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## BANDHUA MUKTI MORCINA V. UNION OF INDIA

Carmen S. Giordano

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## COMMENTS

INTERNATIONAL LAW—BONDED LABOR IN INDIA—*Bandhua Mukti Morcha v. Union of India* — Among the many problems facing India today is the existence of bonded labor, a practice involving one of the most egregious deprivations of liberty and human dignity known to mankind. Despite the formal prohibitions and governmental prescriptive efforts, debt bondage<sup>1</sup> still persists in India. In *Bandhua Mukti Morcha v. Union of India*,<sup>2</sup> the Supreme Court of India<sup>3</sup> addressed the problem of bonded labor and the related problem of inhuman working and living conditions of stone quarry workers and their families in the State of Haryana.<sup>4</sup>

Article 23 of the Indian Constitution<sup>5</sup> prohibits "[t]raffic in human

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1. The phrase "debt bondage" is used synonymously with the phrase "bonded labor." Mohamed Awad, U.N. Economic and Social Council Special Rapporteur on Slavery, U.N. Doc E/4168/Rev. 1, 75 (1966) (hereinafter U.N. Report on Slavery).

2. 1984 A.I.R. (S.C.) 802.

3. For a description and analysis of the Indian Supreme Court, see G. SCHUBERT & D.J. DANIELSKI, *COMPARATIVE JUDICIAL BEHAVIOUR* 221-59 (1960).

4. 1984 A.I.R. (S.C.) 802, 805-06. The Court cited the following government studies that evidenced contemporary existence of bonded labor: Report of the Centre for Rural Development Administration, India Institute of Public Administration to the Ministry of Labour, "Rehabilitation of Bonded Labour in Moghyn District, Bihar;" Report of the Public Policy and Planning of the Indian Institute of Public Administration to the Ministry of Labour, "Evaluation Study of Bonded Labour—Rehabilitation Scheme in Tehri—Garwal, V.P.;" Report on Laxmi Dhar Misra, Director-General (Labour Welfare) based on "On the Spot Studies Regarding Indemnification, Release of Bonded Labourers and Rehabilitation of Freed Labourers in Uttar Pradesh, Madhya Pradesh, Andhra Pradesh, Karnatakay, Orissa, Bihar, Rajasthan, Taminadu and Kerala," and the Report of the National Seminar on "Identificaton and Rehabilitation of Bonded Labour," February 7-9, 1983. *Id.* The Court stated that bonded labor was found mainly in stone quarries and brick kilns. *Id.* at 829.

5. Enacted on January 26, 1950, the Indian Constitution was formulated by an indirectly elected Constituent Assembly and created a federal republic of fifteen states. On the central level, the executive power was vested in the President. The President was elected by an electoral college comprised of members of the central legislature and state legislatures.

Central legislative power was vested in a bicameral house. The Rajya Sabha or upper house, is comprised of 250 members and the Lok Sabha, lower house, consists of 500 members.

Members of the Supreme Court and central high courts were to be appointed by the

beings and *begars* and other similar forms of forced labour."<sup>6</sup> The Bonded Labour System (Abolition) Act of 1976 [Bonded Labour Act], enacted pursuant to article 23, prohibits all practices of bonded labor.<sup>7</sup> Justice Bhagwati, writing for the *Bandhua Mukti Morcha* court, relied on these two laws and other constitutional and statutory norms in providing specific sanctions to eliminate the current practice of bonded labor in the State of Haryana.<sup>8</sup>

Debt bondage is a system of usury under which a debtor and his descendants or dependents are forced by creditors to work without reasonable or legal wages, or with no wages whatsoever, to extinguish a presumed debt.<sup>9</sup> Deprivations of wealth, respect, skill and education are primary contributing factors to the practice of bonded labor.<sup>10</sup> Bonded laborers, a group consisting mainly of Scheduled Castes,<sup>11</sup>

executive, Supreme Court justices were protected from removal by the requirement of a two-thirds majority in each house for impeachment. The central judiciary was vested with original and appellate jurisdiction, and was given the right of judicial review.

Under the Indian Constitution either the Constituent Assemblies, the Legislature, or the general electorate (by ratification) can amend the Constitution. By January 25, 1980, there were a total of 45 amendments to the Indian Constitution. See A.P. BLAUSTEIN, *CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, INDIA*, 9-10 (1980). See also P.K. GHOSH, *THE CONSTITUTION OF INDIA, HOW IT HAS BEEN FRAMED* (1966).

6. INDIAN CONST. art. 23(1) (emphasis in original). *Begar* is an Indian term used to denote a form of forced labor under which a person is compelled to work without remuneration. *Asiad Construction Workers*, [1983] 1 S.C.R. 456, 485-86. See also S. MITRA, *LEGAL AND COMMERCIAL DICTIONARY* (Calcutta 1973) (defining *begar* as "forced labour, compulsory and uncompensated service.").

7. Bonded Labour System (Abolition) Act of 1976, INDIA A.I.R. MANUAL, Vol. 2 (4th ed. 1979) [hereinafter *Bonded Labour Act*].

8. 1984 A.I.R. (S.C.) 802, 805.

9. See *The Bonded Labour Act* *supra* note 7. "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 exorbitant and such bondage cannot be interpreted as the result of any legitimate contract or agreement." *Id.* at 33-34.

"Bonded labour system" is defined in § 2, cl. (g) of the Bonded Labour Act, 1976. See *infra* notes 40-46 and accompanying text.

10. U.N. Report on Slavery, *supra* note 1 at 75. "Poverty and ignorance seem to be responsible for some of these people falling prey to the usurious money-lenders." *Id.*

11. See generally P.U. KANE, 2 *HISTORY OF DHARMASTRA (ANCIENT AND MEDIAEVAL RELIGIOUS AND CIVIL LAW)* 23 (1941). Common to all conceptions of the caste system are the following features: (1) heredity, a theory that man is assigned to a particular caste by birth into that caste; (2) endogamy and exogamy, restrictions relating to marriage; (3) restrictions concerning food, what food and water may be taken and from whom it may be taken; (4) occupation, strict limitations on permissible work; (5) gradation of castes, stratification of individuals on a social scale ranging as low as untouchability.

Members of castes are conditioned early in life to view their superior or inferior status as a "natural" or "divine" expression of the will of God and are taught to be content with their pre-determined stations in society. See generally M.S. McDOUGAL, H.B. LASWELL, LUNG-CHU CHEN, *HUMAN RIGHTS AND WORLD PUBLIC ORDER* (1980) [here-

Scheduled Tribes<sup>12</sup> and landless agricultural workers, often subject themselves to bondage because they lack the most basic resources of well being.<sup>13</sup>

In the instant case, plaintiff Bandhua Mukti Morcha, a public interest organization devoted to the eradication of bonded labor in India, complained to the Court about the existence of bonded labor in the State of Haryana.<sup>14</sup> According to the plaintiff's survey of stone quarries in the Faridabad district of the state, over forty bonded laborers were working in those quarries.<sup>15</sup>

The plaintiff detailed the prevalence of bonded labor, and also described the inhuman conditions under which the laborers were working.<sup>16</sup> The plaintiff characterized numerous injuries and illnesses as resulting from safety and health violations.<sup>17</sup> This was primarily because no training was provided for dynamiting and stone crushing and no compensation or medical treatment was provided for the "innumerable cases of fatal and serious injuries"<sup>18</sup> caused by such work. For example, unregulated stone-dust pollution created a prevalence of tuberculosis.<sup>19</sup>

A report submitted by two Court appointed advocates, Ashok Srivastava and Ashok Panda, (Srivastava/Panda Report) confirmed the plaintiff's allegations and listed specific numerous cases of bonded labor.<sup>20</sup> By way of example, the workers and their families were forced to drink polluted water, live in thatched roof "jhuggies" and do without any type of latrines or washing facilities.<sup>21</sup> The Report described in

inafter Human Rights].

Although India is commonly cited as the "contemporary paradigm of caste society," other countries exhibit "indicia of high stratification and immobility." For example, Japan, Indonesia, Tamiland, Polynesia and Afghanistan exhibit "severe class differentiations [which] approximate the hierarchial and heredity deprivations characteristic of 'caste,' and the children who begin with little continue to be inordinately and permanently handicapped vis-a-vis the children who begin with much." See HUMAN RIGHTS, *supra* at 512 and works cited therein. See also P.T. BORALE, SEGREGATION AND DESEGREGATION (1968) and J. M. DERRETT, RELIGION LAW AND THE STATE IN INDIA, (1968).

12. See *supra* note 11.

13. Tribal people may incur their bonded debt to pay for the "bride price" for example. U.N. Report on Slavery, *supra* note 7 at 170. "Bride Price" is defined as "goods or valuables transferred by the groom's kin to recompense the bride's relatives for her absence." MARVIN HARRIS, AN INTRODUCTION TO GENERAL ANTHROPOLOGY (1975).

14. 1984 A.I.R. (S.C.) at 807-08.

15. *Id.* at 807.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* The plaintiff also claimed that an illegal system of "Thekedars" or middlemen, extracted 30% of the miners' paltry wages as commission. *Id.* at 808.

20. *Id.*

21. *Id.*

detail the truly miserable working and living conditions of the laborers and their families in the Godhokhor stone quarries of Haryana.<sup>22</sup>

A letter written by the plaintiff on February 25, 1982 addressed to the Supreme Court contained these allegations of bonded labor in the Faridabad district.<sup>23</sup> The Court treated this letter as a writ petition and issued notice on it February 26, 1982.<sup>24</sup> On March 5, 1982, the writ petition came up for hearing.<sup>25</sup> The Court then ordered that copies of the Srivastava/Panda Report be provided to all the defendant mine lessees and owners of the stone crushers to enable them an opportunity to file a reply to the Report.<sup>26</sup> The Court also appointed Dr. Patwardhan of the Indian Institute of Technology to conduct a socio-legal investigation of the stone quarries.<sup>27</sup>

By the Court's direction, the State of Haryana agreed to deposit a sum of 1500 rupies to meet the expenses of the Patwardhan investigation.<sup>28</sup> The Court also issued a preliminary order for the release of the bonded laborers named in the Srivastava/Panda Report, and relied upon the Additional Solicitor General of Haryana's representation that potable water would be immediately provided for the workers.<sup>29</sup>

The Indian Constitution provides that "[n]o person shall be deprived of his life or personal liberty except according to procedure established by law."<sup>30</sup> The Indian Supreme Court in *Francis Cornlie Mullins v. W.C. Khambra*<sup>31</sup> has interpreted that article in the Constitution to mandate a fundamental right of every citizen "to live with human dignity, free from exploitation."<sup>32</sup>

In *People's Union for Democratic Rights and Others v. Union of India and Others* [*Asiad Construction Workers case*],<sup>33</sup> the Court held

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22. *Id.*

23. *Id.* at 807-08.

24. *Id.* at 808.

25. *Id.* at 809.

26. *Id.*

27. *Id.* The Court directed that Dr. Patwardhan carry out this "with a view to putting forward a scheme for improving the living conditions for the workers working in the stone quarries." *Id.* The Patwardhan Report further confirmed the plaintiff's allegations. *Id.* at 821.

28. *Id.* at 810.

29. *Id.* The Court subsequently noted that although the State of Haryana agreed to supply drinking water, none in fact was provided. *Id.*

30. INDIAN CONST., Part III, art. 21.

31. 1980 A.I.R. (S.C.) 849.

32. 1984 A.I.R. (S.C.) at 811. *See also* *Maneka Gandhi v. Union of India*, 1978 A.I.R. (S.C.) 597.

33. 1982 A.I.R. (S.C.) 1473. In this case, laborers were recruited and employed under conditions similar to those in the instant case to perform construction work for the Asian Games in Delhi. *Id.*

that every form of forced labor is prohibited by article 23<sup>34</sup> and that it is immaterial whether or not the laborer was somehow remunerated.<sup>35</sup> Article 23, the Court reasoned, was designed to protect individuals not only against the State but also against private citizens.<sup>36</sup>

In reaching its decision in the *Asiad Construction Workers* case, the Court stated that the Constituent Assembly considered article 4 of the Universal Declaration of Human Rights<sup>37</sup> and deliberately drafted article 23 to proscribe conduct beyond that prohibited by article 4.<sup>38</sup> In interpreting article 23, the court also noted:

This Article 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. The practice of forced labour is condemned in almost every international instrument dealing with human rights . . . as far back as 1930 long before the Universal Declaration of Human Rights came into being, [the] International Labour Organization adopted Convention No. 29 laying down that every member of the International Labour Organization which ratifies this convention shall "supress the use of forced or compulsory labour in all its forms" and this prohibition was elaborated in Convention No. 105 adopted by the International Labor Organization in 1957. The words "forced or compulsory labour" in Covention No. 29 had, of course, a limited meaning but that was on account of the restricted definition of these words given in Article 2 of the Convention. Article 4 of the European Convention of Human Rights and Article 8 of the International Covenant on Civil and Political Rights also prohibit forced or compulsory labour. Article 23 is in the same strain and it enacts a prohibition against forced labour in whatever form it may be found.<sup>39</sup>

The *Asiad Construction Workers* Court also relied on *Maneka Gandhi v. Union of India*<sup>40</sup> for the proposition that the Court should expand the ambit of the fundamental rights provisions of the Indian

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34. INDIAN CONST., art. 23(1). See *supra* note 5 and accompanying text.

35. 1982 A.I.R. (S.C.) 1473, 1486. The defendant State of Delhi argued that article 23 only prohibits forced labor that is accompanied by some form of remuneration. *Id.*

36. *Id.* at 1474.

37. *Id.* at 1487. Article 4 states: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms." Universal Declaration of Human Rights, G.A. Res. 217, art. 4, U.N. Doc. A/810, at 73 (1948).

38. 1982 A.I.R. (S.C.) at 1486. "Slave trade" as prohibited by article 4 was changed to "traffic in human beings and *begar* and other similar forms of forced labour." *Id.*

39. *Id.* at 1487.

40. 1978 A.I.R. (S.C.) 597.

Constitution, rather than dilute their meaning and content.<sup>41</sup>

Enacted pursuant to article 23, the Bonded Labour Act<sup>42</sup> includes specific prohibitions and sanctions regarding bonded labor systems. Section 2(g) of the Act defines "bonded labour system" as:

The system of forced, or partly forced labour under which a debtor enters . . . or is presumed to have entered, into an agreement with the creditor to the effect that, (i) in consideration of an advance obtained by him or by any of his lineal ascendants or decendants (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 social obligation, or (iii) for any economic consideration received by him or by any of his lineal ascendants or decendants, he would —

(1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or (2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or (3) forfeit the right to move freely throughout the territory of India, or (4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him.<sup>43</sup>

Sections 4, 5 and 6 of the Act terminated all previously existing bonded debts upon commencement of the Act.<sup>44</sup> Sections 10, 11 and 12 required that all District Magistrates seek out and eradicate all traces of bonded labour from their jurisdictions.<sup>45</sup>

Sections 13, 14 and 15 provided for the establishment of Vigilance Committees in every district and district subdivision in India.<sup>46</sup> These committees were responsible for ensuring compliance with the Act, ad-

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41. 1982 A.I.R. (S.C.) at 1487. The issue in *Maneka Gandhi* case was whether the right to travel out of the country was part of personal liberty as provided in articles 14, 19 and 21 of the Indian Constitution. The Court held that this right was embodied in the Constitution and that the plaintiff's passport could only be impounded by a quasi-judicial proceeding and not by an *ex parte* order. *Id.*

42. Bonded Labour Act, *supra* note 7.

43. *Id.* § 2(g).

44. *Id.* §§ 4, 5, 6.

45. *Id.* §§ 10, 11, 12.

46. *Id.* §§ 13, 14, 15.

vising District Magistrates of efforts that should have been taken to enforce the Act and for providing the economic and social rehabilitation of the freed laborers.<sup>47</sup> Section 15 places the burden of disproving a violation of the Act, alleged by a particular Vigilance Committee or laborer upon the creditor.<sup>48</sup>

Part IV of the Indian Constitution, entitled Directive Principles of State Policy<sup>49</sup> requires that the federal and state governments "strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."<sup>50</sup>

The Directive Principles differ from the Fundamental Rights of Part III<sup>51</sup> in that the principles are not enforceable in the courts of India.<sup>52</sup> Notwithstanding the nonjusticiability of the Directive Princi-

47. *Id.*

48. *Id.* § 15.

49. INDIAN CONST., part IV, arts. 36-51. "The Directive Principles set forth the economic, social, and political goals of the Indian Constitutional system." *Id.* See also WILLIAM O. DOUGLAS, FROM MARSHALL TO MUKHERJEA, STUDIES IN AMERICAN AND INDIAN CONSTITUTIONAL LAW (1956).

Article 39, for example, mandates equality in resource distribution, maintenance of an equal distribution of wealth and equal pay for men and women. INDIAN CONST., art. 39.

50. INDIAN CONST., art. 38(2).

51. INDIAN CONST., part III; see *supra* notes 30-48 and accompanying text.

52. *Id.* art. 37. The Directives were based on the Irish Constitution. "Their utility lies in the fact that although they are not enforceable by any court, they being fundamental principles in governance of the country, the State should apply these principles in the government and in the administration and also should apply these principles in making the laws in the country." P.B. MUKHAYI, THREE ELEMENTAL PROBLEMS OF THE INDIAN CONSTITUTION (1972).

See also His Holiness Kesavananda Bharati Sripadagalauaru v. State of Kerala, [1973] Supp. S.C.R. 1. (See *infra* note 55 and accompanying text). The Directive Principles also differ from the Fundamental Rights provisions in the following manner: The Directives must be implemented by legislation, and absent any law carrying out a Directive policy, neither the States nor individuals can violate any existing law or legal right under color of following a Directive. *Mangru v. Commissioners of Budge Budge*, 1953 A.I.R. (Cal. L.J.) 333, 334. The Courts cannot declare a law void on the ground that it contravenes any of the Directive Principles. *Deep Chand v. State of Uttar Pradesh*, 1959 A.I.R. (S.C.) 648. See generally D.D. BASU, CONSTITUTIONAL LAW OF INDIA (1977) [hereinafter BASU].

Lauterpacht distinguished three categories of human rights: Personal rights such as freedom of speech, assembly and press, political rights such as the right to elect by free and secret ballot the officers of one's government, and social and economic rights such as the right to public assistance. H. Lauterpacht, *International Law and Human Rights*, 64 HARV. L. REV. 519 (1950-51).

The fundamental rights of Part III would include the first two groups and the Direc-

ples, courts in India have relied on them to define the constitutional obligations of the States<sup>53</sup> and to interpret and give meaning to the Fundamental Rights provisions.<sup>54</sup> Courts have also construed the Directive Principles and Fundamental Rights as supplementing each other,<sup>55</sup> despite the tension existing between the two as to which should take precedence in cases of conflict.<sup>56</sup>

Unlike the United States Constitution, the Indian Constitution explicitly guarantees the right to petition the Supreme Court for the enforcement of fundamental rights.<sup>57</sup> Although standing is conferred under article 32 only to individuals who have themselves suffered a violation of a fundamental right,<sup>58</sup> the judiciary has expanded the traditional rules of *locus standi* under this article. In *S. P. Gupta & Ors. v. Union of India & Ors.*, [*Judges Appointment and Transfer case*],<sup>59</sup> the Court held that should a person who has suffered a rights

trive Principles of Part IV would include the third type of rights described by Lauterpacht.

53. In the instant case, Justice Bhagwati wrote that "when the Directive Principles of State Policy have obligated the Central and the State Governments to take steps and adopt measures for the purpose of ensuring social justice to the have-nots and the handicapped, it is not right on the part of the concerned governments to shut their eyes to the inhuman exploitation to which the bonded labourers are subjected." *Bandhua Mukti Morcha*, 1984 A.I.R. (S.C.) at 806.

54. *Id.* at 811-16. *See also* In re Kerala Education Bill, 1958 A.I.R. (S.C.) 956, 966; *Marwa Manghani v. Sanghram Sampat*, 1960 A.I.R. (Punjab) 35, 39.

55. *Kesavanada v. State of Kerala*, 1973 A.I.R. (S.C.) 1461; *M.H. Quareshi v. State of Bihar*, 1958 A.I.R. (S.C.) 731. *See also* V.G. RAMACHANDRAN, FUNDAMENTAL RIGHTS AND CONSTITUTIONAL REMEDIES 927-43 (2d ed. 1970).

56. In a series of cases the Indian Supreme Court held that the Directive Principles must conform and run subsidiary to the Fundamental Rights. *State of Madras v. Champatian Dorirajon*, 1951 S.C.R. 515; *Hanif Queshi v. State of Bihar*, 1958 A.I.R. (S.C.) 731; In re Kerala Education Bill, 1958 A.I.R. (S.C.) 1956.

Through the 42nd and 44th amendments, Parliament has given the Directive Principles precedence over fundamental rights and reiterated the nonjusticiability of the Directive Principles. INDIAN CONST., Part IV, art. 31(C). The fundamental rights are subordinated to Directive Principles. PARAS DIWAN, ABOGATION OF THE FORTY-SECOND AMENDMENT (1978). Articles 14 and 19 shall not obstruct implementation of any of the Directive Principles. R.S. SARKAR, AN APPROACH TO THE CONSTITUTION OF INDIA (1981).

Article 14 provides that "[t]he State shall not deny to any person equality before the law or equal protection of the laws within the territory of India." INDIAN CONST., art. 14. Article 19 included the right of freedom of speech and expression, the right to assemble, to form associations and unions, to travel within India, to reside anywhere in India and to engage in any profession or occupation. *Id.* art. 19; *see generally* RAJENDRA SHARMA, CONFLICT OF FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES (1977).

57. INDIAN CONST., art. 32. "The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed." *Id.*

58. *Id.* *See also* *Asiad Construction Workers*, 1982 A.I.R. (S.C.) at 1484.

59. 1982 A.I.R. (S.C.) 149.

violation be unable to approach the Court due to a socially or economically disadvantaged position, some other person could represent the aggrieved party for the purpose of judicial redress.<sup>60</sup> Therefore, any citizen or public organization acting *bona fide* and having a sufficient interest in the litigation can maintain an action on behalf of another.<sup>61</sup> Moreover, it was held that when the impoverished of society are concerned, the Court would not require a leave writ petition to be filed, but would simply accept a letter from an individual acting *pro bono publico*.<sup>62</sup>

A number of relevant substantive labor laws provide work time and manner regulations beyond the blanket prohibitions of bonded labor found in article 23 and the Bonded Labour Act. The Minimum Wages Act of 1948,<sup>63</sup> made applicable to the entire country of India,<sup>64</sup> provided for minimum wage rates,<sup>65</sup> normal working hours and days, overtime,<sup>66</sup> wage schedules for different types of work,<sup>67</sup> and procedures for enforcing the Minimum Wages Act and remedying violations thereto.<sup>68</sup>

Pursuant to a December 2, 1981 Central Government Notifica-

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60. *Id.* at 377. This view of standing applied not only to article 32 but also to article 226, governing standing before the High Courts. *Bandhua Mukti Morcha*, 1984 A.I.R. (S.C.) at 813.

61. *Judges Appointment and Transfer Case*, 1982 A.I.R. (S.C.) 149, 151. The parameters of "sufficient interest" would have to be determined on a case-by-case basis. [1983] 2 S.C.R. 379 (this statement of the court was edited out of the official reporter). The government of India, through the Minister for Law, Justice and Company Affairs, sought to discontinue the terms of certain High Court Judges who did not consent to permanent appointments in other Courts. The Court held that this violated the Constitution and conferred standing in a number of practicing attorneys. The plaintiff attorneys' interest in "preserving the integrity and independence of the judicial system" constituted "sufficient interest" in the litigation. [1983] 2 S.C.R. at 379 (this statement of the court was also edited out of the official reporter).

Among the cases cited by the Indian Court to support this view of standing was *United States v. Raines*, 362 U.S. 17 (1960). [1983] 2 S.C.R. at 377. In *Raines*, Justice Brennan wrote that a defendant might challenge the constitutionality of applications of a law to others where the application "would itself have an inhibitory effect on freedom of speech." 362 U.S. at 22.

62. *Judges Appointment and Transfer*, 1982 A.I.R. (S.C.) at 150-51. See also *Asiad Construction Workers*, 1983 A.I.R. (S.C.) at 1483.

63. The Minimum Wages Act of 1948, INDIA A.I.R. MANUAL, Vol. 25 (4th ed. 1979).

64. *Id.* at § 1. The State of Jammu and Kashmir were the only two states excepted from the Act's application. *Id.*

65. *Id.* §§ 3, 4, 12.

66. *Id.* §§ 13, 14, 15.

67. *Id.* § 16.

68. *Id.* §§ 20-31.

tion,<sup>69</sup> the minimum wage fixed for miners, which included stone quarry workers,<sup>70</sup> was 9.75 rupies per day for those working above ground and 11.25 rupies per day for those working below ground.<sup>71</sup> The Notification also prescribed separate minimum rates for the different occupations of shot firer, stone breaker, stone carrier, mud remover and water carrier.<sup>72</sup>

The Mines Act of 1952<sup>73</sup> was explicitly recognized by Haryana in a 1982 amendment to the Punjab Minor Mineral Concession Rules of 1964.<sup>74</sup> Three new sections to the Rules provided by the Haryana amendment required that mine lessees and contractors abide by the Mines Act of 1952.<sup>75</sup> Chapters V, VI and VII of the Mines Act of 1952 along with chapters V, VI and IX of the Mines Rules of 1955,<sup>76</sup> regulate worker health, safety, wages and hours, and include detailed provisions relating to drinking water, conservancy facilities and injury compensation.<sup>77</sup>

Two other Central Government Acts relevant to the instant case are the Contract Labour (Regulation and Abolition) Act of 1970<sup>78</sup> [Contract Labour Act] and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act of 1979 [Migrant Workmen Act].<sup>79</sup> The former Act obligates every contractor in an es-

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69. *Bandhua Mukti Morcha*, 1984 A.I.R. (S.C.) at 822-23.

70. *Id.* at 823.

71. *Id.*

72. *Id.* The Mines Vocational Training Rules (India Code 1966), also specifically required special training for all shot firers. *Id.*

73. The Mines Act of 1952 *India A.I.R. Manual*, Vol. 25 (4th ed. 1979).

74. Punjab Minor Mineral Concession (Haryana First Amendment) Rules, India Subs. Leg. 1982.

75. *Id.*

76. The Mines Rules, 1955, chs. V, VI, IX; The Mines Act of 1952, *supra* note 73, chs. V-VII.

77. The Mines Act of 1952, *supra* note 73. Section 2(i) of the Mines Act of 1952 defines "mine" to include "any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on including stone quarries. "Minerals" as defined in section 2(ii) include "all substances which can be obtained from the earth by mining, digging . . ." *Id.*

Although section 3(1)(b) of the Act exempts mines engaged in the extraction of gravel and building stone, the exemption only applies, according to section 3(1)(b)(i), when "the workings do not extend below superjacent ground." *Id.* The stone quarries at issue did extend below superjacent ground and the Act was found applicable. *Bandhua Mukti Morcha*, 1984 A.I.R. (S.C.) at 817-18.

78. The Contract Labour (Regulation and Abolition) Act, *INDIA A.I.R. MANUAL*, Vol. 11 (4th ed. 1979). (hereinafter Contract Labour Act).

79. Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act of 1979, *INDIA A.I.R. MANUAL*, Vol. 23 (4th ed. 1979) [hereinafter Migrant Workmen Act]. Both the Contract Labour Act and the Migrant Workmen Act "are clearly

establishment with twenty or more contract laborers<sup>80</sup> to provide, among other things, canteens, restrooms and first aid facilities.<sup>81</sup> The latter Act, along with the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules of 1980 [Migrant Workmen Rules],<sup>82</sup> provides regulations for wages, recruitment of workers, compensation for travel and relocation, medical facilities, protective clothing, drinking water, latrines, washing facilities and housing.<sup>83</sup> These provisions, pursuant to section 1(a) of the Migrant Workmen Act, were made applicable to every establishment in which five or more inter-state migrant workers were employed.<sup>84</sup>

Before applying this body of law to the facts in *Bandhua Mukti Morcha*, Justice Bhagwati first addressed two preliminary objections raised by the defendants.<sup>85</sup> First, the defendants argued that even if the plaintiff's allegations were assumed to be true, the plaintiff nonetheless lacked standing under article 32 because no fundamental right of the plaintiff or the workers had been violated.<sup>86</sup> The Court found that although anxiety on the part of the defendant mine lessees was understandable, the objection as urged by the State of Haryana was "incomprehensible" and "difficult to appreciate" given the allegations of debt bondage, subhuman working and living conditions and given the responsibility of state governments to eradicate these practices.<sup>87</sup> The second objection was against the form of the reports the Court had ordered and received into evidence.<sup>88</sup>

Responding to the first objection, the Court reasoned that the article 21 right to live with human dignity as interpreted in the *Francis*

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intended to ensure basic human dignity to the workmen . . . ." *Asiad Construction Workers*, 1982 A.I.R. (S.C.) 1473, 1485. Violations of the rights conferred by the Acts are also violations of article 21 of the Constitution. *Id.*

80. Section 2(1)(b) of the Contract Labour Act states that workers are "contract labour[ers]" when they are hired to work in an establishment through a "contractor." *Bandhua Mukti Morcha*, 1984 A.I.R. (S.C.) at 823.

81. Contract Labour Act, *supra* note 78, §§ 16-20.

82. Migrant Workmen Rules, India Cen. Acts 1980.

83. *Id.* See *Bandhua Mukti Morcha*, 1984 A.I.R. (S.C.) at 819.

84. *Bandhua Mukti Morcha*, 1984 A.I.R. (S.C.) at 819. The phrase "Inter-State migrant workmen" is defined pursuant to § 2(1)(e) of the Migrant Workmen Act as "any person who is recruited by or through a contractor in one State under an agreement or other agreement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment." *Id.*

85. *Id.* at 810-17.

86. *Id.* at 811. Both the Additional Solicitor General appearing for the State of Haryana and Mr. Phadke, the attorney for one of the defendant mine lessees made this argument. *Id.*

87. *Id.* at 811.

88. *Id.* at 812.

*Mullins* case<sup>89</sup> derived "its life breath" from the Directive Principles of State policy.<sup>90</sup> Article 39, clauses (e) and (f) along with articles 41 and 42, in particular, were the source of the right to basic human dignity.<sup>91</sup> Pursuant to these Directives, the article 21 right to human dignity included the assurance of just and humane working conditions, protection of worker health, opportunities for children to develop in a healthy manner, educational facilities and maternity relief for women.<sup>92</sup>

Although the Directive Principles are nonjusticiable,<sup>93</sup> the *Bandhua Mukti Morcha* Court held that when legislation has been enacted to assure these protections, a state's failure to implement and observe the legislation would constitute a denial of the article 21 right to live with human dignity.<sup>94</sup> Moreover, Justice Bhagwati reasoned that article 256, which requires states to exercise their executive power to ensure compliance with the laws of Parliament,<sup>95</sup> also supported this conclusion.<sup>96</sup>

Justice Bhagwati further stated that pursuant to the rule set down in the *Asiad Construction Workers* case,<sup>97</sup> the State is constitutionally obligated to ensure that there are no fundamental rights violations of any of its citizens, particularly when they are members of the weaker

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89. *Francis Mullins*, 1980 A.I.R. (S.C.) 849.

90. *Bandhua Mukti Morcha*, 1984 A.I.R. (S.C.) at 811.

91. *Id.* Article 39(e) of the Indian Constitution provides that "[t]he State shall, in particular, direct its policy towards securing (e) that the health and strength of 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 and strength." INDIAN CONST., art. 39(e).

Article 39(f) mandates that State policy be directed toward securing "that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment." *Id.* art. 39(f).

Article 41 provides that "[t]he State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want." *Id.* art. 41.

Article 42 provides that "[t]he State shall make provision for securing just and humane conditions of work and for maternity relief." *Id.* art. 42.

92. *Bandhua Mukti Morcha*, 1984 A.I.R. (S.C.) at 811-12.

93. See *supra* notes 49-52 and accompanying text.

94. *Bandhua Mukti Morcha*, 1984 A.I.R. (S.C.) at 812. In his opinion, Justice Bhagwati was presumably alluding to the aforementioned Acts of the Central Government and State of Haryana.

95. INDIAN CONST., art. 256.

96. *Bandhua Mukti Morcha*, 1984 A.I.R. (S.C.) at 812.

97. 1982 A.I.R. (S.C.) 1473.

sections of society.<sup>98</sup> The State of Haryana's obligation to the plaintiffs was further evidenced by the fact that the State owned the stone quarries at issue pursuant to the Haryana Minerals (Vesting of Rights) Act of 1973.<sup>99</sup>

The defendants' second objection was that the Court lacked power to appoint Ashok Srivastava, Ashok Panda and Dr. Patwardhan as investigative commissioners, and that reports of these commissioners lacked evidentiary value because they were based on *ex parte* information and were untested by cross-examination.<sup>100</sup>

The Court responded to this objection by first noting that the interpretation of article 32, which provides the right to move the Court to enforce fundamental rights and gives the Court procedural powers to those ends,<sup>101</sup> must be guided not by "formalistic canons of construction"<sup>102</sup> but rather by the Preamble of the Constitution,<sup>103</sup> the Fundamental Rights provisions of Part III<sup>104</sup> and the Directive Principles of Part IV.<sup>105</sup> Justice Bhagwati pointed out that article 32(1), the right to move the Court by "appropriate proceedings" had been interpreted in the *Judges Appointment and Transfer* case<sup>106</sup> to allow not only individuals who had themselves suffered rights violations to move the Court, but that in cases in which the plaintiff is economically and socially disadvantaged, any member of the public acting *bona fide* can move the Court on behalf of that plaintiff.<sup>107</sup> Moreover, in such circum-

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98. *Bandhua Mukti Morcha*, 1984 A.I.R. (S.C.) at 812.

99. *Id.* at 812.

100. *Id.* The defendants also argued that the Commissions were beyond the scope of Order XLVI of the Supreme Court Rules of 1966, which governs Court commissions, and Order XXVI of the Indian Code of Civil Procedure. *Id.* at 25, 37-38. The Court rejected this argument pointing out Rule 6 of Order XLVII of the Supreme Court Rules of 1966, which provides that nothing in the 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." *Id.* at 817.

101. INDIAN CONST., art. 32. See *supra* note 57 and accompanying text.

102. *Bandhua Mukti Morcha*, 1984 A.I.R. (S.C.) at 813.

103. INDIAN CONST., Preamble. The Preamble states as follows:

We, the People of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship, Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the nation; In our Constituent Assembly this twenty-sixth day of November, 1948, do Hereby Adopt, Enact and Give to Ourselves this Constitution.

*Id.*

104. INDIAN CONST., part III. See notes 30-48 and accompanying text.

105. INDIAN CONST., part IV. See notes 49-62 and accompanying text.

106. 1982 A.I.R. (S.C.) 149.

107. *Bandhua Mukti Morcha*, 1984 A.I.R. (S.C.) at 829.

stances a simple letter addressed to the Court on behalf of such disadvantaged person could be regarded as an "appropriate proceeding."<sup>108</sup>

Once appropriately addressed, the Court held that pursuant to article 32(2) the Court has the power "to adopt any procedure it considers appropriate in the circumstances of a given case for enforcing a fundamental right."<sup>109</sup> In *Bandhua Mukti Morcha*, the appointment of Commissioners was appropriate because it was obviously impossible for the deprived laborers themselves to produce the relevant and necessary evidence and similarly difficult for a citizen acting *pro bono publico* to produce such evidence.<sup>110</sup>

Justice Bhagwati expressed the view that if the Court were to act passively in situations in which the deprived sections of society were suffering fundamental rights violations, "fundamental rights would remain merely a teasing illusion so far as the poor and disadvantaged sections of the community are concerned."<sup>111</sup> Accordingly, the Court held that the Commissioners' reports furnished *prima facie* evidence of the facts stated therein.<sup>112</sup> Therefore, the defendants were to be provided with copies of the reports in the event they wished to dispute any of the facts or data.<sup>113</sup> The weight to be given to the reports would ultimately be determined by the Court.<sup>114</sup>

The Court next considered the general applicability of the pertinent statutory provisions: the Mines Act of 1952,<sup>115</sup> the Migrant Workmen Act,<sup>116</sup> the Contract Labour Act,<sup>117</sup> the Minimum Wages Act of

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108. *Id.* Justice Bhagwati argued that the framers of the Indian Constitution did not prescribe any particular proceedings for the enforcement of fundamental rights 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 . . . ." *Id.*

109. *Id.* at 816. Justice Bhagwati reasoned that article 32(2) conferred power in the Court not only to issue writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, but the Court also had the power to issue writs "in the nature of" any high prerogative writ. *Id.* at 814.

110. *Id.* at 816.

111. *Id.*

112. *Id.*

113. *Id.* Although Justice Bhagwati pointed out that the defendants did have opportunities to contest the reports, he criticized at length the dogmatic reliance on adversarial procedures. He implied that the adversarial system as a mechanism for justice breaks down when potential plaintiffs are suffering severe deprivations of human dignity. *Id.* at 814-15.

114. *Id.* at 816.

115. *Id.* at 817-19. See also Mines Act of 1952, *supra* note 73, §§ 2, 3, 7-9, 44-46.

116. 1984 A.I.R. (S.C.) at 819-22. See also Migrant Workmen Act, *supra* note 79. The court discussed §§ 1(4), 2(1)(b), 2(1)(e), 2(1)(g), 4, 8(1), 8(2), 12-16, 25-26, of the Migrant

1948<sup>116</sup> and the Bonded Labour Act.<sup>119</sup>

The Mines Act of 1952, the Court held, applied to all stone quarries and in particular to the Faridabad stone quarries at issue.<sup>120</sup> The applicability of the Migrant Workmen Act and the Contract Labour Act to the quarries at issue, would have to be determined by further investigation.<sup>121</sup> The applicability of the Minimum Wages Act of 1948 to the plaintiff laborers was not disputed.<sup>122</sup> Both the State of Haryana and the Central Governments were responsible for ensuring that the defendant stone crushers and mine lessees complied with all the pertinent statutes.<sup>123</sup>

With regard to the Minimum Wages Act of 1948, the State and Central Governments were required to ensure that the workers receive no less than minimum wage.<sup>124</sup> If workers were to be paid per truck load of stone, the State and Central Governments would be responsible for devising a formula which assured payment of the minimum wage.<sup>125</sup> Expenses from explosives and drilling would have to be borne by the mine lessees or "Thekedar" but not the laborers.<sup>126</sup> Payment of wages, Justice Bhagwati ruled, had to be made directly to the workers to prevent unlawful deductions by the Thekedars.<sup>127</sup> Surprise checks were to be conducted by the Central Enforcement Machinery to assure contin-

#### Workmen Act.

117. 1984 A.I.R. (S.C.) at 822-23. *See also* Contract Labour Act, *supra* note 78. The Court discussed §§ 2(a)(a), 2(1)(b), 2(1)(c), 2(1)(g), 16-21.

118. 1984 A.I.R. (S.C.) at 823-24. *See also* Minimum Wages Act of 1948 *supra* note 63.

119. 1984 A.I.R. (S.C.) at 824-29. *See also* Bonded Labour Act, *supra* note 7. The Court discussed §§ 2(d), 2(f), 2(g), 2(i), 4(1), 4(2)(a), 4(2)(b), 5, 7-12, 14, 15 of the Bonded Labour Act.

120. 1984 A.I.R. (S.C.) at 817. The Court ruled that the defendant mine lessees and stone crushers were "owners" within § 2(1) of the Mines Act of 1952 and were therefore liable for observing its provisions. *Id.* at 818-19. *See supra* note 74.

121. *Id.* at 831. With regard to the Migrant Workmen Act, if five or more inter-State migrant workers, as defined by § 2(1)(e) of the Act, were employed in a particular quarry, the Act would apply to that quarry. Migrant Workmen Act, *supra* note 79. *See also supra* notes 79-80 and accompanying text. The applicability of the Contract Labour Act depends, *inter alia*, on whether or not twenty or more contract labourers, as defined by § 2(1)(b) of the Act, are employed in the establishment at issue. Contract Labour Act *see supra* note 78 and accompanying text. In appointing the Joint Secretary in the Ministry of Labour to carry out its final order, the Court requested that the Secretary report on the applicability of these two acts by February 14, 1984. 1984 A.I.R. (S.C.) at 831.

122. 1984 A.I.R. (S.C.) at 823.

123. *Id.* at 829.

124. *Id.*

125. *Id.* at 830.

126. *Id.*

127. *Id.*

ued compliance.<sup>128</sup>

Compliance with the Mines Act of 1952 along with the Mines Rules of 1955 was ordered by the Court.<sup>129</sup> The State and Central Governments were directed to assure that an ample supply of tested clean water be kept cool and constantly available for the laborers.<sup>130</sup> Noting that the Patwardhan Report indicated a total lack of conservancy facilities in the defendants' stone quarries,<sup>131</sup> the Court ordered compliance with section 20 of the Mines Act of 1952 and rules 33 through 36 of the Mines Rules.<sup>132</sup> These provisions regulated the construction, condition and number of latrines to be provided; requiring more than just the "vast open mountain dug-up" which both male and female workers were forced to use.<sup>133</sup>

Furthermore, section 21 of the Mines Act of 1952 and rules 40 through 45A of the Mines Rules of 1955 required that medical and first-aid facilities be provided in the stone quarries.<sup>134</sup> Noting the complete absence of such facilities, the Court ordered immediate compliance with these provisions.<sup>135</sup>

The final and most important act that the Court considered was the Bonded Labour Act.<sup>136</sup> Noting that the Act required the establishment of a Vigilance Committee in each sub-division of each District, the Court ordered the State of Haryana to ensure the establishment of such committees within six weeks of its judgment.<sup>137</sup>

The State of Haryana argued that although the plaintiffs might be forced laborers they were not bonded laborers within the meaning of the Bonded Labour Act.<sup>138</sup> Although the plaintiff laborers may not have been allowed to leave the premises of the defendant's stone quarries, the State argued that unless it be proven that the plaintiff laborers were actually working under a bonded debt, they did not qualify for relief under the Act.<sup>139</sup>

In response to this argument, the Court first pointed out that

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128. *Id.*

129. *Id.* at 831.

130. *Id.* at 832.

131. *Id.*

132. *Id.* at 833.

133. *Id.* at 832-33.

134. *Id.* at 833.

135. *Id.*

136. Bonded Labour Act, India Cen. Acts, Vol. XIII, No. 1 (1976).

137. 1984 A.I.R. (S.C.) at 825.

138. *Id.* "Bonded Labourer" is defined in § 2(f) of the Act to mean "a labourer who incurs, or has, or is presumed to have incurred a bonded debt." Bonded Labour Act, India Cen. Acts, Vol. XIII, No. 1 (1976).

139. 1984 A.I.R. (S.C.) at 825-26.

forced labor, whether accompanied by a debt or not, is offensive to the Directive Principles of State Policy.<sup>140</sup> Justice Bhagwati determined that the "thrust of the Act" was to prohibit any form of forced labor.<sup>141</sup> He recognized that if laborers were required to prove usurious conduct to qualify for relief under the Act, the purpose of the Act would be frustrated as a result of the poverty and illiteracy of the laborers.<sup>142</sup> Therefore, the Court held that whenever forced labor is proven, a presumption that the laborer is forced to work for some type of economic consideration would become operative.<sup>143</sup> Unless the defendant could rebut this presumption by producing satisfactory evidence, the Court would proceed by presuming that a forced laborer is a bonded laborer.<sup>144</sup>

A primary impediment to implementation of the Act is reluctance on the part of State Governments to acknowledge the existence of bonded labor.<sup>145</sup> The Haryana Government was directed to inform all officials responsible for the implementation of the Act of the importance of effective enforcement of its provisions.<sup>146</sup> Justice Bhagwati noted that it is not the existence of bonded labor that is a blemish on the State, but rather, it is the State's failure to take steps to eradicate debt bondage that is a slur upon the administration.<sup>147</sup>

The Court determined that in areas where bonded labor is most prevalent, as in stone quarries, brick kilns and among landless agricultural workers, task forces and labor camps should be established to help wipe out the practice.<sup>148</sup> It was also established that "non-political social action groups and voluntary agencies" should be utilized by the Vigilance Committees in conjunction with the National Labour Institute to combat bonded labor.<sup>149</sup> Because most of these laborers are "totally ignorant of their rights and entitlements" and because that lack of education has been a primary cause of their exploitation, the Court also directed the Central Board of Workers Education to set up camps near the Faridabad stone quarries to educate workers about their statutory entitlements and constitutional rights.<sup>150</sup>

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140. *Id.* at 826.

141. *Id.*

142. *Id.*

143. *Id.* at 827.

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.* at 828.

150. *Id.* at 830.

Rehabilitation of bonded laborers was stressed by the Court.<sup>151</sup> For unless rehabilitated, it is likely that these individuals will eventually slip back into serfdom. "The bonded laborer who is released would prefer slavery to hunger, a world of 'bondage and (illusory) security' as against a world of freedom and starvation."<sup>152</sup> The concept of rehabilitation, the Court reasoned, includes four main features as formulated by the Secretary of Ministry of Labour for the Government of India.<sup>153</sup> The first stresses that psychological rehabilitation must coincide with physical and economic rehabilitation.<sup>154</sup> Physical and economic rehabilitation, the second feature, includes the allotment of housing and arable land, training in animal husbandry and other skills, medical care, education, the supply of essential commodities and the protection of civil rights.<sup>155</sup> The third feature stresses the integration and pooling of resources among the various State and Central Government entities involved in the enforcement of the Bonded Labour Act.<sup>156</sup> The fourth feature provides that freed laborers must be given a choice among alternative forms of rehabilitation.<sup>157</sup> The Court directed the State of Haryana to follow these four guidelines in establishing an effective program for the rehabilitation of released laborers.<sup>158</sup>

The final direction of the Court involved the appointment of the Joint Secretary in the Ministry of Labour for Government of India, Shri Laxmi Dhar Misra, to conduct a further investigation of the Faridabad stone quarries and stone crushers.<sup>159</sup> The Joint Secretary<sup>160</sup> was ordered to visit the stone quarries and stone crushers, and interview the laborers, Thekedars, mine lessees and owners of the stone crushers to ascertain whether or not the laborers were forced to work and whether or not they had been given economic advances.<sup>161</sup> The

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151. *Id.* at 828.

152. *Id.*

153. *Id.* (citing Letter from Secretary, Ministry of Labour, Government of India (September 2, 1982) discussing rehabilitation of bonded laborers).

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.* Whether to remain as freed workers in the stone quarries and stone crushers or return to their place of origin was one alternative. *Id.*

158. *Id.*

159. *Id.* at 829. In appointing the Joint Secretary, the Court disclaimed making an ultimate finding of fact based on the Srivastava/Panda Report. *See supra* note 27. Somewhat mollifyingly, the Court indicated to the State of Haryana that it would forbear from making an ultimate ruling on the presence of bonded labor in the Faridabad quarries until the Joint Secretary had conducted his investigation. *Id.*

160. *Id.* The Court noted that Shri Laxmi Dhar Misra had much experience in identifying, releasing and rehabilitating bonded laborers. *Id.*

161. *Id.*

Joint Secretary was also ordered to determine whether those laborers who were bonded desired to continue work in the quarries or return to their place of origin.<sup>162</sup> If the latter was established, the Joint Secretary was ordered to file an affidavit with the District Magistrate of Faridabad who would arrange the release and transport of the laborers back to their homes.<sup>163</sup> The State was also ordered to provide the necessary funds for this operation to the District Magistrate.<sup>164</sup>

The findings of the Joint Secretary were ordered to be documented and submitted to the Court on or before February 28, 1984.<sup>165</sup> The Court directed that Shri Laxmi Dhar Misra conduct his investigation and prepare his report with an eye toward securing the release and rehabilitation of bonded laborers, as well as, to ascertain violations of Minimum Wages Act of 1948, the Migrant Workmen Act, the Contract Labour Act and the Mines Act of 1952.<sup>166</sup>

The Indian Constitution, as enacted in 1950, included the article 23 prohibition on bonded labor because of the historical pervasiveness of the practice.<sup>167</sup> In 1976, the Central Governments also found it necessary to enact the Bonded Labour Act because "no serious effort was made to give effect to Article 23 and to stamp out the shocking practice of bonded labour."<sup>168</sup> These laws, along with numerous other Indian labor laws, provided ample precedent for Justice Bhagwati's decision in *Bandhua Mukti Morcha*. Moreover, the recent cases relied on solid legal foundation for the Court's holding. In particular, the *Asiad Construction Workers* case<sup>169</sup> involved an almost identical situation. *Bandhua Mukti Morcha*, however, went further than the *Asiad Construction Workers* case in the specificity of practical sanctions provided to assure compliance with the pertinent laws.

Although the circumstances presented in *Bandhua Mukti Morcha* confirms that India is still struggling with the problem of bonded labor, the case reinforces the fact that serious efforts are being made to completely abolish the practice. Although lack of compliance with governmental prescriptive endeavors was acknowledged by the Court,<sup>170</sup> the specific orders and mandatory timetable provided by Justice Bhagwati

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162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* at 829-31. The Court summarized its ruling and orders at the end of its opinion. *Id.* at 834-37.

167. *Id.* at 805.

168. *Id.*

169. 1982 A.I.R. (S.C.) 1473. See *supra* note 33 and accompanying text.

170. 1984 A.I.R. (S.C.) 802, 805.

evidence a continuing commitment to the abolition of bonded labor.

Perhaps the most important aspect of the Court's ruling is the emphasis on the rehabilitation of released laborers.<sup>171</sup> Nurturing an awareness among the laborers themselves of their constitutional rights and legal entitlements, as well as providing all the requisite resources of self-help, may be a more effective deterrent to bonded labor than the previous complete reliance on formal and abstract sanctions. Transitional educational institutions such as those sanctioned by the Court are an essential first step in breaking the lag between prescriptive trends and actual practices.<sup>172</sup>

*Carmen S. Giordano*

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171. *Id.* at 828-30.

172. *Id.* For further discussion on how the Indian legal system can better aid in the implementation of human rights, see Dias, *Research on Legal Services and Poverty: Its Relevance to the Design of Legal Services Programs in Developing Countries*, 147 WASH. UNIV. L.Q. 147 (1975).