

LEGAL ABOLITION OF BONDED LABOUR

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ABSTRACT

The existence of bonded labour is an affront to basic human dignity. There has been some change in the nature and incidence of bonded labour in India as a result of various factors, including the impact of social change and social movements, economic modernization and State intervention. While these processes have impacted positively on the unfree status of labour in traditional agriculture and in some other sectors, the incidence of bonded labour still remains high in some segments of unorganised industry, the informal sector and in the relatively modern segments of agriculture in some areas. The Bonded Labour System (Abolition) Act created a legislative framework for the elimination of bonded labour in 1976. Both the Supreme Court and the NHRC have shown its implementation by the States.

Key words: Bonded labour, human dignity, implementation, rehabilitation.

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Introduction:

India's Labour Policy is mainly centered towards various labour laws. These laws have evolved over a period of time in response to two main needs. In the first place, they reflected certain needs of individuals; society and the nation based on the Fundamental Rights guaranteed by the Constitution. For example, Article 19 guarantees freedom of speech and expression, freedom to form Association or Unions and freedom to practice any profession or to carry on any occupation, trade or business, subject to reasonable restrictions that may be imposed by law on the exercise of these freedoms. Article 23 prohibits traffic in human beings and forced labour.

Relationship:

Bonded labour is characterized by a creditor-debtor relationship between the employer and the employee which can then spill over to other members of the family, be of an indefinite duration, and involve adverse contractual stipulations not justified by law or even by the prevailing state of the market. Bonded labour relationships are also usually reinforced by custom or force. Thus bonded labour relationships are not purely economic contracts, even though employees may enter into them voluntarily because of economic necessity. Once employees enter into these relationships, they are characterized by multiple asymmetries and high exit costs, which were not a part of the contract, as understood by the employee, at the outset.

Bonded labour refers to a long-term relationship between employee and employer which is cemented through a loan, by custom or by force, which denies the employee various freedoms including to choose his or her employer, to enter into a fresh contract with the same employer or to negotiate the terms and condition of her/his contract. It also shows in the Indian Constitution.

Part III of Indian Constitution:

In spite of the clear mandates of the Constitution there is one feature of our national life which is ugly and shameful and which cries for urgent attention. This is the existence of bonded or force labour in large part of the country. The practice of bonded or forced labour is fairly old and is based on exploitation by a few socially and economically powerful persons trading on the misery and suffering of large number of men and women and holding them in bondage. It is not only an affront to basic human dignity and also constitutes gross and revolting violation of

Constitution. With the advent of freedom such a practice could not be allowed to continue. It is therefore abolished by the Constitution prohibition under Article 23 of Constitution.

Article 23(1) in Part – III of the Indian Constitution i.e. Fundamental Rights, states that “Traffic in human beings and *begar* and other forms of forced labour are prohibited and any contravention of the provision shall be an offence, punishable by law.”

The Bonded Labour System (Abolition) Act (1976):

The law dealing with bonded and forced labour was legislated by the Indian Parliament in 1976. The Bonded Labour System Abolition Act (1976) of India is quite extraordinary in that it recognizes

- (a) the overlap between forced labour and bonded labour in customary relationships, and also
- (b) the manifestation of these relationships in contract labour and inter-state migration, and
- (c) considers the nature of restraints suffered by the labourer as a result of the bonded/forced labour relationship, and makes all of these illegal.

The Bonded Labour System (Abolition) Act created a legislative framework for the elimination of bonded labour in 1976.

Implementation:

Both the Supreme Court and the NHRC have shown its implementation by the States has generally remained weak. The Supreme Court of India has, in a series of judgments, given directions to improve the situation and since 1997, under its direction; the National Human Rights Commission has been directly involved in monitoring the situation and making reports to the Court. In its order of November 11, 1997, passed in the writ petition No. 3992 of 1985 – PUCL V. State of Tamil Nadu and others, the Supreme Court has entrusted to the NHRC the responsibility of monitoring the directions of the Court issued from time to time and the implementation of the provisions of the Bonded Labour System (Abolition) Act.

Right against exploitation:

Right against exploitation is also included in Universal Declaration of Human Rights as human right. Again this human right is specifically highlighted by enforceable by international

treaty i.e. International Covenant on Civil and Political Rights, enshrining it in Article 8. International Labour Organisation also adopted Convention no. 105 on abolition on forced labour. This labour right is regarded as basic human right and is adopted by India. In June 1998 the International Labour Conference adopted a Declaration on Fundamental Principles and Rights at Work and its Follow-up that obligates member States to respect, promote and realize freedom of association and the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation.

The right to free choice of employment:

The League of Nations adopted the Slavery Convention in 1926, which was followed by the first ILO Forced Labour Convention, 1930 (No. 29), ratified by India in 1951. Article 2(1) of the Convention defines forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. Following this, the United Nations’ Universal Declaration of Human Rights (UDHR) of 1948 reaffirmed the principle that “no one shall be held in slavery or servitude” (Article 4) and the right to “free choice of employment” (Article 23(1)). Though Convention 29 on Forced Labour did not specifically refer to debt bondage, over time the ILO’s Committee of Experts on the Application of Conventions and Recommendations has stated repeatedly that ‘debt bondage’ is one form of ‘forced labour’ and is covered by the Convention’s definition. The ILO’s Worst Forms of Child Labour Convention, 1999 (No.182) specifically includes forced labour, debt bondage and serfdom of children in its purview.

The right to live with human dignity:

The Indian Supreme Court rightly expanded the scope and ambit of the phrase ‘begar’ and other similar forms of forced labour in *Asiad Workers*. Bhagwati J, speaking for the Supreme Court rightly pointed out that Article 23 protects the individual not only against the State but also against the private citizen. It strikes at the forced labour in whatever form it may

manifest itself because it is a violation of human dignity and contrary to basic human values. The Court rightly pointed out where a person provides labour or service to another for remuneration which is less than the minimum wage, such labour or service amounts to the forced labour and clearly falls within the provisions of Article 21 read with Article 23. The person may be compelled to do the forced labour due to economic compulsions but that too is prohibited under the Constitution if the right to live with human dignity has to have any meaning.

The violators of various labour welfare laws and the Constitutional guarantees should be punished severely. This aspect was also taken care of by the Supreme Court in *Asiad workers*, when it stressed that errant persons should be given adequate punishment.

In *Salal Hydro Project V. State of Jammu and Kashmir AIR 1984 SC 177*, the Supreme Court again entertained the PIL and held that the payment of wages less than the statutory minimum wages amounts to forced labour. Hence it violates the fundamental right to live with human dignity.

The Supreme Court opined that the State Governments were under an obligation not only to ensure release of the bonded labour but also rehabilitate them under Bonded labour System Abolition Act 1976. The Courts have voiced the concern at the denial of minimum wages and even the basic facility of pure drinking water to workman.

It is regretted that the Government insisted that the labourers must prove first that they were bonded labourers. One of the major handicaps which impedes the identification of bonded labourers is the reluctance of administration to admit the existence of bonded labour, even where it is prevalent.

Rehabilitation:

The Court in *Bandhua Mukthi Morcha* suggested that legal aid camps in more prone areas, investigative journalism, social action groups and voluntary agencies may play impressive role to identify the bonded labourers. It further suggested that psychological rehabilitation of bonded labour must also go side-by-side with physical and economic rehabilitation; otherwise problem may arise in absence of proper and effective rehabilitation.

The Supreme Court in T. Chakkala Okae V. The State of Bihar and Others Judgment Today, 1992 (1) SC 106. felt that it is better to appoint additional chief secretary of State as an officer to ensure compliance of Court's order and suggest ways and means for proper rehabilitation. The Court might be of the view that in this way serious and proper attention be given to eradicate bonded labour by fixing responsibility upon Additional Chief Secretary. The Court in P. Sivaswamy V. State of Andhra Pradesh AIR 1988 SC 1863 directed District Magistrate Hyderabad, Vigilance Committees constituted at the district level and Joint Secretary, Ministry of Labour, Government of India to visit stone quarry and enquire regarding the existence of bonded labourers and submit a report. The Government considered the report and freed about 2,200 bonded labourers and sent them to their respective State Governments to take immediate steps for the rehabilitation of bonded labourers and submit the report to the Court. But when the matter again listed, the Court was surprised to know that after three and half years no compliance of on the behalf of the States were made. The Court passed strictures against the States.

The role of Executive:

It clearly shows despite the Court verdicts in favour of bonded labour the conditions of bonded labour have not been improved. This signifies the apathetic attitude on the part of the Government and implementing agency i.e. Executive.

The process of eradicating bonded labour is hindered owing to following reasons:

It is usually found that the administration instead of identifying the bonded labourers, denies the existence of bonded labour ii) most of the workers are totally ignorant and unaware of their rights and entitlements iii) vested interests obstruct the proper implementation of the beneficial provisions of laws. The authorities who are to implement the law come from same dominant class of persons who engage the bonded labour. Hence they obstruct the process of identification and liberation of bonded labourers. iv) the inadequate punishment to those who violate the labour laws v) absence of rehabilitation of the liberated bonded labourers. These factors denied the protection under umbrella of the Act to those who are in the most need of it.

The role of judiciary:

The judiciary, particularly the apex Court has played an important role in making right to live with human dignity, a reality for millions of workers; indeed it protected them from exploitation. The Court not only released bonded labour from exploiting employers but also insisted rehabilitation by the State. It has also shown great concern by reviewing rehabilitation measures of the bonded labourers.

Conclusion:

Legal Abolition of Bonded Labour and the judicial protection to the bonded labour clearly show, how important it is to the workers to live with human dignity which is an important dimension of human right.

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