

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLANT JURISDICTION**

**CIVIL APPEAL NO.897/2002**

**IN THE MATTER OF:**

STATE OF UTTAR PRADESH

APPELLANT

VERSUS

JAI BIR SINGH

RESPONDENTS

**AND**

**IN THE MATTER OF:**

**CIVIL APPEAL NO.8597 OF 2001**

Ram Ji Singh & Ors.

APPELLANTS

Versus

State of U.P. & Ors.

RESPONDENTS

**ADDITIONAL WRITTEN SUBMISSION ON BEHALF OF**

**INDIRA JAISING & BHARAT SANGAL,**

**SENIOR ADVOCATES**

**ADDITIONAL WRITTEN SUBMISSIONS**

**THE REFERENCE NEEDS TO BE RETURNED WITHOUT AN OPINION :**

- I. The main and primary reason for making a reference in *State of U.P. v. Jai Bir Singh*, (2005) 5 SCC 1 (*The Reference Order*) is articulated in para 1, 2 and 3 of the Reference Order, which 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 [(1996) 2 SCC 293: 1996 SCC (L&S) 500] of three Judges and State of Gujarat v. Pratamsingh Narsinh Parmar [(2001) 9 SCC 713: 2002 SCC (L&S) 269] 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, 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 [(1978) 2 SCC 213: 1978 SCC (L&S) 215] (shortly hereinafter referred to as Bangalore Water case). The Bench of three Judges in the case of Chief Conservator of Forests v. Jagannath Maruti Kondhare [(1996) 2 SCC 293: 1996 SCC (L&S) 500] based on the decision of Bangalore Water case [(1978) 2 SCC 213: 1978 SCC (L&S) 215] concluded 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 [(2001) 9 SCC 713: 2002 SCC (L&S) 269] took a different view.*

*3. As the cleavage of opinion between the two Benches of this Court seems to have been based on the seven-Judge Bench decision of this Court in the case of Bangalore Water [(1978) 2 SCC 213: 1978 SCC (L&S) 215], the present case along with the other connected cases, in which correctness of the decision in the case of Bangalore Water [(1978) 2 SCC 213: 1978 SCC (L&S) 215] is doubted, has been placed before this Bench.”*

- II.** It is respectfully submitted that the error seems to have arisen in the order of the Bench of three judges. [See: **Order dated 31.01.2022 in the present case @Pg.No.92 of Vol-5B**] which reads as follows:

*“One of the contentions which arises for consideration is whether the Social 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. (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 the Social 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).*

- III.** It is submitted that the two-Judge Bench in *State of Gujarat v. Pratamsingh Narsinh Parmar (2001) 9 SCC 713* (*‘the Parmar case’*) did not take a different view from that of the judgment in *Chief Conservator of Forests v. Jagannath Maruti Kondhare (1996) 2 SCC 293* on the question of whether the Forest Department is an industry, but held that the workmen in question had not asserted that it was an industry and that, therefore, the High Court erred in holding that it was an industry. The finding turned on a question of fact, not law. It is thus clear that there was no “cleavage of opinion” as noted in para 3 of the Reference Order, *since* the decision in

*Parmar* did not take a different view that the Forest Department was not an industry.

Hence, no cause arose for the three-Judge Bench to lay the papers before the CJI for appropriate orders.

- IV. The further reason for discharging the Reference without an opinion is contained in para 24 of the Reference Order, which states:

*“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 [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] is not a unanimous decision. Of the five Judges who constituted the majority, three have given a common opinion but two others have given separate opinions projecting a view partly different from the views expressed in the opinion of the other three Judges. Beg, C.J. having retired had no opportunity to see the opinions delivered by the other Judges subsequent to his retirement. Krishna Iyer, J. and the two Judges who spoke through him did not have the benefit of the dissenting opinion of the other two Judges and the separate partly dissenting opinion of Chandrachud, J., as those opinions were prepared and delivered subsequent to the delivery of the judgment in Bangalore Water case [(1978) 2 SCC 213 : 1978 SCC (L&S) 215].”*

- V. ***Bangalore Water Supply & Sewerage Board v. A. Rajappa [(1978) 2 SCC 213]*** was a decision of a 7-Judge Bench, regardless of the fact that the 5-Judge majority was formed with two dissenting opinions by two Judges. The judgment remains the judgment of a 7-Judge Bench. [See: ***Trimurthi Fragrances (P) Ltd. v. State (NCT of Delhi), (2024) 20 SCC 709***]
- VI. It may be noted that the decision in ***Safdarjung Hospital v. Kuldip Singh Sethi, (1970) 1 SCC 735***, is oddly a decision of six Judges (where a theoretical possibility of equal division existed), whereas the decision in ***Bangalore Water Supply & Sewerage Board Case***

is that of a 7-Judge Bench. It is thus submitted that the Reference Order be recalled.

## VII.

### **Absence of Data relating to this reference**

- VIII. As has been conceded by the Ld. Attorney General for India, any outcome of the present Reference would be with regard to “pipeline” cases, i.e., those pending for decision before the repeal of the Industrial Disputes Act, 1947 *vide* Notification dated 02.02.2026, being Gazette Notification S.O. 465(E). It is thus suggested that before any judgment is delivered in the present matter, this Hon’ble Court may be pleased to direct the States to submit data of cases pending under the I.D. Act, indicating the organisations which they cover, whether university, club, hospitals (whether for profit or not), social-welfare activities of municipalities, local bodies, and the State. This data will give us a picture of the nature and extent of the issues for determination before this Hon’ble court. It will also ensure that the court is not deciding academic issues alone.

### **NOTE OF CAUTION:**

- IX. It is respectfully submitted that a well-established principle of law is that courts will not decide academic questions or issues not raised for consideration before the court. The validity of the 2020 Code, which has removed from the ambit of the word ‘industry’ as interpreted by the *Bangalore Water Supply & Sewerage Board*, charitable, social, philanthropic activities, is likely to be challenged, and any judgment by this court will have a direct and inevitable impact on any future challenge to the 2020 Code. Such an unintended but inevitable impact ought to be avoided, as the challenge to the 2020 code is not before this court.

### **PRINCIPLES OF INTERPRETATION AND CONSTRUCTION OF A STATUTE**

- X. At the outset, it is stated that the submissions herein below are without prejudice to the above submission.
- XI. The most concise articulation of the interpretation of statutes in *Bangalore Water Supply & Sewerage Board Case* is to be found in

the judgment of Beg J. at para 152 and 153, which read as follows:

*“152. The method which has been followed, whether it be called interpretation or construction of a part of an organic whole in which the statute, its objectives, its past and its direction for the future, its constitutional setting are all parts of this whole with their correlated functions. Perhaps it is impossible, in adopting such a method of interpretation, which some may still consider unorthodox, a certain degree of subjectivity. But, our attempt should be not to break with the well established principles of interpretation in doing so. 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.*

*153. If one keeps in mind what was laid down in Heydon case referred to by my learned Brother Krishna Iyer, the well-known principle that a statute must be interpreted as a whole, in the context of all the provisions of the statute, its objects, the preamble and the functions of various provisions, the true meaning may emerge. It may not be strictly a dictionary meaning in such cases. Indeed, even in a modern statute the meaning of a term such as “industry” may change with a rapidly changed social and economic structure. For this proposition I can do no better than to quote Subba Rao, J. speaking for this Court in Senior Electric Inspector v. Laxmi Narayan Chopra [AIR 1962 SC 159 : (1962) 3 SCR 146] : (SCR pp. 156-57)*

*The legal position may be summarized thus: The maxim contem-poranea exposito as laid down by Coke was applied to construing ancient statutes but not to interpreting Acts which are comparatively modern. There is a good reason for this change in the mode of interpretation. The fundamental rule of construction is the same whether the Court is asked to construe a provision of an ancient statute or that of a modern one, namely, what is the expressed intention of the legislature. It is perhaps difficult to attribute to a legislative body*

*functioning in a static society that its intention was couched in terms of considerable breadth so as to take within its sweep the future developments comprehended by the phraseology used. It is more reasonable to confine its intention only to the circumstances obtaining at the time the law was made. But in a modern progressive society it would be unreasonable to confine the intention of a legislature to the meaning attributable to the word used at the time the law was made, for a modern legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them.”*

- XII.** The object of the Industrial Disputes Act 1947 is to provide a judicial forum in which disputes arising between employers and workmen can be resolved towards the achievement of industrial peace and the avoidance of conflict in the form of strikes and lockouts. Although the right to strike forms part of collective bargaining, the Act seeks to regulate that right, especially when it comes to public utility services, and provides a forum for conciliation and adjudication. Failing conciliation, it allows reference to a labour court or tribunal for redress. It is submitted that the definition of “industry” must be interpreted with reference to the object of the Act, as has been done in a series of decisions of this Court. This is how the word ‘industry’ came to be defined in the ***Bangalore Water Supply & Sewerage Board Case***. Para 17 of the said Judgment to this effect reads as follows:

*“17. The relevant constitutional entry speaks of industrial and labour disputes (Entry 22 List III Schedule VII). The Preamble to the Act refers to “the investigation and settlement of industrial disputes”. The definition of industry has to be decoded in this background and our holding is reinforced by the fact that industrial peace, collective bargaining, strikes and lock-outs, industrial adjudications, works committees of*

*employers and employees and the like connote organised, systematic operations and collectively of workmen co-operating with their employer in producing goods and services for the community. The betterment of the workmen's lot, the avoidance of outbreaks blocking production and just and speedy settlement of disputes concern the community. In trade and business, goods and services are for the community, not for self-consumption."*

- XIII.** It is submitted that, when read with the Preamble to the Act and the object to be achieved, the decision in *Bangalore Water Supply & Sewerage Board Case* is good law and does not require reconsideration. The word "industry" must be interpreted not only in light of the object of the Act, but also in relation to the definitions of "workman" and "industrial dispute". It is further submitted that the *Bangalore Water Supply & Sewerage Board Case* interpreted the definition of "industry" with reference to Part IV of the Constitution. It was also held in that decision that even though the statute is a pre-Constitution enactment, it must be interpreted in light of Part IV (**See: para 18**)

*"18. The penumbral area arrives as we move on to the other essentials needed to make an organized, systematic activity, oriented on productive collaboration between employer and employee, an industry as defined in Section 2(j). Here we have to be cautious not to fall into the trap of definitional expansionism bordering on reductio ad absurdum nor to truncate the obvious amplitude of the provision to fit it into our mental mould of beliefs and prejudices or social philosophy conditioned by class interests. Subjective wish shall not be father to the forensic thought, if credibility with a pluralist community is a value to be cherished. "Courts do not substitute their social and economic beliefs for the judgment of legislative bodies". (See Constitution of the United States of America, Corwin, p. xxxi). Even so, this legislation has something to do with social justice between the "haves" and the "have-nots", and naive, fugitive and illogical cutbacks on the import of "industry" may do injustice to the benignant enactment. Avoiding Scylla and Charybdis we proceed to decipher the fuller import of the definition. To sum up, the*

*personality of the whole statute, be it remembered, has a welfare basis, it being a beneficial legislation which protects labour, promotes their contentment and regulates situations of crisis and tension where production may be imperilled by untenable strikes and blackmail lock-outs. The mechanism of the Act is geared to conferment of regulated benefits to workmen and resolution, according to a sympathetic rule of law, of the conflicts, actual or potential, between management and workmen. Its goal is amelioration of the conditions of workers, tempered by a practical sense of peaceful co-existence, to the benefit of both — not a neutral position but restraints on laissez faire and concern for the welfare of the weaker lot. Empathy with the statute is necessary to understand not merely its spirit, but also its sense. One of the vital concepts on which the whole statute is built, is “industry” and when we approach the definition in Section 2(j), we must be informed by these values. This certainly does not mean that we should strain the language of the definition to import into it what we regard as desirable in an industrial legislation, for we are not legislating de novo but construing an existing Act. Crusading for a new type of legislation with dynamic ideas or humanist justice and industrial harmony cannot be under the umbrella of interpreting an old, imperfect enactment. Nevertheless, statutory diction speaks for today and tomorrow; words are semantic seeds to serve the future hour. Moreover, as earlier highlighted, it is legitimate to project the value-set of the Constitution, especially Part IV, in reading the meaning of even a pre-Constitution statute. The paramount law is paramount and Part IV sets out Directive Principles of State Policy which must guide the judiciary, like other instrumentality, in interpreting all legislation. Statutory construction is not a petrified process and the old bottle may, to the extent language and realism permit be filled with new wine. Of course, the bottle should not break or lose shape.”*

- XIV.** The triple test in *Bangalore Water Supply & Sewerage Board Case* has been spelt out based on the object of the Act, the purpose sought to be achieved, that is, access to a judicial forum and the requirement of industrial peace, and Part IV of the Constitution of India, which mandates the State to achieve better conditions of work for weaker

sections of society. [See: Articles 38, 39 and 46 of the Constitution].

- XV. Subject to what is stated above, the triple test is legislatively accepted by the Code of 2020 in the main part of section 2(p). It has been submitted that subsequent legislation can be viewed in order to interpret extant legislation. [See: *Yogendra Nath Naskar v. CIT*, (1969) 1 SCC 555] However, when the subsequent statute is undoing binding judgements of this court, this court will determine the validity of the statute by determining whether the basis of the judgment is taken away and whether the statute is otherwise consistent with the fundamental rights of persons affected before upholding such a statute. It is open to the affected parties to dispute the subsequent statute on known principles of law, and hence, subsequent legislation cannot be decisive in interpreting anterior judgments which have held the field for close to 50 years. It is also submitted that the subsequent statute does indicate the intention of the legislature. While it certainly indicates the intention of the legislature at the time of passing, it cannot do so in reaction to a statute that is over 75 years old. Moreover, the intention of the legislature in and of itself has never ipso facto made the statute in question binding on a court where legislation is subject to judicial review for compliance with the provisions of the Constitution. Hence, the submission is not decisive of the controversy in question.

**WHAT IS THE CONSEQUENCE OF DEFINING INDUSTRY IN THE MANNER SET OUT IN THE BANGALORE WATER SUPPLY & SEWERAGE BOARD?**

- XVI. It is respectfully submitted that the only consequence of defining “industry” in the manner done in *Bangalore Water Supply & Sewerage Board Case* is to provide workmen with a remedy to ventilate their grievances in relation to fair wages, health and safety, occupational safety, security of employment and challenge unfair dismissals before a judicial authority. It does no more, and no less, than that. A democratic society governed by the rule of law is duty-bound to provide a grievance redressal forum of a judicial nature to all its citizens, where their substantive rights can be ventilated. The Industrial Disputes Act does no more and no less, and hence the law declared in the *Bangalore Water Supply & Sewerage Board Case* causes no prejudice to employers other than facing a competent court of labor law..

**XVII.** Filing a civil suit is not an equally efficacious remedy to reasing and industrial dispute remedy as under common law, a civil court cannot order reinstatement and can only award damages . The Specific Relief Act 1963, in section 14(1)(b), makes this clear. This relief of reinstatement can only be granted under the Industrial Disputes Act 1947, see Section 11A added by way of amendment in 1971 to the IDA *Workmen of Firestone Tyre and Rubber Co India (p) Ltd versus Management (1973)1 SCC 813*. Hence, denial of the applicability of the Industrial Disputes Act 1947 will cause grave prejudice to the workmen employed in “industry” as defined in the *Bangalore Water Supply & Sewerage Board Case*.

### SOVEREIGN FUNCTION

**XVIII.** The word sovereign function is misplaced in a democratic society. This Hon’ble Court in *Chief Conservator of Forests (supra)* held them to refer to as inalienable government functions. This Hon’ble Court in *Chief Conservator of Forests (supra)* observed:

*“12. We may not go by the labels. Let us reach the hub. And the same is that the dichotomy of sovereign and non-sovereign functions does not really exist — it would all depend on the nature of the power and manner of its exercise, as observed in para 23 of Nagendra Rao case [(1994) 6 SCC 205 : 1994 SCC (Cri) 1609 : JT (1994) 5 SC 572] . As per the decision in this case, one of the tests to determine whether the executive function is sovereign in nature is to find out whether the State is answerable for such action in courts of law. It was stated by Sahai, J. that acts like defense of the country, raising armed forces and maintaining it, making peace or war, foreign affairs, power to acquire and retain territory, are functions which are indicative of external sovereignty and are political in nature. They are, therefore, not amenable to the jurisdiction of ordinary civil court inasmuch as the State is immune from being sued in such matters. But then, according to this decision the immunity ends there. It was then observed that in a welfare State, functions of the State are not only the defence of the country or administration of justice or maintaining law and order but extends to regulating and*

*controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. Because of this the demarcating line between sovereign and non-sovereign powers has largely disappeared.”*

- XIX.** It is submitted that, strictly speaking, sovereign functions are only those which are not only inalienable but are also classically referred to as “political” questions. These are the issues which are not justiciable in a court of law by virtue of their political nature, and they are granted immunity and defined as inalienable sovereign functions not subject to judicial review. On the other hand, to exclude the welfare activities of the State mandated by Part IV of the Constitution would not merely be an irony but would amount to turning the Constitution on its head. The following observations made by this Hon’ble Court in *Chief Conservator of Forests (supra)* are relevant:

*“13. The aforesaid shows that if we were to extend the concept of sovereign function to include all welfare activities as contended on behalf of the appellants, the ratio in Bangalore Water Supply case [(1978) 2 SCC 213 : 1978 SCC (L&S) 215 : (1978) 3 SCR 207] would get eroded, and substantially. We would demur to do so on the face of what was stated in the aforesaid case according to which except the strictly understood sovereign function, welfare activities of the State would come within the purview of the definition of industry; and, not only this, even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as industry if substantially severable.*

*16. The aforesaid being the crux of the scheme to implement which some of the respondents were employed, we are of the view that the same cannot be regarded as a part of inalienable or inescapable function of the State for the reason that the scheme was intended even to fulfil the recreational and educational aspirations of the people. We are in no doubt that such a work could well be undertaken by an agency which is not required to be even an instrumentality of the State.”*

### CHARITABLE PURPOSE

- XX.** On the question whether the profit motive is a necessary condition to determine whether an organisation is an “industry”, attention is invited to Section 2(p) of the Code of 2020, which states in unambiguous terms that an undertaking can be an industry whether or not it is carried on with a motive to gain profit. To that extent, the legislature has accepted that decision in the *Bangalore Water Supply & Sewerage Board Case*, in that it can qualify as an industry even without a profit motive. The respondents will not deal with the validity of the exclusion in the present case, since it is not the subject matter of this Reference.
- XXI.** Once the triple test is accepted as a method of determining what an industry is, its application to charities and social welfare activities is inevitable, and such activities cannot be excluded from the purview of industry if they satisfy the test.
- XXII.** It may, however, be noted here that there appears to be an inherent contradiction in Section 2(p), which excludes profit-oriented activities on the one hand, while the very same section excludes charities, social and philanthropic activities. However, the interpretation of this apparent contradiction and its validity is a matter for another day.

### LIBERALISATION, PRIVATIZATION, AND GLOBALISATION (LPG)

- XXIII.** It is submitted that there has been a sea change in the approach of the Union of India (UOI) to the question of what should and should not be government functions, due to policies such as disinvestment and the New Public Sector Enterprises Policy, which permits the entry of private players in strategic sectors formally considered sovereign functions. It has been noticed that sectors such as defence and nuclear energy have also been opened for privatisation, subject to the limitations mentioned in the said policy. (See: Separate note.) It is submitted that the greater the implementation of LPG policies (Liberalization, Privatization, Globalization), the greater the

applicability of the Industrial Disputes Act 1947 and the greater the nature of activity that will be governed by the definition of 'industry' as laid down in *Bangalore Water Supply & Sewerage Board Case*, for the reason that sectors liberalized cease to be exclusively government functions and can be and are being performed by private entities.

**PROTECTION IS AVAILABLE TO DIFFERENT CATEGORIES OF EMPLOYEES BY DIFFERENT STATUTES, CONSTITUTIONAL PROVISIONS, AND RULES AND REGULATIONS :**

- XXIV. While government employees have the protection under Article 311 of the Constitution, those not covered by any constitutional provisions or statutes that create a judicial forum to address their grievances are covered by the Industrial Disputes Act, 1947.
- XXV. *Bangalore Water Supply & Sewerage Board Case* provides a judicial forum to those employees who are not covered by any of the above forums or statutes, and is correctly decided and does not require reconsideration. To remove that protection as is being suggested would be to go counter to the ethos of the Constitution of India which guarantees equality before law and equal protection of laws . Access to justice to all employees is a universal right guaranteed by the Constitution of India in an appropriate form. Overruling BWS would mean denial of that right to employees not covered by any other legislation guarantying protection from unfair dismissal and decent conditions of work.



Indira Jaising and

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## **Note on Charitable Purpose**

### **Brief**

The IR Code does not define the terms; charitable, social or philanthropic service; yet it excludes them from the definition of industry. What the below examples of charitable and social institutions show under the Companies Act and Income Tax Act respectively is that the ‘social’ and ‘charitable’ activity in Indian law is not a narrow moral category but a vast institutional field comprising health, education, inequality reduction, research, rehabilitation and community development; read with section 2(p)(i) of the IR Code, this makes the exclusion potentially sweeping enough to disqualify a large part of the organised welfare sector from industrial protection.

### *Income Tax Act*

*“(15) “charitable purpose” includes relief of the poor, education, [yoga,] medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:*

*Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—*

- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and*
- (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent. of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;”*

The breadth of s. 2(15) ITA means that virtually every major non-profit employer in India qualifies as 'charitable'. Key Supreme Court decisions illustrate this:

| <b>Case Name</b>  | <b>Facts</b>  | <b>Key Holding with regards to charitable purpose (Verbatim)</b>  |
|---|---|---|
| <p><b>Additional CIT v. Surat Art Silk Cloth Mfrs. Association (1980)</b></p> | <p>The assessee was a company incorporated to promote commerce and trade in art silk yarn and cloth. Its income came from member subscriptions and commissions on import licenses. The Revenue argued its objects benefited only specified individuals (members) and involved carrying on an activity for profit.</p> | <p>"The test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit-making is the predominant object of the activity, the purpose, though an object of general public utility, would cease to be a charitable purpose. But where the predominant object of the activity is to carry out the charitable</p> |

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|  |   | <p>purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity."</p>  |
| <p><b>CIT v. Bar Council of Maharashtra (1981)</b></p> | <p>The Bar Council of Maharashtra, a statutory body under the Advocates Act, 1961, derived income from interest on securities and enrollment fees. The Revenue rejected its claim for tax exemption, arguing its main object was to benefit the legal profession (its members) rather than being an object of general public utility.</p> | <p>"Having regard to the Preamble of the Act and the nature of the various obligatory functions including the one under cl. (d) enjoined upon every State Bar Council Under s.6 (1) of the Act, it is clear that the primary or dominant purpose of an institution like the assessee-Council is the advancement of the object of general public utility within the meaning of s.2 (15) of the Act, and as such the income from securities held by the assessee-Council would be exempt from any tax</p> |

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|  |   | liability under s.11 of the Act."  |
| <p><b>ACIT v. Thanthi Trust (2001)</b></p> | <p>A trust was founded with the business of a daily newspaper ("Dina Thanthi") as its corpus. The surplus income from the newspaper business was used to fund schools, colleges, scholarships, and orphanages. The tax authorities rejected the exemption, arguing the newspaper business was not carried on in the course of actually carrying out the primary charitable purpose.</p> | <p>"The business that the Trust carries on is that of running a newspaper. That business, though it is held by the Trust as a part of its corpus, and, therefore, in trust, does not directly accomplish, wholly or in part, the Trusts objects of relief of the poor and education. Its income only feeds such activity." "As it stands, all that it requires for the business income of a trust or institution to be exempt is that the business should be incidental to the attainment of the objectives of the trust or institution. A business whose income is utilized by the trust or the institution for the purposes of achieving</p> |

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|  |  | <p>the objectives of the trust or the institution is, surely, a business which is incidental to the attainment of the objectives of the trust."</p>   |
| <p><b>New Noble Educational Society v. CCIT (2022)</b></p> | <p>The appellant educational societies/trusts were denied tax exemption approval under Section 10(23C) of the IT Act on the grounds that they were not created "solely" for the purpose of education (they had other objects) and were not registered under the local state charities law.</p> | <p>"It is held that the requirement of the charitable institution, society or trust etc., to 'solely' engage itself in education or educational activities, and not engage in any activity of profit, means that such institutions cannot have objects which are unrelated to education. In other words, all objects of the society, trust etc., must relate to imparting education or be in relation to educational activities." "Thus, education i.e., imparting formal scholastic learning, is what the IT</p> |

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|  |  | Act provides for under the head of “charitable” purposes, under Section 2 (15)." |
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Reading these cases together with the IR Code's exclusion, the argument becomes clear: the very institutions most richly protected by tax law, hospitals, universities, welfare societies, professional bodies, trusts, are the institutions that will be stripped of 'industry' status and therefore of all worker protections under the IR Code if the exclusion in s. 2(p)(i) is upheld.

### **Tax Exemptions for Charitable Institutions**

| <b>Provision</b> | <b>Beneficiary</b>   | <b>Exemption / Deduction Details</b>  |
|------------------|--|---|
| <b>S. 11</b>     | Trusts/institutions holding property for charitable/religious purposes | Income derived from such property is exempt to the extent it is applied for charitable purposes in India; up to 15% of the income may be accumulated or set apart indefinitely. |
| <b>S. 11(1A)</b> | Trusts/institutions transferring capital assets                        | Capital gains are deemed to be applied to charitable/religious purposes (and thus exempt) if the net  |

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|                          |   | consideration is utilised to acquire a new capital asset to be held for the same purposes.  |
| <b>S. 12</b>             | Trusts/institutions receiving voluntary contributions                 | Voluntary contributions (not directed to the corpus) are treated as income derived from property held under trust, making them exempt if applied for charitable purposes. |
| <b>S. 12A &amp; 12AA</b> | Unregistered trusts/institutions seeking exemption                    | Outlines the conditions and procedures for registration to claim exemptions under Sections 11 and 12.   |
| <b>S. 10(21)</b>         | Approved research associations  | Income is exempt if applied wholly and exclusively to the objects of the association (scientific, social science, or statistical research).                               |
| <b>S. 10(23BBA)</b>      | Bodies administering public religious or charitable trusts/endowments | Income of bodies established under Central or State Acts to administer entities like  |

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|   |   | <p>maths, temples, gurudwaras, and wakfs is exempt.</p>   |
| <p><b>S. 10(23C) (iiiab) / (iiiad) / (vi)</b></p>   | <p>Universities and educational institutions</p>                  | <p>Income is wholly exempt if existing solely for educational purposes and not for profit, subject to conditions like government financing, receipt limits, or prescribed authority approval.</p>   |
| <p><b>S. 10(23C) (iiiac) / (iii ae) / (via)</b></p> | <p>Hospitals and medical institutions</p>                         | <p>Income is wholly exempt if existing solely for philanthropic purposes and not for profit, subject to conditions like government financing, receipt limits, or prescribed authority approval.</p> |
| <p><b>S. 10(23C) (iv) &amp; (v)</b></p>             | <p>Approved charitable or religious funds/trusts/institutions</p> | <p>Income is exempt subject to approval by the prescribed authority, fulfilling investment conditions, and applying income exclusively to their objects.</p>  |

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| <b>S. 35CCA &amp; 35CCB</b> | Associations undertaking rural development or conservation           | Businesses get tax deductions for expenditure paid to approved associations for rural development programmes or the conservation of natural resources/afforestation. |
| <b>S. 80G</b>               | Donors to approved charitable funds/institutions                     | Donors can claim deductions from their gross total income for qualifying donations made to specific funds and charitable institutions.                               |
| <b>S. 80GGA</b>             | Donors making scientific research or rural development contributions | Donors can claim deductions for sums paid to approved research associations, universities, or institutions for scientific research or rural development.             |
| <b>S. 115BBC</b>            | Trusts/institutions receiving anonymous donations                    | Anonymous donations are taxed at 30% on the aggregate amount exceeding 5% of the total donations received  |

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|                          |  | or 1 lakh rupees, whichever is higher (religious trusts are generally excluded).   |
| <b>S. 115TD to 115TF</b> | Trusts ceasing their charitable status | An exit tax (additional income-tax) at the maximum marginal rate is levied on the "accreted income" if a registered trust converts to an ineligible form, merges with a non-eligible entity, or fails to transfer assets to another eligible trust upon dissolution. |

On one hand, the State is granting a plethora of benefits to charitable institutions, on the other hand, through s. 2(p)(i) of the IR Code, the State now proposes that these same institutions, should be exempt from providing their workers with the most basic industrial protections.

### Companies Act

**135. Corporate Social Responsibility.**—(1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during [the immediately preceding financial year] shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director:

*[Provided that where a company is not required to appoint an independent director under sub-section*

*(4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.]*

*(2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.*

*(3) The Corporate Social Responsibility Committee shall,—*

*(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company 4[in areas or subject, specified in Schedule VII];*

*(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and (c) monitor the Corporate Social Responsibility Policy of the company from time to time.*

*(4) The Board of every company referred to in sub-section (1) shall,—*

*(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and*

*(b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.*

*(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, [or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years,] in pursuance of its Corporate Social Responsibility Policy:*

*Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:*

*Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial years].*

*[Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.]*  
*[Explanation.—For the purposes of this section “net profit” shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.]*

*[(6) Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII,*

*within a period of thirty days from the date of completion of the third financial year.*

*(7) If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.]*

*(8) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.]*

*[(9) Where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.]*

## **“SCHEDULE VII**

*(See section 135)*

*Activities which may be included by companies in their Corporate Social Responsibility Policies*

*Activities relating to:—*

*[(i) eradicating hunger, poverty and malnutrition, [promoting health care including preventive health] and sanitation [Including contribution to the Swatch Bharat Kosh set-up by the Central Government for the promotion of sanitation] and making available safe drinking water;*

*(ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;*

*(ii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;*

*(iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal*

*welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water [including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga];*

*(v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;*

*(vi) measures for the benefit of armed forces veterans, war widows and their dependents;*

*(vii) training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports;*

*(viii) contribution to the Prime Minister's National Relief Fund 5[or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)] or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;*

*[(ix)(a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and*

*(b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting*

*Sustainable Development Goals (SDGs)]*

*(x) rural development projects.]*

*[(xi) slum area development]*

*Explanation.— For the purposes of this item, the term ‘slum area’ shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.]*

*[(xii) disaster management, including relief, rehabilitation and reconstruction activities.]”*

Every single item in Schedule VII of the Companies Act, Parliament itself decided that these are the activities companies must spend money on for the public good. Every single one of them is, by definition, a "social service." So any institution implementing a CSR activity, a hospital trust, a school society, a

skilling NGO, a women's shelter, is an institution engaged in "social service." It gets knocked out of the industry and its workers lose their protection.

*What did Bangalore Water Supply Say*

**Chief Justice M. H. Beg:**

"The test indicated above would necessarily exclude the type of services which are rendered purely for the satisfaction of spiritual or psychological urges of persons rendering those services. These cannot be bought or sold. For persons rendering such services there may be no 'industry', but, for persons who want to benefit from the services rendered, it could become an "industry". 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 industrial Disputes Act to protect them. Such is not the type of persons who will raise such a dispute as workmen or employees whatever they may be doing."

**Justice Y. V. Chandrachud:**

"That leads to the consideration whether charitable enterprises can at all be industries. Viewing the problem from the angle from which one must, according to me, view the State's inalienable functions, it seems to me to follow logically that 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. It is the nature of the activity that one has to consider and it is upon the application of that test that the State's inalienable functions fall within the definition of 'industry'. The very same principle must yield the result that just as the consideration as to who conducts an activity is irrelevant for determining whether the activity is an industry, so is the fact that the activity is charitable in nature or is undertaken with a charitable motive. The status or capacity, corporate or constitutional, of the employer would have, if at all, closer nexus, than his motive, with the question whether the activity is an industry. And yet that circumstance, according to me, cannot affect the decision of the question. The motive which propels an activity is yet another step removed and, *ex hypothesi*, can have no relevance on the question as to what is the nature of the activity. It is never true to say that the nature of an activity is charitable. 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. 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 then that, clearly, is to introduce the profit-concept by a side wind, a concept which, I suppose, has been rejected consistently over the years. If any principle can be said to be settled law in this vexed field it is this : the twin consideration of profit motive and capital investment is 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). It is as much beside the point to inquire who is the employer as it is to inquire why is the activity undertaken and what the employer does with his profits, if any."

**Justice V. R. Krishna Iyer (speaking for himself, Justice P. N. Bhagwati, and Justice D. A. Desai):**

"Can charity be 'industry' ? This paradox can be unlocked only by examining the nature of the activity of the charity, for there are charities and charities. The grammar of labour law in a pluralist society tells us that the worker is concerned with wages and conditions of service, the employer with output and economies and the community with peace, production and stream of supply. This complex of work, wealth and happiness, firmly grasped, will dissolve the dilemma of the law bearing on charitable enterprises. Charity is free; industry is business. Then how ? A lay look may scare; a legal look will, see; a social look will see through a hiatus inevitable in a sophisticated society with organizational diversity and motivational dexterity. If we mull over the major decisions, we get a hang of the basic structure of 'industry' in its legal anatomy. Bedrocked on the groundnorms, we must analyse the elements of charitable economic enterprises, established and maintained for satisfying human wants. Easily, three broad categories emerge more may exist. The charitable element enlivens the operations at different levels in these patterns and the legal consequences fences are different, viewed from the angle of 'industry'. For income-tax purposes, Trusts Act or company law or registration law or penal code requirements the examination will be different. We are concerned with a benignant disposition towards workmen and a, trichotomy of charitable enterprises run for producing and/or supplying goods and services, organised systematically and employing workmen, is scientific. The first is one where the enterprise, like any other, yields profits but they are siphoned off for altruistic objects. The second is one where the institution makes no profit but hires the services of employees as in other like businesses but the goods and services,

which are the output, are made available, at low or no cost, to the indigent needy who are priced out of the market. The third is where the establishment is oriented on a humane mission fulfilled by 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. The first two are industries, the third not. What is the test of identity whereby these institutions with eleemosynary inspiration fall or do not fall under the definition of industry ?"

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

"It is common, ground that the first category of charities is disqualified for exemption. If a business is run for production and or supply of goods and services with an eye 'on profit, it is plainly an industry. The fact that the whole or substantial part of the profits so earned is diverted for purely charitable purposes does not affect the nature. of the economic activity which involves the co-operation of employer and employee and results in the production of goods and services. The workers are not concerned about the destination of the profits. They work and receive wag leas. They axe treated like any other workman in any like industry. All the features of an industry, as spelt out from the definition by the decisions of this Court, are fully present in those' charitable businesses. In short, they are industries. The application of the income for philanthropic purposes,

instead of filling private coffers, makes no difference either to the employees of to the character of the activities. Good Samaritans can be clever industrialists."

"The second species of charity is really an allotropic modification of the first. If a kind-hearted businessman or high-minded industrialist or service-minded operator hires employees like his non-philanthropic counter-parts and, in co-operation with them, produces and supplies goods or services to the lowly and the lost, the needy and the ailing without charging them any price or receiving a negligible return, people regard him as of charitable disposition and his enterprise as a charity. But then, so far as the workmen are concerned, it boots little whether he makes available the products free to the poor. They contribute labour in return for wages and conditions of service. For them the charitable employer is exactly like a commercial-minded employer. Both exact hard work, both pay similar wages, both treat them as human machine cogs and nothing more, The material difference between the commercial and the compassionate employers is not with reference to the workmen but with reference to the recipients of goods and services. Charity operates not vis-a-vis the workmen in which case they will be paying a liberal wage and generous extras with no prospect of strike. The beneficiaries of the employees charity are the indigent consumers. Industrial law does not take note of such extraneous factors but regulates industrial relations between employers and employees, employers and workmen and workmen and workmen. From the point of view of the workmen there is no charity. For him charity must begin at home. From these strands of thought flows the conclusion that the 'second group may legitimately and legally be described as industry. The fallacy in the contrary contention lies in shifting the focus from the worker and the industrial activity to the disposal of the end product. This law has nothing to do with that. The income-tax may have, social opinion may have."

"We now move on to economic activities and occupations of an altruistic character falling under the third category. The heart of trade or business or

analogous activity is organisation with an eye on competitive efficiency, by hiring employees, systematising processes, producing goods and services needed by the community and obtaining money's worth of work from employees. If such be the nature of operations and employer-employee relations which make an enterprise an industry, the motivation of the employer in the final disposal of products or profits is immaterial. Indeed the activity is patterned on a commercial basis, judged by what other similar undertakings and commercial adventures do. To qualify for exemption from the definition of 'industry' in a case where there are employers and employees and systematic activities and production of goods and services, we need a totally different orientation, organisation and method which will stamp on the enterprise the imprint, of commerciality. Special emphasis, in such cases, must be placed on the central fact of employer-employee relations. If a philanthropic devotion is the basis for the charitable foundation or establishment, the institution is headed by one who wholeheartedly dedicates himself for the mission and pursues it with passion, attracts Others into the institution, not for wages but for sharing in the cause and its fulfillment, then the undertaking is not "industry"

"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."

**Justice Jaswant Singh (speaking for himself and Justice V. D. Tulzapurkar):**

"...we are of the view that despite the width of the definition it could not be the intention of the Legislature that categories 2 and 3 of the charities alluded to by our learned brother Krishna Iyer in his judgment, hospital run on 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 Government and 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."

### History

The exclusion in the 1982 Amendment which did not come into fruition:

"Clause (j) shall stand substituted as follows when clause (c) of section 2 of the Industrial Disputes (Amendment) Act, 1982

(46 of 1982) will come into force:—

(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”**

### The IR Code Exclusion

“(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 relating 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;”*

This broad exclusion contravenes the majority verdict delivered by Krishna Iyer J.

# **What is the Indian Governments Approach to Privatisation?**

## **I. Divestment Policy<sup>1</sup>**

Consists of:

Strategic divestment: entire/substantial sale of Government shareholding of a CPSE and transfer of management control. Privatisation is a subset of strategic divestment where the Government equity in CPSE and its management control is transferred to a private strategic buyer.

Minority Stake Sale: carried out without transfer of management control through various SEBI-approved methods such as Initial Public Offer, Offer for Sale, Buyback of shares etc.

## **II. New Public Sector Enterprise (PSE) Policy<sup>2</sup>**

For Atma Nirbhar Bharat, the police intends to minimise the presence of the Government in the PSEs across all sectors of the economy.

### Strategic sectors

It delineates four Strategic sectors based on the criteria of national security, energy security, critical infrastructure, provision of financial services and availability of important minerals. Aims for a limit of four PSEs of the holding nature in strategic sectors.<sup>3</sup>

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<sup>1</sup>Department of Investment and Public Asset Management, Ministry of Finance, Government of India, "Disinvestment Policy of the Government of India"

<sup>2</sup> Department of Investment and Public Asset Management, Ministry of Finance, Government of India, "Disinvestment Policy of the Government of India"

<sup>3</sup> Economic Times, "New public sector enterprises policy envisages at most 4 PSUs in strategic sectors: DPE Secy"

Strategic sectors will retain under government control, bare minimum presence of the existing public sector commercial enterprises at Holding company level.

The remaining will be considered for privatisation, merger or subsidiarization with another PSE for closure.

The identified strategic sectors are: (i) Atomic Energy, Space & Defense; (ii) Transport & Telecommunication; (iii) Power, Petroleum, Coal & other minerals; and (iv) Banking, Insurance & Financial Services.<sup>4</sup>

### Non-strategic sectors

All PSEs will be considered for privatisation where feasible or closure.

### Exclusions

The policy does not apply to certain classes of public sector entities namely Not-for-profit companies, CPSEs providing support to vulnerable groups, or having developmental/promotional roles.

### Updates

After Budget 2025, Nirmala Sitharaman highlighted that privatisation remained a Cabinet-backed commitment that will have to be kept up with. At Budget 2026, Sitharaman stated that all previously approved divestments will continue. Divestment and closure of Public Sector units (PSUs) are pursued as part of a broader, composite strategy to improve efficiency and expand private sector participation.<sup>5</sup>

However, according to Reuters, in 2025, divestment plans were slowed, and billions were pumped into ailing state-run firms and privatisation of at least nine state-owned units were put

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<sup>4</sup> Page 38, Economic Survey 2021-22

<sup>5</sup> The Economic Times, "Union Budget 2026: Sitharaman 'fully committed' to privatisation drive, says all approved disinvestments to go through"

in abeyance after opposition from the relevant ministries.<sup>6</sup> This is part of a broader push to raise \$183.7 billion by monetising state assets over the next four years. In 2026, instead of outright privatisation, for which plans have been deferred, India announced their aim to raise 1.79 trillion rupees from selling stakes in state-run firms through IPOs in railway, power, petroleum and natural gas, aviation and coal sectors, by the 2029/2030 financial year.<sup>7</sup>

### **III. Shanti Bill<sup>8</sup>**

Enables limited private participation in the nuclear sector subject to regulatory oversight. Participation takes the form of undertaking plant operations, power generation, equipment manufacturing, and selected activities such as the fabrication of nuclear fuel including conversion, refining and enrichment of uranium-235 up to such threshold value, or production, use, processing or disposal of other prescribed substances. In addition, all activities that involve radiation exposure must obtain prior safety authorisation from the regulatory authority.

Certain sensitive nuclear fuel-cycle activities are reserved exclusively for the Central Government or its wholly owned institutions. These include enrichment or isotopic separation of prescribed or radioactive substances (unless otherwise notified), management of spent fuel such as reprocessing, recycling, radionuclide separation, and high-level waste handling, production and upgradation of heavy water, and any other facilities or activities specifically notified by the Government.

Critical functions remain firmly under sovereign oversight.

### **IV. Privatisation of defence**

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<sup>6</sup> Reuters, “Exclusive: India to ditch privatisation plans, pour billions in state-run firms, sources say”

<sup>7</sup> Reuters, “India aims to raise \$20 billion from IPOs of state-run firms by 2030”

<sup>8</sup> Press Information Bureau, “The Sustainable Harnessing and Advancement of Nuclear Energy for Transforming India (SHANTI) Bill, 2025”

IN FY 2024-2025, the contribution of private defence manufacturing to India's total defence production increased to 22.56%, reflecting a steady upward trend from 2016-17.

As per, the private sector plays a crucial role in defence production, contributing 21% to total defence production, fostering innovation and efficiency. Additionally, Foreign Direct Investment (FDI) in the defence sector was liberalised in September 2020 to attract foreign investment, allowing up to 74% FDI through the automatic route and above 74% through the government route. Since April 2000, the total FDI in defence industries stands at Rs 5,730.55 crores. There has been a growth in the value of production of as well as the number of licenses issued to the Private Defence Industry.<sup>9</sup>

Following 2018 data, the Government was promoting privatisation in defence production, issuing licenses to Indian companies for the manufacture of defence items (as per June 2018 379 licenses were issued to 230 Indian Companies), withdrawing public investments in Defence Public Sector Undertakings (DPSUs), BEML Limited, Bharat Dynamics Limited (BDL), Mishra Dhatu Nigam Limited (MIDHANI) and Hindustan Aeronautics Limited (HAL).<sup>10</sup>

#### **V. National Monetisation Pipeline (distinct from privatisation, public ownership is retained)**

Announced in the Union Budget 2021-22.

It is an operational roadmap developed for the purpose of executing Asset monetisation of various brownfield infrastructure assets across roads, railways, shipping, aviation, power, telecom, oil & gas, and warehousing sectors. This entails a limited period lease of a government or public authority owned asset to a private sector entity for an upfront or periodic consideration. The risks are balanced between the public authority and private party, where the

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<sup>9</sup> Ministry of Defence, Department of Defence Production, Aerospace & Defence Sector Policy Compendium of States and Union Territories (Page 27),

<sup>10</sup> Press Information Bureau, Government of India, Ministry of Defence, "Privatisation of Defence Production"

latter is expected to operate and maintain the asset based on the terms of the contract/concession. As this is linked to infrastructure creation the NMP has been planned to be co-terminus with the remaining four-year period of the National Infrastructure Pipeline.<sup>11</sup>

The NMP 2.0 from FY2025–26 to FY2029–30 aims to carry forward the momentum that has been built-up by NMP 1.0, but with a higher target and a larger repertoire of assets, in line with the Union Budget 2025 announcement. NMP 2.0 also seeks to build on the awareness and institutional capacity related to asset monetisation that has been developed in the past few years. After detailed discussions with the concerned Central Ministries, this strong portfolio covers key sectors, such as highways, railways, power, petroleum and natural gas, civil aviation, ports, warehousing and storage, urban infrastructure, coal, mines, telecom and tourism.<sup>12</sup>

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<sup>11</sup> Niti Aayog, NATIONAL MONETISATION PIPELINE VOLUME I: MONETISATION GUIDEBOOK

<sup>12</sup> Niti Aayog, National Monetisation Pipeline 2.0

## Sources and hyperlinks

### Divestment Policy and New PSE Policy

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