

THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976



SATYARTHI

KAILASH SATYARTHI CHILDREN'S FOUNDATION

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Bonded labour has been defined as a prohibited practice in several international conventions as well as in various Indian legislations. It is a system of forced (or partly forced) labour in which a debtor enters (or presumed to have entered) into an agreement with the creditor. Owing to this agreement, following are the end results:

- Render services to the creditor (by himself or through a family member) for a specified (or unspecified) period of time with no wages (or nominal wages)
- Forfeit the right to move freely
- Forfeit the right to sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him

The said agreement of bonded labour results into an undeniable loss of freedom on part of the debtor. However, the scope of 'loss of freedom', as used above has not been defined so what would be the yardstick of this 'loss of freedom'? The National Human Rights Commission has elucidated on the scope in the following manner:

- Loss of freedom of employment or alternative avenues of employment to sustain a decent livelihood
- Loss of freedom to earn the minimum wage as notified by the Government of India
- Loss of freedom to move from one part of the country to another

So speaking in simple words, the system of bonded labour refers to a system wherein a creditor and a debtor enter into an agreement of rendering services of the debtor as a mode of repayment of the said amount. This agreement may lapse with time or may continue for an uncertain period.

This is also referred as debt bondage or for the lack of a better word, debt slavery. It is important to understand that not all the forms of bonded labour are forced but all the forms of bonded labour involve certain bondage. It is due to this bondage, the very Constitution of India abolishes the practice of bonded labour.

Constitutional mandate:

As per Article 23 of the Indian Constitution, traffic in human beings and other forms of forced labour are prohibited. Based on this constitutional provision, the Government of India passed The Bonded Labour System (Abolition) Act, 1976. In this context, the Supreme Court of India deliberated in the following words - *"We are, therefore, of the view that when a person provides labour of service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23."*

As we can observe, the Supreme Court has well interpreted this constitutional provision and expanded the scope of Article 23 in this case.

1. **Article 21 of the Indian Constitution** - This is the most important and foremost safeguard against any exploitation of human life and liberty. It is part of the basic structure of the Constitution and cannot be amended. It secures the right to life and right to live with human dignity to every person in India. So, any practice of bonded labour would be in contravention of this Constitutional provision since bonded labour deprives a person of numerous liberties.

2. **Article 23 of the Indian Constitution** – As discussed above, the Constitution of India expressly provides for the abolition of forced labour and prohibits this form of forced labour. This not only prohibits bonded labour but also prohibits the practice of Begar and other forms of human trafficking in India.
3. **Article 39 of the Constitution** – This is covered in Part IV of the Indian Constitution which deals with the Directive Principles of State Policy and although it is not enforceable but is considered driving principle for the purpose of governance. This constitutional provision directs the State to secure the right to an adequate livelihood. It also directs the State to formulate its policies with the objective that no citizen is forced out of economic necessity to enter into vocations which are not suited to them.
4. **Article 42 of the Constitution** – This is also a Directive Principle of State Policy which states *“The State shall make provision for securing just and humane conditions of work...”* This means that the state must ensure that every person has a working condition, which are just and humane for them. However, since it is part of Part IV, it cannot be enforced.
5. **Article 43 of the Constitution** – The State shall endeavour to secure for all workers, such conditions of work that will ensure decent standard of life and full enjoyment of leisure and social and cultural opportunities.

Provisions under this Act

Bonded Labor System (Abolition) Act, 1976	
Section 16	Punishment for enforcement of bonded labour. -Whoever, after the commencement of this Act, compels any person to render any bonded labour shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees
Section 17	Punishment for advancement of bonded debt. -Whoever advances, after the commencement of this Act, any bonded debt shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees
Section 18	Punishment for extracting bonded labour under the bonded labour system. Whoever enforces after the commencement of this Act, any custom, tradition, contract, agreement or other instrument, by virtue of which any person or any member of the family of such person or any dependent of such person is required to render any service under the bonded labour system, shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees; and, out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of rupees five for each day for which the bonded labour was extracted from him
Section 19	Punishment for omission or failure to restore possession of property to bonded labourers. -Whoever, being required by this Act to restore any property to the possession of any bonded labourer, omits or fails to do so, within a period of thirty days from the commencement of this Act, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both; and, out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of rupees five for each day during which possession of the property was not restored to him

In the case of *Neerja Chaudhury v. State of Madhya Pradesh*, the Supreme Court ruled – *“It is the plainest requirement of Articles 21 and 23 of the Constitution that bonded labourers must be identified and released and on release, they must be suitably rehabilitated... Any failure of action on the part of the State Government[s] in implementing the provisions of [the Bonded Labour System (Abolition) Act] would be the clearest violation of Article 21 and Article 23 of the Constitution.”*

As mentioned above, there are a few constitutional provisions that safeguard the system of bonded labour from being practiced. In this case, the Apex Court did very well by relating the issue of bonded labour system with the person’s fundamental right enshrined in Article 21 of the Constitution and gave a clear thrust to the State to implement Article 21 and Article 23 of the Constitution.

Also, in the case of *People’s Union for Democratic Rights v. Union of India*, the Supreme Court of India delivered the judgement stating – *“Where a person provides labour or service to another for remuneration which is less than minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the word ‘forced labour’...”*

Rehabilitation of Bonded labourers:

Salient features of Central Sector Scheme for Bonded labourers:

- Every bonded labour including child bonded labour in the country is covered under the Scheme
- The State Governments shall not be required to pay any matching contribution for the purpose of cash rehabilitation assistance. The fund is released by the Ministry of Labour and Employment under the Scheme to the District National Child Labour Project Society and the District Project Society in turn releases the fund to the implementing agencies including the district administration
- The amount of assistance for survey of bonded labourers is Rs. 4.50 lakh per district per year

- The Rehabilitation package shall be Rs.1,00,000 per adult male beneficiary. Beneficiary shall have the option to either deposit it in an annuity scheme or receive cash grant. The District Administration will assess the cash requirement of the beneficiary and exercise its best judgement in the matter and put the money under annuity scheme with the consent of the said adult male
- For special category beneficiaries such as children including orphans or those rescued from organised and forced begging rings or other forms of forced child labour and women, the amount of rehabilitation assistance shall be Rs. Two lakhs out of which at least Rs 1,25,000/- shall be deposited in an annuity scheme in the name of each beneficiary and the balance amount shall be transferred to the beneficiary account through ECS
- In cases of bonded or forced labour involving extreme cases of deprivation or marginalization such as trans-genders, or women or children rescued from ostensible sexual exploitation such as brothels, massage parlours, placement agencies etc., or trafficking, or in cases of differently abled persons, or in situations where the District Magistrate deems fit, the rehabilitation assistance shall be Rs three lakhs, out of which at least Rs two lakhs shall be deposited in an annuity scheme in the name of each beneficiary and Rs one lakh shall be transferred to the beneficiary account through ECS.

The above benefits would be in addition to other land and housing benefits, etc. of the original scheme as mentioned below:

- Allotment of house-site and agricultural land
- Land development
- Provision of low cost dwelling units
- Animal husbandry, dairy, poultry, piggery etc
- Wage employment, enforcement of minimum wages etc
- Collection and processing of minor forest products

- Supply of essential commodities under targeted public distribution system
- Education for children
- The release of rehabilitation assistance has been linked with conviction of the accused. In cases where the trial has not been concluded, but the District Administration has arrived at a prima facie finding and proof of bondage, then the proposal for cash assistance shall not be stopped for want of details of conviction. However, final disbursement of cash assistance and non-cash assistance shall be made upon proof of bondage and other legal consequences as per judicial process
- In cases where, on the conclusion of the summary trial, the District Magistrate (DM) / Sub-Divisional Magistrate (SDM) concludes that the alleged bonded labourer is, in fact, not in a condition of bondage, but requires socio-economic assistance, the DM/SDM, may provide state assistance under any other scheme administered by them
- In cases where, the DM/SDM finds that immediate assistance is necessary for care and protection of the rescued persons during the pendency of the summary trial, such assistance including food, lodging, medical assistance, legal aid, provisions for victim's or witness' protection, etc., shall be provided under any other law or scheme forthwith, notwithstanding the entitlements prescribed under this scheme
- State Governments/UTAs shall be required to concentrate their efforts on the following activities:
 - The District Administration in a convergence approach shall undertake measures for providing safe and secure environment for the capacity building of child bonded labourers in coordination with all relevant Government departments. Accordingly, facilities for ensuring their proper education, psycho social counseling, short stay home till education upto class 12th, skill development shall be an integral component of the rehabilitation package.

- For addressing the special needs of females freed from bonded labour, State Government shall also provide financial and other assistance for marriage, apart from other capacity building measures mentioned earlier
- For addressing the needs of the disabled people, special care should be made available by the State as per national policy for disabled people apart from other capacity building measures
- For adult bonded labour who do not come under any of the above categories, employable skill development training shall be a compulsory element of rehabilitation
- A Bonded Labour Rehabilitation Fund shall be created at the District level by each State with a permanent corpus of at least Rs.10 lakhs at the disposal of the District Magistrate, which should be renewable. This fund will be utilized for extending immediate help to the released bonded labourers. The entire penalties recovered from the perpetrators of the bonded labour upon conviction, may be deposited in this special fund
- Immediate assistance of at least Rs 20,000/- shall be provided by the District Administration to the rescued person out of the District Bonded Labour Rehabilitation Fund at the disposal of the District Magistrate. It will be irrespective of status of conviction proceedings



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