



# ‘Industry’ – More than Just a Word

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**Abstract:** The term “industry” which is a part of almost all spheres of contemporary life was firstly defined in independent India in “section 2 (j) of the Industrial Disputes Act, 1947” in a manner which was envisaged as inclusive of all the concepts fitting for that era. Now as the present-day India has tremendously progressed by industrial as well as technological revolution, the term “industry” has got versatile and multi-faceted aspects which were not foresighted by the original definition of the term in “section 2 (j) of the Industrial Disputes Act, 1947”. Over the period the term “industry” has been deciphered by numerous benchmark judgments by the Indian judiciary, but the Constitutional Bench in “Bangalore Water-Supply and Sewerage Board v. R. Rajappa and Others 1978” has surpassed all by its profound and penetrative interpretation which the Government of India adopted as standard, and amended section 2 (j) though “the Industrial Disputes Amendment Act, 1982”. However till the present-day the amended Act is still not notified; hence the definition of the phrase “industry” goes by the original Act of 1947 only. The present paper aims to view the judicial progression of the term “industry” and attempts to grasp exactly what is meant and implied by it.

**Keywords:** Industry, Industrial Revolution, Bangalore Water-Supply, Employer-Employee Relationship

## I. INTRODUCTION

India has been a land of industrialists and entrepreneurs since a thousand years or more. In ancient India craftsmen and their crafts were well known world-wide. However, in real sense industrialization in India began with the advent of Industrial Revolution in England. The spinning jenny invented somewhere and the electric bulb invented in some other part of the globe had major implications throughout. At end of 18th century there was mushrooming of industries in major cities of India; with technological progression in 19th century, there was a phenomenal growth in number of industries and industrialists which also resulted into rise of a new class of people i.e., the middle class-“the bourgeoisie”.

As India achieved her freedom all industries including mechanical industries and service industries started blooming. Citizens of India imported Western ideas, and came into existence hospitals, clubs and many other business centres. The Government of India laid emphasis firstly on Five Year Plans, and secondly on industrialization. As a result today India boasts of making indigenous products from a safety pin to a satellite as well ChandrayaanII[1] of which

credit goes to industrialization. However, this gave rise to many issues as the courts in India were flooded with litigation, and thus the courts had to first to decide the ambit of the word “industry” itself.

Section 2 (j) of “the Industrial Disputes Act, 1947” (hereinafter “the Act, 1947”) defines “industry” as, “industry” means any business, trade, undertaking, manufacture or calling of employers, and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.”[2]

The roots of this definition can be seen in section 4 of “the Commonwealth Conciliation and Arbitration Act, 1904” of Australia, wherein the concept of “industry” is defined as “(i) any business, trade, manufacture, undertaking or calling of employers on land or water; (ii) any calling, service, employment, handicraft or industrial occupation or avocation of employers on land or water; and (iii) any branch of an industry or a group of industries”.[3] In 1947 the Legislature defined the word “industry” in section 2 (j) of “the Industrial Disputes Act, 1947”; however after 1947 or more precisely after first Five Year Plan was devised and acted upon the confusion about the word “industry” started to come into light by the way of series of court cases. Till 1978 the word “industry” was explained in numerous rationalizations by various courts.

However, on February 21, 1978 the Supreme Court of India by the landmark decision in case of “Bangalore Water-Supply and Sewerage Board v. R. Rajappa and Others”[4] (hereinafter Bangalore Water-Supply) delineated as to what could be called as the tenets of an “industry”. In here the seven-judge Bench specifically examined all aspects of the term “industry” and lay down a definitive law on the subject. It commented upon various entities and also on the fact as to whether they can be termed up as industries under the available definition. Taking guidelines from Bangalore Water-Supply, the Legislature by bringing in “the Industrial Disputes Amendment Act, 1982”[5], amended the definition of the word “industry” as “(j) “industry” means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,.....”[6]. Many industries such as “educational, scientific, research/training institutes, hospitals/dispensaries and agriculture” etc. could not find place in the amended definition of the “industry”.

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Nonetheless, as “the Industrial Disputes Amendment 1982” has not been notified, the 1947 definition itself is used and remains in law books. The 1947 definition is of wide amplitude and the canvas it cast is too wide so as to embrace every possible entity to bring it within the definition of the word “industry”.

## II. THEORETICAL BACKGROUND

“Industry” for a layman means “a place where capital and labour co-operate with each other for the purpose of generating wealth in the shape of goods, or propagating commerce and thus make profits in the process”. In any industry it is implied that there exist a relationship of “a master and a servant” wherein for certain remuneration/consideration i.e., “wages” to the servant the services of the servant are employed/engaged by the master. The minute parameters of such relationship which is analyzed in landmark judicial decisions are detailed in various commanding text-books such as - “*O.P. Malhotra’s The Law of Industrial Disputes (Set of Volumes) 2004*”[7], “*Industrial Disputes Act 1947*” authored by Justice D.D. Seth[8] and “*Law on Industrial Disputes with Central & State Rules (Set of 2 Volumes) 2016*” written by Vithabhai B. Patel[9] etc. “When one think about a college, the thought comes about education, and not of an industry; when one think of a temple, the notion comes up of spirituality, and not about an industry. Nothing prevents an “institute” from giving the term “industry” a wider meaning. In order to meet the requirements of contemporary age and bring about a balance between a fair economy and industrial peace it is necessary to bring about harmonization between the consumer on one hand, and the master and servant on the other.”

The concept of industry has undergone a great metamorphosis over the years, when virtual offices are now a reality and paperless transactions are no longer a novelty. Today managerial organizations are radically different from the pre-liberalization area and thus one has to understand the concept of the word “industry” in present-day world of industrial turbulences. The concept of industry has to cater to modern needs without much dislocation and disorganization of the society and also at the same time harmonizing the changing face of the Indian industry and keeping the ideal of a welfare state in mind. Today managerial organizations are radically different from the pre-liberalization area and thus one has to understand the concept of the word “industry” in present-day world of industrial turbulences. The concept of industry has to cater to modern needs without much dislocation and disorganization of the society and also at the same time harmonizing the changing face of the Indian industry and keeping the ideal of a welfare state in mind.

## III. FINDINGS

**“Industry”-The Legal Travel:** The term “industry” as defined in section 2(j) of the Act, 1947 was elucidated by the Supreme Court of India in 1958 in *D.N. Banerjee v. P.R. Mukherjee*[10]. In here, a “Triple Test” was laid down to find out as to whether there existed an “industry”. It was held that: “An Industry is a place where there is: i) a systematic activity ii) organized by the co-operation between the employer and the employee[11], the direct and substantiate

element is commercial iii) for the production or distribution of goods and services calculated to satisfy human wants and wishes.”[12] Afterwards the Supreme Court of India in *Bangalore Water-Supply* in 1978 overruled many previous landmark rulings such as “*National, Union of Commercial Employees v. M.R. Meher*[13], *University of Delhi & Anr. v. Ram Nath*[14], *Cricket Club of India v. Bombay Labour Union & Anr.*[15], *Management of Safdarjung Hospital v. K.S. Sing Sethi*[16], *The Dhanrajgirji Hospital v. The Workmen*[17].”

**Magnitude of Bangalore Water-Supply:** When scope of the word “industry” is encompassed or fixed then only classification of a dispute being an “industrial dispute or non-industrial dispute” becomes possible. Till *Bangalore Water-Supply* in 1978 because of want of properly defined parameters of the term “industry” there was a great chaos in its meaning and extent; and the industrial arena of India was growing rapidly and confusion was at its peak and was surmounted by conflicting decisions of the prevalent courts. In *Bangalore Water-Supply* the Supreme Court of India finally guided the Legislature of India in placing main policy issues regarding industrial disputes in correct perspective with an extensive and analytical judgment by laying down the constituent parameters of an “industry” as following: “There is an industry present if, a) there is (i) a systematic activity (ii) organized by cooperation between employer and employee, the direct and substantial element being commercial (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 of services geared to celestial bliss that is making, on a large scale, of *prasad* or food), prima facie there is an industry in that enterprise; b) absence of profit motive or gainful objective is a relevant, 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 emphasis on the employer-employee relations; d) news organization is a trade or business, it does not cease to be one because of the philanthropy animating the undertaking.”[18]

## IV. RESULTS AND DISCUSSION

M. Hidayatullah, C.J. in “*Management of Safdarjung Hospital v. K.S. Sing Sethi*”[19] promulgated two determinants necessary in the constituent for to be recognized as an “industry” as follows: “the end-product should be the result of co-operation between employers and the employees, and if the end-product is a service, it should be a material service, which has been described as that which involves an activity for providing the community with the use of something such as electric power, water, transportation, telephones etc”.

This view was criticized by Krishna Iyer, J. in *Bangalore Water-Supply*[20] who said that “it is transcendental to define material service as excluding professional service. Even non-material services now qualify as the product of industry and those engaged in rendering such services are also enveloped in the concept of industry”.



P.B. Gajendragadkar, J. in “*State of Bombay & Others v. The Hospital Mazdoor Sabha*”[21] propounded a decisive test of “Direct and Indirect Nexus” by removing liberal professions from the scope of the term “industry”. Nevertheless, this decisive test of “Direct and Indirect Nexus” was discarded in *Bangalore Water-Supply*[22] along with other tests like “Principle of Partnership” and “contribution of values by the employees”.

As “the Industrial Disputes Amendment 1982”-wherein the definition of “industry” has been constructed on the guidelines of *Bangalore Water-Supply*-has not been notified, what remains as law, is the 1947 definition itself. The explanation given by the Government of India to the courts for absence of notification of the “1982 Amendment” was due to lack/absence of “alternative machinery for redress of grievances available to employees in establishments in the 1982 Amendment”.

In *State of U.P. v. Jai Bir Singh* in 2005[23], “the Constitutional Bench of five judges” headed by N. Santosh Hegde, J. held that, “the *Bangalore Water-Supply* order needs a review in view of the Executive’s failure to notify and enforce the amended restrictive definition of industry.” The Constitutional Bench has opined decisively that: “it was only in the absence of an unambiguous definition of industry in the “the Act, 1947”[24] that the Apex Court delivered its ruling in 1978, and that at the same time, Krishna Iyer, J. had said that “our judgment has no pontifical flavour but seeks to serve the future hour till changes in the law or in industrial culture occur”[25]”. “In view of the difficulty experienced by all of us in defining the true denotation of the term “industry” and divergence of opinion in regard thereto-as has been the case with this bench also-we think, it is high time that the Legislature steps in with a comprehensive bill to clear up the fog and remove the doubts and set at rest once for all the controversy which crops 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 which are driven to the necessity of evolving a working formula to cover particular cases.”[26] However, some observations made by the Supreme Court in *State of U.P. v. Jai Bir Singh*[27] in favour of a legal review of the 1978 ruling are on quite different lines and highly debatable. The order says that “there is an “overemphasis on the rights of workers” in industrial law and that this has resulted in payment of “huge amounts as back wages” to workers illegally terminated or retrenched and that these awards “sometimes take away the very substratum of industry”.”

Krishna Iyer, J. has stated in the judgment[28] (recited in *State of U.P. v. Jai Bir Singh*) that: “the working class, unfamiliar with the sophistications of definitions and shower of decisions, unable to secure expert legal opinion, what with poverty pricing them out of the justice market and denying them the staying power to withstand the multi-decked litigative process, *de facto* is denied social justice if legal drafting is vagarious, definitions indefinite and court rulings contradictory.”[29]

Y.V. Chandrachud, J. in *Bangalore Water-Supply* conferred that: “problem [of definition of industry] is far too policy-oriented to be satisfactorily settled by judicial decisions. Parliament must step in and legislate in a manner which will leave no doubt as to its intention.”[30]

D. Chandrachud, J. of the Bombay High Court (as he then was) held in *Shri Umashankar Jaswal v. Royal Auto Centre* 2007[31] that “The issue of what is an industry comes to the fore, especially in dealing with small shops, which may be a shop, which is covered under the provisions of “the Bombay Shops and Establishments Act, 1948”. It is always mind-boggling as to whether a small shop can be regarded as an industry, especially when there are a deluge of cases filed against petty shop owners by the disgruntled workmen who once upon a time were working in the said shop as a salesman, or a helper or a menial assistant.”

The Supreme Court has already laid down the test in *Bangalore Water-Supply* about the functionality of the “employer-employee relations”. In the said judgment the Supreme Court at paragraph number 111 has made it clear that the very image of industries is of plurality of workmen. It has to be differentiated as to what could be called as “a plurality of workmen” and “a small shop”, which is run with the help of a menial assistant or a helper. There could be shops which employ many salesmen, and there are shops which are run with the help of a menial helper or a servant. Both cannot be equated on the same plane. Thus, recourse is always taken to the mandate of *Bangalore Water-Supply* wherein the Apex Court has held that the isolated employments could be excluded from the very application of the word “industry”. In this judgment the Court has discussed the positions of petty grocers, single lawyers, rural practitioners or even urban doctors who run on their profession with a helper or a menial assistant. It has emphasized that the above vocations may be called as professions, but cannot be equated with that of an industry, wherein what is envisaged is a large number of workers, working for their employer. In case of the above-mentioned petty grocers or urban doctors there is nothing like an organized labour force, and thus this aspect itself pushes the above-mentioned vocations out of the definition of the word “industry”. The Supreme Court differentiated between some of vocations which are conducted purely for livelihood, and some vocations which can be classified as industries. In doing so, the Supreme Court has given many examples elaborating its point of view. The Court is also aware of the fact that the purpose and object of “the Industrial Disputes Act 1947”, is to solve industrial disputes, and not to meddle in the affairs of the petty grocers or a blacksmith who just run their avocation to have two square meals a day. The Supreme Court is not oblivious of the fact, when it states that we see many cobblers on the pavements of big cities or cycle repairers with a solitary helper, and the very sight of them, repels the idea of the word “industry”. What they are engaged into, is an “avocation”, rather than an “industry”. The same yardstick or a parameter is applied to the lawyers, urban doctors, two small businessmen, domestic servants or to that extent, even solicitors with or without any assistance who, according to the Supreme Court do not fall within the meaning of the word “industry”. The Supreme Court’s cautioned in *Bangalore Water-Supply* that automated industries would not be excluded from the word “industry”, even though it employs a few employees.



It was held by Bobde, J. of the Bombay High Court (as he then was) relied in the judgment of “*Karwa Commercial Pvt. Ltd v. Baburao K. Malgaonkar and Others*”[32], on the judgments in “*Firm Tulsiram Sadanand Sarada v. Assistant Collector of Labour, Nagpur 1961*”[33] and in *Bangalore Water-Supply* and came to the conclusion that the activity in question was not an “industry”. In here Bobde, J. has laid emphasis upon the fact that in order to be an “industry” the activity should predominantly be carried on by an organized labour force for the production or the distribution of goods so that it renders services to the society at large, which is ultimately a part of the community. He made a distinction between activities which can be called as purely a private or personal employment in opposition to establishments which are carried on with the help of organized labour. According to him, the private or personal avocations were not industries, whereas those carried on with the help of organized labour are industries within the meaning of “section 2 (j) of the Industrial Disputes Act 1947”. He further elaborated that the employer in the above-mentioned case was really running a family run business, wherein it was incumbent upon him to employ one or two employees who were really doing the work of a marginal nature, and thus there was nothing like an organized labour, and this very fact went to the root of the matter, and the said small shop or small family run business were not industries.

### V. CONCLUSION

As the net resultant it can be said that in order to understand whether a particular enterprise is an industry or not, the tenets of an industry are to be superimposed on the said enterprise, to find out whether an “industry” exists therein or not. If all the elements of the word “industry”, as is spelt out by the Apex Court in *Bangalore Water-Supply* are present, then there is an existence of an “industry”. The implications of the judgment in *Bangalore Water-Supply* had far reaching consequences and its reverberations can be felt in every case filed in the courts today.

As the outcome of the whole interpretation the following are considered as industries; e.g. “charitable institutions[34] with commercial activities[35], government run hospitals, public utility services” etc.; and the followings cannot be considered as industries – “temples[36], remand homes[37], domestic services, sovereign activities of government” etc.

The *Bangalore Water-Supply* judgment today is almost 41 years old. During these 41 years there have been a number of judgments in the High Court as well as of the Supreme Court wherein, the courts had to comment upon the existence of an industry bearing in mind the technological advances, the change of psych and the rendering of the services to the community’s concern.

The definition of the word “industry” has travelled a long legal journey. The policy-makers have given more impetus to the changing socio-economic as well as political scenario of India while determining the accurate definition. Consequently, the word “industry” is one of the most dynamic words of the Indian legal sphere, hence the name of this paper “*Industry - More than Just a Word*”.

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