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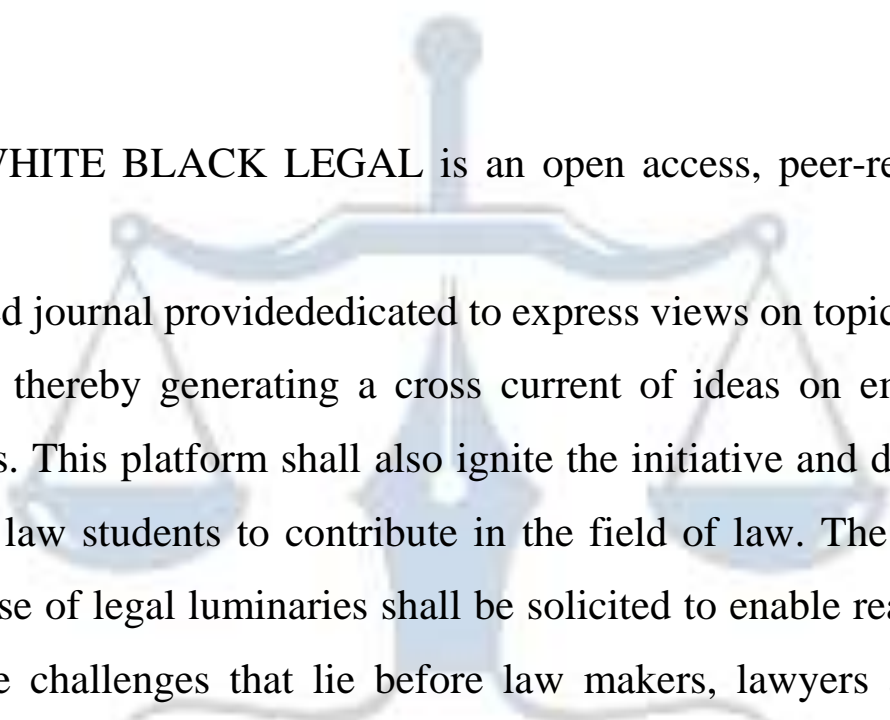


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **CASE COMMENTARY: THE ISSUE OF BONDED LABOUR DEALT UNDER THE CASE OF - BANDHUA MUKTI MORCHA V/S. UNION OF INDIA**

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Judgement Cause Title -Bandhua Mukti Morcha v/s. Union of India

Citation-(1984) 3 SCC 161

Judgement Date-16<sup>th</sup> December 1983.

Court-Hon'ble Supreme Court of India.

Constitution of Bench-3 Bench of Judges.

Name of Judges-The Hon'ble

- 1) Justice P.N. Bhagwati
- 2) Justice Ranganath Misra
- 3) Justice D.A. Desai

## **INTRODUCTION**

Bonded labour in India refers to a system where individuals are forced to work for an employer in conditions of exploitation, typically to repay a loan or debt. This form of labour is often inherited, with children born into bonded labour following in their parents' footsteps. Bonded labourers are typically not paid fair wages and are subjected to harsh working conditions, making it a severe violation of human rights.

In historic times, bonded labour was prevalent in agriculture works, brick kilns, industrial work like textile industries, and also in domestic work. Despite its formal abolition through legislation like the Bonded Labour System (Abolition) Act, 1976<sup>1</sup>, bonded labour continues to persist, especially in rural areas where poverty, lack of education, and the absence of legal

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<sup>1</sup>Bonded Labour System (Abolition) Act, 1976 is No. 19, act of parliament, 1976(India)

enforcement allow exploitative practices to thrive.

Although the government has introduced laws and welfare measures to combat bonded labour, challenges remain in terms of enforcement, awareness, and social stigma, making it a persistent issue in contemporary India.

## FACTS OF THE CASE

A non profitable organization called the Bandhua Mukti Morcha, the petitioner, examined several stone quarries in the Faridabad district close to Delhi and found that many workers from Rajasthan, Madhya Pradesh, Uttar Pradesh, and Maharashtra were living in appalling conditions. The petitioner wrote the Honorable Justice P. N. Bhagwati a letter on February 25, 1982.

The names Eleven employees from Rajasthan, thirty employees from Madhya Pradesh, and fourteen employees from Uttar Pradesh were named in the letter along with their declarations indicating their susceptibility. The letter concentrated on stone dust, industrial respiratory diseases, and deadly injuries in addition to incarcerated labour. Additionally, it noted low pay, poor sanitation, contaminated drinking water, and sexual exploitation of women—all of which are enough to make workers' lives miserable. To guarantee the correct application of labour welfare laws, including the Minimum Wages Act of 1948<sup>2</sup>, the Mines Act of 1952<sup>3</sup>, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act of 1979<sup>4</sup>, the Contract Labour (Regulation and Abolition) Act of 1970<sup>5</sup>, the Bonded Labour System (Abolition) Act of 1976, and others, the petitioner asked for the issuance of a writ petition.

The Supreme Court considered the letter to be a Writ Petition. Two lawyers, Ashok Srivastava and Ashok Panda, were appointed as commissioner by the court to visit and work with the employees at the stone quarries whose names were mentioned in the letter. On March 2, 1982, the commissioners' report was turned in, and it stated:

1. There were numerous marble processing machines in use, creating a dusty atmosphere that was uncomfortable to breathe in.

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<sup>2</sup> The Minimum Wages act of 1948, No. 11, act of parliament, 1948(India)

<sup>3</sup> The Mines act of 1952, No. 35, act of parliament, 1952(India)

<sup>4</sup> Inter-state migrant workmen (Regulation of Employment and Conditions of Service) act of 1979, No. 30, act of parliament, 1979(India)

<sup>5</sup> The Contract Labour (Regulation and Abolition) act, 1970, No. 37, act of parliament, 1970(India)

2. Most of the time, people there were compelled to drink contaminated water from a nallah since they lacked access to clean water.
3. Because workers were unable to leave the stone quarries, they resided in jhuggies constructed of stacked stones and straw.
4. They were unable to pursue damages for work-related injuries.

The Court mandated on March 5, 1982, that copies of Ashok Srivastava and Ashok Panda's Report be provided to each respondent upon written request so that they could reply to the information contained within. In order for the State Government and its employees to take the necessary actions to address the problem, the Court has tasked Dr. Patwardhan of the Indian Institute of Technology with conducting a socio-legal investigation on the legitimacy of state tasks.

### ISSUES RAISED

The Apex Court listed the following issues after receiving Dr. Patwardhan's comprehensive and meticulously documented report:

- 1) Does Article 32 of the Indian Constitution allow for the maintenance of the Writ Petition that was filed?
- 2) Has the right to fundamental rights been revoked?
- 3) Does the Supreme Court have the authority to establish a commission?
- 4) Can the Bonded Labour System (Abolition) Act of 1976's provisions be used in this situation?
- 5) Is there any dispute over the application of different worker social welfare laws?

### THE REASONING GIVEN BY THE COURT

#### **Issue 1: Does Article 32 of the Indian Constitution allow for the maintenance of the Writ Petition that was filed?**

The respondent's contention of locus standi was completely rejected by the Honorable Court. It used to be the case that the only person who could ask the court for redress was the one who was wronged. Nonetheless, the Court ruled in *S. P. Gupta v. Union of India*<sup>6</sup> that any member acting in good faith may petition the Court under Article 32<sup>7</sup> or Article 226 of the Constitution on behalf of those who are impoverished and lack resources and awareness.

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<sup>6</sup> *S.P. Gupta vs President of India And Ors*, On 30th December, 1981

<sup>7</sup> INDIAN CONST. art.32

Additionally, the Court determined that the need of locus standi is not a sine qua non because of any limitations in the phrasing of Article 32. The Court further emphasized that the definition of “suitable proceeding” in Article 32 must be read as follows: the appropriateness requirement must be taken into account in light of the goal of the proceeding, which is the enforcement of a fundamental right. Because the petitioner was acting in the public interest to defend the impoverished people’s fundamental rights, the petition was deemed maintainable.

### **Issue 2: Has the right to fundamental rights been revoked?**

The Supreme Court responded to the defendant’s argument that no fundamental rights had been violated by stating that the government was not expected to bring up such issues at the beginning of the present P.I.L. by claiming that some workers were in slavery and living in cruel conditions. In order to ascertain if wage slavery or other types of forced labour exist, the Court’s investigation must be authorized by the government. By definition, the P.I.L. is not an adversarial case; rather, it is a challenge and a chance for the government to defend the weakest and most vile elements of society. The Frances Mullins case<sup>8</sup> was mentioned by the court. According to that case, the right to life and unexploited human dignity were guaranteed by Article 21.

### **Issue 3: Does the Supreme Court have the authority to establish a commission?**

The court asserts that the respondent’s argument on problem 3 that is the appointment of Commissioners is predicated on an incorrect interpretation of the steps outlined in Section 32 of the Constitution. But as of we know Article 32 enshrines the power to issue writs, give instructions, or make orders that may be relevant to the assertion of the disputed basic right. This is seen from the phrase’s contemporaneous form. Even if the requirements for granting any of these high prerogative writs are not fulfilled, the Supreme Court has the authority to grant writs like mandamus, habeas corpus, prohibition, quo warranto, certiorari, and writs that are comparable to these high prerogative writs.

### **Issue 4: Can the Bonded Labour System (Abolition) Act of 1976’s provisions be used in this situation?**

According to the Respondent, the workers have the burden of proving their case under the 1976 Bonded Labour System (Abolition) Act. Requiring bonded labourers to provide proof that they

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<sup>8</sup> Frances Carolie Mullin vs W.C. Khambra & Ors, 1980 AIR 849, 1980 SCR (2)1095 1980 SCC (2) 275

are performing forced labor in return for a payment or other financial benefit. In order for them to be eligible for benefits under the Act, they would need to complete an exceptionally challenging, if not impossible, assignment. In response, the Supreme Court declared that whenever forced labor is brought up in court, there will be an initial presumption that the workers are performing the forced labour in order to obtain financial gain.

**Issue 5: Is there any dispute over the application of different worker social welfare laws?**

Because these are excavations where stone quarrying activities are conducted, the stone quarrying in this case is considered a “mine” in the sense of Section 2(j)<sup>9</sup> of the Mining Act, 1952. Nevertheless, these stone quarries are not regarded as “open cast working” because the holes go below the superjacent ground. Additionally, in an effort to defend themselves, respondents invoked Section 3(1)(b)<sup>10</sup> of the Act of 1952, which exempts quarries from the existing laws. Since these mines are underground and not “open cases,” and explosives are permitted for use in mining, the requirements outlined in section 3(1)(b) are not fulfilled.

The Court determined that the kedars or jamadars are contractors under Section 2(1)(b)<sup>11</sup> of the Cross Migrant Workmen Act, 1959, and that the owners also satisfy Section 2(1)’s requirements (g). However, let’s say that five or more employees in a company meet the requirements for Cross Migrant Workers as outlined in Section 2 subsection (1) clause-e<sup>12</sup>. The Inter-State Migrant Workers Act will only apply to the establishments where five or more employees are employed if they meet the requirements for Cross Migrant Workers as outlined in Section 2 subsection (1) clause-e.

The Court decided that an investigation into whether the state’s employers employed any interstate stoneworkers should be carried out, despite the fact that the majority of workers employed in Haryana’s stone quarries and stone crushers come from Uttar Pradesh, Madhya Pradesh, Rajasthan, Tamil Nadu, and Andhra Pradesh, according to Dr. Patwardhan’s report.

In order to meet the constitutional requirement, the Haryana government was directed to

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<sup>9</sup> The Mines Act of 1952, Sec 2(j) No.35, act of parliament, 1952(India)

<sup>10</sup> The Mines Act of 1952, Sec.3(1)(b), No. 35, act of parliament, 1952(India)

<sup>11</sup> Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act of 1979, Sec.2(1)(b), No.30, Act of parliament, 1979 (India)

<sup>12</sup> Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act of 1979, Sec.2(1)(e), No.30, Act of parliament, 1979 (India)

implement the following laws: the Maternity Benefit Act of 1961<sup>13</sup>, the Employees' Provident Funds and Miscellaneous Provisions Act of 1952<sup>14</sup>, the Employees' State Insurance Act of 1948<sup>15</sup>, the Workmen Compensation Act of 1923<sup>16</sup>, and the Minimum Wages Act of 1948.

## GUIDELINES

The Bandhua Mukti Morcha case<sup>17</sup> played a significant role in forming Indian law against bonded labour. The Supreme Court addressed the systemic problem of bonded labour by issuing a number of guidelines and directions.

1) Identifying and rescuing bonded workers-

Creation of efficient systems for locating bound labourers. Establishing specialized cells or task forces to free bonded laborers. Shielding freed bonded workers from harassment and threats.

2) Rehabilitation and Reintegration-

Providing rehabilitation initiatives to aid in the life reconstruction of bound labourers. Guaranteeing access to healthcare, education, and job training. Assisting rescued bonded labourers in returning to their homes.

3) Prevention of bonded labour-

Improving up the enforcement of laws against bonded labour. Using public awareness initiatives to increase awareness of bonded labour. Empowering marginalized groups to avoid becoming enslaved.

4) Role of state governments-

Punishing individuals who engage in bonded labour severely. Keeping an eye on working conditions in industries that are at risk. Working together with civil society organizations and NGOs.

## CONCLUSION

In India's history of bonded labour, the entire Bandhua Mukti Morcha v. Union of India & Ors case is significant. In 1976, the Bonded Labor (Abolition) Act became operative. The identification, release, and proper rehabilitation of bound personnel are the clear requirements

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<sup>13</sup> The Maternity Benefit Act of 1961, No. 53, Act of parliament, 1961 (India)

<sup>14</sup> Employees' Provident Funds and Miscellaneous Provisions Act of 1952, No. 19, Act of parliament, 1952 (India)

<sup>15</sup> The Employees' State Insurance Act of 1948, No. 34, Act of parliament, 1948 (India)

<sup>16</sup> The Workmen's Compensation Act of 1923, No. 8, Act of parliament, 1923 (India)

<sup>17</sup> Bandhua Mukti Morcha v. Union of India & Ors, (1984) 3 SCC 161

of Article 21<sup>18</sup>. The Act was enacted to safeguard the human dignity of enslaved workers in accordance with the state's Directive Principles of State Policy. The Indian government would be in violation of Article 21 of the Constitution if it did not step in. In summary, the court's approval of the Public Interest Litigation gave socially conscious people a platform to defend their legal and constitutional rights.



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<sup>18</sup> INDIA CONST. art.21