CHAPTER VII

SOME LABOUR IN INDIAN JUDICIAL ACTIVISM,
THE PROBLEMS, ACHIEVEMENTS AND PROSPECTS

The guarantee of human-rights and fundamental freedoms determines, to a great extent, the quality of life in the context of individual state relations. Under the Constitution of India, the Supreme Court and the High Courts are the competent agencies to secure human rights and socio-economic justice to the citizens. However, the constitutional guarantees were meaningful only for the rich, as the access to justice was a costly affair in our country. The poor and illiterate, ignorant of their rights and not in possession of the golden key to open the doors of justice, found justice inaccessible. Slowly, the judiciary realised that justification for its existence depended solely on the faith of the people in its efficacy and that this faith would disappear if it could do nothing to bring justice to the weaker sections who constituted the bulk of the Indian society. Thus, the apex court initiated a peaceful revolution by concentrating on the welfare of the poor through the window of legal extroversion. Keeping in mind the hitherto insurmountable hurdles, the Court has relaxed the traditional rule of "locus standi". It has given new dimensions to the fundamental rights through a liberal interpretation of Article 21. The Court has adopted new methodology for taking constitutional and other rights meaningful to the weak and meek. The Bonded Labour System (Abolition) Act 1976, imposed various responsibilities on government officials for the identification, release,
rehabilitation and welfare of the bonded labourers. However, the governmental measures failed to improve the situation. Thus, the Supreme Court evolved its own methodology for the welfare of the bonded labour. The Court laid down how the act could be implemented, what were the responsibilities of the administration, what role the non-governmental organisations could play, how the benefits of social welfare laws might be assured to the weaker sections, how the proof of bonded labour could be brought before the court and, above all, how the helpless labourers could be represented before the court.

1.00 Genesis of Anti-Poverty Jurisprudence

The peaceful revolution in anti-poverty jurisprudence has been initiated through a radical change in the attitude of the judiciary towards the poor and down-trodden who are subjected to inhuman exploitation and systematically denied elementary justice. The Supreme Court of India, which is an eternal fountain of inviolable justice, spurred by public interest litigation, recently extended its epistolary jurisdiction by justly responding to a letter and providing a remedy to the poor. Thus, a new chapter was started by dethroning the procedural formalities of "locus standi".

1.10 Widening of the Scope of Fundamental Rights

The Supreme Court has under Article 32 original
jurisdiction for the enforcement of Fundamental Rights only. To enable it to play an effective role in bringing about a socio-economic transformation for the benefit of the poor and downtrodden, the Supreme Court has purposefully widened the powers exercisable under Article 32. This has been done by widening the scope and contents of Fundamental Rights and equating several statutory rights with Fundamental Rights. For this purpose the main thrust has been on Article 21. From 1950 to 1977 the Supreme Court interpreted this Article literally and strictly. Since Laminek Gandhi's case, the court gave new dimensions to Article 21.

It held that right to "live" is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. Elaborating the same view in Francis Coralie Pullin v. Administrator, Union Territory of Delhi, the Court stressed the point that the right to live was not restricted to mere animal existence. It meant something more than just physical survival. The right to life was not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world, but it also included "the right to live with human dignity" and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing, and shelter over the head and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about, mixing and conniving with fellow human beings. 

To ensure the observance of social or labour welfare legislation through judicial process by invocation of the unit jurisdiction of the Court, the Supreme Court in the Asiad Case, following the Nanaka sandhi's case, equated several labour welfare laws with Fundamental Rights. The Court held that the non-observance of Equal Remuneration Act 1976 amounted to a violation of Article 14. The violation of the provisions of the Contract Labour (Regulation and Abolition) Act 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 was also held violative of Article 21. The Court observed that the right to life enshrined in Article 21 included the right to live with human dignity and the purpose of these enactments was to ensure basic human dignity to workmen. Non-observance of the Minimum Wages Act 1948 was held to be violative of Article 23 on the reasoning that the term 'force' in the expression 'forced labour' in Article 23 covered economic compulsion also. Thus, a person providing forced labour for a remuneration lower than the minimum wages because of economic compulsion was doing forced labour.

The right of the bonded labourers to live with human dignity was recognised in the Bandhua Mukti Borcha case. Reiterating and emphasising its opinion in the Asiad Case, the Court derived this right from Article 21, which has

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2. AIR 1981 SC 746 at 747.
3. AIR 1982 SC 1473.
4. AIR 1984 SC 902.
become a sanctuary of human values after the celebrated
decision of the Supreme Court in Banega Gandhi case. In
the Bapancha Biskti Horkha case, the court indirectly elevated
the Directive Principles enshrined in Articles 39, 41 and 42
to the position of Fundamental Rights provided in Article
21 on the ground that the latter Article 'derived its life
breath' from the former articles. In Bapancha's case, 5
Supreme Court went a step forward. It declared that failure of the
Government in implementing the provisions of the Bonded Lab-
our System(Obolition) Act would be the clearest violation of
Article 21, and Article 23 of the Constitution. It laid down
that it was the duty of the administration to provide
effective rehabilitation to the bonded labourers. In the case
of bonded labourers, the right to live was extended to many
protective measures relating to the health and strength of
workers, men and women, protection of children against abuse,
opportunities and facilities for children to develop in a
healthy manner, conditions of freedom and dignity, educational
facilities and just and humane conditions of work and mater-
ernity relief. 6 Thus, through a wider interpretation of Article
21 and widening the scope of Fundamental Rights, the Supreme
Court set a new constituti malism at a time when the state
on its part neglected the human values. The Court observed,

*****the State Government is, under our
Constitutional Scheme, charged with the
mission of bringing about a new socio-

economic order where there will be social and economic justice for everyone and equality of status and opportunity for all...

This approach has been adopted not with a view to compelling the executive authority but as an attempt to ensure the observance of socio-economic rescue programmes, legislative as well as executive, framed for the benefit of the have-nots. Thus, the court is attempting to protect the basic human rights of the destitute and is assisting in the realisation of the constitutional objectives.

1.20 Public Interest Litigation

The pressure of the hungry masses who were denied equality and deprived of liberty in many matters prompted the judiciary to adopt an easy and simple procedure free from technicalities. To take a figurative expression of Justice Krishna Iyer,

"...the hungry people for human justice will overpower the carping critics and compel the development of well-conceived legal techniques and relief-oriented judicial measures free from the shackles of civil and criminal procedure codes, the rigid Evidence Act and the medieval sound-proof court system."

Feeling the pulse of the time, the Supreme Court, through a series of bold decisions, simplified and liberalised its procedural formalities relating to locus-standi by giving an opportunity to social action groups to awaken the

7. ibid.
Court on behalf of the poor.

The 'Public Interest Litigation' is a new type of litigation initiated by the Supreme Court of India to enable the poor and vulnerable sections of the society to approach the High Courts and the Supreme Court for the enforcement of their fundamental rights. The seed of the movement was sown in *A.P. Gupta v. Union of India*. It germinated and grew well through the *Aziel*, *Bandhua Mukti Morcha* and *Deeruia Choudhary* cases. In *A.P. Gupta v. Union of India*, Justice Bhagwati declared:

> Today a vast revolution is taking place in the judicial process; the theatre of law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic rights and to whom freedom and liberty have no meaning.

The Court realised that to make the basic human rights meaningful to weaker sections of the society, the economic and social order had to be restructured. In this respect, the judiciary had to initiate, through sensitised judges, multi-dimensional programmes including the Public Interest Litigation. This realisation was reflected in the *Aziel* case:

> The time has now come when the Courts must become the Courts for the poor and struggling masses of this country. They must shed their character of

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These words highlight the motive of the judicial innovations. The Public Interest Litigation, thus, turned out to be a fertile ground to feed the liberal judicial trend. Judicial dynamism went to the extent of taking the stand that judicial process could be set in motion, even by a letter, for the enforcement of the rights of the down-trodden masses.

The Public Interest Litigation lent its helping hand to ameliorate the pathetic condition of the bonded labour. So far, a number of cases on bonded labour have come before the apex Court through the Public Interest Litigation. It was through social action litigation that the attention of judiciary was attracted towards the sad plight of the bonded labour. The Court observed:

'Public Interest Litigation' is not in the nature of adversary litigation, but it is a challenge and 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 and economic justice which is the signature tune of our Constitution.15

1.36 Innovation in Procedure

While exercising jurisdiction in the Public Interest Litigation, the Court has brought about another purposeful

15. Bandhua Mukti Lohita (C) vs. A, 1984 (1) SCC 702.
In the Public Interest litigation, the Court shedded the procedure suited to the adversarial system and adopted a new procedure for giving facts and data. The Court observed:

It is not at all obligatory that an adversarial procedure, where each party produces his own evidence tested by cross-examination by the other side and the judge sits like an umpire and decides the case only on the basis of such material as may be produced before him by both parties, must be followed in a proceeding under Article 32 for enforcement of a fundamental right. 16

Thus the Court appointed a Commission for getting facts and data and making investigation. On the propriety of this innovation the Court said:

If the Supreme Court were to adopt a passive approach and decline to intervene in such a case because relevant material has not been produced before it by the party seeking its intervention, the fundamental rights would remain merely a teasing illusion so far as the poor and disadvantaged sections of the community are concerned. 17

Above all, motivated by the spirit that 'law must not only preach justice but also deliver justice', the Court has given extensive directions to the executive on the identification, release and rehabilitation of the bonded labour. 18 In Meera Chaudhary's case, the Court, through its directions, chalked out a programme for rehabilitation and its supervision by a vigilance committee.
in which persons recommended by the Court were to be taken as members. These innovations witnessed the judicial radicalism and set a new trend to ameliorate the plight of the bonded labourers.

2.00 Judicial Activism and Protection of Bonded Labour

All these radical strategies have been used by the Court to provide justice to the forgotten specimens of civilization viz., bonded labourers. Through these innovations the Court has tried to tackle the following problems of the bonded labourers.

2.10 The Problem of Locus-standi

The main factor which impeded the liberation of bonded labour was that of accessibility to justice. The traditional rule of 'locus-standi' closed the doors of the court to the poor and ignorant. The Supreme Court, therefore, decided to depart from the traditional rule and broaden the access to justice through the concept of 'Public Interest case Litigation'. The Bandhua Mukti Morcha provided jurisprudential foundation to the doctrine of Public/Litigation Articles 32 and 226 of the Constitution do not say that only the person whose fundamental right or legal right is infringed should be entitled to approach the Court.20 Bhagvati, J.

giving

while a new dimension to the term 'appropriate proceeding' in Article 32(1) observed:

There is no limitation in regard to the kind of proceeding envisaged in Clause (1) of Article 32 except that the proceeding must be "appropriate" and this requirement of appropriateness must be judged in the light of the purpose for which the proceeding is to be taken namely, the enforcement of a fundamental right.\footnote{21}

He observed further:

The Constitution makers deliberately did not lay down any particular form of proceeding for enforcement of a fundamental right nor did they stipulate that such proceeding should conform to any rigid pattern or straight jacket formula\footnote{22} because they knew that in a country like India where there is so much of poverty, ignorance, illiteracy, deprivation and exploitation, any insistence on a rigid formula of proceeding for enforcement of a fundamental right would become self-defeating\footnote{23}.

The Court, reiterating its stand in the Judges' Transfer\footnote{21} Case, stated in the Bandhu Jakti\footnote{22} Korkha\footnote{23} case:

where a member of the public acting bonafide moves the Court for enforcement of a fundamental right on behalf of a person or class of persons who on account of poverty or disability of socially or economically disadvantaged position cannot approach the Court for relief, such a member of the public may move the Court even by just writing a letter, because it would not be right or fair to expect a person acting pro bono publico to incur expenses from his own pocket for going to a lawyer and preparing a regular writ petition.\footnote{24}
In fact, it is sad to expect a regular writ petition from bonded labourers for the enforcement of their fundamental rights as they are suffering from abject poverty and lack awareness and assertiveness. The Public Interest Litigation has enabled the Court to issue any direction, order or writ including a writ in the nature of any high prerogative writ. The Court is no longer constrained to fold its hands in despair and plead its inability to help the needy and poor. This approach has been followed even in the Neeraj Chaudhary and Rakesh Advani cases. So, it is now well settled that any member of the public or a social organisation who exposes the case of bonded labour would be able to move the Court by just writing a letter.

2.20 The Problem of Collection of Facts and Data

In the cases relating to bonded labour, to collect relevant facts and data, the Supreme Court, in exercise of its power under Article 32 and Supreme Court Rules, invoked the power to appoint inquiry commissions to ascertain various facts. In the Bandhna Mukti Porcha case, the Court appointed two advocates as Commissioners to visit the stone quarries to ascertain the working and living conditions of the workers. The Commissioners confirmed the allegations made in the letter, which was treated as a writ petition by the Court. They reported, inter alia, that there was pollution.

of air and water. The report disclosed that the condition of the workers was worse than that of animals. The Court issued directions with regard to the labourers listed in the report to allow them to go wherever they liked. The Court also appointed Dr. Patwardhan of the Indian Institute of Technology and Mr. Krishan Mahajan, a correspondent of the Hindustan Times to conduct a socio-legal investigation into the matter on terms indicated. These reports were treated by the Supreme Court as prima-facie evidence on behalf of the bonded labour.

In Boshkew v. State of M.P., the Court directed the District Judge of Shajal to investigate the issues listed in the petition. He was given the option to take the assistance of an Indian Express reporter. The District Judge was required to visit the stone quarries, ascertain the existence of bonded labour, and submit a detailed report on the working conditions in the mines. The report showed that there was no bonded labour at the time of inquiry because the labourers had already been rescued from bondage by the Jamilabad police on a complaint received. The Court solely relied on the report of the District Judge and dismissed the petition. It is submitted, however, that such inquiry should be made by independent individuals or advocates in the area.

The contending parties pleaded that the report of the Commission had no evidential value, since the statements...
made in it were not tested by cross-examination. The Court
in the Bandhua JuktI Porcha case observed that the copies
of the reports were supplied to the parties. If the par-
ties wanted to dispute any of the facts, they could file
an affidavit. It would be entirely up to the Court to con-
sider what weight was to be attached to the facts taking
into account the report and the affidavit. This practice of
appointing socio-legal commissions of inquiry for the
purpose of gathering relevant facts is a radical departure
from the adversarial system of justice, a legacy of the
British system.

2.30 Widening the ambit of 'Bonded Labour'

In the Bandhua JuktI Porcha case, the Supreme Court
made a close scrutiny of the statutory definition of 'bonded
labour' and widened the definition to its logical end. The
court pointed out the loopholes in the definition and laid
down that it was not necessary for the labourers to prove
that they had incurred bonded debt and were forced to work
in consideration of that advance. The Court declared that
it would be cruel to insist that bonded labour should
comply with the normal procedure for the recording of
evidence. On the basis of the statutory definition, the
State Government had contended that even if the labourers
were forced labourers, they were not bonded labour.

Bhagwati, J., rejected the above contention of the Government and observed:

It is indeed a matter of 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 civilization and who are leading a life of abject misery and destitution. 28

The Court held that whenever it was shown that a labourer was made to provide forced labour, the presumption should be that he had received some advance or economic consideration and was, therefore, a bonded labourer. The Court categorically declared that such a presumption might be rebutted by the employer as well as the State Government, but unless and until satisfactory material was produced for rebutting the presumption, the Court would proceed on the basis that the labour was bonded labour entitled to the benefits of the provisions of the Act. The Court thus extended the meaning of term 'bonded labour' so as to include begar and forced labour as well. This stand was reiterated in the Deokraja Chaudhury case. The Court declared that whenever a labourer was forced to provide labour for no remuneration or for nominal remuneration, the presumption would be that he was a bonded labourer unless the employer or the Government rebutted the presumption. 29

28. Ibid. at 827.
29. Ibid. 1904 S.C. 1099 at 1103.
2.40 The Problem of the Identification of Bonded Labour

The first step towards the implementation of the Bonded Labour System (Abolition) Act is the identification of bonded labour. There are many obstacles in the way of the identification of bonded labour. Because of their poverty, ignorance and helplessness, these creatures are unable to come forward to claim justice. The majority of the bonded labourers are not aware that bonded labour has been abolished. They take to work even if it is forced or bonded labour, just to keep their body and soul together. It is the duty of the civilized society to identify those forgotten citizens and help them to stand at par with other citizens. However, the administrators with their ostrich-like attitude bury their heads in the sand, ignoring and neglecting the existence of bonded Labour. In the Bandhua Mukti Morcha and Janshagwat cases the Court unequivocally condemned the indifference and utter callousness on the part of the state administration in identifying, releasing and rehabilitating the bonded labourers. Such a state of inaction is a blot on the fair name of the democratic and welfare state, and a breach of its constitutional obligations. Justice Bhagwati observed:

"I fail to see why the administration should feel shy in admitting the existence of bonded labour, because it is not the existence of bonded labour that is a slur on the administration but its failure to take note of it and to take all necessary steps for the purpose of putting an end to the bonded"
labour system by quickly identifying, releasing, and permanently rehabilitating bonded labourers.\textsuperscript{30}

The hostile attitude of the bureaucracy towards the identification of bonded labour was illustrated in an anecdote narrated by Bhagwati, J., in Meeraja Chaudhary's case:

By an order of the Court, a Tehsildar went to the villages in question and sitting on the 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 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.\textsuperscript{31}

Thus, the Court directed the State Governments to apply the test of bonded labour propounded in the Bandhua Muktinath case, in order to ascertain whether there were any bonded labourers in their territory and if so, to ascertain the number of bonded labourers. The Court also emphasised the need for taking up the work of the identification of bonded labour as one of top priority tasks.

Justice Bhagwati referred to the statutory duty of every District Magistrate to inquire whether any system of bonded labour or forced labour was in vogue and to take such action as may be necessary to eradicate the evil practice of bonded labour. But he admitted that these officers had multi-farious duties to perform and could not

\textsuperscript{30} Annual 1984 S.C.R. 202 at 206.

\textsuperscript{31} Annual 1984 S.C.R. 1099 at 1104.
undertake personal investigation even if they were anxious to eradicate the evil of bonded labour. They had to rely on subordinate officers such as Tehsildars and Patwaris. Such officials in many places had sympathy with the exploiting class or were lacking in social commitment or were indifferent to the misery of the downtrodden. Thus, the task of the identification of the bonded labourers through the official machinery would be very difficult of achievement, believed the Court. However, the Court recognised the importance of the role of M.L.A.'s or Panchayats in the abolition of the vice of debt bondage.

The Court also referred to the reports indicating that the vested interests veiled successfully the status of the bonded labourers and thus obstructed the process of identification; the labourers themselves were not educated enough to come forward. But the ugly reality is whenever the bonded labourers mustered courage and came forward they were not only physically tortured but also harassed for fictitious debts. Even if they lodged a complaint against the contract, it proved to be abortive. Even when a Chief Minister was petitioned regarding their wretched lives, no action was taken.

The Bonded Labour System (Abolition) Act provides for mandatory constitution of Vigilance Committees. The Court

34. Ibid.
pointed out in the Bandhua Mukti Morcha case that the State of Haryana did not constitute Vigilance Committees in any district or sub-division and this was nothing but failure of the governmental authorities. The Court held that the function of the Vigilance Committee was to identify bonded labourers, if there were any, and to free and rehabilitate them. It would not be right for the State Government not to constitute Vigilance Committees on the assumption that there were no bonded labourers at all. 

The Court suggested that the areas with high incidence of bonded labour must be mapped out with the help of social action groups and social scientists. The Court stressed the need for the establishment of task forces for the identification and release of bonded labour. It also suggested that labour camps should be organised periodically in such areas with the assistance of the National Labour Institute. Its faith in the competence of social action groups in the identification of bonded labourers was reflected in Neeraia Chaudhary's case. The states were directed to include the representatives of social action groups in Vigilance Committees, and to extend full support and co-operation to these social action groups. The states were also directed that whenever any officer of the District Administration, went for the identification and release of bonded labourers, he should take representatives of social action groups.

action groups with him and hand over to them a copy of the report pertaining to the action taken in this regard.

2.50 The Problem of the Rehabilitation of Bonded Labour

In the process of the abolition of bonded labour, the next step after identification is their release and rehabilitation. The Supreme Court observed:

It is the plainest requirement of Articles 21 and 23 of the Constitution that bonded labourers must be identified and released, and on release they must be suitably rehabilitated... and any failure on the part of the State Government in implementing the provisions of the Bonded Labour System (Abolition) Act 1976 would be clearest violation of Article 21, apart from Article 23 of the Constitution.37

It is only after their release from bondage that the labourers can be restored to their freedom and liberty. The recent decisions of the Supreme Court have attempted to secure social and economic justice for these forgotten specimens of humanity living in bondage, through their release and rehabilitation. The Court remarked:

Poverty and destitution are almost perennial features of Indian rural life for a large number of unfortunate ill-starred humans in this country and it would be nothing short of cruelty and heartlessness to identify and release bonded labourers merely to throw them at the mercy of existing social and economic system which denies to them even the basic necessities of life such as food, shelter and clothing.38

38. Ibid, at 1106.
More identification and release are useless unless the labourers are provided with meaningful rehabilitation. Without rehabilitation they are subjected to a life of hunger and starvation. Recognising the need for meaningful rehabilitation of bonded labourers, the Supreme Court stated in the Sandhu Jukti Morcha case:

If the bonded labourers who are identified and freed, are not rehabilitated, their condition would be much worse than what it was before—during the period of their servitude—and they would become more exposed to exploitation and slide back once again into servitude even in the absence of any coercion. 39

Emphasising the importance of rehabilitation, the Supreme Court again reiterated its stand in Kerala Chaudhary's case:

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 rehabilitated, because without rehabilitation, they would be driven by poverty, helplessness and despair into servitude once again. 40

Stressing the importance of rehabilitation in the Sandhu Jukti Morcha case, the Court categorically declared:

(The naked truth is that) the bonded labourer who is released would prefer slavery to hunger, a world of 'bondage and illusory security' as against a world of freedom and starvation. 41

Pointing out the mockery of formal rehabilitation,

the Court asked rhetorically:

What would be bonded labourers' prize?

More freedom and liberty with hunger and destitution staring them in face or some food to satisfy the hunger of near and dear ones, even at the cost of freedom and liberty.  

Freedom and liberty have no meaning for the starving and naked. But the administration hardly cares for their problems and sufferings. Once these freed bonded labourers are brought back to their villages, the bureaucrats think that they have discharged their duty and they conveniently forget about the existence of these unfortunate specimens of humanity. The liberated bonded labourers who are not provided with reasonable assistance for rehabilitation feel disgusted and sad. They say, "We might have been killed there, but we are also dying here."

To boost the morale of the released bonded labourers, the Supreme Court directed the State Government to concentrate on the rehabilitation of bonded labourers and evolve effective programmes for this purpose. In the Bondhu Muki Porcha case, the Supreme Court admired the main features of the rehabilitation scheme laid down in a letter dated 2nd September, 1962 addressed by the Secretary, Ministry of Labour, Government of India to various State Governments. The Court itself set out four main features of the concept of rehabilitation on the basis of the above said letter.  

42. A.I.R. 1964 S.C. 1099 at 1100
43. Ibid. at 1101.
44. Ibid.
With these perspectives, Supreme Court directed the State Government of Haryana to draw up a programme of meaningful rehabilitation of the liberated bonded labourers. The Court issued inter alia, the following directions:

i) The Government of Haryana will, without any delay and at any rate within six weeks from today, constitute Vigilance Committees in each sub-division or a district in compliance with Section 13 of the Act.

ii) The Government of Haryana will instruct the district magistrates to take up the work of identification of bonded labour as one of their top priority tasks, and send to map out areas of concentration of bonded labour and assign task forces for identification and release of bonded labour, and periodically hold labour camps in these areas with a view to educating the labourers, inter alia with the assistance of the National Labour Institute.

iii) The State Governments as also the Vigilance Committees and the district magistrates would take the assistance of non-political social action groups and voluntary agencies for the purpose of ensuring implementation of the provisions of the Act.
iv) The Government of Haryana will draw up within a period of three months a scheme or programme for rehabilitation of freed bonded labourers. The Court also directed that the labourers would be free to go wherever they liked and the District Magistrate would take necessary steps to rehabilitate them.

The question of the rehabilitation of bonded labourers came before the Supreme Court in Madhya Pradesh. The petitioner contended that it was the obligation of the State Government to ensure the rehabilitation of released bonded labourers under the provisions of the Act and that the failure to provide such rehabilitation amounted to a violation of the fundamental right of the freed bonded labourers under Article 21 of the Constitution. The petitioner, therefore, prayed for a direction of the Court to the State Government to take steps for the economic and social rehabilitation of freed bonded labourers. The Court held that mere identification and release of bonded labourers was not sufficient. They must be rehabilitated meaningfully. The Court in this regard gave memorable directions:

1) The Government would provide rehabilitation to the bonded labourers within one month.

ii) The nature of assistance should be decided by the Vigilance Committee.

46. [Ref. to a legal case or document]
47. [Ref. to a legal case or document]
such assistance should be provided by the State Government in the presence of the representative of one of the social action groups in respective areas. 48

The observations of the Court in Banchua Mukti Morcha and Meeraia's cases in respect of rehabilitation of bonded labourers are equally applicable to the enforcement of any social or labour welfare legislation under either Article 32 or Article 226, as the object of such legislation is to give effect to the Directive Principles, which together with Article 21, ensure a right to live with human dignity.

2.60 The Role and Importance of Vigilance Committees

A Vigilance Committee is a statutory body and it can play a vital role in the identification, release and rehabilitation of bonded labourers. Under Section 13(1) of the Act, the Constitution of Vigilance Committees is a mandatory requirement and no State Government or Union Territory has any option or discretion but to constitute them. The prevalence of bonded labour is not a pre-condition for the constitution of Vigilance Committees. In spite of this, some of the State Governments which claim that bonded labour does not exist in their territories have not constituted Vigilance Committees.

Committees. Recognising this fact in the Bandana Muktin
Morcha case, the Supreme Court emphasised the need for
the constitution of Vigilance Committees and directed the
State of Haryana to do so. It observed:

It is a matter of regret that though
Section 13 provides for the constitu­tion of Vigilance Committees in each
District and each sub-division of a
District, the Government of Haryana,
for some reason or the other, did not
constitute any Vigilance Committee until
its attention was drawn to this require­ment of law by this Court. It may be
that according to the Government of
Haryana there were not at any time any
bonded labourers within its territories,
but even so Vigilance Committees are
required by Section 13 to be constituted,
because the function of the Vigilance
Committee is to identify bonded labourers,
if there are any, and to free and rehabi­litate them and it would not be right for
the State Government not to constitute
Vigilance Committees on the assumption
that there are no bonded labourers at all.

The Vigilance Committee must keep constant vigil
over the matters related to bonded labourers and function
as an advisory body to the implementing authorities. But
the Vigilance Committees as they exist today are not
effective. They need to be reorganised and activated, and
their meetings should be more frequent than now.

2.70 The Role of Social Action Groups

In a country like India, where social and economic
inequalities exist to a remarkable extent, the under­privileged and unrepresented can be represented properly

only through social action groups. The Bonded Labour System (Abolition) Act under Section 13(2)(c) recognises the need for the inclusion of social workers in the Vigilance Committees to ensure the effective functioning of the Act. The Supreme Court has also emphasised the need for the inclusion of social action groups in Vigilance Committees as the Court feels that the identification of all bonded labourers is difficult to achieve without the help of social workers. Therefore, it has directed the Government (in this instance to the Government of Uttar Pradesh) to extend full support and cooperation to social action groups.\(^{51}\) Emphasising the importance of social action groups, the Court observed:

> It is only through social action groups working amongst the poor that we shall be able to discover the existence of bonded labour, and we shall be able to identify and release them.\(^{52}\)

However, proper care should be taken to identify voluntary groups genuinely interested in the welfare of the bonded labour, as there is a wide scope for the vested interests and political parties to capitalise on the misfortune of these poor and destitute labourers.

2.80 The Problem of Accountability of Employers and the Government

The Government has initiated a plenty of good schemes for the welfare of bonded labourers. But there is no effective implementation of these schemes and so no enjoyment of their benefits.\(^{51}\) Bonded labour, Supreme Court directions to Uttar Pradesh, \textit{Indian Express}, June 25, 1986, p. 10 (Vizianagaram ed.) Contd...
benefits. The Supreme Court has realised the fact that mere
passing of laws is futile unless their objective is realised.
Shayestha J., keeping in view the changing socio-economic
frontiers of society, observed in the Bandhua Mukti Morcha
case:

(we) firmly believe that it is no
use having social welfare laws on
the statutes book if they are not
going to be implemented. We must
not be content with the law in books 53
but we must have the law in action...

The Supreme Court, therefore, has explored new remedies
which would ensure distributive justice to the weaker sec-
tions of the community, by initiating affirmative action on
the part of administration.

In the Bandhua Mukti Morcha case, 54 though the basic
amenities were denied to the labourers by private individuals,
the Court held that the State was bound to provide such
benefits to the workmen. It laid down that the State had a
constitutional obligation to see that there was no violation
of the fundamental rights of any person, particularly when
he belonged to the weaker sections of the community and was
unable to face the exploiting and strong opponent. In the
Aired case, the Supreme Court held that the Union of India, DDA
and Delhi Administration were responsible as principal
employers for securing the rights to the workmen. 55 In the

54. Ibid.
Bandhua Mukti Morcha case, the Court laid down that the State could be compelled to ensure the observance of such laws because,

...inaction on the part of the State in securing implementation of such legislation would amount to a denial of the right to live with human dignity as enshrined in Article 21...

In this case the Court issued 21 directives to the Central and State Government and to various other authorities with regard to the implementation of the Bonded Labour System (Abolition) Act, payment and fixation of minimum wages, controlling of dust pollution, provision of drinking water and conservancy facilities, arrangement of medical and first-aid facilities, observance of welfare legislation for women and children, and the education of workers about the rights and benefits available to them.

The Court further appointed Laxmidhar Mishra, Joint Secretary in the Ministry of Labour, Government of India as Commission to carry out an enquiry to ascertain the existence of bonded labour system in the stone quarries and crushers of Faridabad, and the extent to which the Court/Labour (Regulation and Abolition) Act and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act and the Minimum Wage Act are being implemented. He was also directed to ascertain the extent of compliance with the directions of the Court by the concerned implementing agencies and authorities.

In the Meeraja Chaudhary case the Court directed the State Government to provide rehabilitative assistance to the freed bonded labourers in the presence of the representatives of the social action groups within one month of the date of judgement. It also directed the State Government to make an affidavit to the Court, subsequent to the time-bound rehabilitation stating how much and in what manner rehabilitation assistance was provided and which representative of the social action group was present.

To ensure proper implementation of the Act, the Court stressed that the officers posted at different levels to deal with the problems of bonded labour should be properly trained and sensitised, so that they may feel a sense of involvement and may carry out that functions with total dedication to the cause of the poor and in a manner which will inspire the confidence of the weaker sections of the community including the bonded labour. The Supreme Court further remarked:

It is also essential that there should be constant check and supervision over the activities of the officers charged with the task of securing the identification, release and rehabilitation of the bonded labourers.

In Meeraja's case, the Court chalked out a programme for the rehabilitation of the bonded labourers. For ensuring the proper implementation of these rehabilitation directions, the Court stressed its supervision by a Vigilance

58. Ibid.
Committee in which the persons suggested by the Court were
to be taken as members. According to the Court, the Central
Government was bound to ensure the observance of various
social welfare and labour laws enacted by the Parliament
for the purpose of securing the workers the basic human
dignities in compliance with the Directive Principles of
State Policy.

Hitherto the practice of the Court was to give
directions to the appropriate authorities. But in the Bandhua
Mukti Morcha case, the Court appointed a Commission to assess
the implementation of its directions. In Meera's case, to
sustain the judicial awareness of the implementation of
its directions, the Court did not dispose of the writ peti-
tion to consider the affidavits which might be filed by
the State Government pursuant to the directions given by the
Court.

Mr. Laxmidhar Misra, appointed by the Supreme Court
to assess the implementation of the Court directions in the
Bandhua Mukti Morcha case, submitted his report in two parts.
His report gave the indication that the enforcement of the
Acts covered by his report had not been adequate. In regard
to the steps for the implementation of the Court's directives,
he also came to hold that nothing very substantial had been
done. Though some steps had been taken, owing to a lack of

uniformity and sustained interest, the impact of these steps had been minimal on the health, safety and welfare of these workers.

Swami Agnivesh made a petition for contempt action against the mine owners and the Government for not implementing the directives of the Court. The Court appointed Dr. Kahanbir Jain of the Faculty of National Labour Institute to inquire about the measures, to report on the extent to which the 21 directives issued by the Court had been implemented and to see whether action for contempt was appropriate or some other course was needed.

Through interviews, observations, representations, formal and informal meetings, references to documents and other available literature, Mr. Jain collected the information. In his report, he has pointed out the lack of sufficient drinking water, the provision of schooling of the children of bonded labourers and appropriate medical facilities. He has mentioned the unhygienic living conditions and lack of organisation among the workmen. He is not satisfied with the impact of the camps organised by the Workers' Education Centre for the sensitisation of the workers about their legal rights. He is dissatisfied with the working of the Vigilance Committees. The identification and rehabilitation process is not satisfactory, according to Dr. Jain.

Above all, Dr. Jain has found that there was no accountability for the exploitation of the uprooted.

60. Ibid. at 43.
assettless and illiterate people by the contractors. The trade is ecologically hazardous. There is a lack of planning. The working involved/in-built system of criminality. He, therefore, recommended that there should be central registration of all workers, conferment of the status of small producers by allocating permits directly to them, determining the minimum remuneration, total exclusion of contractors and middlemen from the trade, and protection and restoration of the natural environment. 61

On the report of Dr. Jain, the court set-up a Committee, consisting of the Director General or a very senior officer from the Labour Welfare Office, the Chief Judicial Magistrate, Faridabad, an advocate of the Supreme Court, an officer from the Haryana Government and Swami Agnivesh (petitioner), to identify the bonded labourers in the stone quarries and crushers. The advocate appearing for the respondents was permitted to associate with the activities of the Committee. The Committee identified about 2000 bonded labourers and confirmed the findings of Dr. Jain's report. It recommended that the principal employers should be made liable for the implementation of the directions of both the law and the Court.

The Court, recognising the limitations of the Court in monitoring the implementation of the welfare schemes, called upon the Haryana Government to attend to the needs.
of the workmen in a well considered and systematic way. It stressed that the State should protect the workmen from the vagaries of employment and the anxiety of the employers to draw work without adequate payment.

The Court observed:

If there be any vacuum in the laws, the State of Haryana should rise to play the role of the welfare state and play it well. 62

The Court suggested:

There could be a special cess raised against the quarry activities to be specifically utilised by way of return to the industry and there could be a special fund out of which all the amenities referred to above could be provided. What is wanting is not power but the mind and alertness regarding one's duty. 63

The Court fixed the liability for the abolition of debt bondage and for the implementation of welfare legislation on the society:

In a welfare state it is the society which has to develop its welfare means. No society can have the welfare outlook unless geared up on the basis of amity, friendship, co-operation, consideration and compassion. If everyone living in India is willing to believe in the 'live and let live' principle... (this) would immediately bring about sufficient rejuvenation of the ailing society.64

The Court disposed of this petition without any order as the costs. It directed the State Government to provide better working conditions for the 2000 identified

62. Ibid. at 48-49.
63. Ibid. at 49.
64. Ibid.
bonded labourers and to work for their meaningful rehabilitation. The Court emphasised that if the directions of the Court were worked out there would really be no bonded condition and workmen could live with proper facilities. It is submitted that in case of wilful dereliction on the part of the administration to carry out the Court's directions, the Court should rise to the occasion and grant exemplary costs to the freed bonded labourers. For this the Court may invoke its ruling on Sebastian K. Honigray v. Union of India, wherein it awarded exemplary costs to two women on the ground that the respondents had committed civil contempt by their wilful disobedience to the writ. Such an action would amount to the rehabilitation of bonded labourers by the Court itself. It would have a deterrent effect and act as a sanction to secure obedience of the State to the Court directions.

3.00 Evaluation of Judicial Activism

The judiciary has, through its activist attitude, played an important role to ensure the welfare of the bonded labour. The Court has given the most expansive interpretation of the terms 'begar', 'forced labour' and 'bonded labour' in the light of the Preamble, Fundamental Rights and Directive Principles of State Policy. The Supreme Court has utilised the terms 'bonded labour' and 'forced labour' in Article 23 of the Constitution as

interpretative tools to expand the 'right to life' enshrined in Article 21 to the 'right to live with human dignity'. The rights and benefits guaranteed to the workmen under various labour laws have been raised to the status of Fundamental Rights. The state has been made responsible for the implementation of those rights. Non-implementation has been treated as violation of the Fundamental Right of the labourers under Article 21. In the case of bonded labourers, Fundamental Rights have been enforced even against private individuals.

The Supreme Court has further stated that the identification, release and rehabilitation of bonded labourers is a mandatory obligation of the state. To ensure the fulfilment of this obligation, the Court has adopted a multi-dimensional strategy including the evolution of the concept of public interest litigation, giving of directions to the state authorities and appointing monitoring agencies to assess the observance of directions. This strategy indicates the sincere concern of the apex Court for the cause of bonded labourers. To change the society through the process of law, the Court from the role of enforcing the law by interpretation of the statutes, went ahead to applying the results of social research. For this purpose, the Court departed from the traditional rules of procedure and made radical and purposeful innovations. Thus, it has adopted the role of a social engineer minimising
the gap between what the law gives to the society and what the society gets. In this process the Court has played a supportive role to the co-ordinated efforts undertaken by the journalists, social action groups and human rights activists to enforce the Bonded Labour System (Abolition) Act. The positive response of the Court has instilled a feeling of being heard by the apex Court in the social workers and also in the labourers who were in bondage. This realisation has brought soul into the bodies of the bonded labourers and aroused in them a degree of awareness. They have become more informed of and educated about their rights. The workers at the stone quarries in Faridabad have organised themselves and formed the Mine Workers Union. They have mustered courage and confidence to stand against the oppression of the employers. They filed a case before the labour tribunal demanding an increase in the wages. The tribunal fixed Rs 71/- as wages for every 180 cubic feet truck load of stones, in respect of a stone breaker who is a piece-rated worker working in stone quarries. Deductions were not allowed, and the cost of explosives etc. was to be borne by the proprietors themselves. The new rate was made applicable from the date on which the case was filed. By an order dated 17th October 1990, the Chief Labour Commissioner raised the piece-rated wage to Rs 133/- per 200 cubic feet truck load. This awakening is also visible in the various struggles launched by the Bonded Liberation Front and Mine Workers Union to implement the directives of the Supreme Court.
The Courts initiative has geared the executive machinery to enforce the Bonded Labour System (Abolition) Act and other labour laws. Sincere, earnest and painstaking efforts have been made by the officials of the concerned departments to plan and implement various directives of the Court within the prescribed time limits. The fixing of minimum wages in stone- quarries, notification of the Rules under Bonded Labour System (Abolition) Act, formation of Vigilance Committees etc., are some of the indications of the positive response of the executive machinery.

Further, the interference of the Court has checked the unbridled freedom of the employers to exploit the workers. Mining lessees and crusher owners have taken, in response to the Court directives, some positive steps for the welfare of the workmen.

The evolution of the concept of Public Interest Litigation has enabled the public-spirited persons to represent the voiceless and invisible bonded labourers. The appointment of fact-finding commissions has given credibility to the court proceedings. The monitoring practice of the court for the implementation of its directions at periodical intervals, to ensure observance has enabled the effective vindication of rights in practice. Thus, the Court has set a new constitutional standard at a time when the State on its part has completely neglected the human values.

Though there have been changes in the role of the executive machinery and the employers with regard to the
implementation of bonded labour abolition legislation, the impact of these changes as far as the payment of wages, health, safety and well-being are concerned has been marginal. There are many shortcomings and limitations inherent in the role of the judiciary.

The Court has adopted a conciliatory attitude towards the administration and the employers. The 21 directives given in the Bandhua Mukti Morcha case indicate the Court was constrained to pass severe comments against the State and the keepers of bonded labour. Despite the provision of conviction of the keepers of bonded labourers in the Bonded Labour System (Abolition) Act, there have been rare instances of such conviction. The Court has adopted the strategy of appointing commissions to gather facts and figures and to verify the allegations made in the writ-petitions. These commissioners have probed into the problems and suggested the best possible remedies to bring relief to the aggrieved. These reports have also evidentiary value in deciding the cases. The Court has only highlighted these policy suggestions and left it to the legislature and executive to act upon them.

Litigation in most of the cases seems to be unending, as the Court has commissioned various bodies to report periodically on the implementation of its directives. Perhaps here the Court has trespassed upon the jurisdiction of the executive.

But the position has not improved much, as is indicated

in the report of the Committee appointed by the Supreme Court in the Bandhua Muktī Morcha case. The Committee said that though the Court in its main judgement had directed that untrained workers should not be engaged in the blasting operations with explosives, the practice seemed to be still continuing, and the law and also the directions of this Court were being violated by the contractors. A similar dismal picture has been presented in respect of the rate of wages, exploitation of the workers, schooling and medical treatment, availability of water, provisions and scope for recreation, and inspection of the implementation of labour legislation. Thus, in the end, the Court again has urged the State administration to come forward to play its role in a better way. The Court expressed with sorrows:

The State of Haryana, we must say, has not taken our intervention in the proper spirit and has failed to exercise appropriate control though some eight years back this Court had laid down the guidelines and had called upon the public authority to take charge of the situation and provide adequate safeguards.

Thus, it is submitted that the Court cannot effectively monitor the implementation of the laws. This truth has been expressed by the Court itself:

Court's judgement to regulate such (matters as supply of basic amenities) has inherent limitations. These are not schemes which could be conveniently monitored by a Court—far less can the

The Court should leave this role to the executive. If any dispute or discrepancy is brought before the Court, it should adjudicate the matter strictly according to the law. The Court should impose exemplary punishment to deter the employers and the administration from the non-observance of labour legislation. If the Court remains conciliatory and its directions are not followed, then it will forfeit its prestige and faith. Therefore, it is suggested that the Court should remain strictly within its jurisdiction. It should not succumb to any pressure and punish the guilty according to the law. It should discard the conciliatory and vague approach in order to maintain its credibility.

Since 1981, the Supreme Court had adjudicated upon a number of cases, related with the Fundamental Rights of the bonded labourers. However, in a spirit of over enthusiasm, it has failed to lay down any crystal-clear policies and precedents. A revolutionary process, where extra-ordinary measures are designed for extra-ordinary situations, may misfire unless it is properly channelled and carefully guided, keeping always in mind the limits and limitations of the process. Cases of this nature are now coming before the High Courts also. The Supreme Court itself has transferred many public interest litigation petitions to the respective High Courts.

76. Ibid.
As the demands for the welfare of the bonded labour are more numerous than those for the mere enforcement of Fundamental Rights, the venue of such litigation should be the High Courts and District Courts. The problem of bonded labour is prevalent even in the remote areas. Because of the vast distances involved in reaching the Courts, and the local nature of the social action groups, most of the bonded labourers have remained unheard and unheeded. Therefore, the venue for the enforcement of the Fundamental Rights of the bonded labour should be shifted to the District Courts. For this, the Parliament can extend the jurisdiction of the District Court under Article 32(3), in a limited way for the enforcement of the Fundamental Rights of the bonded labourers. The Supreme Court will then be in a better position to give a proper directional thrust and mature guidance to the revolutionary process by exercising its appellate jurisdiction generally and its original jurisdiction sparingly. These changes are a must to supplement and co-ordinate the efforts of the social action groups, journalists, socially committed administrators and social workers, and to weed out the evil of bondage.