

ARTICLE ON BONDED LABOUR

Dr. Krishan Kumar Kajal

Assistant Professor in Law, C.R. Law College, Hisar

INTRODUCTION

The origin of bonded labour can be traced from the caste hierarchy and feudal structure. In earlier times the people were divided into four categories i.e. Brahmin, kshatriya, vaishya and shudra. Since the lower caste persons did not have enough land to cultivate, they needed money for fulfillment of social obligations besides satisfaction of their physiological needs and for this purpose they become indebted to the higher caste persons. As the debtor has nothing to offer as security, the creditor demanded that he pledges his person and work for the creditor in lieu of the redemption of debt and interest. Guarantee of a permanent source of cheap labour on a long term basis was the main interest of the money lender.

ABOUT BONDED LABOUR?

Bonded labour (*or debt bondage*) occurs when a person's labour is demanded in return for a loan. The person is then tricked into working for little or no pay. The value of their work is usually greater than the original loan. In many cases the loan is passed down from parent to child. Female bonded labourers will often be subject to sexual abuse by their 'employer'. Around 20 million people are estimated to be in bonded labour worldwide. Bonded labour is most likely to exist in situations of poverty where an unexpected expense such as medical costs or a marriage dowry forces an individual to borrow. Bonded labourers are usually unable to defend their rights or are bound by a misplaced sense of duty to repay the debt owed by their family.

According to sec.2 (e)[1], bonded labour means any labour or service rendered under the bonded labour system. Bonded labourer under sec.2 (f) means a labourer who incurs, or has, or presumed to have incurred a bonded debt.

PROVISIONS TO ABOLITION BONDED LABOUR

International- Universal Declaration of Human Rights, 1948

The Preamble of the UDHR recognizes dignity as an inherent in the human family and as a foundation of freedom, justice and peace in the world. Article 1 says that all human beings are born free and equal in dignity and rights. Further the general assembly proclaimed abolition of slave labour, by Articles 4,13(1) and 23(1) as reproduced hereunder:

Article 4 [2]– no one shall be held in slavery or servitude

Article 13(1) – everyone has the right to freedom of movement and residence within the borders of each state

Article 23(1) – everyone has the right to work, to free choice of employment and to protection against employment

Article 4 of the European Convention of the Human Rights 1956 is to the same effect and forced labour or slavery is rightly declared inhuman.

National- Indian Constitution

Article 21 of the Constitution of India guarantees the right to life and liberty. The Indian Supreme Court has interpreted the right of liberty to include, among other things, the right of free movement, the right to eat, sleep and work when one pleases, the right to be free from inhuman and degrading treatment, the right to integrity and dignity of the person, the right to the benefits of protective labor legislation, and the right to speedy justice. The practice of bonded labour violates all of these constitutionally-mandated rights.

Article 23 of the Constitution prohibits the practice of debt bondage and other forms of slavery both modern and ancient. Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.

Begar is a form of forced labour under which a person is compelled to work without receiving any remuneration. Other similar forms of forced labour were interpreted the Supreme Court when it ruled in the *Asiad Workers Case*[3] that both unpaid and paid labour were prohibited by Article 23, so long as the element of force or compulsion was present in the worker's ongoing services to the employer. The Supreme Court also interpreted the term forced labour to mean providing labour or service to another for remuneration which is less than minimum wage. *All labour rewarded with less than the minimum wage, then, constitutes forced labor and violates the Constitution of India.* The Supreme Court ruled that:

“it is the plainest requirement of Articles 21 and 23 of the Constitution that bonded labourers must be identified and released and on release, they must be suitably rehabilitated.... any failure of action on the part

of the State Governments in implementing the provisions of the Bonded Labour System (Abolition) Act would be the clearest violation of Article 21 and Article 23 of the Constitution”.

Article 24 prohibits the employment of children in factories, mines, and other hazardous occupations. Together, Articles 23 and 24 are placed under the heading "Right against Exploitation," one of India's constitutionally-proclaimed fundamental rights.

Article 39 requires the state to "direct its policy toward securing":

(e) that the health and strength of workers... and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

Bonded Labour System (Abolition) Act, 1976

The Bonded Labour System (Abolition) Act purports to abolish all debt agreements and obligations arising out of India's longstanding bonded labour system. It is the legislative fulfillment of the Indian Constitution's mandate against *begar* and forced labour. It frees all bonded labourers, cancels any outstanding debts against them, prohibits the creation of new bondage agreements, and orders the economic rehabilitation of freed bonded laborers by the state. It also criminalizes all post-act attempts to compel a person to engage in bonded labour, with

maximum penalties of three years in prison and a 2,000 rupee fine. The Bonded Labour System (Abolition) Act offers the following definition of the practices being abolished.

JUDICIAL APPROACH

In *P. Sivaswamy v. State of A.P*[4], the courts found that the rehabilitation money payable under the Bonded Labour System (Abolition) Act, 1976 came down to Rs. 738/- per family. The Court observed that the assistance was certainly inadequate for rehabilitation and unless there was effective rehabilitation the purpose of the Act would not be fulfilled. Up-rooted from one place of bonded labour conditions the persons are likely to be subjected to the same mischief at another place, the net result being that the steps taken by the Supreme Court would be rendered ineffective.

In *Bandhua Mukti Morcha v. Union of India*[5], the main issue concerned the existence of bonded labour in the Faridabad stone quarries near the city of Delhi. It was alleged that majority of the workers were compelled to migrate from other states, and turned into bonded labourers. The workers were living in sub-human and miserable conditions. A violation of various labour laws and the Bonded Labour System (Abolition) Act 1976 was alleged. The SC stated that before a bonded labour can be regarded as a bonded labourer, he must not only be forced to provide labour to the employer but he must have also received an advance or other economic consideration from the employer, unless he is made to provide forced labour in pursuance of any custom or social obligation or by reason of his birth in any particular caste or community.

In *P. Sivaswamy v. State of A.P*[6], the courts found that the rehabilitation money payable

under the Bonded Labour System (Abolition) Act, 1976 came down to Rs. 738/- per family. The Court observed that the assistance was certainly inadequate for rehabilitation and unless there was effective rehabilitation the purpose of the Act would not be fulfilled. Up-rooted from one place of bonded labour conditions the persons are likely to be subjected to the same mischief at another place, the net result being that the steps taken by the Supreme Court would be rendered ineffective.

Thus the Supreme Court set a new constitutional standard at a time when State on its part had completely neglected the human values. The court further remarked that the state government is under the constitutional scheme, charged with the mission of bringing about a new socio-economic order where there will be socio-economic justice for everyone and equality of status and opportunity for all.

CONCLUSION

The Bonded Labour System (Abolition) Act was enacted in 1976. Twenty years later, Human Rights Watch has found that the goals of this law-to punish employers of bonded labour and to identify, release, and rehabilitate bonded labourers-have not been met. The bonded labour system continues to thrive.

The district-level vigilance committees, mandated by the Bonded Labour System (Abolition) Act and constituting the key to the enforcement of the act, have not been formed in most districts. Those that have formed tend to lie dormant or, worse yet, are comprised of members unsympathetic to the plight of bonded laborers. Whether for lack of will or lack of support, India's district collectors have failed utterly to enforce the provisions of the Bonded Labour System (Abolition) Act. The State of Tamil Nadu has an estimated one

million bonded labourers; according to the North Arcot District Collector, these were the first charges ever brought under the act in Tamil Nadu.

The mandated rehabilitation of released workers is essential. Without adequate rehabilitation, those who are released will quickly fall again into bondage. This has been established repeatedly, among both adult and child bonded laborers. Nonetheless, the central and state governments have jointly failed to implement the required rehabilitation procedures. Rehabilitation allowances are distributed late, or are not distributed at all, or are paid out at half the proper rate, with corrupt officials pocketing the difference. One government-appointed commission found that court orders mandating the rehabilitation of bonded laborers were routinely ignored.

SUGGESTIONS

1. Carry out comprehensive and independent national surveys to identify the total number of bonded labourers in the country. These surveys should include breakdowns of *dalit* bonded labourers and those who have to provide forced labour for landlords (*begar*).
2. All local and national officials responsible for implementing the bonded labour laws (including District Magistrates, Vigilance Committees, the police, etc.) must be properly trained and function effectively, so that they actively seek out cases of bonded labour and ensure immediate release and rehabilitation, in compliance with the law.
3. Prosecutions must be initiated against all those who use bonded labour and against those who use intimidation and violence to retain people as bonded labourers. The number of successful convictions and sentences passed should be published, by state, on a regular basis.

4. Pressure states and districts to constitute and oversee bonded labour vigilance committees, as required by the Bonded Labour (System) Abolition Act, 1976.

5. Ensure the active involvement of the Scheduled Castes and Scheduled Tribes Commission in the process of identifying, releasing, and rehabilitating bonded child laborers.

6. Launch a nationwide public awareness campaign regarding the legal prohibition of bonded labor. This campaign should explain in simple terms what actions are legally prohibited and what recourses and resources are available to bonded child laborers and their families.

REFERENCES

- 1 The Bonded Labour System (Abolition) Act, 1976
- 2 Article 4.(1) no one shall be held in slavery or servitude, (2) no one shall be required to perform forced or compulsory labour, (3) for the purpose of this article the term forced or compulsory labour shall not include:
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of article 5 of this convention during conditional release from such detention;
 - (b) any service of a military character or, in care of the conventions objectors in countries while they are recognized, service exacted instead of compulsory military service
 - (c) any service exacted in case of emergency or calamity threatening the life or well being of the community
- 3 AIR 1982 S.C. 1473
- 4 AIR 1988 S.C. 1863
- 5 AIR 1984 S.C. 802
- 6 AIR 1988 S.C. 1863