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JUSTIFICATION WITH RESCUED – BONDED LABOURERS

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THEME

Whenever the word bonded labourer comes in the mind of trainee an image appears before him that a person is treated like an animal, his master has full authority over him, he does not have any freedom. Also he does not have the right to live according to his choice neither he has any personal liberty, without any wage he is made to work for 17-18 hours, his life is fully controlled by his master only. His existence is like a 16th century European slave.

It is very sad to say that slavery system in form of bonded labour system still exists in our society. Section 2(f) of the Bonded Labour System (Abolition) Act, 1976 defines the word Bonded Labourer; “Bonded Labourer” means a labourer who incurs, or has or is presumed to have, incurred, a bonded debt.

ABSTRACT

The social work trainee during his internship met with number of bonded labour survivors and interviewed them personally. It was of utter surprise to him that all interviewees had common answers. They replied that :

They all were trafficked from their native place to other state. Before the trafficking, advance money was given to them in huge amount. Trafficker promised to give them work and for their work & they will be paid Rs. 650 to 750/- per day, so they felt tempted. Bonded labour survivors. Plalu Yadav said I did not know where I was going to work, it is only after boarding Into the train I realized that I am being taken to Kashmir.

During the interview many of them told their stories to trainee that they were trafficked from one place to another. They worked there for 15-16 hours with no wages. The principal employer threatened them with life, abused them for daring to ask money. The bonded labour victims Gauri narrated her story that, “once my child fell ill I asked for money or medicine he in response abused and thrashed me, kept us from visiting hospital even. He didn’t let us go our village back. He kept a watch on us. Our life was miserable there; little food to eat, saline water to drink, and small jhuggi jopde (unbacked brick shed) to live.

The above cause of action is clear violation of article 23¹ of the constitution. Article 23 talks about Right against exploitation. Apart from this section 370² of the Indian Penal Code 1860 talks about punishment of trafficker. Whereas Section 374 of IPC states whoever unlawfully Compel any person to labor against the will of that person, shall be punished.

¹ Article 23 read as – Prohibition of traffic in human beings and forced labour – (1) Traffic in human beings and bagar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (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 the ground only of religion, race, caste or class or any of them.

² Trafficking of person.—(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (C) harbors, (d) transfers, or (e) receives, a person or persons, by—

First.— using threats, or

Secondly.— using force, or any other form of coercion, or

Thirdly.— by abduction, or

Fourthly.— by practicing fraud, or deception, or

Fifthly.— by abuse of power, or

Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harbored, transferred or received, commits the offence of trafficking.

Explanation 1.—The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.—The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of mo-re than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) Ha person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine.

Similarly section 370A was inserted in IPC in year 2013 for Prohibition Exploitation of a trafficked person. Beyond this section 16³ of the bonded Labor System (Abolition) Act, 1976 specially emphasizes on punishment for enforcement of bonded labor.

But it is very shameful that three provisions have been not implemented. Executive has failed to execute these laws.

INTRODUCTION OF TRAINEE'S AGENCY

The social work trainee is placed in human right law network (HRLN). HRLN is a socio-legal agency. HRLN comprises advocates, activists and researchers. There are number of advocates who work for marginalized. Activites and advocates are working together for protection of right of vulnerable and marginalized people. The agency has identified the group of marginalized people of the society. Like :-

- Bonded Laborers
- Migrant labors
- Children
- Women
- Schedule castes
- Schedule Tribe
- Disabled people
- Prisoners
- Acid Attack Survivor
- Migrant labor
- HIV Patient
- Mental Patient
- Rape survivor

³ Section 16; whoever after the commencement of this act,comples only person to render any bonded lobour shall be punishable with imprisonment for a thm which may extend to three years and also with fine ahich may extend to two thousand repees.

- Poor
- Homeless People

There is one social activist and one advocate has deployed for each marginalized group. Advocate Colin Gonsalves is the head of agency HRLN. The address of trainee's agency (HRLN) is - 576, Masjid Road, Bhogal market, Jangpura, Delhi.

The social work trainee developed rapport with bonded labour survivor and during the interaction he got to know their social and family background. Their socio-economic status were very poor; they are marginalized group of the society. Bonded labour survivor Sant Ram and Bijay stated that before trafficking they were working as a daily wages labour. They use to earn only 200 rupee in a day. Which was not sufficient for their livelihood. That's why they came into trafficker's words and were pushed into bonded labour system.

On another hand whenever social work trainee associated with rescue team⁴ he observes that the owner of the bonded labour says he paid very heavy amount for each labourer. In Palwal case (Feb. 13, 2020) principal owner shouted on trainee by saying **“MAINE INHE LAYA HAI, INKE MALIK KO HUMNE CHE-CHE LACKH RUPYE DIYE HAI, LUDHIYANA SE KHARIDA HAI, TUM KAUN HOTE HO HAMARE BICH ME AANE WALE.”**

So it can be analyzed that the victims of bonded labour are being trafficked from one place to another. Once they enter into the bonded labour system, then it becomes be difficult to them to come out from this system.

Section 2 clause (g) of the bonded labour system (abolition) Act, 1976 gives idea what boded labour system is?

“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 than,—

⁴ Point 2 of the standard operating procedure; issued by Ministry of Labour and Employment (Government of India) on 17th August, 2017.

- (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, if any, due 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 would—

- (1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or
- (2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or
- (3) forfeit the right to move freely throughout the territory of India, or
- (4) forfeit the right to appropriate or 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,

and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor;

[Explanation.—For the removal of doubts, it is hereby declared that any system of forced or partly forced labour under which any workman being contract labour as defined in clause (b) of sub-section (1) of section 2 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), or an Inter-State migrant workman as defined in clause (e) of sub-section (1) of section 2 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

(30 of 1979), is required to render labour or service in circumstances of the nature mentioned in sub-clause (1) of this clause or is subjected to all or any of the disabilities referred to in sub-clauses (2) to (4), is “bonded labour system” within the meaning of this clause.]

It is crystal clear that our supreme legislature⁵ is well aware about this malpractice. Almost 45 year ago law makers have found that several generations work under bondage for the repayment of a small sum which had been taken by some remote ancestor. This system of bondage implies the infringement of basic human rights and destruction of the dignity of human labor. On 24th October, 1976 an ordinance was promulgated by the president called bonded labor system (abolition) ordinance and later on to replace the said ordinance by an act of parliament the bonded labor system (abolition) bill was introduced in the parliament. The bonded labour system (abolition) bill having been passed by both the House of Parliament received the assent of the president on 9th February, 1976 and it came into force on 25.10.1975.

Out of the Parliament act grass-root level, the social work trainee observed that poverty is a main reason behind bonded labour system. The trainee interviewed not only the rescued bonded labourer but those also who are repatriated and so called rehabilitated by state.

A minor boy Chandan Gwala was trafficked from Dibrugarh (Assam) to Himachal Pradesh. He told social work trainee that he was rescued by NCCEBL⁶ team from Hotel Sea Rock, Una District, Himachal Pradesh. After rescue he was sent to his home. The local administration of Chabua revenue circle, District Dibrugarh, Assam helped him to open a bank account but the rehabilitation amount never came in his account. His pass book had no entries. When social work trainee told him for balance inquiry through his debit card it showed zero balance. Further bonded labour survivor said with his gloomy eyes that his father has passed away. His mother is the only person who looks after him and his three younger brothers and sisters. His mother is working in a tea from and her salary is not sufficient to maintain the family.

Similarly, on 14th January, a tribal minor boy Simon Kerketta was rescued by two social worker Mr. Osbert and Ms. Pushpanjali along with District Administration Patiala. The victim was also trafficked from Assam to Patiala, Punjab. He did not have any identity card; he was working as a

⁵ Parliament.

⁶ NCCEBL - National Campaign Committee for Eradication of Bonded Labour.

bonded laborer from last three years. His master gave him cheque of one lakh sixty thousand (1,60,000) rupees. That's why release certificate under Section 12 of the bonded labour (abolition) act could not be granted to him. In this case certificate was not the major problem but the problem was cheque (issued by the accused person). In the cheque, the accused master mentioned victim's name **SIAMON KERKETTA** in place of **SIMON KERKETTA**. Besides this somehow social work trainee managed to open victim's bank account, without identity proof in Canara Bank, Bhogal Branch, Jangpura, Delhi but cheque was dishonoured on the ground of spelling mistake in payee name. Money cannot be credited into bonded labour survivor's account.

In both the cases great injustice happened with rescued bonded labourers. In the name of rehabilitation they were exposed to more vulnerable conditions. Their rights were defeated. Now the question is who should be held responsible for this?

From the eye of a social worker the trainee understands that the cycle of bonded labour system moves same as a cycle of poverty moves from generation to generation. On one side we rescued the victim but on another side we are not doing any thing for their survival. Not doing any thing for the victim is much more offensive. At least principal employer (alleged accused) gives, food, shelter, job etc. But after rescue we snatch all these things from him. This is the most dangerous thing for him and society also. This may lead him to commit crime also. Only rescuing or punishing accused person is not sufficient but a fruitful rehabilitation of bonded labour survivors in the real justification.

Inspite of enormous power given by legislature, the executive do not play active role. It is disappointing that implementation of bonded labour system abolition Act, 1976 is worst. As per this act administrative officer has the power to take suo-moto action against the offender. But hardly it has been seen that local administration has taken any step for rescuing victims. But on other hand a social worker holds victim's hand with solidarity, not only at the time of rescue but till his rehabilitation. It has been witnessed by a social work trainee that in some cases administration and police favour the accused of the case. Neither the SDM gives release certificate to victim nor the police lodges the FIR⁷ against the accused person.

⁷ FIR – First Information Report.

On, Thursday, 13th of February, 2020, the social work trainee along with his four colleagues went to SDM office, Hathin Tehsil, Palwal District, Haryana. He informed SDM Shri Vakeel Ahmad regarding bonded labour system practice in his jurisdiction. The SDM constituted a team, headed by Nyad Tehsildar along with labour inspector, Police ASI with some police force. When the team reached into brick Klin Ram Bhata, the trainee listened complaints against the owner of the brick klin that the employer and owner Kankar beat them mercilessly. The victims want to return to their homes but the accused does not allow them. Bonded labourers told the team that they are forced to work for 14 to 15 hours without any wages. But with false recording of statement no registration of FIR and no issuance of release certificate. The social work trainee and his colleague expressed their protest. They took the rescued labourers along with them to Delhi.

On the ground of their statement FIR must be registered under Section 323/370, 374 of IPC, Section 16 of bonded labour abolition act, read with section 3⁸ clause (vi) of scheduled castes and the scheduled tribes (Prevention of Atrocities) Act 1989. It is pertinent to mention here, all the victims belong to scheduled caste community.

Another hand their employer was saying **“YE KAHAN, BANDHE HAI, BANDH TO MAI GAYA HU, MAIN INHE 6-6 LAKH RUPYA DIYA HAI, PAISA TO INHONE LE LIYA AUR JAB KAM KARNE KI BARI AAI TO POLICE LE AAYE”**.

The statement given by accused person was also sufficient to take action against him. But due to behaviour of corrupt officers, rescue mission of trainee could not be fruitful.

For a bonded labour survivor release certificate plays a significant role. With the help of release certificate a bonded labour survivors gets financial assistance from the government. Release certificate ensures that he has been a victim and compensation should be granted to him. Also government officials pay attention towards his rehabilitation. They give him benefit of all schemes including central sector for rehabilitation of bonded labour 2016. Not issuing release certificate to a survivor of bonded labour is not only a professional misconduct but also an immoral act.

⁸ Sec.3(vi) read as whoever, not being a member of a scheduled caste or scheduled tribe compels or entices a member of a scheduled caste or a scheduled tribe to do ‘begar or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government; will punished for offences of atrocities.

Our legislature is more transparent than executive. Legislature is determined to eradicate the bonded labour system and enacted the law for its abolition. But this is loop hole of the executives that they do not discharge their duty in the proper manner.

On 20th of February 2020, the social work trainee along with rescued bonded labourer protested against the SDM Hathin and Haryana Government. And decided to file PIL before the High Court of Punjab and Haryana, against the executive⁹ who abused his power. All the victims in this case were trafficked from Chattisgarh to Kashmir. After 6 (six) month, again they were trafficked to Ludhiana, Punjab and later on they were brought to Hathin, Palwal, Haryana.

In one another case, the victim Arinesh Tete was trafficked from his village (Alipurduar District, West Bengal) to Delhi. His father Francis Tete had talked to him once only. The trafficker took the victim with himself without his father's permission. The victim's father lodged a complaint at the nearest police station and alleged that his minor son was abducted by accused and sold out to three persons in Delhi. The WB Police fail to catch the accused person and also to trace the victim. The trainee saw the NHRC¹⁰ letter in which ATR¹¹ of four senior police officer were attached. All four whether ASP or DIG, IG or DGP gave the common reply that they couldn't find both the accused and the victim. It was shocking to the trainee. Now West Bengal Police and Delhi Police are working together for this bonded labour case.

Anjali's case is another example of negligency of duty of executive. Anjali is a bonded labour survivor. She was rescued in September 2019 after High Court's Order. FIR was not lodged in her case but release certificate was given to her by SDM Shalimar Bagh, Delhi. The trainee went to police station to know detail about her case. Because after her rescue nobody knows where she went. Police was not able to respond to the trainee. Even in the record register of P.S. her name was not mentioned. The trainee was surprised that a girl is being rescued by police and administration and after that nobody cared about her. Rescuing and issuing release certificate is appreciable but her rehabilitation and bringing her into track of the society is much more important.

⁹ SDM and the rescue team who manipulated the statement of victims in bonded labour case on 13th of Feb. 2020.

¹⁰ NHRC – National Human Right Commission.

¹¹ ATR – Action Taken Report.

The social work trainee interviewed some social activists. During the interview a social activist advocate Osbert said he has been a part of many rescue team but the common problem which he faces is; **not taking interest of administrative officer**. He says it is quite difficult to convince SDM and labour officer for constituting a rescue team. Whereas convener of NCCEBL¹² Nirmal Gorana said Bonded Labourers are being trafficked from one place to another place. So they are being deprived from all the government welfare schemes. The parliament enacted National Food Security Act, in the year 2013 but the most needy and deserving group of the society was never benefited by this act. For earning their bread and butter they get ready to travel with trafficker. Putting their life into the risk they migrate from their native to other state. By making his face little sad he told trainee if sufficient amount of food have been supplied to them in a proper manner under the provision of this act, they would not have become the target of human smuggler.

Thursday 20 February 2020, on the day of protest the social work trainee had little talk with the sister Lalita Roshani who is both social worker and advocate, she told him Article 21 of the Indian Constitution guarantees about Right to life with dignity but bonded labour survivors live their life without dignity. They are not only fighting for their wages but for the release certificate and rehabilitation also. Only fighting and struggle is written in their destiny. After completion of seven decades of enforcement of constitution they do not have any liberty. Freedom is just a dream for them.

One another had social worker and advocate standing beside Sister Lalita Roshani said they don't have any identity card. She indicates her finger towards the bonded labour survivors and said they have double challenges first fighting is against the accused person for their wages etc. and second fighting is against the government to prove their citizenship since release certificate was not granted to them otherwise it could have been their identity proof.

The department supervisor of the trainee shouted over the government “which kind of government this is? Who failed to implement the act which has already come into existence 45 years ago.”

An HRLN Social Worker said if bonded labour survivors will not be rehabilitated then they will join naxalism. This reminds in that there is limit of human tolerance. And this is a main reason for growing naxalism in the area like West Bengal, Jharkhand, Chattisgarh, Telangaa etc. further he

¹² NCCEBL – National Campaign Committee for Eradication of Bonded Labour.

added that it has been found that bonded labour survivors do not have any asset through which they can begin their life. Neither Chattisgarh Government is showing it sympathy to them nor the Haryana Government is paying attention towards them. Even they are neglected by political parties who talk and promise to finish the poverty and exploitation from the root. In Chattisgarh Government is run by INC whereas in Haryana BJP has come as a ruling party of the state.

Further more, the social work trainee saw a new paper cutting. The news was shocking, DMs of four districts were transferred just because of not providing rehabilitation amount to bonded labour survivors. The 83 victims¹³ were rescued from Kurukshetra, Haryana on 28th and 29th of June 2019. After rescuing DMs of concerned districts of Bihar state were informed. But the District Magistrate of Patna, Nalanda, Sheikhpura and Banka District took this incident lightly and did not allocated money to them. They had to pay them one lakh rupees each of them. A PIL¹⁴ was filed by an organization Bandhua Mukti Morcha before the High Court of Patna, and the Hon'ble Court found them guilty in negligence of duty.

After that social work trainee interviewed a bonded labour survivor Rehana Began (age about 35 years), she narrated him, her past story that how she pushed into bonded labour system and how she came out of that, she said her story begins from the date 15th February 2014. She was running a small tea shop at Dwarka Sector 7 behind plot No.1 near to Gokul Garden, West District, Delhi. On 15th of February contractor Sonu came into her shop he took tea and offered her job for duty in Public Toilet near by her shop. He paid her 5000/- (five thousand rupees) in advance, she started duty in DDA¹⁵ Public Toilet from the next Day of advance. Earlier she was told not to allow man in women's toilet and vise-versa. She was appointed to keeping observation only. But few day later she was verbally abused and forced to clene toilets also. Whenever she asked for the salary she was threaten. With three children she and her rickshaw pullar husband were as bonded labour. Her husband rickshaw was stolen. They did not have liberty to move outside the DDA Park. Her tea shop also was taken into the possession of DDA. Her husband Anil Ansari (age about 40 years) also gave his deposition before the trainee that they suffered lots of atrocities. His rickshaw was stolen just because making them depend upon accused person. Very little food given to them for survive whenever he talks about to send their children to school. The contractor replies "Are tum

¹³ Original Resident of Bihar.

¹⁴ PIL – Public Interest Litigation.

¹⁵ DDA – Delhi Development Authority.

to muslim ho apne baccho ko pada lkha k kya karoge?” That hurt him a lot. Because they want to send their children to school for both the purpose, midday meal and education. From February 2014 till February 2017 she and her husband worked as bonded labourers. She was rescued and accused of the case i.e. contractor Sanjoy who was playing the role of owner at the time of rescue mission, sent to jail. Release certificate given to him. The social worker helped her to open a bank account in which two lacs rupees was credited as a rehabilitation amount. With the help of this amount bonded labour survivor and her husband purchased an e-rickshaw and now-a-day he is earning 8 thousand rupees per month and the victim of the case is working a cook and she earns 9 thousand rupees per month which is enough to them for maintaining their family.

This was a good example of fruitful rehabilitation. It become possible only by issuing release certificate under section 12 of bonded labour system (abolition) Act, 1976. The bonded labour survivor Rehana and her family came back into main session of the society. Now she fulfilled her dream of educating her children.

On the basis of above set of fact and stories it is pitty clear that in rarest of rare case justice has been delivered to victim in true sense. Until and unless rescued bonded labourers do not come back in the main stream of the society, it can not be called justification with rescued bonded labourers. And after the research of social work trainee it has proved that corrupt system of administration is main barrier between justice and bonded labour survivor.