CHAPTER-5

JUDICIAL EFFORTS TOWARDS EXTINCTION OF BONDED LABOUR: A CRITICAL STUDY OF POST CONSTITUTIONAL ERA IN INDIA

Constitution has been defined as the basic law of a state which outlines the framework and procedure of Government, defines its power and functions, provides how constitutional changes may be made and in a democracy usually guarantees the citizens certain protections against arbitrary action of the government.\(^{312}\) In other ways, constitution is the collection of principles of fundamental rules which basically embodied for the establishment, constitution and organization of the organs of government, their power and functions, manner in which the stated powers and functions are to be exercised, their inter-relationships the relation between these organs of the government and the people of the country. Government consists of three organs i.e., Legislature, Executive and Judiciary, the three organs of the government are partially separated from each other. The federal constitution provides for divisions of powers between general or Central Government and regional or State Governments. On account of it there may be disputes between the Central Government and the State Governments. Independent judiciary is required to determine such disputes. The judiciary should not be under the control of Central Government or the State Governments because if the judiciary

\(^{312}\) R.W. Brewster, Government in Modern Society, PP. 44 - 45.
will be under the control of Central Government or the State Governments they (Central or State Government) may compel it to divide the dispute in its favour. That is why our founding fathers of the constitution have adopted the concept of independent judiciary in the federal structure of the constitution. Thus, the independent judiciary is necessary to maintain the federal nature of the constitution. Myriad methods are adopted to maintain the independence of judiciary i.e., appointment of judges by the head of the executive or through independent commission, difficult procedure for their removal, no variation in conditions of their services to their disadvantage after their appointment, prohibition of any discussion with respect to the conduct of any judge etc. Thus, these various provisions have been incorporated in the Indian constitution with the object to establish an independent judiciary in India. The independent judiciary had been held in high esteem as one of the strongest pillars that sustains our democracy and ensures compliance with the rule of law as enshrined in our constitution. The judiciary imparts justice to the people and safeguards the rights and liberties of the people. It also acts as a bulwark against the degeneration of society into a rule of tooth and claw. It is the cornerstone of the country's democratic polity. In a welfare state like India the impartial judiciary is above all. Its decisions are binding not only on all citizens but the government. It would not be pertinent if the author fails to acknowledge the role of judiciary in safeguarding, protecting and liberating the interests of the adult bonded and child labour. Specially the apex court of the country, that is Supreme Court and the State High Courts of the different states are making active
participation in protecting and liberating the poor humble and the weakest of the weak viz. adult bonded labourers and child bonded labourers from being exploited in various ways besides it also helped to bring in, social economic reform and equality.

5.1. The courts as a defender or Protector of Bonded Labourers:

In a case honourable Supreme Court opined that the time has come when the legal and judicial system had to be renovated and restructured so that injustice do not occur and disfigure the fair and luminous face of our nascent democracy. This is urgent demand or necessity of introducing a dynamic and comprehensive legal service programme with a motive of achieving justice to common man. Nowadays, it is unfortunate that like in our democratic country the poor are priced out of this judicial system and for that result they are loosing trust and faith in the capacity of our legal system, to bring about changes in their life conditions and to deliver justice to them. The poor labourers in the contact with the legal system has always been out on the wrong side of the line. The poor, disabled, socially and economically depressed class bonded labourers have regarded law as something mysterious and repulsive. The disadvantageous section of the society have considered law is something away from them and not as a very positive and constructive social device for changing the social economic order and improving their life conditions by rendering rights and benefits on them. The consequence is that the legal or judicial system has lost it's credibility for the weaker sections including bonded labourers

of the community. In such a situation the Supreme Court of India has injected the concept of equal justice by creating judicial radicalism and has set, a new constitutionalism at a time when there was lack of concern on the part of state for human values.314

The Indian judicial system specifically courts have protected or safeguarded the bonded labourers in various ways the most important of them are :-

(i) It has removed the obstacle of locus-standi for the path of bonded labourers,

(ii) It has deviated from the old, technical and complicated (stereotyped) procedure to help bonded labourers, and

(iii) It has construed the various Articles of the constitution and the labour welfare statutes in a liberal way to help the bonded labourers.

Our honourable Supreme Court deserves appreciation in this matter for playing an important role to make the right to live with human dignity a living reality for millions of Indians, it also protected them from exploitation through PIL. Even a letter, telegram or newspaper report have been entertained 'as writ' to enable the havenots to make their fundamental right to live with human dignity, reality. Locus-Standi means

a right of appearance in the court of justice. As per the direction of this doctrine only those persons can approach the court whose rights were violated.

The doctrine of Locus-Standi means a right of appearance in the court of law for justice. As per the doctrine of Locus-Standi only those persons can approach the court of law whose rights were violated. From the commencement of the Indian constitution, the Supreme Court had also taken this view that only a person whose fundamental right is violated can approach the court for relief or redressal or in other words he must have a cause of action for the enforcement of his rights enshrined in the constitution. But in 1976 the doctrine of Locus-Standi has been diluted with the introduction of class litigation or 'PIL' popularly known as Public-Interest litigation.

The poor who constitute the major segment of the society had seen the majesty of law but did not feel its justice. Unfortunately, law in the old mould and justice in the court precincts never could see the suppressed and tortured and grossly discriminated man and woman and child soaked in blood, tears and sweat, because they were below the line of judicial vision. As a result the poor socially and economically disadvantageous sections of the society, illiterate, down trodden etc. came to regard law as their enemy rather than a friend.

316. As per Bhagwati J., in Bandhu Mukti Morcha V/s Union of India, AIR 1984, SC 802, at P. 834.
But later on judiciary itself stated consideration differently and radically changed its attitude towards poor, who were or are subjected to inhuman exploitation and scientifically and systematically denied elementary justice for decades. As an eternal fountain of inviolable justice, the Supreme Court of India recently spurred by Public Interest Litigation, also regarded as “Social Action Litigation”, extended its epistolary jurisdiction by justly responding to all letter and providing a remedy to the poor and needy. In our poverty oriented jurisprudence, a new chapter has been added by dethroning the procedural formalities of locus – standi in matters of social action litigations. Judges, after all are children of their time. Therefore, the judges must act as per the needs or demands of the time.

5.2. Origin of Locus-Standi:

Locus Standi is a vintage doctrine. We can trace its origin or genesis in the common law of the laissez faire dominated England. The philosophical thought of laissez faire was developed during the early industrialization period of 19th century was aimed at attacking the absolutism of the state. With the effect of this theory, it left the individual absolutely free and freedom of contract was regarded as inviolable and sacrosanct. In this theory sovereign did not interfere in the freedom of contract of the individuals except in opposed to public policy. It treated

318. Prof. Upendra Baxi prefers to call it 'Social Action Litigation' because Public Interest Litigation has an American flavour and is originated in the United States two or three decades ago, which is totally different from our model. See interview with Bhagwati J., in "The Lawyers Collective", P.8, Aug. 1986.


state as an evil. The concept of welfare state came into the vocabulary of politics in 1945 in the programme of the British Labour Party.\textsuperscript{321} It indicates that the state is a positive state, which can be best suited to promote positive good. With the advent of welfarism farewell to laissez faire many affairs originally regarded as belonging entirely to the individual dominion and once though as inappropriate for state action became matters of public concern and intervention.\textsuperscript{322} Among from this 19th century concept of litigation laissez faire has to be abandoned in the interests of the society. The rudiments of public interest litigation (Social action litigation) can be traced to Roman law under which it was open to any person to bring what was called an action popularise in respect of public deliet or to sue for a prohibitory or restitutory interdict for the protection of race, sacrae and res publicae.\textsuperscript{323} In England there was from the very early days the device of relator action.\textsuperscript{324} The basis of this principle lies in the interest of crown as parents in upholding the law for the sake of the general public. It is the motive of the crown that the public authorities discharge their functions properly and do not abuse or misuse their powers. The Attorney-General is entrusted or lashed with such function of enforcing due observance of law. The Attorney-General in his capacity as guardian of the public interest can act suo-motu to restrain a public authority from exceeding its powers.\textsuperscript{325}

\textsuperscript{321} It may be said that Lord Beveridge Report gave birth to the Welfare State, See P. 8, Gajendramohan, Law, Liberty and Social Justice, P. 62, 1965 Ed.
\textsuperscript{323} De Smith, S. A., judicial Review of Administrative Action, P. 410, 1980 Ed.
\textsuperscript{324} (A relator Action is an action brought by the Attorney-General at the relation (i.e., at the instances) of some other persons claiming and injunction or declaration or both in order to prevent some breach of law. See H.W.R., Wade, Administrative Law, PP. 530-31, 5th Ed.)
\textsuperscript{325} Supra Note- 12 at P. 411.
In United States of America the administrative agencies were considered to represent the public interest.\textsuperscript{326} The proceedings of the agency what they call, class action were to be the forms for indicating public interest.

Lord Denning of England was the main exponent for liberalizing the rules of locus-standi. He had delivered dynamic judgments in Mac Whirter\textsuperscript{327} and in three \textit{Black Burn Cases},\textsuperscript{328} it was clearly established that any member of the public having sufficient interest, can maintain an action for enforcing a public duty against a statutory or public authority. He stated that it was a matter of high constitutional principle that the court should assist to stop a Government department or Public authority transgressing the law. In Mc Whirter,\textsuperscript{329} the relator's complaint was that the Independent Broadcasting Authority were about to allow the transmission of an indecent television programme contrary to their statutory duty. Mc Whirter sought an injunction against Broadcasting Authority saying that the showing of that indecent films offends against good taste and decency and is likely to be offensive to public feeling.\textsuperscript{330} Lord Denning affirmatively said that the though Attorney General declined to consent to a relator action. Mc Whirter as a public spirited citizens "has sufficient interest to bring the action since he had a television set for which he had paid a license fee as his susceptibility would be

\begin{footnotes}
\item 326. Supra Note-9 al P. 524.
\item 327. A.G.V. Enrel, Mc Whirter V/s independent Broadcasting Authority (1973), 1 All. E.R., P. 184.
\item 329. 1973 (1) All. E.R., P. 689.
\item 330. Ibid, at P. 692.
\end{footnotes}
offended like that of many other watching television if the film was shown in breach of statutory requirements.\textsuperscript{331}

In this case, it can be noticed that the statutory duty which was sought to be enforced against Broadcasting Authority was one which the Broadcasting Authority owed to the general public and not by any specific individual or class or group of individuals. It has been submitted that it would be unwise to consider that the duty is owed only to the group but not to the individual because the former is the sum total of the latter.

Lord Denning has been followed \textit{Mc Whirter Case} in R.V. Greater London Council. Exparte Blackburn,\textsuperscript{332} to accord standing to Blackburn to maintain an action for an order of prohibition for preventing the Greater London council from allowing contrary to law, the exhibition of pornographic films. Here the applicant's wife (co-applicant) was a rate payer and they had children who might have been harmed by indecent films. The court had held that interest by the applicant is not decisive. However, the court suspended the issue of the prohibition by giving time to the council to mend their ways.

Lord Denning emphasized that Blackburn had no sufficient interest no other citizen and in that event one would be able to bring an action for enforcing the law and transgression of law would continue to be unabated. It has been observed by Lord Denning that if there is a good ground for supposing that a Government department public authority is transgressing

\textsuperscript{331} Ibid, at P. 696.
\textsuperscript{332} 1976 (3) All. E.R., P. 184.
the law or is about to transgress it, in a way which offends or injures thousands of his majesty's subjects than any one of those offended or injured can draw it to the attention of the courts Law and seek to have the law enforced and the courts in their discretion can grant, what even remedy is appropriate.\textsuperscript{333} Lord Denning was eager to add more and he further added "The court would not listen of course, to a mere busy body who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done".\textsuperscript{334} The exact or as it is tendency was illustrated by the courts willingness to grant certiorari to a trade union acting on behalf of one of its members.\textsuperscript{335} However, the house of Lords in Gouriet V/s Union of Post Office Workers,\textsuperscript{336} had held that a member of the public lack standing unless he shows some special injury or the invasion of a legal right. In the words of Lord Wilber force, "it can be properly said to be fundamental principle of English Law that the private rights can be asserted by individuals but that public rights can only be asserted by the Attorney General as representing the public." With this decision the public law took clearly to the traditional private law strait jacket of standing being limited to invasion legal right or specific injury. However, it was rectified by order 53, Rule 3(9) of Supreme Court Act of 1981 (England) which provides : "The court shall not grant leave unless it considers that the applicant has sufficient interest in the matter in which the application relates. The law as stands

\textsuperscript{334.} R.V. Paddington Valuation Officer Exparte Pearchey Property Corporation Ltd. (1966) 1 Q.R.P. 380 al P. 40.
\textsuperscript{335.} Minister of Social Security V/s Amal Granted engineering Union (1967) A.C. 725.
\textsuperscript{336.} (1978) A.C. 435, where a member of the public, whom the Attorney-General had refused to assist, failed in a claim for a declaration that the calling of a strike by Post Office workers would be a Criminal Offence as provided in the Post Office Act 1953.
today is that under order-23 a rate payer will now have standing to challenge legality of his legal authority's actions without needing to enlist the aid of Attorney-General provided only that he can show a good cause.337

In the writ jurisdiction, an exception is made in case of a petition for habeas corpus where a relative or friend can file a petition on his behalf.338 Same is held in case of quowarranto.339 Under Article 226 of our constitution a petitioner could attack an administrative action where he was prejudicially affected by act or omission even though he had no proprietary or even fiduciary interest in the subject matter thereof.340 Thus, in *N. V. Subba Rao V/s Government of Andhra Pradesh* 341 the petitioner could challenge the opening of a bone factory on the ground, that it prejudiced the interest of residents of the locality. There are certain illustrations wherein the tax payer of a local authority is given a standing to challenge the illegal action of the local authority. In *Varadarajan V/s Salem Municipality* 342 the municipality by an illegal resolution permitted the erection of a statue in violation of the Municipal Act and undertook to maintain it from municipal fund it was held that a tax payer had a locus standi to file, a writ petition for quashing such resolution.

339. The object of this writ is to prevent a person who has wrongfully usurped an office from continuing is that public office. University of Mysore V/s Govinda Rao, AIR 1965, S.C. 491.
341. AIR. 1968, A.P.P., 98.
5.3. **How the Locus-Standi Gradually Imbedded in the Administration of Justice System in India?**

During 1970\textsuperscript{th} the guaranteed equality and liberty rights were denied in many matters at the socio atmosphere of the hungry masses, and in that pressure judiciary itself decided to opt an easy and simple procedure free from technicalities. To take a figurative expression of Justice Krishna Iyer, "....the hungry people for human justice will overpower the carping critics and compel the development of well-conceived legal techniques and relief oriented judicial measures free from the shackles of civil and criminal procedure codes, the rigid Evidence Act and the medieval sound proof court system".\textsuperscript{343} The result is substantive and procedural laws were streamlined and simplified charged with new technology and viable probative rules.

Nowadays, state with the positive state can be best suited to promote positive good. The state with this positive motive assumes the manifold activities. Part-IV of the constitution empowers the state to interfere in all spheres of life i.e., freedom, indigency, ignorance and discrimination as well as right to healthy environment to social security and to protection from financial commercial or even Government oppression.\textsuperscript{344} The greater conformant of these social, economic rights and imposition of public duties on the state and the other authorities for taking positive action results in the situations in which single human action may be beneficial or prejudicial to a larger number of people making the

\textsuperscript{343} V.R. Krishna Iyer, Judicial Justice (A New Focus Towards Social Justice), P. 23, 1985 Ed.
\textsuperscript{344} S.P. Gupta and others V/s Unions of India, AIR 1982, S.C. 149 at P. 191.
traditional scheme of litigation as a mere two-party affair entirely inadequate for e.g. the discharge of affluent in a lake or river or omission of obnoxious or defective unhealthy packaging of consumer goods etc, many all result injury public at large wherein it would not be possible to say that any specific legal injury is caused to an individual or to a determinate class of individuals. 345 It is a case of public injury and of the characteristic of public injury is that, the act or acts complained cannot necessarily be shown to affect the rights of determinate or identifiable class or group of persons. Public injury is an injury to an indeterminate class of persons. 346 In such cases the duty is one which is not correlative to any individual rights. Now if the breach of public duty were allowed to go unredressed because there is no one who has received a specific legal injury or who is entitled to participate in the proceedings pertaining to the decision relating to promote such duty the failure to perform such public duty would disrespect to Rule of Law. 347

Article 32 & 226 have become the sentinel of the citizens fundamental and legal rights. These two provisions of the constitution confer a good deal of discretion on the courts. There are clear indicatives in recent judicial pronouncements that courts arc taking a very relaxed view of locus-standi so much so that there are now definite signs that the concept of "Public Interest Litigations" is in the process of evolution. 348

345. Ibid.
346. Ibid.
347. Ibid.
In *Maharaj Singh V/s State of Uttar Pradesh*, the Supreme Court observed that "where a wrong against community interest is done, 'no locus-standi' will not always be a plea to non-suit a interested public body chasing the wrong doer in the court. Locus-standi has a larger ambit in current legal semantics than the accepted, individualistic jurisprudence of old".

By liberalization of procedural formalities relating to locus-standi, the Supreme Court of India is giving an opportunity to social action groups to awaken the court on behalf of the poor. The court has been realized that where there is the denial of the constitutional or legal rights of the poor who on account of their poverty or disability or socially or economically disadvantaged position are not able to approach the court for indicating their rights, any member of the public or social action groups acting on behalf of the poor can approach the court and this need not be done by filing a regular writ petition through a lawyer but it would be enough by addressing a letter to the court. In this way the court plays an important role in moulding the relief in an unconventional manner.

The constitution with its detailed provisions conferred the task of interpreting and sustaining the rule of law on an independent judiciary, especially the Supreme Court. This is a perpetual task. The interpretation of the constitution is never final because society like itself is in constant

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flux. The constitution is a living document and has to be interpreted according to the changing needs of the time.

The democratic institutions should work consistent within community values. The courts should strive to make judgments upholding the community values in conformity with the constitutional provisions so that the public will not lose confidence in the judicial system. Western Australia's Chief Justice David Malcolm said "The judiciary must keep a weather eye on community values to retain the relevances on the decisions to that community". The Supreme Court in the country has become a shield to protect and enhance people's rights as well as to encourage a human right culture. For the protection of fundamental rights and in pursuance of the directive principles the constitution itself has vested the judiciary of India with wide powers to declare and strike down such law, which contravene the fundamental rights and directive principles as unconstitutional. The Indian judiciary enjoys a unique position under the constitution. It is an independent organ of the Government having the power of judicial review of both legislative and executive acts. In India the judiciary has been making endeavour and embarking on innovative methods to make the constitutional guarantee of social-economic rights meaningful for the common man keeping in mind the socio-economic philosophy of a true welfare state which is enshrined in the constitution. Perhaps, the greatest contribution of the judiciary of the India is to bring in a harmonious fusion between the fundamental right on one hand and the directive principles on the other. In Kasvananda Bharati V/s State of
Kerala, the Supreme Court observed that "in building up a just social order it is sometimes imperative that the fundamental rights should be subordinated to directive principles", (SCC P. 879 Para 1707). In State of Kerala V/s N.M. Thomas, the court held that both fundamental rights and directive principles were complementary, "neither part being superior to the other".

Earlier directive principles were considered as pious wishes but in the course of time, these directive principles assumed deeper dimensions and greater significance as is evident from the various decisions of the Supreme court. Fundamental rights and directive principles are complementary and supplementary to each other and there is no conflict between them. Merely because directive principles are non-enforceable in the court of law their status is not inferior. If the "State" enacts any law contrary to the directive principles the court can declare such action of executive or legislature as unconstitutional being violative of directive principles for a simple reason that no law or executive action can be contrary to the constitution. In the recent years, active judiciary dealing with the public interest litigations has provided impetus to the importance of directive principles legislations dealing with agrarian reforms aiming at socio-economic justice in India. Adequate means of livelihood ensuring minimum wage, protection of bonded labour from exploitation, their rehabilitation equal pay for equal work and right to human conditions of work have drawn the special attention of the judiciary. Interpreting

351. (1973) 4 SCC 225.
Article 21 of the constitution in the case of *Unni Krishnan*,[^353] right to education is elevated to the status of fundamental right. This leads to realization of the hope contained in Article 45 of the constitution ensuring socio-economic justice to children. Having regard to the judgment of the Supreme court in *Indira Sawhney*,[^354] identification of socially and economically backward classes is to be done by excluding the "Creamy Lawyer" among them. The constitution (Forty Second Amendment) Act of 1976 added provisions regarding environmental protection in the chapters dealing with directive principles and fundamental duties. The judiciary has treated right to live in healthy environment as implicit in the fundamental right to life.

Public Interest Litigation (PIL) as developed in recent years, marked a significant deviation from traditional or normal judicial proceedings. At the time the country got freedom to the procedure followed in courts was drawn from the Anglo-Saxon system of jurisprudence. But for this development many of the guaranteed fundamental rights and the assurances embodied in directive principles would not have been meaningful or effective to the large majority of illiterate, socially and economically disadvantageous bonded labour and indigent citizens under the adversarial proceedings. Several distressing factors and suffering of the people led to the development of PIL. In the beginning the approach of the Supreme court in interpreting the provisions was merely as determining

the lis coming before it in accordance with the procedural rules, as is
evident from the following passage :-

"In India the position of the judiciary is somewhere in between the
courts in England and the United States. But our constitution unlike the
American Constitution, does not recognize the, absolute supremacy of the
court over the legislative authority in all respects for outside the restricted
field of constitutional limitation. Our Parliament and the State legislatures
are supreme in their respective legislative fields and in that wider field
there is no scope for the court in India to play the role of the Supreme
court of the United States."\textsuperscript{355}

After 17 years thereafter, there was change in the perception when
Golak Nath Case\textsuperscript{356} was decided by the Supreme court. In the said case the
Supreme court held that the fundamental rights could not be derogated
from even by an amendment to the constitution. Six years later in
Kesavananda Bharati case the Supreme court evoked a unique and for
reaching doctrine probably the first of its kind in the world under which
Parliament cannot amend the constitution by violating or altering its
"basic structure". The power of judicial review is identified as part of such
basic structure. It means the legislature cannot deprive power of judicial
review even by a constitutional amendment. Earlier the court took a
restricted view in interpreting Act 21 of the constitution looking to its
wording that taking away a person's liberty could not be challenged on the

\textsuperscript{356} Golak Nath V/s State of Punjab (1967) 2 SCR 762.
ground of violation of fundamental rights so long as there was some statute made by the legislature provided for it. In a significant judgment the Supreme court in *Maneka Gandhi v/s Union of India* 357 held the doctrine of substantive due process has been integral to the fundamental rights flowing from Articles 14, 19 & 21 of the constitution. At several stages rights and liberties of citizens, including common man are protected. In PIL, the parties and their lawyers are expected to participate in resolving the public problems unlike in adversarial litigations. In this jurisdiction courts have made significant pronouncements relating to very wide range of matters such as prisons and prisoners, the police, the children, child labour, bonded labour, urban space environment, consumer issues, education, politics and elections, public acceptability human rights, etc. In *Hussainare Khatoon V/s Home Secretary State of Bihar*, 358 when the attention of the court was drawn to the grave and pathetic situation of under trials in Bihar detained pending trial for a period more than the period for which they could be sentenced for the offences charged with the Supreme court not only proceeded to make the right to speedy trial but also directed by general order for release of all the under trials who were already detained beyond such maximum period. In another landmark judgment in *D.K. Basu V/s State of West Bengal*, 359 acting on the letter by the chairman of the Legal Aid Services. West Bengal relating to repealed instances of custodial deaths in West Bengal the procedure to he followed on the arrest of a person observing thus: (SCC P.433, Para 28).

357. (1978) 1 SCC 248.
"Police are no doubt under a legal duty and have legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit to use of third degree methods of torture of accused in custody during interrogation and investigation with a view to solve the crime. End can not justify the means... No society can permit it" The victims of crime also received alternation of the court in Delhi Domestic Working Women's Forum V/s Union of India 360 and recognizing the trauma of the rape victims, indicated the norms for providing legal assistance to such victims at various stages. In that case concerned, with the rape of innocent tribal girls by army jawans in a moving train, the supreme court ordered an ex gratia payment of Rs.10,000 to each of the victims. By and large people have acknowledged significant and far-reaching judgments in cases like the Bhagalpur Blindings, Bihar under trials case and the mentally ill in jail. In these cases while giving relief to disparately needed there has been exposure to executive failings. PIL also has helped in the development of legal principles such as the "Polluter-pays" principle, the "Precautionary" principle and the principle of "award of compensation for constitutional wrong". Thus, the judiciary is playing a useful and significant role in safeguarding the interests of lives and liberties of the people, particularly the common man consistent with the scheme and aim of the constitution. Lord Templeman a Lord of Appeal in the House of Lords has expressed thus: "The supreme court has proved to be a steady and consistent upholder of the intentions of the constituent Assembly expressing the
ideals and beliefs of Jawaharlal Nehru and the other founders of independent India. The court has been tireless in upholding fundamental rights which are the hallmark of a civilized society and in interpreting and enforcing those provisions of the constitution which preserve a democratic society. In 1947, India was torn apart and now the Republic of India is faced with the enmity of Pakistan the malice of China and the hostility of other communities where democracy and the rule of law had no place. Federations throughout the work have been or are being broken up by groups and Individuals preaching violence and exploiting ignorance in India with the burden of an expanding population has inherited problems of poverty and illiteracy. The work of the government of India for the improvement of economic and social standards and for the preservation of a democratic society deserves recognition and support by other democratic countries. The work of the supreme court of India in protecting the people of India from oppression, and in upholding the, rule of law demands respect and admiration”.

Right to live is not confined to merely right to exist but it includes right to live with dignity and grace. Several rights included in the directive principles being non-justiciable in the beginning consequent upon interpretation of Article-21 have been elevated to the facets of right to life. Right to a healthy environment, right to speedy trial and free legal aid, right to free education up to 14 years of age, right to privacy, right to live with human dignity and many more have been declared as fundamental rights by purposeful and meaningful interpretation of Article 21 of the constitution by the Supreme Court and the High Courts.
The liberal approach and expanded scope in relation to public interest litigation (PIL) cases has enabled the public spirited activities and NGO's to take up the causes of under privileged and also of the common public. This is clear from the cases ranging from bonded labour to environmental pollution. Having regard to the misuse or abuse of these organizations for considerations other than public interest, the courts matters appropriately in exercise of discretion in giving necessary directions. Many a times issues are raised in the name of the PIL to embarrass political opponent or to terrorize rival business houses or to earn media attention. In other words the public interest litigation should not be encouraged where one seeks to serve a political interest or personal interest or publicity. The Supreme Court in Janata Dal V/s H.S. Chowdhury\(^{361}\) observed this.

"The busybodies meddlesome interlopers wayfarers or officious intervenas having absolutely no public interest except for personal gain or private profit whether for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the courts by filing vexatious and frivolous petitions and this criminally waste the valuable time of the courts..."

As long as the legislature and the executive fail to perform or act arbitrarily or unreasonably towards the millions of needy people, PIL would be a legitimate source of the common man in securing justice. The

\(^{361}\) (1992) 4 SCC 305.
mere existence of a piece of beneficial legislation is of no use to the society unless the law is interpreted and enforced meaningfully so that its benefit reaches the right quarters in time.

The constitution of India is acknowledged as one of the best constitutions of the world as the great men and women of this country with patriotism, selfless service, sacrifice and concern for the people of this country are behind the making of it. The Indian constitution is dynamic with the provision available for amendment to meet the changes, challenges and needs of the society from time to time of course, the basic structure of the constitution cannot be amended. A good constitution in a democratic set-up is important but much more important is the system contemplates and the manner in which the system works, further, realizing the hopes and aspirations of the people as embodied in the constitution largely and effectively depends upon the people in charge of governance which in turn depends on the character, the ability, the vision, the commitment and the concern of the people who occupy various positions in governance of the country including the constitutional functionaries.

The doctrine of Locus-standi was diluted in judge's case that is *S.P. Gupta V/s Union of India*. In this case, court specifically opined a new view that where a person or class of persons to whom legal injury is caused by reason of violation of fundamental rights is unable to approach the court for judicial redress on account of poverty or disability or socially or

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economically disadvantaged position any member or public spirited person acting bonafide can move the court for relief under Article 32 (Supreme Court) & 226 (High Court). Later on honourable Supreme Court again deviated from the doctrine of locus-standi in People's Union for Democratic Rights V/s Union of India 363 with bonafide motive to bring justice within the reach of poor masses and held that :-

"If the sugar barons and alcohol kings have the fundamental right to carry on their business and to further their purses by exploiting the consuming public, have the chamars belonging top the lowest strata of society no fundamental right to earn and honest living through their sweat and toil?"

"Courts are not meant only for reach and well to do, for the landlords and the gentry for the business magnate and the industrial tycoon, but they exist also for poor and downtrodden, the have nots and handicapped and the half hungry millions of our countrymen".

The apex court of our country has more frequently violated the doctrine of locus standi in cases relating to Bonded Labourers. The few of them are Bandhu Mukti Morcha case,364 Neeraja Choudhury Case,365 Labourers working on Salal Hydroproject V/s State of Jammu and Kashmir,366 Mukesh Advani Case,367 P.Sivaswamy V/s State of Andhra

363. AIR 1982 SC 1473.
364. AIR 1984 SC 802
365. AIR 1984 SC 802
Pradesh and the M.C. Mehta V/s State of Tamil Nadu and so on till date. In all these above stated cases a letter written by a social action groups or a public spirited person has been treated as a writ petition, to ensure the sense of security to the deprived and vulnerable sections of the community, who are regarded as bonded labourers. In Bandhu Mukti Morcha case, Justice Pathak showed certain reservations regarding the violation of locus-standi. In Bandhu Mukti Morcha V/s Union of India, where Supreme Court has held that concept of public interest litigation has not adequately developed and the practice of accepting letters as writ petition has not also been clearly established; in writ petitions the practice of appointing commissioners of investigating agencies has not been precedent, concept of locus-standi has not been wiped away. As per the opinion of the justice Pathak communication must be addressed to entire court and not a particular judge. But this reservation has been brushed aside by Chief Justice Bhagwati in M.C. Mehta V/s Union of India. In this case honourable Supreme Court with reasoning stated that then letters are ordinarily written by poor and disadvantaged persons or by social action groups who may not be knowing the proper form to address or they may know only a particular or individual judge who come from their state and that they may therefore address letter to him. Therefore, it has established that even a letter addressed to an individual judge of the court,

368. AIR 1988 SC 1863.
372. Id. at PP. 406-7.
it will be suffice, provided it is written or by on behalf of a women or child or a deprived person or class of persons.\textsuperscript{373}

Our founding fathers have framed Article 32 in such a way that the doctrine of locus standi can be avoided even under the letters of Article 32. Article 32(1) provides: "The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed". And Article 32(2) provides "The Supreme Court shall have power to issue directions or orders or writs including in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may he appropriate, for the enforcement of any of the rights conferred by this part". Indian constitution by clause (1) of Article 32 confers rights. The clause (1) of Article 32 does not say as to who shall have this right nor does it say by what proceedings the Supreme Court may be so moved. Therefore, the plain language of Article 32 (1) is that whenever there is a violation of a fundamental right anyone can move the Supreme Court for the enforcement of such fundamental right. It is also enshrined in the Article that Supreme Court can be moved for enforcement of Fundamental right by any appropriate proceedings. Where is no limitation in regard to the kind of proceeding envisaged in clause (1) of Article 32 except that the proceeding must be appropriate and this requirement of appropriateness must be judged in the light of a purpose of which the proceeding is to be taken namely enforcement of fundamental rights.\textsuperscript{374} The framers of the constitution deliberately did not emphasized on any

\textsuperscript{373} Id. at 407.
\textsuperscript{374} Bandhu Mukti Morcha Case (1984) 3 SCC at 186.
'particular form of proceedings for the enforcement for the fundamental
right nor did they stipulated the such proceeding should confirm to any
rigid pattern or strait jacket formula because they knew that in a country
like India where there is much poverty, ignorance illiteracy, deprivation
and exploitation any insistence on a rigid formula of proceeding of
enforcement of fundamental right would become self-defeating because it
would place enforcement of fundamental right beyond the reach of
common man and the entire remedy would become a mere rope of sand.375
Where there is a case for the enforcement of fundamental right of bonded,
poor and weak is in question even in letter or post card written bonafide
by a member of public should be taken as appropriate proceeding.376

Now the question arises as to what is the power which may he
exercised by the honourable apex court of our country when it is moved
by an appropriate proceeding for the enforcement of fundamental right.
The founding fathers of the constitution made or incorporated only one
provision in this behalf is to be found in clause (2) of Article 32, which
confers powers on the Supreme Court, to issue directions or orders or writs
in the nature of habeas corpus, mandamus, prohibition, quowarranto and
certiorari which even may be appropriate for the socio-economic to the
persons. The word "in the nature of" makes the Article very wide. It is not
only the high prerogative writs of mandamus, habeas corpus, prohibition,
quowarranto and certiorari which can be issued by the Supreme Court.
These writs in the nature of high prerogative and therefore even of the

375. Id at 187.
376. Ibid.
conditions for issue of any these high prerogative writs are not fulfilled. The apex court of the country would not be constrained to folds its hand in despair and plead its inability to help the poor, disabled but would have power to issue any direction.\textsuperscript{377} Clause (2) of Article 32 confers power on the Supreme Court to enforce the fundamental rights in the widest possible range and terms and it also shows the anxiety of the constitution makers not to allow any procedural technicality to stand in the way of enforcement of fundamental rights. In \textit{Bandhu Mukti Morcha} case, Justice P.N. Bhagwati remarked "The adversarial procedure with evidence led by either party and tasted by cross examination by the other party and the judge playing a passive role has become a pan of other legal system because it is embodied in the code of civil procedure and Indian Evidence Act. But these statutes obviously have no application where new jurisdiction is created in Supreme Court for enforcement of fundamental rights".\textsuperscript{378}

The strict adherence to adversarial procedure can lead to injustice where one of the parties to litigation belongs to poor and deprived section of the community. Therefore, when the poor and the bonded come before the court of law it is necessary to depart from adversarial procedure and to evolve a new procedure which will make it possible for the poor and the weak to bring the necessary material before the court for the purpose of securing enforcement of fundamental rights.\textsuperscript{379}

\textsuperscript{377} Id. at 188.
\textsuperscript{378} Id. at 189.
\textsuperscript{379} Ibid.
The apex court i.e., Supreme Court has deviated absolutely from the provisions of code of civil procedure, Indian Evidence Act and Supreme Court Rules for the enforcement of fundamental rights of bonded labourers. The illustration can be realized in Bandhu Mukti Morcha case,\(^{380}\) where Supreme Court appointed two social workers\(^{381}\) as commissioners to visit the stone quarries of Faridabad District where bonded labourers were working who reported 250 bonded labourers. On the basis of the commissioner's report, the honourable Supreme Court directed the State Government release and rehabilitate the bonded labourers. The two social workers appointment as commissioner was challenged by Additional Solicitor-General of the State Government as violative of order XXVI of Code of Civil Procedure and order XLVI of the Supreme Court Rules, 1996 contending that a commission can he appointed by the Supreme Court only for the purpose of examining witnesses, making legal investigation and examination of accounts and the Supreme Court has no power to appoint a commission for making an enquiry or investigation into facts relating to a complaint of violation of fundamental rights under Article 32.

The honourable Supreme Court rejected this argument on two grounds firstly the poor and the disadvantaged can not possible produce relevant material before the court in support of their case an equally where an action is brought on third behalf by a citizen acting pro bono publico. It would be almost impossible for him together the relevant materrial and place it before the court. Therefore, in case of persons of weaker sections

\(^{380}\) Ibid.
\(^{381}\) M/S Ashok Srivastava and Ashok Panda.
of society the report of such commissioners can be relied. "The order XXVI of the code of Civil Procedures not exhaustive and does not detract from the inherent power of the Supreme court to appoint a commission. If commission's appointment is found necessary for the purpose of securing enforcement of fundamental right in exercise of its constitutional jurisdiction under Act 32. The Secondly order XLVI the Supreme Court Rules 1996 cannot in any way militate against the power of Supreme Court under Article 32 and in fact Rule 6 of order XLVII of the Supreme Court Rules, 1996 confers that nothing in those rules shall be deemed to limit or otherwise affect the inherent power of the court to make such order as may be necessary for the end of justice in the peripheral of welfare state.

In M.C. Mehta V/s of Union of India honourable Supreme Court again reiterated it's power under Article 32 together relevant material by appointing such type of commission under social action litigation. In this case court said:

".......this court under Article 32(1) is free to devise any procedure appropriate for the particular purpose, of the proceeding namely, enforcement of a fundamental rights and under Article 32(2) the court has the implicit power to issue whenever direction, order or writ is necessary in a given case, including all incidental or ancillary power necessary to secure enforcement of the fundamental rights" The Supreme Court did

384. Id at 407 - 08.
another commendable initiative for the protection of bonded labourer in
the interpretation of Section 2(g) of Bonded Labour System (Abolition)
Act, 1976 and Article 21 & 23 of the Indian constitution. The definitions
which are given in the Act of Bonded Labour System appears to be a
narrow definition limited only to a situation where a debtor is forced to
provide labour to a creditor in consideration of an advance. Generally the
implementing agencies or authorities use this definition in releasing
bonded labourers. Even the state of Haryana tried to quibble with this
definition in Bandhu Mukti Morcha case by arguing that these labourers
may be providing forced labour but they are not bonded labourers within
the meaning of Bonded Labour System (Abolition) Act, 1976. State of
Haryana also contended that it could not be compelled to rehabilitate
them. Supreme Court tried to set the knot by defining the bonded labour
system to include all those cases under it's definition, where payment of
less than minimum wages are made.385

The Supreme Court of India in Maneka Gandhi Case and Francis
Coralie Mullin's case republished the liberal concept of Article 21 and held
that Article 21 includes protection of health and strength of workers, men
and women and of the tender age of children against abuse. It also
included under Article 21, the opportunities and facilities for children to
develop in a healthy manner and in conditions freedom and dignity
educational facilities just and human condition of work and maternity
relief.386

386. Id. At 228-29.
In various cases, honourable Supreme Court analyzed Article 23 relating to bonded labourers. In Asiad case\textsuperscript{387} and in \textit{Sanjit Roy V/ State of Rajasthan}\textsuperscript{388} the court interpreted the expression "other similar form of forced bonded labour", in Article 23 in its widest amplitude, covering every form of forced labour and made no difference, where there the person forced to give his labour or service to another is remunerated or not and held that if a person provides labour or service to the state or any other person in the payment of less than the minimum wages, he shall be said to provide forced labour and such a person would be entitled to come to the court for the enforcement of his fundamental right under Article 23.\textsuperscript{389} Supreme Court applied Article 23 specifically for bonded labourers and said that the system of bonded labour has been prohibited under Article 23 and the Bonded Labour System (Abolition) Act, 1976, has been passed to give effect to the Article 23.

With proud feelings it can be said that Supreme Court has done a great service not only to bonded labourers but also to the entire poor community, depressed and oppressed sections of the society under Article 32. The court is pained by the cause of bonded labourers and for their upliftment specially. The success which social action groups obtain is only due to law activists judges of the court.\textsuperscript{390}

\begin{itemize}
\item \textsuperscript{387} AIR 1982 S.C 1473 (42) 1983 S.C.C 525.
\item \textsuperscript{388} Singh S.K. Bonded Labour and the Law (Deep and Deep Publication New Delhi 1994) P. 229.
\item \textsuperscript{389} Ibid.
\item \textsuperscript{390} Id. at 229 – 30.
\end{itemize
5.4. Bonded Labour and Public Interest Litigation:

Article 23 of the constitution strikes the practice of bonded labour and forced labour in all its forms as it is violative of human dignity and basic human values.\(^{391}\) Equally important is the fact that the state in the discharge of its constitutional obligation towards the citizens creates conditions where one person is not exploited by other because of physical, legal or economic disability. It must also be emphasized that the constitution of India has been made for the common people and therefore, it should generally be construed in a manner which echoes common man's voice. The interpreting task of the constitution has been assigned to the judiciary and therefore its interpretation must have in a creative context which do not defeat the hopes and aspirations of our teeming millions half clad half-starved and half educated. The judiciary developed the technique of public interest litigation\(^{392}\) as a potent weapon for protecting the rights of those who have been held in bondage for years together. The main question who has arisen for determination in this context is: How the judiciary has applied this technique of public interest litigation in the cases of release of bonded labour, their rehabilitation and observance of the provisions of minimum wage legislation? What precise contribution by the judiciary has made in this regard?

It is an admitted fact that the system of bonded labour which is a relic of a feudal hierarchical society is based on exploitation of the poor

\(^{391}\) See People's Unions for Democratic Rights V/s Union of India AIR 1982 SC 1473 at 1476 - 77.

\(^{392}\) For conceptual growth and development of PIL in India See Prof. Upendra Baxi, "Taking Suffering Seriously" "Social Action Litigation in the Supreme Court of India", Delhi Law review (1976 - 89) at 5.
and deprived people belonging to the lower rungs of the social ladder. With new hopes the emergence of the Public Interest Litigation in India the courts have become the courts for poor, struggling masses and deprived people. It is through new form of litigation that the poor and down trodden have been able to seek justice from the courts. In India this new strategic form of litigation has extended its helping hand to ameliorate the condition of bonded labourers also. Some cases of bonded labours have come before the court, only through public interest litigation. Amongst the notable pronouncement People's Union for Democratic Right V/s Union of India, popularly known as Asiad Project case the Supreme Court treated a letter written by a social action group as writ petition. The letter was based on a report made by a team of three social scientists who were commissioned for the purpose of investigating and inquiring into the conditions under which the workman engaged in various Asiad projects were working. The letter alleged the violation of various labour laws in respect of workmen engaged in the above stated projects. The authorities entrusted with the task of executing the projects engaged contractors for the purpose who in turn engaged workers through Jamadars who carrying out the assigned work. The Jamadars engaged the workers who were entitled to an approved minimum wage of Rs.9.25 per day. It was alleged that the wages were paid to the workers though Jamadars who deducted Rs.1/- per day per worker as their commission and paid only Rs.8.25 by way of wage to the worker. It was also alleged that the provisions of the

394. AIR 1982 SC 1473, Also see Sanjit Roy V/s State of Rajasthan AIR 1983 SC 323.
employment of Children Act, 1933 were also violated because children below the age of 14 were employed by the contractor in the construction work of the various projects. The petitioners also complained that workers were denied proper living conditions and medical and other facilities to which they entitled under the provisions of contract labour (Regulation and Abolition) Act, 1970. The other laws where violation was alleged included Minimum Wages Act, 1948. Equal remuneration Act, 1976. Article 24 of the constitution, the employment of children Act, 1938 and Inter State Migrant workmen (Regulation of Employment and Condition of Service) Act, 1979. In reply the respondent denied, violation of the provisions of the laws except to the extent that the workers did not get the minimum wages of Rs.9.25 per day.

One of the preliminary objection which was raised by the respondent was that the petitioner had no locus-standi to maintain the writ petition as he was not the aggrieved party. In other words, only the workmen whose legal rights are violated could approach the court for judicial redress. The condition was repelled by the court by saying that "Public Interest Litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case or ordinary litigation but it is intended to promote and vindicate public interest which demands that violation of constitutional or legal rights of large number of people who are poor ignorant or in a socially or economically disadvantaged position should not go unnoticed and
unredressed. The court was quite emphatic in holding that in country like India where is a considerable illiteracy and ignorance it would result in closing the door of justice to the poor and deprived section of the community if the traditional rule of standing was blindly adhered to rule so that justice may become easily available to the poor and the lost. Therefore, the court observed in the present case the workmen whose rights are alleged to have been violated are poor, ignorant, illiterate humans who by reason of their poverty and social and economic disability are unable to approach the court for judicial redress and hence the petitioner have under the liberalized rule of standing locus standi to maintain the present petition espousing the course of workmen.

In this case the other objection raised by the respondent related to the non-applicability of Article 32 as in their view violation of the labour laws did not involve any breach of fundamental right. The court negatived the contention of the respondent by saying that right conferred on the workmen under these laws are intended to ensure basic human dignity to the workmen and if the workers are deprived of any of these rights and benefits the state action would clearly be violative of the provisions of Article 14, 21, 23 & 24 of the constitution. The court held that the duty was cast on the state to see that no person violates the fundamental rights guaranteed to citizens. Since a person whose fundamental rights are violated, is unable to protect himself against the powerful opponent, it

395. Id at 1477.
396. Id at 1482. 86. Id at 1483.
397. Id at 1477.
becomes the duty of the state that the fundamental rights of the individual are to be protected.398

Dealing with the question whether labour or service which is engaged for less than minimum wage by the state or any other person would come within the meaning of forced labour, the court observed that the word 'force' should be taken to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service for remuneration which is less than the minimum wage. If this is the case and the person is made to work for remuneration which is less than the minimum wage the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23 and such a person can move the court for the enforcement of his fundamental right.399

What new had happened in this case? The court issued directions to the Union of India to hold an inquiry into the circumstances leading to the situation and take necessary legal action against the contractors including their prosecution or recovery of the amount short fall. The court further directed that in the near future the government should ensure that wages should be paid by the contractors to the workers directly without the involvement of any Jamadars and no amount of commission shall be deducted or recovered from the wages of the workmen. The court also

399. AIR 1982 SC 1490. Also see Sanjit Roy V/s State of Rajasthan AIR 1983 SC 323.
appointed the ombudsmen to see that the provisions of labour laws are strictly implemented and benefits distributed to the workers.\textsuperscript{400}

\textit{Bandhu Mukti Morcha} Case\textsuperscript{401} adds new dimension to the concept of Public Interest Litigation in the area of identification, release and rehabilitation of bonded labour. Here the petitioner has been organization solely devoted to the cause of release of bonded labourers in the country. The petitioner made a survey of some of stone quarries in Faridabad district near Delhi and found that a large number of bonded labourers from different state of the country were working in those stone quarries under inhuman and intolerable conditions and a majority of them here render under forced labour. The petitioner alleged violation of the provisions of the constitution and no implementation of the laws relating to the labourers working in these stone quarries. The letter was treated as a writ petition by an order of the court dated 26\textsuperscript{th} February 1982 and the court was pleased to appoint commissioners to inquire into the matter and to submit a report to this effect. The report which was submitted to the court and 2\textsuperscript{nd} March, 1982 pointed out inter alia that the conditions of the workers very bad and some of them were even suffering from the tuberculosis like dangerous disease. It was highlighted in the report that there were no facilities for medical treatment or schooling for children and the people were staying in the \textit{jhuggies} for shelter and had no clothes to wear and were shivering from cold. It was revealed that all these workers were bonded labourers who were not permitted to leave the job. Most of

\begin{footnotes}
\footnote{400. Ibid at 1491-92.}
\footnote{401. AIR 1984 SC 802.}
\end{footnotes}
the labourer complained that they got very little or meager of wages from the mine lessees or owner of the stone crushes because they were required to purchase explosive with their own moneys, the report concluded by saying that these workmen, "presented a picture of helplessness, poverty and extreme exploitation in the hands of the moneyed people" and they were found leading a most miserable life and perhaps beasts and animals could be leading more comfortable life than these helpless labourers.\footnote{402}

When the petition came up for having, the court directed for the respondents to file a reply and also appointed one more commissioner from the Indian Institute of Technology to carryout a detailed socio-legal investigation and submit a scheme for improving the conditions of these workers in the stone quarries. The Haryana state was directed, to give all assistance to the investigator. Later on the investigator submitted a comprehensive report on the conditions in which the workmen engaged in stone quarries and stone crushes live and work, it also made various recommendations for improving the living conditions of these workmen.\footnote{403}

Initially the respondent raised objections related to the maintainability of the petition under Article 23 of the constitution. The court expressed surprise over the manner in which the state showed its urgency to raise this objection so as to avoid an enquiry by the court as to whether the workmen are living in bondage and under inhuman condition. Sounding a note of caution Justice Bhagwati observed "The government and its officers must welcome Public Interest Litigation, \footnote{402} Id at 809. \footnote{403} Id at 810.
because it would provide them an occasion to examine whether the poor and downtrodden are getting their social and economic entitlements or whether they can continue to remain victims of deception and exploitation at the hands of strong and powerful sections of the community".\(^{404}\) Again the court expressed surprise by saying that if a complaint is made on behalf of workmen that they are held in bondage and living in miserable condition, it is difficult to understand how such a complaint can be thrown out on the ground that it is not violative of the fundamental right of the workmen.\(^{405}\) The other objection which was raised in the court that the court had no power to appoint commissioner and rely upon their ex-party statement was also negatived by the court by holding that the contention was not well founded as it was based upon a misconception of proceeding under Article 32 of the constitution.\(^{406}\) The eminent learned judge said that the framers of the constitution did not lay down any particular form of proceeding for enforcement of a fundamental right. They also did not stipulate that such proceeding should confirm to any rigid pattern—a formula because they knew that in a country like India where there is so much poverty, ignorance, illiteracy, deprivation and exploitation, any instance on a rigid formula of proceeding for enforcement of a fundamental right would become self defeating.\(^{407}\) In view of this position, the court observed that a simple letter by member of the public acting bonafide can be legitimately regarded as appropriate proceedings. The

\(^{404}\) Id at 81.

\(^{405}\) Ibid in this context the Court made reference to Art 21, 39(e) & (f) 41 & 42 of the constitution of India.

\(^{406}\) Bandhu Mukti Morcha Case, Id at 813 - 14.

\(^{407}\) Ibid.
court was deeply shocked that the provisions of various statutes dealing with the labourers are violated so much so that the State of Haryana showed its reluctance even in admitting the existence of bonded labour knowing fully the fact that it was very much prevalent in the area. The court found that the payment made to the workmen employed in stone quarries and crushes was such that after deduction of the amounts spent on explosives and drilling of holes, which was lift to the workmen was less than the minimum wage. The court directed to change the present system of payment and restrained the mine lessees or the Jamadars from making any deduction what so ever out of the wage of the workmen.

The court regretted after knowing the fact that regarding the bonded labour perspective in the stone quarries and stone crushes the government of Haryana has not constituted any vigilance committee. The court observed that it was serious omission on the part of the state in not having constituted the vigilance committee. Whether the bonded labour existed or not but the constitution of the committee was a statutory obligation. This fact has impeded the process of identification. The court drew the attention towards the effective rehabilitation which should have the following four main features:

a) The physical rehabilitation must go side by side with physical and economic rehabilitation.

406. The legislative enactment which were alleged to have been violated included the Mines Act, 1952 Inter State Migrant workmen (Regulation and Abolition) Act 1970, The Minimum Wages Act, 1948 & The Bonded Labour System (Abolition) Act, 1976. See Id at 817-24.

409. Id. At 823-24.
b) The physical and economic rehabilitation should include all major components like agricultural, animal husbandry, promotional of traditional arts and craft wage employment, health education medical care and protection of civil rights.

c) The different components of the rehabilitation scheme sponsored by the Central and State Governments require skillful integration so as to avoid duplication.

d) The bonded labourers selected for rehabilitation should have a choice between the various alternatives for their rehabilitation so that they do not slide back to debt bondage.\(^{410}\)

After issuing the above broad guidelines the court allowing the petition directed the Government of Haryana to draw up a scheme or programme for, “a better and more meaningful rehabilitation of the bonded labourers”.\(^{411}\)

The court expressed the hope that if the directions issued by it are implemented sincerely, it would improve the life condition of these workmen and ensure social justice to them.

While commenting on the decision of the apex court in the present ease, *Shri Y.R.H. Hargopal Reddy*\(^{412}\) observed that a decision has set a new

\(^{410}\) Ibid at 882.
\(^{411}\) Ibid for the summary of the directions issued by the court to the Government of Haryana as well as the Union Government, see it at 834 - 837.
trend to ameliorate the plight of bonded labourers. The decision also recognized the right of the bonded labour to live with human dignity and accord to legitimacy to the Public Interest Litigation under Article 32 of the constitution. It is submitted that the ruling of the highest court of the land is reflective of the emergence of the Supreme Court of India as the people's court which has been providing redress to the victims of bondage.

Another momentous decision was made in Neerja Choudhury V/s State of M.P. in which the apex court where the judiciary has taken a serious note of the indifferent and callous attitude of the State administration in identifying, releasing and rehabilitating bonded labourers in the state/country. The present case is based on a letter of September 20, 1982 addressed to one of the judges of the Supreme Court by a petitioner who is civil rights correspondents of statesman a leading newspaper in the country. The petitioner stated that 135 bonded labourer who were working in the stone quarries in Faridabad has been released by an order of the Supreme Court of the First Week of March, 1982 and brought back to their respective villages in Bilaspur District of the State of Madhya Pradesh with the promise of rehabilitation by the Government. The petitioner who made a visit the three villages, Kunda, Pandharia & Bhairavapura in Mugli Taluka of Bilaspur District in September, 1982 found that most of released bonded labourer of these

413. AIR 1984 SC 802.
414. The letter was directed to be treated a writ petition but for the sake of completeness. The advocate who appeared on behalf of the petitioner filed a regular writ petition in substitution of this letter. Ibid.
villages had not yet been rehabilitated.\footnote{Out of 135 released bonded labourers, about 75 belonged to these three villages and 45 out of them were from village Kunda, 75 of these bonded labourers belongs to scheduled castes, Id, at. 1101.} The petitioner also enclosed a copy of an article published in the September 14, 1982, issue of the statesman where she had pointed out that these released bonded labourers were without land and work, facing immense hardship and were at the verge of starvation. When the petitioner interviewed of these bonded labourers they said that they would rather go back to stone quarries for work than starve and added: "we might have been killed there but we are also dying here". The petitioner also noticed the same of the released bonded labourers owned land at one time but they had pledged their jewellery and other small belongings to raise money for their subsistence. The petitioner further said that there were some rehabilitation schemes like integrated Rural Development Plan and the 20 point economic programme but "the benefits had been cornered by those with political influence and the well to do in the village".

Therefore, the petitioner agreed that it was statutory obligation of the State Government to ensure rehabilitation of the free bonded labourers and failure to do the same amounted to violation of fundamental right of the free bonded labourer under Article 21 of the constitution. The petitioner prayed for a direction to the State Government to take steps for the economic and social rehabilitation of the free bonded labourers released in March, 1982.
When the petitioner came up for preliminary hearing the court asked the State Government for providing information regarding the framing of the scheme for rehabilitation including constitution of vigilance committee as well as steps taken for rehabilitating 135 released labourers living in the village in the Mungeli Taluka of district Bilaspur. And affidavit was filled by the Assistant Labour Commission informing the court of the various steps taken by the State Government for identification, release and rehabilitation of bonded labourers. Though the State could not specify the actual number of rehabilitated bonded labourer but simply stated that steps were being taken for their rehabilitation.

The court expressed its disapproval of the information supplied by the State Government. It was showed that the attitude of the State Government was indifferent and the state was not willing to admit the existence of bonded labour as according to unless a workmen was able to show that he is forced to provide labour to the employer in lieu of an advance received by him, he cannot be regarded as a bonded labour within the meaning of the definition of that term as laid down in the Act of 1976. Reminding the state by its ruling in the Bandhu Mukti Morcha case, the court reasserted its stand in the following words, “It could be cruel to insist that a bonded labour in order to derive the benefits of this social welfare legislation should have to go through a formal process of trial with the normal procedure for recoding of evidence. That would be a totally futile process because it is obvious that a bonded labourer can never stand up to

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416. The figures supplied by the Government in its affidavit showed that in all 1521 bonded labourers were identified in the year 1978, 75 in 1980, 87 in 1981 and 114 in 1982.
rigidity and formalism of the legal process due to his poverty, illiteracy and social and economic backwardness and if such a procedure were required to be followed, the State Government might as well obliterate this Act from the Statute book". The court has also noticed that majority of the bonded labourers belong to scheduled Castes and Scheduled Tribes of other backward classes and judicial notice has to be taken of this fact that they cannot be permitted to stand trial for proving the factum of bonded labour. Justice Bhagwati observed that whenever it is shown that a labourer is made to provide to forced labour, the court would raise a presumption that he is required to do so in consideration of an advance received by him and is therefore, a bonded labourer. Unless the employer or the Government rebuts this presumptions, the court shall presume that the labourer entitled to the benefit of a provision of the Act. This seems to be the taste which has been approved by the court for determining whether a workmen is a bonded labourer are not. The court expressed surprise over the assertion of the State Government that it was seeking the co-operation of the members of the legislative assembly and Panchayats in the task of identification, release and rehabilitation of bonded labourers. The court observed that these agencies can be of no help in this task. Even commissioner and collector, who usually remain very busy because of multifarious duties cannot be a much use in a eradicating this practice because they have to rely upon their subordinates like Tehsildars or Patwaris who may be more sympathetic towards the exploiting class and not the exploited. Similarly, Panchayats being dominated by vested

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417. Id. at 1103.
418. Ibid.
interests can play a very little role in view of this the court stressed the need for inducing social action groups operating at the grass root level in the task of identification, release and rehabilitation of bonded labour.\textsuperscript{419}

Therefore, the court issued direction to the State Government to include in the vigilance committee representative of social action for identification, release and rehabilitation of bonded labour. In the light of this directive a survey was carried out\textsuperscript{420} and the report exposed on inadequacies of the State administration in regard to the implementation of the programme of identification, release and rehabilitation of bonded labourers. It also made a number of suggestions and recommendations for improving the existing state of affairs. On suggestion related to the reorganization and activation of vigilance committees. The court suggested the following steps to be taken:

a) The officers appointed for handling problems of bonded labour should be properly trained and sensitized so that they feel attached to the misery and suffering of the poor and carry those work with total dedication which may inspire confidence in the mind of the poor including the bonded labourer.

b) There should be constant check and supervision over the activities of the officers handling the problems of bonded labourers.

c) An intensive survey of the areas which has been traditionally prove to the system of the debt bondage should be undertaken by the

\textsuperscript{419} Id at 1104.

\textsuperscript{420} The survey which was undertaken in April 1981, covered the district of Santra, Parma, Bastar, Raigarh and Jabalpur, see it at 1105.
vigilance committees with the help of social action groups operating in such areas.\footnote{421}

Therefore, the court impressed upon the State Government to implement the suggestions and also provide immediate assistance for rehabilitation of 135 freed bonded labourers. Reminding the state of its constitutional obligation, the court speaking through Justice Bhagwati asserted: 

"It is the plainest requirement of Article 21 & 23 of the constitution that bonded labourers must be identified and released and on release, they must be suitably rehabilitated. The Bonded Labour System (Abolition) Act, 1976, has been enacted pursuant to the Directive Principles of State Policy with a view to ensuring basic human dignity to the bonded labourers and any failure of the action on the part of the State Government in implementing the provisions of this legislation would be the clearest violation of Article 21 apart from Article 23 of the constitution" \footnote{422}

The author submits that the observation of the apex court in Neerja Choudhury made in the context of rehabilitation of freed bonded labourers provides a new impetus to the observance of provisions of labour welfare legislation as any failure on the part of the State to implement the same would contravene the provisions of Article 21 of the constitution. It was a unique case where the court compelled the state to implement with the directions issued in favour of the bonded labourers.

\footnote{421. Id at 1105-6.}
\footnote{422. Id at 1106.}
The above facts and findings demonstrates the activist or spirited role of the Supreme Court of India in the era of development of a new jurisprudence of a access to justice absolutely in new form. By liberalizing the traditional rule of locus-standi and evolving the concept of Public Interest Litigation the judiciary has been able to ascertain the state accountable for constitutional or legal violations affecting the interests of the deprived and vulnerable sections of the society. The cases of bonded labourers which have come before the court through this newly searched device of PIL have exposed the reckless and callous altitude of the State in handling the problem of bonded labour in different parts of the country. The apex court has been functioning as a social engineer have to a great extent succeeded in bridging the gap between the law and its implementation with the process of appointing commissions to look into the work of identification, release and rehabilitation of bonded labourers, the court is so powerful to compel the state to carry out its statutory responsibilities towards these depressed people and vulnerable sections.

The court has been an important organ of the Government who recognized as liberator of bonded labourers. Liberty means, who ensure liberty, liberty of freedom free restraint under conditions essential to equal enjoyment of the same right by the others.\textsuperscript{423} Liberty is said to be a power to do as one thinks fit, unless restrained by the law of the land.\textsuperscript{424} In common parlance liberty means freedom from restraint. It denotes freedom to go where one may choose and to act in such manner, non

\textsuperscript{423} See National Survey on the Incidence of the Bonded Labour, (New Delhi-1978), P. 730.

\textsuperscript{424} Ibid.
inconsistent with the equal right of others, as one’s judgment may dictate for the promotion of one’s happiness, that is to pursue such calling and avocation as may be most suitable to develop one’s capacities and give them their highest extent of enjoyment. Liberty to bonded labourers and concerned means that bonded labourers must be free from the debt or any other obligation imposed with the help of law machinery. There should he an opportunity to the bonded labour to lead a life like other free human being.

It can be said boldly that the Supreme Court of India is doing commendable job to liberate the bonded labourers. At the initiation of the target, Supreme Court has entertained letter written by public spirited citizens, as writ petitions and has issued directions to the Central and various State Governments for their release from the bondage. The Supreme Court is very conscious and serious in liberating bonded labourers from the clutches, of masters, money-lenders by issuing directions to the central and state Governments for their release and rehabilitation. In Bandhu Mukti Morcha Case,\footnote{AIR 1984 SC 802.} the court directed that the workmen whose names were setout in the writ petition and in the report of the commissioner would be free to go wherever they liked and issued directions to the State of Haryana to constitute, vigilance committees in each sub-division of the District, and to instruct District Magistrate to take up the work of identification of bonded labourers as one of their top priority task and to map out areas of concentration of bonded labourers and to hold periodically, labour camps in these areas with a view
to educate labourers. State of Haryana was also instructed to take assistance of non-political social action groups and voluntary agencies for the implementation of the provisions of Bonded Labour System (Abolition) Act, 1976.

A large number of workmen were engaged on State Hydro-Electric Project V/s State of Jammu Kashmir,\textsuperscript{426} it is also referred as Salal Hydro Project case. This case was initiated on a basis of a letter addressed by the people's Union for Democratic Rights to \textit{Mr. D.A. Desai} enclosing a copy of the news item which appeared in the issue of Indian Express dated August 26, 1982, pointing out that a large number of workmen working on Salal Hydro Project were denied benefits of labour laws. The letter was treated as writ petition and by an order dated September 10, 1982, the Union of India and some other parties were directed by show cause against the writ petition. The court directed that the Union of India and Chief Labour Commissioner (Central) shall ensure that minimum wages must be paid to the engaged workers. The Central Government with a view to securing compliance with various directions given by the court issued a circular to all engineers in charge of the project and to all contractors and sub-contractors or piece wagers directing not to employ a child below 14 years of age\textsuperscript{427} to give compulsory weekly off with wage to every workman,\textsuperscript{428} and to pay minimum wages to all the labourers\textsuperscript{429} and in case of overtime

\textsuperscript{426} (1984) 3 SCC 538.
\textsuperscript{427} Id. At 543.
\textsuperscript{428} Ibid.
\textsuperscript{429} Ibid.
the workmen were required to be paid at the rate of ordinary rate of wages in the presence of authorized representative.430

\textit{Mukesh Ambani} Case\textsuperscript{431} is an illustration of debt bondage. Basically \textit{Mukesh Ambani} an advocate practicing in Supreme Court addressed a letter to one of the judge of a court annexing a cutting from Indian Express depicting homicide plight of the bonded labourer working stone quarries at Raisen in Madhya Pradesh. The allegation were that the contractors recruit labour from Tamil Nadu. Everyone recruited was paid roughly an advance of Rupees One Thousand was reimbursable by deductions spread over from month to month from the wages payable to the bonded labourers but the method of accounting was so manipulated, that the debt of Rupees One Thousand was never wiped out and on the contrary it increased by geometrical proportion. The workmen went deeper into the mine of indebtedness with the result of octopus hold of the contractors and the workmen became bonded labourers under inhuman conditions. The Supreme Court came to their rescue by entertaining a letter as writ petition and directed District Judge Bhopal to enquire and report the conditions of bonded labourers working in stone quarries at Raisen. After being satisfied from the report of District Judge, the court issued a direction for the release of bonded labourers to the Government with the following observation and directions :- "No employer can pay less than the minimum wages. But this remains a paper promise, unless effective implementation machinery is setup. We conclude with a hope that such a

\begin{footnotesize}
430. Ibid.
\end{footnotesize}
machinery would be setup jointly by the Union of India and the State of Madhya Pradesh".432

The interesting turn was made or happened in *P. Sivaswamy V/s State of Andhra Pradesh* 433 a letter written by the Ex-services organization at *Tirukkoyilur* in South Arcot District of Tamil Nadu alleging prevalence of bonded labour in stone quarries in several districts of Andhra Pradesh and in other areas was registered as writ petition. The court had directed to District Magistrate Hyderabad to visit the site and to make a report within two weeks. In continuation of this action the court again directed State of Andhra Pradesh to file an affidavit setting out in detail facts and figures, showing how many bonded labourers have been identified and released in the different districts of the state since 01.01.1983 and whether they have been rehabilitated and if so, in what manner and whether there is any follow up action. The court also directed to setup at a very early date in all the district and sub-division of the state, vigilance committees and to include social activities in it. The Supreme Court also directed to the Joint Secretary Ministry of Labour (Govt. of India) *Shri Lakshmidhar Misra*, to visit the stone quarry at *Kailasapuram* and to hold an enquiry for the purpose of ascertaining whether there is existence of bonded labour and whether the labour welfare legislation are being observed. A Report was submitted by the Joint Secretary Ministry of Labour *Shri Lakshmidhar Misra*, in which it have been submitted indicating violation of Minor Act, 1952. Minor Rules 1955. Minor Vocational Training Rules, Minor Creche

432. Id. at 168.
Rules, 1955. the Contract Labour, Act and Minimum wages Act. He submitted report to the Joint Secretary Ministry of Labour, was seriously considered by the State of Andhra Pradesh and the Central Government. As a result State of Andhra Pradesh and the central Government took action, about 2200 bonded labourers were freed and sent to their respective villages falling in state of Andhra Pradesh, Tamil Nadu, Karnataka and Orissa. The Supreme Court had also directed to these states to constitute vigilance committee for the liberation and the rehabilitation of bonded labourers. Further, more directions came from the court to involve social action groups and voluntary agencies in the liberation and rehabilitation package was to be implemented in the presence of representative of such social action groups of voluntary agencies so as to ensure that rehabilitation provisions actually reaches in the hands of bonded labourers. The Supreme Court in continuation of the rehabilitation programme, again directed to the state of Tamil Nadu, Karnataka and Orissa to take immediate steps for the rehabilitation of 1417 bonded labourers released from the site of Ranga Reddi District and to submit a report to the court. But on the 6th October, 1987 when the matter was again listed, the court was surprised to know that after elapse of three and half year no compliance on behalf of states were made. The court passed strictures against the aforesaid states.

Earlier in Asiad Case434 a social action group known as people's Union for Democratic Right, had produced a very shocking report regarding the exploitation of migrant contract labourers engaged in the

434. 1982 3 SCC 235.
constructions of the prestigious Asian games stadium in New Delhi. These workers, were not paid the minimum wages and the part of their wages was expropriated by Jamadars through whom the workers were recruited by contractors. The court directed the Delhi Administration and Delhi Development Authority to ensure immediate and faster relief to assigned workers and held that every form of forced labour comes under Article 23. In Asiad Case the raising tendency spirit was boosted up to the right to receive minimum wages, to the status of fundamental right. The Bandhu Mukti Morcha, Neerja Choudhury, Salal Hydro Project Case, Mukesh Ambani, Sivaswamy. Balram and Asiad Cases provide a favourable legal setting for the social action groups to use law strategically to compel the state and its agencies to implement the policy underlying the Bonded Labour System (Abolition) Act. 1976.

In Balram V/s State of M.P.,\textsuperscript{435} Supreme Court issued certain directions to the Central Government and its officials, to release adequate funds under the scheme to meet its liability under the Act. Further the court directed that the collectors and other officials who have been assigned the responsibility of supervising rehabilitation shall ensure that the full amount intended for the free bonded labourers reaches them. The court also directed to open an account in the bank in their respective names.

Though "equal pay for equal work" is considered to be an concomitant of Article 14 in as much as "equal pay for equal work" is the

\textsuperscript{435} AIR 1990 SC 44. Hereafter referred as Balram Case.
negation of the right equal pay for equal work would depend upon not only the qualitative difference as regards reliability and responsibilities as well and though the functions may be the same but the responsibilities do make a real and substantial difference". According the Supreme Court in State of Orissa V/s Balaram Sadhu reiterated the earlier settled law that daily wages and casual workers could not claim parity in pay with regularly employed staff merely on presumption of equality in the nature of work. However such workers were entitled to payment of prescribed minimum wages.

Where part time Border Wing Home Guards (BWH) were recruited for patrolling the border and checking infiltration initially as volunteers for three months but were retained for 14 long years and they performed the same situation and circumstances as permanent BWHG, the Supreme Court held that retention of such part time BWHG, for such a long period obliterated the distinction between them and the permanent BWHG. Hence, such BWHG were entitled to parity in privileges and monetary benefits with permanent BWHG.

People's Union for Civil liberties V/s State of Tamil Nadu in a writ petition filed by the petitioner in 1985 to bring to the notice of the open court the plight of migrant bonded labour from Tamil Nadu who were being subjected to exploitation in Madhya Pradesh. Subsequently however

439. 2004 LLR 577.
the scope of the petition was explained so as to cover the problems relating to the bonded labourers in all States and Union Territories in the country. The courts by its order dated 11.5.1997 directed the National Human Rights Commission to take over the monitoring of the implementation of its directions and that of the provisions of the Bonded Labour System (Abolition) Act, 1976. The NHRC constitutes the groups of experts to closely examine the matter to prepare a report on the status, to suggest methods of improving the existing schemes, and to suggest recommendations to effectively implement the laws for abolition of bonded labour system.

The expert group submitted its report containing a status report on the work relating to abolition of bonded labour system in the various states and the various existing schemes as also some recommendations to improve the working of the system. There was also a suggestion to amend the Act so as to make it more effective. The implementation of the Act encompassed three functions: identification, release and rehabilitation of bonded labourers. A suggestion was also made to involve NGO in the endeavours to abolish bonded labour. The amicus curiae appointed by the court also gave his suggestions viz. (a) to organize a model workshop in the district of any state involving the district magistrate and the other authorities to sensitize them of their duties under the Act as also to help sensitize achieving the objectives of the statute and (b) to establish a model rehabilitation center. The NHRC agreed with these suggestions. The Union of India submitted that the central issue in solving bonded labour system is the rehabilitation of released bonded labourers. It also submitted that Ministry of Labour in consultation with the NHRC was preparing a detailed
manual for identification, release and rehabilitation of the bonded labourers particularly in planning and executing the suitable package for the released bonded labourers.

The apex court after giving through all these materials concluded that "It is a sad reality that the rehabilitation and related aspects of bonded labourers are not given adequate consideration till now. If we are now concentrating our attention identification and release of bonded labourers, they will languish in streets if there are no well chalked out corresponding plans for rehabilitations. Hence the primary direction shall be aimed at evolving implementing rehabilitation plans". The court accordingly issued certain directions, inter alia that all states and union territories must submit their states report in the form prescribed by NHRC in every six months; they shall constitute vigilance committees at the district and sub-divisional levels in accordance with Section 13 of the Act within six months; they shall make proper arrangements for rehabilitating released bonded labourers. Within six months they shall chalk out a detailed plan for rehabilitating released bonded labourers either by itself or with the involvement of NGOs; and they shall make arrangements to sensitize the district magistrate and other statutory authorities in respect of their duties under the Act.

There has to be a prima facie case made out for prosecution under the Bonded Labour System (Abolition) Act. 1976. The petitioners in the

440. Id at 578.
441. Ibid.
*Sannasumannara Somashekarappa and others V/s Gorappa Rudraswamy* and others, were alleged to have committed the offence under Section 16 of the Bonded Labour System (Abolition) Act, 1976. As per two criminal petitions, four children in one case and other children in the other, who were alleged to have been working as bonded labour with the petitioners were said to have been freed. Statements of the children were also said to have been recorded. It was alleged that petitioners had approached the parents of the children and paid them advance and took the children to their houses for a period of one year to graze cattle. The children were provided with food and clothes by the petitioners. One charge sheet being filed before the sub-divisional Magistrate, Dewangere, though summons were issued to the petitioners, they were granted bail by the magistrate. It was quashed after the petitions were filed before the Karnataka High Court.

Before the High Court it was contended by the petitioners that prosecution under Section 16 of the Act necessarily requires that it must be covered by the definition as provided under Section 2, since there were no such prima facie case the proceedings pending against them before the sub-divisional magistrate should be quashed. While quashing the proceedings the court observed that to constitute an offence under the Act there must be a debt or liability incurred by the parents or the persons who have been directed to work as or bonded labour. What amount was paid in advance to the parents of the boys for grazing cattle was paid in the form of wages. There was no creditor debtor relationship between the

parents of the boys and the petitioners. Then parents were neither being compelled nor forced to send their children for grazing cattle in the houses of the petitioners. Neither were the children obliged to work or bonded labour for the petitioners. The court accordingly allowed the petition and quashed the impugned proceeding pending before the sub-divisional magistrate.

On the entitlement of absorption of contract labourers. The apex court in *Air India Statutory Corporation V/United Labour Union* has held that though there is no express provision in the contract labour (Regulation and Abolition.) Act, 1970 for Absorption of contract, when engagement of contract labour stood prohibited on issuance of a notification under Section 10 (1) of the Act, the direct relationship was established between the contract labour and the erstwhile principal employer and the latter was obliged to absorb the former. It was also held that the High court had found that the workmen were engaged in violation of the provisions of the Act or were continued as contract labour in spirit of the prohibition notification issued under Section 10(1) it could in exercise of its power of judicial review, direct the principal employer to absorb the contract labour and it was not held necessary for the workmen to seek a reference of the dispute relating to their absorption under Section 10 of the Industrial Disputes Act, 1947.

443. Id. at 1153.
It was again reiterated in *Secretary Haryana State Electricity Board V/s Suresh*,\(^{445}\) following Air India it was held that where the work for which contract labour was engaged was perennial in nature as against seasonal, contract labour system should be abolished by issuing a notification under Section 10(1) of the Contract Labour Act, so as to make the Contract Labour the direct employees of the principal employer. It was also held that if the prevailing Contract Labour System was not genuine, but a more camouflage to deprive of the workers of the benefits under the various labour enactments, the court could pierce the veil and the establish the direct relationship between the principal employer and the contract labour.

However, in *Steel Authority of India V/s National Union Waterfront Workers*,\(^{446}\) a constitution bench of the apex court overruled the decision Air India and held that where contract labour was engaged in connection with the work in an establishment and employment of such contract labour was prohibited by issue of a notification under Section 10(1) of the Contract Labour Act, there was no question of automatic absorption of the contract labour working in the establishment and the principal employer could not be required to absorb the Contract Labour. It was also held that on a contract engaging contract labour in connection with the work entrusted to him by the principal employer, it did not culminate into a relationship of "master and servant" between the principal employer and the contract labour. Whether the contract labour system was genuine or a

\(^{445}\) (1999) 3 SCC 601.
\(^{446}\) (2001) 7 SCC 1.
mere camouflage had to be adjudicated by the industrial tribunal/court and not by the high court in its writ jurisdiction.

In *APSRTC V/s S.G. Srinivas Reddy*, the Andhra Pradesh State Road Transport Corporation issued a circular on 01.09.1998 detailing the guidelines for absorption of persons directly employed by the corporation on casual basis or for a contractual period or daily wages or non consolidated salary or piece rate basis or under work charged established whose services had been ordered to be dispersed with under an earlier circular. As per the guidelines the benefit of absorption was to be availed of only by those who had been engaged for more than a year and against sanctioned vacancies. Contract labour engaged contractors to work at bus station etc. were specifically excluded.

The respondents claiming to be scavengers employed by the appellant corporation approached the High court by way of writ petition seeking direction for regularization. The court without examining their claim on merit directed the corporation to "consider" their cases in terms of the above mentioned circular, in pursuance, thereof the divisional manager sent a letter dated 14.7.1992 instructing the depot manager to verify their claim and report back to him. Meanwhile, altering in action the respondent approach the High court for a declaration that the corporation failure to take action in pursuance of the said letter was illegal and the corporation should be directed to absorb them into its service. The

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High court, again without examining the matter on merits, directed the corporation to consider their claim for absorption as per the guideline.

The corporation consider their cases but turn down their claim for absorption on the ground, inter alia that they were the employees of a contractors and the corporation exercised no control over them. They again approached the High court and the single judge held that the respondents could not be denied relief on the ground that they were employed as contract labour, since the corporation did not take such a contention in the earlier petition. The judge also held that when the direction was to 'consider' the case for absorption in terms of the guidelines the corporation could not reject the claim by taking a stand that the respondents were employed as contract labour writ appeal field by the corporation was dismissed by the division bench mainly on the ground that the work for which the respondents were employed as contract labour that is to clear the buses and to sweep the bus-stand premises was perennial in nature and not seasonal which work could not have been contracted out.

Allowing the appeal of the corporation the apex court held that in the instant case this was neither a notification under Section 10(1) of the Act prohibiting contract labour nor a contention raised or a finding given that a contract with the contractor was sham and nominal and the contract labour work in the establishment were in fact, employees of the principal employer. The High Court by assuming that the contract labour system was only a camouflage and that there was a direct relationship of employer
and employee between the corporation and the respondents, could not have directed absorption of the respondents who were held to be contract labour in view of the principal laid down in Steel Authority of India.\textsuperscript{448}

If they wanted the relief of absorption the right course for them would have been to approve the industrial tribunal/court and establish that the central labour system was only a raise/camouflage to avoid labour was benefits to them. The court held that the High Court under Article 226 of the constitution could not direct absorption of the respondents on the ground that work which the respondents were engaged as contract labour was perennial in nature.\textsuperscript{449}

In \textit{Secondary State of Karnataka V/s Umadevi} \textsuperscript{450} the constitution Bench has considered the meaning of forced labour under Article 23 and has held that employment on daily wages does not amount to forced labour.

Whether there was a liability to pay minimum wages in an employment of providing a security personnel to various organizations which is not scheduled employment was the question in \textit{Lingegowd Detective and Security Chamber (P) Ltd. V/s Mysore Kirloskar Ltd.}\textsuperscript{451} according to the apex court since the minimum wages Act cannot be extended to those not identified to be covered, appellant who provides security personnel was not liable to pay minimum wages. The court

\textsuperscript{448} (2001) 7 SCC 1.
\textsuperscript{449} (2006) 3 SCC 682.
\textsuperscript{450} (2006) 4 SCC 1.

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distinguished the earlier decision in *People's Union for Democratic Rights and others V/s Union of India and others.*

The apex court further held that the respondents were also entitled to the relief of absorption/regularization on the basis of the circular dated 1.9.1988 as it specifically excluded contract labour. The order of the single judge of the High Court on both the occasions has not examined the status of the respondents, nor recorded or finding that they were entitled to absorption. Therefore, if the corporation on considering the claims of the respondents found that they were not employed found that they were by it, but were contract labour who were not entitled to seek absorption under the guidelines, the corporation was justified in rejecting their claim for absorption.

5.5. **No liability to pay minimum wages, if employment is not listed in scheduled to the minimum wages Act:**

In *Lingegowd Detective and Security Chamber (P.) Ltd V/s Mysore Kirloskar Ltd.* The appellant company was engaged in providing detective and security services to various organizations. Aggrieved by the orders passed by the authority under the Minimum wages Act, 1948 requiring the appellant to pay minimum wages to its employees, it filed a writ petition in the Karnataka High Court praying for setting aside the said orders. It was contended that since its engagement of providing security personnel to various organization was not a scheduled employment as

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452. AIR 1982 SC 142.
listed in the scheduled to the Act, and as no specific notification was issued in that behalf, the impugned orders of the authority were without jurisdiction.

A single judge of the High court allowing the writ petition held that the workmen of the appellant were not entitled to the grant of minimum wages. He however, looking to the beneficial nature of the legislation directed Mysore Kirloskar Ltd., as the principal employer to pay a sum of Rs. One lakh as ex gratia to the workmen. Aggrieved, the respondent Mazdoor Union filed writ appeal before the division bench of the High Court which was allowed. It was held that "where a person provides labour or services to another for remuneration which is less than the minimum wages, the labour or services provided by him fall within the scope and ambit of the words forced labour", under Article 23 of the constitution, and therefore, the orders passed the authority under the Act were not to be inter forced with. It was further held that since the principal employer's activities were included in the list of scheduled employments, under the scheduled to the Act, there was no requirement a separate notification to that effect. Hence, this appeal to the apex court.

When we consider/or relying on few of its earlier judgments, i.e. M.P. Mineral Industry Assn V/s Regional Labour Commr, Bhikusa Yamasa Kahatriya V/s Sangammu Akola Taluka Bibi Kamgar

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455. For arriving at this conclusion, the court placed reliance on several decisions relating to the true essence of the expression "right to life". Under Article 21 of the constitution.
Union.\textsuperscript{457} Haryana unrecognized school Assm V/s State of Haryana,\textsuperscript{458} Patel Ishwar Bhai Prahladbhai V/s Taluka development Officer,\textsuperscript{459} the Supreme Court held that since detective and security services provided by the appellant to various organizations did not form part of the scheduled employment as detailed in the schedule to the Act, the decision of the division bench was liable to be set aside. Allowing the appeal the court restored the decision of the single judge of the high court. Later on court held that there was no matter and servant, employer, employee relationship between these workmen of the appellant and Mysore Kirloskar Ltd. And that, the provisions of the contract labour (Prohibition and Abolition) Act, 1970 had no applicability to the fact of the case.

It is submitted that view taken by the division bench of the high court seems to be correct or both the grounds advocated by it encapsules the right interpretation of law applicable in the instant case.

5.6. Right to minimum wages should be enforced as created under the statute:

Placing reliance on three Supreme Court decisions, i.e. People’s Union for Democratic Rights V/s Union of India,\textsuperscript{460} Sanjit Roy V/s State of Rajasthan \textsuperscript{461} and Bandhu Muklti Morcha V/s Union of India,\textsuperscript{462} it was argued in Gujarat Mazdoor Sabha V/s Commissioner of Labour\textsuperscript{463} before

\textsuperscript{457} 1963 Supp(l) SCR 524.
\textsuperscript{458} (1966) 4 SCC.
\textsuperscript{459} (1983) 1 SCC 403.
\textsuperscript{460} AIR 1982 SC 1443.
\textsuperscript{461} AIR 1983 SC 328.
\textsuperscript{462} AIR 1984 SC 802.
\textsuperscript{463} 2006 1 LIJ 506.
the Gujarat High Court that if the right to receive the minimum wages is a fundamental rights as held in those cases, and non payment of the same amounts to violation of Article 23 of the constitution irrespective of the existence of other fora, the court must issue a writ under Article 226 of the constitution against every entrepreneur, employer, industrialist who is not making a payment of minimum wages to their employees.

The court after conceding that though the apex court had held in people's Union for democratic Rights, that non payment of minimum wages amounted to violation of the fundamental rights, it did not issue a writ against the employers but only required the states and its agencies the institute an effective system to ensure that the minimum wages are paid. The court further held that between when labour laws provide for a procedural forum, the aggrieved party must approach the same and must short circuit it simply because it is time consuming. Even otherwise the court reasoned "If we start entertaining such applications, then any order made by us or any writ issued by us would again lead to a problem. This court after issuing the writs will have to act as a labour court for enforcing the writs, which in fact is not the intention of the constitution of India.

Besides, the court reasoned further, "when the law provides for a proper forum" than any person for redressal of his grievance must approach the said forum because the officers are trained, they know how

464. Supra Note 149, 150, 151, 152.
465. Supra Note 152 at 547.
to handle the matters and the law further provides that in what manner such orders can be executed".466

It was known that our legal system was established by Britishers, who had come to this country to rule and extract the full advantage by exploiting the people of this country. Britishers were fond of leading the life in aristocracy, was the vital reason for the creating of legal system and they established or managed for the welfare of elite classes. Basically that time judges, were also belonged to elite classes who interpreted the constitution in favour of vested interests and individual rights.467 The courts procedure was so complex and confusing that justice can be obtained only by engaging advocates and paying them a handsome amount as their remuneration fee, which was beyond the capacity and reach of poor. The judicial system was not so in position to bring revolutionary changes in the life conditions of the poor. Our courts become courts for the poor rather than the courts of the poor. In Asiad case the court observed.

".....the courts have been used only for the purpose of indicating the rights of the wealthy and the affluent, it is only these privilege class, which have been able to approach the courts for protecting their vested interests. It is only moneyed who have so far had the golden key to unlock the door of justice ".468

466. Ibid.
467. L.S.D. Vol. LXV, No. 1, Col. 123dated 23.10.76
Teeming millions of the country belonging to the deprived and vulnerable sections of humanity are looking to the courts for improving their life conditions and making basic human rights meaningful for them. The courts of laws are not meant only for the rich and well to do for the landlords, big industrialists, powerful leaders and criminals but they exist also for the poor and down trodden, the have-nots and handicapped. If Poor's fundamental rights are flouted when the atmosphere is created, when the basic element of care comfort necessaries to sustain life is refused, when injustice and inhumanity emerges and the legislative protection is ignored, it will become the constitutional obligation of the court of law as a sentinel or guardian of fundamental rights of the people to break the fetters to right the wrong and to ensure justice to them. The Indian judicial system also owes a duty to the society to help people in distress and to help the poor and indigent, to protect the health and strength of it's inhabitants and to promote positive good for them by providing healthy environment and favourable social and economic condition in the society. For the socio-economic and political justice in a welfare state, it is the society which has to develop it's welfare means, no society can have a welfare outlooks unless it gears up on the basis of amity, friendship, Co-operation, consideration and comparison. If every individual living in India is intended to believe in the "live and let live" principle he would be prepared to develop the same attention to people around him as he is willing to devote for himself. 

471. See Bandhu Mukti Morcha V/s Union of India, AIR 1992 SC 38 at. P. 49.
The main officials that is judges of the Indian judicial system though brought up and trained in western style and also the product of our society where these inequalities flourish or existed. The concerned officials of the Indian judicial system are very much sensitized towards the social evils. Therefore, this dedicated issue may come up of the occasion where there is a violation of human rights\textsuperscript{472} where there is torture and ill treatment,\textsuperscript{473} where human being are treated like animals\textsuperscript{474} where young boys,\textsuperscript{475} women,\textsuperscript{476} and young inmates\textsuperscript{477} are denied justice. Generally poor bonded labourers live in slums and in the vicinity of factories and of the work place, they face hazards pollution. Courts have helped these poor bonded directly and indirectly issuing many directions to stop pollution\textsuperscript{478} and to provide healthy environment\textsuperscript{479} and to protect health and wealth of it's inhabitant and to promote positive good for them and favourable social and economic condition in the society.\textsuperscript{480} In \textit{M.C. Mehta V/s State of Tamil Nadu}\textsuperscript{481} Supreme Court came to the rescue of the children working in match factories of \textit{Sivakasi} in \textit{Kumraj}, District of Tamil Nadu, where the working conditions are hazardous. The court said :-

\textsuperscript{472} Munna V/s State of Uttar Pradesh (1982) 1 SCC 545.  
\textsuperscript{473} Sheela Bose V/s State of Maharashtra, (1983) 2 SCC 96.  
\textsuperscript{474} Dr. Upendra Baxi V/s State of Uttar Pradesh (1983), 2SCC.  
\textsuperscript{475} Kdras Rechadiya V/s State of Bihar (1981) 3 SCC 671.  
\textsuperscript{476} Hussainara Khatoon (I) V/s Home Secretary State of Bihar 1980 1 SCC 81.  
\textsuperscript{477} Sunil Batra (II) V/s Delhi Administration (1980) SCC 468.  
\textsuperscript{478} M.C. Mehta V/s Union of India, (1986) 2 SCC 176.  
\textsuperscript{479} Subhash Kumar V/s State of Bihar, AIR 1991 SC 420.  
\textsuperscript{481} AIR 1991 SC 417.
"It is necessary that special facilities for providing the quality of life of children should be provided. This would require facility for education, scope for recreation as also providing opportunity for socialization."\(^{482}\)

In *Bandhu Mukti Morcha Case*,\(^{483}\) State of Haryana tried to frustrate the case on technical grounds. Holding the contention futile and reminding State Government's responsibility for bonded labourers, the court held:-

"We should have thought if any citizens brings the court of a complaint that a large number of peasants or workers are bonded serfs or are being subjected the exploitation by few mine lessees or contractors or employers or one being denied the benefits of social welfare laws the State Government which is under constitutional scheme charged with the mission of bringing about a new socio - economic order where there will be social and economic orders, where there will be social and economic justice for everyone and equality of status and opportunity for all, would welcome an enquiry by the court."\(^{484}\)

In *Neerja Choudhury*,\(^{485}\) the Supreme Court did not receive much resistance from the State Government for the release and rehabilitation of bonded labourers, which shows the effect of the court on the government to protect and uplift the bonded labourers. The effect was continuous due to very wide publicity of the cases, which can he seen in *P. Sivaswamy's*

\(^{482}\) Id. at 419.
\(^{483}\) Supra Note 90.
\(^{484}\) Supra Note 90 at 182.
\(^{485}\) Supra Note 102.
Case,\textsuperscript{486} where the State Government have not only released rehabilitated bonded labourers but also come up with certain suggestions for the purpose of ensuring observance of the labour laws for their benefits.\textsuperscript{487} In the case the court could asked for an affidavit from the parties, decided the case and out rightly issued the directions, but the court followed a peculiar procedure making orders for release and rehabilitation from time to time, The court also kept on verifying about the action taken by the various State Governments and central Governments. The court directed to three states namely Orissa, Karnataka & Tamil Nadu to provide rehabilitation to the freed bonded labourers, and to furnish to complete affidavit including the number of rehabilitated bonded labourers. The court also cautioned the state that unless a compliance report is furnished, writ of the state shall be treated to be in competent court.\textsuperscript{488}

5.7. \textit{Goofy attitude in identification of bonded labourers}:

Procedure of identification of bonded labour is the nave of a wheel of abolition of bonded labour system, in the implementation of the Bonded Labour System (Abolition) Act, 1976 the first big questions arises is identification of bonded labour. Basically, the bonded labourers are poor and illiterate, and due to this twin misfortunes they are unable to come forward to court for justice. The minimum bonded labourers do not know that forced labour is a crime under the Bonded Labour System (abolition) Act, 1976, which comes to their rescue. They take to work, even if it be

\begin{itemize}
\item \textsuperscript{486} P. Sivaswamy \textit{v/s} State of Andhra Pradesh AIR 1988 SC 1863.
\item \textsuperscript{487} Id. At 1864.
\item \textsuperscript{488} Id. At 1867.
\end{itemize}
forced labour just to keep their body and soul together. In the name of humanity, it is the prime facie duty of the civilized society to identify those forgotten citizens and give a helping hand to them to stand on the poor with the other citizens of the society.

With the ostrich like attitude, the State Government bury their heads in the sand ignoring and neglecting the existence of bonded labour. Mere enacting on Act for abolition is not sufficient. It is incredible that some State Governments are not admitting the existence of bonded labour even though it is prevailing.489 Bhagwati J., aptly remarked this in Bandhu Mukti Morcha V/s Union of India490 that "It is not uncommon to find that the administration in some states are not willing to admit the existence of bonded labour even though it exists in their territory and there is controvertible evidence that, it does so exist.491

Further, it was observed by the "Judge" we fail to see why the administration should feel shy in admitting the existence of bonded labour it because, is not existence the bonded labour that is a slur on the administration but its failure to take note of it and to take all necessary steps for the purpose of putting an end to the bonded labour system by quickly identifying.492

"It is true that the existence of bonded labour cannot be discovered and wiped out solely relying on the action taken by M.L.A.S. or the

489. See Prakash SS (Bonded Labour and Social Justice) P. 79.
490. Supra Note 90.
491. Ibid at 806.
492. Ibid.
bureaucrats or even the Panchayats but their role in eradicating this problem cannot be ignored. The Commissioners and Collectors have multifarious duties to attend to and even if they are anxious to help in eradicating the vice of bonded labour system, which we are sure, they are, they would not find time to make any personal inquiry or investigation but they would have to rely on subordinate officers such as Tahsildars & Patwaris and at many places the Patwaris & Tahsildars being either or sympathy with the exploiting class or lacking in social commitment or indifferent to the misery and suffering of the poor and down trodden, the task of identification.......of bonded though the official machineries would be very difficult of achievement.493

The goofy attitude of our bureaucrats in identification of bonded labourers was exemplified as remarked by Justice P.N. Bhagwati in Neerja Choudhury V/s State of Madhya Pradesh. 494 By the order of a court the Tahsildar want to a village setting on the dais along with the landlords by his side he started the enquiries of the labourers whether they are bonded or not and when the labourers, obviously inhibited and terrified by the presence of landlords said that they were not bonded but they are working freely and voluntarily and is was so recorded by the Tahsildar in his record.495

Under our constitutional scheme, the State Governments are charged with the mission of bringing about a new socio-economic order

494. AIR 1984 SC 1099.
495. See Ibid, at P. 1104.
where there will be social and economic justice for everyone and equality of status and opportunity for all, were given direction by the court, for identification of bonded labourers. When the court intend to ask for identification, the only answer that was received from the State Government was "Steps has been taken and were being taken by the State Government for identification". and further the State Government points out that every often vested interests veil successfully the status of bonded labourers and thus obstruct the process of identification, the labourers themselves are not educated enough to come and lodge a complaint. But the ugly reality is whenever the bonded labourers muster courage and come forward there were instances that they were physically belaboured. Workmen were not only physically tortured but also they were harassed for the fictitious debts. In Mukesh Advani Case, the petitioner alleged that there was naked and unabashed exploitation of workmen in the stone quarries at Raisen, Madhya Pradesh. He also alleged that the workers are bonded labourers and they belonged to Tamil Nadu. By the time of enquiry by the court there were no bonded labourers to be found there. Even if they lodged a police complaint against the contractors it proved to be abortive. Even when a Chief Minister was given a petition regarding their wretched lives, no action was taken. The above important judgments shows that neither the legislators nor the

496. See Ibid at. P. 1102.
498. Ibid.
499. See of Human Bondage by K.P. Sunil Illustrated weekly of India Juno 1986 (In Kodaikanal some of the bonded labourers dared to give a petition to Sri M.G.Ramchandran C.M. of Tamil Nadu, no action was taken upto and even after four years).
government are sincere and committed in their effort in taking proper and responsible steps in identifying bonded labourers.

For the absolute emancipation of bonded labour, the next important effective step after identification is released and rehabilitation. In better format, we can call 'liberation' instead of release because the bonded labourers are liberated from the shakles of slavery. Therefore, the simplest and plainest requirement of Article 21 & 23 of the constitution that bonded labourers must be identified, then released and on released they must be suitably rehabilitated and any type of lethargic attitude on the part of the State Government in the implementation of the provisions of the Bonded Labour System (Abolition) Act, 1976 would be the clearest violation of Article 21 apart from Article 23 of the constitution.

It is only after liberation they get restored to their freedom and liberty. The decisions in Bandhu Mukti Morcha V/s Union of India, Neerja Choudhury V/s State of Madhya Pradesh, Mukesh Advani V/s State of Madhya Pradesh of the Supreme Court set a new trend in ameliorating the plight of bonded labourers. These landmark decisions have attempted to secure social and economic justice to the forgotten is specimens of humanity living in bondage to their release and rehabilitation. Poverty and destitutions are almost perennial features of Indian rural life for a large number of unfortunate ill starred humans in this country and it would be nothing short of cruelty and heartlessness to

500. See Supra Note 90.
501. See Supra Note 102 at P. 1099.
identify and release bonded labourers and to throw at the mercy of existence social and economic system which denies them even the basic necessities of life such as food, shelter and clothing.  

If the bonded labourers are not being properly rehabilitated, mere identification and liberation will become useless. Until of rehabilitation they are consigned to a life of another bondage to hunger and starvation and they will be bound to live a life in between the devil and the deep sea. The Supreme Court in recognizing the importance of rehabilitation of bonded labourer pointed out "... if the bonded labourers who were identified and freed are not rehabilitated, their condition would be much worse than what it was before during the period of their serfdom and they would become more expose to exploitation and slide back once again with serfdom even in the absence of any coercion".  

The 35th Session of the Labour Ministers Conference held on 11.05.1995 adopted the following suggestions for the rehabilitation bonded labourers.  

(i) Rehabilitation of bonded labour as a programme should be integrated with the existence IRDP & NREP.  
(ii) Subsidy available under IRDP & NREP should be in addition to subsidy available for the rehabilitation of bonded labour.

(iii) Subsidy for bonded labour rehabilitation should be used as a seed money for obtaining bank loan, subject however to the limitation of project cost approved.

(iv) The limit of Rs.4,000 under the central sector scheme was fixed quiet a few years back and their is need to raise this limit.

(v) In addition to the subsidy Rs.4,000 which is permissible, an additional amount for the maintenance during the interregnum between the time of identification and set of programmes may be built in.

(vi) Subsidy for the rehabilitation of bonded labour should be released without insisting on cent percent receipt of utilization certificate. Non receipt certificate should be condoned for the purpose of release of subsidy if 75% of the due utilization certificates have been received.

(vii) Capacity and willingness of voluntary agencies should be exploited whenever feasible to bring about grass root changes in the rural society. The working of the agencies can be converted into existing scheme of rural organizers.506

Undoubtedly, there are plenty of good schemes in the country but the real difficulty lies in securing their proper and effective implementation. Today, the bonded labourers are not crying for the laws

506. Ibid.
or programmes for their rehabilitation but they are crying for the effectively realization and enjoyment of those limited benefits. Justice O. Chnappa Reddy aptly remarked, "the plan allocation for rehabilitative assistance should be enhanced and the financial allocation should be utilized in such a way that then benefits reach the deserving persons.\textsuperscript{507}

There are instances where the benefits did not reach the deserving persons. Ibrahim Patnam a Taluk near Hyderabad (Andhra Pradesh), is a monument to decedent living. There are rich landlords. Reddys and Kopus, continue to exploit farm worker. There is even marked alienation between the two groups. By the virtual revolt of the bonded labourers, aided and abetted by 'Vyavasaya Coolie Sangam' (Agriculture Labour Union) a voluntary organization, some twenty bonded labourers wriggled out free of their masters in April 1985. But no rehabilitation was provided upto December 1985 and perhaps even after. The labourers are at a disadvantage because they have no means of livelihood if the authorities do not take steps to rehabilitation the situation may take an ugly turn,\textsuperscript{508} and in some areas it was already taken an ugly turn. In Kodai kanal where the bonded labourers were freed but not properly rehabilitated, literally they are begging in the surrounding villages of Kodai Kanal, and even what little food they get by begging it sometime seized by hired hoodlums of the contractors.\textsuperscript{509}

\textsuperscript{508} See "Up from slavery, landlords and liberated Bonded Labourers on a confrontation course", The week', December 22 - 28, 1985 - P. 32.
\textsuperscript{509} See K.P. Sunil, "of Haryana bondage", illustrated weekly of India, June 1 - 7, 1986, P. 8, at P. 12.
It is one of the functions of vigilance committee constituted under Bonded Labour System (Abolition) Act, 1976 to provide for social and rehabilitation of freed bonded labourers. But the vigilance committees are they exist today are not effective and they need to be reorganized and activated. The Supreme Court is of the opinion that officers who are posted at different levels deal with the problems of bonded labour including there identification, released and rehabilitation should be properly trained and sensitized so that they may feel essence of involvement with the misery and suffering of the poor and they may carry out their functions with total dedication to the cause of removal of poverty and in the manner which will inspire the confidence of the weaker section of the community including the bonded labour. Further, the Supreme Court observed that "it is also essential that there should be constant check and supervision over the activities and the officers charged with the task of securing identification, release and rehabilitation of bonded labourers".

It is submitted that in case-there is a willful disobedience on the part of State Government to any directions given by the court of as in *Neerja Choudhury V/s State of Madhya Pradesh*, the court may rise to the occasion to grant exemplary cost to freed bonded labourers. It is nothing but rehabilitation the free bonded labourers by the court itself. It is a welcome step in the process of rehabilitating poverty stricken bonded

510. See 14(l)(b) of the said Act 21.
512. Ibid, at P. 1105.
513. Ibid.
514. AIR 1984 S.C. 1099.
labourers, because it happened that 800 children who had been released since the petition alleging bonded kids in the carpet weaving industry in Allahabad, Mirzapur, Varanasi was moved two years ago, but their whereabouts are not known.\textsuperscript{516} The court must keep its eye wide open until the rehabilitation operation is completed. Such an action may have a deterrent effect and acts as sanction to secure obedience of the state to the directions given by the court for implementation of such neglected and dormant social or Labour welfare legislation.\textsuperscript{517} Therefore, the State Government must concentrate on the rehabilitation of the bonded labourers and evolve effective programmes for this purpose. Indeed, the State Governments are under obligation to do so under the provisions of the Bonded Labour System (Abolition) Act, 1976.

In Kodai Kanal, a pleasant hill town in Tamil Nadu situated in Ama District, there is explosive new taking about bonded labour, what had discovered there that hundreds of contract labourers live and work in medieval conditions amid the tree covered hills around Kodai Kanal has shaken the town with unleashed communal feelings and even threats of violence.\textsuperscript{518} These labourers are said to be employed by unscrupulous contractors with the obvious backing of businessmen and government officials.

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\textsuperscript{516} Bonded Kids, Supreme Court direction to Uttar Pradesh Indian Express, June 25, 1986, P. 410 (Vizianagaram Ed.).
\textsuperscript{517} Bandhu Mukti Morcha V/s Union of India AIR 1984, SC. 802.
\end{flushleft}
The wattle trees which abound on the hilly slopes of the western hards have a myriad uses. Its bark when peeled of yields a dye which is use in the leader industry, the wood is use manufacture of viscose yarn and wood pulp constitutes the basic raw material for the manufacture of paper. Three major companies have been monopolizing the use of wattle in Tamil Nadu. They are: *Tan India Wattles Extracts Co. Ltd.; South India Viscose Ltd.; and Seshasayee Paper and Board Ltd.* The companies leased out the forest lands from Tamil Nadu Forest Department. After the bark of the trees is peeled of labourers of Tan India, the wood is cut and removed by the other two companies for their respective use.

The labourers are mostly stateless individuals Tamils from Srilanka who have been repatriated to India under *Sirimao Bhandarnaike - Lal Bahadur Sastry Pact*, 1964. They were lured by the general promise of contractors or their agents and dragged into the blazing poverty by working in the wattle coops. There are four coops. *NMR coops, the Paricombia coop, the Konalar coop and Edambankari coop,* all are in a 40 km, radius around *Kodai Kanal*. The terms and conditions of bonded labourers are blood-curdling. These are working under piece rate wages and they are never paid the full amount. They were dwelling in the camps in striking resemblance top common chicken coops. They were given yearly two blankets for a family of five members and three blankets for a family of six members, apart from each a Dhoti or Sari respectively. They were supply coarsest rice available in the market for less than Rs.3 per kg. which was sold to them on a credit at Rs.4 per kg. and they have to take

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water from holes teeming with worms. The women complains that there is no one in the camp without diarrhea, stomach ache or worms and they blame it to the black water they must drink. Medical facilities are completely absent. If any women in the coops is injured during the course of the work, the contractors take her to Kodaikanal for treatment and no other male member from the coop is allowed to accompany her. She is brought back to the coop only the next day. God alone knows what they do to the unfortunate women. It was notices that at least 25 women from the coops have been raped by the contractors and their friends in this way. Seducing woman and illegitimate children is a common feature. Deaths during delivery time and deaths in the coarse of work and quite normal due to lack of medical care. Labour laws are inoperative in these forests and whenever there is a voice of resistance they are bitten mercilessly. On march 3.1986, it all come out into open when Shiva Santha Kumar a social worker with a help of Henri Tiphange, Civil liberties activist presented a petition to the sub collector, Gurnihal Singh Pirzada alleging that 40 odd working at NMR coop were being held in bondage by B. Guruswamy and P.Rajasekharam, both labour contractors for the supply of wattle bark to Tan India. Later confidential enquiry was conducted by the dynamic Sub collector by the order of collector of Anna District from 7-3-1986 to 10-3. 1986 and it was established beyond doubt

521. See Supra note 208, at P. 11.
522. Ibid at P. 10.
523. Ibid at P. 13.
524. Ibid at P. 11.
525. Ibid.
that the contents of the petition were correct.\textsuperscript{526} The collector found ill-fed under paid workers dressed tattered clothes, living in primitive housing and they were paid only once in three months, the sub-collector concluded that they were bonded labourers and released them. The collector of Anna District stayed the sub-collectors orders and started a fresh enquiry. The Supreme Court on being approached by \textit{Bandhu Mukti Morcha}, appointed its own commission and the Supreme Court in its interim orders dated April, 1, 1986 directed the State Government not to transfer the Sub-collector from \textit{Kodaikanal}. But \textit{Pirzada} was transferred from \textit{Kodaikanal} on June 13, 1986. Again \textit{Bandhu Mukti Morcha} went to Supreme Court against the transfer of Sub-collector to \textit{Kodaikanal} within 24hrs. justice \textit{Oza} observed that "the government could not flout the orders of court".\textsuperscript{527} Due to the efforts of the Supreme Court, 633 bonded labourers were identified in all apart from a few hundred workers belonging to certain backward areas of Maduri and rest of them were Srilankan repatriates.\textsuperscript{528}

At last, \textit{Pirzada} came to their rescue. The Sub-collector has worked out the basic needs of the families and has arranged for the delivery of essentials of their door steps and they have also he given ration cards and their names included in the electoral rolls.\textsuperscript{529} Neither they, nor \textit{Pirzada} himself, knew then that he would be transferred out within a few days. With his transfer (in late February) the District Administration began to

\textsuperscript{526} Thoma.s Abraham, "Breaking out of Bondage", Frontline, June 14 - 27, 1986, P. 75.
\textsuperscript{528} T.N. Gopalan, "Freedom from Bondage, but not from want", Indian Express August 17, 1986, P.8.
\textsuperscript{529} Ibid.
play hide and seek. Today, more than a year later, roughly half of than continue to live in old, ill-lit coops without any amenities deep in the forests of Kodaikanal. It is shocking fact that whereabouts of the rest are not known, will history repeal itself? These are the situations around 1990.

5.8. **Social Action Groups have become the Representative of under privileged and the unrepresented:**

Where glaring social and economic inequalities exist, there is an urgent need for social action groups to represent the under privileged and the unrepresentative. Now a days there are a number of social action groups with a burning zeal to help their fellow beings. With the positive effort of social action groups functioning amongst the poor, they shall be able to discover the existence of bonded labour and be able to identify and release them.

The bonded labour system (Abolition) Act, 1976 provides for the inclusion of social workers in the vigilance committees at District and Sub-divisional levels. Under the above Act, Section 13(2)(c) provides for the two social workers resident in the District to be nominated by the District Magistrate for the vigilance committees constituted for a District and Section 13(3)(c) provides for two social workers resident in the sub-division to be nominated by the sub-division magistrate for the vigilance committees constituted for sub-division. On this practical issue the apex court recognized the need for inclusion social action groups in the

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vigilance committee constituted under the Act as it failed that identification of bonded labourer through official machinery is difficult and directed the State Government (Government of Uttar Pradesh in this particular instance) to extend full support and cooperation to those social action groups.\textsuperscript{532} It would be immaterial that who be the identifying persons, whether the Government official or the activist of social workers what is prime need that is determination, dedication and sense of social commitment.

It must be expressed very definitely that what sort of faith expressed in the inclusion of members of voluntary groups in the vigilance committees as a remedy for identification has also its kind. Proper due care must take into consideration to identify the voluntary groups which are genuinely interested to alleviate the unfortunate bonded labourers. Care is needed to prevent the vested interest and political parties from the capitalizing on the misfortune of such teeming millions. It is proved fact that with bonafide intent genuine social action groups exist and they had their own role in the matter of identification, release, and rehabilitation of bonded labourers. Therefore, social action groups has really become an important effective body who always stand in identification, release and rehabilitation of teeming millions helpless bonded labourers.

\textsuperscript{532} Ibid.
5.9. Bonded Labour and its neo-constitutionalism:

The Supreme Court in *Bandhu Mukti Morcha V/s Union of India*\(^{533}\) vehemently came forward and recognized the right of bonded labourers to live with human dignity. These rights of bonded labourer to live with human dignity derived from Article 21 with the sanctuary of human values after the celebrated decision of the Supreme Court in *Maneka Gandhi Case*\(^{534}\). The Supreme Court of India in *Bandhu Mukti Morcha V/s Union of India*\(^ {535}\) initiated a new trend to read the Directive Principals of state policy in the Article 21 of the constitution to make the right to live with human dignity fruitful to the working class of the country. The court significantly remarked:

"Since the Directive Principles of the State Policy contained in clauses (e) & (f) of Article 39, 41 & 42, are not enforceable in a court of law, it may not be possible to compel the state through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity but where legislation is already enacted by providing these basic requirements to the workmen and thus investing their rights to live with basic human dignity, with concrete reality and content, the state can certainly be obliged to ensure observance of such legislation for inaction on the part of the state in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21.....\(^{536}\) This was

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533. AIR 1984 SC, 802.
534. Supra Note 226 at P. 341.
535. AIR 1984 SC, 802.
536. Ibid at P. 812.
nothing but reiteration of its stand that was already taken in Asiad case\textsuperscript{537} which says that, "the State is under constitutional obligation to see that there if no fundamental rights of any person particularly when he belongs to weaker sections of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The Central Government bound to ensure observance of social welfare and labour laws enacted by parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the Directive Principle of State Policy".\textsuperscript{538}

In Neerja Choudhury V/s State of Madhya Pradesh,\textsuperscript{539} the Supreme Court went a step forward ascertaining through Justice P.N. Bhagwati, who observed, "it is the plainest requirement of Article 21 & 23 of the constitution that the bonded labourers must be identified and on released they must be suitably rehabilitated. The Bonded Labour System (Abolition) Act, 1976, has been enacted in pursuant to the Directive Principle of State Policy with a view to ensuring human dignity to the bonded labourers and any failure of action on the part of the State Government, in implementing the provision of this legislation would be the clearest violation of Article 21 apart from Article 23 of the constitution".\textsuperscript{540}

\textsuperscript{537} People's Union for Democratic Rights V/s Union of India, AIR 1982 SC 1473.
\textsuperscript{538} Ibid. at P. 1490 - 91.
\textsuperscript{539} AIR 1984 SC, 1099.
\textsuperscript{540} Ibid at 1106.
Later on there are also cases in which Supreme Court has reiterated the same stand to the identification, release and rehabilitation of bonded labourers on the part of the State Government machinery. The Supreme Court set a new constitutional standard at a time when a state on its part has completely neglected the human values. The court further remarked that"......the State Government is under our constitution scheme, charged with the mission of bringing about a new socio economic order where there will be socio economic justice for everyone and equality of status and opportunity for all........".541

The following are the gains of socio action litigation towards bonded labourer :

(i) Socially conscious individual and social action groups can and will come forward on behalf of the voiceless and invisible bonded labourers because of liberalized locus standi.

(ii) Simplification of procedure makes it possible for social action groups or individuals to approach the courts through writing letters to the court which can be treated as writ petition.

(iii) The appointing of commissions by the court with the member of social action groups of fact finding bodies will establish a new mood of establishing facts before the court.

541. See Supra note 208 at P, 811.
(iv) The monitoring practice of the court for the implementation of the direction at periodic intervals, to ensure compliance enable the effective vindication of right in practice.

5.10. Child Labour Welfare:

The former chief Justice of India Mr. Justice Subba Rao, rightly remarked "Social justice must begin with child unless tender plant is properly nourished, it has little chance of growing into strong and useful tree. So. first priority in the scale of social justice should be given to the welfare of children".542

For achieving these objectives of the constitution of India the government have three organs of Government the legislature, the executive and the judiciary. Each of these is supreme within the sphere allotted to it. To interpret the constitution keep the three organs of Government within there allotted spheres and to enforce rule of law, an independent authority is absolutely essential and this furnished the court of justice. The Supreme Court of India at the apex has been assigned a very important role and constituted as a guardian of the constitution which is the yardstick of grundnorm for other legislation.543

Our constitution accords a dignified and crucial position to the judiciary. It is the greatest unifying and integrating force of our country. It

543. See M.P. Dube, "Role of Supreme Court in India constitution 1987 P-6.
expounds and defines the true meaning of law.\textsuperscript{544} It is the ultimate interpreter of the constitution and this puts a second break on the legislature and the executive the first being the political check of the people themselves.\textsuperscript{545} The constitution puts an obligation on every organ of the state, including the judiciary to usher in a new social order in which justice social economic and political and equality of status and opportunity prevail.\textsuperscript{546} The final burden of interpreting this elastic provision is upon the courts.\textsuperscript{547} The courts have to contribute to laws growth without over stepping the boundaries of the system in other words how to reconcile tradition and convenience or the claims of stability and those of change. "It is the duty of judiciary to recognize the development of the nation and to apply stabilized principles of the constitution which the nation in its progress from time to time assumes. The judicial organs would otherwise separate itself from the progressive life of community and act as a clog upon the legislative and executive departments rather than as a interpreter".\textsuperscript{548} Indian judiciary is charged with the duty of holding the balance even between a state or a states and the union and between the state and the individual. It has to holds the scale even a legal combat between the reach and the poor, the mighty and the weak without fear or favour.\textsuperscript{549} The role of judiciary in India has been quite significant in promoting and ensuring the child welfare. The prima facie and important

\begin{thebibliography}{99}
\bibitem{544} Ibid.
\bibitem{546} The Preamble of the India Constitution of India.
\bibitem{547} H.R. Khanna J. Indian Express, July 28, 1981.
\bibitem{548} Sir Isaac Newton, 1922, quoted Doctrine of Stare-decisis, perspective over ruling and acquiescence - A critique by Ram Rajput, (1968), 2 SCJ, 1 (Journal Section).
\bibitem{549} See Supra Note 3, P. 11.
\end{thebibliography}
task of social justice is to take care of child for him lies then hope of nation's future. To assess the judicial response to the child labour welfare as an effective instrument to improve the status of the children, in accordance with the spirit of constitution. The judiciary in its fullest extent has aided and impeded social changes in relation to the status of children in India in the form of interpretation of legislation. A document of the social revolution is the constitution which imposes an obligation on every instrumentality including the judiciary to transform the status-quo ante into a new human order in which there will be equality of status and opportunity for all including children. Therefore, the judiciary has a socio-economic destination and a creative function.

5.11. Right to Education and Child Labour Welfare:

Compulsory education and child labours are inter linked, if compulsory education will have to reach to every person in full fledged manner, automatically the practice of child labour will be abolished absolutely. Article 24 of the constitution bars employment below the age of 14 years. Article 45 is supplementary to Article 24 for if the child is not being employed below the age of 14 years kept occupied in some educational institutions. The court in a series of cases has unequivocally declare that right to receive education by the child workers is an integral part of right of personal liberty embodied in Article 21 of the constitution. After reviewing the decisions of Supreme Court it clearly demonstrate that

552. See M.C. Mehta V/s State of Tamil Nadu and others, AIR 1991 SC 417 at 418.
right to education is necessary for the proper flowering of man, his mind and overall personality and has now become the facts of right to personal liberty. Further, the High Court in a famous case of *Anand Bardhan Chandel V/s University of Delhi,*553 has held that education is a fundamental right under constitution. The court observed that "the laws are therefore, now settled that the expression of life and personal liberty in Article 21 of the constitution includes a variety of rights though they are not enumerated in Part III of the constitution, provided that they are necessary for the full development of the personality of the individual and can be included in the various aspects of the liberty of the individuals. The right to education is therefore, included in Article 21 of the Indian constitution".

This right can be denied only by means of procedure established by law as contemplated in Article 21 of the constitution, the procedure to be fair, just and reasonable must pass a test under Article 14, 19 & 21 of the constitution.554 Similarly, the Andhra Pradesh High Court in its momentous decision in *Murly Krishna Public School* case 555 pronounced that "right to education to Dalit's is a fundamental right and it is mandatory duty of a state to provide adequate opportunities to advance educational interests by establishing schools". This short of decision of the Andhra Pradesh High Court has paved the way for better educational opportunities for Dalit children. The Dalit hitherto neglected specimen of humanity who are dragging there earthly existence under a grinding poverty have the fundamental rights to education and they can compel the

553. See AIR 1978, Delhi P. 308.
554. See Maneka Gandhi V/s Union of India, AIR 1978 SC 597.
555. See AIR 1968 A.P. 204.
state to take positive action to provide education facilities to their children. If the state is failing to provide better educational facilities to the children belonging to the lower strata of the society is violative of not only Article 45 but also Article 21 of the constitution. Thus, the judicial response to the right to education is positive and progressive to secure in particular to the children of the weaker section of the society.556

The pernicious practice of child labour would never be abolished unless and until the education will be made compulsory to the child labour which is closely related to the child education. The Government of India in 1986 & 1987's onward is specifically from 2000 & 2005, 2008 adopted a new set of policies toward working children, which for the first time reflected privately in the ministries of labour and education. With this positive will the courts have played a parental role while directing in the Central Government to persuade the workmen to send their children to nearby schools and arranged not only the schools but also provide free of charge books and other facilities such as transportation etc. The court also put forth the suggestion that whenever the central government undertakes time should provide that the children of the construction workers who are living at or near the project side should be given facilities for schooling and this may be done either by the Central Government itself or if the Central Government entrusts the project work any part thereof to a contractor, necessary provisions to this effect may be made in the contract with the

contractors. With the realistic view, the court wants to consider the overall position of children and was in agreement with the prevailing condition of Indian society. It has been agreed that due to the poverty and destitutions in this country, it was difficult to eradicate child labour. The court pleaded that it is the high time when with the positive role by the Government and desired that attempt must be made to reduce, if not eliminate the incidence of child labour because it was absolutely essential that child should be able to receive proper education with a view to equipping itself to become a useful member of the society and to play a constructive role in the socioeconomic development of the country. The Supreme Court again in *M.C. Mehta V/s State of Tamil Nadu,* has held that children are means under Article 45 of the constitution to be subjected to free and compulsory education until they completed age of 14 years. The court has however, observe that the Directive Principle of State Policy has still remained a far cry and though according to these provisions all children raise up to the age of 14 years are supposed to be in school, economic necessity forces growing up children to seek employment.

An interpretation was also came in *Unni Krishnan J.P V/s State of Andhra Pradesh,* wherein Supreme Court has held that children below-14 years of age must be given education, as mandated under Article 45 of the constitution.

559. AIR *1991, SC 147.
560. AIR 1993, SC 2178.
The liberalization of the concept of locus-standi: to make excess to the court easy is an example of changing attitude of the courts. Basically all the working children come from the families which are below the poverty line and these have no means to ventilate their grievances that there fundamental rights are being breached with impurity. The apex court, keeping in view pitiable conditions of the child workers has shown its generosity by relaxing the concept of locus-standi. From the philosophy of Public Interest Litigation, the judiciary itself is intended to indicate and promote public interest by rendering help to those people of the society who are unable to approach the court because of there poor economic conditions. In number of cases, where before the Supreme Court, the issue of locus standi has arisen. It has been held by the Supreme Court.

“Where a legal wrong or legal injury is caused to person or to a determinate class of persons by reason of violation of any constitutional or legal rights or any burden is imposed in contravention of any constitutional or legal provisions or without authority of law. or any such legal wrong or legal injury or illegal burden is threatened, and such person or determinate class of person is by reason of poverty helplessness or disability or socially or economically disadvantage position, unable to approach the court for relief, any member of public can maintain an application for an appropriate direction or writ or order”.561

In Fertilizer Corporation Kamgar Union V/s Union of India, Krishna Iyer J, also stated:-

561. AIR 1980, SC 1622.
“In simple term the locus - standi must be liberalized to meet the challenge of time”.

This liberalized rule of locus-standi has further been reflected in various Supreme Court's decisions including *Ratlam Municipality Case*\(^{562}\) *K.R. Shenoy V/s Udipi Municipality*,\(^{563}\) *Ram Kumar Mishra V/s State of Bihar*,\(^{564}\) and *Bandhu Mukti Morcha V/s Union of India*\(^{565}\)

There was one important case in which a letter had been entertained as a writ petition, send by post as Public Interest Litigation in *People's Union for Democratic Rights V/s Union of India*,\(^{566}\) commonly known as Asiad case. This case is an epoch-making judgment of the Supreme Court of India, which also has displayed a creative attitude of judges to protect the interest of the child workers. With this judgment the Supreme Court of India is trying to establish a new dimension to several areas, such as locus-standi. Public Interest Litigation, enforcement of labour laws, minimum wages and employment of children. In this case the Supreme Court took cognizance of the child workers interest and observed:\(^{567}\)

“Large number of men, women and children who constitute the bulk of our population are today living sub-human existence in condition of abject poverty, utter grinding poverty has broken their back and sapped

\(^{562}\) AIR 1974, SC 2177.  
\(^{563}\) AIR 1980, SC 1622.  
\(^{564}\) AIR 1974, SC 2177.  
\(^{565}\) AIR 1984, SC 537.  
\(^{566}\) AIR 1984, SC 802.  
\(^{567}\) AIR 1982, SC 1473 also see Bandhu Mukti Morcha Case AIR 1984, SC 802.
with moral fibre. They have no faith in the existing social and economic system”.

In *M.C. Mehta V/s State of Tamil Nadu*, the petition under Article 32 of the constitution has been brought by way of public interest litigation before the Supreme Court and is connected with the problem of employment of children in match factories of Sivakasi in Kamraj District of Tamil Nadu State. In this case *Ranganath Misra, C.J. & M.H. Kania*, Justice rightly observed:

“We are of the view that employment of children within the match factories directly connected with the manufacturing process upto final production of match sticks or fire works should not at all be permitted. Article 39 (f) of the constitution provides that the state should direct its policy towards securing that children are given opportunities and facilities to develop in healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment”.

Further the court observed

“The spirit of the constitution perhaps is that children should not be employed in factories as childhood is the formative period”.

To the welfare of child labour the court opined that compulsory insurance scheme should be provided for both adult and children

568. See AIR 1991, SC 419.
employees taking into consideration the hazardous nature of employment. The Tamil Nadu state shall ensure that every employee working in the match factories is insured for a sum of Rs.50,000 and the Insurance Corporation, is contacted should come forward with a viable group insurance scheme to cover the employees in a match factories of Sivakasi area.

5.12. Trafficking of Human Beings and Forced Labour are Prohibited:

The court has specifically pointed out that Article 23 of the constitution has been intended to protect the individual not only against the state but also against other private citizens from the trafficking in human beings and other forms of forced labour, it prohibited traffic in human beings and beggar and other similar forms of forced labour practiced by anyone else.

_Bhagwati J., observed:_

“Article 23 strikes forced labour in whatever form it may manifest, because it is violative of human dignity and is contrary to basic human values”.

The Supreme Court has rightly reminded us of the task undertaken by our wise founding fathers of the constitutions under Article 23 of the National Charter. The court observed :-

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569. See AIR 1982, SC 1473.
".....The constitution makers when they set-out to frame the constitution found that they had the enormous task before the changing of the socio-economic structure of the country and bringing about socio-economic regeneration with a view to reaching social and economic justice to common man. Large masses of people, bled white by well night two centuries of foreign rule were living in abject poverty and destitution, with ignorance and illiteracy accentuating their helplessness and despair. The society had degenerated into a status oriented hierarchical society with little respect of the dignity of the individual who was in the lower rungs of the social ladder or in an economically impoverished condition. The political revolution was completed and has succeeded in bringing freedom to the country but freedom was not to an end in itself, it was only or means, to an end, the end being the raising of the people to higher level of achievement and bringing about their total advancement and welfare. Political freedom had no meaning, unless it was accompanied by social and economic freedom and it was therefore necessary to carry forward the social and economic revolution with review to creating socio-economic conditions in which everyone would be able to enjoy basic human right-stand participate in the fruits of freedom and liberty in an egalitarian social and economic framework. It was with this end in view that the constitution makers enacted the directive Principles of State policy in Part-IV of the constitution setting out the constitutional goal of a new socio economic order. Now this was one feature of our national life which was ugly and shameful and which cried for urgent attention and that was the existence of bonded or forced labour in large part of the country. This evil
was the relic of a feudal exploitative society and it was totally incompatible with the new egalitarian socio-economic order, which we the "people of India" were determined to build and constitute a gross and most revoking, denial of basic human dignity. It was therefore, necessary to eradicate the participations' practice and wipe it out altogether from the national scene and this had to be done immediately because after the advent of freedom such practice could not be allowed to blight the national life may longer obviously, it would not have been enough merely to include abolition of forced labour in the Directive Principles of the State Policy because the outlawing of this practice would not have been legally enforceable and it would have continued to plague our national life in violation of the basic constitutional norms and value until some appropriate legislation could be brought by the legislative forbidding such practice. The constitution makers therefore, decided to give teeth to their resolve to obliterate and wipe out this evil practice by enacting constitutional prohibition against it in the chapter on Fundamental Rights, so that the abolition of such practice may become enforceable and effective in Article 23 as was included in the chapter of fundamental rights. The prohibition against traffic in human beings and beggar and other similar forms of forced labour", is clearly intended to be a general prohibition, total in its effect and all pervasive in its range and it is enforceable not only against state but also against only other person including in any such practice."
In *Lakshmi Kant V/s Union of India*, 570 the apex court took active steps to abolish bonded domestic service and slavery of poor children, which had been in practice under the guise of foreign abolition. But violation of various protective provisions have been pertinently pointed out by the highest judicial tribunal in the country. 571 Such violation related to the provisions of the minimum wages Act, 1948, and the Inter-State Migrant workmen (Regulation of Employment and conditions of service) Act, 1979, the Supreme Court has issued directions to safeguard the interests of large number of child workers in *Salal Hydro Project V/s Jammu & Kashmir*. 572

With the spirit of judicial activism, there still many cases where the acute poverty has compelled the parents to sell their children hoping that the children would be engaged only in household duties. But there are persons, who purchase female children for the purpose of forcing them to brothel keepers. When the unfortunate children are sold to brothel keepers, they are brutally treated, until they succumb to the desire of the brothel keepers and enter into the unethical and squalid business of prostitution. Amongst those cases, which brought into the notice of the Supreme Court in *Vishal Jeet V/s Union of India*, 573 in this case the apex court has referred to Article 23 of the constitution which prohibits traffic in human beings and clauses (e) of Article 39, which inter-alia, provides that the tender age of children is not abused and the citizens are not forced by

570. See AIR 1984, SC 469.
571. See The Observation of Justice P.N. Bhagwati in People's Union for democratic Rights V/s Union of India See AIR 1982, SC 1473.
572. AIR 1987, SC 177.
573. See AIR 1990, SC 1412.
economic necessity to enter into work consulted to their age of strength. The Supreme Court also referred to clause (f) of Article 39, which inter alia, provides that childhood and youth are protected against exploitation and against mental and moral abandonment. The provisions show that the framers of the constitution were anxious to protect and safeguard the welfare of children. It is the judiciary, organ of the government, which has always worked hard to discourage the pernicious practice of traffic in human beings and forced labour. The courts in India are always quite sensitive to the problems of child workers who are oftenly made victim and that the judiciary fought to raise loud voices for the cause of child labourers or workers with a zeal to raise them to higher level of achievement and bring about their total advancement and welfare so that they are converted into good and responsible citizens of the country. It can have only by the positive endeavor of all the organs of the government.

In India almost the judiciary has brought a revolution awaking in the life of child worker. Relentlessly, the judiciary has always endeavored to expand and develop the law so as to respond to the hope and aspirations of people who are looking to the judiciary to give life and content to law. The Indian judicial institution played significantly in resolving inter-disputes and as well as to act as a balancing mechanism between the conflicting pulls and pressure in the society.

At the same pattern new contents are being provided to the exploitation of children, women and labour. Executive has been made more and more to realize its responsibilities what has ascertained in the
apex document of the country. The apex court in *Sheela Barse V/s Union of India*, 574 has even gone to the extent of holding that child is a national asset, it is the duty of the state to look after the child with a view to assuring full development of its personality. The court has very aptly held that incarceration in jail has the effect of dwarfing the development of child, exposing him to baneful influences, coarsening his conscience and alienating him from the society.575 Justice Bhagwati made a suggestion to formulate and implement a national policy for the welfare of children. He observed :-

"Children’s programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizen,576 physically fit morally alert and morally healthy, endowed with the skill and motivations needed by society. Equal opportunities for development of all children during the period of growth should be our aim for this would serve our large purpose of reducing, inequality and ensuring social justice."

The Supreme Court has even directed the State Governments 577 to enforce the statutory requirements of the Factories Act to providing recreation facilities and medical aid to the workers of match factories at Shivakasi.578 It has also been suggested that every employee working in these factories should be brought under a group insurance scheme.

574. See AIR 1987, SC 1773.
575. Ibid.
576. Ibid.
578. 2941 of them are reported to the children.
Plethora of Statutes are available, i.e., the J & K. children's Act, 1970: the Rajasthan children's Act, 1970; the Assam children's Act, 1971; the Kerala children's Act, 1973; the Haryana children's Act, 1974; the Bal Adhiniyam 1974 etc., to prevent the misuse of children in hazardous employment and to protect the general rights of the children. But sociological studies have revealed either the ineffective nature of these laws or their blatant violation. In 1986 the child labour (Prohibition and Regulation) Act was passed but this also is not attempting a comprehensive ban of child labour still, and the Nation Policy on child labour (1987) has been evolved.

The petitioner employer in Raj Kumar Tiwari V/s State \(^{579}\) was imposed Rs.20,000/- as penalty for employing a child alleged to be below 14 years of age. He challenged this order contending that, before imposing penalty no enquiry was held. The High Court, although found that an enquiry was indeed held, set aside this impugned order on the ground that for the applicability of Section 14 of the Act it is sine qua non that the person/child employed must be one who has not completed 14 years of age.\(^{580}\) According to the court the impugned order itself indicate that the child employed was of 14 years old and not below 14 years of age. The petition was, thus allowed on this ground and the impugned order was aside. It is submitted that there a lot of differences between the expressions “a person who has completed 14 years of his age” and “a person who is 14 years old”, while the former would mean a person who has completed 14 years of age and is in his 15\(^{th}\) year, the latter phrase could mean a person

\(^{579}\) 2003, 111, LLJ 1045.

\(^{580}\) Id. At 1047.
who has completed 13 years of age and is in his 14th year. In the absence of exact date of birth to calculate whether the person has completed 14 years of his age, the court could have upheld the order of the lower court being the fact finding court. It is very seldom that an employee is punished by the court for employing children. And this is a major contributing factor for the continued employment of children by unscrupulous.

_Hemanta Bhai V/s State of Chattisgarh_ 581 is another case of prosecution under the child labour (Prohibition and Regulation) Act. The case of the prosecution was so saddy that the Chattisgarh High Court had no hesitation in quasing the proceedings on several courts and allowing the petition of the employer what looks strange. Is that the prosecution had no stand or arguments to make sustain the prosecution. According to the court the trial magistrate had not applied his mind to the facts and law applicable to the present case. The employer had neither employed the child in his bidi-making workshop nor permitted her to work in workshop where the process of bidi making was carried on. The child was found rolling bidies at her residence and for that the firm could not be proceeded against in view of the proviso to Section 3, which exempts family enterprises from the application of the Act. Besides, no evidence was produced to prove that the girl was below 14 years age.

In the era of globalization and outsourcing of labour this is a typical case which highlights how a beneficial social legislation like the child labour Act can be legally circumvented by the employer. While it may be

true that this Act may have reduced the number of children employed in 
organized sector, it is equally true that their number has gone up in the 
informal sector where no labour laws apply. The result is that children 
continue to be exploited by employers legally in the garb of family 
employment not with standing the existed a law prohibiting child labour.

5.13. **Employer liable for violation of Act**:

Employment of a child labour is one of the prohibited occupation 
viz. construction work, was at issue in *Raj Homes Pvt, Ltd. V/s State of 
M.P.*[582] the petitioner company impugned before the Madhya Pradesh 
High Court the show cause order passed by the assistant Labour 
Commissioner, Bhopal for violation of Section 3 of the child labour 
(Prohibition and Regulation) Act, 1986 and directing it to pay a sum of 
Rs.20,000/- per child labour and their release forth with cancel for the 
petitioner before the High Court assailed the validity of the order on three 
ground viz. proper enquiry was not conducted before passing the impugned 
order: evidence was not recorded; and the order was passed within six 
months.

Dismissing the petition the court held that in the instant case report 
of the inspector was available and there was a piece of evidence and was 
based on actual inspection. There was nothing is doubt about the 
correctness of the report. Notice to inspect had also been given in the 
labour was found employed. Age of the child labour was also not in 
dispute. The decision therefore is in accordance with the law laid down by

[582] 2003, 111, LLJ 626.
the apex court in *M.C. Mehta V/ State of Tamil Nadu*. In fact this is one of the exceptional cases wherein the court has upheld the punishment imposed on the employer of child labour by disallowing all the contentions raised by the employer's counsel. The judiciary specially the higher judiciary has often been sympathetic to the issue of child labour thrive in our country whenever the problem was brought to their notice either by public interest litigation or otherwise.

In *Narendar Malav V/ State of Gujarat* is a PIL, which brought to the notice of the apex court the issue of child labour in the salt mines of Gujarat. The court requested the amicus curiae and a man governmental organization SEWA, to enquire and investigate the issue of child labour the welfare and well being, of salt mine workers and their families in the Saurashtra and Kutch areas of the State of Gujarat, particular with reference to education facilities for their children and availability of adequate/proper housing and medical facilities and to report to the court within three months. The court requested the amicus curiae and the representatives of the NGO to interact with the empowered committee for the purpose of ascertaining the measures taken by various agencies for the welfare of the salt workers and their families and to suggest ways and means to improve their conditions. The court also directed the State government through the Assistant Labour Commissioner to provide all the assistance for this purpose.

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DURING the year 2006, there has not been much judicial activism in the area of social security legislations. Most of the judgments have followed the already established legal propositions. However, there have been some legislative developments and governmental initiatives in the area. The government has embarked on what could possibly be the most ambitious social security programme conceived anywhere in the world. Targeting a coverage of 37 crore male and female workers, which is more than the population of most countries, the government is looking at providing health insurance, survivor benefits and old age pension to all workers, particularly those in the unorganized sector. It has already sought technical and actuarial advice from the Life Insurance Corporation on the kind of funding that would be required to provide the minimum benefits envisaged by the government. It has been decided to appoint a high level committee to address four basic issues the provisions required, the source of funding, the infrastructure necessary and the implementation/monitoring mechanisms of the scheme. In the United States, social security benefits are available to citizens in the form of survivors of workers, disabled workers and retirees. The United Kingdom has a programme covering workers with weekly earnings of at least 77 pounds. Self-employed persons with annual income below £ 4.095 are covered for all benefits except the state second pension, work injury benefits, and contributory jobseeker's allowance. Voluntary contributors are covered for the basic state retirement pension and survivor's benefits only. The government is focusing on a minimum benefit programme.

which includes a term insurance of upto Rs. 10,000/- accidental cover of Rs. 40,000 health insurance of Rs. 6,000 and monthly pension of Rs. 200. For example, the Employees State Insurance Corporation has with a view to bring more employees in the scheme and to improve its viability, decided on 16.12.05 to raise the wage limit for the scheme’s coverage to Rs. 10,000 from the existing limit of Rs. 7500.\textsuperscript{586} This measure is expected to benefit lakhs of employees who were otherwise outside the coverage of the scheme. It is submitted that the corporation to keep it more realistic should do such upward revision of the ceiling limit periodically.

5.14. Regularization/absorption of contract labour:

In \textit{Workmen (represented by Colliery Mazdoor Sabha) V/s Central Govt. Industrial Tribunal Calcutta} \textsuperscript{587} the workers engaged through the contractor raised an industrial dispute for their regularization/absorption in the company. The tribunal, having found that the petitioners were contractor’s workers, held that they could not be given any such relief. This award by the tribunal was challenged by the petitioners in a writ petition before the Calcutta High Court. Before High court it was contended, \textit{inter alia}, that since the contractor was not a licensed contractor under section 12 and the principal employer a registered employer under section 7 of the Contract Labour (Regulation and Abolition) Act, 1970, the finding of the tribunal was absolutely \textit{de hors} the

\textsuperscript{586} See Id. 2005 LLR, 1.
\textsuperscript{587} 2005 LLR 79.
statutory rule, and the workmen were to be considered as the direct employees of the organization.\textsuperscript{588}

Affirming the finding of the tribunal, and relying on \textit{Dena Nath};\textsuperscript{589} \textit{Steel Authority of India Ltd.}\textsuperscript{590} and \textit{Municipal Corporation of Greater Mumbai}\textsuperscript{591} the High Court held that the workers of the contractor would not be entitled to relief of regularization even when the principal employer was not a registered employer and the contractor a non licensed contractor. In the instant case, the court was satisfied that the principal employer was not having any direct control or supervision over the workers engaged by the contractor. Work orders as also cheques for payment were issued in the name of the contractor only.

\textit{Paradip Port Trust v. Their Workmen} \textsuperscript{592} was an appeal by the management of the Paradip Port Trust against the order of the tribunal regularizing the services of 40 casual workmen on the ground that they had put in many years of service and that the work they are doing was perennial in nature. The respondents in the instant case were employed by material suppliers/transporters on contract for loading, unloading and stock of material inside the central stores of the petitioner port trust for seven years. They were issued gate passes by the petitioner for purposes of entry in prohibited areas. At certain occasions, they were even paid by the

\begin{footnotesize}
\begin{enumerate}
\item[588.] Reliance was placed for his argument on Secretary, Haryana State Electricity Board V/s Suresh, 1991 1 CLR 959.
\item[589.] Dena Nath V/s National Fertilizers Ltd. 1992 1 CLR 1 (SC).
\item[590.] Steel Authority of India Ltd. V/s National Union Water Front Workers and others, 2001 (4) LLR 135.
\item[592.] 2005 LLR 47.
\end{enumerate}
\end{footnotesize}
management of the port trust. Management had effective control not only over their entry into prohibited area but also on their movement inside the central store. The work they were doing was also found to be permanent and perennial in nature. Based on these findings, the tribunal ordered regularization of their services and payment of wages at par with permanent workers of the petitioner port trust.

Aggrieved by the decision of the tribunal, the management impugned the same before the High court. It was argued by the petitioner that though the workmen were issued gate passes to enter inside the prohibited area, they were not directly engaged for the work of loading and unloading by it. The workmen were being paid by the supplier on piece rate basis for doing such work, in fact, the work of stacking of materials was done by the regular workers. These contract workers were neither direct nor indirect labourers of the petitioner and there was no relationship of employer and employee between the petitioner port trust and the respondent workmen.\textsuperscript{593}

On the contrary, the case of the workmen was that the petitioner port trust had some control over their activities and issuance of gate passes to them for entering into the prohibited area for doing the job of loading and unloading and also stacking of materials inside the central store under the supervision and instruction of the officer-in-charge showed due control and supervision of the management over them, bringing in the relationship of master and servant. It was also contended that the work the

\textsuperscript{593} Id. at 49.
respondent workmen were engaged in being of perennial and permanent in nature, not accepting them as permanent employees of the port trust amounted to unfair labour practice and denial of right to life and livelihood with dignity.594

In the light of these rival claims, the court was to decide whether there existed a relationship of employer-employee between the appellant port trust and the respondent workmen, and whether the petitioner port trust was guilt of unfair labour practice. On a reappraisal of the evidence adduced by the parties before the tribunal, the court held that not only the management had effective control over the entry of workers into the prohibited area but also on the movement of workers inside the central store. There being no dispute that the workers were working in the central store for the past several years, which was being used for storage of materials belonging to the petitioner port trust, the court held that the work was permanent and perennial in nature. The management of the petitioner port trust was, therefore, guilty of indulging in unfair labour practice by engaging the workers for years without making them permanent. The court without any hesitation upheld the award of the tribunal.

594. Id. at 50. For this argument Reliance was placed on GSRTC V/s Workmen of State Transport Corporation, (1999) Lab 1 C 2639 (Gujarat).
5.15. Canteen employees:

In *Haldia Refinery Canteen Employees’ Union v. M/s Indian Oil Corporation Ltd*\(^{595}\) the workers of the canteen engaged through the contractor claimed absorption as workmen of the respondent corporation. The corporation, however, treated them as the employees of the contractor and denied them the status of workmen of the corporation. On a writ petition filed by the appellant workmen, a single judge of the Calcutta High Court directed the respondent to absorb and regularize their services in its employment on the reasoning that the obligation to provide a canteen being statutory the facility became a part of the service condition of the employees and they were wrongly being treated by the respondent as employees of the contractor.\(^{596}\) On appeal, the division bench, however, reversed the single judge judgment relying on the later three judge bench judgment in *Indian Petrochemicals Corporation Ltd v. Shramik Sena*.\(^{597}\)

Hence the present appeal by the appellant workmen to the apex court.

Upholding the judgment of the division bench of the high court the Supreme Court held that though the respondent corporation had the right to test, interview or otherwise assess or determine the quality of the employees/workers with regard to their level of skills, knowledge, proficiency, capability, etc., this was to ensure that the canteen was run in an efficient manner and provided wholesome and healthy food to the

\(^{595}\) 2005 LLR 529.

\(^{596}\) Reliance was placed on MMR Khan V/s Union of India JT 1990 (3) SC 1; and Parimal Chandra Raha V/s LIC of India JT 1995 (3) SC 288.

\(^{597}\) (1999) 6 SCC 439.
workmen of the establishment.\footnote{598} The fact that the respondent had nothing to do with either the appointment or taking disciplinary action or dismissal or removal from service of the employees working in the canteen, and was not responsible for the proper maintenance of registers, records and accounts so far as compliance of any statutory provisions/obligations pertaining to payment of wages or depositing the provident fund contributions were concerned, showed that the appellants were the employees of the contractor. Besides, the contractor having been given a free hand to engage the employees without any stipulation that he shall retain and engage compulsorily the employees who were already working in the canteen under the previous contractor, showed that the appellants were not the employees of the respondent corporation. Further, twice earlier when labour issues between the workmen and the canteen contractor were settled the respondent corporation was not a party also showed that appellants were treating themselves as the employees of the contractor and not that of the respondent corporation.\footnote{599} The Court held that the appellants did not become the workers of the management for purposes other than the Factories Act; they were 'workmen' of the corporation only for the purposes of the Factories Act since the corporation was under a statutory obligation (under section 46 of the Factories Act, 1948) to maintain a canteen for the use of the workers of the corporation.

\footnote{598} Id. at 533 – 34. 
\footnote{599} Id. at 534.
5.16. **Female employee on contractual appointment, having worked for more than 80 days will be entitled to maternity- benefit:**

The petitioner *Bharati Gupta (Mrs.) v. Rail India Technical and Economical Services Ltd.* was a qualified architect who had been engaged on contractual basis by the respondent for spells of renewable contracts of six months each from 8.10.1997 onwards. Her last letter of appointment dated 23.5.2000 stating that the term of her appointment was for six months from 17.4.2000 to 16.10.2000 showed that her employment continued on a routine basis and fresh contract would be issued subsequently. On her applying for maternity leave from 11.11.2000, she was issued a letter on 13.12.2005 stating that her contractual employment ceased from 16.10.2000 and that she was no longer on the rolls of the organization, as such not entitled to maternity benefit. Hence this writ petition to the High court.

The nature of maternity benefits and the entitlement of employees have been clearly spelt out in the Maternity Benefit Act, 1961. The provisions of the Act apply to establishments which have been defined in an expansive manner so as to include the respondent. Sections 4 and 5 of the Act obligate every employer of an establishment to extend maternity benefits under the Act, including leave/pay and maternity bonus. Section 12 mandates that no one can be dismissed on account of pregnancy and section 27 specifically provides that the Provisions of the Act would have an overriding effect.

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600. 2005 LLR 1108.
The court relying on the apex court decision in *Municipal Corporation of Delhi V/s Female Workers (Muster Roll)* 601 which held that even daily wage employees on muster rolls are entitled to the benefits under the Act- rightly observed that in the facts and circumstances of the case, the respondent could not escape its obligation to pay the benefits under the Act to the petitioner.

5.17. **Fixation and revision of minimum wages :-**

Section 3 of the Minimum Wages Act, 1948 states that the appropriate government shall, in the prescribed manner, fix the minimum rates of wages payable to employees employed in employments specified in parts I and II of the schedule and shall revise the same at such intervals not exceeding five years. If for any reason it has not been possible to review or revise the minimum wages within such interval, or within reasonable period thereafter, the minimum rates of wages shall continue to exist, it is clear that the justification for statutory fixation/revision of minimum wages is to prevent exploitation of labour. In *President Cinema Workers Union Affiliated to Bharatiya Mazdoor Sangh V/s Secretary, Social Welfare and Labour Department* 602 the minimum wages fixed in 1992 was not revised for 13 years. The court held that the inaction on the part of the government in not revising the minimum wages for the last 13 years was unreasonable and violative of article 23 of the Constitution which prohibits forced labour. The notification of 1992 was issued as per the cost price index that prevailed in that year. Having regard to the cost of living,

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the state government should have made efforts to issue notification revising the minimum rates of wages on time. The court, therefore, directed the government to review and revise the minimum wages of the petitioners within six months of the order.

It is submitted that the court after having found the state guilty of violation of article 23 of the Constitution, should have passed some strictures or imposed exemplary penalty or both on the functionaries of the state who had illegally omitted to revise the minimum wages so that their successors are deterred from omitting their legal duty.

5.18. Claim of arrears of differential wages:

Section 20(2) of the Minimum Wages Act prescribes that an application claiming arrears of differential wages should be filed within six months from the date when such wages became payable. In *Executive Engineer, Rural Works Division. Mayurbhanj V/s Addl District Magistrate*603 the workers (opposite parties two to 68) were engaged as daily rated labour casual labour by the petitioner. Since they were paid less wages than that was fixed by the state government for a certain period they approached the authority under the Act which allowed their claim along with compensation calculated at ten times the amount despite the contention raised by the petitioner that the claim was time barred. The authority, however, chose to condone the delay because it found that the party was adjudicating the matter before the labour officer before the application was filed before the Court.

603. 2005 LLR 121.
The Orissa High Court agreeing with the view taken by the authority and dismissing the writ petition, held that condoning of delay for not filing the claim for arrears of wages would not be illegal when there was sufficient cause in support of the application. Besides, once the authority under the Act has found that the wages paid to the workers by the contractors were less than the minimum wages as fixed, it was right in holding that the principal employer was liable to pay the difference of wages as arrears and as such there was no irregularity in the order of the authority.

5.19. Safai karamcharis cannot be denied minimum wages on the ground they are part-time workers:

Under Section 15 of the Minimum Wages Act, it is open to the employers to prescribe working hours as per their choice. In *Somi V/s MCD* the petitioner was working as a *safai karamchari* designated as a part-time worker. In the writ petition before the Delhi High Court, he prayed for payment/receipt of minimum wages. The court held that even though the office order which prescribes less than eight hours of duty for part-time *safai karamcharis*, in view of section 15, it must be presumed that the authorities have decided it on their own for good and sufficient reasons and this would not disentitle the worker from being paid his minimum wages. Considering that it is the state that prescribes and fixes the minimum wages it would be a travesty of law if they themselves are the violators of standards which they have laid for other parties. The court,

604. 2005 LLR 778.
accordingly, directed the respondent to pay the minimum wages to the petitioner with the observation that this order was not to be construed as stating that the duty hours fixed in the office order should be continued.

5.20. **Person responsible for payment of wages** :-

In *P.C. Agarwala V/s Payment of wages Inspector*, the employees of Jiyagiroa Cotton Mills, approached the authority under the Payment of Wages Act, 1936 claiming payment of wages to them. While allowing their claim for payment, the authority held that it could proceed against the assets of the company in the hands of the directors or the assets acquired from the company by the directors except personal property of the directors if the same was acquired other than with the income of the company. Aggrieved, the directors approached the Madhya Pradesh High Court which dismissed the letters patent appeal holding that the appropriate remedy was provided under section 17 of the Act. However, it held that the directors would be liable since the expression 'occupier' as used in the Factories Act, 1948 did not appear in the Payment of Wages Act. Allowing the appeal, the Supreme Court held that on a plain reading of the language governing the statute including Section 5 (which deals with occupier who is in default) and Section 291 (which speaks about the general powers of the board of directors) of the Companies Act, 1956 liability for payment of wages could not be fastened upon the directors of the company.

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605. 2005 LLR 1073.
5.21. Causal connection between employment and death of workman :-

In Oriental Insurance Co. Lid. V/s. Thankappan 606 the deceased was a bus conductor who stayed in the bus to commence his journey early morning at 3.30 a.m. He along with the driver went to the nearby stream to have a bath before start of the journey and was drowned while taking bath, the commissioner for workmen's compensation allowed the claim for compensation taking the views that the accident had arisen out of and during the course of employment. In appeal to the High court the insurance company contended that no causal connection could be made out between death of the deceased by drowning and his employment as bus conductor. Therefore death did not occur during the course of employment and the claimants were not entitled to compensation under the Act.

Dismissing the contention and upholding the order of the compensation commissioner, the Kerala High Court held that the accident had its origin in the employment. Whenever there was a causal connection between the employment and death of a workman in an unexpected way, it could certainly be considered as an accident arising out of and in the course of employment entitling the dependant legal heirs to compensation. In the instant case the deceased was staying in the bus for the purpose of commencing its trip early in the morning. The accident occurred when he went to the stream nearby for taking bath along with the bus driver. The

606. 2005 LLR 1018.
causal connection between the accident and the employment was thus manifest.607

5.22. National extension of duty :-

The deceased in New India Assurance Company Ltd., Secunderabad v. Smt. P.Padmavathi 608 was a cleaner in a lorry which stopped at a destination point to collect hire charges. While going to hotel to get food on the instructions of the driver of the lorry, he met with an accident and died subsequently. Holding that the job undertaken by the deceased cleaner was ancillary and incidental to his employment, the commissioner for workmen's compensation, on a claim petition filed by the claimants, awarded compensation calculating the compensation based on the notified minimum wages for cleaners under the Minimum Wages Act, 1948. In appeal to the High court, the insurance company contended that there was no causal connection between the death of the deceased and his employment and the accident did not occur during the course of his employment as cleaner; and hence the claimants were not entitled to compensation under the Act.

Rejecting the said contention the Andhra Pradesh High Court held that the job the deceased undertook (going to get food on instruction from the driver) was nothing but notional extension of duty. It was only on account of his employment as cleaner of the lorry that the deceased was there at that particular spot where the accident took place. Merely because

608. 2005 LLR957.
the accident occurred when the vehicle was stationary and he was out on an errand, it could not be said that the accident did not take place during the course of employment. The words 'arising out of and in the course of employment' used in section 3 of the Act are to be construed keeping in view the beneficial nature of the enactment. 609

The court is acting or functioning as a striker player towards the goal of social welfare and social security. The activism of the court through PIL can be a useful medium to liberate the bonded labourers, contract bonded labourers, and child bonded labourers etc. and to provide a new ethos in the justicing system. These potential of awakening, the political and legal system and to provide social and economic justice to bonded labourers, contract and child bonded labourers etc. With all these efforts and endeavours by the Supreme Court of India, we hope that the Government would welcome this initiative of the court as it would provide and opportunity to help the poor and distressed to come out of the clothes of powerful landlords, businessman, officials and leaders to join the national mainstream. Sixty (60) years of independence is quite a long period and the system have not been able to wipe out this evil social practice from the Indian society. The time has come when the State must ensure that the constitutional promise of social and economic justice become reality to all the distressed and deprived people who have been deprived and exploited for centuries together.

609. 2005 LLR 871.
The judiciary has always made concrete efforts to safeguard bonded labourers, child labours etc. against the exploitative tendencies of the employers by regularizing their working hours, fixing their wages, laying down rules about their health and medical facilities and for nutrition food. The judiciary has even directed the States that it is their duty to create an environment where the child workers can have the opportunities to grow and develop in a healthy manner with all dignity in consonance with the National Charter fixed in the constitutional of India.

The foregoing discussion on the issue ultimately reveals the crucial position of the Indian judiciary. It is charged with the duty of keeping balance between the interest of individual and State. It can be said that the Supreme Court has done a great service not only to the bonded labourers but also to the entire poor person, depressed and oppressed classes of the society under Article 32 of the Indian constitution.