REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.897 OF 2002

STATE OF U.P. ... APPELLANT

VERSUS

JAI BIR SINGH ... RESPONDENT

WITH

CIVIL APPEAL NO.1276 OF 2001

CIVIL APPEAL NO.1278 OF 2001

CIVIL APPEAL NO.1279 OF 2001

CIVIL APPEAL NO.6114 OF 2001

CIVIL APPEAL NO.8597 OF 2001

CIVIL APPEAL NO.2409 OF 2002

CIVIL APPEAL NO.2506 OF 2002

CIVIL APPEAL NO.4569 OF 2002

CIVIL APPEAL NO.5101 OF 2002

CIVIL APPEAL NO.6108 OF 2002

CIVIL APPEAL NO.6471 OF 2002

SLP(C) NO.20982 OF 2002

CIVIL APPEAL NOS.355-358 OF 2003

CIVIL APPEAL NO.7994 OF 2004

SLP(C) NO.11291 OF 2004

SLP(C) NO.14085 OF 2004

SLP(C) NO.14127 OF 2004

SLP(C) NO.4139 OF 2005

CIVIL APPEAL NO.1273 OF 2007

CIVIL APPEAL NO.1274 OF 2007

CIVIL APPEAL NO.3647 OF 2007

CIVIL APPEAL NO.4646 OF 2007

SLP(C) NO.16301 OF 2007

CIVIL APPEAL NO.296 OF 2008

CIVIL APPEAL NOS.1311-1312 OF 2008

SLP(C) NO.3107 OF 2008

SLP(C) NO.4327 OF 2008

SLP(C) NO.4328 OF 2008

SLP(C) NO.4329 OF 2008

SLP(C) NO.16276 OF 2008

SLP(C) NO.17224 OF 2008

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

SLP(C) NO.1112 OF 2009

CIVIL APPEAL NO.3920 OF 2010

CIVIL APPEAL NO.5681 OF 2010

CIVIL APPEAL NO.3119 OF 2011

CIVIL APPEAL NO.7757 OF 2011

CIVIL APPEAL NO.1131 OF 2012

CIVIL APPEAL NO.5519 OF 2012

CIVIL APPEAL NOS.8149-8151 OF 2012

CIVIL APPEAL NOS.4505-4506 OF 2013

CIVIL APPEAL NOS.4507-4508 OF 2013

SLP(C) NOS.12679-12682 OF 2014

SLP(C) NO.1857 OF 2016

SLP(C) NO.14156 OF 2021

I N D E X

<u>O P I N I O N</u>

<u>NAGARATHNA, J.</u>

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

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

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

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

Reframed Questions:

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

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

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

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

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

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

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

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

Definition of "Industry":

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

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

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

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

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

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

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

“**(j) “industry**” <u>means any</u> 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, <u>and includes</u>—

(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, <u>but does not include</u>—

(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 <u>is the predominant one</u>.

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

(2) hospitals or dispensaries; or

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

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

(5) khadi or village industries; or

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

(7) any domestic service; or

(8) any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten."

(underlining by us)

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

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

> "**2. Definitions. —** In this Code, unless the context otherwise requires, —
>
> xxx
>
> (p) "industry" <u>means</u> any systematic activity carried on by co-operation between an employer and worker (whether such worker is employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,—
>
> (i) any capital has been invested for the purpose of carrying on such activity; or
>
> (ii) such activity is carried on with a motive to make any gain or profit, <u>but does not include</u> —
>
> > (i) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or
> >
> > (ii) any activity of the appropriate Government relatable to the sovereign functions of the appropriate Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or
> >
> > (iii) any domestic service; or
> >
> > (iv) any other activity as may be notified by the Central Government;"
>
> (underlining by us)

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

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

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

Submissions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Whether reconsideration of Bangalore Water Supply is necessary?:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Bangalore Water Supply:

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

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

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

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

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

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

"46. ...

(1) (a) Are establishments, run without profit motive, industries?

(b) Are charitable institutions industries?

(c) Do undertakings governed by a no-profit-no-loss rule, statutorily or otherwise fastened, fall within the definition in Section 2(j)?

(d) Do clubs or other organisations (like the Y.M.C.A.) whose general emphasis is not on profit-making but fellowship and self-service, fit into the definitional circle?

(e) To go to the core of the matter, is it an inalienable ingredient of 'industry' that it should be plied with a commercial object?

(2) (a) Should cooperation between employer and employee be direct insofar as it relates to the basic service or essential manufacture which is the output of the undertaking?

(b) Could a lawyer's chambers or chartered accountant's office, a doctor's clinic or other liberal profession's occupation or calling be designated an industry?

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

(3) (a) Is the inclusive part of the definition in Section 2 relevant to the determination of an industry? If so, what impact does it make on the categories?

(b) Do domestic service drudges who slave without respite — become 'industries' by this extended sense?

(4) Are governmental functions, *stricto sensu*, industrial and if not, what is the extent of the immunity of instrumentalities of government?"

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

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

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

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

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

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

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

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

(underlining by us)

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

"91. Running right through are three tests:

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

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

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

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

"94. ...

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

(underlining by us)

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

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

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

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

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

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

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

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

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

> "126. The <u>first</u> is one where the enterprise, like any other, yields profits but they are siphoned off for altruistic objects. The <u>second</u> is one where the institution makes no profit but hires the services of employees as in other like businesses but the goods and services, which are the output, are made available, at low or no cost, to the indigent needy who are priced out of the market. The <u>third</u> is where the establishment is oriented on a humane

> mission fulfilled by men who work, not because they are paid wages, but because they share the passion for the cause and derive job satisfaction from their contribution. The first two are industries, the third not."

(underlining by us)

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

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

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

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

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

> "160. …It behoves us, therefore, hopefully to abolish blurred edges, illumine penumbral areas and overrule what we regard as wrong. Hesitancy, half-tones and hunting with the hounds and running with the hare can claim heavy penalty in the shape of industrial confusion, adjudicatory quandary and administrative perplexity at a time when the nation is striving to promote employment through diverse strategies which need, for their smooth fulfilment, less stress and distress, more mutual understanding and trust based on a dynamic rule of law which speaks clearly, firmly and humanely. If the salt of law lose its savour of progressive certainty wherewith shall it be salted? So we proceed to formulate the principles, deducible from our discussion, which are decisive, positively and negatively, of the identity of "industry" under the Act. We speak, not exhaustively, but to the extent covered by the debate at the bar and, to that extent, authoritatively, until overruled by a larger Bench or superseded by the legislative branch."
>
> (underlining by us)

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

> "161. "Industry', as defined in Section 2(*j*) and explained in *Banerji (AIR 1953 SC 58)*, has a wide import.
>
> (a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to

celestial bliss e.g. making, on a large scale *prasad* or food), *prima facie*, there is an 'industry' in that enterprise.

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

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

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

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

(a) 'Undertaking' must suffer a contextual and associational shrinkage as explained in *Banerji* and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I, although not trade or business, may still be 'industry' provided *the nature of the activity*, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold of 'industry' undertakings, callings and services, adventures 'analogous to the *carrying* on the trade or business'. All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range off this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

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

(b) A restricted category of professions, clubs, co-operatives and even *gurukulas* and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or *ashramites* working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt — not other generosity, compassion, developmental passion or project.

IV. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the *University of Delhi case* [*University of Delhi* v. *Ramlfath*, (1964) 2 SCR 703 : AIR 1963 SC 1873 : (1963) 2 Lab LJ 335] or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the *Corporation of Nagpur* will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby."

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

(underlining by us)

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

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

Opinion of Beg, C.J.:

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

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

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

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

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

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

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

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

Opinion of Chandrachud, C.J.:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Analysis of the Opinions in Bangalore Water Supply:

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

"Triple Test":

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

(i) systematic activity,

(ii) organised by cooperation between employer and employee;

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

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

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

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

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

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

Overruling of Safdarjung Hospital:

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

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

13.1 In ***Safdarjung Hospital***, this Court had to determine whether a hospital could be regarded as an "industry". The Court accepted the conclusion in ***Gymkhana Club***, namely that *"…before the work engaged in can be described as an "industry", it must bear the definite character of 'trade' or 'business' or 'manufacture' or 'calling' or must be capable of being described as an undertaking resulting in material goods or material services".* Following this, this Court diverged from the earlier ruling in ***Hospital Mazdoor Sabha***, holding that the three hospitals under consideration were not industries, as follows:

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

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

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

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

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

Solicitors' Case:

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

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

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

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

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

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

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

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

Gymkhana Club:

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

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

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

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

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

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

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

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

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

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

Why did Bangalore Water Supply Overrule Both Cases?:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Further Analysis:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(underlining by me)

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

SUMMARY OF CONCLUSIONS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S. No.	Questions	Answers
		out the activity is not relevant. Rather, what the nature of the activity is and all other relevant factors of the activity have to be considered to determine whether the activity is an "industrial activity" within the meaning of Section 2(j) of the I.D. Act.
3.	What State activities will be covered by the expression "sovereign function", and whether such activities will fall outside the purview of Section 2(j) of the I.D. Act?	The determination of State activities which would be covered by the expression "sovereign function", and whether such activities will fall outside the purview of Section 2(j) of the I.D. Act would again depend upon the nature of the activity. The interpretation given to the aforesaid provision in ***Bangalore Water Supply*** excludes certain activities from the operation of the "sovereign function exception" and consequently, places them within the scope of the definition of "industry". The dominant nature of the activity rather than the dominant purpose of the activity is a relevant factor.
4.	Any other issue(s) that may arise during the course of hearing before the nine-Judge Bench.	The issue that arose during the course of hearing before this Bench was, whether, the interpretation of

S. No.	Questions	Answers
		the word "industry" in Section 2(p) of the IR Code could be applied to reconsider the seven-Judge Bench decision of this Court in ***Bangalore Water Supply***, by giving a narrow interpretation to Section 2(j) of the I.D. Act? In other words, whether Section 2(p) of the IR Code could cast its shadow on Section 2(j) of the I.D. Act so that the interpretation of Section 2(j) of the I.D. Act could be aligned with Section 2(p) of the IR Code? In my view, the interpretation of the word "industry" in Section 2(j) of the I.D. Act may have a bearing on the interpretation of Section 2(p) of the IR Code and not *vice versa.* There can be no interpretation given to Section 2(j) of the ID Act on the basis of the definition under Section 2(p) of the IR Code.

22. The Reference is answered accordingly in the aforesaid terms.

I place on record my sincere appreciation of the valuable assistance rendered by learned Attorney General, learned senior counsel, learned counsel and learned instructing counsel as well as learned *amicus curiae* appearing for the respective parties.

……………………………………J.
(B.V. NAGARATHNA)

NEW DELHI;
AUGUST 20, 2026