Chapter -4
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In 1947, India got Independence, if we look into the history of Indian political and legal system. We find a lot of change in social system and industrial system. Although efforts have been made from time to time to improve all the systems but we are specially concerned here with the labour problems.

When India became Independent there was less industrial scope for advancement and Indian economy at large was agrarian based. However, most of the people had no lands because there were intermediaries in form of system and naturally landless labourers have to go for work to the landlord willingly or unwillingly. It was in a form of forced labour or bonded labour but our Constitution has guaranteed and recognized the dignity of labour as well as other rights of them. The Constitution of India which was adopted after independence is a document with a social purpose and economic mission. It is heavily weighted in weaker sections of Indian humanity and seeks to bring new socio-economic order based on egalitarianism and social justice. The working position and provisions of Indian Constitution with regard to bonded labour may be discussed as under:

1. Preamble:

The Constituent Assembly which had been originally constituted under the Cabinet Mission’s Plan and had its first sitting on December 9, 1946, became a fully sovereign body on August 15, 1947 with the transfer of power under the Indian Independence Act 1947. Thereafter and until the commencement of the new Constitution on January 26, 1950, the constituent Assembly exercised full sovereign powers and functions as the Constitution making body and as the predecessor to the present central legislature, i.e. the parliament of India. To begin with, the ideals, objectives and the basic philosophy of the Constitution enshrined in a nutshell in its preamble. The words of the preamble are largely a reproduction of the objectives and resolutions set upon and represent the spirit of the Constitution of India. After referring to India as a Sovereigns, Socialist, Secular. Democratic Republic.
The Preamble Declares:

"WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC] and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all; FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949 do HEREBY, ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION".

The term preamble means the introduction to the statute. It is the introductory part of the Constitution. It explains the fundamentals underlying the structure of Constitution and gives us some important basic facts about our country. The preamble generally sets the ideals and goals which the makers of the Constitution intend to achieve through that Constitution, *In Golak Nath v State of Punjab.* Supreme Court held that the preamble contains in a nutshell its ideals and its aspiration. Therefore, it is also regarded as 'a key to open the mind of the makers of the Constitution which may show the general purpose for which they made several provisions in the Constitution.'

The Constitution makers gave to the preamble, 'the place of pride'. It embodies the great purposes, objectives and the policy underlying the provisions of the Constitution. According to Sir Alladi Krishnaswami, preamble expresses "what we had thought or dreamt for so long". It embodies in a solemn form all the ideals and aspirations for which the country had struggled during the British regime. The preamble to the Constitution as a socialist republic visualises to remove economic inequalities and to provide facilities and opportunities for decent standard of living and to protect the economic interest of the weaker segments of the society, in particular, Scheduled Caste i.e. Dalits and Scheduled Tribes i.e. Tribes and to protect them from "all forms of exploitation".

Preamble is also a legitimate aid in the interpretation of the provisions of the Constitution, *In Re Berubari Union and Exchange of Enclaves* case Court laid
down that the preamble would not to be resorted to if the language of the enactment contained in the Constitution was clear. However, “If the terms used in any of the Article in the Constitution are ambiguous or are capable of two meanings, in interpreting them some assistance may be sought of the objectives enshrined in the preamble”.

In *Biswambher v. State of Orissa*, in *Re Kerala Education Bill* and in *Hari Shankar v State of M.P.* Court held similar views. In *Bhatnagar v. Union of India* where the Supreme Court referred to the preamble to read the policy behind the impugned enactments, but in *M/S Burrakur Coal Co. v. Union of India* the Court observed that full effect must be given to the express provisions of the Act even though they appear to go beyond the terms of the preamble. For the purposes of interpretation, the preamble of the Constitution stands on the same footing as the preamble of an Act.

As regards the preamble of an Act, the rule is that where the enacting part is explicit and unambiguous, the preamble can not control, qualify or restrict its but where the enacting part is ambiguous, the preamble can be used to explain and elucidate it. According to Chief Justice Dyer, it is “a key to open the minds of the makers of the Act, and the mischiefs which they intended to redress”. in *Powell v. Kempton Park Race course Co.* Lord Halsbury I.C. said:

“Two propositions are quite clear; one that a preamble may afford useful light as to what the statute intends to reach; and another, that if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment”.

Again in *Attorney General v. H.R.H. Prince Ernest Augustus of Hanover.* Lord Normand for the House of Lords Said:

“If they [the enacting words] admit of only one construction, that construction will receive effect even if it is inconsistent with the preamble, but if the enacting words are capable of either of the constructions offered by the parties, the construction which fits the preamble may be preferred”.

In *Venkataswami v. Naraindas* Supreme Court observed that “No resort to the preamble would be justified in interpreting the provision in the Act when the words used in it are clear and unambiguous. A preamble is a key to the interpretation of a Statute but is not ordinarily an independent enactment conferring rights or taking them away and cannot restrict or widen the enacting
part which is clear and unambiguous. The motive for legislation is often recited in
the preamble but the remedy may extend beyond the cure of the evil intended to be
removed". In sum and substance, the preamble throws light on the intent and
design of the legislature.

In *Jai Singh and Another v. Union of India and Others*¹⁹, Court observed
that the preamble of a statute is a part of the Act and is an admissible aid to
construction. Although not an enacting part, the preamble is expected to express
the scope, object and purpose of the Act.

These propositions are, however, subject to the clarification that the
preamble to an act is not part of the Act because it is not enacted and adopted by
the enacting body in the same manner as the enacting provisions. The preamble of
our Constitution was, however, enacted and adopted by the same procedure as the
rest of the Constitution. This difference was not brought to the notice of the
Supreme Court in *Re Berubari Union & Exchange of Enclaves*²⁰, where it observed
that the preamble is not part of the Constitution²¹. Later when the Constitutional
history of the preamble was brought to the notice of the Court in *Kesavanande
Bharati v. State of Kerala*²² it was held that the preamble of the Constitution is part
of the Constitution and observations to the contrary in *Berubari Union* case was
not correct²³. Court reaffirmed it in *Union of India v. Madhav*²⁴.

The recognition of the preamble as an integral part of the Constitution
makes the preamble a valuable aid in the construction of the provisions of the
Constitution because unlike the preamble to an Act, the preamble to the
Constitution occupies the same position as other enacting words or provisions of
the Constitution.²⁵

It has been said that the preamble to the Constitution is the loadstar and
guide for those who find themselves in grey areas while dealing with its
provisions²⁶. The preamble may be involved to determine the ambit of
Association v. State of Karnataka*²⁸, Court expressed same opinion.

In *Kesavananda's case*²⁹ a majority of the full Bench held that the
objectives specified in the preamble contain the basic structure of our Constitution,
which cannot be amended in exercise of the power under Art 368 of the
Constitution. The theory of 'Basic Structure' is echoed by three judges out of five
in *Indira Gandhi v Raj Narain*[^30] and reaffirmed by *Minerva Mills v. Union of India*[^31].

The Constitution makers of India set out three broad purposes in the preamble:

First, they sought to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic. The term ‘Sovereign’ used in the preamble explains that India is an independent country. It no more dependent upon any outside authority, both internally and externally India is sovereign. It is sovereign because it can make or unmake any decision with respect to itself without interference by any other country.[^32] In *Synthetic and Chemicals Ltd. v. State of Uttar Pradesh*[^33] Court held that the world ‘Sovereign’ means that the State has power to legislate on any subject in conformity with Constitutional limitations.

Being a sovereign state, India is free from any type of external control. It can acquire foreign territory and, if necessary, cede a part of the territory in favour of a sovereign State, subject to certain Constitutional requirement.[^34]

The word *Socialist* was added in the preamble by (42"" Amendment) Act. 1976 of the Constitution. The term socialist indicates that State in India want to secure life of people and remove inequality in income and status.

Mrs. Indira Gandhi, the then Prime Minister, expressed that the term ‘socialist’ was used simply to indicate that the goal of the State in India was to secure ‘a better life for the people’ or ‘equality of opportunity’. She said that socialism like democracy was interpreted differently in different countries. She, thus made it clear that India had her own concept of socialism and all she wanted was a better life for the people.[^35]

In *Excel Wear v. Union of India*[^36], the Supreme Court observed that the addition of the word ‘socialist’ might enable the Courts to lean more in favour of nationalization and State ownership of an industry. But so long as private ownership of industries is recognized and governs an overwhelming large proportion of our economic structure, the principles of socialism and social justice cannot be pushed to such an extent so as to ignore completely, or to a very large extent, the interest of another section of the public, namely the private owners of the undertaking.
In Minerva Mills Ltd. Case, the Constitution Bench had considered the meaning of the word 'socialism' to crystallize a socialistic state securing to its people socio-economic Justice by interplay of the Fundamental Rights and the Directive Principles.

In D.S. Nakara v. Union of India Court observed that the addition of "Socialist" indicates the incorporation of the philosophy of 'socialism' in the Constitution which aims at elimination of inequality in income and status and standards of life. In Kerala Hotel and Restaurant Assn v. State of Kerala Court observed same opinion.

In Air India Statutory Corporation v. United Labour Union, The Supreme Court elaborated the concept of "socialism" and said that the word "socialism" was expressly brought in the Constitution to establish an egalitarian social order through rule of law as its basic structure. The Court referred to the views of Dr. V.K.R.V. Rao, an eminent economist of India, on socialism. Dr. Rao in his "Indian socialism- retrospective and prospect" has stated that the equitable distribution of the income and maximization of production is the object of socialism under the Constitution to solve the problems of unemployment, low income and mass poverty and to bring about a significant improvement in the national standard of living. To bring about socialism, Dr. Rao said, deliberate and purposive action on the part of the State in regard to production as well as distribution and the necessary savings, investment, use of human skills and use of science and technology should be brought about.

In Samatha v. State of Andhra Pradesh, the Supreme Court held that the word 'socialist' used in the preamble must be read from the goals, Article 14, 15, 16, 17, 21, 23, 38, 39, 46 and all other cognate Article, sought to establish i.e. to reduce inequalities in income and status and to provide equality of opportunity and facilities.

In Secretary H.S.E.B v. Suresh, the Supreme Court held that socialistic concept of society was very well laid in Part III and Part IV of the Constitution and that it was bounded duty of the law Courts to give shape and offer reality to such a concept.

In G.B. Pant University of Agriculture and Technology v State of Uttar Pradesh Court observed that democratic socialism aims to end poverty.
ignorance, disease and inequality of opportunity. This socialistic concept ought to be implemented in the true spirit of the Constitution.

The concept of socialism inserted in the preamble with the view of removing inequality in income, status and to provide better way of life to the people of India, specially the weaker and deprived people of India and to bring them to the level of others.

The term ‘Secular’ also inserted by the Constitution Forty Second Amendment Act, 1976, the Constitution of India stand for a secular State. It means that State has no official religion. State treats all the religions equally. The word secularism used in preamble of Indian Constitution declares the resolve of the people to secure to all it citizen “liberty of thought, belief, faith, and worship”. In St. Xavier College v. State of Gujarat the Supreme Court has said that although the word ‘secular state’ is not expressly mentioned in the Constitution but there can be no doubt that Constitution makers wanted to establish such a State and accordingly Article 25 to 28 have been included in the Constitution.

In S.R. Bommai v. Union of India a nine Judge Bench of the Apex Court observed that the concept of ‘secularism’ was very much embedded in our Constitutional philosophy. What was implicit earlier has been made explicit by the Constitutional 42nd Amendment in 1976.

The Court explained that the term ‘secular’ had advisedly not been defined presumably because it was a very elastic term not capable of precise definition and perhaps best left undefined.

Court further, observed that while freedom of religion was guaranteed to all persons, from the point of view of the State, the religion, faith or belief of a person was immaterial. “To the State, all are equal and are entitled to be treated equally. Court held ‘secularism’ was thus more than “a passive attitude to religious tolerance”. It is said to be a positive concept of equal treatment of all religions. This attitude has been described by some as one of neutrality towards religion or as one of benevolently neutrality.

In Valsamma Paul v. Cochin University, the Apex Court emphasized that inter-caste marriage and adoption were two important social institutions through which ‘secularism’ would find its fruitful and solid base for an egalitarian social order under the Constitution of India. The Court explained that while pluralism
was the keystone of Indian culture, religious tolerance was the bedrock of Indian secularism. secularism the Court said was a bridge between religions in a multi-religious society to cross over the barriers of their diversity. In the positive sense, it was the cornerstone of an egalitarian and forward-looking society which our Constitution endeavored to establish.

In *Aruna Roy v. Union of India*⁴⁸ The Supreme Court had said that secularism has a positive meaning that is developing, understanding and respect towards different religions. The Court thus ruled that study of religions in school education, could not be held to be an attempt against the secular philosophy of the Constitutions Secularism inserted under Constitution 42⁴² amendment of 1976 does not mean Constitution of an atheist society.⁴⁹

The Apex Court in *State of Karanataka v Dr. Praveen Bhai Thogadia.*⁵⁰ held that secularism is not to be confused with communal or religious concepts of an individual or a group of persons. It means that State should have no religion of its own and no one could proclaim to make that state have one such or endeavour to create a theocratic State. Each person whatever be his religion must get an assurance from the State that he has the protection of law freely to profess, practice and propagate his religion and freedom of conscience, otherwise, the rule of law will become replaced by individual perceptions of one’s own presumptuous good social order.

The Apex Court in *M.P.G Nair v. State of Kerala*⁵¹ expressed that the object of inserting the said word was to spell out expressly the highest ideals of secularism and the integrity of the Nation, on the ground that these institutions have been subjected to considerable stresses and strains and vested interests have been trying to promote their selfish ends to the great detriment of the public good.

In *Bal Patil v. Union of India*⁵² Court held that the State does not recognizes any religion as a State religion and that it treats all religions equally, and with equal respect without in any manner, interfering with their individual rights of religion, faith or worship.

*In I.R. Coelho v. State of Tamil Nadu*⁵³ Court observed that secularism is a matter of conclusion to be drawn from various Articles conferring Fundamental Rights. If the secular character is not to be found in Part III, the Court ruled, it

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cannot be found anywhere else in the Constitution, because every Fundamental Right in Part III stands either for a principle or a matter of detail.

It has recently been observed that the essence of secularism in India is the recognition and preservation of the different types of people, with diverse languages and different beliefs and placing them together so as to form a whole united India.\footnote{44}

Going through the above cases it becomes crystal clear that secularism means that State has no religion of its own. It treats all religious people equally without making any discrimination on ground of religion, race, caste, sex. It preserves the people of different types, with different languages and diverse beliefs. People of India have assurance from that State that he has the protection of law to profess, practice and propagate their religion freely and they have freedom of conscience. The word secularism used in preamble is reflected in provisions contained in Article 25 to 30 and part VI-A to the Constitution. It means that the concept of secularism was already implicit in the Constitution. The amendment merely spells out this concept in the preamble.

The Constitution sets up in India "Democratic Republic". The term 'Democratic' indicates that the Constitution has established a form of Government which gets its authority from the will of the people. The rulers are elected by the people and are responsible to them. \textit{In Mohan Lal v. Dist. Magistrate, Rai Bareilly}\footnote{35} the Apex Court held that "democracy" is a concept, a political philosophy, an ideal practiced by many nations culturally advanced and politically mature by resorting to governance by representatives of the people elected directly or indirectly.

Democracy may be direct or indirect. In direct democracy every person exercise the power of the Government. The people as a whole not only carry on the Government but can even change the Constitution by their direct vote. In an indirect democracy, the people elect their representatives who carry on the administration of the Government directly. It is also known as representative democracy. In India Constitution provides for a representative democracy.

In \textit{Union of India v. Association for Democratic Reforms}\footnote{46}, the Apex Court expressed: "a successful democracy posits an "aware Citizenry". Democracy
cannot survive’, the Court said, ‘without free and fair election, without free and fairly informed voters.

_In Satya Narain Shukla v. Union of India_ Court observed that dissent is the essence of democracy and merely because one disagrees with another, one can not jump to the conclusion that other harbors a grudge against the former.

Government of India is a democratic State because people of the India participate in the formation of the Government at regular intervals on the principle of universal adult franchise. It means that the existence of the Government is on the sweet will of people if they are not showing interest in existing Government they can change it by their direct vote.

The term ‘Republic’ used in Constitution means a form of Government in which the Head of the State is an elected person and not a hereditary monarch like the King or Queen in Great Britain. In republic form of Government the political sovereignty vested in the people and the head of the State is only a person elected by the people for a fixed term. In our Constitution there is a president who is the head of the executive and who is elected, as opposed to hereditary monarch, and hold office for a fixed term of five years. The Supreme power in a Republic rests in the people and their elected representatives or officers, as opposed to one governed by King or a similar ruler. The Constitution of India sets up in India a republic form of Government, in which, the ultimate power reside in the body of the people, enfranchised by universal adult suffrage.

The second purpose of framer of the Constitution was that they sought to secure to citizens of India justice-social, economic, and political; liberty of thought, expression, faith, and worship, equality of status and opportunity; and to promote among the people of India, fraternity, assuring dignity of the individual and unity and a integrity of nation. Although the expressions ‘Justice’, liberty, equality, and fraternity, may not be susceptible to exact definitions, yet they are not mere platitudes. They are given content by the enacting provisions of the Constitution particularly by Part III, the Fundamental Rights, Part IV, the Directive Principles of State Policy, Part IV A, the Fundamental duties and part XVI, Special Provisions Relating to Certain Classes.

_In P.A. Inamder v. State of Maharashtra_ Court observed that it is well accepted by thinkers, philosopher and academicians that if justice, liberty, equality
and fraternity including social, economic, and political justice, the golden goals set out in the preamble of the Constitution, are to be achieved; the Indian polity has to be educated and educated with excellence.

_In M. Nagaraj and Others v. Union of India and Others_ the Apex Court observed that India is constituted into a sovereign democratic republic to secure to all its citizens, fraternity assuring the dignity of the individual and the unity of the nation. The sovereign, democratic republic exists to promote fraternity and the dignity of the individual and to secure to the citizen's certain rights. This is because the objectives of the State can be realized only in and through the individuals. Therefore rights conferred on citizens and non citizens are not merely individual or personal rights. They have a large social and political content because the objectives of the Constitution can not be otherwise realized. Fundamental Rights represent the claims of the individual and the restrictions thereon are the claims of the society. Article 38 in Part IV is the only Article which refers to justice, social, economic and political. However, the concept of Justice is not limited only to Directive Principles. There can be no justice without equality. Article 14 guarantees the Fundamental Rights to equality before the law on all persons. Great social injustice resulted from treating sections of the Hindu community as 'untouchable' and therefore, Article 17 abolished untouchability and Article 25 permitted the State to make any law providing for throwing open all public Hindu religious temples to untouchables. Therefore, provisions of Part III also provide for political and social justice.

The preamble of Indian Constitution prefers to secure to the all citizens social, economic and political justice.

_Social Justice_ means the abolition of all sorts of inequalities, which may result from the inequalities of wealth, opportunity, status, race, religion, caste, title and the like. The Directive Principles in Part IV of the Constitution sets out the goal of social justice. The better aspect of the expression 'social justice' is that it enable the Courts to uphold legislation –

1. To remove economic inequalities.
2. To provide a decent standard of living to the working people.
3. To protect the interest of the weaker section of the society.
In Lingappa Pochamme Appalwer v. State of Maharashtra, the Court observed that “social justice” in the preamble enjoin the State to enact positive measures for the protection of the tribals and the weaker sections of the community. So that the Constitutionality of such measures should be upheld in this light.

The provisions entitling maternity leave even to women engaged on casual basis or on muster roll basis or daily wages and not to those in regular employment are in consonance with the doctrine of social justice and any contention against it is contrary. The Constitutional philosophy should be allowed to become a part of every man’s life in our country and the socialist pattern of society as envisaged in the Constitution has to be attributed its full meaning.

In Air India Statutory Corporation v. United Labour Union, the Apex Court held that the aim of social justice was to attain substantial degree of social, economic and political equality, which was the legitimate expectation and Constitutional goal. It was held that social justice is a dynamic device to mitigate the suffering of the poor, weak, dalits, tribal’s and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. The Court ruled that the preamble and Article 38 of the Constitution envision social justice as the arch to ensure life to be meaningful and livable with human dignity.

The purpose of social justice is to remove inequality of wealth, status, religion, cast, etc and to mitigate the suffering of poor, down-trodden, disadvantage sections of society and bring them to the level of equality. Where they can lead life with dignity, it is a Constitutional goal which has to be achieved by providing equality to all citizen of India.

The expression ‘Economic Justice’ mean justice from the stand point of economic force. In short, it means equal pay for equal work. That every one should get his just dues for his labour, irrespective of his, sex, caste, social status, etc.

In State of Haryana v. Haryana Civil Secretary at Personal Staff Association Court expressed that Art 39 (d) of the Constitution of India, equal pay for equal work is not Fundamental Right of employee. It is only a Constitutional goal to be achieved by Govt.

The word ‘Political Justice’ means that in political matter all person should be treated equally, unreasonable or arbitrary distinction should not be made
among men in political matters. The Constitution of India has adopted the system of universal adult suffrage, to secure political justice.

The term ‘Liberty’ is used both in negative as well as positive sense. As a negative concept liberty means the absence of all undue or arbitrary interference with individual’s action on the part of the State. In positive sense, ‘liberty’ comprises of ‘liberties’ or rights which are considered essential for an individual to achieve his goal. The Constitution of India secure to all the citizens of India the liberty of thought, expression, belief, faith and worship, which are considered essential to the development of the individual as well as Nation.

‘Equality of Status and of Opportunity’ means, in matter of employment or appointment to any office all citizens have equal right. No distinction should be made by State between the citizen and citizen, on the ground of religious, caste, sex or place of birth.

Fraternity means a spirit of brotherhood, a feeling that all people are children of the same soil, the same motherhood.

Dignity of the Individual- The preamble of the Constitution assures the dignity of each and every individual by securing to each individual equal Fundamental Rights and by laying down a number of directives for the State to direct its policies towards, inter alia, securing to all people, men and women equality, the right to an adequate means of livelihood, just and human conditions of work, a decent standard of life third the framer of Constitution made it clear that the people of India adopted, enacted and gave to themselves the Constitution on 26th November, 1949 but the date of commencement of the Constitution was fixed on to be 26th January, 1950. In Keshwananda Bharati v, State of Kerala Court observed that Constitution emanates from the people of India and not from any external or lesser source. It is a conclusive assumption and a legal fiction which can not be tested or questioned in any Court.

From the forgoing study it can be said that preamble of the Constitution provide social justice and equality to all and does not permit the system of bonded labour to operate. The preamble is a basic feature of the Constitution that can not be taken away even by legislature by exercising its Constitutional amending powers. Thus if the system of bonded labour is allowed to operate it will be against the basic theme of the preamble.
The Constitutional makers fully realized that 'democracy' to be founded on a strong basis must stand for the good of all people and not for the benefit of a few. The success of democracy lies in the establishment of a 'welfare-state'. The economic justice assured by the 'preamble' of the Constitution and emphasized in Art 38, cannot be achieved on a political plane. Independence would mean nothing to the masses if they are not freed from poverty and ignorance, political right to vote conferred on the people by adult franchise would mean nothing to a person. Who is starving and hungry? As Pandit J.L. Nehru Said

Political democracy by itself is not enough except that it may be used to obtain a gradually increasing measures of economic democracy, equality and the spread of good things of life to the others and removal of gross inequalities. Justice, political, economic, social and assurance of equality in the sphere of employment and commercial or trading activities may in all kind of transactions are the cornerstone of a 'welfare state'. The Indian Constitution intends to do away with the artificial barriers and man made inequalities that thwart the progress towards the achievement of the lofty ideals enunciated in the preamble.

The protection afforded to the weaker sections including bonded labourer of the community strengthens the view that Constitution is not blind to the reality it seeks to uplift the masses through the Constitutional protection.

The preamble of the Constitution of India emphasized the objective of fraternity in order to ensure both the dignity of the individual and the unity of the Nation.

The Constitution- makers were eager to proclaim a war against the distributive forces through the Constitution as these practices of human discrimination could have no place in the new political and social concept that was emerging with the advent of independence. The ideal of 'one men one vote', one value, equality before law, and equal protection of laws, freedom of profession and the right to move freely throughout the country, all these would have no meaning if one man subjugated by another man and one life is at the mercy of another.

2. Constituent Assembly Debate

Before framing the Constitution of India, there was a huge discussion for the purpose. While the constituent Assembly designing a Constitution for the country besides other problems it had to face the problems of trafficking in human
beings, 'begar' and other similar forms of forced labour (Bonded Labour System). The result of the deliberations was that Articles 23 and 24 of the Indian Constitution came in the light. Initially, they were Article 17 and 18 of the Draft Constitution of India respectively. Articles 23 and 24 are placed under the heading of "Right Against Exploitation".

Kazi Syed Karimuddin stated that Article 17 (1) does not cover cases in which prisoners are asked to work against their own sweet will. If this Article is allowed to remain as it is then the jail authorities can not be allowed to take work from the prisoners it is why for Article 17, the following be substituted.

"17 Neither slavery nor involuntary servitude such as 'begar' except as punishment for crime shall exist within the Union State". So that 'begar' could be as a punishment for crime.

Sardar Bhopinder Singh Man observed "'begar', is a sort of forced work from labourers and we have sought to abolish it and prohibit it in the country. The idea is that the worker should not be made to work against his will, but however an exception is made that the State can impose compulsory service for public purposes. Now, supposing the State requires any property and deprives any citizen of it, there is the accepted principle that it shall pay compensation, adequate price, for it. Similarly, when the State deprives a worker of his labour, (and I believe his labour is his property for the labourer) then I want that the State should pay compensation for it".

Sardar Bhopinder Singh Man, wanted to make provision for compensation for compulsory public services imposed by the State and observed that 'begar' is a sort of forced work it should be abolished and prohibited in the country. Worker should not be forced to work against their free will but however State can impose compulsory service for public purposes. For it State shall pay adequate compensation.

Prof. K.T. Shah moved an amendment No.559, which was accepted, which introduced the word only in clause (2) of Article 17 after the word "discrimination on the ground." After the acceptance of amendment clause (2) of Article 17 read:

"....in imposing such service the State shall not make discrimination on the ground only of race, religion, caste or class".
Shri Raj Bahadur\textsuperscript{78} member of constituent Assembly stressed the hardship arising out of such practice in very strong terms and said:

"'begar' like slavery has a dark and dismal history behind it. As a man coming from an Indian State, I know what this 'begar', this extortion of forced labour, has meant to the down trodden and dumb people of the Indian States. If the whole story of this 'begar' is written, it will be replete, with human misery, human suffering, blood and tears. I know how some of the princess have indulged in their pomp and luxury, in their reckless life, at the expense of the ordinary man, how they have used the down trodden labourers and dumb ignorant people for the sake of their pleasure. I know for instances how for duck shooting a very large number of people are roped in forcibly to stand all day long in mud and slush during cold chilly wintry days. I know how for the sake of their game and hunting people have been roped in large numbers for beating the lion so that the princes may shoot it. I have also seen how poor people are employed for domestic and other kinds of labour, no matter whether they are ailing or some members of their family are ill. These people are paid nothing or paid very little for the labour extorted from them. This is not the whole story. As I said in the beginning, it would make really a terrible reading if the whole story is told. I know that very often these tyrannies are perpetuated upon poor people by the petty officials. Not only do these petty officials perpetrate such tyrannies but they also extort bribe from the labourers who wants to escape the curse of this 'begar'. While making my observation on this Article, I would like to say that I am opposed to the compensation in case of compulsory labour on works for public purposes, because I feel that there is a possibility that, if this amendment is accepted, it may be misused and people might be forced against their will.

Summing up, I may add that Art. 13 of the Draft Constitution of India\textsuperscript{79}, constitutes the charter of freedom for the common man and this Article\textsuperscript{80} is a sort of complement to that charter of freedom. This frees the poor, down- trodden and dumb people of the Indian States and I can not say anything of other provinces... from this curse of 'begar'. This 'begar' has been a blot on humanity and has been a denial of all that has been good and noble in human civilization. Through the centuries this curse has remained as a dead weight on the shoulders of the common man like the practice of slavery. The members of the Drafting Committee and this
Shri S. Nagappa praised and supported the constituent Assembly in its efforts to prohibit forced labour and observed: “This practice of ‘begar’ is prevalent in my own part of the country, especially among the Harijans. I am glad that the Drafting Committee has inserted this clause to abolish ‘begar’ sir. Whenever, cattle die; the owner of the cattle wants these poor Harijans to come and remove the dead cattle, remove the skins, tan them and make chapels and supply them free of cost. For this, what do they get? Some food during festival days, often, sir this forced labour is practiced even by the Government. For instance, if there is any murder, after the postmortem, the police force these people to remove dead body and look to the other funeral processes. I am glad that hereafter this sort of forced labour will have no place. Then, Sir; this is practiced in Zamindaries also. For instance, if there is a marriage in the Zamindar’s family, he will ask these poor people, especially the Harijans, to come and white-wash his whole house, for which they will be given nothing except food for the day. This sort of forced labour is still prevalent in most parts of the presidency”.

Another thing that I want to bring to the notice of the House is that whenever the big Zamindar’s lands are to be ploughed, immediately he will send word for these poor people, the Harijans, the previous day, and say: “All your services are confiscated for the whole of tomorrow; you will have to work throughout the day and night. No one should go to any other work”. In return, the zamindar will give one morsel of food to these poor fellows. Sir, this sort of forced labour is in practice in the 20th century in our so called civilized country. I am very thankful to this Drafting Committee. I support this Article.

Shri T.T. Krishnamachari pointed out as: “I think some form of forced labour does exist in practically all parts of India, call it ‘begar’ or any thing like that and in my part of the country, the tenant often times is more or less a helot attached to the land and he has certain rights and those are contingent on his continuing to be a slave”.

“We are trying to root it out and by putting it in the Fundamental Rights it will has ten legislation to wipe out evils of that kind as it will then become an obligation of the State. I would only mention to the House that let us not seek to
enlarge the scope of these Article by putting in evils which can be wiped out by legislation on which public opinion is sufficiently mobilized, but only import into it such consideration against which vested interests might conceivably take a firm stand. Sir, I support the Article that is being considered by the House.85

Members of Constituent Assembly brought to the notice of Assembly the situation of forced labour which was prevailing there. Areas. All members were in favour of abolishing this social evil. Various amendments were made to in Article 17. However, only the amendment of Prof. K.T. Shah was accepted.

Views of Constituent Assembly Members on the Article 24:

Shri Damodar Swarup Seth forbade the employment of women in mines or in industries harmful to their health at night and moved an amendment to the effect

“That the following be added at the end of Article 18:

‘Nor shall women be employed at night, in mines or in industries detrimental to their health’.

And observed “it is a matter of great satisfaction that in Article 18 protection has been afforded to children of minor age, but, unfortunately, for reasons not known to me, no protection has been provided for the fairer and softer sex, who had been in the past, employed in mines even at night time and in industries which are injurious to their health. I therefore think, Sir, that it is just and desirable that the addition suggested should be made in this Article so that women may also be provided with due protection and may not be employed in mines at night and in industries which are not suited to their delicate health and position in society. I therefore hope that the House will accept this amendment of mine”.

Prof. Shibban Lal Saksena supported the views of Shri Damodar Swarup Seth and stated, “I am very glad that this Article has been placed among Fundamental Rights. In fact, one of the complaints against this charter of liberty is that it does not provide for sufficient economic rights. If we examine the Fundamental Rights in the Constitutions of other countries, we will find that many of them are concerned with economic rights. In Russia particularly, the right to work is guaranteed; the right to rest and leisure, the right to maintenance in old age and sickness etc., are guaranteed. We have provided these things in our Directive
Principles, although I think properly, they should be in this Chapter. Even then, this Article 18 is an economic right, that no child below the age of fourteen shall be employed in any factory. I feel, Sir, that the age should be raised to sixteen. In other countries also the age is higher; we want that in our country also this age should be increased; particularly on account of our climate, children are weak at this age and the age should be raised”.

So also, I want that women should not be employed in the night or after dusk and before dawn in the factories. In fact all the progressive countries in the world have forbidden female labour after dusk and before dawn. This question was debated at length during the discussion on the Factory Act in the Parliament. I think that this is a question of very fundamental importance and this should be laid down in the Fundamental Rights that the States shall not employ women after dusk or before dawn. If this important thing had been done, we would have been hailed by innumerable women workers in the country- especially as it is a question of employing women in mines and factories. You know there was a great furore in the country during the war when women were allowed to work in mines, and I personally think that this must be considered as something very important and I hope Dr. Ambedkar will see his way to include it.

3. Fundamental Rights:

Constitution of India contains enough provisions for forced labour (bonded labour) both of a mandatory and directory (i.e. Fundamental Rights and Directive Principles) to protect their rights. Our Constitution expresses a commitment to face this evil through socio-economic reforms. Fundamental Rights and Directive Principles are instruments of social justice as well as justice to bonded labourers through various Article of the Constitution.

Part III of the Constitution of India titled as Fundamental Rights secure to citizens, certain basic, natural and inalienable rights. These rights are essential for human being, by these rights human personality is developed, human liberty is preserved and social and democratic life is promoted. The chapter-III of the Constitution of India has very well been described as the Magna Carta of India. These rights are considered essential for the protection of rights, liberties and dignity of the people of India.
Speaking about the Fundamental Rights, Bhagwati J. (as he then was), in the case of *Maneka Gandhi v. Union of India*\(^9\) observed that these Fundamental Rights represent the basic values cherished by the people of this country. Since the Vedic times they are calculated to protect the dignity of the Individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a pattern of guarantees on the basic structure of human rights and impose negative obligations on the State not to encroach on individual liberty in its various dimensions.

Recently in *I.R. Coelho v. State of Tamil Nadu*\(^9\), a nine judge bench of the Apex Court observed that the rights were not limited, narrow rights but provided a broad check against the violations and excesses by the State authorities. These rights have proved to be the most significant Constitutional control on the Government particularly legislative power. They form a comprehensive test against the arbitrary exercise of State power in any area.

Again in *M. Nagaraj and others v. Union of India and others*\(^9\), Supreme Court emphasized that Fundamental Rights is a limitation on the power of the State. It is a fallacy to regard Fundamental Rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any Constitution by reason of basic fact that they are members of the human race. These Fundamental Rights are important as they possess intrinsic value. Part III of the Constitution does not confer Fundamental Rights. It confirms their existence and gives them protection. Its purpose is to withdraw certain subjects from the area of political controversy to place them beyond the reach of amoralities and officials and to establish them as legal principles to be applied by the Courts. Every right has content. Every fundamental value is put in Part III as Fundamental Right as it has intrinsic value. The converse does not apply. A right becomes a Fundamental Right because it has foundational value. Apart from the principles, one has also to see the structure of the Article in which the fundamental value is incorporated.

While seeking to protect the basic rights of the individual, the framers of the Constitution also wanted to become an effective instrument for social revolution. The possible conflict between the rights of the individual and the needs of the community was sought to be resolved on the one hand by hedging the Fundamental Rights themselves by necessary restrictions in public interest etc, and
on the other by incorporating a chapter on the more positive Directive Principles of State Policy, which though not enforceable in Courts of law, were declared to be "fundamental in the governance of the country" and the legislature and the executive were enjoined to apply them in making and administering laws.

It has been emphasized that Fundamental Rights are not to be read in isolation. They have to be read along with the chapter on Directive Principles of State Policy and Fundamental Duties enshrined in Article 51 A.\(^9\)

The founding fathers of the Constitution, cognizant of the reality of life wisely engrafted the Fundamental Rights and Directive Principles in chapter III and IV for a democratic way of life to every one in Bharat Republic.\(^4\)

After the long discussion on forced labour in the constituent assembly, the Constitution makers laid down certain provisions to abolish forced labour, to prevent exploitation of the weaker sections of the society by unscrupulous individuals or even by the State, the right not to be exploited is the right guaranteed under the Article 23 and 24, Article 23 as an adjunct to the guarantee of personal liberty and the prohibition against discrimination.

Article 23 enacts a very important Fundamental Right in the following terms:

**Article 23: prohibition of traffic in human beings, ‘begar’ and forced labour**

1. "Traffic in human beings and ‘begar’ and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law”.

2. "Nothing in the Article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on the grounds only of religion, race, caste or class or any of them”.

In Article 23 there are two declarations. First, that traffic in human beings, ‘begar’ and other similar forms of forced labour are prohibited.

Second, any contravention of the prohibition shall be an offence punishable in accordance with law. Under the Article 35 of the Constitution laws punishing acts prohibited by this Article shall only be made by parliament, though existing laws on the subject, until altered or repeated by parliament, are saved.

There are various Fundamental Rights which operate as limitation on the
power of the State and impose negative obligations on the State not to encroach on individual liberty and these rights are enforceable only against the State. But there are certain Fundamental Rights which are enforceable against the whole world, e.g. Art. 17, 23 and 24, 23 is not limited in its application against the State, but strikes at traffic in human beings, 'begar' and other similar forms of forced labour whenever they are found, and thus, the sweep of Article 23 is wide and unlimited.

Article 23 shows the deep concern of founding father of Indian Constitution for forced labour (Bonded labour)

Therefore, Article 23(1) of the Constitution guarantees a right against exploitation to the citizens of India not only against the State but also against private citizens. It imposes a positive obligation on the State to take steps to abolish evils of "traffic in human beings and 'begar' and other similar forms of forced labour. It prohibits the system of bonded labour "because it is a form of forced labour within the meaning of this Article. The protection of this Article is also applicable to both citizens as well as non-citizens. It is a very salutary provision intended to ensure human dignity against social injustice and economic exploitation perpetuated in our social policy for long time.

In People's Union for Democratic Rights and Others v. Union of India the Apex Court observed, "Article 23 is clearly designed to protect the individual not only against the State but also against other private citizens. Article 23 is not limited in its application against the State but it prohibits "traffic in human beings. 'begar' and other similar forms of forced labour" practiced by anyone else. The sweep of Article 23 is wide and unlimited and it strikes at "traffic in human beings. 'begar' and other similar forms of forced labour" whenever they are found. the reason for enacting this provision in the chapter on Fundamental Rights is to be found in the socio-economic condition of the people at the time when the Constitution come to be enacted. The Constitution makers, when they set out to frame the Constitution, found that they had the enormous task before them of changing the socio-economic structure of the country and bringing about socio-economic regeneration with a view to reaching social and economic justice to the common man. Large masses of people, bled white by well-nigh two centuries of foreign rule, were living in abject poverty and destitution, with ignorance and literary accentuating their helplessness and despair. The society had degenerated
into a status-oriented hierarchical society with little respect for 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 it has succeeded in bringing freedom to the country but freedom was not an end in itself, it was only a means to an end, the end being the raising of the people to higher levels 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 a view to creating socio-economic conditions in which every one would be able to enjoy basic human rights and participate in the fruit of freedom and liberty in an egalitarian social and economic framework. It was with this end in view that the Constitution maker 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 there 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 parts 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 constituted a gross and most revolting denial of basic human dignity.

It was therefore necessary to eradicate this pernicious practice and wipe it out altogether from the national scene and this had to be done immediately because with the advent of freedom, such, practice could not be allowed to continue to blight the national life any longer. Obviously, it would not have been enough merely to include abolition of forced labour in the Directive Principles of State Policy, because then the outlawing of this practice would not have been legally enforceable and it would here continued to plague our national life in violation of the basic Constitutional norms and values unlike some appropriate legislation could be brought by the legislature 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 as soon as the Constitution come into force. This is the reason why the provision enacted in Article 23 was included in the chapter on
Fundamental Rights. The prohibition against "traffic in human beings 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 the State but also against any other person indulging in any such practice."

Traffic in Human beings: It means to deals in human beings like goods. It means selling and buying in men and women likes chattels for commercial exploitation. It would include immoral traffic in women or girls or subjecting children to immoral or such like practices\(^9\), such as making them *devadasi* or *Jogins*.\(^{97}\) In *Vishal Jeet v Union of India*\(^{98}\), The supreme Court issued directions to the State Governments and Union Territories for eradicating the evil of child prostitution and for evolving programmes for the care, protection, treatment, development and rehabilitation of young fallen victims.

The Suppression of Immoral Traffic (Prevention Act 1956)\(^99\) is a law made by parliament in the light of Article 35 of the Constitution for the purpose of punishing acts which result in traffic in human beings. Slavery is not expressly mentioned but there is no doubt that the expression "traffic in human beings" would cover it. Slavery in its ancient form may not so much be a problem in every State but today its newer forms which are labeled in the Indian Constitution under the general term 'exploitation" are no less a serious challenge to human freedom and civilization. It is in this view that our Constitution, instead of using the word 'slavery' uses the more comprehensive expression traffic in 'human beings' which includes a prohibition not only of slavery but also of traffic in women or children or the crippled, for immoral or other purpose. Under section 370 of existing Indian Penal Code whoever imports, exports, removes, buys, sells or disposes of any person as a slave or accepts, receives or detains against his will any person as a slave shall be punished with imprisonment.

Article 23 (1) is to be read with Article 39 (e) and 39 (f) which impose obligation on the State for protection of children and youth against exploitation and against moral and material abandonment.

In *Gaurav Jain v. Union of India*.\(^{100}\) A three judge bench of the Supreme Court held that problem of prostitution had become one of the serious nature and required considerable and effective attention. The Court issued directions for the Constitution of a committee to examine the problem and for the segregation of the
children of prostitutes from their mothers living in the prostitute homes and to allow them to mingle with others and become part of society.\textsuperscript{101}

Now a day, trafficking in human beings has acquired serious dimensions. It is no longer confined to commercial sexual exploitation. It is carried for other purposes as well, such as domestic service, labour in small factories, establishment, begging, marriage, adoption, public sport, organ trade, etc. in fact, with each passing day, trafficking is acquiring altogether new dimensions in the wake of economic reforms brought forth by globalization.\textsuperscript{102}

(i) Begar:

The word 'begar' has not been defined in the Constitution. The word 'begar' is an Indian term and has varying local connotation, as regard the kind of labour or service exacted by force or compulsion. Simply 'begar' may be described as compulsory work without payment. It is a form of forced labour for which no wages are paid, if some payment is made, it is very meager or less than minimum wages. The practice was widely prevalent in India in an ancient time before the advent of the Constitution. Therefore this practice has been abolished through Article 23 (1).

Molseworth gives the meaning of word 'begar' as, "labour or service exacted by a Government or a person in power without giving remuneration for it" and in Wilson's glossary it was defined as forced labour, one pressed to carry burthens for individuals or public, under the old system, when pressed for public service no pay was given. AIR commentaries on the Constitution of India define 'begar' as a system under which persons are pressed to carry burdens for individual or public or to perform other forms of menial service under compulsion.\textsuperscript{103}

In People's Union for Democratic Rights v Union of India\textsuperscript{104} Apex Court observed that the term 'begar' is of Indian origin. It means involuntary work without payment. 'begar' thus mean "labour or service exacted by Government or a person in power without giving remuneration for it".\textsuperscript{105}

In Kahason Thangkhul v Simiral Shailai\textsuperscript{106} Chandra v State of Rajasthan\textsuperscript{107} Suraj Narayan v State of Madhya Pradesh\textsuperscript{108} Dubar Goala v Union of India\textsuperscript{109} and in Atma Ram v State of Bihar\textsuperscript{110} Swami Motor Transport Pvt Ltd. v Sri Sankaraswamigal Mutt.\textsuperscript{111} In all above cases Court expressed similar opinion in
Stipulation under a contract of personal service making refusal to render service, punishable to an offence, was held to be violative of Article 23 (1), as is amount to 'begar' or force labour.\(^{112}\)

Thus 'begar' is held to be form of 'forced labour'. To constitute 'begar' the person who is compelled to render service is not paid any remuneration. However, it has been held that payment of less than minimum wages in included in the practice of 'begar'.\(^{113}\)

(ii) Similar forms of forced labour:

It is not only the practice of traffic in human being, 'begar' which are prohibited by Article 23 (1). But other similar forms of forced labour are also declared punishable by this Article.

The words 'other similar forms of forced labour' in Article 23(1) are to be interpreted 'ejusdem generis' the kind of 'forced labour' contemplated by the Article has to be something in the nature of either traffic in human beings or 'begar'.\(^{114}\)

*People's Union for Democratic Rights v. Union of India*\(^{115}\) Popularly known as 'Asaid Case' is a milestone in the judicial history heralding the advent of poverty oriented jurisprudence for the delivery of social justice through Courts.\(^{116}\) In this case Supreme Court by its dynamism for the first time in the judicial history of India read the provisions of labour laws into Fundamentals Rights to secure socio-economic justice to the poor, disadvantaged, weak and deprived section of the society.

The Court dealing with question of interpretation of Article 23 of the Constitution in the instant case emphatically rejected the argument equating forced labour with 'begar' so as to confine the reach of Article 23 of the Constitution to those cases where no wage was paid as distinguished from cases where some monetary compensation was paid.

The Supreme Court relying on the *Maneka Gandhi Case*\(^{117}\) where the Court had once again reiterated the principle that when interpreting the provisions of the Constitution conferring Fundamental Rights, the attempt of the Court should be to expand the reach and ambit of the Fundamental Rights rather than to attenuate their meaning and content.
The Court pointed out that keeping in view the above principle it was difficult to assume that the reach of the Constitutional provision was so restricted as to permit socially and economically powerful to exploit the indigent and poor resorting to different forms of forced labour. Such interpretation was absolutely unwarranted being illogical and out of context and deserved nothing but rejection, because if accepted, justice Bhagwati said:

"Could there be any logic or reason in enacting that if a person is forced to give labour or service to another without receiving any remuneration at all, it should be regarded as pernicious practice sufficient to attract the condemnation of Article 23, but if some remuneration is paid for it, then. It should be out side the inhibition of that Article. If this was the true interpretation of Article 23 it would be reduced to mere a rope of sand, for it would then be the easiest thing in an exploitative society for a person belonging to a socially or economically dominant class to exact labour or service from a person belonging to the deprived and vulnerable section of the community by paying a negligible amount of remuneration and thus escape the rigours of Article 23"\textsuperscript{118}

The words other similar forms of forced labour are used in Article 23 not with a view to importing the particular characteristics of 'begar' but with a view of bringing within the scope and ambit of that Article all other forms of forced labour. If the requirement that labour or work should be exacted without any remuneration is imported in other forms of forced labour, they would straightway come within the meaning of the word 'begar' and in that event there would be no need to have the additional words 'other similar forms of forced labour'. These words would be rendered futile and meaningless, and it is a well recognised rule of interpretation that a construction which has the effect of rendering any words, used by legislature superfluous or redundant should be avoided. Therefore the object of adding the words 'other similar forms of forced labour', is clearly to expand the reach and content of Article 23, by including in addition to 'begar'. Every form of forced labour is within the inhibition of Article 23 and it makes no differences whether the person who is forced to give his labour or service to another is remunerated or not. In cases of service contracts for a specified period, though the remuneration is paid, the contract can not be specifically enforced and such enforcement would amount to a forced labour and would come under the inhibition of Article23.
The Court illustrated this principle by pointing out that: "a case where a person has entered into a contract of service with another for a period of three years and he wishes to discontinue serving such persons before the expiration of the period of three years. If a law was toprovide that in such a case the contract shall be specifically enforced and he shall be compelled to serve for the full period of three years, it would clearly amount to forced labour and such a law would be void as offending Article 23." \(^\text{119}\)

Giving multi-dimensional meaning to the term 'forced labour'. Justice Bhagwati pointed out that forced labour may arise in any one of the following ways:

1. Where actual physical force is used to compel a person to render service against his wishes, or
2. Where compulsion is not physical, but is exerted through a legal provision, such as a provision for imprisonment or fine in case the employee fails to provide labour or service to the employer or,
3. A form of compulsion arising out of hunger, poverty, want and destitution, or
4. Where the choice of alternative is absent and the labour is compelled to perform a job against his wishes.\(^\text{120}\)

\textit{Bhagwati, J. opined:} "Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and if labour or service is compelled as a result of such 'force', it would be 'forced labour'. He went on saying that where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than minimum wage."\(^\text{121}\)

The word "force" can not be given a restrictive meaning so as to cover only cases of legal or physical force only, because the Constitution of India makes provision for the establishment of a new socio-economic order which may provide economic and social justice to all.
The Constitution requires in building of a new socialistic republic, where workman shall have right to work, to education and to adequate means of livelihood. In a capitalistic society, economic compulsion often have more weight than physical and legal force and therefore the term ‘forced labour’ is to be construed liberally. The learned judge observed:

"The word 'force' must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstance which leaves no choice of alternatives to a person in wants and compel him to provide labour or service even though the remuneration received for it is less than the minimum wages."122

Where a person is obliged to render service in return of wages less than the minimum wages prescribed by the law, then there is no reason as to why he can not be treated as being compelled to render service unwillingly. Thus where an amount less than the minimum wages is paid for services rendered then the case would clearly fall within the sphere of the Article 23. Such a person can validly move the Court for enforcement of the Fundamental Right demanding judicial direction that payment should be made according to the law laying down the minimum wages.

It is quite obvious that no person will perform services voluntarily in return of wages less than the bare minimum subsistence level which forms the basis of the rates fixed under the Minimum Wages Act 1948, existence of compulsion will be presumed to exist when a person who knows the rate of minimum wages, but is still ready to provide service for a sum less than the minimum wage. The learned judge observed.

It may, therefore, be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wages, he is acting under the force of some compulsion which desires him to work though he is paid less than what he is entitled under law to receive.

*In Sanjit Roy v. State of Rajasthan*123 The workers were paid below the minimum wages in the name of public utility service where construction of a bridge was going on as part of famine relief in the State of Rajasthan, the Supreme Court after extensively referring to the observations of the Court in *Asaid workers case* widening the horizons of Article 23 the Court observed.

"There is no reason why the State should resort to such camouflage. The
presumption, therefore, must be that the work undertaken by the State by way of famine relief is useful to the society and productive in the creation of some assets of wealth and when the State exacts labour or service from the affected persons for carrying out such work, e.g. a bridge or a road, which has utility for the society and is doing to augment the wealth of the State. There can be no justification for the State not to pay the minimum wage to the affected persons. The State can not be permitted to take advantage of the helpless condition of the affected persons and exact labour or service from them on payment of less than minimum wage. No work of utility can be allowed to be constructed on the blood and sweat of person who are reduced to a state of helplessness on account of drought and scarcity conditions the State can not under guise of helping these affected persons exact work of utility and value from them without paying them the minimum wage. Whenever any labour or service is taken by the State from any person, whether he be affected by drought scarcity conditions or not, the State must pay at least minimum wage to such person on pain of violation of Article 23 and the exemption in the Act insofar as it excludes the applicability of minimum wages Act. 1948 to workmen employed for famine relief work and permits payment of less than the minimum wage the such workmen must be held to be invalid as offending the provision of Article 23”.

The expression “forced labour” in Art 23 is of the widest amplitude and on its true interpretation. It covers every possible form of forced labour, 'begar' or otherwise, and it makes no difference whether the person forced to give his labour or service to another is remunerated or not Bhagwati J insisted, after referring to his ruling in 'Asaid case' that every person providing labour or service to another is entitled at least to the minimum wage; if less than minimum wage is paid to him then Art 23 is infringed.

In Rohit Vasavada v. Gen. Man IFFCO124 the pitiable condition of contract labour working in a fertilizer factory run by a cooperative society were brought to the notice of the Gujarat High Court that the worker had to handle urea manually without adequate safeguards, they were not free to leave the premises as they desired; their health was in jeopardy and proper wages were not being paid to them. The High Court Characterized this form of labour as forced labour prohibited by Art 23.
In *Deena v. Union of India*,\(^{123}\) it was held by the Supreme Court that labour taken from prisoners without paying proper, reasonable remuneration, wage was amount to ‘forced labour’ and violative of Article 23 of the Constitution. The prisoners are entitled to payment of reasonable wages for the work taken from them and the Court is under duty to enforce their claim.

From all these views, interpretation, decision, it has become crystal clear that ‘begar’, forced labour etc all are similar to bonded labour system the Supreme Court has widened the scope of Article 23 of the Constitution by giving proper interpretation in the above mentioned cases which help to protect the interest of the labourers and socially economically deprived classes. Therefore Article 23 is a very salutary provision intended to ensure human dignity against social injustice and economic exploitation.

*(iii) Bonded labour:*

Under the bonded labour system, one person provide labour or service to another for nominal wages or without wages for specified or unspecified period until debt is repaid which normally never happens during his life time.

Even before the enactment of the Bonded Labour System (Abolition) Act, 1976, bonded labour which is a form of forced labour was prohibited under Article 23 of the constitution of India. Similarly, slavery and unlawful compulsory labour were made criminal offence, punishable under section 370, 371, 374 of the Indian Penal Code long age.

To give effect to Art 23, parliament enacted the Bonded Labour System (Abolition) Act, 1976. By which bonded labour system was abolished and declared illegal. The Supreme Court in its various decisions ruled that bonded labour is unconstitutional under Art 23 as it can be regarded as a form of forced labour.

In *Bandhua Mukti Morcha v. Union of India*,\(^{126}\) in an action brought in the Supreme Court by the organization dedicated to the cause of release of bonded labourer, the Supreme Court has observed, “that system of bonded labour under which one person is bonded to provide labour to another for years and years until an alleged debt is supposed to be wipe out which never seems to happen during the life time of the bonded labourer as totally incompatible with the new egalitarian socio-economic order which we have promised to build and it is not only an affront to basic humanity dignity but also constitute gross and revolting violation of
Constitutional values”.

The Court has linked Art. 23 and 21 in the context of the bonded labour and further observed. It is the Fundamental Right of every one in this country, assured under the interpretation given to Article 21… to live with human dignity, free from exploitation. The Court has also held that failure of the State to identity the bonded labourers to release them from their bondage and to rehabilitate them as envisaged by the Bonded Labour System Act, 1970 violates Article 21 and 22.

In *Neeraja Choudhary v. State of Madhya Pradesh* S.C. has said. “whenever it is found that any workmen is forced to provide labour for no remuneration or nominal remuneration, the presumption would be that he is a bonded labourer unless the employer or the State Government is in position to prove otherwise by rebuilding such presumption.”

As stated above Article 23 protects individual not only against State but also against private citizens. If the right of a person is infringing by private person it is the duty of State to take necessary step to ensure his Fundamental Rights.

In *People's Union for Democratic Rights and Others v. Union of India and Other* Bhagwati J. emphasized that whenever any Fundamental Right which is enforceable against private individual such as, for example a Fundamental Right enacted in Art.17 or 23 or 24 is being violated, it is the Constitutional obligation of the State to take the necessary steps for the purpose of interdicting such violation and ensuring observance of the Fundamental Right by the private individual who is transgressing the same. Of course, the person whose Fundamentals Right is violated can always approach the Court for the purpose of enforcement of his fundamentals right, but that can not absolve the State from its Constitutional obligation to see that there is no violation of the Fundamental Right of such person, particularly when he belongs to the weaker section of humanity and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him.

(iv) Compulsory service for public purposes:

Clause (2) of Article 23, an exception to clause (1) which empowered the State to impose compulsory service for public purposes, However, in imposing such compulsory service, the State is prohibited to make any discrimination on the ground only of religion, race, caste, class or any of them.
On this point Dr. B.R. Ambedkar explained in the Constitution assembly and cleared the position that “whenever compulsory labour or compulsory service is demanded, it shall be from all and if State demands service from all and does not pay any, I do think the State not committing any very great inequality”

Such compulsory service however, must be for a public purpose. It has been held that conscription for social service as the spreading of literacy is a public purpose. In State of Bihar v. Kameshwar Singh, Court observed that expression “public purpose” include any object or aim in which the general interest of the community as opposed to the particular interest of individuals, is directly and essentially concerned. It would include the social or economic objectives enshrined in Part IV of the Constitution relating to Directive Principles of State Policy. In Dulal Samanta v. D.M. Howrah Court observed that the expression “public purposes” is wide enough to include not only Military and Police service but also other purposes. Thus compulsory military service or social services can be imposed because they are neither ‘begar’ nor traffic in human being.

In State v. Jarawar Court observed that the imposition of compulsory service for the purpose of carrying a load of Government property by the Tehsildar or any Government servant in normal times can not be regarded as a public purpose.

In Acharaj Singh v. State of Bihar Court observed that under Rule 125, Defense of India Rules, orders were made imposing compulsory levy of food grains on cultivators. Clause (7) of the order provided for payment of transport charges at the rate of 10 paise per quintal for mile for the transport of foodgrains from the villages of the cultivator to the nearest Government godown. It was contended that the rate of transport charges was grossly inadequate and amounted for practical purposes to force labour for nominal charges and therefore infringed Article 23 of the Constitution. The Court rejected the contention firstly, because the transport charges were not to be considered in isolation but were to be added to the price fixed for the foodgrains as they formed an important element in the amount paid to the seller, secondly, even if it were held that the seller was compelled to render service to the Government by being required to bring the foodgrains from the village to the Government godown, the order would be saved under Article 23 (2), since it was made for a public purpose namely, the equitable
distribution of essential commodities which affected the life of the community.

Taking work from the prisoners convicted for rigorous imprisonment is also for public purpose. Work taken from other prisoners is also for public purpose. Such work helps the rehabilitation of the prisoners who may be paid reasonable wages for their work part of which may also go to victims of crime.\textsuperscript{136}

The Government demanding services of teacher for census, election, family planning duties is not violative of the 23 (1), such services fall within the meaning of "public purposes" under Article 23 (2) and these services can also be treated as national service which is a fundamental duty of every citizen under Article 51A.\textsuperscript{137}

From the above decisions of the Court it is clear that State can impose compulsory service for public purpose it will not contravene the Article 23 of the Constitution and would not be 'begar' or forced labour.

After going through Article 23, it seems that India's compliance with Article 8 of the International Covenant on Civil and Political Rights (Concerning Slavery, Servitude and Forced Labour) is exemplary. Article 23 of the Indian Constitution specially prohibits trafficking, debt bondage and forced labour:

(v) Prohibition of Employment of Children as Bonded Labourer (Article 24):

Article 24 read with Article 23 prohibits the employment of children as bonded labourer generally irrespective of the nature of employment. Further, no child below 14 years can be employed in a hazardous employment irrespective of the fact whether he is a bonded labourer or not. Together, Article 23 and 24 are placed under the heading of 'Right Against Exploitation' one of India's Constitutionally proclaimed Fundamental Rights.

In People's Union for Democratic Right v. Union of India,\textsuperscript{138} Supreme Court held that the construction work is hazardous employment, no one can employ a child below the age of 14 years in a hazardous employment and the prohibition contained in Article 24 could be plainly and indubitably enforced against everyone, whether State or private individual. In Labourers, Salal Hydro Project v State of J & K\textsuperscript{139} The Court reiterated the principle that employment of children below 14 years in construction work violets Article 24.

A landmark judgment in M.C. Mehta v. State of Tamil Nadu\textsuperscript{140}. The Supreme Court has held that children below the age of 14 years can not be
employed in any hazardous industry, mine or other works and had laid down exhaustive guidelines how State authorities should protect economic, social and humanitarian rights of millions of children working illegally in public and private sections. Court has identified nine major industries as hazardous in which child labour is ban and which are as follows:-

1. Match making at Sivakasi in Tamil Nadu
2. Precious Stone polishing in Jaipur, Rajasthan
3. The Diamond polishing including in Surat
4. The Glass industry in Firozabad
5. The Brass ware industry Moradabad
6. The Hand made carpet Industry Mirzapur, Bhadohi
7. The Lock making Industry in Aligarh, all in U.P.
8. State Industry in Mankapur. Andhra Pradesh

In *Bandhua Mukti Morcha v. Union of India*, The Supreme Court reiterated with approval the directions given in *MC Mehta v. State of Tamil Nadu* in regard to the Constitutional perspective of the abolition of the child labour and the employment of child below the age of 14 years in the notorious sivakasi match Industries. Taking note of the cause for failure to implement the Constitutional mandate, the Court declared the directions as feasible inevitable and reiterated the need for their speedy implementation.

The instant case related to the employment of children in Carpet industry in the State of Uttar Pradesh. Referring to *M.C. Mehta's case*, the Apex Court gave direction to the Government of India to convene within two months from the receipt of order, a meeting of the concerned Ministers of the respective State Governments and their Principal Secretaries, holding concerned Departments, to evolve the principles and policies for progressive elimination of employment of the children below the age of 14 years in all employment as mentioned in *Mehta's case* and to provide:

(1) Compulsory education to all children employed in the factories, mine or any other industry, organized or unorganized labour with such timings as is convenient to import compulsory education, facilities for secondary, vocational profession and higher education;
Apart from education, periodical health check-up;

Nutrient food, etc.;

Entrust the responsibilities for implementation of the principles. The Court further directed that periodical reports of the progress made in that behalf would be submitted to the Registry of the Supreme Court.

In the long run it can be said that a critical human and economic problem is that of child labour. Poor parents seek to augment their meager income through employment of their children. Employers of children also stand to gain financially. Act 24 prohibits the employment of children below the age of 14 years in any factory or mine or other hazardous occupation. Obviously, the provision is in the interest of health and strength of young persons and is in keeping with the provisions of the directives in Article 39(e) and (f). But in view of our socio-economic realities the framer of the Constitution could not prohibit the employment of children generally.

5. Directive principles:

The Directive Principles of State Policy contained in part IV of the Constitution set out the aims and objectives to be taken up by the State in the governance of the country. The Directive Principles of State Policy of the Indian Constitution (part IV) were included with definite purpose welfare of the people. It sets forth the ideals and objectives to be achieved by the State for setting up in India a social welfare state, as distinguished from a mere political state, which aims at social welfare and the common good and to secure to all its citizens, justice, social and economic.

The Directive Principles of State Policy contained in Article 37 to 51 of the Constitution possess two characteristics which flow from Art 37.

Firstly they are not enforceable in any Court of law and therefore if a directive is not obeyed or implemented by the State, its obedience or implementation cannot be secured through judicial proceedings, secondly, they are fundamental in the governance of the country and it shall be duty of the State to apply these principles in making laws.

The Courts do not however enforce a Directive Principle, as such, as it does not create any justiciable right in favour of an individual. A Court will not issue an order or a writ of mandamus to the Government to fulfill a Directive
Principle.\textsuperscript{147} The Supreme Court has again reiterated. In \textit{Lily Thomas v Union of India.}\textsuperscript{148} "this Court has no power to give directions for the enforcement of the Directive Principles of the State Policy. This Court has time and again reiterated the position that Directives...are not enforceable in Courts as they do not create any justiciable rights in favour of any person". But the Courts are, nevertheless, bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy."\textsuperscript{149}

Today we are living in an era of a welfare State which has to promote the prosperity and well-being of the people. The Directive Principles lay down certain economic and social policies to be pursued by the various Governments in India. They impose certain obligation on the State to take positive action in certain directions in order to promote the welfare of the people and achieves economic democracy. The idea of Welfare State envisaged by our Constitution can only be achieved if the States endeavour to implement them with a high sense of moral duty. The Directive Principles are the ideals which the union and State Governments must keep in mind while they formulate policy or pass a law.

Dr. B.R. Ambedkar, while explaining the object underlying the Directive Principles of State Policy observed,\textsuperscript{150} "While we have established political democracy, it is also the desire that we should lay down as our ideal, economic democracy, we do not want merely to lay down a mechanism to enable people to come and capture power. The Constitution also wishes to lay down an ideal before those who would be forming the Government. That ideal is economic democracy, whereby, so far as I am concerned, I understand to mean one men one vote".

Now it has become clear that the main object behind the Directive Principles is to achieve the ideal of economic democracy. In the opinion of Dr. L.M. Singhvi\textsuperscript{151} "The Directive Principles of State Policy are the life giving provisions of the Constitution, these principles constitute the stuff of the Constitution and its philosophy of social justice. These principles represent the pledges and the promises of the Constitution, which is not merely a literary document but a living instrument".

\textit{In Air India Statutory Corpn v. United Labour Union and others}\textsuperscript{152} S.C. observed that these Directive Principles are fore-runners of the U.N.O. convention of Right to Development. These principles are embedded as integral part of our
Constitution and that these Directive Principles now stand elevated to inalienable fundamental human rights, even they are justiciable by themselves.

However, the Courts can not issue any direction to the parliament or to the State legislature, to enact a particular kind of law. Implementation of the Directive Principles is, therefore, a matter of policy for the Government to decide.\textsuperscript{153}

It is gratifying to note that the judicial response in India toward the Directive Principles and their use for interpretation of the rest of the Constitution has been quite impressive. It has been noted that during last sixty years, Indian Judiciary has never undermine the importance of Directive Principles while interpreting various Constitutional provisions in general and Part-III in particular.

In fact, soon after the commencement of the Constitution, the Indian judicial response towards most of the provisions of the Constitution was purely positivist, which resulted in strict interpretation, this strictly positivistic attitude gave birth to decisions like \textit{State of Madras v. Champakam Dorairajan}\textsuperscript{154}. Directive Principles of the State Policy have to conform to and run as subsidiary to the chapter of Fundamental Rights because the later are enforceable in the Courts while the former are not.

\textit{In Dorairajan} case, the question of supremacy among the Directive Principles and Fundamental Rights arose, the Supreme Court held that in case of conflict between the two, the Fundamental Right would prevail over the Directive Principle.

Further, in \textit{Re Kerala case} the Court adopted the view that in determining the scope and ambit of Fundamental Right, the Directive Principles should not be completely ignored and that the Court should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible.\textsuperscript{155}

\textit{In C.B. Boardings Lodging v. State of Mysore.}\textsuperscript{156} The honorable Supreme Court held that it did not find any conflict on the whole between the provisions contained in Part III and Part IV and that they are complementary and supplementary to each other.

There is no anti thesis between the Fundamental Rights and Directive Principles. They are meant to supplement one another. Shelat and Grover, JJ, in \textit{Keshavananda Bharati’s} case observed.\textsuperscript{157} "Fundamental Rights and the Directive Principles are meant to supplement one another. It can well be said that the
Directive Principles prescribed the goal to be attained and the Fundamental Rights lay down the means by which that goal to be achieved."

The opinion so expressed was reiterated and followed with approval in Minerva Mills Limited v. Union of India. The Court observed that the Constitution was founded on the bed rock of balance between Part III and Part IV. To give absolute primacy to one over the other, was to disturb the harmony of the Constitution which the Court held, was an essential feature of the basic structure of the Constitution. Further the Court held that there is no conflict between Directive Principles and Fundamental Rights. Both are complementary to each other. None is superior and none is inferior to the other, and therefore, there is no necessity to sacrifice either of them for the sake of other.

In Unni Krishnan V State of A.P. the Court has reiterated the same principle that "the Fundamental Rights and Directive Principles are supplementary and complementary to each other and the provisions in Part III should be interpreted having regard to the preamble and the Directive Principles of the State Policy.

However, with the passage of time the Indian judicial attitude towards the Directive Principles of State Policy has been changed to a great extent.

More important is the fact that honorable Supreme Court has gone to the extent of giving the status of Fundamental Rights to some of the most important Directive Principles. Such as, equal justice and free legal aid, living wages to workers, clean and healthy environment, free and compulsory education to all children up to the age of 14 years etc.

Recently in I.R. Coelho v. State of Tamil Nadu Court observed that by enacting Fundamental Rights and Directive Principles which are negative and positive obligation, it should be the responsibility of the Court to adopt a middle path between individual liberty and public good. Fundamental Rights and Directive Principles have to be balanced. That balance can be tilted in favour of the public good. The balance however can not be overturned by completely overriding individual liberty the balance is an essential feature of the Constitution.

It has become clear from the above decisions of Courts that there are no conflicts between the Directive Principles and Fundamental Rights. No one is superior or inferior to each other. Both constitute an organic unit. They are divided
into two parts for the sake of convenience. Both embody the philosophy of our Constitution, the philosophy of Justice - Social, economic and political.

The Fundamental Rights though important for the bonded human being but the Directive Principles are more valuable to them. The Directive Principles contains ample provisions for the upliftment of bonded labourers, according to Article 39(a) it shall be obligation of the State to direct its policy towards security of its citizens right to adequate means of livelihood. Right to livelihood is an important facet of right to life because no person can live without means of living that is means of livelihood.\(^1\)

If the right to livelihood is not treated as a part of the Constitutional right to life, the easiest way of depriving a person of his right to life will be to deprive him of his means of livelihood. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. There is thus close nexus between life and means of livelihood.

In *Olga Tellis v. Bombay Municipal Corporation*\(^2\) SC observed “if there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life.”\(^3\)

The Supreme Court has however put a rider on the right to livelihood. The State may not be compelled by affirmative action, “to provide adequate means of livelihood or work to the citizens”. But the State is under a negative obligation, viz not to deprive a person of this right without just and fair procedure. Thus, according to the Court.\(^4\) Any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Art 21.

In case of bonded labourers, the obligation of State under Article 39(a) can only be meaningful if they are provided adequate means of living, cannot be arranged without providing them right to work. Article 39(b) and (c) together with other provisions of the Constitution contain the main objectives namely, the building of a welfare society and an egalitarian social order in the Indian union. When the Constitution makers envisaged development in social, economic and political fields, they did not desire that it should be a society where a citizen will not have the dignity of the individual.

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The right to work is embodied in Article 41 of the constitution, through which the State is directed to ensure the people within the limit of its economic capacity and development: (i) employment, (ii) education, and (iii) public assistance in cases of unemployment, old age, sickness and disablement and in other cases of underserved want. It is usual to refer to matters specified in this directive as measures of social security.

Right to work under Article 41 is not an absolute right, but it is subject to economic capacity of State. The State may not by affirmative action be compelled to provide adequate means of livelihood or work to the citizens, but it is moral obligation of the State to provide adequate means of livelihood and in turn, proper job to the human beings to earn their livelihood.

Commenting on Art 41, the Supreme Court has observed169 “This country has so far not found it feasible to incorporate the right to livelihood as a Fundamental Right in the Constitution. This is because the country has so far not attained the capacity to guarantee it, and not because it considers it any the less fundamental to life, advisedly, therefore, it has been placed in the chapter on Directive Principles. Article 41 which enjoins upon the State to make effective provision for securing the same within the limits of its economic capacity and development”. Thus even while giving the direction to the State to ensure the right to work, the Constitution makers thought it prudent not to do so without qualifying it.

Art 41 is also connected with Article 47 which enjoins on the State to consider the raising of the level of nutrition and standard of living of its people including bonded labourers, whose earning are just sufficient to provide them with few Chapaties of Jawar and Chutney of red chilies and salt every day of every season. Level of nutrition can only be provided by providing them living wages under Article 43. A living wage is such wage, which enables the male earner to provide himself and his family not merely the bare essentials of food, clothing and shelter, but a measure of frugal comfort including education for children, protection against ill health, requirements of essential social need and a measure of insurance against the more important misfortunes including old age. Article 43 of our Constitution has adopted as one of the Directive Principles of State Policy regarding 'Living wage':

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Article 43 sets out the ideals to which our social welfare State has to approximate in an attempt to ameliorate the living conditions of the workers, including bonded labourers.

The most useful principles to bonded labourers are contained in Article 39(e), (f) and 42. Article 39(e) provides: "that the health and strength of workers, men and women and the tender age of children are not abused and that citizen are not forced by economic necessity to enter avocation unsuited to their age and strength". Article 39(f) provides: "that children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment." Article 42 provides: "The State shall make provision for securing just and human conditions of work and maternity relief".

These Articles show the deep concern of the framers of the Constitution for the welfare and well being of the workers. The Courts may not enforce the Directive Principles as such. But they must interpret law so as to further and not hinder the goals set out in the Directive principle.170

In Bandhua Mukti Morcha v. Union of India171 the Supreme Court read Articles 21 and 23 with such Directive Principles as Articles 39(e) and (f) and 41 and 42 to secure the release of bonded labour and free them from exploitation. The Court has observed in this connection172

"This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Articles 41 and 42".

It is not only the question of release of bonded labour but also of their proper rehabilitation after release. The S.C. has insisted upon effective rehabilitation of the freed bonded labourer families.

In Shivaswamy v. State of Andhra Pradesh173 the Court observed that Rs. 738/- paid for family as financial assistance to the repatriated bonded labourers, set free from bonds, were inadequate and not in conformity with Article 42 which required the State to make provisions for just and human conditions of work.

In M.C. of Delhi v. Female workers (Muster Roll),174 the Maternity Relief has been extended to women (muster roll) employees, working on daily wages.

Unfortunately it is submitted that these provisions of the Directive
Principles have not come effectively to rescue the bonded labourers. They are forced by economic necessity to enter avocation most unsuited to their age and strength. There are little opportunities or facilities for them to develop in a healthy manner, there is no protection against exploitation and moral and material abandonment, apart from industries and other organised sectors, bonded children are very commonly working in dhabas and wayside restaurants. If the child working in dhaba happens to drop some glass or kettle containing boiling tea he is sure to suffer burn but the employer instead of treating his burns will shower abuses for breaking the crockery, so also is the case with young bonded children employed as domestic servants. They are completely at the mercy of the employer. There is no limit to their working hour, no regulation of their diet and other living conditions. There are the child workers on roads the newspaper hawkers and the shoe shine boys. Small children as young as 6 and 7 years are also exploited sexually they are used for immoral purposes for begging and many other anti-social and illegal activities.

In Bandhua Mukti Morcha case the condition of bonded labourers working in some of stone quarries in Faridabad District has been described in the following words:

"Beside these cases of bonded labour, there are innumerable cases of fatal and serious injuries caused due to accidents while working in the mines while dynamiting the rocks or while crushing the stones. The stone dust pollution near crushers is so serious that many a valuable lives are lost due to tuberculosis while others are reduced to mere skeletons. The workers are not provided with any medical care, what to speak of compensating the poor workers for injury or for death."

The condition of bonded labourers in mine is not much better. The residential accommodation is not worth the name- with scanty clothing, not even a thatched roof to fend against the icy winds and winter rain or against the scorching heat in mid summer, with impure and polluted drinking water accumulated during rainy season in the ditches, with absolutely no facilities for schooling or child care, bearing all the hazard of nature and pollution and ill treatment, these thousand of sons and daughters of Mother India epitomize the wretched of the earth.

Bonded labourers live a life worst than animals. The animals are at least
free to roam about as they like and they can plunder or grab food whenever they are hungry, but these out caste of society are held in bondage robbed of their freedom and live either in hovels or under the open sky and be satisfied with whatever little food they can manage to get, to fill their hungry stomach.\textsuperscript{178}

Since India is a country which has given a pride of place to the basic human rights and freedom in it's Constitution in it's chapter on Fundamental Rights and under, Art, 39 (e), (f) and 42, the question may be raised whether or not the Fundamental Rights and Directive Principles enshrined in our Constitution have any meaning to the bonded labourers to whom food, drinking water, timely medical facilities and relief from disease and disaster still remains unavoidable.

Article 39A\textsuperscript{179} directs the state to ensure that the operation of the legal system promote justice, on a basis of equal opportunities, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

This Article was added to the Constitution pursuant to the new policy of the Government to give legal aid to economically backward classes of peoples. The bonded labourers are subjected to every kind of disability therefore they are very much in the need of the new provision. \textit{In Premchand Garg v. Excise Comissioner}\textsuperscript{180} it has been held that Court also comes under the definition of State, therefore Courts are also under obligation to provide legal assistance and justice to the bonded labourers. Supreme Court has taken a lead in this respect and is doing tremendous job in providing free legal aid and justice to bonded labourers.

\textit{In Centre for Legal Research v. State of Kerala}\textsuperscript{181} it has been suggested that in order to achieve the objective in Article 39 A, the State must encourage and support the participation of voluntary organization or social action groups in operating the legal aid programme. The Government should set up a "suitor fund" to meet the cost of defending a poor or indigent.\textsuperscript{182} The Court held that although the mandate in Article 39 A is addressed to the legislature and the executive, yet the Court too are bound by the mandate contained therein.\textsuperscript{183}

Article 39A promotes justice on the basis of equal opportunities.\textsuperscript{184} It imposes an imperative duty upon the states to provide free legal aid to the poor, disadvantaged section of society including bonded labourers. It is with a view to
enable the poor litigant to have an easy access to Court of law to invoke legal right and to secure him equal protection of laws against his well to do opponent, that the scheme of affording legal aid and assistance to the poor has been conceived.\textsuperscript{185} It has been held to be a mandate not only from Article 39A but also from Article 14 and 21.\textsuperscript{186} It has now been held that legal aid constituted a part of the right to personal liberty guaranteed under Article 21 and was enforceable by the Court.\textsuperscript{187}

From the on going study it has become clear that there are many Article in our Constitution aiming at the elimination of exploitation of bonded labourers and other workers but unfortunately, we could not have done too much for the relief and rescue of bonded labourers and workers even after having a good Constitutional protection. It is a matter of great regret that even after more than 60 years of our independence, the plight of workers are unsatisfactory and exploitation still continues. Regarding the problem of bonded labour our Constitution is committed to curb this evil, undoubtedly we have obtained a little success in its eradication yet much more is still to be done. The interest of bonded labourer certainly protected through Fundamental Right and Director Principles but due to failure of execution their rights could not be protected.

Finally, it may also be mentioned here that often the functionaries of the State are in sympathy with the exploiters and there efforts may satisfy the form but never the substance. Moreover, those officers who are really interested in eradicating these social evil thoroughly discouraged in their efforts by the pressure exerted by the vested interests. These pressure may vary in shape and nature, for example political pressure, economic pressure, pressure coming from their own superiors in myriad forms like transfer, bribery, coercion through violence, vexatious litigation etc.
CHAPTER-4

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32 Supra note 29.
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