

BONDED LABOUR AND PUBLIC INTEREST LITIGATION: THE EMERGING TRENDS

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Abstract: The system of bonded labour has been found to exist in India from the ancient times to the present. Article 23 of the Constitution of India prohibits “traffic in human beings and begar and other similar forms of forced labour”. The contravention of this provision is made a punishable offence. Bonded labour is one of the form of forced labour. The Bonded Labour (System) Abolition Act, 1976 was enacted by the Parliament to wipe out this pernicious system of bonded labour. The system of bonded labour is based on the exploitation of the poor and the deprived people belonging to the lower rungs of the social ladder. These people are illiterate and ignorant of their fundamental rights and do not have guts and resources to move to the court in order to remove themselves from the shackles of this system. Thus, they remain tied in this exploitative and shameful system. The emergence of Public Interest Litigation in India has given new hopes to these deprived people. The Public Interest Litigation has extended its helping hands to ameliorate the conditions of the bonded labourers. The Supreme Court has, more frequently, violated the doctrine of locus standi in a number of cases relating to bonded labourers.

Keywords: Constitution of India, Article 23, Bonded Labour System, Public Interest Litigation, Locus Standi

1. Introduction

Article 23 of the Constitution of India prohibits the practice of bonded labour.¹ This Article strikes at forced labour in all its forms as it is violative of human dignity and basic human values.² When a person provides labour or service to another for remuneration which is less than minimum wage, it falls within the scope and ambit of ‘forced labour’ under Article 23 of the Constitution. Article 23 falls under Part III of the Constitution dealing with Fundamental Rights and such a person can move to the court for enforcing his right and demand full wages for his work. Further, the State is under constitutional obligation towards the citizens that they are not being exploited due to physical, legal or economic disability. This constitutional obligation is of great significance in respect of the persons belonging to weaker sections of the humanity who cannot stand against a strong and powerful exploiters. In a country like India, where the system of bonded labour has been found to exist in all its forms and manifestations, the State cannot absolve itself of this constitutional obligation. Article 35(a) (ii)³ of the Constitution not only confers the power on the Parliament to provide for punishment for contravention of the provision contained in Article 23 but expressly takes away the power of the State legislature to make any legislation with regard to the said matter. Accordingly Bonded Labour System (Abolition) Ordinance, was promulgated on 24th October, 1975. By the said ordinance the bonded labour system was abolished and the bonded labourers were freed and discharged from any obligation to render any bonded labour and their bonded debt were extinguished. The ordinance was replaced by Bonded Labour System (Abolition) Act, 1976. The present paper attempts to examine the traditional rule of locus standi and how and why the court departed from this accepted principle of locus standi; to examine the role of judiciary in developing the technique of public interest litigation as a potent weapon for protecting the rights of those who have been held in bondage for years together and to study the contribution of judiciary in this regard.

2. Traditional Rule of Locus Standi

Locus Standi is the right of a person to seek a relief in a court of law. The traditional rule in regard to the locus standi is that judicial redress is available only to the person who has suffered a legal injury by reason of violation of legal right or legally protected interests by the impugned action of the State or a public authority or any other person who is likely to suffer legal injury by reason of threatened violation of his legal rights or legally protected interests by any such action.⁴ In fact two basic principles have been regarded as fundamental for applying the rule of locus standi. Firstly, the petitioner should have a grievance. He himself should be the aggrieved party. Secondly, some legal right or interest of the petitioner must be infringed or threatened so that the court can intervene into the matter. This has been, in fact, the traditional view of locus standi accepted in most advanced system of the world.

2.1. Position in United Kingdom

The genesis of the rule of the locus standi has been found to exist in the common law of *laissez faire* dominated England. The philosophy of *laissez faire* was developed during the early industrialization period of 19th century was aimed at attacking the absolutism of the State.⁵ English courts were reluctant to allow any person other than the one ‘aggrieved’ by an action to move common law courts. As a general rule, petitioner had to show that he had some legal right of his own which had been adversely or injuriously affected by the impugned action. Due to this constructive approach, there was no growth of Public Interest Litigation in England during the 19th century.⁶ It was during the middle of 20th century, that the concept of welfare State started emerging in United Kingdom and due to judicial activism and dynamic approach of Lord Denning, the concept of ‘aggrieved person’ was

liberalized and it was held that a person can be said to be an 'aggrieved person' if he has a genuine grievance and is not a total stranger, busybody or meddling interloper.⁷ In England, Lord Denning was the main exponent for liberalising the rule of locus standi. In his dynamic judgments in *McWhirter*⁸ and in three *Black Burn Cases*⁹, it was clearly established that any member of the public having 'sufficient interest' can maintain an action for enforcing a public duty against statutory or public authority.

2.2. Position in United States of America

In United States of America also, it was only a 'person aggrieved', who could approach a court for ventilating his grievances. The applicant had to show that he had suffered a legal wrong or injury which entitled him to challenge the action. In the United States of America, the rule of locus standi has undergone a big change. "While Americans always turned to the courts individually to seek reforms from oppressive social evils, it is only since 1950s that groups interested in social reforms have consistently soughtjudicial intervention."¹⁰ In America, social reform litigation has been encouraged by a number of factors, one of the most important being the failure of legislature to respond adequately to pressures for change. Social reform activity is designed ultimately to produce legal decisions affecting conditions or circumstances of whole classes or groups.¹¹ The law confirms standing even though the concerned individual has no direct personal interest provided his action vindicate the public interest.¹² However, during the earlier days the view which the court propounded was that to have standing, there must be deprivation of legal right.¹³ It was soon realised that the requirement of legal right/wrong hindered the process of judicial review. Thus, in *Association of Data Processing Organisation v. Camp*,¹⁴ the Supreme Court which relied upon the Administrative Procedural Act dispensed with the requirement of an alleged invasion of legal right. At present the rule of locus standi stands further relaxed and recent decisions laid down that if an action of an agency injures the plaintiff that should be enough to give him standing.

2.3. Position in India

In India, the traditional rule in regard to locus standi was that judicial redress was available only to a person who had suffered a legal injury by reason of violation of his legal right or legally protected interest by the impugned action of the State or a public authority or any other person who was likely to suffer legal injury by reason of his threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement of judicial redress is personal injury from violation, actual or threatened of the legal right or legally protected interest of the person seeking such redress.¹⁵ The same was the situation even in case of deprivation of a fundamental right of the person enshrined in Part III of the Constitution. In India, during the post emergency era, the activist press, investigative journalism, legal activists in the Universities and social action groups provided a new ground and fertile soil for the birth and growth of public interest litigation.¹⁶ After emergency, the Supreme Court of India in a series of cases has buried the principle of locus standi, the legacy of an outdated Anglo-Saxon Jurisprudence and thereby evolved public interest litigation to establish a judicial democracy.

In 1981, the doctrine was diluted in *Judges' case*.¹⁷ The court took the view that when a person or class of persons to whom legal injury is caused by reason of violation of fundamental rights is unable to approach the court for judicial redress on account of poverty or disability or socially or economically disadvantaged position, any member acting bonafide can move the court for relief under Article 32 and 226 of the Constitution.¹⁸ The observations of the court in the *Judges' case* are worth reproducing. The court observed that there is an urgent need to innovate new methods and devise new strategies for the purpose of providing access to justice of large masses of people who are denied basic human rights and to whom freedom and liberty has no meaning. The court has a duty to utilize the initiative and zeal of public minded person or organisations by allowing them to move the court and act for general or group interest."

Thus, we find that the traditional rule of locus standi now stands enlarged and the courts have accorded a flexible meaning to the expression 'aggrieved person'. The Supreme Court realizes the fact that the concept of the locus standi requires liberalization if justice is to be made meaningful to the millions of poor, needy and ignorant people. This led to the emergence of the concept of public interest litigation. In this a public spirited person or a group of citizen or an association can take up the case of the deprived section of the community against administrative wrongs. This new technique of judicial activism has been asserted and reasserted by apex court in a number of subsequent cases.¹⁹ These observations of the court highlight the concern of the judiciary to make justice accessible to all whether rich or poor.

3. Emerging Trends of Public Interest Litigation

The emergence of the liberalising trends of the traditional rule of locus standi has given rise to new form of litigation popularly known as Public Interest Litigation in India. Public interest litigation in its present form constitutes a new chapter in our judicial system. It has acquired a significant degree of importance in the jurisprudence practiced by our courts and has evolved a lively, though somewhat controversial, response in legal circles, in the media and the general public.²⁰ PIL is a part of the process of participate justice. It is a strategic arm of the legal aid movement and is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity. Public interest litigation is like the ordinary litigation which is brought for the purpose of enforcing the right of one individual against another, the only difference is that it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or educationally disadvantaged position should not go unnoticed and unredressed.²¹ This would be destructive of the rule of law which forms one of the essential elements of public interest in any democratic form of Government. This mode of litigation is essentially a cooperative or collaborative effort by the petitioner, the State or public authority and the judiciary to secure the observance of the constitutional or basic human rights, benefits and privileges upon poor, downtrodden and vulnerable sections of the society.

4. PIL With Reference to Bonded Labour

The thrust of the PIL is that the courts must become the courts for poor and the struggling masses. The poor who constituted a major segment of the Indian society had seen the majesty of law but did not feel its justice.²² On the failure of the legislature and executive to deliver good to the public it becomes the responsibility of the courts to come forward for the rescue of the poor by evolving new juristic technique of social change. The poor regarded the law as mysterious and forbidding. They had no faith in the legal system. They always took law as taking something away from them and not as a positive and constructive social device for changing the social and economic order and improving their life conditions by enforcing rights and benefits on them. Unfortunately, law in the old mould and justice in the court precincts never could see the suppressed and tortured and grossly discriminated men and women and child soaked in blood, toil, tears and sweat, because they were below the line of justice vision.²³ The system of bonded labour which is a relic of feudal hierarchical society is based on exploitation of the poor and deprived people belonging to the lower rungs of the social ladder. The emergence of public interest litigation in India has given new hopes to these deprived people. This type of litigation is primarily intended to promote and vindicate public interest which demand that violation of constitutional or legal right of socially and economically disadvantageous people do not go unnoticed and unredressed.²⁴ Public Interest Litigation has extended its helping hand to ameliorate the conditions of the bonded labourers. Supreme Court more frequently violated the doctrine of locus standi in cases relating to bonded labourers.²⁵ So far the cases²⁶ on bonded labour that came before the court are only through the jurisprudential expansion in the form of Public Interest litigation. It is only through the PIL that the plight of the bonded labour has attracted the attention of the judiciary.

4.1. *Asiad Worker's Case*

In *People's Union for Democratic Rights v. Union of India*,²⁷ popularly known as *Asiad Workers Case*, the Supreme Court treated a letter written by a social action group as writ petition. The letter was based upon a report made by a team of three social scientists who were commissioned for the purpose of investigating and inquiring into the conditions under which the workmen engaged in various *Asiad* projects were working. The letter alleged the violation of various labour laws in respect of the workmen engaged in the above projects. The authorities entrusted with the task of executing the projects engaged contractors for the purpose, who, in turn, engaged workers through *Jamadars* for carrying out the assigned work. The *Jamadars* engaged the workers who were entitled to an approved minimum wage of 9.25 paise per day. The allegations in the writ petition were: (i) there was a violation of the Minimum Wages Act, 1948, as the *Jamadars* who paid the wages to the workers deducted rupee one per day per worker as their commission and the workers got only 8.25 paise only by way of wage; (ii) the provisions of Equal Remuneration Act, 1976 were violated as the women workers got Rs. 7/- per day, the balance of the amount of the wage was being misappropriated by the *Jamadars*; (iii) there is a violation of Article 24 of the Constitution and of the provisions of the Employment of Children Acts 1938 and 1970 in as much as children below the age of 14 years were employed by the contractors in the construction work of the various projects; (iv) there was violation of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 which resulted in the deprivation and exploitation of the workers and denial of their right to proper living and medical and other facilities under the Act; and (v) the provisions of the Inter-state Migrant Workers (Regulation of Employment and Conditions of Service) Act, 1979 though brought into force as far back as 2nd October 1980 in the Union Territory of Delhi were not implemented by the contractors.²⁸ These averments made on behalf of the petitioner were denied in reply filed on behalf of the Union of India, Delhi Administration and the Delhi Development Authority.

The respondents raised two preliminary objections against the maintainability of the writ petition. The first preliminary objection was that the petitioners had no locus standi to maintain the writ petition. It was contended that only the workmen whose legal rights were violated can approach the court for judicial redress.²⁹ This contention was repelled by the court by saying, "It is true, that the complaint of the petitioners in the writ petition is in regard to the violations of the provisions of various labour laws designed for the welfare of workmen and therefore, from a strictly traditional point of view, it would be only the workmen whose legal rights are violated and who would be entitled to approach the court for judicial redress. But the traditional rule of standing which confines access to the judicial process only to those to whom legal injury is caused or legal wrong is done has now been jettisoned by this Court and the narrow confines within which the rule of standing was imprisoned for long years as a result of inheritance of the Anglo-Saxon System of jurisprudence have been broken and a new dimension has been given to the doctrine of locus standi which has revolutionised the whole concept of access to justice in a way not known before to the Western System of Jurisprudence."³⁰ It was observed, "Public interest litigation which is strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and indicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed."³¹ The court was emphatic in holding that in a country like India where there is a considerable poverty, illiteracy and ignorance, it would result in closing the door of justice to the poor and deprived sections of the community if the traditional rule of standing was blindly adhered to. Therefore, there was a need to relax this rule so that justice may become easily available to the lowly and the lost.³² Therefore, the court observed that in the present case the workmen whose rights are alleged to have been violated are poor, ignorant, illiterate humans who, by reason of their poverty and social and economic disability are unable to approach the court for judicial redress and hence the petitioner have under the liberalized rule of locus standi to maintain the present petition regarding the course of workmen.³³

The second preliminary objection urged on behalf of the respondents was that in any event no writ petition could lie against the respondents, because the workmen whose rights were said to have been violated were employees of the contractors and not of the respondents. It was also contended as part of this preliminary objection that no writ petition under Article 32 of the Constitution could lie against the respondents for the alleged violations of the rights of the workmen under the various labour laws, and the remedy, if any, was only under the provisions of those laws.³⁴ As regard to the first limb of this preliminary objection, it was held that it is true that the workmen were the employees of the contractors but the Union of India, the Delhi Administration and the Delhi Development Authority, could not escape their obligation for the observance of various laws by the contractors. It was held that the Union of India is principal employer and as per Section 20 of the Contract Labour (Regulation and Abolition) Act 1970, if any amenity required to be provided under sections 16, 17, 18 or 19 for the benefit of the workmen employed in an establishment is not provided by the contractor, the obligation to provide such amenity rests on the principal employer. Similar provisions are being contained in the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979. Hence, it is clear all these obligations are enforceable against Union of India. As far as Article 24 of the Constitution is concerned, it was held that it can be enforceable against every one and therefore, not only the contractors are under the constitutional mandate not to employ a child below the age of 14 years, but also the Union of India is obliged to ensure that this constitutional obligation is being complied with by the Union of India. The Union of India, the Delhi Administration and the Delhi Development Authority cannot fold their hands in despair and become silent spectators of the breach of a constitutional prohibition being committed by their own contractors.³⁵ As regards to the observance of the provisions of the Equal Remuneration Act 1946, it was held that the principle of equality embodied in Article 14 of the Constitution finds expression in this Act and therefore, the Union of India cannot ignore its violation by its own contractors and sit quiet by adopting a non-interfering attitude and taking shelter under the executive that the violation is being committed by the contractors and not by it.³⁶ As regards to the Minimum Wages Act, 1948, it was held that it is true the contractors are liable to pay the minimum wages to the workmen employed, but the Union of India is equally responsible to ensure that the minimum wage is paid to the workmen by their contractors.

The other limb of the second preliminary objection was that the petition is not maintainable under Article 32 of the Constitution as there is no violation of fundamental rights and the alleged violation is the violation of the rights of the workmen under various labour laws. The court negated this contention and held that there is violation of Article 24 for employing the children below the age of 14 years in the construction works and also the violation of principle of equality embodied under Article 14 for non-observance of the provisions of the Equal Remuneration Act, 1948. There is also the violation of Article 21 as the workmen were deprived of human dignity.

The next issue which came for consideration before the court was that whether there is any breach of Article 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it. The court held that Article 23 prohibits '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 was observed, "The word 'force' must be constructed to include not only physical or legal force but also force arising from the compulsion of economic circumstance which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is 'forced labour' because he gets what he is entitled under law to receive."³⁷ The court further held that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour' under Article 23. Such a person would be entitled to come to the court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be 'forced labour' and the breach of Article 23 is remedied.³⁸

The court issued directions that in the near future the government should ensure that wages shall be paid by the contractors to the workmen directly without the involvement of any Jamadars and no amount of commission should be deducted or recovered from the wages of the workmen.³⁹ Directions were issued to the Union of India to hold enquiry in the circumstances that any of the workmen has not received the minimum wage payable to him, it shall take the necessary legal action against the contractors whether by way of prosecution or by way of Recovery of the amount of the short-fall.⁴⁰ The court further appointed three ombudsmen and requested them to make periodical inspections of the sites of the construction work for the purpose of ascertaining whether the provisions of these labour laws were being carried out and the workers were receiving the benefits and amenities provided for them under these beneficent statutes or whether there were any violations of these provisions being committed by the contractors so that on the basis of the reports of the three ombudsmen, this Court could give further direction in the matter if found necessary.⁴¹

4.2. Bandhua Mukti Morcha Case

*Bandhua Mukti Morcha v. Union of India*⁴² adds new dimension to the concept of public interest litigation in the area of identification, release and rehabilitation of bonded labourers. In this case the petitioner was an organization dedicated in the work of release of bonded labourers in the country. The petitioner made a survey of some of the stone quarries in Faridabad district near Delhi and discovered that a large number of labourers from different states of the country were working in those stone quarries under inhuman and intolerable conditions and a majority of them were bonded labourers. A letter was addressed to one of the judges of the Supreme Court containing the signatures and thumb impressions of the alleged bonded labourers. The petitioner alleged the violation of various provisions of the Constitution and statutes in regard to the labourers working in these stone

quarries and prayed for the issue of writ for proper implementation of these provisions of the Constitution and statutes with a view to ending the misery, suffering and helplessness of "these victims of most inhuman exploitation". The letter was treated as writ petition by an order of the court dated 26th February 1982 and the court was pleased to appoint commissioners to enquire into the matter and submit the report. The report was submitted on 2nd March 1982. The Report pointed out inter alia that in the stone quarries, "many stone crushing machines were operating with the result that the whole atmosphere was full of dust and it was difficult even to breathe".⁴³ The Report referred to the statements of various labourers that they were not allowed to leave the stone quarries and they were providing forced labour and they did not have pure water to drink but were compelled in most cases to drink dirty water from a nullah. The Report further disclosed that some of the labourers were suffering from tuberculosis and no compensation was paid for the injuries caused due to the accidents arising in the course of employment. There were no facilities for medical treatment and schooling for children. The Report stated that the labourers were living in Jhuggies and the condition of the jhuggies was much worse in such as the jhuggies were made only of straw and most of the people living in jhuggies had no clothes to wear and were shivering from cold and even the small children were moving about without any proper clothing.⁴⁴ Most of the labourers complained that they got very little of wages from the mine lessees or owners of the stone crushers because they were required to purchase explosives with their own money and had to incur many other expenses. The Report ended by observing that these workmen "presented a picture of helplessness, poverty and extreme exploitation at the hands of moneyed people" and they were found "leading a most miserable life and perhaps beast and animal could be leading more comfortable life than these helpless labourers".⁴⁵

On 5th March 1982, when the petition came up for hearing, the court directed the respondents to file the reply and also appointed one more commissioner namely, Dr. Patwardhan of Indian Institute of Technology to carry out a socio-legal investigation and submit a scheme for improving the conditions of these workers in stone quarries. The State of Haryana was directed to provide all assistance to the investigator. Dr. Patwardhan finished his enquiry and submitted his report within remarkably short time. The report of Dr. Patwardhan was a comprehensive, well documented socio-legal study of the conditions in which the workmen engaged in stone quarries and stone crushers live and work and it has made various constructive suggestions and recommendations for the purpose of improving the living conditions of these workmen.⁴⁶

The respondents raised the following preliminary objections:

1. The writ petition is not maintainable under Article 32 of the Constitution as there is no violation of fundamental rights of either the petitioner or the workmen on whose behalf the petition is filed.⁴⁷
2. The court had no power to appoint commissioners and the Reports made by them had no evidentiary value since what was stated in the Reports were based only on the ex-parte statements which were not tested by cross-examination. For this reliance was placed on Order XLVI of Supreme Court Rules 1966 and Order XXVI of the Code of Civil Procedure which deal with commissioners. It was contended that since the commissions issued by the court in the present case did not fall within the terms of any of the provisions of Order XLVI, they were outside the scope of the power of the court and the court was not entitled to place any reliance on their reports for the purpose of adjudicating the issues arising in the writ petition.⁴⁸

Regarding first preliminary objection, the court expressed surprise over the manner in which the State Government showed its urgency to raise this objection so as to avoid an enquiry by the court as to whether the workmen are living in bondage and under inhuman conditions. It was observed, "Public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. The Government and its officers must welcome public interest litigation, because it would provide them an occasion to examine whether the poor and the down-trodden are getting their social and economic entitlements or whether they are continuing to ermine victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningful reality for them or it has remained merely a teasing illusion and a promise of unreality, so that in case a complaint in the public interest litigation is found to be true, they can in discharge of their constitutional obligation root out exploitation and injustice and ensure to the weaker sections their rights and entitlements."⁴⁹ The court further observed, "when a complaint is made on behalf of workmen that they are held in bondage and are working and living in miserable conditions without any proper or adequate shelter over their heads, without any protection against sun and rain, without two square meals per day and with only dirty water from a nullah to drink, it is difficult to appreciate how such a complaint can be thrown out on the ground that it is not violative of the fundamental right of the workmen."⁵⁰ Thus, the court rejected this preliminary objection and held there is violation of the fundamental rights of the workmen and the State of Haryana must ensure that the mine-lessees or contractors, to whom it is giving its mines for stone quarrying operations, observe various social welfare and labour laws enacted for the benefit of the workmen.⁵¹

As far as second preliminary objection is concerned, the same was rejected and the court held that it is not well founded. It is based upon a total misappropriation of the nature of proceeding under Article 32 of the Constitution. The court gave a new interpretation to the term "appropriate proceeding" contained under Article 32.⁵² Justice Bhagwati observed that, "There is no limitation in regard to the kind of proceeding envisaged in clause (1) of Article 32 except that the proceeding must be "appropriate" and this requirement of appropriateness must be judged in the light of the purpose for which the proceeding is to be taken, namely, enforcement of a fundamental right. The Constitution makers deliberately did not lay down any particular form of proceeding for enforcement of a fundamental right nor did they stipulate that such proceeding should conform to any rigid pattern or straight jacket formula as, for example, in England, because they knew that in a country like India where there is so much of poverty, ignorance, illiteracy, deprivation and exploitation, any insistence on a rigid formula of proceeding for enforcement of a

fundamental right would become self-defeating because it would place enforcement of fundamental rights beyond the reach of the common man and the entire remedy for enforcement of fundamental rights which the Constitution makers regarded as so precious and invaluable that they elevated it to the status of a fundamental right, would become a mere rope of sand so far as the large masses of the people in this country are concerned. The Constitution makers therefore advisedly provided in clause (1) of Article 32 that the Supreme Court may be moved by any 'appropriate' proceeding, 'appropriate' not in terms of any particular form but 'appropriate' with reference to the purpose of the proceeding.⁵³ The court held that it would not be correct to say that the court has no power to appoint commissioners and their Reports have no evidentiary value as they are not tested by cross-examination. The court held that to accept this contention would be to introduce the adversarial procedure in a proceeding where in the given situation, it is totally inapposite.⁵⁴ This contention was rejected by the court on two grounds. Firstly, the poor and the disadvantaged cannot possibly produce relevant material before the court in support of their case an equally where an action is brought on their behalf by a citizen acting pro bono public. Therefore, in case of persons of weaker section of the society, the report of such commissioners can be relied. Secondly, the Order XXVI of the Code of Civil Procedure is not exhaustive and does not detract from the inherent power of the Supreme Court to appoint commissioner, if the appointment is found necessary for the purpose of enforcing of fundamental right in the exercise of its constitutional jurisdiction under Article 32 of the Constitution and further Order XLVI of the Supreme Court Rules 1966 cannot in any way militate against the power of the Supreme Court under Article 32. The court further held that, "Order XLVI of the Supreme Court Rules 1966 cannot in any way militate against the power of the Supreme Court under Article 32 and in fact Rule 6 of Order XLVII of the Supreme Court Rules 1966 provides that nothing in those Rules shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice."⁵⁵

The Supreme Court was deeply shocked that the provisions of various statutes⁵⁶ dealing with labourers were violated. Regarding the bonded labour perspective in stone quarries the court was regretted that the government of Haryana showed its reluctance in admitting the existence of bonded labour knowing fully the fact that it was very much prevalent in the area and it has not constituted any vigilance committee in this regard. It was contended on behalf of the respondents that in stone quarries and stone crushers there might be forced labourers but they were not bonded labourers within the meaning of the Bonded Labour System (Abolition) Act, 1976 as there was nothing to show that the labourers have incurred any bonded debt. The court held that there is no substance in the contention and rejected the same. It was held that bonded labour is a form of forced labour as per Section 12⁵⁷ of the Act. The court observed that, "It would be cruel to insist that a bonded labourer in order to derive the benefits of this social welfare legislation, should have to go through a formal process of trial with the normal procedure for recording of evidence. That would be a totally futile process because it is obvious that a bonded labourer can never stand up to the rigidity and formalism of the legal process due to his poverty, illiteracy and social and economic backwardness and if such a procedure were required to be followed, the State Government might as well obliterate this Act from the statute book."⁵⁸ Therefore, the court held that, "whenever it is shown that a labourer is made to provide forced labour, the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is therefore a bonded labourer. This presumption may be rebutted by the employer and also by the State Government if it so chooses but unless and until satisfactory material is produced for rebutting this presumption, the Court must proceed on the basis that the labourer is a bonded labourer entitled to the benefit of the provisions of the Act."⁵⁹

The court drew the attention of the government towards effective rehabilitation of the bonded labourers. In the opinion of the court, the concept of rehabilitation should have the following four main features⁶⁰:

- (i) Psychological rehabilitation must go side by side with physical and economic rehabilitation;
- (ii) The physical and economic rehabilitation should include all major components like agriculture, animal husbandry, promotion of traditional arts and craft, wage employment, health, education, medical care and protection of civil rights;
- (iii) The different components of rehabilitation scheme sponsored by the central and state governments require skillful integration so as to avoid duplication; and
- (iv) The bonded labourers released for rehabilitation should have a choice between various alternatives for their rehabilitation so that they do not slide back to debt bondage.

The court allowed the writ petition and issued directions to the Central Government, State of Haryana and various authorities with the hope that if these are fulfilled it would improve the life condition of these workmen and ensure social justice to them.

4.3. Neerja Chaudhary's Case

*Neerja Chaudhary v. State of Madhya Pradesh*⁶¹ is another momentous decision of the apex court where the judiciary has taken a serious note of the indifferent and callous attitude of the State administration in identifying, release and rehabilitation of bonded labourers. The main issue involved in this case is regarding the rehabilitation of freed bonded labourers. The writ petition is based upon a letter dated 20th September 1987 addressed to one of the judges of the court by a petitioner who is a Civil Rights Correspondent of *Stateman*, a leading newspaper in the country. The petitioner stated that 135 bonded labourers who were released from the stone quarries of Faridabad by an order of the court in the first week of March 1982 were brought back to their respective villages in Bilaspur district in Madhya Pradesh on the promise of their rehabilitation by the Government. The petitioner made a visit of three villages, namely, Kunda, Pandharia and Bhairavapura in Mungli Taluka of Bilaspur district and found that most of the released bonded labourers of these villages have not yet been rehabilitated.⁶² The petitioner enclosed with the letter an article written by her which was published in *Stateman* newspaper on 14th September, 1982. In that article she pointed out that these released bonded labourers are without land and work, facing immense hardship and were at the verge of starvation. When the petitioner interviewed some of them they said they would rather go back to stone quarries for work than starve and added: "we

might have been killed there, but we are also dying here”.⁶³ The petitioner pointed out that some of them owned land at one time but they had lost it to the money lenders and some of them had pledged their jewellery and other small belongings to raise advance for their subsistence. The petitioner further said that there were some rehabilitation schemes like Integrated Rural Development plan and the 20-Point Economic Programme but “the benefits had been cornered by those with political influence and the well to do in villages.”⁶⁴ Therefore, the petitioner urged that it was the statutory obligation of the State Government to ensure the rehabilitation of the freed bonded labourers and the failure to do the same amounted to violation of the fundamental rights of the freed bonded labourers under the Constitution. The petitioner prayed for a direction to the State Government to take steps for the economic and social rehabilitation of the freed bonded labourers released in March 1982.

When the present case came for preliminary hearing, the court asked the State Government for providing information regarding the framing of the scheme for rehabilitation including constitution of Vigilance Committees as well as steps taken for rehabilitating 135 released labourers living in Mungli Taluka of District Bilaspur. An affidavit was filed by the Assistant Labour Commissioner, Bilaspur informing about the various steps taken by the State Government for identification, release and rehabilitation of bonded labourers.⁶⁵ The court expressed its disapproval of the information supplied by the State Government. It found that the attitude of the government was indifferent and inadequate and the State Government is not willing to admit the existence of the bonded labor in its territory. It is of the view that unless a workman was able to show that he is forced to provide labour to the employer in lieu of an advance received by him, he cannot be regarded as bonded labour within the meaning of the definition of that term as laid down in the Bonded Labour System (Abolition) Act, 1976. The court reminded the government of its ruling in Banfhua Mukti Marcha Case⁶⁶ and reasserted its stand in the following words:

“It would be cruel to insist that a bonded labourer in order to derive the benefits of this social welfare legislation, should have to go through a formal process of trial with the normal procedure for recording of evidence. That would be a totally futile process because it is obvious that a bonded labourer can never stand up to rigidity and formalism of the legal process due to his poverty, illiteracy and social and economic backwardness and if such a procedure were required to be followed, the State Government might as well obliterate this Act from the statute book. It is now statistically established that most of the bonded labourers are members of Scheduled Castes and Scheduled Tribes or other backward classes and ordinary course of human affairs would show, indeed judicial notice can be taken of it, that there would be no occasion for a labourer to be placed in a situation where he is required to supply forced labour for no wage or for nominal wage, unless he has received some advance or other economic consideration from the employer and under the pretext of not having returned such advance or economic consideration, he is required to render service to the employer or is deprived of his freedom of employment or of the right to move freely wherever he wants. Therefore, whenever it is shown that a labourer is made to provide forced labour, the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is therefore a bonded labourer. This presumption may be rebutted by the employer and also by the State Government if it so chooses but unless and until satisfactory material is produced for rebutting this presumption, the Court must proceed on the basis that the labourer is a bonded labourer 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 labourers may be providing 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”⁶⁷

This test has been approved by the court for determining whether a labourer is a bonded labourer or not. The State Government pointed out that members of the Legislative Assembly, Collectors and Commissioners and Panchayats are co-operating in the task of identification, release and rehabilitation of bonded labourers. The court observed that these agencies can be of no help in this task it was observed that, “it is difficult to believe that the existence of bonded labour can be discovered and the evil of bonded labour can be wiped out by relying solely on action to be taken but the members of the Legislative Assembly or the bureaucracy or even the Panchayats though their help must certainly be sought and taken.”⁶⁸ Even collector and commissioner, who usually remain busy in multifarious duties cannot be of much use in eradicating this practice because they have to rely upon their subordinates like Tehsildars or Patwaris who may be more sympathetic towards the exploiting class and not the exploited. Similarly, Panchayats being dominated by vested interest can play a very little role. In view of this the court stressed the need for involving social action groups operating at the grass root level in the task of identification, release and rehabilitation of bonded labour.⁶⁹

The court issued direction to the state government to include in the Vigilance Committees the representatives of the Social action groups for identification, release and rehabilitation of bonded labourers. A survey was conducted in April 1982 in districts Satna, Panna, Bastor, Raigarhand Jabalpur regarding the action taken by the State Government for bonded labourers. The counsel for the State government produced a summary of conclusion and recommendations of this survey. One of the recommendation was regarding the reorganizing and activation of Vigilance Committee. Commenting on the suggestions, the court suggested the following steps to be taken:

- (i) The officers appointed for handling the problems of bonded labour should be properly trained and sensitized so that they feel attached to the misery and sufferings of the poor and carry those work with total dedication which may inspire confidence in the minds of the poor included the bonded labour.
- (ii) There should be constant supervision over the activities of the officers handling the problems of bonded labourers.
- (iii) An intensive survey of the areas which have been traditionally prone to the system of debt bondage should be undertaken by Vigilance Committees with the help of social action groups operating in such areas.⁷⁰

The court insisted the state government to implement the suggestions and provide assistance to the 135 freed bonded labourers. The court reminded the State of its constitutional obligation in these words: "It is plainest requirement of Articles 21 and 23 of the Constitution that the 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 the action on the part of the State Government in implementing the provision of the legislation would be the clearest violation of Article 21 apart from Article 23 of the Constitution."⁷¹

5. Conclusion

The above discussion demonstrates the activist role of the Supreme Court of India in the development of new jurisprudence of access to justice. The *Asiad Workers Case*, *Bandhua Mukti Morcha* and *Neerja Chaudhary* are landmark judgments in which the court liberalized the traditional rule of *locus standi* and has evolved the new technique of public interest litigation. By this innovative technique the Supreme Court has become able to see the actual plight of bonded labourers living under the most inhuman conditions of work. From these judgments it becomes crystal clear that the concept of public interest litigation has been welcomed which provides an opportunity to the State Government to see whether the poor and down-trodden are getting their social and economic entitlements and it is also to be noted that there is a need of strong determination, dedication and a sense of social commitment on the part of the administration to identify, release and rehabilitate the bonded labourers in order to wipe out this ugly human practice which is a blot on our national life. Acting as a social engineer, the apex court have to a great extent succeeded in bridging the gap between the law and its implementation. By appointing commissions to look into the work of identification, release and rehabilitation of bonded labourers, the court has been able to compel the State to carry out its statutory responsibilities towards these depressed people. The government should welcome the initiatives taken by the court and response positively to the same. It would give an opportunity to the State to check that whether the poor and downtrodden are getting their social and economic entitlements or whether they continue to remain victims of exploitation at the hands of strong and powerful sections of the community.

¹ Article 23(1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

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

² See *Public Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473 at 1476-1477.

³ Article 35(a) (ii): Notwithstanding anything in this Constitution Parliament shall have, and the Legislature of a State shall not have power to make laws for prescribing punishment for those acts which are declared to be offences under this Part; and the Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub clause (ii).

⁴ *S. P. Gupta v. Union of India* (1981) 4 SCC 87 at pp 204-05.

⁵ *S. S. Prakash, Bonded Labour and Social Justice*, Deep and Deep Publications, New Delhi, 1990, p. 101-02.

⁶ *V. C. Ramachandran, Law of Writs*, Volume I, Eastern Book Company, Lucknow, 2006, p. 967.

⁷ *Ibid*

⁸ *Attorney General v. Independent Broadcasting 5 Authority*, (1973), I. All. E. R.689.

⁹ *Rex v. Greater London Council, Exparte Black Burn*, (1976), 3 All. E. R., 184; *R. v. Metropolitan Police Commissioner, Exparte Black Burn and Others* (1973), All. E. R. 324, and *R. v. Metropolitan Police Commissioner, Exparte Black Burn* (1968) I. All. E. R. 763.

¹⁰ *Richard, A. L. and others (ed.), Growing Through Courts*, London 78. Quoted by V. R. Haragopal Reddy, *Bonded Labour System in India*, Deep and Deep Publications, New Delhi, 1995, p. 67.

¹¹ *Ibid*

¹² *Oklahoma v. Civil Service Commission*, 330 U.S. 127 (1947).

¹³ *Perkins v. Lukens Steel Company*, 330 U.S. 113 (1940).

¹⁴ 397 U.S. 150(1970).

¹⁵ *Per Bhagwati, J. in S. P. Gupta v. Union of India* (1981) 4 SCC 87 at pp 204-05. See also *Charanjit Lal v. Union of India* AIR 1951 SC 41; *State of Orissa v. Madan Gopal Rungta* AIR 1952 SC 12; *Calcutta Gas Co. Ltd. v. State of W.B.* AIR 1962 SC 1044; *Kalyan Singh v. State of U.P.* AIR 1962 SC 1183; *Venkateswara Rao v. Govt. of A.P.* AIR 1966 SC 828; *Bhagwan Dass v. State of U.P.* AIR 1976 SC 1393.

¹⁶ *Y. R. Haragopal Reddy, Bonded Labour System in India*, Deep and Deep Publications, New Delhi, 1995, p. 68.

¹⁷ *S. P. Gupta v. Union of India* AIR 1982 SC 149.

¹⁸ *Id.*, at 210.

¹⁹ For eg *Municipal Council Ratlam v. Vardhchand* AIR 1980 SC 1622; *Akhil Bhartiya Sahitya Karamchari Sang v. Union of India* AIR 1981 SC 344; *Azad Rickshaw Public Union Amritsar v. State of Uttar Pradesh* AIR 1982 SC 80; *D. S. Nakara v. Union of India* AIR 1983 SC 130; *M. C. Mehta v. Union of India* AIR 1982 SC 1087; *Sheela Barse v. Secretary Children Aid Society* (1988) 3 SCC 30; *T. R. Mathur v. State of U. P.* (1993) Suppl. 1 SCC 722.

²⁰ *V. C. Ramachandran, Law of Writs*, Volume I, Eastern Book Company, Lucknow, 2006, p. 961.

- ²¹ S. P. Gupta v. Union of India AIR 1982 SC 149; People's Union for Democratic Rights v. Union of India AIR 1982 SC 1473; Fertilizer Corporation Kamgar Union v. Union of India (1981) 1 SCC 568; Bandhua Mukti Morcha v. Union of India AIR 1984 SC 802.
- ²² As per Justice, Bhagwati in *Bandhua Mukti Morcha v. Union of India* AIR 1984 SC 802, at 211.
- ²³ V. R. Krishna Iyer, J. Judicial Justice (A New Focus Towards Social Justice), p. 8, 1985 (ed.).
- ²⁴ B. R. Sharma and R. P. Nainta, "Bonded Labour and Public Interest Litigation: The Emerging Trends", Kanpur Law Journal, 1983 Vol. 8, p. 1-12 at p. 2.
- ²⁵ S. S. Prakash, *Bonded Labour and Social Justice*, Deep and Deep Publications, New Delhi, 1990, p. 111
- ²⁶ People's Union for Democratic Rights v. Union of India AIR 1982 SC 1473; Bandhua Mukti Morcha v. Union of India AIR 1984 SC 802; Neerja Chaudhary v. State of Madhya Pradesh AIR 1984 SC 1099; Sarjit Roy v. State of Rajasthan AIR 1982 SC 238; Mukesh Advani v. State of M. P. AIR 1985 SC 1363; P. Sivaswamy v. State of Andhra Pradesh AIR 1988 SC 1863; Laborers working on Salal Hydro-Electric Project v. State of Jammu and Kashmir (1984) 3 Supreme Court Cases 538; Balram and others v. State of M.P and others AIR 1990 SC 44. etc.
- ²⁷ AIR 1982 SC 1473.
- ²⁸ *Id.* at 1479.
- ²⁹ *Id.* at 1482.
- ³⁰ *Id.* at 1482.
- ³¹ *Id.* at 1476-77.
- ³² *Id.* at 1482.
- ³³ *Id.* at 1483.
- ³⁴ *Id.* at 1482.
- ³⁵ *Id.* at 1484.
- ³⁶ *Ibid.*
- ³⁷ *Id.* at 1490.
- ³⁸ *Ibid.*
- ³⁹ *Id.* at 1491.
- ⁴⁰ *Id.* at 1491
- ⁴¹ *Id.* at 1491-92.
- ⁴² AIR 1984 SC 802.
- ⁴³ *Id.* at 808.
- ⁴⁴ *Ibid.*
- ⁴⁵ *Id.* at 809.
- ⁴⁶ *Id.* at 810.
- ⁴⁷ *Id.* at 810-811.
- ⁴⁸ *Id.* at 812.
- ⁴⁹ *Id.* at 811.
- ⁵⁰ *Ibid.* In this context the court made reference of Articles 21, 39(e) and (f), 41 and 42 of the Constitution of India.
- ⁵¹ *Id.* at 812.
- ⁵² Article 32(1) reads, "The right to move Supreme Court by appropriate proceedings for enforcement of the rights conferred by this Part is guaranteed."
- ⁵³ Bandhua Mukti Morcha v. Union of India AIR 1984 SC 802, at 813-814.
- ⁵⁴ *Id.* at 816.
- ⁵⁵ *Id.* at 817.
- ⁵⁶ The statutes which were alleged to have been violated included, the Mines act, 1982; Inter State Migrant Workmen (Regulation and Abolition) Act, 1970; The Minimum Wages Act, 1948 and The Bonded Labour System (Abolition) Act, 1976. See at 817-824.
- ⁵⁷ Section 12 reads, "It shall be the duty of every District Magistrate and every officer specified by him under section 10 to inquire whether, after the commencement of this Act, any bonded labour system or any other form of forced 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 system of forced labour, he shall forthwith take such action as may be necessary to eradicate the enforcement of such forced labour."
- ⁵⁸ Bandhua Mukti Morcha v. Union of India AIR 1984 SC 802, at 827.
- ⁵⁹ *Id.* at 827.
- ⁶⁰ *Id.* at 828.
- ⁶¹ AIR 1984 SC 1099.
- ⁶² Out of 135 released bonded labourers, 75 belonged to these three villages and 45 out of them were from village Kunda and 75 released bonded labourers from these three villages belonged to Scheduled Castes. *Id.* at 1101.
- ⁶³ *Id.* at 1101.
- ⁶⁴ *Ibid.*
- ⁶⁵ The figures supplied by the government in its affidavit showed that in all 1531 bonded labourers were identified in the year 1978, 75 in 1980, 57 on 1981 and 114 in 1982.
- ⁶⁶ AIR 1984 SC 802.

⁶⁷*Id.* at 1103.

⁶⁸*Ibid*

⁶⁹*Id.* at 1104.

⁷⁰*Id.* at 11105-06.

⁷¹*Id.* at 1106.

