Chapter 5
Bonded Labour: Legislative Framework
CHAPTER-5

BONDED LABOUR: LEGISLATIVE FRAMEWORK

After the independence of India, expectations of the citizens increased. The promises given by the political leaders were not fulfilled after independence. Consequently, equality in political life and inequality in social and economic life continued which built tension particularly among the have-notes, agricultural slaves and under privileged sections of the society. Even after 28 years of independence inequalities, exploitation and oppression of weaker sections continued as the dominant people became blind due to the possession of power.

As a result, the Government of India (the late Prime Minister Indira Gandhi) announced a new economic policy 20 point economic programme on July 1, 1975, for the amelioration of the socio-economic conditions of the weaker sections of the society. In the programme, it has been proclaimed, “Bonded labour, wherever it exists will be declared illegal.”

On the basis of this proclamation the Bonded Labour System (Abolition) Ordinance 1975 was promulgated by the president of India on October 24, 1975. It was replaced by the Bonded Labour System (Abolition) Act 1976. The Act was further amended in November, 1985 to bring the contract and inter-state migrant workers under the purview of the Act.

In order to assist the State Governments in their task of rehabilitation of released bonded labourers, the Ministry of Labour has launched a Centrally Sponsored Scheme since May 1978 for the rehabilitation of freed bonded labourers under the scheme the Government of India extends rehabilitation assistance @ Rs. 20,000/- per freed bonded labourers w.e.f. 01.05.2000. The expenditure is shared by the Central and State Government on 50-50 basis.

1. The Passage of Bonded Labour System (Abolition) Act, 1976:
   (i) The Rajya Sabha Debate:¹

The Bonded Labour System (Abolition) Bill 1976 was introduced in the Rajya Sabha on 6th January, 1976. On 12th January, 1976, the Rajya Sabha debated the above Bill. Moving the Bill, the Labour Minister spoke of the objectives of the Bill in the following words: "That the Bill is to provide for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people and for matters
connected therewith or incidental thereto be taken into consideration." He also emphasised the necessity of the immediate abolition of the bonded labour as it formed a part of the 20-point Programme. He also said that the bonded labour system is the "most anomalous remnant of feudalism still vitiating our society. It is the moral duty of the nation to abolish the system." He also described the mechanics of this system, whereby "a poor peasant or an agricultural worker takes small loans; his dues accumulate very fast under exorbitantly high rates of interest; soon he finds it impossible to extinguish his debts, he disposes off his property but still continues to be in the debt; he then begins to work for the creditor at absurdly low wages and hopes to repays the debt by the fruits of his labour; but the crucial logic of usury defeats him; his children and grandchildren also begin to work for nominal wages to liquidate the debt. Generation after generation becomes virtual slaves to the creditor. The entire future of the family becomes mortgaged to small loan taken in the remote past, the debt becomes the destiny."

Speaking of the bonded labourer, the Minister described as having "no access to any commodity or capital market; he ceases to be a free economic agent; he is reduced to an appendage of the feudal property he lives like a sub-man: he lives like a thing." Mentioning that the Prime Minister had decided "that the system must end", the Minister gave examples of the bonded labour system existing in different parts of the country.

Speaking of the Bill, the Minister described its salient features. He said, "It has been laid down in the Ordinance that all debts incurred by the bonded labourers shall be deemed to have been liquidated. Any Act that can, in any way, perpetuate this system, or stand in the way of the abolition of this system has been made a punishable offence there shall be vigilance committees at the District and sub-divisional levels consisting of officials dealing with development projects and non-officials concerned with rural development. Officers of the State Government can be vested, under the Ordinance, with adequate powers in respect of inquiry, cognizance, prosecution and trial." The State Governments have already been told that the eradication of bonded labour cannot be done by legislation only; it is a complex administrative problem, the solution of which will require the concerted efforts of the developmental machinery of the Government, nationalised banks, rural banks and social workers working in the agrarian sector. State Governments
have been requested to utilise the Plan Schemes for the rehabilitation of freed bonded labourers.

In the debate that followed, one member spoke of the different kinds of bondage prevalent in the country, and suggested that the Government create a machinery to recognise and abolish these forms of bonded labour another member spoke of the bonded labour system "sanctioned by local customs and traditions, and mentioned that "bondage may not be caused by obligations sanctioned by local customs." He claimed that the prevalence of the system originated from the existing socio-economic structure and that economic backwardness resulted in "indebtedness among the poorer classes to meet their minimum daily needs." On the Bill, he suggested associating organised rural workers in the implementation of the Act, ensuring implementation at the State and Central levels and including MLAs, MPs and Trade Unions in the Vigilance Committees. Another speaker wondered how the Bill would be implemented by the States, whose actions left much to be desired. He felt that leaving the implementation of this Act to the bureaucracy was not sufficient, and that public co-operation was imperative. He suggested organising rural workers; including representatives of agricultural workers in the Vigilance Committees and organising and recognising Trade Unions of bonded labourers. One member sought information, on the machinery to defect bonded labour. On the Vigilance Committee, he remarked that providing alternative livelihood for freed bonded labourers, being one of its functions, would not be possible, nor would these Committees, be able to 'arrange relief from the rural banks' as proposed. Another member in his speech felt that 'the Bill, although it provides for the abolition of the bonded labour system, does not seem to be very adequate to implement it thoroughly. He felt that the Bill did not mention about the resettlement of bonded labour and that a provision should be introduced to make resettlement, a statutory obligation on both the Central and State Governments and to "see that at least a piece of land and some loan is advanced to the freed bonded labourers" so that they "can make their own living and live with self-respect." He suggested that the Government should consider constituting special tribunals ... in every District instead of using the normal machinery to implement the Act." To implement the Act immediately, he suggested that some special committee or high powered committee be constituted to make immediate rules so that the Act could
be implemented without delay. Another member wanted the definition of the bonded debt to be elaborated as he felt that "all debts were not necessarily bonded labour debts, but might finally result in bonded labour. Therefore, every debt which resulted in bonded labour "should be defined as bonded debt." Another member advocated that the Act be implemented strictly the keepers of bonded labour prosecuted, watchdog committees set up in every State and field officers held responsible if any complaints were reported from their areas. This thing of responsibility would ensure that the officers strictly implemented the Act. One member felt that the implementing machinery of the Act was inadequate. He criticised the function of the District magistrate as envisaged in the Act. He also felt that the wording which laid down that he would "as far as practicable try to promote the welfare of the freed bonded labourer." He further commented that unless alternative employment was assured to the freed bonded labourers, no rehabilitation programme could succeed. He wanted an effective implementation machinery and offences under the Act made non-bailable. Another member mentioned the prevalence of the bonded labour system in the brick kiln industry and in agriculture. He suggested that the Vigilance Committees should have funds to disburse and felt that its Chairman should be a non-official, while the Deputy Commissioner be its Secretary. In his closing speech, the Labour Minister spoke of the rehabilitation programmes envisaged by the Labour Ministers Conference held on 11th January, 1976 which decided that the State Governments would take steps specifically identifying bonded labour and that surveys would be used effectively for identifying the existence of bonded labour. The State Governments would also prepare and implement schemes for the social and economic rehabilitation of the bonded labour and the State Labour Ministry would act as the coordinating agency. Specific rehabilitation schemes for the bonded labour would form part of the Annual Plan Programmes. In the clause by clause discussions that followed a number of amendments were proposed by the members. However, all such amendments were negatived. Later on, the Labour Minister moved that the Bill be passed, which was done.

(ii) Lok Sabha Debate:  

After the Rajya Sabha passed the Bill on 12th January, 1976, the Lok Sabha debated upon it on 23rd and 27th January, 1976. Introducing Bill, the Labour
Minister virtually repeated his speech in the Rajya Sabha and indicated its salient features. In the debate that followed the Minister's introductory speech, one member criticised passing the Bill without assuring the freed bonded labourers of land and assistance. He felt that the Central Government would not take any responsibility to implement this Act, and concluded by remarking "that this Bill is more for the purpose of serving as a favourable propaganda for the ruling party than for the liberation of the bonded labourer." Another member, in his speech, said that the mere abolition of the bonded labour by legislation was not going to be effective. He felt that there were many who were outside the purview of the Act, but in reality, bonded labourers. He urged the Government to identify such people immediately, free them and create credit institutions so that timely loans to the freed bonded labourers are forthcoming. On the role of the Vigilance Committees, he doubted their effectiveness and felt that unless the Central Government directly involved itself the States would not implement the Act seriously. He suggested the inclusion of the local Member of Parliament, members of the legislative assembly and the Chairman and members of panchayat, unions in the Vigilance Committees.

Another member, while welcoming the Bill suggested that all forms of forced labour prevalent in the country should be incorporated in the Bill and pointed out that there was no provision for the rehabilitation of the freed bonded labour. He recommended that a legal provision for rehabilitating such people be made and that the Central Government be specifically responsible for these rehabilitation programmes. He also suggested setting up a vigilance committee at the Central level. Another member emphasised the need for effective implementation of the Act, and urged the "mass involvement of the agricultural workers and the general mass of the people, the exploited people, to fight against the vested interests." One of the members suggested that instead of the three Scheduled Castes/Scheduled Tribes representatives in the District and Sub-Divisional Vigilance Committee, there should be five of them, as bonded labourers were mostly from the Scheduled Castes and Scheduled Tribes. He also suggested that these representatives should be paid. One member complimenting the Prime Minister on this Bill, pointed out that attention should be paid to the human problem of the bonded labourers. He suggested that whenever rules were to be formulated, those rules should ensure that no injustice was done to the freed bonded labourers, also those opportunities to
earn their livelihood should be created. He suggested representatives of the bonded labourers are the vigilance committees and requested sufficient credit to free the bonded labourers from the Regional Rural Banks. Another member wanted the introduction of the Bill abolishing rural indebtedness throughout India and the formulation of policies to tackle poverty and backwardness, One member mentioned that the Bill prohibited bonded labourers from being evicted from their homestead or other residential premises, but no corresponding provision had been made for providing them land. Another member suggested certain measures which would ensure effective implementation of the Act. He suggested an intensive campaign in villages to free the bonded labourers, and magistrates and tehsildars should go to villages to free such people. Adequate employment opportunities should be given to such freed labour and money-lenders and their strong men prevented from harassing them. He suggested that voluntary organisations be entrusted with the implementation of the Act. Another member felt that too much responsibility was being thrust upon the District Magistrate, who was to implement the Act. He asked why were the lower level functionaries not held accountable? He recommended that offences under the Act should be made non-bailable. He emphasised that the removal of poverty would solve many of the present ills. Replying to the debate, the Labour Minister thanked the members of the House for their participation and shared Government's view that "socio-economic legislation is bound to be reduced to a dead letter, if appropriate follow-up steps are not taken on the economic and social fronts." Analysing the economic problem that a bonded labourer would face on being freed the Minister said that "He will not have inputs for production or any supply of credit; he will neither have any professional skill that would enable him to pursue an independent livelihood.

Even when installed in a profitable activity, he will have no income during the period of gestation of any income generating process; therefore, he may have to be given a consumption subsidy during the gestation period. The bonded labourer who is used to a world of domination and servitude will not obviously be aware of his rights. At time, he may not even like to undergo the strenuous process of economic rehabilitation and may prefer reversion to serfdom.

The Minister mentioned that guidelines were being prepared for the State Governments that the Union Labour Ministry would function as the nodal ministry.
and monitor and coordinate the implementation of the Act by the various State Governments. Explaining why the types of bonded or forced labour were not exhaustive, the Minister Stated that the intention was merely to clarify, and assist the Courts in interpreting the definition of the bonded labour system, which was the most important section in the Act. He pointed out that the need to organise the rural poor had been recognised and that steps were being taken by the Union Labour Ministry and the National Labour Institute to create an ethos conducive to collective bargaining by the agrarian labour.

Speaking of the problem of identifying the bonded labour, the Minister spoke of the need for intensive survey and States having been requested to conduct them. He pointed out that the suggestion that the punishment for offences being enhanced, would not be held as "no punitive action on its own can bring out the fundamental transformation" and that "increased punishments may not be compatible with the penal provisions in other statutes." The suggestion for fixing rigid time limits for restoration of property was not considered pragmatic as the Courts might consider many time limits arbitrary. The Minister informed the House, that the committees set up at the Central and State levels should monitor and coordinate measures under this Act. Emphasising the role of the District magistrate as chairman of the District Vigilance Committees, he pointed out their powers would facilitate speedy action. The necessity of introducing a separate provision for rehabilitation programmes, was not necessary, as the States were already taking appropriate action under the Ordinance.

The Clause by Clause discussions then took place. A number of amendments were suggested, but all of them were negative. The Act received the assent of the President on 9th February, 1976, and came into being as the Bonded Labour System (Abolition) Act 1976.

2. Objects and Reasons of the Act:

The existence of bonded or forced labour in large parts of our country was an ugly and shameful feature of our social life which cried for urgent attention. Being totally out of tune with our new socio-economic order, this evil and pernicious practice had to be wiped out altogether by bringing forward appropriate legislation. Therefore Bonded Labour System (Abolition) ordinance, 1975 was promulgated by president on Oct 24, 1975 which was later replaced by Bonded
Labour System (Abolition) Act, 1976 this Act seeks to provide for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker section of the people.

The main thrust of the Bonded Labour System Act 1976 is to prohibit the continuance of any bonded labour. The Act was passed with an avowed object of giving effect to Articles 21 and 23 of the Constitution. The objects and reasons appended to the Bill (Act) reads as under:

There still exists in different parts of the country a system of usury under which the debtor or his descendent or dependents have to work for the creditor without reasonable wages or with no wages in order to extinguish the debt. At times, several generations work under bondage for the repayment of a paltry sum which has been taken by some remote ancestor. The interest rates are exorbitant and such bondage can not be interpreted as the result of any legitimate contract or agreement. The system implies the infringement of the basic human rights and destruction of the dignity of human labour.

The object of the Act is to provide for welfare of the bonded labourers who are supposed to be in a weak position by the reason of their being in unbargaining conditions. An important object of the Act is also to regularise the condition of the bonded labourers for the matters connected therewith. Previously the bonded labourers were unorganized unable to look after their own interest.

The objectives of the Bonded Labour Legislation may also be pointed out categorically in other words as follows.

(1) The Act was enacted with the view to preventing the continuance of any form of bonded labour (forced labour).

(2) The Act was also enacted with a view to preventing the economic and physical exploitation of the weaker sections in the community for matters connected therewith or incidental thereto.

(3) This was made under the guiding principles of Directive Principles with the amalgamated influence of Fundamental Rights and also to assure the dignity of the individual which is heralded in the preamble of our Constitution.
(4) The open objective of the Act is identification, release, and rehabilitation of bonded labourers which are fundamental necessities for the liberty and freedom of the individual.

(5) This Act is also a part of the labour welfare legislation to protect the labour community and to assist them in march towards the attainment of economic and social justice which is assured by and for the people of India.

For the passing of the legislation the other reason was that many agricultural labourers and marginal farmers were in need to get heavily indebted and thus had become bonded on account to lack of financial resources for meeting unavoidable social obligations like expenses of wedding and expenses for funerals. In order to meet these expenses they had to enter into an agreement with the landlords. It can therefore be said that the landlords had to take undue advantages of the weak position of the farmers.

Act 73 of 1985:- The Bonded Labour System (Abolition) Act, 1976, provides for the abolition of bonded labour system and for matters connected therewith or incidental thereto. Section 2 of the Act defines ‘bonded labour’, ‘bonded labourer’ and ‘bonded labour system’. Though these definitions are very clear, doubts have been raised from time to time as to whether a contract labour or inter-State migrant workman could also come within these definitions.

The expression ‘contract labour’ and ‘inter-state migrant workman’ have been defined in cl (b) of sub-s (1) of s 2 of the Contract Labour (Regulation and Abolition) Act 1970 and cl (e) of sub-s (1) of s 2 of the Inter-State Migrant Workman (Regulation of Employment and Conditions of Service) Act 1979, respectively. Some times it is found that the wages paid to such labourers are less than the minimum wages prescribed by law and there is also an element of coercion till the advances are fully re-paid. Yet because of the peculiar conditions of their employment, these labourers do not get identified as bonded labourers though they virtually work under the conditions of bondage as envisaged under the Bonded Labour System (Abolition) Act 1976, with the result that they continue to remain in bondage.

With a view to overcome these difficulties, it is proposed to amend clause (g) of s 2 of the Bonded Labour System (Abolition) Act 1976, so as to clarify that the contract or migrant labourers who are required to render labour or service in...
circumstances of the nature mentioned in sub-clause (1) of the said clause or are subjected to all or any of the disabilities referred to in sub-cl (2) to (4) thereof, shall be deemed to be working under ‘bonded labour system’ within the meaning of the said clause.

3. Statutory Definition of Bonded Labour:

The statutory definition of bonded labour is as follows:

Section 2 (e) “bonded labour” means any labour or service rendered under the bonded labour system,

(f) “bonded labourer” means a labourer who incurs, or has, or is presumed to have, incurred a bonded debt;

(g) “bonded labour system” means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered into an agreement with the creditor to the effect that-

(i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, due on such advance, or

(ii) in pursuance of any customary or social obligation, or

(iii) in pursuance of any obligation developing on him by succession or

(iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or

(v) by reason of his birth in any particular caste or community,

he would-

(1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal, wages, or

(2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or

(3) forfeit the right to move freely through out the territory of India, or

(4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him,
and includes the system of forced, or partly forced labour under which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor;

The expression "nominal wages" is defined in section 2(i) to mean, in relation to any labour, means a wage which is less than,

(a) the minimum wages fixed by the Government, in relation to the same or similar labour, under any law for the time being in force, and

(b) where no such minimum wage has been fixed in relation to any form of labour, the wages that are normally paid, for the same or similar labour, to the labourers working in the same locality.

Section 2 of the Act sets out the definition of 'bonded labour', the Act defines 'bonded labour' as a service rendered under the bonded labour system'. This is a system of forced or partly forced, labour under which the debtor enters into an agreement, oral or written, with the creditor. According to this agreement, in consideration of an 'advance' obtained by the debtor or by his lineal ascendants and in consideration of interest on such an advance or in pursuance of any customary obligation or by reason of his birth in any particular caste or community, the debtor agrees to render, by himself or through any member of his family, labour for the creditor for a specified or unspecified period of time either without wages or for nominal wages, or forfeit the freedom of employment or other means of livelihood, or forfeit the right to move freely throughout India, or forfeit the right to appropriate or sell at market value any of his property or the product of his own or any of his family member’s labour. The 1976 Act also lays down the monitoring, enforcement and implementation modalities, which rest mainly with the State Governments.

The ambit of 'bonded labour' prohibited by the 1976 Act has been clarified by the Supreme Court in a number of judgements, including the 'Asiad workers' Case (1982) and the 'Bandhua Mukti Morcha' Case (1984). The Court has clarified that the 1976 Act is derived form Article 23 (1) of the Constitution whose ambit is much wider than Article 4 of the Universal Declaration of Human Rights, since "the Article strikes at forced labour in whatever form it may manifiest itself.
because it is violative of human dignity and is contrary to basic human values” (Supreme Court judgment in the Asiad case). *

After having gone through the statutory definition of Bonded Labour System (Abolition) Act, 1976 Supreme Court widened the statutory definition of the bonded labour to its logical end in Bandhua Mukti Morcha v. Union of India. The definition (given by Justice Bhagwati) reads as follows: “It is of course true that strictly speaking, a bonded labourer means a labourer who incurs or has or is presumed to have incurred a bonded debt and a bonded debt means an advance obtained or presumed to have been obtained by a bonded labourer under or in pursuance of the bonded labour system and it would therefore appear that before a labourer can be regarded as bonded labourer, he must not only be forced to provide labour to the employer but he must has also received an advance or other economic consideration from the employer unless he is made to provide forced labour in pursuance of any custom or social obligation or by reason of his birth in any particular caste or community”.

It is further held that, “whenever” it is shown that a labourer is made to provide forced labour, the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is, therefore a bonded labourer.

The Supreme Court categorically declared in Bandhua Mukti Morcha case that any bonded labourer being made to provide forced labour other than as a social custom or by his birth he is deemed to receive some economic consideration or some advance and this presumption may be rebutted by the employer or the landlord and also by the State Government concerned, if it so chooses but unless and until satisfactory evidence is produced for rebutting this presumption the Court must proceed on the basis that the labourer is a bonded labourer entitled to the benefit under provisions of the Bonded Labour System (Abolition) Act, 1976. This resulted in the amendment of Section 2, in the Bonded Labour System (Abolition) Act 1976. In Section 2 in clause (g) the following explanation was added at the end, namely: Explanation:- For the removal of doubts, it is hereby declared that any system of forced, or partly forced labour under which any workman of the Contract Labour (Regulation and Abolition) Act, 1970 or an Inter-State Migrant workman as clause (e) of sub-section (i) of section 2 of the Inter-State Migrant
Workman (Regulation of Employment and Conditions of Service) Act, 1979 is required to render labour in circumstances of the nature mentioned in sub-clause (i) of this clause or is subjected to all or any of the disabilities referred to in sub-clause (2) to (4), is "bonded labour system" within 'the meaning of this clause.' This amendment was carried out in December 1985.

In Sannasomannara Somashekarappa and Others v Gorappa Rudraswamy and Others⁸, The High Court of Karnataka allowed criminal revision petitions, quashing criminal proceedings against the petitioners under Section 16 of the Bonded Labour System (Abolition) Act, 1976 on the short ground that the facts as stated by the witnesses did not attract the definition under Section 2(g) of the Act.

In the instant case, as noted the petitioners are said to have offered to the parents of the children advance of Rs. 1,000, Rs. 2,000, Rs. 1,650 and like and asked them to send their children to graze cattle. It is the argument of the learned counsel for the petitioners that the amount so offered was only in the form of wages. As required under Section 2 (g) of the Act, already there must be debt or liability incurred by the parents or the persons who have been directed to work as bonded labour and further submitted that it is neither a case of bonded labour nor was there any liability incurred by the ascendants of the boys who had been released. There was no such creditor-debtor relationship between the parents of the boys freed and the petitioners. It was only an offering of wages to graze their cattle in advance. Of course, engaging of child labour would be an offence elsewhere, but in my opinion the very act of the petitioners in engaging children for grazing cattle by providing food, clothing etc. would not a mount to exploitation of bonded labour and does not constitute bonded labour system. Rather the parents of the boys who had been freed were not being compelled or forced to send their children for grazing cattle in the field of the petitioners nor were the parents of the children under any obligation to send their children to work as bonded labourer for the petitioners. Prima facie the facts as stated by witnesses do not attract the definition provided under section 2(g) of the Act. Under the circumstance exploitation of children by the petitioner could be dealt with in accordance with law elsewhere but the provision of this Act would not apply to these cases. In view of the same, the petitions have to be allowed.
Thus one of the important outcomes of the bonded labour relationship, according to the Act and the subsequent Supreme Court Judgments, is the payment of wages of laborer which are legally less than stipulated minimum wages or the prevailing of the market wages. Although this is controversial stipulation in the case of certain sectors where market wages are normally below the legal minimum wages, the operation part is, if a labourer is paid, "no remuneration or nominal remuneration the presumption would be he is a bonded labourer". Nominal can only be determined, vis-à-vis some norm of minimum wage. Apart from the fact that the fixing of the minimum wages is itself not regarded as satisfactory, even this norm has been found unenforceable in large part of the country. Especially in Agricultural occupations during the non-seasonal periods, wage rates tend to fall much below the minimum. At these low wages, not only the landless labourers but also marginal farmers are found to offer their labour. Thus, a large number of rural populations could be categorized as bonded. The question needs to be considered as to whether the payment of less than a minimum wage is a sign of debt burdened bondage or of the coercion by the market as formed by our presently structured institutions. Any how, the Supreme Court succeeded to close that channel of escape previously happily availed by the masters. As far as contract labourers and Inter state migrant workmen are concerned, they will not be further required to be named as bonded labourer after the payment of minimum wages.

The main thing to note here is that (a) the mere presence of a creditor-debtor relationship between a labourer and an employer is not sufficient to denote a bonded labour relationship the later should result also in other involuntary restraints on the labourers: and (b) in the Indian context, a creditor-debtor relationship is not even a necessary condition of bondage, since the Indian legal definition of bondage incorporates various categories of forced labour, which still treating the creditor-debtor relationship as an important part of bondage.  

4. Salient Features of the Bonded Labour System (Abolition) Act 1976:

A noteworthy feature of Act is its awareness of the need for machinery relating to its implementation. This is in sharp contrast with other legislations which by and large ignored the problem of implementation and failed to specify the institutional arrangement for enforcing the provisions and the officials
responsible for enforcing the statute, the following are the some of the main features of the Act.

1. Bonded labour is declared illegal. Every bonded labour stand freed or discharged from an obligation to render bonded labour. No person is allowed to make an advance under, or in pursuance of the bonded labour system.

2. No person shall compel any person to render any bonded labour or other form of forced labour.

3. Any custom or tradition or any contract by which any member of the family or dependent of such person is required to do any work or render any service as bonded labour shall be void.

4. Under section 6 of the Act every obligation of bonded labourer to repay any bonded debt have been extinguished, no other proceeding shall lie for the recovery of any such debt. Every decree or order for the recovery of bonded debt shall be deemed to have been fully satisfied. Every attachment made for the recovery of bonded debt shall stand vacated. If possession of any property belonging to a bonded labourer or a member of his family or other dependent was forcibly taken over by any creditor for the recovery of the bonded debt, such property shall be restored.

5. The Act is intended to free the mortgaged property of the bonded labour. Any property vested in a bonded labourer which was under any mortgage, charge, lien or other encumbrances in connection with any bonded debt stand freed and discharge and if the possession of the said property was with the mortgagee or other holder of the charge, lien or encumbrance will be restored to the possession of the bonded labourer.

6. Freed bonded labourers shall not be evicted from homesteads or other residential premises which he was occupying as part of consideration for the bonded labour.

7. The creditors are prevented from accepting payment against the extinguished debt.

8. The primary responsibility to achieve the objects of the Act is left on the State Governments. The State Government may authorize the District Magistrates to carry out the provisions of the Act. The District Magistrates
are under a duty to be vigilant against the existence of the system of bonded labour and to provide for the economic and social rehabilitation of the released bonded labourers.\textsuperscript{11}

In *Bandhua Mukti Morcha v. Union of India and others*\textsuperscript{12} the petitioner, an organization dedicated to the cause of release of bonded labourers in the country, addressed a letter to one of the judges of the Supreme Court complaining that there were a large number of labourers from Maharashtra, Madhya Pradesh, Uttar Pradesh and Rajasthan who were working in certain stone quarries under inhuman and intolerable conditions. Many of them were bonded labourers, the rules relating to medical pollution care were not implemented by the Central Government or by the Haryana Government or by the employers.

Rejecting the preliminary objection of the Government, the Supreme Court observed that if any citizen brings before a Court a complaint that a large number of peasants or workers are bonded serfs or being subjected to exploitation by a few mine lessees or contractors or employers or are being denied the benefits of social welfare laws, the State Government which is under our constitutional scheme, charged with the mission of bringing about the new socio-economic order where there, will be social and economic justice for everyone and equality of status and opportunity for all, would welcome an inquiry by the Court, so that if it is found that there are in fact bonded labourers or even if the workers are not bonded in the strict sense of the terms as defined in the Bonded Labour System (Abolition) Act, 1976, but they are made to provide forced labour or are consigned to a life of utter deprivation and degradation, such a situation can be set right by the State Government. The public interest litigation is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social economic justice which is the signature tune of our Constitution.

In order to secure socio-economic justice several directions were issued by the Supreme Court on the various aspects, after carefully considering the provisions of all the labour legislations enacted for the benefit of labourers and for improvement and betterment of their lot, or for furthering the interest of the workmen and for proper protection and preservation of their just rights and to enable the appropriate authorities to take necessary action in the matter.
In Neeraja Chaudhary v. State of M.P.\textsuperscript{13} it was also made clear in the Bonded Labour System (Abolition) Act 1976 that failure of any action on the part of the State Government in implementing the provisions of this legislation would amount to be the clear violation of Article 21 apart from Article 23 of the Constitution. The Supreme Court has rightly held that it was the obligation of the State Government to ensure total eradication of the bonded labour system.

The object of the Act is not only to abolish the system of bonded labour but also to ensure rehabilitation of the freed bonded labourers. In Bandhua Mukti Morcha v. Union of India and others\textsuperscript{14} where the Supreme Court directed an inquiry regarding working conditions in the stone-crushing industries, in pursuance of the directions given by the Supreme Court by order dated 1-9-1997, the Distt. Judge, Faridabad after conducting a number of inspections has submitted a report dated 2-1-1998 showing various deficiencies in the matter of provision of rations at the ration depots, medical and health facilities, education facilities, supply of electricity, etc. to the workmen employed at the stone crushers. The report also revealed that provisions regarding mine safety are not being complied with in any of the stone crushers. Many of the owners of the stone crushers have not taken steps to provide houses for the workers inspite of the facts that plots of land have been made available to them. The report of the Distt. Judge shows that the earlier affidavit filed by Distt. Magistrates, Faridabad stating that the State Govt. of Haryana have complied with the various directions by the Court, is not correct.

In these circumstances the Court considered it necessary to issue notice to the Chief Secretary, State of Haryana as well as to the Distt. Magistrates who have filed affidavits to shows cause why they should not be punished for contempt of Court. The State of Haryana was also directed to furnish the names and addresses of the crusher-owners who have been allotted 162 plots for the purpose of construction of houses for the workers so that necessary proceedings may be taken against them. In response to this direction vide order dated 3-4-1998 a list of 153 crusher owners was furnished. The Court directed to issue notices to be served on them through Deputy Labour Commissioner, Faridabad to show cause why an order be not passed for cancellation of the allotment of sites made in their favour for purpose of constructing dwelling units for the workmen, which had not been done. In the meanwhile, the State of Haryana was directed to file a sketch map
indicating the location of the 18 "deras" as also the existing facilities available therein, such as, schools, primary health centres and ration shops and their respective distances from the "deras".

In *Bandhua Mukti Morcha v. Union of India*\(^5\) the Supreme Court observed that since the Municipal Corporation, Faridabad has already resumed possession over 141 stone-crusher worker's housing plots, the dwelling units for these workers shall now be constructed on these plots by the Municipal Corporation, Faridabad with the financial assistance of the State Government. The cost of contraction shall be recoverable from the stone-crusher owners.

The Court directed the Asstt. Labour Commissioner (Central) and the Deputy Labour Commissioner to verify whether all the nine mine lessees to whom the notices had been issued are paying to their labourers wages commensurate with the provisions of the Minimum Wages Act and if any labourer is being paid less than the wage fixed under the Minimum Wages Act, particulars of that lessee, and the labourers shall be reported to this Court as it is contended that payment of wages less than that fixed under the Minimum Wages Act amounts to 'begar' within the meaning of Article 23 of the Constitution which is also an offence under Section 374 of the Indian Penal Code.

The Court noticed that during the period from Jan. 1997 till December 1997, the inspecting Officers carried out 534 inspections under various enactments, under the Minimum Wages Act, The Payment of Wages Act (Mines Rules), the Contract Labour (Reg. and Abolition) Act and Equal Remuneration Act as a result of which 387 prosecution complaints were filed against the employers and 57 cases of less payment involving 407 workers were detected. The facts Stated indicate that the mine lessees have been repeatedly and continuously committing gross violation of labour laws including non payment of Minimum wages. This amounts to violation of various directions issued by this Court in its judgment dated 16.12.1983 in *Bandhua Mukti Morcha v. Union of India*\(^6\) and judgment dated 13.81991 in *Bandhua Mukti Morcha v. Union of India*.\(^7\) The State Govt, of Haryana may consider the feasibility of canceling the leases of these defaulters and file their response within three weeks.

In *Public Union for Civil Liberties and Others v. State of Tamil Nadu and Others*\(^8\) SC observed: "It appears that no significant progress has been made by
authorities concerned and it is not unlikely that authorities concerned are not enthusiastic as one would expect in a matter of such significance. Detailed directions for prompt compliance by all the State Governments through their administrative machinery are issued. Additional directions are also issued to the State of Madhya Pradesh”.

**In Kameshware Prasad Sharma v. State of Bihar and Others**. The Supreme Court observed that it had been monitoring this case over a decade by issuing interim orders from time to time. It was satisfied, the Court said, that the State Government has substantially complied with its directions. The Court, however, issued certain directions in the nature of suggestions for the consideration and compliance of the State Government.

**In Champa Shrivastava v. State of U.P. and Others**. The High Court was not satisfied with the averments made in the counter affidavit and therefore directed that an enquiry be conducted by the District or Additional District Magistrate and speaking order passed relating to the rehabilitation of the bonded labours with opportunity given to the petitioner and information furnished as to where and how those bonded labourers were settled.

**In Public Union for Civil Liberties v. State of Tamil Nadu and others**. SC after having gone through the report of National Human Rights Commission and Expert Group, the Court found the major issue in regard to bonded labour was their rehabilitation. Court issued directions to the State Government and Union Territories toward achieving such rehabilitation.

**In Chhote Shukla and Vijay Kumar Shukla v. State of Bihar and others**. The High Court observed that the Sub-Divisional Magistrate was not empowered to take cognizance of offences under Bonded labour Act. However, it was merely an irregularity and as per section 460 of the criminal procedure code, it did not vitiate the proceeding.

It reveals that the Apex Court of our welfare State is keenly alert and dedicated to the cause of release of bonded labourers and their proper rehabilitation with all basic amenities of life as guaranteed under Articles 21 and 23 of the Constitution of India, for which the Bonded Labour System (Abolition) Act, 1976 has been codified.
(9) The Act further provides for the setting up of vigilance committee in Districts and Sub-Divisions. The composition of such committees include the Districts Magistrate (at District level) Committee and Sub-Divisional Magistrate (for Sub-Division level) as Chairman, three persons, belonging to scheduled castes and scheduled tribes and two social workers along with one representative of financial institution will be the members of the committee. The Acts cast the duty on every State Government to constitute such number of vigilance committee in each District and each sub-division level as it may think. These vigilance committees have similar composition at their respective levels each.

(10) The function of this committee are to advise for action and implementation, to provide rehabilitation to the freed bonded labourers, to make survey; to defend suits instituted against freed bonded labour or recovery of the bonded debt etc.

In Public Union for Civil Liberties and Others23 Supreme Court gave direction to all State Governments for setting up of vigilance committees in each District and the setting up of rural credit facilities such as Grameen Banks, Cooperatives Societies etc. From which short term interest free loans can be availed without security, since the root cause of bonded labour seems to be the lack of availability of funds (credit through an institutional network).

In Bandhua Mukti Morcha v. Union of India and Others24 Supreme Court directed the immediate setting up of a committee with Director General, Labour Welfare or a very senior officer from his establishment as its convener to check up within 6 weeks the particular provided in the list by the petitioner, identify the persons claimed to have been bonded labour and collect all relevant material in respect of them; so as to assist this Court to make further directions in terms of the requirement of the scheme to rehabilitate them. In course of their movement, for the purpose of complying with this order if fresh cases of bonded labour are noticed by them they would collect the particulars separately and report to the Court.

In Public Union for Civil Liberties v. State of Tamil Nadu and Others25 Supreme Court considering the vitality of rehabilitation issue in the endeavors to abolish bonded labour issued direction to all the State Governments and Union Territories to Constitute vigilance committees at the District and Sub-Division
levels in accordance with section 13 of the Act within a period of six months from
the day of judgment.
(11) The Act places the burden of proof on the creditor to show that the debt is not
a bonded debt.
(12) Offences for contravention of provisions of the Act are punishable with
imprisonment for a term which may extend to three years and also with fines
which may extend to two thousand rupees.
(13) Powers of judicial Magistrates are required to be conferred on executive
Magistrates for trial of offences under this Act. Offences under this Act may be
tried summarily.
(14) All Civil Courts are barred from taking up the case under the various
provisions of the Act.
(15) Any violation of these provisions shall be cognizable and bailable offence.

The Bonded Labour System (Abolition) Act, 1976 could be regarded as the
most comprehensive, bolt and progressive piece of social welfare legislation ever
enacted by the parliament.

5. Centrally Sponsored Scheme for Rehabilitation of Bonded Labour:

In order to assist the State Government in their task of physical and
psychological rehabilitation of released bonded labourers, the Ministry of Labour
launched a Centrally Sponsored Scheme on 50: 50 bases in May, 1978 for
rehabilitation of bonded labourers. This scheme has undergone qualitative changes
from time to time and has been progressively liberalized. The rehabilitation
assistance has since been enhanced to Rs. 20,000/- per bonded labourer w.e.f. May
2000 and in the case of seven North Eastern States 100% central assistance if they
express their inability to provide their share. The modified scheme also provides
for financial assistance to the State Governments/UTs for conducting survey of
bonded labourers, awareness generation activities and impact evaluation.

Detailed guidelines have been issued to the State Governments for
implementing the scheme. The State Governments have also been advised to
integrate / dovetail the Centrally Sponsored Scheme for rehabilitation of bonded
labourer with other ongoing poverty alleviation schemes such as Swaran Jayanti
Gram Swaraj Rozgar Yojana (SJGSRY), Special Component Plan for Scheduled
Castes, Tribal Sub Plan etc. so as to pool resources for meaningful rehabilitation of bonded labourers.

6. Components of the Scheme for Rehabilitation of Bonded Labour:

The Centrally Sponsored Scheme for rehabilitation of bonded labourer [modified in May 2000] has the following components:

➤ Each State Government is required to identify sensitive Districts where bonded labour has taken deep roots, find reasons for the existence and suggest remedial measures.

➤ Conduct surveys on a regular basis - to find incidence of bondage, causes and forms of bondage, etc.

➤ Government of India provides a sum of 2 lakhs per sensitive District to conduct such surveys. This amount is provided to a particular District once in 3 years.

➤ An annual grant of Rs. 10 lakhs per State Government is provided for awareness generation purposes.

➤ Each State Government is required to conduct five Evaluatory studies in 5 Districts, regions of the State every year through reputed research organizations, academic institutions, NGOs.

➤ Rehabilitation grant has been enhanced to Rs. 20,000/- per free bonded labourer, which is to be shared by the Central and State Government on 50-50 basis. Out of this, Rs. 1000/- are required to be paid immediately on release of a bonded labourer as subsistence allowance.

From on going study it may be concluded that the Bonded Labour System (Abolition) Act, 1976 outlaws all debt agreements and obligations arising out of India’s bonded labour system. It is the legislative fulfillment of India’s constitutional mandate against ‘begar’ and ‘forced labour’. It frees all bonded labourers, cancels any outstanding debts against them, prohibits the creation of new bondage agreements, and orders to the economic rehabilitation of freed bonded labourers by the State. It also criminalizes all attempts to compel a person to engage in bonded labour, with maximum penalties of three years in prison and a 2,000 rupee fine.

The statutory definition of the bonded labour system covers all of the system’s many permutations in modern India. There are variations from one landlord to another in terms of wages paid, the amount advanced, whether the
advance is considered a type of loan or a type of wage, the hours worked per day and days worked per year, and the worker’s relative freedom from the bondmaster. Despite these differences, all are bonded labourers within the definition of the Act. It is what they have in common that determines their bonded status. They are working for nominal wages in consideration of an advance, and they are not free to discontinue their work.

These three elements—advance, low wages, and compulsion—are at the core of all bonded labour. The Act defines “nominal wages” as those that are less than minimum wages or, where no minimum wage has been set, less than wages normally paid for same or similar work in the same locality. District Magistrates (called District Collectors in some States) are responsible for enforcement of the Bonded Labour Act. The District Magistrate, an appointed civil servant, is the top authority at the District level and as such oversees the work of fifty to sixty distinct departments in Government administration, including the administration of justice. In addition, he is required by the Bonded Labour Act to identify all cases of bonded labour occurring in his District, free the labourers, and initiate prosecution under the Act. He is also charged with ensuring that available credit sources are in place, so that freed labourers will not be forced into bondage again. Finally, the District magistrate is to create and participate in the functioning of a District-level “vigilance committee”. The statutory function of this committee include providing for labourers social and economic rehabilitation, depending freed labourer from suits for bonded debt, advising District Magistrates, and coordinating efforts to ensure that the Act’s provisions are implemented.

Despite its references to rehabilitation, the Act itself nowhere specifies what this rehabilitation should consist. The gap was filled by a Ministry of Labour scheme launched in 1978. Under the scheme, the Central Government contributes half of the rehabilitation assistance allowance due to every freed bonded labourer, and the State where the bonded labourer resides pays the other half. The allowance, determined by a Ministry of Labour Planning Commission, was originally set at 4,000 rupees. It was raised to 6,250 rupees in 1986. It was subsequently enhanced to Rs. 10,000/- per bonded labourer w.e.f. 4.4.95. Now under the modified scheme, the rehabilitation grants have further enhanced to Rs. 20000/- per bonded labourer.
w.e.f. of 1-5-2000, out of these Rs. 1000 is immediately paid on his/ her release as subsistence allowance.

Despite these comprehensive provisions, very few vigilance committees have been formed or are actually operative. The extent to which bonded labourers are identified, released, and rehabilitated by Government officials is negligible. The result is that the rights set forth in the Bonded Labour System (Abolition) Act, 1976 are never realized by the vast majority of those persons the Act was meant to protect.
CHAPTER-5

Notes and References
2. Ibid.
3. “Nominal wages” means a wage which is less than (a) the minimum wage fixed by the Government, in relation to the same or similar Labour; and (b) where no such minimum wage has been fixed in relation to any form of labour, the wages that are normally paid, for the same or similar labour to the labourers working in the same locality.
6. Id., at 826.
7. Id., at 827.
11. Id., s 10-12.
12. Supra note 5.