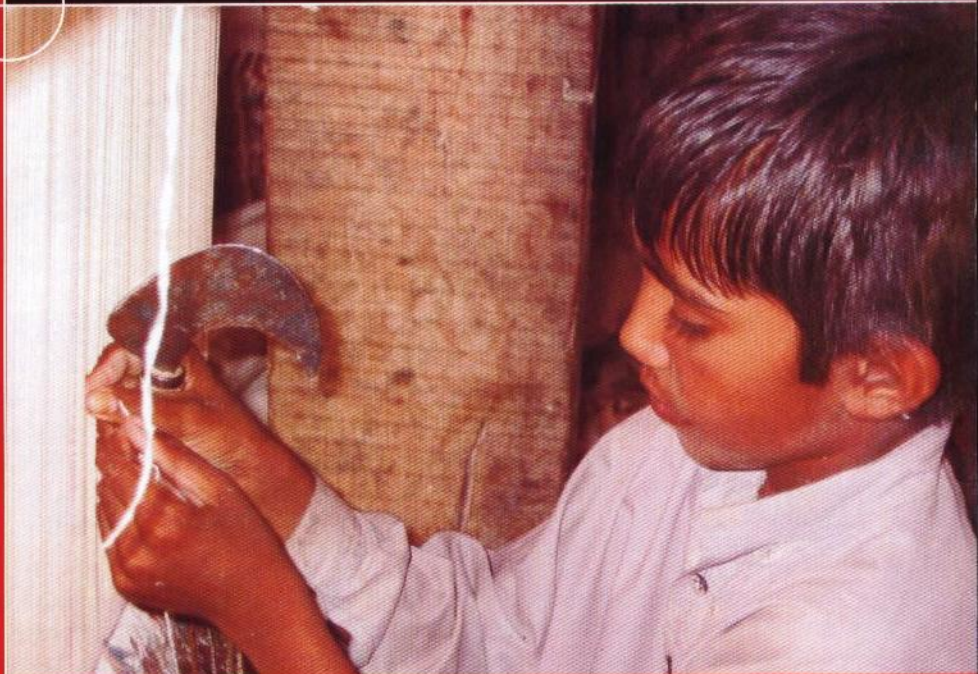


BONDED LABOR FREE TO STARVE



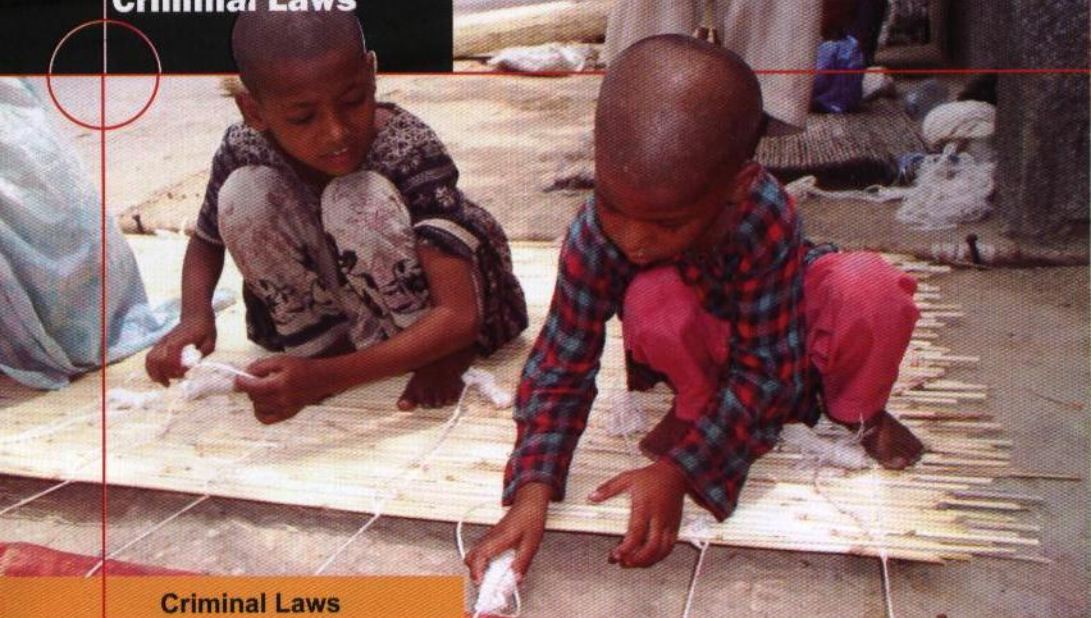
Bonded labor, also called debt bondage, is defined as a form of slavery by the Abolition of Forced Labor Convention 1957 (No 105) and a form of forced labor under ILO Forced Labor Convention 1930 (No 29).

A person becomes a bonded laborer when he or she takes or is tricked into taking a loan. Subsequently, the person is forced to work long hours for little or no pay, often for seven days a week, in order to repay the debt. Sometimes, the debt is never repaid and simply passes from one generation to the next. Intimidation and violence is used to prevent people escaping from this form of slavery.

The United Nations estimates that there are millions enslaved as bonded laborers in Pakistan. Ironically, these people live in a country which has several laws, specifically outlawing bonded labor.



Criminal Laws



Criminal Laws

Pervaiz Maseeh

The Pakistan Penal Code (No XLV), way back in October 1860, made slavery a criminal offense. Its section 370 makes import, export, removal, buying, selling or disposing of any person as a slave, or accepting, receiving or detaining any person against his will as a slave, punishable with imprisonment extending up to seven years, or fine, or both.

Section 371 supplements the section 370 provisions by making habitual import, export, removal, buying, selling, trafficking or dealing in slaves punishable with imprisonment for life or for a term not exceeding ten years, and fine.

Section 374 in this regard goes on to say that unlawfully compelling any person to labor against the will of that person is punishable with imprisonment for a term extending up to five years or with fine or with both.

Section 100 of the Code of Criminal Procedure 1898 deals with the issue's practical side. It empowers a First Class Magistrate or a Sub-Divisional Magistrate to issue a search warrant if he has reason to believe that any person is confined under conditions that may amount to an offense. Additionally, section 491 gives any High Court the power to order the release of any person illegally or improperly detained in public or private custody within the limits of its jurisdiction.

There is a special provision for the recovery of unlawfully detained under-16 girls. Section 552 of the Code of Criminal Procedure says that a District Magistrate, upon complaint made on oath, can order for the immediate release of such women or children who have been abducted or unlawfully detained.

Constitutional Provisions



The Constitutional Provisions

Article 14 of the Constitution of Pakistan (1973) makes the dignity of man inviolable. Its Article 25 treats all citizens as equal before law and thus entitled to equal protection of law. Article 11(2), in order to uphold this spirit, prohibits all forms of forced labor and traffic in human beings while Article 11(1) declares slavery to be non-existent and forbidden, and disallows any law to permit or facilitate, in any form, its introduction in Pakistan.

The Supreme Court of India in *Sanjit v. State of Rajasthan*, AIR 1983 SC 328, has held that this provision prohibiting forced labor, which is similar to that contained in Pakistan's Constitution, can be invoked not only against the State but also against private persons, who indulge in such practice. Additionally, the Indian Court has held that a court can go to the extent of directing rehabilitation of bonded laborers, or order payment of minimum wages to them. This is a crucial ruling and can be used to the advantage of bonded laborers even in Pakistan.

No miracles, however, can be expected if the concerned authorities and the perpetrators deny the existence of forced or bonded labor; and assert that what is claimed as bonded labor is not that at all. Even the Supreme Court of Pakistan came across this problem in *Darshan Mashih v State*, PLD 1990 SC 513, when the Supreme Court asked all the concerned parties to the Petition to assist it in defining as to what is meant by the expression 'forced or bonded labor'. The term 'bonded labor' has a wide meaning; however, regardless of how one looks at the term, it implies compulsion.

Article 9 of Pakistan's Constitution is also relevant in that it states that no person could be deprived of liberty save in accordance with law. Additionally, Article 15 dealing with freedom of movement gives every citizen the right to remain in and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle any where. Constitution's Article 18 also gives every citizen the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business.

All the above Constitutional provisions, i.e., Articles 9, 15, and 18, basically imply that no one could be held against that person's consent unless the detaining authority has the sanction of law behind him. Every citizen has been given the right to move freely throughout Pakistan, and to reside and settle anywhere. Regardless of the fact as to whether a laborer has borrowed from a landlord or a brick kiln owner, these provisions clearly indicate that the laborer cannot be denied his right of liberty to move freely. He or she and their respective family members could not be denied their right of freedom of movement. A civil action for recovery of the borrowed amount, and in some cases, even a criminal case, may be maintainable against the borrowers. However, the employers in no event are permitted, under any law of Pakistan, to detain the laborers.

Bonded Labor System (Abolition) Act



No person, accordingly, can take away the liberty of another person without a law authorizing him or her to do so. The person whose life or liberty is threatened is therefore legally entitled to require the person, seeking to deprive him or her of the right to move freely, to show the legal authority under which the perpetrator is purporting to act. No public functionary, what to talk of a private person, may confine a person unless he has a legal warrant to do so. Consequently, the detention of a person who has been deprived by another of his or her liberty in flagrant violation of the law, could be set aside by a court of law and the person concerned could even file a suit for damages.

Bonded Labor Abolished

The Bonded Labor System (Abolition) Act 1992 (No III) became law on March 11, 1992 and extends to the whole of Pakistan. One of the salient features of this law is the fact that its provisions have an effect notwithstanding anything contained in any other law, for the time being in force {sec. 3}. This is an important stipulation since it implies that the Act is supreme to all the other laws and the employers thus cannot take defense under the previous laws to perpetuate the system of bonded labor, like the Sindh Tenancy Act 1950.

The Act was introduced with the purpose to abolish the bonded labor system, with a view of preventing the economic and physical exploitation of the labor class in the country.

The Act abolished the bonded labor system; and every bonded laborer stood freed and discharged from any obligation to render any bonded labor. Making of any advance in pursuance of the bonded labor system, or to compel any person to give any bonded labor, is also prohibited under this law {sec. 4}.

Forcing bonded labor on any person, or enforcing any tradition, or contract, by virtue of which any person or any member of his family is required to render any service under the bonded labor system, is punishable with imprisonment for a term extending up to five years, but not less than two years. A minimum fine of Rs 50,000 can also be imposed along with imprisonment {secs. 11 & 12}.



Bonded Labor System (Abolition) Act



The Act terminates all obligations of a bonded laborer to repay any bonded debt, or such part of any bonded debt as remains unsatisfied immediately before it {sec. 6(1)}. Creditors, under the Act, have been prohibited from accepting any payment against any bonded debt. Acceptance of any payment against any such debt, by a creditor, which is considered to have been fully satisfied by virtue of the provisions of this Act, is punishable with imprisonment extending up to three years, or with fine that cannot be less than Rs 15,000, or with both. Additionally, the person concerned could also be ordered to deposit in court the amount so recovered from the bonded laborer {sec. 8}.

The Act also takes away the jurisdiction of any civil court, tribunal or any other authority for the recovery of any bonded debt {sec. 6(2)}. Every decree or order for the recovery of bonded debt, passed before the Act and not fully satisfied before the Act's commencement, is considered to have been fully satisfied {sec. 6(3)}.



All property belonging to a bonded laborer which was, immediately before the Act, under any mortgage, or other encumbrance in connection with any bonded debt, stood freed from such obligation. Otherwise, the bonded laborer has been given the right to claim mesne profits from the person who continues to have the possession {sec. 7}.

The implementation of the 1992 Act has been left to the Provincial Government. The latter Governments, in turn, are empowered to confer such powers and impose such duties on a District Magistrate, as may be necessary to ensure that the law is properly enforced. The District Magistrate has now been replaced by the Zila Council Nazim, following the introduction of the Devolution Plan; the latter can then designate an officer, subordinate to him, to exercise all or any of the powers, and perform all or any of the duties, enjoyed by him under the law {sec. 9}. These officials are expected to promote the welfare of the freed bonded laborers by securing and protecting their economic interests so that they may not have any reasons to contract any further bonded debt. Such officials are duty bound under section 10 of the Act to inquire as to whether any form of bonded labor system is being practiced by any person, resident within the local limits of their jurisdiction.

The concerned officials are to be advised by the vigilance committees established at the district level under the provisions of section 15, read with Rule 6 of the Bonded Labor System (Abolition) Rules 1995. These committees consist of elected representatives of the area, representatives of the district administration, bar associations, press, social services and labor departments of the Federal and Provincial Governments. The committees are chaired by the Zila Nazim while the DCO (District Coordinating Officer) acts as its secretary, or at least a member.

Bonded Labor System (Abolition) Act



Existence of bonded labor is to be stopped by the officials, including the Zila Nazims. Additionally, any member of the vigilance committee, upon learning about the existence of bonded labor, must immediately report to the Zila Nazim for taking appropriate action.

The Provincial Government should authorize a Magistrate of the first class to try any offense under this Act which could be tried summarily {sec. 16}. Offenses under the Act are cognizable and bailable.

It is common in Pakistan to obtain "stay orders" from the courts on any issue. The law-makers in the present case appeared to be aware of this problem and thus refused permission to any court to have jurisdiction in any matter covered by any provision of this Act and to grant injunction, in respect of anything which is done or intended to be done under this Act {sec. 20}.

Rule 9 of the 1995 Rules talks of the establishment of a fund for the rehabilitation and welfare of freed bonded laborers. The Fund could be used to finance the projects connected with the establishment of training institutes for the training of persons freed from bonded labor system; provide legal and financial assistance to bonded laborers or their family members, and finance other measures for the rehabilitation and welfare of freed bonded laborers.

Bonded labor in all its forms thus automatically has become prohibited in view of the provisions contained in the 1992 Act. It is known to everybody, however, that bonded labor continues to exist. It is therefore important that legal impediments should be erected at all possible stages to cut down the possibility of bonded labor existing in any form any where in Pakistan.

Not much prosecution, however, has taken place in the country regarding the enforcement of this Act. As late as June 2004, the Government of Pakistan informed the National Assembly that only 23 cases of bonded labor were detected in the whole country; the total amount of fine imposed in these cases came to Rs 6,100. This is despite the introduction of the National Policy and Plan of Action for the Abolition of Bonded Labor way back in February 2001. Nothing concrete has taken place since then to show improvement in the plight of bonded laborers.



Bonded Labor System



What is Bonded Labor System?

"Bonded Labor System", for purposes of the Bonded Labor System (Abolition) Act, is defined to mean:

The system of forced, or partly forced labor, under which a debtor enters, or has or is presumed to have, entered into an agreement with the creditor to the effect that:

in consideration of an advance (peshgi) obtained by him or by any of the members of his family whether or not such advance is evidenced by any document, and in consideration of the interest, if any, due on such advance;

in pursuance of any customary or social obligation; or

for any economic consideration received by him or by any of the members of his family,

he would:

render, by himself or through any member of his family, or any person dependent on him, labor or service to the creditor, for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages; or

forfeit the freedom of employment or adopting other means of livelihood for a specified period or for an unspecified period;

forfeit the right to move freely from place to place;

forfeit the right to appropriate or sell at market value any of the property or product or his labor or the labor of a member of his family or any person dependent on him, and includes the system of forced or partly forced labor under which a surety for debtor enters, or has or is presumed to have entered into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labor on behalf of the debtor {sec. 2(e)}.





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