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**SHRI DHARMASTHALA MANJUNATHESHWARA
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DEBT BONDAGE: LAW AND ENFORCEMENT ISSUES

Dr. Gagan Krishnadas ¹
Dr. Ramesh ²

Abstract

Bonded Labour is also known as “debt bondage” – is one of the most widely practiced form of slavery. In India, the labourers are bonded for work when they are unable to pay back the debt taken from the rich people. Bonded Labour was abolished legally through a legislation in 1976. Yet, due to the widespread poverty and inefficient enforcement mechanisms, bonded labour still exists in various forms. Walk Free Foundation, an international NGO working on ending of slavery has stated that India has at least 3% of its population locked in slavery.

Bonded labour system also comes under unorganised labour force, but is not easily traceable. Bonded labour is carried out in violation of Human Rights and Constitutional norms. Women and Children are also used as bonded labourers. There are no minimum standards of dignity and payment in such a system. This paper examines the legal framework for abolishing bonded labour; problems faced in ending bonded labour system and proposes measures to end bonded labour system.

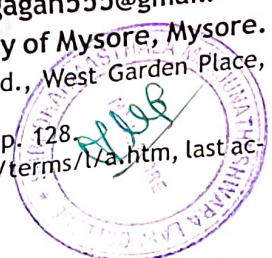
Keywords: *Bonded Labour, Servitude, Slavery, Debt Bondage, India.*

Importance of Labour

Mahatma Gandhiji listed “seven deadly sins” – out of which the first sin is to gain wealth without working.³ Gandhiji believed that every person has to work in order to survive. He said that, “God created man to work for his food, and said that those who ate without work were thieves.”⁴ Gandhiji believed that every type of labour is important and different type of labourers should respect each other.

Karl Marx believed that labour is the “first premise of all human existence”⁵ Marx believed that the capitalists did not pay the labourers sufficient wages for their work which leads to what he calls as “class struggle.” He was one of the earliest philosophers to have raised the issue in favour of the working class.

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³ Stephen R. Covey, *Principle Centered Leadership*, Simon & Schuster Ltd., West Garden Place, Kendal Street, London, p. 87.
⁴ Mahatma Gandhi, *All Men Are Brothers*, Columbia University Press, 1958, p. 128.
⁵ Encyclopedia of Marxism, available at: <https://www.marxists.org/glossary/terms/1/a.htm>, last accessed November 4, 2015.



According to John Locke, every person initially owns her own body as her property. To acquire a property beyond her body, a person will have to mix her labour to the objects in the world.⁶ So, according to Locke, every property or wealth so created in this world is due to the labour of an individual.

Adam Smith in 1776 wrote *The Wealth of Nations*. The importance of labour has been explained in the initial chapters of his book. He says that "Labour was the first price, the original purchase - money that was paid for all things. It was not by gold or by silver, but by labour, that all wealth of the world was originally purchased."⁷ He continues to explain how the division of labour improved the productivity and efficiency of the community as a whole. Smith then explains that the employers make an understanding to fix lower wages, while labourers make an understanding and bargain for higher wages. He also states that the employers are in a better condition to sustain without labourers and it is the labourers who suffer in the long run. He advocates in his book that in the absence of these understandings (cartels), the "invisible hand" of the market will fix the best prices for the labourers.

History of Slavery

Slavery is defined as "the condition in which one human being was owned by another. A slave was considered by law as property, or chattel, and was deprived of most of the rights ordinarily held by free persons."⁸ The slaves were never treated as human beings, they did not enjoy any liberty or rights. They were treated as things and property that could be owned.

All along the history, we come across the evidence that slavery existed. Hammurabi code makes a statement that slavery was institutionalised and the slaves did not have any rights that the citizens enjoyed.⁹ In ancient Greek civilization, slavery was rampant and each family owned at least a slave.¹⁰ Romans inherited the institution of slavery from the Greeks. Romans enslaved entire populations when they conquered new cities. Thus, they got cheap or almost free labour for their farms and for building their city.¹¹ There was rebellion by slaves in many places. Notable one recorded in the history is the Third Servile War led by Spartacus which is the first major uprising for freedom recorded in history.¹²

⁶ John Locke, *Encyclopedia Britannica*, available at: <http://www.britannica.com/biography/John-Locke>, last accessed November 5, 2015.

⁷ Adam Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations*, Thomas Nelson, 1843, page 13.

⁸ Slavery, *Encyclopedia Britannica*, available at: <http://www.britannica.com/topic/slavery-sociology>, last accessed: November 2, 2015.

⁹ Junius P. Rodriguez, *The Historical Encyclopedia of World Slavery*, Volume 1; Volume 7, ABC-CLIO Inc, California, 1997, p. 330.

¹⁰ J P Mahaffy, *A Survey of Greek Civilization*, p. 150.

¹¹ Bradley, Keith R., *Slaves and masters in the Roman Empire: a study in social control*, Oxford University Press, USA, 1984, p. 43.

¹² Baldwin, Barry, *Two Aspects of the Spartacus Slave Revolt*, *Classical Journal* (1967): 289-294.



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In the modern times, we find slavery in African continent. In Australia also, the aborigines were enslaved by the migrants who went to the continent. In America, slavery was legal and had the support of the courts! Even after the ratification of written Constitution in 1789, slavery existed. It was only after the Civil War and the Thirteenth Amendment of the Constitution in 1865, that slavery was formally put to an end all over USA. Slaves were captured during wars. This was the nature of slavery in the ancient times. But as time progressed, in the modern times, men were enslaved by way of debt bondage.

Debt Bondage

"Debt slavery, also called debt servitude, debt bondage, or debt peonage, a state of indebtedness to landowners or merchant employers that limits the autonomy of producers (e.g., tenant farmers) and provides the owners of capital with cheap labour. Examples of debt slavery, indentured servitude, peonage, and other forms of forced labour exist around the world and throughout history, but the boundaries between them can be difficult to define."¹³

When we take the incidence of debt bondage in India, it has lot to do with the land holding. In India, large areas of lands are held by very less number of people. India being an agricultural society and a chunk of population being uneducated, they rely on agricultural labour.¹⁴ However, they do not own a piece of land and hence rely on landlords who are known as *zamindaars*. It is a Hindi word that translates to "a person who holds the land." The landless labourers work on the lands of the zamindaars and often borrow money and when they are unable to pay, they are tied as bonded labourers.

Bonded labour exists in India in several forms. National Human Rights Commission confirms this in the following words, "there still exists in different parts of our country a system under which the debtor or his descendents have to work along with one or more than one member of the family for the creditor for a specified or an unspecified period without any market wage or without minimum wage notified by the Government in order to discharge a debt. This system originated from the uneven social structure characterized by feudal and Semi feudal conditions."¹⁵

Global Slavery Index

Global Slavery Index was first published in 2013 by the Walk Free Foundation. The 2014 index estimates that there are 35.8 million people living in modern slavery. Most of the modern slavery exists in the form of bonded labour. The report notes, "[From children denied an education by being forced to work or marry early, to men

¹³ Debt slavery, *Encyclopedia Britannica*, available at: <http://www.britannica.com/topic/debt-slavery>, last accessed November 3, 2015.

¹⁴ Lerche, Jens, *Is bonded labour a bound category? Reconceptualising agrarian conflict in India*, *The Journal of Peasant Studies* 22, No. 3 (1995): 484-515.

¹⁵ *Know Your Rights - Bonded Labour*, National Human Rights Commission, 2010, p. 1.



unable to leave their work because of crushing debts they owe to recruitment agents, to women and girls exploited as unpaid, abused domestic workers, modern slavery has many faces and comes in many different forms. It still exists today, in every country] – modern slavery affects us all.”¹⁶

It is estimated that India stands on the fourth position when it comes to the percentage of people living in slavery, followed by Pakistan.¹⁷ When it comes to absolute numbers, India tops the index with 14.28 million living in slavery.¹⁸

| Rank | Country | Estimated proportion of population in modern slavery (%) | Estimated population in modern slavery (n) | Total Population |
|------|--------------------------|--|--|------------------|
| 1 | Mauritania | 4.0000 | 155,600 | 3,889,880 |
| 2 | Uzbekistan | 3.9729 | 1,201,400 | 30,241,100 |
| 3 | Haiti | 2.3041 | 237,700 | 10,317,461 |
| 4 | Qatar | 1.3563 | 29,400 | 2,168,673 |
| 5 | India | 1.1409 | 14,285,700 | 1,252,139,596 |
| 6 | Pakistan | 1.1300 | 2,058,200 | 182,142,594 |
| 7 | Congo | 1.1300 | 762,900 | 67,513,677 |
| 8 | Sudan | 1.1300 | 429,000 | 37,964,306 |
| 9 | Syria | 1.1300 | 258,200 | 22,845,550 |
| 10 | Central African Republic | 1.1300 | 52,200 | 4,616,417 |
| 11 | Republic of the Congo | 1.1061 | 49,200 | 4,447,632 |
| 12 | United Arab Emirates | 1.0572 | 98,800 | 9,346,129 |
| 13 | Iraq | 1.0351 | 345,900 | 33,417,476 |
| 14 | Cambodia | 1.0292 | 155,800 | 15,135,169 |
| 15 | Moldova | 0.9362 | 33,300 | 3,559,000 |
| 16 | Mongolia | 0.9068 | 25,700 | 2,839,073 |
| 17 | Namibia | 0.9068 | 20,900 | 2,303,315 |
| 18 | Botswana | 0.9068 | 18,300 | 2,021,144 |
| 19 | Suriname | 0.9068 | 4,900 | 539,276 |
| 20 | Nepal | 0.8227 | 228,700 | 27,797,457 |

Table 1. Estimated population in modern slavery. Source: Global Slavery Index, 2014.

¹⁶ The Global Slavery Index 2014, p. 7, available at: <http://www.globalslaveryindex.org/download/>, last accessed October 28, 2015.

¹⁷ Ibid.

¹⁸ Ibid.



International Covenants

According to the Forced Labour Convention of 1930 (No.29) [Article 2 (1)] – the term “forced or compulsory labour” means 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 voluntarily.

The ILO Convention states that member countries are to suppress the use of forced or compulsory labour in all its forms within the shortest possible period. (India ratified the ILO Convention on Forced Labour (No. 29) on 30.11.1954).

Article 4 of the Universal Declaration of Human Rights, 1948 states that “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”

The UN Supplementary Convention on the Abolition of Slavery (1956) – defines debt bondage as “the status or condition arising from a pledge by a debtor of his personal service or those of a person under his control as a security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”

In the ILO Report on Stopping Forced Labour (2001) – the term, bonded labour refers to a worker who rendered service under condition of bondage arising from economic consideration, notably indebtedness through a loan or an advance. Where debt is the root cause of bondage, the implication is that the worker (or dependents or heirs) is tied to a particular creditor for a specified or unspecified period until the loan along with the interest which is at usurious rates has been fully repaid.

Constitutional Dimensions

The Constitution of India guarantees all its citizens – justice - social, economic and political; freedom of thought, expression, belief, faith and worship; equality of status and of opportunity and fraternity, dignity of individual and unity of the nation.

Article 23

Prohibition of traffic in human beings and forced labour:

- 1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- 2) 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 of religion, race, caste or class or any of them.

Article 39

Certain principles of policy to be followed by the States:



Article 39(a) provides that the citizens, men and women equally, have the right to an adequate means of livelihood; Article 39 (d) provides that there is equal pay for equal work for both men and women and Article 39 (e) provides that the health and strength of workers, men and women, and the tender age of children are not abused and that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

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 maternity relief.

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 industries on an individual or co-operative basis in rural areas.

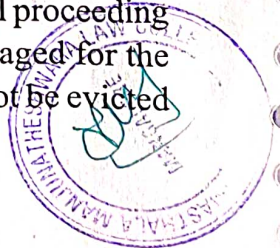
Bonded Labour Abolition Act of 1976

The Bonded Labour Abolition Act was first promulgated as an ordinance and then passed in the parliament. The Act contains totally 7 chapters and 27 sections. The statement of objects and reasons states that the Act is based on Article 23(1) of the Constitution. Unlike many statutes, this legislation is applicable to the whole of India and does not exempt the state of Jammu and Kashmir.

Section 2 of the Act defines several times. It defines 'bonded debt' as "an advance obtained, or presumed to have been obtained, by a bonded labourer under, or in pursuance of the bonded labour system." The term 'bonded labour' has been defined as "labour or service rendered under the bonded labour system." The term 'bonded labourer' has been defined as "labourer who incurs, or has, or is presumed to have, incurred a bonded debt." Section 2(f) defines "bonded labour system" in broad terms so as to include all types of forced labour being carried out as a result of debt by the descendants or ascendants. Section 3 specifically states that this legislation will override other Acts. Hence, this is a special Act.

Section 4 abolishes bonded labour from the date of the commencement of the Act (October 25, 2015) and prohibits lending money on the basis of bonded labour. Section 5 voids any past custom or agreement that creates bonded labour.

Section 6 extinguishes bonded debt given to a bonded labourer and no civil proceeding will lie for recovering such debt. Section 7 liberates the property mortgaged for the purpose of bonded labour. Section 8 states that the bonded labour shall not be evicted



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from any homestead or residence where he was living before he was freed from the bonded labour. This section was inserted because of the ground reality of bonded labourers being housed within the land owned by the creditors!

Sections 16, 17, 18, 19, 20, 21, 22 and 23 in Chapter VI deal with the offences and punishment under the Act. Those who give debt on the condition of bonded labour are given imprisonment of 3 years and fine of two thousand rupees. Those who have already been practicing bonded labour are asked to free the bonded labourers within 30 days of the commencement of the Act, failing which they would be fined.

Rehabilitation of Bonded Labourers

In order to assist the State Governments in their task of securing physical and psychological rehabilitation of released bonded labourers, the Ministry of Labour launched a Centrally Sponsored Scheme on 50:50 basis in May 1978. The scheme has undergone qualitative changes from time to time and has been progressively liberalized. The rehabilitation assistance has since been enhanced from Rs. 10,000/- to Rs. 20,000/- per bonded labourer w.e.f. May, 2000 & in the case of seven North Eastern States, 100% central assistance if they express their inability to provide their share.¹⁹

| Sl.No | States | No. of Bonded Labourers released | No. of bonded labourers rehabilitated | Central assistance provided(in Rs) |
|-------|-------------------|----------------------------------|---------------------------------------|------------------------------------|
| 1 | Andhra Pradesh | 37,988 | 31,534 | 850.00 |
| 2 | Bihar | 14,315 | 13,533 | 454.38 |
| 3 | Karnataka | 63,437 | 57,185 | 1578.18 |
| 4 | Madhya Pradesh | 13,317 | 12,392 | 164.49 |
| 5 | Orissa | 50,029 | 46,901 | 903.34 |
| 6 | Rajasthan | 7,488 | 6,331 | 72.42 |
| 7 | Tamil Nadu | 65,573 | 65,573 | 1661.94 |
| 8 | Maharashtra | 1404 | 1,325 | 15.56 |
| 9 | Uttar Pradesh | 28,846 | 28,846 | 633.30 |
| 10 | Kerela | 823 | 710 | 15.56 |
| 11 | Haryana | 591 | 89 | 4.93 |
| 12 | Gujarat | 64 | 64 | 1.01 |
| 13 | Arunachal Pradesh | 3,526 | 2,992 | 568.48 |
| 14 | Punjab | 69 | 69 | 6.90 |
| 15 | Chhatisgarh | 124 | 124 | 12.40 |
| 16 | Jharkhand | 196 | 196 | 19.60 |
| 17 | Uttranchal | 5 | 5 | 0.50 |
| 18 | West Bengal | 267 | 267 | 20.41 |
| | Total | 2,88,098 | 2,68,136 | 6,983.36 |

Table 2. Rehabilitation of bonded labourers.

Source: Annual Report. Ministry of Labour and Employment, GOI, 2008-09

¹⁹ Annual Report 2014-15, Ministry of Labour and Employment, Government of India.

Supreme Court on Bonded Labour

In the case *Bandhua Mukti Morcha v. Union of India and others*²⁰ Justice P.N. Bhagwati and R.S. Pathak passed an order directing the Government of Haryana to take necessary steps to curb the problem of bonded labour. A letter was addressed by one NGO – Bandhua Mukti Morcha to the Supreme Court judges about the inhuman working conditions of the bonded labourers in the stone quarries of Haryana state. It was found that the vigilance committee under the Bonded Labour Abolition Act, 1976 had not been constituted. The court directed that the Government should take necessary steps to enforce the law.

In *People's Union for Civil Liberties v. State of Tamil Nadu & Others*²¹, the Supreme Court directed that the National Human Rights Commission (NHRC) should be involved in monitoring the pace and progress of implementation of the law, national policy and programme of action as also directions of the apex Court issued from time to time.

Bonded Labour in Karnataka

In 2015 May, 107 bonded labourers were rescued from an Agarbatti factory located in Kaggalipura, which is in the outskirts of Bangalore city. The bonded labourers were brought from Jharkand, West Bengal, Assam and Nepal. They were made to work day with very less time for lunch and tea breaks.²²

In 2015 October, a committee headed by senior journalist Sivaji Ganesan submitted a report to the Government of Karnataka stating that bonded labour problem was rampant in the state and the authorities were not doing enough work to curb it. The report noted that periodical surveys have not been done and there is no clear data about the prevalence of bonded labour system in Karnataka. The report cited from an NGO named Jeevika which helped at least 3,000 bonded labourers to apply to the district administration in the year 2014 and helped 7,000 bonded labourers in the year 2012-13.²³

The Legislature Committee on Women and Child Welfare submitted its report to the Karnataka Legislative Council which noted that the revenue department was not discharging its duties to tackle bonded labour. It noted that the Centre had not released its share of Rs. 75.8 crore for the rehabilitation of bonded labourers. The report noted that 4,127 bonded labourers were freed between 2001 and 2014. It noted that 1,511 bonded labourers were released during the year 2000-2001. In the year 2002-03, only 6 bonded labourers were released. During 2013-14, 639 bonded labourers were released. The report also noted that 33 child labourers were rehabilitated in the last two years.²⁴

²⁰ AIR 1984 SC 802

²¹ 1997 (1) SCC 301

²² Bonded labour case points to a wide trafficking network, *The Hindu*, June 2, 2015

²³ Caught in a vicious cycle of bonded labour, *The Hindu*, October 4, 2015.

²⁴ Revenue Dept. has neglected bonded labour issue: report, *The Hindu*, August 3, 2015.



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Conclusion

There are laws for curbing the inhuman practice of bonded labour system. It is alarming that even 40 years after abolishing bonded labour, the problem is prevalent. There are many reasons for the prevalence of bonded labour. One of the major reason is the landlessness of the labourers. One more reason is the unavailability of credit from the banks. As a result, labourers rely on moneylenders and landlords for loan credit and get entangled as bonded labours. Bonded labour can be prevented by having good credit facilities for the poor and implementing land reforms effectively.

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