

Critical Analysis of Bonded Labour System in India

Yathin K.*

Abstract

This study's main purpose is to characterise the current situation of bonded labour in India, as well as its challenges which are being faced in order to be abolished. Article 23 of Indian Constitution prohibits human trafficking and forced labour. Parliament, on the other hand, took until 1976 to establish legislation defining and outlawing bonded labour. The first in-depth investigation research was carried out in 1978 to investigate the type and scope of bonded labour. Following that, the Indian Supreme Court made a series of rulings. Regarding the definition of the term "bound labour". It has also appointed Court Commissioners and given the central government a number of directions. The Bonded Labour System (Abolition) Act of 1976 requires federal and state governments to report on the incidence of bound and forced labour, as well as to vigorously enforce it. Since 1997, the National Human Rights Commission (NHRC) has been overseeing the implementation of the Bonded Labour System (Abolition) Act, ensuring that the Supreme Court's decision is followed. Both the federal and state governments abide by the court's rulings. This study looks at current evidence on bonded labour, such as reports and surveys from the mid-90s to 2020s, to evaluate if the incidence and pattern of bonded labour has changed, both in terms of appraising the current situation and situating recent changes.

Keywords: Constitution of India, National Human Rights Commission, Bonded Labour System (Abolition) Act, Rehabilitation of the Bonded Labour Scheme, Corporate Social Responsibility (CSR), International Covenant on Economic, Social, and Cultural Rights (ICESCR)

INTRODUCTION

Bonded labour is defined by a creditor-debtor relationship between an employer and an employee that can expand to other family members, is indefinite in length, and includes unfavourable contractual terms [1]. Forced labour, bonded labour, and slavery, whether conventional or not, are all examples of compulsion. Standards are not backed up by the law or even the existing market situation. To reinforce bonded labour connections, custom or force are sometimes used. Employees may willingly participate in bound labour agreements for economic reasons, but they are not solely economic transactions. Employees enter into these relationships, which are defined by numerous asymmetries and significant exit fees that were not included in the contract as the employee originally understood it. We believe bonded labour refers to a long-term contractual relationship between an employee and an employer that limits the employee's capacity to pick his or her employer, sign into a new contract with the same employer, or negotiate the conditions of his or her employment, whether by custom or by force, the terms and conditions of her or his contract.

*Author for Correspondence

Yathin K.
E-mail: yathin.k@law.christuniversity.in

Student, School of Law Christ University, Bangalore,
Karnataka, India

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Below, we show how this corresponds with the Indian Constitution's perspective. Bonded labour has been a problem in civilisation for a long time [2]. In India, the social structure has historically established the position of distinct labour types, as well as their access to land and other productive assets. The attributes of bondage are unique in today's environment. India has a history of

economic and social transformations, and it must continue to do so. It is necessary to first comprehend the nature of the articulation between poor and developed regions, as well as traditional and modern sectors. Forced labour is a violation of the Indian Constitution, which guarantees all citizens' fundamental rights. "Traffic in human persons, beg and other types of forced labour are forbidden, and any breach of the provision will be an offence punishable by law," says Article 23(1) of Part III of the Indian Constitution, which deals with Fundamental Rights.

CAUSES FOR BONDED LABOUR SYSTEM IN INDIA

Limited employment opportunities, landlessness, irregular and low wages, poor condition of agricultural land, inherently faulty policies and land reforms, caste-based discrimination, illiteracy, exploitation, exploitative share cropping system, and cultural and religious beliefs are all linked to bonded labour (Human rights commission, 2010) [3].

Different forms of Bonded Labour System

Various Types of Bonded Labour: The prevalence of bonded labour takes several forms, depending on the type of work and the practise that is prevalent in different places.

Debt Bondage

Debt bondage is one of the most widespread forms of bonded labour. Debts are used by the proprietors to extort employment from the debtor who is obligated to repay the debt he owes.

Seasonal Bondage

Under this arrangement, the debtor is required to work for the proprietors for a set number of months each year. He is free to work somewhere else for the rest of the months. The debtor has no choice but to return to the institution when the season arrives.

Generational Bondage

In this sort of bondage, the father works for his debt, and when he is unable to work due to old age, his son or daughter must labour on his behalf to repay the obligation owed to him by the creditor.

Child Bondage

Children are forced to labour in exchange for the parent's debt. When a parent receives money from a business owner, he involves the children in the transaction. In this instance, the children are not allowed to go to school and are free to leave the institution at any time.

Bonded Labour Cycle

The author of bound labour and Tackling the System of Bondage 2012, Siddharth Kara, effectively stated the cycle of bonded labour and how it victimises economically disadvantaged groups (Figure 1).

Constitutional Provisions

Article 21 of the Indian Constitution is the most significant and effective safeguard against human life and liberty being exploited. It is an unalienable part of the fundamental foundation of the Constitution. It guarantees that everyone in India has the right to a decent life. Because it deprives a person of numerous liberties, any practise of bonded labour would be in violation of this Constitutional clause. As previously noted, Article 23 of the Indian Constitution plainly provides for the prohibition of forced labour and makes it illegal. This not only improves the situation, but it also Bonded labour is prohibited in India, as is Beggar and other forms of human trafficking [4].

While it is not enforceable, Article 39 of the Indian Constitution is a driving philosophy for government. Part IV of the Indian Constitution, which deals with the Directive Principles of State Policy, contains this provision. The state is required under this fundamental clause to secure the right to a sufficient means of subsistence. It also directs the government to develop policies to ensure that no citizen is forced to work in vocations that are unsuitable for them owing to financial constraints.

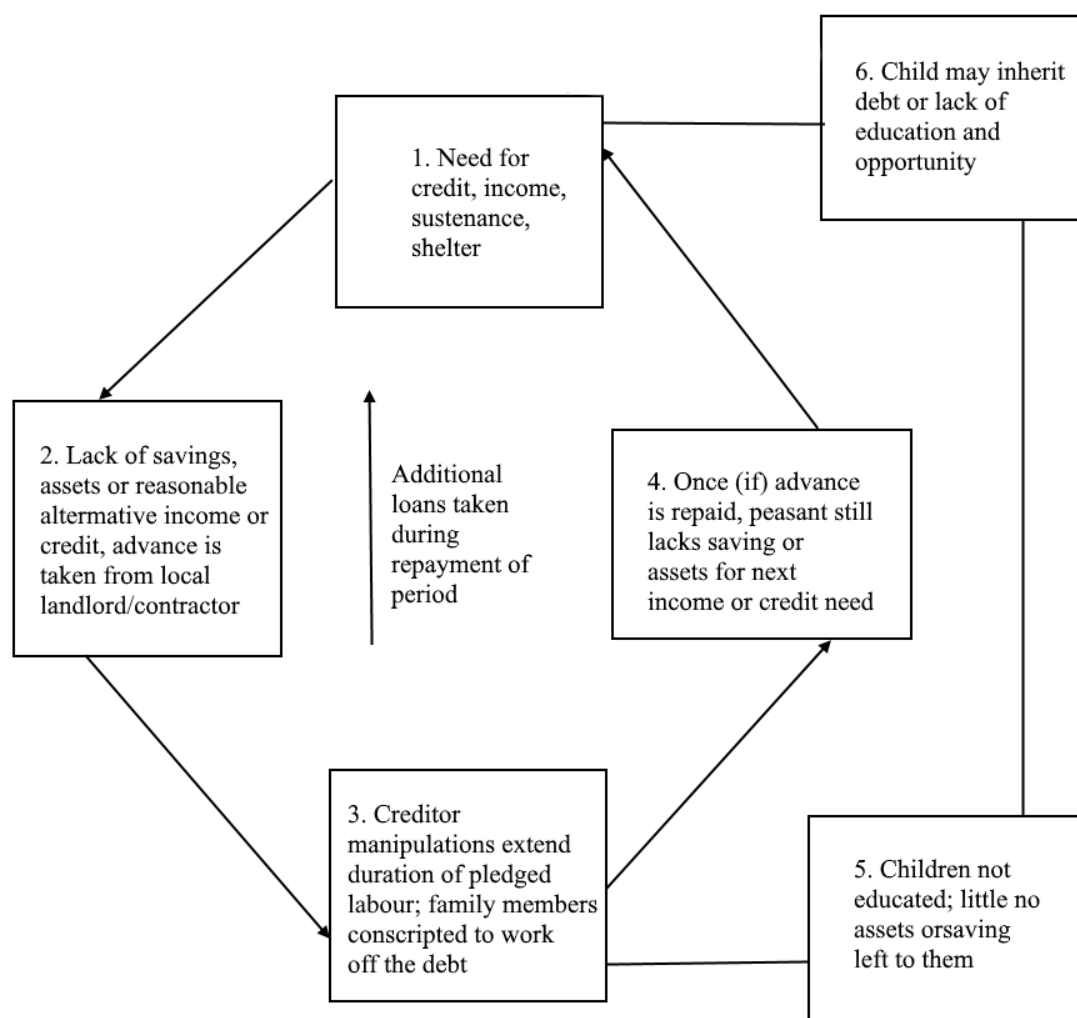


Figure 1. The bonded labour cycle is been illustrated by the author of bound labour and tackling the system of Bondage 2012, Siddharth Kara.

"The State shall make provision for providing acceptable and humane conditions of employment...", says Article 42 of the Constitution, which is also a Directive Principle of State Policy. This means that the government must ensure that everyone is treated equally and compassionately in the workplace. It cannot, however, be enforced because it is part of Part IV.

Article No. 43 "The State shall endeavour to secure for all workers such working conditions as would ensure a respectable standard of living and full enjoyment of leisure, social, and cultural opportunities," says Article 43 of the Constitution.

International Safeguards to prevent Bonded Labour:

The Indian government has ratified and is legally bound by a number of international human rights conventions. According to a Human Rights Watch assessment, the following international rules should be implemented in India to end the bonded labour system.

1. The 1926 Convention on the Abolition of the Slave Trade and Slavery.
2. The 1930 Forced Labour Convention.
3. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery), 1956.
4. International Covenant on Civil and Political Rights (ICCPR).

5. International Covenant on Economic, Social, and Cultural Rights (ICESCR).
6. The 1989 Convention on the Rights of the Child 32, 35, and 36 of the Constitution.

Legal Restrictions on Enforcement of Bonded Labour

Individual labour rights are well established in India, but they are rarely enforced, owing to the country's turbulent history with slavery. Although the legislation defining and prohibiting bonded labour was ultimately passed by Parliament in 2005, Article 23 of India's 1949 Constitution forbids both human trafficking and forced labour. State governments are responsible for monitoring and implementing labour laws, according to the 1976 Bonded Labour System Abolition Act. The Indian government has shown a strong resistance to enforcing the ban on bonded labour. Procedure on the part of the government, as well as caste divisions Bias, among other things, could be to blame for the widespread lack of enforcement. Corruption, insufficient law enforcement officials, and a lack of accountability are all issues. Bonded labour is defined by the Indian Supreme Court as the payment of a price in exchange for performing work. Wages that are less than the market or legal minimum wage. The Public Interest Law (PIL), which permits citizens to petition India's courts if they believe their rights, or the rights of their fellow citizens, are being violated, is used to respond to allegations of human rights breaches. The Supreme Court held two important hearings on child labour in 1991 and 1997, both of which resulted in PIL rulings. The need of education for children was emphasised, as was the issue of poverty. However, emphasising its role as a judicial rather than a legislative authority, the court declined to expressly outlaw child labour. The Indian government has yet to establish a direct link between economic development and human rights violations in the workplace. By effectively doubling the present minimum wage for children, a new government proposal to raise the minimum wage for children demonstrates a delayed commitment to the abolition of child labour in particular. Proving the legitimacy of the needs and circumstances of nonetheless, the Supreme Court's decision to establish a rehabilitation and welfare programme for working children, as well as the initiatives of the National Human Rights Commission, have raised legislators' awareness of the serious problem of child labour.

Legal Provisions

Bonded Labour (Abolition) Act 1976

Bonded labour has been declared illegal by several international accords as well as Indian legislation. It is a system of forced (or partially forced) labour in which a debtor signs a contract with a creditor (or is believed to have signed). As a result of this agreement, the following are the outcomes:

- You give up your freedom to travel about freely by providing services to the creditor for a definite (or unspecified) amount of time without payment to the creditor (either directly or through a family member) (or nominal remuneration).
- Relinquish his right to sell any of his property or labour product for fair market value. The labour of a family member or any other person who is financially reliant on him, the bound labour arrangement causes an undeniable loss of independence on the part of the workers. The debtor's however, the meaning of 'loss of freedom,' as defined above, has yet to be determined, therefore what yardstick would be used to assess this 'loss of freedom?' The National Human Rights Commission defines the scope as follows:
- Loss of job freedom or alternative sources of income to afford an acceptable level of living • Loss of freedom to earn the Government of India's minimum wage.

Bonded labour, to put it simply, is a system in which a creditor and a debtor agree to repay a debt by the debtor providing services as a form of repayment. This agreement may be set to expire over time or may be extended indefinitely. This is sometimes known as debt slavery or debt bondage, for want of a better phrase. Slavery by debt is a better term. It is important to note that while not all forms of bonded labour are forced, they all involve enslavement in some way. The practise of bonded labour is illegal in India because of this servitude.

1. The Minimum Wages Act of 1948: This law aims the minimum wage for labourers. The Act also addresses the time period that must be established for workers, including overtime, essential breaks, necessary leaves, and other benefits.

2. The Contract Labour (Regulation and Abolition) Act of 1970: was enacted to improve working conditions for contract labourers and to reduce exploitation. The Act also prohibits the major employer and contractor from sharing joint and several duties.
3. The Interstate Migrant Workmen (Regulation and Employment Conditions of Service) Act, 1979 was enacted in Indian labour law to regulate inter-state labourers' working conditions.
4. Unlawful compelled labour is outlawed under Section 370 of the Indian Penal Code.
5. The Child Labour (Prohibition and Regulation) Act of 1986, as revised in 2016, reads as follows: It prevents children from working in certain occupations and regulates children's working conditions in others.
6. Human Trafficking Bill of 2018: It makes a special mention of human trafficking for the purpose of forced labour, classifying it as an aggravated type of human trafficking.
7. Draft Domestic Workers Workplace Regulation and Social Security Bill 2016: The National Platform for Domestic Workers is in charge of putting it together. It aims to broaden existing labour regulations to include domestic employees, ensuring that they are entitled to a minimum pay and social security benefits.

SCHEMES

2016: Rehabilitation of the Bonded Labour Scheme: The scheme's most notable elements are:

- A rescued adult male bound labourer will receive Rs. 1 lakh in financial aid, while a rescued kid bonded labourer will receive Rs. 2 lakh.
- The Scheme also provides States with financial help of Rs. 4.50 lakh per district for bonded labourer surveys, Rs. 1 lakh for evaluative research, and Rs. 10 lakhs per State every year for public awareness campaigns.

Scheme of Ujjawala

The Ministry of Women and Child Development launched the programme, which provides shelter and rehabilitation to female victims of human trafficking.

The way forward: Consistent efforts must be made to create a database of bonded labourers by conducting periodic surveys.

Bonded labour should be addressed as soon as possible. It is critical to eliminate the conditions that perpetuate bondage, such as providing respectable work, education, and access to formal credit, as well as eradicating any potential components of bondage and coercion in the worker-employer relationship.

To solve migration challenges, robust inter-state coordination structures are essential. Workplace changes should be undertaken, and they should be linked to social security schemes. Measures should be taken to improve the Bonded Labour Abolition Act's implementation. Furthermore, bonded labour issues should be handled in expedited courts, and the workers should be given justice.

The National Human Rights Committee (NHRC), an independent government institution entrusted with regulating and coordinating India's response to all kinds of modern slavery, should be enhanced.

CSR (Corporate Social Responsibility) is a crucial idea in the corporate world. Private enterprises may be urged to finance local initiatives and NGOs that oppose forced and bonded labour and provide victim services as part of the CSR responsibilities under the 2013 Enterprises Act.

CASE LAW

Bandhua Mukti Morcha Vs. Union of India [5]

A Public Interest Litigation was filed with the Supreme Court under Article 32 of the Indian Constitution, requesting that the court issues appropriate directions outlawing bonded labour. The

petitioner conducted a survey of stone quarries in the Faridabad district. They were living in appalling conditions, according to the petitioner. There were a slew of middlemen who received money from workers in the form of commissions. To ameliorate the workers' living circumstances, the court ordered the federal government and the state of Haryana to construct washrooms, provide appropriate drinking water, and provide medical supplies. The Central Government was ordered to comply by the court. Every two weeks, conduct inspections and provide medical and legal assistance to any worker who is found to be in distress.

"At the very least, this right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy, particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42, and it must include protection of the health and strength of workers, men and women, and children in their tender age against abuse, opportunities and facilities for education", the court continued. Educational opportunities, acceptable and good working conditions, and maternity leave are all available to women. These are the bare minimums that must be met in order for a person to live in dignity, and no state, including the federal government, nor any state government, has the ability to deny a person these basic essentials". Because the foundations of bondage are linked to elements such as production technology on the one hand, and economic vulnerability and structural inequality on the other, the broad links between bound labour systems, production structures, and development patterns need to be better understood.

1. Neerja Chaudhury vs. State of Madhya Pradesh: The Supreme Court ruled in Neerja Chaudhury vs. State of Madhya Pradesh that bonded labourers must be identified and released, and then adequately rehabilitated. Articles 21 and 23 of the Constitution would be violated if state governments failed to carry out the obligations of the Bonded Labour System (Abolition) Act.
2. People's Union for Democratic Rights vs. Union of India: The Supreme Court of India ruled that when a person provides labour or service to another for less than minimum wage, that labour or service clearly falls within the scope of the phrase "forced labour".

CONCLUSION

Long-term development and land reform, as well as poverty reduction and social security, were identified as ways out of slavery in the National Commission for Rural Labour NCRL Report (1991). Finally, despite the fact that the country's labour regulations and other laws are not enforced, the practise of bondage continues. India has a profusion of labour regulations that govern contract and migrant labour conditions, as well as prohibiting child labour in hazardous industries and requiring minimum wages. They are, however, mainly unimplemented. More crucially, there are cases after cases of infringement of workers' fundamental human rights, which are enshrined in the Constitution. To ensure the law's implementation, the government must work together with businesses and workers' organisations, as well as civil society.

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