

Bonded Labour: Incumbent Legislation in the need of reform?

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Abstract

Bonded Labour is a practice which grounded its roots in Pakistan years before its birth. The traditions of the subcontinent, the ancestral state of Pakistan, employed bonded labour as an alternative to the conventional loan repayment method. This practice has however, over the years, created a cycle of imprisonment, where once an individual, a free citizen, who engages it, ends up spending his life in servitude to those he owes financial debts. It is then not only this individual who is roped into a vicious cycle of no escape, as his family is tied down along with him. Termed to be modern slavery, countries, including Pakistan have made legal provisions criminalizing bonded labour. But practices which are entrenched in cultural institutions rarely respond to legislative sanctions. Such seems to be the case of Bonded labour as the practice is still alive within the country. The relevant legislations will be qualitatively assessed to see if they are sufficient as legal devices to eliminate this problem, or if they are in need of reform.

Introduction

Bonded labour is typically categorized as the creditor/debtor relationship whereby the creditor extends money, advance or loan to the debtor on the understanding that the latter will render him services for an agreed or indefinite period of time. It is usually the case that the value of work as reasonably assessed is not applied towards the liquidation of debt¹. This has resulted in entire families being bonded to the creditor for generations. Many a times the affected persons are subjected to physical and sexual violence and live on near-starvation diets. Often the people involved are kept under tight surveillance and at times in private prisons. This maltreatment amounts to denial of their fundamental rights, i.e. right to freedom of movement, the right not to be subjected to inhumane degrading treatment and right to be free from servitude². The sufferers range from males, females to children and in relation to children it is further violative of the constitutional right to education. It is for these reasons that United Nations has classified it as a form of “*modern slavery*”³. According to the Global Slavery Index 2013, nearly 30 million people⁴ around the World are affected by bonded labour and are living their lives like slaves. Its highest proportion has been said to be found in countries like Pakistan, Mauritania, India, Nepal, Gambia, Benin, Ivory Coast, Moldova, Gabon and Haiti. Thus, bonded labour is a global concern not peculiar to Pakistan.

According to the Global Slavery Index 2013 Pakistan has been estimated to have 2.1 million bonded labourers. This practice is mostly witnessed in the brick kiln industry of Punjab and the agricultural communities of Sindh. Within the brick kilns the recruitment of labourers is indirect usually through a contractor who receives commission from them.

¹ This is especially true of Peru where they are paid a symbolic two percent per year.

² Under Art 15 of The Constitution of Pakistan 1973 freedom of movement is the right of every citizen of Pakistan.

³ It is specifically dealt with by Art 1(a) of the United Nations Supplementary Convention on the Abolition of Slavery.

⁴ Whereas the estimation of International Labour Organisation of forced labour across the globe is 21 million. Despite the irregularities in the estimation by the Global Slavery Index on the one hand and ILO on the other Mrs Clinton has said that although “the index was not perfect, it provided a starting point” and that she “urges the leaders around the world to view this index as a call to action, and to stay focussed on the work of responding to this crime”.

The brick kiln workers are offered advances through contractors before the work has actually commenced. Payment is made on a weekly basis through the contractor who deducts his 5% commission. Deductions in connection with loans and advances are also made at the same time. Fresh loans are also offered during the course of the work and the cycle continues till the workers are completely trapped. It is very difficult for the families to get rid of the debt and only a few families manage to reduce their debt.

Whereas in the agricultural sector of Sindh it is noted in the *hari/zamidar* (labourers brought to work on a land/ landlord) relationship. What this entails is a situation where the harvest is shared 50/50 with the *zamidar*. The *zamidar* determines which expenses should be deducted and the selling price of the crop and the *hari* is obliged to borrow to meet the costs of cultivation as well as borrowing for regular consumption needs and events such as death, marriage and illness. Half of the share in the harvest is not enough for survival. In addition to being an economic exploitation design, the problem of bonded labour insofar as Pakistan is concerned is also rooted in socio-economic structures. Although Bales is accurate to observe that “slavery grows best in extreme poverty”⁵, it is equally true that it flourishes because people do not make the effort to live in their means. Thus, where loans are taken for marriage, arrangements knowing that in return one will be bound to indefinite work is one situation where keeping to ones means would not have prompted debt-bondage.

A. National Legislation on Bonded Labour

It has been noticed that up until 1989 there was no legislation in Pakistan that outlawed bonded labour. Much of the cases were dealt under the forced labour provision or the slavery provision enshrined in the Constitution of Pakistan 1973. However, in 1989 with the coming of the decision of Supreme Court of Pakistan the matter of bonded labour was accorded real attention. In 1988 the Chief Justice of Pakistan had received a

⁵ Jo Beall, ‘Disposable People: New Slavery in the Global Economy: Kevin Bales’ (2000) 27(3) The Journal of Sociology & Social Welfare 180.

telegram from the bonded laborers in the brick kiln industry of Punjab alleging that they and their families had been illegally detained by the brick kiln owners and despite them having filed complaint no protection had been accorded to them. In the exact words of the petitioner “*we are hiding like animals without protection and food. We want to live like human beings. The law gives us no protection*”. The Supreme Court noting the injustices and seriousness of the matter exercised its power under Art 184(3)⁶ and changed the telegram into a petition and considered the matter to be of public interest and took cognizance for the enforcement of fundamental rights. This shows how in the absence of legislation the judicial organ can be the enforcer of rights. Perhaps A.V Dicey was not inaccurate to enunciate in his three-tier description of rule of law, the limb that judges are the only protectors of rights especially where there is a legislative void.

Thus, in *Darshan Masih alias Rehmatay and Others v The State of Pakistan* the Supreme Court of Pakistan ordered the detainees to be freed giving effect to Arts 11(1), 11(2) and 8 of the Constitution of Pakistan. Moreover, the Court identified “*Peshgi*”⁷ System “as the peripheral cause of bonded labour system and robustly recommended for the discontinuance of this practice in future. In particular, the Court commended that the legislative organ should enact laws on the abolition of bonded labour and further suggested that the proposed legislation must contain a comprehensive definition of forced labour. The National Parliament took charge of this recommendation and enacted the Bonded Labour Abolition Act in 1992. However, it failed to incorporate into the law the definition of forced labour as had been recommended by the Supreme Court. This omission has resulted in failure to determine the exact scope of forced labour.

⁶ This article is from the Constitution of Pakistan 1973 and states that “the Supreme Court shall, to the exclusion of every other Court, have original jurisdiction in any dispute between two or more governments”.

⁷ Bonded labour in exchange of advance/ an amount of money given before services are rendered.

1. Forced Labour

The Bonded Labour System Abolition Act of 1992 defines forced labour in s. 2(e) as “*forced or partly forced labour whereby a debtor enters into an agreement with creditor in consideration of Peshgi obtained by him and renders labour to the creditor either without wages or for nominal wages.*”. It is evident from this section that bonded labour is a kind of forced labour but it gives no explanation whatsoever as to what is meant by forced labour. Forced labour is a wide term and it has been argued by Professor H.L.A Hart that where the laws are open textured there is a penumbra of interpretation surrounding them. This evidences that s. 2(e) is open to the possibility of being manoeuvred because of its imprecision and is responsible for many of the uncertainties in law. According to Forced Labour Convention 1930, ratified in 1957 by Pakistan, forced labour means: “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. According to this Convention the benchmark for determining forced labour is whether or not the service was rendered under some menace of penalty and whether or not the work was done voluntarily. It is not clear from the wording of s. 2(e) whether where the word forced is used. It is intended to mean that that is set out in the Labour Convention (under the Convention, the State of Pakistan has an obligation to pass laws that will give effect to its obligations under International Labour Standards). In this regard it could further be criticized for lacking understandability. According to Lon Fuller laws must be intelligible and the rule of law demands that the citizens understand the laws promulgated. Since the section is devoid of precision it is difficult to predict that citizens of Pakistan will understand it without much difficulty. Nonetheless what is clear from the decision of the court in *Zaib-un-Nisa v The Govt of Pakistan* is that voluntary work is also included within the scope of forced labour. This interpretation of forced labour is wider than that afforded under Labour Convention.

B. Executive Problems

Under s 9⁸ the responsibility for implementation lies with the Provincial Government who may then delegate it to the District Magistrate. Then under s10 (1) the District Magistrate has the duty to promote the welfare of freed labourers. This has been understood to mean setting up rehabilitation centres. However, according to Barrister Zamir Ghumro "... the people whose interests are best served by forced labour do nothing to rehabilitate hundreds of people released from private jails and others". Furthermore, under s 10(2) the District Magistrate also has the responsibility to inquire if forced labour is being enforced in their local limits of jurisdiction. In this respect the Policy Review 2013 states no surveys as such have been conducted. From this it comes to fore that the executive organ is recruited with people who lack sense of responsibility and duty and do not feel embarrassed about sleeping on their duties. In this regard an attitudinal change is needed. A vocational training programme with the aim of teaching the officials strict observance of law is needful. Additionally, a stricter recruitment system based on meritocracy should be put in place to circumvent the inclusion of those who come through nepotism.

C. Need for reform

More recently, in *Human Rights Commission v The State* the Supreme Court of Pakistan exhibited its dissatisfaction with the Bonded Labour Act of 1992. In this regard the Court observed that "... although BLSSA 1992 has been promulgated yet it was not sufficient" and that the "... law must be more stringent otherwise it would become difficult for law enforcing agencies as well as courts to effect recovery of detained prisoners". Moreover, it recommended the registration of brick kilns and

⁸ This states that " the Provincial Government may confer such powers and impose such duties on a District Magistrate as may be necessary to ensure that the provisions of this Act are properly carried out and the District Magistrate may designate an officer subordinate to him to exercise all or any of the powers , and perform all or any of the duties, so conferred or imposed and specify the local limits within which such powers or duties shall be carried out by such officer".

furnishing the labour inspectors with the updated lists of labourers engaged by brick kilns. In spite of this recommendation only 15% of the 15000 kilns have been registered so far as was noted by the brick kiln workers leader Syeda Ghulam Fatima in 2013. And in 2014 nine years after the recommendation came we still see calls for registration of brick kilns by the Regional manager of Sparc Mr. Kashif Bajeer. Given that bonded labour is also dominant in the agricultural sector of Sindh it has to be regarded that registration of brick kilns will not serve to control bonded labour there. Thus, the recommendation that came forth in the Human Rights case is not a sweeping solution as it is specific to brick kilns only.

With regards to Sindh to overcome the *Hari/zamidar* situation reforms have to be made to the land laws such as the Sindh Tenancy act of 1950. As noted by IA Rehman,⁹ in Sindh bonded labourers are afraid to speak up or stand up against their landlords because they are heavily indebted to them and also because whenever they try registering their complaints against them their complaints are not registered by the officials and they are set back home. This goes on to show lack of respect for law on part of the officials as a result of which the implementation of law in Pakistan is slow and digressive. It is perhaps for this reason that the reported no of cases in the Sindh High Court on bonded labour are as less as one or two. In this backdrop it is difficult to argue that the laws on bonded labour in Pakistan are effective.

Conclusion

It is undisputed that effectiveness is a broad term but as Alan MacFarlane¹⁰ points out it encapsulates the notion of rule of law, implementation of law and legal decisions and the degree to which citizens feel protected by laws. Given that in Pakistan these notions are missing, as has been seen in the preceding discussion, it is arguable that the Bonded

⁹ The director of the Human Rights Commission Pakistan.

¹⁰ He is a renowned anthropologist and historian and a professor at King's College, Cambridge.

Labour System Abolition Act 1992 is not effective. Since the reasons for this are multifarious a number of remedial measures will have to be adopted before some positive change is noted. However, for the purpose of this essay, only the most pertinent and legal ones will be enunciated.

The first measure relates to the registration of brick kilns. This will help in the identification of bonded labour and will also bite on the secrecy in which this practice happens in the industrial area. Secondly, there should be provision for legal aid to encourage plaintiff to bring their cases to court. Under art. 10-A of the Constitution of Pakistan right to fair trial is a Constitutional right and the interpretation of this right includes legal representation and legal aid. Failure to provide this is a Constitutional breach. In the context of the 1992 Act there is an omission in this regard. It is therefore strongly proposed that a provision relating to legal aid should be inserted into the Act. At the moment the legal representation expenses are afforded by NGOs when this should actually be the responsibility of the state government. Additionally, some clarity should be brought in s. 2(e) of the Act by clearly defining the term forced labour.

Bibliography

--'Promoting the Elimination of Bonded Labour in Pakistan' (*International Labour Organisation*)

<http://www.ilo.org/islamabad/whatwedo/projects/WCMS_125694/lang--en/index.htm> accessed 10 February 2018

'Support Social Protection and Decent work of Brick Kiln Workers and Bonded Labourers in Pakistan' (ActionAid Pakistan)

<<http://www.actionaid.org/sites/files/actionaid/brochure-projects.pdf>> accessed 8 February 2018

'The State of Human Rights' (Human Rights Commission of Pakistan, 2001 and 2004)

Beall J., 'Disposable People: New Slavery in the Global Economy: Kevin Bales' (2000) 27(3) *The Journal of Sociology & Social Welfare* 180

Bonded Labour System Abolition Act 1992

Darshan Masih alias Rehmatay v The State of Pakistan PLD 1990 Supreme Court 513

Daru P. and O'Reilly C., 'Combating bonded labour in rural Pakistan' *International Labour Organisation* (Hyderabad, 14 September 2004)

<http://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS_075594/lang--en/index.htm> accessed 11 February 2018

Erclawn, A. and Karamat A., 'Bonded Labour in Pakistan: Impacts of Policy, Law and Economy' (2002) 7(1) *The Journal, NIPA*.

Faiza Ilyas, 'Call for changes to bonded labour, tenancy laws' *Dawn* (Karachi, 21 November 2013) <<http://dawn.com/news/1057559/call-for-changes-to-bonded-labour-tenancy-laws>> accessed 9 February 2018

Forced Labour Convention 1930

Mantouvalou V., 'Servitude and Forced Labour in the 21st Century: the human rights of domestic workers' (2006) 35(4) *Industrial Law Journal* 395

The Constitution of Pakistan 1973

United Nations Supplementary Convention on the Abolition of Slavery 1956

Zaib-un-Nisa v The Govt of Pakistan 1995 CLC 1281