IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 897 OF 2002

<u>IN THE MATTER OF:-</u>

STATE OF UTTAR PRADESH ... APPELLANT

VERSUS

JAI BIR SINGH ...RESPONDENT

AND WITH

CIVIL APPEAL NO. 4646 OF 2007
[SLP (CIVIL) NO.3318 OF 2007]

<u>IN THE MATTER OF:</u>

STATE OF HARYANA …APPELLANT

VERSUS

RAJESH …RESPONDENT

INDEX

SR. NO.	PARTICULARS	PAGES
1.	REVISED WRITTEN SUBMISSION BY DR. K.S. CHAUHAN, SENIOR ADVOCATE ON BEHALF OF THE WORKMAN (RAJESH)/ RESPONDENT	1-55

FILED BY:-

[AJIT KUMAR EKKA]

FILED ON:15.03.2026 ADVOCATE FOR THE RESPONDENT

NEW DELHI

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 897 OF 2002

IN THE MATTER OF:-

STATE OF UTTAR PRADESH ... APPELLANT

VERSUS

JAI BIR SINGH ...RESPONDENT

AND WITH

CIVIL APPEAL NO. 4646 OF 2007

IN THE MATTER OF:

STATE OF HARYANA …APPELLANT

VERSUS

RAJESH …RESPONDENT

REVISED WRITTEN SUBMISSION BY DR. K.S. CHAUHAN, SENIOR ADVOCATE ON BEHALF OF THE WORKMAN (RAJESH)/ RESPONDENT

MOST RESPECTFULLY SHOWETH:

Fundamental principles:

Social justice is not only a moral imperative, but it is essential for economic security, social cohesion and peace.[1] Fundamental human rights and capabilities are the indispensable foundation for achieving social justice, both within the world of work and the wider world. Human rights, labour rights and enhanced capabilities are essential conditions for social justice. The ILO Conference reaffirm and recognised the fundamental principles that: (a) labour is not a commodity; (b) freedom of expression and of association are essential to sustain progress; (c) poverty anywhere constitutes a danger to prosperity everywhere; (d) the war against want requires to be carried on with unrelenting vigour within each nation and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common

[1] Gilbert F. Houngbo, ILO Director-General: Available at: https:// www. ilo.org/ resource/ news/global-progress-social-justice-slowed-persistent-inequalities-new-ilo

welfare.[2] Basic human rights are laid out in various instruments, such as the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966). The Copenhagen Declaration on Social Development (1995)[3]reaffirmed the interdependence between social development, human rights and international security, building on the ILO Declaration (1944)[4] and the Charter of the United Nations (1945). All of these acknowledge the importance of the right to free expression as critical for social, political and economic rights.[5]

Facts:

1. That the respondent-Rajesh (workman) was engaged as Beldar-cum-Chowkidar, as a Group-D employee, for a project of construction of canal on 01.09.1999 by Sub Divisional Officer (SDO), Sidmukh Sub-Division No.15 of Division No.4, Tohana which is later on renamed and known as SDO, Sidmukh Feeder Sub- Division No.15 of Division No.2, Hisar (hereinafter it may be referred to as 'the Management'). The appointment/engagement of the respondent-Rajesh as Beldar-cum-Chowkidar, was on the terms of wages as prescribed/ fixed by the Deputy Commissioner, Hisar, i.e. at the rate of Rs.1995/- p.m. w.e.f. 01.09.1999.
2. That the respondent has continuously worked upto 31.08.2000 from 01.09.1999, that is for a period more than 240 days in a year. However, the appellant (management) has

[2] Declaration concerning the aims and purposes of the International Labour Organisation: (ILO Declaration of Philadelphia, 1944)

[3] The Copenhagen Declaration is the outcome document of the first World Summit for Social Development held in Copenhagen in 1995.

[4] The International Labour Organization (ILO)Declaration of Philadelphia 1944 is a landmark document adopted on May 10, 1944, that redefined its mission, which demonstrated the truth of the statement in the Constitution of the ILO that lasting peace can be established only if it is based on social justice. All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity; Thus, it centred on social justice, human rights, and economic security. It established that labour is not a commodity, freedom of expression and association are essential for progress, and poverty anywhere is a danger to prosperity everywhere.

[5] The state of social justice: A work in progress, Internation Labour Organisation Report, 2025

alleged that the respondent had not worked for 240 days but has worked only for a period of 219 days from 01.09.1999 to 30.06.2000 and the appellant (management) has alleged that the appellant has not violated any legal principle or any protection under the law available to the respondent, and have further alleged that the respondent has left the job twice on his own, and as such, the respondent had not worked for 240 days, whereas such contention of the management/ appellant is contrary to the records and the witnesses produced on behalf of the appellant / management have admitted that the respondent has continuously worked with effect from 01.9.1999 and upto 31.08.2000 and has worked for more than 240 days.

3. That the respondent (workman) has raised the demand notice under Section 2-A of the Industrial Disputes Act, 1947 vide demand notice dated 22.04.2003, thereby raising a dispute to the effect that the services of the respondent were illegally terminated w.e.f. 31.08.2000 while the respondent was serving as Chowkidar-cum-Beldar under the supervision of SDO, Sidhmukh Feeder Sub Division No.15, Division No.2, Hisar (Haryana). The conciliation proceedings were carried out in accordance with the provisions of the Act, but the parties could not arrive at the settlement and the Government of Haryana, therefore, referred the dispute vide Reference No.49 of 2003 to the Ld. Industrial Tribunal-cum-Labour Court, Hisar, (Haryana) under Section 10 of the Act for adjudication of the following question: -

"Whether the termination of services of Sh. Rajesh is legal or not? If not, to what relief he is entitled to"?

The labour dispute was raised against the retrenchment of the respondent under Section 25-F of the Industrial Disputes Act, 1947, and the dispute was referred vide Reference No.49 of 2003 by the Govt of Haryana. The respondent filed demand notice dated 22.04.2003 thereby claiming that the respondent be reinstated with full back wages, continuity of services and other consequential relief.

4. That it was alleged that the appellant / management has not retrenched the respondent but the respondent has left the job voluntarily on his own, and the respondent has not worked for 240 days, hence, it is alleged that the contention of the respondent is perverse and illegal, but the contention of the management/appellant is contrary to the records, such contention is not supported by any oral or documentary evidence in the facts and circumstances of the present case, and the witnesses produced on behalf of the appellant have admitted that the respondent has continuously worked with effect from 01.9.1999 and upto 31.08.2000 with breaks and has worked for more than 240 days. It is pertinent to mention here that the witnesses of the management have supported the version of the respondent. However, it was alleged that the respondent was not retrenched by the appellant. The respondent raised the dispute under Section 25-F of the Act, before the Ld. Industrial Tribunal-cum-Labour Court, Hisar and the documents produced on records i.e. Ex.M-2 to Ex.M-10 thereby showing that the respondent has completed 240 days in a year, before the Ld. Industrial Tribunal-cum-Labour Court, Hisar. Nine documents were exhibited by the statement of WW-1 Gopi Ram, J.E. vide his statement dated 16.02.2005 along with Ex. W-1 (9 pages), before the Ld. Presiding Officer, Labour Court, Hissar. The statement of WW-2 Rajesh dated 16.02.2005, the answering Respondent has also contended that he was being paid monthly salary and the relevant document of vouchers of payment were exhibited by Panni Lal, JE, MW-1. The statement of MW-1 Panni Lal, JE (with M-3-Voucher for the month of July dated 15.09.2000) has admitted that the Respondent has worked upto 31.08.2000 in the following terms: -

"Stated that the workman was engaged as daily casual labour in September 1999 on D.C. rates. The complete detail of the working is Ex.M-1. He has worked upto 31.08.2000 with gaps. The detail of the pay of the applicant is Ex. W-1 at pages 1 to 9. The applicant has not worked for more than 240 days continuously in any last preceding year. The workman was not retrenched, but he has voluntarily left the work

himself, there is no seniority list for the daily paid casual workers. The applicant has been paid all his wages."

And by perusing the documents produced in records, and the statement of Gopi Ram WW-1, a Junior Engineer of the management that the workman had worked for 31 days even during August 2000. JE Gopi Ram WW-I has proved this fact on the basis of official attendance record copy of which was tendered as Ex. W-I by him. It is, therefore, established from documents Ex. M-l and Ex. W-I that workman had worked for 250 days (219+31) during twelve months period prior to the impugned termination which, according to the workman was made w.e.f. 31.08.2000. The Ld. Labour Court has been pleased to compute the period of 240 days to examine the rigor of the provisions of the I.D. Act, 1947 for the compliance of Section 25-F of the Act and has found the contention of the appellant is perverse as it is contrary to the facts on records. Resultantly, the Ld. Labour Court has categorically held that the workman had completed the requisite days of service i.e. 240 days in 12 preceding months from the date of termination (retrenchment) vide the award dated 07.12.2005 passed by the Ld. Industrial Tribunal-cum-Labour Court, Hisar, (Haryana). It is admitted case that there has been no compliance of Section 25-F of the Act by the management, resultantly, the claim of the workman has been accepted, and the order of termination has been set aside, and the back wages have been awarded vide the award dated 07.12.2005. The relevant extract of the relief vide award dated 07.12.2005 passed by the Ld. Labour Court, Hisar, (Haryana), is reproduced:

"RELIEF: -

15. In view of the above discussion and findings on the issues, this reference is answered in favour of the workman to the effect that termination of his services was not legal and he is entitled to reinstatement with continuity of service and all other consequential service benefits alongwith 50% back wages from the date of issuance of demand notice i.e. 22/4/2003 till the publication of award and full wages

thereafter till reinstatement. File be consigned to record after necessary compliance.

Sd/A.K. Singh Panwar
7/12/2005 Presiding Officer
Industrial Tribunal-cum-Labour Court, Hisar.
Endst. No. 109 Dated: 25/1/2006"

Kindly peruse award passed by Shri A.K. Singh Panwar, Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar **ANNEXURE P-5** at pages 23-28 of the Appeal paper book.

5. That the appellant preferred Civil Writ Petition No. 8218 of 2006 before the Hon'ble High Court of Punjab and Haryana at Chandigarh against the award dated 07.12.2005, thereby contending that the respondent has not completed 240 days in his engagement, and the appellant has contended that the respondent has worked only for a period of 219 days from 01.09.1999 to 30.6.2000, which is perverse and illegal and contrary to the facts on records as the documents produced on records i.e. Ex.M-2 to Ex.M-10 demonstrated that the respondent has completed 240 days in a year, produced before the Ld. Industrial Tribunal-cum-Labour Court, Hisar and by perusing the documents produced in records, the Ld. Court has been pleased to compute the period of 240 days to examine the rigor of the provisions of the I.D. Act, 1947 for the compliance of Section 25-F of the Act, and despite this, the management had indulged in unfair labour practice by illegally terminating his services with effect from 31.08.2000 in violation of the provisions of Section 25-F and 25-G of the Act in as much as no notice and retrenchment compensation was given to him and persons junior to him were retained by the appellant. The respondent has prayed for his reinstatement with continuity of service and other consequential service benefits including back wages.

6. That the management in the present case, has itself tendered attendance details Ex.M-1 revealing that the workman has worked for 219 days during last 10 months period ranging

between September 1999 to June 2000 whereas the workman's plea is that he had worked till 31.08.2000. He has been able to prove through Gopi Ram WW-1, a Junior Engineer of the management that the workman had worked for 31 days even during August 2000. JE Gopi Ram WW-I has proved this fact on the basis of official attendance record copy of which was tendered as Ex. W-I by him. It is, therefore, established from documents Ex. M-l and Ex. W-I that workman had worked for 250 days (219+31) during twelve months period prior to the impugned termination which, according to the workman was made w.e.f. 31.08.2000. As such, the contention of the appellant is perverse and illegal, and it is contrary to the facts on records. Resultantly, the Ld. Labour Court has categorically held that the workman had completed the requisite days of service i.e. 240 days in 12 preceding months from the date of termination (retrenchment) vide the award dated 07.12.2005 passed by the Ld. Industrial Tribunal-cum-Labour Court, Hisar, (Haryana). The relevant pay bill of work charge establishment for the month of July was marked as Exh.M-3 before the Ld. Presiding Officer, Labour Court, Hissar. Kindly peruse **ANNEXURE CA-1 (Colly)** of the Counter Affidavit filed by the respondent. Thus, the bare perusal of the documents demonstrate that the Respondent has worked for more than 240 days, U/Sec. 25-B of the Industrial Disputes Act, 1947, hence the termination of the Respondent without following the statutory requirements of Section 25F of the Industrial Disputes Act is illegal, arbitrary and unconstitutional. Therefore, the appellant- State of Haryana has violated the provisions of Industrial Disputes Act by terminating the services of the Respondent herein. The action of the appellant- State of Haryana is an unfair labour practice and the respondent is entitled for reinstatement with full back wages. The Division Bench of the Hon’ble High Court of Punjab and Haryana at Chandigarh after considering the facts on records has been pleased to rightly dismiss the Civil Writ Petition No. 8218 of 2006 whereby the award dated 07.12.2005 passed by the Ld. Labour Court, Hisar, (Haryana)

has been affirmed, vide Final Impugned Judgement and Order dated 21.07.2006 passed by the Hon'ble High Court of Punjab and Haryana.

7. That on preferring of the SLP under Article 136 of the Constitution of India against the Final Impugned Judgement and Order dated 21.07.2006 passed by the Hon'ble High Court, this Hon'ble Court has been pleased to issue notice vide order dated 02.03.2007 in SLP (Civil) No. 3318 of 2007.

8. That the respondent contested the case by filing his Counter Affidavit whereby the respondent has demonstrated that the appellant -State of Haryana has concealed the material facts, as the respondent has stated that he has worked from 01.09.1999 to 30.06.2000, whereas the appellant -State of Haryana has themselves proved in its evidence the fact of working of the answering Respondent upto August 2000 in the facts and circumstances of the present case. It is settled legal position that the appellant is an industry as defined under Section 2(j) of the Industrial Disputes Act. It is also pertinent to mention here that the documentary evidence which is placed on record by the respondent as well as by the appellant-State of Haryana, the respondent has completed more than 240 days in a year, hence the respondent is legally entitled for reinstatement with full back wages and as such, the Ld. Labour Court has rightly considered the facts and evidence on records and has rightly passed the award and the Hon'ble High Court has rightly dismissed the writ petition preferred by the appellant. It is also pertinent to mention here that the evidence on record amply prove that the respondent is unemployed after his retrenchment. Moreover, at any stage of the proceedings, the appellant has not contended that the appellant is not an '*industry*' as defined by section 2 (j) of the Industrial Disputes Act, 1947. The construction work etc./ Sidhmukh Feeder Sub-Division of the State government where the respondent was serving/working as Chowkidar-cum-Beldar under the supervision of Sub Divisional Officer, Sidhmukh Feeder Sub-Division No.15, Division No.2, Hisar (the management), is an industry as defined by Section 2 (j)

of the Industrial Disputes Act, 1947. The law is very well settled by the Seven Judges Bench decision in *Bangalore Water Supply and Sewerage Board v. A Rajappa*, reported as 1978(2) SCC 213, that the functions discharges by the respondent at the working/construction site of the appellant is an industry as defined by section 2(j) of the Industrial Disputes Act, 1947. Moreover, the recently enforced The Industrial Relations Code, 2020, though it is prospective in nature and has been enforced vide Notification No. S.O. 5320(E), dated 21.11.2025, but the Industrial Relations Code, 2020 has been enacted as an Act to consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes and for matters connected therewith, by the Union Parliament to replace and repeal of the Trade Unions Act, 1926 (16 of 1926); the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946) and The Industrial Disputes Act, 1947 (14 of 1947) by Section 104 of The Industrial Relations Code, 2020. It has been enforced by notification in the Official Gazette as provided in Section 1(3) of the Industrial Relations Code, 2020 vide Notification No. S.O. 5320(E), dated 21st November 2025, published in the Gazette of India Extra-Ordinary, Part-II, sec.3(ii) by the Central Government.

9. That Section 2 of the Industrial Relations Code, 2020 defines various terms and phrases employed in the Code. Section 2(p) defines “industry”, Section 2(q) defines “industrial dispute”, Section 2(r) defines “industrial establishment or undertaking”, Section 2(zh) defines “retrenchment”, Section 2(zo) defines “unfair labour practice”, Section 2(zq) defines “wages”, Section 2(zr) defines “worker”. The definition of Section 2(p) defines “industry” which is a provision which has expounded the principle as determined by the Seven Judges Bench decision in *Bangalore Water Supply and Sewerage Board* v. *A Rajappa*, (supra), while explaining the scope of “industry” as defined by Section 2(j) of the Industrial Disputes Act, 1947.

10. That this Hon'ble Court has been pleased to Grant Special Leave to Appeal vide Order dated 01.10.2007 in SLP (Civil) No. 3318 of 2007. Thereafter, the SLP was registered and re-numbered as Civil Appeal No. 4646 of 2007.
11. That the Constitution Bench of this Hon'ble Court has been pleased to refer Civil Appeal No. 897 of 2002 titled as State of U.P. v Jai Bir Singh and connected matters whereby the Constitution Bench has doubted the correctness of the Seven Judges Bench decision in *Bangalore Water Supply and Sewerage Board v. A Rajappa* (supra), and it has referred it to the larger bench vide order dated 05.05.2005 which is reported as *State of U.P.* v *Jai Bir Singh*, 2005(5) SCC 1.
12. That this Hon'ble Court has been pleased to pass order dated 15.07.2009 in Civil Appeal No. 4646 of 2007 directing its tagging along with Civil Appeal No. 897 of 2002 titled as State of U.P. v Jai Bir Singh vide order dated 15.07.2009 in Civil Appeal No. 4646 of 2007, which was already referred to the larger bench by the Constitution Bench.
13. That thereafter Seven Judges Constitution Bench of this Hon'ble Court has been pleased to further refer Civil Appeal No. 897 of 2002 titled as State of U.P. v Jai Bir Singh and connected matters, by agreeing with the Constitution Bench decision in *State of U.P.* v *Jai Bir Singh*, 2005(5) SCC 1 where the Seven Judges Bench has also doubted the correctness of *Bangalore Water Supply and Sewerage Board* v. *A Rajappa* (supra), and referred it to the larger bench of Nine Judges to examine the correctness, vide order dated 02.01.2017, titled as State of U.P. v Jai Bir Singh, reported as 2017(3) SCC 311.

STATUTORY PROVISIONS:

I. The Industrial Disputes Act, 1947:

14. That the Industrial Disputes Act, 1947 is a crucial labour legislation ("law") which was enacted by the Parliament to resolve the disputes between the management and the workmen for securing industrial peace and harmony. It came into force on 01.04.1947. It provides a framework for

investigating and settling disputes between employers and workmen through machinery like conciliation, arbitration, and adjudication. The key features of the legislation include regulating strikes/lockouts, layoffs, retrenchments, and establishing works committees for cooperation. This legislation has been replaced by Section 104(1) (c) of the Industrial Relations Code, 2020 (with effect from 21.11.2025).[6]

Section 2(j) of the Industrial Disputes Act, 1947, defined 'Industry' as under: -

"**2. Definitions**. —In this Act, unless there is anything repugnant in the subject or context, —

[7][(j) "**industry**" means any business, trade, undertaking, manufacture or calling of employers and includes any calling,

---

[6] Notification No. S.O. 5320(E), dated 21st November 2025, see Gazette of India, Extraordinary, Part II, sec. 3(ii).

[7] **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

(5) khadi or village industries; or

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or

(7) any domestic service; or

service, employment, handicraft, or industrial occupation or avocation of workmen;"

The Supreme Court while interpreting the definition of "*industry*" as contained in Section 2(j) of the Industrial Disputes Act, 1947, in *Bangalore Water Supply and Sewerage Board v. A. Rajappa,*[8] had observed that Government might restructure this definition by suitable legislative measures. Accordingly, it was proposed to redefine the term, 'industry' by clause (c) of Section 2 of the Industrial Disputes (Amendment) Act, 1982 (Act No. 46 of 1982) with the statement of objects and reasons to provides the machinery and procedure for the investigation and settlement of industrial disputes. The provisions of the Act had been amended from time to time in the light of experience gained in its actual working, case laws and industrial relations policy of the Government. It was proposed by Act No. 46 of 1982 to exclude from the scope of the expression 'industry', certain institutions, like hospitals and dispensaries, educational, scientific research or training institutes, institutions engaged in charitable, social and philanthropic services, etc., in view of the need to maintain in such institutions an atmosphere different from that in industrial and commercial undertakings and to meet the special needs of such organisations. But clause (c) of section 2 of the Industrial Disputes (Amendment) Act, 1982 (46 of 1982) which defines 'industry' was not notified and now, with the repeal of the Industrial Disputes Act, 1947,

---

(8) any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or
(9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten;
(The clauses (a), (b) and (d) to (k) of section 2 and sections 3, 4, 5, 6, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21 and 23 of this Act shall come into force w.e.f. 21.08.1984: vide Notification No.S.O.606(E), dated 21.8.1984)However, it was provided that the Central Government may, by notification in the Official Gazette, appoint, and different dates maybe appointed for different provisions of this Act.) Thus, clause (c) of Section 2 (by which section 2(j) was amended) was not enforced vide Notifn.No.S.O.606(E), dated 21.08.1984.

[8] (1978) 2 SCC 213 (Paras 140-144): AIR 1978 SC 548.

it is inconsequential in the facts and circumstances of the present case.

15. That it is also proposed to exclude sovereign functions of Government including activities relating to atomic energy, space and defence research from the purview of the term "industry". However, the special characteristics of such activities, and the fact that the workmen also need protection, it was proposed to have a separate law for the settlement of individual grievances as well as collective disputes in respect of the workmen of these institutions. The term '*industry*' has been made more specific while making the coverage wider. The scope of the term 'workman' has been enlarged to cover the supervisory staff whose wages do not exceed Rs.1,600/- per month at that relevant period. It was also recommended that a model grievances redressal procedure should be adopted. But this voluntary arrangement has not proved effective. It is, therefore, proposed to make it obligatory for every industrial establishment employing 100 or more workmen to set up a time bound grievance redressal procedure. Thus, the definition of industry in Section 2(j) of the Industrial Disputes Act, 1947, was subsequently amended by the Industrial Disputes (Amendment) Act, 1982 (46 of 1982), the amended provisions broadly accepted the principles determined by the Seven Judges Bench of this Hon'ble Court in *Bangalore water Supply and Sewerage Board* v. *A Rajappa*[9], where this Hon'ble Court has laid down *triple* tests, i.e., (i) Systematic activity, (ii) Organised by Cooperation between employer and employee (the direct and substantial element in Chimerical) and (iii) for the production and/or distribution of the goods and services calculated to satisfy human wants and wishes (not spiritual or religious, but inclusive of material things or service geared to celestial bliss e.g. making, on a large scale Parsad or food) prima facie, there is an industry in that enterprise. The amended Act was not enforced vide Notification No.SO 606(E), dated 21.08.1984.

[9] (1978) 2 SCC 213 (Paras 140-144): AIR 1978 SC 548.

16. That thereafter, the Industrial Disputes (Amendment) Act, 1984 (Act No. 49 of 1984) was enacted with the objects and reasons to provide for investigation and settlement of industrial disputes, after it amended the Act No.49 of 1984 was enacted for inserting Section 2 (bb), and amending Section 25F, Section 25M, 25N and 25Q, and it was enforced vide Notification No. S.O. 635(E), dated 18.08.1984, Gazette of India, (Extraordinary) Part II, Section 3(ii). The provisions of the Industrial Disputes Act, 1947, had been amended from time to time in the light of experience gained in its actual workings, case laws, and industrial relations policy of the Government.

II. **The Industrial Relations Code, 2020 (Act No. 35 OF 2020)** (with effect from 21.11.2025).

The Parliament has enacted the provisions of the Industrial Relations Code, 2020, which have been enforced vide Notification No. S.O. 5320(E), dated 21.11.2025. Though there is no challenge to it, but the legislative changes affected by the Parliament whereby the provisions of the Industrial Disputes Act, 1947 (14 of 1947) has been **repealed** by Section 104(c)of the Industrial Relations Code, 2020.

17. That the Industrial Relations Code, 2020 has been enacted as an Act to consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes and for matters connected therewith, by the Parliament to replace and repeal of the Trade Unions Act, 1926 (16 of 1926); the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946) and The Industrial Disputes Act, 1947 (14 of 1947) by Section 104 of The Industrial Relations Code, 2020. It has been enforced by notification in the Official Gazette as provided in Section 1(3) of the Industrial Relations Code, 2020 vide Notification No. S.O. 5320(E), dated 21.11.2025, published in the Gazette of India Extra-Ordinary, Part-II, sec.3(ii) by the Central Government. Section 2 of the Industrial Relations Code, 2020 defines

various terms and phrases employed in the Code. Section 2(a) defines Appellate Authority, Section 2(b) "Appropriate Government", Section 2(c) "Arbitrator", Section 2(d) "Average Pay", Section 2(e) "Award", Section 2(f) "Banking Company", Section 2(g) "certifying officer", Section 2(h) "closure", Section 2 (i) "conciliation officer", Section 2(j) "conciliation proceeding", Section 2(k) "controlled industry", Section 2(l) "employee", Section 2(m) "employer", Section 2(n) "executive", Section 2(o) "fixed term employment", Section 2(p) "industry", Section 2(q) "industrial dispute", Section 2(r) "industrial establishment or undertaking", Section 2(s) "insurance company", Section 2(t) "lay-off", Section 2(u) "lock-out", Section 2(v) "major port", Section 2(w) "metro railway", Section 2(x) "mine", Section 2(y) "National Industrial Tribunal", Section 2(z) "negotiating union or negotiating council", Section 2(za) "notification", Section 2(zb) "office-bearer", Section 2(zc) "prescribed", Section 2(zd) "railway", Section 2(ze) "registered office", Section 2(zf) "registered Trade Union", Section 2(zg) "Registrar", Section 2(zh) "retrenchment", Section 2(zi) "settlement", Section 2 (zj) "standing orders", Section 2(zk) "strike", Section 2(zl) "Trade Union", Section 2(zm) "Trade Union dispute", Section 2(zn) "Tribunal", Section 2(zo) "unfair labour practice", Section 2(zp) "unorganised sector", Section 2(zq) "wages", Section 2(zr) "worker". The relevant provisions are reproduced herein below: -

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

(k) "*controlled industry*" means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest;

(p) "*industry*" means any systematic activity carried on by co-operation between an employer and worker (whether such worker is employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or

wishes which are merely spiritual or religious in nature), whether or not,—

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

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

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

(ii) any activity of the appropriate Government relatable to the sovereign functions of the appropriate Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or

(iii) any domestic service; or

(iv) any other activity as may be notified by the Central Government;

(r) ***"industrial establishment or undertaking"*** means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

(i) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking which is not carrying on or aiding the carrying on of any such activity, such unit shall be deemed to be a separate industrial establishment or undertaking;

(ii) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be,

unit thereof shall be deemed to be an industrial establishment or undertaking;******

(zr) "worker" means any person (except an apprentice as defined under clause (aa) of section 2 of the Apprentices Act, 1961) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and includes working journalists as defined in clause (f) of section 2 of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955) and sales promotion employees as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976 (11 of 1976), and for the purposes of any proceeding under this Code in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched or otherwise terminated in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person---

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

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

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

(iv) who is employed in a supervisory capacity drawing wages exceeding eighteen thousand rupees per month or an amount as may be notified by the Central Government from time to time:

Provided that for the purposes of Chapter III, "worker"---

(a) means all persons employed in trade or industry; and

(b) includes the worker as defined in clause (m) of section 2 of the Unorganised Workers' Social Security Act, 2008 (33 of 2008)."

The above definitions in Section 2 of The Industrial Relations Code, 2020, have made provision Section 2(k)

"controlled industry", Section 2(p) "industry", Section 2(r) "*industrial establishment or undertaking*" and Section 2(zr) "worker", such provisions are akin to the interpretation of "*Industry*" in Section 2(j) of the Industrial Disputes Act, 1947, as interpreted by the Seven Judges bench of this Hon'ble Court in *Bangalore water Supply and Sewerage Board* v. *A Rajappa,*[10]and as such, it is in consonance with the interpretation of "*Industry*" in Section 2(j) of the Industrial Disputes Act, 1947. In fact, on the one hand, the Parliament has impliedly accepted the principle as settled by Seven Judges Bench in *Bangalore water Supply* v. *A Rajappa,*[11] where this Hon'ble Court has laid down three testes i.e. (i) Systematic activity, (ii) Organised by Cooperation between employer and employee (the direct and substantial element in Chimerical) and (iii) for the production and/or distribution of the goods and services calculated to satisfied human wants and wishes (not spiritual or religious but inclusive of material things or service geared to celestial bliss e.g. making, on a large scale Parsad or food) prima facie there is an industry in that enterprise. This Hon'ble Court has applied the test as laid down in *Hospital Mazdoor Sabha*[12] and has overruled *Safdarjung,*[13] *Solicitors' Case*,[14] *Gymkhana*,[15] *Delhi University*,[16] *Dhanrajgirji Hospital*[17] and other rulings whose ratio runs counter to the principles enunciated above in these precedents and has expressly approved *Hospital Mazdoor Sabha*[18]. But on the other hand, the Parliament has incorporated certain words which defeat the purpose of the

---

[10] (1978) 2 SCC 213.
[11] (1978) 2 SCC 213 (Paras 140-144)
[12] *State of Bombay* v. *Hospital Mazdoor Sabha*, AIR 1960 SC 610:1960 (2) SCR 866.
[13] *Safdarjung Hospital v Kuldip Singh Sethi,* (1970) 1 SCC 735: (1971) 1 SCR 177.
[14] National Union of Commercial Employees v. M.R. Meher 1962 Supp (3) SCR 157 (*Solicitors' case).*
[15] Secretary Madras *Gymkhana* Club Employees Union v. Management of the Gymkhana Club, 1968 (1) SCR 742: AIR 1968 SC 554.
[16] *Delhi University v. Ram Nath*, 1964(2) SCR 703: AIR 1963 SC 1873.
[17] *Dhanrajgirji Hospital* v. Workmen, 1975(4) SCC 621:
[18] *State of Bombay* v. *Hospital Mazdoor Sabha*, AIR 1960 SC 610:1960 (2) SCR 866.

enactment of such provision and application of such provision with an improved principle is required to be applied in the facts and circumstances of the present case.

18. That the conclusions arrived at by the majority: **Bhagwati**, **Krishna Iyer**, and **D.A. Desai JJ.** (where extracts of paragraphs 140 to 144 by **Krishna Iyer J**.) in *Bangalore Water Supply case (supra)* are reproduced hereinbelow for ready reference:

"**140.** "Industry', as defined in Section 2(*j*) and explained in *Banerji*, has a wide import.

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

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

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

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

141. Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

"(*a*) 'Undertaking' must suffer a contextual and associational shrinkage as explained in *Banerji*[19] and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra), although not trade or business, may still be 'industry' provided *the nature of the activity*, *viz*. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold of 'industry' undertakings, callings and services, adventures 'analogous to the *carrying* on the trade or business.' …"

142. ……The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range off this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

[19] D.N. Banerji v. P.R. Mukherjee, 1952 (2) SCC 619: 1953 SCR 302.

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

143. The dominant nature test:
"(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the *University of Delhi case*[20] or some departments are not productive of goods and services if isolated, *even then, the predominant nature of the services* and the integrated nature of the departments as explained in the *Corporation of Nagpur*[21] will be the true test. The whole undertaking will be 'industry' although those who are not '*workmen'* by definition may not benefit by the status.
(b) Notwithstanding the previous clauses, *sovereign functions*, strictly understood, (alone) qualify for exemption, not the *welfare activities or economic adventures* undertaken by government or statutory bodies.
(c) Even in departments discharging *sovereign functions*, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).
(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby."
144. We overrule Safdarjung,[22] *Solicitors 'case*[23] *Gymkhana*,[24] *Delhi University*,[25] *Dhanrajgirji Hospital*[26] and other rulings whose ratio runs counter to the principles enunciated above, and ***Hospital Mazdoor Sabha***[27] is hereby rehabilitated."

19. That the above view by HMJ Krishna Iyer J., (for three Hon'ble judges) has been agreed and concurred by ***Beg CJ.,*** in para 160 "I think the phrase *'analogous to industry'* which has been used in

[20] University of Delhi v. Ram Nath, (1964) 2 SCR 703: AIR 1963 SC 1873
[21] Corporation of city of Nagpur v. Its Employees,(1960)2 SCR 942:AIR1960 SC675.
[22] *Safdarjung Hospital v Kuldip Singh Sethi,* (1970) 1 SCC 735: (1971) 1 SCR 177.
[23] National Union of Commercial Employees v. M.R. Meher 1962 Supp (3) SCR 157 (*Solicitors' case).*
[24] Secretary Madras *Gymkhana* Club Employees Union v. Management of the Gymkhana Club, 1968 (1) SCR 742: AIR 1968 SC 554.
[25] *Delhi University v. Ram Nath*, 1964(2) SCR 703: AIR 1963 SC 1873.
[26] *Dhanrajgirji Hospital* v. Workmen, 1975(4) SCC 621:
[27] State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 SC 610:1960 (2) SCR 866.

the *Safdarjung Hospital case(supra),*[28]*could not really cut down the scope of "industry*". The result, however, of that decision has been that the scope has been cut down. I, therefore, completely agree with my learned brother that the decisions of this court in *Safdarjung hospital case (supra) and other cases mentioned by my learned brother must be held to be overruled…"*

And thereafter it is stated in para 163. "I would also like to make a few observations about the so-called *"sovereign" functions which have been placed outside the field of industry. I do not feel happy about the use of the term "sovereign" here…."*

And such view by HMJ Krishna Iyer J., (for three Hon'ble judges) has been agreed by ***Y.V.Chandrachud CJ.,*** in para 178 "On a careful consideration of the question I am of the opinion that *Hospital Mazdoor Sabha*[29](supra) was correctly decided"

20 Therefore, a majority of 5:2 [Beg CJ., and Chandrachud CJ., and Bhagwati, Krishna Iyer, and D.A. Desai JJ.] in a Seven Judges Bench in *Bangalore Water Supply & Sewerage Board v. A. Rajappa*, (1978) 2 SCC 213 has held that the *Safdarjung Hospital case,*[30]*is incorrectly decided, and the decision in Hospital Mazdoor Sabha case,*[31]*is correctly decided.* The court viewed that the sovereign function may get exemption, but the welfare activities or economic adventures/ activities undertaken by government or statutory bodies are not entitled for such exemption from the scope of industry.

21. However, **Jaswant Singh, J.** (*for himself and* ***Tulzapurkar, J***.) delivered a partly **dissenting** judgment in *Bangalore Water Supply v. Rajappa,*[32] where the minority has partly concurred and partly dissented with the view expressed by Krishna Iyer J. Jaswant Singh, J. in his decision in Paras185 &186 has stated that the definition of the term "industry" is couched and applied the *doctrine of noscitur a sociis,* and the

---

[28] *Safdarjung Hospital v Kuldip Singh Sethi,* (1970) 1 SCC 735: (1971) 1 SCR 177.
[29] State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 SC 610:1960 (2) SCR 866.
[30] *Safdarjung Hospital v Kuldip Singh Sethi,* (1970) 1 SCC 735: (1971) 1 SCR 177.
[31] State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 SC 610:1960 (2) SCR 866.
[32] Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213

dissent has also suggested that there is a necessity for legislative intervention:-

185. The definition of the term "industry" as contained in section 2(*j*) of the Industrial Disputes Act which is in two parts being vague and too wide as pointed out by *Beg,C.J.* and *Krishna Iyer, J.,* …. However, bearing in mind the collocation of the terms in which the definition is couched and applying the *doctrine of noscitur a sociis* which, as pointed out by this Court in *State of Bombay v. Hospital Mazdoor Sabha*,[33] means that, when two or more words which are susceptible of analogous meaning are coupled together. …….."

186. ..the need for excluding some callings, services and undertakings from the purview of the aforesaid definition and….explaining the scope of the definition of "industry" ….in *State of Bombay* v. *Hospital Mazdoor Sabha (supra); Secretary, Madras Gymkhana Club Employees Union* v. *the Gymkhana Club*[34] and *Safdarjung Hospital,* v. *Kuldip Singh Sethi.*[35] Speaking for the Bench in *State of Bombay* v. *Hospital Mazdoor Sabha (supra);* Gajendragadkar, J. (as he then was) had observed:[36](SCR p. 876)

"It is clear, however, that though Section 2(*j*) uses words of very wide denotation, a line would have to be drawn in a fair and just manner so as to exclude some callings, services or undertakings. …It is not and cannot be suggested that in its wide sweep the word 'service' is intended to include service howsoever rendered in whatsoever capacity and for whatsoever reason. We must, therefore, consider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in Section 2(*j*), and that no doubt is a somewhat difficult problem to decide."

22. That this Hon'ble Court in its order dated 18.02.2026 has been pleased to broadly observe/frame the following issues and the respondent is trying to state a possible answer to such questions, for the kind consideration of this Hon'ble Court: -

---

[33] State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 SC 610: (1960) 2 SCR 866.

[34] Secretary, Madras Gymkhana Club Employees Union v. Management of Gymkhana Club, AIR 1968 SC 554: (1968) 1 SCR 742.

[35] Management of Safdarjung Hospital, New Delhi v. Kuldip Singh Sethi, (1970) 1 SCC 735: (1971) 1 SCR 177.

[36] State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 SC 610: (1960) 2 SCR 866, p. 876.

Questions for consideration by this Hon'ble court:

1. **Whether the test laid down in paragraphs 140 to 144 in the opinion rendered by this Hon'ble Court [HMJ V.R. Krishna Iyer J., in *Bangalore Water Supply and Sewerage Board v. A. Rajappa*, (infra) to determine if an undertaking or enterprise falls within the definition of "industry" lays down correct law**?

Section 2(j) of the Industrial Disputes Act, 1947 defined the term , "Industry" which was considered by this Hon'ble Court in *Bangalore Water Supply and Sewerage Board v. A. Rajappa*,[37] **Krishna Iyer J.** (for himself **Bhagwati**, and **D.A. Desai JJ.)** has fundamentally redefined the term '*industry'* by establishing the *'Triple Test'*. The important principles of the Triple Test include:

(i) There must be a systematic activity.
(ii) There must be co-operation between the employer and employees.
(iii) The activity must be for the production and/or distribution of goods or services calculated to satisfy human wants and wishes.

Bangalore Water Supply case(supra) has broadened the scope of 'Industry' by declaring that it is irrelevant to make any gain or profit. Any activity can be defined as an 'industry', if it is run by a charitable organization, or for public welfare. The *'regal or sovereign functions'* of the government, such as legislative, judicial, defence, and police, would fall outside its ambit, but 'welfare activities' or 'commercial enterprises' undertaken by the government fall within the ambit of the term 'industry' as defined by Section 2(j) of the Industrial Disputes Act, 1947. The majority judgment has been concurred by **Beg CJ.,** and **Y.V. Chandrachud J**. (the Hon'ble Chief Justice as then was) and the majority has held that *Hospital Mazdoor Sabha*[38] is correctly decided, and that view has been rehabilitated. The

---

[37] Bangalore Water Supply and Sewerage Board v. A. Rajappa, (1978) 2 SCC 213.
[38] State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 SC 610:1960 (2) SCR 866.

majority has applied the inherent principles to interpret the provisions of the Industrial Disputes Act, 1947, such principles including the fundamental rights, and the Directive Principles of State policy which ensure justice, equity and dignity of a person. The provisions of Articles 12, 15(1),16(1)&(2),17,19 (1) (g) & (2), 23, 24, 32 (1) which are guaranteed against the State by Part-III under the scheme of the Constitution, and the principles of justice, equity and fairness to ensure welfare of the people and to ensure justice and social democracy. The fundamental rights and the Directive Principles of State policy occupy a unique place in the lives of modern civilized societies, and such rights or principles are guaranteed against the State, likewise the DPSPs are also principles which are policy directives to the State under the scheme of the Constitution. It is well settled by the Seven Judges bench in *Bangalore Water Supply v. A. Rajappa*,[39] the *'dominant nature'* test assesses whether the primary activity of an organization aligns with the definition of *'industry'* under section 2(j) of the Industrial Disputes Act. If the predominant activities involve production or distribution of goods or material services, the organization is likely to be considered as an 'industry'. Thus, an undertaking or enterprise falls within the definition of 'industry' and it has laid down correct law.

It is concluded that "industries" will cover "*branches of work that can be said to be analogous to the carrying out of a trade or business*" Governments and municipal and statutory bodies may run enterprises which do not *for that reason* cease to be industries. Charitable activities may also be industries. Undertakings, *sans* profit motive, may well be industries. Professions are not *ipso facto* out of the pale of industries. Any operation carried on in a manner analogous to trade or business may legitimately be statutory "industry".[40] According to the traditional concepts of English Law, profit

---

[39] Bangalore Water Supply and Sewerage Board v. A. Rajappa, (1978) 2 SCC 213.
[40] Bangalore Water Supply and Sewerage Board v. A. Rajappa, (1978) 2 SCC 213, p.239.

has to be disregarded when ascertaining whether an enterprise is a business.[41] The fundamentals of "industry" or "analogous" species of quasi-trade qualify for becoming "industry" if the nature of the organized activity implicit in a trade or business. The pith and substance of the matter is that the structural, organisational, engineering aspect, the crucial industrial relations like wages, leave and other service conditions as well as characteristic business methods (not motives) in running the enterprise, govern the conclusion. Presence of profit motive is expressly negated as a criterion.[42] The tax department of the local body is "industry."[43] The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of industry, it would be illogical to exclude the tax department from the definition.[44] The health department of the municipality is "industry."[45] Medical education, without mincing words, is "industry". It has no vulgarising import at all since the term "industry" is a technical one for the purpose of the Act, even as a masterpiece of painting is priceless art but is "goods" under the Sales Tax Law, without any philistinic import. Law abstracts certain attributes of persons of things and assigns juridical values without any pejorative connotation about other aspects.[46]

An 'industry' is a continuity, is an organized activity, is a purposeful pursuit, not any isolated adventure, desultory excursion or casual, fleeting engagement motive-lessly undertaken. Such is the common feature of a trade, business, calling, manufacture, mechanical or handicraft-based service,

---

[41] Halsbury's Laws of England, Third Edition, Vol. 38 p. 11.
[42] Bangalore Water Supply and Sewerage Board v. A. Rajappa, (1978) 2 SCC 213, p.250.
[43] Corporation of city of Nagpur v.Its Employees,(1960)2 SCR 942, p. 965.
[44] Bangalore Water Supply and Sewerage Board v. A. Rajappa, (1978) 2 SCC 213, p.251.
[45] Corporation of city of Nagpur v. Its Employees,(1960)2 SCR 942, p. 969.
[46] Bangalore Water Supply and Sewerage Board v. A. Rajappa, (1978) 2 SCC 213, p.253.

employment, industrial occupation or avocation. The expression '*undertaking'* cannot be torn off the words whose company it keeps. If birds of a feather flock together and *noscitur a sociis* is a commonsense guide to construction, "undertaking" must be read down to conform to the restrictive characteristic shared by the society of words before and after. Meditation or mushaira are spiritual and aesthetic undertakings in Section 2(j) of the Act. Society or cooperative society is a legal person and is the employer and its members and/or others are employees, and such activity are in the nature of trade. Merely because co-operative enterprises deserve State encouragement the definition cannot be distorted. The society as the entity is an industry because the member-workers are paid wages and there can be disputes about rates and different scales of wages among the categories i.e., workers and workers or between workers and employer. These societies, credit societies, marketing cooperatives, producers' or consumers' societies or apex societies, are industries.[47]The Court has stated that "it is not necessary that there must be a *profit motive*, but the enterprises must be analogous to trade or business in a commercial sense". Hidayatullah, C.J., in *Gymkhana*[48] *has* turned down the test of commerciality by observing as under: -

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

While dealing with the reasoning in *Hospital Mazdoor Sabha,*[49] he has further observed:

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

---

[47] Bangalore Water Supply and Sewerage Board v. A. Rajappa, (1978) 2 SCC 213, p.277.

[48] Secretary Madras *Gymkhana* Club Employees Union v. Management of the Gymkhana Club, 1968 (1) SCR 742: AIR 1968 SC 554.

[49] State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 SC 610:1960 (2) SCR 866.

There must be employer-employee relations more or less on the pattern of trade or business. The use of the first schedule to the Act depends on the condition precedent of the existence of an industry, has been agreed by the court. But that by itself does not mean that a hospital cannot be regarded as an industry, profit or no profit, research or no research. The court has adduced enough reasons to regard hospitals, research institutions and training centres as valuable material services to the community, qualifying for coming within Section 2(*j*). The court has plainly stated that hospitals, in Safdarjung Hospital[50] was wrong, and *Hospital Mazdoor Sabha*[51] was right.[52] Thus, the court has approved the *Hospital Mazdoor Sabha*[53] as a landmark judgment holding that government-run hospitals are "industry" under Section 2(*j*)of the Industrial Disputes Act, 1947. It was established by this decision that non-profit, state-run services can be considered as industry if it is organized, systematic cooperation between employers and employees to provide services.

2. **Whether the expression "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947, and the test laid down in *Bangalore Water Supply v. A. Rajappa (supra)*, are required to be revisited in view of the facts and circumstances, or not**?

Section 2(j) of the Industrial Disputes Act, 1947 had defined the term, "Industry" which was considered by this Hon'ble Court in *Bangalore Water Supply v. A. Rajappa*, (supra), the majority speaking through **Krishna Iyer J.** (for himself **Bhagwati**, and **D.A. Desai JJ.)** the majority judgment was

---

[50] Management of Safdarjung Hospital, New Delhi v. Kuldip Singh Sethi, (1970) 1 SCC 735: (1971) 1 SCR 177.

[51] State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 SC 610:1960 (2) SCR 866.

[52] Bangalore Water Supply and Sewerage Board v. A. Rajappa, (1978) 2 SCC 213, p.280.

[53] State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 SC 610:1960 (2) SCR 866.

concurred by **Beg CJ.,** and **Y.V.Chandrachud J**.(the Hon'ble Chief Justice as then was). The majority has held that *Hospital Mazdoor Sabha*[54] is correctly decided, where it was held that the government-run hospitals are "industry" under Section 2(*j*)of the Industrial Disputes Act, 1947 and it is required to be rehabilitated. The decision in *Bangalore Water Supply v. A. Rajappa*, (supra), which has defined the term, "industry" under Section 2(*j*)of the Industrial Disputes Act, 1947 is correctly decided and it does not require reconsideration as the relevant principles have been accepted by the legislature.

That the ***Industrial Relations Code, 2020*** has been enacted by the Parliament to consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes and for matters connected therewith. The Parliament has replaced The Industrial Disputes Act, 1947 (14 of 1947), and the Industrial Disputes Act, 1947 has been repealed alongwith the Trade Unions Act, 1926 (16 of 1926); and the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946) by Section 104 of The Industrial Relations Code, 2020. The Industrial Relations Code, 2020 has been enforced by a notification in the Official Gazette as provided in Section 1(3) of the Industrial Relations Code, 2020 vide Notification No. S.O. 5320(E), dated 21.11.2025, published in the Gazette of India Extra-Ordinary, Part-II, sec.3(ii) by the Central Government. The parameters of the Industrial Disputes Act, 1947 (14 of 1947) and the decision in *Bangalore Water Supply v. A. Rajappa*, (supra), has changed with the enactment of the Industrial Relations Code, 2020. Section 2(p) of the Industrial Relations Code, 2020 defined "industry", Section 2(q) defined "industrial dispute", Section 2(r) defined "industrial establishment or undertaking", Section 2(s) defined "insurance company", Section 2(zh) defined "retrenchment", Section 2(zo) defined

[54] State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 SC 610:1960 (2) SCR 866.

"unfair labour practice", and Section 2(zr) defined "worker" of the Industrial Relations Code, 2020. Section 2(p) of the Industrial Relations Code, 2020 which defines "Industry", and has impliedly applied the principles settled by this Hon'ble Court in *Bangalore Water Supply case* (supra) which is law for last about *47-48 years*, on the one hand, and on the other hand, the exclusionary provisions are also equally very wide and such provisions should not negate the settled legal principles without any legal justification as the settled principles are in consonance with the Directive Principles of State Policy which obliges the respondent/ state as well as this Hon'ble Court to protect the interest of the workers under Articles 38, 39 and 41 of the Constitution to fulfils the Constitutional obligations of the Directive Principles under the scheme of the Constitution of India. In view of the above, as the legislation has been repealed, and new legislation, the provisions of the Industrial Relations Code, 2020 is not under challenge in these proceedings as such, the principle settled in *Bangalore Water Supply case (supra)*, does not require reconsideration. The definition as mentioned in section 2(p) of the Industrial Relations Code, 2020 has legal impact on the changes by enactment of the Industrial Disputes (Amendment) Act, 1982, and replacement of the Industrial Disputes Act, 1947, and its repeal by the enforcement of the Industrial Relations Code, 2020, which are prospective in nature, and the provisions are not under challenge in these proceedings, therefore, now, it is only an academic exercise without a proper challenge to the provisions of the Industrial Relations Code, 2020.

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

This Hon'ble Court has already settled in catena of decisions that social welfare activities and schemes or other enterprises

undertaken by the Government Departments or their instrumentalities can be construed to be "industrial activities" for the purpose of Section 2(j) of the ID Act, 1947. In the case of ***Coir Board v. Indira Devi,***[55] a two judges' Bench of this Hon'ble Court speaking through ***Sujata V. Manohar J.*** surveyed all previous decisions of this Court including the seven judges Bench decision in **Bangalore Water** (supra)[56] and passed an order of reference to the Chief Justice for constituting a larger Bench of more than seven judges if necessary. Kindly peruse the following extract of that order: -

"24. Since the difficulty has arisen because of the judicial interpretation given to the definition of `industry' in the Industrial Disputes Act, there is no reason why the matter should not be judicially re-examined. In the present case, the function of the Coir Board is to promote coir industry, open markets for it and provide facilities to make the coir industry's products more marketable. It is not set up to run any industry itself. Looking to the predominant purpose for which it is set up we would not call it an industry. However, if one were to apply the tests laid down by Bangalore Water Supply and Sewerage Board case it is an organization where there are employers and employees. The organization does some useful work for the benefit of others. Therefore, it will have to be called an 'industry' under the Industrial Disputes Act.

25.We do not think that such a sweeping test was contemplated by the Industrial Disputes Act, nor do we think that every organization which does useful service and employs people can be labelled as industry. We, therefore, direct that the matter be placed before the Hon. Chief Justice of India to consider whether a larger Bench should be constituted to reconsider the decision of this Court in *Bangalore Water Supply and Sewerage Board (supra).*"

When the matter was listed before a three judge Bench, in the case of *Coir Board v. Indira Devi*,[57] the request for constituting a larger Bench for reconsideration of the

---

[55] Coir Board, Ernakulam v. Indira Devi P.S, (1998) 2 SCR 87: 1998 (3) SCC 259, p.271.
[56] Bangalore Water Supply and Sewerage Board v. A. Rajappa, [1978] 2 SCC 213
[57] Coir Board v. Indira Devi, [2000] 1 SCC 224.

judgment in the *Bangalore Water case* was refused both on the ground that the Industrial Disputes Act has undergone an amendment and that the matter does not deserve to be referred to a larger Bench as the decision of seven judges in Bangalore Water case is binding on Benches of this Court of less than seven judges. The order refusing reference to the seven judges Bench by the three judge Bench in *Coir Board, v. Indira Devi P.S.,*[58] is reproduced:

"1. We have considered the order made in Civil Appeal Nos. 1720-21 of 1990. The Judgment in *Bangalore Water Supply and Sewerage Board v. A. Rajappa*[59], delivered almost two decades ago and the law has since been amended pursuant to that judgment though the date of enforcement of the amendment has not been notified.

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

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

Thus, the reference sought by the two judges to a larger Bench of more than seven judges was declined by the three judges Bench. As has been held by this Court, subsequently in the case of *Central Board of Dawoodi Bohra Community v. State of Maharashtra*,[60]it was open to the Chief Justice on a reference made by two Hon. Judges of this Court, to constitute a Bench of more than seven judges for reconsideration of the decision in the Bangalore Water case (supra).

The majority decision in *Bangalore Water Supply v. A. Rajappa*, (supra), has held that *Hospital Mazdoor Sabha*[61] is correctly decided, where it was held that the government-run

---

[58] Coir Board v. Indira Devi, [2000] 1 SCC 224
[59] Bangalore Water Supply and Sewerage Board v. A. Rajappa, [1978] 2 SCC 213
[60] Central Board of Dawoodi Bohra Community v. State of Maharashtra, [2005] 2 SCC 673,
[61] State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 SC 610:1960 (2) SCR 866.

hospitals are "industry" under Section 2(*j*)of the Industrial Disputes Act, 1947, and that view by the *Hospital Mazdoor Sabha*[62] has been rehabilitated by the hon'ble Seven Judges Bench. Thereafter, the Constitution Bench of this Hon'ble Court has been pleased to refer Civil Appeal No. 897 of 2002 titled as State of U.P. v Jai Bir Singh and connected matters whereby the Constitution Bench has doubted the correctness of the Seven Judges Bench decision in *Bangalore Water Supply and Sewerage Board v. A Rajappa* (supra), and it has referred it to the larger bench in *State of U.P.* v *Jai Bir Singh*,[63] 2005(5) SCC 1 vide order dated 05.05.2005 which is reported as *State of U.P.* v *Jai Bir Singh*, 2005(5) SCC 1. Thereafter, Seven Judges Bench has further referred Civil Appeal No. 897 of 2002 vide order dated 02.01.2017, titled as *State of U.P. v Jai Bir Singh*,[64] by agreeing with the Constitution Bench. However, the recent legislation, i.e., the Industrial Relations Code, 2020, has impliedly accepted the principles decided in *Bangalore Water Supply v. A. Rajappa*, (supra), which has defined the term, "industry" under Section 2(*j*)of the Industrial Disputes Act, 1947, which is correctly decided.

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

Krishna Iyer J., in *Bangalore Water Supply v. A. Rajappa*, (supra), has cited *D.N. Banerji* v. *P.R. Mukherjee,*[65] *and Lord* Denning in *Automobile Proprietary Ltd.*[66]observed:

> "It is true that 'the industry' is defined; but a definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give precision and certainty to a word or phrase which would

[62] State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 SC 610:1960 (2) SCR 866.

[63] *State of U.P.* v *Jai Bir Singh*, 2005(5) SCC 1.

[64] State of U.P. v Jai Bir Singh, reported as 2017(3) SCC 311.

[65] D.N. Banerji v. P.R. Mukherjee,1953 SCR 302.

[66] Hotel and Catering Industry Training Board v. Automobile Proprietary Ltd., (1968) 1 WLR 1526, p.1530.

otherwise be vague and uncertain, but not to contradict it or supplant it altogether."

A definition is ordinarily the crystallisation of a legal concept promoting precision and rounding off blurred edges but, alas, the definition in Section 2(*j*), viewed in retrospect, has achieved the opposite.[67]

21….A pluralist society with a capitalist backbone, notwithstanding the innocuous adjective "socialist" added to the Republic by the Constitution (Forty-second Amendment Act, 1976) regards profit-making as a sacrosanct value. Elitist professionalism and industrialism is sensitive to the "worker" menace and inclines to exclude such sound and fury as "labour unrest" from its sanctified precincts by judicially de-industrialising the activities of professional men and interest groups to the extent feasible. Governments, in a mixed economy, share some of the habits of thought of the dominant class and doctrines like **sovereign functions**, which pull out economic enterprises run by them, come in handy. The latent love for *club life and charitable devices and escapist institutions bred by clever capitalism and hierarchical social structure,* shows up as inhibitions transmuted as doctrines, interpretatively carving out immunities from the "industrial" demands of labour by labelling many enterprises "non-industries". *Universities, clubs, institutes, manufactories and establishments managed by eleemosynary or holy entities, are instances*. To objectify doctrinally subjective consternation is casuistry.

50. The Court proceeded to carve out the negative factors which, notwithstanding the literal width of the language of the definition, must, for other compelling reasons, be kept out of the scope of **industry**. For instance, sovereign functions of the State cannot be included although what such functions are/ has been aptly termed *"the primary and inalienable functions of a constitutional government"*. Even here we may point out the ineptitude of relying on the doctrine of *regal powers*. That has reference, in this context, to the Crown's liability in tort and has nothing to do with Industrial Law. In any case, it is open to Parliament to make law which governs the State's relations with its employees. Articles 309 to 311 of the Constitution of India, the enactments dealing with the Defence Forces and other legislation dealing with employment under statutory bodies may, expressly or by necessary implication, exclude the operation of the Industrial Disputes Act, 1947. That is a question of interpretation and statutory exclusion; but, in the

---

[67] Bangalore Water Supply & Sewerage Board v. A. Rajappa,1978 (2) SCC213, p.233 (para 20).

absence of such provision of law, it may indubitably be assumed that the key aspects of public administration like public justice stand out of the circle of industry. Even here, as has been brought out from the excerpts of ILO documents, it is not every employee who is excluded but only certain categories primarily engaged and supportively employed in the discharge of the essential functions of constitutional government. In a limited way, this head of exclusion has been recognised throughout.

83. The Indian Bar and Medicine have a high social ethic up to now. Even so, *Dabholkar*[68]cannot be ignored as freak or recondite. Doctors have been criticised for unsocial conduct. The halo conjured up in the *Solicitors' case*[69] hardly serves to "de-industrialize" the professions. After all, it is not infra dig for lawyers, doctors, engineers, architects, auditors, company secretaries or other professionals to regard themselves as workers in their own sphere or employers or suppliers of specialised service to society. Even justicing is service and, but for the exclusion from industry on the score of ***sovereign functions***, might qualify for being regarded as "industry". The plea of "profession" is irrelevant for the industrial law except as expression of an anathema. No legal principle supports it.

While surveying the precedents this Hon'ble Court has surveyed *Bombay Panjrapole*[70] *which was held as an industry by keeping in view its activities which satisfy the ingredients of an industry:*

111….. In the land of the Buddha and Gandhi no one dare argue to the contrary. So let there be no mistaking our compassionate attitude to suffering creatures. It is laudable and institutions dedicated to amelioration of conditions of animals deserve encouragement from the State and affluent philanthropists. …. *"The manner in which the activity in question is organised or arranged, the condition of the cooperation between the employer and the employee necessary for its success and its object to render material service to the community"* is a pivotal factor in the activity-oriented test of an "*industry*". The compassionate motive and the charitable inspiration are noble but extraneous. Indeed, medical relief for human beings made available **free** by regular hospitals, run by *Government or philanthropists, employing doctors and supportive staff and business-like terms, may not*

---

[68] The Bar Council of Maharashtra v. M. V. Dahholkar, (1976) 2 SCC 291: AIR 1976 SC 242.

[69] National Union of Commercial Employees v. M.R. Meher, Industrial Tribunal, Bombay, AIR 1962 SC 1080: 1962 Supp 3 SCR 157: (1962) 1 Lab LJ 241.

[70] Bombay Panjrapole, Bhuleshwar v. Workmen, (1971) 3 SCC 349:(1972) 1 SCR 202.

qualify for exemption from industry. Service to animals cannot be on a higher footing than service to humans. Nor is it possible to contend that love of animals is religious or spiritual any more than love of human beings is. A panjrapole is no church, mosque or temple. Therefore, without going into the dairying aspects, income and expenditure and other features of *Bombay Panjrapole*[71]one may hold that the institution is an *industry*." ….

Research

112. We may proceed to consider the applicability of Section 2(*j*) to institutions whose objectives and activities cover the research field in a significant way……An earlier decision of this Court, *Ahmedabad Textile Industry's Research Association case*[72] has taken the view that even research institutes are roped in by the definition but later judicial thinking at the High Court and Supreme Court levels has leaned more in favour of exemption where profit-motive has been absent. ***Kurji Holy Family Hospital*** [73]was held not to be an industry because it was a *non-profit-making body* and its work was in the nature of training, research and treatment. Likewise, in ***Dhanrajgirji Hospital* v. *Workmen***[74] a Bench of this Court held that the charitable trust which ran a hospital and served research purposes and training of nurses., *was not an industry*. The High Courts of Madras and Kerala have also held that research institutes such as the *Pasteur Institute, the CSIR and the Central Plantation Crops Research Institute* are not industries. ***The basic decision which has gone against the Ahmedabad Textile case***[75] ***is the Safdarjung case***[76]***.*** We may briefly examine the rival viewpoints, although in substance we have already stated the correct principle. The view that commends itself to us is plainly in reversal of the ratio of ***Safdarjung***[77] which has been wrongly decided, if we may say so with great respect.

113. ***Does research involve collaboration between employer and employee?*** It does. The employer is the institution, the employees

---

[71] Bombay Panjrapole, Bhuleshwar v. Workmen, (1971) 3 SCC 349:(1972) 1 SCR 202.

[72] Ahmedabad Textile Industry's Research Association v. State of Bombay, AIR 1961 SC 484: (1961) 2 SCR 480:(1960) 2 Lab 720.

[73] See Safdarjung Hospital v. Kuldip Singh Sethi, (1970) 1 SCC 735:(1971) 1 SCR 177 :(1970)2 LLJ 226

[74] Dhanrajgirji Hospital v. Workmen, (1975) 4 SCC 621:1975SCC(L&S) 342: AIR 1975 SC 2032: (1975) 2 LLJ 409.

[75] Ahmedabad Textile Industry's Research Association v. State of Bombay, AIR 1961 SC 484: (1961) 2 SCR 480: (1960) 2 Lab 720

[76] Safdarjung Hospital v. Kuldip Singh Sethi,(1970) 1 SCC 735:(1971)1SCR 177:(1970) 2 LLJ 226.

[77] Safdarjung Hospital v. Kuldip Singh Sethi,(1970)1SCC 735:(1971) 1 SCR 177:(1970) 2 LLJ 226

are the scientists, para-scientists and other personnel. Is *scientific research service*? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for, and technological inventions and innovations may be patented and sold. *In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries.* For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into money aplenty**. Research benefits industry**. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an organisation, propelled by systematic activity, modelled on cooperation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that **research institutes, albeit run without profit-motive, are industries.**

114. True Shri Tarkunde is right ***if Safdarjung***[78] **is rightly decided**. The concluding portions of that decision proceed on the footing that research and training have an exclusionary effect. That reasoning, as we have already expounded, hardly has our approval.[79]

Clubs

119. Even these people's organs cannot be non-industries unless one strict condition is fulfilled. They should be, and usually are, self-serving. They are *poor men's clubs* without the wherewithal of a *Gymkhana*[80] or *Cricket Club of India*[81] which reached this Court for adjudication. Indeed, they rarely reach a Court being easily priced out of our expensive judicial market. These self-service clubs do not have hired employees to cook or serve, to pick or chase balls, to tie up nets or arrange the cards table, the billiards

[78] Safdarjung Hospital v. Kuldip Singh Sethi, (1970) 1 SCC 735:(1971) 1 SCR 177:(1970)2LLJ 226

[79] Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213, p.272.

[80] Secretary Madras *Gymkhana* Club Employees Union v. Management of the Gymkhana Club, 1968 (1) SCR 742: AIR 1968 SC 554.

[81] Cricket Club of India Ltd. v. Bombay Labour Union, AIR 1969 SC 276:(1969) 1 SCR 600:(1969) 1 Lab LJ 277.

table, the bar and the bath or do those elaborate business management chores of the well-run city or country clubs. The members come and arrange things for themselves. The secretary, an elected member, keeps the key. Those interested in particular pursuits organize those terms themselves. Even the small accounts or clerical items are maintained by one member or other. On special evenings all contribute efforts to make a good show, excursion, joy picnic or anniversary celebration. The dynamic aspect is self-service. In such an institution, a part-time sweeper or scavenger or multi-purpose attendant may sometimes exist. He may be an employee. This marginal element does not transform a little association into an industry. We have projected an imprecise profile and there may be minor variations. The central thrust of our proposition is that *if a club or other like collectivity has a basic and dominant self-service mechanism, a modicum of employees at the periphery will not metamorphose it into a conventional club whose verve and virtue are taken care of by paid staff, and the members' role is to enjoy. ………*

121. The Madras Gymkhana Club[82]a blue-blooded members' club has the socialite cream of the city on its rolls. It offers choice facilities for golf, tennis and billiards, arranges dances, dinners and refreshments, entertains and accommodates guests and conducts tournaments for members and non-members. These are all activities richly charged with pleasurable service. For fulfilment of these objects the club employs officers, caterers, and others on reasonable salaries. **Does this club become an industry?** The label matters little; the substance is the thing. A night-club for priced nocturnal sex is a lascivious "industry". But a literary club, meeting weekly to read or discuss poetry, hiring a venue and running solely by the self-help of the participants, is not. Hidayatullah, C.J., in ***Gymkhana***[83] ruled that the club was not an "industry". Reason? "An industry is thus said to involve co-operation between employer and employees for the object of satisfying material human needs but not for oneself nor for pleasure nor necessarily for profit."

"It is not of any consequence that ***there is no profit motive because that is considered immaterial. It is also true that the affairs of the club are organised in the way business is organised, and that there is production of material and other services and in a limited way production of material goods mainly in the catering department***. But these circumstances are not truly representative

[82] Madras *Gymkhana* Club Employees Union v. Management of the Gymkhana Club, 1968 (1) SCR 742, p.759.
[83] Secretary Madras *Gymkhana* Club Employees Union v. Management of the Gymkhana Club, 1968 (1) SCR 742: AIR 1968 SC 554.

in the case of the club because the services are to the members themselves for their own pleasure and amusement and the material goods are for their consumption. In other words, the club exists for its members. No doubt occasionally strangers also take benefit from its services, but they can only do so on invitation of members. No one outside the list of members has the advantage of these services as of right. Nor can these privileges be bought. In fact, they are available only to members or through members.[84]…..

122. Why is the *club not an industry*? It involves cooperation of employer and employees, organised like in a trade and calculated to supply pleasurable utilities to members and others. ..

125. The *Cricket Club of India*[85]stands in a worse position. It is a huge undertaking with activities wide-ranging, with big budgets, army of staff and profit-making adventures. Indeed, the members share in the gains of these adventures by getting money's worth by cheaper accommodation, free or low-priced tickets for entertainment and concessional refreshments; and yet **Bhargava, J.** speaking for the Court held this mammoth industry a **non-industry**. Why? Is the promotion of sports and games by itself a *legal* reason for excluding the organisation from the category of industries if all the necessary ingredients are present? Is the fact that the residential facility is exclusive for members an exemptive factor? …….. *The testimony of the activities can leave none in doubt that this colossal "club" is a vibrant collective undertaking which offers goods and services to a section of the community for payment and there is cooperation between employer and employees in this project. The plea of non-industry is un-presentable*, and exclusion is possible only by straining law to snapping point to salvage a certain class of socialite establishments. Presbyter is only priest writ large. ***Club is industry manu brevi***.

132. Even a cursory glance makes it plain that the learned Judge took the view that a place of treatment of patients, run as a department of Government, was not an industry because it was a part of the functions of the Government. We ***cannot*** **possibly agree that running a *hospital, which is a welfare activity and not a sovereign function, cannot be an industry.***

---

[84] Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213, p.275; also see Madras *Gymkhana* Club Employees Union v. Management of the Gymkhana Club, 1968 (1) SCR 742, p.759.

[85] Cricket Club of India Ltd. v. Bombay Labour Union,AIR 1969 SC 276:(1969)1 SCR 600 : (1969) 1 Lab LJ 277.

Likewise, dealing with the ***Tuberculosis Hospital*** *case*[86] the learned Judge held that the hospital was wholly charitable and also was a research institute. Primarily, it was an institution for research and training. Therefore, the Court concluded, the institution *could not be described as industry*. *Non-sequitur*. ***Hospital facility, research products and training services are surely services and hence industry***. It is difficult to agree that a hospital is not an industry. In the third case the same factors plus the prohibition of profit are relied on by the Court. We find ***it difficult to hold that absence of profit, or functions of training and research, take the institution out of the scope of industry***.

143.*The dominant nature test*:
"(*a*) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the *University of Delhi case*[87]or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the *Corporation of Nagpur* will be the true test. The **whole undertaking will be 'industry'** although those who are not 'workmen' by definition may not benefit by the status.
(*b*) Notwithstanding the previous clauses, **sovereign functions,** strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.
(*c*) Even in ***departments discharging sovereign functions***, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(*j*)."

Thus, this Hon'ble Court has applied the dominant nature test to determine the nature of an undertaking or enterprise, club, cooperatives or hospital or such other institutions as industry under section 2(j) of the I.D. Act. This Hon'ble Court in **Bangalore Water Supply** *v. A. Rajappa*,[88]

---

[86] Safdarjung Hospital v. Kuldip Singh Sethi, (1970) 1 SCC 735:(1971) 1 SCR 177: (1970) 2LLJ 226 *Tuberculosis Hospital case*
[87] University of Delhi v. Ram Nath, (1964) 2 SCR 703: AIR1963 SC1873:(1963)2 Lab LJ 335
[88] Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213.

has examined the regal or sovereign functions of the state as an exception to activities undertaken by the Government in the exercise of its inalienable functions under the Constitution, call it **regal, sovereign** or by any other name:

"**179.** One of the exceptions carved out by the Court is in favour of activities undertaken by the **Government in the exercise of its inalienable functions under the Constitution, call it regal, sovereign or by any other name.** I see no justification for excepting these categories of public utility activities from the definition of "***industry***". If it be true that one must have regard to the nature of the activity and not to who engages in it, it seems to me beside the point to enquire whether the activity is *undertaken by the State*, and further, if so, whether it is undertaken in fulfilment of the State's constitutional obligations or in discharge of its constitutional functions. In fact, to concede the benefit of an exception to the State's activities which are in the nature of *sovereign functions* is really to have regard not so much to the nature of the activity as to the consideration who engages in that activity; for, *sovereign functions can only be discharged by the State and not by a private person*. ***If the State's inalienable functions are excepted from the sweep of the definition contained in Section 2(j), one shall have unwittingly rejected the fundamental test that it is the nature of the activity which ought to determine whether the activity is an industry.*** Indeed, in this respect, it should make no difference whether, on the one hand, an activity is undertaken by a corporate body in the discharge of its statutory functions or, on the other, by the State itself in the exercise of its inalienable functions. ***If the water supply and sewerage schemes or firefighting establishments run by a Municipality can be industries, so ought to be the manufacture of coins and currency, arms and ammunition and the winning of oil and uranium.*** *The fact that these latter kinds of activities are, or can only be, undertaken by the State does not furnish any answer to the question whether these activities are industries. When undertaken by a private individual they are industries. Therefore, when undertaken by the State, they are industries.* The nature of the activity is the determining factor and that does not change according to who undertakes it. Items 8, 11, 12, 17 and 18 of the First Schedule read with Section 2(*n*)(*vi*) of the Industrial Disputes Act render support to this view.

These provisions which were described in ***Hospital Mazdoor Sabha***[89] as "very significant" at least show that, conceivably, a defence establishment, a mint or a security press can be an industry even though these activities are, ought to be and can only be undertaken by the State in the discharge of its constitutional obligations or functions. The State does not trade when it prints a currency note or strikes a coin. And yet, considering the nature of the activity, ***it is engaged in an industry when it does so***.[90]"

II. Post Bangalore water supply cases, this Hon'ble Court in ***N. Nagendra Rao & Co. v. State of A.P.***,[91]has discussed the recognition of sovereign function and its circumstances and the nature of republican & democratic governance:

9. This principle was statutorily recognised when East India Company was taken over by the Crown. Section 68 of the Government of India Act, 1858 permitted the Secretary of the State in Council to sue or be sued. It was a departure from the English common law that no proceedings, civil or criminal, could be filed against the Crown. In *Peninsular & Oriental Steam Navigation Co.* v. *Secretary of State for India*[92] which came up before the Supreme Court of Calcutta,…. on the liability of the State for negligence of its officers, Chief Justice Peacock held that since East India Company was not a ***sovereign***, its liability for negligence of its officers would be same as of an employer for acts of its employee. But the observations which were to influence the courts for years to come, both before coming into force of the Constitution and thereafter, were made while deciding the other issue whether the Secretary of the State in Council was personally liable. It was observed that there was a "clear distinction between acts done in exercise of what are usually termed **sovereign powers** and acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them". To that extent there could have been little

---

[89] State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 SC 610:1960 (2) SCR 866.

[90] Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213, p. 296.

[91] N. Nagendra Rao & Co. v. State of A.P., (1994) 6 SCC 205, p.221: 1994 SCC (Cri) 1609.

[92] Peninsular & Oriental Steam Navigation Co. v. Secretary of State for India, (1868-69) 5 Bom HCR (App. A) 1.

difficulty. But the learned Chief Justice in the next breath went on to observe:

"It is clear that the East India Company would not have been liable for any act done by any of its officers or soldiers in carrying on hostilities, or for the act of any of its naval officers in seizing as prize property of a subject, under the supposition that it was the property of an enemy, nor for any act done by a military or naval officer, or by any soldier or sailor, whilst engaged in military or naval duty, nor for any acts of any of its officers or servants in the exercise of judicial functions."

……. And this enunciation of law, even though incorrect and uncalled for, was seized upon and extended further in *Nobin Chunder Dey* v. *Secretary of State of India,*[93] where the English principle of ***sovereign immunity of the Crown*** was applied and plaintiff's claim for recovery of damages against the State for non-issuing of the excise pass and in the alternative for refund of the auction money was rejected as it was an act done by the Government in exercise of sovereign power of the State. This decision and its application in numerous cases led to denial of relief to citizens and different principles were evolved, but each revolving round basic doctrine of sovereign immunity. It was dissented to by the Madras High Court in *Secretary of State* v. ***Hari Bhanji***[94] and it was observed that *Nobin Chunder Dey*[95] did not properly comprehend the law laid down in *Peninsular.*[96] The Chief Justice of the Madras High Court, after dealing with *Peninsular*(supra)and its erroneous application in *Nobin Chunder Dey*(supra), observed that ***defence of sovereign immunity was available*** *in those* ***limited cases where the State could not be sued for its acts****, such as making war or peace, in Municipal Courts*. Relevant observations are extracted below:

"Acts done by the Government in the exercise of the sovereign powers of making peace and war and of concluding treaties obviously do not fall within the province of municipal law, and although in the administration of domestic affairs the

[93] Nobin Chunder Dey v. Secretary of State of India, ILR (1875) 1 Cal 11: 24 WR 309.
[94] Secretary of State for India in Council v. Hari Bhanji, ILR (1882) 5 Mad 273.
[95] Nobin Chunder Dey v. Secretary of State of India, ILR (1875) 1 Cal 11.
[96] Peninsular, (1868-69) 5 Bom HCR (App. A) 1.

Government ordinarily exercises powers which are regulated by that law, yet there are cases in which the supreme necessity of providing for the public safety compels the Government to acts which do not pretend to justify themselves by any canon of municipal law.***

Acts thus done in the exercise of ***sovereign powers*** *but which do not profess to be justified by municipal law are what we understand to be the acts of State of which municipal courts are not authorised to take cognizance*." (emphasis supplied)

The doctrine or the defence by the "act of State", is not the same as sovereign immunity. The former flows from the nature of power exercised by the State for which no action lies in civil court whereas the latter was developed on the divine right of Kings.

10. When the law was in this fluid state, the Constitution was enforced and in *Province of Bombay v. Khushaldas S. Advani*[97] Justice Mukherjea, one of the members of the seven-Judge Bench, who was in minority made following observations approving the ratio laid down in *Hari Bhanji*.[98]On this aspect there was no conflict in majority and minority opinions. The Hon'ble Judge observed:[99]

"It is true that the East India Company was invested with powers and functions of a two-fold character. They had on the one hand powers to carry on trade as merchants; on the other hand, they had delegated to them powers to acquire, retain and govern territories to raise and maintain armies and to make peace and war with native powers in India. But the liability of the East India Company to be sued was not restricted altogether to claims arising out of undertakings which might be carried on by private persons; but other claims if not arising out of acts of State could be entertained by civil courts, if the acts were done under sanction of municipal law and in exercise of powers conferred by such law. The law on this point was discussed very ably by the Madras High Court in *Secretary of State v. Hari Bhanji*[100]."

---

[97] Province of Bombay v. Khushaldas S. Advani,1950 SCC 551: AIR 1950 SC 222: 1950 SCR 621

[98] Secretary of State for India in Council v. Hari Bhanji, ILR (1882) 5 Mad 273.

[99]Province of Bombay v. Khushaldas S. Advani, 1950 SCR 621, pp. 694-95: AIR 1950 SC 222, pp. 248-49, (para 119)

[100] Secretary of State v. Hari Bhanji,ILR (1882) 5 Mad 273.

The learned Judge also considered the Peninsular case[101] and observed as under:[102]

"Much importance cannot in my opinion be attached to the observations of Sir B. Peacock in Peninsular and Oriental Steam Navigation Co. v. Secretary of State.[103]In that case the only point for consideration was whether in the case of a tort committed in the conduct of a business the Secretary of State for India could be sued. The question was answered in the affirmative. Whether he could be sued in cases not connected with the conduct of a business or commercial undertaking was not really a question for the court to decide."

11. But it was not till 1962 that an occasion arose for this Court to examine the *tortuous act by servant of the State* and whether a citizen who was wronged by it was entitled to claim compensation. In *Vidhyawati*,[104] the driver of a government vehicle while driving the jeep along a public road knocked down a person who was walking on the footpath by the side of the public road in Udaipur city causing him multiple injuries, including fractures of the skull and backbone, resulting in his death three days later in the hospital where he had been removed for treatment. The suit of his widow, minor daughter and mother was decreed, on the finding that the driver was guilty of negligence. But the decree was granted against the driver only. In appeal, however, the High Court decreed the suit against the State as well. This Court after examining in detail the scope of Article 300 of the Constitution of India and the earlier provisions in the Government of India Act beginning from Section 68 of the Act of 1858, approved decision in *Narayan Krishna Laud*,[105] and observed that the decision in *Viscount Canterbury*[106]being based upon the principle that "the King cannot be guilty of personal negligence or misconduct and consequently cannot be responsible for the negligence or misconduct of his servants" was not applicable as held in Peninsular case (supra)as the liability of the Secretary of State

---

[101] Peninsular case [(1868-69) 5 Bom HCR (App. A) 1]

[102] Province of Bombay v. Khushaldas S. Advani, 1950 SCR 621,pp. 696: AIR 1950 SC 222,p. 249, (para 132).

[103] Peninsular and Oriental Steam Navigation Co. v. Secretary of State [(1868-69) 5 Bom HCR (App. A) 1.

[104] State of Rajasthan v. Vidhyawati, AIR 1962 SC 933 :1962 Supp (2) SCR 989.

[105] Narayan Krishna Laud v. Collector of Bombay, (1868-69) 5 Bom HCR 1 (Bom).

[106] Viscount Canterbury v. Attorney General, 1 PH 306 : 41 ER 648.

in place of East India Company was specifically provided for. The Court further held[107]:(SCR p. 1002: AIR p.938, para10)

"This case also meets the second branch of the argument that the *State cannot be liable for the tortious acts of its servants, when such servants are engaged on an activity connected with the affairs of the State.* In this connection it has to be remembered that under the Constitution we have established a welfare State, whose functions are not confined only to maintaining law and order, but extend to engaging in all activities including industry, public transport, State trading, to name only a few of them……. In this respect, the present set-up of the Government is analogous to the position of the East India Company, which functioned not only as a Government with sovereign powers, as a delegate of the British Government, but also carried on trade and commerce, as also public transport like railways, posts and telegraphs and road transport business."

The Court after dealing with case law and Article 300 proceeded further to hold:[108](SCR p.1007:AIR p.940, para 15)

"…. The immunity of the Crown in the United Kingdom was based on the old feudalistic notions of justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorising or instigating one, and that he could not be sued in his own courts. In India, ever since the time of the East India Company, the sovereign has been held liable to be sued in tort or in contract, and the Common Law immunity never operated in India. Now that we have, by our Constitution, established a ***Republican form of Government, and one of the objectives is to establish a Socialistic State with its varied industrial and other activities, employing a large army of servants, there is no justification, in principle, or in public interest, that the State should not be held liable vicariously for the tortious act of its servant***. This Court has deliberately departed from the Common Law rule that ***a civil servant cannot maintain a suit against the Crown***. In the case of *State of Bihar v. Abdul Majid*[109],this Court has recognised ***the***

[107] State of Rajasthan v. Vidhyawati, AIR 1962 SC 933, p.938:1962 Supp (2) SCR 989, p. 1002 (para 10)
[108] State of Rajasthan v. Vidhyawati, AIR 1962 SC 933, p.940:1962 Supp (2) SCR 989, p. 1007 (para 15).
[109] State of Bihar v. Abdul Majid [1954 SCR 786: AIR 1954 SC 245.

right of a government servant to sue the Government for recovery of arrears of salary. When the rule of immunity in favour of the Crown, based on Common Law in the United Kingdom, has disappeared from the land of its birth, ***there is no legal warrant for holding that it has any validity in this country, particularly after the Constitution. As the cause of action in this case arose after the coming into effect of the Constitution, in our opinion***, it would be only recognising the old established rule, going back to more than 100 years at least, if we uphold the vicarious liability of the State. ***Article 300 of the Constitution*** itself has saved the right of Parliament or the Legislature of a State to enact such law as it may think fit and proper in this behalf. But so long as the Legislature has not expressed its intention to the contrary, it must be held that the law is what it has been ever since the days of the East India Company." (emphasis supplied)

But this Constitution Bench decision was distinguished in ***Kasturi Lal***[110] by another Constitution Bench as, "the facts in ***Vidhyawati case***[111] fall in a category of claims which is distinct and separate from the category in which the facts of the present case fall". The Bench, therefore, relying on the observation in Peninsular case[112] which were held to be obiter in Province of Bombay[113]proceeded to hold:(SCRpp.386-87: AIR p.1046, para 21)

"Thus, it is clear that this case recognises a material distinction between acts committed by the servants employed by the State where such acts are referable to the exercise of ***sovereign powers delegated to public servants***, and acts committed by public servants which are not referable to the delegation of any sovereign powers. ......"
The Bench did not avert to Hari Bhanji case(supra) which was approved by this Court in Province of Bombay.[114]

This Hon'ble Court in ***N. Nagendra Rao v. State of A.P.***,[115] has cited the United States, and *Australia*n decisions to

[110] Kasturi Lal v. State of U.P., AIR 1965 SC 1039:(1965) 1 SCR 375.
[111] State of Rajasthan v. Vidhyawati, AIR 1962 SC 933:1962 Supp (2) SCR 989
[112] Peninsular case, (1868-69) 5 Bom HCR (App. A) 1.
[113] Province of Bombay v. Khushaldas S. Advani,1950 SCC 551: AIR 1950 SC 222:1950 SCR 621.
[114] Province of Bombay, 1950 SCC 551: AIR 1950 SC 222: 1950 SCR 621
[115] N. Nagendra Rao & Co. v. State of A.P., (1994) 6 SCC 205, p. 233.

understand the concept that sovereignty and the provisions of Article 300 of the Constitution of India:

21. This change in outlook is consequence of gradual growth of the ***concept that sovereignty*** vests in the people. Its roots germinated with the rise of federalism in America. The English doctrine of parliamentary sovereignty was superseded in America by the doctrine of popular sovereignty. Wills in the book on *Constitutional Law of the United States* observed: "Who then is in the United States, the sovereign? It is the people." It was said by **Pt. Jawaharlal Nehru** while moving the Objective Resolution in the Constituent Assembly on 13-12-1946, "all power and authority of the sovereign independent India, its constituent and part and organs of the Government are **derived from the people**". **Justice Douglas** in his book from *Marshall to Mukherji* observed: "India and the United States both recognise that **people are the basis of all sovereignty."**

22. The old and archaic concept of sovereignty thus does not survive. **Sovereignty now vests in the people.** The legislature, the executive and the judiciary have been created and constituted to serve the people. In fact, the concept of sovereignty in the Austinian sense, that king was the source of law and the fountain of justice, was never imposed in the sense it was understood in England upon our country by the British rulers. In ***Maganbhai Ishwarbhai Patel*** v. *Union of India,*[116]where the question was if the Government was justified in agreeing to transfer certain village to Pakistan without approval of Parliament, it was observed by a Constitution Bench: (SCC p. 421, para 44)

"[T]he question is one of authority. Who in the State can be said to possess plenum dominium depends upon the Constitution and the nature of the adjustment."

In America the power vests in the court. Therefore, even such actions of the Government which are solely concerned with relations between two independent States are now amenable to scrutiny by courts to be examined on the anvil of constitutional provisions and exercise of authority under constitutional framework.

[116] Maganbhai Ishwarbhai Patel v. Union of India,(1970) 3 SCC 400.

23. In *Federated State School Teachers' Assn. of* ***Australia*** v. *State of Victoria*,[117] the **distinction between sovereign and non-sovereign functions** was categorised as regal and non-regal functions. The former was confined to legislative power, the administration of the laws and exercise of the judicial power. In respect of **non-regal functions, which could be assumed by legislative power**, the State was held as a corporation analogous to a private company. The learned Judge observed as under:

"Regal functions are inescapable and inalienable. Such are the legislative power, the administration of the laws, the exercise of the judicial power. **Non-regal functions may be assumed by means of the legislative power.** But when they are assumed the State acts simply as a huge corporation, with its legislation as the charter. Its action under the legislation, so far as it is not regal execution of the law is merely analogous to that of a private company similarly authorised."
This decision reflects modern thinking. The State is treated in performance of its functions like a private company. It would obviously be answerable **for negligence of its employees**…

26. In the light of what has been discussed, it can well be said that the East India Company was not a sovereign body and therefore, the doctrine of sovereign immunity did not apply to the activities carried on by it in the strict sense. Since it was a delegate of the Crown and the activities permitted under the Charter to be carried on by it were impressed with political character, the State or its officers on its analogy cannot claim **any immunity for negligence in discharge of their statutory duties under protective cover of sovereign immunity**. The limited sovereign power enjoyed by the Company could not be set up as defence in any action of torts in private law by State. Since the liability of the State even today is same as was of the East India Company, the suit filed by any person for negligence of officers of the State cannot be dismissed as it was in exercise of sovereign power. Ratio of ***Kasturi Lal,***[118] is available to those rare and limited cases where the statutory authority acts as a delegate of such function for which it cannot be sued in court of law. In ***Kasturi Lal case*** (supra) the property for damages of which the suit

---

[117] Federated State School Teachers' Assn. of Australia v. State of Victoria,(1928-29) 41 CLR 569, p. 585.
[118] Kasturi Lal v. State of UP, AIR 1965 SC 1039: (1965) 1 SCR 375.

was filed was seized by the police officers while exercising the power of arrest under Section 54(1)(*iv*) of the Criminal Procedure Code. The power to search and apprehend a suspect under Criminal Procedure Code is one of the inalienable powers of State. It was probably for this reason that the principle of sovereign immunity in the conservative sense was extended by the Court. But the same principle would not be available in large number of other activities carried on by the State by enacting a law in its legislative competence.[119]

27. A law may be made to carry out the primary or inalienable functions of the State. Criminal Procedure Code is one such law. A search or seizure effected under such law could be taken to be an exercise of power which may be in domain of inalienable function. Whether the authority to whom this power is delegated is liable for negligence in discharge of duties while performing such functions is a different matter. But when similar powers are conferred under other statute as incidental or ancillary power to carry out the purpose and objective of the Act, then it being an **exercise of such State function which is not primary or inalienable**, an officer acting negligently is liable personally and the State vicariously. … the object of the State cannot be a power for negligent exercise of which the State can claim immunity. No constitutional system can, either on State necessity or public policy, condone negligent functioning of the State or its officers. The rule was succinctly stated by ***Lord Blackburn*** in *Geddis* v. *Proprietors of Bonn Reservoir:*[120]

"No action will lie for doing that which the Legislature has authorised, if it be done without negligence, although it does occasion damage to anyone; but an action does lie for doing that which the Legislature has authorised if it be done negligently."

29. In ***Vidhyawati***[121]it was held that this article consisted of three parts:
(1) that the State may sue or be sued by the name of the State;
(2) that the State may sue or be sued in relation to its affairs in like cases as the corresponding Provinces or the

---

[119] N. Nagendra Rao & Co. v. State of A.P., (1994) 6 SCC 205, p. 236.
[120] *Geddis* v. *Proprietors of Bonn Reservoir,* (1878) 3 AC 430, p.435
[121] State of Rajasthan v. *Vidhyawati*, AIR 1962 SC 933:1962 Supp (2) SCR 989.

corresponding Indian States might have sued or been sued if the Constitution had not been enacted; and
(3) that the second part is subject to any provisions which may be made by an Act of the Legislature of the State concerned, in due exercise of its legislative functions, in pursuance of powers conferred by the Constitution.
In ***Vidhyawati***[122]and ***Kasturi Lal,***[123]it was held that since no law had been framed by the legislature, the **liability of the State to compensate for negligence of officers** was to be decided on general principle. In other words, if a competent legislature enacts a law for compensation or damage for any act done by it or its officers **in discharge of their statutory duty** then a suit for it would be maintainable."

Therefore, the legal system and principles are to be moulded as per the scheme of the Constitution. The function could be, and should be, taken as **regal or sovereign function has been recently examined by** this Court**.** Likewise, the paramount function of the State, is the welfare of the citizens and to establish the rule of law and an egalitarian social order in the society. Such commitment of the state is visualised by Part-III and Part IV of the Constitution of India. This Hon'ble Court in ***Nagendera Rao v. State of Andhra Pradesh***,[124] speaking through Sahai***, J.*** examined the question in detail in the background of the stand of the respondent-State pleading absence of vicarious liability because of the doctrine of ***sovereign immunity***. This aspect has been dealt in paras 21 to 24, Para 21 opens by saying that the *old and archaic concept of* **sovereignty,** which does not survive now, as in the democratic governance under the Constitutional scheme, **sovereignty** now vests in the **people**. It is because of this, the **Australian High Court** in *The Federated State School Teachers' Association of Australia v. The State of Victoria*[125] has distinguished between such

[122] State of Rajasthan v. *Vidhyawati*, AIR 1962 SC 933:1962 Supp (2) SCR 989.
[123] Kasturi Lal v. State of UP, AIR 1965 SC 1039: (1965) 1 SCR 375.
[124] N. Nagendera Rao and Co. v. The State of Andhra Pradesh, 1994 (6) SCC 205.
[125] Isaacs, J. in The Federated State School Teachers' Association of Australia v. The State of Victoria (1929) 41 C.L.R. 569, in which the learned Judge stated as below at page 585:

"Regal functions are inescapable and inalienable. Such are the legislative power, the administration of laws, the exercise of the judicial power, non-regal

functions as sovereign and non-sovereign functions which are was categorised as regal and non-regal. In some cases, the expression used is State function, whereas in some Governmental function.[126] The aforesaid principle shows that if the court is to extend the concept of **sovereign function** to include all **welfare activities as contended on behalf of the appellants- State,** the ratio in **Bangalore Water-Supply case(supra)** would get eroded, and substantially. The court has 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.[127] Therefore, the sovereign functions theory cannot be used to deprive rights and remedies for the industrial workers working in the industries.

Though the provisions of Section 2(k) of the Industrial Relations Code, 2020, defines "controlled industry", Section 2(p) defines "industry", Section 2(r) defines *"industrial establishment or undertaking", and* Section (zr) defines "worker." Though the definition of industry in Section 2(p) of the Industrial Relations Code, 2020, very wide, but the exception in clause (ii) of Section 2(p) is much wider and practically, there would be no industry as specified in sub clauses (i) to (iv) of clause (ii) of Section 2(p) of the Industrial Relations Code, 2020, such exception has no scientific basis to such an activity whether it is carried on with a motive to make any gain or profit, but it does not include institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; any

---

functions may be assumed by means of the legislative power. But when they are assumed the State acts simply as a huge corporation, with its legislation, the charter. Its action under the legislation, so far as it is not regal execution of the law is merely analogous to that of a private company similarly authorised."

[126] Chief Conservator of Forests and others vs Jagannath Maruti Kondhare, etc., (1996) 2 SCC 293, pp. 299-300 (para11).

[127] Chief Conservator of Forests and others vs Jagannath Maruti Kondhare, etc., (1996) 2 SCC 293, p. 300 (para11).

activity of the appropriate Government relatable to the sovereign functions of the appropriate Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; any domestic service; or any other activity as may be notified by the Central Government.

Though the definition of "worker" in Section 2(zr) of the Industrial Relations Code, 2020, is very wide, but the exception in clauses (i) to (iv) of clause (ii) of Section 2(zr) of the Industrial Relations Code, 2020 are much wider as they have practically taken away the basic rights, though there is no quarrel to the exception the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957) in clause (i), but the clause (ii) is very wide, it should be read down as such exception may eat way the rights of the working classes known as workers as defined by Section 2(zr) of the Industrial Relations Code, 2020. The third and fourth clauses should have been left to the wisdom of the discretion of the judicial functions of the courts, as such powers are essential for the discharge of the power of judicial review by the courts, as the basic essence of the judicial functions of the courts. Moreover, there is no alternative remedy provided for such workers; therefore, such workers would face an uneven situation where they would have no remedies for realisation of their rights.The above definitions in Section 2 of The Industrial Relations Code, 2020,have made provision Section 2(k) "controlled industry", Section 2(p) "industry", Section 2(r) "*industrial establishment or undertaking*" and Section 2(zr) "worker", such provisions are akin to the interpretation of "*Industry*" in Section 2(j) of the Industrial Disputes Act, 1947, as interpreted by the Seven Judges bench of this Hon'ble Court in *Bangalore water Supply and Sewerage Board* v. *A Rajappa,*[128]and as such, it is in consonance with the interpretation of "*Industry*" in Section 2(j) of the Industrial Disputes Act, 1947. Thus, such exceptions as held in catena of decisions are only enabling and there shall be an exception which has to be justified by the government and the provisions of "sovereign function" has to the re-examined in the light of the change of the character of the governance as even the defence personnels(known as 'Agni veers') who are being recruited for a very "short"

[128] (1978) 2 SCC 213 (Paras 140-144)

duration (4 years period of recruitment and there is no alternative provision for their grievance redressal) under the scheme or policy, but no alternative mechanism is provided to redress their legitimate grievances. They cannot be termed as "sovereign functions" as it is for a period of 4 years only and if such a person is deprived of his contractual rights, or protections, there should be remedies for such person under the scheme of rule of law or under the Industrial Disputes Act or now the Industrial Relations Code, 2020, such view would be contrary to the constitutional scheme and philosophy evolved by the framers as provided in Part-III and Part-IV of the Constitution of India. There may be certain situations where such person discharging contractual duties or functions, may require to avail judicial recourse or remedy for his or her legitimate grievances, but there is no redressal mechanism is provided, in such an eventuality, the right to judicial review is a fundamental right under Article 32 of the Constitution under scheme of the Constitution. Therefore, it could violate the constitutional guarantee.

Moreover, the definition of industry in section 2(p) define it as a 'systematic activity' carried on by 'co-operation between an employer and worker'; the second condition is that such worker is employed by such employer directly or by or through any agency, including a contractor; the third condition is that such employment is for 'production, supply or distribution' of 'goods or services' with a view to satisfy human wants or wishes; such wants or wishes which are merely spiritual or religious in nature. Thus, there is an exception to religious or spiritual activities. It is immaterial that any capital has been invested for the purpose of carrying on such activity or not, and such activity is carried on with a motive to make any gain or profit, or not. But the further provision states that it does not include institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or any activity of the appropriate Government relatable to the sovereign functions of the appropriate Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space. Thus, there is an exception in the cases of "sovereign functions of the appropriate Government" and it includes all the activities carried on by the departments of the

Central Government dealing with defence research, atomic energy and space. Though the exception of the aforementioned four departments is understandable, but there is no alternative mechanism which is provided for the workmen working in such departments. Furthermore, the exception of any domestic service is a very wide term, which exception is contrary to the principle of rule of law. In addition to the above, there is a further provision empowering the Central Government to notify any other activity. Therefore, it is a very wide power which is not guided and has no limitation whatsoever for the exercise of such power. Therefore, the power of judicial review is an important facet of rule of law as there should be checks and balances in the exercise of such power. The judicial review or judicial intervention for the exercise of functions by the institutions are limitations to protect the rights and to effective enjoyment of the legal protection afforded under the scheme of the constitutional governance. The rights and remedies are provided to every any person, and the constitutional philosophy is underlined in democratic governance, and we are following a governance in which we have a republican form of government because supreme power is held by the people. The people exercise such power through their elected representatives, rather than directly or via a monarch, but we have the President of India which is the highest civilian office and any citizen is entitled to get himself or herself to such high office without any requirement of hereditary qualification. Thus, we have a republican form of government because supreme power is held by the people and exercised through elected representatives, rather than directly or via a monarch to ensure a government that is "of the people". The Constitution mandates limiting government through law, focusing on justice and common welfare, and preventing the "turbulence" of pure democracy. The Constitution mandates justice, liberty equality and fraternity as the beacon lights of the democratic rights and human values and as such, these values including justice is one of such inherent human values, therefore, the principles of justice. We have the republican form of government, and we are not a Monarchy, such governance and government has the accountability to the people and the elected representatives cannot enjoy super natural powers as they are accountable to the people and as such, in a given situation a contractual worker who has no

security of tenure may not enjoy "sovereign function" as it is for a period of 4 years only, and if such a person is deprived of his contractual rights, or protections, there should be remedies including under the Industrial Disputes Act or now the Industrial Relations Code, 2020, as such, such view would be contrary to the constitutional scheme and philosophy evolved by the framers as provided in Part-III and Part-IV of the Constitution of India. The provisions of Articles 12, 15(1), 16(1)& (2), 17, 19(1) (g) & (2), 23, 24, 32 (1) in Part-III, and Articles 38, 39 (b) & (c), 41, 42, 43,43A, 46, 47, 48A, and Article 298 which empower the government with executive power of the Union and of each State to carry on any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose, and Articles 301 to 305, 307, 309 of the Constitution of India which regulates trade and commerce and the governance under the scheme of the Constitution of India. Thus, the Constitution has dealt with the principles and assigned power to the executive government and other organs of the State and there are limitations on such powers assigned to the organs of the State, and such limitations cannot be diluted even by express provisions as these are legal limitations.

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to affirm the principle expounded by Justice Krishna Iyer in Bangalore water supply case (supra) as accepted by the majority of Judges and expound the principle for the benefits of the workers and to assure their constitutional rights and remedies as settled by this Hon'ble Court in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, YOUR HUMBLE RESPONDENT, AS IS DUTY BOUND, SHALL EVER PRAY.

FILED BY: -

[**AJIT KUMAR EKKA**]

FILED ON: 15.03.2026 ADVOCATE FOR THE RESPONDENT

NEW DELHI