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EDITORIAL ANALYSIS

Labour Rights Beyond the Shadow of BWSSB

 THE HINDU

25 August 2026

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 The Hindu

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GS2

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INTERVIEW ANGLE

"The nine-judge bench said the definition of "industry" in the new Code must be read on its own text, unanchored from BWSSB. Is freeing a statute from precedent judicial restraint, or is it a policy choice made in the language of interpretation?"

Source: [Original editorial](#)

The Hindu



Every fact web-verified against primary sources

THE LIFT LINE

A precedent can be preserved and abandoned in the same judgment: kept alive for the disputes of the past, and quietly detached from the law of the future.

WHY THIS EDITORIAL MATTERS FOR YOUR EXAM

This is a rare instance of a nine-judge Constitution Bench decision on a labour law question, sitting at the intersection of [statutory](#) interpretation, judicial review and social justice. It is directly examinable in GS2 and connects to GS3 through the labour codes.

GS Paper 2: Structure and functioning of the judiciary; landmark judgments; welfare legislation and its judicial interpretation.

GS Paper 3: Labour reforms; the [four labour codes](#); employment and the organised sector.

CONCEPT	MEANING	WHY IT IS TESTABLE
The BWSSB triple test	An establishment is an “industry” if there is systematic activity, cooperation between employer and employee, and production or distribution of goods or services to satisfy human wants	The 1978 test at the centre of the reference
Prospective overruling	A judicial decision applied only to future cases, leaving past transactions undisturbed	The technique the Court used to protect settled disputes
Section 2(p), Industrial Relations Code, 2020	The new statutory definition of “industry”	The provision the Court freed from the BWSSB gloss

BACKGROUND AND CONTEXT

Bangalore Water Supply and Sewerage Board v. A. Rajappa (1978) interpreted **Section 2(j) of the Industrial Disputes Act, 1947**. A seven-judge bench held that every establishment carrying on a systematic and organised activity, with the cooperation of employees, for the production or distribution of goods or services to satisfy human wants, is an “industry”, **even where there is no profit motive**.

That last clause is the whole point. By making profit irrelevant, the test pulled hospitals, universities, research bodies, charitable institutions and government departments into the definition, and therefore into the reach of industrial dispute machinery: conciliation, adjudication, protection against **retrenchment** and the requirement of due process in dismissal.

The correctness of this test was referred to a larger bench in **State of Uttar Pradesh v. Jai Bir Singh**, where it remained pending for over two decades. Meanwhile Parliament replaced the 1947 Act with the **Industrial Relations Code, 2020**, one of the four labour codes alongside the Code on Wages, 2019, the Code on Social Security, 2020, and the Occupational Safety, Health and Working Conditions Code, 2020.

The 2026 Decision

On **20 August 2026**, the nine-judge bench delivered **State of Uttar Pradesh v. Jai Bir Singh (2026 INSC 897)**. The bench comprised **Chief Justice Surya Kant** and Justices **B. V. Nagarathna, P. S. Narasimha, Dipankar Datta, Ujjal Bhuyan, Satish Chandra Sharma, Joymalya Bagchi, Alok Aradhe and Vipul M. Pancholi**. The Chief Justice wrote the plurality opinion for himself and Justices Satish Chandra Sharma, Alok Aradhe and Vipul M. Pancholi, with separate opinions from Justices Nagarathna, Narasimha, Datta and Bagchi. The Court was unanimous that the triple test governs disputes pending under the 1947 Act, and divided 6:3 overall.

The holding had two limbs:

LIMB	HOLDING
Pending disputes under the 1947 Act	The BWSSB triple test continues to govern; judgments, settlements and determinations no longer open to challenge remain undisturbed
The Industrial Relations Code, 2020	“Industry” under Section 2(p) must be construed entirely on its own text and scheme, without being anchored to BWSSB

THE ANALYSIS

- 1. The Court refined rather than overruled, and that distinction is load-bearing.** Much early commentary described the decision as overturning BWSSB. It did not. The essential framework of the triple test was left standing for the statute it interpreted, and the Court expressly protected settled outcomes. Getting this right is the difference between an accurate answer and a wrong one.
- 2. The operative shift is prospective and definitional.** By holding that Section 2(p) of the 2020 Code must be read on its own text and scheme, the Court detached the new definition from five decades of accumulated interpretation. Nothing has yet been narrowed. What has changed is that the interpretive slate for the governing statute of the future is now blank.
- 3. The authors’ argument is about vocabulary as evidence of direction.** Gowda and Krishnan do not rest on the operative order alone. They read the majority’s language, lifting a burden, allowing the law to move forward unencumbered, as disclosing a view of BWSSB as an impediment rather than as a settled protective principle. Judicial vocabulary is legitimate evidence of judicial attitude, and attitude shapes how an open definition is filled in.
- 4. The class of establishments at stake is specific.** The coverage question is live precisely for the bodies BWSSB brought in against the grain of ordinary usage: hospitals, universities, research institutions, charitable organisations, government departments. Commercial manufacturing was never in doubt. The uncertainty is concentrated on the non-commercial, public-purpose sector, which is where a large share of formal employment sits.
- 5. The counter-argument is genuinely strong and must be stated.** Parliament wrote a new definition in a new Code. A court that mechanically imported the gloss on a differently worded provision of a repealed Act would be rewriting the statute rather than reading it. On this view the decision is interpretive discipline, and any resulting narrowing is a legislative choice for which the remedy is legislative, not judicial.

DATA AND INSTITUTIONS VAULT

PRELIMS-GRADE FACTS:

State of Uttar Pradesh v. Jai Bir Singh, 2026 INSC 897, decided 20 August 2026 by a nine-judge Constitution Bench.

Plurality opinion by Chief Justice Surya Kant, for himself and Justices Satish Chandra Sharma, Alok Aradhe and Vipul M. Pancholi; separate opinions by Justices Nagarathna, Narasimha, Datta and Bagchi; the Court divided 6:3 overall but was unanimous that the triple test governs pending 1947 Act disputes.

Bangalore Water Supply and Sewerage Board v. A. Rajappa (1978) interpreted Section 2(j) of the Industrial Disputes Act, 1947.

The triple test: systematic activity; cooperation between employer and employee; production or distribution of goods or services to satisfy human wants. Profit motive is irrelevant.

The new definition sits at Section 2(p) of the Industrial Relations Code, 2020.

The four labour codes: Code on Wages, 2019; Industrial Relations Code, 2020; Code on Social Security, 2020; Occupational Safety, Health and Working Conditions Code, 2020.

*Do not write that the nine-judge bench “overruled” or “struck down” the BWSSB triple test. It did neither. It **preserved** the test for disputes pending under the repealed 1947 Act and held that the 2020 Code’s definition must be read independently. Also do not confuse **Section 2(j)** of the 1947 Act with **Section 2(p)** of the 2020 Code.*

THE DEBATE

FOR (the decision narrows labour protection by stealth): Detaching a newly worded definition from five decades of protective interpretation reopens settled coverage questions for hospitals, universities and public institutions. The majority’s own language treats the protective precedent as a burden, which signals how the blank slate is likely to be filled.

AGAINST (the Court simply read the statute Parliament wrote): A new Code with a new definition must be construed on its own text. Transplanting the gloss from a repealed provision would substitute judicial preference for legislative choice. If coverage narrows, the remedy lies in Parliament, not in a court’s refusal to read the words before it.

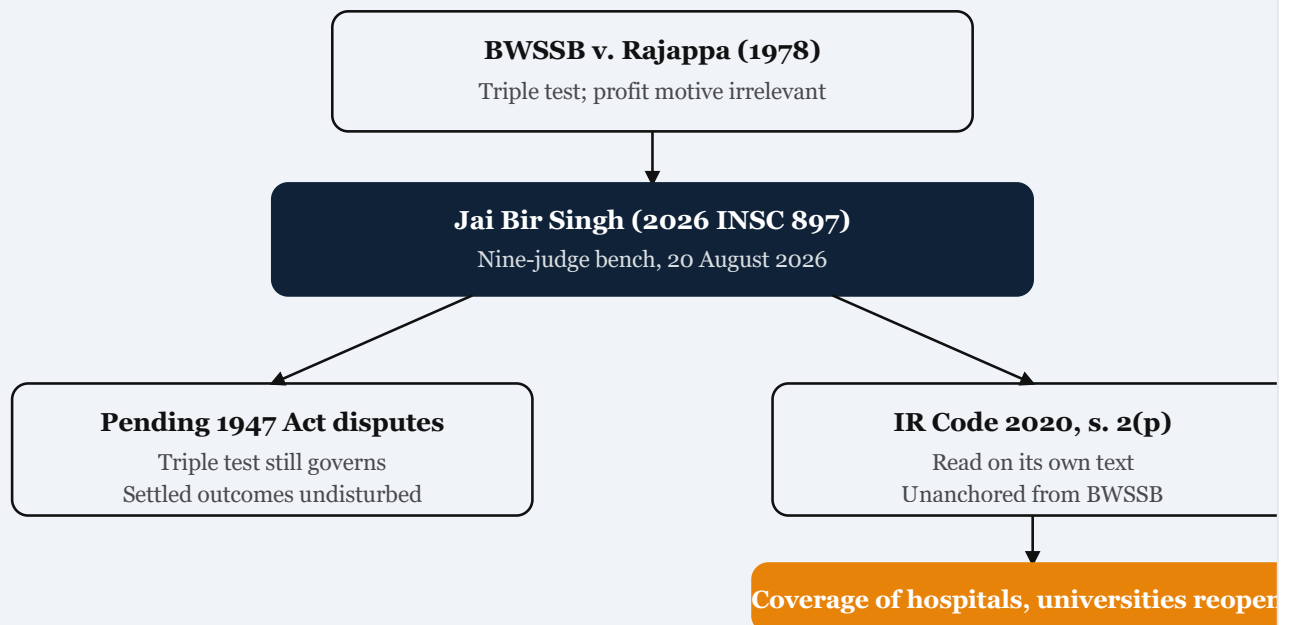
Balanced verdict: The doctrinal holding is defensible; its practical consequence is genuinely destabilising. Both propositions can be true at once. The Court acted within the ordinary limits of interpretation, and the effect is nonetheless that the reach of labour protection under the governing statute is unsettled and will take years of litigation to re-establish. The durable answer is legislative clarity, not a better precedent.

HOW TO THINK ABOUT THIS

When a court declines to carry forward an old interpretation into a new statute, ask three separate questions rather than one. First, what did the court actually hold, as distinct from what commentary says it held. Second, is the reasoning defensible on ordinary interpretive principles, independent of whether the outcome is attractive. Third, who bears the cost of the resulting uncertainty, and for how long.

The three answers frequently point in different directions, and a mature answer says so rather than collapsing them into a single verdict. Here the holding is narrow, the reasoning is sound, and the cost of uncertainty falls on workers in non-commercial establishments for as long as the new [jurisprudence](#) takes to form.

DIAGRAM-IN-WORDS



The judgment splits the law in two. The past keeps its protections; the future is handed a blank definitional slate, and it is the non-commercial public-purpose sector whose coverage now depends on how that slate is filled.

TAKEAWAY BOX

A precedent can be preserved and abandoned in the same judgment: kept alive for the disputes of the past, and quietly detached from the law of the future.

State of Uttar Pradesh v. Jai Bir Singh, 2026 INSC 897, decided 20 August 2026 by a nine-judge bench under CJI Surya Kant; BWSSB v. A. Rajappa (1978) interpreted Section 2(j) of the Industrial Disputes Act, 1947; the new definition is Section 2(p) of the Industrial Relations Code, 2020; the triple test makes profit motive irrelevant.

When a court frees a statute from precedent, is it exercising interpretive discipline or making a policy choice in the language of interpretation?

Connects to past UPSC Mains questions on judicial interpretation of welfare legislation and on the labour codes as an instrument of economic reform.

“The reach of Indian labour law has been determined less by what Parliament wrote than by how courts read the word ‘industry’.” Critically examine in light of the 2026 nine-judge bench decision.

Source: Labour Rights Beyond the Shadow of BWSSB — Ujjayari.com | Free UPSC & State PCS Editorial Analysis

• KEY ARGUMENTS AT A GLANCE

Writing in *The Hindu*, former Supreme Court judge V. Gopala Gowda and Maitreyi Krishnan argue that while the nine-judge Constitution Bench in *State of Uttar Pradesh v. Jai Bir Singh* (2026 INSC 897) preserved the 1978 Bangalore Water Supply triple test for disputes pending under the repealed Industrial Disputes Act, 1947, its holding that “industry” under Section 2(p) of the Industrial Relations Code, 2020 must be construed entirely on its own text and scheme, unanchored from BWSSB, betrays a judicial anxiety about that precedent’s worker-protective legacy and signals a likely narrowing of labour-law coverage.



SUPPORTING

- The majority’s own framing, which speaks of “lifting a burden” and letting the law “move forward unencumbered”, treats a worker-protective precedent as an impediment rather than as a settled principle, and the authors read that vocabulary as revealing the direction of travel.
- The BWSSB triple test deliberately made the profit motive irrelevant, which is what brought hospitals, universities, research institutions, charitable bodies and government departments within the definition of “industry” and therefore within the protection of industrial dispute machinery.
- Because the 2020 Code’s definition is now to be read without the interpretive scaffolding built over five decades, the question of who counts as an industrial worker is effectively reopened for an entire class of establishments whose coverage had long been settled.



COUNTER

The strongest counter-view is that the Court did no more than apply ordinary principles of statutory interpretation: Parliament enacted a new definition in a new Code, and a court is bound to read that text on its own terms rather than transplant the gloss placed on a differently worded provision of a repealed Act. On this reading the decision is interpretive discipline, not a policy preference, and any narrowing of coverage is a legislative choice for which the judiciary is not answerable.



WAY FORWARD

The authors' position implies that the burden now shifts to Parliament and to the executive rule-making process: if the social purpose of the BWSSB test is to survive, coverage must be secured through express statutory language and rules under the Code rather than left to be rebuilt case by case, a process that would leave workers without remedy for years while the jurisprudence re-forms.


MAINS ANSWER FRAMEWORK
QUESTION

The judicial definition of "industry" has determined the reach of Indian labour law for nearly five decades. Examine the significance of the nine-judge bench decision in State of Uttar Pradesh v. Jai Bir Singh (2026) for the coverage of the Industrial Relations Code, 2020. (250 words)

INTRODUCTION

On 20 August 2026, a nine-judge Constitution Bench of the Supreme Court in State of Uttar Pradesh v. Jai Bir Singh (2026 INSC 897) settled a reference that had been pending for over two decades on the correctness of the triple test for "industry" laid down in Bangalore Water Supply and Sewerage Board v. A. Rajappa (1978). The Court preserved the test for pending disputes under the repealed Industrial Disputes Act, 1947, but held that "industry" under the Industrial Relations Code, 2020 must be construed independently.

BODY

The 1978 BWSSB decision interpreted Section 2(j) of the Industrial Disputes Act, 1947 to hold that any establishment carrying on a systematic activity, organised through cooperation between employer and employee, for the production or distribution of goods and services to satisfy human wants, is an "industry" regardless of whether it operates for profit. The deliberate exclusion of the profit motive is what gave the test its reach, bringing hospitals, educational and research institutions, charitable bodies and government departments within the protective machinery of industrial dispute resolution.

The 2026 nine-judge bench, with a plurality opinion by Chief Justice Surya Kant writing for himself and Justices Satish Chandra Sharma, Alok Aradhe and Vipul M. Pancholi, and separate opinions by Justices Nagarathna, Narasimha, Datta and Bagchi, declined to unsettle that position for disputes still pending under the 1947 Act, expressly holding that judgments, settlements and determinations no longer open to challenge shall remain undisturbed. Its operative innovation lies elsewhere: the Court held that "industry" under Section 2(p) of the Industrial Relations Code, 2020 must be construed entirely on its own text and scheme, without being anchored to BWSSB. The authors read this as more than interpretive housekeeping. They argue that the majority's vocabulary of lifting a burden and allowing the law to move forward unencumbered discloses an underlying view of BWSSB as an obstacle, and that severing the new Code from five decades of protective interpretation reopens the coverage question for precisely those establishments the triple test had brought within the law.

CONCLUSION

A complete answer should distinguish the doctrinal holding, which is defensible as ordinary statutory interpretation of a newly enacted definition, from its practical consequence, which is that the reach of labour protection under the new Code is now unsettled. The durable resolution lies with Parliament, since

coverage secured by express statutory language does not depend on how the next bench reads a precedent.

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