P L D 1990 Supreme Court 513

Present: Muhammad Afzal Zullah, Javid Iqbal and S. Usmah Ali Shah, JJ

DARSHAN MASIH alias REHMATAY and others--Petitioners
versus
THE STATE--Respondent
Constitutional Case No.1 of 1988, heard on llth,'12th, 13th, 14th and 15th March 1989.

(a) Constitution of Pakistan (1973)--

--- Arts. 184, 199, 187, 189, 190, 9, 11, 14, 15, 18 & 25---Public interest litigation--Treatment --- Enforcement of Fundamental Rights --- Telegram received by Chief Justice of Pakistan alleging bonded labour and illegal detention by employers in brick kiln industry --- Supreme Court, considered the matter to be a case falling in the category of public interest litigation and took cognizance for the enforcement of Fundamental Right5, regarding bonded labour practices---Order was passed by Supreme Court on the basis of an agreement reached by all concerned --- Need for legislation defining expression "forced labour" with illustrations of its different forms, in such a manner, so as to minimize any confusion about its real purport as also resultant unproductive litigation and putting other important elements in Fundamental Rights together in a self-contained code emphasized by Supreme Court.

The Chief Justice of Pakistan received the following telegram:--

"Chief Justice Supreme Court of Pakistan, Rawalpindi We plead for protection and bread for our family we are brick kiln bonded labourers. We have been set at liberty through the Court. And now three amongst us have been abducted by our owners. Our children and women are living in danger. We have filed complaint. No action taken. We are hiding like animals without protection or food. We are afraid and hungry. Please help us. We can be contacted through counsel Asma Jehangir. Our state can be inspected. We want to live like human beings. The law gives no protection to us.

Darshan Masih (Rehmatay) and 20 companions with women and children Main Market Gulberg, Lahore."

On the receipt of the telegram by the Court it was, prima facie, considered to be a case falling in the category of public interest litigation and direct cognizance by the Supreme Court under Article 184 of the Constitution, was possible.

The Supreme Court having taken cognizance of a case of public importance for the enforcement of Fundamental Rights, regarding bonded labour practices, concluded the first part of the proceedings and passed the order on the basis of an agreement reached by all concerned see page 5Q] As regards second part namely prevention of the bonded labour practices in the brick-kiln industry, the Court gave directions for devising long term measures.

This being the first case of its nature the Supreme Court considered it necessary to clarify certain aspects relating to procedural and other elements appearing in the case:--

True a telegram has never been earlier made the basis by the Supreme Court of Pakistan for action, as in the present cage; but, there is ample support in the Constitution for the same. Under Article 184 (3) "Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved, have the power to make an order of the nature mentioned in the said Article." The questions of procedural nature relating to the entertainment of proceedings and/or cognizance of a case under this provision, have been dealt with in the case of Miss Benazir Bhutto (PLD 1988 SC 416). The acceptance of a telegram in this case is covered by the said authority as also by the due extension of the principles laid therein. Such extension/s would depend upon the facts and circumstances of each case and nature of public interest involved and importance thereof. The element of "public importance" in this case stands demonstrated by the resume (a part only) of the proceedings, given in the judgment.

It needs to be mentioned that in Suppertime Court of Pakistan, though letters and telegrams are sent to individual Judges, but it is not considered as an appropriate and proper method of initiating proceedings. Some times it leads to embarrassment. Accordingly such an information has to go to the Chief Justice for initiating proceedings. In this case the telegram was addressed. Directly to the Chief Justice and he marked it to the Bench.

As to what form/s of taking cognizance of a matter under Article 184 (3) are possible, will depend upon the nature and importance thereof.

The "nature" of the orders which can be passed in such cases is also indicated in Article 184 (3); that is: such as can be passed under Article 199. Even if for the time being it be assumed that the "nature of the order is confined only to the Orders under sub-clause (c) of Article 199 (1) and not to the other Orders under "Article 199", it would be seen that any conceivable just and proper order can be passed in a case like the present one. The principle of extension involved in the relevant phrase used in Article 199(l)(c): " an order giving such directions to any person or authority ------- as may be appropriate for the enforcement of the----cannot be abridged or curtailed by the law. As to how far it can be extended, will depend upon each case.

It is so also because of the other provisions of the Constitution, the Rules of the Supreme Court and the principles and rules comprising the Constitutional set up of Pakistan. For instance, according to Article 187(l) Supreme Court some ,times has to satisfy the dictates subject of ample authority as well as of future application in given cases. When this power is exercised the Court will have the necessary additional power to "issue such directions, orders or decrees as may be necessary Besides the binding effect of the judgment/order of this Court on all other "Courts" when it "decides" a question of law or it is based upon or enunciates a principle of law, under Article 189; another provision Article .190, gives a similar command to all executive and judicial "authorities" throughout Pakistan." This is, so as to act "in aid of Supreme Court". When Art. 199 (1) (c) is read together with Articles 187, 189 and 190, as above, it becomes clear that in a fit case of enforcement of Fundamental Rights, the Supreme Court has jurisdiction, power and competence to pass all proper/necessary orders as the facts justify.

The question as to whether this is a case of enforcement of Fundamental Right/s has not been raised. Everybody accepted that it is so. The provisions of Article 9 relating to security of person; Article 11 in so far as it relates to forced labour, traffic in human beings and child labour; Article 14 relating to. dignity of man; Article 15 ensuring freedom of movement; Article 18 relating to freedom of trade, business or profession; and, Article 25 relating to equality, particularly in the protection of law and bar against discrimination on the basis of sex, as also the safeguards for women and children, amongst others, are applicable to the various aspects of the matter. However, it is a different matter that some Fundamental Rights are more directly attracted than the other and some elements involved in any one of them are relevant while the others are meant for other situations. In view of lack of contest on this issue it is not necessary to go into a detailed discussion in this behalf.

It is, however, remarked that for purposes of convenience of all concerned, it might be necessary to define the expression "forced labour" with illustrations of its different forms; in such a manner, so as to minimise any confusion about its real purport as also the resultant unproductive litigation.

For the same purpose the other important elements in these Fundamental Rights, may be collected together and put in a self-contained Code. It might cover all aspects of human dignity, deprivations and misery, including those rights in this behalf which are ensured, in addition, as basic human rights in Islam. Supreme Court has in the Shariat jurisdiction dealt with some of them. There is no bar in the Constitution to the inclusion in such law of these rights, in addition to the Fundamental Rights contained in Chapter 1, Part II thereof. This comprehensive law should deal with the compulsory education of the classes concerned for making them aware of their rights; the detection of the infringement thereof as the duty of the State; and providing remedial mechanism also at the instance of the State whenever the will to assert or exercise them is lacking on the part of a citizen. These aspects of the enforcement of Fundamental Rights guaranteed by the Constitution and other basic human rights ensured by Islam can, by law be made

also into an independent inalienable right, with self operating mechanism for its enforcement as well.

The other question needing some comment relates to the definitions in the "Bonded Labour System" and its various aspects including the prohibition of future loans in the form of Peshai and recovery of the past ones.

A law which does not take care of all elements of justice in the problem it deals with, does not command acceptability.

It is not necessary to enact new provisions in this behalf. The contracts or of work should be tested on the touchstone of the whether of loans (Peshgi) provisions of the Contract Act; which already contains enough strong safeguards against illegal, immoral, unconscionable and other similar contracts and those against public policy .

However, the new Code proposed to be enacted can use these provisions by reference; of course, with additions and omissions as are necessary for the different situations of forced labour. It is also necessary to keep in view the conditions in Pakistan. In particular the people and their ethos, are different here than in the neighbouring country.

The entrustment of some important functions to the District Administration has also proved unproductive. Care should be taken not to commit same mistakes here. The involvement of the Bar Councils, the Local Bar Associations, the Press Bodies and recognised Social Services; together with the labour departments both at Centre and Provincial levels can be involved here, with advantage.

Advantage can also be had by studying our judgments on similar subjects. For example, the judgment in Land Reforms case deals also with the nature of contracts between the land-owners and the tenants (can mutatis mutandis also apply to agricultural Labour force). The existing law has been tested on the touchstone of the Islamic Injunctions. (Qazilbash Wakf v. Chief Land Commissioner and others Shariat Appeal No.1 of 1981 etc. decided on 10-8-1989) reported as PLD 1990 SC 99. This method would also provide the legitimate cover of Islamic Injunctions to the new legislation in any future challenge, on that basis.

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.

There is great merit in the Court proceeding and deciding an issue on the basis of strict legal principles 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 performance 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 credibly which commands public confidence in its legitimacy.

This statement 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.

Neeraja Choudhary AIR 1984 SC 1099; AIR 1982 SC 1473; Miss Benazir Bhutto's case PLD 1988 SC 416; Neeraja Chaudhary and Bandhua Mukti Morcha v. Union of India and others AIR 1984 SC (India) 1099 and 802; Ghulam Ali and 2 others v. Mst. Ghulam Sarwar Naqvi PLD 1990 SC and Qazilbash Wakf v. Chief Land Commission and others PLD 1990 SC 99 rer.

(b) Contempt of Court--

--- Both parties had committed mistakes which were not always intentional and there was some element of emotional reactions, together with, lack of understanding about the proceedings in public interest litigation and its thrust-- Supreme Court declined to take action for contempt of Court against both sides in circumstances.

(c) Constitution or Pakistan (1973)--

--- Art. 184 --- Entertainment of a telegram for taking cognizance by Supreme Court --- Such a telegram has to go to the Chief Justice and not to the individual Judges---"Public interest"---Questions of procedural nature relating to the entertainment of proceedings and/or cognizance of case under Art. 184 having been dealt with in the case of Miss Benazir Bhutto PLD 1988 SC 416, acceptance of a telegram thus is covered by the said decision as also by the due extension of the principles laid therein --- Such extensions of principles, however, would depend upon the facts and circumstances of each case and nature of public interest involved and importance thereof.

(d) Constitution of Pakistan (1973)--

--- Arts.184(3), 199, 187, 189 & 190 --- Cognizance of a matter by Supreme Court-- Forms of taking cognizance of a matter under Art.184(3) will depend upon

the nature and importance thereof --- Nature of the order which Supreme Court.
As to what form/s of taking cognizance of a matter under Article 184 (3) are possible, will depend upon the nature and importance thereof.

The "nature" of the orders which can be passed in such cases is also indicated in Article 184 (3); that is: such as can be passed under Article 199. Even if for the time being it be assumed that the "nature" of the order is confined only to the orders under sub-clause (c) of Article 199 (1) and not to the other orders under "Article 199", it would be seen that any conceivable just and proper order can be passed in a case like the present one. The principle of extension involved in the relevant phrase used in Article 199(l)(c): "an order giving such directions to any person or authority ------- as may be appropriate for the enforcement of the cannot be abridged or curtailed by the law. As to how far it can be extended, will depend upon each case.

It is so also because of the other provisions of the Constitution, the Rules of the Supreme Court and the principles and Rules comprising the Constitutional set-up of Pakistan. For instance, according to Article 187 (1) Supreme Court some times has to satisfy the dictates of "Complete Justice". What goes with it, Is the subject of ample authority as well as of future application in given cases. When this power is exercised the Court will have the necessary additional power to "issue such directions, orders or decrees as may be necessary Besides the binding effect of the judgment/order of this Court on all other Courts" when it "decides" a question of law or it is based upon or enunciates a principle of law, under Article 189; another provision Art. 190, gives a similar command to all executive and judicial authorities" throughout Pakistan. This is, so as" to act "in aid of Supreme Court". When Art. 199(l) (c) is read together with Articles 187 189 and 190, as above, it becomes clear that in a fit case of enforcement of Fundamental Rights, the Supreme Court has jurisdiction, power and competence to pass all proper/necessary orders as the facts justify.

(e) Law-

--- Law which does not take care of all elements of justice in the problem it deals with, does not command acceptability.

(f) Constitution of Pakistan (1973)..

--- Art. 184 --- Public interest litigation --- Treatment by Court.

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 back drop 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.

There is great merit in the Court proceeding and deciding 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 performance 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.

A note of caution 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.

Dates of hearing: 11th, 12th, 13th, 14th and 15th March, 1989.

ORDER

MUHAMMAD AFZAL ZULLAH, J.--On 30th July, 1988 during the long summer vacations the following telegram was received by the Honourable Chief Justice of Supreme Court:

"Chief Justice Supreme Court of Pakistan, Rawalpindi We plead for protection and bread for our family we are brick kiln bonded labourers. We have been set at liberty through the Court. And now three amongst us have been abducted by our owners. Our children and women are living in danger. We have riled complaint. No action taken. We are hiding like animals without protection or food. We are afraid and hungry. Please help us. We can be contacted through counsel Asma Jehangir Our state can be inspected. We want to live like human beings. The law gives no protection to us.

Darshan Masih (Rehmatay) and 20 companions with women and children Main Market, Gulberg, Lahore."

The same day it was marked to me. A Bench with myself as Member was then functioning at Lahore. On the receipt of the telegram by me at Lahore it was, prima facie, considered to be a case falling in the category of public interest litigation and direct cognizance by (he Supreme Court under Article 184 of the Constitution, was possible. As it was the first case of its nature, while treating the matter in Chambers, it was necessary to seek assistance of the Bar on the legal side and the police, for the purpose of the release of the detenus who, it appeared prima facie

from the telegram, were the bonded labourers in the Brick Kiln Industry. The following order was accordingly passed:--

"Malik Abdul Karim, President of Lahore High Court Bar Association be requested to assign a senior member of the Bar on the criminal side to handle the case.

In the meanwhile the office to trace out the case marked 'A' in the telegram.

A copy of the telegram and this order be immediately taken to I.-G. Punjab personally by an official of the Court for a very prompt action; in accordance with law and report."

Although the Order was taken personally to the I.-G. Police by an official of the Court as a mark of urgency to impress upon him for personal immediate attention, he sent it down to the D.I.-G. Police who in turn sent it down to the lower staff; and ultimately, during the subsequent detailed inquiry it was discovered that a copy of the Supreme Court directive had reached Bhatta owner concerned. He obviously took all precautionary measures so as to avoid serious consequences. Be that as it may, a D.I.-G. reported that "a case under section 406/420, P.P.C. was registered at Police Station Bhai Pheru, District Kasur, against Boota Masih and 20 others on the complaint of Malik Abdul Qayyum, for an alleged criminal breach of trust. The accused reportedly received four lacs in advance as labour charges for manufacturing raw bricks; but slipped away alongwith advance money. Boota Masih and 13 others have been arrested". The President Bar Association deputed a senior Member of the Bar who had also been Government Law Officer (Assistant Advocate-General). He also made preliminary inquiries through the sources of the Bar. The accused persons were ordered to be produced before the Court. However, as the matter was being dealt by a Magistrate 1st Class under the Criminal Procedure Code, after the aforenoticed arrest of the persons concerned, it was not considered appropriate in the circumstances of the case to pass direct orders of release; particularly because the Police itself offered that they would themselves get them released on bail. Some persons out of the total mentioned in telegram were stated to be not available--nor they had been arrested. After a detailed preliminary discussion with all concerned the following Order was passed:--

"This matter has come up for further examination after prima facie satisfaction through preliminary inquiries that the. complaint is bona fide."

"The concerned police officials including Muhammad Ashraf, DSP, Pattoki, are present. The learned Advocate-General has appeared to assist as Senior Officer of the Court. He has with him his -own team including Mr. Tanvir Ahmad, Additional Advocate-General, Mr. Abdus Sattar Najam, an ex-Law Officer (Assistant Advocate-General), who has been assigned the duty to assist the Court in this matter in pursuance of the request sent to the President of the Bar Association in this behalf. Mrs. Asma Jehangir, a local Lawyer, is assisting Mr. Najam. One Mst. Bashiran, who claims to be acquainted with the facts and circumstances in which the complaint was made to the Supreme Court, is assisting this team of Lawyers.

The-DSP has stated that a criminal case having been registered in respect of the subject-matter of the complaint, 21 persons (all adult males) were required by the Police for investigation; 14 of them having already been arrested as accused, 11 were bailed out in accordance,- with law. They are all present in Court and have stated that they are no more under detention. Three persons have appeared in custody. The DSP stated that excepting Sadiq Masih, who is in custody under judicial orders, the remaining two are going to be released by him today on personal bonds and on furnishing of surety bonds by one Yasin, who is present in Court and is stated to be the present employer of all the detenus and their companions. Regarding the remaining seven persons, after obtaining time from the Court, the DSP has made a statement that to the best of his satisfaction they are not in any form of illegal detention. According to him they have concealed themselves out of fear of arrest by the police in the case which has already been registered. He further stated that Sadiq, Allah Ditta Boota and Rehmat, who are present (out of the alleged detenus) have assured him (the DSP) that the remaining seven persons would appear before the DSP as soon as possible because, as stated, they are no more now under the fear of any illegal treatment. On their assurance, the DSP, in turn, has assured the Court that the remaining seven persons would also be "Insha Allah" produced in Court on 16-8-1988 at 1.30 pm.

'The DSP has been told to submit his report also on 16-8-1988. Mr. Abdus Sattar Najam, the representative of the Bar Association, shall also try to complete his report which, he has stated, is under preparation.

Order accordingly.

Some representatives of the Press were present in the Court. They have been directed not to publish the proceedings for the time being because that might prejudice the result of these proceedings. However, they have been assured that the final order would not be subject to this restriction, unless till then some such development takes place which compels the Court to order otherwise."

It was feared that perhaps the Police, in order to avoid the charges of illegal intervention/detention and pressure at the behest of the owners, had resorted to registration of a case and had also arrested some persons; and, the remaining were also thought to be under some type of detention and were neither being arrested nor wire they produced, under the fear that they might divulge something against the owners and/or the Police. In order to further know the nature of relationship between the labourers and their employers as also the police connections, it was thought necessary to ensure the production of all the persons who were allegedly accused persons though they appeared in reality to be bonded labour. It may be stated here that by and large all those who were arrested were, being released on bail either on the asking of the Police and/or by the owner or by the Magistrate on the merits of the case. The proceedings were being held day to day in Chambers; several hours daily, were devoted to this matter. The following three orders dated 16th of August, 17th of August and 21st of August, 1988 were passed after about a fortnight of the receipt of the telegram, which would show the trend and purpose of the inquiry. Contemporaneously it was being ensured that wherever somebody was

being detained or coerced to render forced labour, should be protected. The results were being achieved in geometrical progression.

"Order: (Dated 16-8-88)

Muhammad Ashraf, DSP, has submitted a report in writing. He appears to have completely aligned with the Bhatta owner-- in this case Rana Abdul Qayum. He has not mentioned anything about the accusation against the police about which he heard a lot in the Court proceedings.

The Additional Advocate-General Mr. Tanvir Ahmad stated that the report by the Advocate-General is under preparation and would be submitted soon. He has cited two cases from Indian jurisdiction Neeraja Choudhary AIR 1984 SC 1099 (Para 2) and AIR 1982 SC 1473 in W.P. 8143 of 1981".

Mr. Ahsanullah, who from appearance seems to be a respectable person, claiming to be a Journalist attached with a newspaper of Hyderabad and also the Chief Organizer of a Union constituted to help the Bhatta Workers, has appeared today with his team; including one Yaqoob an uneducated person described by Mr. Ahsanullah as his Office Secretary- presumeably of the Union. Rana Abdul Oayyum, the main actor in this entire episode has also attended today. A Lawyer named Muhammad Arif, is present presumeably with a watching brief, from Rana Abdul Oayyum.

Mr. Najam, learned Advocate representing the Bar Association with Mrs. Asma Jehangir have also appeared. Mr. Najam has submitted his report in a folder with additional four folders containing photostat copies of unarranged many documents, including newspaper reports etc. which have not yet been perused on account of their bulk. Some other Members of the Bar arc also present. Many other persons including the majority of alleged detenus, their partisans and the employs of the Bhatta owners are present. Due to paucity of space, the proceedings could not be held in the chamber. They have been held in the Court hall Out of the remaining seven detenus, Ashraf has appeared. Yaqoob has also appeared. He stated that Aslam is his son and that he is not in detention at the present. For some unavoidable reason, Yaqoob has explained, Aslam has not been able to attend. With regard to Akram, the DSP has produced a certificate of an Army Officer stating that he is employed in the Army in a civilian category since August 1987 and is not in detention. The Army Officer in his wisdom has not spared the alleged detenu to appear in Court. Thus Akrain is not in detention. Out of the remaining detenus; Paloos (stated to be the young brother of Sadiq who was present at the time of the last hearing in police custody), is stated to have gone away to unknown place and would be produced by the Police if further time is allowed. Sadiq his elder brother, according to the DSP was got released on bail by him (DSP) but strangely enough he is not present. The victim side's apprehension is that though formally released he is still in police custody. The DSP explained about Anwar and Hanif that they are under the influence of Rehmat, one of the detenus who is now free and sitting with the victim group on the benches,. occupied by the Union officials and other workers. It is visible that the alleged victims and others workers are in' constant

communication with the union officials particularly Mr. Ihsanullah while Rana Abdul Qayurn and others with him, sitting alongwith the Police officials, are in constant communication with the Police. The sympathies and alignment are obviously visible. The learned Additional Advocate-General, it seems, has so far adopted an independent posture and so did the Advocate General who had appeared during the earlier hearings.

I encouraged both the sides to enter into some dialogue in Court. Accusations and counter-accusations started. The purpose was to discover as to how to procure the attendance of Paloos, Hanif and Anwar who, it seems, are no more in detention, but still under some outside control. Ultimately it was felt that Rehmat the freed detenu who is a close relation of Hanif dctenu might be able to produce the latter. Regarding the two; Anwar and Paloos, it was strongly felt that they are under the influence and control of the Police, and the DSP is in a position to produce them. Accordingly, both Rehmat and the DSP were firmly told to produce them otherwise they might be dealt with under the criminal law.

During the hearing/discussion which, today also, was spread over about three and a, half hours as was the previous one, three important aspects amongst many others came to light which need to be noted:

(1) During the heated discussion amongst them it came to light that some freed detenus who are present, if examined, would reveal visible marks of injuries on their body. Mr. Najain Advocate, Mr. Tanvir Ahmed, Additional Advocate-General and the DSP saw the bodies of the two Rehmats; one who has already been mentioned in these proceedings who might be described as No. 1 and another Rehmat who can be described as No.2. They were also seen by the Court. Rehmat No.2 was so terrified and under such strong pressure from the police, and about this there is absolutely no doubt, that he insisted that the marks of injuries on his back which obviously were the result of Sota/Danda blows, were suffered by him on account of, what he blured out," bricks-bricks". This was obviously false statement. The D.S.P. also on seeing all this admitted that they were marks of Danda blows but he was hesitant to go any further; presumably because the police officials thought that on account of the aforementioned warning with regard to non-production of the remaining detenus the' might also be proceeded against for crime of y - omissions and commission. Similarly, the victim side was hesitant and terrified that they might be proceeded against either by the police or by the Court. Further disclosures were becoming impossible. Therefore, after careful consideration both the police and the victims as also Rana Abdul Qayum. and Ahsanullah, were clearly told that whatever has happened it should be brought before the Court so that some measures should be devised for prevention in future; and further, that the Court shall not take any action with regard to what has already happened.

(2) Two ladies Mst. Reshman and Sharifan who had appeared on the last hearing, according to the victim side as freed detenus and according to the police as intruders, also appeared today and surprisingly enough they were not taking the side with the victim party instead they started accusing Rehmat No.1 and Yaqoob

the Office Secretary of the Union. In order to observe demeanour further the Court questioned Mst. Reshman and Sharifan separately. Both (Reshman and Sharifan) were then allowed to accuse and confront said Yaqoob in Court as they wished. Yaqoob for a while faced the questions with firmness and clear denial of allegations of exploitation. However, he was brought under pressure by the two women who subdued his voice by their shouts. Apparently Yaqoob seemed to have lost in this verbal encounter. It would be too premature to say as to who was in the right. In any case, these women are at present absolutely free though the possibility that they might have been kept in confinement by the Bhatta Walas, by the police or some clever fellow from the victims' side cannot be excluded

(3) Apart from Reshman, Rehmat No.1, the D.S.P., Younis A.S.I. and Rana Abdul Qayum were afforded separate opportunity of giving any information they liked, which was not audible by others sitting in the hall. It is not necessary to state here a 11 that they said. Rana Abdul Qayum stuck to his position that he is neither an exploiter nor has caused any physical harm to any of the victims nor he manoeuvred it through police.

He' insisted on his case against the victims being true. From his demeanour it did not at all, appear that if he used unlawful acts in the past against the victims, he had any intention now, to give it up. Otherwise he seems to be a respectable person. The D.S.P. in very guarded language gave sufficient indication that the police is helpless when heavy pressures are applied upon them. He did not, at all, plead for the A.S.I. Muhammad Younas who seems to be a major character in the episode from the police side. He, however, promised that he will help the Court in finishing the bonded labour practices about which considerable information. Rahmat (1) still terrified was virtually speechless when he was asked to disclose the circumstances in which he was allegedly detained and physically harmed. He kept on urging that he should be helped in protecting his family. He mentioned that he wants to arrange the marriage of his young daughter but is afraid that he might not be able to do so. Mst. Bashiran, who had appeared on the earlier hearing, a daughter-in-law of Rehmat, who was very vocal on the last hearing conspicuously, was absent today. When questioned about this, Rehmat said that they have been sent away out of fear of the Bhatta Walas and the police. When, Muhammad Younus, A.S.I. was similarly afforded opportunity, he was first confronted with a circumstance which has come to the knowledge of the AR(1) of this Court: that he in a very extraordinary way had given photo copy of an important official document to Rana Abdul Qayum and when further confronted with some other. irrefutable circumstances almost broke down, with clamour that 'he should be pardoned. He has committed blunders but with similar explanation as by the D.S.P. that the police is helpless under higher pressures. From his demeanour it did not seem that the only motive for his wrong doings was the so-called higher pressure. He happened to be a reckless young man risen from the lower ranks. He might have felt proud of what he did including the torture to the victims presumably at the behest of Rana Abdul Qayum for obvious alignment and motives as also perhaps due to his own nature. He was clearly told that he should at least now make a resolve not to do it in future to which he responded with a very strong promise. He ' was also assured

that this Court would not take any action nor would direct any action against him for what has happened in past provided he keeps his promise."

The proceedings ended today with the direction to the D.S.P. to produce Paloos and Anwar by 11 o'clock on 18th August, 1988, and similar directions to Rehmat (1) to produce Hanif tomorrow at any time, during the Court hours.

As on previous hearing the Members of the Bar including the learned Additional Advocate-General have been very helpful. The appearance of Mr. Ahsanullah also proved helpful as he gave the background of the bonded labour practices in the brick-kiln industry in Pakistan and his role initially as a student leader and then as a Press exporter/Labour Union leader. It would be premature to make any further assessment about him or his organization.

"ORDER: (Dated 17-8-1988).

Today Rehmat (1) appeared with one Barkat whose wife is the sister of Hanif detenu. Barkat explained that Hanif is not, at all, now in detention. He has gone to some unknown place. Two other persons also appeared. All stated that Hanif is no more in detention. He has run away on account of fear of-police and is not traceable though every-body having heard about him is certain that he is no more in detention.

Paloos who was required to be produced by the D.S.P. on 18th instant has also appeared and has stated (hat he was afraid of the police and was hiding himself here and there. Therefore, he did not appear earlier. When asked whether he is under any detention now, he answered in the "negative". Therefore, he is also now free.

One Anwar Masih who has come With Paloos when questioned also seemed to be involved in this affair. He to start with tried to be clever and did not want to disclose anything. But when told that in this behalf if he declines to state the circumstances in which Paloos had appeared in Court, he might be proceeded against, he then disclosed that he had gone to the office of Ahsanullah where he found Paloos already present. He further stated that Ahsanullah has informed him that Hanif has been held by the police and is now in confinement. It is not possible to accept his statement. He himself appears to be of shady character though claims to be Bhatta labourer. If so from appearance he might be a "Jamadar" of workers in the making. However, if Ahsanullah volunteers any fresh information about Hanif that would be dealt with separately as noted earlier. All circumstances indicated that he was no more in detention. This would, however, not exclude the police or the Bhatta owners having confined him. The case would now come up tomorrow for appearance of the DSP and the remaining one detenu namely Anwar (Paloos having already appeared is no more in detention). The case 'regarding Hanif, as already stated, now stands closed. In these proceedings if Ahsanullah or any body else gives any information with regard to his fresh detention that would be examined separately.

Before this order could be signed, the tragic death of the President of Pakistan took place. 18th to 20th August, 1988, has been declared as mourning holidays. Court will remain closed. The case shall now come up on 21st August, 1988. The DSP who was to appear and produce Anwar on 18th shall do the same on 21st August, 1988.

ORDER, (Dated 21-8-1988)

Anwar son of Mangoo has appeared with Nama a Jamadar. The DSP has identified him, as the last alleged detenu. He says he is free and under no detention at present. This concludes 1st step in these proceedings to achieve reasonable certainty that all the alleged detenus are at present free.

In addition to the presence as before, Ch. Mohammad Zar, Director Punjab Social Welfare Department with his team and Mr. Shahid Mahmood Nadeem Reporter of Herald (the latter as a Social Worker in the field of forced labour) have also appeared.

Further statements and views heard and orders passed.

"ORDER: (Dated 21-8-1988)

In this first, case of its type, namely, public interest litigation, the Supreme Court having taken cognizance of a case of public importance for the enforcement of Fundamental Rights, regarding bonded labour practices, concluded the first part of the proceedings. All the 21 detenus, who belong to brick-kiln labour force and are of Christian community have been released from the alleged detention. With regard to second part, namely, prevention of the bonded laborer practices in the brick-kiln industry, the Court gave directions for devising long term measures. The reports have been called from the Advocate-General, Punjab, the Police Investigating Agency, the concerned Labour Union, the concerned Bhatta Owners Union, the Director of the Punjab Labour Welfare Department, Lahore High Court Bar association through Mr. Abdus Sattar Najam, Advocate, and a separate report which will be treated as confidential regarding women and children concerned in this labour problem. It has also been directed that in addition to the efforts being made to eradicate the malpractices in the field of labour employment in the brick-kiln industry, a system should be devised to avoid all grievances/complaints of the nature dealt by the Supreme Court in this case. For that purpose, the First meeting shall be held on Thursday the 25th August 1988 at 10.00 a.m. in the office and under the chairmanship of Advocate-General. Punjab: and in his absence, by the Additional Advocate-General. The following shall attend that meeting :-

(i) Mr. Tanvir Ahmad, Additional Advocate-General;

(ii) A Christian church representative of high order with particular reference to the territorial area concerned;

(iii) A Muslim scholar Aalam/preacher having strong social influence in the area;

(iv) Mr. Muhammad Zar, Director, Punjab Social Welfare Department;

(v) Mr:Abdus Sattar Najam, Advocate;

(vi) Mr. Shahid Mahmood.Nadeem, Reporter of Herald Magazine;

(vii) Kaila, a Christian labourer belonging to the actual laborer force in the . brick-kiln industry;

(viii) Mst. Aziz Begum, representing the women and children Christian labour force in the brick-kiln industry.;

(ix) Mr. Ihsamillah, representing the Union for brick-kiln labour;

(x) Mr. Niazi, representing the Brick Kiln Owners Association; and

any other person whom the Chairman of the meeting might think it proper to co-opt.

2. The report about these deliberations and the measures devised therein should be with a view to enforce them from 28th August, 1988, in so far as day-to-day complaints are concerned. The report shall be submitted by the Advocate-General on the 27th August, 1988 and will be treated as interim report. He will separately submit his detailed report regarding long-term measures."

As it would appear from the last order all labourers/detenus having been freed, it was thought necessary, to give enough time to all concerned to prepare and make their submissions in writing in the form of reports. They were allowed enough time. The matter was adjourned. During all this effort spread over about three weeks, prima facie, it got established that at least in the Province of Punjab, to which the inquiry was primarily directed, there existed the practice of bonded labour in brick-kiln industry; though it was not on as vast scale as it was stated to be in the neighbouring country. The level of consciousness amongst the labourers and their organizational network was such that by and large the cases of bonded labour and resultant illegal detention were being brought to Courts of Magistrate - mostly in proceedings under section 100 Cr.P.C. and before the High Court in the Habeas Corpus proceedings. The learned Members of the Bar were also playing a very active role. Rather it was one of the major complaints of the brick kiln owners that they were being pressurised by the labour class through, what they said, "bailiff action". They bad also offered that if they are relieved of the so called "bailiff action" they would give more concessions to the labourers. It was noticed that wherever the pressure exerted by the owner was not productive or was counter-productive, local police in selected cases was being misused by the owners through illegal detention, torture in some cases and registration of false cases in-others. The magistracy by and large it appears was not taking sides. Individual criminal cases of detention, illegal arrest and/or false cases were being treated with sympathy for the labourers. In this very case as in many other cases brought to the

notice of the Court the accused were promptly bailed out and subsequently the cases were either withdrawn or concluded without reaching their logical ends. They were either found to be fit for release of the accused without further trial on account of the absence of evidence and/or due to false implication. In this case the District Magistrate took prompt action and passed the following order within about a week of the proceedings:-

"Mr.Oamar-uz-Zaman Assistant District Attorney, Kasur for the State present. The petitioner is present with his counsel Mr. Jamshed Hussain Khokhar, Advocate.

The petitioner Rao Abdul Qayuum son of Nazir Khan Caste Rajput r/o Bhai Pheru moved an application for withdrawal of case FIR No.319 dated 23-6-1988 under section 406/420, P.P.C., P.S., Bhai Pheru registered at the instance of said petitioner wherein he alleged that the petitioner entered into an agreement with the respondents for the preparation of earth made bricks @ Rs.32 per thousand and he paid the respondent in advance individually but the respondents failed to fulfil the agreement and left the work after obtaining the amount in advance.

Subsequently the parties compromised through the intervention of the respectable of the area and the complainant moved for the withdrawal of the case on 21-8-1988. After giving the due notice to the prosecution and obtaining their report the case is fixed for arguments. The arguments were heard. Statement of the complainant was recorded. The complainant also riled an affidavit in support of his petition.

I have examined the Judicial rile and report by the prosecution. Since the parties have compromised and the complainant is no more interested in the prosecution of the respondents the proceedings in the trial would be an exercise in futility.

In view of the above, I accept the petition under section 494 Cr. P.C. and direct the prosecution to request the trial Court concerned for withdrawal of the case."

Later on the learned Magistrate who had taken cognizance of the case by his order dated 13-9-1988 concluded the case after noticing the proceedings under section 494 Cr. P.C. and also on account of reason that no case was made out against the accused.

During the time that the reports were being prepared and the case stood adjourned, several applications were received from both sides making complaints against each other. The labourers complained about individual forced labour and the labour malpractices while the brick-kiln owners complained against the labourers as well as the Labour Union for cheating, malpractice and intimidation particularly putting them under pressure of allegedly false complaints with the High Court and the Supreme Court. These complaints were also dealt with so as to understand the depth and extent of the forced/bonded labour practice in the brick-kiln industry as also for keeping in view the causes to devise the means and measures through which a lasting solution could be found.

It may be mentioned here that contrary to what had happened in the neighbouring country regarding bonded labour, the Government neither at the Federal nor at the Provincial level took sides with the employers- -rather the Government agencies (other than local) particularly in the Law and Labour Offices had sympathetic, and one could say, loaded attitude in favour of the labourers. Though the local executive some times did, like the police, help the brick-kiln owners; yet on the matters being reported to the Court they particularly the District Magistrates, by and large, adopted correct attitude. However, a possibility cannot be excluded that this response from the District Administration may have been due to the prompt action which was being taken by the High Court in habeas corpus jurisdiction. Otherwise a fear/possibility, which was strongly expressed,/existed that left to themselves the District Administration would side with the employers, and is in the habit of protecting the Police whenever it sides with them.

Considerable material on various aspects of the bonded labour practices in question became available in various reports which in compliance with the directions of the Court, were submitted duly. They are as follows:-

"Reports of Mr. Khalil Ramdey, Advocate-General, Punjab, together with the report of Mr. Tanvir Ahmed Khan, Additional Advocate General, two reports of Mr. Abdus Sattar Najam, a representative of the Lahore High Court Bar Association; report of Mr. Ihsanullah Khan on behalf of the labourers; report of Mr. Shoaib Niazi on behalf of the brick kiln owners; report of Director Labour Welfare Punjab; confidential report submitted by the DSP concerned; a confidential report submitted by Miss Asma Jehangir--particularly dealing with some matters in which an open report might have prejudiced the interest of some innocent persons and another confidential report were amongst others submitted to the Court, These reports be read as Schedule I (page I to 107) to this judgment. (A compilation of complaints from both sides although not made part of this judgment like the reports; yet they are useful as a background material in order to understand the nature of this matter. They have been complied (pages I to 205) by the office of this Court and in case of need can be referred to as Appendix 1 to this judgment). The case again came up before me in Chambers for passing interim orders till the Court was able to deal with the matter in Court in a larger Bench in due course."

All concerned were heard at length and keeping in view about hundred complaints which were brought to my notice; the proceedings in those cases; the proceedings in this case; the reports submitted in writing; and the oral submissions made by all concerned including individual labourers and brick-kiln owners the 'Allowing Orders were passed on 17/18-9-1988.

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)
PRESENT Mr. Justice Muhammad Afzal Zullah.

Mr. Khalil Ramday, Advocate-General, Punjab,
Mr. Tanvir Ahmad Khan, Additional Advocate-General, Punjab.
Mian Abdus Sattar Najam, Advocate.

Mr.M.A. Hamidi, Deputy Director, Labour.
Mr. Muhammad Ashraf, D.S.P. Pattoki and all other Police officials.
Mr. Khalid Mahmood, Advocate for Labourers.
Mrs. Asma Jebangir for Women and Children.
Mr. Zainul Abidin, Advocate, for Anjuman-i-Malkan Bhatta Khisht, Punjab with Mr. Muhammad Shoaib Nia7i, Chairman of Anjuman.
Mr. Ehsanullah, President, Bhatta Mazdoor Mahaz.
Kela Masih.
Aziz Begum. and many other Labourers,
Bhatta Owners and Office-Bearers of their Anjumans.

ORDER

1. All concerned have been heard at considerable length. The following broad agreement has been reached, (if approved to be made as Order/decision of the Court.

(i) Peshgi system to be discontinued forthwith except that upto one week' estimated wages may be paid by the owner to the worker as advance against proper receipt.

(ii) The payment shall be made to the worker concerned or the head of the household, direct in cash. The receipt shall be issued in duplicate -- on to be retained by each.

(iii) The Institution of "Jamadar" is finished and he is excluded for all times No payment for others shall be made to him nor shall it b acknowledged in any forum, as due in any form, if claimed to have bee made through him.

(iiii) The Institution of "Jamadarni" is likewise finished altogether. Every case registered anywhere in Punjab by the Police, which deals wit directly or indirectly, any of the constituents of the practice of bonded labour in the brick-kiln industry, shall be reported to the Advocate General, with a copy of the F.I.R. within 24 hours. The Advocate General shall submit a photocopy of the F.I.R. and other documents, if any, with his own comments, within further 24 hours, to the Supreme Court.

(vi) Past Peshgis, for the time being, shall not be treated as void and unrecoverable. However, they shall not at all be recovered in any form through police or through the employment of the so-called "labour" under the peshgi recovery arrangement" or through any coercive measure; and further orders shall be made by the Court in this behalf including the request for utilisation of the Zakat fund for the discharge of so-called bad debts of Peshgi. The question, whether recoveries would be abolished altogether and whether legislation shall be made on the lines as done in India, is deferred for the time being, for six months. This aspect shall be reviewed in the light of the working of these arrangements to which all concerned have agreed, if approved by Court.

(vii) Filing of Habeas Corpus petitions shall not be stopped. However, all concerned have agreed that if the arrangements agreed upon are put into practice the need for filing false/genuine Habeas Corpus petitions would not arise. The Advocate-General shall, however, appear personally in every Habeas Corpus petition whether in the High Court or in the Supreme Court.

(viii) The owners shall not directly ask or pressurise any labourer for employing the womenfolk or children. However, if the latter do so at their own risk and responsibility, no complaint shall then be made against the Bhatta owners in this behalf. The head of the household who employs any of their womenfolk against her wishes and/or children, might in proper cases, be proceeded against. The payment made to the head of the household including that. of his family members male, female, shall be in the name of the head of the household. Separate recipients may not be mentioned in the formal registers and receipts.

(ix) No deduction whatsoever shall be made from wages; nor the number 'of bricks, if they are more than 1,000, shall be counted as 1000 in any garb. The damage/loss to the bricks suffered on account of rain shall be wholly borne by the owner. Similarly, no other deduction including that of past Peshgi, loans including those for marriage or for- medical treatment etc. shall be made from the wages."

(x) Payment made by the owner to the labourer in addition to the wages whether in the form of formal loan or otherwise for marriages and other ceremonies or for medicines or other purposes shall not be recoverable from the labourer. If genuinely paid/spent they shall be treated as for good-will or donation.'

(xi) Other arrangements that may be specified at the final stage in the final judgment.

2. For the time being it has been decided to make amongst others, the following arrangements for the implementation of the interim agreement/decision reached with the consent of all concerned:-

(a) The Advocate-General of the Province shall be incharge of all criminal matters directly or indirectly concerned with the practice of Bonded Labour--whether or not formally instituted or registered. He shall also be indirectly incharge of the process of the recovery of past genuine Peshais in so far as it would be practicable, till a new law is made about the same. He shall also be directly involved in the determination of the amount of past Peshais."

(b) The Provincial Bar Council, the High Court Bar Association, District Bar Associations, and other local Bar Associations, shall form Committees to deal with the Bonded Labour. The Vice-Chairman of the Provincial Bar Council shall be the Head of this system of Committees. The President of the Lahore High Court Bar Association will co ordinate his proceedings with the Vice-Chairman of the Bar Council.

(c) A separate Press Committee shall be formed with Mr. Majid Nizami, Chief Editor of Nawa-i-Waqt subject to his consent, as the Head of this Committee.

(d) A Committee for Women and Children shall be formed with Begum Dr. Justice Javid Iqbal as its Chairperson, subject to her consent.

(e) Hon'ble the. Chief Justice of the Lahore High Court will be approached by the learned Advocate-General to apprise him of the bonded labour situation in Punjab and about the present case and proceedings. The Advocate-General shall also make a request for nomination of an Hon'ble Judge of the High Court from amongst the member of the Administration Committee, to deal with the cases, which, the Advocate General would certify as concerned directly or indirectly with the subject of Bonded Labour."

The case is adjourned for tomorrow for further proceedings.

Lahore: 17-9-1988.

"ORDER:

Sd/- MA. Zullah, J."

This part heard case has concluded after the agreement/decision, reached by all concerned, recorded yesterday. It has again been read, discussed and explained. All concerned have once more accepted it but have further made a joint request that it should be treated as an interim arrangement/agreement and consequently as an interim decision.

Order accordingly; subject, however, to necessary further conditions and elaboration.

It needs to be observed and clarified that all concerned in this case have assisted the Court ungrudgingly throughout the hearing which is spread over several weeks 'and many hours of formal Court's sittings. The proceedings have not been treated as of adversary character. The labourers, employers, and their organisations projected their views with candidness, and honesty of purpose representing their respective interests. It is in this context that it has to be further clarified that no party as such would be deemed to have beer. recognised as "complainant", "accused" or "contesting party"; nor, the interim decision shall be treated as the, success or failure in any form, of any person, party or institution.

LAHORE. 18th September, 1988.

Sd/- MA. Zullah, J."

An effort was being made by all concerned to faithfully obey the above orders and the case had not yet been fixed before the Court when further complaints--rather mass of them, addressed; some directly to me and others to Hon'ble Chief Justice,

started pouring in. They were from both sides. The owners complained that the labourers were leaving their brick-kilns, somewhere en mass, with a view to bring to a grinding halt the entire brick-kiln industry. And the labourers complained that the attitude of the brick-kiln owners had become more harsh. It was not only surprising but also painful to see this newly developed situation. However, it did not take long to rind out the malady. The union headed by Mr. Ahsanullah, it was discovered, had sent down misrepresented and mis quoted orders dated 17th/18th September, 1988 to his lower organisations, and to some individuals as well. Photo copies of that material came into the hands of the labourers in general. They, as informed by the Union, took it as finally settled that the past Peshgi had been abolished and that they were free of their contracts with their employers; and thus were no more either liable to return the amounts received or ' to do any work for the employers. When they started moving out, the brick-kiln owners became panicky and in reaction and retaliation were in many cases, responsible for fresh high handedness to the labourers. The cause of the new development was discovered by chance in a complaint received from the labourers of a brick-kiln who made the grievance that despite the Court having absolved the labourers of all responsibilities with regard to their part of the contract and their liability to return the money having been waived by the Court, they could stay away from the work while the brick-kiln owner was insisting upon his rights under the contract. And they appended the copies of the information- rather wrong information supplied to them by the Union. Photostat copies of the material were also sent to the Court otherwise.

In the meanwhile the brick-kiln owners in further retaliation resorted to Province-wise strike; mainly, on two grounds. One, that the Labour Union was misusing the Court Orders; and, (ii) that by this miss -use it further led the labourers in large number to flout their genuine contracts--though at many places there were absolutely no complaints of forced/bonded labour. Again parties were heard, complaint of the brick-kiln owners was, prima facie, considered to be correct. Mr. Ahsanullah Khan also realised his mistake. Accordingly, further detailed Orders in Chambers were passed in order to put the record right. Mr. Ahsanullah also promised to co-operate by sending down the correct version of the Court Orders. The order dated 23-11-1988, again passed in Chambers as an interim Order, is reproduced below:-

23-11-1988 This interim order is in continuation of an earlier order dated 18-9-1988 and it disposes 'of two Miscellaneous Applications (1) No. 730/88 and (2) No.751/88--one is by the labourers and the other by the owners. They respectively represent the complaints received from both the sides numbering a few dozens each."

The labourers have complained that despite the past Peshais (advances) having been held by the Supreme Court as not recoverable/(though it is not so), the owners still insist on recoveries and on the refusal/resistance by the labourers, the latter are maltreated. The complaint of the owners is that despite their willingness to obey and observe the conditions agreed upon and contained in the order dated 18-9-1988, the labourers ,in the first instance, refuse to pay back the Peshgis (prior

to 18-9:1988) and when the owners insist upon the return of Peshkis, the labourers not only stop the work but in many cases leave the brick kiln putting the owners to heavy losses. Apart from those who are in this profession since long, some young new entrants who were not at all responsible for the "peshgi system" and had invested their hard-earned earnings and even sale proceeds of their ancestral property in this industry complained of a loss of rupees few lacs each within few months due to running away of the labourers. This all, according to the owners, has been done by the labour leaders dealing with their industry, particularly, the Bhatta Mandoor Mahaz and its President Mr.Isanullah.

3. After hearing both the sides at some length, I came to the conclusion that the dispute regarding re-payment of the past peshais and the resultant hardship for both the sides arose on account of wrong information about the order of this Court conveyed by Mr. Ihsanullah and his Mohaz to the labourers who are mostly uneducated. Prima facie it could be said that it was an attempt at misrepresentation. Be that as it may, the reaction by the owners, it prima facie appears, was also wholly unjustified. Some of them tried to (allegedly) pressurizes the labourers in connection with which few cases have also been registered against them--some quite serious. In other cases, on the direction of this Court, the Illaqa Magistrate acted under section 100, Cr.P.C. as a result of which several labourers were released from confinement which appeared to be illegal.

4. After having understood the controversy on this minor difference, on only one point out of several tentatively covered by the agreement embodied in the interim order dated 18-9-1988, Presidents of both the organizations were asked by the Court to use their good offices for helping each side. Both made strong promises. The experience of the last about three weeks shows that none of them has fulfilled them. Their, undertakings in writing, however, are on the record.

5. As the misunderstanding had started on account of the conduct of Mr. Ihsanullah and his Mohaz, therefore, the following order was passed by the Court on Civil Miscellaneous Application No. 730/88:-

"This problem also seems to have arisen on account of misrepresentation of Labour Mobaz about the decision of the Supreme Court on question of Peshgi. The President of the Mohaz, Mr. Ihsanullah, be asked to write a letter to the applicants explaining the correct position. They in the meanwhile be told to seek normal legal remedies, regarding any complaint, which might have arisen on account of the mistake of the Mohaz and on account thereof, their own misunderstanding.

The draft letter to be sent by Mr. Ihsanullah should be produced before the Court for scrutiny, so that another mistake or mischief should not be committed--within 48 hours."

On another similar application the following Order was passed;--

"This is another gross misrepresentation of the Court order. The applicant is suffering on account of some one else's fault. Let the Mohaz undo this impression

and Mr. Ihsanullah be asked whether he will remove the wrong impression and how? Reply in writing by tomorrow.

Mr. Ihsanullah sent a long reply to the Court without attending to the immediate need, trying to show that he was not responsible for the wrong information to the labourers about the contents of the order of the Court and that it was the impression gained by the labourers themselves on reading of the newspapers carrying the report of the interim order dated 18-9-1988 of the Court. He was then seat for, questioned and confronted with a part of his own reply wherein he wrongly represented that the Court had stopped the owners from recovering the past Peshais till further orders. As this was obviously incorrect and contrary to the order of the Court wherein the recovery o the past Peshgis in accordance with law has not at all been stopped."

Mr. Ihsanullah agreed to remove the misunderstanding and undertook to do all that was necessary in this behalf. He, however, did not admit that he did anything intentionally to misrepresent the Court order though be frankly admitted there was misunderstanding amongst the labourers about the payment/ it is. He also promised that he would immediately write a recovery of the past peshgis letter removing the wrong impression. Accordingly, the following order was passed on 20-11-1988:-

"Mr.Ihsanuilah states that he did not properly understand order dated 10th November, 1988 and that he has now understood the order as well as the situation with which it deals. He has promised to do his best to remove the misunderstanding about the recovery of the past 'peshgis' in the mind of the applicants as well as in the minds of the other labourers.

Accordingly, he has started preparing a draft translation verbatim of the order dated 18th September., 1988 which he intends circulating amongst all the Bhatta labourers. Let him do so after obtaining a certified copy from the Court. -When he has prepared the translation he shall seek approval thereof from the office.

In the meanwhile he has undertaken to address a short letter applicants informing them about that part of the order of this Court which relates to the liability of the labobrers to pay past 'peshgis' and about the methods through which these can be recovered. He would also inform them that lawful methods other than those prohibited by the Supreme Court with regard to the recovery of the-past 'peshgis' have neither been stopped nor such lawful methods have been declared as unlawful. When this letter is prepared the same also shall be approved by the office. Mr. Ihsanullah has been told that he can get a copy of this order."

In pursuance to this order he in the first instance submitted a lengthy letter addressed by him to the labourers for approval by the Court office. It was returned to him as it did not come upto the mark regarding the undertaking given, by him to the Court. He submitted another draft letter which though deficient in some respects was approved; because Mr. Ihsanullah agreed to give a note on this letter stating that copies of two orders of the Court, one dated 20th November, 1988

reproduced above and the other dated 22nd November 1988 passed on Civil Miscellaneous Application No. 751/88 were appended with his letter. The latter order passed on the representative application of the owners making complaint against the labourers and their leaders, as already noticed, is as follows:--

"Past-peshigis prior to 19-9-1988 can be recovered in accordance with law. The Court has neither declared them void nor have they been held to be irrecoverable.

and/or clarification of the .order dated 18-9-1988. After hearing all the learned counsel, it appeared as if they sought clarification of the order. When told that it is not a final order and the case has to go to the Bench for final orders, they made their submissions and proposals for improving the arrangements already made. Some of them submitted the proposal in writing that office-bearers of every Bar Association in the Punjab be asked to help resolve the differences of owners and labourers on the question of re-payment/return of past peshgis. This was a loudable suggestion. It would have been accepted by the Court, amongst others, for the reason that the honourable members of the Bar are not only to be entrusted the important role in the enforcement of Fundamental Rights in this first case of its nature dealt by the Supreme Court; but, also they should act as a vanguard of an enlightened intellectual force for the enforcement of the Fundamental Rights and other similar rights enshrined in the Constitution and the Objectives Resolution. However, the Court has not been able to put this scheme into operation because of certain procedural impediments regarding the role of the Bar Associations in the Bar Councils Act and also due to the elections with which the leaders of the Bar at the local level were deeply concerned. This question and other proposals would, however, be dealt with by the Bench hearing the case.

8. All those applications are, accordingly, disposed of. The applicants and their counsel, however, would be at liberty to assist the Court when the case is fixed for final hearing before the Bench. Thus all the miscellaneous applications/telegrames and letters addressed to the Court on the above issue and those dealt with in the interim order now stand disposed of by this interim order, subject however, to the final decision by the Court.

9. In the meanwhile both Mr. Ihstinullah and Mr. Muhammad Shoaib Niazi are directed to create atmosphere of amity and maintain the same till the final decision by the Court. It is further directed that the complaints about infringement of any right shall be addressed directly to the functionaries and Courts who can redress the grievance under the relevant laws; in particular, the complaint and information about the illegal confinement should also be addressed to the Illaqa Magistrate who shall promptly act under Section 100 Cr. P.C.--- the High Court's jurisdiction notwithstanding. The disputes regarding re payment of the past Pesh is may be taken before the Civil Court for redress in accordance with law.

10. About the registration of the criminal cases, I had passed a general order which might have created some hardships for the owners as well as the labourers--but more for the owners. While Mr. Muhammad Shoaib Niazi, to be fair to him, stated

that he would not try to protect an owner who commits zulm on his labourers; Mr. Ihsanullh frankly stated that the said order should not be implemented because it will push the matter again into the hands of the police. He also stated that' he has no ill-will against the owners. Accordingly, that order was not sent down for implementation. Be that as it may, the law regarding crime

and punishment shall continue to have its course. The procedure prescribed in the earlier order after the registration of the relevant cases, shall be followed.

11. The office will take steps so as to ensure that now the complaints and applications are addressed to the relevant functionaries and Courts and not to the Supreme Court directly. The labour organizations as also the owners' organizations shall also make their respective parties understand the order dated 18-9-1988 and this order with various directions. It seems they have not properly done enough work on this aspect 'of the matter. In addition the Director Labour, Punjab, shall do the needful in this behalf. A copy of this order shall be sent to him as also to the other concerned Government Departments.

Some, complaints were made to take action for contempt of Court against both sides, particularly after the last order. But keeping in view the fact that both had committed mistakes not always intentional, and there element of emotional reactions, together with, lack of understanding about this Public Interest Litigation and its thrust, it was not considered appropriate to do so. A similar complaint having been made against the Television Corporation, it has been separately dealt with.

Although after the last order the main parties once again started making efforts to implement the odors in Chambers dated 17/18-9-1988 in letter and spirit; yet miscellaneous petitions were also filed, so as to avoid the same being accepted as the final decision for the disposal of the entire matter. However, when the Full Bench heard the matter in Court, at length, the parties, their counsel and others concerned again thoroughly discussed the implications of those Orders in and out of Court, with a view to Present an agreed solution ' to the Court. As a result of these efforts and with the help of the Court, they agreed to the passing of almost the same Orders on "substantial issues .with some adjustments necessitated by experience, meanwhile.

The agreed Order for final disposal of the case passed on 15-3-1989 reads as follows:-

(Note: The agreed rendering in Urdu is also reproduced).

"(In the matter of Enforcement of Fundamental Rights Re: Bonded Labour in Brick Kiln Industry)

"Members of both the parties in person and through their learned counsel have been heard in the above-noted case. The following agreement in principle has - been reached and be made as the t, order/decision of the Court:-

"(a) Past Peshgis:

(i) It is to be made clear that past un returned Peshgis given to the laborers by brick kiln industry owners are still outstanding against the labourers. The labourers are legally bound to return all such outstanding peshgis to the respective kiln industry owners. However, in case of denial of peaceful return of these Peshgis, the owners are authorised to recover the same by legal means i.e. through Court decrees----cases to be decided expeditiously with effective notices to the labourers; but ' they are not authorised to use unlawful means for the recoveries of such Peshgis, such as coercive methods or use of police.

(ii) Past Special Emergency Loans. A maximum of Rs. 5,000 per household granted to that labouiers in the past, in the form of formal loans or grants for: marriages, religious festivals, medicine/treatment and death ceremonies, by the owners, (to the labourers) shall not be recoverable from them and shall be treated as donation. This concession shall only be available to those laboureirs who return and resume their work voluntarily.

(b) Future Pesligis. Peshgis system in future is to be discontinued. Although in proper cases if a valid agreement on this point is reached between a labourer and a brick-kiln owner, the latter shall give to the former an advance loan, which shall not be in 'any case more than seven days wages, against a proper receipt in duplicate, copy of which shall be retained by both the parties. The payments/adjustments of which shall be made to the owners in easy instalments as agreed by the parties, However, if a loan in this behalf is not settled/adjusted, no additional loan is to be advanced by the owner and if given that would be against the spirit of the agreement and would ,be at the risk of the owner.

(c) Return to work. A notice/direction is to be issued to all the labourers to come for work and report to their respective Bhatta owners; who will give them assurance in writing that they will not use any coercive methods or use of police force to bring them back or to retain them. However, in case a labourer does not want to come back or having returned, wants to leave his work in the Bhatta of an existing owner, or to get job elsewhere, or in the Bhatta of another owner, he shall not be retained forcibly provided he on application to be made to the concerned District Judge/Civil Judge 1st Class, gets a certificate for the purpose.

(d) Payment of Wages. Payment of wages shall have to be made to the labourers on y/weekly/fortnightly/monthly basis as agreed upon between the labourer and Bhatta owner, regularly. No deductions are to be made from their wages; for the damage/losses to bricks caused on 4 account of rain and it shall be borne by the Bhatta owners.

(e) Jamadar/Jamadarni System. The existing Jamadar/Jamadarni system is to cease forthwith. All the labourers shall have direct dealings with their respective owners. No payments on behalf of the labourers shall be made to them nor recoverable/adjustable.

(f) The owners shall not directly or indirectly ask or pressurise any labourer for employing the womenfolk or children. However, if the latter do so at their own risk and responsibility, no complaint shall then be made against the Bhatta owners in this behalf. The head of the household who employs any of their womenfolk against her wishes and/or children, might in proper cases, be proceeded against."

Agreed /Official Urdu Version

Before passing on to the next subject it is necessary to state that the phrase "he shall not be retained forcibly provided he on application ------- gets a certificate in Para (c) of the order has to be read with the other parts of the order so as to mean that the "retention" shall not be treated as "detention". Not only this the labourer shall not be "retained" in any manner which is otherwise unlawful.

It is necessary at this stage to clarify certain aspects of this case. It is indeed necessary because, this being the first case of its nature, the procedural and other elements thereof are likely in due course, to come under discussion.

(i) True a telegram in has never been earlier made the basis by the Supreme Court of Pakistan for action, as in this case; but, there is ample support in the Constitution for the same. Under Article 184 (3) "Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved, have the power to make an order of the nature mentioned in the said Article." The questions of procedural nature relating to the entertainment of proceedings and/or cognizance of a case under this provision, have been dealt with in the case of Miss Benazir Bhutto (PLD 19,98 SC 416). The acceptance of a telegram in this case is covered by the said authority as also by the due extension of the principles laid wherein, Such extension/s would depend upon the facts and circumstances of each case and nature of public interest involved and importance thereof. The element of "public importance" in this case now stands demonstrated by the resume (a part only) of the proceedings, given earlier.

It needs to be mentioned that in our Supreme Court, though letters and) telegrams are sent to individual Judges, but it is not considered as an appropriate and proper method of initiating proceedings. Some times it leads to embarrassment. Accordingly such an information has to go to the Hon'ble Chief Justice for initiating proceedings. In this case the telegram was addressed directly to him and he marked it to me.

As to what other form/s of taking cognizance of a matter under Article 184 (3) are possible, will depend upon the nature and importance thereof.

(ii) The "nature" of the orders which can be passed in such cases is also indicated in Article 184 (3); that is: such as can be passed under Article 199. Even if for the time being it be assumed that the "nature" of the order is confined only to the Orders under sub-clause (c) of Article 199(l) and not to the other Orders under "Article 199", it would be seen that any conceivable just and proper order can be passed in a case like the present one. The principle of extension involved in the relevant phrase used in Art. 199(1)(c): "an order giving such directions to any person or authority ------- as may be appropriate for the enforcement of the cannot be abridged or curtailed by the law. As to how far it can be extended, will depend upon each case.

It is so also because of the other provisions of the Constitution, the rules of this Court and the principles and Rules comprising the Constitutional set up of Pakistan. For instance, according to Article 187 (1) this Court some times has satisfy the dictates of "Complete Justice". What goes with it, is the subject or ample authority as well as of future application in given cases. When this power is exercised the Court will have the necessary additional power to "issue such directions, orders or decrees as may be necessary Besides the binding effect of the judgment/order of this Court on all other "Courts" when it "decides" a question of law or it is based upon or enunciates a principle of law., under Article 189; another provision Art. 190, gives a similar command to all executive and judicial "authorities" throughout Pakistan". This is, so as to act "in aid of Supreme Court". When Art. 199(l) (c) is read together with Articles, 187, 189 and 190, as stated above, it becomes clear that in. a fit ' case of enforcement of Fundamental Rights, the Supreme Court has jurisdiction, power and competence to pass all proper/ necessary orders as the facts justify.

(iii) The question as to whether this is a case of enforcement of Fundamental Right/s has not been raised. Everybody accepted that it is so. The provisions of. Article 9 relating to security of person; Article 11 in so far as it relates to forced labour, traffic in human beings and child labour; Article 14 relating to dignity of man; Article 15 ensuring freedom of movement; Article 19 relating to freedom of trade, business or profession; and, Article 25 relating to, equality, particularly in the protection of law and bar against discrimination on the basis of sex, as also the safeguards for women and children, amongst others, are applicable to the various aspects of the matter. However, it is a different matter that some Fundamental rights are more directly attracted than the others and some elements involved in any one of them are relevant while the others are meant for other situations. In view of lack 'of contest on this issue it is not necessary to go into a detailed discussion in this behalf. It is, however, remarked that for purposes of convenience of all concerned, it might be necessary to define the expression "forced labour with illustrations of its different forms; in such a manner, so as to minimize any confusion about its real purport as also the resultant unproductive litigation. For the same purpose the other important elements in these Fundamental Rights, may be collected together and put in a self-contained Code. It might cover all aspects of human dignity, deprivations and misery, including those rights in this behalf which are ensured, in addition, as basic human rights in Islam. This Court has in the

Shariat jurisdiction dealt with some of them. There is no bar in the Constitution to the inclusion in such law of these rights, in addition to the Fundamental rights contained in Chapter I Part II thereof. This comprehensive law should deal with the compulsory education of the classes concerned for making them aware of their rights; the detection of the infringement thereof as the duty of the State; and providing remedial mechanism also at the instance of the State whenever the will to assert or exercise them is lacking on the part of a citizen. These aspects of the enforcement of Fundamental rights guaranteed by the Constitution and other basic human rights ensured by Islam can, by law be made also into an independent inalienable right, with self operating mechanism for enforcement as well.

(iv) The last question needing some comment relates to the definitions in the "Bonded Labour System" and its various aspects including the prohibition of future loans in the form of Peshgis and recovery of the past ones. We have the example and experience made in India in this behalf. In my view it will not meet the expected success in Pakistan. A law which does not take care of all elements of justice in the problem it deals with, does not command acceptability. In this very case, the enquiry though limited, has revealed that individual young people by selling their properties and/or by earnings from abroad through similar labour, advanced loans to the Bhatta labour in lacs of Rupees. The latter (labourers) fled away during the hearing of this case, treating it as their right- neither to work nor to return the money. Mr. Ihsanullah and his Union insisted till the end that 1i is their right to do so, as according to Indian Law the amount could be appropriated on account of what he thought the philosophy underlying practice of bonded labour. He however, felt on strained to give some answer to the claim of honest well meaning persons who have thus been put to loss and who admittedly were new-comers to the trade and were not guilty of forced or bonded labour. He while accepting that it was injustice to them, insisted that without recovering the amounts from labourers, the State should compensate the owners. He could not justify the conduct of the labourers and their advisor (himself and his Union) in this behalf on any principle. It is however implied in his response in general. But such like or similar revolution and their philosophies are, at least for the time being, not efficacious methods of change, which needs also to be just----the Advocates appearing for the labour also agreed. His view if made as law in Pakistan, an Islamic State, it is likely to fail. One way out is that it is not necessary to enact new provisions in this behalf. The contracts whether of loans of work should be tested on the touchstone of the provisions of the Contract Act; which already contains enough strong safeguards against illegal, immoral, unconscionable and other similar contracts and those against Public Policy. This Court has recently given wide interpretation through Islamic connotations, to these safeguards in the cases of Miss Benazir Bhutto and 'Ghulam Ali and two other v. Mst. Ghulam Sarwar Nagvi' (CP-133-R of 1989 decided on 15-5-1989). However, the new Code proposed to be enacted can use -these provisions by reference; of course, with additions and omissions as are necessary for the different situations of forced Labour. It is also necessary to keep in view the conditions in Pakistan. In particular the people and their ethos, are different here than in the neighbouring country. For example the governments in this case through their law officers have, by and large, shown sympathy with the labourer's cause; while the state Governments in India do

not show any such sentiments. See cases of Neeraja Choudhary and 'Bandhua Mukti Morcha v. Union of India and others (AIR 1984 SC (India) 1099 and 802) on the working of the law made there regarding bonded labour. The same cases have shown some more weaknesses in that law. The entrustment of some important functions to the District Administration has also proved unproductive. Care should be taken not to commit same mistakes here. The involvement of the Bar Councils, the Local Bar Associations, the Press bodies and recognised Social Services; together with the labour departments both at Centre and Provincial levels can be involved here, with advantage. There are also other distinguishing features of serious nature which can be easily discovered if the judgments in the Indian jurisdiction on their experience of nearly one and a half decade, are carefully studied with a view to avoid obvious pitfalls. Advantage can also be had by studying our judgments on similar subjects. For example, the judgment in Land Reforms case deals also with the nature of Contracts between the Land owners and the tenants (can mutatis mutandi also apply to agricultural Labour force). The existing law has been tested on the touchstone of the Islamic Injunctions. (Qazilbash Wakf v. Chief Land Commissioner and others Shariat Appeals No.1 of 1981 etc. decided on 10-8-1989). This method would also provide the -legitimate cover of Islamic Injunctions to the new legislation in any future challenge, on that basis.

At the end it would be of further advantaged if the note of caution contained in the judgment of concurrence rendered by Pathak, J. in the Indian case of Bandhua Mukti Morcha is kept in view. It is as follows:

"There is good reason to suppose that 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 reizard to the particular circumstances of the case, to surrounding realities including the potential for successful implementation, and the likelihood a d 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 local history, the prevailing economic pressures, the duration of the stapes 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."

"67. There is great merit in the Court proceeding and deciding 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 un faltering, and that particular performance 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.

"68' 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."

In the light of what has been stated above this matter stands disposed of in terms of agreed order dated 15-3-1989 already reproduced. There shall be no order as to costs.

SCHEDULE I

Under the directions of the Hon'ble Supreme Court of Pakistan, a meeting was held on 25th August, 1988 at 11-A.M. under the Chairmanship of Mr. Khalil Ramdey, Advocate-General, Punjab, Lahore. The following attended the meeting:-

(1) Mr. Tanvir Ahrnad Khan, Additional Advocate General..

(2) Rev. Anwar Javed, a Christian representative.

(3) Mian Abdul Sattar Najam, Advocate

(4). Mr.Pervaiz Shah, DSP, Chunian.

(5) Mr. Aslam Zar, Secretary District Bar Association, Lahore (was co- opted in this meeting on the request of the Bhatta Owners Association).

(6) Mr. Muhammad Shoaib Khan Niazi, President-Brick Kiln Owners Association.

(7) Mr. Barkat Ali, General Secretary, Anjuman Malkan Bhatta, Lahore.

(8) Mr. Muhammad Usman, General Secretary, Anjuman Malkan Bhatta, Punjab..

(9) Mst. Aziz Begum, a Labourer.

(10) Mr. Kela Masih, a Labourer.

(11) Mr. Shahid Mahmood Nadeem, a Journalist.

(12) Mr. Ehsan Ullah, President, Bhatta Mazdoor Mahaz.

(13) Mr. Naubahar Khan, Asstt. Director Labour.

(14) Mr. MA. Hameedi, Senior Law Officer, Labour Directorate.

(15) Mr. Khalid Nasir Khan, Deputy Director Labour.

(16) Ch. Muhammad Zar, Director Labour Welfare.

In the meeting the problems of the Brick Kiln Labourers were high lighted by Mr. Ehsan Ullah, President, Bhatta Mazdoor Mohaz, Pakistan, Mr. Shahid Mahmood Nadim, Journalist, Kela Masih a Brick Kiln Labourer in detail. Mr. Shoaib Khan Niazi, President, Anjuman Malkan Bhatta, discussed in detail the problems of Brick Kiln Owners in this regard. Ch. Zar Muhammad, Director Labour Welfare also discussed the problems of Brick Kiln Industry. The meeting continued till 2-30 p.m. and was adjourned for 27th August, 1988 at 2 p.m. to continue further discussions.

Today the proceedings resumed again at 2-30 P.M. under the Chairmanship of Mr. Khalil Ramdey, Advocate-General, Punjab. Mr. Shoaib Khan Niazi, President, Brick Kiln Owners Association could not participate as he sought two more days for the submission of his suggestions to eradicate the problems of this industry. Mr. Abdul Sattar Najam, Advocate, as also Ch. Muhammad Zar, Director Labour Welfare, did not attend the meeting because of their pre-occupations. The other participants deliberated on this issue and presented their suggestions. The meeting was finally concluded at 3-30 P.M. A final report would be submitted by the learned Advocate-General within two days.

Respectfully submitted by:

Dated: 27-8-1988.

(Tanvir Ahmad Khan)
Additional Advocate General
Punjab, Lahore

REPORT SUBMITTED BY MR. KHALIL RAMDEYADVOCATE-GENERAL. PUNJAB

The Hon'ble Supreme Court took cognizance of the matter in pursuance of a telegram submitted by Darshan Masih (Rehmatey) and 20 others regarding the abduction, illegal detention and maltreatment of certain Brick-Kiln Workers by the owners of such Kilns.

2. The Hon'ble Court was pleased to direct the Inspector-General of Police, Punjab to trace out the persons concerned and to submit a report before this Hon'ble Court. The President of the Lahore High Court Bar Association was also directed to depute a senior member of the Bar for rendering assistance to the Hon'ble Court in the matter.

3. Through an order dated 11-8-1988 this Hon'ble Court was further pleased to direct the Advocate-General, Punjab to also be of assistance to the Hon'ble Court in this matter.

4. In pursuance of these directions this humble servant of the Hon'ble Court contacted the concerned Police authorities and was informed that 21 persons who were the -alleged detenus, were involved in an F.I.R. registered at Police Station Bhai Pheru of District Kasur for the alleged commission of offences punishable under section 406/420 of the Pakistan Penal Code. This F I R had been recorded at the instance of the owner of the Brick-Kiln who was the employer of the aforesaid alleged detenus. The undersigned was also informed that some, out of the aforesaid 21 persons had been arrested out of whom some had been released on bail by the Ilaqa Magistrate; that 3 of them were still under arrest with the Police whereas the remaining 5 had not been available to the Police and thus had not been arrested.

5. The undersigned directed the Senior Superintendent, of Police, Kasur, the Deputy Inspector-General of Police, Lahore and the Deputy Inspector General of Police (Headquarters), Punjab to produce all the persons involved/arrested in pursuance of the aforesaid F.I.R. before the undersigned on 13-8-1988 at 8 a.m. for their onward production before the Hon'ble Supreme Court.

6. The said persons were so produced on the said date. The Deputy Superintendent of Police, Pattoki, the Station House Officer of Police Station Bhai Pheru and the Investigating Officer of the aforesaid case also appeared before the Hon'ble Supreme Court where My Lord of the Supreme Court was pleased to continue the proceedings till late in the evening i.e. till after 4-30 p.m. on 13-8-1988 on account of the importance of the matter. After 13-8-1988 the matter came up for hearing before My Lord of the Hon'ble Supreme Court on certain other dates of hearing also wherein representatives of the Brick-Kiln Owners, representatives of Brick-Kiln Workers, representatives of Bhatta Mazdoor Union, representatives of the Labour Department of Government of Punjab also participated and made their respective submissions before the Hon'ble Supreme Court.

7. As was observed by My Lord of the Supreme Court, the matter was of great public importance involving breach and enforcement of fundamental rights.

8. His Lordship had further 'directed that the undersigned should examine the matter and should hold a meeting with the representatives of Brick-Kiln Owners, representatives of the Labour Union of Brick-Kiln Workers, representatives of the Labour Department and religious Scholars/Leaders of Muslims and Christians.

9. In pursuance of this direction of My Lord of the Supreme Court, the undersigned held long discussions on 25-8-1988 and 27-8-1988. The following gentlemen attended the aforesaid meetings:-

(1) Mr. Tanvir Ahmad Khan, Additional Advocate General, Punjab, Lahore.

(2) Ch. Muhammad Zar, Director Labour Welfare, Government of the Punjab, Lahore.

(3) Mr. Khalid Nasir Khan, Deputy Director Labour Welfare, Government of the Punjab, Lahore.

(4) Mr. Naubahar Khan, Assistant Director Labour Welfare, Government of the Punjab, Lahore.

(5) Mr. MA. Hameedi, Senior Law Officer, Labour Welfare Directorate, Government of the Punjab, Lahore.

(6) Mr. Pervaiz Shah, Deputy Superintendent of Police, Chunian.

(7) Mian Abdul Sattar Najam, Advocate.

(8) Mr. Aslam Zar, Secretary, District Bar Association, Lahore.

(was co-opted in this meeting on the request of the Bhatta Owners Association).

(9) Mr. Shahid Mahmood Nadeem, Journalist.

(10) Rev. Anwar Javed, Christian Representative.

(11) Mr. Muhammad Shoaib Khan Nia7i, President, Brick-Kiln Owner Association.

(12) Mr. Barkat Ali, General Secretary, Anjuman Malkan Bhatta, Lahore.

(13) Mr. Muhammad Usman, General Secretary, Anjuman Malkan Bhatta Punjab.

(14) Mr. Ehsan Ullah, President, Bhatta Mazdoor Mahaz.

(15) Kela Masih, Labourer.

(16) Mst. Aziz Begum, Labourer.

10. From the aforesaid discussions held by me and after having heard the views of various quarters concerned with this problem and having examined the voluminous material prepared by various agencies and organisations on this subject, the position in a nutshell which emerges is detailed hereunder:-

OPERATIONAL PROCESSES OF A BRICK-KILN

(a) To understand the problem in its true perspective it will be appropriate to first appreciate the operation of a Brick-Kiln. This operation to begin with involves digging/excavation of earth which earth is then mixed with water and a paste is prepared. From this earthen paste 'KATCHA' bricks are prepared with the help of moulds. This function has to be carried out by persons who are skilled for this job. This exercise commences in the evening with the digging of earth and mixing of earth with water and preparation of paste which continues till early hours of the night. The worker then has to get up early in the morning around dawn and starts putting this paste into the moulds which process then continues till he ha ' s

exhausted the earthen paste prepared by him. It may also be mentioned here that the Brick-Kiln owner has allocated to each worker a particular number of 'KATCHA' bricks to be prepared by him. The persons involved in this part of operation are called 'PATHAIRAS'. After these 'KATCHA' bricks are prepared the job of 'PATILAJRAS' is over.

(b) These 'KATCHA' bricks are then carried to the actual kiln. This carriage is ordinarily done with the assistance of 'Donkeys' and the persons performing this function are called 'KUMHARS'. The next process is the setting of the 'KATCHA' bricks in the Kiln which has to be d one in a very systematic and scientific manner and again requires skill. This process is called 'BHARAT' and the persons involved in this' BHARAT' are called 'BHARAIAS'.

(d) Then follows the process where these 'KATCHA' bricks are then heated for their being baked as final bricks. This process is called JALAI and the persons involved are called as JALAIAS'. The final process is called 'NIKAS' which means carrying the bricks out of the Kiln for onward transportation to the market.

11. EMPLOYER-EMPLOYEE RELATIONSHIP

(a) My discussions and inquiries have revealed that the problem of malpractice in the Brick-Kiln Industry is confined mainly to the category of labourers who are 'PATHERAS'. The reason perhaps is that this is the category of workers who form the majority of workers in a Brick-Kiln and are even otherwise important for the production of bricks.

(b) It has transpired that the Brick-Min Owners do not directly employ the labour for their purposes and that the workers are engaged by the Brick --Kiln Owners through a middle-man who is called the 'JAMADAR'. The 'PATHERAS' are paid on work charge basis meaning thereby that they are paid according to the number of 'KATCHA' bricks that they have prepared. The rate today at which these 'PATHERAS' are paid is Rs.35 to 50 per thousand 'KATCHA' bricks. I am quoting this rate according to the payments being made by the Brick-Kilns around Lahore. Besides this payment which is mad-- to the TATHERAS' the 'JANLkDAR' is also paid some amount which is his commission for providing labour to the Brick-Kiln Owners and this commission is also based on the number of XATCHA' bricks prepared by the 'PATHERAS'. The JAMADAR' does not only provide labour to the Brick-Kiln Owners but is also responsible for their continuous working with the Brick-Kiln Owners and the 'JAMADAR' is the one who is responsible also for ensuring that these 'PATHERAS' do not run away and do not leave the employment of the concerned Brick-Kiln.

(c) Another practice in this industry is that the workers in the Brick-Kiln especially the 'PATHERAS' are given 'ADVANCES' known as 'PESHGI', at the time of joining the particular Brick-Kiln. According to the prevailing practice, rendition of accounts is done at the end of each week. The number of 'KATCHA' bricks prepared by each 'PATHERA' is determined and the -amount thus due to him is

accordingly fixed. Ordinarily half of the amount found due to a 'PATHERA' is adjusted towards the 'PESHGI' advanced ' to him and the remaining half is paid to him in cash. According to the Brick-Kiln Owners, account of each 'PATHERA' is separately maintained and his signatures or thumb impressions are obtained on the settlement of accounts each week. According to the representatives of the workers, this rendition and settlement of accounts is a sham. The workers are obviously illiterate and they do not know what amounts have been written in the book and that the workers have no choice 'but to put their thumb impressions on such accounts.

(d) Prima facie nothing seems to be wrong with the practice of 'PESHGI' and in fact on a cursory look it appears to be beneficial to the workers but in practice on lifting the veil, this is the practice which appears to be the root of almost all the evils in this industry.

(e) According to the practice the 'PATHERAS' reside on the Brick-Kiln. The so-called accommodation is provided to them by the Brick-Kiln Owners. It is also the practice that these 'PATHERAS' are required by the employers to reside with their families and children at the Brick-Kiln and the entire family, including the small children get involved in the process of preparation of 'KATCHA' bricks. This in turn gives rise to the menace of child, labour and I was provided with the 'photographs which are enclosed, which show that small children even of the age of less than 7 years are working on this job.

(f) This requirement of the 'PATHERAS' families residing at the Brick-Kiln serves a two-fold purpose for the employer. First, that by hiring one person, the employer also gets the benefit of the labour of the entire family. Second, that the family members of the worker serve as hostages with the employer and as a guarantee for the 'PESHGI' and against the worker's escape from the employer.

(g) The next menace emanating from this 'PESHGI' system is that this 'PESHGI' is advanced to the worker not for his benefit but in fact to enslave him for the rest of his fife and that this 'PESHGI' hardly ever comes to an end. It is an 'ever-increasing' and 'never-diminishing' amount which goes on multiplying on one pretext or the other. Some of the basis on which this 'PESHGI' goes on increasing is the 'FINES' imposed on the workers and the 'KATOTIS' to which a worker renders himself liable. This 'PESHGI' is carried by the concerned worker all his life and on his death his family inherits this liability. I was told that at times, for the adjustment of this 'PESHGI' even the widows of late workmen are sold. Some chits were produced before me which are also enclosed which demonstrate the magnitude and the cruelty being perpetrated through this 'PESHGT' system.

(h) Ordinarily, payment of advances for any item is considered to be a burden for the one who has to make these advances and blessing for the one to receive them. But in the present case, it is the other way round. Strangely enough, it is the employer who wishes to continue with this advance business and it is the recipient of the advance who wants to do away with this system.

(i) No worker is free to leave the employment of his employer. If he wishes to leave the job then he is obliged to adjust the amount of 'PESHGI' outstanding against him which is always in thousands. Since this worker is not in a position to offer this kind of amount to his employer, he obviously has to take shelter under another employer who pays this amount of 'PESHGI' to the previous owner and takes this worker under his charge. This worker is thus traded like chattel by Brick-Kiln Owners all his life. If despite all these chains a worker still manages to escape, he is chased and hounded by the 'JAMADAR' who brings him back to the employer and in almost every case the escaped worker is traced and brought back.

12. HISTORICAL BACKGROUND

(a) The reasons for such a maltreatment of the workers in the Brick-Kilns appear to be embedded in history. The Brick-Kilns are situated away from the main cities and towns. They are scattered. Consequently the workers at the Brick-Kilns are not exposed to those blessings of the civilization which are available in the cities and the towns. Since they are scattered and are located at quite some distances from one another, the workers of one Min have no contact with the workers of the other Kilns. Because of this non-communication of the workers the labour force in the Brick-Kilns could never get together to voice better living and better working conditions for themselves. The number of workers at a particular Brick-Kiln is not such which could pose any threat for the employer for compelling them to offer better working conditions to the workers. Being far away from the cities and towns the workers and ever their children have apparently no excess to basic amenities such as education and medical facilities. Most of the workers in this industry are Christians and even on this score being the minority they perhaps do not feel confident enough to challenge the maltreatment being meted out to them by the Brick-Kiln Owners who belong to the majority class with all the resources, political involvement s at their disposal.

13. PROBLEMS.

(a) As has been explained above the 'PESHGI' system and the 'JAMADAR' system appear to be the cause of most of the problems faced by the - Brick-Kiln Workers.

(b) The wages being paid to the workers need to be rationalised.

(c) The working conditions for the labour in this industry need to be improved and brought at par with the working conditions of the other industries and establishments in the country.

(d) The 'CHILD-LABOUR' on the Brick-Kilns needs to be stopped forthwith.

(e) Social security benefits and medical facilities etc. need to be extended to these workers.

(f) Provision for education of the workers' children also requires to be I made.

(g) The workers also deserve protection. against physical violation at the hands of employers and 'JAMADARS'

(h) An environment of physical security, social and family security needs to be ensured to the workers.

(i) Benefit of labour laws needs to be extended to this labour force also.

14. RECOMMENDATIONS

(1) Legislation be made whereby:-

(a) The system of 'BONDED LABOUR' not only in Brick-Kiln Industry but in all walks of life be abolished and the labour be freed and discharged from all their obligations to render bonded labour.

(b) The 'ADVANCES' and 'PESHGIS' already made and all rights and liabilities accruing therefrom should stand extinguished.

(c) Giving and receiving of all 'ADVANCES' (PESHGIS) be stopped and made an offence punishable under the law.

Prohibition against 'CHILD LABOUR' should be strictly enforced inter the Brick-Kiln Industry.

(3) Provisions of Factories Act, the Minimum Wages Ordinance, and other laws attracted to this industry should be strictly enforced and provisions of Labour Laws including the Social Security Ordinance should be extended to workers of the Brick-Kiln Industry.

(4) For ensuring implementation of these recommendations----Supervisory Committees should be constituted under the law which Committees should consist of representatives of the District Administration, the Labour Department, the Elected Representatives of the area, religious leaders of Muslims and Christians and representatives of the employees and representatives of the employers. These Committees should be set up at Tehsil levels.

(5) A Commission at the national level also needs to be set up to go into the details of the problems and to suggest further remedial measures not only for the Brick-Kiln Industry but in all the areas where the bonded labour is in vogue.
(6) The Police Department be instructed not to register cases involving the Brick-Kiln Employers and the Employee without the prior information and permission of the Superintendent of Police of the concerned District.

Dated:31-8-1988.
Enels- As referred above.

RESPECTFULLY SUBMITTED BY:
(KHALIL RAMDEY),
Advocate-General, Punjab.

Note: I am informed by Mr. TA. Khan, Addl.A.-G. that the reports and articles on the subject by various agencies; the decided cases from Indian Juris diction and the legislation made by the Indians on the subject have already been placed before My Lord. The same are therefore not being added with his report.

Sd.(Illegible)

SUBMISSION OF REPORT ON MATTER NO AR/(L)/88-SCJ.

It is respectfully submitted to this Honourable Court as under:-

1. That the President, Lahore High Court Bar Association forwarded a letter from the Assistant Registrar, Supreme Court directing the President of LHBA to assign a senior member of the Bar to hand IS the above mentioned matter and submit a report of the same to the Honourable Judge of the Supreme Court.

2. That, I, undertook to prepare the report based on a telegram, enclosed with the letter which was my lead to identify the sender of the telegram. In this regard I contacted Mrs. Asma Jahangir, Advocate who gave me some background of the case in question but did not know the whereabouts and Address of the sender of the telegram.

3. That in order to appraise their. Lordships of the entire matter and circumstances that exist behind this telegram I considered it my duty as an officer of this Honourable Court to prepare the present report as best as I could, thus towards-this end I have contacted the persons and institutions mentioned below.

(a) I.-G.Police.
(b) D.I-G Police Jahang ir Mirza:
(c) ??
(d) Asma Jahangir, Advocate, Lahore
(e) Rana Salim, Advocate, Chunian Bar Association.
(f) Ehsanullah Khan, Bhatta Mazdoor Mahaz, I-Dyal Singh Mansion, The Mail, Lahore.

4. Following my detailed interviews with the above mentioned persons I have gone through the material provided to me by them and obtained some material myself through the press and. the criminal branch of the Lahore High Court, Lahore A am placing this material before his Lordship. This 'material includes:-----

(a) Habeas Corpus petitions filed in Lahore High Court, Lahore since 15-5-1988 with annexures, reports of bailiffs, and orders of the Honourable High Court.

(b) Copies of FIRs filed by Bhatta owners on the labourers subsequent to their release from the Honourable High Court, Lahore.

(c) Media clippings and reports on bonded labour in Brick Kiln Industry. These reports include:

(i) Press Clippings and write ups.

(ii) Report on Brick Kiln by Women's Division, Government of Pakistan..

(iii) Report on special inquiry ordered by Headquarter Section-5 Rawalpindi, Martial Law Zone-A.

(iv) Report of the Human Rights Commission of Pakistan.

5. That on reading these reports/material and after meeting with the above mentioned persons, as I was given this task by this Honourable Court, I personally visited some Bhatta sites at Bhai Pheru, District Kasur to further authenticate and verify the allegations made so far and to discern the magnitude of the bonded labour problem. However, I am in no position to give any verification but place the facts before your Lordships.

6. In order to understand the entire complexion of this social and legal problem, enclose some legal measures taken by the government of India in this matter where similar situation exists.

7. In view of the above, I would like to humbly submit to their Lordships that the telegram may not be treated as a single and isolated incident but be regarded as a part of a whole legal and social problem that exists in Pakistan i.e. Bonded Labour and is particularly rampant in the Brick Kiln Industry where the Honourable Courts have found illegal detention in a number of cases but where the violators of this law have not been proceeded with in accordance with law.

8. That regarding the present telegram the facts are submitted before your Lordships as under.

(a) That the sender of the telegram is one Rehmat Masih s/o Ismail who was a Petitioner in Crl. Misc. No. 266/H/88 fixed before his Lordship Mr. Justice Fazal Karim.

(i) That his Lordship ordered that a bailiff of the Court be deputed to produce the detenus numbering 89 before the Honourable Court.

(ii) That amongst the 89 detenus, were the Petitioner's family members, women and 31 children.

(iii) That on 16.5.88 (the next day) the bailiff submitted his report to his Lordship Mr. Justice Fazal Karim which confirmed their illegal detention. The bailiff also reported "six alleged detenus namely, Aslain Masih, Polia Masih, Boota Masih, Sardar Masih, Anwar Masih and Jamal Masih were given severe beating by the respondent's men just before my arrival and they were recovered from a Haveli of animals adjacent to Brick Kiln. They were confined in a room. Their condition was very miserable at the time of recovery." The Honourable Court satisfied of the illegal detention ordered the release of the detenus, however the Honourable Court did not give any direction of filing cases against the Respondents. Subsequently the detenus were medically examined.

(iv) That subsequent to this Habeas Corpus petition five more petitions were filed out of which two were dismissed by his Lordship Justice Sheikh Riaz, and the bailiff Was not deputed to recover the detenus instead ASI, Thana Manga Mandi, Lahore was directed to produce the detenus. The honourable Justice Sheikh Riaz observed.

On the direction of this Court, the ASI has visited the brick-kiln and found the detenus are not in illegal confinement. In fact, this is usual dispute which arises with the brick kiln owners. The labourers take advances and then they do not want to work and under the garb of the order of this Court they are recovered and get licence to work wherever they like. In these circumstances, the habeas corpus petition is not competent and the same is hereby dismissed."

Dated 10-7-88 in Cr. Misc. No. 374/H/88.

9. That the present Petitioners, senders of the telegram were released and subsequently it is alleged that one Sadiq Masih was picked up by Riasat Ali Shah, Sub-Inspector CIA Chunian, three constables and Mr. Rao Qayum (Bhatta ,owner) along with companions in broad daylight from Chunian where several witnesses were present, this incident has also been alleged as correct by Advocates at Chunian Bar including, Rana Salim, Sheikh Ashfaq and Sardar Salim.

10. It is alleged that Sadiq Masih was kept under illegal detention at the Bhatta of Rao Oayum, physically beaten and tortured and then later it is alleged that he was falsely implicated in case F.I.R. No. 307/88 registered with Police Station Bhai Pheru where he was also- tortured at the Police Station. '

11. That subsequently rive more FIRs were made against Sadiq Masih FIRs No. 319/88, 328/88, and another a few days later.

12. A complaint of the abduction is also riled with SSP Kasur which was marked to DSP Chunian but no action has been taken on this. (Annexure 'B enclosed).

13. That it is alleged that on 27-6-88,17 more detenus who were released by the Court were abducted from Sialkot from the Bhatta of Choudbry Rashid, Thana Badyana, and further alleged that ASI Yunus, Rao Oayum (Bhatta owner) and his

companions abducted the alleged abductees in a Mazda Wagon EHB 3693 at 03-00 a.m. early morning. It is further claimed that in all twenty persons came to abduct the detenus.

14. That on the same day (i.e. 27.6.88) a telegram was sent by the relatives of the alleged abductees to Deputy Inspector-General Police, Mr. Justice Fazal Karim, The Governor Punjab, Chief Minister Punjab and Chief Justice of Lahore High Court Lahore (Annexure'C').

15. That on 17-7-88 the office of Superintendent Criminal issued a notice to Rehmat Masih to appear before the officer on special duty Judicial). This notice was intimated to Counsel for the Petitioner (Rehmat Masih), Mrs. Asma Jahangir on, 23-7-88 . In the meanwhile two more persons were allegedly abducted around 20-7-88 and hence Rehmat Masih along with his cousin Darshan Masih gave another set of telegrams, one of which was received by the Honourable Or Supreme Court.

16. That on 11-7-88 one Meher Masih also gave an application to D.I-G Lahore regarding the same abduction. Number of the application is 389-CC DIG, dated 11-7-88. (Annexure 'D'). This matter was marked to SSP, Lahore.

17. That Mrs. Asnia Jahangir, Counsel for the Petitioner (Rehmat Masih) has no further information on the whereabouts of her clients.

18. That the Bhatta Mazdoor Mahaz was contacted by me who alleged that one of the abductees, namely daughter-in-law of Rehmat Masih, Bashiran Bibi escaped from the Bhatta of Yasin Pehlwan, Bhai Pheru and ,narrates that the women folk of the abductees were sold to Yasin Pehlwan by ASI Yunus, Bhai Pheru, Rao Riaz and Rao Qayum (Bhatta owners) whereas the menfolk namely Rehmat, (the author of the telegram) Yakub, and Liaqat husband of Bashiran are either illegally confined at the Bhatta of Abdul Qayum or are in police custody.

20. The upshot of this entire scenario being gross allegations which require investigation at a high level as influential persons are involved and it is claimed that they are aided and given full co-operation by the police.

21. That while concluding my report I submit before this Honourable Court that only long term measores can solve this problem as bonded labour seems widespread.

22. That after having made this investigation I would humbly submit that bonded labour is prohibited by the Constitution of Pakistan but the punishment for this offence Under the Pakistan Penal Laws is only one month.

23. That since 1971 The Factories Act applies to Brick Kiln industries in Punjab but is not being enforced.

Dated 13 August, 1988.

Report in connection with the matter of Brick-Kiln Labour.

It is respectfully submitted:-

BRIEF NOTE:

I have already brought on the record of this Hon'ble Court documents relevant to the matter in issue as Annexures to my report submitted earlier on i6-8-1988. A separate report prepared by a Martial Law Team on the petition of one Mr.Gul Zarin of Rawalpindi was also included among the Annexures. In the last para of the report, the Enquiry Team after making spot secret and open enquiries and after examining the relevant documents, had made certain recommendations. The recommendations speak, for the increase in the wages by 10% of the cost of the bricks which was then determined at Rs.450 to Rs.550 per. one thousand. It further recommended for medical facilities and abolition of loans/advance system and the prohibition of child labour and some compensation for those disabled during the work. These recommendations do not provide a solution to the problem being inadequate. On the last date of hearing, your Lordship was pleased to appoint a Committee which included the President of Bhatta Owners Association. The meeting of the Committee was held in the office of the Advocate-General Punjab which was presided over by him on All the members appointed, attended the meeting. The Bhatta Owners came to the meeting with their Legal Adviser. In the meeting, the following facts stood established, rather almost admitted between the owners and the representatives of the labourers:-

(a) The Owners admitted the transfer of the Labour as against payment of the loans/advances (PATSHGT) obtained by them.

(b) Minor children, and ladies of the family work as one unit with their family head.

(c) The ladies and children reside at the Bhattas.

(d) No education and medical facilities are made available over thereof.

(e) Those of Labour Force who quit the Bhatta the advance, arc apprehended and brought back to he brick-kiln. The release of the labourers is strictly conditioned to the prior payment of the advances. making payment

(f) the wages paid to the labour till today is maximum Rs.35 to Rs.40 per one thousand bricks which in the coming years, according to the owners, would be increased upto Rs.50 per thousand bricks.

The facts which were brought to the notice of the Members of the Committee and were controverted by owners are in the following terms:-

(i) The representative of the Labour Mr. Ihsan ullah Khan showed in the open meeting certain documents relating to the various Bhattas showing as to how the advances. He also placed on the table the written by a labour/unit and carrying an offer that any one who could pay same could take the labour to his place. When confronted with these documents, the representative of the owners did not make any comment.

(ii) OWNERS CONDUCT

(a) During the meeting, I requested the, representative of the, owners to help us in recommending to this Honble Court a unanimous solution which may include their grievances and solutions to them and the grievances of the, labour force and Weir solutions. The grievance at the loudest voiced by the representative of the owners was the filing of habeas corpus petition and they held the Labour Mahaz responsible for that. They had lot of other grievances against the Bhatta Maz.door Maha7. According to them, it was they who had shown the path of Courts to the Labour which created a lot of problems for them. They wished and hoped from us to make some recommendations which could place a ban on the activities of the Bluitta Maziloor Mahaz.

(b) No concrete proposals could be adopted acceptable to the representative of the Labour and the representative of the owners.

Before making my proposals, I would place before this Hon'b1e Court the problems which, I have visualised during all these days----

(1) WAGWES

The question of wages is a pivotal issue. The illiterate and landless classes of the rural society having no other job to meet their daily life classes of the rural requirements, come to Bhatta owners. They come in a family unit, The admitted wages till today paid to labour are Rs.35 to Rs.40 for 1,000 bricks which, according to the Bhatta owners, will be raise I to Rs.50 per thousand bricks in future. The estimated cost of production of 1,000 bricks comes to Rs.220 to Rs.230 and the sale price today is about Rs.650 to Rs.700 per thousand. The profit seems to be enormous, The labour force when calculated on daily basis, by producing 1,000 bricks per day, gets maximum Rs.5 per day. After adjustment of advance, etc. their take-home is not more than Rs.2.50 a day. This is highly unjust. There should be some relationship between the profit and the wages of the labour. This kind of wages even do not work as Subsistence Allowances for the labour force.

(2) ADVANCE SYSTEM:

The. advance system working within the Labour Force of Bhattas is certainly a cruel and vicious circle. As submitted above, in most of the cases, the first advance is the money which is paid by their new owner to their last owner. This money

liability is in many cases inherited. The increase in the advance is not necessarily made by actual payment. The system of fine in case of non-payment within the directed time by the owner, fattens the advances. The few photo copies of the documents evidencing this position are attached with this report. The only cure to this seems to be the abolition of advance system altogether and the payment of wages to the labour force on daily basis to be fixed under the Minimum Wages Act.

(3) LACK OF MEDICAL FACILITIES & EDUCATION:

(i) In order to provide the medical facilities and the facilities of education to the children of the labour, the application of Factories Act in letter and spirit to the brick-kiln industry may help a lot to solve this problem.

(ii) Out of the numerous problems, noted above, there is one, the most important deserving reference Le the counting of the bricks after their making.' At most of the Bhattas, instead of 1000 bricks, the owner will receive 1,020 bricks in katcha shape to account for any loss or damage likely to occur during transportation to the kiln. The loss/damage to the bricks by rains, etc. is shared by the labour by 50%. This again is unjustified. It may be mentioned here that in the brick-kiln industry, there is a five kinds of labour force which is detailed below:-

(a) Those who make the bricks are named as PATHATRAS.

(b) Those who transport Katcha Bricks to brick-kiln are known as KUMHARS,

(c) Those who stack the bricks in the kiln are known as BHARAI WALAS,

(d) Those who bake the bricks by. giving coal, etc. are known as JALAI WALAS, and

(e) I Those who, after the baking of the bricks, take them out are known as NIKAST WALAS.

All the above categories are almost facing the same problems.

(4) LEGISLATIVE MEASURES:

The Constitution of Pakistan in its Articles No.11, 14(1), 15, 18 ' 24,35,36 and 37 have attempted to look after the situation. In P.P.-C., sections 367, 368, 370, 371 and 374 have provided punishment in case of violation of the rights noted above. This is not enough. The execution of law certainly is paramount than its legislation. In my opinion, the execution of the laws which do already exist on the juries corpus of the country, if made by an agency working under the High Court, the problems of the labour force may have some solution. We are not deficient in the laws. We are suffering from the lack of their enforcement.

(5) PRACTICAL MEASURES;

I, after analyzing the situation, see that the taking of whole the family to a brick-kiln causes a number of problems for the labour force of Bhattas. They become vulnerable to the pressure of the Bhatta owners. The children and other family members are always a very strong security in their band to make the Labour Force to dance to their tunes. After the work, the labour force is made to remain within the fold of brick-kiln. Even if they want to leave, they can not quit the place being so many in number and additionally being guarded. In case one ale member, by a desperate attempt comes out, he is again pulled back by the family ties as their family is taken as hostages. The instances of such practice have come to the notice of the members of the Committee. The children and the women labour are made to work due to their presence at the spot. The following measures may do a lot for the labour in solving their problems:-----

(1) The labour Force should be employed in their individual capacities and not employed in labour units under one family head.

(2) The labour should not be paid on the basis of the number of bricks but be paid on daily basis.

(3) The Government should take steps for constituting new schemes like 5 Maria Schemes, etc. to make a colony of the Labour Force of Bhattas a a spot, close to the cluster of Bhattas.

(4) In the ABADIS in order to improve the lot of the Bhatta Labour Force, schools and the dispensaries may be installed. That will enable the coming generation of the said labour to resort to some other avocations.

(5) By the establishment of village ABADIS, it will not be possible for the Bhatta Owners to treat the labour force and their families as bondage labour.

(Sd.)
MIAN ABDUL SATTAR NAJAM) Advocate,
4-Mozang Road, Lahore.

Report on the points in issue on behalf of Bhatta Owners Association. It is respectfully submitted.

In the meeting held in the office of learned Advocate-General, Bhatta Owners were asked to submit the report in writing on the following issues:-

(1) Regulation of wages, and

(2) Method of recovery of balance of advance from the labourer on his leaving work.

In regard to issue No.2, allegation is that for the payment of balance of advance the labourer is transferred to new Bhatta owner and the balance is received by the previous owner from the new owner. This allegation is totally incorrect. The fact is that advance is obtained voluntarily which has become custom with a labourer for the work to be done by him at piece rate and is to be adjusted against the wages to be earned by him during the period of work. If the work .is finished, the labourer is free to seek fresh engagement and even if the balance is not adjusted and he is not willing to work there is no restraint on him to leave to the work and to go for some work of his choice with other person. The custom is so strongly established about the work and adjustment of advance that it is considered to be the matter of mutual trust and respectability among the Bhatta owners and the labourers and it is not breached by either party. For the sake of maintaining his own reputation as a good labourer it is considered by him to be his duty to pay back the balance when he gets new engagement with new owners. It is solemnly stated that he is neither chased nor bothered for the balance but voluntarily according to the customary mode he himself feels obliged to pay back the balance of the advance not adjusted against the work to the previous owner. There is no question of transfer of labourer by one Bhatta owner to another Bhatta owner for the balance due from him. Other details would be submitted under the relevant issues.

Now the first issue as to the regulation of wages is taken up and the factual position is that the wages of the various categories of labourers engaged by a Contractor, to whom the contract is awarded by Bhatta owner are regulated by the Government under the Minimum Wages Ordinance (XXXIX of 1961) and the notification as it has become available was issued lastly on 10th October, 19 published in the Punjab Gazette dated 13th November, 1983. It is stated in the notification that Minimum Wages Board Punjab having reviewed its recommendations in exercise of powers under section 7 of the Minimum Wages Ordinance 1961 by conducting the enquiry and considering objections and suggestions received in pursuance of the Notification dated 16th October, 1981 has recommended to the Government of Punjab revision of the rates of wages declared under the said Notification. The province has been divided into two zones for the purpose of workers in Brick kilns industry and the schedule has been provided fixing the rates of wages in two zones. In case of Pathai Wala Brick layer whose case is under hand the rate in "A" Zone is fixed at Rs.34 per thousand bricks and for B Zone Rs.31 per thousand bricks. But the bricks layer is engaged by the Contractor at the higher rate than fixed for per thousand bricks and a few months back the Bhatta Owners Association had decided to raise the rate to Rs.50 per thou-sand bricks in Lahore and Rs.45 per thousand bricks in Kasun If the Government would revise the rates and if it is fixed higher than the proposed rates, that. shall be followed and some percentage more than the rates to be fixed by the Government would be paid to the bricks layer to keep up harmony between the Contractor and the labourer. Even otherwise there is no dispute between the Contractor and the labourer about the payment of Wages being regulated and contracted between the parties-which is above the rates fixed by the Government. At one time just to harass the contractors and the Bhatta owners some frivolous petitions were 'riled under the Payment of Wages Act but on contest no one could prove his case for withholding the wages or non-payment of the wages. Decisions taken by the authority are attached for perusal. As a matter of fact the

Bhatta owners have never denied the wages. Wages according to the regulated rates are paid to Contractor for the labourers engaged by him, rather at the higher rate through contract which has been faithfully honoured in all cases and always.

Second Issue as complained, is not based on any authentic material. It is a long standing practice which is customarily followed by the Contractor and the labour that for the Bhatta season which is not run during rainy days and in bitter cold the Contractor secures the labourer who demands advance payment for the work to be done during the season for his benefit and advantage and to meet his requirements. The contractor by force of condition is obliged to concede to his demand for advance with a view to secure the supply of katcha bricks for the brick kiln which involves an expenditure of not less than Rs.50,000 to burn first fire in the kiln and to continue the fire with the regular supply of katcha bricks. If the fire in the kiln' is extinguished for non-availability of the kacha bricks then for burning fire again in the kiln similar cost and loss in semi burnt bricks worth Rs.50,000 is involved which would naturally burden the Bhatta owner with extra expenditure and make him to suffer the loss in Bhatta business. Thus Bhatta owners in order to secure the regular supply of katcha bricks and the labourer and the contractors exploiting that situation demand excessive advance which some time is not adjusted against the work done during the season by the labourer of the category to which the complainant belongs. Bhatta owner at the end of the season strikes the balance with the Contractor in the matter of labourers engaged by him and if the balance is remained outstanding that is shown to the labourer and his thumb mark is obtained as settlement. The matter of account is never in dispute between the owner, contractor and the labourer. If the labourer is not prepared to work for the next season he is given the release chit and he is at liberty to go for any engagement of his choice with any person. It is the mutual trust of the parties which holds the obligation of payment of balance interest and when the labourer gets new situation and advance he pays back the balance to the previous owner but there is no coercion exercised against him by the owner. This customary mode of payment of balance is never objected to by the labourer who himself has created the situation by taking excessive advance and adjusting payment towards that.

That there are about lac of such category of labourers in the Punjab alone but they have never objected to this customary mode of advance and payment and the Bhatta owners have also not violated any rule of morality in relation to them. Only in the recent past motivated and vicious campaign has been started by persons other than the labourers going for habeas corpus, giving wrong impression that the balance of advance payable by them would be wiped off and they would remain no longer liable to pay the balance of advance taken from any Bhatta owner. They have based such complaint on the incorrect statement that the Bhatta owners transfer the labourers for the recovery of balance of advance to the new contractor and if the balance is not paid they are forcibly brought back to work for the outstanding amount. This is totally a wrong statement with the motive to disturb the harmony of labour relations and to exploit the situation for political purpose.

It is suggested that elimination of payment of advance would not be in the interest of contractor and the labourer engaged for the Bhatta owners and may not work

practically but before any step is taken it appears necessary that proper survey may be conducted under the supervision of a Labour Court to ascertain the wishes of the labourers whether they desire to end the practice of taking advance from the, Contractor of Bhatta owners. If they agree that such a practice should be abolished the Bhatta owners have no objection to that course and they will abide by the decision of the Court but the existing advances which are due from the labourers who had left the work and gone to some other contractor for engagement should be secured in a reasonable manner so that it may not become a practice to take advance and leave work, which is not good for the economy of the country. In future whatever measure would be suggested by the Government in the matter of advance payment to the labourer that shall be followed faithfully by the Bhatta owners. However it is suggested that advance is an incentive and attraction and also advantageous to meet certain requirements by the labour it should be reduced after proper enquiry to such a proportion as would be conveniently adjustable against the work to be done by the labourer.

In Article 3 of the Constitution of Islamic Republic of Pakistan it is provided that State shall ensure the elimination of exploitation and the gradual fulfillment of fundamental principles, from each according to his ability, to each according to his work.

In the present case according to the work the rates of Wages are being fixed by the Government under the Minimum Wages Ordinance 1961. On the completion of the work one becomes entitled to the Wages as provided by the law. There is no provision for advance payment for work but if the mode of Advance payment has been customary introduced by the parties in any field of activity and it is not to the advantage of one party only but also to the advantage of the other party, it is suggested that reasonable amount of advance may be allowed in such cases so that the relationship should be secured which would work for the benefit of the both.

It is made cleat that the labourer engaged by the contractor is piece rated and it is the effort of every labourer, to reach maximum target within minimum time. The children and women who are accustomed to labour as helper to the male member make their contributions in the work to earn maximum. They are not engaged by the Contractor in unit but only the male member is engaged and it is upto him to associate his other family members or not. There is no compulsion by the Contractor that should mark whether. It depends upon the condition of the family to work in unit or not and if they are not prepared to work in unit the Contractor never objects to the work of the male member. Choice is with the male member and the other members of the family.

The site for Bhatta almost in all cases is rented land and the site is shifted if the earth and water are exhausted at the particular site, which form the material for the manufacture of the bricks. Whatever improvised arrangement becomes possible it is made and that is enjoyed by the labourers without any sort of payment and totally free. To make the point clear it is submitted that no interest, fine or any sort of addition is made to the advance 'by the Bhatta owners in the account of labourer. It is only the advance which is adjusted against the work being done by the

labourer. Account is maintained meticulously and that is periodically signed by the labourer to whom the payment is advanced. Account is also personally maintained by the labourer. This account is open to inspection by any one who is authorised.

In most of the cases habeas corpus filed in the names of labourers by A outsiders have failed and the allegations found to be vexatious. Copies of certain orders available with the Bhatta owners are submitted for perusal.

As explained above, issue No.1 is totally out of context about which the is no dispute existing between the parties and issue No.2 may be regulated 'in reasonable manner as suggested which should be both for the benefit of the owner and the labourer engaged by the contractor and whatever measure would be proposed by the competent authority that would be complied with. So far as this complaint is concerned it has no truth and is moved for gaining political advantage just to disturb the harmony of the labourer and Bhatta owners and to deprive them of the advantages of the system of working smoothly for the last so many years. Cuttings and publications are attached for perusal and such action as the Honourable Court deems fit to take in the circumstances of the case in accordance with law against the exploiters.

(Sd.) '
Muhammad Shoaib Khan Niazi,
President Bricks Kiln Owners Association, Punjab.

REPORT ON THE WORKING CONDITIONS OF LABOUR ENGAGED IN BRICK KILN INDUSTRY

1. The importance of centuries old Bricks Kiln Industry cannot be under estimated even in present times as its products constitute one' of the basic requirements for the development of the country. The labour engaged in this industry is specialised one and the relationship between the employer and the employee is of a very special nature which are visibly distinct from the industrial relations existing in other industries. The complex and intricate problems of Bricks Kiln workers have attained a very high magnitude owing to general awareness of workers, exposure of working conditions of Bricks Kiln workers and mal practices of Bricks Kiln owners in mass media and endeavour of Trade Unions and Human Rights Groups. The problems of bonded labour in Brick Kiln Industries is the result of following interconnected factors;----

(i) Prevalence of system of advance payment to workers 'commonly known as "Peshgees";

(ii) Presence of middle man;

(iii) Shortage of semi- skilled labour for Brick Kiln Industry.

2. As far the applicability of Labour Laws is concerned, operation of Brick Kiln Industry is distinct from that of other industries where the 'precincts/ premises are well defined. Brick Kilns have no bounded premises as no wall and gate exist around any Brick Kiln. The factual position is that the Brick Kiln owners select a site where "Katcha" bricks are prepared. This site continues changing depending upon the depth of digging and. the consent of the owner of the land. Sometimes these sites are located far away from the actual location of Brick Kiln. Consequently the application of Factories Act, 1934 and other relevant legislation becomes difficult as the number" of workers at the actual site seldom rises to 10 or more and thus provisions of the Act are not attracted. The inspections conducted by Inspecting Officers of the Labour Department and prosecutions of Brick Kiln owners and meagre fines imposed by the Courts have not so far weeded out the evils of a well-entrenched system.

3. The practice of advances given to the workers of Brick Kiln Industry is age old, traditional and in-built part of the system. The liabilities of advance in certain cases never get paid-up during lifetime of workers, the succeeding generation thus bear the burden of clearing the liabilities. The cases are not rare when a group of Workers along with the their family members are made to shift from one Brick Kiln to another with their liabilities.,

4. As a matter of practice after payment of advances to Brick Kiln workers half of their Wages are deducted against the loans with the result that workers are compelled to take more advances to make their both ends meet. The ever compounding advances bind the workers to a particular Brick Kiln owner and those who dare to escape are brought back by using coercive methods.

5. The institution of "Jamadar" a middle man who supplies labour to Brick Kiln owners is also responsible for augmenting the problems in the scenario of bonded labour. The middle man takes considerable sum of money as advance from owners and distributes it among his workers as remuneration for the work done or as advance. But occasionally, in consideration of greater sum of money, the Jamadar shifts his labour to another Brick Kiln. The owner of the first Brick Kiln enforces disgraceful methods to retrieve them.

It may be added, that the labour engaged in this industry is almost specialised one and no other category of workers is willing to take up this profession. Consequently the Brick Kiln owners use every method both coercive and pursuasive to attract this specialised labour to their Brick Kiln. This state of affairs has tremendously enhanced the importance of middle man who plays a pivotal role in this business.

6. Lately some labour organizations led by professional labour leaders have made in-roads into this industry and have successfully created awareness among these workers. Mass communication media has also played an important role in highlighting the problems of workers of this industry.

7. Despite the snag created by the announcement of judgment by Additional District and Sessions Judge, Faisalabad in Civil Appeal No.487 of 1984 pronouncing that in the presence of Section 80 of the Factories Act, 1934, the Act confines its application to Government owned industry only. (The judgment of Additional District Judge, Faisalabad has already been challenged in the Lahore High Court through a Civil Revision Petition No.CM/4051/C/85, dated 11-6-1985) the field staff of the Directorate of Labour Welfare, Punjab conduct inspections of Brick kilns to ensure the implementation of the relevant labour laws. Similarly the Punjab Labour Court No.2, Lahore has also held although on a different premises that Brick Kilns are not a factory within the meaning of Factories Act, 1934 and even if it was construed to be, only those employees were entitled to statutory benefits who were employed on the Brick kilns and not otherwise. This interpretation excludes the workers employed to dig earth and to make "Katcha" bricks from the ambit of Factories Act, 193-4. It is, however, submitted that Civil Revision Petition indicated above challenging the judgment of the Additional District Judge, Faisalabad requires early hearing and decision enabling the Directorate of Labour Welfare, Punjab to apply the Factories Act, 1934 on Brick Kiln Industry without any impediment.

8. Nevertheless, Directorate of Labour Welfare, Punjab with a view to ameliorating the lot of Brick Kiln workers and putting an end to their exploitation has been making strenuous efforts and has taken the following steps :-

(a) By a special Notification issued on 28.6.1988; the Factories Act, 1934 has been made applicable to those Brick Kilns where five or more workers are employed.

(b) The Administrative Department has been requested to revise minimum Wages fixed as far back as November 13, 1983 in order to make the same commensurate with the present days' price hike.

(c) The Directorate of Labour Welfare, Punjab has also recommended to the Government that the scope of Social Security may also be extended to Brick Kiln Industry and all medical facilities which are permissible to the industrial workers should be provided to the workers of Brick Kiln industry.

RECOMMENDATIONS

1. The evil of this bonded labour cannot be eradicated altogether unless a new legislation exclusively for Brick Kiln workers is drafted and promulgated. The proposed legislation may either abolish the customary system of advance or if the system of advance is to be retained on account of some considerations, it may be regulated through some Government Agency. Advances already given to the workers be written off. A similar law has already been promulgated and enforced in India in 1976 known as "The Bonded Labour System Abolition Act, 1976".

2. The concept and role of middle man known as "Jamadar" also be abolished through the special law.

3. In order to resolve the residential problem of the Brick Kiln workers, a quota for the allotment of residential plots/houses in Labour Colonies may be reserved for the Brick Kiln workers.

SUBMISSION OF REPORT THE HONBLE SUPREME COURT IN THE MATTER OF BOUNDED LABOUR. A.R.(L)/88 - S.C.J.

It is respectfully submitted:--

1. That the following report is being submitted by me to this Honourable Court regarding the conditions of women and children in the brick kiln industry.

2. That the facts as reported to me and as studied by me are given below. This report only includes incidents which are officially reported or where circumstances exist for legal redress

(a) Firstly it may be reported that slavery, slave like practices and bonded labour are exploitative practices as they result in gross abuse to the victims. The existence of bonded labour itself presupposes existence of conditions which are universally accepted as substandard and inhuman. Wherever exploitation of this nature prevails women and children bear a double burden of this exploitation. Women and children ate vulnerable and a defence less section of our society who are protected by special legislation for this very reason, Even the United Nations have categorized them as a disadvantaged group. Special Protective Standards and Declarations have been made for women and children. All Constitutions of the world prohibit forced labour, bonded labour and slavery. Article 11 (1) of our Constitution also forbids forced labour. It prohibits child labour below the age fourteen , years in any factory, mine or other hazardous employment.

(b) My report is based on personal interviews with women and children working in the brick kiln industry. The sample interviewed is small as the Bhattas are closed in this weather and very few families could be found at the premises. Even the ones present were not forthcoming and a tense atmosphere prevails at the Bhatta premises owing the present matter being taken up by this Honouable Court. Other observations are based on my previous experience while working with the labourers.

CHILDREN

1. About 00% of the children start work with their families at the Bhatta below the age of thirteen. The mortality rate amongst children is high and they are denied freedom to move out of the Bhatta premises.

2. Blindness is common amongst children of these labourers. Around one out of twenty families have blind children. The two families visited recently, one of Sheedan Bibi working at the Bhatta of Virk Yakub at Sheikhupura and another Ghulam Bibi working at Bari Bbatta have blind children. These families claim that the children were not born blind but were blinded because of "Safaada" in the mud which hits these children while digging. Blindness amongst old people is around 15 to 20 per cent.

3. Some Bhatta owners insist upon participation of children in the work force of the family. This is particularly demanded during the peak season. Mostly the parents do not resist child labour as it supplements their income. The resistance only comes when a child has to look after their siblings. It may be important to mention that not a single Bhatta around Kasur or Lahore has any educational or medical facilities.

4. There are incidents where children of Brick Kiln labourers are kept as hostages when parents leave the Bhatta. One recent case is of Thana Bhai Pheru at Bhatta Rana Sharif, where S.P. Kasur gave police help to one Mr. Zahid Dad Secretary-General of Bhatta Mazdoor Mahaz to recover 3 female children aged eleven, seven and six from the Bhatta of Sharif Kalia, Multan Road. The father of these children, Bashir Ahmad worked at the Bhatta and when he left the owner refused to release the children. They were recovered after 2, months. The children were made to work without pay, maltreated and given inadequate food. They were dependent upon the Munshi and the Owner's employees, who it is alleged, abused these children in return for giving them basic required food. The ille(yal detention of these children can be verified through SP Kasur but whether they were actually abused or not is an allegation. However, one of the girls still bears marks on her thighs. This could be a subsequent injury but-this child gave a very vivid and clear account of her abuse. This child described a horrible picture of her maltreatment. She did not make an allegation against the owner but against his employees and as such, she did not seem to be exaggerating her story.

5. Another such incident took place a few months back at the Bhatta of Mian Arif Mauza Kania Wala, Tbana Sadar, Sheikhupura. The SP Sheikhupura got a child of 8 years recovered from the Bhatta premiss. The mother of this child, Martha worked at this Bhatta and left because of gross ill-treatment. The Bhatta owner kidnapped her two sons. One of her sons Arif Masih escaped and sought help. Again the Secretary of their Union got the child recovered through the police. On return the Secretary of the Union was attacked and he is still immobile.

6. Another horrifying aspect which has affected the children of the labourers is a distortion of mental well-being. They live in fear, witness physical violence meted out to their parents and are born in slavery. Their reactions are very different to normal children. For example unlike normal children they do not surround a car or vehicle entering the premises but run away into a shelter. The violence witnessed by them on their parents could breed an intense hatred of the entire society in the minds of these children. They are suspicious of all well clad people and have no

ambition to study or dream of doing any other work but that of baking bricks. Their life is restricted to the Bhatta premises and its activities.

WOMEN

1. Women are an integral part of the labour force in the brick kiln industry. They work along with men putting in as many hours and days. In addition they do the household work. Their workload is heavier than men.

2. Yet women are not recognised in the labour force and are invisible even in the statistical data kept by the labour department. This exclusion of women drops the number of persons shown as employees by each Bhatta. At a later stage this well affect the observance of any prescribed minimum wage. Since the wage of the family will be clubbed under the male member, the minimum wage per person will naturally decrease. If women are not officially recognised as an independent workforce they will be unable to get any benefit of labour laws.

3. Marriage of young girls is resisted as this decreases the number of persons working in the Bhatta. This of course is not a practice of all Bhatta owners, but it has been particularly alleged by workers of Bhattas near Chunian and Kasur district. It is insisted that "Watta Satta" marriage be performed so as to replace the labour force. Hence the lives of these labourers are in the total control of the owners.

4. Women are given no maternity leave and are expected to work throughout their pregnancy and resume work two to three days after delivery Some of the women admitted doing so voluntarily, as they needed extra income and could not survive if they did not work. Most women claim that even if they are unwell or even where a death has taken place in the family the owners insist on their presence at work.

5. A system of prostitution dens runs at some of the Bhattas. The Jamadarni normally playing the role of the pimp and it is said that at such Bhattas the owners do not use force bat are provided women through the Jamadarni. Here, I must add that there is an overall deprivation of moral values amongst the bonded labourers themselves. Promiscuity is acceptable and physical abuse on women an every day reality which is not given much thought.

6. Some of the Bhatta owners have also married Pathair women who stay at the Bhatta Temises and carry out most of the immoral activities. For example Rana Sharif of Bhai Pheru married Sharifaan Bibi who was a Pathair at the Bhatta of Rao Qayyum. Sharifaan Bibi stays at the Bhatta premises. A few others who have contracted marriages are' Rana Sheikh and son of Haji Riat namely Maqbool Riaz. All these Pathair wives live at the Bhatta.

7. During my recent interviews one Clara Bibi now working at Bhatta of Haji Aslam near Bagh Wali Puili, Lahore related an incident experienced by her while working at Bhatta of Mian Akhtar, Gujranwala a year ago. Clara Bibi is a widow

and has a grown up daughter. She alleges that the owner desired her daughter and forbade Clara Bibi from getting her daughter married anywhere. Clara Bibi claims she and her daughter got helpless at the hands of the owner who often called for her daughter. Eventually Clara Bibi and others helped to rescue the girl, who escaped and went to her uncle's house and married his son. Clara Bibi claims she was beaten up by the owner and eventually the owner on her behalf filed a complaint of abduction of her daughter. The in-laws of her daughter were taken to jail and eventually Clara Bibi herself left the Bhatta premises with her children without any belongings. The abduction case is still in the trial Court.

8. Another old woman Jalan and her son who now work at a Bhatta at Sheikhupura related to me the story of another abduction. Jalan, her son and his family worked at a Bhatta of Yakub Virk, Gara Musali, Khan Baila, beyond Liaqatpur. Jalan Bibi's son has a wife and three daughters. Jamadar Khaliq, his brother Sattar and Azimu employees of the Bhatta owner kept Jalan Bibi's daughter-in-law and the three grand-daughters at the instructions of the owner. After much pleading they returned two grand-daughters. Jalan Bibi claims that her daughter-in-law and her grand-daughter aged one year have been sold elsewhere by Jamadar Khaliq and his accomplices. She and her son have no knowledge of the whereabouts of the two missing persons of their family.

9. A girl of 14 years named Majidan Bibi was abducted by Bhatta owner Abdul Shakur and his friend Hakam Ali resident of Jhagian Jhumran, P.S. Manga Mandi, Lahore. Majidan Bibi's mother riled an FIR No.127/88 dated 27-5-88 at Police Station Mangzi Mandi. Majidan Bibi was allegedly kept under illegal confinement for two months and she was subjected to rape many times by Hakam Ali. Hakalm Ali got bail on the production of a Nikahnama, whereas bail of Majidan Bibi was rejected for non-prosccution. Majidan Bibi was at Kot Lakhpat Jail from 2.7.88 till 21.7.88. She was later granted bail after her mother located her whereabouts and applied for bail. Majidan Bibi claims she was threatened after her mother riled the FIR and was forced to make a statement before the Illaqa Magistrate 2nd Class Nawankot to the effect that she had voluntarily gone with the accused and consented to Nikah. Majidan's mother commented that if her daughter had voluntarily gone to contract marriage, she had no reason to object, as any marriage to an economically better off person would normally be welcome. The rejection of her bail for non-prosecution also indicates the intentions of the accused. Both Majidan and her co-accused are on bail. Majidan and her mother claim they have grave fear of being physically harmed by the accused. They have shifted their residence several times. At present their address is Bhabra stop, New Abadi Bhabra, Lahore.

10. A F.I.R. dated 27-2-88 was riled by Shaukat Masih at the Police Station Saddar, Kasur alleging an attempt of rape on his wife. Copy of FIR and application by. Shaukat Masili to S.H.O., Saddar Kasur is attached as Annexure W.

11. Another FIR was riled by one Sharifan Bibi at Police Station Bhai Pheru dated 22-1-88. Sharifan Bibi and her family worked at the Bhatta Rana Sharif. Owing to their. inability to make the required number of bricks, Sharifan's mother and the

Munshi exchanged hot words. Sharifan Bibi alleged she and her mother were paraded naked by the Munshi, the owner and some other employees of the Bhatta. F.I.R. attached as Annexure 'R'.

12. A report filed by Sheema Bibi is attached as Annexurc'C' where Sheema alleged that she had been sold by Malik Jahangir, owner, to recover the loan left behind by her deceased husband.

13. Several incidents were reported and repeated where widows and abandoned women were sold in order to recover loans.

14. Another abduction case reported was of Palo Bibi, her daughter and one son. Palo Bibi's son Manzoor Masih made an application to I.-G. Police Lahore claiming that Rana Mohammad Yusuf S.H.O. Khanna Police Station, Pir Mukhtar Shah M.P.A. owner of Bhatta No.66 Bhai Pheru had abducted his mother and sisters. After the complaint the abductees were produced before the Illaqa Magistrate Khanna for recording of their treatments that they were not abducted. In that very Court the abductees openly told the Illaqa Magistrate that they were being forced to make this statement as one of their sons had been kept by the police and they had no choice but to make this statement. On inquiring it was also discovered that no formal F.I.R. was registered and hence how could the D.D.A. get their statements registered under section 161 of the Cr.P.C. An application was given for re-examination of the witnesses on 5th May 1988. Fifteen adjournments have been sought by the accused and so far no order is given on the application of re-examination. (Documents of case attached as Annexure D).

OTHER OBSERVATIONS.

The numbers of social welfare organisations working in Lahore have never bothered to help bonded labour. The Tuberculosis Association claim they made a survey, but were told that no one at the Bhattas suffered from TB. They were not allowed to enter the Bhattas in some cases. Family Planning Association has so far not made bonded labour a target group. Similarly none of the other organisations have done any social work amongst these labourers. The church groups initiated work amongst the Bhatta workers four years ago, but soon abandoned it. It is not easy to work amongst a class of people whose existence has not only hindered their physical well-being but also distorted their psyche. This total degradation of this section of society is bound to affect the entire social fabric of our society if allowed to continue. The open violation of the Fundamental Rights of the supreme law of the land will give way to a "non- respect" to laws of the country.

RECOMMENDATIONS.

Realising that the judiciary has its own particular role which cannot be expanded to legislation of laws, I would like to make the following recommendations:--

(1) The Supreme Court could lay down parameters to be observed by Courts in Habeas Corpus petitions regarding bonded labour.

(2) Bailiff of the Court and not the police be instructed to recover the detenus.

(3) Where the Court is satisfied of illegal detention direction be given to police for filing of a complaint against the offender. This would act as a deterrent.

(4) The Bar Associations be instructed to draw up a penal of advocates who could give free legal aid to all depressed sections of society particularly bonded labour.

(5) Where criminal cases are instituted against bonded labourers for return of loan, they be quashed and the complainant be asked to seek civil remedy.

(6) The Labour Department be ordered to make periodical visits to the brick kiln industry and other industries where bonded labour is known to be practised. The Courts are guardians of the law and as such can give instructions to ensure effective implementation of the law.

(7) A minimum wage be determined not on the basis of per family but individually.

Asma Jehangir, Advocate

Reference Verbal Orders of Honourable Court dated 13.8.1988. Respectfully sheweth:--

There are about 55 brick-kilns running in the Illaqa of Police Station Bhai Pheru, Tehsil Chunian, District Kasur. On each and every kiln labourers of following category work at 24 hours.

(1) Patharas: Who prepare bricks from the earth in the initial stage. (2) Ghumara: Who collect Katcha bricks from the field and pour into kiln, (3) Dabal and Bhariwal These people place the bricks in kiln in order and make ready for blowing fire; (4) Nakasi walas. . These peoples extract pacca bricks from kiln and make ready for sale;'(5) Jamadar The Jamadars look after the labourers working under them;, (6) Chowkidars: These persons have a watch around the kiln so that none should steal away the bricks. (7) Munshi: These persons deal with the customers and maintain cash.

Patharas.

The labourers who prepare bricks are usually Christian or non-Muslim. About 30-60 persons at a time work on each kiln. For preparing one thousand Katcha bricks the wages are about 35/40 rupees. The persons who can prepare one thousand bricks daily can take Rs.10,000 from the owner of kiln as advance.

Ghumars.

The Ghumars who procure bricks on donkeys from Fields to the kiln, take Rs.22 per thousand bricks. The Ghumar who has 3 donkeys ready for work is called one Jog and can take Rs.6,000 as advance from the owner of Kiln through Jamadars.

Dabai and Safai Wala.

These people work on wages. They put the bricks in order into the kiln and made them ready for blowing fire. About 4 to 10 persons are usually arranged for this work. Besides pay .they also take money as advance.

Nakasi Wala.

These people extract pacca bricks from the kiln when it is ready for use and take Rs.10 as wages for per thousand. Patharas. Ghumars. These peoples, work under jamadar who also provides Patharas and Ghumars. The amount which is given in advance is regularly entered in a cash book. On every Thursday every labourer is paid according to his work. These accounts are regularly maintained in ledgers.

These workers .usually reside with family in the premises of kiln only for their own benefit and residential quarter, electricity etc. are supplied to them free of cost. Besides above the owners of kiln finance them at the time of marriage or death.

Patharas are usually non-Muslims or Christian. They are hard workers and are of simple type. Some of them are shrewd type and create unrest amongst the workers. About 2 years ago some people have formed a Union. These people excite the workers against Bhatha Walas. They take Rs.10. per head from each labourer as contribution. The labour working of kiln obtain lacs of rupees as advance from the owners of kiln. The workers of Union misguide them and they leave their place of working without paying the amount taken in advance. The Union workers used to rile a writ petition against kiln owners.

A practice is going on amongst workers. The workers take advance through Jamadars and then slip away with the concurrence of Union workers, when the kiln owner pursues them for the recovery of advanced amount they take amount from another Bhata Wala in order to clear their accounts. These Patharas have started this practice and they put the Bhatta Walas in difficulty.

When Patharas get advance a contract is made in this respect. When they slip away after getting the amount the owners of kiln give them chase and both of them become disrupted. On 15-5-1988 Muhammad Irshad Bailiff of Lahore High Court under the orders of Mr. Justice Fazal Karim, Lahore High Court, Lahore for the recovery of confinnees, came to Police Station Bhai Pheru and after getting force from the P.S. proceeded in the illaqa. A report No.18 of 15-5-1988 in this respect was entered in the Daily Diary at 4-45 p.m. But in this report neither the name of any confince nor the name of any kiln was mentioned. Afterwards it came to light that the bailiff had recovered 89 persons from the Kiln of Rao Abdul Qayyum. It

seems, My Lord, apparently it is impossible to illegally confine so many persons at a Brick Kiln.

My Lords on 25-6-1988 Rao Abdul Oayyum s/o Nazir Ahmed Khan, Rajput owner of Mahmood Brick Bhai Pheru lodged an F.I.R. No.318/88 under section 406/420, P.P.C. where in he mentioned that the following persons working at his kiln had entered into a contract with him to prepare one thousand Katcha bricks for Rs.32. Under this contract every worker obtained amount as advance given against each and started working. Besides amount of advance everybody used to have wages according to their work. After that these labourers left the work without informing the kiln owner. At that time Rs.4,00,000 were outstanding against them. On the report of Rao Abdul Qayyum case against the following persons was registered:

(1) Boota Masih son of Shera 25216.00
(2) Arif son of Boota
(3) . Ashraf s/o Boota. 3373.00
(4) Yaqub son of Jalal
(5) Aslam son of yaqub 32586.00
(6) Allah Ditta s/o Dosa
(7). Akram son of Dosa 19470.00
(8) Anwar s/o Mehga. 16488.00
(9) Jamal s/o Bakha. 7790.00
(10) sardar son.of Bero 1540.00.
(11) Haneef s/o Hakim. 8619.00
(12) Rehmat s/o Ismail. 28059.00
(13) Liaquat son of Rehmat. 20838.00
(14) . Hakim s/o Ismail. 18881.00
(15) Rehmat s/o Yaro. 13470.00
(16) BJames z,/o Rehmat. 31770.00
(17) Pitras s/o Rehmat. 3631.00
(18) Hadayat s/o Shaban 28027.00
(19) Inayat s/o Shaban 10402.00
(20) Paloos s/o Tajo 23486.00
(21) Sadiq s/o Tajo.

After the registration of case the investigation was conducted by Muhammad Younis ASI. During the investigation the relevant record of kiln was taken into possession. Afzal s/o Siraj Din, Akbar Ali son of Shabab Din, Zulfiqar Hussain son of Muhammad Hussain and Habib Ahmed son of Nizam Din, Zahoor son of Noor Din, Rana Sajawal s/o Sadar P.Ws. appeared before the Investigating Officer. There statements under section 161 Cr.P.C.WCre duly recorded. There was ample proof against these accused persons, hence on 28-6-1988 Rehmat (1) Pitras (2) James (3) Boota (4) Arif (5) Alah Ditta, (6) Inayat (7) Hadayat (8) Hakim Masih, (9) Sardar Masih (10) Javeid where as Sadiq accused was arrested on 23-6-1988. They were sent to judicial lock-up after thorough interrogation. An incomplete challan against them has been put in Court on 12-7-1988. Afterwards Rehmat s/o Ismail and Liaquat accused were also arrested in this case. All of them (14 accused) arc on bail.

My Lord, rest of the accused (1) Yaqub, Masih, (2) Akram Masih, (3) Aslam, (4) Anwar, (5) Hancef, (6) Pitras, (7) Ashraf, are still absconding. They will soon be hauled up.

Meanwhile a compromise is said to have been effected between the complainant and the accused party of their own accord without any pressure. The accused are now working at the kiln of Rana Mohammad Yasin Pehlwan. They are at liberty to work at the kiln and there is no compulsion for them. None has confined them and they work of their own accord.

Now the investigation of the case is being conducted by the Inspector Khan Muhammad S.H.O. Police Station Bhai Phcru. After discussing the matter with D.S.P. Legal the case will be finalised immediately.

Submitted Please.

Muhammad Ashraf
D.S.P./S.D.P.C Pattok

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