Personal liberty and human dignity are the most cherished values of our constitution. These are the necessary epitomes which help in the development of an individual's personality and in the realisation of the ideas of socio-economic justice. The paean of personal liberty is enshrined in article 21 of the Constitution. The judicial mutation through interpretative process has given the widest possible meaning to the fundamental right to life and personal liberty. This process was given impetus by Maneka Gandhi v. Union of India. Now the right to life and liberty does not mean mere animal existence but it includes the right to live with human dignity.

Thus, article 21 of the Constitution protects against exploitation. In addition to this, article 23 specifically prohibits traffic in human beings and begar and other similar forms of forced labour. Employment of children in hazardous employment is also prohibited by article 24 of the Constitution. The State is expected to direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Children

3. Article 23 provides: "Prohibition of Traffic in human beings 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 this 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 grounds only of religion, race, caste or class or any of them."
4. Article 24 provides: "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment".
5. See Article 39(e).
are required to be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity. The childhood and youth are required to be protected against exploitation and against moral and material abandonment. But these rights against exploitation are brutum fulmen because the life process of the people lags behind such legal forbiddance. The painful gap between preachment and performance is best stated by Tolstoy in the following words:

The abolition of slavery has gone on for a long time. Rome abolished slavery, America abolished it and we did, but only the words were abolished, not the thing.7

In India, in spite of the various existing provisions in the constitution as also in other laws, the plight of the workers and the labourers is miserable. They do not have the bare necessities of life. They struggle between life and death. They are continued to be exploited in the hands of a few who have the vested interests. They do not have the humane conditions of work. Children and youth are exploited and they do not have the opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity. But we are fortunate to be in this country where the judiciary has played an important role in realising the constitutional goals and assuring the rights to the down-trodden and the weak.

With this back-drop in mind, an attempt has been made in this chapter to study the role of the Supreme Court in protecting the workers from exploitation by assuring them the right to live with human dignity. An attempt has

6. See Article 39(f). See K.Rajendran v. State of Tamil Nadu, A.I.R.1982 S.C.1107 at 1125 where it was observed that though directive principles are not enforceable by Courts but yet they are fundamental in the governance of the country and it is the duty of the State to make adequate provisions in pursuance to them. See also U.P.S.E.Board v. Hari Shankar, A.I.R.1979 S.C.65 at 69 where it was held that the courts must bear directive principles in mind when interpreting statutes directly or indirectly concerned with directive principles of State Policy.

also been made to study the judicial role in protecting children from exploitation.

(B) Protection of Workers Against Exploitation

In spite of the clear mandates of the Constitution, there is one feature of our national life which is ugly and shameful and which cries for urgent attention. This is the existence of bonded or forced labour in large parts of the country. The practice of forced or bonded labour is fairly old, and is based on exploitation by a few socially and economically powerful person trading on the mise and suffering of large number of men and women and holding them in bondage. It is not only an affront to basic human dignity but also constitutes gross and revolting violation of constitutional values.

Before independence a number of Acts were passed by the various states to eradicate the pernicious evil of forced or bonded labour but without any success. With the ushering in of independence and with the advent of freedom, such a practice could not be allowed to continue to blight the national life any longer. Therefore, the framers of the Constitution, decided to give teeth to their resolve to abolish and wipe out this evil practice by enacting constitutional prohibition against it in article 23 of the Constitution. During the consideration of article 17 of the Draft Constitution, which corresponds to article 23 of the Constitution, Raj

9. See for example, The Bihar and Orissa Kamiallti Agreement Act, 1920, The Madras Debt Bondage Abolition Regulation Act, 1940. In the post independence period also two Acts were passed but they also remained dead letters. The Acts were: Orissa Debt Bondage Abolition Regulation and Rajasthan Sagri System Abolition Act, 1961.
Bahadur observed:

Begar like slavery has a dark and dismal history behind it. As a man coming from 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.10

From the perusal of the above observations of Raj Bahadur, it is amply clear that our founding fathers wanted to make article 23 as a Charter of liberty for the down-trodden people of India. Article 23 prohibits traffic inhuman beings and begar and other similar forms of forced labour11 and any contradiction of this provision has been made an offence punishable in accordance with law.12 Article 35(a)(ii) of the constitution specifically vests the legislative competence in this regard in Parliament.13 Accordingly, the Bonded Labour System (Abolition) Ordinance, 1975 was promulgated by the President on 24 October 1975. This Ordinance was replaced by the Parliament by the Bonded Labour System (Abolition) Act, 1976.

This Act was enacted with the object of giving effect to article 23 of the constitution and to strike against the system of bonded labour which had been a shameful scar on the Indian social scene even after independence.14

10. VII C.A.D. 809. See also the views of T.T. Krishnamachari, Id. at 810-11.
11. See supra note 3.
12. Section 374 of the Indian Penal Code makes it an offence to compel a man to labour against his will. This section of the Penal Code has remained as one of the dead letters of the Code and it does not have the slightest effect on the prevention of bonding of labourers.
13. Article 35(a)(ii) provides that notwithstanding anything in this Constitution, Parliament shall have, and the legislature of a State shall not have, power to make laws for prescribing punishment for those acts which are declared to be offences under this Part; and Parliament, shall as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause(ii).
14. In the Statement of Objects and Reasons of the Bonded Labour System (Abolition) Act, 1976, it was stated that there still exists in different parts of the country a system of usury under which the debtor or his descendants or dependants 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 had been taken by some remote ancestor. The rates of interest are exhorbitant and such bondage cannot be interpreted as the result of any (conted)
Though technically bonded labourers were freed in 1975 yet the system of bonded labour or forced labour exists in different parts of the country even after twelve years have passed when legislature attempted to abolish it. Peter Davies, Director of the Anti-Slavery society, at a meeting of the working group on slavery, a subsidiary body of U.N. Commission on Human Rights, Geneva, criticised the Indian Government's performance in tackling the problem, saying that the action taken by it was "at best deficient" and "at worst non-existent". He also implied that political will to deal with the problem in a time bound manner was lacking in India. There are many reasons which are responsible for the failure of the Bonded Labour System (Abolition) Act, 1976. Some of the reasons are as under:

First, there has not been proper identification of the bonded labourers. The process of identification and release of the bonded labourers is a process of discovery and transformation of non-being into human beings. It has usually been found that the administration instead of identifying the bonded labourers, denies the existence of bonded labourers. This process has denied the protection umbrella of the Act to those who are in the most need of it.

Secondly, most of the workers are totally ignorant or unaware of their rights and entitlements. It is this ignorance which is responsible for the total denial of the rights and benefits to which they are entitled under the various social welfare laws.

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legitimate contract or agreement. The system implies the infringement of the basic human rights and destruction of the dignity of human labour. The Act was 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.

15. See Indian Express (Chandigarh edition) 6, 4 August 1984.
Thirdly, sometimes vested interests obstruct the proper implementa-
tion of the beneficial provision of laws. Most of the lower authorities who
are to implement the law come from the same dominant class of persons who
engage the bonded labour. Hence they obstruct the process of identification
and liberation of bonded labourers.

Fourthly, the inadequate punishment to those who violate the labour
laws, makes it impossible to ensure the observance of beneficial provisions
for the have-nots. In that case the welfare provisions remain only as paper
tigers without any teeth or claws.

Lastly, rehabilitation of the liberated bonded labourers is yet
another factor which is required to be looked into in its proper perspective.
Psychological rehabilitation must go side by side with the physical and eco-
nomic rehabilitation.

During the recent years, the judiciary, particularly the apex court,
has played an important role in making right to live with human dignity a
reality for millions of Indians and has protected them from exploitation.
The Supreme Court has not only given the widest possible meaning to the
fundamental rights enshrined in articles 21 and 23 but also took into
consideration the various factors which were responsible for the failure of
various other social welfare laws.

The true scope and ambit of the expressions "begar"and "other similar
forms of forced labour" have been most eloquently explained by the Supreme
Court in a monumental case of People's Union for Democratic Rights v. Union
of India. In this case, the writ petition was filed by way of public inter-
est litigation concerning the working conditions of workmen employed in the
construction work of the various projects connected with the Asian games.In
the petition, it was pointed out that the workers did not get the minimum
17. A.I.R.1982 S.C.1473. This case is popularly known as Asiad Workers'Case.
wages as prescribed under the Minimum Wages Act, 1948. The violation of various other laws, such as Employment of Children Act, 1938; Contract Labour (Regulation and Abolition) Act, 1970; the Inter-state Migrant Workmen (Regulation of Employment and Conditions of Services) Act 1979 and Equal Remuneration Act, 1976 etc., were also alleged. The authorities which were assigned the task of completion of various projects of Asiad, engaged different contractors for the completion of the work. These contractors engaged various workers through jamadars, at a minimum wage of Rs 9.25 per day. The Union of India frankly admitted that the contractors did pay the minimum wage of Rs 9.25 per day to the jamadars through whom the workers were recruited and the jamadars deducted rupee one per day per worker as their commission and paid only Rs 8.25 by way of wage to workers. The result was that the workers did not get the minimum wage of Rs 9.25 per day. Thus, the main question to be decided by the court that whether there is any violation of rights enshrined in articles 21, 23 and 24 of the Constitution. ¹⁸

Defending the public interest litigation, Bhagwati, J., (as he then was), pointed out that public interest litigation is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity and is totally different from the ordinary traditional litigation which is essentially an adversary in character. The rule of law, which is apart of "just, fair and reasonable procedure" under article 21 of the Constitution, does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. It was further pointed out that so far the courts have been used only for the purpose of

¹⁸. Id. at 1479-80, 1484-85.
¹⁹. Id. at 1476-77.
vindicating the rights of wealthy and affluent. It is only the moneyed who have so far had the golden key to unlock the doors of justice. But, now for the first time the portals of the Court are being thrown open to the poor and the down trodden, the ignorant and the illiterate and their cases are coming before the courts through public interest litigation.\textsuperscript{20}

It is submitted that the Supreme Court rightly entertained the public interest litigation so as to enable the have-nots to make meaningful their fundamental right to live with human dignity.\textsuperscript{21} The Supreme Court rightly jettisoned the traditional rule of standing, according to which the access to the judicial process is confined only to those to whom legal injury or wrong has been done. The traditional rule of standing evolved by Anglo-Saxon jurisprudence was given farewell by the Supreme Court, keeping in view the peculiar socio-economic conditions prevailing in the country where there is considerable poverty, illiteracy and ignorance obstructing and impeding accessibility to the judicial process. In the present case workmen whose rights were said to have been violated and to whom a life of basic dignity had been denied were poor, ignorant, illiterate humans and they were unable to approach the courts for judicial redress.

Relying on \textit{Maneka Gandhi v. Union of India}\textsuperscript{22} and \textit{Francis Coralie Millin v. The Administrator, Union Territory of Delhi},\textsuperscript{23} the Supreme Court pointed out that article 21 of the constitution has acquired a new dimension and it has received most expansive interpretation. It has been held that right to life guaranteed under article 21 is not merely confined to physical existence or to the use of any faculty or limb through which life is enjoyed

\begin{itemize}
\item \textsuperscript{20} \textit{Id.} at 1478.
\item \textsuperscript{21} In entertaining the public interest litigation, the Supreme Court relied on \textit{S.P. Gupta v. Union of India}, A.I.R.1982 S.C.149.
\item \textsuperscript{22} \textit{Supra} note 1.
\item \textsuperscript{23} A.I.R.1981 S.C.746.
\end{itemize}
or soul communicates with outside world but it also includes within its scope and ambit the right to live with human dignity and the state cannot deprive any one of this precious and invaluable right because no procedure by which such deprivation might be affected could ever be regarded as "reasonable, fair and just". In the present case, the workers were conferred with rights and benefits by the provisions of various labour laws, already mentioned in the facts of the case, and these provisions were clearly intended to ensure basic human dignity to the workmen and if the workmen were deprived of any of these rights and benefits, then that would clearly be violative of article 21 of the Constitution.24

Dwelling on the scope of article 23 of the constitution, Bhagwati J. (as he then was) speaking for the 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...The sweep of Article 23 is wide and unlimited and it strikes at "traffic in human beings and begar and other similar forms of forced labour" wherever they are found.25

It was pointed out that the word begar used in article 23 is not a word of common use in English language. It is a word of Indian origin which like many other words has found its way in the English vocabulary. It is very difficult to formulate a precise definition of the word "begar", but there can be no doubt that it is a form of forced labour under which a person is compelled to work without receiving any remuneration for it. It is thus clearly a form of forced labour.26 Now it is not only begar which is prohibited under article 23 but also "all other similar forms of forced labour", whenever they are found. The learned judge observed:

24. Supra note 17 at 1485.
25. Ibid.
26. Id. at 1486-87. See also Vasudevan v. S.D.Mittal, A.I.R.1962 Bom.53.
This Article (article 23) strike at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values.27

Thus, it is submitted that a very wide scope was given to article 23 by the Supreme Court so as to include in it every kind of forced labour including the bonded labour. In this case, it was argued that it is not every form of forced labour which is prohibited by article 23 but only such form of forced labour as was similar to begar and since begar meant only labour or service which a person was forced to give without receiving any remuneration for it, the forced labour also must be held as labour without remuneration at all.28 This contention of the counsel for the respondent was rejected by the court and it relied on the principle enunciated in Maneka Gandhi v. Union of India29 that while interpreting the provisions of the constitution conferring fundamental rights, the attempt of the court should be to expand the reach and ambit of fundamental rights rather than to attenuate their meaning and content.30 It was observed:

It is difficult to imagine that the constitution makers should have intended to strike only at certain forms of forced labour leaving it open to the socially or economically powerful sections of the community to exploit the poor and weaker sections by resorting to other forms of forced labour.31

Explaining the meaning of "other similar forms of forced labour", the court observed:

We do not think it would be right to place on the language of Art.23 an interpretation which would emasculate its beneficial provisions and defeat the

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27. Supra note 18 at 1487 (emphasis supplied). The practice of forced labour has been condemned in almost every international instrument dealing with human rights. See for example, convention No.29 and 105 of International Labour Organisation, Article 4 of the European Convention of Human Rights and article 8 of the International Covenant on Civil and Political Rights. See also Rohit Vasuvada v. General Manager IFFCO, A.I.R.1984 Guj.102.

28. Ibid. See also Dulal Samanta v. Distt. Magistrate, Howrah, A.I.R.1958 Cal.365, where it was held that the words 'other similar forms of forced (conted.)
very purpose of enacting them. We are clear of the view that Article 23 is intended to abolish every form of forced labour. The words "other similar forms of forced labour" are used in Art.23 not with a view to imparting the particular characteristic of 'begar' that labour or service should be exacted without payment of any remuneration but with a view to bringing within the scope and ambit of that Article all other forms of forced labour and since 'begar' is one form of forced labour, the constitution makers used the words "other similar forms of forced labour".32

It is submitted that the Supreme Court has rightly explained the meaning of "other similar forms of forced labour". If the narrow interpretation was given to this phrase and if it meant only such forms of forced labour as was similar to begar, then these words would have been rendered futile and meaningless. It is the recognised principle of interpretation that the court should always avoid that interpretation which would make any words used by the legislature as superfluous or redundant.

Another important question which arose before the court for consideration was whether there was any breach of article 23 when a person provides labour or service to the state or to any other person and is paid less than the minimum wage for it. Lamenting on this question, Bhagwati, J., (as he then was) observed:

[T]hat where a person provides labour or services to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under article 23.33

labour' should be construed ejusdem generis and that the kind of forced labour that was envisaged by article 23 had to be some thing in the nature of either traffic in human beings or begar. See also K.S.Sidhu,"Right Against Exploitation", in M.Hidayatullah(ed.), Constitutional Law of India,Vol.1,521 at 526.

29. Supra note 1.
30. Supra note 17 at 1487.
31. Ibid.
32. Id. at 1487-88. See also Bailey v. Alabama,(1910)219 US 219.
33. Id. at 1490. See also infra note 81d.
What is prohibited under article 23 is "forced labour", that is labour or service which a person is forced to provide and 'force' which would make such labour or service 'forced labour' may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through legal provisions such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Thus, the term "force" was explained by the Court in the following words:

The word 'force' must, therefore, be construed to include not only physical or legal force but also force arising from compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wages.34

From the above observations, it is clear that the Supreme Court has given the widest possible interpretation to the various phrases used in article 23 of the Constitution. This interpretation of the Supreme Court, it is submitted, would make right to live with human dignity, a living reality for millions of workers who are doing forced labour for one reason or the other.

In the Asiad Workers case, the Supreme Court also took note of the inadequacy of the punishment imposed on the violators of the labour laws. It was pointed out that if violation of labour laws are going to be punished only by meagre fines, it would be impossible to ensure the observance of the labour laws and the labour laws would be reduced to nullity and they would remain only paper tigers without any teeth or claws. The court impressed upon the judges and magistrates of the country that the violations of

34. Ibid.
labour beneficial provisions must be viewed with strictness and wherever any violations of labour laws are established before them, they should punish the errant employees by imposing adequate punishment.\textsuperscript{35}

In \textit{Sanjit Roy v. State of Rajasthan},\textsuperscript{36} the petitioner was the director of a social action group called Social Work and Research Centre. The social action groups was engaged in the work of upliftment of scheduled castes and scheduled tribes in different areas. In this case Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964, which excluded the application of Minimum Wages Act in relation to Workmen employed on famine work, was held to be violative of article 23 of the Constitution.\textsuperscript{37} The Supreme Court relied on the \textit{Asiad Workers Case} and held that the payment of wages less than minimum wage amounts to 'forced labour' and hence violates article 23 of the Constitution.\textsuperscript{38} The court pointed out that no work of utility and value can be allowed to be constructed on the blood and sweat of persons who are reduced to state of helplessness on account of drought and scarcity conditions. The state could not under the guise of helping persons exact work of utility and value without paying them the minimum wage.

In \textit{Labourers Working on Salal Hydro-project v. State of J&K},\textsuperscript{40} the Supreme Court treated a letter addressed by Peoples' Union for Democratic Rights and based on a news/report, as writ petition. In the letter it was alleged that the labourers coming from the different parts of the country

\begin{itemize}
\item \textsuperscript{35} Id. at 1482.
\item \textsuperscript{36} A.I.R.1983 S.C.328.
\item \textsuperscript{37} Id. at 333.
\item \textsuperscript{38} Id. at 331-32. Pathak J. (as he then was) who constituted the bench along with Bhagwati J. (as he then was) in this case, agreed with the order proposed by Bhagwati J. but based his decision in a separate judgement on the ground that there was a breach of article 14 of the constitution rather than article 23 of the Constitution. See Id. at 335-336.
\item \textsuperscript{39} Id. at 333-34.
\item \textsuperscript{40} A.I.R.1984 S.C.177.
\end{itemize}
to the site of Salal Hydro-Project in the State of J&K were being exploited and they were being denied the right to live with human dignity. The Supreme Court directed the observance of the various labour laws and also pointed out that the minimum wages must be paid to the workmen directly without any deduction save and except those authorised by the statute. 41

From the above judgements of the Supreme Court, it is amply clear that the Supreme Court not only protected the workers from exploitation but also displayed a creative attitude by giving wider meaning to the expression 'forced labour'. It is this new dimension of 'forced labour' which would cover all kinds of exploitations of workers within the ambit and scope of article 23 read with article 21 of the constitution. Thus, the Supreme Court has contributed a lot in making right to live with human dignity meaningful for those workers who were being exploited.

Bandhua Mukti Morcha v. Union of India 42, is yet another landmark judgement of the Supreme Court where the bonded labourers have been protected from exploitation. In this case the petitioner was an organisation dedicated to the cause of release of bonded labourers in the country. Justice Bhagwati (as he then was) while describing the true condition of bonded labourers remarked that they are non-beings, exiles of civilization, living a life worst than that of animals, for, 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-castes of society are held in bondage, robbed of their freedom and they are consigned to an existence where they have to live either in hovels or under the open sky and be satisfied with whatever little wholesome food they can manage to get, inadequate though it be to fill their hungry stomachs. Not having any choice, they are driven by poverty and hunger into a life of bondage, a dark bottomless pit from which, in a cruel

41. Id. at 183-84. See also Ram Kumar v. State of Bihar, A.I.R.1984 S.C.537.
exploitative society, they cannot hope to be rescued.\textsuperscript{43}

The system of bonded labour stood prohibited by article 23 of the Constitution and there could have been no more solemn and effective prohibition than the one enacted in this article 23.

In Bandhua Mukti Morcha, the Supreme Court noticed the causes of failure of Bonded Labour System (Abolition) Act, 1976. In the present case, the state tried to escape the liability of releasing the bonded labourers by saying that there were no bonded labourers in the state of Haryana.\textsuperscript{44} The petitioner made a survey of some of the stone quarries in Faridabad district and found that there were large number of labourers from different states of the country who were working under 'inhuman and intolerable conditions' and many of them were bonded labourers. The petitioner described in the letter, which was treated by the Supreme Court as writ petition, that there was violation of the various constitutional provisions and the statutes which were not being implemented or observed in regard to the labourers working in those stone quarries.\textsuperscript{45}

It was contended by the learned Additional Solicitor General on behalf of the State of Haryana that in the stone quarries and stone crushers there might be forced labourers but they were not bonded labourers within the meaning of that expression as used in the Act, since the labourers would be bonded only if they have or are presumed to have incurred a bonded debt and there was nothing to show that in the present case. It was further contended by the Additional Solicitor General that it was not enough for the petitioner to show that the workmen were providing forced labour and they were not allowed to leave the premises of the establishment, but it was further necessary to show that they were working under the bonded labour system.\textsuperscript{46}

\textsuperscript{43} Id. at 805.
\textsuperscript{44} Id. at 825-26.
\textsuperscript{45} Id. at 808.
\textsuperscript{46} Id. at 826.
The Supreme Court rejected and above contention of the learned Additional Solicitor General and observed:

[W]henever 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 labour...entitled to the benefit of the provisions of the Act. The State Government cannot be permitted to repudiate its obligation to identify, release and rehabilitate the bonded labourers on the plea that though the concerned labourer may be providing forced labour, the State does not owe any obligation to them unless and until they show in an appropriate legal proceeding conducted according to the rules of adversary system of justice, that they are bonded labourers.47

It is submitted that one fails to understand as to how the state government, which is constitutionally mandated to secure right to live with human dignity, could possibly take up the stand that the labourers must prove that they are bonded labourers. It is a matter of great regret that the state government should have insisted on a formal rigid and legalistic approach in the matter of a statute which is one of the most important measures for ensuring human dignity to those unfortunate specimens of humanity who are exiles of civilisation and who are leading a life of abject misery and destitution.

One of the major handicap which impedes the identification of bonded labour is the reluctance of the administration to admit the existence of bonded labour, even where it is prevalent. It is, therefore, necessary to impress upon the administration that it does not help to ostrich -like bury its head in the sand and ignore the prevalence of bonded labour, for it is not the existence of bonded labour which is slur on the administration but its failure to eradicate it and moreover, not taking the necessary steps for the purpose of wiping out this blot on the fair name of the state is a breach of constitutional obligation.48

47. Id. at 827. 48. Ibid.
In Bandhua Mukti Morcha, the Supreme Court suggested that following steps could be taken for the identification of the bonded labourers:

(i) There are certain areas of concentration of bonded labourers which can be easily identified on the basis of various studies and reports made by the governmental authorities, social action groups and social scientists from time to time. These concentrated areas are mostly found in stone crushers, brick kilns and amongst landless labourers. The task force should be assigned by each state government to identify such labourers and release them.\textsuperscript{49}

(ii) Labour camps should be held periodically with the help of National Labour Institute, which has the necessary expertise and experience of holding such camps, to identify such bonded labourers.

(iii) Social action groups and other voluntary agencies, particularly those with a record of honest and competent service, should be involved in task of identification and release of bonded labourers.\textsuperscript{50} Because it is primarily through such social action groups and voluntary agencies comprising men and women dedicated to the cause of emancipation of bonded labour will be able to penetrate through the secrecy under which very often bonded labourers are required to work and discover the existence of bonded labour and help to identify and release them.

(iv) Investigative journalism can also play an important role in identifying the various bonded labourers.\textsuperscript{51}

(v) Suitable awards should also be given to those persons who bring to the knowledge of the administration, the existence of bonded labour.

\textsuperscript{49} Ibid.
\textsuperscript{50} Id. at 828.
The majority of labourers and workers are yet to have humane conditions of work. These unfortunate poor workmen lead a miserable life in small hovels, exposed to the vagaries of weather. They drink foul water, breath polluted air and keep on suffering from other diseases. They know that breathing polluted air is bad for their health but for them breathing polluted air is better than starving. There are number of legislations which are concerned with the welfare of the workers and for providing them humane conditions of work. All these legislations intended to secure basic human dignity to the workmen and if the workmen are deprived of any of the rights and benefits to which they are entitled under such labour welfare legislations, then that would clearly be violative of article 21 of the Constitution. Therefore, it is the duty of the state to ensure the observance of various social welfare labour laws for the purpose of securing the workmen a fundamental right to live with human dignity.

The Supreme Court in Bandhua Mukti Morcha found that there was violation of the various social welfare laws by the state and the workers were being denied of their right to have 'just and humane conditions of work'. The court observed:

The right to live with human dignity enshrined in article 21...include protection of health and strength of workers, men and women, and...just and humane conditions of work and maternity relief.

52. In a report of the district judge of Tehri Garwal, it was pointed out that nearly 100 bonded labourers were kept in a cage made of tin amidst cooking fuel, vegetables, rice and wheat. The cage was sixty feet by fifteen feet in area and part of it was covered by gunny bags. Several labourers were lying ill on the floor without even getting the medical attention. See M.J.Antony, "Bonded labourers Kept in Cage", Indian Express (Chandigarh edition), 3 October, 1985. See also editorial,"Slavery at High Noon", Indian Express (Chandigarh edition) 4 October 1985.

53. See for example, Mines Act, 1952; Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1959; Minimum Wages Act, 1948 and Contact Labour (Regulation and Abolition) Act, 1970.

54. See Peoples Union for Democratic Rights v. Union of India, supra note 17 at 1485. See also Maneka Gandhi v. Union of India, supra note 1.

55. Supra note 42 at 811-12 (emphasis added)
In the light of the above observatipn, the Supreme Court issued as many as twenty one directions to the State or Haryana and the Central Government for implementing the various social welfare legislations in their true spirit and securing right to live with human dignity to all workers. To mention some of the directions, the court directed that the government should take immediate steps for ensuring that the stone crushers do not continue to foul the air. Mine lessees and stone crushers should supply pure drinking water to all workmen. The vessels containing drinking water should be kept in clear and hygienic conditions and water should be obtained from unpolluted source. The directions were given to ensure the conservancy facilities in the shape of latrines and urinals in accordance with the provisions of Mines Act, 1950. The court also directed the government to take immediate steps for ensuring appropriate and adequate medical and first aid facilities. The government was also directed by the state to ensure that the provisions of the Maternity Benefit Act, 1961 and Mine Creche Rules, 1966 should be complied with.

Thus, the judgement of the Supreme Court serves as an eye opener not only to the State and the Central Governments but also to those employers who are engaging various workers in their respective enterprises, that it is their constitutional obligation to secure for all workers just and humane conditions of work. In a socialistic welfare state it is the obligation of the State to ensure the creation and sustaining of conditions congenial to good health.

56. Id. at 834-37.
57. It may be pointed out here that recently the judiciary has categorically stated that "the slow poisoning by the polluted atmosphere caused by environmental pollution and spoilation should also be regarded as amounting to violation of Art.23 of the Constitution". See T.Damodhar Rao v. S.O.Municipal Corporation Hyderabad, A.I.R.1987 A.P.171 at 181. See also Kinkri Devi v. State, A.I.R.1988 H.P. 4 at 8-9; L.K.Koolwal v. State, A.I.R.1988 Raj.2 at 4.
58. Supra note 42 at 836. See section 20 of the Mines Act 1952 and rules 33 to 36 of the Mines Rules, 1955. (conted.)
Mere liberation of the labourers from bondage without making arrangements for their rehabilitation will serve no useful purpose and may even create a very real problem as to livelihood of the labourers so set free. There is a specific provision for the rehabilitation of the bonded labourers after their release from the bondage.61 But the process of rehabilitation has proceeded at its own pace.62 The concept of rehabilitation has the following main features as admirably set out in the letter dated 2 September 1982 addressed by the Secretary, Ministry of Labour, Government of India to the various State Governments:

(i) Psychological rehabilitation must go side by side with physical and economic rehabilitation.

(ii) The physical and economic rehabilitation has 15 major components namely; allotment of house-sites and agricultural land, land development, provision of low cost dwelling units, agriculture, provision of credit, horticulture, animal husbandry, training for acquiring new skills, promoting traditional arts and crafts, provision of wage-employment and enforcement of minimum wages, collection of processing of minor forest produce, health, medical care and sanitation, supply of essential commodities, education of children of bonded labourers and protection of civil rights.

61. Section 14(b) and (c) of the Bonded Labour System(Abolition)Act, 1976.
62. Mr.T.Anjaiah, Minister for Labour, stated in the Lok Sabha on 22 April, 1985 that there was backlog of 42000 bonded labourers needing the rehabilitation in the country and hoped that the process of rehabilitation would be completed by the end of Seventh Plan. See Indian Express(Chandigarh edition) 23 April 1985.
(iii) There is a scope of bringing about an integration among the various central and centrally sponsored schemes and the on-going schemes of the State Governments for a more qualitative rehabilitation. The essence of such integration is to avoid duplication, i.e., pooling resources from different sources for the same purpose.

(iv) While drawing up any scheme/programme of rehabilitation of freed bonded labour, the latter must necessarily be given the choice between the various alternatives for their rehabilitations and such programme should be finally selected for execution as would need the total requirements of the families of the freed bonded labourers to enable them to cross the poverty line on the one hand and to prevent them from sliding back to debt bondage on the other.\textsuperscript{63}

In the light of the above mentioned guidelines, the Supreme Court in \textit{Bandhua Mukti Morcha}, directed the State of Haryana to draw up a scheme or programme for "a better and more meaningful rehabilitation of the freed bonded labourers".\textsuperscript{64}

\begin{quote}
\textbf{Neeraja Chaudhary v. State of M.P.}\textsuperscript{65} is a land mark decision of the Supreme Court on rehabilitation of the bonded labourers. The brief facts of this case were that the petitioner, a Civil Rights Correspondent of Statesman, wrote a letter to the Supreme Court pointing out that about 135 labourers were released from bondage in 1982 from Faridabad and they were brought back to their respective villages in Madhya Pradesh. But they were not rehabilitated even after six months of their release and they were living on the verge of starvation.\textsuperscript{66} Bhagwati, J. (as he then was) speaking for the Court observed:
\end{quote}

\begin{quote}
It is the plainset requirement of Articles 21 and 23 of the Constitution that bonded labourers must be
\end{quote}

\textsuperscript{63} Quoted in \textit{supra} note 42 at 828.
\textsuperscript{64} \textit{Ibid}.
\textsuperscript{65} A.I.R.1984 S.C.1099. \textsuperscript{66} \textit{Id}. at 1100-01.
identified and released and on release, they must be suitably rehabilitated. The Bonded Labour System (Abolition) Act, 1976 has been enacted pursuant to the Directive Principles of State Policy with a view to ensuring basic human dignity to the bonded labourers and any failure of action on the part of the State Government in implementing the provisions of this legislation would be the clearest violation of Article 21 apart from Article 23 of the Constitution.67

Thus, from the above observations of the Supreme Court, it is amply clear that it is not enough merely to identify and release bonded labourers but it is equally, perhaps more, important that after identification and release, they must be properly rehabilitated. Because without rehabilitation, they would be driven by poverty, helplessness and despair into serfdom once again. Poverty and destitution are almost perennial features of Indian rural life for large numbers of unfortunate ill-starred humans in this country and it would be nothing short of cruelty and heartlessness to identify and release bonded labourers merely to throw them at the mercy of the existing socio-economic system which denies to them even the basic necessities of life such as food, shelter and clothing. We, who have not experienced poverty and hunger, want and destitution, talk platitudinously of freedom and liberty but these words have no meaning for a person who has not even a square meal per day, hardly a roof over his head and scarcely one piece of cloth to cover the shame.68

It is obvious that poverty is a cause inflicted on large masses of people by our mal-functioning socio-economic structure and it has disastrous effect of corroding the soul and sapping the moral fibre of a human being by robbing him of all basic human dignity and destroying in him the higher values and the finer susceptibilities which go to make up this wonderful creation of God upon earth, namely, man.69 In Neeraja Chaudhry, the Court

67. Id. at 1106 (Emphasis added).
68. Id. at 1100.
69. Ibid.
rightly pointed out that "what use are 'identification' and 'release' to bonded labourers if after attaining their so called freedom from bondage to a master they are consigned to a life of another bondage, namely, bondage to hunger, and starvation where they have nothing to hope for - not even anything to die for - and they do not know whether they will be able to secure even a morsel of food to fill the hungry stomachs of their starving children".  

These unfortunate specimens of human beings for whom the life is a long unceasing rigel with no resources except perhaps a forlorn hope, who cannot even cry for help because they know that it will be a cry in the wilderness and which no one will hear and who drag on their earthly existence in the hope that one day death will relieve them from their misery and suffering, today ask the legislature, the executive and the judiciary "what have you done for us; have we not a right to live with human dignity and share with all of you the fruits of freedom and development or are we consigned to a life of slavery and starvation where we see before our eyes the emanciated bodies of our children with hollow cheeks, sunken eyes and shrivelled bodies withering away and dying?" 

Thus, the petitioner rightly urged in Neeraja Chaudhry that failure on the part of the state government to ensure the proper rehabilitation of the freed bonded labourers amounted to violation of the fundamental right of the bonded labourers to live with human dignity under article 21 of the Constitution. There are instances where the bonded labourers, who were liberated from bondage, died of starvation and disease. Due to the complete neglect

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70. Ibid.
71. Id. at 1106.
72. Id. at 1101. See also infra note 81(b).
73. See "editorial", The Sunday Tribune, 27 April 1986. A woman released from Rajasthan quarry, died of hunger and disease in M.P. She was one of the 633 labourers who were liberated from bondage in the quarries but they were not rehabilitated. The government instead of rehabilitating them, refused to believe the certificate given to them that they were bonded labourers.
of rehabilitation programmes, most of the liberated bonded labourers want to go back to the bondage of their master because they feel that for all the ill treatment, earlier at least they were getting their food, but now there was nothing. Therefore, it is suggested that the government should take the rehabilitation seriously. It is only then that the liberty and freedom to live with human dignity will become meaningful to millions of Indians. It is suggested that while rehabilitating the bonded labourers, care should be taken that the socio-economic cause which led them in bondage are satisfied.

Among the social causes of bondage, it has been found that most of the bonded labourers incurred debts on account of marriages and death rites. The frequent habit of drinking is yet another cause responsible for the incidence of bonded labour. Care should also be taken that while rehabilitating the bonded labourers, the skilled labourers are not rehabilitated with unskilled jobs.

It has been found that very often vested interests veil successfully the status of bonded labourers and thus obstruct the process of identification of these bonded labourers. The labourers themselves are not educated enough to come forward and lodge a complaint. They appear to be reconciled themselves with their fate and that is why there is a wide gap between legal discharge of bonded labourers and their factual position. In Neeraja Chaudhry, in rural area unemployment and under-employment of agricultural labour is rampant. These labourers prefer to go for "nominal wages" throughout the year rather than having long spells of unemployment and under-employment.

An example of this has been cited in Neeraja Chaudhry, supra note 65 at 1104. Where pursuant to a direction given by the Collector as a result of an order made by the Supreme Court, the tehsildar went to the villages in question and sitting on a dias with the landlords by his side, he started enquiring of the labourers whether they were bonded or not and when the labourers, obviously inhibited and terrified by the presence of the landlords, said that they were not bonded but they were working freely and voluntarily, he made a report to the Collector that there were no bonded labourers.
the Supreme Court rightly pointed out that the objective of identification
and release of bonded labourers cannot be achieved by solely relying on
executive machinery and seeking co-operation of members of legislature and
even of Gram Panchayats. What is really necessary is to involve social act-
ion groups operating at the grass root level in the task of identification
and release of bonded labourers. 78 Suitable awards should be given to those
who help in identifying the bonded labourers. This will act as an incentive
to the social workers. The entire machinery for identification, release and
rehabilitation of bonded labourers has to be streamlined. We have fortunately
in our country quite a large number of socially committed officers who,
inspired by idealism with their enthusiasm undiminished, minds untrammelled,
and hearts unpolluted by all kinds of pressures, are prepared to brave oppo-
sition and some times even danger, in order to help the deprived and vulner-
able sections of the community. 79

It has to be appreciated that mere passing of welfare laws is not
sufficient for the upliftment of the weaker sections, though legislation is
the frist step in the right direction. What is more important is that welfare
legislation for the beneit of the weaker sections have to be implemented in
the proper spirit and for achieving this, the involvement of human agencies
at various level is a must.

In Mukesh Advani v. State of M.P., 80 a public interest litigation was
filed by one Mukesh Advani, advocate, by addressing a letter to one of the
judges of the Supreme Court and annexing thereto a cutting from the Indian
Express dated 14 September, 1982, depicting the horried plight of bonded
labour working in stone quarries at Raisen in Madhya Pradesh. In the letter

78. Supra note 65 at 1103-04.
79. Id. at 1105.
it was also alleged that the working conditions of the workers were of the 18th century vintage and not even a single legislation enacted for the welfare of labour was implemented or respected.

As a part of social action litigation this letter was treated by the Supreme Court as writ petition under article 32 of the Constitution. They directed the District Judge Bhopal to ascertain the existence of bonded labour as it was alleged in the letter. The District Judge in his report submitted that there were no bonded labourers at relevant time but there was total absence of implementation of labour laws. Therefore, the Supreme Court concentrated in giving directions to the government for taking suitable steps for implementation of labour welfare legislations in their true spirit. The Supreme Court stressed that the labourers be protected against the unauthorised exploitation by paying less than the minimum.

It is submitted that the Court rightly stressed that the state in discharge of its obligation under the constitution must extend the umbrella of protection to these poor, needy and unprotected workmen who were unable to negotiate on terms of equality and who might accept any terms to save off hunger and destitution. It is the state which must interpose between the unequals to eschew the exploitation. 81

In Shankar v. Durgapur Project Ltd., 81a Calcutta High Court held that the State cannot deprive a worker of decent standard of life, which under article 43 of the Constitution, the State should endeavour to secure. To do an act contrary to article 43, i.e., to deprive a person of decent standard of life, would be violative of article 21 of the Constitution. The court point-
ted out that compelling a person to live to sub-human conditions also amounts to the taking away of his life not by execution of a death sentence but by a slow and gradual process by robbing him of all his human qualities and graces, a process which is more cruel than sending a man to gallows. To convert human existence into animal existence no doubt amounts to taking away human life, because a man lives not by his mere physical existence or bread alone but by his human existence.

In P. Sivaswami v. State of A.P., the Supreme Court once again stressed the need for effective rehabilitation of the released bonded labourers. The Supreme Court pointed out that the financial assistance of rupees 738/- per family of the freed bonded labour was certainly inadequate for rehabilitation. And unless there was effective rehabilitation, the purpose of the Bonded Labour System (Abolition) Act, 1976 would fail and the steps taken by the Supreme Court would be rendered ineffective and these would be mounting frustration.

In P. Bhaskara Vijayakumar v. State, it was held that imposition of rigorous imprisonment with hard labour attached to it does not amount to extracting "forced labour" from prisoner. It is not contrary to article 23. However, prisoners would be entitled to be paid for their labour under article 21. The High Court accordingly directed State to pay adequate wages.

(C) Protection of Children Against Exploitation And Moral And Material Abandonment

The concern of the government of India regarding the securing of human dignity to children is contained in the following introductory

81c. Id. at 1868.
declaration of the National Policy for children:

The nations' children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grew up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society.82

Thus, equal opportunities for development with human dignity to all children during the period of growth should be our fundamental aim. For, this would serve our larger purpose of reducing inequality and ensuring right to live with human dignity to all. Children as a class constitute the weakest and most vulnerable and defenceless section of the human society. Children are the national assets and it is the duty of the state to look after them with a view to ensuring full development of their personality and with full human dignity. Otherwise, the right to life and liberty would become meaningless for them. There are many constitutional provisions which aim at assuring the right to life with human dignity and in preventing the exploitation and moral and material abandonment of children.84 There are also many International Conventions85 in this respect. India being party to all these covenants, having rectified them, is under an obligation to implement the same in the proper way.

The liberty of every kind necessary to live as human beings with full human dignity and to ensure all round development of one's personality are

82. See National Policy for Children, Resolution No.1-14/74-CDD.
84. See for example, articles 21, 23, 24, 38, 39(e),(f) and 45 of the Constitution.
85. See for example, the United Nations Declaration of the Rights of the Child adopted in 1959 and article 24 of the International Covenant on Civil and Political rights in 1966.
included in the expression "personal liberty" used in article 21 of the Constitution. Therefore, for the success of every child in life it is necessary that he should not be denied opportunity of education. Article 45 of the Constitution expected the state to provide free and compulsory education for all children until they attained the age of fourteen years. But this mandate of the constitution has remained mostly as a dead letter and millions of children were denied the opportunity to develop with human dignity. The judiciary has shown its deep concern for providing free and compulsory education to all children below the age of fourteen years.

In Labourers Working on Salal Hydro Project v. State of J & K, the Supreme Court considered the root cause of the problem that why most of the children do not go to schools or why most of the parents do not send their children to schools. It was pointed out that the possibility of augmenting their meagre earning through employment of children is very often the root cause why parents do not send their children to schools. This is also the reason for large drop outs from schools. This is a socio-economic problem which cannot be solved merely by legislation. On the other hand, it is absolutely essential that the child should get proper education so as to develop himself with human dignity.

The Supreme Court took cognizance of this problem and directed the Central government to persuade the workmen to send their children to a nearby school and arrange not only for the school fee to be paid but also

86. See Bapu Ji Educational Assoom. v. State, A.I.R.1986 Kant 119 at 129.
87. In Brown v. Board of Education, (1963) 347 US 483 at 494 Warren Chief Justice observed that education "is a principal instrument in awakening the child to cultural values, in preparing him for later professional training and helping him to adjust normally to his environment". The right to education has been held to be fundamental right. See A.V.Chandel v. Delhi University, A.I.R.1978 Del.308 at 311; Inder Parkash v. Deputy Commissioner Delhi, A.I.R.1979 Del.87 at 92.
89. Supra note 40.
provide free of charge books and other facilities such as transportation. The Supreme Court also suggested, and rightly so, that whenever the Central government undertakes a construction project which is likely to last for some months, the central government should provide that the children of construction workers who are living at or near the project site should be given facilities for schooling and this may be done either by the central government itself or if the central government entrusts the work or any part thereof to a contractor, necessary provision in this regard may be made in the contact with the contractor.\textsuperscript{90}

It is suggested that the above mentioned suggestions of the Supreme Court should be implemented immediately. It is further suggested that all the children upto the primary level should be provided with mid day meals and free uniforms. For the children coming from the labourers' class or from the very poor families some scholarship in the form of some incentive should be given. This would encourage more and more children to come to school. This will also enable the poor parents to send their children to schools instead of sending them to some employment for meagre earnings.

It is submitted that if free and compulsory education is provided to all children in the country in accordance with the mandate of the constitution then they can be protected from exploitations of various kinds, including the social evil of child labour, and they will be able to participate in the living stream of national life with human dignity.

It is specifically provided in the constitution that the tender age of the children is not abused and they are not forced by economic necessity to avocations unsuited to their age and strength.\textsuperscript{91} The employment of children

\textsuperscript{90} Id. at 183.

\textsuperscript{91} See article 39(e). Article 37 of the Constitution makes all the directive principles of the Constitution "fundamental in the governance of the country" and it further provides that it shall be the duty of the state to apply these principles in making laws. Thus, it follows that it become the duty of the Court to apply the directive principles in interpreting (conted.)
below the age of fourteen years of age, in any factory, mine or other
hazardous concern is also prohibited. In spite of these constitutional
mandates, the child labour exists in almost all parts of the country and
their tender age and strength is exploited. They are denied the right to
live with human dignity. The principal cause of this is the poverty.

The Supreme Court of India has shown its deep concern in prohibiting
the employment of children in hazardous concerns. In the post internal
emergency era, it was in Asiad Workers that the Supreme Court expanded
the meaning and scope of the phrase "hazardous employment". In this case the
Supreme Court, inter alia, considered that whether the employment of child-
ren in the "construction work" amounts to employment in hazardous concerns.
Another related question was considered that whether such employment violated
the Employment of Children Act, 1938. It was contended on behalf of the Delhi
Administration and the Delhi Development Authority that the said Children
Act is not applicable to the employments in the construction work since construc-
tion industry is not a process specified in the schedule and, therefore,
not prohibited under the Act.

The Supreme Court while showing its live concern for the prevention
of the children from exploitation noted that this was sad and deplorable
omission which must be set right immediately by every state government by
amending the schedule so as to include construction industry in it. It was
the Constitution and the laws. The directive principles should serve
as code of interpretation. Fundamental rights should be interpreted in
the light of the directive principles and the later should, whenever
and wherever possible, be read into the former. See A.B.S.K.Sangh v.
92. Article 24, see supra note 4.
(1982-83).
94. Supra note 17.
95. Id. at 1480.
observed:

Construction work is clearly a hazardous occupation and it is absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. This is a constitutional prohibition which even if not followed up by appropriate legislation, must operate proprio vigore.\footnote{96}{Ibid.}

The echo of this observation came again from the Supreme Court in Labourers Working on Salal Hydro Project v. State of J&K.\footnote{97}{Supra note 40.} The Supreme Court once again held that "construction work" is a "hazardous employment" and no child below the age of 14 years of age be allowed to be employed in it.\footnote{98}{Id. at 183.} The Supreme Court did notice in this case that as long as there is poverty and destitution in our country, it will be virtually difficult to eradicate child labour. But if we want to ensure that children should also enjoy the right to life and liberty with human dignity, then an attempt has to be made to reduce, if not eliminate, the incidence of child labour particularly from the hazardous concerns. Otherwise, the constitution will have no meaning to these children.

It is submitted that the Supreme Court has rightly expanded the meaning and scope of the phrase "hazardous employment" by holding that "construction work" comes within its ambit and sweep. It is hoped that the state governments would implement the Supreme Court judgment in its true spirit and ensure all the children a right to life and personal liberty with human dignity.

It is submitted that the Supreme Court has rightly expanded the meaning and scope of the phrase "hazardous employment" by holding that "construction work" comes within its ambit and sweep. It is hoped that the state government would implement the Supreme Court judgment in its true spirit and ensure
all the children a right to life and personal liberty with human dignity.

The Parliament in discharge of its constitutional duty, enacted the Child Labour (Prohibition and Regulation) Act, 1986. This Act was passed to regulate the working conditions of children in most of the employments and specify the employments, occupations and processes in which the employment of children should be banned. The Act has been passed to achieve the following main objectives:

(i) To ban the employment of children, i.e., those who have not completed their fourteen years in specified occupations and processes.

(ii) To lay down a procedure to decide modifications to the schedule of banned occupations or processes.

(iii) To regulate the conditions of work of children in employments where they are not prohibited from working.

(iv) To lay down enhanced penalties for employment of children in violation of the provisions of this Act, and other Acts which forbid the employment of children.

(v) To obtain uniformity in the definition of "child" in the related laws.

Thus, it is submitted that the Parliament has not only given impetus to the Supreme Court judgement in Asiad Workers but also taken a step forward to prevent the exploitation of children in various employments.

Protection of children against moral and material abandonment is yet another constitutional goal which has to be achieved before all children are given the right to live with human dignity. Children should be given

99. This Act received the assent of the President on 23.12.86. This Act has also repealed the Employment of Children Act, 1938 vide section 22.

100. See the Statement of Objects and Reasons of the Child Labour (Prohibition and Regulation) Act 1986.

101. See Article 39(F).
opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity. Social activists and the judiciary, in the post internal emergency era, have contributed a lot in this sphere.

In Lakshmi Kant Pande v. Union of India, a letter was written by an advocate to the judges of the Supreme Court complaining about the malpractices by some social organisations and other voluntary agencies engaged in offering Indian children in adoption to foreign parents. The Supreme Court treated this letter as a writ petition in the nature of public interest litigation. There was no uniform law governing the inter-country adoption. Only abortive attempts were made by the Parliament in 1972 and 1980 to enact the uniform law of adoption. After observing the absence of legal framework in the area of inter-country adoption and failure of the Parliament to enact law in this regard, the Supreme Court formulated the guidelines and norms which must be observed in permitting inter-country adoption. The guidelines and the norms for preventing the moral and material abandonment of children by going into the wrong hands, were framed by the Supreme Court with such meticulous details which even a consummate draftsman would have, perhaps, missed. The anxiety of the Supreme Court in framing the detailed norms and guidelines was to protect and safeguard the interest and welfare of the children of the country which is the eloquent aim of the various constitutional provisions.

Thus, the Supreme Court laid down a law governing the inter-country adoption. In other words, the Supreme Court filled the vacuum created by the absence of any Parliamentary legislation in regard to the uniform law.

103. For example, articles 15(3), 21, 24, 39(e) and (f).
104. Article 141 of the Constitution provides that "the law declared by the Supreme Court shall be binding on all courts within the territory of India".
adoption law. This exercise of the Supreme Court has been criticised on a number of grounds. A learned scholar feels disturbed by the implications of the ruling on the institutional role of the Supreme Court. He has criticised the ruling on the ground that public interest litigation has given rise to sharp cleavage of opinions among legal scholars and public men as to the limits to which the Supreme Court can go under the banner of public interest litigation. He went on to categorise this ruling of the Supreme Court as "an instance of excessive judicial legislation".

It is submitted that the apprehensions of the learned scholar seem to be erronious and he applied the apt formulation, "excessive judicial legislation", rather, inaptly. The Courts are considered as the guardians of the constitution. In the post internal emergency era, the Supreme Court, which is the highest organ of the judicial wing, while discharging its assigned role, ordained the activists role and inducted the concept of "public interest litigation" into the Constitutional jurisprudence. It is true that public interest litigation has a limited role to play. It must not open a pandora's box. But let us not ignore that the Supreme Court has at least to perform its "assigned role", and the potent weapon of public interest litigation was inducted into the judicial armoury only to achieve this objective. Article 39(f) read with article 21, imposed duty on the state to secure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and childhood and youth are protected against exploitation and moral and material abandonment. Judicial process is also a state action and the judiciary is bound to apply the directive principles in making its judgement.

106. Ibid.
Court rightly entertained the public interest litigation and acted within the framework within which it could operate under the banner of public interest litigation. We are fortunate to be in this country where if one organ of the state has failed (Parliament in this case) to discharge its duty due to one reason or the other, the other organ of the State (Judiciary) is performing that permitted role and preventing injustice to millions of Indians.109

Subsequently, in view of the difficulties faced by some agencies in implementing the norms and guidelines laid down by the Supreme Court, further clarifications and alterations were made by the Supreme Court.110 The Supreme Court also issued some new directions.111

In the post internal emergency era, the Supreme Court has also shown its concern for the protection of children from exploitation in jails.

In Sheela Barse v. Union of India,112 a writ petition by way of public interest litigation was filed under article 32 of the Constitution by a social worker seeking the release of children below the age of 16 years of age, detained in jails in different states of the country, production of complete information of children in jails, information as to the existence of juvenile courts, homes and schools and for a direction that the District Judges should visit jails or sub-jails within their jurisdiction to ensure that children are properly looked after when in custody as also for a direction to the state Legal Aid Boards to appoint duty counsel to ensure availability of legal protection for children as and when they are involved in criminal cases and are proceeded against. The Union of India and all states and Union Territories were impleaded as respondents.113

109. Supra note 107 at 93.
113. Id. at 1774.
The Supreme Court issued a number of directions with a view to protect children from exploitation in jails. The court pointed out that "it is an elementary requirement of any civilised society and it has been so provided in various statutes concerning children that children should not be confined in jail because incarceration in jail has a dehumanising effect and it is harmful to the growth and development of children."

In *Sheela Barse v. Secretary, Children Aid Society*, an appeal by special leave was filed by the appellant who was a free lance journalist by profession and a member of the Maharashtra State Legal Aid and Advice Committee. The appellant sought to challenge the judgement of the Bombay High Court on a writ petition filed by her.

In the writ petition, she had made grievance about the working of Observation Home managed and maintained by the Children's Aid Society which was registered under the Societies Registration Act, 1860.

In the present appeal, the appellant contended that the High Court failed to consider several of the contentions advanced by her at the hearing of the writ petition. It was pointed out that children while staying in the Observation Homes were forced to work without remuneration and were engaged in hazardous employment. There were instances where the observation homes assigned the work to private, entrepreneurs with a view to making financial gains for society. According to the appellant, the short fall in follow-up action has not been properly considered by the High Court and the directions given by it were inadequate. In giving the directions, the High Court lost sight of mandatory provisions of the Children Act as also the provisions of articles 21 and 24 of the Constitution and the provisions contained in the

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114. For the detail of these directions see *supra* Chapter VI.
115. *Supra* note 112 at 1774-75.
117. Id. at 657.
directive principles of State policy. It was further contended that respondent No.1 society should have been treated as "State" and not as voluntary organisation. And lastly, it was contended that the directions of the High Court in the matter of illegal detention of children were not adequate.

The Supreme Court in the present case did not agree with the contention of the appellant that for employment of children in Children's Home, they should be paid remuneration. The Supreme Court observed:

Children in Observation Homes should not be made to stay for long and as long as they are there, they should be kept occupied and the occupation should be congenial and intended to bring about adaptability in life aimed at bringing about a self-confidence and picking of humane virtues.

It is submitted, from the above observations of the Supreme Court, it is evident that the Court showed deep concern for the welfare of the children and in ensuring the light to live with human dignity to all children in Observation Homes as well.

The Court also pointed out the Juvenile Court has to be manned by the Judicial Officer with some special training. Creation of a Court with usual Judicial Officer and labelling it as Juvenile Court does not serve the requirement of the statute. The statutory scheme contemplates a judicial officer of a different type with a more sensitive approach - oriented outlook.

The Supreme Court while laying stress on the need to look after the various problems of the children pointed out that if there be no proper growth of children of today, the future of the country will be dark. It is the obligation of every generation to bring up children, who will be the citizens of tomorrow, in a proper way. If a child goes wrong for want of proper attention, training and guidance, it will indeed be a deficiency of the society and

118. Id. at 658.
119. Ibid.
120. Id. at 659.
121. Ibid.
of the Government. The Supreme Court observed:

Every society must, therefore, devote full attention to ensure that children are properly cared for and brought up in a proper atmosphere where they could receive adequate training, education and guidance in order that they may be able to have their rightful place in the society when they grow up.122

The Supreme Court also agreed with the contention of the appellant that the respondent society should have been treated as "state" within the meaning of article 12 as it was undoubtedly an instrumentality of the state on the basis of the test laid down by this Court. Finally, the Supreme Court directed, and rightly so, that the respondent society has, therefore, to regulate its activities not only in accordance with the statutory requirements but also act in a manner satisfying the requirements of the constitutional provisions in articles 21 and 24 as also the directive principles of the state policy.123

The Parliament also gave a clarion call and in pursuance of the Supreme Court judgements in Sheela Barse, it enacted the Juvenile Justice Act, 1986.124 In the prefatory note to the Statement of Objects and Reasons, it was stated that a review of the working of the existing Children Acts would indicate that much greater attention is required to be paid to children who may be found in situations of social mal-administration, delinquency or neglect. The justice system as available for adults is not considered suitable for being applied to juveniles. It is also necessary that a uniform juvenile justice system should be available throughout the country which should make adequate provision for dealing with all aspects in the changing social, cultural and economic situation in the country. There is also need for larger involvement of informal system and community based welfare agencies in the care, protection, treatment and rehabilitation of such juveniles.125

122. Ibid.
123. Id. at 660.
124. This Act received the assent of the President on 1 December 1986.
Thus, the Supreme Court has played an important role in ensuring the right to live with human dignity. It has given directions in this regard to the state and central government in the absence of any direct statutory law or in case of the non-implementation of some of the existing statutes. Various judgments of the Supreme Court have provided foundation stone for the enactment of various uniform laws for the welfare of children. In short, the role of the Supreme Court has been that of a catalyst in making the right to live with human dignity meaningful and a living reality for all.

(D) An Appraisal

The paean of personal liberty enshrined in article 21 of the constitution has undergone a change through the judicial mutation. The Supreme Court in the post internal emergency era, through its interpretative process has expanded the wings of the phrase "personal liberty" and it has acquired new dimensions of wider range. Now right to live with human dignity and protection against exploitation to all, including children, has become one of the basic ingredients of the right to "life" and "personal liberty". The Supreme Court not only gave wider meaning to the fundamental rights but also adopted a new approach in interpreting the various provisions of the constitution. It has read fundamental rights in the light of the various provisions of the Part IV dealing with directive principles and whenever and wherever it was necessary and possible, it has read the provisions dealing with various directive principles of Part IV into the fundamental rights. As a result of this approach, the beneficial provisions of Part IV have been made enforceable through the court of law.

It was Maneka Gandhi, which acted as a catalyst for the new approach of the judiciary for giving wider meaning to the right to "life" and "personal
liberty”. Protection of workers against exploitation is assured in our constitutional jurisprudence as fundamental right. But in spite of the clear mandates of the constitution, there is one feature of our national life which is ugly and shameful and which cries for urgent attention. This is the existence of bonded labour or forced labour in various parts of the country. Though article 23 read with article 21 provided protection to the workers against the forced labour, yet the direct Parliamentary attempt in abolishing the bonded labour came only in 1976 when the Bonded Labour System (Abolition) Act was passed. All the good intentions of the framers of the Constitution as well as that of the Parliament in abolishing the evil of bonded labour could not be translated into reality because of number of reasons. Lack of proper identification of the bonded labourers, ignorance on the part of bonded labourers of their constitutional rights; obstruction by the vested interests in the implementation of the beneficial provisions; inadequate punishment for the violation of the labour laws and lack of proper rehabilitation of the freed bonded labourers were some of the main reasons due to which various welfare provisions for the protection of workers from exploitation remained only as paper tigers without any teeth and claws.

The Supreme Court, particularly in the post internal emergency era, ordained the activist role for discharging the constitutionally assigned role, that is, to protect and secure fundamental right to live with human dignity and freedom from all kinds of exploitation. In Asiad Workers the Supreme Court rightly expanded the scope and ambit of the phrase "begar" and "other similar forms of forced labour". By entertaining the public interest litigation, the portals of the court were thrown open to the poor, down-trodden, ignorant and illiterate and the right to live with human dignity was made meaningful to them. The Supreme Court rightly reiterated
Francis Coralie Mullin and held that right to life guaranteed under article 21 is not merely confined to the physical existence or to the use of any limb or faculty through which life is enjoyed or soul communicates with outside world but it also includes the right to live with human dignity and the State cannot deprive anyone of this precious right because no procedure by which such deprivation is affected could ever be regarded as "just, fair and reasonable".

Bhagwati, J.(as he then was) speaking for the Supreme Court rightly pointed out that article 23 protects the individual not only against the state but also against the private citizens. It strikes at the forced labour in whatever form it may manifest itself, because it is violation of human dignity and contrary to basic human values. The court rightly pointed out that where a person provides labour or service to another for remuneration which is less than the minimum wage, such labour or service amounts to the "forced labour" and clearly falls within the prohibition of article 21 read with article 23. The person may be compelled to do the "forced labour" due to economic compulsions but that too is prohibited under the constitution if the right to live with human dignity has to have any meaning.

The violators of the various labour welfare laws and the constitutional guarantees should be punished severally. This aspect was also taken care of by the Supreme Court in Asiad Workers when it stressed that the errant persons should be given adequate punishment.

In Sanjit Roy and Labourers Working on Salal Hydro Project, the Supreme Court again entertained the public interest litigation and held that the payment of wages less than the statutory minimum wages amounts to "forced labour" and hence it violates the fundamental right to live with human dignity.
In Bandhua Mukti Morcha, the Supreme Court again had an occasion to protect the poor workers from "intolerable" and "inhuman conditions" of work. It is regretted that the government insisted that the labourers must prove first that they were bonded labourers. One of the major handicaps which impedes the identification of bonded labourers is the reluctance of the administration to admit the existence of bonded labour, even where it is prevalent. It is submitted that failure to eradicate the system of bonded labour or forced labour and not taking proper steps for the purpose of wiping out this blot on the fair name of the state is a breach of constitutional obligation.

It is suggested that there should be proper identification of the areas where there is concentration of bonded labourers. This can be done on the basis of various studies and reports made by the governmental authorities, social action groups and social scientists from time to time. The most concentrated areas are found in stone quarries and brick kilns areas. Legal aid camps educating the labourers of their rights and labour camps with the help of the National Labour Institute should be held periodically to identify the bonded labourers. Social action groups and other voluntary organisations who are devoted to the cause of emancipation of bonded labour should be involved in the identification of bonded labourers. Investigative journalism can also play an important role in this regard. Suitable awards should also be given to those who bring to the knowledge of the administration, the existence of bonded labourers. Bandhua Mukti Morcha has emphasised on all these aspects.

In Bandhua Mukti Morcha, the Supreme Court aptly pointed out that the right to live with human dignity enshrined in article 21 includes protection of health and strength of workers; men and women and just and humane
conditions of work and maternity relief. Thus, the Supreme Court judgement serves an eye opener for the state administration to ensure the observance of various labour laws and to make right to live with human dignity a living reality.

Mere liberation of the labourers from bondage is not the end of every thing. They have to be rehabilitated socially and economically. It is the plainest requirement of articles 21 and 23 that all the liberated or released bonded labourers should be properly rehabilitated. In Neeraja Chaudhry, the Supreme Court has rightly emphasised this aspect. The Court pointed out that what use are 'identification' and 'release', to bonded labourers if after attaining their so called freedom from bondage from their master, they are consigned to a life of another bondage, namely, bondage of hunger and starvation. While rehabilitating the bonded labourers, care should to be taken that skilled labourers are not rehabilitated with unskilled work. The socio-economic causes due to which the labourers went into bondage have also to be taken care of while rehabilitating them.

In Mukesh Advani, the Supreme Court pointed out that state in discharge of its obligation under the Constitution must extend the umbrella of protection to the poor, needy and unprotected workmen and it must interpose between the unequals to aschew the exploitation.

Equal opportunities for development with human dignity and protection from exploitation and moral and material abandonment to all children during the period of their growth is yet another constitutional goal. It is necessary that children should not be denied the right to compulsory and free education because it is necessary for the all round development of ones' personality and to live with human dignity. The liberty of every kind necessary to live as human beings with full human dignity is included in the
expression "personal liberty".

The Supreme Court in Labourers Working on Salal Hydro Project, dissected the root cause of the problem why most of the children do not go to schools or why most of the parents do not send their children to school and thereby deny to them the opportunity to develop with full human dignity. It is a socio-economic problem of which the Supreme Court took notice and directed the state and central government to take immediate steps accordingly.

It is suggested that all children below the age of fourteen years should be given free and compulsory education. The government should arrange for their free uniform, transportation, free stationary and books and midday meals. Those children who come from poor or working class families should also be paid some scholarship. This would act as an incentive to children as well as parents who send them to some employments for meagre income. In other words, it would prevent child labour as well. More schools should also be opened in the areas where there is concentration of workers and near the major project sites. The suggestions of the Supreme Court in this regard should be implemented without any further delay.

The Supreme Court particularly in the post internal emergency era, has played an important role in preventing the children from employment in hazardous concerns. The Supreme Court in Asiad Workers rightly expanded the scope of the term "hazardous employment" by holding that the "construction work" is an employment of hazardous nature. If we want to ensure that children should also enjoy the right to live with human dignity then, an attempt has to be made to reduce, if not eliminate, the incidence of child labour, particularly from hazardous concerns. The Parliament has responded well to implement the suggestions of the Supreme Court in this regard by enacting Child Labour(Prohibition and Regulation) Act, 1986. Thus, the
Supreme Court judgement provided a base for parliamentary legislation beneficial to children.

In *Lakshmi Kant Pandey*, the Supreme Court, protected the children from moral and material abandonment, in the absence of any uniform law regarding the inter-country adoption. Thus, the Supreme Court came to the rescue of children in those areas where even the Parliament had lacked behind due to one reason or the other.

It is submitted that the Supreme Court should always interpret the provisions of Part III dealing with fundamental rights in the light of the directive principles of Part IV and wherever and whenever it is possible, the latter should be read into the former. This trend of the Supreme Court is evident from *Lakshmi Kant Pandey* as also from *Sheela Barse*.

In *Sheela Barse* the Supreme Court ensured that children are protected in jails and in observation homes and remand homes. The judicial concern for the protection of children in jails and observation homes acted as a catalyst and provided a foundation stone for the Parliament to enact the Juvenile Justice Act, 1986.

From the perusal of the various judgements analysed in this Chapter, it is evident that in the post internal emergency era, the Supreme Court has properly used the potent weapon of public interest litigation from the judicial armoury. It has, through its positive interpretative process, made right to live with human dignity a living reality for millions of Indians. The central focus of the Supreme Court judgements discussed in this chapter has been to protect workers, children and have-nots from exploitation and moral and material abandonment. It is hoped that in future also, the Supreme Court will continue to follow the activist role and will ensure the right to live with human dignity to all.