



Incidences and pattern of bonded labour: A reality check

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Abstract

Peonage is a system where labourers are bound in servitude until their debts are paid in full. Those bound by such a system are known, in the US, as peons. Peonage is a form of unfree or restricted or constrained labour. Such systems have existed in many places at many times throughout history. According to Anti-Slavery International, "A person enters debt bondage when their labour is demanded as a means of repayment of a loan, or of money given in advance. Usually, people are tricked or trapped into working for no pay or very little pay (in return for such a loan), in conditions which violate their human rights. Invariably, the value of the work done by a bonded labourer is greater than the original sum of money borrowed or advanced." About 40 million people in India, most of them Dalits, are bonded workers, many working to pay off debts that were incurred generations ago. These figures are comparable to ones in Bolivia, Brazil, Peru and Philippines. Of 20 million bonded labourers in Pakistan 7.5 million are children. An estimated 496,000 children are in slavery in Bangladesh.

The paper shall deal with the International scenario of bonded labour. Debt bondage has been defined by the United Nations as a form of "modern day slavery" and is prohibited by international law. It is specifically dealt with by Article 1(a) of the United Nations 1956 Supplementary Convention on the Abolition of Slavery. The practice of bonded labour violates various International Human Rights Conventions wherein India is a party to all of them and such is legally bound to comply with their terms. Bonded labour is widely prevalent in many regions in India. The main feature of the system is that the debtor pledges his person or that a member of his family for a loan and is released on the repayment of the debt. The paper shall also deal with the Constitutional support provided for prohibition of bonded labour as in Articles 14, 15, 19, 21 and various others. Last but not the least the paper shall deal with the salient features of The Bonded Labour System (Implementation) Act, 1976.

Thus, bonded labour must be attacked from many fronts. Enforcement of the law is essential, but it is not enough. The bonded labour must have someplace else to go. The elimination of current debt bondage and the prevention of new or renewed bondage therefore, require a combination of concerted government action and extensive community involvement.

Keywords: bonded labour, employment, slavery

Introduction

Prior to the early modern age, feudal and serfdom systems were the predominant political and economic systems in Europe. These systems were based on the holding of all land in fief or fee, and the resulting relation of lord to vassal, and was characterized by homage, legal and military service of tenants, and forfeiture. Many historians have argued that this system was also established in some Latin American countries, following European settlement.

A modernization of the feudal system was "peonage", where debtors were bound in servitude to their creditors until their debts were paid. Although peons are only obliged to a creditor monetarily, it might be viewed that this relationship reduces personal autonomy ^[1].

Historical peonage

Peonage is a system where labourers are bound in servitude until their debts are paid in full. Those bound by such a system are known, in the US, as peons. Employers may extend credit to labourers to buy from employer-owned stores at inflated prices. This method is a variation of the truck system (or company store system), in which workers are exploited by agreeing to work for an insufficient amount of goods and/or services. In these circumstances, peonage is

a form of unfree or restricted or constrained labour. Such systems have existed in many places at many times throughout history.

Historical examples from International Arena

- In Colonial America, some settlers used indentured service to obtain passage or an initial settlement, then continued working independently after completing their bonded labour ^[2].
- The American South - Such a system was often used in the southern United States after the American Civil War where African-American and poor white farmers, known as sharecroppers, were often extended credit to purchase seed and supplies from the owner of the land they farmed and pay the owner in a share of the crop.
- In Peru a peonage system existed from the 1500s until land reform in the 1950s. One estate in Peru that existed from the late 1500s until it ended had up to 1,700 peons employed and had a jail. Peons were expected to work a minimum of three days a week for their landlord and more if necessary to complete assigned work. Workers were paid a symbolic 2 cents per year. Workers were unable to travel outside of their assigned lands without permission and were not allowed to organize any

¹ Kevin Bales. New slavery: a reference handbook. ABC-CLIO, 2004, 15-18. ISBN 978-1-85109-815-6

² The Bondage of Debt: A Photo Essay, by Shilpi Gupta

independent community activity^[3].

Thousands of such labourers were sold into slavery during the West African slave trade and ended their lives working as slaves on the plantations in the New World. For this reason, Section 2 of the Slave Trade Act 1843 enacted by the British Parliament declared "persons held in servitude as pledges for debt" to "be slaves or persons intended to be dealt with as slaves" for the purpose of the Slave Trade Act 1824 and the Slavery Abolition Act 1833^[4].

It continued to be very common in Africa and China, but was suppressed by the authorities after the establishment of the People's Republic of China. It persists in rural areas of India, Pakistan and Nepal.

In Niger, where the practice of slavery was outlawed in 2003, a study found that almost 8% of the population are still slaves. Descent-based slavery, where generations of the same family are born into bondage, is traditionally practised by at least four of Niger's eight ethnic groups. The slave masters are mostly from the nomadic tribes — the Tuareg, Fulani, Toubou and Arabs.

40 million people in India, most of them Dalits, are bonded workers, many working to pay off debts that were incurred generations ago. These figures are comparable to ones in Bolivia, Brazil, Peru and Philippines. There are no universally accepted figures for the number of bonded child labourers in India. Of 20 million bonded labourers in Pakistan 7.5 million are children. An estimated 496,000 children are in slavery in Bangladesh.

Some International Human Rights Conventions

The practice of bonded labour violates the following International Human Rights Conventions whereas India is a party to all of them and such is legally bound to comply with their terms^[5]. They are:

- Convention on the Suppression of Slave Trade and Slavery, 1926;
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery Trade, 1956;
- Forced Labour Convention, 1930;
- International Covenant on Civil and Political Rights (ICCPR), 1966;
- International Covenant on Economic, Social and Cultural Rights (ECOSOC), 1966;
- Convention on the Rights of the Child (CRC), 1989

Modern Example: Prostitution

News media in the Western Europe regularly carry reports about one particular kind of debt bondage: women from Eastern Europe who are forced to work in prostitution as a way to pay off the "debt" they acquired when they were illegally smuggled to destinations in Western Europe. This form of debt bondage also takes place in other parts of the world, such as women moving from Southeast Asia or Latin America^[6].

³ Croix, *The Class Struggle in the Ancient Greek World*, p. 165.

⁴ P.A. Brunt, *Social Conflicts in the Roman Republic* (Chatto & Windus, 1971), pp. 56-57.

⁵ Hart, *Christine Untouchability Today: The Rise of Dalit Activism, Human Rights and Human Welfare*, Topical Research Digest 2011, Minority Rights

⁶ Kara, Siddharth (January 2009). *Sex Trafficking - Inside the Business of Modern Slavery*. Columbia University Press. ISBN 978-0-231-13960-1.

Law and issues related to bonded labour in India

Introduction

Bonded labour is widely prevalent in many regions in India. The main feature of the system is that the debtor pledges his person or that a member of his family for a loan and is released on the repayment of the debt^[7].

Bonded labour is referred to by different names in different regions. The Elayaperumal Committee mentions the following:

- Gothi in Orissa;
- Machindari in Madhya Pradesh;
- Sagri in Rajasthan;
- Vet Begar and Salbandi in Maharashtra;
- Jana, Manihi or Ijhari in Jammu and Kashmir;
- Jeetha in Mysore;
- Vetti in Tamil Nadu;
- Kamiya or Kuthiya in Chhattisgarh.

In the beginning of the twentieth century the system combined the elements of exploitation, patronage and protection at least in some regions. But with increasing trend towards the money-economy and changes in the types of use to which agricultural land is put, the element of patronage disappeared and that of exploitation persisted.

Abolition of bonded labour system: A legal context

Indian Constitution

Some related provision regarding to bonded labour, namely:

- Preamble: The Constitution of India guarantees all citizen social, economic and political justice, freedom of thought and expression, equality of status and opportunity and fraternity assuring dignity of the individual;
- Article 14, 15 and 16: These articles guarantee equality and equal treatment;
- Article 19(1) (g): The article guarantees freedom of trade and profession;
- Article 21: The article guarantees right to life and liberty;
- Article 23: Prohibition of traffic in human beings and forced labour - Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only on religion, race, caste or class or any of them.
- Article 24: The article prohibits the employment of children whether as bonded labour or otherwise. Together, Article 23 and Article 24 are placed under the heading "Right against Exploitation", one of India's constitutionally proclaimed fundamental rights.
- Directive Principles: Moreover, the Directive Principles direct the State to strive to secure, inter alia: (a) Just and human conditions of work (Article 42); (b) Educational and economic interest of the Scheduled Caste and Scheduled Tribe and other weaker section of

⁷ Ravi S. Srivastava *Bonded Labor in India: Its Incidence and Pattern InFocus Programme on Promoting the Declaration on Fundamental Principles and Rights at Work; and International Labour Office, (2005). Forced Labor. Paper 18*

the society (Article 46).

- Under Article 42. Provision for just and humane conditions of work and maternity relief - The State shall make provision for securing just and humane conditions of work and for maternity relief.
- Under Article 43. Living wage, etc. for workers - The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work and living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular the State shall endeavour to promote cottage industrial on an individual or co-operative basis in rural areas ^[8].

Indian Penal Code

Under Section 374. Unlawful compulsory labour - Whoever unlawfully compels any person to labour against the will of that person, shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both, also;

Children (Pledging of Labour) Act, 1933:

Children (Pledging of Labour) Act, 1933 says that unless there is something repugnant in the subject or context - "an agreement of pledging the labour of child" means an agreement written or oral, express or implied, whereby the parent or guardian of a child, in return for any payment or benefit received or to be received by him, undertakes to cause or allow the services of the child to be utilized in any employment. Provided that any agreement made without detriment to a child, and not made in consideration of any benefit other than reasonable wages to be paid for the child's services and terminable at not more than a weeks' notice, is not an agreement within the meaning of this definition. It also says that "Whoever, being the parent or guardian of a child, makes an agreement to pledge the labour of that child, shall be punished with fine which may extend up to fifty rupees".

Based on those provisions, the system of bonded labour is thus totally incompatible with the aim of an egalitarian socio-economic order under the Constitution of India. The system is also an infringement of the basic human rights and destruction of the dignity of human labour ^[9].

National law

In order to give effect to the constitutional prohibition of bonded labour as specified under Article 23 of Indian Constitution, Bonded Labour System (Abolition) Act was passed in 1976.

The Act was intended to free all bonded labourers, cancel their debts, establish rehabilitative measures and punish offender through imprisonment and fines. Implementation of the Act is the responsibility of the State Government.

Before going into the material parts and the implementation of the Act of 1976, let us observe a few developments in this area prior to the posing of the Act of 1976 ^[10]

The bonded labour system (abolition) act, 1976

⁸http://nhrc.nic.in/Documents/SPEECH_2012_10_25.pdf

⁹ http://pblabour.gov.in/pdf/rtd/rtd_chapter18.pdf

¹⁰ 'Modern Slavery,' in: R. Ennals (ed.) From Slavery to Citizenship, West Sussex, UK: John Wiley and Sons, pp. 257-261.

Salient features

The open objectives of the Act are Identification, Release and Rehabilitation of Bonded Labourers. Let us analyse some of the salient features of the Act:

Firstly, it is about the awareness of the need for machinery relating to its implementation. Secondly, the Act envisage the Constitution of Vigilance Communities at the district and sub-divisional level, to advise the District Magistrate and to ensure the implementation of the provision of the Act.

Thirdly, Section 16 to 19 of the Act deals with the Penal Sanctions which are, if enforced properly, sufficient to have the requisite effect ^[11].

Implementation

The real problem lies in the implementation aspects. The failure in the implementation of the Act may arise because of a variety of factors chide among them, namely:

- Lack of Awareness: The need to create awareness of socio-economic legislation or to publicize it is hardly realized.
- Lack of Actual Prosecution of the Offenders: As also seen from past experience, there is hardly any enforcement of the penal sanctions provisions.
- Lack of Administrative and Political Will: Not infrequently, the administrators who implement the programmes are drawn from the dominant castes whose interests are adversely affected by the legislation ^[12].
- Lack of Facilities for Legal Aid and Advice: Often, illiteracy, lack of communication, remoteness from urban centres and poverty inhibits the weaker section from taking advantage of the legal process available to them.
- Social and Economic Dependence: The law should take account of the social and economic background of the issue.
- Lack of Measures to Make Concerned Official Countable for Their in Action or Misdeeds: In Neeraja Chaudhary v. State of M.P. (1982), most of the released bonded labourer had not been rehabilitated even after six months of their release.

As per the Bonded Labour System (Abolition) Act, 1976:

"Bonded labour" means any labour or service rendered under the bonded labour system-Section 2 (e).-↵

"Bonded labourer" means a labourer who incurs, or has, or is presumed to have incurred a bonded debt-Section 2(f).-↵

"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 he would-↵

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 benefit of the creditor, for a specified period or for any unspecified period, either without wages or for nominal wages, or
2. For the freedom of employment or other means of livelihood for a specified period or for an unspecified

¹¹ [http://www.childlineindia.org.in/CP-CR-Downloads/Bonded%20Labour%20System%20\(Abolition\)%20Act%201976%20and%20Rules.pdf](http://www.childlineindia.org.in/CP-CR-Downloads/Bonded%20Labour%20System%20(Abolition)%20Act%201976%20and%20Rules.pdf)

¹² <http://labour.nic.in/content/dglw/Schemes/BondedLabour.html>

- period, or
3. Forfeit the right to move freely throughout the territory of India, or
 4. Forfeit the right to appropriate or sell at market value any of his property or product of 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-Section 2(g)

Through its various judgments, Supreme Court has given a very broad, liberal and expansive interpretation of the definition of the bonded labour. According to the interpretation given by the apex court, where a person provided labour or service to another for remuneration less than the minimum wage, the labour or service falls clearly within the scope and ambit of the words forced labour under the constitution^[13].

Nuances of the bonded labour system (abolition) act, 1976

On commencement of this Act the bonded labour system shall stand abolished and every bonded labourer shall stand freed and discharged free from any obligation to render bonded labour. Any custom, agreement or other instrument by virtue of which a person is required to render any service as bonded labour shall be void. Liability to repay bonded debt shall be deemed to have been extinguished. Property of the bonded labourer to be freed from mortgage etc. Freed bonded labourers shall not be evicted from homesteads or other residential premises which he was occupying as part of consideration for the bonded labour. District Magistrates have been entrusted with certain duties and responsibilities for implementing the provision of this Act. Vigilance committees are required to be constituted at district and sub-divisional levels. Offences for contravention of provisions of the Act are punishable with imprisonment for a term which may extend to three years and also with fines which may extend to two thousand rupees. Powers of Judicial Magistrates are required to be conferred on Executive Magistrates for trial of offences under this Act. Offences under this Act may be tried summarily. Every offence under this Act shall be cognizable and bailable.

Hindrances

The problem of Bonded Labour System is not a problem in or by itself. It is a part of the larger issue of welfare of the nation as a whole. Besides the several failures of implementation of the Act, the Report from Human Right Watch Asia (1996) finds that there are also some obstacles to enforce the Act, namely:

- Apathy;
- Caste and Class Bias;
- Obstruction;
- Corruption;
- Lack of Accountability;

- Lack of Adequate Enforcement Staff^[14].

Suggestions and Conclusion

Bonded labour must be attacked from many fronts. Enforcement of the law is essential, but it is not enough. The bonded labour must have someplace else to go. The elimination of current debt bondage and the prevention of new or renewed bondage therefore, require a combination of concerted government action and extensive community involvement^[15].

Bonded labour is a vast, pernicious, and longstanding social evil and the tenacity of the Bonded Labour System must be attacked with similar tenacity. Anything less than total commitment is certain to fail.

The problem of bonded labour is dynamic in nature and it can reoccur at any point of time. Thus, the bonded labourers must be rehabilitated as soon as possible after their release. If this is not done than it is a remedy worse than the malady because these labourers will die of starvation. Thus, before releasing the bonded labourers a sound rehabilitative planning is inevitable. The following measures can be adopted in this regard:

- Public awareness and education is a must,
- Productive and income generating schemes must be formulated in advance otherwise they will again fall back upon the system of bonded labour after their release,
- These schemes should be chosen after duly consulting the concerned labourers and NGOs involved in their emancipation and rehabilitation,
- The government should work on a priority basis in areas vulnerable for the system of bonded labour and for the rehabilitation of already releases labourers,
- An effective and speedier grievance redressal machinery should be established for proper disposal of cases pertaining to bonded labour,
- A humanitarian training programme should be formulated for persons dealing with bonded labourers,
- There should be a system of summary disposal of cases under various laws dealing with the evil of bonded labour,
- There should be a strict enforcement of the welfare and labour legislations,
- There should be more stringent penal laws for effectively dealing with the menace of bonded labour etc.
- Besides the measures for improvement mentioned already in the foregone discussion, the Government of India should demonstrate its commitment to the eradication of bonded labour by implementing some of the following recommendations at the earliest possible.
- The Bonded Labour System (Abolition) Act should direct Vigilance Committees and District Collectors to initiate serving and credit programme at the community level.
- In addition to genuine government action, it is essential that non-governmental organization be encouraged by the Governance to collaborate in this effort.
- A nation-wide public awareness campaign should be

¹⁴ 'Modern Slavery,' in: R. Ennals (ed.) From Slavery to Citizenship, West Sussex, UK: John Wiley and Sons, pp. 257–261.

¹⁵ 'Modern Slavery,' in: R. Ennals (ed.) From Slavery to Citizenship, West Sussex, UK: John Wiley and Sons, pp. 257–261.

¹³ http://nhrc.nic.in/Documents/SPEECH_2012_10_25.pdf

launched regarding the legal prohibition of bonded labour.

- The scheme for rehabilitation programmes should be integrated with existing IRDP and NREP (35th Session of the Labour Ministers Conference held in 11 May 1985).
- The Court should also abandon the conventional approach and come to the rescue of the bonded labourers, particularly in the technical rules of evidence and degree of burden of proof.

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