

Social and Institutional Challenges in Implementation of Pakistan's Bonded Labour Laws

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Abstract

Bonded Labour laws safeguard the rights of downtrodden sections, including daily wagers and brick kiln workers, who are often subjected to the harshest forms of working conditions. Prevalence of bonded and forced labour is a growing problem in South Asian countries. This paper examines societal factors and institutional challenges that influence implementation of bonded labour laws and treaties in Pakistan. The paper carries out a comprehensive review of literature and historical trends regarding bonded labour in Pakistan. Moreover, a critical analysis of social and institutional factors that hinder implementation of bonded labour laws is undertaken. Evidence from Pakistan indicates that bonded labour legislation lacks application as well as proper institutional frameworks. Experiences from South Asian countries including Pakistan reveal that the capacity and ability of state and state institutions needs to be strengthened for enforcing the relevant legislative measures. The paper concludes by suggesting corrective measures and actions for strengthening bonded labour legislation enforcement and oversight.

Keywords: Bonded Labour, Labour laws, Institutional and Societal factors, Pakistan

Introduction

Bonded labour is that form of labour “whereby a person is forced to pay off a loan with direct labour in place of currency, over an agreed or obscure period of time” (Labour News, 2010, 1). Bonded labour is categorized varyingly and is referred to as un-free labour or debt slavery. In legal terms bonded labour is defined: “as a situation when a person provides a loan to another and uses his or her labour or services to repay the debt; when the value of the work, as reasonably assessed, is not applied towards the liquidation of the debt, the situation becomes debt bondage” (Labour News, 2010, 1). Bonded labour

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has been practiced since ancient times, slavery was its classic form and various lordships and kingships bought slaves and sold labour at will.

In almost all places of the world, the practice was widespread, for instance during the American civil war African – American and poor white farmers, were often extended credit to purchase agricultural raw materials from owners, which they would repay in the form of a share of their crop (Labour News, 2010). In Peru too such a system existed, till the 1950s for tenants who would work for their landlord's for at least three days a week and were paid less than 2 cents an year (Ibid). A multitude of examples of forced bonded labour and slavery can be identified historically, across Africa and Asia.

Globally bonded labour is a widespread problem, according to ILO there are more than 20.9 million victims of forced labour, trafficking and slavery in the world today (ILO, 2015). A person is regarded to be bonded labour, when their wages or payments for services are taken in lieu of repayment of loan(s). The person is then trapped into this form of slavery for ages and it can also last for generations (Anti-Slavery, 2009). In such situations often, labourers are exploited to the maximum, their rights usurped and physical and other forms of violence are directed at them, and they may even be locked and kept under close observation (ibid). Bonded labourers may be born into bonded labour, since many belong to families that have collectively fallen in as bonded labourers. In developing and least developed countries bonded labourers often work as peasants, and brick kiln workers as well as in the informal manufacturing and agricultural sectors (Molfenter, 2011).

Historically, debt bondage was used to trap labourers into working on plantations in Africa, the Caribbean and South-East Asia (Anti-Slavery, 2009). While in South Asia bonded labour contributes to be prevalent in agriculture, brick kilns, mills and factories amongst others. Factors that contribute to bonded labour include persistence of poverty and widespread discrimination that makes groups of people vulnerable to exploitation and desperation. Debt bondage is illegal under international law and has been defined by the United Nations as a form of "modern day slavery" (ibid). Internationally the effort to ban

slavery has been a lengthy historical process that started with the ban on the transatlantic slave trade by the British (Anti-Slavery, 2009).

The absence of safety nets, state social services and low capacity of states to meet basic needs and fundamental rights of poor and deprived people often results in creating situations, favorable to the onset of bonded labour. In India particularly and South Asia generally, bonded labour is rooted in the caste system, which includes the derogatory treatment meted out to the Dalit's or Untouchables in India.

The objective of this paper is to develop an understanding of the factors that impede implementation of bonded labour legislations in Pakistan. The paper addresses the following questions:

- 1) Which domestic and international legislations have been enacted in relation to bonded labour in Pakistan?
- 2) What enforcement mechanisms are available for domestic and international legislations regarding bonded labour in Pakistan?
- 3) How do social and institutional factors impact application of laws relating to bonded labour in Pakistan?

Bonded Labour Prevalence and Application of Bonded Labour Legislation In Pakistan

In Pakistan, estimates of bonded labour vary, for instance the ILO estimates that there were 1.7 million bonded labourers in the country in 2008. While, government estimates are on the lower side, which places them at a few hundred thousand (Molfenter, 2011). More balanced estimates suggest that there are around Three Million bonded labourers in Pakistan, these include 1.8 million share croppers and a million brick kiln workers (Anti-slavery, 2009). It is acknowledged that apart from India and Bangladesh Pakistan has one of the highest percentage of bonded labourers per population, with estimates suggesting that at least 14% of the world's slaves are residing in Pakistan (Molfenter, 2011). In most cases entire families are bonded into labour, while children are usually bonded

individually as child labour. It is interesting to note that even though Pakistan has outlawed use of child labour, in practice however child labour continues to be prevalent across the country. Pakistan's Supreme Court declared bonded labour illegal during the 1980s and Pakistan's National assembly outlawed child labour in 1992 through the Bonded Labour System (Abolition) Act, 1992 (The Voice, 2015).

Application of Domestic Bonded labour laws in Pakistan.

As outlined there are a number of laws in Pakistan that deal with bonded labour. The first domestic law, comes from the *Children (Pledging of Labour) Act* passed in 1933 in British India. The Act placed penalties for guardians of children, who are placed into employment for monetary benefits (Molfenter, 2011). In 1991 the government of Pakistan enacted the employment of children act, which outlawed employment of children in hazardous occupations. While, in 1992 the bonded labour system abolition act was enacted, which sought to free all bonded labours from their erstwhile debts (Anti-Slavery, 2008). The act criminalized slavery with imprisonment of two to five years. In addition, the 1992 systems act provided a fund for assistance of freed bonded labourers (Anti-Slavery 2008). Moreover, a number of provisions within the Pakistani constitution pertain to bonded and child labour. For instance, Article 3 of the 1973 constitution requires that the state act to eliminate all forms of exploitation and ensures equality and dignity of each and every individual. The constitution of Pakistan contains a number of instruments and provisions including articles 11, 14, 17, 18, 25, 37 and 38, which relate to prohibition of slavery, dignity of man, the right to form unions, and ensuring equitable and just humanitarian working conditions (Molfenter, 2011).

In addition, a number of articles deal with bonded labour indirectly these include articles 3 and 15 amongst others. The 1992 bonded labour system abolition act was followed by framing of rules for abolition of bonded labour in 1995. The 1992 bonded labour systems act is implemented through the provincial governments and their implementation is undertaken through district magistrates. Under the Act, vigilance committees were supposed to be set up at district levels consisting of elected representatives and the

district administration, the labour department and associated stake holders. The bonded systems act rules formulated in 1995 advise the district administration, bar associations, social services and labour department. In theory, these measures should provide sufficient protection from forced bonded labour, however enforcement of legislation regarding bonded labour has been inconsistent and weak in Pakistan.

Application of International bonded labour laws in Pakistan.

Pakistan has signed and ratified a number of international laws curbing bonded labour practices (FES, 2013). It is a signatory of ILO conventions No. 29, No. 105, and 182. In addition, Pakistan ratified the 1956 United Nations Supplementary Convention on Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery, the 1989 UN Convention on the Rights of the child and the Philadelphia Declaration (ibid). Moreover, International Laws, covenants and instruments clearly enunciate the commitments to end practices of bonded or forced labour in the shortest time frames.

Since independence Pakistan has remained an active member of ILO. Pakistan ratified different ILO conventions including the forced labour convention in 1957. Consequently, the ILO in 1960 asked Pakistan to fully enforce the convention (Ercelawn & Nauman, 2002; FES, 2013). Apart from the ILO's Minimum age convention, Pakistan has ratified all major ILO treaties and conventions. Moreover, Pakistan signed ILOs 1996 covenants relating to banning slavery and slavery like practices, and the 1989 convention on the Rights of the Child (Ibid). From the list of Conventions and Treaties it is clear that Pakistan has signed most international legal instruments that restrict use of bonded labour in different forms and manifestations. However, enforcement and implementation of these instruments has been inconsistent and weak due to a number of factors.

It further needs to be realized that Pakistan having recently been granted GSP plus by the EU in 2013, is required to implement a number of labour related provisions. These include ratifying EUs 27 international standards and covenants on labour, human and women's rights, environment, narcotics and corruption (Dawn, 2014). The GSP plus

conditionality's requires Pakistan to stringently enforce and implement labour related International conventions.

Challenges Affecting Bonded Labour In Pakistan

As highlighted in the preceding section, implementation of existing laws pertaining to bonded labour has been weak in Pakistan. The two areas of concern in relation to enforcement of bonded labour legislation includes labourers associated with brick kilns as well as tenants and wage workers associated with the agriculture sector (Javaid, 2006). The 'bonded' brick kiln workers mostly belong to Punjab province, while agriculture bonded labour - locally referred to as 'Haris' work in the Sindh province (Ercelawn & Nauman, 2002; The Voice, 2015). Despite prevalence of different legislations, the laws haven't been implemented to good effect and approximately two million bonded labours continue to languish in their daily lives. One factor which contributes to the lack of implementation of bonded labor laws includes skewed power relations, which often dictates terms in the Pakistani society. Brick kilns as well as large tracts of land in the Sindh province are owned by powerful feudal lords, who hold considerable influence over power relations in terms of social and political systems in their respective constituencies (Javaid, 2006). Their subjects in many cases are 'bonded labourers', who often work in Brick Kilns or in Agriculture fields and are exposed to different forms of abuses. In addition, bonded labourers have no alternative livelihood, which ensures that they remain psychologically as well as financially depended on their lords and are chained into the bonded system (The Voice, 2015).

There have been a number of successes in providing rights and legal support to bonded labour. For instance a large number of cases related to bonded labour abuse in brick kilns in Punjab have been reported and settled by the courts. Moreover, under the 1992 bonded labour act district level watchdogs are required to report bonded labour practices to the courts for litigation, which has not happened. Rather practices of bonded labour are being identified by individuals and organizations working on 'labour rights'. This indicates 'lacunas' and deficiencies in the legal system, since under standard practice it is the job

of district level watchdogs to identify bonded labour abuses and ensure remedial actions. Moreover, the situation in the Sindh province seems to be far worse than Punjab, since there are very few cases reported (The Voice, 2015). In Hyderabad district alone there are some 50,000 'Haris' bonded tenants, who are languishing in agricultural farms and fields. In some cases the labourers belong to the Hindu Pakri communities (Ibid). The bonded system ensures that these individuals remain chained as bonded labour and perpetually remain at the mercy of their feudal lords.

Limitations and Weaknesses in Application of Bonded Labour Laws in Pakistan

As stipulated in the 1992 bonded labour system abolition act, district vigilance committees are to be setup as integral components for implementation of the act (Javaid, 2006). However, in most districts in Pakistan these committees have yet to be set up. Moreover, not a single case has been detected by these committees in any district. Even though bonded labour practices continue to take place unabatedly in Pakistan. The lower and higher courts periodically intervene to liberate bonded labourers and seek to check excesses committed against bonded labourers. But that only happens in case the labourers are able to approach the courts, and provided the judiciary responds or takes notice of these incidents (Javaid, 2006). For instance forty six bonded Haris were liberated in Sindh on 16th September 2015 at the intervention of the Badin sessions court (Dawn, 2015). As mentioned the scale of bonded labour problem in Pakistan is huge, it needs to be understood that the incidents reported in the press or taken up by courts of law represent a fraction of the actual problem of bonded labour in Pakistan (Javaid, 2006). Moreover, there has been a consistent pattern of bonded labour abuse and in most cases bonded labour chose to remain silent. In addition, the funds earmarked under the bonded labour abolition act funds for awareness raising and education of children of brick kiln workers have remained unrealized. Other factors that have been identified by Javaid (2006) as contributing to the failure of abolition of bonded labourers in Pakistan include remoteness, lack of transportation and protection (Javaid, 2006).

Javaid (2006) and a number of researchers identify different shortcomings that affect implementation of legal instruments supposed to check incidence of bonded labour. For instance some of the provisions within the 1992 bonded labour abolition act are criticized as being replicas of the Indian act. In addition, the idea of vigilance committees at district levels is seen as being difficult to actualize. Moreover, the factories Act of 1978 cannot be applied to brick kilns since it does not conform to the working hours of brick kiln workers (ibid). Thus, in Pakistan legal failures makes laws difficult to enforce and implement, since the laws are incapable of catering to traditional models of labour relations at different levels within the Pakistani context.

a. Societal Factors affecting Implementation of Bonded labour laws.

A careful analysis of factors impeding implementation of bonded labour legislations in Pakistan reveal that deep rooted social and institutional intricacies affect application of bonded labour laws in Pakistan. For instance a number of social practices are linked to desperate socioeconomic conditions of the poor and under privileged segments of Pakistan's society, many of whom are forced into bonded labour. Majority of Pakistan's bonded labour belongs to those living under extreme poverty, often living in miserable living conditions. It is a fact that poverty is a contributing factor towards victimization and bonded labour has a direct correlation with poverty (FES, 2013). Moreover, different social factors that impact bonded labour includes the need for money, fear of destitution, threats of violence from employers including landlord's and brick kiln owners, who often force individuals or families into bonded labour (FES, 2013). In many instances these labourers are viewed with disdain by society, and are seen as third class citizens having no access to fundamental human rights. For instance bonded peasants in Sindh province experience severe forms of social and human rights excesses and abuses. Social factors such as inequitable distribution of resources, including land resources and abuses lie at the core of the bonded labour problem. Social structures in Pakistan are not conducive for the poor. As such the poor do not receive fair share amongst resources and rich landowners are seen as unwilling to share even fractions of their lands or pay basic wages to labourers or workers.

Moreover, despite the promulgation of the 18th amendment[†] that was supposed to strengthen checks and balances and ensure greater transparency, there has been very minimal improvements on the ground. Many studies and analysis on bonded labour prevalence in Pakistan have concluded, that on the contrary, since passage of the 18th amendment institutional efficiency has continued to plummet (FES, 2013).

b. Institutional factors affecting implementation of Bonded labour laws.

From an institutional perspective it is clear that problems pertaining to bonded labour relate more to the lack of coherence and inconsistencies in implementation and lack of appropriate implementation measures. This is reflected by various shortcomings within the Pakistani judicial system. Moreover, governance systems in Pakistan are usually prone to influences of landlords and powerful corporate and industrial owners, whom they are supposed to oversee and keep in check. So any corrective measures by labourers or civil society is limited and workers are often discouraged from reporting crimes (Molfenter, 2011). Various studies on bonded labour by Molfenter (2011) and FES (2013) identify the ineffectiveness of international conventions pertaining to Forced and Compulsory Labour.

Government policy and practice in Pakistan, is often determined through actions of the civil bureaucracy including District - Deputy Commissioners and Police Officers, who are often susceptible to influence by social elite (s), feudal (s) and the politicians. The actions of these officers coupled with governance arrangements often determines how and if the relevant laws take their course. Unfortunately, as long as there are insufficient checks and balances that are incapable of taking corrective measures including actions against violators of bonded labour practices such as elites and their social influences, the requisite laws will continue to remain partly implemented (Javaid, 2006). So while at the

[†] The 18th Amendment was passed by Pakistans National assembly on April 8, 2010. The Bill sought to increase provincial autnony. In relation to labor laws the 18th amendment to the Constitution devolved the subject of labor to provinces. However, no serious steps have been taken by provinces to bring new and reformed legislation.
Source:

<http://www.pildat.org/publications/publication/labourissue/18thConstitutionalAmendment.pdf>

country level, Pakistan may sign and ratify different global conventions on bonded labour and the constitution includes sufficient provisions regarding the same. The implementation(al) measures and arrangements alone determine enforcement at local levels (Javaid ,2006).

Conclusion

This paper dilates upon the bonded labour problem in Pakistan. It outlines how a failure to implement relevant laws and legal instruments on bonded labour is a contributing factor in Pakistan's efforts to control bonded labour practices. The institutional mechanisms to control and check bonded labour do not holistically extend on the ground in Pakistan. The 18th amendment has made matters more complicated, since checks and balances and implementation measures are not well defined.

The lack of proper Institutional and implementation arrangements continues to hamper enforcement of bonded labour laws in Pakistan. Moreover, social and economic factors play a predominant role in shaping society and the environment, such that the institutional and governance frameworks remain weak or in effective. Different stakeholders such as trade unions, lawyers, labour department, government administrative agencies and most importantly bonded labourers themselves, fail to deal and point out issues associated with bonded labour.

For a focused and comprehensive approach towards curbing practices of bonded labour in Pakistan, it would be important to deal with the root causes of the crises. These include the socio-economic deprivations as identified by this study. In addition, social safety nets need to be setup and educational systems needs to be made compulsory at the primary school levels, so that maximum enrollment is ensured. Moreover, a specific focus needs to be on children of bonded labourers, so that they are properly schooled and a new generation arises from brick kilns. Moreover, dissemination of bonded labour and labour laws to the labourers needs to be ensured. These initiatives if implemented with a sense of purpose in Pakistan, can improve the implementation of bonded labour laws and safeguard and protect rights of bonded labourers in relation to laws and conventions

relating to bonded labour in Pakistan.

References

- Anti Slavery. (2009). *What is bonded Labour?* Retrieved May 01, 2017 from http://www.antislavery.org/includes/documents/cm_docs/2009/b/1_bonded_labour.pdf
- Anti-Slavery. (2008). *The Bonded Labour System (Abolition) Act 1992*;
- Dawn. (2014). GSP-Plus and labour compliance. *Daily Dawn*.
- Dawn. (2015). 46 bonded Haris liberated. *Daily Dawn*.
- Ercelawn, A. and Nauman, M.(2002). Bonded labour in Pakistan: An Overview A Study for ILO, by Pakistan Institute of Labour Education and Research, Karachi. *The Journal, NIPA*, 7 (1).
- FES. (2013). *BREAKING THE BONDAGE Bonded Labour Situation and the Struggle for Dignity of Brick Kiln Workers in Pakistan*, Fredrich Ebert Stitung in coop. with BLLF. Retrieved November 17, 2017 from <http://library.fes.de/pdf-files/bueros/pakistan/10382.pdf>
- Forced and Bonded Labour in Pakistan (2008). Retrieved January 27, 2017 from http://www.antislavery.org/includes/documents/cm_docs/2009/2/2008_pakistan.pdf
- ILO. (2015). *Stopping forced labour and slavery-like practices The ILO strategy*. International Labour Organization, Rome. Retreved January 13, 2017 from http://www.ilo.org/wcmsp5/groups/public/---ed_norm/declaration/documents/publication/wcms_203447.pdf
- Javaid, M.I. (2006). 'Bonded Labour in the Brick Kiln ndustry of Pakistan' published in *The Lahore Journal of Economics*, 11(1), 99-119.
- Labour News. (2010). *Bonded Labour in Pakistan*. Retrieved June 10, 2017 from http://www.labournews.net/lnv2/index.php?option=com_content&view=section&layout
- Molfenter, C. (2010). Bonded Child Labour in Pakistan - The state's Responsibility to Protect from an Institutional Perspective. *Vienna Online Journal on International Constitutional Law*, 5 (2), 260-320
- The Voice (2015). *Bonded Labour*. Retrieved January 18, 2017 from <http://thevoicesociety.org/bonded-labour/>