

## EVOLUTION OF “INDUSTRY”

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### **Introduction**

This paper aims to track the transformation of the word industry throughout India’s legislative and judicial history and the problems that have occurred due to various interpretations provided to it. First, we take a look at the history of industries in India and the changes that happened on its outlook when Independence took place. Then we look at what the Industrial Disputes Act is and why it is important. Then we look at the landmark case of Bangalore Water Supply that defined what does an industry mean. We examine how the case affected the laws at that time. We then see how the word industries was interpreted by other judicial decisions that took place subsequently. We then look at the Code of Industrial Relations Bill that came out in 2015. We then analyze how the Bill does not achieve the objectives that it sought to accomplish. We then give a few suggestions of our own as to what can be done about the expanded interpretation given to the word industry. We conclude by looking at the current position of India with regards to ease of doing business and suggesting the enactment of additional legislations.

### **History**

The concept of industry has very special implications in the Indian context. It has contributed a lot in the socioeconomic and human development in the country. It is one of the primary employment generators in the country. Even before the concept of a modern industry came about, India had

showed signs of an ancient industry. It was famous for its traditional handicrafts and clothing's. The modern industrial sector in India began after the 19<sup>th</sup> Century.

With the advent of the British, a new age of industrial growth came along. The first modern industrial sector was set up by the Britishers with the establishment of the cotton textile industry in Bombay in 1854. They also set up railways with the first line running between Bombay and Thane in 1854. By the time the World Wars were fought, the industrial sector in India had expanded to produce chemicals, iron and steel, cement, glass, etc.<sup>1</sup>

After the attainment of independence, there was drastic changes in the outlook of an industry. The post-independence Indian regime was established with the social welfare in mind. This could have also been seen in the industrial policies that were applied by the Indian government. Socio-economic welfare was targeted with a focus on employment generation and higher productivity. Considering how many people were engaged in the agricultural industry, policies were made for this industry especially.

### **Industrial Disputes Act, 1947**

Various judicial decisions and legislative acts have given us different definitions of an industry. The reason for this is that there are inconsistencies in various statutes and judicial approach to this issue has been rather conflicting.

There are numerous legislations that have been passed by the Government of India with the view of regulating different aspects of an industry. Each deal with different aspects of economic development. They have been looked at differently in different judicial interpretations and have been amended to reflect upon such interpretations.

One of the most important legislations for the regulation of industries is the Industries Regulations Act, 1947. This act legislates upon a number of circumstances that might occur due to the

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<sup>1</sup> DK Sinha, *The Evolution of Industries in India*, <http://www.yourarticlelibrary.com/essay/the-evolution-of-industries-in-india/42355/> (last visited October. 28 2016)

interaction between an employer and an employee. The rationale behind this legislation is to balance the interest of both the parties whenever there is a dispute between them.<sup>2</sup>

### **Bangalore Water Supply Case**

One of the primary legislative authorities that define what an industry is the Industrial Dispute Act 1947. The word industry is defined in section 2(j) of the Act. This definition first gives us a statutory meaning of the word industry by defining it as any business, trade, undertaking, manufacture or calling of employees. It then goes on to give some in-exhaustive illustrations such as any service, employment, handicraft, or avocation of workmen. One of the landmark cases that have given us a broader and a more structured definition of an industry is the Bangalore Water Supply Case<sup>3</sup>. Before this case there were many establishments such as hospitals, universities, solicitor firms and government departments that were not included in the definition of an industry but can now be construed to be a part of it. The principles that were applied in the Bangalore water case were enshrined in the Amendment of the Industrial Dispute Act in 1982. The Bangalore Water Supply case came out with a triple test to determine what would constitute an industry. It provided that there had to be

1. Systematic activities
2. Organized by cooperation between employer and employees
3. for the production of goods and services calculated to satisfy human wants and wishes

The main focus was whether there is enough weight given to the employer and employee relationship and if it satisfied the triple test, it would constitute an industry. Profit motive was no longer a requirement to constitute industry. The court laid down a dominant nature test, which by its very name suggests that if the nature of relationship between the employer and employee is not dominant but only constitutes a minimal part, it would not be an industry. It held that small units

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<sup>2</sup> *Industrial Acts and Legislations*, [http://www.archive.india.gov.in/business/legal\\_aspects/indl\\_acts.php](http://www.archive.india.gov.in/business/legal_aspects/indl_acts.php) (last visited October. 28 2016)

<sup>3</sup> 1978 SCR (3) 207

who hired employees for some minor works and in their original capacity did not employ a large number of workmen would be exempted from being classified as an industry since there wasn't a regular relationship between an employer and an employee.

### **Aftermath of the Bangalore Water Supply Case**

Following the judgment of the Bangalore Water Supply case, there were a lot of amendments brought about by the legislature within the purview of an industry. It basically reaffirmed the triple test applied in the Bangalore water supply case, which provided for systematic functioning between the employer and the employees for the purpose of satisfying human needs. However, it went on to exclude various heads which were earlier classified as industry such as research and training institutions, educational institutions, scientific institutions, any unit of govt. imparting sovereign functions, central govt. activities such as atomic energy and space. Even hospitals were excluded from the definition of an industry. Any organization providing social or philanthropic services would also not be an industry as there was no commercial motive. However, this amendment has not been enforced as the Supreme Court has held the Bangalore water supply Case as the law of the land. The Bangalore case has very clearly laid down that a profit motive is not a necessity for an industry.

### **Subsequent judicial interpretations**

Another case in the aftermath of the Bangalore water supply case was Physical Research Laboratory v KG Sharma, where the court explained why research institutions do not classify as an industry. The court held that although research institutions constitute systematic activities, with the cooperation of employees, but it fails to satisfy the third requirement of the triple test as it does not lead to satisfaction of human wants and needs. Therefore, a research and training institution would not classify as an industry. The amendment seems to have various problems as we cannot classify every govt. department as imparting sovereign functions such as The Electricity

Department providing electricity, and earning profit on the same cannot be said to be a sovereign function of the state.

There have been some contrasting views on the concept of industry which have found the definition of industry given in the Bangalore case a very problematic one. One such case is the Coir Board, Ernakulam Cochin & Anr v Indira Devi P.S. & Ors, Now if we look at the primary function of the Coir Board, it is just to promote the business for coir industry products, by providing opportunities in the market for it and since there is no profit motive, it shouldn't be classified as an industry, but if we look at the law applied in the Bangalore case, then it would in fact constitute an industry as it fulfills the triple test as there is systematic functioning, organized by cooperation between employers and employees and that has led to some useful product which would satisfy human wants. The court said that we cannot give such an exhaustive definition to an industry where every activity which would employ a certain number of people and lead to some useful product would constitute an industry as in that case every other business activity would call themselves an industry.

Recently there has been a transition with regards to what the Bangalore Water Supply case means for the employer employee relation. These concerns can be seen in the recent judgement given in the case of State of UP vs Jai Bir Singh, in which the courts expressed that the interests of the employees have been favored over the interests of the employer. The court felt that the case strayed away from the main objective of the Act, which was to regulate this employer-employee relation without giving preference to any one class. The court went on to say that there was a need to correct the definition of an industry and reduce its scope to comply with the wishes of the employers as well as the employees.<sup>4</sup>

### **The Code on Industrial Relations Bill 2015**

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<sup>4</sup> Sneha Bhawani, *What Constitutes an "Industry"?* – An Analysis In Context Of Labor Laws Of India, <http://blog.ipleaders.in/constitues-industry-analysis-context-labour-laws-india/> (last visited October. 28 2016)

The government acknowledged that previously, the employees were given excessive protection. In order to correct this and regulate the relationship between the employees and the employer, the Labor Code on Industrial Relations was created. The bill had received hefty criticism and been opposed by various trade unions across the country<sup>5</sup>. The bill combined the Industrial Dispute Act, 1947, the Trade Unions Act, 1926, and the Industrial Employees Act, 1946<sup>6</sup>. The definition of industry is given in Section 2(1) of the Labor Code on Industrial Relations. Closely analyzing the definition, one can clearly see that the definition given in the code incorporated the rationale of the Bangalore Water Supply case. It integrated the triple test enunciated in the case and said that profit motive was not a necessary factor to establish an industry and that it wouldn't matter if any capital was invested or not. The definition given in the bill closely resembles the definition given in the amendment in 1982, the only difference being that various functions of the state government were exempted from the definition given in the amendment but are included in the definition given in the Bill.

### **Why the Bill doesn't complete its objective**

The Bill does not provide for exempting various public utility services unlike the amendment. The basic motive of the legislature by not exempting various public utility heads is to protect the workmen employed in such public departments, since otherwise they would be excluded from such protection and such a narrow interpretation of an industry would lead to catastrophic consequences for the workmen employed in such public utility departments.

The Labor Code on Industrial Relations can be seen as quite regressive. Although, the aim of the Draft was to find a middle ground between the requirements of the employers and employees, it still followed the reasoning of the Bangalore Water Supply Case. It ignored the concerns which

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<sup>5</sup> Sharit Bhowmik, *The Labour Code on Industrial Relations Bill 2015: Tough times ahead for labour in India*, <http://column.global-labour-university.org/2015/06/the-labour-code-on-industrial-relations.html> (last visited October. 28 2016)

<sup>6</sup> Prashant K. Nanda, *Govt to create single industrial relations law*, <http://www.livemint.com/Politics/n0NI4jZ8DyVZbQIKxqN4uN/Govt-to-create-single-industrial-relations-law-by-merging-th.html> (last visited October. 28 2016)

were raised in previous judicial decisions of the Coir Band and the Jai Bir Singh case and still more in favor of the employees. Although the decision was passed to prevent the exploitation of employees until some new legislation provided for some solution, the legislature has failed to come up with a new legislation to protect the interests of employees who are not a part of industry.

### **What can be done**

However, one cannot deviate from the fact that it is the inability of the executive that has resulted in there being no forum for redressal of workmen for such businesses. We cannot just include them into the purview of industry just because there would be no forum left for the workmen of such organizations. The Bangalore case has resulted in favor of workmen to a large extent and the balance between the employer and employees have been disturbed leading to disharmony between the employer and the employees. This judgment did not intend to provide blanket protection to employees and be a burden for employers and was passed according to the need of the hour. Although one can understand the need of protecting the rights and genuine interests of the employees, one should equally understand the need to minimize the scope of interruptions in industrial peace and harmony. Such overemphasis on the rights of workers has also led to payments of huge amounts of back wages to illegally terminated and retrenched employees. Such measures sometimes just take away the very foundation of an industry. To fulfill this objective we need to have separate laws for services which do not constitute industry and we need to look at the amendment carefully which provides that various public utility heads should not be a part of the definition of industry.

The executive should in fact come out with alternative forums for redressal of such employees. The judgment in the Coir Band case and Jai Bir Singh case looks progressive as it looks to find a balance between the relationship of the employer and the employees and it does not want to broaden the ambit of industry by giving it such an exhaustive definition. The Bangalore Water Supply does not lay a good precedent. The wide meaning of "industry" has offered chance to both the employer and the employee to raise issues i.e. one attempting to haul out of this definition, to

be out of the grip of the said Act, and the other conveying inside it to get benefits under it. Because of the width given to the meaning of the word "industry", there is a tug of-war between the two, regardless of the different choice of the Court. The legislature should legislate on such matters with scrutiny so that there is no leeway for a different interpretation than what the legislature intends.

### **Conclusion**

Industries provide India with a major employment opportunity. Also, they are a major contributor towards our economic development. However, the current definition of the word is rather outdated. The Ease of Doing Business Report 2017 by the World Bank Group puts India at 130<sup>th</sup> rank among 185 economies<sup>7</sup>. While, such a result is determined by various factors, establishment and regulation of industries is one of the major heads under this report. In order to promote its industrial market and attract the investment by various multinational organizations, India must take the interests of the employers into account as well. At the same time, it should also make sure that it works for the welfare of the working class citizens as well. In order to do so, India must enact additional legislations so that a more focused interpretation of an industry can be achieved while at the same time, the interests of the employees isn't lost as well.<sup>8</sup>

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<sup>7</sup> *Ease of doing business: India's brush with reality*, <http://www.livemint.com/Opinion/iwNkJN2L8QFtJIZCB2bJtI/Ease-of-doing-business-Indias-brush-with-reality.html> (last visited October. 28 2016)

<sup>8</sup> How is 'Industry' Defined Under Labour Laws in India?, <http://asklabourproblem.info/how-is-industry-defined-under-labour-laws-in-india/> (last visited October. 28 2016)