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DEFINITION OF 'INDUSTRY' UNDER THE INDUSTRIAL DISPUTE ACT, 1947 WITH REFERENCE TO THE BANGALORE WATER SEWERAGE CASE

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Section A

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ABSTRACT

My paper basically examines the definition of Industry under the Industrial Disputes Act, 1947. There are two main parties in an Industry I.e. Employer & Employee. The definition of Industry has continuously baffled the courts from a long duration of time ever since Industrial Disputes Act, 1947 has been enacted. Though this Act provides a definition of 'industry' in Section 2(j), but the definition provided is not very precise and has varied interpretations by various people. Judiciary has played an important role in defining what comes under an "Industry". There are multiple cases decided by the courts, however in each case the definition of Industry is very different. An empirical approach is followed by a court rather than a strictly analytical approach The Industrial Disputes Bill had an amendment in 1982 which clearly puts an end to the floating state of the definition of 'industry'. Due to this process the concept of '**industry**' has been narrowed

My paper uses various landmark judgements which have clearly mentioned the definition of Industry under the Industrial Dispute Act of 1947.

Keywords: Definition & meaning of Industry, Bangalore Water Sewerage Case, Employer & Employee.

REVIEW OF LITERATURE

- **P. Kalpakam (1978), *"MEANING OF "INDUSTRY":*** *THE BANGALORE WATER SUPPLY AND SEWERAGE BOARD v. A. RAJAPPA"*[1] analyses in depth and comments on the adjudication of the issue of the scope of the definition of 'Industry' under the said act of 1947, and also the importance of the definition for the applicability of the Industrial Disputes Act.

- **K. K. Chaudhuri (1983), "*Changing Concept of 'Industry' under Industrial Disputes Act*"**[2] studies the nature and development of the term 'Industry' into a narrower concept, and debates whether the same leads to a curtailment of the benefits and protection to employees, that were provided before the constricted interpretation.

- **Bushan Tilak Kaul (2008), "*'INDUSTRY,' 'INDUSTRIAL DISPUTE,' AND 'WORKMAN': CONCEPTUAL FRAMEWORK AND JUDICIAL ACTIVISM*"**[3], his work focuses on the various meanings envisaged by the term 'Industry' through numerous judicial interpretations while keeping in mind the concept of social justice, from both the employer and employee, point of views.

- **Abhilasha Bhatnagar (2010), '*Revisiting Interpretation of 'Industry'*** *as has been done in Bangalore Water Case from an Interpretation of Statute Perspective'*[4] the paper concentrates on the interpretational approach that was adopted in the said case, as well as the factors which influenced the interpretation to understand the intention of the Legislature and how it could be separated from the intention of Judiciary.

- **Kamroi, A, & Shrivastava, A. (2019), '*A Critical Analysis of Bangalore water supply decision:*** *a bugaboo of a one-sided judicial interpretation concerning the meaning of "industry"*'[5] critically analyses the decision to widen the scope, as being over-inclusive and extremely liberal while also discussing the merits and demerits of the definition and its meaning.

[1] Kalpakam, P. (1978). MEANING OF "INDUSTRY": THE BANGALORE WATER SUPPLY AND SEWERAGE BOARD v. A. RAJAPPA. *Journal of the Indian Law Institute, 20*(3), 471-481; available at: http://www.jstor.org/stable/43950612

[2] K. K. Chaudhuri. (1983). Changing Concept of 'Industry' under Industrial Disputes Act. *Economic and Political Weekly, 18*(22), M67-M84; available at: http://www.jstor.org/stable/4372151

[3] Kaul, B. (2008). 'INDUSTRY,' 'INDUSTRIAL DISPUTE,' AND 'WORKMAN': CONCEPTUAL FRAMEWORK AND JUDICIAL ACTIVISM. *Journal of the Indian Law Institute, 50*(1), 3-50, available at: http://www.jstor.org/stable/43952131

[4] Bhatnagar, Abhilasha (2010), Revisiting Interpretation of 'Industry' as has Been Done in Bangalore Water Case from an Interpretation of Statute Perspective; Available at: https://ssrn.com/abstract=1681528

[5] Kamroi, A., & Shrivastava, A. (2019). A critical analysis of Bangalore water supply decision: a bugaboo of a one-sided judicial interpretation concerning the meaning of" industry"; available at: https://www.researchgate.net/profile/Anujay_Shrivastava/publication/338805239_A_CRITICAL_ANALYSIS_OF_BANGALORE_WATER_SUPPLY_DECISION_A_BUGABOO_OF_AN_ONE-SIDED_JUDICIAL_INTERPRETATION_CONCERNING_THE_MEANING_OF_INDUSTRY/links/5e2b4f9092851c3aadd7bfe0/A-CRITICAL-ANALYSIS-OF-BANGALORE-WATER-SUPPLY-DECISION-A-BUGABOO-OF-AN-ONE-SIDED-JUDICIAL-INTERPRETATION-CONCERNING-THE-MEANING-OF-INDUSTRY.pdf

INTRODUCTION

The Industrial Disputes Act of 1947 is applicable to whole of India. It modulates Indian Labour Law to an extent that it supervises trade unions as well as Individual workman employed in an Industry. It came into existence on 1st April, 1947.

The Industrial Disputes Act of 1947 aims at establishing a secure industrial peace and harmony by providing a full proof mechanism and procedure for the investigation and settlement of various kinds of industrial disputes by conciliation, arbitration and adjudication which is clearly provided under the defined statute. The ultimate objective of this act is *"Maintenance of Peaceful work culture within the Industry of India* " which is clearly provided under the Statement of Objects & Reasons of the statute.

These laws are only applied to the organized sector. Chapter V of the 'The Industrial Disputes Act of 1947 talks about the various kinds of Regulation on strikes and lockouts and the proper procedure which has to be followed by a Legal instrument of 'Economic Coercion' either by the Employer or by the Workmen. Chapter V-B of The Industrial Disputes Act of 1947 which was introduced by an amendment in 1976. It requires that the firms employing 300 or more workers to obtain government permission for layoffs, retrenchments and closures. It was not widely accepted. This led to a further amendment in 1982 (which took effect in 1984) widening its scope and reducing the threshold to 100 workers.

OBJECTIVES OF THE INDUSTRIAL DISPUTES ACT:

- The main objective of The Industrial Disputes Act of 1947 is to provide measures for securing and preserving good relations between employers and employees present in the industry.
- It also aims at providing a suitable machinery for the equitable and peaceful settlement of the various kinds of industrial disputes.
- It also helps to prevent illegal strikes and lockouts of the employees which are present in the industry.
- It provides relief to workers against layoffs, retrenchment, wrongful dismissal and victimization.
- It promotes collective bargaining in the Industry.
- It also seeks to improve the conditions of workers working in the Industry.

- It also puts a stop to unfair labour practices in the Industry.

FEATURES OF THE INDUSTRIAL DISPUTES ACT ARE LISTED OUT:

The Industrial Disputes Act of 1947 act applies to entire India including the state of Jammu and Kashmir. Some of the features are listed below:

- It usually solves the disputes between employers and workers and generally favours the arbitration

- It plays an important role in setting up of different committees like the works committees which functions as a machinery for mutual discussion between employers and workers so that a friendly relation is promoted between them.

- This act has also created a way for creating permanent conciliation machinery at various stages. So that there are definite time limits for conciliation and arbitration.

- This act mainly has an emphasis on compulsory adjudication apart from the general conciliation and voluntary arbitration of Industrial Disputes.

- The Act empowers different organs of Government to refer a particular kind of dispute to an appropriate authority, i.e., Labour Court, Industrial tribunal and National tribunal which basically depends upon the nature of the dispute either on its own or on the request of the parties.

SOME OF THE FOLLOWING AUTHORITIES THAT ARE SPECIFIED UNDER THE INDUSTRIAL DISPUTES ACT:

1. **Works Committee[6]:**

Under the Industrial Disputes Act of 1947, the works committee is considered to be one of the most powerful social institution. It is established not only to secure cooperation between workers and employers, but also to make the will of the employees effective as they start working in the management.

According to section 3 of the Industrial Disputes Act, in case an Industry which contains 100 or more

[6] S.3 of the Industrial Disputes Act, 1947

workmen which are employed by the Industry or have been employed on any of the day preceding twelve months, then the appropriate Government by ordinary or particular order, acquire their employer to build a works committee which contains details of representatives of employers and workmen engaged in the Industry.

2. **Conciliation Officers[7]:**

Conciliation Officers is also one of the authorities which is established under this act. Conciliation officers are appointed by the appropriate government. Then these appointed conciliation officers are charged with some duties. There duties can be of mediating between employer and employee. They can also promote settlement between varied industrial disputes. Generally, conciliation officers are appointed for a specified area or a specified industry in a specified area. The appointment of a Conciliation officer may be permanent or temporary

3. **Court of Inquiry[8]:**

Habitually the government constitutes a court of inquiry. The court of Inquiry consists of thirteen or more independent persons which are required to investigate about any subject. They are made aware about an industrial dispute. A court of Inquiry court consists of two or more members and out of those 2 members any one of them will be appointed as a chairman.

4. **Labour Court[9]:**

Under Section7 of Industrial Dispute Act of 1947 a labour court is established. The government has been empowered to establish one or more Labour Courts. The main function of a Labour Court is to settle various kinds of industrial disputes concerning any matter specified in the second schedule.

Some of the matters which are taken place under a labour court are:

- The propriety or legality of an order passed by an employer under the standing orders.
- The application and interpretation of standing orders.
- The discharge or dismissal of various workers, including the retirement, which are employed in an Industry.
- Withdrawal of any customary concession or privilege.

[7] S.4 of the Industrial Disputes Act, 1947
[8] S.6 of the Industrial Disputes Act, 1947
[9] S.7 of the Industrial Disputes Act, 1947

5. **Industrial Tribunal[10]:**

The appropriate Government by notification within the legal Gazette can represent one or additional industrial tribunals for the judgment of business disputes regarding any matters particularly

- Wages embrace the amount and mode of payment
- Compensative and different allowances
- Hours of labour and rest intervals.
- Leave with wages and holidays.
- Bonus, percentage, provident fund and gratuity.
- Shift operating otherwise than by standing orders
- Rules of discipline
- Rationalization

6. **National Tribunal[11]:**

The Central Government by notification within the legal Gazette, represent one or additional National Industrial Tribunals for the judgment of business disputes within the opinion of the Central Government involve queries of the national importance of business institutions set in additional than one State square measure possible to be interested or laid low with such disputes.

[10] S.7A of the Industrial Disputes Act, 1947
[11] S.7B of the Industrial Disputes Act, 1947

BANGALORE WATER-SUPPLY & SEWERAGE BOARD Vs. R. RAJAPPA & OTHERS[12]

Citations: 1978 AIR 548, 1978 SCR (3) 207

Bench:

- M. HAMEDULLAH
- CHANDRACHUD, Y.V
- BHAGWATI, P.N.
- KRISHNAIYER, V.R.
- SINGH, JASWANT
- TULZAPURKAR, V.D.
- DESAI, D.A

Petitioner: BANGALORE WATER-SUPPLY & SEWERAGE BOARD, ETC. Respondent: R. RAJAPPA & OTHERS

Date of Judgment: 21ST FEBRUARY 1978

Facts of the Case:

The Appellant Board had fined the employees for misconduct, and various sums were recovered from them. A Claims Application was filed by them No. 5/72 under Section 33C (2) of the Industrial Disputes Art, 1947 alleging that the punishment was in violation of the principles of natural justice. A preliminary objection was raised by Appellant Board before the Labour Court. A statutory body performing functions like providing the basic amenities to the citizens, is not considered to be an industry under Industrial Dispute Act, 1947. The employees were not workmen and the Labour Court had no jurisdiction to decide the claim of the workmen in this case.

This objection was over-ruled, in the appellant Board. There was a filing of two Writ Petitions viz. Nos. 868 and 2439 of 1973 before the Karnataka High Court at Bangalore. The Present Bench then dismissed the petitions and held that the appellant Board is **"industry"** within the meaning of the, expression under **Section 2(j)** of the Industrial, Disputes Act, 1947.

[12] 1978 AIR 548

The appeals by Special Leave, considering chances of confusion in the case where the common man has to understand the definition of Industry. There should be a clear and confirmed meaning as to what is an industry under the Industrial Disputes Act, 1947. This case was then discussed in front of a larger bench.

ISSUES INVOLVED

- Bangalore Water Supply and Sewerage Board case law raised an important issue that whether Bangalore Water Supply will fall under the definition of 'Industry' or not and in fact, particularly the issue was will it be considered as an 'Industry' under Section 2(j) of the Industrial Dispute Act?

- Whether Charitable Institutions are considered as to be Industries under Section 2(j) of the Industrial Dispute Act?

- Will a university or college or school or research institute can be called an industry?

- Whether Sovereign or Regal functions will be an industry under Section 2(j) of the Industrial Dispute Act?

- Whether Municipal Corporations Industry under Section 2(j) of the Industrial Dispute Act?

- Whether Hospital is Industry under Section 2(j) of the Industrial Dispute Act?

JUDGEMENT

Bangalore Water Supply and Sewerage Board case law raised an important issue that whether Bangalore Water Supply will fall under the definition of 'Industry' or not and in fact, particularly the issue was will it be considered as an 'Industry' under Section 2(j) of the Industrial Dispute Act, 1947.

Justice V. R. Krishna Aiyer presided over the bench and therefore, played an important role in this case. He was considered to play the role of a crusader legislator, because he was giving the definition of an Industry. He then drafted a new definition of the term "industry" and gave a wider and a broader meaning to it. The ruling given by them was on the grounds of a result of the various disputes arising in establishments that are not manufacturing industries but belong to categories like hospitals, educational and research institutions, and many more such industries. The definition was accordingly expanded and widened to cover the various kinds of establishments which involved an employer-employee relationship, irrespective of the objectives of the organization in question.

The Bench then held that the Bangalore Water Supply and Sewerage Board falls under the definition of industry. They also justified this it gave elaborating definitions and test to determine an industry.

It laid down the following tests:

- TRIPLE TEST
- DOMINANT NATURE TEST

TRIPLE TEST

D. N. Banerji vs P. R. Mukherjee[13] was one of the landmark judgements which was referred by the Supreme Court. It clearly laid down what an Industry constitutes:

A. An Industry is that where there is:

(i) A systematic activity which takes place,

(ii) It is generally organised by a co-operation between an employer and an employee (the direct and indirect element),

(iii) An Industry is generally established for the production or distribution of goods and services and is meant to satisfy human wants and wishes, prima facie, then it is considered to be an "industry".

B. Whereas the following were held as irrelevant considerations as determining test:

A. Whether or not there is profit motive or investment of capital in an Industry.

B. A private individual shall be employer of the Industry. This act equally applies when the government or the local authority is the employer.

C. Material services that are given by the undertaking to the public in the public interest. Therefore, carrying such an activity in public interest was clearly held not to be the deciding test in such cases.

DOMINANT NATURE TEST

Dominant nature test is a test where a complex of activities, some which qualify for exemption, whereas some don't. It involves employees on the total undertaking, some who are workmen. Some departments are not producers of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the department will be the true test, the whole undertaking will be industry although those who are not workmen by definition may not benefit by the statute.

Whether Charitable Institutions Are Industries?

Charitable Institutions are not based on master – servant relationship. The Honourable Supreme Court held that Charitable Institutions are not industries under Section 2(j) of the Industrial Dispute Act. The Supreme Court also observed:

[13] 1953 AIR 58

"If, in a pious and altruistic mission many employ themselves, free or for small honorarium or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services, clinics 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 ad those who serve are not engaged for remuneration or on the bases of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical are hired."

The definition of "industry" that can be concluded from the Bangalore Water Supply and Sewerage case can be as:

(A) Where,

I. A systematic activity takes place

II. It is organized by co-operation between employer and employee

III. It is set up for the production or distribution of goods and services which is meant to satisfy human wants and wishes which are materialistic in nature

IV. There shall always be an absence of profit motive or gainful objective.

V. The true focus shall always emphasis on the employer-employee relations.

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

The Supreme Court observed:

"If the triple test of a systematic activity which is a co-operation between an employer and an employee and there is also production of goods and services which were to be applied, then a University, a College, a Research Institute or teaching institute can be called an industry."

Thus, educational institutions are industries however in a limited sense. The definition of industry as amended in 1982 and it specifically excludes educational institutions from the definition of industry. But this definition is not widely accepted. Therefore, principles as laid down in Bangalore Sewerage Case are still followed even today to determine that whether a particular enterprise is an industry or not.

Whether Sovereign or Regal functions will be industry?

A. The services which are governed by specific rules and constitutional provisions under Articles 310 and 311 should be strictly excluded from the sphere of industry.

B. If there is a relationship between the State as an employer and its servants as an employee, then it might be contended that such provisions of a particular set of employees are outside the scope of the Industrial Disputes Act.

The court also observed that Sovereign functions of the Government itself are exempted from the scope of Section 2(j).

C. The welfare activities or economic adventures undertaken by the Government are not a part of the sovereign functions of the government and therefore are considered to be 'industries'

Whether Municipal Corporations Industry?

Generally, a Municipal Corporation carries out various kind of activities. These activities can either be sovereign and as well as non- sovereign in nature. The Supreme Court has provided the distinction between sovereign and non- sovereign function in the leading case of **Corporation of City of Nagpur V. Its Employees**[14]. It was held that the sovereign functions of the Municipal Corporation are outside the scope of the definition of industry under Section 2(j) but the non-sovereign functions of the Municipal Corporation are within the scope of Section 2(j). It held as follows:

A. If there is rendering of service by an individual or a private person. Then it will be it equally be an industry in the hands of a corporation.

B. The employees who are rendering the service in the departments are connected with service of financial, administrative or executive and they will be gradually entitled to the benefits of the Act.

The court also held that the Departments of the Municipal Corporation which perform welfare activities fall within the definition of industry under Section 2(j) of the Act. For example:

(i) Sewerage Department

(ii) Public Works Department

(iii)Education Department

(iv)Water works Department etc.

[14] 1960 AIR 675

Whether Hospital is Industry?

State of Bombay V. Hospital Mazdoor Sabha[15] case is famous case which today is considered as a precedent for other cases. Through this case the group of hospitals that are considered to be an industry are given:

A. A group of hospitals which has been established for purpose of giving medical relief to the citizens and for helping to impart medical education by a state.

B. Rendering of material services to the community at large with the help of employees.

C. Hospitals that are run by the Government as part of its sovereign functions with the sole objective of rendering free service to the patients are not considered to be an industry. But all other hospitals, either private or public, whether charitable or commercial would be industry if they fulfil the **triple test**.

The definition of industry as amended in 1982 specifically excludes hospitals from the definition of industry. But this definition has still not come into force.

Therefore, the guiding principles as laid down in Bangalore Sewerage Case are still followed even today to determine that whether a particular enterprise is an industry or not.

METHODOLOGY

My Research Paper will primarily rely on the Doctrinal kind of research which is a theoretical research. Doctrinal research is a kind of research in which the information is collected through well-established statues, landmark cases and other authentic legal sources. It is one of the fundamental methodologies of legal research.

[15] 1960 AIR 610

CONCLUSION

According to the Industrial Dispute Act of 1947 the definition of an Industry is clearly defined under Section 2 (j). We now understand that an industry means any business or trade organization that is either undertaking or manufacturing goods or calling of employees for a specific task or any service, that is related to employment, handicraft or industrial occupation or avocation of workman. Historically according to different scholars, the definition of an industry was quite different. With the passage of time the definition of Industry has undergone various changes. The definition of Industry also had various judicial interpretations. A definition is ordinarily the crystallization of legal concepts promoting precision and rounding off blurred edges but the definition in Section 2 (j) viewed in retrospect has achieved the opposite.

In the leading case of **Bangalore Water Supply and Sewerage Board v. A. Rajappa**[16], a bench of seven Judges was appointed. The question in this case was that whether the activity of the Board fell within the ambit of 'industry', or not. It was said that it went haywire and far beyond the confines of this case. In the name of judicial activism to bring every conceivable activity in the sweep of the industry. It was held in this case that the meaning which was given to the term 'industry' under the Industrial Dispute Act was very wide. It covered any systematic activity under the term Industry which lead to obscurity.

It took more than three decades after the Bangalore case. The Bangalore case till date still stands as a binding precedent in many of the cases. Many legal jurists have argued in either favour or against this decision. This decision had emerged from various cases. **D.N. Banerjee v. P.R. Mukherjee**[17] was one of the cases which passed through the Supreme Court. Supreme Court in this case had given a conflicting decision in the meaning of the term industry. In some of the leading cases the Supreme Court has, given a liberal decision. The court has adopted a very wide interpretation in some cases and in some cases a narrow interpretation has taken place.

In the last, the ruling was given by a five-judge Supreme Court Bench. It was recommended to set up a larger Bench so that the definition of "industry" is properly interpreted. In 1978 it was first interpreted in law, and it became a wake-up call to the legislature and the executive. Justice Chandrachud, was then the member of the Bench. He in 1978 delivered a verdict, and had clearly told that the "problem [of definition of industry] is far too policy-oriented to be satisfactorily settled by judicial decisions. Parliament must step in and legislate in a manner which will leave no doubt as to its intention."

Later on, The Parliament of India had amended the definition of "industry" in 1982. The Parliament clearly restricted the wide meaning of "industry" which was given earlier under the Bangalore Water Supply case. The definition which was given by the Parliament refused to include institutions like hospitals, dispensaries,

[16] Supra note 7
[17] Supra note 8

educational, scientific and research or training institutes, institutions engaged in charitable, social philanthropic services and many more. During that time, it was also suggested to exclude sovereign functions of the Government which included activities like atomic energy, space and defence research. For all these specific kinds of institutions, a separate body was proposed to be created to address their grievances. The successive Governments have been very reluctant to bring the said law into force by merely issuing a notification.

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