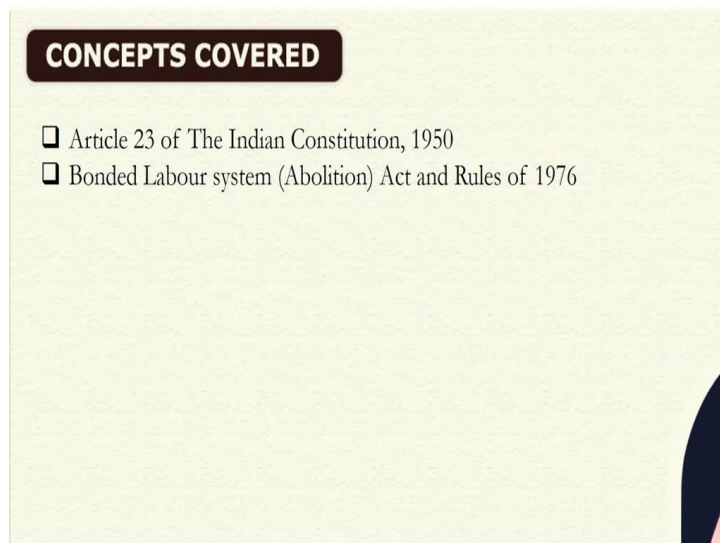


New Labour Codes of India
Professor K. D. Raju
Department of mathematics
Indian Institute of Technology Kharagpur
Lecture 43
Bonded Labour System Abolition and Regulation

Dear students, today we are going to discuss about the bonded labour system in the country and also the Bonded Labour System Abolition and Regulation Act, and its provisions. As you know that bonded labour system is from a time immemorial period, and it has been practised in India due to various social reasons.

So scholars say that it is mainly due the social reasons, and the reason I have mentioned is poverty. So, poverty is the root cause of the bonded labour system. So, the parents take that from the people who have large areas of agricultural land and other areas. So, instead of taking this particular debt, they do not have anything to give security.

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So, instead the security, usually they give their own work or their families also work for the person who has landed the money. So, and continuously they are going to be working there hey, later on, they become the bonded labourers and they never going to pay back all the money along with the interest which is accruing from time to time.

So, from one generation this debt will be passed over to the younger generation. And also, we know that it took more than 20 years after independence to abolish this particular system in the country. And before going to these Bonded Labour System Abolition Act and Rules of 1976, we have to look into the constitutional provisions which talk about non-exploitation.

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Bonded labour Concept

- ❑ Due to the extreme scarcity of resources on the part of the debtor, he had nothing to offer as security.
- ❑ Thus, the creditor and debtor entered into an agreement where the debtor pledged his person and work in lieu of unsatisfied debt.

Bonded labour - Concept

- ❑ 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 is presumed to have entered) into an agreement with the creditor. Owing to this agreement, the 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.

So, here, we can see that the concept of the Bonded labour system, so, it is definitely a resource constraint or we can say that the extreme form of the scarcity of resources, which leads to debt and debt is the continued debt and the relationship between creditor and debtor goes to the employer and employee relationships.

So, the debtor always becomes the pledge to work on behalf of or for the debtor or this debtor becomes the worker for the creditor in lieu of unsatisfied debt. So, this debt is never going to be satisfied. And that is why we said that it may change it may transfer from one generation to another generation. So, then they become this bonded labour.

So, it is a practice prohibited practice all over the world, and also the international conventions, which talk about bonded labour system, and its negative impact on the workers

and human beings and it is nothing but a form of forced labour. And the ILO also is, against forced labour.

So, we can see that there will be always an agreement between the creditor and debtor, and also the services rendered by the debtor, to the creditor and creditor and his family for an unspecified period of time. So, the period is not mentioned. So, they work and work and ultimately there are no wages or minimal wages given to the debtor, and the creditor has become the employer forever of this category of people.

So, you can see that later on, even in some cases, the Indian movement of these people is also restricted. And some point of time, slavery prevailed, and these people were sold to other people, and even with their families. So, slavery was abolished, and then later part of this bonded labour system was abolished in other parts of the world.

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Bonded labour - Concept

- ❑ The National Human Rights Commission has elucidated 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, our National Human Rights Commission has elucidated the ambit of the bonded labour system. So, the Commission says that loss of freedom of employment or alternative avenues of employment to sustain a decent livelihood and loss of freedom to earn the minimum wage.

So, in the bonded labour system, there is no minimum wage, it is the wage fixed by the creditor and also a loss of freedom. So, we said the loss of freedom of employment, loss of freedom of minimum wage, and loss of freedom of movement. So, the creditor never allows the debtor to move from his work to anybody else work. So, they are considered to be bonded labourers.

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Right against Exploitation - Constitution

□ **23. Prohibition of traffic in human beings and forced labour.—**

1. **Traffic** in human beings and **begar** and **other similar forms of forced labour** are prohibited and any contravention of this provision shall be an offence punishable in accordance with law(**Bonded Labour System(Abolition) Act, 1976**).
2. Nothing in this article shall prevent the State from **imposing compulsory service for public purposes**, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

And the Indian Constitution talks about the Right against exploitation, especially article 23, which talks about the prohibition of trafficking of human beings and forced labour. So, trafficking in human beings for various purposes, whether it is for begging or sexual trafficking, and it is nothing, but for it is a different form of forced labour, which is prohibited through the Bonded Labour System Abolition Act of 1976.

So, here we can see that it is imposing compulsory service, but it is not applicable to compulsory service for public purposes. So, in India, it is there are no compulsory military services or there are no compulsory any other services. And at the same time, we can see this forceful imposition of services, also we can see in the private sector, for example, the appointment orders and in certain cases the bonds so we will see what is the jurisprudence with regard to this, what the court said about bonds executing bonds and working for 2 to 3 years.

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People's Union for Democratic Rights vs. Union of India, (1982)3SCC

- ❑ Held:
- ❑ Article 23 is clearly designed to protect the individual not only against the State **but also against other private citizens.**
- ❑ **Scope of Art. 23:**
 - ❑ If a person is forced to give labour or service to another without receiving any remuneration at all.
- ❑ **Meaning of Begar:**
 - ❑ It is a form of forced labour under which a person is compelled to work **without receiving any remuneration.**
 - ❑ It is violative of human dignity and is contrary to basic human values.

So, one of the landmark judgments of the Supreme Court in this regard is the People's Union for Democratic Rights versus Union of India. So, in 1982, it is popularly known as the Ishod case. So, here the children were used to construct the Ishod Village in New Delhi at that point of time. So, the Supreme Court was heavily against the government, those who are constructing and the children who were used for the construction work, which happened during that time, and their families.

So, the court said very clearly said that, so, it is article 23 is notary to protect individuals against the state or against the government, but also this is against private citizens. So, the scope of 23 has been expanded by the Supreme Court to this particular case. And if anybody is forced to do labour, or forced to give service to another without any remuneration is nothing but forced labour and also the court was talking about, so, what constitutes a beggar?

So, the Court also said that the begging or the meaning of begar is in the form of forced labour, under which a particular person is compelled to work without receiving any remuneration. So, this kind of forced labour is nothing but a violation of human dignity, and is contrary to basic human rights and human values.

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People's Union for Democratic Rights vs. Union of India, (1982)3SCC

❑ Held:

❑ **“Other similar forms of forced labour”:**

❑ **An example:**

- ❑ Where a person has entered into a contract of service with another for a period of 3 years and he *wishes to discontinue serving such other person before the expiration of the period of 3 years*, if he is compelled to serve for the full period of 3 years, it would clearly amount to **forced labour** and such a law would be void as offending Article 23.
- ❑ Of course, if there is a breach of the contract of service, **the employee would be liable to pay damages to the employer** but he cannot be forced to continue to serve the employer without breaching Article 23.

So, in this case, people, so the court was looking into these various kinds of forced labour. So, the court said that, if anybody executed a bond for a service period of 3 years, against his wishes, and wishes to continue in the service, such as the person before the expiration of that particular period, 3 years.

So, it is true that if any person is compelled, those persons who executed even a bond compelled to continue in service are forced labour. But the court said that if there is somebody executed the bond, definitely they can, and damages can be claimed, but the forced labour cannot continue.

So, in that particular case, if anybody executed a bond for 3 years, and want to withdraw from the bond, they have to pay damages to the employer, but forced labour is prohibited under Article 33 of the Constitution.

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People's Union for Democratic Rights vs. Union of India, (1982)3SCC

- ❑ Held:
- ❑ Secondly, the Petitioner talks about the children under the age of 14 years being employed to work at a construction activity site of the Asian Games which again is a **direct breach of Article 24**.
- ❑ Non-Payment of Wages can also be attributed to as a violation of **Article 23** which entails Prohibition of Traffic in Human Beings and Forced Labour.
- ❑ **Article 23** is not just limited to being implemented against the state but also against **other private citizens**, this is so because the framers of the Constitution did it to protect the rights of the enormous number of citizens belonging to a

So here the Court said that, in this particular case, very clearly if children or children are not allowed to participate in this kind of construction activities, so, this is a direct breach of article 24.

So, 23 and 24 together reading and this rule can be implemented not only against the state but also against the private citizens if somebody is definitely taking part in forced labour taking part in child labour because of due to their socio-economic conditions. So, this is a clear violation of Articles 23 and 24 of the Indian Constitution.

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Bandhua Mukti Morcha vs. UOI (16.12.1983 - SC)

- ❑ The Supreme Court of India, in this public interest litigation case, directed the State of Uttar Pradesh to eliminate the carpet industry's **use of child labor**,
- ❑ issue welfare directives prohibiting child labor under the age of 14 and provide children access to education and health facilities in an effort to abolish child labor.

Then comes another case, the Bandhua Mukti Morcha versus Union of India. So, in this particular case, the Supreme Court was pointing out the use of child labour, especially with regard to Uttar Pradesh carpet industry indulging in child labour.

So, the court very clearly said that, so, the directives prohibiting child labour, so anybody is working below the age of 14, that is child labour, and also the court mentioned about the children and access to education and health facilities and the need to abolish child labour. So, child labour, we are going to discuss this in another lecture.

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Assn. of Medical Super speciality Aspirants & Residents vs. Union of India (2019)8SCC607

- ❑ **Facts:** Writ Petition challenging the Notification by the Government of West Bengal by which every post-graduate trainee was directed to execute an Indemnity Bond to serve the State Government for a period of 3 years after successful completion of post- doctoral/MD/MS course and for a period of 2 years after successful completion of the PG Diploma course.
- ❑ If the trainees fail to serve the State Government as mentioned above, they shall be liable to recompense the State Government a penalty amount of Rs.10 Lakhs for each defaulting year.
- ❑ **Arguments:** Being vitiated by coercion and violation of Article 23 of the Constitution and other fundamental rights.
- ❑ **Held:** Art. 23(2) of the Constitution **enables the State Governments to require the Appellants to do compulsory service in the Government**

But the court has very specifically said that child labour is immunised in the country, but in one of these cases Association of Medical Superspecialty Aspirants and Residents versus union of India 2019 very recent judgment, the court was discussing mandatory bonds related to doctors, those who are doing post graduate courses, or post-doctoral courses like MD and MS post-graduation courses, in those cases, so here the repetition was challenging.

A West Bengal government notification, which insisting for that postgraduate doctors have a 3 years indemnity bond to serve the state government for a period of 3 years after successful completion of their post-graduation in medicine, MD MS courses, and also for a period of 2 years after completion of the PG diploma courses as well. So, the petitioners have challenged it as forced labour.

So, the court said that, in this particular case, if somebody wants to go out of this particular Board, they have to pay damages to the tune of 10 lakh rupees for each defaulting year.

So, the petition is argued that this is a clear violation of article 23 of the Constitution and Fundamental Rights. But the court has distinguished or classified the services rendered by the postgraduate teachers, and postgraduate doctors in this case.

So, the court said that the state government has to require the appellants to do compulsory service in the government hospitals, which is undoubtedly for the benefit of the public and also the benefit of society at large. So the Court confirmed the validity of the notification issued by the West Bengal government. So there can be a reasonable restriction for the bonded services as well.

The court earlier also mentioned that, so nobody should be compelled to work somewhere, but they have to pay damages. But especially in the case of the government services like this for doctors, 3 years and 2 years of services, it is for the public good. So, they cannot violate this particular bond. And the Court said that this is not a violation of article 23 of the Constitution.

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Bonded Labour System(Abolition) Act, 1976

Bonded Labour System(Abolition) Act, 1976

Objective:

- An Act to provide for the **abolition of bonded labour system** with a view to **preventing the economic and physical exploitation** of the **weaker sections of the people** and for matters connected therewith or incidental thereto.

So the Constitutional provisions are very clear. Yes. It is very clear the court said through these particular cases that the bonded labour system should be abolished. The court said the use of child labour should be abolished. And using somebody without paying any remuneration is equal to the promoting beggar system.

Now, we will see these specific provisions of the Bonded Labour System Abolition Act of 1976. So, the objectives are very clearly saying that abolishing of bonded labour system with a view to preventing economic physical exploitation of the weaker sections of the people. So, the objective very clearly says to end abolishing of bonded labour system, but this Act came in 1976. So, the real question is really we are abolishing the bonded labour system in the country.

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Important Definitions

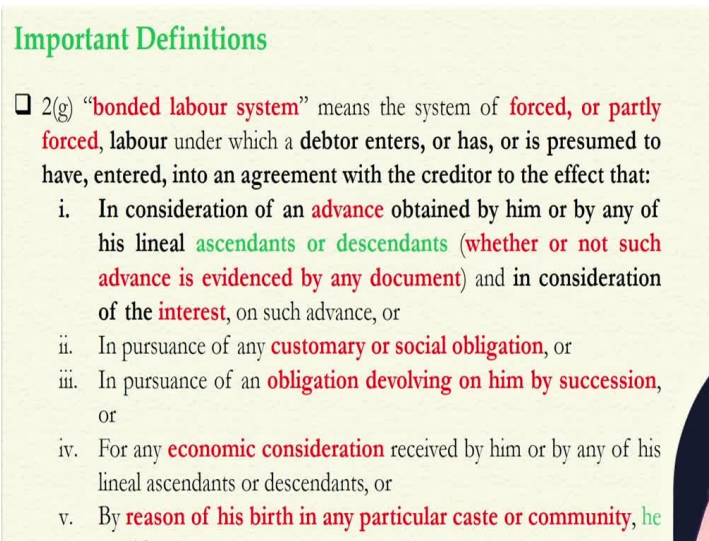
- 2(b) “agreement” means an agreement (whether **written or oral, partly written and partly oral**) between a debtor and creditor and **includes an agreement providing for forced labour, the existence of which is presumed under any social custom prevailing in the concerned locality.**
- **The existence of an agreement is ordinarily presumed**, under the social custom, **in relation to the following forms of forced labour, namely:** Adiyamar, Baramasia, Basahya, Bethu, Bhagela, Cherumar, Garru-galu, Hali, Hari, Harwai, Holya, Jana, Jeetha, Kamiya, Khundit-Mundit, Kuthia, Lakhari, Munjhi, Mat, Munish system, Nit-Majoor, Paleru, Padiyal, Pannayilal, Sagri, Sanji, Sanjawat, Sewak, Sewakia, **Seri**, Vetti;

So, here it says that the agreement between the debtor and creditor. So, the agreement means, whether it can be written or else or partly written and partly or between the debtor and creditor and which is to do forced labour or as presumed under any social custom prevailing in that particular locality.

So, this can be considered as an agreement. So, in the case of bonded labour system, the existence of an agreement is presumed. So, the bonded labour system existence of such agreements, whether it is oral or it is written is presumed and also we can see that the various local names throughout India, is known in the name of varied names from south to north.

So, in every society, this practice, some of these practices are mentioned like Seri, Vetti or Sevakia or Sewak or Sanjawat or this Padiyal or Pannayilal all these are mentioned, these are the different names of forced labour in different parts of this particular country. So, even whatever the name whatever the form that has to be abolished.

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Important Definitions

□ 2(g) “**bonded labour system**” means the system of **forced, or partly forced, labour** under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that:

- i. In consideration of an **advance** obtained by him or by any of his **lineal ascendants or descendants (whether or not such advance is evidenced by any document)** and in consideration of the **interest**, on such advance, or
- ii. In pursuance of any **customary or social obligation**, or
- iii. In pursuance of an **obligation devolving on him by succession**, or
- iv. For any **economic consideration** received by him or by any of his lineal ascendants or descendants, or
- v. By **reason of his birth in any particular caste or community**, he

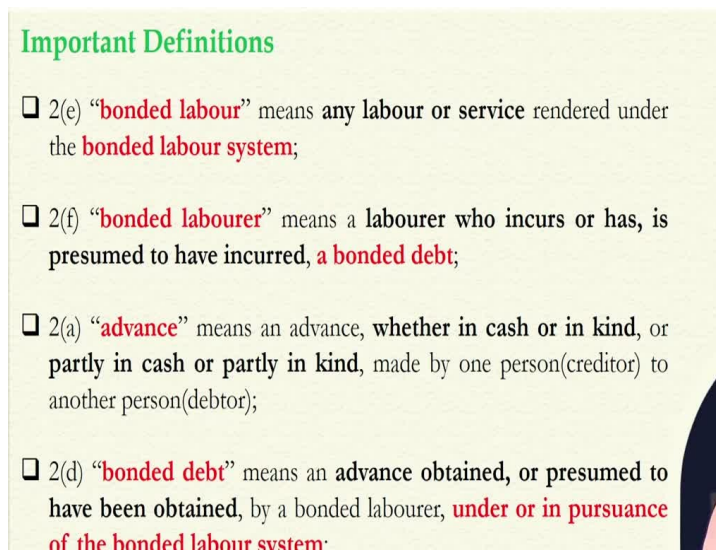
So, section 2(g) very clearly defines the 1976 Act defines bonded labour system. So, it means, a system of forced or partly forced labour under which a debtor and its workers are presumed to have entered into an agreement with the creditor to the effect. So, and the different steps it says that, in consideration of an advance obtained by him or by any of his lineal, ascendants or descendants, so, whether this advance is evidenced by document or not evidence by such document and in consideration of interest.

So, the debtor-creditor relationship even if it is the debtor themselves or their ascendant or descendant. And also in pursuance of customary or social obligations in some parts of India,

it was done as a customary obligation and also obligations revolving on him by succession. So, the father was, a bonded labour, so the son is going to be the bonded labour and the next generation is also going to be the bonded labour and any kind of economic considerations.

So, and also by reason of birth in a particular caste or community, they are considered to be bonded labourers, a particular caste or community. So, we can see in many societies, this system prevails. So, the relationship between these bonded labour system with a caste and community the relationship between bonded labour system, customary practice and also social obligations are related.

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Important Definitions

- ❑ 2(e) “**bonded labour**” means any labour or service rendered under the **bonded labour system**;
- ❑ 2(f) “**bonded labourer**” means a labourer who incurs or has, is presumed to have incurred, **a bonded debt**;
- ❑ 2(a) “**advance**” means an advance, **whether in cash or in kind, or partly in cash or partly in kind**, made by one person(creditor) to another person(debtor);
- ❑ 2(d) “**bonded debt**” means an **advance obtained, or presumed to have been obtained**, by a bonded labourer, **under or in pursuance of the bonded labour system**.

And also the bonded labour, we can see that bonded labour means the service labour or service rendered under the bonded labour system. So, labour means a labour who incurs or is presumed to have incurred a bonded debt. So, if you want to call them bonded labour, there must be bonded debt and advance, so we know that either in cash or in kind or partly cash or partly in kind which is received by the debtor and the person giving is known as the creditor.

So, there must be a bonded debt , advanced money or in terms of cash or kind. So, which is received by the debtor which leads to the bonded labour system. So, all the sections section 2(e), 2(f), 2(a) and 2(d) talks about bonded labour advance and bond debt. So, in every bonded labour there must be a bonded debt.

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Abolition of Bonded Labour System

- ❑ On the commencement of this Act, **the bonded labour system shall stand abolished** and every bonded labourer shall stand freed and discharged from any obligation to render any bonded labour.
- ❑ After the commencement of this Act, **no person shall-**
 - a) Make any advance **under, or in pursuance of, the bonded labour system**, or
 - b) **Compel any person** to render any bonded labour or other form of forced labour.
- ❑ On the commencement of this Act, **any custom or tradition or any contract, agreement or other instrument**, by virtue of which any person, or any member of the family or dependant of such person, **is required to do any work or render any service as a bonded labourer** shall be void and inoperative.

And also you can see that the bonded labour system shall stand abolished and every labourer shall stand freed and discharged from any obligation to render any bonded labour. So, that means, the bonded labour system has been completely abolished and the bonded labourer are freed from such bonds and also the debts and also it prohibits not only the bonded labour system and no person in pursuance of the bonded labour system combined any person to render any bonded labour or any kind of forced labour.

So, we know that even though there is a customer tradition or any contract or any agreement or any other instruments, so, by virtue of any kind of custom, if somebody is compelling, if the member or the family members or dependents, they have to do this particular such kind of work or render such services like a bonded labour, it shall be any kind of agreement shall be void and inoperative. So, now, whether it is an oral agreement or written agreement, the bonded labour system has been abolished completely.

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Offences and Punishment

- ❑ Whoever **compels** any person **to render any bonded labour** shall be punishable with imprisonment upto **3 years** and fine upto **₹2,000/-**.
- ❑ Whoever **advances any bonded debt** shall be punishable with imprisonment upto **3 years** and fine upto **₹2,000/-**.
- ❑ Whoever **enforces, any custom, tradition, contract, agreement or other instrument**, such that a person is required to render any service under the bonded labour system shall be punishable with imprisonment upto **3 years** and fine up to **₹2,000/-**; and, **out of the fine payment shall** be made to the bonded labourer at the rate of upto **₹5/-** per day for which labour was extracted from him.

So, if anybody practices the bonded labour system or not complying with the provisions of this particular Act, or anybody is continuing with the bonded labour system shall be punishable with imprisonment up to 3 years and also fine up to 2000 rupees and wherever or advances any bonded debt shall be punishable, the person who is giving money shall be also punished with reimbursement up to 3 years and fine up to 2000 rupees.

So, whoever enforces any such local custom or tradition or contract agreement or other instruments, such person is required to render service under the bonded labour system shall be punishable with imprisonment for 3 years and fine up to 2000 rupees and also with both. So, it means that bonded labour system you can get 3 years of imprisonment and also a fine of 2000 rupees can get as punishment for violation of any of the provisions of 1976 Act.

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Extinguishment of Liability to pay Bonded Debt

- ❑ On the commencement of this Act, **every obligation of a bonded labourer to repay any bonded debt**, or such part of any bonded debt as remains unsatisfied, **shall be deemed to have been extinguished.**
- ❑ **No suit or other proceeding shall lie in any civil court or before any other authority** for the recovery of any bonded debt or any part thereof.
- ❑ Every decree or order for the recovery of bonded debt, **shall be deemed, to have been fully satisfied.**
- ❑ Every attachment, for the recovery of any bonded debt, **shall, stand vacated;** and, if any movable property of the bonded labourer was **seized and removed from his custody**, such movable property **shall be restored.**

And also we said that there is an extinguishment of liability. So extinguishment of liability means every obligation of a bonded labour to repay any bonded debt that means, so, if any part of the bonded labour debt remains unsatisfied, shall be deemed to have been extinguished, so abrogated or extinguished. So, if people are, completely, people will be absolved from this kind of liability. So, no suit or proceeding shall lie in any civil court or before any other authority for the recovery of bonded debt.

So, every decree or order for the recovery of bonded debt shall be deemed to have been fully satisfied, which means it is going to be any such kind of agreement that should be void in nature. And so, any bonded labour, who is in the custody of the creditor will completely cease to be a bonded labour and should be removed from the custody of the creditor. And if any such property is with the creditor shall be restored, the creditor will be restored to the debtor. So, the debtor is to restore to the bonded labour. So if any property is in the custody of the debtor, then the creditor will give back to the debtor's custody.

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Extinguishment of Liability to pay Bonded Debt

- ❑ Where, **possession of any property** belonging to a bonded labourer or a member of his family or other dependant **was forcibly taken over by any creditor** for the recovery of any bonded debt, **such property shall be restored.**
- ❑ If **restoration of the possession of any property** is **not made within 30 days** from the commencement of this Act, the aggrieved person may, **apply to the Executive Magistrate within 90 days** and the prescribed authority may, **after giving the creditor a reasonable opportunity of being heard, direct the creditor to restore to the applicant the possession of the concerned property.**
- ❑ An order of prescribed authority **shall be deemed to be an order made by a civil court** and may be executed as a decree of the court

Extinguishment of Liability to pay Bonded Debt

- ❑ Where any attached property **was sold** before the commencement of this Act, in execution of a decree or order for the recovery of a bonded debt, **such sale shall not be affected by any provision of this Act.**
- ❑ Where **any suit or proceeding, for the enforcement of any obligation under the bonded labour system**, including a suit or proceeding for the recovery of any advance made to a bonded labourer, **is pending at the commencement of this Act**, such suit or other proceeding **shall stand dismissed.**
- ❑ Every bonded labourer who has been **detained in civil prison**, whether before or after judgment, **shall be released from detention.**

And also provision states that we said that already said the extinguishment of bonded debt. So if any possession of any property belongs to a bonded labour, or a member of the family, or an independent was forcibly taken over by the creditor, then recovery of any bonded debt, such property shall be restored.

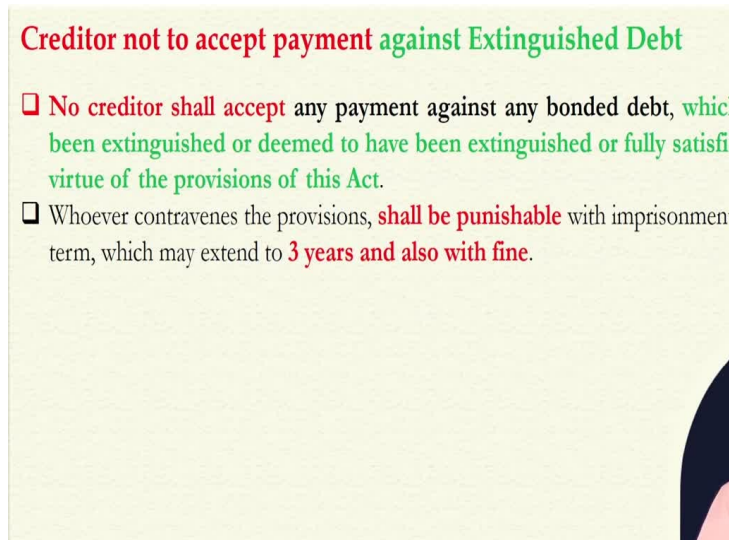
So, if the employer shall take away any such property commercially, then that will be restored, and the restoration of possession of any such property is made within 30 days from the commencement of this particular Act at that point of time. And you can say that you can apply to the Executive Magistrate of the place within 90 days and after, giving the creditor of reasonable opportunity of being heard, the creditors to restore that particular property, as we know that the Act came into existence in 1976.

So, there is a lot of bonded labourers are freed, but the social problem is that still it is convenient in some parts of the country the social menace is continuing. So, that is the problem is the state is not able to stop this bonded labour system completely. And if any property was sold before the commencement of this particular Act, in such a way that execution of subsidiary or recovery of a bonded debt, such sale shall not be affected by the provisions of this particular act.

That means if the creditor wants to sell the property, which is in the custody of the debtor, so, then it cannot be affected. So also any suit or proceedings for the enforcement of any duplication under the bonded labour system, including a suit or proceeding for the recovery of any adverts made to a bonded labour is pending at the commencement of this Act. Such suit shall stand dismissed.

That means all kinds of litigations are going to be cancelled with the advent of this particular Act at that point of time. And also you can see that every bonded labour who has been detained in civil prison before or after judgment shall be released from detention. So, no person shall be detained or put in jail for any kind of bonded labour system.

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Creditor not to accept payment against Extinguished Debt

- ❑ No creditor shall accept any payment against any bonded debt, which has been extinguished or deemed to have been extinguished or fully satisfied by virtue of the provisions of this Act.
- ❑ Whoever contravenes the provisions, shall be punishable with imprisonment for a term, which may extend to 3 years and also with fine.

So, the credit is not to accept payment against extinguished debt, no credit shall accept any payment against any bonded debt, which has been extinguished or deemed to have been extinguished or fully satisfied by virtue of the process of this particular Act. So, whoever contravenes the provisions shall be punishable with imprisonment for a term which may extend to 3 years and with fine, so, that is the minimum period which is prescribed.

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Property of bonded labourer to be freed from mortgage

- ❑ All property vested in a bonded labourer which was under any mortgage, charge, lien or other encumbrances in connection with any bonded debt shall stand freed and discharged from such mortgage, charge, lien or other encumbrances and such property shall be restored to the possession of the bonded labourer.
- ❑ If any delay is made in restoring any property, such labourer shall be entitled to recover, from the mortgagee or holder of the lien, charge or encumbrance such mesne profits as may be determined.

So, the property of bonded labour is to be freed from the mortgage. So, the mortgage is usually done by the creditor in most of the cases of bonded labour system. So, the property vested in the bonded labour, which was under any mortgage or charge or lien, usually the creditor signs a mortgage deed or he takes the charge of the property or it will be under lien or other any other encumbrances shall be freed from such kind of liabilities, and it should be restored to the position of the bonded labour.

So it means that if, any kind of liability on the bonded labour is land, such property will be restored. And also he shall be entitled to recover from the mortgagee or holder of the lien, charge or encumbrance, such means and profits determined by the courts from time to time.

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Offences and Punishment

- ❑ Whoever, **required to restore any property to the possession of any bonded labourer, omits or fails to do so** shall be punishable with imprisonment up to **one year**, or fine upto **₹1,000/-**, or **both**; and, **out of the fine payment** shall be made to the bonded labourer at the rate of upto **₹5/-** per day for which possession of the property was not restored to him.

So, the bonded labour system notably abolishes bonded labour system, but also, recovers the property, which is with the creditor. And also if you look into this, it is the resort any property to the position of any bonded labour omits or failed to do shall be punishable with one-year imprisonment and up to 1000 rupees fine or both.

And out of the fine payments shall be made to the bonded labour at the rate of up to 5 per day for which the positional property was not restored to him. So, the positional property is part and parcel of the Bonded Labour System Abolition Act of 1976.

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Freed bonded labourer not to be evicted from homestead

- ❑ **No person who has been freed and discharged** under this Act from any obligation to render any bonded labour, **shall be evicted from any homestead or other residential premises which he was occupying** immediately before the commencement of this Act.
- ❑ **If any such person is evicted by the creditor** from any homestead or other residential premises, **the Executive Magistrate in charge of the Sub-Division** within which such homestead or residential premises is situated **shall restore the bonded labourer to the possession of such homestead or other residential premises.**

And also we can see that the free bonded labour cannot be evicted from any kind of construction or other residential premises, which he occupied immediately before the commencement of this particular right. So, if a house is provided by the creditor, then he need not be evicted from such house by the employer.

So any such person is convicted by the creditor or evicted by the creditor from such kind of homestead or home or residential premises, the Executive Magistrate of this particular place in charge of the subdivision has to restore such kind of home or residential premises back to the debtor. Such residential premises must be back to this particular debtor, which is declared to be bonded labour. So, the Executive Magistrate also have a role in recovering the property back to the bonded labour.

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Offences and Punishment

- ❑ Whoever **abets** any offence shall, **whether or not the offence abetted is committed**, be punishable with the **same punishment as is provided for the offence**, which has been abetted.
- ❑ Where an offence under this Act has been **committed by a company**, every person (director, manager, secretary or other officer of the Company) **in charge of and responsible for the conduct of the business of the company, as well as the company**, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

If anybody abets so, the same punishment shall be provided for the offence which is committed and if it is committed by a company, then the director or the manager or secretary or other officers of the company in charge at the time and responsible for the conduct of this business of the company.

As well as the company itself shall be deemed to be guilty of the offence, that means in the case of bonded labour system, the case of companies, so, the manager secretary or director, who is in charge is going to be responsible for the bonded labour system and he can be proceed against him according to the provisions of this particular Act.

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District and Sub-Divisional Vigilance Committees

District Vigilance Committees

- Every State Government shall constitute such number of Vigilance Committees in each **district and each Sub-Division** as it may think fit and shall consist of the following members, namely:
 - a) The **District Magistrate**, or a **person nominated by him**, who shall be the **Chairman**;
 - b) **3 persons belonging to the SC or ST** and residing in the district, **nominated by the District Magistrate**;
 - c) **2 social workers** and residing in the district, **nominated by the District Magistrate**;
 - d) **Upto 3 persons** to represent the official or non-official agencies in the district connected with rural development, **nominated by the State Government**;
 - e) **1 person** to represent the financial and credit institutions in the district, **nominated by the District Magistrate**;

Sub-Divisional Vigilance Committees

- Each Vigilance Committee, **constituted for a Sub-Division**, shall consist of the following members, namely:
 - a) The **Sub-Divisional Magistrate**, or a **person nominated by him**, who shall be the **Chairman**;
 - b) **3 persons** belonging to the SC or ST, **residing in the Sub-Division**, **nominated by the Sub-Divisional Magistrate**;
 - c) **2 social workers**, **resident in the Sub-Division**, **nominated by the Sub-Divisional Magistrate**;
 - d) **Upto 3 persons** to represent the official or non-official agencies in the Sub-Division connected with rural development, **nominated by the District Magistrate**;
 - e) **1 person** to represent the financial and credit institutions in the Sub-Division, **nominated by the Sub-Divisional Magistrate**;

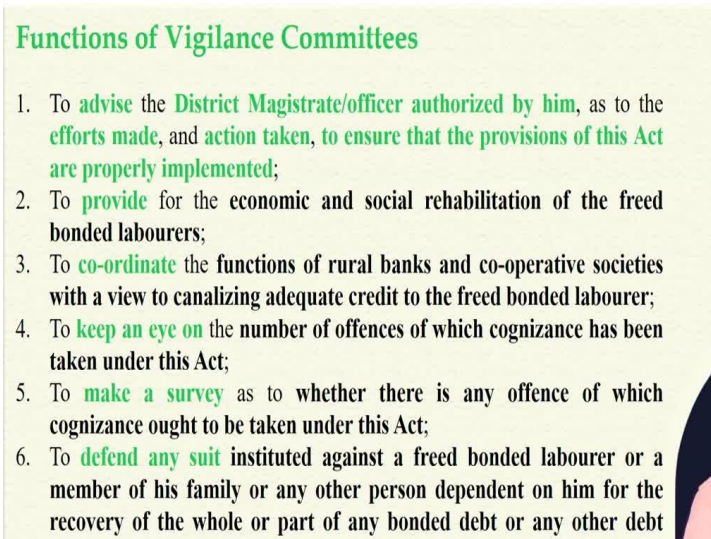
And also in order to abolish the bonded labour system, we can see the rules which prescribes for District and Sub-Divisional vigilance committees. So, it is not a big problem nowadays, but it was a problem, before enacting this particular Act.

So, for each district and for each subdivision, some of the persons are entrusted with, enforcing these particular provisions of this Bonded Labour System Act, and the District Magistrate or the person nominated by him who shall be the chairman of the District Vigilance Committees, and 3 persons belongs to SC or ST communities.

Or in the particular district nominated by the district collector, again to social workers, and residing in the particular district, then the District Magistrate up to 3 years, 3 persons to be representative or non-official agencies in the district in the rural development nominated by the state government. So there is a committee by the chairman and some of the members.

And also even if a person represents the financial and political institutions in the district, the District Magistrate should nominate such kind of people to this particular committee. And we said that there is a District Vigilance Committee same as that of the District there is a Sub Divisional Vigilance Committee as well. So in order to prevent the bonded labour system in the country.

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Functions of Vigilance Committees

1. To **advise** the **District Magistrate/officer authorized by him**, as to the **efforts made**, and **action taken**, to ensure that the provisions of this Act are properly implemented;
2. To **provide** for the economic and social rehabilitation of the freed bonded labourers;
3. To **co-ordinate** the functions of rural banks and co-operative societies with a view to canalizing adequate credit to the freed bonded labourer;
4. To **keep an eye on** the number of offences of which cognizance has been taken under this Act;
5. To **make a survey** as to whether there is any offence of which cognizance ought to be taken under this Act;
6. To **defend any suit** instituted against a freed bonded labourer or a member of his family or any other person dependent on him for the recovery of the whole or part of any bonded debt or any other debt

So if you look into the functions of these Sub Divisional and traditional Sub Vigilance Committees, so you can see that this is basically to advise the district magistrate or officer authorized in the district to ensure the implementation of portions on this particular Act, and also the economic and social rehabilitation of the free bonded labourers.

And thirdly, to coordinate the functions of the rural banks and cooperative societies, with a view to canalizing adequate credit to the freed bonded labour and keeping an eye on economic and social rehabilitation of freed bonded labour we said also to coordinate the functions of Rural Banks and Cooperative societies with a view to canalizing adequate credit to the freed bonded labourers.

So that they can come out of this particular bonded labour system and also keep an eye on the number of offences of which the cognizance has been taken under this particular Act and also conduct a particular survey, whether there is any offence for which cognizance is to be taken or not in the particular area also to be done by this vigilance committees. And also, they are to defend any suit instituted against the free bonded labour. So, there is a complete array of responsibilities are entrusted to these Vigilance Committees.

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Nirmal Gorana vs. State of Tripura and Ors. (06.08.2019 - Tripura)

- ❑ The writ petitioner, highlighted the practice of **migrant labourers detained illegally and subjected to carrying out functions as a bonded labourer under coercion, threat and intimidation.**
- ❑ Bonded labour, it may be noticed, is rampant in **brick kilns, stone quarries, crushing mines, beedi manufacturing, carpet weaving, construction industries, agriculture, in rural and urban unorganized and informal sector, power looms and cotton handlooms, fish processing** etc.
- ❑ The Vigilance Committees are directed to give more attention to these areas and take prompt action in case violation is noticed.

And also we can see that some of the case laws in which for example, these Nirmal Gorana versus State of Tripura, so this is the 2019 case. And also we can see that in this particular case, the petitioner highlighted the practice of migrant labourers being detained illegally and subjected to carrying out the functions as bonded labour and under coercion threat and intimidation.

So everybody knows that at the end of 2019, the pandemic started and by the beginning of 2020, the migrant labourers started fleeing from one state to the other states.

Especially in the case of some of the industries like the bonded labour system is rampant in brick kilning industry, stone quarries, and stone crushing mines, bidi manufacturing, carpet

weaving, construction industries, agriculture, rural and urban, unorganized and informal sector, power looms, handlooms, fish processing, etc.

So a set of industries, so, which were, pointed out by the petitioner in this case. So, here, the court has directed the vigilance committees to give more attention to these particular areas in case of violation is not a violation of the bonded labour act is as a noted in this particular areas.

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M. Venkatachalam vs. The District Collector and Ors. (26.03.2010)

- ❑ Whenever it is shown that a labourer is made to provide forced labour, the **Court will presume that he is doing so in consideration of an advance or other economic consideration received by him and therefore, he is a bonded labourer.** Though this presumption **can be rebutted, it can be done only by satisfactory materials** and until such time, the Court will have to presume that he is a bonded labourer.
- ❑ Even the State Government cannot be permitted to repudiate its obligation to identify, release and rehabilitate the bonded labourer on the plea that they must show in an appropriate proceeding conducted or adversary system of justice that they are bonded labourers.
- ❑ **In the absence of any clear rebuttal,** it is open to the Sub Divisional Magistrate to presume that respondents are clearly kept under bondage and he, being an officer entrusted under Section 12 of the Act, is **entitled to release the persons from bondage and by virtue of the provisions of the Act, they are also entitled to receive rehabilitation from the State**

And also we can see that there are other cases, like in Venkatachalam versus The district collector. The Madras High Court was constrained about, the leverage made to provide forced labour, the court presumes that he is doing so, in consideration of an advance or other economic considerations received by him, therefore, he is a bonded labour.

So, in almost all cases of bonded labour, the court presumes an advance or a debt is prevailing. So, this can be rebutted only by producing sufficient evidence and sufficient materials. So, in the absence of any clear-cut rebuttals, it is open to the Divisional Magistrates to break this bonded labour system.

And the Sub Divisional Magistrates can release the person from bondage by virtue of the provisions of the Bonded Labour System Abolition Act of 1976. So, the court is very clear, that it is the duty of the creditor to produce evidence to the effect that when they adapt, exist, otherwise he can be so, the debtor can be released from bondage labour.

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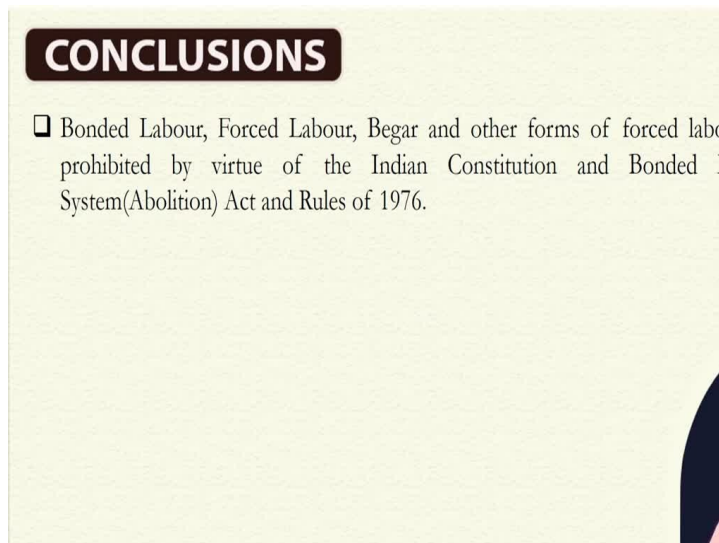
P. Sivaswamy vs. State of Andhra Pradesh (10.08.1988 - SC)

- ❑ A letter written by the Secretary/Spokesman of the Great War Ex-Services Organisation at Tirukkoyilur in South Arcot District of Tamil Nadu alleging prevalence of bonded labour in stone quarries in several districts of Andhra Pradesh and other areas was registered as Writ Petition No. 1574 of 1982.
- ❑ Held, there was no satisfactory compliance in regard to rehabilitation by State of Karnataka. However, 3 years were necessary to persuade State of Andhra Pradesh where bonded labour was identified and from where repatriation was necessary.
- ❑ **Interference of Courts shall become necessary when states fail to perform statutory obligations imposed on them.**

And also the court in some of the cases very clearly said that the interference of the courts is necessary when state failed to perform statutory obligations. So, this is P Sevaswamy versus State of Andhra Pradesh 1988 case. So, here we can see the repetitions.

So, regarding the rehabilitations, there were no satisfactory compliance with regard to the rehabilitation by the state of Karnataka and some other states like Andhra Pradesh, a long period of time has been taken to identify these bonded labourers and repatriate them to their hometowns. So, the court said that, if when the state is failed, then the court will interfere or the court will take charge of this kind of particular matter.

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CONCLUSIONS

- ❑ Bonded Labour, Forced Labour, Begar and other forms of forced labour prohibited by virtue of the Indian Constitution and Bonded Labour System (Abolition) Act and Rules of 1976.



REFERENCES

- ❑ The Indian Constitution, 1950
- ❑ Bonded Labour System (Abolition) Act, 1976
- ❑ Bonded Labour system (Abolition) Rules, 1976

So, when we look into the bonded labour system as a whole, the international conventions have completely abolished the bonded labour system all over the board. And our constitution very clearly says that the bonded labour system should be abolished, and any kind of forced labour should be abolished. And it is interesting to note that this particular regulation has been not repealed by the new code.

And it is going to be, this particular code is going to subsist and the provisions of the Bonded Labour System Abolition Act, and also the roots are going to be applicable to all bonded labourers in the country if any left in some of the industries and it is a fact that some of the industries like where it is carpet industry, or it is the power loom industry or this brick kilning industry or so, we are going to next talk about the child labour.

For example, in the case of child labour or sale labour and forced labour used in some of the industries like Matchbox industry in Sivakasi, which we are going to discuss in the next class. So, these portions are going to subsist and these provisions are going to be an effective tool for the prohibition of bonded labour system forced labourers in the country. Thank you.