CHAPTER VI
INDUSTRIAL RELATIONS, SAFEGUARDS FOR WORKERS AND SOCIO-ECONOMIC JUSTICE

(A) Prelude

Industrial Jurisprudence is based on the values of socio-economic justice which is an integral part of our Constitution. The concept of socio-economic justice is nowhere more vibrant than in the industrial jurisprudence. Industrial law is like an industrial machine. It must have dynamism and capability of making industrial mechanism function in a state of harmony and coherence. The worker is the most important wheel. He is the kingpin of the whole system. His rights continue to grow as industrial economics evolves from a laissez faire to a socialist mode of production. Thus, protection of the rights and interests of the workers is of prime importance.

Most cherished values of the Constitution are human dignity and personal liberty. 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 Preamble to the Constitution of India establishes India as 'socialistic' and 'welfare state'. The principal aim of a 'socialist state' is to eliminate inequality in income and status and standards of life. The basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave. It further promises to secure to all its citizens: justice — social, economic and political and promote among them all fraternity assuring the dignity of the individual. Right against exploitation is a fundamental right under which begar and other similar forms of forced labour are prohibited. Industrial justice is not an application of rigid formula but in consonance with Part IV of the Constitution dealing

4. The word 'Socialist' was added in the Preamble by the Constitution(Forty-second Amendment) Act, 1976.
6. See article 23 of the Constitution of India.
with directive principles of state policy which provide socio-economic rights to the people of the country including workers and labourers. It has rightly been observed that the industrial jurisprudence in the creative Indian context may look for light to the loadstar of Part IV of the Constitution and where two judicial choices are available, construction in conformity with Part IV of the Constitution dealing with social philosophy has a preference. In addition to this, the industrial jurisprudence has been built around several legislations enacted by the Parliament. But in spite of the various existing provisions in the Constitution and otherwise, 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. For them the fundamental rights and socio-economic rights do not exist because they are continued to be exploited in the hands of a few who have the vested interest. They are not paid the minimum wages. Their condition of work is beyond any imagination. Living wage is like a dream for them. But we are fortunate to be in this land of ours where the judiciary is responding well and giving clarion call to the needs and rights of the down-trodden people including economically and socially exploited workers and labourers.

Against this back drop in mind, an attempt would be made in this chapter to study the following aspects:

(a) Right against exploitation and bonded labour.
(b) Right to humane conditions for work.
(c) Right to adequate means of livelihood and living wage.
(d) Participation of workers in the management of industries.
(e) An appraisal.

(B) Right Against Exploitation And Bonded Labour

The nineteenth century gospel of laissez faire, which encouraged industrialisation, also encouraged an unlimited and unregulated economic power in the hands of a few people. The State was a silent spectator as to

the exploitation of the workers and labourers in the hands of the economic haves. The political consciousness of the masses could not keep the State, any more, at a hands distance from the social and economic lives of labourers and workers. The State had to shed, under the circumstances, its self imposed isolation from the socio-economic realities of the workers and labourers and intervened on behalf of the have-nots. The role adorned by the State as the benefactor of the workers and labourers came to be regarded as a step forward towards the welfare of the people.9

(i) International Treaty Obligation

The International Labour Organisation was made a part of the League of Nations by Part XIII (Labour) of the Treaty of Versailles, which was signed on 28th June, 1919. This contained the ideals of socio-economic justice to labourers and workers.10 Article 41 of the International Labour Organisation contained various principles for the socio-economic welfare of the labourers.11 These socio-economic rights had an influence on the Indian Constitution which was in the embryonic stage. In 1930, B. Shiva Rao observed:

Recognising that the well being, physical, moral and intellectual, of the workers of India is of supreme importance in assuring the peace, progress and prosperity of the country and recalling the solemn obligations of India as a Member of the League of Nations, and of the International Organisation to endeavour to secure and maintain fair and humane conditions of labour for men, women and children, and to collaborate in the international establishment of social justice...12


10. Section 1 of the Treaty of Versailles, Part III (Labour) provided: "Whereas the League of Nations has its object the establishment of universal peace, such a peace can be established only if it is based upon social justice. And whereas the condition of labour exist involving such injustice, hardship and privation to large number of people as to produce unrest so great that the peace and harmony of the world are imperilled, and an improvement of those conditions is generally required as for example, by regulation of the hours of work, including the establishment of a maximum working days and week...the provisions of an adequate living wage, the protection of the workers against sickness, disease and injury arising out of his employment...." See also Id. at 207-08.

11. First principle of Article 41 of I.L.O. provided that Labour should not be regarded merely as a commodity or article of commerce. Third Principle provided that the payment to the enjoyment of a wage adequate to (conted)
It is interesting to note that International Labour Organisation adopted Convention No.29 laying down that every member of the International Organisation which ratified the convention shall "suppress the use of forced or compulsory labour in all its forms" and this prohibition was elaborated in Convention No.105 adopted by the International Labour Organisation in 1957. The words "forced or compulsory labour" in Convention No. 29 had, of course, a limited meaning but that was so on account of the restricted meaning of these words in the definition given in article 2 of the Convention.13

United Nations Charter, to which India was one of the original signatory, reaffirmed faith in fundamental human rights and in the dignity and worth of human persons. Article 55 of the Charter stipulates, inter-alia, that the United Nations "shall promote respect and observance of human rights and fundamental freedoms". Under article 56, all members pledge themselves to "take joint and separate action in co-operation with the organisation for the achievements of the purpose set forth in Article 55 of the Charter". Further article 4 of the Universal Declaration of Human Rights declares that "no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms".14 Article 8 of the Covenant on Civil and Political Rights, 1966, further provided that no one shall be held in servitude and no one shall be required to perform forced or compulsory labour.15 Article 10(3) of the Covenant on Economic, Social and Cultural Rights, 1966, inter-alia, provided that the young persons should be protected from economic and social exploitation.16 India is a


14. The Declaration was proclaimed by the General Assembly of the United Nations on 10th December, 1949.

15. See article 8(2) and (3)(a) of the Covenant on Civil and Political Rights, 1966. The Covenant after ratification by the specified minimum of States, came into force on March 23, 1976.

16. This Covenant, after ratification by the specified minimum of States, came into force on January 3, 1976.
party to the covenant as well as the protocol to it. Therefore, the two above mentioned Covenants, have legal force as treaties imposing legal obligations on the parties including India.  

(ii) Constitutional Imperatives

The Constitution makers, when they set out to frame the Constitution, found that they had the enormous task before them of changing the socio-economic structure of the country and bringing about socio-economic regeneration with a view to reaching social and economic justice to the common man. Large masses of people, bled white by well-nigh two centuries of foreign rule, were living in abject poverty and destitution, with ignorance and illiteracy accentuating their helplessness and despair. The society had degenerated into a status oriented hierarchical society with little respect for the dignity of individual who was in the lower rungs of the social ladder or in an economically impoverished condition. The political revolution was completed and it had succeeded in bringing about freedom to the country but the freedom was not an end in itself, it was only a means to an end, the end being the raising of the people to the higher levels of achievement and bringing about their total advancement and welfare. Political freedom had no meaning unless it was accompanied by social and economic freedom and it was, therefore, necessary to carry forward the social and economic revolution with a view to create socio-economic conditions in which every one would be able to enjoy basic human rights and participate in the fruits of the freedom and liberty in an egalitarian social and economic framework. It was with this end in view, as also the international covenants, that the Constitution makers provided right against exploitation as fundamental right and enacted the directive principles of state policy in Part IV setting out the Constitutional goals of a new socio-economic order, which the State is under an obligation to strive for.

Article 23 of the Constitution prohibits traffic in human beings and begar and other similar forms of forced labour and any contravention of the same.

18. Supra note 13 at 1485-86.
19. See article 38 of the Constitution.
of this provision shall be an offence punishable in accordance with law. During the consideration of article 17 of the Draft Constitution, which corresponds to article 23 of the Constitution, Raj 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 sufferings, blood and tears.

From the above observation it is clear that the founding fathers wanted to make this article as a charter of liberty for the down-trodden people of India.

In addition to this, in Part IV of the Constitution, which is "fundamental in the governance of the country", there are many provisions which plead for improving the socio-economic conditions of the workers and labourers. Article 38 puts an obligation on the State to strive to promote the welfare of the people by securing a social order in which justice, social, economic and political shall inform all the institutions of national life. It further says that the State shall, in particular, strive to minimise the inequalities in income and status, facilities and opportunities to the people engaged in different vocations in different areas.

Article 39 says that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood and that there is equal pay for equal work for both men and women. It further says that the health and strength of the workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Also that youth are protected against exploitation and moral and material abandonment.

20. Section 374 of the Indian Penal Code, 1860, makes it an offence to compel a man to labour against his will. This section was one of the dead letters of the Code and it did not have the slightest effect on the bonding of labourers. The existence of begar and other similar forms of forced labour has also been acknowledged by the administration from time to time.
21. C.A.D. vol.VII 809, See also the views of Shri S.Nagappa and Shri T.T.Krishnamachari, Id. at 810-81d.
22. See article 37 of the Constitution.
23. See supra note 19.
25. Article 39(d).
26. Article 39(e). This article follows the phraseology of Article 45(4)(2) of the Irish Constitution.
27. Article 39(f).
Article 41 requires the State to make, within the limits of its economic capacity and development, effective provision for securing right to work.

Article 42 requires the State to make provision for securing just and humane condition of work and for maternity relief.

Article 43 can be split up in two parts as: (i) The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and (ii) The state shall, in particular, endeavour to promote cottage industries on an individual or co-operative basis in rural areas. In other words, it is the objective of this article to secure to all who are willing to work, opportunities for employment wherein the worker would not only receive the wages equivalent to a 'living wage' but also working conditions as would enable him to lead a decent standard of life and enjoy the social and cultural opportunities provided for. The word 'agricultural' before the word 'industrial' was added by the Constituent Assembly at the last stage, considering that large bulk of our working population in India consists of agricultural workers.

Article 43A was added to the Constitution by the Constitution (Forty-second Amendment) Act, 1976. This requires the State to ensure worker's participation in the management of industrial undertakings. This is, obviously, a necessary condition for the maintenance of industrial peace under which alone significant industrial production and growth is possible. This requirement is a step towards the workers having control over their own labour. It is a step towards the construction of socialism which is the prime voice of our Preamble to the Constitution.

28. This part of the article is based on article 16 of Professor Lauterpacht's Draft International Bill of Rights of man (1945).
29. This part of the article seems to be inspired by article 24 and 25(1) of the Universal Declaration of Human Rights of 1948. Article 24 provided that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. Whereas article 25(1) provided that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical.
31. It was added by section 9 of the said amendment w.e.f. 31.1.1977.
All these are not hollow directions but solemn constitutional promises. The ultimate aim of all these provisions is to secure socio-economic justice to all kinds of workers and labourers in all kinds of vocations.

The effect of article 37, read with articles 42 and 43 was stated by the Supreme Court in U.P.S.E. Board v. Hari Shankar, as follows: The provisions of article 42 and 43 show that our constitution had expressed a deep concern for the welfare of workers. The mandate which article 37 addressed to the Court meant that while Courts were not free to direct the making of laws implementing directive principles, Courts were bound to evolve, affirm, and adopt principles of interpretation which would further and not hinder the goals set out in the directive principles. Therefore, Courts must bear these principles in mind when interpreting statutes directly or indirectly concerned with the directive principles of state policy.

While explaining the scope of article 38 and 43, the Supreme Court in K. Rajendran v. State of Tamil Nadu observed that articles 38 and 43 are in Part IV of the constitution. They are not enforceable by courts but they are still fundamental in the governance of the country and it is the duty of the State to make adequate provisions in pursuit to them. In spite of these clear mandates of the Constitution there was one feature of our national life which was ugly and shameful and which cried for urgent attention and that was the existence of bonded or forced labour in large parts of the country.

(iii) Bonded Labour and Judicial Protection

The system of bonded labour has been prevalent in various parts of the country since long prior to the attainment of political freedom. This system is based on exploitation by a few socially and economically powerful persons trading on the mise and suffering of large numbers of men and holding them in bondage. It is a relic of a feudal hierarchical society which hypocritically proclaims the divinity of man but treat large masses of people belonging to the lower rungs of the social ladder or economically

33. Id. at 69.
35. Id. at 1125.
impoverished segments of society as dirt and chattel. This system under which one person can be bonded to provide labour to another for years and years and until an alleged debt is supposed to be wiped out which never seems to happen during the lifetime of the bonded labourer, is totally incompatible with the new egalitarian socio-economic order which we have promised to build and it is not only an affront to basic human dignity but also constitutes gross and revolting violation of constitutional values.  

The practice of bonded labour is fairly old. Breman has pointed out that it was existing on wide scale during Moghal times. According to Mukherjee, bonded labour was present at large scale where the lower and depressed orders were most numerous. In India bonded labour is known by different names in different parts of the country. For example, Gothi in Orissa, Mahidari in M.P., Sagri in Rajasthan, Vet Begar and Salbandi in Maharashatra, Jane, Manibi or Ijhari in J&K Jeetha in Mysore and Vetti in Tamil Nadu.

The appalling conditions in which bonded labourers live, not as humans but as serfs, recall to the mind the following lines from "Man with the Hoe"

Bowed with the weight of centuries he leans,
Upon his hoe and gazes on the ground,
The emptiness of ages on his face,
And on his back the burden of the world.

Justice Bhagwati (as he then was) while describing the true condition of these bonded labourers marked in the epoch making judgment in the case of Bandhua Mukti Morcha v. Union of India, that they are non-beings, exiles of civilisation, living a life worst than that of animals, for the animals are atleast 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 unwholesome food they can manage to get, inadequate though it be, to fill their hungry stomachs. Not having any

38. R.Mukherjee, Land Problems of India,225(1933).
41. Supra note 36.
choice, they are driven by poverty and hunger into a life of bondage a
dark bottomless pit from which, in a cruel exploitative society, they
cannot hope to be rescued.\textsuperscript{42}

Before independence, number of Acts were passed\textsuperscript{43} by the various
states to eradicate this pernicious evil but without any success. It was,
therefore, necessary to eradicate this practice and wipe it out completely
from the national scene and this had to be done immediately with the ush­
ing in of independence because with the advent of freedom, such practice
could not be allowed to continue to blight the national life any longer.
Obviously, it would not have been enough merely to include abolition of
forced labour in the directive principles of state policy, because then
the outlawing of this practice would not have been legally enforceable
and it would have continued to plague our national life in violation of
the basic constitutional norms and values untill some suitable legislation
could be enacted by the legislature prohibiting such practice. The framers
of the Constitution, therefore, decided to give teeth to their resolve to
abolish and wipe out this evil practice by enacting constitutional prohibi­
tion against it in the Part dealing with the fundamental rights. Hence they
enacted article 23 in Part III dealing with fundamental rights and which
are enforceable in the courts of law. Article 23 provides:

\begin{quote}
(1) Traffic in human beings and \textit{begar} and other similar
forms of forced labour are prohibited and any contra­
vention to this provision shall be an offence punish­
able in accordance with law.

(2) Nothing in this article shall prevent the State from
imposing compulsory service for public purposes, and
in imposing such services the State shall not make any
discrimination on grounds of religion, race, caste or
class or any of them.
\end{quote}

The sweep of article 23 is very wide and is clearly designed to pro­
tect the individual not only against the State but also against the private
\textit{citizens}.\textsuperscript{44} Only thing which it permits is that the State can impose

\textsuperscript{42} Ibid.
\textsuperscript{43} 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
as dead letters. The Acts were:Orissa Debt Bondage Abolition Regula­

\textsuperscript{44} People's Union for Democratic Rights \textit{v.} \textit{Union of India}, supra note 13
at 1485.
compulsory service for 'public purposes'. The words 'public purposes' must include an object or aim in which the general interests of the community, as opposed to particular interests of individuals, are directly and vitally concerned.\(^45\)

The true scope and ambit of the expressions 'begar' and 'other similar forms of forced labour', have been eloquently explained by the Supreme Court in a landmark case of People's Union for Democratic Rights v. Union of India,\(^46\) which is popularly known as Asiad Workers' Case. Justice Bhagwati,(as he then was), while speaking for the Court pointed out that the word 'begar' in article 23 is not a word of common use in the 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. Begar is thus clearly a film of forced labour.\(^47\) 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 judge observed:

This Article(article 23) strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values.\(^48\)

In this case it was argued that it is not every form of forced labour which is prohibited by article 23 but only such forms 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 any remuneration at all.\(^49\) Rejecting this contention, the court relied upon

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\(^46\) Supra note 13 at 1486-90.

\(^47\) Id. at 1486-87. See also Vasudevan v. S.D. Mittal, A.I.R.1962 Bom.53 at 67.

\(^48\) Supra note 13 at 1487.

\(^49\) Ibid. Cf. Dulal Samanta v. Distt. Magistrate, Howrah, A.I.R.1958 Cal.365 it was held that the words 'other similar forms of forced 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 Justice K.S. Sidhu, supra note 17 at 526.
the principle enunciated in Maneka Gandhi v. Union of India\(^{50}\) 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, 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.\(^{51}\)

It was further observed:

> We do not think that it would be right to place on the language of article 23 an interpretation which would emasculate its beneficial provision and defeat the 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 Article 23 not with a view to importing 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."\(^{52}\)

It is submitted that the court has rightly construed the meaning of "all other similar forms of forced labour". If it meant only such forms of forced labour as was similar to 'begar' then these words would be rendered futile and meaningless. And it is well recognised principle of interpretation that the Court should avoid that interpretation which would make any words used by the legislature as superfluous or redundant.

The framers of the Constitution have given us one of the most valuable document in history for ushering in a new socio-economic order. This has a social purpose and economic mission. Therefore, every word or phrase in the Constitution should be interpreted in a manner which would advance the socio-economic objective of the Constitution.

In Asiad Workers case, a writ petition was filed in the Supreme Court by way of public interest litigation concerning the working conditions of workmen employed in the construction work of the various projects

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51. Supra note 13 at 1487.
52. Id. at 1487-88. See also Bailey v. Alabama,(1910)219 U.S.219.
connected with the Asian Games. In the petition it was pointed out that the workers did not get the minimum wages as prescribed under the Minimum Wages Act, 1948. The petition also alleged the violation of various other laws such as the Employment of Children Act, 1938, Contract Labour(Regulation and Abolition)Act, 1970, The Inter-State Migrant Workmen(Regulation of Employment and Condition of Services)Act, 1979, Equal Remuneration Act, 1976 etc. The authorities, which were assigned the task of completion of various projects of Asiad, engaged various 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 the workers. The result was that the workers did not get the minimum wage of Rs.9.25 per day.

Now the important question to be decided by the court was whether there is any violation of article 23 when the person is paid less than the minimum wage for it. Bhagwati J., (as he then was), lamented:

\[T\]hat where a person provides labour or service to another for remuneration which is less than the minimum wages, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23.53

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 a legal provision 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. Explaining the term 'force' it was observed:

The word 'force' must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or services even though the remuneration received for it is less than the minimum wages.54

53. Id. at 1490.
54. Ibid.
There is no reason why the word 'forced' should be given a narrow and restricted meaning when the national Charter has promised to build a new socialistic republic where there will be socio-economic justice for all.

In *Sanjit Roy v. State of Rajasthan*, 55 also it has been held by the Supreme Court that the payment of wages less than minimum wage amounts to 'forced labour' and hence violates article 23 of the Constitution. 56

It is submitted that from the above judgments it is evident that the Supreme Court has not only made a distinct contribution to a worker oriented jurisprudence but also displayed the creative attitude of judges to protect the interests of the weaker sections of the society by giving wider meaning to the expression 'forced labour'. It is this new dimension of 'forced labour' which covers within its ambit the bonded labour. And now any form of bonded labour will also be covered as violative of article 23 of the Constitution. The judgment, thus, promises a new deal to workers in various areas, including freedom from traditional exploitation. The judges have also clarified that the courts are not meant only for "the rich and well to do, the landlord and the gentry, the business magnate and the industrial tycoon or the sugar barons and the alcohol kings". Developing the fact that it is the rich only who have so far "had the golden key to unlock the doors of justice", the judgment seeks to open the doors to millions of workers throughout the country to establish their rights to be heard and to enforce their fundamental rights against the State. It may not be possible in practice to ensure total elimination of malpractices, payment of adequate wages and fair play to everyone in farms and factories on the basis of the latest interpretation of the protective articles of the Constitution. But the State, contractors and citizen's organisations have been virtually given a judicial warning, though belatedly, which they will do well to heed in the public interest. 56a

It has already been mentioned that the bonded labour system, more than any other institution, symbolises the economic and physical exploitation of the weaker sections of society in India. And article 23 prohibits,

56. *Id.* at 333-34. In this case Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964, which excluded the application of Minimum Wages Act, 1948 was held to be violative of article 14 and 23. 56a. See Editorial, *The Tribune*, dated 21.9.1982 at p.4.
inter alia, begar and 'other similar forms of forced labour' and any contravention of this provision shall be an offence punishable in accordance with law. Article 35(a)(ii) of the Constitution specifically vests the legislative competence in this regard in Parliament. 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 a view to giving effect to article 23 of the Constitution. This Act is intended to strike against the system of bonded labour which has been a shameful scar on the Indian social scene for decades and which has continued to disfigure the life of the nation even after independence.

Section 2 clause(d) defines 'bonded debt' to mean an advance obtained or presumed to have been obtained, by a bonded labourer, under or in pursuance of the bonded labour system. Clause(f) of section 2 defines bonded labourer as "a labourer who incurs, or has, or is presumed to have incurred a bonded debt". The 'bonded labour system' has been defined in clause(g) of section 2 to mean:

the system of forced or partly forced, labour under which a debtor enters, or has, or is presumed to have entered, into an agreement with the creditor to the effect that:-

57. Article 35(a)(ii) says that notwithstanding anything in this Constitution, Parliament shall have, and the Legislature of the State shall not have, power to make laws for prescribing punishment for those acts which are declared to be offences under this Part.

58. The Act deemed to have come into force w.e.f. 25th day of October, 1975.

59. See the Statement of Objects and Reasons of the Bonded Labour System (Abolition) Act, 1976. In this it was stated that there still exists in different parts of the country a system of usuary 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 interest rates are exhorbitant and such bondage cannot be interpreted as the result of any legitimate contract or agreement. The system implies the infringement of the basic human rights and destruction of the dignity of human labour. The 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.
(i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, due on such advance, or

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

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

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

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

he would -

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

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

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

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

Thus, a very comprehensive definition of the bonded labour system has been provided under the Act and it includes the system of forced or partly forced labour.

The term 'nominal wages' is defined as a wage which is less than (a) the minimum wage fixed by the Government, in relation to the same or similar labour, under any law for the time being in force, and (b) where no such wages have been fixed in relation to any form of labour, the wages that are normally paid, for the same or similar labour, to the labourers working in the same locality. 60

60. Section 2(i) of the Bonded Labour System (Abolition) Act, 1976.
On the commencement of this Act, the bonded labour system shall, on such commencement, stand freed and discharged from any obligation to render any bonded labour. It is further provided that after the commencement of this Act, no person shall make any advance under, or in pursuance of the bonded labour system, or compel any person to render any bonded labour or other form of forced labour. All agreements, custom or tradition or any contract by virtue of which any person, or any member of the family or dependent of such person, is required to do any work or render any service as a bonded labourer, are declared void and inoperative. The liability to repay any bonded debt or part of bonded debt stands extinguished. All the property of the bonded labourer which, before the commencement of this Act, was held under any mortgage, charge or lien, is to be freed and no person freed and discharged under this Act, to be evicted from any homestead or other residential premises which he was occupying immediately before the commencement of the Act as a part of the consideration for the bonded labour. The Act also specifies the implementing authorities. It imposes a duty on every District Magistrate and every officer to whom power may be delegated by him, to enquire whether, after the commencement of the Act, any bonded labour is being enforced by or on behalf of, any person resident within the local limits of his jurisdiction and if, as a result of such enquiry, any person is found to be enforcing the bonded labour system or any other form of forced labour, he is required forthwith to take the necessary action to eradicate the enforcement of such forced labour.

It is submitted that from the above provisions of the Act it is clear that the Act prohibits not only bonded labour but all forms of forced labour. Because any form of forced labour is against the basic human rights and destruction of the dignity of human labour.

The Act also authorises the Constitution of Vigilance Committees in each District and in each sub-division of a District. It also sets out that what shall be the composition of each Vigilance Committee. The function
of the Vigilance Committee shall be, inter alia, to advise the District Magistrate or any other officer authorised by him as to the efforts made and action taken to ensure that the provisions of this Act or of any rule made thereunder are properly implemented and to provide for the economic and social rehabilitation of the forced bonded labourers. 69 The burden of proof that particular debt is bonded or not shall lie on the creditor. 70

Section 16 to 20 are the penal sections. A person compelling another to render labour is punishable with imprisonment for a period of three years and with a fine which may extend upto rupees two thousand. 71 Any person who after the commencement of Act advances any bonded debt or abets any offence under this Act, shall also be punishable in a like manner. 72 Every offence under this Act has been made cognizable and bailable. 73

We have noted the panaromic view of the various provisions of the Bonded Labour System (Abolition) Act, 1976. Some noteworthy features of this Act are as under:

(1) The Act has in it the awareness of the need for a machinery relating to its implementation. This is in sharp contrast with other legislations which by and large ignored the problem of implementing and failed to specify the institutional arrangement for enforcing the provisions and the officials responsible for enforcing the statute. 74

(2) Periodic evaluation and to make survey as to whether there is any offence of which cognizance ought to be taken.

(3) By making the offence cognizable the State has undertaken the direct responsibility for the implementation of the Act, and unlike some of the previous legislations, does not leave it to the initiative of the affected individuals.

(4) Under the Act not only bonded labour is to be abolished but all forms of forced labour are to be abolished.

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69. See Section 14(i)(a) and (b).
70. Section 15.
71. Section 16.
72. Section 17 and 20.
73. Section 22.
(5) It makes provisions not only for the liberation of the bonded labourers but also for the social and economic rehabilitation of the freed bonded labourers.

(6) A wide definition of bonded labour system is given which covers the system of forced or partly forced labour.

(7) This Act has been given an overriding effect over any other enactment, agreement, custom, tradition or any contract.

(8) Freed bonded labourer is not to be evicted from homestead etc.

(9) Any suit against the bonded labourer is to be defended by the person to be authorised by the Vigilance Committee.

Thus, as a piece of legislation, this seems to be a good piece of work. But even the government conceded that though bonded labourers were technically freed by an ordinance in 1975, incidence of the system had been reported from eleven States. Pater Davies, Director of the Anti-Slavery Society, at the meeting of the Working Group on Slavery, a subsidiary body of the 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. But Mrs.Lakshmi Puri, a senior diplomat at the Indian Mission at the United Nations in Geneva, firmly denied that the Indian Government was adopting an "ostrich like" attitude in this matter. It rejected charges that it lacked political will to tackle the problem of bonded labour and maintained that it had taken constitutional, administrative, economic and social measures to eradicate it. In spite of this, the truth remains that now more than twelve years have passed when the Bonded Labour System(Abolition)Act, 1976 was enacted by the Parliament, but the majority of the labourers and workers are still sluggishing in bondage in the various parts of the country. It is yet to become meaningful for those poor down-trodden people, for whom it was enacted. Now let us see what are the causes for its failure to achieve the objective and what are the remedies.

75. These States are Andhra Pradesh, Bihar, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tamil Nadu and Uttar Pradesh. See Indian Express, 9th May, 1984 at p.8. And now the incidence of bonded labour has been reported from many other states like Haryana, Panjab and J&K etc.


77. Ibid.
for those failures or how this Act can achieve the underlined objective of liberating all the weaker sections of the people from bondage.

(v) Reasons and Remedies for the Failure of Act

(a) Identification

The process of identification and release of bonded labourers is a process of discovery and transformation of non-beings into human beings and what it involves is eloquently described in the beautiful lines of Rabindra Nath Tagore in "Kadi and Komal"

Into the mouths of these
Dumb, pale and weak
We have to infuse the language of soul
Into the hearts of these
Weary and worn, dry and forlorn
We have to minstrel the language of humanity. 78

This process of discovery and transformation poses a serious problem since the social and economic milieu in which it has been accomplished is dominated by elements hostile to it. But this problem has to be solved if we want to emancipate those who are living in the bondage and serfdom and make them equal participants in the fruit of freedom and liberty. It is a problem which needs urgent attention of both State and Central governments. Particularly so, when the directive principles of state policy have obligated them to take steps and adopt various measures for ensuring social justice to those poor down-trodden people who are subjected to the inhuman bondage. It is not right on the part of the State administration to shut their eyes to the inhuman exploitation. 79

It is not uncommon to find that the administration in the State is not willing to admit the existence of bonded labour, even though it exists in their territory and there is incontrovertible evidence that it does so exist. To quote one instance, Mr. Bhajan Lal, the former Chief Minister of Haryana, denied the existence of bonded labour in the State in the Assembly while replying to the call attention motions of Mr. Mangal Sein (BJP) and Mr. Hira Nand Arya (DMKP) that the workers in quarries or

78. Cited in supra note 36 at 806.
79. Ibid.
crushers in Faridabad are forcibly detained.\textsuperscript{80} 

\textit{Bandhua Mukti Morcha v. Union of India},\textsuperscript{81} is another instance where 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{82} In this case the petitioner made a survey of some of the stone quarries in Faridabad District and found that there were large number of labourers from Maharashtra, Madhya Pradesh, Uttar Pradesh and Rajasthan, who were working under "inhuman and intolerable conditions" and many of them were bonded labourers. The petitioner addressed a letter to the Supreme Court, which was later treated as a writ petition. The petitioner described in the letter 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{83}

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 labourer would be bonded only when if he has or is presumed to have incurred a bonded debt and there was nothing to show that in the present case. It was further contended by the learned 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{84}

\textsuperscript{80} Bhajan, "No Bonded Labour in State", \textit{Indian Express}, (Chandigarh Edition), dated 28 March, 1985 at p.9. According to Bhajan Lal, there were bonded employers in the State when Swami Agnivesh, a leader of the Bandhua Mukti Morcha, a bonded labourer liberation organisation, went to certain quarries to liberate certain bonded labourers, there was clash between the workers and in that one worker died. And Swami Agnivesh including four other persons were arrested by the police and sent to the judicial lock up. On the other hand Bhajan Lal claimed that there were no bonded labourers and the clash was due to the investigation of Swami Agnivesh.

\textsuperscript{81} Supra note 36.

\textsuperscript{82} \textit{Id.} at 825-26.

\textsuperscript{83} \textit{Id.} at 808.

\textsuperscript{84} \textit{Id.} at 826.
Rejecting the above contention of the learned Additional Solicitor General, the Supreme Court 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 provided forced labour, the State Government 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.85

It is submitted that the Court has taken the right view. Section 12 of the Act specifically lays duty on every District Magistrate and every officer specified by him to enquire whether any bonded labour or any other form of forced labour is being enforced by or on behalf of any person and, if so, to take such steps as may be necessary to eradicate the enforcement of such forced labour.

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 that is a slur on the administration but its failure to eradicate it and moreover not taking the necessary steps for the purpose of wiping this blot on the fair name of the State is a breach of its constitutional obligations.86

It is indeed difficult to understand how the State Government which is constitutionally mandated to bring about changes in the life conditions of the poor and the down-trodden and to ensure social justice to them, could possibly take up the stand that the labourers must prove that they are bonded labourers. The court pointed out that it is 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 these unfortunate specimens of humanity who are exiles of civilisation and who are leading a life of

86. Ibid.
abject misery and destitution. 87

For the proper and immediate identification of the various bonded labourers, the following steps may be taken.

(1) 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. 88

(2) Labour Camps should be held periodically with the help of National Labour Institute, to identify such bonded labourers.

(3) The survey of the bonded labour prone areas should also be done by the Vigilance Committee with the help of social action groups operating in those areas. 89

(4) Investigative journalism can also play an important role in identifying the various bonded labourers.

(5) Suitable award should be given to those persons who bring to the knowledge of the State Government the existence of bonded labour.

In fact we are very fortunate to be in this country where there are a large number of dedicated social action groups. Young men and women involved in the investigative journalism, inspired by idealism and moved by a passionate and burning zeal to help their fellow beings, are there whose services can be utilised for the identification and release of the bonded labourers. 90

(b) Vested Interests

This is another important barrier which obstructs the implementation of the various labour welfare legislations. Most of the lower authorities who are to implement the law come from the same dominant class of persons who engage the bonded labour.

87. Ibid. See also the various directions issued by the Supreme Court, Id. at 834-37.
88. Ibid.
89. See Neeraja Chaudhry v. State of M.P., supra note 85 at 1106.
90. Id. at 1104.
In Neeraja Chaudhry, the State Government pointed out that "very often vested interests veil successfully the status of bonded labourers and thus obstruct the process of identification, the labourers themselves are not educated enough to come forward and lodge a complaint. They appear to be reconciled themselves to their fate" and that is why there is a wide gap between legal discharge of bonded labourers and their factual liberation. An interesting instance was given in this case that a tehsildar went to the village to enquire about the bonded labourers. Sitting on the dias with the landlords by his side, he started questioning whether they were bonded or not and when the labourers, obviously inhibited and terrified by the presence of land-lords, said that they are not bonded but they were working freely and voluntarily. Accordingly, he made the report to the collector that there were no bonded labourers.

It is futile to expect a district magistrate in today's setup to effectively tackle the existence of bonded labour because the key political officials in and out of the power keep such labour themselves. But suppose some official with a conscience tries to identify and rehabilitate the bonded labour, then what would become of him is clear from the following instance.

In Koddal Hills of Tamil Nadu's Anna district, the Collector countermanded the orders of his Sub-Collector who released on 10 March, 1986, over 40 families from bondage. The Sub-Collector, Mr. Gurnihal Singh, investigated the conditions in which some Sri Lankan repatriates worked for a private firm engaged in the manufacture of dyes. He found the workers heavily in debt and prevented from moving around freely. He ordered the release of these families and payment to them of wages amounting to rupees twenty thousand. What the conscientious official had reckoned without was the fact that a State Minister had "interests" in the firm. As a result, Mr. Singh no longer holds the post.

It is submitted that if such political or other interferences continue...
from the people who have the vested interest then the social welfare legislations will not be able to achieve their aim. Strict action should be taken against those who interfere in the implementation of the Act. For this, it is suggested that the Vigilance Committee be constituted under the Act and it should be headed not by the district magistrate but by the district judge because he has more independence in the discharge of his duties. Also the composition of the Vigilance Committee depends on the persons to be nominated by the chairman.\textsuperscript{96} It is also suggested that the persons from social action groups and investigative journalism should be nominated to the Vigilance Committee.

(c) Awareness

In addition to poverty and helplessness, there is one more reason why the workmen employed in stone quarries and stone crushers are deprived of the rights and benefits conferred upon them by the various social welfare laws. The reason is that they are totally unaware or ignorant of their rights and entitlements. It is this ignorance which is responsible for the total denial of the rights and the benefits to which they are entitled under the various social welfare laws. A bonded labour shall not be inclined to avail himself of the benefits of the Act unless he is aware that he would not be evicted from his homestead and that any property mortgaged by him would be freed from the debt and would be returned to him.\textsuperscript{97}

Fortunately, in our country we have the Central Board of Workers Education which is entrusted with the function of educating workers regarding their rights and entitlements. Therefore, it is suggested that these Boards should organise camps in those areas where there is concentration of bonded labour. Even the social welfare organisations and village Panchayats can also play an important role in educating the workers about their rights under the various laws.\textsuperscript{98} Further, legal aid camps should be organised in those areas which are more prone to bonded labour because the barriers of illiteracy and remoteness from the urban centres prevent the weaker sections from taking advantage of the legal processes available to them. National Labour Institute may also periodically hold the camps to educate the workers about their rights because they have the necessary expertise and experience in holding the camps. It is hoped that if this all is done, then the workers who are ignorant of their rights, will take advantage of

\textsuperscript{96} See section 13 of the Act.
\textsuperscript{97} Section 7 and 8 of the Act.
\textsuperscript{98} K.Sharan, "Law and Bonded Labour System", National Labour Institute (cont...)
the various social welfare laws.

(d) Inadequate Punishment

In *Asiad Workers case*, 99 it was pointed out that the magistrates had been imposing only small fines of Rs.200/- thereabouts for the violations of labour laws. They seem to view the violation with great indifference and unconcern as if they are trifling offences undeserving of judicial severity. They seem to overlook the fact that the labour laws are enacted for improving the condition of the workers and the employers cannot be allowed to buy off immunity against violation of labour laws by paying paltry sum which they would not mind paying, because by violating the labour laws they would be making profit which would far exceed the amount of fine. If the violations 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 laws would be reduced to nullity. They would remain only paper tigers without any teeth or claws. And the socio-economic rights mentioned in the directive principles will be of no use to the workers.

It is, therefore, suggested that the judges and the magistrates should view the violation of the labour law with strictness and should punish the errant employers by imposing adequate punishment.

(e) Rehabilitation

The Legislature in its wisdom very aptly appreciated that mere release of the bonded labourer from bondage without making appropriate arrangements for his rehabilitation will serve no useful purpose and may even create a very real problem as to livelihood of the labourers so set free and accordingly the legislation made suitable provision for the rehabilitation of the bonded labourers. 100 But the process of rehabilitation has proceeded at its

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99. *Supra* note 13 at 1481-82.
100. *Section* 14(b) and (c) of the Bonded Labour System(Abolition)Act, 1976.
The concept of rehabilitation has the following four main features as admirably set out in the letter dated 2nd September 1982 addressed by the Secretary, Ministry of Labour, Government of India to the various State Governments:

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

(2) 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 and 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.

(3) There is a scope for bringing about an integration among the various central and centrally sponsored schemes and the on-going schemes of 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. It should be ensured that while funds are not drawn from different sources for the same purpose and different components of the rehabilitation scheme are integrated skillfully.

(4) 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 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.

101. At the national leve, 17,143 bonded labourers were rehabilitated in 1983-84 as against a target of 28,804. See HiranmayKarlekar,"Of Inhuman Bondage",Indian Express,(Chandigarh Edition), dated 18 July 1985 at p.6. On 22 April,1985 Mr.T. Anjaiah, Minister for Labour stated in the Lok Sabha that there was backlog of 42,000 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)dated 23 April,1985 at p.5.
102. Cited in supra note 36 at 828.
Neeraja Chaudhry v. State of M.P. is a landmark case on rehabilitation. In this case the petitioner a Civil Rights Correspondent of Statesman wrote a letter to the Supreme Court pointing out that 135 labourers were released from bondage by the court in March, 1982 from Fardabad and they had been brought back to their respective villages in Madhya Pradesh. But even after six months of their release, they were not rehabilitated by the State Government and they were living on the verge of starvation. Bhagwati, J., (as he then was), in his monumental judgement stated:

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. 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.

From these observations it is clear that they must be rehabilitated, because otherwise, they would be driven by poverty, helplessness and despair into serfdom once again. Poverty and destitution are almost perennial features of Indian rural life. It would be nothing short of human cruelty and heartlessness to identify and release bonded labourers merely to throw them at the mercy of the existing social and economic system which denies to them even the basic necessities of life such as food, shelter and clothing.

The Court pointed out that what use are 'identification' and 'release' to bonded labourers if after attaining their so-called freedom from the 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.

There are instances where the "liberated bonded labourers have died of starvation and disease". The government instead of rehabilitating

103. Supra note 85.  
104. Id. at 1100-01.  
105. Id. at 1106.  
106. Id. at 1100.  
107. Ibid.  
them, refused to believe the certificate given to them that they were bonded labourers. 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 used to get their food, but now there is nothing". S.H. Venkatramani, has rightly pointed out that "trapped between bureaucratic double speak and ponderous process of the legal system, the labourers have to weather a lot worse than bondage: for many, it has already raised the spectre of starvation".

It is, therefore, suggested that the government should take the task of rehabilitation seriously and only then the liberty and freedom under the Constitution as also under the Bonded Labour System (Abolition) Act, 1976, will become meaningful to them. While rehabilitating them the care should be taken to satisfy their socio-economic causes due to which they went in bondage. While rehabilitating the bonded labourer, care should be taken that a skilled labourer should not be rehabilitated with unskilled labour or jobs. Among the social causes of bondage, it has been found that most of the bonded labourer incurred debts on account of marriages and death rites. The habit of drinking has also been found responsible for the incidence of bonded labour. For this, it is suggested that social action groups and other helping agencies of the government should propagate for group marriages and should try to educate them about the unnecessary expenditure in which these bonded labourers enter into.

If all the above suggested measures are taken, then the rehabilitation can become meaningful to the bonded labourers and they would never like to go back to the bondage of their master. It has to be appreciated that 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.

109. Ibid.
111. In the rural areas unemployment and underemployment of agricultural labour is rampant. There it is a debatable point that whether a person would like the status of a bonded labourer on "nominal wages" throughout the year or would choose the status of casual labour with long spells of unemployment and under—employment.
112. A classic example of the victims of this process is that the craftsmen of Jausar Bhabar in the U.P. Hills, who were once skilled in carving pillars, were rehabilitated with cattle loans after release from debt bondage. See Sevanti Ninan, supra note 94.
mere passing the welfare legislation for the upliftment of the downtrodden, the weak and meek is by itself not sufficient, though undoubtedly the legislation is the first step in the right direction. What is really important is that every law enacted, particularly welfare legislation, for the benefit of the weaker section of the people, must be implemented in the proper spirit for achieving the noble object for which such legislation was passed. And implementation of the law, has necessarily to be affected through human agencies.

(C) Right to Humane Conditions for Work

The basic framework of socialism is to provide a decent standard of life to all the working people. Article 42 provides that "the State shall make provision for securing just and humane conditions of work and for maternity relief." Article 39(e) and (f), inter alia, provides that the State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women are not abused and that youth are protected against exploitation. Article 43 also enjoins the State to make endeavour to secure to all workers, by a suitable legislation or economic organisation or in any other way, condition of work ensuring a decent standard of life. Thus, the State in discharge of its obligations under the above mentioned provisions must extend the umbrella of protection to the poor, needy and unprotected workmen who are unable to negotiate on terms of equality and who may accept any terms to stave off hunger and destitution. It is the State which must interpose between these two unequals to eschew exploitation.

In U.P.S.E.Board v. Hari Shanker, Chinnappa Reddy, J., speaking for the Court observed that the Constitution has expressed a deep concern for the welfare of the workers by enacting articles 42 and 43. While the directive principles shall not be enforceable in any court, the principles are nevertheless fundamental in the governance of the country and it

114. Supra note 5.
115. The Covenant of the League of Nations of 28th June, 1919 enjoined in Article 23(a) that the members of the League "will endeavour to secure and maintain fair and humane conditions of labour for men, women and children..." The phraseology of the first part of article 42 is similar to and taken from article 16 of Lauterpacht's Draft International Bill of Rights of Man which stated: "State shall, through national legislation and international cooperation, endeavour to secure just and humane conditions of work". See K.C. Markandan, supra note 12 at 183-84.
shall be the duty of the State to apply these principles in making laws. What the injunction means is that while courts are not free to direct the making of legislation, courts are bound to evolve, affirm and adopt principles of interpretation which will further and will not hinder the goals set out in the directive principles. This command of the Constitution must be present in the minds of the judges while interpreting statutes which concerns themselves directly or indirectly matters set out in the directive principles.

In D.B.M. Patnaik v. State of A.P. the Supreme Court extended the application of article 42 to conditions in jails. The court observed:

> We cannot do better than say that the Directive Principles contained in Article 42...may benevolently be extended to living conditions in jails. There are subtle forms of punishment to which convicts and undertrials prisoners are some times subjected. It must be realised that these barbarous relics of a bye-gone era offend against the letter and spirit of our Constitution.

But in spite of these clear mandates, the majority of the labourers and workers are yet to have humane conditions of work. These poor unfortunate workmen lead a miserable life in small hovels, exposed to the vagaries of weather. They drink foul water, breath heavily dust laden polluted air and keep on suffering from respiratory infection and other diseases. They know that breathing polluted air is bad but for them breathing polluted air is better than starving. There are number of other social welfare legislations, which are concerned with the welfare of the workers and for providing them humane condition of work. These legislations intended to ensure basic human dignity to the workmen and if the workmen are deprived

118. Article 37 of the Constitution.
120. Id. at 2096.
121. A Report of the district judge of Tehri Garhwal, 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 60 feet by 15 feet in area and part of it was covered by gunny bags. Several labourers were laying ill on the floor without ever getting medical attention. See M.J.Antony,"Bonded Labourers kept in Cage", Indian Express, (Chandigarh Edition), dated 3 October,1985. See also Editorial "Slavery at High Noon", Indian Express, dated 4 October,1985.
123. See for example, Mines Act,1952; Inter-State Migrant Workmen(Regulation of Employment and condition of Services)Act,1959; Minimum Wages Act,1948; Contact Labour(Regulation and Abolition) Act,1970.
of any of these rights and benefits to which they are entitled under the social welfare legislations, then that would clearly be violation of article 21 of the Constitution.\textsuperscript{124} Therefore, it is the duty of the State to ensure the observance of various social welfare and labour laws enacted by the Parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the directive principles of state policy.\textsuperscript{125}

In \textit{Bandhua Mukti Morcha v. Union of India},\textsuperscript{126} the court observed:

\begin{quote}
This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses(e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and ... just and humane conditions of work and maternity relief.\textsuperscript{127}
\end{quote}

In this case the Supreme Court found that there was violation of the various social welfare laws by the State of Haryana and the workers and labourers in the stone crushers and quarries were being deprived of from 'just and humane condition of work'.\textsuperscript{127a} Therefore, the court issued as many as twenty-one directions to the State of Haryana and the central government for the implementation of various social welfare laws in their true spirit.\textsuperscript{128} Some of the directions were aimed at providing 'just and humane conditions of work' for the workers. To mention some of them, 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 owners should supply pure drinking water to the workmen on a scale of at least 2 litres for every workman by keeping suitable vessels in a shaded place at conveniently accessible points and such vessels should be kept in clean and hygienic condition and shall be emptied, cleaned.

\begin{footnotes}
\item[124.] People's Union for Democratic Rights \textit{v.} Union of India, supra note 13 at 1485. In \textit{Maneka Gandhi \textit{v.} Union of India}, supra note 3, it has been held that the right to life guaranteed under article 21 is not confined merely to physical existence or to the use of any faculty or limb through which life is enjoyed or the soul communicates with our side world but it also includes within its scope and ambit the right to live with basic human dignity.
\item[125.] Article 256 provides that the executive powers of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State.
\item[126.] Supra note 36.
\item[127.] \textit{Id.} at 811-12.
\item[127a.] See also \textit{Labourers Working on Salal Hydro Project \textit{v.} State of J\&K}, A.I.R.1984 S.C.177.
\item[128.] \textit{Supra} note 36 at 834-37.
\end{footnotes}
and refilled every day. The water should be obtained from the unpo-
lluted source and should be supplied at the site of the work at a regular
interval. It was also directed that the government should ensure that
conservancy facilities in the shape of latrines and urinals in accordance
with the provisions of Mines Act, 1952 are provided. The government
was also directed to take immediate steps for ensuring appropriate and adequate
medical and first aid facilities. It was also directed that the govern-
ment should ensure that the provisions of the Maternity Benefit Act, 1961,
the Maternity Benefit (Mines and Circus) Rules 1963 and the Mine Creche Rules
1966 should be complied with.

It is submitted that this landmark judgment of the Supreme Court should
serve as an eye opener not only to the State and Central governments but
also to those employers who are engaging various workers and labourers, that
it is their constitutional duty to provide 'just and humane conditions of
work' to the workers and labourers. A healthy body is the very foundation
for all human activities. In a welfare state, therefore, it is the obliga-
tion of the State to ensure the creation and sustaining of conditions conge-
nial to good health.

In Sankar v. Durgapur Project Ltd., Calcutta High Court pointed
out that an important facet of the right to life is the right to live like
human beings, which conforms to a much lesser degree the state's obligation
to ensure decent standard of life and full enjoyment of leisure to all work-
men as provided by article 43 of the Constitution. In other words, depriving
workers of "decent standard of life" would amount to violation of fundamental
right to life and liberty under article 21 of the Constitution.

It is submitted that, by interpreting the directive principle of
article 43 into fundamental right of article 21 the court has recognised
the importance of the directive principles.

129. Id. at 835.
130. Id. at 836. See section 20 of the Mines Act, 1952 and Rules 33 to 36 of
the Mines Rules, 1955.
131. See also section 21 of the Mines Act, 1952 and Rules 40 to 45-A of the
132. Supra note 36 at 836.
(D) Right to Adequate Means of Livelihood
And Living Wage

Social realities mould social justice, and the compulsions of social justice, in the context of given societal conditions, constitute the basic fact from which blossoms law which produces order. One of the most important facets of life is that there should be adequate means of livelihood. Accordingly, article 39(a) of the Constitution enjoins in State that it shall, in particular, direct its policies towards securing that the citizens, men and women equally have the right to an adequate means of livelihood. There is need for this provision, for, the ultimate responsibility of the State is of special importance in regard to the provision of opportunity of suitable employment with adequate wages for all who seek work. Earlier, the Supreme Court gave a narrow interpretation to the right of livelihood and held that it is not included in article 21 dealing with the right to life and liberty. But the judicial grammar of interpretation has changed and now recently in the case of Olga Tellis v. Bombay Municipal Corporation the Supreme Court held that the right to livelihood under article 39(a) is included in the right to life under article 21. It was pointed out that the sweep of the right to life conferred by article 21 is wide and far reaching and an important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. Therefore, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation of offending the right to life conferred by article 21.

134. This clause is analogous to the third principle of Article 41 of ILO of 28th June 1919. See supra note 11. In the Constitutional Assembly, Naziruddin Ahmad moved an amendment which sought the deletion of the words "men and women equally" on the ground that they are redundant and K.T. Shah sought the change of words "every citizen has a right to an adequate" for the words "that the citizens, men and women equally have the right to an adequate". However, in the final form no change was done. See VII, C.A.B. at 504-06.
135. See article 41 of the Constitution.
138. Id. at 193-94. See also 24 Parganas Lawyer's Clerk Association v. State conted...
Article 43 of the Constitution directs the State to endeavour to secure living wage, etc., for workers. The old principle of the absolute freedom of contract and the doctrine of *laissez faire* have yielded place to new principles of social welfare and common good. Labour naturally looks upon the constitution of wage structure as affording "a bulwark against the dangers of depression, safeguard against unfair methods of competition between employers and a guarantee of wages necessary for the minimum requirement of employees".

There can be no doubt that in fixing wage structure in different industries, industrial adjudication attempts, gradually and by stages though it may be, to attain the principle objective of a welfare state, to secure "to all citizens justice - social and economic". To the attainment of this ideal the Indian Constitution has given a place of pride and that is the basis of the new guiding principles of social welfare and common good.

It is quite likely that in under developed countries, where unemployment prevails on a very large scale, unrecognised labour may be available on starvation wages; but the employment of labour on starvation wages cannot be encouraged or favoured in the modern democratic welfare state. If the employer cannot pay the bare minimum wages, then he has no right to continue his enterprise.

The concept of 'living wage' has been explained by the Supreme Court in number of cases.

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139. Article 43 provides: *Living Wage, etc. for workers* - The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas. See also supra note 10.


141. Ibid.

142. Ibid.

India, Hidayatullah, J., observed that "our political aim is 'living wage' though in actual practice living wage has been an ideal which has eluded our efforts like an ever-receding horizon and will so remain for some time to come. Our general wage structure has at best reached the lower level of fair wage though some employers are paying much higher wages than the general average".

In Express Newspaper Ltd. v. Union of India, N.H.Bhagwati, J., speaking for the court observed that broadly speaking wages have been classified into three categories, viz. (1) the living wage, (2) the fair wage and (3) the minimum wage.

The 'living wage' should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but a measure of frugal comfort including education for children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age. This is the ideal to which our social welfare state has to approximate in an attempt to ameliorate the living conditions of the workers.

But according to the concept of 'minimum wage' as adopted by the Committee on Fair Wages, a minimum wage must provide not merely for the bare sustenance of life but for the preservation of the efficiency of worker. For this purpose, the minimum wage must also provide for some measure of education, medical requirements and amenities.

N.H.Bhagwati J., also drew a distinction between a bare subsistence or minimum wage and a statutory minimum wage. The former is a wage which would be sufficient to cover the bare physical needs of a worker and his family that is a rate which has got to be paid to the worker irrespective of the capacity of the industry to pay. The statutory minimum wage, however, is the minimum which is prescribed by the statute and it may be higher than the bare subsistence or minimum wage, providing for some measure of education, medical requirements and amenities.

145. Id. at 317.
147. Id. at 600.
149. Ibid.
The 'fair wage' is a mean between the living wage and minimum wage.150

The content of the expressions 'minimum wage', 'fair wage' and 'living wage' is not fixed and static. It varies and is bound to vary from time to time. With the growth and development of national economy, living standards would improve and so would the notions about the respective categories of wages expand and be more progressive.151

According to N.H.Bhagwati, J., the concept of statutory minimum wage is in harmony with the advance of thought in all civilised countries and approximates to the statutory minimum wage which the State should strive to achieve having regard to the directive principle of state policy, as adopted in article 43 of the Constitution. The enactment of the Minimum Wages Act, 1948, affords an illustration of an attempt to provide a statutory minimum wage.152

On the other hand, K.C.Markandan is of the view that the Constitution framers considered a 'living wage' as something lower than a 'minimum wage', and so in the context of the poor economic condition of India the use of the expression 'living wage' was deliberate as compared to the expression 'minimum wage', and probably the wage for an individual worker alone was contemplated and not for his family.153

It is submitted that the views of K.C.Markandan are not well founded. The judicial interpretation of the expression 'living wage' has certainly given content to the concept. Firstly, it clarified that the 'wage' has relation not only with the individual worker but also with his family. Secondly, it comprehends some decent and humane existence for the worker and his family and not mere subsistence. Thirdly, the concept of wages has been explained as an elastic concept depending upon the state of economy of a particular region.

Article 43 has been held to furnish the principle by which unfair labour practices can be judged. In Eveready Flashlight Co. v. Labour Court, the Court observed that though it was not possible to lay down an exhaustive test of unfair labour practice, it could be stated as a working

150. Id. at 602.
151. Id. at 603.
152. Id. at 602.
principle, that unfair labour practice violated the principle of article 43 and other articles which referred to decent wages and living conditions of workmen, and which practice, if allowed to become normal, would tend to lead to industrial strife.\(^{155}\)

In *Hindustan Antibiotic v. Workmen*,\(^ {156}\) it was held that there is socio-economic justification for providing minimum wages to the workers because it is necessary for their social and economic upliftment.\(^ {157}\) The worker is interested in his pay and if he is given reasonable wages it is expected that a satisfied worker will contribute to the growth of the industry and ultimately to the prosperity of the country. The constitutional directions in article 39(d) and 43 will be disobeyed if the State attempts to make distinction between the same class of labourers on the ground that some of them are employed by a company financed by it and other by the company floated by a private enterprise.\(^ {158}\)

In *Jalan Trading Co. v. D.M.Aney*,\(^ {159}\) the Supreme Court held that the payment of bonus is an implementation of articles 39 and 43 of the Constitution and hence reasonable.

In *U.P.S.E.Board v. Hari Shankar*,\(^ {160}\) the court expressed its deep concern over the welfare of the workers and non-implementation of articles 42 and 43 of the Constitution. The court emphasised that the command of the Constitution must be ever present in the minds of judges when interpreting the statutes which concern themselves directly or indirectly with matters set out in the directive principles of state policy.

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155. Id. at 500. In *National Carbon Co.Ltd. v. M.N.Gan*, A.I.R.1957 Cal.500 at 507, it was contended that an award of the tribunal directing the payment of a living wage was an attempt by the courts to enforce the directives, which was beyond the courts power and therefore, illegal. It was held that the industrial tribunal were constituted to ensure industrial harmony. They did not order living wage to be paid because the Constitution directed it, but because it was necessary to do so in order to avoid industrial discord. See also *Balwant Raj v. Union of India*, A.I.R.1968 All.14.


157. Id. at 954.


160. Supra note 32. See also *K.Rajendran v. State of Tamil Nadu*, supra note 34.
The courts in India have always kept the above directives in mind and in all subsequent cases insisted that the minimum wage must be paid to all labourers and workers.

In People's Union for Democratic Rights v. Union of India, the Supreme Court observed that 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, then that amounts to 'forced labour' within the meaning of article 23 and hence violative of that article.\(^{162}\)

In Sanjit Roy v. State of Rajasthan,\(^{163}\) Rajasthan Famine Relief Works Employees(Exemption for Labour Laws)Act, 1964 excluded the applicability of Minimum Wages Act, 1948, to workmen employed on famine relief work and permitted payment of less than the minimum wages to such workmen. It was declared invalid as offending the provisions of article 23 of the Constitution. It was further held that the payment of less wages than fixed by the Minimum Wages Act, 1948, also offends article 14 of the Constitution.\(^{164}\)

In Labourers Working on Salal Hydro Project v. State,\(^{165}\) the Supreme Court directed that the minimum wages must be paid to the workmen, under the Minimum Wages Act, 1948, directly without any deduction save and except those authorised by the Statute. In this case, it was pointed out that the National Hydro-Electric Power Corporation as also the contractors and 'piece wagers' or sub-contractors were paying to the workmen employed by them wages at the rate of Rs. 9/- per day, whereas the minimum wage payable to workmen in the construction industry as per the notification issued by the State of Jammu and Kashmir was Rs. 10/- per day.

Ram Kumar v. State of Bihar,\(^{166}\) is another instance where the Court has shown its concern that the workers should be paid the minimum statutory wage. This is a case of public interest litigation where one Ram Kumar Misra, President of Free Legal Aid Committee, Bhagalpur, complained in a letter which was treated as writ petition, that the owners of the two ferries in

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161. Supra note 13.
162. Id. at 1489-90.
163. Supra note 55.
164. Id. at 335-36 as per R.S. Pathak, J.(as he then was).
Bhagalpur and Sultanpur are not paying to their workmen wages under the Minimum Wages Act, 1948. The Supreme Court vindicated the rights of the poor workmen and held that they should be paid minimum wages as fixed by the Minimum Wages Act, 1948. The Court further directed the State of Bihar to pay Rs. 2000/- to the petitioner by way of costs.167

It is submitted that the court has taken a very healthy attitude in this case. It is also clear that starting from Express Newspaper Case, the court has consistently maintained that the workers should be paid the minimum statutory wages which is consistent with the directive principle of state policy contained in article 43 of the Constitution.

(E) Participation of Workers in the Management of Industries

Workers' participation in management is one of the most significant modes of resolving industrial conflicts and encouraging among workers a sense of belongingness in establishment where they work. It affords due recognition to the attitude of workers and enables them to contribute their best in all round prosperity of the country in general and industrial prosperity in particular. Moreover, in India which has launched a vast programme of industrialisation, the need for workers' participation is all the more important.169 In order to ensure effective communication and mutual understanding between the management and workers, various ways and means have been tried. Workers' participation in management is comparatively of recent origin in this field.170

(i) Concept and Scope

Workers' participation is a broad concept. It is widely used and indistinctly defined. Its main aim is "to seek co-operation of those engaged in production in the fields of ethical, politico-social and economic. So far as the ethical kind is concerned participation of workers is conceived as a means of developing personality", satisfying human urge for self expression and recognising the dignity of man as man. This kind is

167. Id. at 540.
168. Supra note 146.
170. V.P. Michael, Industrial Relation in India And Workers' Involvement In Management, 167(1979).
in consonance with a "conception of man and human rights". The political and social kinds are primarily concerned with the label of "industrial democracy". The economic aims are to make the establishment more efficient which results in more production and thereby contributing to all round development and prosperity of the country as well as of the industry. Workers' participation means the identification with the involvement in the day-to-day functioning for the achievement of the goals of the enterprise taking into account the reality of the situations which enables the worker to undertake responsibilities. In such a situation he naturally becomes a partner in the decision making process of the organisation, irrespective of the nature of organisational structure of participation machinery.

The workers' participation has been defined differently by psychologists, sociologists, economists and lawyers. Davis Keith, who represents psychologist's viewpoint, defines the concept of participation as the mental and emotional involvement of a person in a group situation which encourages him to identify himself with group goals and share responsibilities in them. From the view point of sociologists the workers' participation is an instrument of varying potentialities to improve industrial relations and promote industrial peace. The economists view workers' participation as the basis for higher productivity of labour and utilisation of collective experience of workers in order to advance the qualitative and quantitative conditions of production. Lawyers, however, consider workers' participation as a legal obligation upon the management to permit and provide for involvement of workers of industrial establishment through proper representation of workers at all levels of management in the entire range of management action. But it should be noticed that workers' participation cannot be limited and isolated to certain areas which are favourable and convenient to the management alone.

Since the concept of workers' participation is dynamic, it varies in its scope from country to country also depends on the degree of participation. Its objectives include prevention of workers' exploitation either

172. Ibid.
173. Ibid.
174. Ibid.
175. Supra note 170 at 168.
176. Davis Keith, Human Relations in Business, quoted in supra note 170 at 167-168.
177. Supra note 169 at 405.
by owners or top managers and growth of economy through democratic process. In India, workers's participation in the form of Works Committees, became statutory only in 1947. Its aim was to promote measures for securing and preserving amity and good relations between employer and workmen and to discuss day to day problem of the industry. The First Five Year Plan(1951-56) also emphasised the need for encouraging Works Committees. The Works Committee has not functioned effectively due to the lack of clear-cut demarcation between their responsibilities and the responsibilities of trade unions operating in the field. The indifferent attitude of trade unions also affected their functioning. Hence Joint Management Councils(JMC) on voluntary basis were introduced only after over a decade. This was in line with the Industrial Policy Resolution of 1956. However, this scheme of Joint Management Councils for various reasons could not succeed. In order to meet this unhappy state of affairs and to secure greater measure of co-operation between labour and management to increase efficiency in public service, the Government of India on 30 October 1975 introduced a new scheme of workers' participation in management at shop floor and plant levels. This idea of inculcating the system of workers' participation received formal recognition only in 1976 when a specific directive in this regard was added in the Constitution of India.

(ii) Constitutional Commitments

The Constitution(Forty-second)Amendment Act,1976, which amended inter alia, preamble declaring it as a socialistic constitution was thought to be a necessary addition to the rhetoric. The basic framework of socialism is to provide a decent standard of life to the working people and especially

179. Section 3(1) of the Industrial Dispute Act,1947 provides for the setting up of Works Committees in all undertakings employing one hundred or more workers.
180. See The First Five Year Plan,576(1953).
181. According to this scheme every industrial unit employing more than five hundred employees was required to constitute a shop council for each department or shop or one council for more than one department or shop depending upon the strength of employees working in different department s or shops. In 1977 Sachar Committee was appointed by the Government of India for the review of the Companies Act 1956 and MRTP Act 1969. This Committee recommended two types of participation, viz.,(1)by making workers as share-holders and (2) appointing worker director on the Board of Directors.
provide security from cradle to grave. 182 The Constitution (Forty-second Amendment) Act, 1976 also added a new article 43-A in Part IV of the Constitution dealing with directive principles of state policy. It provides:

The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.183

The provision is intended to herald industrial democracy. It is in this context of changing norms and working values that one has to judge workers' demand to be heard. The principle behind the inclusion of workers' participation in the directive principles of state policy is to give due recognition to the workers and to create among themselves a sense of co-partnership. It being a constitutional imperative, the State is under an obligation to take suitable measures either legislative or otherwise to secure effective workers' participation in management. The emerging constitutional jurisprudence has recognised the urgent necessity of providing for the participation of workers in the management of the industry in which they are employed. This will not only step up production but will provide an effective communication system so as to ensure smooth and effective functioning of the various units of the establishment. This will also assure hard work and devotion on the part of workers to the industry.184 But an article, with magnetic power, printed into the Constitution is not a time bomb or legal catalyst without more. We need a new industrial jurisprudence where worker will have equal rights and a culture partnership will emerge. This calls for a whole code and calculus in action charged with a socialistic perspective.185

(iii) Judicial Approach Towards Participation of Workers in the Management

It is heartening to note that the judicial approach has generally favoured the workers interest. The Supreme Court pointed out as far back

183. Article 43-A of the Constitution of India.
184. See supra note 169 at 404.
We should bear in mind that a Corporation, which is engaged in production of commodities vitally essential to the community, has a social character of its own and it must not be regarded as the concern primarily or only of those who invest their money in it.\textsuperscript{187}

The concern of the judiciary for workers in the industry can be best explained in the eloquent wordings of Krishna Iyer J., in \textit{Straw Board Mfg. Co. v. Its Workmen}.\textsuperscript{188} He observed:

\begin{quote}
We are to apply the principles of industrial jurisprudence with its primary concern for peace among the parties, contentment of workers, the end product being increased production informed by distributive justice. Law, especially Labour Law, is the art of economic order sustained by social justice. It aims at pragmatic success, but is guided by value realities in relativity and rejects absolutes. The recent constitutional amendment (Article 43-A) which emphasizes the workers role in production as partners in the process, read in the light of earlier accent on worker's rights and social injustice, gives a new status and sensitivity to industrial jurisprudence in our 'socialist republic'. This social philosophy must inform interpretation and adjudication, a caveat needed because precedents become time barred when societal ethos progress.\textsuperscript{189}
\end{quote}

Justice Krishna Iyer makes it emphatically clear that we should be guided by realistic judicial responses to societal problems, against the backdrop of the new, radical values implied in 'social justice' to labour, the production backbone of the nation, adjusted to the environs of the particular industry and its economics and kindered circumstances.\textsuperscript{190} Thus, article 43-A which provides for the working class participation in the management, in the words of Justice Iyer, marks "the end of industrial bonded labour".\textsuperscript{191}

\textsuperscript{186} A.I.R.1951 S.C.41.
\textsuperscript{187} Id. at 59.
\textsuperscript{188} 1977 Lab.I.C.543 S.C.
\textsuperscript{189} Id. at 546.
\textsuperscript{190} Id. at 547.
In Gujarat Steel Tubes Ltd. v. Its Mazdoor Sabha, the Supreme Court pointed out that the morality of law and constitutional mutation implied in article 43-A bring about a new equation in industrial relations. The Court pointed out the labour is no more a mere factor in production but a partner in the industry. It was also held that dealing with the complex considerations bearing on payment of back wages the new perspective emerging from article 43-A of the Constitution cannot be missed.

In National Textile Workers' Union v. P.R.Rama Krishnan, the Supreme Court has clinched a fundamental issue which is a step forward not only as a matter of social justice but also in advancing and protecting the interest of workers vis-a-vis management. Upendra Baxi has pointed out that this case "may turn out to be a more monumental landmark than a scarecrow, if future justices handle its potential with a becoming socialist sensitivity". In the present case the basic question for the consideration of the court was whether the workers have a right to be heard in winding up proceedings? Unfortunately, the apex court could not speak with one voice. The majority view was taken by Justice P.N.Bhagwati(as he then was), O.Chinnappa Reddy and Baharul Islam, JJ. The minority view was taken by E.S.Venkataramiah and A.N.Sen, JJ. In order to see the true importance of the case, it is required that majority and minority views are analysed separately.

Justice Bhagwati(as he then was) relying on the socio-economic philosophy of Part IV of the Constitution, made it clear that the concept of company has undergone a radical change in the last few decades. The adoption of the socialistic pattern of society as the ultimate goal of the country's social and economic policies hastened the emergence of new concept of


195. For critical appraisal of this case see Upendra Baxi,"Pre-Marxist Socialism And The Supreme Court of India",(1984) 4 S.C.C.(J) 3-9.

196. Id. at 4.
Today, social scientists and thinkers regard a company as a living, vital and dynamic social organism with firm and deep rooted affiliations with rest of the community in which it functions. It would be wrong to look upon it as something belonging to the shareholders. It is true that the shareholders bring capital, but capital is not enough. It is one of the factors which contributes to the production of national wealth. There is another equally, if not more, important factor of production and that is labour. Explaining the relationship of workers vis-a-vis the company he observed:

The workers, therefore, have a special place in a socialist pattern of society. They are not mere vendors of toil, they are not a marketable commodity to be purchased by the owners of the capital. They are producers of wealth as much as capital - nay, very much more. They supply labour without which capital would be impotent and they are, at the least, equal partners with the capital in the enterprise.

He further observed:

The constitutional mandate (article 43-A) is therefore, clear and undoubted that the management of the enterprise should not be left entirely in the hands of the suppliers of the capital but the workers should also be entitled to participate in it, because in a socialist pattern of society, the enterprise which is a centre of economic power should be controlled not only by capital but also by labour. It is, therefore, idle to contend... after the introduction of Article 43-A in the Constitution that the workers should have no voice in the determination of the question whether the enterprise should continue to run or be shut down under an order of the court.

It is submitted that from the above observations it is clear that workers are considered by the court as equal partners with the management and they have a right to be heard in the winding-up proceedings. Notwithstanding the grandiloquence about "equal partnership" of labour and capital, Justice Bhagwati says that it is open to the legislature to enact a rule expressly prohibiting workers any hearing at any stage in the winding-up

197. Supra note 194 at 81.
198. Ibid. See also Panchmehal Steel Ltd. v. Universal Steel Traders, 1976 Tax.L.R.1666 at 1673.
199. Supra note 194 at 83.
200. Id. at 83-84.
Thus, it is submitted, seems to be a wrong view. Because if the interest of the workers has to be taken into account, the workers must have a say as they know best where their interest lies and they must have an opportunity of placing before the court relevant material bearing upon their interest.

In the words of Justice Bhagwati:

[If the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stand in the way of its growth. Law must, therefore constantly be on the move adapting itself to the fast changing society and not lag behind. It must shake off the inhibiting legacy of its colonial past and assume a dynamic role in the process of social transformation.]

Justice Chinnappa Reddy, who shared the majority view but delivered a separate judgement, also observed that the movement is now towards socialism. The working classes, all over the world, are demanding "workers control" and "industrial democracy". They want the control and direction of their lives in their own hands and not in the hands of industrialists, bankers and brokers. Our Constitution has accepted the worker's entitlement to control and it is one of the directive principle of state policy, that is, article 43-A. It is in this context of changing norms and waxing values that one has to judge the worker's demand to be heard.

Baharul Islam, J. sharing the majority view expounded:

A Democratic Republic is not socialist if in such a Republic the workers have no voice at all. Our Constitution has expressly rejected the old doctrine the employer's right to 'hire and fire'. The workers are no longer ciphers; they have given pride of place in our economic system. The workers' right to be heard in a winding up proceedings has to be spelt out the Preamble and Articles 38 and 43-A of the Constitution and from the general principles of natural justice.

201. Id. at 85. See also supra note 195 at 6. Justice Bhagwati before making this observation relied on several decisions of the court and particularly on State of Orissa v. Dr. Bina Pani, A.I.R.1967 S.C.1269; A.K. Kraipak v. Union of India, A.I.R.1970 S.C.150; and Maneka Gandhi v. Union of India, A.I.R.1978 S.C.597 and held that no order involving civil consequences can be passed against any person without giving him an opportunity to be heard against the passing of such order and this rule applies irrespective whether the proceeding in which it is passed is a quasi-judicial or an administrative proceeding. It would, a fortiori apply in a judicial proceedings such as a petition for winding up of a company.

202. Supra note 194 at 86.
It is submitted that industrial relations will never be the same after this momentous judicial pronouncement which has oxygenated article 43-A into an enkindling light which would engage capital and labour in a search for the cherished goal of equality.  

However, Justice Venkataramiah, failed to agree with the majority view and delivered a leading minority view. He admitted that "workers' participation in the affairs of the company or the ushering in of an industrial democracy is quite a laudable object". That is the reason for enacting article 43-A which requires the state to take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in the industry. Then he built up his argument by saying:

The Legislature has not taken any concrete steps in this regard. But, can the Court step in and introduce drastic amendments into the Company law, Surely it cannot.

He further observed:

Even though by virtue of its power of interpretation of law the Court in an indirect way is making law, it should be stated that there are well recognised limitations on the power of the court making inroads into the legitimate domain of Legislature. If the Legislature exceeds its power, this court steps in. If the Executive exceeds its power, then also this Court steps in. If this court exceeds in its power, what can people do?...The only proper solution is the observance of restraint by this Court in its pronouncements so that they do not go beyond its own legitimate sphere.

203. Id. at 87.  
204. Id. at 89.  
205. Id. at 105.  
207. Supra note 194 at 101.  
208. Ibid. (emphasis is of the author)  
209. Ibid. Here Justice Venkataramiah has relied on Smt. Indira Nehru Gandhi v. Raj Narain, A.I.R.1975 S.C.2299 that even though there is no express statement in our constitutional law incorporating in it the doctrine of separation of powers, in the interpretation of the Constitution this court has broadly adopted the said doctrine.
From the above observations of Justice Venkataramiah, it is clear that judges should not legislate, even if the legislatures do not. In support of this argument he gave number of examples from Part IV of the Constitution where the provisions are required to be implemented by the passing of suitable legislation and it has not been done and that court cannot issue a writ to implement these provisions.

It is submitted that the view taken by Justice Venkataramiah seems to be erroneous. Perhaps he failed to take note of the content and spirit of article 37 of the Constitution which says, *inter alia*, that it shall be the duty of the State to apply these directive principles in making laws. This applies to courts as a part of the State and the Supreme Court is bound to advert to directive principles when it exercises its power of making law, while declaring it, under article 141 of the Constitution. To say that article 37 applies only to legislatures would indeed be to put the constitutional clock back. Judicial lawlessness could be as much problematic for the people of India as executive or legislative lawlessness. To interpret the Companies Act in the light of the constitutional mandate (article 43A in this case) is not a judicial excess; rather not to do so, would be. And in any case it is not judicial restraint, but judicial abdication, to interpret the company law as if it were above and beyond the Constitution of India. The oath that Justices affirm is to protect and uphold the Constitution of India and laws under it, not to protect laws against it. F.S.Nariman, while appreciating the majority view rightly pointed out that judicial law making is inevitable particularly when legislation does not keep pace with the desired goals of constitutional democracy set by directive principles of state policy. He added, that the Indian

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210. See Articles 41,43,44,47.
211. Supra note 194 at 101-102.
216. Supra note 195 at 9.
Supreme Court is legitimately playing a vital role in bridging the inevitable gaps in law, and this is essential for the sustaining a valid and progressive legal system. There are numerous examples in our country where the Supreme Court has provided justice to the parties before it in the absence of Parliamentary legislation. And let us not wish that the judiciary will turn down the demands of the claimants of twenty-first century and hibernate itself into lofty palaces and finally disappear like dinosaurs under the pretext that "since there is no legislation by the Parliament so we cannot give justice, we cannot protect this solemn document - the Constitution of India." 

Similarly the opinion of A.N. Sen, J., who shared the minority view with Venkataramiah, J., that "the introduction of article 43A in the Constitution does not affect the position in any way", also holds little water.

To sum up, in the words of Krishna Iyer, "Whatever interpretation we may put on participation of workers in industrial management, the perspective ought to be peoples' involvement in the economic progress of the nation, a facet of economic democracy. It is important to institutionalise the programme, and this can be achieved only through statutory provisions. Ideologically, this involves a reorientation of governmental attitude toward socio-economic changes. Industrially, this demands a willingness to welcome the worker as a managerial partner, cautiously, but not bogusly. Jurisprudentially, this involves exploration of new values about the contribution of workers and implementation of their functional role, from floor to the apex of the pyramid of the industry, through different constructs, disciplines, norms, sanctions and correctives". The ultimate purpose of proletariate jurisprudence is to give to the worker the economic justice which he is entitled to in a socialist state. There should be enlightenment of managements that unless they appreciate the good work each individual has put in for the establishment's advancement and share the benefits of progress with the worker so that he feels loved and cared

218. Ibid.
220. Supra note 194 at 107.
221. Supra note 191.
for, industrial progress will be interspersed with strife and bad blood. There should be complete fusion of capital and labour with one goal—industrial progress.  

(F) An Appraisal

From the perusal of the various aspects of industrial jurisprudence, it is clear that it is based on the values of socio-economic justice which is an integral part of our Constitution. At the same time the worker is the most important organ of the industrial mechanism. So the rights of the workers in the industry and labourers in the farm require protection against the various forms of exploitation at various levels. Our state is a socialistic welfare state the basic aim of which is to provide decent standard of life to the working people and especially provide security from cradle to grave. The preamble and the directive principles of Part-IV are aimed to secure all citizens, including workers and labourers, justice—social, economic and political. It is an obligation of the state to strive to minimise the inequalities in income, and endeavour to eliminate in-equalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. Right against exploitation, begar and other similar forms of forced labour has been secured in article 23 as a fundamental right. In addition to this there are various other social welfare legislations which are aimed to protect the interests of workers and labourers in various vocations. But in spite of all this the workers and labourers are exploited and deprived of their rights. Fortunately, the judicial response in this regard has been in the positive direction.

India achieved its political freedom in 1947 but the freedom from socio-economic exploitation was yet to be achieved. When the Constitution of India was being drafted, the founding fathers of the Constitution had this goal of freedom from socio-economic exploitation before them. They were inspired by the various international treaties and covenants. Right against exploitation in article 23, which is described by the founding fathers as charter of liberty, and the directive principles of Part IV, aimed at a new socio-economic order to which the state is under an obligation to achieve. In U.P.S.E.Board v. Hari Shankar, it was made clear

223. Supra note 32.
that the Courts are to evolve such interpretations which further and not hinder the goals of Part IV dealing with directive principles of state policy.

In spite of this the disease of bonded labour, which is the concept of feudalistic age, crept into our social milieu. It is known by different names in different parts of the country. It is worth noting here that number of Acts were passed before as well as after independence to eradicate the evil of bonded labour, but without any success. It was this reason that article 23 was enacted as fundamental right and not as directive principle of state policy. The prohibition in article 23 against begar and all other similar forms of forced labour is not only against the state but also against the private individual. Because it is against human dignity and human values. In Asiad Workers, the Supreme Court gave new meaning to this article. It rightly pointed out that article 23 strikes at forced labour of all forms and not only such forms of forced labour which resemble with begar. It abolishes every form of forced labour. The force may be in any form. The Supreme Court rightly pointed out that the force may be physical, may be exerted through legal provisions or it may be by compulsion arising out of hunger and poverty, want or destitution. Thus, it includes compulsion arising out of economic circumstances. In Asiad Worker as well as in Sanjit Roy it was pointed out that payment of less than minimum wage also amounts to forced labour. In this way the Supreme Court not only made a distinct contribution to workers oriented jurisprudence but also displayed the creative attitude to protect the interest of the weaker sections of the society. This new interpretation of the term "forced labour" includes "bonded labour" as well. Another positive feature of Asiad Worker is that prior to this judgement only rich people had the golden key to unlock the doors of justice but now the judgement seeks to open the door to millions of workers as this case had come up before the court out of a public interest litigation.

Parliament enacted the Bonded Labour(Abolition) Act, 1976 with a view to prevent economic and physical exploitation of weaker sections. It defines bonded labour comprehensively which includes forced or partly forced labour. One of the most important features of the enactment is that it has made provisions regarding enforcement machinery to implement the provisions of the Act. Periodic evaluation, social and economic rehabilitation of the liberated bonded labourers and giving this Act overriding effect over any other
enactment or agreement or custom are some of the other striking features of the Act. But in spite of this, the Act has failed to achieve its object. The reason for this is that there is no proper identification of the existence of bonded labourers. The State denied the existence of bonded labour. For this, as pointed out in Bandhua Mukti Morcha, legal aid camps, special task force to identify labourers from more prone areas, investigative journalism and social organisations can play an important role. For the proper implementation of the Act, an awareness among the weaker sections of the people has to be generated and strict punishment for the violation of the labour laws has to be imposed. People who have vested interests in the non-implementation of the labour laws have to be identified and punished without any concession. In Neeraja Chaudhry, the Supreme Court has rightly pointed out that rehabilitation of the bonded labourers is the plainest requirement of articles 21 and 23. There is no use of identification and release of labourers from bondage if after attaining so called freedom from bondage they are consigned to the life of another bondage namely, bondage of hunger and starvation.

Humane conditions of work is another goal of the directive principles and of a socialist state. Judiciary in its various pronouncements has laid down that the workers and labourers should have just and humane conditions of work. Everything remains incomplete unless there is a right to adequate means of livelihood. Fortunately, there is a change in the judicial attitude from In Re Sant Ram to Olga Tellis, and now right to livelihood is considered as an integral part of article 21. Starting from Express Newspaper case, the court has consistently maintained that the workers should be paid the minimum statutory wages which is consistent with the directive principle of state policy enshrined in article 43 of the Constitution.

Forty-second amendment to the Constitution brought new light in the Constitution when it added some new directives in Part IV including article 43-A which provides for the participation of the workers in the management of industries. This addition was made to herald industrial democracy and to promote good relations and amity among the employers and workers and to mark the "end of industrial bonded labour". Thus, the morality of law and constitutional mutation implied in article 43-A bring about a new equation
in industrial relation. The worker is now regarded as a partner of the industry. The Supreme Court in National Textile Worker's, (Majority View), has given impetus to article 43-A by holding that the workers have right to be heard in the winding up proceedings. However, the minority view, it seems, failed to appreciate the true place of article 43-A.

On the whole, it may be summarised that both legislature as well as the judicature have shown their keen interest in improving the lot of weaker sections of the society. Where the legislature has failed to achieve the objective of directive principles in relation to workers and labourers, the judiciary has filled in the gaps. Let us hope that the day is not far off when in a free India every Indian will feel free from socio-economic exploitation and socio-economic justice becomes a reality for them.