

Critical Analysis of Bonded Labour System in India

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ABSTRACT: This study's main purpose is to characterize the current situation of bonded labour in India, as well as its challenges which are been 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 Labor 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 paper 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.

KEYWORD: Constitution of India, National Human Rights Commission, Bonded Labour System (Abolition) Act, Rehabilitation of the Bonded Labour Scheme, Corporate Social Responsibility (CSR).

INTRODUCTION

The concept of bonded labour in India is not novel; rather it is another form of slavery which is an amalgamation of inhumane exploitation and discrimination. It originates from underlying socio-economic structures which can be mainly characterized as the "caste system" wherein the majority of bonded labours belong to the Dalit or indigenous class of people like the Adivasis. In the ancient Indian era, there was proximity between the occupational status and the caste of an individual, the same system continues to be prevalent even today.

The entire mechanism of bonded labour was much more prevalent in the pre-independence period, following which Article 23 of Indian constitution was drafted which prohibited the practice of any form of forced labour and made all such practices punishable. Even though there was a constitutional provision which prohibited any form of forced labour, the parliament failed to enact a law which explicitly abolished the practice of bonded labour.

Post-independence several states like Orissa (Orissa Debt Bonded Abolition Regulation, 1948), Kerala (Kerala Bonded Labour System Abolition, 1975) and Rajasthan (Rajasthan Sagri Abolition Act, 1961) enacted state legislations which penalized the practice of bonded labour. Despite several states penalizing the practice of bonded labour, there was no uniform law until 1976 which prohibited and penalized the practice of bonded labour.

The bonded labour system (Abolition) Act, 1976 (herein referred to as the Act) was enacted to abolish the system of bonded labour to not only prevent physical exploitation of the people belonging to weaker sections but also to ensure equality and right to life as enshrined under the Indian Constitution. The Act defines a bonded labourer as "a labourer who incurs, or has, or is presumed to have incurred a bonded debt"^[1].

The most significant feature of a bonded labourer is his loss of power to bargain i.e. lack of ability to raise a voice against the creditor who subjects him to inhumane and unequal treatment. When the labourer is unable to reimburse the debt to the creditor in a similar form, then he renders services on conditions which are not only brutal but also inhuman and discriminatory. The entire system is a representation of unequal exchange which not only represents severe violations of human rights but is also a disgrace to the labour's dignity.

The bonded labour system is an outcome of a debt-bondage system under which the debtor agrees along with the creditor that he would render services either himself or through his family members for a time period without any form wages^[2]

CONSTITUTIONAL CONTEXT OF BONDED LABOUR

Under the Indian Constitution, Article 23(1) prohibits human trafficking and other forms of forced labour and also provides that contraventions to this article are punishable in accordance with the law.^[3] In India, the scope and content of this article came in for judicial interpretation in the case of People's Union for Democratic Rights Vs. UOI^[4] (Asiad workers case) in 1982.

WHILE DISPOSING OF THE WRIT PERTAINING TO THE SUPREME COURT MADE THE FOLLOWING OBSERVATIONS:

1. All forms of forced labour were prohibited under Article 23 of the Indian Constitution.
2. Remuneration is not a criterion under bonded labour i.e. it is not important whether the debtor is remunerated for his labour.
3. Wages below limits as per the minimum wages act would lead to forced labour.
4. If labour arises out of any form of compulsion or force it would come within the ambit of forced labour and would therefore be covered by article 23 of the Indian Constitution.

All forms of labour are covered within the ambit of article 23 of the Indian Constitution, even if the labour voluntarily enters into such a contract with the debtor. Forced labour can arise in multiple ways like:

1. Physical force,
2. Force which is extended via a legal provision such as fines in cases where the labour fails to provide services, and
3. Any forms of compulsion or force arising out of hunger, poverty or destitution^[5]

Apart from article 23, Directive principles of state policy under article 42 and article 43 of the Indian Constitution also guarantee better working conditions for all. Article 42 provides for humane

working conditions at work and also ensures maternity reliefs for the female employees. Similarly, Article 43 provides for the state to ensure live able and good working conditions to ensure a decent standard of life along with full enjoyment of social as well as cultural opportunities.

In the case of *Bandhua Mukti Morcha Vs. UOI*^[6], Justice Bhagwati gave a very liberal, broad and an expansive definition to the bonded labour system in India. The court went beyond the plain literal definition of Section 2(g) of the Act and broadened its scope while interpreting the case. As per Justice Bhagwati's interpretation of this case, it was not necessary to prove any element of loan, debt or advance beyond the reasonable doubt in a creditor-debtor relationship as they belong to two diametrically opposite sectors of the society.

Since the debtor is usually poor, has lesser access to resources and in need of defence, whereas the creditor is richer, influential and socially more dominant thus they are bonded in a relationship which is based on unequal exchange. In this case, the main issue was about the mere existence of bonded labour in a stone quarries factory. It was alleged by the workers that they were compelled to migrate from various states and were then forced into a bonded labour system.

The workers also alleged that they lived in inhumane and miserable conditions and therefore alleged a gross violation of the Act. The Apex court took into account the miserable conditions which the workers were subjected too and also recognized the right of these workers to live with dignity.

The entire system of bonded labour lies within the fact that there is an obvious existence of social inequalities i.e. where one is more affluent than the other which in turn forces the weaker individuals to depend upon the affluent individuals for their survival. Therefore, this unequal dependence leads to immense brutalities. Despite having several legislations to protect the bonded labour, this evil system continues to exist in Indian society. This system needs to eradicate from the deep roots of our country as it strengthens caste-based discriminations and is volatile of the basic structure of our constitution equality as is enshrined under Article 14 of the Indian constitution.

At the same time, it is equally important to address the mental and physical trauma that bonded labour is subjected too. They are deprived of basic human and fundamental rights which can cause an immense effect in their overall wellbeing. In the case of *Neerja Choudhary Vs. State of MP*^[7], the court held that a mere identification and release of the bonded labour is not sufficient, rather, after their identification and release they must be rehabilitated otherwise they would be vastly subjected to poverty, despair and helplessness which would force them to become bonded labour again. Therefore, to remove this system from the grass-root, rehabilitation of the bonded labour is of equal importance.

THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976 - SALIENT FEATURES AND CRITICISMS

Salient Features of the Act

The Act provides several safeguards against the system, to protect the bonded labour from exploitation. Some of these safeguards are as follows:

- The bonded labour stand discharged from every obligation to provide any form of bonded labour.^[8]
- The Act yielded every agreement/ custom void wherein bonded labour existed.^[9]
- The Act freed every property which was mortgaged recovery for bonded debt from its commencement^[10]

- The Act also freed any person who was detained in civil prison in pursuance of a bonded debt.
- As per the Act, once a bonded labour is freed, he cannot be evicted from the homestead^[11]
- The Act has made the offence of practicing Bonded Labour punishable, with imprisonment of up to 3 years and a fine up to two thousand rupees for any person compelling another individual to engage in bonded labour^[12]
- Offences under this Act are cognizable as well as bailable^[13]

Criticisms of the Act

Even though the Act has successfully provided relief to several Bonded Labourers and has helped address situations wherein a gross violation of human rights takes place, it also has some loopholes which adversely affect its applicability and efficiency.

SOME OF THE KEY ISSUES ARE ENUMERATED BELOW:

- The Bonded Labour System (Abolition) Act, 1976 is only welfare legislation and is not a labour law. Other labour laws address situations where there is employer-employee nexus, however, the Bonded Labour System (Abolition) Act, 1976 is the reverse- it scraps off the existing master-servant relationship.
- Post-independence the government took more than 25 years to institutionalize bonded labour. This shows the apathy government had towards the bonded labour. The reason for such lack of concern may be due to the nexus between local goons who force individuals into bonded labour or pay fewer wages than the statutory mandated and police officials. Also, since most of the bonded labour come from the lower strata of society, they are bound to face caste discrimination when dealing with state officials.
- Section 10 of the act empowers a district magistrate to look into the rights of bonded labourers and implement the provisions of the act. Section 11 mandates district magistrate to secure economic rights of the bonded labour so that the person doesn't live in debt in future. However, in reality, we see that sometimes there is a close nexus between landlords who abuse provisions of the legislation and executive magistrate, these results in a much worse position for the bonded labourer. Also, too much discretionary power is given to the executive magistrate who is not reasonable. Instead, a committee should be formed which should comprise of members of civil society, members from SC/ST and tribal communities, judicial magistrates and the executive magistrate. This committee should look into social welfare and economic interest of bonded labourers.
- Section 21 of the act empowers state governments to make executive magistrate as judicial magistrate of the first class or second and then they can try alleged offences under this legislation. Again, over here executive magistrates have been conferred with too much power.
- Section 22 makes offences under this act as bailable such offences should be made non-bailable as bonded labour takes away right to life of an individual and directly violates the constitution of India. The non-bailable offence will further ensure deterrence in society.
- Moreover, the real problem lies in the implementation. Failure of implementation of the provisions of the Act can arise due to several factors like:
 - ✓ Lack of consciousness and knowledge
 - ✓ Lack of the prosecution of offenders

- ✓ Lack of political as well as administrative will
- ✓ Monetary, as well as social dependence^[14]

BRIEF COMPARISON BETWEEN BONDED LABOUR AND CONTRACT LABOUR

Contract labours are employed for a fixed-term contract which maybe fixed in terms of time. This ensures the employee with employment for a fixed duration. The contract could also be fixed in terms of a project which ensures the employee that his employment is secured till the completion of a project. Lastly, contract labours can also be employed seasonally, for example- for agricultural purposes.

On the other hand, bonded labour occurs when an individual owes to some other individual and there is no scope for repayment. In such instances, the debtor enters into a relationship wherein he works for the creditor as a way to pay off the loan or debt. The nature of work and the time duration for such work may or may not be defined. There are no contractual obligations in the bonded labour system and this could lead to severe and gross violations of human rights.

RECOMMENDATIONS AND SUGGESTIONS

Every individual is endowed with a right to live with dignity. The bonded labours have not seen the light of the day and their right to live with dignity is mostly denied blatantly. Even though the Indian Constitution and the Act provide legislations which provides for various protection and prohibit the practice of bonded labour, however, the system is very much prevalent even in the current times due to various implementation failures and other factors. There is an urgent need for political as well as unconventional recommendations to eradicate this problem from the roots of India.

- One way is to deny the very existence of the problem. Such denial leaves no scope for its eradication. Therefore, a pro-active role is a must on behalf of the State Government. The state government must take measures to firstly identify the bonded labours in their territories, secondly recognize and free them, thirdly provide rehabilitation facilities to them to prevent relapse and lastly ensure that the offenders are punished as per the provisions of the Act.
- The current system fails to recognize double victimization of women belonging to weaker sections, particularly sexual and physical assaults. A separate provision must be added within the Act which ensures safety for women and punishes the offenders. Considering, bonded labour is legally abolished from India- sexual harassment of women at the workplace would not apply. Therefore the addition of such a provision must be incorporated in the Act.
- The police system must be revamped along with sensitizing them. This would make them more approachable for bonded labour. Currently, it is frequently noted that the police gets corrupted by the offenders who are usually rich and powerful, which worsens the conditions of the bonded labour.
- People belonging to SC/ Dalits/ST and others who belong to the lower section in the hierarchy of caste must be made an integral part of the civil society. The law alone cannot change the society, like-minded and progressive people can. By giving the weaker sections position of power they can get a social as well as a political recognition.
- Currently, the monetary fine as a punishment for the offender is merely 2000 INR. This amount is unreasonably low as the offenders are mostly rich and powerful. The fine should be increased to reform the offenders which could subsequently decrease the practice of bonded labour.

IMPACT OF COVID-19 ON BONDED LABOUR SYSTEM IN INDIA

The pandemic and the lockdown which India faced earlier have resulted in a massive loss of livelihoods in the economy. The informal sector remains the worst hit. Many vulnerable individuals and their families who lost their source of livelihood within the informal sector are in an urgent need for funds for survival. However, with little or no savings and limited access to state support, they fall at a greater risk of falling prey to the lenders who provide a credit on their terms including debt bondage^[15]

Now more than ever, there is a huge risk of workers likely to fall prey to contract debts to support themselves and their families, thus increasing the risk of debt bondage. Many of these vulnerable people have previously worked as bonded labour; however, with the sudden lockdown which crippled their livelihoods, many of them have no option other than to borrow money at the terms of the creditor and moneylenders to keep themselves afloat.

Even though the Apex Court had advised the NHRC to form guidelines to protect and rehabilitate bonded labours during the pandemic, however, this seems to be inefficient due to several factors like:

1. such workers are usually untraceable,
2. moneylenders tend to immorally corrupt the police officers, and
3. the bonded labour are usually blackmailed by the moneylenders due to which they hesitate from speaking up against the creditors. It is undisputable that the informal sector is the worst hit because of the ongoing pandemic and this has led to a massive increase in the vulnerable people who fall prey to vicious moneylenders for their survival.

CONCLUSION

Abolition of the bonded labour system has been a constant struggle in India. There are several problems which have to be addressed and tackled with. However, the two strongest reasons for the existence of bonded labour system in the current times are firstly, the predominant caste structure of India and secondly the extreme poverty.

Even though the Act read with Article 23 of the Indian Constitution declares the system as illegal, there are several issues pertaining to its implementation which makes this system prevalent even today. NHRC constantly encourages the state governments to conduct surveys and provide rehabilitation to the bonded labours but the results continue to remain staggeringly poor due to aforementioned reasons. Till the point the law does not instill its existence even at the lowest sections of the society, it would be regarded as insufficient, despite having a statutory recognition.

Therefore, preventive as well as reformative methodology must be followed. The bonded labour system must severely be condemned and eliminated from the grass-root levels of the society. Proper implementation of the existing laws and rules could work wonders and can actually make the Indian society completely free from such forms of oppressive systems which restrict social prosperity.

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