

National Legal Framework

The Constitution of Pakistan

- Article 14 makes the dignity of man inviolable, while Article 25 states that all citizens are equal before law and are entitled to equal protection of law.
- Article 11(2) prohibits all forms of forced labor and traffic in human beings. Article 11(1) further states that slavery is non-existent and forbidden and no law should permit or facilitate its introduction in Pakistan in any form.
- Article 9 states that no person could be deprived of liberty save in accordance with law.
- 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 anywhere.
- Article 18 also gives every citizen the right to enter 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, 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 freely move throughout Pakistan, and to reside and settle in any part.

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. 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 or 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.

The Pakistan Penal Code

- Section 370 makes the 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 section 370 provisions by making the habitual import, export, removal, buying, selling, trafficking or dealing in slaves punishable with imprisonment for life or with imprisonment 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 up for a term extending up to five years, or with fine, or with both.

The Code of Criminal Procedure

- Section 100 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.
- Section 491 gives any High Court the power to set at liberty any person illegally or improperly detained in public or private custody within the limits of its appellate criminal jurisdiction.

Despite the above Constitutional and legal provisions, bonded labor was not acknowledged by the government until the bonded laborers of the brick kiln industry successfully brought a case against their owner. The 1989 Supreme Court decision on this case limited *peshgi* advances to one week's wages and granted bonded laborers the right to hold identity cards and vote. It also granted bonded laborers the right to work where they wanted and to make their own arrangements to repay their debts. Attempts by bonded laborers to exercise these new rights were met with strong resistance by employers and local authorities.

The **Supreme Court** judgment in the brick kiln case led to the adoption of the Bonded Labor System (Abolition) Act 1992. This Act outlaws the practice of bonded labor, cancels all existing bonded debts, and forbids lawsuits for the recovery of bonded debts.

Bonded Labor System (Abolition) Act 1992

The main features of the Bonded Labor System (Abolition) Act 1992 are as follows:

- Bonded labor is declared illegal. Every bonded laborer stands freed or discharged from any obligation to render bonded labor. Those detained in civil prison shall be released forthwith;
- Any custom or tradition or any contract by which any member of the family or dependent of such person, who is required to do any work or render any service as bonded laborer shall be void and inoperative.
- After the commencement of the Act, no person shall give any advance in pursuance of the bonded system;
- No person shall compel any person to render any bonded labor or other form of forced labor;
- The act also envisage the extinguishment of the liability of the bonded laborer to repay any bonded debt;
- The act is intended to free the mortgaged property of bonded labor;
- Freed bonded labor shall not be evicted from any homestead or other residential premises which he was occupying;

- Vigilance committee at the district and sub-divisional level will be set up to advise the implementing authorities on all matters relating to the enforcement of the legal provisions; and
- Any violation of its provision shall be cognizable and bail able offence, punishable with imprisonment which may extend to two years or fine up to Rs 50,000/ or both. By making the offences cognizable under the act, the state has undertaken the act, and unlike some of the previous legislations, does not leave it to initiative of the affected individuals.