From the decisions referred to above it is clear that the safeguards proved to the employees are not adequate enough to protect the interest of the workers. On the other hand the powers of Lay-off and Retrenchment continue to be the new devices of tyranny against the employees.

EXPANDED SCOPE OF THE DEFINITION OF INDUSTRY

By

—G. RAMANA MURTHY,
LL.M. (Labour Law)
Osmania University, Hyderabad

In the post-independence era the Industrial Jurisprudence of India has undergone tremendous changes. Almost every aspect of industrial relations has witnessed a change in the wake of socio-economic changes in and outside the country. The one particular change to which we must make a reference is the expanded version of the concept of Industry.

When the Industrial Disputes Act, 1947 was enacted the term 'Industry' was defined by the Legislature to include only a few manufacturing units. But the later developments brought in such a change that several non-manufacturing units are also covered by the definition of the term 'Industry'. This expansion in the coverage of the definition is due partly to the action of the Legislature and partly due to that of the Judiciary.

This article explains how the Legislature has expanded the scope of Industry by including various units in the definition and how the Judiciary has by its interpretative mechanism expanded the scope of the definition of Industry.

I. EXPANSION IN THE DEFINITION OF 'INDUSTRY' AT THE INSTANCE OF THE LEGISLATURE:

When the Legislature enacted the Industrial Disputes Act, Section 2(j) of the Act defined the expression 'Industry' thus:

> "Industry" means any business, trade undertaking, manufacture or calling of employers and includes any calling, services, employment handicraft or industrial occupational or avocation of workmen;
>
> An 'industrial establishment or undertaking' means an establishment of undertaking in which any industry is carried on,
>
> Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industries, then—
>
> (a) if any unit of such establishment or undertaking carrying on any activity, being an Industry, is severable from the other unit or units, such unit shall be deemed to be separate industrial establishment or undertakings;
>
> (b) if the Ipredominate activity or each of the predominant activities carried on in such establishment or undertaking or any thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or as the case may be, unit thereof shall

be deemed to be an industrial establishment or undertaking."

Section 2(i) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 defined the term 'Industry' to mean any Industry specified in Schedule I and includes any other Industry added to the schedule by notification under Section 4

Section 4 is to the effect that the Central Government may by notification in the Official Gazette add to Schedule I any other Industry in respect of the employees whereof it is of opinion that the Provident Fund Scheme should be framed under this Act and thereupon the Industry so added shall be deemed to be an industry specified in Schedule for the purpose of this Act.

Section 2(k) of the Apprentices Act, 1961 defines the term 'Industry' to mean any Industry or business in which any trade, occupation or subject field in engineering or technology or any vocational course may be specified as a designated trade.

In certain Statutes the Legislature has used the expression 'controlled Industry' or 'notified Industry'. For example, Section 2(d) of the Contract Labour (Regulation and Abolition) Act, 1970 defines the term "controlled Industry' which is defined as "any Industry the control; of which by the Union has been declared by any Central Act to be expedient in the public interest.

Section 2(b) of the Sales Promotion Employees Act, 1976 defines a 'notification Industry' to mean an Industry declared as such under Section 3 of the Act. This Section 3 of the Act provided that the Central Government may having regard to the nature of an industry (not being a pharmaceutical Industry) the number of employees employed in such an Industry to do any work relating to promotion of sales or business or both the conditions of service of such employees and such other factors which in the opinion of the Central Government are relevant to declare such Industry to be notified Industry for the purpose of this Act.

In the year 1982 the Union Parliament amended the Industrial Disputes Act, 1947. By this amendment Section 2(j) the definition of Industry in Section 2(j) was substituted as under, with effect from the date to be notified:

Section 2(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 an amendment made to the Industrial Disputes Act in the year 1982. Section 2(j) was amended to read as follows:

"(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 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 purposes of carrying on such activity;

(ii) Such activity is carried on with a motive to make any gain or profit and includes—

(a) Any activity of the Dock Labour Board established under Section 5A of the Dock Workers (Regulations of Employment) Act, 1948—

(iii) Any activity relating to the promotion of sales or business or both carried on by an establishment but does not include;

(iv) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any

activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one;

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

(1) Hospitals or dispensaries; or

(2) Educational, scientific, research or training institutions, or

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

(4) khadi or village industries; or

(5) 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 the defence research, atomic energy and space; or

(6) Any domestic service; or

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

(8) Any activity, being an activity carried on by a co-operative society or a club any other like body or individuals, if the number of personnel employed by the co-operative society, club or other like body of individuals in relations to such activity *i.e.,* less than ten."

II. Expansion in the definition of 'Industry' at the instance of the Judiciary :

Just as in the case of 'local or other authorities' the problem had come before the Court whether they are to be considered as 'State' within the definition of Article 12 of the Constitution, in the case of certain establishments like colleges, universities, autonomous bodies *etc.,* questions had come before the Court whether they can be considered as "industries' within the definition of Section 2(j) of the Industrial Disputes Act, so as to entitle the workers employed in these units to the legal remedies available to the industrial workers under the Industrial laws. In certain cases the Courts took a restricted view of the expression 'Industry' and considered very few industrial establishments are covered by the definition of Industry, but a change came in the interpretative process of the Court resulted in an expanded version of the term 'Industry'. The following cases show the trend of judicial interpretation:-

Before making a reference to any particular case decided by the Court for and against the wider definition of 'Industry' it is necessary to point out that the Courts have preferred to follow the rule of interpretation which indicate a change in the social structure. There was a time when the Courts followed the theory of 'contemporanea exposito' *i.e.,* the contemporary theories when the Statute was enacted, but the Courts have taken the view that such a theory is relevant only to the interpretation of ancient Statutes and not to the interpretation of the Statute which are comparatively modern.

By giving a restricted meaning to the term 'Industry' in Section 2 of the Industrial Disputes Act, 1947, the Supreme Court had cut down the scope of the definition of 'Industry' in the following cases:

In Management of *Safdar Jung Hospital v. Kuldip Singh Sethi*, AIR 1970 SC 1407, it was held that the Safdar Jung Hospital is not an Industry.

In *Dhanrajgirji Hospital v. the Workmen,* AIR 1975 SC 2032, it was held that the Dhangarajgirji Hospital is not an industry.

In *National Union of Commercial Employees and another*, AIR 1962 SC 1080, the Supreme Court held that a Solicitor's firm is not an Industry.

In *Rabindra Nath Sen and others v. First Industrial Tribunal, West Bengal*, AIR 1963 Cal. 310, the Supreme Court held that the services rendered by Physicians, Counsel and Solicitors based on their individual skill and experience do not satisfy the description of Industry and therefore need to be kept outside the scope of the expression 'Industry'.

In *University of Delhi and another v. Ram Nath and others*, AIR 1963 SC 1973, it was held that the work of education carried on by institution like Delhi University is not industry.

In *Cricket Club of India v. Bombay Labour Union and another*, AIR 1969 SC 276, the Supreme Court held that the activity of Cricket Club of India is not an industry; it is a self-service institution

A change in the judicial thinking could be noticed from the following decisions of the Supreme Court where a wider interpretation was given to the term 'Industry' keeping in view the aim and object of the Industrial Disputes Act, 1947 and not merely the dictionary meaning of the term.

In *Budge Budge Municipality* case, AIR 1953 SC 58, the Supreme Court said,

"When our Act came to be passed labour disputes had already assumed big proportions and there were clashes between workmen and employers in several instances. We can assume that it was to meet such a situation that the Act was enacted, and it is consequently necessary to give the terms employed in the Act referring to such disputes as wide an import as reasonably possible."

In this very case the Supreme Court said, "There is nothing, however, to prevent a Statute from giving the word 'Industry' and the words "Industrial dispute' a wider and more comprehensive import in order to meet the requirements of rapid industrial progress and in the interests of industrial peace and economy, a fair and satisfactory adjustment of relations between employers and workmen in a variety of fields of activity. It is obvious that the limited concept of what an industry meant in early times must yield place to an enormously wider concept so as to take in various and varied forms of Industry, so that disputes arising in connection with them might be settled quickly without much dislocation and disorganization of the needs of the society and in a manner more adopted to conciliation and settlement a determination of the respective rights and liabilities accorded to strict legal procedures and principles."

Again in *Hospital Mazdoor, Sabha* case, AIR 1960 SC 610, Supreme Court said:

"if the object and scope for the Statute considered there would be no difficulty in holding that the relevant words of wide import have been deliberately used by the Legislature in the definition of 'Industry' in Section 2 (j). The object of the Act would be realized if we bear in mind the definition of 'Industrial disputes' given by Section 2(k) of 'wages' by Section 2(rr), 'workmen' in Section 2(s) and of 'employer' by Section 2(g)".

The Court added, 'it is obvious that the words used in the inclusive definition denote extension and cannot be treated as restricted in any sense."

Way back in 1960 the Supreme Court of India in the case of *City of Nagpur Corporation v. N.H. Majumdar* dealt with the question when and when a particular function can be treated as 'Industry' and

when a particular function can be considered as a 'sovereign' function. The distinction between the sovereign and non-sovereign functions had been discussed and demonstrated with reference to Indian as well as foreign precedents and text-books by Chief Justice *Subba Rao* in his inimitable style.

In *Bangalore Water Supply v. State of Rajappa*, AIR 1978 SC 548, the principles of formulated by the Supreme Court earlier were raised to their prestine glory.

In this case the Supreme Court held that the term 'Industry' as defined in Section 2(j) has a wide import. Where there is: (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 large scale, prasad or food) *prima facie* there is an 'Industry' in that enterprise.

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

The true focus in functional and the decisive test is the nature of the activity with special emphasis on the employer- employee relations. If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking. Although Section 2(j) uses the words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

'Undertaking' must suffer a contextual and associational shrinkage as explained in AIR 1953 SC 58, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements above-mentioned, although not trade or business, may still be "Industry" provided the nature of the activity, *viz.,* the employer-employee basis, bears resemblance to what is found in trade or business. This takes into the fold of 'Industry' undertakings, callings and services adventures analogous to the carrying on of 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.

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 of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more……"

The above guidelines of the Supreme Court in explaining the meaning and definition of the term 'Industry' have gone a long way in a new definition being adopted by the Legislature for the old definition of 'Industry' in Section 2(j) of the Act.

FREEDOM OF SPEECH IN PARLIAMENT UNDER INDIAN CONSTITUTION

By

—**M. SRINIVASULU,** LL.M. (Constitutional Law) Osmania University, Hyderabad

Under Article 19(1) of the Constitution every citizen of India has freedom of speech and expression. This freedom however is subject to reasonable restrictions which may