BANDHUA MUKTI MORCHA

v.

UNION OF INDIA & OTHERS

December 16, 1983

Constitution of India.—Article 32 (1)—Mode of interpreting Article 32—"Appropriate proceedings", meaning of—Letter addressed by a party on behalf of persons belonging to socially and economically weaker sections complaining violation of their rights under various social welfare legislations—Whether can be treated as a writ petition—Maintainability of—Public Interest Litigation—Nature and scope of.

Constitution of India, Article 32 (2)—Appointment of commissions by the Supreme Court to enquire into the complaint made in the writ petition and relying upon the commissioners' report—Propriety of—Adversarial Procedure—How far binding on the Court—Supreme Court Rules, 1966, O, XXXV, XLVI and XLVII, Rule 6—Code of Civil Procedure, O.XXVI.

Mines Act, 1952—Sections 2 (j), (jj), (kk), 3 (1) (b) proviso 18 Chapters V, VI & VII—Meaning of the word "mine"—Whether stone quarries are mines—Whether workers of the stone quarries and crushers entitled to the benefits accruing under the Act—Responsibility of the mine lessees, mine owners, Central Government and the State Governments for ensuring the benefits accruing under the Act, explained—Mines Rules 1955, Rules 30-32—Punjab Minor Mineral Concession Rules, 1964.

Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979—ss.2 (1) (e), (b), (g), 4,8,12 and Chapter V—Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980—Rules 23, 25-45—Definition of inter-state migrant workmen—Rights and benefits of inter-state migrant workmen explained—Thekedars or Jamadars recruiting workers for mine lessees/owners from outside the State are "contractors"—Contract Labour (Regulation and Abolition) Act, 1970—ss. 2 (1) (a), (b), (c) (g), 16 to 21.

Bonded Labour System (Abolition) Act, 1976—ss.2 (f), (g), 4, 5, 10-15—Existence of Forced Labour—Whether bonded labour—Burden of proof lies upon the employer that the labourer is not a bonded labourer—Court will be justified in presuming that the labourer is a bonded labourer unless the presumption is rebutted by producing satisfactory material.

Minimum Wages Act, Workmen's Compensation Act, 1983, Payment of Wages Act, Employees State Insurance Act, Employees Provident Fund and Miscellaneous Provisions Act, Maternity Benefits Act, 1957—Benefits accruing under these Acts—Whether available to mine workers.

The petitioner, an organisation dedicated to the cause of release of bonded labourers in the country, addressed a letter to Hon'ble Bhagwati, J. alleging : (1) that there were a large number of labourers from different parts of the country who were working in some of the stone quarries situate in district Faridabad, State of

A Haryana under "inhuman and intolerable conditions; (2) that a large number of them were bonded labourers; (3) that the provisions of the Constitution and various social welfare laws passed for the benefit of the said workmen were not being implemented in regard to these labourers. The petitioner also mentioned in the letter the names of the stone quarries and particulars of labourers who were working as bonded labourers and prayed that a writ be issued for proper implementation of the various provisions of the social welfare legislations, such as, Mines B Act, 1952 Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, Contract Labour (Regulation and Abolition) Act, 1970, Bonded Labour System (Abolition) Act, 1976, Minimum Wages Act, Workmen's Compensation Act, Payment of Wages Act, Employees State Insurance Act, Maternity Benefits Act etc. applicable to these labourers working in the said stone quarries with a view to ending the misery, suffering and helplessness of "these victims of the most inhuman exploitation."

C The Court treated the letter as a writ petition and appointed a commission to inquire into the allegations made by the petitioner. The commission while confirming the allegations of the petitioner, pointed out in its report that (*i*) the whole atmosphere in the alleged stone quarries was full of dust and it was difficult for any one to breathe; (*ii*) some of the workmen were not allowed to leave the stone quarries and were providing forced labour; (*iii*) there was no facility of providing D pure water to drink and the labourers were compelled to drink dirty water from a *nullah*; (*iv*) the labourers were not having proper shelter but were living in jhuggies with stones piled one upon the other as walls and straw covering the top which was too low to stand and which did not afford any protection against sun and rain; (*v*) some of the labourers were suffering from chronic diseases; (*vi*) no compensation was being paid to labourers who were injured due to accidents arising in the course of employment; (*vii*) there were no facilities for medical treatment or E schooling. At the direction of the Court, a socio-legal investigation was also carried out and it suggested measures for improving the conditions of the mine workers.

The respondents contended: (1) Article 32 of the Constitution is not attracted to the instant case as no fundamental right of the petitioner or of the workmen referred to in the petition is infringed ; (2) A letter addressed by a party to this Court cannot be treated as a writ petition; (3) In a proceeding under Art. 32, this F Court is not empowered to appoint any commission or an investigating body to enquire into the allegations made in the writ petition ; (4) Reports made by such commissions are based only on ex-parte statements which have not been tested by cross-examination and therefore they have no evidentiary value; and (5) there might be forced labourers in the stone quarries and stone crushers in the State of Haryana but they were not bonded labourers within the meaning of that expression as used in the Bonded Labour System (Abolition) Act, 1976.

G Rejecting all the contentions and allowing the writ petition on merits, the Court

HELD : The State Government's objection as to the maintainability of the writ petition under Article 32 of the Constitution by the petitioners is reprehensible. If any citizen brings before the Court a complaint that a large number H of peasants or workers are bonded serfs or are being subjected to exploitation by a few mine lessees or contractors or employers or are being denied the benefits of

social welfare laws, the State Government, which is, under our constitutional scheme, charged with the mission of bringing about a new socio-ecomonic order where there will be social and economic justice for every one equality of status and opportunity for all, would welcome an inquiry by the court, so that if it is found that there are in fact bonded labourers or even if the workers are not bonded in the strict sense of the term as defined in the Bonded Labour System (Abolition) Act 1976 but they are made to provide forced labour or are consigned to a life of utter deprivation and degradation, such a situation can be set right by the State Government. Even if the State Government is on its own inquiry satisfied that the workmen are not bonded and are not compelled to provide forced labour and are living and working in decent conditions with all the basic necessities of life provided to them, the State Government should not baulk an inquiry by the court when a complaint is brought by a citizen, but it should be anxious to satisfy the court and through the court, the people of the country, that it is discharging its constitutional obligation fairly and adequately and the workmen are being ensured social and economic justice. [102A-D]

2. Moreover, 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 squaremeals per day and with only dirty water from a nullah to drink, it is difficult how such a complaint can be thrown out on the ground that it is not violative of the fundamental right of the workmen. It is the fundamental right of every one in this country, assured under the interpretation given to Article 21 by this Court in *Francis Mullen's* Case, to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State-neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State Policy contained in clauses (e) and (f) of Article 39, Article 41 and 42 are not enforceable in a court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that the exceutive power of every State *shall* be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State. [103B-H-104A]

3. The State is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when he belongs to the

A weaker sections of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The Central Government is therefore bound to ensure observance of various social welfare and labour laws enacted by Parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the Directive Principles of State Policy. It must also follow as a necessary corollary that the State of Haryana in which the stone quarries are vested by reason of Haryana Minerals (Vesting of Rights) Act B 1973 and which is therefore the owner of the mines cannot while giving its mines for stone quarrying operations, permit workmen to be denied the benefit of various social welfare and labour laws enacted with a view to enabling them to live a life of human dignity. The State of Haryana must therefore 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. This is a constitutional obligation which can be enforced against the C Central Government and the State of Haryana by a writ petition under Article 32 of the Constitution. [104 A-D]

4. While interpreting Article 32, it must be borne in mind that our approach must be guided not by any verbal or formalistic canons of construction but by the paramount object and purpose for which this Article has been enacted as a Fundamental Right in the Constitution and its interpretation must receive illumination from the trinity of provisions which permeate and energise the entire Constitution D namely, the Preamble, the Fundamental Rights and the Directive Principles of State Policy. Clause (1) of Article 32 confers the right to move the Supreme Court for enforcement of any of the fundamental rights, but it does not say as to who shall have this right to move the Supreme Court nor does it say by what proceedings the Supreme Court may be so moved. There is no limitation in the words of Clause (1) of Article 32 that the fundamental right which is sought to be enforced by moving the Supreme Court should be one belonging to the person who E moves the Supreme Court nor does it say that the Supreme Court should be moved only by a particular kind of proceeding. It is clear on the plain language of clause (1) of Article 32 that whenever there is a violation of a fundamental right, any one can move the Supreme Court for enforcement of such fundamental right. Of course, the court would not, in exercise of its discretion, intervene at the instance of a meddlesome interloper or busy body and would ordinarily insist that only a person whose fundamental right is violative should be allowed to activise the court, but there is no fetter upon the power of the court to entertain a proceed- F ing initiated by any person other than the one whose fundamental right is violated, though the court would not ordinarily entertain such a proceeding, since the person whose fundamental right is violated can always approach the court and if he does not wish to seek judical redress by moving the court, why should some one else be allowed to do so on his behalf. This reasoning however breaks down in the case of a person or class of persons whose fundamental right is violated but who cannot have resort to the court on account of their poverty or disability or socially G or economically disadvantaged position and in such a case, therefore, the court can and must allow any member of the public acting bona fide to espouse the cause of such person or class of persons. This does not violate, in the slightest measure the language of the constitutional provision enacted in clause (1) of Article 32. [106 B-H-107A]

H 5. Clause (1) of Article 32 says that the Supreme Court can be moved for enforcement of a fundamental right by any 'appropriate' proceeding. 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. [107 A-F]

Therefore where a member of the public acting bona fide moves the Court for enforcement of a fundamental right on behalf of a person or class of persons who on account of poverty or disability or socially or economically disadvantaged position cannot approach the court for relief, such member of the public may move the court even by just writing a letter, because it would not be right or fair to expect a person acting *pro bono publico* to incur expenses out of his own pocket for going to a lawyer and preparing a regular writ petition for being filed in court for enforcement of the fundamental right of the poor and deprived sections of the community and in such a case, a letter addressed by him can legitimately be regarded as an "appropriate" proceeding. [107 F-H]

6. 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. When the Court entertains public interest litigation, it does not do so in a cavilling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to unsurp it, but its attempt is only to ensure observance of social and economic rescue programmes, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the executive. The Court is thus merely assisting in the realisation of the constitutional objectives. [102 D-E, G-H, 103 A-B]

7. Clause (2) of Article 32 conferring power on the Supreme Court "to issue directions, or orders, or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari" which ever may be appropriate, for enforcement of any of the fundamental rights, is in the widest terms. It is not confined to issuing the high prerogative writs of habeas corpus, mandamus, prohibition, certiorari, and quo warranto, which are hedged in by strict conditions differing from one writ to another. But it is much wider and includes within its matrix, power to issue any directions, orders or writs which may be appropriate

for enforcement of the fundamental right in question and this is made amply clear by the inclusive clause which refers to *in the nature* of habeas corpus, mandamus, prohibition, qua warranto and certiorari. Therefore even if the conditions for issue of any of these high prerogative writs are not fulfilled, the Supreme Court would have power to issue any direction, order or writ including a writ in the nature of any high prerogative writ. This provision conferring on the Supreme Court power to enforce the fundamental rights in the widest possible terms shows the anxiety of the Constitution makers not to allow any procedural technicalities to stand in the way of enforcement of fundamental rights. The Constitution makers clearly intended that the Supreme Court should have the amplest power to issue whatever direction, order or writ may be appropriate in a given case for enforcement of a fundamental right. That is why the Constitution is silent as to what procedure shall be followed by the Supreme Court in exercising the power to issue such direction or order or writ as in Article 32 and advisedly so, becasue the Constitution makers never intended to fetter the discretion of the Supreme Court to evolve a procedure appropriate in the circumstances of a given case for the purpose of enabling it to exercise its power of enforcing a fundamental right. Neither clause (2) of Article 32 nor any other provision of the Constitution requires that any particular procedure shall be followed by the Supreme Court in exercising its power to issue an approrpriate direction, order or writ. The purpose for which the power to issue an appropriate direction, order or writ is conferred on the Supreme Court is to secure enforcement of a fundamental right and obviously therefore, whatever procedure is necessary for fulfilment of that purpose must be permissible to the Supreme Court. [108 B-H, 109 A-B]

8. It is not at all obligatory that an adversarial procedure, where each party produces his own evidence tested by cross-examination by the other side and the judge sits like an umpire and decides the case only on the basis of such material as may be produced before him by both parties, must be followed in a proceeding under Article 32 for enforcement of a fundamental right. In fact, there is no such constitutional compulsion enacted in clause (2) of Article 32 or in any other part of the Constitution. There is nothing sacrosanct about the adversarial procedure with evidence led by either party and tested by cross-exmaination by the other party and the judge playing a positive role has become a part of our legal system because it is embodied in the Code of Civil procedure and the Indian Evidence Act. But these statutes obviously have no application where a new jurisdiction is created in the Supreme Court for enforcement of a fundamental right. Therefore it is not justified to impose any restriction on the power of the Supreme Court adopt such procedure as it thinks fit in exercise of its new jurisdication, by engrafting adversarial procedure on it, when the constitution makers have deliberately chosen not to insist on any such requirement and instead left it open to the Supreme Court to follow such procedure as it thinks appropriate for the purpose of securing the end for which the power is conferred namely, enforcement of a fundamental right. [109 B-G]

9. The strict adherence to the adversarial procedure can some times lead to injustice, particularly when the parties are not evenly balanced in social or economic strength. Where one of the parties to a litigation belongs to a poor and deprived section of the community and does not possess adequate social and material resources, he is bound to be at a disadvantage as against a strong and powerful opponent under the adversary system of justice, becasue of his difficulty in getting competent legal representation and more than anything else, his inability to produce relevant-

evidence before the court. Therefore, when the poor come before the court, particularly for enforcement of their fundamental rights, it is necessary to depart from the adversarial procedure and to evolve a new procedure which will make it possible for the poor and the weak to bring the necessary material before the court for the purpose of securing enforcement of their fundamental rights. If the adversarial procedure is truly followed in their case, they would never be able to enforce their fundamental rights and the result would be nothing but a mockery of the Constitution. Therefore the Courts should abandon the *laissez faire* approach in the judicial process particularly where it involves a question of enforcement of fundamental rights and forge new tools, devise new methods and adopt new strategies for the purpose of making fundamental rights meaningful for the large masses of people. And this is clearly permissible on the language of clause (2) of Article 32 because the Constitution makers while enacting that clause have deliberately and advisedly not used and words restricting the power of the court to adopt any procedure which it considers appropriate in the circumstances of a given case for enforcing a fundamental right. [110 B-F]

10. It is obvious that the poor and the disadvantaged cannot possibly produce relevant material before the Court in support of their case and equally where an action is brought on their behalf by a citizen acting *pro bono publico*, it would be almost impossible for him to gather the relevant material and place it before the Court. In such a case the Supreme Court would be failing in discharge of its contional duties of enforcing a fundamental right if it refuses to intervene because the stitupetitioner belonging to the underprivileged segment of society or a public spirited citizen espousing his cause is unable to produce the relevant material before the court. If the Supreme Court were to adopt a passive approach and decline to intervene in such a case because relevant material has not been produced before it by the party seeking its intervention, the fundamental rights would remain merely a teasing illusion so far as the poor and disadvantaged sections of the community are concerned. Therefore the Supreme Court has evolved the practice of appointing commissions for the purpose of gathering facts and data in regard to a complaint of breach of a fundamental right made on behalf of the weaker sections of the society. The Report of the commissioner would furnish prima facie evidence of the facts and data gathered by the commissioner and that is why the Supreme Court is careful to appoint a responsible person as commissioner to make an inquiry or investigation into the facts relating to the complaint. Even in the past the Supreme Court has appointed sometimes a district magistrate, sometimes a district Judge, sometimes a professor of law, sometimes a journalist, sometimes an officer of the court and sometimes an advocate practising in the court, for the purpose of carrying out an enquiry or investigation and making report to the court because the commissioner appointed by the Court must be a responsible person who enjoys the confidence of the court and who is expected to carry out his assignment objectively and impartially without any predilection or prejudice. Once the report of the commissioner is received, copies of it would be supplied to the parties so that either party, if it wants to dispute any of the facts or date stated in the Report, may do so by filing an affidavit and the court then consider the report of the commissioner and the affidavits which may have been filed and proceed to adjudicate upon the issue arising in the writ petition. It would be entirely for the Court to consider what weight to attach to the facts and data stated in the report of the commissioner and to what extent to act upon such facts and data. But it would not be correct to say that the report of the commissioner has no evidentiary value at all, since the statements

A made in it are not tested by cross-examination. To accept this contention would be to introduce the adversarial procedure in a proceeding where in the given situation, it is totally inapposite. [111 B-H, 112, A-B]

B 11. It is true that Order XLVI of the Supreme Court Rules 1966 makes the provisions of Order XXVI of the Code of Civil Procedure, except rules 13, 14, 19, 20, 21 and 22 applicable to the Supreme Court and lays down the procedure for an application for issue of a Commission, but Order XXVI is not exhaustive and does not detract from the inherent power of the Supreme Court to appoint a commission, if the appointment of such commission is found necessary for the purpose of securing enforcement of a fundamental right in exercise of its constitutional jurisdiction under Article 32. 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 C 6 of Order XLVII of the Supreme Court Rules 1966 provides that nothing in these 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. [112 C-F]

In the instant case, therefore, the court did not act beyond its power in appointing the commissions for the purpose of making an inquiry into the conditions of workmen employed in the stone quarries. The petitioner in the writ petition D specifically alleged violation of the fundamental rights of the workmen employed in the stone quarries under Articles 21 and 23 and it was therefore necessary for the court to appoint these commissioners for the purpose of inquiring into the facts related to this complaint. The Reports of the Commissions were clearly documents having evidentiary value and they furnished prima facie evidence of the facts and data stated in those Reports. Of course, it is for the court to consider what weight it should attach to the facts and data contained in these Reports in the light of E the various affidavits filed in the proceedings.[112 F-H, 113 A-B].

12. The position pointed out as the power of the Supreme Court to appoint commissioners in the exercise of its jurisdiction under Article 32 must apply equally in relation to the exercise of jurisdiction by the High Courts under Article 226 for the latter jurisdiction is also a new constitutional jurisdiction and it is conferred in the same wide terms as the jurisdiction under Article 32 and the same powers F can and must therefore be exercised by the High Court while exercising jurisdiction under Article 226. In fact, the jurisdiction of the High Courts under Article 226 is much wider, because the High Courts are required to exercise this jurisdiction not only for enforcement of a fundamental right but also for enforcement of any legal right and there are many rights conferred on the poor and the disadvantaged which are the creation of statute and they need to be enforced as urgently and vigorously as fundamental rights.. [113 B-D]

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3 : 1. The Stone quarries in the instant case are "mines" within the meaning of the Section 2 (j) of the Mines Act, 1952 since they are excavations where operations for the purpose of searching for or obtaining stone by quarrying are being carried on but they are not 'open cast working' since admittedly excavations in the H case of these stone quarries extend below superjacent ground. Since the workings in these stone quarries extend below superjacent ground and they are not 'open east workings' and moreover explosives are admittedly used in connection with

the excavation, the conditions set out in the proviso to sec 3 (i) (i) are not fulfilled and hence the exclusion of the provisions of the Mines Act 1952 (other than the excepted sections) is not attracted and all the provisions of the Mines Act 1952 apply to these stone quarries. The provisions contained in chapters V, VI & VII of the Mines Act confer certain rights and benefits on the workmen employed in the stone quarries and stone crushers and these rights and benefits intended to secure to the workman just and human conditions of work ensuring a decent standard of life with basic human dignity. Since the stone quarries are not being exploited by the State of Haryana though it is the owner of the stone quarries, but are being given out on lease by auction, the mine-lessees who are not only lessees but also occupiers of the stone quarries are the owners of the stone quarries within the meaning of that expression as used in section 2 (1) and so also are the owners of stone crushers in relation to their establishment. The mine-lessees and owners of stone crushers are, therefore, liable under section 18 of the Mines Act, 1952 to carry out their operations in accordance with the provisions of the Mines Act, 1952 and the Mines Rules, 1955 and other Rules and Regulations made under that Act and to ensure that the rights and benefits conferred by these provisions are actually and concretely made available to the workmen. The Central Government is entrusted under the Mines Act 1952 with the responsibility of securing compliance with the provisions of that Act and of the Mines Rules 1953 and other Rules and Regulations made under that Act and it is the primary obligation of the Central Government to ensure that these provisions are complied with by the mine-lessees and stone crusher owners. The State of Haryana is also under an obligation to take all necessary steps for the purpose of securing compliance with these provisions by the mine-lessees and owners of stone crushers. The State of Haryana is therefore, in any event, bound to take action to enforce the provisions of the Mines Act 1952 and the Mines Rules 1955 and other Rules and Regulations made under that Act for the benefit of the workmen. [113 G-H, 114 A, 115 A, E, G, 116 B-F, 117 C-D]

13. The Inter-state Migrant Workmen (Regulation of Employment and conditions of Service) Act, by sub-section (4) of section (1) applies to every establishment in which five or more inter-State Migrant workmen are employed or were employed on any day of the preceding twelve months and so also it applies to every contractor who employs or employed five or more inter-State migrant workmen on any day of the preceding twelve months. Section (2) sub-section (1) Clause (b) of the Act defines contractor, in relation to an establishment, to mean "a person who undertakes (whether as an independent contractor, agent, employee or otherwise) to produce a given result for the establishment, other than a mere supply of goods and articles of manufacture to such establishment, by the employment of workmen or to supply workmen to the establishment, and includes a sub-contractor, khatedar, sardar, agent or any other person, by whatever name called, who recruits or employs workman." Clause (e) of sub-section (1) of section (2) defines "interstate Migrant Workmen" to mean "any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or with-out the knowledge of the principal employer in relation to such establishment." The expression "principal employer" is defined by clause (g) of sub-section (1) of section 2 to mean "in relation to a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named." Obviously, therefore, the mine-lessees and owners of stone crushers in the present case would be principal employers within the meaning of that expression as used in the Inter-

A State Workmen Act. Section 16 lays a duty on every contractor employing inter State migrant workmen in connection with the work of an establishment to provide various other facilities particulars of which are to be found in Rules 36 to 45 of the Inter-State Migrant Workmen Rules. (These facilities include medical facilities, protective clothing, drinking water, latrines, urinals and washing facilities, rest rooms, canteens, creche and residential accommodation). The obligation to provide these facilities is in relation to the inter-State migrant workmen employed in an B establishment to which the Act applies. But this liability is not confined only to the contractor, because Section 18 provides in so many terms that if any allowance required to be paid under-section 14 or 15 to an inter-State migrant workman is not paid by the contractor or if any facility specified in Section 16 is not provided for the benefit of such workman, such allowance shall be paid or as the case may be, the facility shall be provided by the principal employer within such time as may be prescribed by the Rules and all the allowances paid by the principal employer or all C the expenses incurred by him in this connection may be recovered by him from the contractor either by deduction from the amount payable to the contractor or as a debt payable by the contractor. [117 F-H, 119 E-A-120 A]

14. The thekedar or jamadar who is engaged by the mine lessees or the stone-crusher owners to recruit workmen or employ them on behalf of the mine lessees or stone crusher owners would clearly be a 'contractor' within the meaning of that term as defined in Section 2 sub-section (1) clause (b) and the workmen recruited D by or through him from other States for employment in the stone quarries and stone crushers in the State of Haryana would undoubtedly be inter-State migrant workmen. Even when the thekedar or jamadar recruits or employs workmen for the stone quarries and stone crushers by sending word through the "old hands", the workmen so recruited or employed would be inter-State migrant workmen, because the "old hands" would be really acting as agents of the thekedar or jamadar for the purpose of recruiting or employing workmen crushers in the State of E Haryana. [121-E]

15. In addition to the rights and benefits conferred upon him under the Inter-State Migrant Workmen Act and the inter-State Migrant Workmen Rules, an inter-State migrant workman is also, by reason of Section 21, entitled to the benefit of the provisions contained in the Workmen's Compensation Act 1923, The Payment of Wages Act 1936, The Employees' State Insurance Act 1948, F The Employees' Provident Funds and Misc. Provisions Act, 1952, and the Maternity Benefit Act 1961. [122 B-C]

The obligation to give effect to the provisions contained in these various laws is not only that of the jamadar or thekedar and the minelessees and stone crushers owners (provided of course there are 5 or more inter-State Migrant Workmen employed in the establishment) but also that of the Central Government G because the Central Government being the "appropriate Government" within the meaning of Section 2(1)(a) is under an obligation to take necessary steps for the purpose of securing compliance with these provisions by the thekedar or jamadar and mine-lessees and owners of stone crushers. The State of Haryana is also bound to ensure that these provisions are observed by the thekedar or jamadar and minelessees and owners of stone crushers. [122-D-F]

H 16. If the Jamadar or thekadar in a stone quarry or stone crusher is a 'contractor' within the meaning of the definition of the term in the Inter-State Migrant

Workmen Act, he would *a fortiorari* be 'contractor' also for the purpose of Contract Labour Act and any workmen hired in or in connection with the work of stone quarry or stone crusher by or through the jamadar or thekedar would be workmen entitled to the benefit of the provisions of the Contract Labour Act. Where therefore the thekedar for Jamadar is a Contractor, and the workmen are employed as 'contract labour' within the meaning of these expressions as used in the Contract Labour Act the Contractor as well as the principal employer would be liable to comply with the provisions of the Contract Labour Act and the Contract Labour Rules and to provide to the contract labour rights and benefits conferred by these provisions. The Central Government being the "appropriate government" within the meaning of section 2 sub-section (1) clause (a) would be responsible for ensuring compliance with the provisions of the Contract Labour Act and the Contract Labour Rules by the mine-lessees and stone crushers owners and the thekedar or jamadar. So also, for reasons discussed while dealing with the applicability of the Mines Act 1952 and the Inter State Migrant Workmen Act, the State of Haryana would be under an obligation to enforce the provisions of the Contract Labour Act and the Contract Labour Rules for the benefit of the workmen. [123 E-F, H, 124 A-C] A B C

17. There can be no doubt and indeed this was not disputed on behalf of the respondents, that the Minimum Wages Act 1948 is applicable to workmen employed in the stone quarries and stone crushers. Therefore whatever be the mode of payment followed by the mine lessees and stone crusher owners, the workmen must get nothing less than the minimum wage for the job which is being carried out by them and if they are required to carry out additionally any of the functions pertaining to another job or occupation for which a separate minimum wage is prescribed, they must be paid a proportionate part of such minimum wage in addition to the minimum wage payable to them for the work primarily carried out by them. The system of payment which is being followed in the stone quarries and stone crushers, under which the expenses of the explosives and of drilling holes are to be borne by the workmen out of their own wages, should be changed and the explosives required for carrying out blasting should be supplied by the mine lessees or the jamadar or thekedar without any deduction being made out of the wages of the workmen and the work of drilling holes and shot firing should be entrusted only to those who have received the requisite training under the Mines Vocational Training Rules 1966. So far as the complaint of the petitioner that the workmen employed in the stone quarries and stone crushers are not being paid the minimum wage due and payable for the work carried out by them is concerned, it is a matter which would have to be investigated and determined. [124 C, 125 A-E] D E F

The Bonded Labour system is intended to strike against the system of bonded labour which has been a shameful scar on the Indian Social Scene for decades and which has continued to disfigure the life of the nation even after independence. The Act was brought into force through out the length and breadth of the country with effect from 25th October 1975, which means that the Act has been in force now for almost 8 years and if properly implemented, it should have by this time brought about complete identification, freeing and rehabilitation of bonded labour. But as official, semi-official and non-official reports show, we have yet to go a long way in wiping out this outrage against humanity. [126 A-C] G

18. It is clear bonded labour is a form of forced labour and Section 12 of the Bonded Labour System (Abolition) Act 1976 recognises this self-evident proposition by laying a duty on every District Magistrate and every officer specified H

by him to inquire whether any bonded labour system or any other form of forced labour is being enforced by or on behalf of any person and, if so, to take such action as may be necessary to eradicate the enforcement of such forced labour. The thrust of the Act is against the continuance of any form of forced labour. It is of course true that, strictly speaking, a bonded labourer means a labourer who incurs or has or is presumed to have incurred a bonded debt and a bonded debt means an advance obtained or presumed to have been obtained by a bonded labourer under or in pursuance of the bonded labour system and it would therefore appear that before a labourer can be regarded as a bonded labourer, he must not only be forced to provide labour to the employer but he must have also received an advance or other economic consideration from the employer unless he is made to provide forced labour in pursuance of any custom or social obligation or by reason of his birth in any particular caste or community. 130 A-D]

19. The contention of the State of Haryana that the burden of proof under the bonded labour System (Abolition) Act, 1976 is upon the bonded labourers is misconceived. To insist that the bonded labourers must first prove that they are providing forced labour in consideration of an advance or other economic consideration received by them and then only they would be eligible for the benefits provided under the Act, is nothing but asking them to do a task which is extremely difficult, if not impossible. The labourers would have no evidence at all to prove so and since employment of bonded labour is a penal offence under the Act, the employer would immediately without any hesitation disown having given any advance or economic consideration to the bonded labourers. The insistance of proof from two labourers by the State Government which is constitutionally mandated to bring about change in the life conditions of the poor and downtrodden and to ensure social justice to them is reprehensible. [130 F-H, 131 A]

It would be cruel to insist that a bonded labour 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 labourers can never stand up to the regidity 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 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 of other economic consideration from the employer and under the consideration from the employer and under the pretext of not having returned such advance or other 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 whereever he wants. Therefore, whenever it is shown that a labourers 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 reubutting 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. [131 C-H, 132 A] A

20. Though section 13 provides for constitution of a Vigilance Committee in each District and each sub-division of a District, the Government of Haryana, for some reason or the other, did not constitute any Vigilance Committee until its attention was drawn to this requirement of the law by this Court. It may be that according to the Government of Haryana there were not at any time any bonded labourers within its territories, but even so Vigilance Committees are required by Section 13 to be constituted because the function of the Vigilance Committee is to identify bonded labourers, if there are any, and to free and rehabilitate them and it would not be right for the State Government not to constitute vigilance Committees on the assumption that there are no bonded labourers at all. In constituting Vigilance Committee in each District and sub-division, the Haryana Government would do well to include representatives of non-political social action groups operating at the grass root level, for it is only through such social action groups and voluntary agencies that the problems of identification of bonded labour can be effectively solved. [128 E-H, 129 A-B] B C

The magistrates and judicial officers take a very lenient view of violations of labour laws enacted for the benefits of the workmen and let off the defaulting employers with small fines. There have also been occasions where the magistrate and judicial officers have scotched prosecutions and acquitted or discharged the defaulting employers on hypertechnicalities. This happens largely because the magistrates and judicial officers are not sufficiently sensitised to the importance of the observance of labour laws with the result that the labour laws are allowed to be ignored and breached with utter callousness and indifference and the workmen begin to feel that the defaulting employers can, by paying a fine which hardly touches their pocket, escape from the arm of law and the labour laws supposdely enacted for their benefit are not meant to be observed but are merely decorative appendages intended to assuage the conscience of the workmen. The Magistrates and Judicial Officers should take a strict view of violation of labour laws and to impose adequate punishment on the erring employers so that they may realise that it does not pay to commit a breach of such laws and to deny the benefit of such laws to the workmen. [145 A-D] D E F

21. The Court issued several directions to the Central Government and the State Government and the various authorities for implementing the provisions enacted in various social welfare laws for the benefit of the workmen employed in the stone quarries and stone crushers in the state of Haryana. So that the poor workmen who lead a miserable existence may one day be able to realise that freedom is not only the monopoly of a few but belongs to them all and that they are also equally entitled along with others to participate in the fruits of freedom and development. [132 D, 145 D-F] G

PER PATHAK, J CONCURRING

(1) 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 practised by our courts and has evoked a lively, if somewhat con- H

troversial, response in legal circles, in the media and among the general public. In our country, this new class of litigation is justificed by its protagonists on the basis generally of vast areas in our population of illiteracy and poverty, of social and economic backwardness, and of an insufficient awareness and appreciation of individual and collective rights. These handicaps have denied millions of our countrymen access to justice. Public interest litigation is said to possess the potential or providing such access in the milieu of a new ethos, in which participating sectors in the administration of justice cooperate in the creation of a system which promises legeal relief without cumbersome formality and heavy expenditure. In the result, the legal organisation has taken on a radically new dimension, and correspondingly new perspectives are opening up before judges and lawyers and State Law agencies in the tasks before them. A crusading zeal is abroad, viewing the present as an opportunity to awaken the political and legal order to the objectives of social justice projected in our constitutional system. New slogans fill the air, and new phrases have entered the legal dictionary, and one hears of the "justicing system" being galvanised into supplying justice to the socio-economic disadvantages. These urges are responsible for the birth of new judicial concepts and the expanding horizon calpower. They claim to represent an increasing emphasis on social welfare and a progressive humanitarianism, To the mind trained in the certainty of the law, of defined principles, of binding precedent, and the common law doctrine of *stare decisis*, the future is fraught with confusion and disorder in the legal world and severe strains in the constitutional system. At the lowest, there is an uneasy doubt about where we are going. If public interest litigation is to command broad acceptance attention must be paid to certain relevent considerations. The history of human experience shows that when a revolution in ideas and in action enters the life of a nation, the nascent power so released possesses the potential of throwing the prevailing social order into disarray. In a changing society, wisdom dictates that reform should emerge in the existing polity as an ordered change produce through its institution. Moreover, the pace of change needs to be handled with care lest the institutions themselves be endangered. [152 F-H; 153 A-C; 153 G; 154 A-B]

1:2 Like the Warren Court's affirmative action programmes for the benefit of minorities and other socially or economically disadvantaged interests through the avenues of Public Law, the courts in India, are beginning to apply a similar concept of constitutional duty. The doctrine of standing has been enlarged in India to provide, where reasonably possible, access to justice to large sectors of people for whom so far it had been a matter of despair. It is time indeed for the law to do so. In large measure, the traditional conception of adjudication represented the socio-economic vision prevailing at the turn of the century. In India, as the consciousness of social justice spread though our multi-layered social order, the constitution began to come under increasing pressure from social action groups petitioning on behalf of the under privileged and deprived sections of society for the fulfilment of their aspirations. Despite the varying fortunes of the number of cases of public interest litigation which have entered the Sureme Court, Public Interest Litigation constitutes today a significant segment of the court's docket. [154 D; 156 A-C]

2:1. The provisions of Article 32 do not specifically indicate who can move the Court. In the absence of a confining provision in that respect, it is plain that a petitioner may be anyone in whom the Law recognises a standing to maintain an action of such nature. [156 E]

2:2. As regards the form of proceeding and its character, Article 32 speaks generally of "appropriate proceedings." It should be a proceeding which can appropriately lead to an adjudication of the claim made for the enforcement of a fundamental right and can result in the grant of effective relief. Article 32 speaks of the Court's power "to issue direction or orders of writs", and the specific reference to "writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari" is by way of illustration only. They do not exhaust the content of the Court's power under Article 32. [156 F-G]

3:1. A practice has grown in the public of invoking the jurisdiction of this Court by a simple letter complaining of a legal injury to the author or to some other person or group of persons, and the Court has treated such letter as a petition under Article 32 and entertained the proceeding without anything more. It is only comparatively recently that the Court has begun to call for the filing of a regular petition on the letter. There is a grave danger, in-herent in a practice where a mere letter is entertained as a petition from a person whose antecedents and status are unknown or so uncertain that no sense of responsibility can, without anything more, be attributed to the communication. There is good reason for the insistence on a document being set out in a form, or accompanied by evidence, indicating that the allegations made in it are made with a sense of responsibility by a person who has taken due care and caution to verify those allegations before making them. A plaint instituting a suit is required by the Code of Civil Procedure to conclude with a clause verifying the pleadings contained in it. A petition or application filed in court is required to be supported on affidavit. These safeguards are necessary because the document, a plaint or petition or application, commences a course of litigation involving the expenditure of public time and public money, besides in appropriate cases involving the issue of summons or notice to the defendant or respondent to appear and contest the proceeding. Men are busy conducting the affairs of their daily lives, and no one occupied with the responsibilities and pressures of present day existence welcomes being summoned to a law court and involved in a litigation. A document making allegations without any proof whatever of responsibility can conceivably constitute an abuse of the process of law. Therefore, in special circumstances the document petitioning the court for relief should be supported by satisfactory verification. This requirement is all the greater where petitions are received by the Court through the post. It is never beyond the bound of possibility that an unverified communication received through the post by the court may in fact have been employed *mala fide*, as an instrument of coercion or blackmail or other oblique motiive against a person named therein who holds a position of honour and respect in society. The Court must be ever vigilant against the abuse of its process. It cannot do that better in this matter than insisting at the earliest stage, and before issuing notice to the respondent, that an appropriate verification of the allegations be supplied. The requirement is imperative in private law litigation. Having regard to its nature and purpose, it is equally attracted to public interest litigation. While this Court has readily acted upon letters and telegrams in the past, there is need to insist now on an appropriate verification of the petitioner other communication before acting on it. It will always be a matter for the court to decide, on what petition will it require verification and when will it waive the rule. [157 B-H; 158 A-C]

3:2. All communications and petitions invoking the jurisdiction of the Court must be addressed to the entire Court, that is to say, the Chief Justice and his companion judges, No such communication or petition can properly be addressed

A to a particular judge. When the jurisdiction of the Court is invoked, it is the jurisdiction of the entire court. Which Judge or Judges will hear the case is exclusively a matter concerning the internal regulation of the business of the Court, interference with which by a litigant or member of the public constitutes the grossest impropriety. It is well established that when a division of the Court house and decides cases it is in law regarded as a hearing and a decision by the Court itself. The judgment pronounced and the decree or order made are acts of the Court, B and accordingly they are respected, obeyed and enforced throughout the land. It is only right and proper that this should be known clearly to the lay public. Communications and petitions addressed to a particular Judge are improper and violate the institutional personality of the Court. They also embarrass the judge to whom they are personally addressed. The fundamental conception of the Court must be respected, that is a single indivisible institution, of united purpose and existing solely for the high constitutional functions for which it has been C created. The conception of the Court as a loose aggregate of individual Judges, to one or more of whom judicial access may be particularly had, undermines its very existence and endangers its proper and effective functioning. [158 E-H; 159 A]

4:1. In public interest litigation, the role held by the Court is more assertive than in traditional actions. Viewed from the Warren Court's experience the role of the Court is creative rather than passive, and it assumes a more positive attitude D in determining facts. Not infrequently public interest litigation affects the rights of persons not before the Court, and in shaping the relief the court must invariably take into account its impact on those interests. Moreover, when its jurisdiction is invoked on behalf of a group, it is as well to remember that differences may exist in content and emphasis between the claims of different sections of the group. For all these reasons the court must exercise the greatest caution and adopt procedures ensuring sufficient notice to all interests likely to be affected. Moreover, the E nature of the litigation sometimes involves the continued intervention of the Court over a period of time, and the organising of the litigation to a satisfactory conclusion calls for judicial statemanship, a close understanding of constitutional and legal values in the context of contemporary social forces, and a judicious mix of restraint and activism determined by the dictates of existing realities. Importantly, at the same time, the Court must never forget that its jurisdiction extends no farther than the legitimate limits of its constitutional powers, and avoid trespassing into F political territory which under the Constitution has been appropriated to other organs of the State. [159 B; D-G]

4:2. The procedures adopted by the Court in cases of public interest litigation must of course be procedures designed and shaped by the Court with a view to resolving the problem presented before it on determining the nature and extent of relief accessible in the circumstances. Whatever the procedure adopted by G the court it must be procedure known to judicial tenets and characteristic of a judicial proceeding. There are methods and avenues of procuring material available to executive and legislative agencies and often employed by them for the efficient and effective discharge of the tasks before them. Not all those methods and avenues are available to the Court. The Court must ever remind itself that one of the indicia identifying it as a Court is the nature and character of the procedure adopted by it in determining a controversy. It is in that sense limited in H the evolution of procedures pursued by it in the process of an adjudication, and in the grant and execution of the relief. Legal jurisprudence has in its historical

development identified certain fundamental principles which form the essential constituents of judicial procedure. They are employed in every judicial proceeding, and constitute the basic infrastructure along whose chamacts flows the power of the Court in the process of adjudication. [159 H; 160 A-D] A

4:3. What should be the conceivable frame work of procedure in public interest litigation does not admit of a clear cut answer. It is not possible to envisage a defined pattern of procedure applicable to all cases. Of necessity the pattern which the Court adopts will vary with the circumstances of each case. But, if there is a statute prescribing a judicial procedure governing the particular case the Court must follow such procedure. It is not open to the Court to bypass the statute and evolve a different procedure at variance with it. Where, however, the procedure prescribed by statute is incomplete or insufficient; it will be open to the Court to supplement it by evolving its own rules. Nonetheless, the supplementary procedure must conform at all stages to the principles of natural justice. There can be no deviation from the principles of natural justice and other well accepted procedural norms characteristic of a judicial proceeding. They constitute an entire code of general principles of procedure, tried and proven and hallowed by the sanctity of common and consistent acceptance during long years of the historical development of the law. The general principles of law, to which reference is made here, command the confidence, not merely of the Judge and the lawyer and the parties to the litigation, but supply that basic credible to the judicial proceeding which strengthens public faith in the Rule of Law. They are rules rooted in reason and fairplay and their governance guarantees a just disposition of the case. The Court should be wary of suggestions favouring novel procedures in cases where accepted procedural rules will suffice. 160 E-H; 161 A] B C D

5:1. Article 32 confers the widest amplitude of power of this Court in the matter of granting relief. It has power to issue "directions or orders of writs", and there is no specific indication, no express language, limiting or circumscribing that power. Yet, the power is limited by the very nature, that its judicial power. It is power which pertains to the judicial organ of the State, identified by the very nature of the judicial institution. There are certain fundamental constitutional concepts which, although elementary, need to be recalled at times. The constitution envisages a broad division of the power of the State between the legislature, the executive and the judiciary. Although the division is not precisely demarcated, there is general acknowledgement of its limits. The limits can be gathered from the written text of the Constitution, from conventions and constitutional practice, and from an entire array of judicial decisions. The constitutional lawyer concedes a certain measure of overlapping in functional action among the three organs of the State. But there is no warrant for assuming geometrical congruence. It is common place that while the legislature enacts the law the executive implements it and the court interprets it and, in doing so, adjudicates on the validity of executive action and, under our Constitution, even judges the validity of the legislation itself. And yet it is well recognised that in a certain sphere the legislature is possessed of judicial power, the executive possesses a measure of both legislative and judicial functions, and the court, in its duty of interpreting the law, accomplished in its perfected action a marginal degree of legislative exercise. Nonetheless, a fine and delicate balance is envisaged under our Constitution between these primary institutions of the State. In every case the Court should determine the true limits of its jurisdiction and, having done so, it should take care to remain within the restraints of its jurisdiction. [161 B-H; 162 A] E F G H

A 5:2. This aspect of Court action assumes especial significance in public interest litigation. It bears upon the legitimacy of the judicial institution, and that legitimacy is affected as much by the solution presented by the Court in resolving a controversy as by the manner in which the solution is reached. In an area of judicial functioning where judicial activism finds room for play, where constitutional adjudication can become an instrument of social policy forged by the personal political philosphy of the judge, this is an important consideration B to keep in mind. [162 B-C]

5:3. Where the Court embarks upon affirmative action in the attempt to remedy a constitutional imbalance within the social order, few critics will find fault with it so long as it confines itself to the scope of its legitimate authority. But there is always the possibility, in public interest litigation, of succumbing to the temptation of crossing into territory which properly pertains to the Legislature C or to the Executive Government. For in most cases the jurisdiction of the Court is invoked when a default occurs in executive administration, and sometimes where a void in community life remains unfilled by legislative action. The resulting public grievance finds expression through social action groups, which consider the Court an appropriate forum for removing the deficiencies. Indeed, the citizen seems to find it more convenient to apply to the Court for the vindication of constitutional rights than appeal to the executive or legislative organs of the State. In the process of correcting executive error or removing legislative omission the D Court can so easily find itself involved in policy making of a quality and to a degree characteristic of political authority, and indeed run the risk of being mistaken for one. An excessively political role identifiable with political governance betrays the Court into functions alien to its fundamental character, and tends to destroy the delicate balance envisaged in our constitutional system between its three basic institutions. The Judge, conceived in the true classical mould, is an impartial arbiter, beyond and above political bias and prejudice, functioning silently in E accordance with the Constitution and his judicial conscience. Thus does he maintain the legitimacy of the institution he serves and honour the trust which his office has reposed in him. [162 D-H]

The affirmative schemes framed in public interest litigation by the Court sometimes require detailed administration under constant judicial supervision over protected periods. The lives of large sections of people some of whom have F had no voice in the decisions, are shaped and ordered by mandatory Court action extending into the future. In that context it is as well to remember that public approval and public consent assume material importance in its successful implementation. In contrast with policy making by legislation, where a large body of legislators debate on a proposed legislative enactment, no such visual impact can be perceived when judicial decrees are forged and fashioned by a few judicial personages in the confines of a Court. The mystique of the robe, at the stage of G decision-making, is associated traditionally with cloistered secrecy and confidentiality and the end-result commonly issues as a final definitive act of the Court. It is a serious question whether in every case the same awesome respect and reverence will endure during different stages of affirmative action seeking to regulate the lives of large numbers of people, some of whom never participated in the judicial process. [163 A-D]

H 5:4. Treating with public interest litigation requires more than legal scholarship and a knowledge of text book law. It is of the utmost importance in such

cases that when formulating a scheme of action, the Court must have due regard to the particular circumstances of the case, to surrounding realities including the potential for successful implementation, and the likelihood and degree of response from the agencies on whom the implementation will depend. In most cases of public interest litigation, there will be neither precedent nor settled practice to add weight and force to the validity of the Court's action. The example of similar cases in other countries can afford little support. The successful implementation of the orders of the Court will depend upon the particular social forces in the backdrop of local history, the prevailing economic pressures, the duration of the stages involved in the implementation, the momentum of success from stage to stage, and the acceptability of the Court's action at all times by those involved in or affected by it. [163 E-G]

5:5. An activist Court spearheading the movement for the development and extension of the citizen's constitutional rights, for the protection of individual liberty and for the strengthening of the socio-economic fabric in compliance with declared constitutional objectives, will need to move with a degree of judicial circumspection. In the centre of a social order changing with dynamic pace, the Court needs to balance the authority of the past with the urges of the future. In that task the court must ever be conscious of the constitutional truism that it possesses the sanction of neither the sword nor the pursue and that its strength lies basically in public confidence and support, and that consequently the legitimacy of its acts and decisions must remain beyond all doubt. Therefore, whatever the case before it, whatever the context of facts and leagal rights, whatever the social and economic pressures of the times, whatever the personal philosophy of the Judge, let it not be forgotton that the essential identity of the institution, that it is a Court, must remain preserved so that every action of the Court is informed by the fundamental norms of law, and by the principles embodied in the Constitution and other sources of law. If its contribution to the Jurisprudential ethos of society is to advance our constitutional objectives, it must function in accord with only those principles which enter into the composition of judicial action and give to its essential quality. [163 H; 164 A-D]

5:6. There is a great merit in the Court proceeding to decide an issue on the basis of strict legal principle and avoiding carefully the influence of purely emotional appeal. For that alone gives the decision of the Court a direction which is certain, and unfaltering, and that especial permanance in legal jurisprudence which makes it a base for the next step forward in the further progress of the law. Indeed, both certainty of substance and certainty of direction are indispensable requirements in the development of the law, and invest it with the credibility which commands public confidence in its legitimacy. [165 A-B]

This warning is of especial significance in these times, during a phase of judicial history when a few social action groups tend to show evidence of presuming that in every case the court must bend and mould its decision to popular notions of which way a case should be decided. [165 C]

As new areas open before the Court with modern developments in jurisprudence, in a world more sensitive to human rights as well as the impact of technological progress, the Court will become increasingly consious of its expanding jurisdiction. That is inevitable. But its responsibilities are correspondingly great, and perhaps never greater than now. [165 D]

A It must be remembered that there is no higher Court to correct over the Supreme Court its errors, and that its Judge wear the mantle of infallibility only because their decisions are final. That the Judges sit at the apex of the judicial administration and their word, by constitutional mandate, is the law of the land can induce an unusual sense of power. It is a feeling Judges must guard against by constantly reminding themselves that every decision must be guided by reason and by judicial principles. [165 E-F]

B 6:1. Persons in this country obliged to serve as bonded labour are entitled to invoke Article 23 of the Constitution. The provisions embodied in that clause form a vital constituent of the Fundamental Rights set forth in Part III of the Constitution, and their violation attracts properly the scope of Article 32 of the Constitution. [165 G]

C 6:2. It is true that the reports of the court appointed commissions have not been tested by cross examination, but then the record does not show whether any attempt was made by the respondents to call them for cross examination. Further, whether the appointment of the commissioners falls within the term of order XLVI of the Supreme Court Rules, 1966 is of technical significance only because there was inherent power in the court, in the particular circumstances of this case to take that action; However, the court would do well to issue notice to the respondents, before appointing any Commissioner, in those cases where there is little D apprehension of the disappearance of evidence. [166 B-C]

6:3. The present case is one of considerable importance to a section of our people, who pressed by the twin misfortunes of poverty and illiteracy, are compelled to a condition of life which long since should have passed into history. The continued existence of such pockets of oppression and misery do no justice to the promises and assurances extended by our Constitution to its citizens. [166 D-E]

E PER AMARENDRA NATH SEN, J: (Concurring with Pathak, J.)

1:1. Article 32 of the Constitution is clearly attracted to the facts of the case, as in the present case the violation of the fundamental right of liberty of the workmen who are said to be kept in wrongful and illegal detention, employed in forced labour, is alleged. Forced labour is constitutionally forbidden by Article 23 of the Constitution. [168 D-E]

F 1:2. Any person who is wrongfully and illegally employed as a labourer in violation of the provisions of the Bonded Labour System (Abolition) Act, 1976 is in essence deprived of his liberty. A bonded labourer truly becomes a slave and the freedom of a bonded labourer in the matter of his employment and movement is more or less completely taken away and forced labour is thrust upon him. When any bonded labourer approached this Court the real grievance that G he makes is that he should be freed from this bondage and he prays for being set at liberty and liberty is no doubt a fundamental right guaranteed to every person under the Constitution. There cannot be any manner of doubt that any person who is wrongfully and illegally detained and is deprived of his liberty can approach this Court under Article 32 of the Constitution for his freedom and wrongful and illegal detention, and for being set at liberty. Whenever any person is wongfully and illegally deprived of his liberty, it is open to anybody who is interested in the H person to move this Court under Article 32 of the Constitution for his release. It may not very often be possible for the person who is deprived of his liberty to

approach this Court, as by virtue of such illegal and wrongful detention, he may not be free and in a position to move the Supreme Court. [167 E-H] A

1:3. The Bonded labourers working in the far away places are generally poor and belong to the very weak section of the people. They are also not very literate and they may not be conscious of their own rights. Further, as they are kept in bondage their freedom is also restricted and they may not be in a position to approach this Court. Though no fundamental right of the petitioner may be said to be infringed, yet the petitioner who complains of the violation of the fundamental right of the workmen who have been wrongfully and illegally denied their freedom and deprived of their constitutional right must be held to be entitled to approach this Court on behalf of the bonded labourers for removing them from illegal bondage and deprivation of liberty. [168 B-C] B

S.P. Gupta v. Union of India & Another, [1981] Suppl. S.C.C. 87, referred to. C

2:1. Article 32 or for that matter any other article does not lay down any procedure which has to be followed to move this Court for relief against the violation of any fundamental right. Article 32 (1) only lays down that the right to move this court by appropriate proceedings for enforcement of fundamental rights is guaranteed. The Constitution very appropriately leaves the question as to what will constitute an appropriate proceeding for the purpose of enforcement of fundamental rights to be determined by the Court. This Court when sought to be moved under Article 32 by any party for redressing his grievance against the violation of fundamental rights has to consider whether the procedure followed by the party is appropriate enough to entitle the court to proceed to act on the same. No doubt this Court has framed rules which are contained in part IV, Order XXXV of the Supreme Court Rules under the Caption "application for enforcement of fundamental rights" ("Article 32 of the Constitution") Generally speaking, any party who seeks to move this Court under Article 32 of the Constitution should conform to the rules prescribed. The rules lay down the procedure which is normally to be followed in the matter of any application under Article 32 of the Constitution. These rules are rules relating to the procedure to be adopted and the rules are intended to serve as maids to the Deity of Justice. Procedural law which also forms a part of the law and has to be observed, is, however, subservient to substantive law and the laws of procedure are prescribed for promoting and furthering the ends of justice. There cannot be any doubt that this Court should usually follow the procedure laid down in 0.XXXV of the Rules of this Court and should normally insist on a petition properly verified by an affidavit to be filed to enable the Court to take necessary action on the same. Though this Court should normally insist on the rules of procedure being followed, it cannot be said, taking into consideration the nature of right conferred under Article 32 to move this Court by an appropriate proceeding and the very wide powers conferred on this Court for granting relief in the case of violation of fundamental rights, that this Court will have no jurisdiction to entertain any proceeding which may not be in conformity with procedure prescribed by the Rules of this Court. The Rules undoubtedly lay down the procedure which is normally to be followed for making an application under Article 32 of the Constitution. They, however, do not and cannot have the effect of limiting the jurisdiction of this Court of entertaining a proceeding under Article 32 of the Constitution, if made, only in the manner prescribed by the rules. [169 F-H; 170 A-D] D E F G H

A 2:2. For effectively safeguarding the fundamental rights guaranteed by the Constitution, the Court in appropriate cases in the interests of justice will certainly be competent to treat a proceeding, though not in conformity with the procedure prescribed by the Rules of this Court, as an appropriate proceeding under Article 32 of the Constitution and to entertain the same. Fundamental rights guaranteed under the Constitution are indeed too sacred to be ignored or trifled with merely on the ground of technicality or any rule of procedure. The B rules framed by this Court do not also lay down that this Court can be moved under Article 32 of the Constitution only in accordance with the procedure prescribed by the Rules and not otherwise. A mere technicality in the matter of form or procedure which may not in any way affect the substance of any proceeding should not stand in the way of the exercise of the very wide Jurisdiction and powers conferred on this Court under Article 32 of the Constitution for enforcement of fundamental rights guaranteed under the Constitution. Taking into consideration the substance of the matter and the nature of allegations made, it will essentially C be a matter for the court to decide whether the procedure adopted can be considered to be an appropriate proceeding within the ambit of Article 32 of the Constitution. The Court if satisfied on the materials placed in the form of a letter or other communication addressed to this Court, may take notice of the same in appropriate cases. Experience shows that in many cases it may not be possible for the party concerned to file a regular writ petition in conformity with procedure laid down in the Rules of this Court. The Supreme Court for quite some years D now has in many cases proceeded to act on the basis of the letters addressed to it. A long standing practice of the Court in the matter of procedure also acquired sanctity. Further in various cases the Court has refused to take any notice of letters or other kind of communications addressed to Court and in many cases also the Court on being moved by a letter has directed a formal writ petition to be filed before it has decided to proceed further in the matter. [170 F-H; 171 A-D]

E 2:3. It is however eminently desirable that normally the procedure prescribed in the rules of this Court should be followed while entertaining a petition under Article 32 of the Constitution, though in exceptional cases and particularly in the matter of general public interest, this Court may, taking into consideration the peculiar facts and circumstances of case, proceed to exercise its jurisdiction under Article 32 of the Constitution for enforcement of fundamental rights treating the letter or the communication in any other form as an appropriate proceeding F under Art. 32 of the Constitution. Further any party who addresses a letter or any other communication to this Court seeking intervention of this Court on the basis of the said letter and communication should address this letter or communication to this Court and not to any individual Judge by name. Such communication should be addressed to the Chief Justice of the Court and his companion Justices. A private communication by a party to any Learned Judge over any matter is not proper and may create embarrassment for the Court and G the Judge concerned. [171 G-H; 172 A]

In the present case, the unfortunate workers who are employed and bonded labourers at a distant place, could not possibly in view of their bondage, move this Court, following the procedure laid down—in the Rules of this Court. The Petitioner which claims to be a social welfare Organization interested in restoring H liberty and dignity to these unfortunate bonded labourers should be considered competent to move this Court by a letter or like communication addressed to

this Court, to avoid trouble and expenses, as the petitioner is not moving this Court for any personal or private benefit. A

3:1. Whenever, however, there is an allegation of violation of fundamental rights, it becomes the responsibility and also the sacred duty of this Court to protect such fundamental rights guaranteed under the Constitution provided that this Court is satisfied that a case for interference by this Court appears prima facie to have been made out. Very often the violation of fundamental rights is not admitted or accepted. On a proper consideration of the materials the Court has to come to a conclusion whether there has been any violation of fundamental rights to enable the court to grant appropriate reliefs in the matter. In various cases, because of the peculiar facts and circumstances of the case the party approaching this Court for enforcement of fundamental rights may not be in a position to furnish all relevant materials and necestary particulars. If, however, on a consideration of the materials placed, the Court is satisfied that a proper probe into the matter is necessary in the larger interest of administration of justice and for enforcement of fundamental rights guaranteed, the Court, in view of the obligations and duty cast upon it of preserving and protecting fundamental rights, may require better and further materials to enable the Court to take appropriate action; and there cannot be anything improper in the proper exercise of Court's jurisdiction under Article 32 of the Constitution to try to secure the necessary materials through appropriate agency. The commission that the Court may appoint or the investigation that the court may direct is essentially for the Court's satisfaction as to the correctness or otherwise of the allegation of violation of fundamental rights to enable the Court to decide the Course to be adopted for doing proper justice to the parties in the matter of protection of their fundamental rights. It has to be borne in mind that in this land of ours, there are persons without education, without means and without opportunities and they also are entitled to full protection of their rights or privileges which the Constitutions affords. Living in chilled penury without necessary resources and very often not fully conscious of their rights guaranteed under the Constitution, a very large section of the people commonly termed as the weaker section live in this land. When this Court is approached on behalf of this class of people for enforcement of fundamental rights of which they have been deprived and which they are equally entitled to enjoy, it becomes the special responsibility of the Court to see that justice is not denied to them and the disadvantageous position in which they are placed, do not stand in the way of their getting justice from this Court. [172 D-H; 173 A-B] B C D E F

3:3. The power to appoint a commission or an investigation body for making enquiries in terms of directions given by the Court must be considered to be implied and inherent in the power that the Court has under Article 32 for enforcement, of the fundamental rights guaranteed under the Constitution. This is a power which is indeed incidental or ancillary to the power which the Court is called upon to exercise in a proceeding under Article 32 of the Constitution. It is entirely in the discretion of the Court, depending on the facts and circumstances of any case, to consider whether any such power regarding investigation has to be exercised or not. The Commission that the Court appoints or the investigation that the Court directs while dealing with a proceeding under Article 32 of the Constitution is not a commission or enquiry under the Code of Civil Procedure. Such power must necessarily be held to be implied within the very wide powers conferred on this Court under Article 32 for enforcement of fundamental rights. G H

A For proper exercise of its powers under Article 32 of the Constitution and for due discharge of the obligation and duty cast upon this Court in the matter of protection and enforcement of fundamental rights which the Constitution guarantees, this Court has an inherent power to act in such a manner as will enable this Court to discharge its duties and obligations under Article 32 of the Constitution properly and effectively in the larger interest of administration of justice, and for proper protection of Constitution safeguards. [173 C-G]

B 4. The litigation of this type particularly in relation to bonded labourers is really not in nature an adversary litigation and it becomes the duty of the State and also of the appropriate authorities to offer its best cooperation to see that this evil practice which has been declared illegal is ended at the earliest. The existence of bonded labour in the Court is an unfortunate fact. Whenever there is an allegation of the existence of bonded labour in any particular State, the State instead of seeking to come out with a case of denial of such existence on the basis C of a feeling that the existence of bonded labour in the State may cast a slur or stigma on its administrative machinery, should cause effective enquiries to be made into the matter and if the matter is pending in this Court, should cooperate with this Court to see that death-knell is sounded on this illegal system which constitutes a veritable social menace and stands in the way of healthy development of the nation. [174 A-C]

D *PER CONTRA* :

5. The grievance of denial of other just rights to the workmen and the reliefs claimed for giving the workmen the benefits to which they may be entitled under various legislations enacted for their welfare are more or less in the nature of consequential reliefs incidental to the main relief of freedom from bonded and forced labour to which the workmen are rejected. In the facts and circumstances of the case, it appears that the provisions of inter-State Migrant Workmen (Regulation of E Employment and Conditions of Service) Act, 1979 are not applicable and therefore do not fall for any adjudication. [174 F-G]

ORIGINAL JURISDICTION : Writ Petition No. 2135 of 1982.

Under Article 32 of the Constitution.

F

Govind Mukhoty, S.K. Bhattacharya and *N.R. Chaudhary* for the Petitioner.

M.N. Phadke, K.B. Rohtagi and *S.K. Dhingra* for the Respondent Nos. 4,5,7, 8 & 9.

G

K.B. Rohtagi and *S.I. Dhingra* for the Respondent No. 13

S.K. Verma for the Respondent No. 6.

H *Abdul Khadar Sr.* Advocate and *Miss. A. Subhashni* for the respondent.

The following Judgments were delivered— A

BHAGWATI, J. The petitioner is an organisation dedicated to the cause of release of bonded labourers in the country. The system of bonded labour has been prevalent in various parts of the country since long prior to the attainment of political freedom and it constitutes an ugly and shameful feature of our national life. This B system based on exploitation by a few socially and economically powerful persons trading on the misery and suffering of large numbers of men and holding them in bondage is a relic of a feudal hierarchical society which hypocritically proclaims the divinity of men but treats large masses of people belonging to the lower rungs of the social ladder or economically impoverished segments of society as dirt and C chattel. This system under which one person can be bonded to provide labour to another for years and years until an alleged debt is supposed to be wiped out which never seems to happen during the life time of the bonded labourer, is totally incompatible with the new egalitarian socio-economic order which we have promised to build and it is not only an affornt to basic human dignity but also con- D stitutes gross and revolting violation of constitutional values. The appalling conditions in which bonded labourers live, not as humans but as serfs, recall to the mind the following lines from "Man with the Hoe" which almost seem to have been written with reference to this neglected and forlorn species of Indian humanity :

E

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

They are non-beings, exiles of civilization, living a life worst F than that of animals, for the animals are at least free to roam about as they like and they can plunder or grab food whenever they are hungry but these out castes of society are held in bondage, robbed of their freedom and they are consigned to an existence where they have to live either in hovels or under the open sky and be satisfied with whatever little unwholesome food they can manage to get, in- G adequate though it be to fill their hungry stomachs. Not having any choice, they are driven by poverty and hunger into a life of bondage a dark bottomless pit from which, in a cruel exploitative society, they cannot hope to be rescued.

H

This pernicious practice of bonded labour existed in many

A States and obviously with the ushering in of independence it could not be allowed to continue to blight the national life any longer and hence, when we framed our Constitution, we enacted Article 23 of the Constitution which prohibits "traffic in human beings and begar and other similar forms of forced labour" practised by any one. The system of bonded labour therefore stood prohibited by Article 23
B and there could have been no more solemn and effective prohibition than the one enacted in the Constitution in Article 23. But, it appears that though the Constitution was enacted as far back as 26th January, 1950 and many years passed since then, no serious effort was made to give effect to Article 23 and to stamp out the shocking practice of to bonded labour. It was only in 1976 that Parliament enacted the
C Bonded Labour System (Abolition) Act, 1976 providing for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people. But, unfortunately, as subsequent events have shown and that is borne out also by the Report made by the Centre for Rural Development Administration, Indian Institute of Public Administration to the
D Ministry of Labour Government of India on "Rehabilitation of Bonded Labour in Monghyr District, Bihar", the Report made by the Public Policy and Planning Division of the Indian Institute of Public Administration to the Ministry of Labour, Government of India on "Evaluation Study of Bonded Labour Rehabilitation Scheme In Tehri Garhwal, U.P.", the Report of Laxmi Dhar Misra, the Direc-
E tor-General (Labour Welfare) of the Government of India based on On the Spot Studies Regarding Identification, Release of Bonded Labourers and Rehabilitation of Freed Labourers in Uttar Pradesh, Madhya Pradesh, Andhra Pradesh, Karnataka, Orissa, Bihar, Rajasthan, Tamilnadu and Kerala and the Report of the National Seminar on "Indentification and Rehabilitation of Bonded Labour"
F held from 7th to 9th February, 1983 that the pernicious practice of bonded labour has not yet been totally eradicated from the national scene and that it continues to disfigure the social and economic life of the country at certain places. There are still a number of bonded labourers in various parts of the country and significantly, as pointed out in the Report of the National Seminar on "Identification and
G Rehabilitation of Bonded Labour" a large number of them belong to Scheduled Castes and Scheduled Tribes account for the next largest number while the few who are not from Scheduled Castes or Scheduled Tribes are generally landless agricultural labourers. It is absolutely essential we would unhesitatingly declare that it is a
H constitutional imperative-that the bonded labourers must be identified and released from the shackles of bondage so that they can assimilate

themselves in the main stream of civilised human society and realise the dignity, beauty and worth of human existence. The process of identification and release of bonded labourers is a process of discovery and transformation of non-beings into human-beings and what it involves is eloquently described in the beautiful lines of Rabindra Nath Tagore in "Kadi and Komal"

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

This Process of discovery and transformation poses a serious problem since the social and economic milieu in which it has to be accomplished is dominated by elements hositle to it. But this problem has to be solved if we want to emancipate those who are living in bondage and serfdom and make them equal participants in the fruits of freedom and liberty. It is a problem which needs urgent attention of the Government of India and the State Governments and 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-notes 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. It is not uncommon to find that the administration in some States is not willing to admit the existence of bonded labour, even though it exists in their territory and there is incontrovertible evidence that it does so exist. We fail to see why the administration should feel shy in admitting the existence of bonded labour, because it is not the existence of bonded labour that is a slur on the administration but its failure to take note of it and to take all necessary steps for the purpose of putting an end to the bonded labour system by quickly identifying, releasing and permanently rehabilitating bonded labourers. What is needed is determination, dynamism and a sense of social commitment of the part of the administration to free bonded labourers and rehabilitate them and wipe out this ugly inhuman practice which is a blot on our national life. What happend recently in the Ranga Reddy District of Andrha Pradesh as a result of the initiative taken by this Court in Writ Petitions Nos. 1574 of 1982 and 54 of 1983 shows clearly that if the political and administrative apparatus has a sense of commitment to the constitutional values

A and is determined to take action for identifying, releasing and rehabilitating bonded labourers despite pressures and pulls from different quarters, much can be done for securing emancipation and rehabilitation of bonded labourers. The District Administration of Ranga Reddy District could in less than six months release over 3000 bonded labourers from the clutches of contractors in stone quarries in Ranga B Reddy District and send them back to their homes with tickets and pocket expenses. It is therefore essential that whichever be the State Government it should, where there is bonded labour, admit the existence of such bonded labour and make all possible efforts to eradicate it. By doing so, it will not only be performing a humanitarian function but also discharging a constitutional obliga- C tion and strengthening the foundations of participatory democracy in the country.

We also find that in some cases the State Governments in order to shirk their obligation, take shelter under the plea that there may be some forced labour in their State but that is not bonded labour. We D shall have occasion to deal with this plea a little later when we refer to the definition of 'bonded labour' given in the Bonded Labour System (Abolition) Act, 1976 which at first blush appears to be a narrow definition limited only to a situation where a debtor is forced to provide labour to a creditor. The State of Haryana has in the present case tried to quibble with this definition of 'bonded labour' and its E argument has been that these labourers may be providing forced labour but they are not bonded labourers within the meaning of the Bonded Labour System (Abolition) Act, 1976 and they may therefore be freed by the Court if it so pleases but the State of Haryana cannot be compelled to rehabilitate them. We are constrained to observe that this agrument, quite apart from its invalidity, ill-behoves a F State Government which is committed to the cause of socialism and claims to be striving to ensure social justice to the vulnerable sections of the community. But we do not wish to anitcipate the discussion in regard to this argument and at the present stage we content ourselves by merely observing that it is unfortunate that any State Government should take up the plea that persons who are forced to provided labour G may be forced labourers but unless it is shown by them by proper evidence tested by cross-examination that they are forced to provide labour against a bonded debt, they cannot be said to be bonded labourers and the State Government cannot be held to be under any obligation to rehabilitate them.

H

The petitioner made a survey of some of the stone quarries in

Faridabad district near the city of Delhi and found that there were a large number of labourers from Maharashtra, Madhya Pradesh, Uttar Pradesh and Rajasthan who were working in these stone quarries under "inhuman and intolerable conditions" and many of whom were bonded labourers. The petitioner therefore addressed a letter to one of us on 25th February, 1982 pointing out that in the mines of Shri S.L. Sharma, Gurukula Indra Prastha, Post Amar Nagar, Faridabad, District, a large number of labourers were languishing under abject conditions of bondage for last about ten years, and the petitioner gave the names of 11 bonded labourers who were from village Asarha, Barmer district of Rajasthan, 7 bonded labourers who were from village Bharol, district Jhansi of Madhya Pradesh and 23 bonded labourers who were from village Barodia, Bhanger, Tehsil Khurai, district Sagar, M.P. The petitioner pointed out that there were "yet another 14 bonded labourers from Lalitpur in U.P.". The petitioner also annexed to its letter, statements in original bearing the thumb marks or signatures as the case may be of these bonded labourers referred to in the letter. The petitioner pointed out in the letter that the labourers working in these stone quarries were living under the most inhuman conditions and their pitiable lot was described by the petitioner in the following words:

> "Besides these cases of bonded labour, there are innumerable cases of fatal and serious injuries caused due to accidents while working in the mines, while dynamiting the rocks or while crushing the stones. The stone-dust pollution near the stone crushers is so various that many a valuable lives are lost due to tuberoculosis while others are reduced to mere skeletons because of T.B. and other diseases. The workers are not provided with any medical care, what to speak of compensating the poor worker for injury or for death. No cases are registered against the mine owners or the lessees for violation of safety rules under Mines Act. We are enclosing herewith the statements of about 75 workers who have suffered or are suffering continuously due to non-implementation of the rules by the Central Government or by Haryana Government or by the employers.
>
> Almost 99% of the workers are migrant from drought prone areas of Rajasthan, Madhya Pradesh, Andhra Pradesh, Orissa, Maharashtra and Bihar. But if there is any one place where the Central legislation of Inter State Migrant Workmens Act 1979 is being most flagrantly violated it is

here in these mines, without any residential accommodation, with the name-not even a thatched roof to fend against the icy winds and winter rain or against the scorching heat in mindsummer, with scanty clothing, with very impure and polluted drinking water accumulated during rainy season in the clitches, with absolutely no facilities for schooling or childcare, braving all the hazards of nature and pollution and illtreatment, these thousands of sons and daughters of Mother India epitomise the "Wretched of the Earth".

On top of all these forms of exploitation is the totally illegal system of "Thekedars", middlemen who extract 30% of the poor miner's wages as their ill gotten commission (Rs. 20 out of Rs. 60, wages for per truck load of stone ballast). The trucks are invariably oversigned in some cases they doubt the prescribed size of 150 Sq. feet but payment remains the same. The hills are dotted with liquor vends-legal and illegal. Murders and molestation of women is very common."

The petitioner also set out the various provisions of the Constitution and the statutes which were not being implemented or observed in regard to the labourers working in these stone quarries. The petitioner in the end prayed that a writ be issued 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 dated 25th February 1982 addressed by the petitioner was treated as a writ petition and by an order dated 26th February 1982 this Court issued notice on the writ petition and appointed two advocates, namely, M/s. Ashok Srivastava and Ashok Panda as commissioners to visit the stone quarries of Shri S.L. Sharma in Godhokhor (Anangpur) and Lakkarpur in Faridabad district and to interview each of the persons whose names were mentioned in the letter of the petitioner as also a cross section of the other workers with a view to finding out whether they are willingly working in these stone quarries and also to inquire about the conditions in which they are working. M/s. Ashok Srivastava and Ashok Panda were directed to visit these stone quarries on 27th and 28th February 1982 and to make a report to this Court on or before 2nd March 1982. Pursuant to this order made by us, M/s. Ashok Srivastava and Ashok Panda visited the stone quarries of S.L. Shrma in Godhokhor and Lakkarpur and carried out the assignment entrusted to them and submitted a

report to this Court on 2nd March 1982. The Report pointed out inter alia that in the stone quarries of S.L. Sharma at Godhakhpur, "many stone crushing machines were operating with the result that the whole atmosphere was full of dust and it was difficult even to breathe". The report then referred to the statements of various workers interviewed by M/s. Ashok Srivastava and Ashok Panda and according to the statements given by some of them, namely, Lalu Ram, Dalla Ram, Thakur Lal, Budh Ram, Harda, Mahadev, Smt. Shibban, Hardev, Anam, Punnu, Ghanshyam, Randhir and Mute, they were not allowed to leave the stone quarries and were providing forced labour and they did not have even pure water to drink but were compelled in most cases to drink dirty water from a *nallah* and were living in Jhuggies with stones piled one upon the other as walls and straw covering at the top, which did not afford any protection against sun and rain and which were so low that a person could hardly stand inside them. The statements of these workers showed that a few of them were suffering from tuberculosis and even when injuries were caused due to accidents arising in the course of employment, no compensation was being paid to them and there were no facilities for medical treatment or schooling for children. The Report proceeded to state that M/s. Ashok Srivastava and Ashok Panda then visited mine no. 8 in Godhokhor stone quarries and here they found that the condition of the jhuggies was much worse inasmuch 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. M/s. Ashok Srivastava and Ashok Panda found that none of the inmates of the jhuggies had any blanket or wollen clothes and they did not even have any mat on which they could sleep. The statements of Phool Chand, Babu Lal, Bhoolu, Karaya, Ram Bahadur and Sallu also showed that all these workers were bonded labourers who were not allowed to leave the stone quarries and one of them, namely, Sallu was seriously injured on his left leg only a day before the visit of M/s. Ashok Srivastava and Ashok Panda but he did not hope to get any compensation "because here no one gets any compensation for any injury". Most of the workers interviewed by M/s. Ashok Srivastava and Ashok Panda stated that they got very little by way of wages from the mine lessees or owners of stone crushers since they had to purchase explosives with their own moneys and they had to incur other expenses which, according to Dr. Patwardhan's report to which we shall refer hereafter, included 50 per cent of the expenses of drilling holes. M/s. Ashok Srivastava and Ashok Panda also pointed out in the Report that the following persons working

A B C D E F G H

A in the Godhokhor stone quarries claimed that they were bonded labourers :

(1) Chand Bahadur son of Hastbir (2) Lal Bahadur son of Umbar Bahadur (3) Chhotey Lal son of Jarau (4) Harak Bahadur son of Jeet Bahadur (5) Gopal Bahadur son of Jhabu Singh B (6) Roop Singh son of Govinda (7) Medh Bahadur son of Aspteir (8) Jiddey Bahadur son of Nunbahadur (9) Phool Bahadur son of Ram Bahadur (10) Heera Bahadur son of Balbahadur (11) Veer Bahadur son of Chhalvir (12) Nain Singh son of Lal Bahadur (13) Lal Bahadur son of Gang Bahadur (14) Ganesh son of Gang Bahadur (15) Amber Bahadur son of Sadhu Bahadur (16) Hira Lal son of C Atbahadur (17) Kamar Bahadur (18) Jagadh Bahadur son of Top Bahadur (19) Gajender Bahadur son of Shyam Lal (20) Ganga Ram son of Lal Bahadur (21) Nar Bahadur and (22) Sant Bahadur son of Bhag Bahadur.

So far as the workers working in Lakkarpur stone quarries D were concerned, the report of M/s. Ashok Srivastava and Ashok Panda stated that out of about 250 persons living in straw jhuggies, 100 persons hailed from Bilaspur while 150 persons belonged to Allahabad and according to the report, 100 persons coming from Bilaspur stated that they were forcibly kept by the contractor and they were not allowed to move out of their place and they were bonded E labourers. M/s. Ashok Srivastava and Ashok Panda described in the Report the pitiable condition in which these workers were living in straw jhuggies without any protection against sun and rain and with drinking water available only from the *barsati nalleh*. The Report pointed out that while M/s. Ashok Srivastava and Ashok Panda were interviewing the workers in the Lakkarpur stone quarry, it F started raining heavily and thereupon they took shelter in one of the jhuggies "but inside the jhuggi it was not safe, as water was pouring inside" and they were completely drenched inside the jhuggi. The Report also stated that, according to these workers, there were no medical facilities available and even where workers were injured, they did not get any medical aid. The Report ended by observing G 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 beasts and animals could be leading more comfortable life than these helpless labourers".

H Thereafter, the writ petition came up for hearing on 5th March 1982 along with another writ petition filed by the present petitioner

for release of some other bonded labourers and on this day the Court made an order directing that the copies of the Report of M/s. Ashok Srivastava and Ashok Panda should be supplied to all the mine-lessees and stone crushers who are respondents to the writ petitions so that they may have an opportunity to file their reply to the facts found in the Report. The Court also appointed Dr. Patwardhan of Indian Institute of Technology to carry out a socio-legal investigation in the following terms :

> "It is necessary that a socio-legal investigation should be carried out for the purpose of determining what are the conditions prevailing in the various quarries in Faridabad District and whether there are any workmen in those quarries against their will or without their consent and what are the conditions in which they are living and whether any of the provisions of the Bonded Labour System (Abolition) Act and Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act is being violated. We may make it clear that when we are directing a socio-legal investigation of these matters it is not in a spirit to criticise the State Government or any of its officers but with a view to find out the correctness of the state of affairs so that the State Government and its officers could take necessary steps for remedying the situation if a state of affairs exists which is contrary to the provisions of law and the basic human norms. The Court can take action only after the socio-legal investigation is carried out by some responsible person and a copy of the report of the socio-legal investigation is made available to the parties. We would, therefore, request Dr. Patwardhan of I.I.T. to be good enough to carry out a socio-legal investigation into the aforesaid matters in the quarries in Faridabad District a list of which will be supplied by Mr. Mukhoty on behalf of the petitioners to Dr. Patwardhan within ten days from today after giving a copy to Mr. K.G. Bhagat, learned Counsel appearing for the State of Haryana. Dr. Patwardhan is requested to carry out socio-legal investigation with a view to putting forward a scheme for improving the living conditions for the workers working in the stone quarries and after the scheme is submitted to us we propose to hear the parties on the scheme with a view to evolving a final scheme with the assistance of the State of Haryana for the purpose of economic regeneration of these workmen.

The Court permitted Dr. Patwardhan to take the assistance of

A any person other than the parties to the writ petition in order to help him in his task and at the suggestion of the Court, the State of Haryana agreed to deposit a sum of Rs. 1500 to meet the expenses of Dr. Patwardhan in carrying out the socio-legal investigation. The Court also recorded in its order that when it was pointed out in the Report of M/s. Ashok Srivastava and Ashok Panda that the B workers in the stone quarries did not have any pure drinking water but were using dirty water from the nallah for drinking purposes, Mr. K.G. Bhagat learned Additional Solicitor General appearing on behalf of the State of Haryana fairly stated that "though it may not be strictly the obligation of the State Government, the State Government will take necessary measures for providing drinking facilities C to the workmen in the stone quarries". The Court also directed that the workmen whose names were set out in the writ petition and in the Report of M/s. Ashok Srivastava and Ashok Panda and particularly in regard to whom a separate statement had been filed in Court on behalf of the petitioner, would be free to go wherever they liked and they should not be restrained from doing so by any one and "if they D go to their respective villages, the district magistrates having jurisdiction over those villages" shall "take steps or measures to the extent possible for rehabilitating them."

Pursuant to this order made by the Court, the State of Haryana deposited a sum of Rs. 1500 in Court to meet the expenses of the E socio-legal investigation and Dr. Patwardhan embarked upon his task with the assistance of Mr. Krishan Mahajan, the legal correspondent of the Hindustan Times. It took some time for Dr. Patwardhan to complete his assignment and prepare his report but having regard to the immensity of the task, the time within which Dr. Patwardhan finished the inquiry and submitted his report was remarkably F short. We shall have occasion to refer to this Report a little latter when we deal with the arguments advanced on behalf of the parties, but we may point out at this stage that the report of Dr. Patwardhan is 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 sugges- G tions and recommendations for the purpose of improving the living conditions of these workmen. We are indeed grateful to Dr. Patwardhan for carrying out this massive assignment so efficiently and in such a short time. Dr. Patwardhan has submitted a statement of the expenses incurred by him in carrying out this socio-legal H investigation and this statement shows that he has incurred a total expense of Rs. 2078 which after withdrawal of the amount of Rs.

1500 deposited by the State of Haryana, leaves a balance of Rs. 578 to be reimbursed to Dr. Patwardhan. We are of the view that Dr. Patwardhan should also be paid a small honorarium of Rs. 1000. We would therefore direct the State of Haryana to deposit a sum of Rs. 1578 with the Registry of this Court within 4 weeks from today with liberty to Dr. Patwardhan to withdraw the same.

Though it was stated by Shri K.G. Bhagat on behalf of the State of Haryana that the State Government will take necessary measures for providing drinking facilities to the workmen in the stone quarries referred to in the writ petition and in the report of M/s. Ashok Srivastava and Ashok Panda, it appears that either no such measures were taken on behalf of the State Government or even if they were taken, they were short lived. The result was that the workmen working in most of these stone quarries had to remain without pure drinking water and they had to continue "to quench their thirst by drinking dirty and filthy water". Whether it is the obligation of the State Government to provide pure drinking water and if so what measures should be directed to be taken by the State Government in that behalf are matters which we shall presently consider. These are matters of some importance because there can be no doubt that pure drinking water is absolutely essential to the health and well-being of the workmen and some authority has to be responsible for providing it.

Before we proceed to consider the merits of the controversy between the parties in all its various aspects it will be convenient at this stage to dispose of a few preliminary objections urged on behalf of the respondents. The learned Additional Solicitor General appearing on behalf of the State of Harynana as also Mr. Phadke on behalf of one of the mine lessees contended that even if what is alleged by the petitioner in his letter which has been treated as a writ petition, is true, it cannot support a writ petition under Article 32 of the Constitution, because no fundamental right of the petitioner or of the workmen on whose behalf the writ petition has been filed, can be said to have been infringed. This contention is, in our opinion, futile and it is indeed surprising that the State Government should have raised it in answer to the writ petition. We can appreciate the anxiety of the mine lessees to resist the writ petition on any ground available to them, be it hyper-technical or even frivolous, but we find it incomprehensible that the State Government should urge such a preliminary objection with a view to stifling at the thresh-hold an inquiry by the Court as to whether the workmen are living in bondage

A and under inhuman conditions. We should have thought that if any citizen brings before the Court a complaint that a large number of peasants or workers are bonded serfs or are being subjected to exploitation by a few mine lessees or contractors or employers or are being denied the benefits of social welfare laws, the State Government, which is, under our constitutional scheme, charged with the mission B of bringing about a new socio-economic order where there will be social and economic justice for every one and equality of status and opportunity for all, would welcome an inquiry by the court, so that if it is found that there are in fact bonded labourers or even if the workers are not bonded in the strict sense of the term as defined in the Bonded Labour System (Abolition) Act 1976 but they are made to C provide forced labour or are consigned to a life of utter deprivation and degradation, such a situation can be set right by the State Government. Even if the State Government is on its own inquiry satisfied that the workmen are not bonded and are not compelled to provide forced labour and are living and working in decent conditions with all the basic necessities of life provided to them, the State Government D should not baulk an inquiry by the court when a complaint is brought by a citizen, but it should be anxious to satisfy the court and through the court, the people of the country, that it is discharging its constitutional obligation fairly and adequately and the workmen are being ensured social and economic justice. We have on more occasions than one said that public interest litigation is not in the nature of E 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 F examine whether the poor and the down-trodden are getting their social and economic entitlements or whether they are continuing to remain 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 meaning-ful reality for them of it has remained merely a teasing illusion and a promise of unreality, so that in case G the 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. When the Court entertains public interest litigation, it does not do so in a cavilling spirit or in a confrontational mood H or with a view to tilting at executive authority or seeking to usurp it but its attempt is only to ensure observance of social and economic

rescue programmes, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the executive. The Court is thus merely assisting in the realisation of the constitutional objectives. A

Moreover, 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. It is the fundamental right of every one in this country, assured under the interpretation given to Article 21 by this Court in *Francis Mullen's* case, to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State—neither the Central Government nor any State Government—has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State Policy contained in clauses (e) and (f) of Article 39, Article 41 and 42 are not enforceable in a court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that the executive power of every State *shall* be so exercised as to ensure compliance with the laws made by Parliament B C D E F G H

A and any existing laws which apply in that State, We have already pointed out in *Asiad Construction Worker*[1] case that the State is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when he belongs to the weaker sections of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The B Central Government is therefore bound to ensure observance of various social welfare and labour laws enacted by Parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the Directive Principles of State Policy. It must also follow as a necessary corollary that the State of Haryana in which the stone quarries are vested by reason of Haryana Minerals C (Vesting of Rights) Act 1973 and which is therefore the owner of the mines cannot while giving its mines for stone quarrying operations, permit workmen to be denied the benefit of various social welfare and labour laws enacted with a view to enabling them to live a life of human dignity. The State of Haryana must therefore ensure that the mine-lessees or contractors, to whom it is giving its mines for stone D quarrying operations, observe various social welfare and labour laws enacted for the benefit of the workmen. This is a constitutional obligation which can be enforced against the Central Government and the State of Haryana by a writ petition under Article 32 of the Constitution.

E The next preliminary objection urged by the learned Additional Solicitor General on behalf of the State of Haryana and Mr. Phadke on behalf of one of the mine-lessees was that the court had no power to appoint either Mr. Ashok Srivastava and Mr. Ashok Panda or Mr. Patwardhan as commissioners and the Reports made by them had no evidentiary value since what was stated in the Reports was based F only on ex-parte statements which had not been tested by cross-examination. The learned Additional Solicitor General as also Mr. Phadke relied on Order XLVI of the Supreme Court Rules 1966 which, as its heading shows, deals with commissions and 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 G 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. This arguemnt, plausible though it may seem at first sight, is in our opinion not well founded and must be rejected. It is based upon a total misconception of the

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(1) [1983] 1 S.C.R. 456.

true nature of a proceeding under Article 32 of the Constitution. Article 32 is so frequently used by lawyers and judges for enforcement of fundamental rights without any preliminary objection against its invocation being raised on behalf of the State, that we have rarely any occasion to examine its language and consider how large is the width and amplitude of its dimension and range. We are so much accustomed to the concepts of Anglo-Saxon jurisprudence which require every legal proceeding including a proceeding for a high prerogative writ to be cast in a rigid or definitive mould and insist on observance of certain well settled rules of procedure, that we implicitly assume that the same sophisticated procedural rules must also govern a proceeding under Article 32 and the Supreme Court cannot permit itself to be freed from the shackles of these rules even if that be necessary for enforcement of a fundamental right. It was on the basis of this impression fostered by long association with the Anglo-Saxon system of administration of justice that for a number of years this court had taken the view that it is only a person whose fundamental right is violated who can approach the Supreme Court for relief under Article 32 or in other words, he must have a cause of action for enforcement of his fundamental right. It was only in the year 1981 in the Judges Appointment and Transfer Case[1] that this Court for the first time took the view that where a person or class of persons to whom legal injury is caused by reason of violation of a fundamental right is unable to approach the court for judicial redress on account of poverty or disability or socially or economically disadvantaged position, any member of the public acting bona fide can move the court for relief under Article 32 and *a fortiorari*, also under Article 226, so that the fundamental rights may become meaningful not only for the rich and the well-to-do who have the means to approach the court but also for the large masses of people who are living a life of want and destitution and who are by reason of lack of awareness, assertiveness and resources unable to seek judicial redress. This view which we took in the Judges Appointment and Transfer Case is clearly within the terms of Article 32 if only we look at the language of this Article uninfluenced and uninhibited by any pre-conceptions and prejudices or any pre-conceived notions. Article 32 in so far it is material is in the following terms :

> "Art. 32 (1) : The right to move the Supreme Court by appropriate proceedings for the effforcement of the rights conferred by this Part is guaranteed.

(1) [1982] (2) SCR 365.

A (2) : The Supreme Court shall have power to issue directions or orders or writs, including writ in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights
B conferred by this Part.

While interpreting Article 32, it must be borne in mind that our approach must be guided not by any verbal or formalistic canons of construction but by the paramount object and purpose for which this Article has been enacted as a Funadmental Right in the Con-
C stitution and its interpretation must receive illumination from the trinity of provisions which permeate and energise the entire Constitution namely, the Preamale, the Fundamental Rights and the Directive Principles of State Policy. Clause (1) of Article 32 confers the right to move the Supreme Court for enforcement of any of the fundamental rights, but it does not say as to who shall have this right to
D move the Supreme Court nor does it say by what proceedings the Supreme Court may be so moved. There is no limitation in the words of Clause (1) of Article 32 that the fundamental right which is sought to be enforced by moving the Supreme Court should be one belonging to the person who moves the Supreme Court nor does it say that the Supreme Court should be moved only by a particular
E kind of proceeding. It is clear on the plain language of clause (1) of Article 32 that whenever there is a violation of a fundamental right, any one can move the Supreme Court for enforcement of such fundamental right. Of course, the Court would not, in exercise of its discretion, intervene at the instance of a meddlesome interloper or busy body, and would ordinarily insist that only a person whose
F fundamental right is violated should be allowed to activise the court, but there is no fetter upon the power of the court to entertain a proceeding initiated by any person other than the one whose fundamental right is violated, though the court would, not ordinarily entertain such a proceeding, since the person whose fundamental right is violated can always approach the court and if he does not wish to seek judicial
G redress by moving the court, why should some one else be allowed to do so on his behalf. This reasoning however breaks down when we have the case of a person or class of persons whose fundamental right is violated but who cannot have resort to the court on account of their poverty or disability or socially or economically disadvantaged posi-
H tion and in such a case, therefore, the court can and must allow any member of the public acting bona fide to espouse the cause of such

person or class of persons and move the court for judicial enforcement of the fundamental right of such person or class of persons. This does not violate, in the slightest measure, the language of the constitutional provision enacted in clause (1) of Article 32.

Then again clause (1) of Article 32 says that the Supreme Court can be moved for enforcement of a fundamental right by any 'appropriate' proceeding. 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 Contitution 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 refrence to the purpose of the proceeding. That is the reason why it was held by this Court in the Judges Appointment and Transfer Case (supra) that where a member of the public acting bona fide moves the Court for enforcement of a fundamental right on behalf of a person or class of persons who on account of poverty or disability or socially or economically disadvantaged position cannot approach the court for relief, such member of the public may move the court even by just writing a letter, because it would not be right or fair to expect a person acting *pro bono publico* to incur expenses out of his own pocket for going to a lawyer and preparing a regular writ petition for being filed in court for enforcement of the fundamental right of the poor and deprived sections of the community and in such a case, a letter addressed by him can legitimately be regarded as an "appropriate" proceeding.

A But the question then arises as to what is the power which may be exercised by the Supreme Court when it is moved by an "appropriate" proceeding for enforcement of a fundamental right. The only provision made by the Constitution makers in this behalf is to be found in clause (2) of Article 32 which confers power on the Supreme Court "to issue directions or orders or writs including writs in the nature B of habeas corpus, mandamus, prohibition, quo warranto and certiorari, which-ever may be appropriate, for enforcement of any of the fundamental rights. It will be seen that the power conferred by clause (2) of Article 32 is in the widest terms. It is not confined to issuing the high prerogative writs of habeas corpus, mandamus, prohibition, certiorari and quo quarranto, which are hedged in by strict condi- C tions differing from one writ to another and which to quote the words spoken by Lord Atkin in *United Australia Limited* v. *Barclays Bank Ltd.*[1] in another context often "stand in the path of justice Clanking their mediavel chains". But it is much wider and includes within its matrix, power to issue any directions, orders or writs which may be appropriate for enforcement of the fundamental right in question D and this is made amply clear by the inclusive clause which refers to *in the nature* of habeas corpus, mandamus, prohibition, quo warranto and certiorari. It is not only the high prerogative writs of mandamus, habeas corpus, prohibition, quo warranto and certiorari which can be issued by the Supreme Court but also writs *in the nature* of these high prerogative writs and therefore even if the conditions for E issue of any of these high prerogative writs are not fulfilled, the Supreme Court would not be constrained to fold its hands in despair and plead its inability to help the citizen who has come before it for judicial redress, but would have power to issue any direction, order or writ including a writ in the nature of any high prerogative writ. This provision conferring on the Supreme Court power to enforce F the fundamental rights in the widest possible terms shows the anxiety of the Constitution makers not to allow any procedural technicalities to stand in the way of enforcement of fundamental rights. The Constitution makers clearly intended that the Supreme Court should have the amplest power to issue whatever direction, order or writ may be appropriate in a given case for enforcement of a fundamental G right. But what procedure shall be followed by the Supreme Court in exercising the power to issue such direction, order or writ ? That is a matter on which the Constitution is silent and advisedly so, because the Constitution makers never intended to fetter the discretion of the Supreme Court to evolve a procedure appropriate in the circums-

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(1) [1941] AC 1.

tances of a given case for the purpose of enabling it to exercise its power of enforcing a fundamental right. Neither clause (2) of Article 32 nor any other provision of the Constitution requires that any particular procedure shall be followed by the Supreme Court in exercising its power to issue an appropirate direction, order or writ. The purpose for which the power to issue an appropriate direction, order or writ is conferred on the Supreme Court is to secure enforcement of a fundamental right and obviously therefore, whatever procedure is necessary for fulfilment of the purpose must be permissible to the Supreme Court. It is not at all obligatory that an adversarial procedur, where each party produces his own evidence tested by cross examination by the other side and the judge sits like an umpire and decides the case only on the basis of such material as may be produced before him by both parties, must be followed in a proceeding under Article 32 for enforcement of a fundamental right. In fact, there is no such constitutional compulsion enacted in clause (2) of Article 32 or in any other part of the Constituion. It is only because we have been following the adversarial procedure for over a century owing to the introduction of the Anglo-Saxon system of jurisprudence under the British Rule that it has become a part of our conscious as well as sub-conscious thinking that every judicial proceeding must be cast in the mould of adversarial procedure and that justice cannot be done unless the adversarial procedure is adopted. But it may be noted that there is nothing sacrosanct about the adversarial procedure and in fact it is not followed in many other countries where the civil system of law prevails. The adversarial procedure with evidence led either party and tested by cross-examination by the other party and the judge playing a passive role has become a part of our legal system because it is embodied in the Code of Civil Procedure and the Indian Evidence Act. But these statutes obviously have no application where a new jurisdiction is created in the Supreme Court for enforcement of a fundamental right. We do not think we would be justified in imposing any restriction on the power of the Supreme Court to adopt such procedure as it thinks fit in exercise of its new jurisdiction, by engrafting adversarial procedure on it. when the Constitution makers have deliberately chosen not to insist on any such requirement and instead, left it open to the Supreme Court to follow such procedure as it thinks appropriate for the purpose of securing the end for which the power is conferred, namely, enforcement of a fundamental right. The adversarial procedure has, in fact, come in for a lot of criticism even in the country of its origin, and there is an increasing tendency even in that country to depart from its strict norms. Lord De lin speaking of the English judicial system said : "If our methods were

A as antiquated as our legal methods, we should be a bankrupt country". And Foster Q.C. observed : "I think the whole English system is non-sense. I would go to the root of it—the civil case between two private parties is a mimic battle..... conducted according to rules of evidence." There is a considerable body of juristic opinion in our country also which believes that strict adherence to the adversarial B procedure can some times lead to injustice, particularly where the parties are not evenly balanced in social or economic strength. Where one of the parties to a litigation belongs to a poor and deprived section of the community and does not possess adequate social and material resources, he is bound to be at a disadvantage as against a strong and powerful opponent under the adversary system of justice, because C of his difficulty in getting competent legal representation and more than anything else, his inability to produce relevant evidence before the court. Therefore, when the poor come before the court, particularly for enforcement of their fundamental rights, it is nescessary to depart from the adversarial procedure and to evolve a new procedure which will make it possible for the poor and the weak to bring the necessary D material before the court for the purpose of securing enforcement of their fundamental rights. It must be remembered that the problems of the poor which are now coming before the court are qualitatively different from those which have hither to occupied the attention of the court and they need a different kind of lawyering skill and a different kind of judicial approach. If we blindly follow the adversa- E rial procedure in their case, they would never be able to enforce their fundamental rights and the result would be nothing but a mockery of the Constitution. We have therefore to abandon the *laissez faire* approach in the judicial process particularly where it involves a question of enforcement of fundamental rights and forge new tools, devise new methods and adopt new strategies for the purpose of making F fundamental rights meaningful for the large masses of people. And this is clearly permissible on the language of clause (2) of Aricle 32 because the Constitution makers while enacting that clause have deliberately and advisedly not used any words restricting the power of the court to adopt any procedure which it considers appropriate in the circumstances of a given case for enforcing a fundamental right. G It is true that the adoption of this non-traditional approach is not likely to find easy acceptance from the generality of lawyers because their minds are conditioned by constant association with the existing system of administration of justice which has become ingrained in them as a result of long years of familiarity and experience and become H part of their mental make up and habit and they would therefore always have an unconscious predilection for the prevailing system

of administration of justice. But if we want the fundamental rights to become a living reality and the Supreme Court to become a real sentinel on the *quivive*, we must free ourselves from the shackles of outdated and outmoded assumptions and bring to bear on the subject fresh outlook and original unconventional thinking.

Now it is obvious that the poor and the disadvantaged cannot possibly produce relevant material before the court in support of their case and equally where an action is brought on their behalf by a citizen acting *pro bono publico*, it would be alomost impossible for him to gather the relevant material and place it before the court. What is the Supreme Court to do in such a case ? Would the Supreme Court not be failing in discharge of its constitutional duty of enforcing a fundamental right if it refuses to intervene becasue the petitioner belonging to the underprivileged segment of society or a public spirited citizen espousing his cause is unable to produce the relevant material before the court. If the Supreme Court were to adopt a passive approach and decline to intervene in such a case becaues relevant material has not been produced before it by the party seeking its intervention, the fundamental rights would remain merely a teasing illusion so far as the poor and disadvantaged sections of the community are concerned. It is for this reason that the Supreme Court has evolved the practice of appointing commissions for the purpose of gathering facts and data in regard to a complaint of breach of fundamental right made on behalf of the weaker sections of the society. The Report of the commissioner would furnish *prima facie* evidence of the facts and data gathered by the commissioner and that is why the Supreme Court is careful to appoint a responsible person as commissioner to make an inquiry or investigation into the facts relating to the complaint. It is interesting to note that in the past the Supreme Court has appointed sometimes a district magistrate, sometimes a district judge, sometimes a professor of law, sometimes a journalist, sometimes an officer of the court and sometimes an advocate practising in the court, for the purpose of carrying out an inquiry or investigation and making report to the court because the commissioner appointed by the Court must be a responsible person who enjoys the confidence of the court and who is expected to carry out his assignment objectively and impartially without any predilection or prejudice. Once the report of the Commissioner is received, copies of it would be supplied to the parties so that either party, if it wants to dispute any of the facts or data stated in the Report, may do so by filing an affidavit and the court then consider the report of the commissioner and the affidavits which may have been filed and proceed to adjudiciate upon

A the issue arising in the writ petition. It would be entirely for the Court to consider what weight to attach to the facts and data stated in the report of the commissioner and to what extent to act upon such facts and data. But it would not be correct to say that the report of the commissioner has no evidentiary value at all, since the statements made in it are not tested by cross-examination. To accept this con-
B tention would be to introduce the adversarial procedure in a proceeding where in the given situation, it is totally inapposite. The learned Additional Solicitor General and Mr. Phadke relied on Order XXVI of the Code of Civil Procedure and Order XLVI of the Supreme Court Rules 1966 for the purpose of contending that a commission can be appointed by the Supreme Court only for the purpose of exa-
C mining witnesses, making legal investigations and examining accounts and the Supreme Court has no power to appoint a commission for making an inquiry or investigation into facts relating to a complaint of violation of a fundamental right in a proceeding under Article 32. Now it is true that Order XLVI of the Supreme Court Rules 1966 makes the provisions of Order XXVI of the Code of Civil
D Procedure, except rules 13, 14, 19, 20, 21 and 22 applicable to the Supreme Court and lays down the procedure for an application for issue of a commission, but Order XXVI is not exhaustive and does not detract from the inherent power of the Supreme Court to appoint a commission, if the appointment of such commission is found necessary for the purpose of securing enforcement of a fundamental right
E in exercise of its constitutional jurisdiction under Article 32. 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
F be necessary for the ends of justice." We cannot therefore accept the contention of the learned Addl. Solicitor General and Mr. Phadke that the court acted beyond its power in appointing M/s. Ashok Srivastava and Ashok Panda as commissioners in the first instance and Dr. Patwardhan as commissioner at a subsequent stage for the purpose of making an inquiry into the conditions of workmen emp-
G loyed in the stone quarries. The petitioner in the writ petition specifically alleged violation of the fundamental rights of the workmen employed in the stone quarries under Articles 21 and 23 and it was therefore necessary for the court to appoint these commissioners for the purpose of inquiring into the facts related to this complaint.
H The Report of M/s. Ashok Srivastava and Ashok Panda as also the Report of Dr. Patwardhan were clearly documents having eviden-

tiary value and they furnished prima facie evidence of the facts and data stated in those Reports. Of course, as we have stated above, it will be for us to consider what weight we should attach to the facts and data contained in these Reports in the light of the various affidavits filed in the proceedings. A

We may point out that what we have said above in regard to the exercise of jurisdiction by the Supreme Court under Article 32 must apply equally in relation to the exercise of jurisdiction by the High Courts under Article 226, for the latter jurisdiction is also a new constitutional jurisdiction and it is conferred in the same wide terms as the jurisdiction under Article 32 and the same powers can and must therefore be exercised by the High Courts while exercising jurisdiction under Article 226. In fact, the jurisdiction of the High Courts under Article 226 is much wider, because the High Courts are required to exercise this jurisdiction not only for enforcement of a fundamental right but also for enforcement of any legal right and there are many rights conferred on the poor and the disadvantaged which are the creation of statute and they need to be enforced as urgently and vigorously as fundamental rights. B C D

Having disposed of these preliminary objections, we shall now proceed to consider the writ petition on merits. But, before we turn to examine the facts of this case, we may first consider which are the laws governing the living and working conditions of workmen employed in the stone quarries. The first statute to which we must refer in this connection is the Mines Act, 1952. This Act extends to the whole of India and therefore applies a *fortiorari* in the State of Haryana. Section 2(j) defines "mine" to mean "any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes in clause (iv) "all open cast working". The word "minerals" has been given a very broad meaning under section 2(jj) and it means "all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicing, quarrying or by any other operation". Section 2(kk) gives the definition of "open cast working" and according to this definition, it means "a quarry, that is to say, an excavation where any opertation for the purpose of searching for or obtaining minerals has been or is being carried on, not being a shaft or an excavation which extends below superjacent ground". There can be no doubt that according to these definitions, the stone quarries with which we are concerned in this writ petition constitute "mines" within the meaning of the definition of that term in section 2(j). since they are E F G H

A excavations where operations for the purpose of searching for or obtaining stone by quarrying are being carried on but they are not 'open cast working' since admittedly excavations in the case of these stone quarries extend below superjacent ground. But the question still remains whether the provisions of the Mines Act 1952 apply to these stone quarries even if they are "mines". Section 3(1) (b) B enacts that the provisions of the Mines Act, 1952 except those contained in sections 7, 8, 9, 44, 45 and 46 shall not apply to any mine engaged in the extraction *inter alia* of kankar, murrum, laterite boulders, gravel, shingle, building stone, road metal and earth and therefore, if this statutory provision stood alone without any qualification, it would appear that barring the excepted sections, the provi- C sions of Mines Act 1952 would not apply to these stone quarries. But there is a proviso to section 3(1)(b) which is very material and it runs as follows :

> "3(1) The provisions of this Act, except those contained in sections 7, 8, 9, 44, 45 and 46, shall not apply to—
>
> D
>
> (b) any mine engaged in the extraction of kankar, murrum, laterite, boulder, gravel, shingle, ordinary sand (excluding moulding sand, glass sand and other mineral sands), ordinary clay (excluding kaolin, china clay, white clay or fire clay), building stone, road metal earth, fullers E earth and lime stone :
>
> Provided that—
>
> (i) the workings do not extend below superjacent ground; or
>
> (ii) where it is an open cast working— F
>
> (a) the depth of the excavation measured from its highest to its lowest point nowhere exceeds six metres;
>
> (b) the number of persons employed on any one day does not exceed fifty; and G
>
> (c) explosives are not used in connection with the excavation."

Since the workings in these stone quarries extend below H superjacent ground and they are not 'open cast workings' and moreover explosives are admittedly used in connection with the excavation,

the conditions set out in the proviso are not fulfilled and hence the exclusion of the provisions of the Mines Act 1952 (other than the excepted sections) is not attracted and all the provisions of the Mines Act 1952 apply to these stone quarries. It may also be noted that the definition of 'mine' in section 2(j) includes in Clause (x) any premises or part thereof in or adjacent and belonging to a mine on which any process ancilliary to the getting, dressing or preparation for sale of minerals.....is being carried on." Now obviously stone crushing is a process ancilliary to the getting, dressing or preparation for sale of stone quarried from the stone quarries and therefore if the stone crushing activity is carried on in premises in or adjacent to a stone quarry and it belongs to the same owner as the stone quarry, it would be subject to the discipline of the provisions of the Mines Act 1952 and all workmen employed in connection with such stone crushers would be entitled to the benefit of the provisions of that Act. It will, thus, be seen that all the provisions of the Mines Act, 1952 are applicable to the workmen employed in the stone quarries as also to the workmen employed in connection with stone crushers, where the stone crusher is situate in or adjoining to a stone quarry and belongs to the same owner as the stone quarry. Now the provisions of the Mines Act, 1952 which are material are those set out in Chapters V, VI and VII, Chapter V dealing with provisions as to health and safety, Chapter VI, with hours and limitation of employment and Chapter VII, with leave with wages. The provisions contained in these three Chapters confer certain rights and benefits on the workmen employed in the stone quarries and stone crushers and these rights and benefits are intended to secure to the workmen just and humane conditions of work ensuring a decent standard of life with basic human dignity. We shall have occasion to consider some of these rights and benefits when we deal with the specific complaints made on behalf of the petitioner, but we may point out at this stage that the most important rights and benefits conferred on the workmen are those relating to their health and safety which include provisions as to drinking water, conservancy and injuries arising out of accidents, in regard to which detailed requirements are laid down in Chapters V, VI and IX of the Mines Rules, 1955. We may also point out that the obligation of complying with these provisions of the Mines Act, 1952 and the Mines Rules, 1955 rests on the owner, agent and manager of every stone quarry and stone crusher, because section 18 declares that the owner, agent and manager of every mine shall be responsible that all operations carried on in connection therewith are conducted in accordance with the provisions of the Act and of the regulations, rules and by-laws

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A and of any orders made under the Act. The 'owner' is defined in section 2(1) of the Mines Act, 1952 to mean "any person who is the immediate proprietor or lessee or occupier of the mine or any part thereof.....but does not include a person who merely receives a royalty, rent or fine from the mine or is merely the proprietor of the mine, subject to any lease, grant or licence for the working thereof." Since the stone quarries in the present case are not being exploited by the State of Haryana though it is the owner of the stone quarries, but are being given out on lease by auction, the mine-lessees who are not only lessees but also occupiers of the stone quarries are the owners of the stone quarries within the meaning of that expression as used in section 2(1) and so also are the owners of stone crushers in relation to their establishment. The mine-lessees and owners of stone crushers are, therefore, liable under section 18 of the Mines Act, 1952 to carry out their operations in accordance with the provisions of the Mines Act, 1952 and the Mines Rules, 1955 and other Rules and Regulations made under that Act and to ensure that the rights and benefits conferred by these provisions are actually and concretely made available to the workmen. The Central Government is entrusted under the Mines Act 1952 with the responsibility of securing compliance with the provisions of that Act and of the Mines Rules 1955 and other Rules and Regulations made under that Act and it is the primary obligation of the Central Government to ensure that these provisions are complied with by the mine-lessees and stone crusher owners. The State of Haryana is also, for reasons which we have already discussed, under an obligation to take all necessary steps for the purpose of securing compliance with these provisions by the mine-lessees and owners of stone crushers. The State of Haryana has in fact amended the Punjab Minor Mineral Concession Rules 1964 in their application to the State of Haryana by issuing the Punjab Minor Mineral Concession (Haryana First Amendment) Rules 1982 on 6th December 1982 and substituted a new clause 16 in Form F, a new clause 13 in Form L and a new clause 10 in Form N providing that the lessee/lessees or the contractor/contractors, as the case may be,

> "shall abide by the provisions of Mines Act, 1952 Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and the rules and regulations framed thereunder and also the provisions of other labour laws both Central and State as are applicable to the workmen engaged in the mines, and quarries relating to the provisions of drinking water, rest shelters, dwelling houses, latrines

and first aid and medical facilities in particular and other safety and welfare provisions in general, to the satisfaction of the competent authorities under the aforesaid Acts, rules and regulations and also to the satisfaction of the District Magistrate concerned. In the case of non-compliance of any of the provisions of the enactments as aforesaid, the State Government or any officer authorised by it in this behalf may terminate the contract by giving one month's notice with forfeiture of security deposited or in the alternative the State Labour Department may remedy the breach/ breaches by providing the welfare and safety measures as provided in the aforesaid enactments at the expense and cost of the contractor/contractors. The amount thus spent shall be recovered from the contractor/contractors by the Industries Department and reimbursed to Labour Department."

The State of Haryana is therefore, in any event, bound to take action to enforce the provisions of the Mines Act 1952 and the Mines Rules 1955 and other Rules and Regulations made under that Act for the benefit of the workmen.

We may then turn to the provisions of Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (hereinafter referred to as the Inter-State Migrant Workmen Act). This Act was brought into force in the State of Haryana with effect from 2nd October 1980 and the authorities under this Act were notified on 21st July 1982. We may, therefore, proceed on the basis that the provisions of this Act became enforceable, if not from 2nd October 1980 at least from 21st July 1982. Now this Act by sub-section (4) of Section (1) applies to every establishment in which five or more inter-State migrant workmen are employed or were employed on any day of the preceding twelve months and so also it applies to every contractor who employs or employed five or more inter-State migrant workmen on any day of the preceding twelve months. Section (2) sub-section (1) Clause (b) of the Act defines contractor, in relation to an establishment, to mean "a person who undertakes (whether as an independent contractor, agent, employee or otherwise) to produce a given result for the establishment, other than a mere supply of goods and articles of manufacture to such establishment, by the employment of workmen or to supply workmen to the establishment, and includes a sub-contractor, khatedar, sardar, agent or any other person, by whatever name called, who recruits

A or employs workmen." Clause (e) of sub-section (1) of Section (2) defines "inter-State migrant workmen" to means "any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment." The expression "principal-
B employer" is defined by clause (g) of sub-section (1) of Section 2 to mean "in relation to a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named." Obviously, therefore, the mine-lessees and owners of stone crushers in the present case would be principal employers within the meaning of that expression as used in the Inter-
C State Migrant Workmen Act. Section 4 provides for registration of every principal employer of an establishment to which the Act applies and Section 6 enacts that no principal employer of an establishment to which this Act applies, shall employ inter-State migrant workmen in the establishment unless a certificate of registration in respect of such establishment is issued under the Act in force. Similarly,
D Section 8 sub-section (1) provides that with effect from such date as the appropriate Government may be Notification in the Official Gazette appoint no contractor to whom the Act applies shall recruit any person in a State for the purpose of employing him in any establishment situated in another State, except under and in accordance with a licence issued in that behalf by the licensing officer appointed
E by the Central Government who has jurisdiction in relation to the area wherein the recruitment is made, nor shall be employ as workmen for the execution of any work in any establishment in any State, persons from another State excent under and in accordance with a licence issued in that behalf by the licensing officer appointed by the appropriate Government having jurisdiction in relation to the
F area wherein the establishment is situated. Sub-section (2) of Section 8 declares that a licence under sub-section (1) may contain such conditions including, in particular, the terms and conditions of the agreement or other arrangement under which the workmen will be recruited, the remuneration payable, hours of work, fixation of wages and other essential amenities in respect of the inter-State migrant
G workmen, as the appropriate Government may deem fit to impose in accordance with the Rules, if any, made under Section 35. Section 12 imposes certain duties and obligations on contractors which include *inter alia* the duty to issue to every inter-State migrant workman a pass-book containing various particulars regarding recruitment
H and employment of the workman as also to pay to the workman the return fare from the place of employment to the place of residence

in the home State when he ceases to be employed. Rule 23 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules 1980 (hereinafter referred to as Inter-State Migrant Workmen Rules) sets out certain additional particulars which must be included in the pass-book to be issued to every inter-State migrant workmen. Section 13 then proceeds to lay down the wage rates, holidays, hours of work and other conditions of service of an inter-State migrant workman and provides *inter alia* that in no case shall a inter-State migrant workman be paid less than the wages fixed under the Minimum Wages Act 1948, and the wages shall be paid to an inter-State migrant workman in cash. The detailed particulars in regard to wages payable to an inter-State migrant workman are laid down in Rules 25 to 35 of the Inter-State Migrant Workmen Rules. Then follows Section 14 which provides that there shall be paid by the contractor to every inter-State migrant workman at the time of recruitment, a displacement allowance and the amount of displacement allowance shall not be refundable but shall be in addition to the wages or other amounts payable to him. There is also a provision made in Section 15 for payment to an inter-State migrant workman of a journey allowance of a sum not less than the fare from the place of residence in his State to the place of work in the other State, both for outward and return journeys and this Section also enacts that the workman shall be entitled to payment of wages during the period of such journeys as if he was on duty. Section 16 lays a duty on every contractor employing inter-State migrant workmen in connection with the work of an establishment to provide various other facilities particulars of which are to be found in Rules 36 to 45 of the Inter-State Migrant Workmen Rules. These facilities include medical facilities, protective clothing, drinking water, latrines, urinals and washing facilities, rest rooms, canteens, creche and residential accommodation. The obligation to provide these facilities is in relation to the inter-State Migrant Workmen employed in an establishment to which the Act applies. But this liability is not confined only to the contractor, because Section 18 provides in so many terms that if any allowance required to be paid under section 14 or 15 to an inter-State migrant Workman is not paid by the contractor or if any facility specified in section 16 is not provided for the benefit of such workman, such allowance shall be paid or as the case may be, the facility shall be provided by the principal employer within such time as may be prescribed by the Rules and all the allowances paid by the principal employer or all the expenses incurred by him in this connection may be recovered by him from the contractor either by deduction from the amount payable to the

A contractor or as debt payable by the contractor. Section 25 & 26 make it an offence for any one to contravene any of the provisions of the Inter-State Migrant Workmen Act or Inter-State Migrant Workmen Rules and Section 30 gives over-riding effect to the provisions of the Inter-State Migrant Workmen Act over any other law or any agreement or contract of service or any standing orders. These B are broadly the relevant provisions of the Inter-State Migrant Workmen Act and the Inter-State Migrant Workmen Rules which may call for consideration.

But the question arises whether the Inter-State Migrant Workmen Act applies to the workmen employed in the stone quarries C and the stone crushers. Now it was not disputed on behalf of the State of Haryana and indeed it was clear from the Report of Dr. Patwardhan that most of the workmen employed in the stone quarries and stone crushers come from Uttar Pradesh, Madhya Pradesh, Rajasthan, Tamilnadu and Andhra Pradesh and there are only a few workmen from Haryana. It is only if 5 or more out of these D workmen coming from States other than Haryana are inter-State migrant workmen within the meaning of that expression as defined in Section 2 sub-section (1) clause (e) of the Inter-State Migrant Workmen Act that the establishment in which they are employed would be covered by the Inter-State Migrant Workmen Act. It would therefore have to be determined in case of each stone quarry E and each stone crusher whether there are 5 or more inter-State migrant workmen employed in the establishment and if there are, the provisions of the Inter-State Migrant Workmen Act and the Inter-State Migrant Workmen Rules would become applicable to such establishment. The Union of India in a submission filed on its behalf by Miss Subhashini has taken up the stand that the workmen employed in the stone F quarries and stone crushers "are coming to join the service in the stone quarries of their own volition and they are not recruited by any agent for being migrated from any State" and "as such they do not come under the definition of the term" inter-State migrant workman. We would have ordinarily been inclined to accept this statement made on behalf of the Union of India, but we find that, according G to the Report of Dr. Patwardhan, the *modus operandi* that is followed for the purpose of recruitment of workmen is "that the stone crusher owners or the lessees holders ask the thekedar or jamadar of the mine to fetch people from various States to work in the mines" and some times "the jamadar or thekedar communicates the need for H workers to old hands at the quarries so that they could bring in people on their return from their villages or their respective States". Now

if what has been reported by Dr. Patwardhan is true, there can be no doubt that the workmen employed in the stone quarries and stone crushers would be inter-State migrant workmen. The thekedar or jamadar who is engaged by the mine lessees or the stone-crusher owners to recruit workmen or employ them on behalf of the mine lessees or stone crusher owners would clearly be a 'contractor' within the meaning of that term as defined in Section 2 sub-section (1) clause (b) and the workmen recruited by or through him from other States for employment in the stone quarries and stone crushers in the State of Haryana would undoubtedly be inter-State migrant workmen. Even when the thekedar or jamadar recruits or employs workmen for the stone quarries and stone crushers by sending word through the "old hands", the workmen so recruited or employed would be inter-State migrant workmen, because the "old hands" would be really acting as agents of the thekedar or jamadar for the purpose of recruiting or employing workmen. The Inter-State Migrant Workmen Act being a piece of social welfare legislation intended to effectuate the Directive Principles of State Policy and ensure decent living and working conditions for the workmen when they come from other States and are in a totally strange environment where by reason of their poverty, ignorance and illiteracy, they would be totally unorganised and helpless and would become easy victims of exploitation, it must be given a broad and expansive interpretation so as to prevent the mischief and advance they remedy and therefore, even when the workmen are recruited or employed by the jamadar or thekedar by operating through the "old hands", they must be regarded as inter-State migrant workmen entitled to the benefit of the provisions of the Inter-State Migrant Workmen Act and the Inter-State Migrant Workmen Rules. The Report of Dr. Patwardhan also points out one other aspect of the matter : according to him, there is invariably "an understanding between the jamadar or thekedar and the owners of stone crushers holding leases of stone quarries as to the rate of output of stone to be fed through the crushers" and thus the jamadar or thekedar is clearly a 'contractor' of the stone crusher owners and the workmen recruited or employed by him on behalf of the owners of stone crushers are inter-State migrant workmen. We entirely agree with this view put forward by Dr. Patwardhan in his Report and we have no doubt that if there is any agreement or understanding between the jamadar or thekedar on the one hand and the owners of stone crushers on the other, that the jamadar or thekedar will ensure a certain rate of output of stone to be fed to the stone crushers, the jamadar or thekedar would be a 'contractor' and the workmen recruited or employed by him on behalf of the stone

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A crusher owners would be inter-State migrant workmen. But whether in any particular stone quarry or stone crusher the workmen employed are inter-State migrant workmen on the application of this test laid down by us and if so, how many of them are such inter-State migrant workmen, is a matter which would have to be investigated and determined and that is what must be done if we are to make the provisions B of the Inter-State Migrant Workmen Act and the Inter-State Migrant Workmen Rules meaningful for these workmen who are recruited from other States and who come to the stone quarries and stone crushers in the State of Haryana. We may point out that in addition to the rights and benefits conferred upon him under the Inter-State Migrant Workmen Act and the Inter-State Migrant Workmen Rules, C an inter-State migrant workman is also, by reason of Section 21, entitled to the benefit of the provisions contained in the Workman's Compensation Act 1923. The Payment of Wages Act 1936, The Employees' State Insurance Act 1948, The Employees' Provident Funds and Misc. Provisions Act, 1952, and the Maternity Benefit Act 1961. The obligation to give effect to the provisions contained D in these various laws is not only that of the jamadar or thekedar and the mine-lessees and stone crusher owners (provided of course there are 5 or more inter-State migrant workmen employed in the establishment) but also that of the Central Government because the Central Government being the appropriate Government" within the meaning of Section 2(1)(a) is under an obligation to take necessary steps for E the purpose of securing compliance with these provisions by the thekedar or jamadar and mine-lessees and owners of stone crushers. The State of Haryana is also for reasons already discussed above bound to ensure that these provisions are observed by the thekedar or jamadar and mine-lessees and owners of stone crushers.

F We then turn to consider the provisions of the Contract Labour (Regulation and Abolition) Act 1970 (hereinafter referred to as the Contract Labour Act). This Act applies to every establishment in which 20 or more workmen are employed or were employed on any day of the preceding twelve months as contract labour and to every contractor who employs or who employed on any day of the G preceding twelve months 20 or more workmen. The expression "appropriate government" is defined in Section 2 sub-section (1) clause (a) and so far as the stone quarries and stone crushers are concerned, the Central Government is the 'appropriate Government'. Section 2 sub-section (1) clause (b) states that a workman shall be H deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection

with such work by or through a contractor and "contractor" is defined in clause (c) of that sub-section to mean, in relation to an establishment, "a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor". The expression "principal employer" is defined in clause (g) of sub-section (i) of section 2 and for the purpose of a mine, it means the owner or agent of the mine and therefore, so far as the stone quarries and stone crushers are concerned, the mine lessees and owners of stone crushers would be the principal employers. Then there are provisions in the Contract Labour Act for registration of establishment by every principal employer and for licencing of every contractor to whom the Act applies. But more importantly, Sections 16 to 19 impose a duty on every contractor to provide canteens, rest rooms, first aid facilities and other facilities and Section 20 enacts that if any amenity required to be provided under section 16, 17, 18 or 19 for the benefit of the contract labour employed in an establishment is not provided by the contractor, such amenity shall be provided by the principal employer and all expenses incurred by the principal employer in providing such amenity may be recovered by the principal employer from the contractor. Every contractor is made responsible under-section 21 for payment of wages to each worker employed by him as contract labour and such wages are to be disbursed in the presence of a representative duly authorised by the principal employer. Now if the jamadar or thekedar in a stone quarry or stone crusher is a 'contractor' within the meaning of the definition of that term in the Inter-State Migrant Workmen Act, he would *a fortiorari* be a 'contractor' also for the purpose of Contract Labour Act and any workmen hired in or in connection with the work of a stone quarry or stone crusher by or through the jamadar or thekedar would be workmen entitled to the benefit of the provisions of the Contract Labour Act. There are elaborate Rules made under the Contract Labour Act called the Contract Labour (Regulation and Abolition) Central Rules 1971 (hereinafter referred to as the Contract Labour Rules) and these Rules not only deal with the procedure for application and grant of registration to a principal employer and licence to a contractor, but also particularise the details of the various welfare and other facilities directed to be provided to the contract labour by Section 16, 17, 18 and 19 of the Contract Labour Act. Where therefore the thekedar or jamadar is a 'contractor' and the workmen are employed as 'contract labour' within the meaning of these expres-

sions as used in the Contract Labour Act, the contractor as well as the principal employer would be liable to comply with the provisions of contract Labour Act and the Contract Labour Rules and to provide to the contract labour rights and benefits conferred by these provisions. The Central Government being the "appropriate gove rnment" within the meaning of Section 12 sub-section (1) clause (a) would be responsible for ensuring compliance with the provisions of the Contract Labour Act and the Contract Labour Rules by the mine-lessees and stone crusher owners and the thekedar or jamadar. So also, for reasons which we have already discussed while dealing with the applicability of the Mines Act 1952 and the Inter-State Migrant Workmen Act, the State of Haryana would be under an obligation to enforce the provisions of the Contract Labour Act and the Contract Labour Rules for the benefit of the workmen.

Turning to the provisions of the Minimum Wages Act 1948, there can be no doubt and indeed this was not disputed on behalf of the respondents, that the Minimum Wages Act 1948 is applicable to workmen employed in the stone quarries and stone crushers. The minimum wage fixed for miners by the Notification of the Central Government dated 2nd December 1981 is Rs. 9.75 per day for those working above the ground and Rs. 11.25 per day for those working below the ground. Moreover the Notification prescribes a separate minimum wage for the occupation of a shot firer, stone breaker, stone carrier, mud remover and water carrier. There is a minimum wage prescribed in the Notification for each of these occupations. The question is whether the workmen employed in the stone quarries and stone crushers are paid minimum wage for the work done by them. The Report of Dr. Patwardhan alleges that the mode of payment to the workmen employed in stone quarrying operations is such that after deduction of the amounts spent on explosives and drilling of holes, which amount has to be borne by the workmen out of their wages, what is left to the workmen is less than the minimum wage. It is also stated in the Report of Dr. Patwardhan that the workmen employed in the stone quarries not only quarry the stone but also carry out the work of a shot firer and a stone breaker, though the work of a shot firer cannot be done by them without proper training as provided in the Mines Vocational Training Rules 1966 and for this work of a shot firer and a stone breaker carried out by them, they do not get the minimum wage stipulated for the occupation of a shot firer or a stone breaker and moreover since they are piece-rated workers, their output falls because of the other jobs they are required to carry out with the result that they are deprived of the

minimum wage which they should otherwise receive. We are not in a position at the present stage to give a definite finding that what is stated in the Report of Dr. Patwardhan is true, but there can be no doubt that whatever be the mode of payment followed by the mine lessees and stone crusher owners, the workmen must get nothing less than the minimum wage for the job which is being carried out by them and if they are required to carry out additionally any of the functions pertaining to another job or occupation for which a separate minimum wage is prescribed, they must be paid a proportionate part of such minimum wage in addition to the minimum wage payable to them for the work primarily carried out by them. We would also suggest that the system of payment which is being followed in the stone quarries and stone crushers, under which the expenses of the explosives and of drilling holes are to be borne by the workmen out of their own wages, should be changed and the explosives required for carrying out blasting should be supplied by the mine lessees or the jamadar or thekedar without any deduction being made out of the wages of the workmen and the work of drilling holes and shot firing should be entrusted only to those who have received the requisite training under the Mines Vocational Training Rules 1966. We would direct the Central Government and the State of Haryana to take necessary steps in this behalf. So far as the complaint of the petitioner that the workmen employed in the stone quarries and stone crushers are not being paid the minimum was due and payable for the work carried out by them is concerned, it is a matter which would have to be investigated and determined in the light of the law laid down by us.

Lastly, we must consider the provisions of the Bonded Labour System (Abolition) Act 1976. We have already pointed out that many of the States are not prepared to admit the existence of bonded labour in their territories and the State of Haryana is no exception. But in order to determine whether there is any bonded labour in the stone quarries and stone crushers in the Faridabad area of the State of Haryana, it is necessary to examine some of the relevant provisions of the Bonded Labour System (Abolition) Act 1976. This Act was enacted with a view to giving effect to Article 23 of the Constitution which prohibits traffic in human beings and begar and other similar forms of forced labour. We have had occasion to consider the true scope and dimension of this Article of the Constitution in *People's Union for Democratic Rights v. Union of India*[1] commonly known as

(1) [1983] 1 S.C.R. 456.

A the Asiad workers' case and it is not necessary for us to say anything more about it in the present judgment. Suffice it to state that this Act is intended to strike against the system of bonded labour which has been a shameful scar on the Indian social scene for decades and which has continued to disfigure the life of the nation even after independence. The Act was brought into force through out the B length and breadth of the country with effect from 25th October 1975, which means that the Act has been in force now for almost 8 years and if properly implemented, it should have by this time brought about complete identification, freeing and rehabilitation of bonded labour. But as official, semi-official and non-official reports show, we have yet to go a long way in wiping out this outrage C against humanity. Clause (d) of Section 2 defines "bonded debt" to mean an advance obtained or presumed to have been obtained, by a bonded labourer, under or in pursuance of, the bonded labour system. The expression 'bonded labourer' is defined in clause (f) to mean "a labourer who incurs, or has, or is presumed to have incurred a bonded debt". Clause (g) defines "bonded labour system" D to mean :

> "the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that,—
>
> E (i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, due on such advance, or
>
> (ii) in pursuance of any customary or social obligation, or
>
> F (iii) for any economic consideration received by him or by any of his lineal ascendants or descendants, or he would—
>
> (1) render, by himself or through any member of his family, or any person dependent on him, labour or service G 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 H livelihood for a specified period or for an un-specified 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."

The expression "nominal wages" is defined in clause (i) of Section 2 to mean, in relation to any labour, a wage which is less than—

(a) the minimum wages fixed by the Government, in relation to the same or similar labour, under any law for the time being in force, and

(b) where no such wage has been fixed in relation to any form of labour, the wages that are normally paid, for the same or similar labour, to the labourers working in the same locality."

Section 4 is the material section which provides for abolition of bonded labour system and it runs as follows :

"4(1) On the commencement of this Act, the bonded labour system shall stand abolished and every bonded labourer shall, on such commencement, stand freed and discharged from any obligation to render any bonded labour.

(2) after the commencement of this Act, no person shall—

(a) make any advance under, or in pursuance of, the bonded labour system, or

(b) compel any person to render any bonded labour or other form of forced labour.

Section 5 invalidates any custom or tradition or any contract agreement or other instrument by virtue of which any person or any member of the family or dependent of such person is required to do any work or render any service as a bonded labourer. Section 6 provides *inter alia* that on the commencement of the Act, every obligation of a bonded labourer to repay any bonded debt or such part of any bonded debt as remains unsatisfied immediately before such commencement, shall be deemed to have been extinguished.

A There are certain other consequential provisions in Section 7 to 9 but it is not necessary to refer to them. Sections 10 to 12 impose a duty on every District Magistrate and every officer to whom power may be delegated by him, to inquire whether, after the commencement of the Act, any bonded labour system or any other form of forced labour is being enforced by or on behalf of, any person resident within B the local limits of his jurisdiction and if, as a result of such inquiry, any person is found to be enforcing the bonded labour system or any other system of forced labour, he is required forthwith to take the necessary action to eradicate the enforcement of such forced labour. Section 15 provides for Constitution of a Vigilance Committee in each District and each sub-division of a District and sets out what C shall be the composition of each Vigilance Committee. The functions of the Vigilance Committee are set out in Section 14 and among other things, that Section provides that the Vigilance Comm ttee shall be responsible *inter alia* to advise the District Magistrate as to the efforts made and action taken, to ensure that the provisions of the Act or any Rule made thereunder are properly implemented, to provide D for the economic and social rehabilitation of the freed bonded labourers and to keep an eye on the number of offences of which cognizance has been taken under the Act. Then comes Section 15 which lays down that whenever any debt is claimed by any labourer or a Vigilance Committee to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor. These are some of E the material provisions of the Bonded Labour System (Abolition) Act 1976 which need to be considered.

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

have no doubt that the Government of Haryana will without any delay and at any rate within six weeks from today constitue a Vigilance Committee in each sub-division and thus comply with the requirement of Section 13 of the Act. We may point out that in constituting Vigilance Committee in each District and sub-division, the Haryana Government would do well to include representatives of non-political social action groups operating at the grass root level, for it is only through such social action groups and voluntary agencies that the problem of identification of bonded labour can be effectively solved.

It was contended by the learned Additional Solicitor General on behalf of the State of Haryana that in the stone quarries and stone crushers there might be forced labourers but they were not bonded labourers within the meaning of that expression as used in the Act, since a labourer would be a bonded labourer only if he has or is presumed to have incurred a bonded debt and there was nothing in the present case to show that the workmen employed in the stone quarries and stone crushers had incurred or could be presumed to have incurred any bonded debt. It was not enough, contended the learned Additional Solicitor General, for the petitioner merely to show that the workmen were providing forced labour in that they were not allowed to leave the premises of the establishment, but it was further necessary to show that they were working under the bonded labour system. The learned Additional Solicitor General also submitted that in any event, even if the workmen filed affidavits to the effect that they had taken advances from thekedar or jamadar and or mine lessees and/or stone crusher owners and they were not allowed to leave the premises of the establishment until the advances were paid of, that would not be enough evidence for the Court to hold that they were bonded labourers, because the mine-lessees and stone crusher owners had no opportunity to cross-examine the workmen making such affidavits. This contention was seriously pressed by the learned Additional Solicitor General on behalf of the State of Haryana, but as we shall presently show, there is no substance in this contention. We may point out that in the course of the arguments we did suggest to the learned Additional Solicitor General that even if the workmen were not bonded labourers in the strict sense of the term but were merely forced to provide labour, should the State Government not accept liability for freeing and rehabilitating them, particularly in view of the Directive Principles of State Policy. The State of Haryana was however not prepared to come forward with any proposal in this behalf.

A Now it is clear that bonded labour is a form of forced labour and Section 12 of the Bonded Labour System (Abolition) Act 1976 recognises this self-evident proposition by laying a duty on every District Magistrate and every officer specified by him to inquire whether any bonded labour system or any other form of forced labour is being enforced by or on behalf of any person and, if so, to take B such action as may be necessary to eradicate the enforcement of such forced labour. The thrust of the Act is against the continuance of any form of forced labour. It is of course true that, strictly speaking, a bonded labourer means a labourer who incurs or has or is presumed to have incurred a bonded debt and a bonded debt means an advance obtained or presumed to have been obtained by a bonded C labourer under or in pursuance of the bonded labour system and it would therefore appear that before a labourer can be regarded as a bonded labourer, he must not only be forced to provide labour to the employer but he must have also received an advance or other economic consideration from the employer unless he is made to provide forced labour in pursuance of any custom or social obliga- D tion or by reason of his birth in any particular caste or community. It was on the basis of this definitional requirement that the learned Additional Solicitor General on behalf of the State of Haryana put forward the argument that even if the workmen employed in the stone quarries and stone crushers were being compelled to provide forced labour, they were not bonded labourers, since it as not shown E by them or by the petitioner that they were doing so in consideration of an advance or other economic consideration received from the mine-lessees and owners of stone crushers. Now if this contention of the learned Additional Solicitor General were well-founded, it would become almost impossible to enforce the provisions of the Bonded Labour System (Abolition) Act 1976 because in every case F where bonded labourers are sought to be identified for the purpose of release and rehabilitation under the provisions of the Act, the State Authorities as also the employer would be entitled to insist that the bonded labourers must first prove that they are providing forced labour in consideration of an advance or other economic consideration received by them and then only they would be eligible G of the benefits provided under the Act and this would make it extremely difficult, if not impossible, for the labourers to establish that they are bonded labourers because they would have no evidence at all to prove that any advance or economic consideration was provided to them by the employer and since employment of bonded labourers H is a penal offence under the Act the employer would immediately, without any hesitation, disown having given any advance or economic

consideration to the bonded labourers. It is indeed difficult to understand how the State Government which is constitutionally mandated to bring about change in the life conditions of the poor and the down-trodden and to ensure social justice to them, could possibly take up the stand that the labourers must prove that they are made to provide forced labour in consideration of an advance or other economic consideration received from the employer and are therefore bonded labourers. It is indeed a matter of regret that the State Government should have insisted on a formal, rigid and legalistic approach in the matter of a statute wich is one of the most important measures for ensuring human dignity to these unfortunate specimens of humanity who are exiles of civilization and who are leading a life of abject misery and destitution. 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. It is now statistically established that most of 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 other 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

A 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.

The first question that arises in regard to the implementation B of the Bonded Labour System (Abolition) Act 1976 is that of identification of bonded labour. One major handicap which impedes the identification of bonded labour is the reluctance of the administration to admit the existence of bonded labour, even where it is prevalent. It is therefore necessary to impress upon the administration that it does not help to ostrich-like bury its head in the sand and ignore C the prevalence of bonded labour, for it is not the existence of bonded labour that is a slur on the administration but its failure to eradicate it and moreover not taking the necessary steps for the purpose of wiping out this blot on the fair name of the State is a breach of its constitutional obligation. We would therefore direct the Government of Haryana and also suggest to the other State Governments, to take D steps to sensitise the officers concerned with the implementation of the Act to this acute human problems and its socio-economic parameters. Moreover it may be noted that the District Magistrates have a central role to play under the provisions of the Act and the State Governments would therefore do well to instruct the District Magistrates to take up the work of identification of bonded labour E as one of their top priority tasks. There are certain areas of concentration of bonded labour which can be easily identified on the basis of various studies and reports made by governmental authorities, social action groups and social scientists from time to time. These areas of concentration of bonded labour are mostly to be found in stonequarries, brick kilns and amongst agricultural landless labourers F and such areas must be mapped out by each State Government and task forces should be assigned for identification and release of bonded labour. Labour camps should be held periodically in these areas with a view to educating the labourers and for this purpose, the assistance of the National Labour Institute may be taken, because the National Labour Institute has the requisite expertise and expe- G rience of holding such camps and it should be associated with the organisation and conduct of such camps and in each such camp, individuals with organisational capability or potential should be identified and given training in the work of identification and release of bonded labour. More importantly non-political social action H groups and voluntary agencies and particularly those with a record of honest and competent service for Scheduled Castes and Scheduled

Tribes, agricultural labourers and other unorganised workmen should be involved in the task of identification and release of bonded labourers, for it is primarily through such social action groups and voluntary agencies alone that it will be possible to eradicate the bonded labour system, because social action groups and voluntary agencies comprising men and women dedicated to the cause of emancipation of bonded labour will be able to penetrate through the secrecy under which very often bonded labourers are required to work and discover the existence of bonded labour and help to identify and release bonded labourers. We would therefore direct the Vigilance Committees as also the District Magistrates to take the assistance of non-political social action groups and voluntary agencies for the purpose of ensuring implementation of the provisions of the Bonded Labour System (Abolition) Act 1976.

The other question arising out of the implementation of the Bonded Labour System (Abolition) Act 1976 is that of rehabilitation of the released bonded labourers and that is also a question of the greatest importance, because if the bonded labourers who are identified and freed, are not rehabilitated, their condition would be much worse than what it was before during the period of their serfdom and they would become more exposed to exploitation and slide back once again into serfdon even in the absence of any coercion. The bonded labourer who is released would prefer slavery to hunger, a world of 'bondage and (illusory) security' as against a world of freedom and starvation. The State Governments must therefore concentrate on rehabilitation of bonded labour and evolve effective programmes for this purpose. Indeed they are under an obligation to do so under the provisions of the Bonded Labour System (Abolition) Act 1976. It may be pointed out that the concept of rehabilitation has the following four main features as admirably set out in the letter dated 2nd September 1982 addressed by the Secretary, Ministry of Labour, Government of India to the various States Governments:

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

(ii) The physical and economic rehabilitation has 15 major components namely allotment of house-sites and agricultural land, land development, provision of low cost dwelling units, agriculture, provision of credit, horticulture, animal husbandry, training for acquiring

A new skills and developing existing skills, promoting traditional arts and crafts, provision of wage employment and enforcement of minimum wages, collection and processing of minor forest produce, health, medical care and sanitation, supply of essential commodities, education of children of bonded labourers and protection civil rights;

(iii) There is scope for bringing about an integration among the various central and centrally sponsored schemes and the on-going schemes of the State Governments for a more qualitative rehabilitation. The essence of such integration is to avoid duplication i.e. pooling resources from different sources for the same purpose. It should be ensured that while funds are not drawn from different sources for the same purpose drawn from different sectors for different components of the rehabilitation scheme are integrated skillfully; and

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

We would therefore direct the Government of Haryana to draw up a scheme on programme for "a better and more meaningful rehabilitation of the freed bonded labourers" in the light of the above guidelines set out by the Secretary to the Government of India, Ministry of Labour in his letter dated 2nd September 1982. The other State Governments are not parties before us and hence we cannot give any direction to them, but we hope and trust that they will also take suitable steps for the purpose of securing identification, release and rehabilitation of bonded labourers on the lines indicated by us in this Judgment.

We are not at all satisfied that the stand taken on bhalf of the State of Haryana that there is no bonded labour at all in the stone

quarries and stone crushers is correct. The Report of M/s Ashok Srivastava and Ashok Panda shows that, according to the statements given by some of the workers, they were not allowed to leave the stone quarries and were providing forced labour and this Report also stated that several persons working in the Ghodhokor and Lakarpur stone quarries were forcibly kept by the contractors and they were not allowed to move out of their places and were bonded labourers. The petitioner also filed the affidavits of a large number of workers on 24th August 1982, each of them stating that he is under heavy debt of the thekedar who does not allow him to leave the premises without settling the account. We cannot ignore this material which has been placed before us and unquestioningly accept the statement made on behalf of the State of Haryana that there is no bonded labour in the stone quarries and stone crushers. But at the same time, we do not think that it would be right for us on the basis of this material to come to a definite finding that these workers whose names are given in the Report of M/s Ashok Srivastava and Ashok Panda or who have filed affidavits are providing forced labour or are bonded labourers. It is necessary to direct a further inquiry for the purpose of ascertaining whether any of the labourers working in the stone quarries and stone crushers in Faridabad District are bonded labourers in the light of the law laid down by us in this judgment. We would therefore direct Shri Laxmi Dhar Misra, Joint Secretary in the Ministry of Labour, Government of India, who has considerable experience of the work of identification, release and rehabilitation of bonded labourers, to visit the stone quarries and stone crushers in Faridabad District and ascertain by enquiring from the labourers in each stone quarry or stone crusher whether any of them are being forced to provide labour and are bonded laboureres. While making this inquiry, Shri Laxmi Dhar Misra will take care to see that when he interviews the labourers either individually or collectively, neither the mine-lessees or owners of stone crushers nor the thekedar of jamadar nor any one else is present. Shri Laxmi Dhar Misra will prepare in respect of each stone quarry or stone crusher a statement showing the names and particulars of those who, according to the inquiry made by him, are bonded labourers and he will also ascertain from them whether they want to continue to work in the stone quarry or stone crusher or they want to go back to their homes and if they want to go back, the District Magistrate of Faridabad will on receipt of the statement from Shri Laxmi Dhar Misra, make necessary arrangements for releasing them and provide for their transportation back to their hromes and for this purpose the State Government shall make the requisite funds

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available to the District Magistrate. Shri Laxmi Dhar Misra will also enquire from the mine-lessees and owners of stone crushers as also from the thekedar or jamadar whether there are any advances made by them to the labourers working in the stone quarry or stone crusher and if so, whether there is any documentary evidence in support of the same and he will also ascertain what, according to the mine-lessees and owners of stone crushers or the jamadar or thekedar, are the amounts of loans still remaining outstanding against such labourers. Shri Laxmi Dhar Misra will submit his report to this Court on or before 28th February 1984. We may make it clear that the object and purpose of this inquiry by Shri Laxmi Dhar Misra is not to fasten any liability on the mine-lessees and owners of stone crushers and the jamadar or thekedar on the basis of the Report of Shri Laxmi Dhar Misra but to secure the release and repatriation of those labourers who claim to be bonded labourers and who want to leave the employment and go some where else. We may point out that the problem of bonded labourers is a difficult problem because unless, on being freed from bondage, they are provided proper and adequate rehabilitation, it would not help to merely secure their release. Rather in such cases it would be more in their interest to ensure proper working conditions with full enjoyment of the benefits of social welfare and labour laws so that they can live a healthy decent life. But of course this would only be the next best substitute for release and rehabilitation which must receive the highest priority.

So far as implementation of the provisions of the Minimum Wages Act 1948 is concerned we would direct the Central Government and State of Haryana to take necessary steps for the purpose of ensuring that minimum wages are paid to the workmen employed in the stone quarries and stone crushers in accordance with the principles laid down by us in this judgment. It may not be a matter of any consequence as to which mode of payment is followd, whether the workmen are paid on truck basis or on any other basis, but what is essential is and that is what the Minimum Wages Act 1948 requires that the workmen must not receive any wage less than the minimum wage. Even if payment of wages is made to the workmen on truck basis, a formula would have to be evolved by the Central Government and the State of Haryana to ensure that the workmen receive no less than the minimum wage and to facilitate this formula it would have to be provided that the expenses on explosives and drilling holes shall be borne by the mine-lessees and or the jamadar or thekedar and the work of drilling holes and shot firing shall be entrusted only

to those who have received requisite training under the Mines Vocational Training Rules 1966. We would direct the Central Government and the State of Haryana to take the necessary steps in this behalf so that within the shortest possible time and as far as possible within six weeks from today the workmen start actually receiving in their hands a wage not less than the minimum wage. If payment of wages is continued to be made on truck basis, it is necessary that the appropriate officer of the Central Enforcement Machinery must determine the measurement of each truck as to how many cubic feet of stone it can contain and print or inscribe such measurement on the truck, so that appropriate and adequate wage is received by the workmen for the work done by them and they are not cheated out of their legitimate wage. We would also direct the inspecting officers of Central Enforcement Machinery to carry out surprise checks for the purpose of ensuring that the trucks are not loaded beyond their true measurement capacity. Such surprise checks shall be carried out by the inspecting officers of the Central Enforcement Machinery at least once in a week and if it is found that the trucks are loaded in excess of their true measurement capacity and the workmen are thereby deprived of their legitimate wages, the inspecting officers carrying out such checks will immediately bring this fact to the notice of the appropriate authorities for initiation of necessary action against the defaulting mine owners and/or thekedar or jamadar. We would also direct the Central Government and the State of Haryana to ensure that payment of wage is made directly to the workmen by the mine-lessees and stone-crusher owners or at any rate in the presence of a representative of the mine-lessees and stone crushers owners and the inspecting officers of the Central Government as also of the State of Haryana shall carry out periodic checks in order to ensure that payment of the stipulated wage is made to the workmen. Shri Laxmi Dhar Misra will also, while holding an inquiry pursuant to this order, ascertain, by carrying out sample check, whether the workmen employed in any particular stone quarry or stone crusher are actually in receipt of wage not less than the minimum wage and whether the directions given by us in this order are being implemented by the authorities.

There are also two other matters in respect of which it is necessary for us to give directions. The first is that, apart from poverty and helplessness, one additional reason why the workmen employed in stone quarries and stone crushers are deprived of the rights and benefits conferred upon them under various social welfare laws enacted for their benefit and are subjected to deception and

A exploitation, in that they are totally ignorant of their rights and entitlements. It is this ignorance which is to some extent responsible for the total denial of the rights and benefits conferred upon them. It is therefore necessary to educate the workmen employed in stone quarries and stone crushers so that they become aware as to what are the rights and benefits to which they are entitled under B the various social welfare laws. The knowledge of their rights and entitlements will give them the strength to fight against their employers for securing their legitimate dues and it will go a long way towards reducing, if not eliminating, their exploitation. We have fortunately in our country the Central Board of Workers Education which is entrusted with the function of educating workers in their C rights and entitlements and we would therefore direct the Central Board of Workers Education to organise periodic camps near the sites of stone quarries and stone crushers in Faridabad District for the purpose of creating awareness amongst the workmen about the rights and benefits conferred upon them by social welfare laws. This educational campaign shall be taken up by the Central Board of D Workers Education as early as possible and the progress made shall be reported to this Court by the Central Board of Workers Education from time to time, at least once in three months.

The other matter in regard to which we find it necessary to give directions relates to the tremendous pollution of air by dust E thrown out as a result of operation of the stone crushers. When the stone crushers are being operated, they continually throw out large quantities of dust which not only pollute the air, but also affect the visibility and constitute a serious health hazard to the workmen. The entire air in the area where stone crushers are being operated is heavily laden with dust and it is this air which the workmen breathe F day in and day out and it is no wonder that many of them contract tuberculosis. We would therefore direct the Central Government and the State of Haryana to immediately take steps for the purpose of ensuring that the stone crushers owners do not continue to foul the air and they adopt either of two devices, namely, keeping a drum of water above the stone crushing machine with arrangement for G continues spraying of water upon it or installation of dust sucking machine. This direction shall be carried out by the Central Government and the State of Haryana in respect of each stone crusher in the Faridabad District and a compliance report shall be made to this Court on or before 28th February, 1984.

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So far as the provisions of the Contract Labour Act and the

Inter-State Migrant Workmen Act are concerned, we have already discussed those provisions and pointed out in what circumstances those provisions would be applicable in relation to workmen employed in the stone quarries and stone crushers. It is not possible for us on the material on record to come to a definite finding whether the provisions of the Contract Labour Act and the Inter-State Migrant Workmen Act are applicable in the case of any particular stone quarry or stone crusher, because it would be a matter for investigation and determination, particularly since it has been disputed by the Central Government that there are any inter-State migrant workmen at all in any of the stone quarries or stone crushers. We would therefore direct Shri Laxmi Dhar Misra to conduct an inquiry in each of the stone quarries and stone crushers in Faridabad District for the purpose of ascertaining whether there are any contract labourers or inter-State migrant workmen in any of these stone quarries or stone crushers, in the light of the interpretation laid down by us in this judgment, and, if so, what is the number of such contract labourers or inter-State migrant workmen in each stone quarry or stone crusher. If Shri Laxmi Dhar Misra finds as a result of his inquiry that the Contract Labour Act and/or the Inter-State Migrant Workmen Act is applicable, he will make a report to that effect to the Court on or before 15th February 1984. We may make it clear that this inquiry by Shri Laxmi Dhar Misra is not directed for the purpose of fastening any liability on the mine-lessees and stone crusher owners or the jamadars and thekedars *proprio vigore* on the basis of such report, but merely for the purpose of considering whether a prima facie case exists on the basis of which action can be initiated by the Central Government, in which the mine-lessees and stone crusher owners and/or the jamadars or thekedars would have an opportunity of contesting the allegation that the Contract Labour Act and/or the Inter-State Migrant Workmen Act applies to their stone quarry or stone crusher and defending such action.

We may now take up a few specific complaints urged on behalf of the workmen. The first complaint relates to the failure to provide pure drinking water to the workmen in most of the stone quarries and stone crushers. The Report of M/s Ashok Srivastava and Ashok Panda as also the Report made by Dr. Patwardhan shows that pure drinking water is not made available to the workmen. In Lakarpur mines the workmen are obliged to take water "from a shallow rivulet covered with thick algae" and that too, "after a walk over a dangerously steep incline". The same situation also prevails in the mine in the Gurukul area as also in the Anangpur mines and in these mines

"quite often the upstream and the further down-stream of the rivulet get blocked due to mining of stone and the water becomes stagnant" and the workmen have no other option but to use this water for drink king purposes. It is true that in the lower reaches of Lakarpur near the road there is a tubewell from which the workmen get water but that is only when they are permitted to do so by the persons operating it. The Report of Dr. Patwardhan also points out that it is the children or women of the workmen who are usually engaged in the work of transporting water from distant places like the tubewell but they are not paid anything for this work which is being done by them. Neither any mine-lessee or stone crusher owner nor any jamadar or thekedar regards it as his duty to make provision for drinking water for the workmen nor does any officer of the Central Government or of the State Government bother to enforce the provisions of law in regard to supply of drinking water. It is clear that, quite apart from the provisions of the Contract Labour Act and the Inter-State Migrant Workmen Act, there is a specific prescription in section 19 of the Mines Act 1952 and Rules 30 to 32 of the Mines Rules 1955 that the mine-lessees and stone crusher owners shall make effective arrangements for providing and maintaining at suitable points conveniently situated a sufficient supply of cool and wholesome drinking water for all workmen employed in the stone quarries and stone crushers. The quality of drinking water to be provided by them has to be on a scale of at least 2 litres for every person employed at any one time and such drinking water has to be readily available at conveniently accessible points during the whole of the working time. Rule 31 requires that if drinking water is not provided from taps connected with constant water supply system, it should be kept cool in suitable vessels sheltered from weather and such vessels must be emptied, cleaned and refilled every day and steps have to be taken to preserve the water, the storage vessels and the vessels used for drinking water in clean and hygienic condition. The inspectors may also by order in writing require the mine-lessees and stone crusher owners to submit with the least possible delay a certificate from a competent health officer or analyst as to the fitness of the water for human consumption. This obligation has to be carried out by the mine-lessees and stone crusher owners and it is the responsibility of the Central Government as also of the State of Haryana to ensure that this obligation is immediately carried out by the mine-lessees and stone crusher owners. We would therefore direct the Central Government and the State of Haryana to ensure immediately that the mine-lessees and stone crusher owners start supplying pure drinking water to the workmen on a scale of at least 2 litres for every

workman by keeping suitable vessels in a shaded place at conveniently accessible points and appointing some one, preferably, amongst the women and/or children of the workmen to look after these vessels. The Central Government and the State of Haryana will also take steps for ensuring that the vessels in which drinking water is kept by the mine-lessees and stone crusher owners are kept in clea and hygienic condition and are emptied, cleaned and refilled every day and they shall also ensure that minimum wage is paid to the women and/or children who look after the vessels. The Chief Labour Commissioner, the Deputy Chief Labour Commissioner, the Assistant Labour Commissioner and the Labour Enforcement Officers of the Government of India as also the appropriate inspecting officers of the Government of Haryana shall supervise strictly the enforcement of this obligation and initiate necessary action if there is any default. The Central Government as also the State of Haryana will also immediataly direct the mine-lessees and stone-crusher owners to start obtaining drinking water from any unpolluted source or sources of supply and to transport it by tankers to the works site with sufficient frequency so as to be able to keep the vessels filled up for supply of clean drinking water to the workmen. The Chief Administrator, Faridabad Comnlex is directed to set up the points from where the mine-lessees and stone crusher owners can, if necessary, obtain supply of potable water for being carried by tankers. These directions given by us shall be promptly and immediately carried out by the appropriate authorities and Shri Laxmi Dhar Misra will, while conducting his inquiry, also ascertain whether these directions have been carried out and pure drinking water has been made available to the workmen in accordance with these directions and submit a report in that behalf to the Court on or before 28th February 1984.

The second complaint related to the failure to provide conservancy facilities to the workmen in the stone quarries and stone crushers. Section 20 of the Mines Act 1952 requires that there shall be provided separately for males and females a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to persons employed in the stone quarries and stone crushers and all such latrines and urinals shall be adequately lighted, ventilated and at all times maintained in a clean and sanitary condition. What should be the number of latrines and urinals to be provided in each stone quarry or stone crusher and what should be the standard of construction to be complied with in erecting the latrines are provided in Rules 33 to 35 of the Mines Rules 1955 and Rule 36 provides that a sufficient number of water

taps conveniently accessible shall be provided in or near such latrines and if piped water supply is not available, then a sufficient quantity of water shall be kept stored in suitable receptacles near such latrines The Report of Dr. Patwardhan shows that there is not a trace of such conservancy facilities in any of the stone quarries and the "vast open mountain dug-up without a thought as to environment is used by men and women and children as one huge open latrine" where the only privacy is that provided by the "curtain drawn by the turned down eyes of women and the turned away eyes of men". This statement made in the Report of Dr. Patwardhan has not been denied in any of the affidavits in reply filed on behalf of the respondents. We would therefore direct the Central Government as also the State Government to ensure that conservancy facilities in the shape of latrines and urinals in accordance with the provisions contained in Section 20 of the Mines Act 1950 and Rules 33 to 36 of the Mines Rules 1955 are provided immediately by mine lessees and owners of stone crushers. This direction shall be carried out at the earliest without any delay and Shri Laxmi Dhar Misra will, while making his inquiry, ascertain whether the mine-lessees and owners of stone crushers in each of the stone quarries and stone crushers visited by him have complied with this direction and a Report in that behalf shall be submitted by Shri Laxmi Dhar Misra on or before 28th February, 1984.

There was also one other complaint made on behalf of the workmen and that related to the absence of any medical or first aid facilities. The Report of Dr. Patwardhan shows that no such facilities are provided to the workmen employed in the stone quarries and stone crushers and this finding was not seriously disputed on behalf of the respondents. It is indeed regrettable that despite there being a mandatory provision for medical and first aid facilities in Section 21 of the Mines Act 1952 and Rules 40 to 45A of the Mines Rules 1955, no medical or first aid facilities seem to be provided in the stone quarries and stone crushers. We would therefore direct the Central Government as also the State Government to take steps to immediately ensure that proper and adequate medical and first aid facilities as required by Section 21 of the Mines Act 1952 and Rules 40 to 45A of the Mines Rules 1955 are provided by the mine-lessees and owners of stone quarries to the workmen. Rule 45 provides that every shot firer and blaster in a mine shall hold first aid qualification specified in Rule 41 and shall carry, while on duty, a first aid outfit consisting of one large sterilized dressing and an amul of tincture of iodine or other suitable antiseptic. But we find that this requirement is also

not observed by the mine-lessees and stone crusher owners and the workmen are required to carry on blasting with explosives without any first aid qualification or first aid outfit. We would therefore direct the Central Government as also the State of Haryana to ensure that every workman who is required to carry out blasting with explosives should not only be trained under the Mines Vocational Training Rules 1966 but should also hold first aid qualification and he should carry a first aid outfit, while on duty, as required by Rule 45. The Central Government and the State Government will also take steps to secure that proper and adequate medical treatment is provided by the mine-lessees and owners of stone crushers to the workmen employed by them as also to the members of their families and such medical assistance should be made available to them without any cost of tansportation or otherwise and the cost of medicines prescribed by the doctors must be reimbursed to them. Where the workmen or the members of their families meet with any serious accident involving fracture or possibility of disability or suffer from any serious illness, the mine-lessees and owners of stone crushers should be required by the Central Government as also the State Government to make arrangements for hospitalisation of such workmen or members of their families at the cost of the mine-lessees and/or owners of stone crushers. We would also direct the Central Government and the State of Haryana to ensure that the provisions of the Maternity Benefit Act, 1961, the Maternity Benifit (Mines and Circus) Rules 1963 and the Mines Creche Rules, 1966, where applicable in any particular stone quarries or stone crushers, are given effect to by the mine-lessees and owners of stone crushers. These directions given by us shall also be carried out at the earliest without any undue delay and Shri Laxmi Dhar Misra, while conducting his inquiry, will ascertain whether these directions have been complied with and the necessary medical and first aid facilities including hosnitalisation have been provided to the workmen and the members of their families.

We may point out that the above directions in regard to provision of health and welfare facilities have been given by us only with reference to the provisions of the Mines Act 1952 and the Mines Rules 1955 which are admittedly applicable in the case of stone quarries and stone crushers. We have not given any directions for enforcement of the provisions of the Contract Labour Act and the Inter-State Migrant Workmen Act because it has yet to be determined whether these two statutes are applicable in any particular stone quarry or stone crusher. It is also necessary to point out that whenever any

A workman suffers any injury or contracts any disease in the course of employment, he is entitled to compensation under the Workmens' Compensation Act 1923, but unfortunately he is very often not in a position to approach the appropriate court or authority for enforcing his claim to compensation and even if he files such a claim, it takes a long time before such claim is disposed of by the court or authority. B We would therefore direct that as soon as any workman employed in a stone quarry or stone crusher receives injury or contracts disease in the course of his employment, the concerned mine-lessee or stone crusher owner shall immediately report this fact to the Chief Inspector or Inspecting Officers of the Central Government and/or the State Government and such Inspecting Officers shall immediately provide C legal assistance to the workman with a view to enabling him to file a claim for compensation before the appropriate court or authority and they shall also ensure that such claim is pursued vigorously and the amount of compensation awarded to the workman is secured to him. We would like to impress upon the Court or Authority before which a claim for compensation is filed by or on behalf of the workman D to dispose of such claim without any undue delay, since delay in the awarding of compensation to the workman would only and to his misery and helplessness and would be nothing sort of gross denial of justice to him. The Inspecting Officers of the Central Government as also of the State Government will visit each stone quarry or stone crusher at least once in a fortnight and ascertain whether there is E any workman who is injured or who is suffering from any disease or illness, and if so, they will immediately take the necessary steps for the purpose of providing medical and legal assistance and if they fail to do so, the Central Government and the State Government, as the case may be, shall take uecessary action against the defaulting Inspecting Officer or Officers.

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We have given these directions to the Central Government and the State of Haryana and we expect the Central Government and the State of Haryana to strictly comply with these directions. We need not state that if any of these directions is not properly carried out by the Central Government or the State of Haryana, we shall G take a very serious view of the matter, because we firmly believe that it is no use having social welfare laws on the statute book if they are not going to be implemented. We must not be content with the law in books but we must have law in action. If we want our democracy to be a participatory democracy, it is necessary that law H must not only speak justice but must also deliver justice.

Before parting with this case, we may point out, and this has

come to our notice not only through the Report of Dr. Patwardhan but also otherwise, that the magistrates and judicial officers take a very lenient view of violations of labour laws enacted for the benefits of the workmen and let off the defaulting employers with small fines. There have also been occasions where the magistrate and judicial officers have scotched prosecutions and acquitted or discharged the defaulting employers on hypertechnicalities. This happens largely because the magistrates and judicial officers are not sufficiently sensitised to the importance of observance of labour laws with the result that the labour laws are allowed to be ignored and breached with utter callousness and indifference and the workmen begin to feel that the defaulting employers can, by paying a fine which hardly touches their pocket, escape from the arm of law and the labour laws supposedly enacted for their benefit are not meant to be observed but are merely decorative appendages intended to assuage the conscience of the workmen. We would therefore strongly impress upon the magistrates and judicial officers to take a strict view of violation of labour laws and to impose adequate punishment on the erring employers so that they may realise that it does not pay to commit a breach of such laws and to deny the benefit of such laws to the workmen.

We accordingly allow this writ petition and issue the above directions to the Central Government and the State of Haryana and the various authorities mentioned in the preceding paragraphs of this judgment so that these poor unfortunate workmen who lead a miserable existence in small hovels, exposed to the vagaries of weather, drinking foul water, breathing heavily dust-laden polluted air and breaking and blasting stone all their life, may one day be able to realise that freedom is not only the monopoly of a few but belongs to them all and that they are also equally entitled along with others to participate in the fruits of freedom and development. These directions may be summarised as follows :

(1) The Government of Haryana will, without any delay and at any rate within six weeks from today, constitute Vigilance Committee in each sub-division of a district in compliance with the requirements of section 13 of the Bonded Labour System (Abolition) Act, 1976 keeping in view the guidelines given by us in this judgment.

(2) The Government of Haryana will instruct the district magistrates to take up the work of identification of bonded

A labour as one of their top priority tasks and to map out areas of concentration of bonded labour which are mostly to be found in stone quarries and brick kilns and assign task forces for identification and release of bonded labour and periodically hold labour camps in these areas with a view to educating the labourers inter alia with the assistance
B of the National Labour Institute.

(3) The State Government as also the Vigilance Committees and the district magistrates will take the assistance of non-political social action groups and voluntary agencies for the purpose of ensuring implementation of the provisions
C of the Bonded Labour System (Abolition) Act, 1976.

(4) The Government of Haryana will draw up within a period of three months from today a scheme or programme for rehabilitation of the freed bonded labourers in the light of the guidelines set out by the Secretary to the Govern-
D ment of India, Ministry of Labour in his letter dated 2nd September 1982 and implement such scheme or programme to the extent found necessary.

(5) The Central Government and the Government of Haryana will take all necessary steps for the purpose of ensuring
E that minimum wages are paid to the workmen employed in the stone quarries and stone crushers in accordance with the principles laid down in this judgment and this direction shall be carried out within the shortest possible time so that within six weeks from today, the workmen start actually receiving in their hands a wage not less than
F the minimum wage.

(6) If payment of wages is made on truck basis, the Central Government will direct the appropriate officer of the Central Enforcement Machinery or any other appropriate authority or officer to determine the measurement of each
G truck as to how many cubic ft. of stone it can contain and print or inscribe such measurement on the truck so that appropriate and adequate wage is received by the workmen for the work done by them and they are not cheated out of their legitimate wage.

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(7) The Central Government will direct the inspecting officers

of the Central Enforcement Machinery or any other appropriate inspecting officers to carry out surprise checks at least once in a week for the purpose of ensuring that the trucks are not loaded beyond their true measurement capacity and if it is found that the trucks are loaded in excess of the true measurement capacity, the inspecting officers carrying out such checks will immediately bring this fact to the notice of the appropriate authorities and necessary action shall be initiated against the defaulting mine owners and/or thekedars or jamadars.

(8) The Central Government and the Government of Haryana will ensure that payment of wages is made directly to the workmen by the mine lessees and stone crusher owners or at any rate in the presence of a representative of the mine lesseses or stone crusher owners and the inspecting officers of the Central Government as also of the Government of Haryana shall carry out periodic checks in order to ensure that the payment of the stipulated wage is made to the workmen.

(9) The Central Board of Workers Education will organise periodic camps near the sites of stone quarries and stone crushers in Faridabad district for the purpose of educating the workmen in the rights and benefits conferred upon them by social welfare and labour laws and the progress made shall be reported to this Court by the Central Board of Workers Education at least once in three months.

(10) The Central Government and the Government of Haryana will immediately take steps for the purpose of ensuring that the stone crusher owners do not continue to foul the air and they adopt either of two devices, namely,, keeping a drum of water above the stone crushing machine with arrangement for continuous spraying of water upon it or installation of dust sucking machine and a compliance report in regard to this direction shall be made to this Court on or before 28th February, 1984.

(11) The Central Government and the Government of Haryana will immediately ensure that the mine lessees and stone crusher owners start supplying pure drinking water to the workmen on a scale of at least 2 litres for every work-

man by keeping suitable vessels in a shaded place at conveniently accessible points and such vessels shall be kept in clean and hygienic condition and shall be emptied, cleaned and refilled every day and the appropriate authorities of the Central Government and the Government of Haryana will supervise strictly the enforcement of this direction and initiate necessary action if there is any default.

(12) The Central Government and the Government of Haryana will ensure that minimum wage is paid to the women and/or children who look after the vessels in which pure drinking water is kept for the workmen.

(13) The Central Government and the Government of Haryana will immediately direct the mine lessees and stone crusher owners to start obtaining drinking water from any unpolluted source or sources of supply and to transport it by tankers to the work site with sufficient frequency so as to be able to keep the vessels filled up for supply of clean drinking water to the workmen and the Chief Administrator, Faridabad Complex will set up the points from where the mine lessees and stone crusher owners can, if necessary, obtain supply of potable water for being carried by tankers.

(14) The Central Government and the State Government will ensure that conservancy facilities in the shape of latrines and urinals in accordance with the provisions contained in section 20 of the Mines Act, 1950 and Rules 33 to 36 of the Mines Rules 1955 are provided at the latest by 15th February 1984.

(15) The Central Government and the State Government will take steps to immediately ensure that appropriate and adequate medical and first aid facilities as required by section 21 of the Mines Act 1952 and Rules 40 to 45A of the Mines Rules 1955 are provided to the workmen not later than 31st January 1984.

(16) The Central Government and the Government of Haryana will ensure that every workmen who is required to carry out blasting with explosives is not only trained under the

Mines Vocational Training Rules 1966 but also holds first aid qualification and carries a first aid outfit while on duty as required by Rule 45 of the Mines Rules 1955.

(17) The Central Government and the State Government will immediately take steps to ensure that proper and adequate medical treatment is provided by the mine lessees and owners of stone crushers to the workmen employed by them as also to the members of their families free of cost and such medical assistance shall be made available to them without any cost of transportation or otherwise and the doctor's fees as also the cost of medicines prescribed by the doctors including hospitalisation charges, if any, shall also be reimbursed to them.

(18) The Central Government and the State Government will ensure that the provisions of the Maternity Benefit Act 1961, the Maternity Benefit (Mines and Circus) Rules 1963 and the Mines Creche Rules 1966 where applicable in any particular stone quarry or stone crusher are given effect to by the mine lessees and stone crusher owners.

(19) As soon as any workman employed in a stone quarry or stone crusher receives injury or contracts disease in the course of his employment, the concerned mine lessee or stone crusher owner shall immediately report this fact to the Chief Inspector or Inspecting Officers of the Central Government and/or the State Government and such Inspecting Officers shall immediately provide legal assistance to the workman with a view to enabling him to file a claim for compensation before the appropriate court or authority and they shall also ensure that such claim is pursued vigorously and the amount of compensation awarded to the workman is secured to him.

(20) The Inspecting Officers of the Central Government as also of the State Government will visit each stone quarry or stone crusher at least once in a fortnight and ascertain whether there is any workman who is injured or who is suffering from any disease or illness, and if so, they will immediately take the necessary steps for the purpose of providing medical and legal assistance.

(21) If the Central Government and the Government of Haryana fail to ensure performance of any of the obligations set out in clauses 11, 13, 14 and 15 by the mine lessees and stone crusher owners within the period specified in those respective clauses, such obligation or obligations to the extent to which they are not performed shall be carried out by the Central Government and the Government of Haryana.

We also appoint Shri Laxmi Dhar Misra, Joint Secretary in the Ministry of Labour, Government of India as a Commissioner for the purpose of carrying out the following assignment .

(a) He will visit the stone quarries and stone crushers in Faridabad district and ascertain by enquiring from the labourers in each stone quarry or stone crusher in the manner set out by us whether any of them are being forced to provide labour and are bonded labourers and he will prepare in respect of each stone quarry or stone crusher a statement showing the names and particulars of those who, according to the inquiry made by him, are bonded labourers and he will also ascertain from them whether they want to continue to work in the stone quarry or stone crusher or they want to go away and if he finds that they want to go away, he will furnish particulars in regard to them to the District Magistrate, Faridabad and the District Magistrate will, on receipt of the particulars from Shri Laxmi Dhar Misra, make necessary arrangements for releasing them and provide for their transporation back to their homes and for this purpose the State Government will make the requisite funds available to the District Magistrate.

(b) He will also enquire from the mine lessees and owners of stone crushers as also from the thekedars and jamadars whether there are any advances made by them to the labourers working in the stone quarries or stone crushers and if so, whether there is any documentary evidence in support of the same and he will also ascertain what, according to the mine lessees and owners of stone crushers or the Jamadar or Thekedar, are the amounts of loans still remaining outstanding against such labourers.

(c) He will also ascertain by carrying out sample check whether the workmen employed in any particular stone quarry

or stone crusher are actually in receipt of wage not less than the minimum wage and whether the directions given in this order in regard to computation and payment of minimum wage are being implemented by the authorities.

(d) He will conduct an inquiry in each of the stone quarries and stone crushers in Faridabad District for the purpose of ascertaining whether there are any contract labourers or inter-State migrant workmen in any of these stone quarries or stone crushers and if he finds as a result of his inquiry that the Contract Labour Act and/or the Inter-State Migrant Workmen Act is applicable, he will make a report to that effect to the Court.

(e) He will ascertain whether the directions given by us in this judgment regarding effective arrangement for supply of pure drinking water have been carried out by the mine lessees and stone crusher owners and pure drinking water has been made available to the workmen in accordance with those directions.

(f) He will also ascertain whether the mine lessees and owners of stone crushers in each of the stone quarries and stone crushers visited by him have complied with the directions given by us in this judgment regarding provision of conservancy facilities.

(g) He will also ascertain whether the directions given by us in this judgment in regard to provision of first aid facilities and proper and adequate medical treatment including hospitalisation to the workmen and the members of their families are being carried out by the mine lessees and stone crusher owners and the necessary first aid facilities and proper and adequate medical services including hospitalisation are provided to the workmen and the members of their families.

(h) He will also enquire whether the various other directions given by us in this judgment have been and are being carried out by the mine lessees and stone crusher owners.

Shri Laxmi Dhar Misra will carry out this assignment entrusted to him and make his report to the Court on or before 28th February

1984. It will be open to Shri Laxmi Dhar Misra to take the assistance of such other person or persons as he thinks fit including officers or employees in the Ministry of Labour or in the Ministry of Mines, who may be made available by the higher authorities. If Shri Laxmi Dhar Misra finds it necessary, he may request the Court to extend the time for submitting his report by addressing a letter to the Registry of the Court. The State of Haryana will deposit a sum of Rs. 5000 within two weeks from today for the purpose of meeting the costs and out of pocket expenses of Shri Laxmi Dhar Misra.

We have no doubt that if these directions given by us are honestly and sincerely carried out, it will be possible to improve the life conditions of these workmen and ensure social justice to them so that they may be able to breathe the fresh air of social and economic freedom. The Central Government and the State of Haryana will pay to the petitioner's advocate a sum of Rs. 5000 by way of costs. We are grateful to Mr. Govind Mukhoty for rendering valuable assistance to us in this case.

PATHAK, J. I have read the judgments prepared by my brothers Bhagwati and A.N. Sen, and while I agree with the directions proposed by my brother Bhagwati I think it proper, because of the importance of the questions which arise in such matters, to set forth my own views.

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 practised by our courts and has evoked a lively, if somewhat controversial, response in legal circles, in the media and among the general public. In the United States, it is the name "given to efforts to provide legal representation to groups and interests that have been unrepresented or under-represented in the legal process. These include not only the poor and the disadvantaged but ordinary citizens who, because they cannot afford lawyers to represent them, have lacked access to courts, administrative agencies and other legal forums in which basic policy decisions affecting their interests are made".[1] In our own country, this new class of litigation is justified by its protagonists on the basis generally of vast areas in our population of illiteracy and poverty, of social and economic backwardness, and of an insufficient awareness and appreciation

1. Mitchell Rogovin : Public Interest Law, The Next Horizon, American Bar Association Journal. 1977 p. 334.

tion of individual and collective rights. These handicaps have denied millions of our countrymen access to justice. Public interest litigation is said to possess the potential of providing such access in the milieu of a new ethos, in which participating sectors in the administration of justice co-operate in the creation of a system which promises legal relief without cumbersome formality and heavy expenditure. In the result, the legal organisation has taken on a radically new dimension and correspondingly new perspectives are opening up before judges and lawyers and State Law agencies in the tasks before them. A crusading zeal is abroad, viewing the present as an opportunity to awaken the political and legal order to the objectives of social justice projected in our constitutional system. New slogans fill the air, and new phrases have entered the legal dictionary, and we hear of the "justicing system" being galvanised into supplying justcie to the socio-economic disadvantaged. These urges are responsible for the birth of new judicial concepts and the expanding horizon of juridical power. They claim to represent an increasing emphasis on social welfare and a progressive humanitarianism.

On the other side, the attempts of the judge and the lawyer are watched with sceptical concern by those who see interference by the courts in public interest litigation as a series of quixotic forays in a world of unyielding and harsh reality, whose success in the face of opposition bolstered by the inertia and apathy of centuries is bound to be limited in impact and brief in duration. They see judicial endeavour frustrated by the immobility of public concern and a traditional resistance to change, and believe that the temporary success gained is doomed to waste away as a mere ripple in the vastness of a giant slow-moving society. Even the optimistic sense danger to the credibility and legitimacy of the existing judicial system, a feeling contributed no doubt by the apprehension that the region into which the judiciary has ventured appears barren, uncharted and unpredictable, with few guiding posts and direction finding principles, and they fear that a traditonally proven legeal structure may yield to the anarchy of purely emotional impulse. To the mind trained in the certainty of the law, of defined principles, of binding precedent, and the common law doctrine of *Stare decisis* the future is fraught with confusion and disorder in the legal world and severe strains in the constitutional system. At the lowest, there is an uneasy doubt about where we are going.

Amidst this welter of agitated controversy, I think it appropriate to set down a few considerations which seem to me relevant if public

A interest litigation is to command broad acceptance. The history of human experience shows that when a revolution in ideas and in action enters the life of a nation, the nascent power so released possesses the potential of throwing the prevailing social order into disarray. In a changing society, wisdom dictates that reform should emerge in the existing polity as an ordered change produced through its B institutions. Moreover, the pace of change needs to be handled with care lest the institutions themselves be endangered.

In his Law in the Modern State, Leon Duguit observed : "Any system of public law can be vital only so far as it is based on a given sanction to the following rules : First, the holders of power cannot C do certain things; second, there are certain things they must do."(1) Traditional legal remedies have been preoccupied largely with the first rule. It is recently that the second has begun substantially to engage the functional attention of the judicial administration. In the United States, the Warren Court achieved a remarkable degree of success in decreeing affirmative action programmes for the benefit D of minorities and other socially or economically disadvantaged interests through the avenues of public law. In India, we are now beginning to apply a similar concept of constitutional duty.

Until the arrival of public interest litigation, civil litigation was patterned exclusively on the traditional model. The traditional E conception of adjudication believes a suit to be a means for settling disputes between private parties concerning their private rights. In the usual form, the suit is an organised proceeding between two individual contestants. It deals with a definite framework of facts requiring identification through porinciples codified by statute and on the basis of which the right-obligation relations between the parties F are determined, culminating in the grant or denial of relief by the Court. It is a proceeding confined to the parties, on whose volition depends the fact material brought on the record, with the judge sitting over the contest as a mere passive neutral umpire. Judicial initiative has no significant role.

G The rigid character of civil litigation conceived as a contests between two individual parties representing their personal interests has been allowed to expand into a representative proceeding where a person can, with the permission of the Court, represent others also having the same interest although not named in the

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(1). p. 26.

suit. And the disability, temporary or permanent, of a person whose legal right is violated, enables another to represent his interest in a judicial proceeding. They are cases where next friends are permitted by the Court to act for minors and persons of unsound mind, where a person may petition for the release of an illegally detained individual, and where a minority shareholder, complaining of an ultra vires transaction by the management of a company, can sue in the name of the company. Intervenors are allowed to participate in a proceeding involving the decision of legal questions affecting their interests. A rate payer of a local authority has been held entitled to challenge its illegal action. A person conferred by statute the right to participate in the decision-making process of a statutory authority is entitled to seek relief against such decision. In *S.P. Gupta* v. *Union of India*,[1] this Court has laid down that its jurisdiction can be invoked by a third party in the case of violation of the constitutional rights of another person or determinate class of persons who, by reason of poverty, helplessness, disability or social or economic disadvantage is unable to move the Court personally for relief. The Court observed further that where the public injury was suffered by an indeterminate class of persons from the breach of a public duty or from the violation of a constitutional provision of the law, any member of the public having sufficient interest can maintain an action for judicial redress for such public injury. The principle was qualified by the reservation that such petitioner should act *bona fide* and not for personal gain or private profit, nor be moved by political or other oblique motivation. The doctrine of standing has thus been enlarged in this country to provide, where reasonably possible, access to justice to large sections of people for whom so far it had been a matter of despair.

It is time indeed for the law to do so. In large measure, the traditional conception of adjudication represented the socio-economic vision prevailing at the turn of the century. The expansion of governmental activity into the life of individuals through programmes of social welfare and development had not yet been foreshadowed. An environment permeated by the doctrine of *laissez faire* shaped the development of legal jurisprudence. But soon, progressive social and economic forces began to grow stronger and influence the minds of people, and governments, in response to the pressures of egalitarian and socialist-oriented urges, began to enter increasingly upon socio-economic programmes in which legislation and the courts

(1). [1983] 2 S.C.R. 365.

A constituted the principal instruments of change. The movement accelerated with the close of the Second World War, and a character of human rights was written into the political constitutions adopted by most nations emerging from colonial rule even as, on another plane, it altered our basic conception of international law. In India, as the consciousness of social justice spread though our multi-layered B social order, the courts began to come under increasing pressure from social action groups petitioning on behalf of the underprivileged and deprived sections of society for the fulfilment of their aspirations. It is not necessary to detail the number of cases of public interest litigation which have entered this Court. It is sufficient to point out that, despite the varying fortune of those cases, public interest C litigation constitutes today a significant segment of the Court's docket.

In the debate before us, questions of substantial importance have been raised by learned counsel, questions which go to the procedure adopted by the Court and the manner of the exercise of its constitutional powers.

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This petition invokes the jurisdiction of the Court under Article 32 of the Constitution, which confers the guaranteed right to move this Court by appropriate proceedings for the enforcement of fundamental rights. The right exercised is a right to a constitutional remedy and the jurisdiction invoked is a constitutional jurisdiction. Bearing E this in mind, we must also take into account that the provisions of Article 32 do not specifically indicate who can move the Court. In the absence of a confining provision in that respect. It is plain that a petitioner may be anyone in whom the law recognises a standing to maintain an action of such nature.

F As regards the form of the proceeding and its character, Article 32 speaks generally of a "appropriate proceedings". It should be a proceeding which can appropriately lead to an adjudication of the claim made for the enforcement of a fundamental right and can result in the grant of effective relief. Article 32 speaks of the Court's power "to issue directions or orders or writs", and the specific reference G to "writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari" is by way of illustration only. They do not exhaust the content of the Court's power under Article 32.

Entering not into a more controversial area, it is appropriate H to consider the nature of the procedure which the court may adopt under Article 32 of the Constitution. So far as the traditional private

law is concerned, the procedure follows the accepted pattern and traditional forms associated with it. There can be little dispute there. Does public interest litigation call for somewhat different considerations? Before dealing with this aspect, however, it is necessary to touch on two fundamental matters.

First, as to the petition, A practice has grown in the public of invoking the jurisdiction of this Court by a simple letter complaining of a legal injury to the author or to some other person or group of persons, and the Court has treated such letter as a petition under Article 32 and entertained the proceeding without anything more. It is only comparatively recently that the Court has begun to call for the filing of a regular petition on the letter. I see grave danger inherent in a practice where a mere letter is entertained as a petition from a person whose antecedents and status are unknown or so uncertain that no sense of responsibility can, without anything more, be attributed to the communication. There is good reason for the insistence on a document being set out in a form, or accompanied by evidence, indicating that the allegations made in it are made with a sense of responsibility by a person who has taken due care and caution to verify those allegations before making them. A plaint instituting a suit is required by the Code of Civil Procedure to conclude with a clause verifying the pleadings contained in it. A petition or application filed in court is required to be supported on affidavit. These safeguards are necessary because the document, a plaint or petition or application, commences a course of litigation involving the expenditure of public time and public money, besides in appropriate cases involving the issue of summons or notice to the defendant or respondent to appear and contest the proceeding. Men are busy conducting the affairs of their daily lives, and no one occupied with the responsibilities and pressures of present day existence welcomes being summoned to a law court and involved in a ligitation. A document making allegations without any proof whatever of responsibility can conceivably constitute an abuse of the process of law. There is good reason, I think, for maintaining the rule that, except in special circumstances, the document petitioning the court for relief should be supported by satisfactory verification. This requirement is all the greater where petitions are received by the Court through the post. It is never beyond the bound of possibility that an unverified communication received through the post by the court may in fact have been employed mala fide, as an instrument of coercion or blackmail or other oblique motive against a person named therein who holds a position of honour and respect in society.

A The Court must be ever vigilant against the abuse of its process. It cannot do that better in this matter than insisting at the earliest stage, and before issuing notice to the respondent, that an appropriate verification of the allegations be supplied. The requirement is imperative in private law litigation. Having regard to its nature and purpose, it is equally attracted to public interest litigation. While B this Court has readily acted upon letters and telegrams in the past, there is need to insist now on an appropriate verification of the petition or other communication before acting on it. As I have observed earlier, there may be exceptional circumstances which may justify a waiver of the rule. For example, when the habeas corpus jurisdiction of the Court is invoked. For in all cases of illegal detention C there is no doubt that the Court must act with speed and readiness. Or when the authorship of the communication is so impecable and unquestionable that the authority of its contents may reasonably be accepted prima facie until rebutted. It will always be a matter for the Court to decide, on what petition will it require verification and when will it waive the rule.

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Besides this, there is another matter which, although on the surface appears to be of merely technical significance, merits more than passing attention. I think the time has come to state clearly that all communications and petitions invoking the jurisdiction of the Court must be addressed to the entire Court, that is to say, the E Chief Justice and his companion Judges. No such communication or petition can properly be addressed to a particular Judge. When the jurisdiction of the Court is invoked, it is the jurisdiction of the entire court. Which Judge or Judges will hear the case is exclusively a matter concerning the internal regulation of the business of the Court, interference with which by a litigant or member of the public F constitutes the grossest impropriety. It is well established that when a division of the Court hears and decides cases it is in law regarded as a hearing and a decision by the Court itself. The judgment pronounced and the decree or order made are acts of the Court, and accordingly they are respected, obeyed and enforced throughout the land. It is only right and proper that this should be known G clearly to the lay public. Communications and petitions addressed to a particular Judge are improper and violate the institutional personality of the Court. They also embarrass the judge to whom they are personally addressed. The fundamental conception of the Court must be respected, that it is a single indivisible institution, of united H purpose and existing solely for the high constitutional functions for which it has been created. The conception of the Court as a loose

aggregate of individual Judges, to one or more of whom judicial access may be particularly had, undermines its very existence and endangers its proper and effective functioning. A

I shall now turn to the character and incidents of the procedure open to the Court in public interest litigation and the nature of the power exercised by it during the proceeding. In public interest litigation, the role held by the Court is more assertive than in traditional actions. During the regime of the Warran Court in the United States, it proceeded to the point where affirmative programmes were envisaged, and the relationship between right and remedy was freed from the rigid intimacy which constitutes a fundamental feature of private law litigation. While remedial procedure was fashioned according to the demands of the case and varied from stage to stage, in the shaping of relief the court treated with the future and devised a code of regulatory action. Viewed in that context, the role of the Court is creative rather than passive and it asseums a more positive attitude in determining facts. B C D

Not infrequently public interest litigation affects the rights of persons not before the court, and in shaping the relief the court must invariably take into account its impact on those interests. Moreover, when its jurisdiction is invoked on behalf of a group, it is as well to remember that differences may exist in content and emphasis between the claims of different sections of the group. For all these reasons the court must exercise the greatest caution and adopt procedures ensuring sufficient notice to all interests likely to be affected. Moreover, the nature of the litigation sometimes involves the continued intervention of the court over a period of time, and the organising of the litigation to a satisfactory conclusion calls for judicial statesmanship, a close understanding of constitutional and legal values in the context of contemporary social forces, and a judicious mix of restraint and activism determined by the dictates of existing realities. Importantly, at the same time, the Court must never forget that its jurisdiction extends no farther than the legitimate limits of its constitutional powers, and avoid trespassing into political territory which under the Constitution has been appropriated to other organs of the State. This last aspect of the matter calls for more detailed consideration, which will be attempted later. E F G

The procedures adopted by the Court in cases of public interest litigation must of course be procedures designed and shaped by the Court with a view to resolving the problem presented before it and H

A determining the nature and extent of relief accessible in the circumstances. On the considerations to which I have adverted earlier, the Court enjoys a degree of flexibility unknown to the trial of traditional private law litigation. But I think it necessary to emphasise that whatever the procedure adopted by the court it must be procedure known to judicial tenets and characteristic of a judicial pro-
B ceeding. There are methods and avenues of procuring material available to executive and legislative agencies, and often employed by them for the efficient and effective discharge of the tasks before them. Not all those methods and avenues are available to the Court. The Court must ever remind itself that one of the indicia identifying it as a Court is the nature and character of the procedure adopted
C by it in determining a controversy. It is in that sense limited in the evolution of procedures pursued by it in the process of an adjudication and in the grant and execution of the relief. Legal jurisprudence has in its historical development identified certain fundamental principles which form the essential constituents of judicial procedure. They are employed in every judicial proceeding, and constitute the
D basic infrastructure along whose channels flows the power of the Court in the process of adjudication.

What should be the conceivable framework of procedure in public interest litigation ? This question does not admit of a clear cut answer. As I have observed earlier, it is not possible to envisage
E a defined pattern of procedure applicable to all cases. Of necessity the pattern which the Court adopts will vary with the circumstances of each case. But it seems to me that one principle is clear. If there is a statute prescribing a judicial procedure governing the particular case the Court must follow such procedure. It is not open to the Court to bypass the statute and evolve a different procedure at variance
F with it. Where, however, the procedure prescribed by statute is incomplete or insufficient, it will be open to the Court to supplement it by evolving its own rules. Nonetheless, the supplementary procedure must conform at all stages to the principles of natural justice. There can be no deviation from the principles of natural justice and other well accepted procedural norms characteristic of a judicial
G proceeding. They constitute an entire code of general principles of procedure, tried and proven and hallowed by the sanctity of common and consistent acceptance during long years of the historical development of the law. The general principles of law, to which reference is made here, command the confidence, not merely of the Judge and
H the lawyer and the parties to the litigation, but supply that basic credibility to the judicial proceeding which strengthens public faith

in the Rule of Law. They are rules rooted in reason and fairplay, and their governance guarantees a just disposition of the case. The court should be wary of suggestions favouring novel procedures in cases where accepted procedural rules will suffice. A

Turning now to the nature and extent of the relief which can be contemplated in public interest litigation, we enter into an area at once delicate and sensitive and fraught with grave implications. Article 32 confers the widest amplitude of power on this Court in the matter of granting relief. It has power to issue "directions or orders or writs", and ther is no specific indication, no express language, limiting or circumscribing that power. Yet, the power is limited by its very nature, that it is judicial power. It is power which pertains to the judicial organ of the State, identified by the very nature of the judicial institution. There are certain fundamental constitutional concepts which, although elementary, need to be recalled at times. The Constitution envisages a broad division of the power of the State between the legislature, the executive and the judiciary. Although the division is not precisely demarcated, there is general acknowledgment of its limits. The limits can be gathered from the written text of the Constitution, from conventions and constitutional practice, and from an entire array of judicial decisions. The constitutional lawyer conceds a certain measure of overlapping in functional action among the three organs of the State. But there is no warrant for assuming a geometrical congruence. It is common place that while the legislature enacts the law, the executive implements it and the court interprets it and, in doing so, adjudicates on the validity of executive action and, under our Constitution, even judges the validity of the legislation itself. And yet it is well recognised that in a certain sphere the legislature is possessed of judicial power, the executive possesses a measure of both legislative an judicial functions, and the court, in its duty of interpreting the law, accomplishes in its perfected action a marginal degree of legislative exercise. Nonetheless, a fine and delicate balance is envisaged under our Constitution between these primary institutions of the State. In similar Constitutions elsewhere the courts have been anxious to maintain and preserve that balance. An example is provided by *Marbury* v. *Madisan*[1] I do not mean to say that the Court should hesitate or falter or withdraw from the exercise of its jurisdiction. On the contrary, it must plainly do its duty under the Constitution. But I do say that in every case the Court should determine B C D E F G H

(1) 5 U.S. [1 Cranch] 137 [1803].

A the true limits of its jurisdiction and, having done so, it should take care to remain within the restraints of its jurisdiction.

This aspect of Court action assumes especial significance in public interest litigation. It bears upon the legitimacy of the judicial institution, and that legitimacy is affected as much by the solution B presented by the Court in resolving a controversy as by the manner in which the solution is reached. In an area of judicial functioning where judicial activism finds room for play, where constitutional adjudication can become an instrument of social policy forged by the personal political philosophy of the judge, this is an important consideration to keep in mind. C

Where the Court embarks upon affirmative action in the attempt to remedy a constitutional imbalance within the social order, few critics will find fault with it so long as it confines itself to the scope of its legitimate authority. But there is always the possibility, in D public interest litigation, of succumbing to the temptation of crossing into territory which properly pertains to the Legislature or to the Executive Government. For in most cases the jurisdiction of the Court is invoked when a default occurs in executive administration, and sometimes where a void in community life remains unfilled by legislative action. The resulting public grievance finds expression E through social action groups, which consider the Court an appropriate forum for removing the deficiencies. Indeed, the citizen seems to find it more convenient to apply to the Court for the vindication of constitutional rights than appeal to the executive or legislative organs of the State.

F In the process of correcting executive error or removing legislative omission the Court can so easily find itself involved in policy making of a quality and to a degree characteristic of political authority and indeed run the risk of being mistaken for one. An excessively political role identifiable with political governance betrays the Court into functions alien to its fundamental character, and tends G to destroy the delicate balance envisaged in our constitutional system between its three basic institutions. The Judge, conceived in the true classical mould, is an impartial arbiter, beyond and above political bias and prejudice, functioning silently in accordance with the Constitution and his judicial concience. Thus does he maintain the H legitimacy of the institution he serves and honour the trust which his office has reposed in him.

The affirmative schemes framed in public interest litigation by the Court sometimes require detailed administration under constant judicial supervision over protracted periods. The lives of large sections of people, some of whom have had no voice in the decision, are shaped and ordered by mandatory Court action extending into the future. In that context, it is as well to remember that public approval and public consent assume material importance in its successful implementation. In contrast with policy making by legislation, where a large body of legislators debate on a proposed legislative enactment, no such visual impact can be perceived when judicial decrees are forged and fashioned by a few judicial personages in the confines of a Court. The mystique of the robe, at the stage of decision-making, is associated traditionally with cloistered secrecy and confidentiality and the end-result commonly issues as a final definitive act of the Court. It is a serious question whether in every case the same awesone respect and reverence will endure during different stages of affirmative action seeking to regulate the lives of large numbers of people, some of whom never participated in the judicial process.

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There is good reason to suppose that treating with public interest litigation requires more than legal scholarship and a knowledge of textbook law. It is of the utmost importance in such cases that when formulating a scheme of action, the Court must have due regard to the particular circumstances of the case, to surrounding realities including the potential for successful implementation, and the likelihood and degree of response from the agencies on whom the implementation will depend. In most cases of public interest litigation, there will be neither precedent nor settled practice to add weight and force to the vitality of the Court's action. The example of similar cases in other countries can afford little support. The successful implementation of the orders of the Court will depend upon the particular social forces in the backdrop of local history, the prevailing economic pressures, the duration of the stages involved in the implementation, the momentum of success from stage to stage, and acceptance of the Court's action at all times by those involved in or affected by it.

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An activist Court, spearheading the movement for the development and extension of the citizen's constitutional rights, for the protection of individual liberty and for the strengthening of the socio-economic fabric in compliance with declared constitutional objectives, will need to move with a degree of judicial circumspection. In the

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A centre of a social order changing with dynamic pace, the Court needs to balance the authority of the past with the urges of the future. As far back as 1939, Judge Learned Hand[1] observed that a Judge "must preserve his authority by cloaking himself in the majesty of an over-shadowing past; but he must discover some composition with the dominant needs of his times". In that task the Court must B ever be conscious of the constitutonal truism that it possesses the sanction of neither the sword nor the purse and that its strength lies basically in public confidence and support, and that consequently the legitimacy of its acts and decisions must remain beyond all doubt. Therefore, whatever the case before it, whatever the context of facts and legal rights, whatever the social and economic pressures of the C times, whatever the personal philosophy of the Judge, let it not be forgotten that the essential identity of the institution, that it is a Court, must remain preserved so that every action of the Court is informed by the fundamental norms of law, and by the principles embodied in the Constitution and other sources of law. If its contribution to the jurisprudential ethos of society is to advance our constitutional D objectives, it must function in accord with only those principles which enter into the composition of judicial action and give to it its essential quality. In his perceptive Lectures entitled "The Warren Court: Constitutional Decision as an Instrument of Reform"[2]. Professor Archicald Cox pointedly observes :

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> "Ability to rationalise a constitutional judgment in terms of principles referable to accepted sources of law is an essential, major element of constitutional adjudication. It is one of the ultimate sources of the power of the Court—including the power to gain acceptance for the occasional great leaps forward which lack such justification. Constitu- F tional government must operate by consent of the governed. Court decrees draw no authority from the participation of the people. Their power to command consent depends upon more than habit or even the deserved prestige of the justices. It comes, to an important degree, from the continuing force of the rule of law—from the belief that the G major influence in judicial decisions is not fiat but principles which bind the judges as well as the litigants and which apply consistently among all men today, and also yesterday and tomorrow".

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(1) 52 Harvard Law Review 361 [1939].
(2) Harvard University Press [1968], p. 21.

There is great merit in the Court proceeding to decide an issue on the basis of strict legal principle and avoiding carefully the influence of purely emotional appeal. For that alone gives the decision of the Court a direction which is certain, and unfaltering, and that particular permanence in legal jurisprudence which makes it a base for the next step forward in the further progress of the law. Indeed, both certainty of substance and certainty of direction are indispensable requirements in the development of the law, and invest it with the credibility which commands public confidence in its legitimacy.

This warning is of especial significance in these times, during a phase of judicial history when a few social action groups tend to show evidence of presuming that in every case the court must bend and mould its decision to popular notions of which way a case should be decided.

I have endeavoured by these observations to indicate some of the areas in which the Court should move with caution and circumspection when addressing itself to public interest litigation. As new areas open before the Court with modern developments in jurisprudence, in a world more sensitive to human rights as well as the impact of technological progress, the Court will become increasingly conscious of its expanding jurisdiction. That is inevitable. But its responsibilities are correspondingly great, and perhaps never greater than now. And we must remember that there is no higher Court to correct our errors, and that we wear the mantle of infallibility only because our decisions are final. That we sit at the apex of the judicial administration and our word, by constitutional mandate, is the law of the land can induce an unusual sense of power. It is a feeling we must guard against by constantly reminding ourselves that every decision must be guided by reason and by judicial principles.

My brothers have dealt with the preliminary objections raised by the respondents to the maintainability of this proceeding. On the considerations to which I have adverted earlier I have no hesitation in agreeing with them that the preliminary objections must be rejected. I have no doubt in my mind that persons in this country obliged to serve as bonded labour are entitled to invoke Article 23 of the Constitution. The provisions embodied in that clause form a vital constituent of the Fundamental Rights set forth in Part III of the Constitution, and their violation attracts properly the scope of Article 32 of the Constitution. I also find difficulty in upholding the objection by the respondents to the admissibility and relevance

of the material consisting of the report of the two advocates and of Dr. Patwardhan appointed as Commissioners. It is true that the reports of the said Commissioners have not been tested by cross-examination, but then the record does not show whether any attempt was made by the respondents to call them for cross-examination. The further question whether the appointment of the Commissioners falls within the terms of Order XLVI of the Supreme Court Rules 1966 is of technical significance only, because there was inherent power in the Court, in the particular circumstances of this case, to take that action. I have already set forth earlier my views in respect of the nature and forms of procedure open to the Court in public interest litigation and I need not elaborate them here. I may add, however, that the Court would do well to issue notice to the respondents, before appointing any Commissioner, in those cases where there is little apprehension of the disappearance of evidence.

On the merits of the case I find myself in agreement with my brother Bhagwati, both in regard to the operation of the various statutes as well as the directions proposed by him. The case is one of considerable importance to a section of our people, who pressed by the twin misfortunes of poverty and illiteracy, are compelled to a condition of life which long since should have passed into history. The continued existence of such pockets of oppression and misery do no justice to the promises and assurances extended by our Constitution to its citizens.

AMARENDRA NATH SEN, J. The relevant facts have been fully set out in the judgment of my learned brother Bhagwati, J. My learned brother has also recorded in his judgment the various contentions which were urged before us in this writ petition.

A preliminary objection was raised by Shri K. L. Bhagat, Additional Solicitor General of India and also by Shri Phadke, learned counsel appearing on behalf of the respondents, as to the maintainability of the present petition. The objection to the maintainability of the present petition is taken mainly on the following three grounds:—

1. Art. 32 of the Constitution is not attracted to the instant case as no fundamental right of the petitioners or of the workmen referred to in the petition are infringed.

2. A letter addressed by a party to this Court cannot be treated as a writ petition and in the absence of any

verified petition this Court cannot be moved to exercise its writ jurisdiction. A

3. In a proceeding under Art. 32 of the Constitution this Court is not empowered to appoint any commission or an investigating body to enquire into the allegations made and make a report to this Court on the basis of the enquiry to enable this Court to exercise its power and jurisdiction under Art. 32 of the Constitution. B

I propose to consider the objections in the order noted above. I shall first deal with the first objection, namely, that Art. 32 of the Constitution is not attracted as there is no violation of any fundamental right of the petitioner or of the workmen referred to in the petition. C

The substance of the grievance of the petitioners in this petition is that the workmen referred to in the communication addressed to this Court are bonded labourers. In 1976, the Parliament enacted the Bonded Labour System (Abolition) Act, 1976 and by virtue of the provisions of the said Act, the bonded labour system has been declared to be illegal in this country. Any person who is wrongfully and illegally employed as a labourer in violation of the provisions of the Act, is in essence deprived of his liberty. A bonded labourer truly becomes a slave and the freedom of a bonded labourer in the matter of his employment and movement is more or less completely taken away and forced labour is thrust upon him. When any bonded labourer approaches this Court, the real grievance that he makes is that he should be freed from this bondage and he prays for being set at liberty and liberty is no doubt a fundamental right guranteed to every person under the Constitution. There cannot be any manner of doubt that any person who is wrongfully and illegally detained and is deprived of his liberty can approach this Court under Art. 32 of the Constitution for his freedom from wrongful and illegal detention, and for being set at liberty. In my opinion, whenever any person is wrongfully and illegally deprived of his liberty, it is open to anybody who is interested in the person to move this Court under Art. 32 of the Constitution for his release. It may not very often be possible for the person who is deprived of his liberty to approach this Court, as by virtue of such illegal and wrongful detention, he may not be free and in a position to move this Court. The Petitioner in the instant case claims to be an association interested in the welfare of society and particularly of the weaker section. The Petitioner further D E F G H

A states that the petitioner seeks to promote the welfare of the labourers and for promoting the welfare of labour, the petitioner seeks to move this Court for releasing the bonded labourers from their bondage and for restoring to them their freedom and other legitimate rights. The bonded labourers working in the far away places are generally poor and belong to the very weak section of the people. They are B also not very literate and they may not be conscious of their own rights. Further, as they are kept in bondage their freedom is also restricted and they may not be in a position to approach this Court. Though no fundamental right of the petitioner may be said to be infringed, yet the petitioner who complains of the violation of the fundamental right of the workmen who have been wrongfully and C illegally denied their freedom and deprived of their constitutional right must be held to be entitled to approach this Court on behalf of the bonded labourers for removing them from illegal bondage and deprivation of liberty. The *locus standi* of the petitioner to move this Court appear to be conclusively established by the decision of this Court in the case of *S.P. Guta* v. *Union of India & Anr.*[1] Forced D labour is constitutionally forbidden by Art. 23 of the Constitution. As in the present case the violation of the fundamental right of liberty of the workmen who are said to be kept in wrongful and illegal detention, employed in forced labour, is alleged, Art. 32 of the Constitution to my mind, is clearly attracted. The first ground raised on behalf of the respondents cannot, therefore, be sustained.

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Before I proceed to deal with the second ground urged on behalf of the respondents, it will be convenient to set out the provisions of Art. 32 of the Constitution. Art. 32 read as follows :—

> "(1) The right to move the Supreme Court by appropriate F proceedings for the enforcement of the rights conferred by this Part is guaranteed.
>
> (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrants and certiorari, G whichever may be appropriate, for the enforcement of any of the rights conferred by this part.
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> (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower

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(1) [1981] Suppl. S.C.C. 87.

any other Court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution."

Art. 32(1) confers the right to move this Court by appropriate proceedings for enforcement of the fundamental rights guaranteed under the Constitution. Art. 32(2) makes provision for the powers of this Court in the matter of granting relief in any proceeding in this Court for enforcement of the fundamental rights guaranteed by the Constitution. Art. 32(3) and 32(4) which I have also set out for the purpose of complete understanding of the provisions of Art. 32 for proper appreciation of its scope and effect, do not have any material bearing on the question involved in the present proceeding.

The second ground which raises the question whether the letter addressed by a party to this Court can be treated as a writ petition and in the absence of any verified petition this court can be moved to exercise its writ jurisdiction, is essentially an objection to the procedure to be adopted by this Court in the matter of entertaining a proceeding under Art. 32 for enforcement of fundamental rights of the parties. Art. 32(1) of the Constitution which has been earlier set out guarantees the right to move this Court by an appropriate proceeding for the enforcement of the fundamental rights. Art. 32(2) confers wide powers on this Court in the matter of granting relief against any violation of the fundamental rights. Art. 32 or for that matter any other article does not lay down any procedure which has to be followed to move this Court for relief against the violation of any fundamental right. Art. 32(1) only lays down that the right to move this Court by appropriate proceedings for enforcement of fundamental rights is guaranteed. The Constitution very appropriately leaves the question as to what will constitute an appropriate proceeding for the purpose of enforcement of fundamental rights to be determined by the Court. This Court, when sought to be moved under Art. 32 by any party for redressing his grievance against the violation of fundamental rights has to consider whether the procedure followed by the party is appropriate enough to entitle the court to proceed to act on the same. No doubt this Court has framed rules which are contained in part IV, Order XXXV of the Supreme Court Rules under the Caption "application for enforcement of fundamental

A rights ("Art. 32 of the Constitution"). Generally speaking, any party who seeks to move this Court under Act. 32 of the Constitution should conform to the rules prescribed. The rules lay down the procedure which is normally to be followed in the matter of any application under Art. 32 of the Constitution. These rules are rules relating to the procedure to be adopted and the rules are intended B to serve as maids to the Deity of Justice. Procedural law which also forms a part of the law and has to be observed, is, however, subservient to substantive law and the laws of procedure are prescribed for promoting and furthering the ends of justice. There cannot be any doubt that this Court should usually follow the procedure laid down in O.XXXV of the Rules of this Court and should normally C insist on a petition properly verified by an affidavit to be filed to enable the Court to take necessary action on the same. Though this Court should normally insist on the rules of procedure being followed, it cannot be said, taking into consideration the nature of right conferred under Art. 32 to move this Court by an appropriate proceeding and the very wide powers conferred on this Court for D granting relief in the case of violation of fundamental rights, that this Court will have no jurisdiction to entertain any proceeding which may not be in conformity with procedure prescribed by the Rules of this Court. The Rules undoubtedly lay down the procedure which is normally to be followed for making an application under Art. 32 of the Constitution. They, however, do not and cannot have the E effect of limiting the jurisdiction of this Court of entertaining a proceeding under Art. 32 of the Constitution, if made, only in the manner prescribed by the rules. For effectively safeguarding the fundamental rights guaranteed by the Constitution, the Court in appropriate cases in the interests of justice will certainly be competent to treat a proceeding, though not in conformity with the procedure prescribed F by the Rules of this Court, as an appropriate proceeding under Art. 32 of the Constitution and to entertain the same. Fundamental rights guaranteed under the Constitution are indeed too sacred to be ignored or trifled with merely on the ground of technicality or any rule of procedure. It may further be noticed that the rules framed by this Court do not also lay down that this Court can be moved under Art. G 32 of the Constitution only in accordance with the procedure prescribed by the Rules and not otherwise. A mere technicality in the matter of form or procedure which may not in any way affect the substance of any proceeing should not stand in the way of the exercise of the very wide jurisdiction and powers conferred on this H Court under Art. 32 of the Constitution for enforcement of fundamental rights guaranteed under the Constitution. Taking into

consideration the substance of the matter and the nature of allegations made, it will essentially be a matter for the Court to decide whether the procedure adopted can be considered to be an appropriate proceeding within the ambit of Art. 32 of the Constitution. The Court, if satisfied on the materials placed in the fom of a letter or other communication addressed to this court, may take notice of the same in appropriate cases. Experience shows that in many cases it may not be possible for the party concerned to file a regular writ petition in conformity with procedure laid down in the Rules of this Court. It further appears that this Court for quite some years now has in many cases proceeded to act on the basis of the letters addressed to it. A long standing practice of the Court in the matter of procedure also acquires sanctity. It may also be pointed out that in various cases the Court has refused to take any notice of letters or other kind of communications addressed to Court and in many cases also the court on being moved by a letter has directed a formal writ petition to be filed before it has decided to proceed further in the matter. It is, however, eminently desirable, in my opinion, that normally the procedure prescribed in the rules of this Court should be followed while entertaining a petition under Art. 32 of the Constitution, though in exceptional cases and particularly in matter of general public interest, this Court may, taking into consideration the peculiar facts and circumstances of the case, proceed to exercise its jurisdiction under Art. 32 of the constitution for enforcement of fundamental rights treating the letter or the communication in any other form as an appropriate proceeding under Art. 32 of the Constitution. It is, however, eminently desirable that any party who addresses a letter or any other communication to this Court seeking intervention of this Court on the basis of the said letter and communication should address this letter or communication to this Court and not to any individual Judge by name. Such communication should be addressed to the Chief Justice of the Court and his companion Justices. A private communication by a party to any Learned Judge over any matter is not proper and may create embarrassment for the Court and the Judge concerned.

In the present case, the unfortunate workers who are employed as bonded labourers at a distant place, could not possibly in view of their bondage, move this Court, following the procedure laid down in the Rules of this Court. The Petitioner which claims to be a Social Welfare Organisation interested in restoring liberty and dignity to these unfortunate bonded labourers should be considered competent to move this Court by a letter or like communication addressed to

this Court, to avoid trouble and expenses, as the petitioner is not moving this Court for any personal or private benefit.

I shall now consider the third and the last objection which relates to the powers of this Court to direct an enquiry into the allegations made and to call for a report in a proceeding under Art. 32 of the Constitution to enable this Court to exercise its power and jurisdiction under Art. 32 of the Constitution.

We have earlier noted that the fundamental rights are guaranteed by the Constitution and for the enforcement of the fundamental rights very wide powers have been conferred on this Court. Before this Court proceeds to exercise itsp owers under Art. 32 of the Constitution for enforcing the fundamental rights guaranteed, this Court has to be satisfied that there has been a violation of the fundamental rights. The fundamental rights may bc alleged to have been violated under various circumstances. The facts and circumstances differ from case to case. Whenever, however, there is an allegation of violation of fundamental rights, it becomes the responsibility and also the sacred duty of this Court to protect such fundamental rights guaranteed under the Constitution provided that this Court is satisfied that a case for interference by this Court appears prima facie to have been made out. very often the violation of fundamental rights is not admitted or accepted. On a proper consideration of the materials the Court has to come to a concluson whether there has been any violation of fundamental rights to enable the Court to grant appropriate reliefs in the matter. In various cases, because of the peculiar facts and circumstances of the case the party approaching this Court for enforcement of fundamental rights may not be in a position to furnish all relevant materials and necessary partiuclars. If, however, on a consideration of the materials placed, the Court is satisfied that a proper probe into the matter is necessary in the larger interest of administration of justice and for enforcement of fundamental rights guaranteed, the Court, in view of the obligations and duty cast upon it of preserving and protecting fundamental rights, may require better and further materials to enable the Court to take appropriate action; and there cannot be anything improper in the proper exercise of Court's jurisdiction under Art. 32 of the Constitution to try to secure the necessary materials through appropriate agency. The Commission that the Court may appoint or the investigation that the court may direct is essentially for the Court's satisfaction as to the correctness or otherwise of the allegation of violation of fundamental rights to enable the Court to decide the course to be adopted for

doing proper justice to the parties in the matter of protection of their fundamental rights. We have to bear in mind that in this land of ours, there are persons without education, without means and without opportunities and they also are entitled to full protection of their rights or privileges which the Constitution affords. Living in chilled penury without necessary resources and very often not fully conscious of their rights guaranted under the Constitution, a very large section of the people commonly termed as the weaker section live in this land. When this Court is approached on behalf of this class of people for enforcement of fundamental rights of which they have been deprived and which they are equally entitled to enjoy, it becomes the special responsibility of this Court to see that justice is not denied to them and the disadvantageous position in which they are placed, do not stand in the way of their getting justice from this Court. The power to appoint a commission or an investigating body for making enquiries in terms of directions given by the Court must be considered to be implied and inherent in the power that the Court has under Art. 32 for enforcement of the fundamental rights guaranteed under the Constitution. This is a power which is indeed incidental or ancillary to the power which the Court is called upon to exercise in a proceeding under Art. 32 of the Constitution. It is entirely in the discretion of the Court, depending on the facts and circumstances of any case, to consider whether any such power regarding investigation has to be exercised or not. The Commission that the Court appoints or the investigation that the Court directs while dealing with a proceeding under Art. 32 of the Constitution is not a commission or enquiry under the Code of Civil Procedure. Such power must necessarily be held to be implied within the very wide powers conferred on this Court under Art. 32 for enforcement of fundamental rights. I am, further of the opinion that for proper exercise of its powers under Art. 32 of the Constitution and for due discharge of the obligation and duty cast upon this Court in the matter of protection and enforcement of fundamental rights which the Constitution guarantees, it must be held that this Court has an inherent power to act in such a manner as will enable this Court to discharge its duties and obligations under Art. 32 of the Constitution properly and effectively in the larger interest of administration of justice, and for proper protection of constitutional safeguards. I am, therefore, of the opinion that this objection is devoid of any merit.

I may incidentally observe that as a result of such action on the part of the Court attention of the appropriate authorities concerned has in a number of cases been pointedly drawn to the existence of

bonded labourers in various parts of the country and to their miserable plight and a large number of bonded labourers have been freed from their bondage. To my mind, the litigation of this type particularly in relation to bonded labourers is really not in nature in adversary litigation and it becomes the duty of the State and also of the appropriate authorities to offer its best co-operation to see that this evil practice which has been declared illegal is ended at the earliest. The existence of bonded labour in the country is an unfortunate fact. Whenever there is any allegation of the existence of bonded labour in any particular State, the State instead of seeking to come out with a case of denial of such existence on the basis of a feeling that the existence of bonded labour in the State may cast a slur or stigma on its administrative machinery, should cause effective enquiries to be made into the matter and if the matter is pending in this Court, should co-operate with this Court to see that death-knell is sounded on this illegal system which constitutes a veritable social menace and stands in the way of healthy development of the nation.

For reasons aforesaid, I do not find any merit in the preliminary objections raised and I agree with my learned brother that the preliminary objections must be over-ruled.

On the merits of the case my learned brother Bhagwati, J. has in his judgment carefully and elaborately discussed all the aspects. Apart from the principal grievance made that the workmen in the instant case are bonded labourers, various grievances on behalf of the workmen have been voiced and denial to the workmen of various other just rights has been alleged. The grievance of denial of other just rights to the workmen and the reliefs claimed for giving the workmen the benefits to which they may be entitled under various legislations enacted for their welfare are more or less in the nature of consequential reliefs incidental to the main relief of freedom from bonded and forced labour to which the workmen are subjected. I must frankly confess that in the facts and circumstances of this case I have some doubts as to the applicability of the provisions of Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. The views expressed by my learned brother Bhagwati, J. in his judgment, to my mind, do not amount to any adjudication on the question of applicability of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. The observations made by my learned brother Bhagwati, J. and the directions given by him on the various aspects with regard to the merits of the case after carefully considering the provisions of

all the relevant labour legislations enacted tor the benefit of labourers and for improvement and betterment of their lot, are for furthering the interests of the workmen and for proper protection and preservation of their just rights and to enable the appropriate authorities to take necessary action in the matter. As I am in agreement with the views expressed bv my learned Brother Bhagwati, J. I do not propose to deal with these aspects at any length and I content myself by expressing my agreement with the judgment of my learned brother Bhagwati, J. on these matters.

S. R. *Petitions allowed and preliminary grounds rejected.*