

Public International Law on Slavery and Forced Labour under Indian Constitution: National and International Dimensions

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Abstract:

The concept has its roots in the 1807 [Abolition of Slavery Act](#) of [Great Britain](#). Many academics in the field perceive this as the beginning of the end of the traditional form of slavery: chattel slavery. In the 19th century, Britain controlled the majority of the world through its colonies. Consequently, in passing this law to abolish slavery, the [British Parliament](#) abolished slavery in the vast majority of its colonies.

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.

Key words: Slavery, Convention, Bounded, Labour, Colonies, Domestic, Exploitation, Forced.

INTRODUCTION

Although slavery is illegal everywhere, it continues to exist in some parts of the world. Its existence is rarely acknowledged by citizens

of advanced industrialized countries, despite the fact that it is a part of the global economy.

Children are particularly vulnerable to the new slavery. In 2002, the international program on the elimination of child labor [IPEC] estimated that of the 246 million child laborers in the world, 8.4 million are bonded or forced laborers.¹

SLAVERY: - To be a slave is to be controlled by another person or persons so that your will does not determine your life's course, and your work and sacrifices are not yours to claim.²

According to Kevin Bales one of the world's leading experts on contemporary slavery, people are enslaved by violence and held against their will for the purpose of exploitation. While people today mostly believe that slavery is the thing of the past, the practice is still thriving wherever poverty, social conditions and gullibility can be exploited. Bales estimates that there are 27 million slaves in the world today.

The **slavery convention (article 1.1)** in 1926 defines slavery as :-

the status or conditions of the persons over whom any and all of the powers attaching to the right of ownership are exercised.

The convention defines slave trade as :- all acts involving the capture, acquisition and

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www.bbc.co.uk/worldservice/people/casestudy_art04.shtml

² WWW.HERA.ORG/COM

disposal of a person with intend to reduce him to slavery; all acts involve in the acquisition of a slave with a view to selling or exchanging him : all acts of disposal by sale and exchange of a slave acquired with a view to being sold or exchanged and in general, every act of trade or transport in slaves by whatever means of conveyance (Article 1.2) SLAVERY CONVENTION(1926) – The first international treaty , adopted by the league of nations (predecessor of the united nation) that defines slavery and slave trade and commits government to abolishing slavery.³

ILO CONVENTION (NO29) concerning compulsory and forced labour(1930)

this convention broadened the 1926 slavery convention's defining to slavery to include forced and compulsory labor

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SLAVE OF THE CHILDREN, CHILD PROSTITUTION AND CHILD PRONOGRAPGHY (2000)

This optional protocol is designed to criminalize activities that involve in the sale and illegal adoption of children as well as child prostitution and child pornography⁴.

FORCED LABOUR [BONDED LABOUR] IN INDIA

Forced labour in any work or services which people are forced to do against their will under the threat of some form punishment. Almost all slavery practices, including trafficking in people

³ www.hera.org.com

⁴ THE pornography entered into force on 18th January 2002

and bonded labor, contain some elements of forced labor.⁵

Forced labour affects million of men, women and children around the world and is most frequently found in labour intensive and or under regulated industries, such as –

- Agriculture and fishing
- Domestic work
- Construction, mining, quarrying and brick kilns
- Manufacturing, processing and packaging
- Prostitution and sexual exploitation
- Market trading and illegal activities

In around 10 percent of cases the state and military is directly responsible for the use of forced labour. Notable example where this takes place are Burma, North korea, and china. However, in the vast majority of cases forced labour is used by private individuals who are seeking to make profits from the exploitation of other people. Forced labour are usually obtained as a result of trapping the individual in debt bondage or by restrictions their freedom of movement. In other cases violence, threats and intimidation are used and there is absence of effective state protection.

WHERE IS THE PROBLEM ?

Forced labour is a global problem, although some regions have larger numbers of people affected than others. The regional distribution of forced labour is :

- Asia and pacific: 11.7 million (56%)

⁵ www.anti-slavery.com

- Africa : 3.7 million (18%)
- The development economies(US , Canada, Australia, European union, japan, japan, new Zealand) 1.5 million (7%)
- Central, southeast, and eastern Europe(non UN) and common wealth on the independent state(CSEE) 1.6 million (7%)

THE INTERNATIONAL SLAVERY :

Slavery in international law is governed by a number of treaties, conventions and declarations. Foremost among these is the **universal declaration on human rights** that states in Article 4 :- “ no one should be held in slavery or servitude, slavery in all of its forms should be eliminated.”⁶

The concept has its roots in the 1807 **abolition of slavery act of great Britain** . many academics in the field perceive this as the beginning of the end of traditional form of slavery ; chattel slavery. In the 19th century , Britain controlled the majority of the world through its colonies.

The UNITED STATES DECLARATION OF INDEPENDENCE,⁷ the French DECLARATION OF THE RIGHT OF MAN AND OF THE CITIZEN⁸. The African charter of human rights,⁹and constitution of south Africa¹⁰ all present the idea that human being should be free

⁶ United nations. “ universal declaration on human rights.” General assembly of the United nations. 1948

⁷ “Declaration of independence”. United states of America, July 4, 1776

⁸ Declaration of the rights of man and of the citizen. “ national assembly of france, August 26, 1789

⁹ “African charter on human and people’s rights”. African union, June 27 1981

¹⁰ Constitution of south Africa . south Africa May 6, 1996.

from tyranny and oppression. Although slavery continued to persist in some countries after these documents were written – namely, the united nation, in which slavery continued until the EMANCIPATION PROCLAMATION in 1863¹¹ - the underlying norms of this right is present.

RIGHT TO STARE¹²

It includes in slavery :-

- **The practice and institution of debt bondage** :the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonable assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.
- **The exploitation of children and adolescent** : any institution or practice whereby a children or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with the view to exploitation of the child or young person of his labour.
- **The practice and institution of serfdom** : the condition or status of a tenant who is by law, custom or agreement bound to live and labour on the land belonging to another person and to render some determinate service to such other person,

¹¹ “Emancipation Proclamation” united states of America January 1, 1863

¹² www.hera.org.com(2004)

whether for reward or not, and is not free to change his status.

LAW AND ISSUES RELATED TO BONDED LABOUR IN INDIA :

This definition is set out in the ILO'S forced labour convention, 1930 (no. 29). This convention has been ratified by over 170 states and obliges government to " suppress the use of forced or compulsory labour in all its forms within the shortest possible period. The UNITED NATION international convent on civil and political rights also prohibits the use of forced labour (article 8) and has been ratified by more than 160 states.

China is the only country in the world which has not ratified either of these international standards. However, many countries have not passed specific laws defining and prohibiting forced labour with adequate punishment for those responsibility .where these laws exists they are often not enforced properly.

LEGAL CONTEXT – INDIAN CONSTITUTION:

Some related provisions regarding to bonded 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 .
- Article14 , 15 and 16 :- these articles guarantees equality and equal treatment.

➤ Articles21 :-the article guarantees right to life and liberty.

➤ Article23 :- 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 provisions shall be an offence punishable in accordance with law. Nothing in this article shall prevent the state from imposing compulsory service for public purpose, 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.

➤ Article24 :- The article prohibits the employment of children whether as bonded labour or otherwise. Together, article 23 and article 24 are place under the heading" right against exploitation" one of India's constitution proclaimed fundamental rights.

➤ DIRECTIVE PRINCIPLES :-Moreover, the directive principles directs the states to strive the secure, inter alia : (a) just and human conditions of work (article 42) ; (b) educational and economic interest of the schedule caste and schedule tribes and other weaker section of the society (article 46).

➤ UNDER ARTICLE 42:- provisions for just and humane conditions of work and maternity relief – The state shall make provisions for securing just and humane conditions of work and maternity relief

➤ UNDER ARTICLE 43:- living wages etc. for workers – The state shall endeavour to secure by suitable

legislation or economic organization or in any other way, to all workers, agriculture, industrial, or otherwise, work and living wages, 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.

PROTECTION FROM SLAVERY AND FORCED LABOUR

The human rights act protect your human right not to be held in slavery or servitude.

Slavery is when someone actually owns you like a pieces of property. Servitude is similar. The law also protects you from forced labour_ forcing you to work under the threat of punishment that you have not agreed to accept.

Human Right Watch Report :

ARTICLE 4 NO SLAVERY AND FORCED LABOUR

Although the slave trade was abolished centuries ago, modern day slavery persist with many workers, often migrants, forced labour into performing compulsory work for little or no wages in conditions where they are effectively prevented from escaping. The prohibitions on holding a person in slavery or servitude is absolute and can never be justified.

The states are also under obligations to introduce legislation guaranteeing concrete and effective protection against such acts. There is also an obligations to investigate any allegations of slavery, servitude or forced or compulsory labour.

The prohibitions on requiring a person to perform forced and compulsory labour does not include lawful work or military service; work during emergency or other services that forms parts of normal civil obligations. ARTICLE 4 has contain followings¹³:-

- Article 4&1 = no shall be held in slavery and servitude.
- Article 4&2= no shall be required to perform forced or compulsory labour.
- Article4&3= for the purpose of this article the term “forced or compulsory labour” shall not include-
- Any work required to be done in the ordinary course of detention imposed according to the provisions of article 5 of this convention or during conditional releases from such detention.
- Any service of military character or in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service.
- Any service exacted in case of an emergency or calamity threatening the life or well being of the community.

¹³ Wwww. About Human Rights 2000-2014.com

- Any service or work which forms part of normal civic obligations

Example cases:-

Siliadin v France (2005)

A 15 year old girl was brought to France from Togo by 'Mrs D' who paid for her journey but then confiscated her passport. It was agreed that the girl would work for Mrs D until she paid back her air fare, but after a few months she was 'lent' to 'MR and MRS B' who forced to work for 15 hours a day, seven days a week with no pay, no holidays, no identity documents and without her immigration status being authorised. The girl wore second-hand clothes and did not have her own room. The authorities intervened once they were alerted to the situation. However at the time, slavery and servitude were not specially criminalised in France. The European court of human rights held that the girl had been held in servitude and that France had breached its positive obligations under the prohibitions of slavery and forced labour, because French law had not afforded the girl specific and effective protection.¹⁴

SLAVERY AND FORCED LABOUR UNDER 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 a fine, or with both, also;

In the Queen v Tang (2008) HCA 39¹⁵

The high court founds that in Australia, slavery is not limited to 'chattel slavery' and that the critical powers exercised were :-

- The power to make each woman an object of purchase.
- The capacity to use the women in a substantially unrestricted manner for the duration of their contracts
- The power to use their services without commensurate compensation.

THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

Bonded labour – means any labour or service rendered under the bonded labour system (section 2e). Bonded labourer means a labourer who incurs, or has, or is presumed to have incurred a bonded debt (section 2f).

The open objective of this act are identification, releases and rehabilitations of bonded labourers. Let us analyse some of the silent features of the act :-

- Section 16 to 19 of the act deals with the penal sanctions which are, if enforced

¹⁴ Case summary taken from *human rights, human lives, department for constitutional affairs*, 2006.

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<http://www.ag.gov.au/rightandprotection/humanrights/publicsectorguidance-sheet/pages/freedom-from-slavery-and-forced-labour.aspx>

properly sufficient to have the requisite effect.

- The act envisage the constitution of vigilance communities at the district.

SLAVERY AND FORCED LABOUR UNDER NATIONAL AND INTERNATIONAL DIMENSIONS:

INTERNATIONAL DIMENSIONS

Debt bondage has been defined by the united nations as a form of ‘modern day slavery’ and is prohibited by the international law. It is specifically dealt with by article 1(a) of the united nation 1956 supplementary conventions on the abolitions of the slavery. According to some economists, for example ; - Hernando de Soto , this is a major barrier to development in those countries , entrepreneurs do not dare take risks and cannot get credit because they hold no collateral and may burden families for generations to come.

Where children are forced to work because of debt bondage of the family, this is considered not only child labour, but a form of child labour in term of the worst forms of child labour conventions, 1999 of the international labour organization.

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. They are –

- Conventions on the suppressions of slave trade and slavery , 1926
- Supplementary conventions on the abolitions of slavery, the slave trade and institutions band practices similar to slave trade 1956;
- Forced labour conventions, 1930
- International convent on civil and political rights (ICCPR) , 1966
- International convent on economic, social and cultural rights (ECOSOC), 1966
- Conventions on the rights of the child (CRC), 1989

NATIONAL DIMENSIONS

In order to give effect to the constitutional prohibitions of bonded labour as specified under article 23 of Indian constitutional , 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 responsibilities of the state government.

LEGISLATIVE HISTORY :

Prior to 1976, all efforts to tackle the issue of bonded labour were made at the regional level only. Before the independence , there were two legislation , ; -

1. The bihar and Orissa kamaiauti agreement act , 1920

2. The madras debt bondage abolition regulation act , 1940

In the post independence two legislative period :- 1 The Orissa debt bondage abolition regulation , 1948

2 The Rajasthan Sagri system abolition act 1961

Some of the major case law related to the issue of bonded labour are:-

PUCL V STATE of TN (2004)¹⁶ ,

where the supreme court appreciated the role of NGO'S in the prevention of bonded labour and their emancipation. The court further observed that the approach of judiciary should be benevolent toward bonded labours.

SHANKHAR MUKHERJEE V UOI (1990)¹⁷

whether supreme court held that the contract labour act , 1970 is a welfare legislation that must be interpreted liberally in the favours of the labourers. The court further held that the system of contract of labour is just another form of bonded labour and it should be abolished due to its baneful effect .

NEERAJ CHAUDHARY V STATE OF M.P (1984)¹⁸

Where the supreme court expressed anguish over the indifference of the government towards the rehabilitation of released bonded labours.

NATIONAL AND INTERNATIONAL PROTECTION AGENCIES:

Globally *the international labour organization*¹⁹ , one of the UN specialized agencies , play a key role in enforcing international standard on protection against slavery and assisting victims of slavery through initiatives like its INTERNATIONAL PROGRAMME ON THE ELIMINATION OF CHILD LABOUR (IPEC)- THE PLACE OF LEGISLATION AND ENFORCEMENT IN THE FIGHT AGAINST CHILD LABOUR²⁰, INTERNATIONAL STANDARD AND CHILD LABOUR (united nation convention on rights of child 1989)²¹

Another UN initiatives is the global programmes against trafficking in human being. Non –government organizations like Anti – slavery international (ASI). More and more organizations are also working to combat and preventive trafficking and sexual servitude. The coalitions against trafficking in women raises awareness and lobbies policy – makers internationally on behalf of

¹⁶ PUCL V STATE (CASE OF KORAM : KULDIP SINGH AND S. SAGHIR AHMED , JJ.) WRIT PETITION (CIVIL) 3922 OF 1985

¹⁷ SHANKAR MUKHARJEE V UOI 1990 AIR 532 , 1989 SCR SUPL.(2) 182

¹⁸ NEERAJ CHAUDHARY V STATE OF MP ON 8 MAY, AIR 1984 SC 1099, 1984 (2) CRIMES 511 SC, 1984 LABIC 851, 1984 (1) SCALE 874, (1984) 3 SCC 243 (ILO) 1996-2014

²⁰ ILO CHILD LABOUR : TARGETING THE INTORABLE REPOERT VI(1) international labour conference 86th session 1998 Geneva, 1996.

²¹ ENTRY INTO FORCE 2 SEPTEMBER 1990, 192 RACTIFICATION AS AT 18 APRIL 1997

sexual exploit women .the protection project collects legal data and survivor stories regarding trafficking in women and children.

In **Sanjit Ray v. State of Rajasthan**²²

the SC restricted the state from extracting **labor** by paying less than the minimum wages in the name of public utility services, considering such amounts to forced **labor** and is violative of article 23 of the constitution. Therefore, **labor** must be compensated with wages even when they are under law compelled to render service in the larger public interests.

In **Bandhua Mukti Morcha v. Union of India**²³

the main issue concerned the existence of bonded **labor** 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 **laborers**. The workers were living in sub-human and miserable conditions. A violation of various **labor** laws and the Bonded **Labor** System (Abolition) Act 1976 was alleged. The SC stated that before a bonded **labor** can be regarded as a bonded **laborer**, he must not only be forced to provide **labor** 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 **labor** 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**²⁴

the courts found that the rehabilitation money payable under the Bonded **Labor** 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 **labor** 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 **Balram and others v. State of M.P**²⁵

the main issue was to determine whether the state and central governments had given the benefit of the scheme framed under the Bonded **Laborers** Act (whereby each bonded **laborer** was to be paid Rs. 6, 250/- as rehabilitation money) to some 3949 **laborers** in the state. The court directed that the Additional Collector and such, other officers who have been assigned the responsibility of supervising rehabilitation to ensure that the full amount intended for the freed **laborers** reaches them. Therefore, all such persons who were willing to have an account opened in their respective names for facilitating credit of the amount in such account shall have accounts opened and the money shall be credited in such accounts. The Union of India was also directed to release adequate funds under the Scheme to meet the liability under the Scheme framed under the Bonded **Labor** System (Abolition) Act, 1976 within four weeks to enable compliance of the directions now made. Similar directions were also issued to the State of Madhya Pradesh.

²² 20 January, 1983

²³ AIR 1984 S.C. 802

²⁴ AIR 1988 S.C. 1863

²⁵ AIR 1990 S.C. 44

In Bandhua Mukti Morcha v. Union of India and other²⁶

the main issue involved was whether the employment of the children below the age of 14 years was violative of Article 24 and whether the omission on the part of the State to provide welfare facilities and opportunities deprives them of the constitutional mandates contained in Articles 45, 39(e) and (f), 21, 14 etc.? The Supreme Court while dealing with the issue held that while exploitation of the child must be progressively banned, other simultaneous alternatives to the child should be evolved including providing education, health care, nutrient food, shelter and other means of livelihood with self-respect and dignity of person. Therefore the Court ordered the Government of India to convene a meeting of the concerned Ministers of the respective State Governments and their Principal Secretaries holding concerned Departments, to evolve the principles and policies for progressive elimination of employment of the children below the age of 14 years in all employments governed by the respective enactments mentioned in *M.C. Mehta's*²⁷ case - To provide (1) compulsory education to all children either by the industries itself or in co-ordination with it by the State Government with such timings as is convenient to impart compulsory education, facilities for secondary, vocational profession and higher education; (2) apart from education, periodical health check-up; (3) nutrient food etc.; (4) entrust the responsibilities for implementation of the principles. Periodical reported of the progress made in that behalf be submitted to the Registry of this Court

CONCLUSION

²⁶ AIR 1997 S.C. 2218

²⁷ 1997 AIR S.C.W. 407

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.

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

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