

**IN THE FEDERAL SHARIAT COURT**  
**(ORIGINAL JURISDICTION)**

**PRESENT.**

**HON: MR. JUSTICE CH. EJAZ YOUSAF, CHIEF JUSTICE**  
**HON: MR. JUSTICE DR. FIDA MUHAMMAD KHAN, JUDGE**  
**HON: MR. JUSTICE SAEED-UR-REHMAN FARRUKH, JUDGE**

**Shariat Petition No. 8/L of 1993.**

Syed Shabbir Hussain Kazimi --- Petitioners  
and others

Versus

Govt. of Pakistan --- Respondent

Counsel for petitioners --- Mr. Irshad Ahmad Qureshi  
Advocate

**Shariat Petition No. 6/L of 1993**

Haji Muhammad Amin etc. --- Petitioners

Versus

The Secretary, Ministry of Law, --- Respondent  
Govt. of Pakistan

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Counsel for petitioners --- Mr. Irshad Ahmad Qureshi  
Advocate

**Shariat Petition No.36/L of 1992**

Rana Saeed-uz-Zaman etc. --- Petitioners

Versus

Govt. of Pakistan --- Respondent

Counsel for petitioners --- Mr. Irshad Ahmad Qureshi  
Advocate

**Shariat Petition No. 37/L of 1992**

Ch. Niaz Ali and others --- Petitioners

Versus

Govt. of Pakistan --- Respondent

Counsel for petitioners --- Mr. Irshad Ahmad Qureshi  
Advocate.

**Shariat Petition No. 58/I of 1992**

Ghulam Khan Bangash --- Petitioner

Versus

Federation of Pakistan --- Respondent

Counsel for petitioner --- Mr. S.M. Ayub Bukhari,  
Advocate.

**Shariat Petition No. 10/L of 1993**

Haji Muhammad Aslam etc. --- Petitioner

Versus

Secretary, Ministry of Law,  
Government of Pakistan --- Respondent

Counsel for petitioners --- Mr. Irshad Ahmad Qureshi  
Advocate, Malik Rab Nawaz  
Noon, Advocate.

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**JUDGEMENT**

**SAEED-UR-REHMAN FARRUKH, J.-.** By this judgment

we propose to dispose of the following eight matters as common questions of law and facts arise therein:-

1. Shariat Petition No. 36-L of 1992  
( Rana Saeed-uz-Zaman etc. versus Govt. of Pakistan )
2. Shariat Petition No. 37-L of 1992  
( Niaz Ali and others versus Govt. of Pakistan )
3. Shariat Petition No.58-I of 1992  
( Ghulam Khan Bangash Vs. Federation of Pakistan )
4. Shariat Petition No. 6-L of 1993  
( Haji Muhammad Amin etc. Vs. Secretary, Ministry of Law ).
5. Shariat Petition No.7/L of 1993  
( Mian M. Akram etc. Vs. Secretary, Ministry of Law )
6. Shariat Petition No.8-L of 1993  
( Syed Shabbir Hussain and others Vs. Govt. of Pakistan )
7. Shariat Petition No. 9-L of 1993  
( Gulfraz Ahmad etc. Vs. Secretary, Ministry of Law, Govt. of Pakistan )
8. Shariat Petition No.10-L of 1993  
( Haji Muhammad Aslam etc. Vs. Secretary, Ministry of Law ).

2. Through the above Shariat Petitions, under Article 203-D of the

Constitution of the Islamic Republic of Pakistan, the petitioners who

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are brick kiln owners, have assailed various provisions of the Bonded Labour System ( Abolition) Act, 1992 (hereinafter called " the Act"), as being repugnant to injunctions of Holy Quran and Sunnah.

Following declaration has been sought from this court:-

" that the definitions of the 'bonded debt', 'bonded labour', 'bonded labourer' and 'bonded labour system' may kindly be declared as repugnant to the Injunctions of Islam."

3. The impugned definitions are reproduced as under:-

- a) "advance (peshgi)" means an advance (peshgi), whether in cash or in kind, or partly in cash or partly in kind, made by one person (hereinafter referred to as the creditor) to another person (hereinafter referred to as the debtor);
- b) "bonded debt" means an advance ( peshgi) obtained, or presumed to have been obtained, by a bonded labourer under, or in pursuance of, the bonded labour system".
- c) " bonded labour" means any labour or service rendered under the bonded labour system;
- d) " bonded labourer" means a labourer who incurs, or has, or is presumed to have, incurred, a bonded debt;
- e) " bonded labour system" means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered into an agreement with the creditor to the effect that,--
  - (i) in consideration of an advance ( peshgi) obtained by him or by any of the members of his family [ whether or not such advance ( peshgi) is evidenced by any, document] and in consideration of the interest, if any, due on such advance ( peshgi), or
  - (ii) in pursuance of any customary or social obligation, or
  - (iii) for any economic consideration received by him or by any of the members of his family;

he would—

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- (1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefits of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or
  - (2) forfeit the freedom of employment or adopting other means of livelihood for a specified period or for an unspecified period, or
  - (3) forfeit the right to move freely from place to place, or
  - (4) forfeit the right to appropriate or sell at market value any of his property or product or his labour or the labour of a member of his family or any person dependent on him,
- and includes the system of forced or partly forced, labour under which a surety for a debtor enters, or has or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor;

4. Besides, in these Shariat Petition, some of the provisions of "the Act" i.e. sections 5, 6, 7, 8 and 11 have also been brought under challenge as being contrary to the Islamic Injunctions. These sections read as under:-

**Section 5. Agreement custom, etc. to be void.--**

Any custom or tradition or practice or any contract, agreement or other instrument, whether entered into or executed before or after the commencement of this Act, by virtue of which any person, or any member of his family, is required to do any work or render any service as a bonded labourer, shall be void and inoperative.

**Section 6. Liability to repay bonded debt to stand extinguished.** --- (1) On the commencement of this Act, every obligation of a bonded labourer to

repay any bonded debt, or such part of any bonded debt as remains unsatisfied immediately before such commencement, shall stand extinguished.

(2) After the commencement of this Act, no suit or other proceeding shall lie in any Civil Court, tribunal or before any other authority for the recovery of any bonded debt or any part thereof.

(3) Every decree or order for the recovery of bonded debt, passed before the commencement of this Act and not fully satisfied before such commencement, shall be deemed, on such commencement, to have been fully satisfied.

(4) Where, before the commencement of this Act, possession of any property belonging to a bonded labourer or a member of his family was forcibly taken by any creditor for the recovery of any bonded debt, such property shall be restored, within ninety days of such commencement, to the possession of the person from whom it was seized.

(5) Every attachment made before the commencement of this Act for the recovery of any bonded debt shall, on such commencement, stand vacated; and, where, in pursuance of such attachment, any movable property of the bonded labourer was seized and removed from his custody and kept in the custody of any Court, tribunal or other authority pending sale thereof, such movable property shall be restored, within ninety days of such commencement, to the possession of the bonded labourer:

Provided that, where any attached property was sold before the commencement of this Act, in execution of a decree or order for the recovery of a bonded debt, such sale shall not be affected by any provision of this Act.

(6) Subject to the proviso to subsection (5), any sale, transfer or assignment of any property of a bonded labourer made in any manner whatsoever before the commencement of this Act for recovery of bonded debt shall not be deemed to have created or transferred any right, or interest in or encumbrance upon any such property and such property shall be restored, within ninety days of such commencement, to the possession of the bonded labourer.

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(7) If restoration of the possession of any property referred to in sub-section (4) or sub-section (5) or sub-section (6) is not made within ninety days from the commencement of this Act, the aggrieved person may, within such time as may be prescribed, apply to the prescribed authority for the restoration of the possession of such property and the prescribed authority may, after giving the creditor a reasonable opportunity of being heard, direct the creditor to restore to the applicant the possession of the said property within such time as may be specified in the order.

(8) An order made by any prescribed authority under sub-section (7) shall be deemed to be an order made by a Civil Court and may be executed by the Court of the lowest pecuniary jurisdiction within the local limits of whose jurisdiction of the creditor voluntarily resides or carries on business or personally works for gain.

(9) Where any suit or proceeding for the enforcement of any obligation under the bonded labour system, including a suit or proceeding for the recovery of any advance (peshgi) made to a bonded labourer, is pending at the commencement of this Act, such suit or other proceeding shall, on such commencement, stand dismissed.

(10) On the commencement of this Act, every bonded labourer who has been detained in civil prison, whether before or after judgment, shall be released from detention forthwith.

**Section 7. Property of bonded labourer to be freed from mortgage, etc. ---**

(1) All property vested in a bonded labourer which, was immediately before the commencement of this Act, under any mortgage, charge, lien or other encumbrance in connection with any bonded debt shall, in so far as it is relatable to the bonded debt, stand freed and discharged from such mortgage, charge, lien or other encumbrance; and where any such property was, immediately before the commencement of this Act, in the possession of the mortgagee or the holder of the charge, lien or encumbrance, such property shall, except where it was subject to any other charge, on such

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commencement, be restored to the possession of the bonded labourer.

(2) If any delay is made in restoring any property referred to in sub-section (1) to the possession of the bonded labourer, such labourer, shall be entitled, on and from the date of such commencement, to recover from the mortgagee or holder of the lien, charge or encumbrance, such mesne profits as may be determined by the Civil Court of the lowest pecuniary jurisdiction within the local limits of whose jurisdiction such property is situated.

**Section 8. Creditor not to accept payment against extinguished debt.** --- (1) No creditor shall accept any payment against any bonded debt which has been extinguished or deemed to have been extinguished or fully satisfied by virtue of the provisions of this Act.

(2) Whoever contravenes the provision of sub-section (1), shall be punishable with imprisonment for a term which may extend to three years, or with fine which shall not be less than fifteen thousand rupees, or with both.

(3) The Court convicting any person under sub-section (2) may, in addition to the penalties which may be imposed under that sub-section, direct such person to deposit in Court, the amount accepted in contravention of the provisions of sub-section (1), within such period as may be specified in the order, for being refunded to the bonded labourer.

**Section 11. Punishment for enforcement of bonded labour.** --- Whoever, after the commencement of this Act compels any person to render any bonded labour shall be punishable with imprisonment for a term which shall not be less than two years nor more than five years, or with fine which shall not be less than fifty thousand rupees, or with both.

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5. The facts, in brief, necessary to understand the genesis of these cases are as follows: Two complaints, one by the labourers and other by the owners of some brick kilns, moved before Supreme Court of Pakistan, were taken up for adjudication by it in exercise of its powers under Article 184 of the Constitution of Islamic Republic of Pakistan. The complaint made by the labourers was that the owners were pressing them to work at their brick kilns against Peshgis ( advances) and on their refusal they were being mal-treated. On the other hand the grievance of the brick kiln owners was that the labourers, after having received substantial amounts in advance with the undertaking to work at their respective brick kilns, had ceased to do so causing immense loss to them.

All concerned were heard at considerable length by the Supreme Court. Ultimately, a broad agreement was reached, leading to the following interim order dated 17-9-1988:-

"1. (i) Peshgi system to be discontinued forthwith

except that up-to 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 house hold, direct in cash. The receipt shall be issued in duplicate-one to be retained by each.
- (iii) The institution of " Jamadarni" is finished and he is excluded for all times. No payment for others shall be made to him nor shall it be acknowledged in any forum, as due in any form, if claimed to have been made through him.
- (iv) The institution of " Jamadarni" is likewise finished altogether.
- (v) Every case registered anywhere in Punjab by the police, which deals with 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 FIR within 24 hours. The Advocate-General shall submit a photocopy of the FIR 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 utilization 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

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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 or 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 pressurize any labourer for employing the women folk 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 women folk 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 1000 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 marriages 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

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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.

6. The matter was disposed of on 15-3-1989 with the

following salient directions:-

- (i) Past unreturned Peshgis (advances) given to the labourers would be treated outstanding against them.
- (ii) Peshgi system in future would be discontinued.
- (iii) In future payment of wages would be made to the labourers on daily, weekly, fortnightly and monthly basis as agreed upon between the parties.
- (iv) Jamadari system is to cease forthwith.
- (v) The owners shall not be directly or indirectly ask or pressurize any labourer for employing women folk or children.

This judgment is reported as "In The Matter of Enforcement of Fundamental rights Re: Bonded Labour In Brick Kiln Industry" (PLJ 1989 S.C. 562).

In 1989 another case pertaining to brick kiln industry qua dispute between labourers and the brick kiln owners came up before Supreme Court of Pakistan in a case titled "Darshan Masih alias

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Rehmatay and others versus The State". Their Lordship took great pains in resolving it. The hearing of the case went on for considerable period. Certain suggestions / recommendations were made by different Committees constituted by the Court.

This case was decided on 15-3-1989 with the directions, inter-alia, that the important elements in the Fundamental Rights regarding prohibition of forced labour, dignity of man, freedom of movement, freedom of trade, business or profession etc. should be put in consolidated form. It was observed that " 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

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basic human rights in Islam.----- 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".----- ( Pages 545, 546 of the report--- [ PLD 1990 S.C. 513].

The matter was ultimately disposed of in terms of the agreed order dated 15-3-1989 (reproduced hereinabove in para 6 ibid). Thus the peshgi system and Jamadari system were done away with for all times to come by Hon'ble Supreme Court.

7. Pursuant to the above two land mark judgments of the apex Court of the country, the legislature passed the Bonded Labour System (Abolition) Act, 1992, some of the provisions whereof ( noted in para 4 ibid) have now been brought under challenge by the brick kiln owners through these Shariat Petitions.

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8. It is manifest that the above two judgments of the Supreme Court of Pakistan, even if not to be equated with a "judgment in rem," are authoritative on account of their Constitutional status and as such conclusive of the matters / issues adjudicated upon.

We closely questioned learned counsel for the petitioners, in all these petitions, to demonstrate, if possible, that the impugned provisions of "the Act" were violative of the directions / guidelines given by Supreme Court in the above judgments. He failed to do so. We are fully satisfied that "the Act" was passed by the legislature strictly in line with directives of the Supreme Court. By purporting to challenge the vires of the impugned provisions of "the Act" what the petitioners really seek is the effacement of the binding effect of the two judgments, which is not permissible in law.

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The judgments of Supreme Court declaring the law on the subject cannot be called in question by a person or by a batch of persons though he / they might not be party to the judgement..

We may refer with some advantage to two decisions from Indian jurisdiction i.e. " M/s Shenoy and Co., Bangalore and others versus Commercial Tax Officer, Circle II, Bangalore and others"

[ AIR 1985 Supreme Court 621] and " M/s Star Diamond Co.

India versus Union of India and others" [ AIR 1987 Supreme

Court 179], wherein it was held that Supreme Court decision was

binding on all persons though they were not party before

Supreme Court.

Even an obiter in a judgment by Supreme Court carries binding effect. See " National Bank of Pakistan versus Banking

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Tribunal and others” [ PLD 1994 Karachi 358 at 362] and “  
M.Z.Khan versus Aziz-ud-Din Ahmad Khan” [ 2004 Y.L.R. 84].

9. In our view “ the Act”, as a whole, is a beneficial statutory dispensation of vital importance as it is intended to curb and put to irreversible end the reprehensible institution of bonded labour not only in the brick kiln industry but also in other sectors in the country like haris tenants-at-will, labourers in mining industry, glass bangle industry, tanneries etc.

4 10. Mr. Irshad Ahmad Qureshi, learned counsel for the petitioners tried to submit that the above judgments were delivered by the Supreme Court of Pakistan under Article 184 of the Constitution of Islamic Republic of Pakistan to ensure that the fundamental rights of the parties to the dispute i.e. brick kilns owners on the one hand and the

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labourers working in the said brick kilns on the other were protected and their denial / violation was checked. The main thrust of his argument was that the Supreme Court did not consider the matter in the light of Islamic injunctions on the subject and as such the petitioners were within their rights to assail the relevant provisions of "the Act" i.e. Bonded Labour system ( Abolition) Act, 1992 as being violative of Holy Quran and Sunnah.

11. While arguing on merits of these petitions, Mr. Irshad Ahmed Qureshi, learned counsel for the petitioners tried to demonstrate that the Peshgi system, prevalent in the brick kilns, was not against the Injunctions of Islam. According to him, the labourers used to perform their duties pursuant to lawful agreements between the parties, which stood sanctified by Injunctions of Islam. In this view of the matter the impugned provisions of " the Act" regarding abolition of Peshgi system and branding the labourers working in the brick -

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kilns as "bonded labour" were liable to be declared as contrary to mandate of Holy Quran and Sunnah.

In support of his submissions learned counsel relied upon the following Verse from the Holy Quran:-

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

O. ye who believe, fulfill your undertakings.  
(5:1)

Besides, learned counsel also relied upon the following Hadith of the Holy Prophet (peace be upon him).

الْأَيْمَانُ لَا إِيمَانَ لِمَنْ لَا أَمَانَةَ لَهُ وَلَا لِلَّذِينَ  
لَمْ يَلْعَنُوا لَهُ (كثرة العمال جلد ١٥ ص ٩٤)

He, who is devoid of honesty does not possess faith and there is no Deen for one who does not fulfill his contract (promise).

It was argued that the Peshgi amounts were being given to the workers in the brick kiln under valid and lawful agreements and ,

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therefore, there was no justification available in law for Legislature to abolish the Peshgi system vide section 4 of "the Act" "Jamada system" was also necessary to be kept alive so as to enable the brick kiln owners to keep watch over the performance of the workers with regard to the job of brick making entrusted to them.

12. On the other hand both learned Standing counsel for the Federal Government and Miss Asma Jahangir Advocate, learned amicus-curiae vehemently opposed these petitions both on the ground of maintainability as well as on merits.

13. A perusal of the judgments of the Supreme Court supra would show that these indeed protected/up-held the following fundamental rights of the labourers:-

- (i) Security of life or liberty of a person ---Article 9.
- (ii) Safeguard as to arrest and detention--- Article 10.
- (iii) Prohibition of all forms of forced labour---Article 11.
- (iv) Upholding of inviolability of dignity of man---Article 14.
- (v) Guarantee of freedom of movement---Article 15.
- (vi) Freedom of trade, business or profession.---Article 18.

14. On 10<sup>th</sup> June 1930 the General Conference of the International Labour Organization convened a conference at Geneva and adopted

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certain proposals to take the form of International Convention about Forced or Compulsory Labour. Pakistan ratified this convention known as "29<sup>th</sup> Forced Labour convention, 1930" on 23-12-1957.

Two Articles of this convention are relevant in the context of the controversy involved in these cases. These are reproduced as under:-

**Article 4.**

1. The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.
2. Where such forced or compulsory labour for the benefit of private individuals, companies or associations exists at the date on which a Member's ratification of this Convention is registered by the Director-General of the International Labour Office, the Member shall completely suppress such forced or compulsory labour from the date on which this Convention comes into force for that Member.

**Article 5.**

No concession granted to private individuals, companies or associations shall involve any form of forced or compulsory labour for the production or the collection of products which such private individuals, companies or associations utilize or in which they trade."

15. Some of the human rights and freedoms were compendiously recounted in the Universal Declaration of Human Rights, which was



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proclaimed by United Nations on 10<sup>th</sup> December 1948. It sought to

uphold the following rights of human beings:-

1. **Article 3** Every one has the right to life, liberty and security of person.
2. **Article 4** No one shall be held for slavery or for servitude.
3. **Article 5** No one shall be subjected to torture or cruel, inhuman or degrading treatment.

The emphasis of the above Charter of the United Nations was largely due to the abuse of power of which totalitarian regimes before the second world war were guilty. It was intended to enable the individual to claim that he was a free person and entitled to secure his free development as such. The right to work, the right to a fair wage or leisure to which a labourer could lay claim were declared to be inviolable.

16. As against the above, significantly, Islam had fifteen centuries ago etched out in detail the fundamental rights of the mankind by unequivocal commandments. In the context of the controversy

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involved in these shariat petitions, we shall refer to the rights of the labourers / workers only, in the sequel.

17. To begin with, there is Hadith of Holy Prophet (peace be upon him) for discharging the financial obligations.

إِعْطِ كُلَّ ذِي حَقِّ حَقَّهُ  
(بخاری: الصحيح باب من اقسم على ائمه ليفطر. ج ۲ ص ۲۴۳)

( pay every rightful claimant his dues : ).

The Holy Quran, in relation to the labour of Prophet Moses at Prophet Shoaib's house, has succinctly discussed an event. The Prophet

Shoaib said:-

وَمَا أُرِيدُ أَنْ أَمْسُقَ عَلَيْكَ سِتْرِي  
إِنْ شَاءَ اللَّهُ مِنَ الصَّالِحِينَ

( And I do not wish to put you to unnecessarily hard labour. By the grace of God, you will find me straightforward in these matters). (28:27)

The Holy Prophet ( peace be upon him) whenever he spoke of the master-worker relationship, used to say:

إِنْ إِخْوَانَكُمْ حَوَّلَكُمْ جَعَلَهُمُ اللَّهُ لِحْتِ أَيْدِيكُمْ

(بخاری الصحيح باب العبيد اخوانكم جلد ۳ ص ۱۳۲  
ط استانبول، و ابوداود باب في حق المملوك)

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“Those who work for you are your brothers:  
God has ordained them to be your  
subordinates.”

18. In Islam a workman is not entitled to anything until his work be

finished. The Jurists have explained this issue by giving an example of

brick maker. Al Murghinani has said:-

ومن استأجر انساناً ليضرب له لبناً استحق الاجرة  
اذا اقامها وقال لا يستحقها حتى يترجمها لان  
الشرية من تمام عمله اذ لا يؤمن المفساد  
قبله --- ولان الاجير هو الذي يتولاه عرفاً  
وهو معتبر فيما لم ينص عليه - ولابي حنيفة ان

العمل قد تم بالاقامة والشرية عمل زائد (هداية باب الاجر

حتى يستحق جلد روم ص ٢٩٣ طبع ملتان )

“If a person hires another to make  
him a certain quantity of bricks.  
According to Imam Abu Haneefa he is  
entitled to his hire when he sets up  
the bricks. The two disciples held  
that he is not entitled to his hire until  
he collects the brick together and  
build them up because it is this  
which completes his work, since  
bricks are not secured from injury  
until they be so collected and built  
up ----”

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19. Forced labour is repugnant to Islam in the extreme. The Holy

Prophet ( peace be upon him) has mentioned this in one of his

Ahadiths:-

قَالَ اللهُ تَعَالَى: ثَلَاثَةٌ أَنَا خَصْمُهُمْ يَوْمَ الْقِيَامَةِ  
رَجُلٌ أَعْطَى بِي ثُمَّ خَدَّرَهُ وَيَجُلُّ بِأَعْمَرًا فَأَكَلَ  
تَمَنَّهُ وَرَجُلٌ اسْتَأْجَرَ أَهْرَبًا فِاسْتَوْنِي مِنْهُ وَلَمْ يُعْطِهِ  
”بخارى: الصحيح، كتاب الاجارة، باب الثمن من منع اجر الاجير“

“Allah said, I will be an opponent to three types of people on the Day of Resurrection:-

1. One who makes a covenant in My Name, but proves treacherous;
2. One who sells a free person and eats his price; and
3. One who employs a labourer and takes full work from him but does not pay him for his labour.”

(The underlining is ours).

This important Hadith was expounded by Allama Ibn-al-Hajar

Asqalani as follows:

هو من باع حراً واكل ثمنه لانه  
استوفى من ثمنه بغير عوض وكانه اكلها و  
لانه استخدمه بغير اجرة وكانه استعبده  
( احمد بن علي بن حجر: فتح الباري (دارالغريبوت)  
جلد ٤ ص ٢١٨ )

“ By taking work from someone without payment to him his legitimate wages is equivalent to pressing a free man into slavery and to produce goods from his labours, since, when he has reaped the

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benefits without offering compensation, he has purchased the labourer and in effect has regarded him as a slave whom he has purchased

20. How much regard the Holy Prophet ( peace be upon him) had

for the rights of the workers is conveyed by probably his last Hadith

shortly before he left this world and met his Creator. His words,

according to Hazrat Ali, were;

كَانَ آخِرَ كَلِمَةٍ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ  
 الصَّلَاةُ وَالصَّلَاةُ وَالصَّلَاةُ فِي مَا مَلَكَتْ  
 أَيْمَانُكُمْ رَابِعًا وَرَابِعًا : السُّنَنُ بَابُ حَقِّ الْمَمْلُوكِ  
 هَذَا دَعْوَى ص ٢٣٦

( Always keep prayers in your mind and of the rights of the people who are your dependents).

There is another Hadith worth quoting:-

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : إِهْوَأَ نَفْسُ  
 حَبْلَتِهِ وَالسُّنَّةُ حَتَّى آيِدِيكُمْ مِمَّنْ كَانَ أَهْوَأَ حَتَّى  
 يَدِهِ فَلْيُطْعِمَهُ مِنْ طَعَامِهِ وَلْيَلْبِسَهُ مِنْ لِبَاسِهِ  
 وَلَا يَكْفِنَهُ مَا يَنْعَلُهُ فَإِنْ كَفَفَهُ مَا يَنْعَلُهُ  
 فَلْيُعِينَهُ

"Reported by Abi-Zar from the Holy Prophet to have been said that; These (servants) are actually your brothers. Allah Almighty has only extended your authority over them and subjected them to work under your command (if the situation is that), you should provide the same food which you yourself eat and provide the same clothes which you yourself wear and never over-burden them by compelling to do a work beyond their capacity if you entrust such type of work to them, then personally assist them in doing that job. (Sunan Al-Jami'a Tirmizi chapter 29 Hadees No. 1945 Publication, Egypt.

21. Even if the worker does not claim his rights, according to Islam the owner should be alive to his rights and cognizant of his full responsibility; he should fulfill his obligations, failing which he shall be held answerable before God on the day of Judgment:

22. Naturally, the proprietor or the owner would like to extract as much work as possible from the servant or worker. But Islam aims at expelling this idea out of his mind. Says the Holy Prophet (peace be upon him):-

لَا يَدْخُلُ الْجَنَّةَ مَنْ سَيَّئَ الْمَلِكَةَ

البرقي محمد بن عيسى الترمذى: الجامع السنن "باب ما جاء في الاحسان الى الخادم، تحفة الراهوى (دارالعلم

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“Those who do wrong with their servants cannot enter paradise.”

إِذَا أَدَّى الْعَبْدُ حَقَّ اللَّهِ وَحَقَّ مَوْلَانِهِ  
سَمَّانَ لَهُ أَجْرَانِ

احمد بن حسين ابن علي البيهقي "السنن الكبرى"  
طبيروت جلد ٨ ص ١٢ باب فضل المملوك اذا صنع

“ When a person fulfilled rights of Allah and rights of his servants he got two rewards.

23. Islam has called exploitation of worker the gravest possible violation of human rights and decency; it has also laid down guidelines for prevention thereof. It cannot tolerate his exploitation, in any form, for a single moment. The Holy Prophet ( peace be upon him) said:

مَطْلُ الْغَنِيِّ ظُلْمٌ  
بخارى: "الصحيح" كتاب الحوالة شرح فتح الباري  
دار الفکر بيروت جلد ٤ ص ٦٤

“The rich commits crime by defraying payment”

24. Thus Islam has formulated a social system based on the fundamental human rights and the relationship between the owner and

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the worker is comprehensively covered by it. This system ensures neither the emergence of a capitalist class nor of a technocrat class bureaucracy but of an egalitarian system in which the rule of law prevails.

25. It is necessary, at this stage to deal with the contention of the learned counsel for the petitioner that the workers employed in brick-kiln performed their duties under contract with the owners. This was with reference to the practice of payment of advance amount to them by way of peshgi. This contention is wholly without force.

26. The Holy Prophet (peace be upon him) has said:

المسلمون عند شروطهم وزاد العالم  
والبيهقي "مناوفاً الحق"  
فتح الباري شرح صحيح بخارى جلد ١ ص ٥٢

"A man shall honour his contracts together with all the binding conditions provided that the conditions are rightful and according to the code of Islam.

(The underlining is ours).

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27. Islam has taken great care to ensure that the worker is not duped/ lured into performance of contract which is fraudulent / unconscionable / vague. such a course of action leads to exploitation of the workers as the employer by handing over certain amount to the worker obtains assurance from him that he would continue to work till such time that the services rendered by him do not offset / liquidate the liability of said amount.

It is common knowledge that almost all the workers in the brick-kiln are illiterate; no deed is drawn specifying the terms and conditions of the contract with the result that the worker engaged at the brick kiln is kept groping in dark, all the time, as to when he would be treated to have discharged the liability qua the advance amount. After extracting sufficient work from him, if and when the worker approaches the employer for settlement of account, he is usually confronted with the reply that he had yet to complete the job entrusted to him. In the meantime, the advance amount having been

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utilized by the worker, the employer conveniently hands over further amount to him so as to keep him engaged at his brick-kiln. This process goes on ad-infinitem. There cannot be worse form of exploitative bondage of labour. The advance (peshgi) is a tool of intimidation to extract surplus work without payment of wages therefor.

28. Islam is the greatest emancipator of mankind and zealously upholds the dignity of worker in particular. Perusal of the Ayats of Holy Qur'an and the Ahadiths of Prophet (peace be upon him), quoted above, would prove that exploitation of down trodden and toiling labourer is strictly forbidden so that he is saved from eking out his livelihood in abject servitude. We are absolutely clear in our mind that the Peshgi system being vague and unconscionable, besides being exploitative in nature, is violative of the Injunctions of Islam.

29. It would not be out of place to humbly cite two important Ahadiths of the Holy Prophet (peace be upon him), on the subject.

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إِعْطِ الْإِجْرَ أَوْ قَبْلَ أَنْ يَجفَّ عَرَفَهُ

“ Pay the worker his wages before his sweat dries.”(Baihaqi, Vol.6, Page-121), Mishkat, Bab-al-Ijara, Page-45.

According to Hazrat Abu Said <sup>Khudri</sup>, the Holy Prophet ( Peace

Be Upon Him) had interdicted the employment of a labourer without prior fixation of his wages ( Baihaqi Al-Sunan al Kubra, Vol. 6, page 120).

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ  
نَهَى عَنْ إِسْتِجَارِ الْإِجْرَى حَتَّى يَبَيَّنَ  
لَهُ أَجْرَهُ

“The Holy Prophet ( peace be upon him) prohibited hiring of a person until his wages were fixed”

Two beneficent conclusions, of far reaching effect, are deducible from these Ahadiths. It is postulated that the nature and extent of the job entrusted to the workers should be well defined at the time of the contract. The worker, on the completion of the job, is to be paid his wages without any delay whatsoever. Thus only piece-rate

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work can be entrusted to the worker in the brick-kiln industry i.e. specific number of bricks to be prepared in lieu of mutually agreed amount as his wages.

30. For what has been said above we are clearly of the view that the impugned definitions in " the Act" are not violative of Islamic Injunctions on the subject. On the contrary, these are intended to achieve the lofty ideals put forth by Holy Quran and Sunnah of upholding the dignity of man in general and preservation / protection of the Fundamental rights of working class in the society in particular.

Likewise the impugned sections 5, 6, 7, 8 and 11 of " the Act" cannot be held to be repugnant to the Injunctions of Islam, in the light of what has been stated above as these provisions have been incorporated therein with the object of abolition of bonded labour in all its forms and manifestations.

31. Before parting with the judgment, we are constrained to observe with concern that the object for which "the Act" was passed could not

(ab)

be achieved so far. Almost every day reports about unlawful detention of labourers, working in different brick kilns alongwith their family members, for extracting forced labour from them, appear in the National press.

In Daily "Nawa-e-Waqt" Lahore, dated 2-9-2005 there was a report about order passed by Lahore High Court whereunder twenty labourers were set at liberty after their recovery from the unlawful custody of the brick kiln owner for extracting forced labour. In the same National Daily dated 10<sup>th</sup> September 2005 there was another report about twenty six brick kiln workers, who were recovered from a brick kiln near Gujranwala Bypass, through bailiff of the Court and set at liberty by the Lahore High Court. Similar news about release of 17 bonded brick kiln labourers under the order of Sessions Judge, Peshawar appeared in daily "Dawn" dated 8<sup>th</sup> October, 2005.

32. Perusal of "the Act" would show that under section 9 the Provincial Government had been conferred powers to impose such duties on a District Magistrate (now District Nazim), as may be

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necessary, to ensure that the provisions of "the Act" are properly enforced.

Likewise, under section 10 the District Magistrate/ District Nazim and the officer designated by him have been held responsible for promotion of the welfare of the freed bonded labourer by securing and protecting his economic interests.

Section 15 provides for constitution of Vigilance Committees at District level comprising of elected representatives of the area, representatives of the District Administration, Bar Associations, Press, recognized Social Services and Labour Departments of the Federal and Provincial Governments.

It is unfortunate that so far no specified authority, (vide section 9) in any district in Pakistan has taken care to exercise its powers so as to alleviate the misery and torture being inflicted upon the brick kiln labourers by many owners, in their respective jurisdictions.

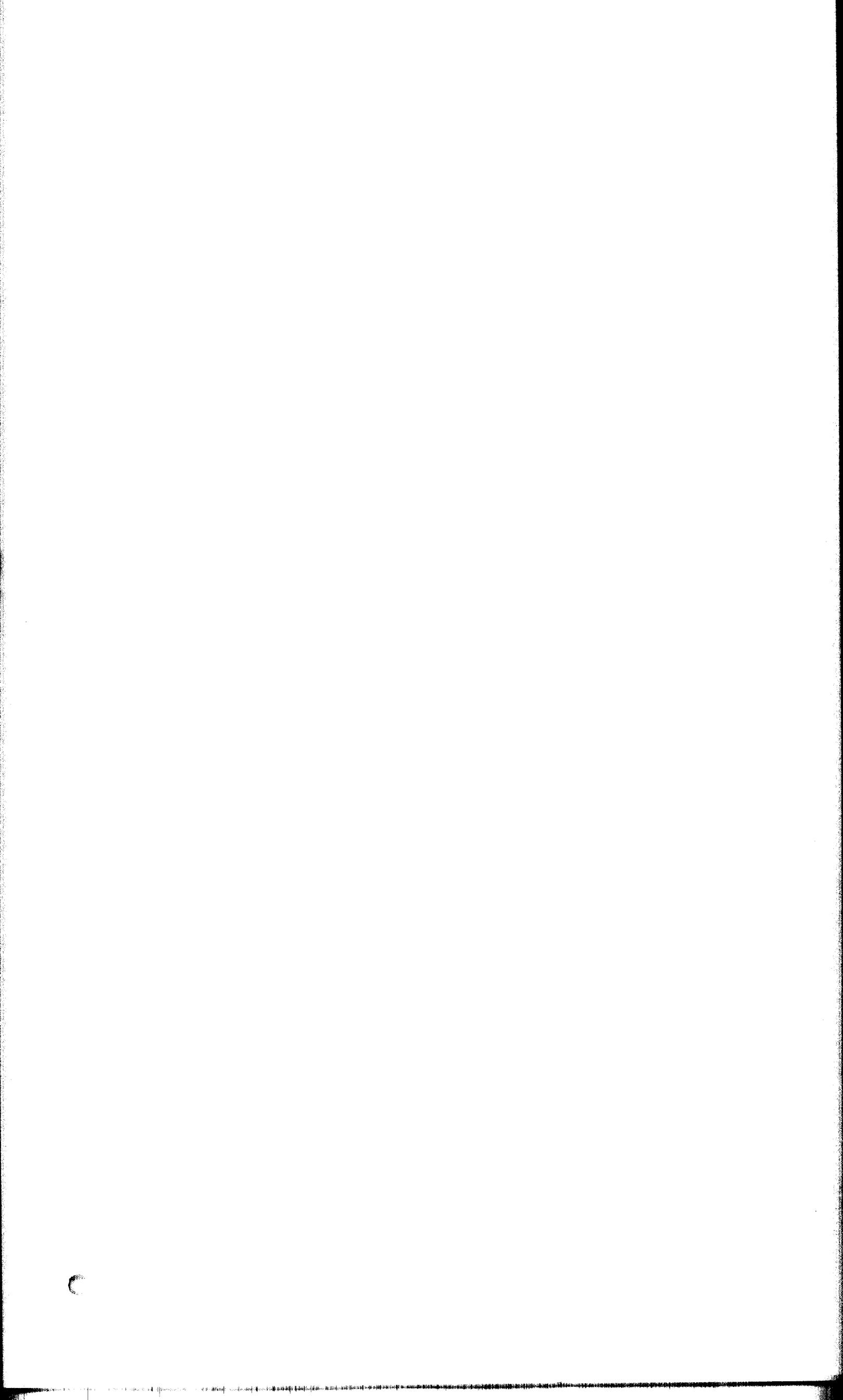
Likewise, no vigilance committees have been formed anywhere in the

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country. This state of affairs is alarming, to say the least. It has immensely distressed us.

It is for the Government functionaries to ensure the due and purposeful enforcement of "the Act", in its letter and spirit, so that the menace of forced labour, rampant in brick kilns, and other similar establishments, all over the country, is checked and comprehensively exterminated.

33. It will not be out of place to mention, at this stage, that a brick kiln squarely falls within the purview of "factory" vide section 2(J) of the Factories Act, 1934. Industrial Relations Ordinance 1969 and West Pakistan (Standing Orders) Ordinance, 1968 are also attracted to such establishment. It is high time that all the brick kilns are duly registered as factories to enable the Labour Inspector to pay regular visits to them and take suitable action/ measures, in accordance with the Labour Laws, to achieve the objective of banishment of practice of forced labour from this industry.



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34. As late as in 2004 Bonded Labours Research Forum, in collaboration with the Ministry of Labour, Manpower and Overseas Pakistanis, Government of Pakistan and I. L.O carried out assessment / study of bonded labour qua different sectors of life in Pakistan, inter-alia, the brick kilns. Dr. Ali Hameed of Pakistan Institute of Labour and Research Forum did a commendable job in preparing a paper after thorough study of the problem, suggesting ways and means of curbing the pernicious practice of bonded labour in brick kilns and other similar segments of society. No action, so far, seems to have been taken on this report either. The statutory functionaries must realize their responsibility of enforcement of the mechanism as provided by "the Act" i.e. Bonded Labour System ( Abolition) Act, 1992 and see to it that the desired results are achieved.

35. We direct that a copy of this Judgment be forwarded to (i). Ministry of Law, Justice and Parliamentary Affairs; (ii). Ministry of

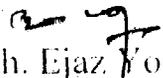
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Labour, Manpower and Overseas Pakistanis, Government of Pakistan,  
as well as to all the Provincial Governments in the Country.

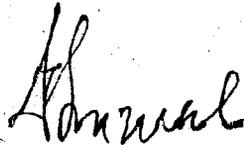
36. With the above observations/ directions, these petitions are  
dismissed as being not maintainable as well as on merit.



( Saeed-ur-Rehman Farrukh )  
Judge



(Ch. Ejaz Yousaf )  
Chief Justice



(Dr. Fida Muhammad Khan )  
Judge

Announced today,  
Islamabad, the 10th October, 2005.  
Zia

APPROVED FOR REPORTING.



(Saeed-ur-Rehman Farrukh)  
Judge