

## Combating Bonded Labour a worst form of Trafficking in Human beings: Rights Based Approach

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### Abstract:

The issue of bonded labor, a severe form of human trafficking, represents a critical violation of human rights across the globe. Defined as modern-day slavery, bonded labor entraps millions of individuals in exploitative and coercive work environments, often driven by poverty, ignorance, and socio-economic vulnerabilities. This essay explores the widespread prevalence of bonded labor and its intricate ties with human trafficking, focusing on its causes, legislative frameworks, and the essential role of a rights-based approach to combat it. The paper discusses the international and domestic laws aimed at combating bonded labor, such as the Bonded Labour System (Abolition) Act, 1976, and relevant Supreme Court rulings, alongside practical state measures for victim rehabilitation. Furthermore, it highlights case studies such as the Gonda Circus Case to demonstrate successful interventions and the importance of an integrated approach combining prevention, protection, and prosecution. The essay concludes by urging a concerted effort to address the root causes of bonded labor through policy reforms and awareness campaigns, emphasizing the need for a rights-based approach to ensure the dignity, protection, and rehabilitation of victims.

**Keywords:** Bonded labor, human trafficking, rights-based approach, international law, victim rehabilitation, forced labor, trafficking prevention, legal frameworks, social justice, Gonda Circus Case, Bonded Labour System (Abolition) Act, human rights.

The United Nations has defined the debt bondage as a form of “Modern day Slavery” and is prohibited by law<sup>1</sup>. Trafficking in human beings has, sadly, taken the shape of an organized transnational crime, generating annual business of more than 8 to 10 billion dollars.<sup>2</sup> According to the estimates around 50 million people are the victims of modern day slavery, including 28 million in the bonded labour and more so almost one in eight of all those in bondage or forced labour are children.<sup>3</sup> While not a new problem, the appalling new dimensions it has reached in recent years means it is now a crime of epidemic proportions. It is a global concern and no country is immune. As a form of organized crime, trafficking targets the sustainable development and the rule of law because illicit profits may be used for corruption, other criminal activities and at times even for terrorism.<sup>4</sup> The issue of trafficking for bonded labour is an occasion for all human rights activists to face introspection and self-assessment. In the present era of globalization and the plight of the very poor, the time has now come not just for the state and civil society but for all stakeholders to move ahead with rights based approach as viable tool for prevention, protection, prosecution and adequate remedy to the victims of trafficking, else it would not be possible to break the vicious cycle of bonded labour.

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<sup>1</sup> <https://www.un.org/en/observances/slavery-abolition-day#:~:text=An%20estimated%2050%20million%20people,are%20in%20commercial%20sexual%20exploitation.>, viewed on 4<sup>th</sup> August, 2024.

<sup>2</sup> Dr. Justice A.S. Anand, "Key Note Address," in *National Seminar on Trafficking in Human Beings* (India Habitat Centre 2005).

<sup>3</sup> [https://www.google.com/search?q=Modern+day+slavery+United+Nations&rlz=1C1RLNS\\_enIN1115IN1117&oq=Modern+day+slavery+United+Nations&gs\\_lcrp=EgZjaHJvbWUyBggAEEUYOTINCAEQABiGAXiABBiKBTIKCAIQABiABBiiBDIKCAMQABiABBiiBDIKCAQQABiABBiiBNIBCTIxOTUxajBqN6gCALACAA&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=Modern+day+slavery+United+Nations&rlz=1C1RLNS_enIN1115IN1117&oq=Modern+day+slavery+United+Nations&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTINCAEQABiGAXiABBiKBTIKCAIQABiABBiiBDIKCAMQABiABBiiBDIKCAQQABiABBiiBNIBCTIxOTUxajBqN6gCALACAA&sourceid=chrome&ie=UTF-8), accessed on 4<sup>th</sup> August, 2024.

<sup>4</sup> Dr. Justice A.S. Anand, "Key Note Address," in *National Seminar on Trafficking in Human Beings* (India Habitat Centre 2005).

Trafficking in human beings for bondage is not only confined to brick kilns, stone quarries, carpet industry, glass industry, sexual exploitation but also takes other forms; for example, children - particularly girls - from minority groups or poor families are trafficked to work as domestic servants in large cities, as labour in hazardous industries and sweetmeat shops etc., for begging, for public sports (such as camel races), malls, call centres, organ transplant, smuggling etc<sup>5</sup>.

In 1994, the UN General Assembly defined trafficking as

*“the illicit and clandestine movements of persons across national borders, largely from developing countries with economies in transition, with the end goal of forcing women and girls into sexually or economically oppressive and exploitative situation for the profit of recruiters, traffickers, and crime syndicates, as well as other illegal clandestine employment and false adoption”*.<sup>6</sup>

The most comprehensive definition of human trafficking has been given in the Convention against Transnational Organized Crime’s protocol which defines trafficking inclusively, as

*“the recruitment, transportation, transfer, harboring or receipt of persons , by means of the threat or use of force or other forms of coercion, 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 purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or others form of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”*<sup>7</sup>

This was adopted by the UN general assembly in 2000 and is a widely-accepted definition.

The thesis of this essay is that the bonded labour cycle cannot be broken without attention to rights and needs of the trafficked victims. This essay will cover in brief the magnitude of the problem, the definition of bonded labour, its causes, the legislative framework, state measures, prevention, protection, prosecution, root causes of vulnerability with nexus and exploitation linkages. It shall also discuss in brief the Gonda Circus Case investigated by the author himself as a success story.

The rights based approach for the survivors of bonded labour is to be adopted in consonance with the Revised “Central Sector Scheme for Rehabilitation of the Bonded Labourers, 2021, Social Welfare Schemes of the State and Guidelines issued by the National Human Rights Commission focussing on the affirmative action transforming needs in to rightful claims<sup>8</sup>. For the victims of bondage it could be made possible by initiating special measures aimed at securing adequate advancement combining both the cash and non-cash components. The rights based approach is an effective tool that tend to justify the functional character of economic, social and cultural rights through a package of state responsibility as facilitator starting from the systematic conceptual process to the methodological processes including the basic indicators as Realization, Recognition, Entitlements, Assertion, Accessibility and Enjoyment<sup>9</sup>.

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<sup>5</sup> Murugesan, J. D. (2018). Handbook on Bonded Labour. Retrieved from [https://nhrc.nic.in/sites/default/files/Hand\\_Book\\_Bonded\\_Labour\\_08022019.pdf](https://nhrc.nic.in/sites/default/files/Hand_Book_Bonded_Labour_08022019.pdf) National Human Rights Commission, Handbook on Bonded Labour (2018), Justice Darmar Murugesan [https://nhrc.nic.in/sites/default/files/Hand\\_Book\\_Bonded\\_Labour\\_08022019.pdf](https://nhrc.nic.in/sites/default/files/Hand_Book_Bonded_Labour_08022019.pdf), accessed on 4<sup>th</sup> August, 2024.

<sup>6</sup> United Nations General Assembly, "Trafficking," 2010, viewed on 26 April 2024, <<http://www.un.org/documents/ga/res/49/a49r060.htm>>.

<sup>7</sup> United Nations Office on Drugs and Crime, "Toolkit to Combat 16 Trafficking in Persons," 16 December 2008, viewed on 26 April,2024, <[http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296\\_tool\\_1-1.pdf](http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_1-1.pdf)>.

<sup>8</sup> [https://labour.gov.in/sites/default/files/20220208154105\\_compressed.pdf](https://labour.gov.in/sites/default/files/20220208154105_compressed.pdf), accessed on 4<sup>th</sup> August, 2024.

<sup>9</sup> Sangroula, Geeta Pathak, 2011, “Breaking the Generation Theory of Human Rights: Justiciability of Economic, Social, Cultural Rights With Special Reference to the Constitutional Framework in Nepal”, ‘Fair Trial and ESCR Literatures compiled and Edited by Asso. Professor Geeta Pathak Sangroula, MHRD Coordinator, Kathmandu School of Law, Nepal.

In order to appreciate the problem in right earnest, it is imperative to examine the causes, factors and circumstances responsible for bonded labour a form of trafficking in human-beings together with the international and the domestic legal framework as without proper diagnosis of the problem, the solution in the form of right treatment is difficult to be found out. The poor economic and social conditions provide a distinct explanation for the direction and flow of the menace of bondage. Trafficking for bonded labour generally flows from poorer to more prosperous states. Huge and unaccountable profit drives every aspect of the trafficking industry from the standpoint of the perpetrators of this crime. Resources and money for survival are the central driving force that renders potential bondage victims more vulnerable to deception, coercion and exploitation.<sup>10</sup> Many unfortunate teenaged children in full bloom are being sold for paltry sum even by their parents finding themselves unable to maintain due to poverty, hoping that they would be engaged only in household duties, commercial or industrial units or manual labour.<sup>11</sup>

The structural factors responsible for bonded labour include economic deprivation and extreme poverty, the effect of globalization, aspiration for modernity, attitude to gender, the demand for sex and situations of conflict, while proximate factors include lax national and international legal regimes, poor law enforcement, lack of awareness, corruption, organized criminal entrepreneurship, weak education campaigns and lack of coordination between the States and at times the neighbouring countries.<sup>12</sup>

Only a few cases of bonded labour are registered and the conclusion of the Summary Trials is minimal compared to the actual number of victims of bondage in different forms at different places across the country on ground. Cases are either not reported or not registered for many reasons, several of which are associated with poor governance. Poor compliance with the provisions of the Bonded Labour System (Abolition) Act, 1976, the Supreme Court Judgements and the guidelines issued by the National Human Rights Commission<sup>13</sup> which may be considered a push factor for bonded labour even though push factors mainly operate at the place of origin. India is a state party to the Convention on the Suppressions of Slave Trade and Slavery, 1926, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slave Trade, 1956, Forced Labour Convention, 1930, International Covenant on Civil and Political Rights, 1966, International Covenant on Economic, Social and Cultural Rights, 1966 and last but not the least the Convention on the Rights of the Child, 1989 as such is legally bound to comply with their provisions<sup>14</sup>, but the prevailing realities have not changed.

Human trafficking for bonded labour is not confined to India or the South Asia but is a global phenomenon that is driven by demand and fuelled by extreme poverty and unemployment.<sup>15</sup> The international safeguards including the Forced Labour Convention of 1930<sup>16</sup>, the ILO Convention<sup>17</sup>, the Universal Declaration of Human Rights, 1948<sup>18</sup> and the

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<sup>10</sup> Fiona. David, *Trafficking in Humans : Social, Cultural and Political Dimensions / Edited by Sally Cameron and Edward Newman*, ed. Sally Cameron and Edward Newman, trans. Sally Cameron and Edward Newman (New York: United Nations University Press, 2008).

<sup>11</sup> Vishal Jeet v/s Union of India (Criminal Writ Petition No. 421 of 1989)

<sup>12</sup> Fiona. David, *Trafficking in Humans : Social, Cultural and Political Dimensions / Edited by Sally Cameron and Edward Newman*, ed. Sally Cameron and Edward Newman, trans. Sally Cameron and Edward Newman (New York: United Nations University Press, 2008).

<sup>13</sup> [https://nhrc.nic.in/sites/default/files/KYR%20Bonded%20Labour%20English\\_2.pdf](https://nhrc.nic.in/sites/default/files/KYR%20Bonded%20Labour%20English_2.pdf); accessed on 25.08.2024

<sup>14</sup> [https://nhrc.nic.in/sites/default/files/A\\_Handbook\\_on\\_International\\_HR\\_Conventions.pdf](https://nhrc.nic.in/sites/default/files/A_Handbook_on_International_HR_Conventions.pdf); accessed on 25.08.2024

<sup>15</sup> Om Prakash Vyas, "Haman Trafficking Across Borders: Human Rights Violations of Women and Children, Challenges and Remedies", KSL Review Journal, Vol. 1, Oct.2012, Page 134-157 (P ISSN: 2091 2110, E ISSN: 2773 8159, DOI 10.46985), Kathmandu School of Law; <https://kslreview.org/index.php/kslr/article/view/965/808>;

<sup>16</sup> [https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C029](https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029); accessed on 25.08.2024

<sup>17</sup> <https://www.ilo.org/international-labour-standards/conventions-protocols-and-recommendations>; accessed on 25.08.2024

Supplementary Convention on the Abolition of Slavery, 1956<sup>19</sup> have not yet been followed in letter and spirit. Trafficking of the person for forced labour has flourished due to the disintegrated and deteriorating social structure, gender disparity, geographical inaccessibility, illiteracy and ignorance, exploitative socio economic and cultural relations in the society. Increasing consumerism, domination of people's lives and demand of cheap labour markets are other contributing factors<sup>20</sup>.

Bonded Labour driven trafficking in women has been universally accepted as an act of violence against women, about which there is global consensus.<sup>21</sup> At the fourth world conference on women in Beijing in 1995, combating this form of violence against women was a concern strongly shared by all and the issue of trafficking has been dealt with in various international human rights instruments<sup>22</sup>.

The OHCHR has also issued 11 guidelines<sup>23</sup> with emphasis on rights based approach which are the obligations of the state parties to ensure protection and promotion of the human rights of trafficked persons. However, in the absence of effective enforcement mechanisms, UN guidelines have not been translated into action.

There are a number of domestic legal laws in India under the Constitutional and Legal provisions including Articles 23, 24, 38, 41, 42 and 43 of the Constitution of India<sup>24</sup>. The Bonded Labour System (Abolition) Act, 1976 is the first parliamentary legislation in India to recognise and address the system of bonded labour, termed slavery in the International arena. Section 2(g) of the Act denotes that bonded labour is a person who is working for an employer/landlord/business owner in exchange for a bonded debt, who has entered in to an agreement to provide labour in forced circumstances. This could be out of advance, custom or social obligation, succession, other economic consideration, caste or community leading to restricted freedom of employment or restricted freedom of movement or failure to pay the legal minimum wages or restricted freedom to sell goods or services in the market place. The Bonded Labour System (Abolition) Act<sup>25</sup> have the provisions of release of all bonded labourers from bondage, agreement or custom to be void, extinguishes all bonded debts, property of bonded labour to be free from mortgage, bonded labour not to be evicted from homestead, creditor not to accept payment against debt, accepting payment against bonded debt, enforcement of bonded labour, advancement of bonded debt, extracting bonded labour, abetment and offences by companies. The Act punishes the perpetrators by imposing a punishment of imprisonment up to 3 years and fine of Rs. 2000/-. In addition to this, the Bhartiya Nyaya Sanhita, 2023<sup>26</sup> have specific sections viz. 127,143,146 further strengthened by Section 3(i) (iv) of the SC/ST (PoA) Act<sup>27</sup> in case the victim is from SC/ST communities. In case of the

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<sup>18</sup> <https://www.un.org/en/about-us/universal-declaration-of-human-rights>; accessed on 25.08.2024

<sup>19</sup> [https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XVIII-4&chapter=18&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XVIII-4&chapter=18&Temp=mtdsg3&clang=_en); accessed on 25.08.2024

<sup>20</sup> Murugesan, J. D. (2018). Handbook on Bonded Labour. Retrieved from [https://nhrc.nic.in/sites/default/files/Hand\\_Book\\_Bonded\\_Labour\\_08022019.pdf](https://nhrc.nic.in/sites/default/files/Hand_Book_Bonded_Labour_08022019.pdf)

<sup>21</sup> "Violence against Women: Harmful Traditional and Cultural Practices in the Asian and Pacific Region," Economic and Social Commission for Asia and the Pacific, viewed on 8<sup>th</sup> September, 2024, <[http://www.unescap.org/ESID/GAD/Publication/Others/Publication\\_EGM-VAW.pdf](http://www.unescap.org/ESID/GAD/Publication/Others/Publication_EGM-VAW.pdf)>.

<sup>22</sup> <https://www.un.org/en/hate-speech/resources/key-international-human-rights-instruments>; accessed on 26.08.2024

<sup>23</sup> Mary Robinson, "Building Relationships That Make a Difference," in *The Annual Conference of Business for Social Responsibility* (San Francisco: United Nations Global Compact, 1999).

<sup>24</sup> Constitution of India, Part III and Part IV, Fundamental Rights and the Directive Principles of State Policy, <https://laddashboard.legislative.gov.in/sites/default/files/COL...pdf>, accessed on 5<sup>th</sup> August, 2024.

<sup>25</sup> <https://www.indiacode.nic.in/bitstream/123456789/1491/1/197619.pdf>; accessed on 26.08.2024

<sup>26</sup> [https://www.mha.gov.in/sites/default/files/250883\\_english\\_01042024.pdf](https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf); accessed on 26.08.2024

<sup>27</sup> <https://socialjustice.gov.in/writereaddata/UploadFile/The%20Scheduled%20Castes%20and%20Scheduled%20Tribes.pdf>; accessed on 26.08.2024

minors, Sections 75 and 79 of the Juvenile Justice (Care and Protection) Act, 2015<sup>28</sup> are attracted. The relevant labour laws are Section 22 of the Minimum Wages Act, 1948<sup>29</sup>, Sections 3 and 14 of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986<sup>30</sup> and Section 25 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979<sup>31</sup> are there for relief to the bonded labourers as part of the domestic laws.

The law of precedent by way of leading judgements of the Supreme Court are there in the cases of People's Union for Democratic Rights vs Union of India<sup>32</sup>, Bandhua Mukti Morcha vs Union of India<sup>33</sup>, Neerja Chaudhary vs State of Madhya Pradesh<sup>34</sup>, Balram vs State of Madhya Pradesh<sup>35</sup> and PUCL vs State of Tamilnadu<sup>36</sup> besides Walter Kerketta vs SDM, Delhi South East District and Others (WP Civil 9744/2017, Delhi High Court), Mohan Bind vs State of Bihar and Others (Civil Writ Jurisdiction Case No. 16246 of 2019, Patna High Court) and Rajo Manjhi vs State of Bihar and Others (Civil Writ Jurisdiction Case No. 15605 of 2019, Patna High Court) on the aspects of identification, rescue, release and rehabilitation of bonded labourers.

The three P's approach comprising measures to prevent the phenomena and prosecute the traffickers and protect the victims<sup>37</sup> is required to be implemented effectively and efficiently. It is to be understood that the problem of trafficking is not only a social but also a socio-economic therefore; measures to be taken by the state should be more preventive rather than punitive.<sup>38</sup> The trafficked person's ability to escape is obstructed by their linguistic and cultural isolation, separation from family and relatives/friends, lack of financial resources and dreaded fear of local authorities in destination countries.<sup>39</sup> If governments are serious about combating this menace, a new approach is required by addressing the push factors of economic instability, poverty and inequality in countries of origin so that the pressure on migration could be reduced over the long term and this could be a worthy goal in its own right.<sup>40</sup>

The support and help mechanisms should include legal services and other resources as trafficking victims often arrive in the State without legitimate identification papers/ travel documents, unable to speak the language, & forced into bondage. The state measures together with human rights at the centre should include activating social change, public awareness and education, potential private sector allies, rescue and data analysis, NGO networks and alliances, economic

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<sup>28</sup> [https://www.indiacode.nic.in/handle/123456789/2148?view\\_type=browse](https://www.indiacode.nic.in/handle/123456789/2148?view_type=browse); accessed on 26.08.2024

<sup>29</sup> <https://www.indiacode.nic.in/bitstream/123456789/1730/1/A1948-011.pdf>; accessed on 26.08.2024

<sup>30</sup> [https://www.indiacode.nic.in/bitstream/123456789/19582/1/the\\_child\\_and\\_adolescent\\_labour\\_\(prohibition\\_and\\_regulation\)\\_act,\\_1986\\_no.\\_61\\_of\\_1986\\_date\\_23.12.1986.pdf](https://www.indiacode.nic.in/bitstream/123456789/19582/1/the_child_and_adolescent_labour_(prohibition_and_regulation)_act,_1986_no._61_of_1986_date_23.12.1986.pdf); accessed on 26.08.2024

<sup>31</sup> [https://www.indiacode.nic.in/bitstream/123456789/13209/1/the\\_inter-state\\_migrant\\_workmen\\_regulation\\_of\\_employment\\_and\\_conditions\\_of\\_service\\_act\\_1979.pdf](https://www.indiacode.nic.in/bitstream/123456789/13209/1/the_inter-state_migrant_workmen_regulation_of_employment_and_conditions_of_service_act_1979.pdf); accessed on 26.08.2024

<sup>32</sup> <https://main.sci.gov.in/judgment/judis/9882.pdf>; and (1982)3 SCC 235; accessed on 26.08.2024

<sup>33</sup> <https://main.sci.gov.in/judgment/judis/9643.pdf>; and (1984)3SCC 161, para 34; accessed on 26.08.2024

<sup>34</sup> <https://indiankanoon.org/doc/1012224/>; and (1984)3SCC 243, para 3; accessed on 26.08.2024

<sup>35</sup> 1992 Supp (2) SCC 93

<sup>36</sup> 1997(7) Scale (SP) 13, Para 6.

<sup>37</sup> Silvia Scarpa, 2008, "Trafficking in Human Beings: Modern Slavery", Oxford University Press, New York

<sup>38</sup> Vishal Jeet v/s Union of India (Criminal Writ Petition No. 421 of 1989).

<sup>39</sup> David, *Trafficking in Humans : Social, Cultural and Political Dimensions* / Edited by Sally Cameron and Edward Newman.

<sup>40</sup> David, *Trafficking in Humans : Social, Cultural and Political Dimensions* / Edited by Sally Cameron and Edward Newman.

opportunity and justice.<sup>41</sup> The errant employers often take benefit of gaps in labour law enforcement in destination states as the bonded labourer normally work in informal sectors with weak labour protections, such as brick kilns, stone quarries, domestic service, agriculture and illegal sex work.<sup>42</sup> The fact is that the bonded labourers who are buffeted endlessly between the state of origin and the state of destination, only to fall in to the clutches of the errant employers once again.<sup>43</sup>

The Bonded Labour System (Abolition) Act, 1976 is the only social welfare legislation wherein an Executive Magistrate is empowered with the powers of a judicial magistrate, First Class and that too by holding a Summary Trial against the errant employer. According to the recently amended laws in particular from Section 283 to Section 288 with in Chapter XXII of the Bhartiya Nagarik Suraksha Sanhita<sup>44</sup> deal with the Summary Trials to be conducted by the Judicial and Executive Magistrates. It lays down the entire scheme with laid down requirements and the procedure that is to be followed to try any case summarily. The Bonded Labour System (Abolition) Act, 1976 have the in built provision for the offences to be tried summarily by the Executive Magistrates having the powers conferred by the state governments.<sup>45</sup>

The rights based approach has serious concern on the fact that the criminal sanction paradigm has resulted in sufferings of the victims rather than the traffickers. The focus here is on the protection of rights of the trafficked victims in all forms of anti- trafficking strategies. The activities connected to rescue, rehabilitation and reintegration are to ensure that. Nowhere in the process, is the victim deprived of their human rights in the states of origin or destination. The rights based approach therefore leads to a situation where rights of the victim are respected and protected all along, so that the victims are not subjected to retaliation or re-victimization by the law enforcement agencies including the judiciary during all the processes connected thereto<sup>46</sup>. The apex court in India in the land mark judgements in Vishal Jeet v/s Union of India<sup>47</sup> and Gaurav Jain v/s Union of India<sup>48</sup> has played a constructive role aimed at not only prevention of the crime and curbing the menace of trafficking but also rehabilitation of the victims.<sup>49</sup>

The errant employers when prosecuted are typically charged with labour law violations and not human rights abuses and victims therefore, receive little or nothing in terms of assistance or justice<sup>50</sup> and even if they are charged they make payments to families for not to pursue the case. The victims surrender retreating into silence and submitting their labour. They should therefore be rescued and rehabilitated<sup>51</sup> and reintegrated<sup>52</sup>.

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<sup>41</sup> Kathryn, Farr, 2005, "Sex Trafficking- The Global Market in Women and Children", Worth Publishers, New York, USA.

<sup>42</sup> David, *Trafficking in Humans : Social, Cultural and Political Dimensions* / Edited by Sally Cameron and Edward Newman.

<sup>43</sup> Murugesan, J. D. (2018). Handbook on Bonded Labour. Retrieved from [https://nhrc.nic.in/sites/default/files/Hand\\_Book\\_Bonded\\_Labour\\_08022019.pdf](https://nhrc.nic.in/sites/default/files/Hand_Book_Bonded_Labour_08022019.pdf)

<sup>44</sup> [https://www.livelaw.in/pdf\\_upload/bharatiya-nagarik-suraksha-sanhita-511325.pdf](https://www.livelaw.in/pdf_upload/bharatiya-nagarik-suraksha-sanhita-511325.pdf); accessed on 6.9.2024.

<sup>45</sup> Section 21(2) Bonded Labour System (Abolition) Act, 1976.

<sup>46</sup> Murugesan, J. D. (2018). Handbook on Bonded Labour. Retrieved from [https://nhrc.nic.in/sites/default/files/Hand\\_Book\\_Bonded\\_Labour\\_08022019.pdf](https://nhrc.nic.in/sites/default/files/Hand_Book_Bonded_Labour_08022019.pdf)

<sup>47</sup> <https://indiankanoon.org/doc/653695/>; accessed on 26.08.2024

<sup>48</sup> <https://indiankanoon.org/doc/40881001/>; accessed on 26.08.2024

<sup>49</sup> Murugesan, J. D. (2018). Handbook on Bonded Labour. Retrieved from [https://nhrc.nic.in/sites/default/files/Hand\\_Book\\_Bonded\\_Labour\\_08022019.pdf](https://nhrc.nic.in/sites/default/files/Hand_Book_Bonded_Labour_08022019.pdf)

<sup>50</sup> David, *Trafficking in Humans : Social, Cultural and Political Dimensions* / Edited by Sally Cameron and Edward Newman.

<sup>51</sup> Vishal Jeet v/s Union of India (Criminal Writ Petition No. 421 of 1989).

There is an urgent need of increased efforts to investigate and punish the errant employers, with penalties that reflect the gravity of the offence. And such efforts will not be possible and successful until officials provide victims with the assistance and protection needed to gain their trust and cooperation as informants and witnesses.<sup>53</sup> The problem of bondage can be suppressed and eradicated only if the law enforcement authorities take very severe and speedy legal action against all the delinquent persons including pimps, brokers and errant employers.<sup>54</sup> The judiciary is required to be more proactive and sensitive in dealing with such cases. There is no clear message to the perpetrators of the crime that once they are caught of having committed the offence, they will be punished. The guilty is therefore to be punished with maximum sentence possible.<sup>55</sup>

The District Magistrates and their subordinate officers who are the only competent authorities under the Act are hardly aware of the laws. The political instability, lack of human rights culture, good governance, widespread gender, and caste discrimination makes any cooperation between the states difficult. Ironically, the District Magistrates treats this menace in the form of labour issues coupled with social and other related problems. The lack of sensitization leads to secondary victimization of the victims. The victim support and social rehabilitation services are not visible. There is an urgent need for harmonization of legal framework; policies, programs and cooperation between the states so that the rights based approach become a reality.<sup>56</sup>

It is to be kept in mind that the child victims should be dealt with separately from adult in terms of laws, policies, programs and interventions. It is quite known that once children have been trafficked, it is difficult to break the cycle of abuse. They are at high risks of being successively criminalized and of being exposed to further abuses and the risk of potential re-traumatization by police and judicial practices. Sometimes, families in the cases of bondage for sex may refuse to take them back because of the stigma attached and therefore, becomes vulnerable for re-trafficking.<sup>57</sup>

The efforts being made by the state authorities are like cleaning the room with tap open. The impact of vulnerability is visible in the form of physical impact wherein the victims are subjected to torture and at times rape, denial of wages, forced labour, several life threatening diseases (T.B/ HIV-AIDS). The trafficked victim enters a cycle so vicious that it is next to impossible to come out of it. They become the target of further human rights abuses.<sup>58</sup>

Just imagine the impact on the child victim as Child labour is a paradox, because when labour begins, the child ceases to be<sup>59</sup>. The victims are not aware of their rights to be free from bondage and to enjoy their freedom of movement. Often, there are long delays in repatriation and also lack of access to legal remedies forming the chain of re-victimization<sup>60</sup>.

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<sup>52</sup> Murugesan, J. D. (2018). Handbook on Bonded Labour. Retrieved from [https://nhrc.nic.in/sites/default/files/Hand\\_Book\\_Bonded\\_Labour\\_08022019.pdf](https://nhrc.nic.in/sites/default/files/Hand_Book_Bonded_Labour_08022019.pdf)

<sup>53</sup> David, Trafficking in Humans : Social, Cultural and Political Dimensions / Edited by Sally Cameron and Edward Newman.

<sup>54</sup> Vishal Jeet v/s Union of India (Criminal Writ Petition No. 421 of 1989).

<sup>55</sup> Justice Sen., Soumitra, 2005, "Role of Judiciary to Combat Trafficking", South Asia Judges Workshop on Combating Trafficking in Women and Children at National Judicial Academy, Nepal, Kathmandu.

<sup>56</sup> Murugesan, J. D. (2018). Handbook on Bonded Labour. Retrieved from [https://nhrc.nic.in/sites/default/files/Hand\\_Book\\_Bonded\\_Labour\\_08022019.pdf](https://nhrc.nic.in/sites/default/files/Hand_Book_Bonded_Labour_08022019.pdf)

<sup>57</sup> Human Trafficking: 26<sup>th</sup> Report of Session 2005/006, Joint Committee on Human Rights: Evidence page. No. 124.

<sup>58</sup> Murugesan, J. D. (2018). Handbook on Bonded Labour. Retrieved from [https://nhrc.nic.in/sites/default/files/Hand\\_Book\\_Bonded\\_Labour\\_08022019.pdf](https://nhrc.nic.in/sites/default/files/Hand_Book_Bonded_Labour_08022019.pdf)

<sup>59</sup> Vyas, Om Prakash, 2010, "Development of Human Rights Jurisprudence in India: Judicial Contribution", LLM Dissertation, KUK, India.

### Success story

The famous Gonda Circus Case dealt with by the National Human Rights Commission (NHRC) of India is an eye-opener on the issue of bonded labour and human trafficking. The testimonies of girls, mostly minors, rescued by the NHRC team shocks the conscience of mankind.<sup>61</sup> It explains how the organised network of traffickers is operating with in India and between Nepal and India. The case is a textbook example of how the girls are trafficked, confined, kept in bondage and exploited both physically and mentally. Poor parents were lured by the traffickers with a paltry sum paid in advance, and made to sign a contract forcing their children to work in the Circus in violation of the Bonded Labour System (Abolition) Act, Labour Laws and the Juvenile Justice Act. Even after years of service, the children were not returned to their parents on the pretext of bondage debt. The success of the case lies in the fact that the victims were restored to their parents; the offenders were arrested and prosecuted. The case was prominently highlighted by print and electronic media resulting in creating awareness in both the countries. The fallout of the case is that the Honourable High Court of Allahabad has put the circus industry under the category of hazardous one and very recently the Supreme Court of India has banned employment of children below 14 years of age in the circus industry.

To sum up, the concern that “*the trafficking cycle of bondage cannot be broken without attention to the rights and needs of those who have been trafficked*” is expressed in the Recommended Guidelines on Human Rights and Human Trafficking by the High Commissioner for Human Rights and the Guidelines issued by the National Human Rights Commission on bonded labour. It is therefore important that appropriate protection and support should be extended to all trafficked released bonded labourers with proper rehabilitation in a time bound manner without discrimination in accordance with the SOP issued by the Ministry of Labour, Government of India<sup>62</sup>. To ensure this, there is an urgent need for cooperation between all stakeholders to ensure adequate shelter to the victims outside the place of work, access to health care and counselling, access to various departments of the state governments, by extending cash and non-cash components through the social welfare legislations, legal and other assistance and protection from harm, threats, or intimidation by offenders. There is an urgent need for creating awareness amongst all the stakeholders on the issue of bonded labour. Conclusion of the Summary trial against the errant employers is very much crucial<sup>63</sup>. The identity of the victims and their privacy should always be respected and protected. It is to be ensured that the victims who do return to their native places are provided with due assistance in support facilitating their social integration to prevent re-trafficking for bondage. Adequate measures should be taken to ensure proper physical and psychological health care, housing, educational and employment services for returned trafficking victims.<sup>64</sup>

To conclude, this essay has successfully argued that by adopting the ‘rights- based’ approach with proper execution of prevention, protection and prosecution mechanisms together with state measures for rehabilitation having human rights at the centre and fulfilling needs of the victims up to the final stage of re-integration in empowering the victims, the vicious cycle of trafficking in human- beings for bonded labour can be broken while combating with this menace. It has also been argued that in the process of rendering assistance to the victim and addressing the vulnerability factors, there is an urgent need for better coordination and cooperation among all the stakeholders throughout the country.

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<sup>60</sup> Murugesan, J. D. (2018). Handbook on Bonded Labour. Retrieved from [https://nhrc.nic.in/sites/default/files/Hand\\_Book\\_Bonded\\_Labour\\_08022019.pdf](https://nhrc.nic.in/sites/default/files/Hand_Book_Bonded_Labour_08022019.pdf)

<sup>61</sup> *Exploitation of Children by the Great Roman Circus in Gonda District of Uttar Pradesh*, Case No.7993/24/ 2004-2005. National Human Rights Commission, New Delhi, India(2005).

<sup>62</sup> Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender, dated 17.08.2017 issued by the Ministry of Labour and Employment, Government of India: [https://labour.gov.in/sites/default/files/sop\\_for\\_bl.pdf](https://labour.gov.in/sites/default/files/sop_for_bl.pdf); accessed on 28.8.2024.

<sup>63</sup> National Human Rights Commission, Handbook on Bonded Labour (2018), Justice Darmar Murugesan [https://nhrc.nic.in/sites/default/files/Hand\\_Book\\_Bonded\\_Labour\\_08022019.pdf](https://nhrc.nic.in/sites/default/files/Hand_Book_Bonded_Labour_08022019.pdf), accessed on 28<sup>th</sup> August, 2024.

<sup>64</sup> Recommended Principles and Guidelines on Human Rights and Human Trafficking by High Commissioner for Human Rights, Compiled in reference materials Volume. 1, MHRD Intensive Program, Kathmandu School of Law, Nepal.

## Bibliography

- [1] Bharat Raj Upreti, "Latest Trends and Developments in Insolvency Law in Nepal," in *The Fifth Forum for Asian Insolvency Reform (FAIR)* (Beijing: OECD, 2006).
- [2] Balram vs State of Madhya Pradesh; 1992 Supp (2) SCC 93
- [3] Convention on the Rights of the Child," The United Nations, 26 August 2006, viewed on 27 April, 2024, <<http://www2.ohchr.org/english/law/crc.htm>>.
- [4] David, *Trafficking in Humans : Social, Cultural and Political Dimensions* / Edited by Sally Cameron and Edward Newman. Translated by Sally Cameron and Edward Newman. Edited by Sally Cameron and Edward Newman. New York: United Nations University Press, 2008.
- [5] Dr. Justice A.S. Anand, "Key Note Address," in *National Seminar on Trafficking in Human Beings* (India Habitat Centre 2005).
- [6] *Exploitation of Children by the Great Roman Circus in Gonda District of Uttar Pradesh*, Case No.7993/24/ 2004-2005. National Human Rights Commission, New Delhi, India(2005).
- [7] Fiona. David, *Trafficking in Humans : Social, Cultural and Political Dimensions* / Edited by Sally Cameron and Edward Newman, ed. Sally Cameron and Edward Newman, trans. Sally Cameron and Edward Newman (New York: United Nations University Press, 2008).
- [8] "Foreign Employment Act, 2042 (1985)," (Nepal1992).
- [9] Gaurav Jain v/s Union of India; <https://indiankanoon.org/doc/40881001/>; accessed on 26.08.2024
- [10] Human Trafficking: 26<sup>th</sup> Report of Session 2005/006, Joint Committee on Human Rights: Evidence page. No. 124
- [11] [https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C029](https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029); accessed on 25.08.2024
- [12] <https://www.ilo.org/international-labour-standards/conventions-protocols-and-recommendations>; accessed on 25.08.2024
- [13] <https://www.un.org/en/about-us/universal-declaration-of-human-rights>; accessed on 25.08.2024
- [14] [https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XVIII-4&chapter=18&Temp=mtdsg3&clang=en](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XVIII-4&chapter=18&Temp=mtdsg3&clang=en); accessed on 25.08.2024
- [15] <https://www.un.org/en/hate-speech/resources/key-international-human-rights-instruments>; accessed on 26.08.2024
- [16] <https://www.indiacode.nic.in/bitstream/123456789/1491/1/197619.pdf>; accessed on 26.08.2024
- [17] [https://www.mha.gov.in/sites/default/files/250883\\_english\\_01042024.pdf](https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf); accessed on 26.08.2024
- [18] <https://socialjustice.gov.in/writereaddata/UploadFile/The%20Scheduled%20Castes%20and%20Scheduled%20Tribes.pdf>; accessed on 26.08.2024
- [19] [https://www.indiacode.nic.in/handle/123456789/2148?view\\_type=browse](https://www.indiacode.nic.in/handle/123456789/2148?view_type=browse); accessed on 26.08.2024
- [20] <https://www.indiacode.nic.in/bitstream/123456789/1730/1/A1948-011.pdf>; accessed on 26.08.2024
- [21] [https://www.indiacode.nic.in/bitstream/123456789/19582/1/the\\_child\\_and\\_adolescent\\_labour\\_\(prohibition\\_and\\_regulation\)\\_act,\\_1986\\_no.\\_61\\_of\\_1986\\_date\\_23.12.1986.pdf](https://www.indiacode.nic.in/bitstream/123456789/19582/1/the_child_and_adolescent_labour_(prohibition_and_regulation)_act,_1986_no._61_of_1986_date_23.12.1986.pdf); accessed on 26.08.2024
- [22] [https://www.indiacode.nic.in/bitstream/123456789/13209/1/the\\_inter-state\\_migrant\\_workmen\\_regulation\\_of\\_employment\\_and\\_conditions\\_of\\_service\\_act\\_1979.pdf](https://www.indiacode.nic.in/bitstream/123456789/13209/1/the_inter-state_migrant_workmen_regulation_of_employment_and_conditions_of_service_act_1979.pdf); accessed on 26.08.2024
- [23] <https://main.sci.gov.in/judgment/judis/9882.pdf>; and (1982)3 SCC 235: accessed on 26.08.2024
- [24] <https://main.sci.gov.in/judgment/judis/9643.pdf>; and (1984)3SCC 161, para 34; accessed on 26.08.2024
- [25] <https://indiankanoon.org/doc/1012224/>; and (1984)3SCC 243, para 3; accessed on 26.08.2024
- [26] <https://iddashboard.legislative.gov.in/sites/default/files/COI...pdf>, Constitution of India, Part III and Part IV, Fundamental Rights and the Directive Principles of State Policy, accessed on 5<sup>th</sup> August, 2024.
- [27] [https://nhrc.nic.in/sites/default/files/KYR%20Bonded%20Labour%20English\\_2.pdf](https://nhrc.nic.in/sites/default/files/KYR%20Bonded%20Labour%20English_2.pdf); accessed on 25.08.2024
- [28] [https://nhrc.nic.in/sites/default/files/A\\_Handbook\\_on\\_International\\_HR\\_Conventions.pdf](https://nhrc.nic.in/sites/default/files/A_Handbook_on_International_HR_Conventions.pdf); accessed on 25.08.2024
- [29] <https://www.un.org/en/observances/slavery-abolition-day#:~:text=An%20estimated%2050%20million%20people,are%20in%20commercial%20sexual%20exploitation>, viewed on 4<sup>th</sup> August, 2024.
- [30] [https://www.google.com/search?q=Modern+day+slavery+United+Nations&rlz=1C1RLNS\\_enIN1115IN1117&oq=Modern+day+slavery+United+Nations&gs\\_lcrp=EgZjaHJvbwUyBggAEEUYOTINCAEQABiGAXiABBiKBTIKC](https://www.google.com/search?q=Modern+day+slavery+United+Nations&rlz=1C1RLNS_enIN1115IN1117&oq=Modern+day+slavery+United+Nations&gs_lcrp=EgZjaHJvbwUyBggAEEUYOTINCAEQABiGAXiABBiKBTIKC)

- [AIQABiABBiiBDIKCAMQABiABBiiBDIKCAQQABiABBiiBNIBCTIxOTUxajBqN6gCALACAA&sourceid=chrome&ie=UTF-8](http://AIQABiABBiiBDIKCAMQABiABBiiBDIKCAQQABiABBiiBNIBCTIxOTUxajBqN6gCALACAA&sourceid=chrome&ie=UTF-8), accessed on 4<sup>th</sup> August, 2024.
- [31] [https://www.livelaw.in/pdf\\_upload/bharatiya-nagarik-suraksha-sanhita-511325.pdf](https://www.livelaw.in/pdf_upload/bharatiya-nagarik-suraksha-sanhita-511325.pdf); accessed on 6.9.2024.
- [32] "International Covenant on Civil and Political Rights," The United Nations, 25 January 1997, viewed on 8<sup>th</sup> September, 2024, <<http://www.hrweb.org/legal/cpr.html>>.
- [33] Justice Kriby, Michael, 2010 "New Global Engagements-The future of the Commonwealth and future of the HIV/AIDS epidemic", Special Lecture delivered on 20<sup>th</sup> of August 2010 in Sydney University, Australia.
- [34] Kathryn, Farr, 2005, "Sex Trafficking- The Global Market in Women and Children", Worth Publishers, New York, USA
- [35] Mary Robinson, "Building Relationships That Make a Difference," in *The Annual Conference of Business for Social Responsibility* (San Francisco: United Nations Global Compact, 1999).
- [36] Mohan Bind vs State of Bihar and Others (Civil Writ Jurisdiction Case No. 16246 of 2019, Patna High Court)
- [37] Ministry of Labour and Employment, Government of India [https://labour.gov.in/sites/default/files/20220208154105\\_compressed.pdf](https://labour.gov.in/sites/default/files/20220208154105_compressed.pdf), accessed on 4<sup>th</sup> August, 2024.
- [38] Murugesan, J. D. (2018). Handbook on Bonded Labour. Retrieved from [https://nhrc.nic.in/sites/default/files/Hand\\_Book\\_Bonded\\_Labour\\_08022019.pdf](https://nhrc.nic.in/sites/default/files/Hand_Book_Bonded_Labour_08022019.pdf)
- [39] Om Prakash Vyas, "Haman Trafficking across borders: Human Rights Violations of Women and Children, Challenges and Remedies", KSL Review Journal, Vol. 1, Oct. 2012, Page 134-157 (P ISSN: 2091 2110, E ISSN: 2773 8159, DOI 10.46985), Kathmandu School of Law.
- [40] PUCL vs State of Tamilnadu: 1997(7) Scale (SP) 13, Para 6.
- [41] Recommended Principles and Guidelines on Human Rights and Human Trafficking by High Commissioner for Human Rights, Compiled in reference materials Volume. 1, MHRD Intensive Program, Kathmandu School of Law
- [42] Rajo Manjhi vs State of Bihar and Others (Civil Writ Jurisdiction Case No. 15605 of 2019, Patna High Court)
- [43] Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender, dated 17.08.2017 issued by the Ministry of Labour and Employment, Government of India: [https://labour.gov.in/sites/default/files/sop\\_for\\_bl.pdf](https://labour.gov.in/sites/default/files/sop_for_bl.pdf); accessed on 28.8.2024.
- [44] Sangroula, Geeta Pathak, 2011, "Breaking the Generation Theory of Human Rights: Justiciability of Economic, Social, Cultural Rights with Special Reference to the Constitutional Framework in Nepal", 'Fair Trial and ESCR Literatures compiled and Edited by Asso. Professor Geeta Pathak Sangroula, MHRD Coordinator, Kathmandu School of Law, Nepal
- [45] United Nations Office on Drugs and Crime, "Toolkit to Combat 16 Trafficking in Persons," 16 December 2008, viewed on 26 April, 2024, <[http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296\\_tool\\_1-1.pdf](http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_1-1.pdf)>.
- [46] United Nations General Assembly, "Trafficking," 2010, viewed on 26 April 2024, <<http://www.un.org/documents/ga/res/49/a49r060.htm>>.
- [47] Vishal Jeet v/s Union of India (Criminal Writ Petition No. 421 of 1989). <https://indiankanoon.org/doc/653695/>; accessed on 26.08.2024
- [48] Walter Kerketta vs SDM, Delhi South East District and Others (WP Civil 9744/2017, Delhi High Court.
- [49] "Violence against Women: Harmful Traditional and Cultural Practices in the Asian and Pacific Region," Economic and Social Commission for Asia and the Pacific, viewed on 8<sup>th</sup> September, 2024, <[http://www.unescap.org/ESID/GAD/Publication/Others/Publication\\_EGM-VAW.pdf](http://www.unescap.org/ESID/GAD/Publication/Others/Publication_EGM-VAW.pdf)>.
- [50] Vyas, Om Prakash, 2010, "Development of Human Rights Jurisprudence in India: Judicial Contribution", LLM Dissertation, KUK, India.