amendment Act was never notified. It is settled law that Courts cannot direct the Government to notify an amendment which is a part of the legislative process. In view of such disinclination, it would be wrong to rely on an inert law to redraft the *Bangalore Water Supply* (supra) ratio. Similarly, the new definition of industry in the IR Code has been given prospective operation and in light of Section 6 of the General Clauses Act, 1897 preserving rights and liabilities acquired or incurred under the repealed law, the ratio in *Bangalore Water Supply* (supra) dealing with cases under the repealed ID Act ought not to be disturbed with reference to the new definition.

VI. The ratio in *Bangalore Water Supply (supra)* applies to a sunset legislation dealing with legacy matters and has been consistently followed for decades. Given this situation, in view of the settled principles of stare decisis, such interpretation which yields to no manifest error, needs to be retained keeping in mind the fact that the economic and technological changes since it was decided have weakened rather than strengthened the case for revisiting it. To overrule it now, would unsettle rights and proceedings doing more harm than good.

VII. However, it is apposite to note that the ratio in *Bangalore Water Supply* (supra) limited itself till a new definition was introduced. As a new law redefining "industry" has come into force, the ratio in *Bangalore Water Supply* (supra) would remain restricted to the proceedings pending under the repealed law and the provisions of the new law, i.e. IR Code shall be independently interpreted.

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(JOYMALYA BAGCHI)

NEW DELHI
AUGUST 20, 2026