



## INTERNATIONAL PERSPECTIVE OF BONDED LABOUR

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### ABSTRACT :

*Human dignity is a highly cherished value. A man cannot lead a decent life unless he is treated as a human and not as a commodity. But unfortunately, the bonded labour are kept far away from any realization of their worth as human beings. The work of international organizations has not been without its positive influence on the developing countries. The various international declarations, charter and other texts adopted over years have been discussed. The Endeavour of the International Labour Organization in the direction of international legislation can be viewed as bold and innovative. In India, Researchers of bonded labour attempt to understand its long standing practices through an examination of contemporary forms of labour coercion, their origin and relationship to the implications of police making. The object of human rights is that the dignity of human is inviolable and attributed to all man and women equally. In the struggle for justice, freedom and equality, the human dignity is best expressed.*

**KEYWORDS :** *international perspective, conventions, declarations, human rights, bonded labour.*

### INTRODUCTION

The uneven social structure characterized by the age old feudal system has led to the emergence of the bonded labour existing in the form of slavery for centuries in most parts of the world. Earlier, the bonded labour system has been combined with the elements of exploitation and patronage. But with the increasing trends towards laissez-faire economy the element of patronage has disappeared and the exploitation of labours in the society increased. The adverse effect of this exploitation is on the health and development of the labour class. Bonded labours is one specific form of forced labour in which the person is forced to sell labour to pay his/her debts which is also known as debt bondage.<sup>1</sup> The labours are forced to work in agriculture fields, brick kilns and in manufacturing plants. The problem is not only recognized nationally but internationally as well, poverty, discrimination, social exclusion and insufficient implementation of legislation are the root cause of bonded labour across the world. Eco dependence and poverty of the under privileged section of the society forced them to be slaves.<sup>2</sup> Today, debt bondage and bonded labour is the most pervasive form of slavery in the world. Many people are ensnared in slavery through debt bondage than all other forms of slavery combined. Debt bondage exist in every



<sup>1</sup> .Y.R. Haragopal Reddy, "Bonded Labour System in India" 3 (Deep and Deep Publications, New Delhi,1995)

<sup>2</sup> .N.D.Kambla,"Bonded Labour in India" 3( Uppal Publishing House, New Delhi,1982)

corner of the world.<sup>3</sup>

### BONDED LABOUR IN OTHER COUNTRIES

However, bonded labour or forced labour is not restricted only to India. According to the survey conducted by the anti-slavery society of London, semi-slavery condition still prevail in Europe, Latin America and Africa. It is also prevalent in Northern Mediterranean countries especially in Italy where the mafia is involved in it.<sup>4</sup>

### INTERNATIONAL LABOUR ORGANIZATION AND ITS CONVENTIONS

The United Nations has adopted a number of human rights instruments which contain standards and principles concerning forced labour and some other social and labour matters. They are as under :-

#### CONVENTION ON SLAVERY, 1926

The 1926 Slavery Convention to suppress the slave trade and slavery was an international treaty created under the auspices of the League of Nations.<sup>5</sup> The object of the convention was to confirm and advance the suppression of slavery and the slave trade. For this purpose of the present convention, the following definitions are agreed upon: "(1) slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. (2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves."<sup>6</sup>

The High Contracting Parties undertake to "(a) prevent and suppress the slave trade; (b) To bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms."<sup>7</sup>

#### CONVENTION ON FORCED LABOUR, 1930 (NO. 29)

The Forced Labour Convention, 1930, was an outgrowth of the international Slavery Convention opened for signature during the Assembly of the League of Nations on September 25, 1926. The ILO adopted Convention No. 29 which lays down that, "Each member of the International Labour Organization which ratifies the convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period."<sup>8</sup> For the purposes of this convention the term "forced or compulsory labour" shall mean 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. But for the purposes of this convention the term 'forced or compulsory labour' shall not include:

"(a) Any work or service exacted in virtue of compulsory military service laws for work of a purely military character.

(b) Any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country.

<sup>3</sup> .Siddharth Kala, "Modern Slavery: A Global Perspective" 17 (Columbia University Press, New York Chichester, West Sussex, 2017)

<sup>4</sup> . S.S. Prakash, "Bonded Labour and Social Justice" 63 (Deep and Deep Publication, New Delhi, 1990).

<sup>5</sup> .Convention on the Suppression of Slave Trade and Slavery, signed at Geneva, September 25, 1926 (entered into force March 9, 1927 and ratified by India June 18, 1927).

<sup>6</sup> .Convention on slavery, 1926, art. 1

<sup>7</sup> . *Id.* art. 2

<sup>8</sup> . Convention on Forced Labour 1930, art. 1, ILO Convention No. 29 Concerning forced or compulsory labour; adopted June 28, 1930 as modified by the final Articles Revision Convention, adopted October 9, 1946 (entered into force May 1, 1932, and ratified by India November 30, 1954).

(c) Any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired or placed at the disposal of private individual companies or associations.

(d) Any work or service exacted in cases of emergency that is to say in the event of War or of a calamity or threatened calamity such as fire, flood, famine, earthquake.”<sup>9</sup>

The Forced Labour Convention 1930 is supplemented by a number of other conventions and recommendations designed to regulate practice which may degenerate into forced labour notably the recruiting of Indigenous Workers Convention 1936, The Contract of Employment (including workers) Convention, 1939 ( it regulate long-term contracts, the penal sanctions (Indigenous Worker) Convention, 1939, The Contract of Employment (Indigenous Worker) Convention, 1947 (it mixes a maximum length for long term contracts), the Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955 and a number of recommendations ancillary to these various conventions. This convention have been widely ratified in respect of and even more widely applied in the non- metropolitan territories for which they are designed.<sup>10</sup>

### The Supplementary Convention on the Abolition of Slavery (1956)

The full title of this convention is the Supplementary Convention on the Abolition of Slavery, the slave trade, Institutions and practices similar to slavery 1956. It is United Nations Treaty which build upon the 1926 convention, which is still operative and designed to intensify National as well as International efforts towards the abolition of slavery, the slave trade and Institutions and practices similar to slavery. The convention defines debt bondage as the status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as a reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those service are not respectively limited and defined.<sup>11</sup>

The general conference of the ILO<sup>12</sup>, having noted the provisions of the Forced Labour Convention, 1930, and The Slavery Convention,1926, provides that all necessary measures shall be taken to prevent compulsory or forced labour from developing into Conditions similar to Slavery and that the Supplementary Convention on the abolition of slavery, the slave trade and the Institutions and practices similar to slavery, 1956, provides for the complete abolition of debt bondage and serfdom. Also noted that the Protection of Wages Convention, 1949 provides that wages shall be paid regularly and prohibits methods of payment which deprived the worker of a genuine possibility of terminating his employment and having decided upon the adoption of further proposals with regard to the abolition of certain forms of forced or compulsory Labour constituting a violation of the rights of a man referred to inthe charter of the United Nations and enunciated by the Universal Declaration of Human Rights. These proposals shall take the form of an international convention which may be cited as The Abolition of Forced Labour Convention ,1957.<sup>13</sup>

Every member of the ILO which ratifies this convention undertakes to suppress and not to make use of any form of forced or compulsory labour : (a) As a means of political coercion or education or as a punishment for holding for expressing political views or views ideologically opposed to the established political, social or economic system . (b) As a method of mobilising and using labour for purpose of economic development,(c) As a means of labour discipline (d) As a punishment for having participated in Strikes (e)As a means of racial, social, national or religious discrimination.<sup>14</sup>

<sup>9</sup> . *Id.* art.2

<sup>10</sup> . *Supra* note 12 at 31.

<sup>11</sup> .The Supplementary Convention on the Abolition of Slavery 1956, art. 1(9).

<sup>12</sup> . ILO convention No. 105 concerning the Abolition of Forced Labour adopted June 27,1957(entered into force January 17,1959 and ratified by India May 18,2000).

<sup>13</sup> .Black Stone's, "*International Human Rights Documents*" 36 (Universal law publishing co. Pvt Ltd,New Delhi,1995)

<sup>14</sup> .Convention on Abolition of Forced Labour,1957, art. I.

After the ILO Forced Convention (No.29) a new term entered anti slavery common parlance: Human Trafficking. The United Nations Protocol to Prevent, Suppress and punish trafficking in persons especially women and children ,supplementing the United Nations convention Against Transnational Organized Crime (2000) also known as the “Palermo Protocol”, established the first international definition of the crime of human trafficking. The Preamble of the said protocol stated that “ taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons”.

“Trafficking in persons shall mean the recruitment ,transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of correction ,of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation and it includes the sexual exploitation ,forced labour or services, slavery or practices similar to slavery servitude or the removal of the organs.”<sup>15</sup>

In India, forced labour and human trafficking for labour exploitation are pervasive issues in India. In primary ,secondary and tertiary economic sectors forced labour and debt bondage are common practice in India. Some Bangladeshi and Nepali migrants are also subjected to forced labour in India through recruitment fraud and debt bondage. Indian workers are migrate for work abroad, primarily to the Gulf, Europe and North America. Often these workers have to pay excessive recruitment fees and later on involved into exploitative labour practices like with holding of documents ,less or withholding of wages, exhausting working hours, They are also subjected to bluff and coercion. It amounts to labour exploitation, forced labour or slavery.

#### OTHER RELEVANT ILO INSTRUMENTS

In addition to the four core conventions relating to the forced labour,the ILO has at its disposal several other instruments which addresses directly or indirectly the issue of forced labour. These are as under:-

##### **The Special youth Scheme Recommendation 1970 (No. 136)**

It addresses problem of employment and training of young people in relation to the application of the forced labour convention. This recommendation indicates that participation in special youth schemes designed to enable young persons to take part in activities directed to the economic and social development of their country and to acquire education, skills and experience facilitating their subsequent economic activity and promoting their participation in society should be voluntary Exception may be permitted only by legislative action and where there is full compliance with the term of existing International Labour Conventions on forced labour and Employment policy.

##### **The Employment Policy Convention, 1964 (No. 122)**

This convention requires ratifying States to declare and pursue as a major goal and active policy designed to promote full, productive and freely chosen employment.<sup>16</sup> From the freedom of workers perspective, it is important to note that the said policy aims at ensuring among other things that there is freedom of choice of employment and the fullest possible opportunity for each workers to qualify for a job for which the worker is well suited<sup>17</sup>.

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<sup>15</sup> .*Supra* note 3 at 18.

<sup>16</sup> .The Employment Policy Convention,1964,art.1 (1)

<sup>17</sup> . *Id.* art. 1(2) (c)

### **The Migration for Employment Convention ( Revised) 1949 (No. 97)**

This convention contain provisions aiming at the assistance to migrants for employment specially through the establishment of free services to provide them with various kinds of assistance and accurate information. In addition, it requires ratifying states to take all appropriate steps against misleading propaganda relating to emigration and immigration.<sup>18</sup> These provisions may be viewed in the context as preventing of conditions conducive to trafficking in persons for the purpose of exploitation. Any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties<sup>19</sup>.

### **The Migrant Worker (Supplementary Provision Convention, 1975 (No. 143)**

This convention requires each ratifying state to adopt all necessary and appropriate measures both within its jurisdiction and in collaboration with other states to suppress clandestine movement of migrants for employment and illegal employment of migrants<sup>20</sup> and to prosecute the authors of manpower trafficking from whichever country these activities take place.<sup>21</sup>

### **The Indigenous and Tribal People Convention 1989, (No. 169)**

This convention lays down a prohibition to exact compulsory personal services from member of the people concerned and provides that the exaction of such services shall be punishable offence.<sup>22</sup> The convention further requires ratifying states to take measures to ensure that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude.<sup>23</sup>

### **Convention on The Right of Migrant Works,1990**

In 1990, the united nations adopted an international convention on the rights of all migrant workers and members of their families .Article 11 provides that the migrant worker or his or her any family member shall not be held in slavery or servitude. They shall not be required to perform forced or compulsory labour clause(4) of Article 11 contained some exception to this rule that incase any hard work or service is required from a person as a punishment under the order of competent court or incase of emergency which threatening the life of the community or part of normal civil obligations imposed by the concerned state.After its adoption , the ILO took an active part in the deliberations .This convention entered into force on 1<sup>st</sup> July 2003 and the ILO is expected to participate actively in its implementation.<sup>24</sup>

### **Human Rights and Bonded Labour**

“Man’s inhumanity to Man” is escalating boundlessly before our eyes intra-nationally and internationally and each passing day brings thoughts too deep for tears and wars too defiant of the United Nation. And “the still sad music of humanity” is unheard by those who wield power and command wealth.

The preamble of the declaration stresses “the dignity and worth of the human person.” The aim of the declaration is to protecting the liberty, physical and moral integrity of human. It includes the right to life, freedom from slavery, servitude and forced labour, freedom from torture or from cruel, inhuman or degrading treatment or punishment, the right to freedom from arbitrary arrest or detention, the rights to

<sup>18</sup> .The Migration for Employment Convention,1947, arts.2,3

<sup>19</sup> . *Id.* art. 8 of Annex I.

<sup>20</sup> . The Migrant Workers (Supplementary Provisions)Convention,1957,art.3 (9)

<sup>21</sup> . *Id.* art. 5.

<sup>22</sup> .The Indigenous and Tribal Peoples Convention,1989, art.11

<sup>23</sup> . *Id.* arts. 20(3) (c)

<sup>24</sup> .Swapan Deep Kaur ,*International Organizations, Theory and Practice* 264(Shree Ram Law House, Chandigarh,2010)

privacy and many other rights were declared to be indispensable for the dignity of the individual and free development of human personality.<sup>25</sup>

### National Human Right Commission on: Elimination of Bonded Labour

The National Human Right Commission of India is a statutory public body constituted on 12<sup>th</sup> Oct. 1993 Under the Protection of Human Rights Ordinance of 28 September 1993. It was given a statutory basis by the Protection of Human Rights Act, 1993. The NHRC of India is responsible for the protection and promotion of human rights as defined by the Act as "Rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants." Its statutory functions include conducting independent investigations into human rights abuses. It may do this on its own initiatives and in response to petitioned complaints. The commission enjoys the same powers as a civil court in conducting these investigations like summon witness and examine them under oath, compel discovery, production of documents and requisition public records from a court or office. But NHRC's recommendations are not binding though the commission has been able to pressure the government into complying with its recommendations on many occasions. In actual the NHRC views the responsibility assigned to it from the angle of the guarantee given under article 23(1) of the constitution incorporated in Bonded Labour System (Abolition) Act, 1976. Also it will monitor the implementation of the Act in early 1998. And it will inform the Supreme Court accordingly.<sup>26</sup>

### The International Covenant on Civil and Political Rights (1966)

This covenant is in the nature of rights of an individual. These rights derive from the inherent dignity of the human person. The preamble of the covenant recognized that in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying Civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his Civil and Political Rights.<sup>27</sup>

All the member states to the ICCPR undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights which are mentioned in this covenant.<sup>28</sup> Right to life is inherent to every human being and it is protected by law.<sup>29</sup> It also contains provision regarding slavery. No one shall be held in slavery and the slave trade in all their forms shall be prohibited. No one shall be held in servitude and required to perform forced labour

#### (a) The International Covenant on Civil and Political Rights (1966) Optional Protocol

The ICCPR is supplemented by two optional protocols which provide substantive rights or monitoring procedure that expand on the primary treaty. It is discretion of the states to sign that optional protocol<sup>30</sup> or not. They are as under:- (a) The optional protocol to the ICCPR (1966). It set up a quasi-judicial complaint procedure for the ICCPR.

(b) The second optional protocol to the ICCPR (1990). It is aimed at the abolition of the death penalty.<sup>31</sup>

<sup>25</sup> . P.M.Smith, "The Notion of Development As a Right: Reflections from an International perspective" in M.P Singh(ed) "Comparative Constitutional Law " 565 (Eastern Book Company, Lucknow 2011).

<sup>26</sup> .Public Union for Civil Liberties v. State of Tamil Nadu & Others, AIR 1985

<sup>27</sup> . The International Covenant on Civil and Political Rights (ICCPR) opened for signature December 16, 1966 (entered into force March 23, 1976 and ratified by India April 10, 1976).

<sup>28</sup> . The International Covenant on Civil and Political Rights 1966, art. 3.

<sup>29</sup> . *Id.* art. 6.

<sup>30</sup> . The word 'Protocol' literally means an initial written agreement, which in This context means that it is the initially written agreement between the states parties to the protocol, and which has become binding upon them after their ratification or accession to it by submitting an instrument of ratification or on instrument of accession by the states parties .

<sup>31</sup> . *Supra* note 55 at 66. (Black)



### The International Covenant on Economic, Social and Cultural Rights, 1966<sup>32</sup>

The state parties to the present covenant recognized that in accordance with Universal Declaration of Human Rights the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his Civil and political rights and all these rights includes freedom from bonded or forced labour.<sup>33</sup>

This covenant imposes on obligation on the states to take positive steps towards human being and recognize their right to work which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accept and will take appropriate steps to safeguard this right.”<sup>34</sup>

### Protocol of 2014 to the Forced Labour Convention, 1930.

On July 11, 2014, the International Labour conference adopted a new protocol to ILO convention No. 29 on forced labour. The protocol is novel because it is neither a soft law ‘recommendation’ nor an entirely new convention on forced labour. In fact the protocol is meant to enhance efforts eliminate forced labour by addressing various implementation gaps in forced labour convention.

It is a new legally binding protocol on forced labour, supported by a Recommendation(No.203).Its aim is to prevention, protection and compensation measures as well as to Intensify efforts to eliminate all forms of forced labour including trafficking in prisons.

Ratifying countries are now obliged to implement the treaty and report on measures taken by them.

- \* At any given time in 2016, and estimated 40.3 million people are in modern slavery, including 24.9 million in forced labour and 15.4 million in forced marriage.
- \* It means that there are 5.4 victims of modern slavery for every 1,000 people in the world.
- \* 1 in four victims of modern slavery are children.
- \* Out of the 24.9 million people trapped in forced labour, 16 million people are exploited in the private sector such as domestic work, construction or agriculture 4.8 million persons in forced sexual exploitation, and 4 million persons in forced labour imposed by state authorities.
- \* Women and girls are disproportionately affected by force labour, accounting for 99% of victim in the commercial sex industries and 58% in other sectors.<sup>35</sup>

### CONCLUSION

The necessity of self-effacing men with huskiness of iron and nerves of steel with a heart of oceanic feeling for the suppression of the suffering of these helpless poor. There will be more chances of improvement when the legatees are fully involved in the programme planning, decision making, its execution and evaluation. Decentralization of planning, state power and authority are preconditions for the success of this programmer and schemes because it can only go ahead on the basic of the wide possible mobilization and participation of the workers. But the progress in the issue is not satisfactory. There are miles to go and promise to keep breaking their chain of bondage.<sup>36</sup>

<sup>32</sup> . The International Covenant on Economic, Social and Cultural Rights, 1966, like the ICCPR, opened for signature December 16, 1966 (entered into force March 23, 1976 and ratified by India April 10, 1976).

<sup>33</sup> . ICESCR, 1966, Preamble.

<sup>34</sup> . *Id.* art. 6.

<sup>35</sup> . Global estimates of Modern slavery: Forced labour and forced marriage, Geneva, September, 2017.

<sup>36</sup> . Uday Partap Singh, "Abolition of Bonded Labour System, A case study with special reference to Indian Legislation" (2009) (unpublished Ph.d thesis, The university of Burdwan).