

## BONDED LABOUR: A SLUR ON INDIAN DEMOCRACY

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*The existence of bonded labour is not a slur on the administration; rather it is the failure to take note of and to make an effort to put an end to the bonded labour system.*

*Bhagwati Bandhua J. in Mukti Morcha case<sup>1</sup>*

### Abstract

*Labour is considered as one of the important pillars of economic development. A large majority of Indian population is earning their sustenance by working as labourers. However these labourers are exploited. One such group of labourers are bonded labours who are susceptible to numerous vulnerabilities. Bonded labour problem is a serious threat to human dignity. In spite of national laws and international conventions bonded labourers are not protected. In view of this the researcher in the present paper intends to examine the situation of bonded labour and the circumstances which force them to be a bonded labour. The paper attempts to analyze different international treaties, convention and the domestic laws which have been adopted by the government to curb the evil of bonded labour in India. Through this paper the author has also endeavoured to put forward certain solutions to control the problem of bonded labour in India.*

**Keywords:** *Bonded Labour, Debt Bondage, Exploitation, Fundamental Right, Rehabilitate, Natural Right*

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<sup>1</sup> AIR 1984 SC 802

## INTRODUCTION

Ever since the independence, the condition of labourers in India has not changed much, even though the country has switched from the decades old socialist policy to the liberalisation of the economy for the betterment of the people with more exposure to the world market. The liberalised laws resulted as nothing which the policy makers had intended – economic development and social welfare. The liberalisation of economy on the contrary, increased the gap between the haves and the have not's. As a result of this disparity, the industrialists and employers are exploiting the employees and workers. Rapid increase in population has led to abundant labour supply, giving the employers a dominant position to force labourers to work on their conditions. This has led to the emergence of the problem of bonded labour or debt bondage.<sup>2</sup>

Bonded labour or 'Bandhua Majdooori' which is still in practice in India in one or the other is not an issue emerging out of recent developments, but has its roots deep into history. It is characterized by a long-term relationship between the employer and employee, usually solidified through a loan, and is embedded intricately in India's socio-economic culture - a culture that is a product of class relations, a colonial history, and persistent poverty among citizens.<sup>3</sup> It stems out of caste-based discrimination, vast poverty and inequality, inadequate education system, unjust social relations, and the government's unwillingness to alter the status quo, exemplify few such causes.<sup>4</sup> Bonded labour or 'debt bondage' can probably be said as the least form of slavery today the most widely used way to 'enslave' people. A person becomes 'slave' when his/ her labour is demanded as a means for repayment of loans taken by them. The person is trapped to work for meagre or no wages. The value of work so done by the labourers tend to exceed invariably than the principal amount they are to be paid. To put it in simpler words, bonded labourers are nothing more than a 'slave' or a machine, requiring nothing else once you have 'purchased' them.

Bonded labour is not an issue centred to India, but exists worldwide, especially in countries

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<sup>2</sup> Debt Bondage: (Section I, Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery), "the status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and the nature of those services are not respectively limited and defined".

<sup>3</sup> Devin Finn, *Bonded Labour in India*, Available at: <http://www.du.edu/korbel/hrhw/researchdigest/india.pdf> (Accessed on February 22, 2016, 9:56pm)

<sup>4</sup> *Ibid*

which were once under colonial rule. In South Asia, its inception can be associated with caste system, in existence from centuries, and continues to flourish in feudal agricultural relationships. Bonded labour was also used as a tool for colonial labour recruitment for plantations in Caribbean, Africa, and South East Asia.<sup>5</sup> In India too, the reason can be traced to the caste discrimination and the work which they performed in the society. Bonded labour exists in countries like Nepal, Bangladesh, Pakistan, Bolivia, Paraguay, and Peru. When we talk of the percentage, then in India itself, two million bonded labourers which includes Dalits or tribal people or in way untouchables. Its existence can be seen in logging industry, works on ranches, domestic work, agriculture, food processing, etc.<sup>6</sup>

When we analyse the legislative provision with regard to protection and prevention of bonded labour, after the independence, it can be reflected in Articles 21, 23 (1) and 24 of the Constitution of India, which guarantees free and dignified existence to all the citizens.<sup>7</sup> But, the provisions in black and white lacked proper implementation and could not tackle the issue efficiently as it was expected to and the problem in existence till today. In past Britishers were taking advantage of this situation as there were no laws which protect the interest of labourer, all existing laws were anti labourers. After the independence the big Zamindars started taking advantage of this situation as there was no independent Act or law which support or supplement the above mentioned Constitutional article. Even before India's independence a number of international conventions such as the Forced Labour Convention, 1930 and the Abolition of Forced Labour were held all over the globe to prohibit the slavery or Bonded Labour but India does not ratify any of these conventions.

Forced Labour Convention, 1930 prohibited all forms of forced or compulsory labour, which, as defined under the convention, refers to "all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself

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<sup>5</sup> Anti-Slavery, Today fights for tomorrow, Available at: <http://www.antislavery.org> (Accessed on: February 21, 2016, 6:00pm)

<sup>6</sup> *Ibid*

<sup>7</sup> Article 21; Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 23; Prohibition of traffic in human beings and forced labour: (1) 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.

Article 24; Prohibition of employment of children in factories, etc: No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

voluntarily.<sup>8</sup> Abolition of Forced Labour Convention, 1957 prohibits forced or compulsory labour as means of political coercion or education, or as a discipline for holding or communicating political perspectives or perspectives ideologically contradictory to the set up political, social or financial framework; as a technique for activating and utilizing work for purposes of monetary improvement; as a method for work discipline; as a discipline for having taken an interest in strikes; and as a method for racial, social, national or religious segregation.<sup>9</sup>

These were some of the important conventions which were conducted across the globe to abolish the issue of bonded labour, but India was neither a part of those conventions nor did she ratify any of them. When the problem of Bonded Labour reached to its peak or when the situation got worsed, then Indian Government ratified the above convention? in the year 1954 to control the problem. But its implementation on the ground level was not good, situation remain as it is. It was only after 1976, the government came up with a specific Act to abolish bonded labour, the Bonded Labour System (Abolition) Act, 1976, the legislation was supplemented by various other legislations like the Contract Labour (Regulation and Abolition) Act, 1970; the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; the Minimum Wages Act, 1948. Prior to this, every state had its own independent laws to control the issue of bonded labour, to name some, Kabadi System Regulation in Bastar, Madhya Pradesh in 1943, Bihar Kamianti Act, 1920, Hyderabad Bhagela Agreement Regulation, 1943, Madras Agency Debt Bondage Regulation, 1940, Rajasthan Sagri System Abolition Act, 1961 (later amended in 1975), Orissa Debt Bonded Abolition Regulation, 1948 and Bonded Labour System (Abolition) Act, Kerala, 1975. But, these laws were full of ambiguities, the government favouring the elites and the rights of the poor at stake.<sup>10</sup> This led to the enactment of the Unified Act of 1976, which aimed at preventing the physical and economic exploitation of weaker section who got engaged in as labourers. It was the first unified Act in the country to curb the issue of bondage labour, deriving its force from the Constitution of India. Further, the judiciary, too, started playing active role for the protection and prevention of slavery (bonded labour) in India.

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<sup>8</sup> International Labor Organization (ILO) Convention, Available at: <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang--en/index.html> (Accessed on February 10, 2016, 7:00pm)

<sup>9</sup> *Ibid*

<sup>10</sup> Puja Mondal, *Bonded Labour: Concept, Causes and Other Details*, Available at: <http://www.yourarticlelibrary.com/society/indian-society/bonded-labour-concept-causes-and-other-details/39314/> (Accessed on February. 20, 2016, 10:00 PM)

In the case *Bandhua Mukti Morcha v. Union of India*,<sup>11</sup> and in *People's Union for Democratic Right v. Union of India and Others (Asiad Worker's Case)*,<sup>12</sup> the Apex court made clear that the scope and power of 1976 Act is derived from Article 23(1) of the Constitution whose ambit is much higher than Article 4 of Universal Declaration Of Human Right(UDHR), since "the Article strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values".

Further, in *Bandhua Mukti Morcha* case, Justice Bhagwati explained the difficulties faced by bonded labourers or the poor in getting their grievances solved. He stated,

*"It would be cruel to require bonded labourers to utilise a formal judicial procedure and to provide proof. This would be a totally useless process because it is clear that a bonded labourer could never take legal action and the State may as well abolish the law from our legal system."*<sup>13</sup>

He also argued that no individual try to put them in the position of bonded labour or live the life of slavery except for the fact that advance that had been given to them and against which work is required to be done give presumption that person will be living the life of Bonded Labour.

*"Consequently, as soon as a person is subject to forced labour, the Court will presume that that person has ended in that situation because of a debt or another economic reason and that he is, thus, a bonded labourer. The employer and the state may refute that presumption if they wish but to the extent that satisfactory elements are not provided, the Court will consider the workers as bonded labourers falling under the provisions of the Bonded Labour System Abolition Act."*<sup>14</sup>

Justice Bhagwati had the view that if a country wants to get free from the problem of bonded labour, then, the associations truly dedicated to the cause of SC/STs, agriculture workers or informal sector workers, must become involve in the identification of bonded labour and work for their liberation.

It is important to note that even if after identification, if they are not rehabilitated at proper place then situation will be more serious and cases of Bonded Labour or slavery would increase in a higher rate as they will left with no work, resulting in borrowing of money from elite classes,

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<sup>11</sup> *Supra* note 1

<sup>12</sup> AIR 1982 SC 1473

<sup>13</sup> *Supra* note 1

<sup>14</sup> *Supra* note 1

result of that it opens the way for slavery. Traces of this can be seen long back, when industrialization had started in India in 20<sup>th</sup> century which resulted migration of people from rural to urban areas in search of job resulted in exploitation or even the wages paid were lower than the minimum wages. As industries were less and people aspiring for the work had increased hugely. So it is primary duty of the State to rehabilitate them in a better manner so that their condition and financial status of labourer get improved in the society.<sup>15</sup> From time to time government had tried to come up with different legislation, with the motive that individual rights of Labourer are protected in the society. Unfortunately it lacks in implementation and all efforts goes in vain.

In regard to bonded labourer, Judiciary has played a pro-active role, so that the enforcement mechanism are properly followed by the States and Union territories and National Human Right Commission (NHRC) have been given full power to visit different States and make survey about the problem of the labourer and to observe whether the orders of the court are being followed properly or not.<sup>16</sup>

An important thing which is required to be considered here is that, whether Labourer right can be equated with Human Rights after understanding the situation and circumstances in which Labourer's are performing their work? Can we say that Labourer's too having some human rights. Theoretically, human rights and natural rights are equated, but they are not the same in practice. As modern idea of human right is equated with the idea of natural right and of the belief that human being should be accorded with some fundamental right by virtue of being human being. Being a worker in an economy, they must enjoy certain rights, which are to be respected by all. Applying the positivist approach to understand whether human and labour rights are comparable, the answer can be found in certain international law literatures. In the Universal Declaration of Human Rights (UDHR) 1948, which is not binding on any state, but an influential document, the positivists consider several labour rights as human rights. Article 4 of the UDHR prohibits slavery and servitude; Article 23 provides that everyone has right to work and work in a job freely chosen,<sup>17</sup> everyone should get equal pay for equal work and everyone is entitled for decent remuneration for the work done, etc., Article 24, in turn, guarantees a right to rest and leisure, including reasonable limitations of working hours, as well as holidays with

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<sup>15</sup> *Neerja Choudhary v. State of MP*, AIR 1984 SC 1099

<sup>16</sup> *Public Union for Civil Liberties v. State Of Tamil Nadu & Ors*; 2012(10) SCALE 256

<sup>17</sup> *Virginia Montauvalou, All Labour Rights Human Rights?*, 3 EUROPEAN LABOUR L. J. 152,153 (2012)

pay.<sup>18</sup> It shows that from positivistic point of view labour rights can be attributed to the stage of human rights. But still it is highly debated, as many scholars and academician do not regard this theory. The author believes that labour rights must be regarded as human rights because of the work they perform and the exploitation which is done on them. Even, the judiciary, in the case *Kharak Singh v. State of Uttar Pradesh*,<sup>19</sup> had observed that right to release and rehabilitation of bonded labour as a fundamental right. In the case *Golak Nath v. State of Punjab*,<sup>20</sup> the Court held that fundamental right is the modern name of natural right. So it can be said that every provisions that has been made in our Constitution is nothing but natural rights embodied in human being which should not get violated by any one.

## CONCLUSION

Even after the presence of legislations, international conventions and treaties on bonded labour for the protection of labourer's from getting exploited in this competitive world, still we are unable to eliminate the problem of slavery or bonded labour in the country and situation prevails as it was before independence. Legislations have been made in all aspects of the labour field to control the problem but with regard to the implementation, it has been failure especially on the part of some States and Union Territory especially in Uttar Pradesh, Bihar, Orissa, Andhra Pradesh etc. Because of the existing problem especially the woman and children suffer a lot. The problems of bonded labour at times lead to human trafficking, and some are even forced into prostitution. It shows how on one side our country is developing rapidly but on other side problem of bonded labour remains as it is. According to the latest official public figures available, there are at least 14 million children living under slavery, the number is expected to rise up to 30 million, if proper survey is conducted. It has also been found that children below the age of five fourteen continue to work in dangerous occupation such as bangle industry or fireworks as a bonded labour. In the context of International Labour Organisation (ILO) Convention No. 182 India topped the list when it comes to number of children living in slavery or as bondages. It is also the matter of shame that India has not been able to deal with the problem of child labour but also with the problem of slavery or bonded labour. Even in some cases parents are forced to sell their children into slavery. It seems that the government has closed it eyes in this regard. It can be clearly been seen from different instances, for example, India ratified ILO Conventions, 138 and 182, which says that the minimum age for employment

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<sup>18</sup> *Ibid*

<sup>19</sup> AIR 1963 SC1295

<sup>20</sup> AIR 1967 SC1643



should not be less than the age of completion of compulsory schooling (14 years of age in India's case) and calls for elimination of the worst forms of child labour, respectively, still we find that lots of children are engaged child labour hotels on different state and national highways. Even though the Central government had enacted a new law - Child labour (Prohibition and Prevention) amendment Act, 2016 – banning employment of child labour below 14 years of age in all occupations and processes. It further prohibits employment of adolescents (14-18 years of age) in hazardous occupations. The new law linked the age of employment for children to the age of compulsory education under Right to Education Act (RTE), 2009 even then also we find the problem of child labour is increasing. Delhi alone accounts for one million of these child labourers who work as bonded labourers in small factories and construction sites. Apart from this, the condition of child labour in states like Bihar, Rajasthan, Madhya Pradesh, Maharashtra and Uttar Pradesh is deplorable, and UP has seen a 13% growth in child labour in the last one decade. Why the government has squandered almost seven decades of independence and still not able to tackle the problem of bonded labour or slavery. Why Lok Sabha or Rajya Sabha are still silent over this issue, even the state legislatures are silent over the issue of bonded labour to whom the sole responsibilities lies to tackle the problem.

The noted social worker and Bandhua Mukti Morcha's national president Swami Agnivesh state that the problem of bonded labour is still in practice and require Special Task Force (STF) to end the problem of slavery. Even the author would like to suggest that Special task force should be appointed in every district which should work independently and should be under direct control of central government and they should submit quarterly report to the concerned departments. The people who are engaged in exploiting bonded labour should be given harsh punishment including imprisonment and heavy penalty should be imposed on them, even if they take the defence that they are doing a favour to the destitute who will starve, and no moral consideration should be shown to those people as this type of crime are crime against the society, and of serious in nature and should not be taken in light manner, as this will affect the development of a country and will create disparity in the society.