TOWARDS ABOLISHING BONDED LABOUR IN PAKISTAN
Note: This report is based on primary and secondary research. To provide an accurate and holistic view of the prevalent issue of bonded labour, the Commission sought information and data from previous reports and a range of key stakeholders. These include the freed bonded labourers of Azad Nagar, Hyderabad (Sindh); representatives of the Brick Kiln Workers Union in Punjab and the Labour Qaumi Movement (LQM). Interviews with officials of the Labour Department Sindh and Punjab, representatives of sub-national human rights bodies including the Sindh Human Rights Commission (SHRC), the Sindh Commission on the Status of Women (SCSW) and the Punjab Child Protection and Welfare Bureau have also been helpful. The NCHR has also been careful to inform its analysis with feedback from meetings conducted with Pakistan’s civil society experts, many of whom have actively tried to address the issue of bonded labour through their work for many years.

This Briefing Paper was written by Muhammad Rafique of Democracy Reporting International with support from NCHR’s Research Coordinator Mr. Raza Asad who provided inputs in conducting legal analysis of Pakistan’s Bonded Labour System (Abolition) Act, in comparison with regional frameworks.
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The issue of bonded labour has lost traction over the years in terms of legislative or administrative action. The promise of a better life for bonded labourers, contained in Darshan Masih judgment, has been lost in the labyrinth of political, legal, social and administrative complexities.

Consequently, the practice and prevalence of it has not been eradicated or even substantially diminished in the country. On the contrary, bonded labour has mutated into the cancer of modern slavery, infecting every segment of labour market. This unfortunate reality is reflected in Pakistan’s dismally high ranking of 6th on the Global Slavery Index.

Let there be no illusions about the enormity of the problem and scale of the odds in the case of modern slavery or bonded labour. These are extremely powerful socioeconomic forces, deeply entrenched in the society, protecting and promoting the decades old manipulative practices and in many cases government and civil society seem helpless in the face of these exploitative forces.

In Pakistan forced labour is characterised by poverty and exclusion. The State’s inability to act against and tackle, the continuity of bonded labour and its underlying causes only perpetuates the prevalence of this menace.

Pakistan is signatory to ILO’s Convention on Forced Labour No. 29 (1930) and Abolition of Forced Labour Convention No. 105 (1957). Despite that according to some estimates, 70% of the total labour force is employed in the informal sectors without any registration or access to social security or educational facilities, thus, they have no opportunity to change their circumstances. The brick kiln workers and people in carpet weaving, glass bangles, tanneries, construction, domestic work, fisheries are working as bonded labourers. This is one form of modern slavery, which violates Article 11 of the Constitution of Islamic Republic of Pakistan, 1973 as declared by Supreme Court of Pakistan in Darshan Masih Case (PLD 1990 Sc513).

This report is an attempt to reignite meaningful and constructive debate on the various manifestations of modern slavery especially bonded labour. The report is based on exhaustive literature review on the subject as well as insights of various stakeholders - including some bonded labourers - to having an in-depth understanding of the issue.

It is hoped that the report will help in further understanding the vicious cycle of bonded labour and helpful for the Government in terms to take protective and remedial measures.

Justice (R) Ali Nawaz Chowhan
Chairman, NCHR

Message from the Chairman
Summary

Prevalence of debt bondage, also often characterised as a form of modern slavery, is one of the most severe and systemic forms of human rights abuse in Pakistan. Bondage is a situation that compels the chronically poor to accept coercion, to work against their will and forfeit their rights. Debt bondage is universally accepted as a crime against humanity.

Recent estimates suggest that over 60% of the country’s nearly 60 million labour force is vulnerable to modern slavery and more than two million persons are trapped in debt bondage. This form of forced labour mostly exists in the country’s informal economy sectors including agriculture, brick kilns, tanneries, carpet weaving, mining, glass-bangle making, construction and domestic work. The situation is also inconsistent with Pakistan’s international commitments under the International Convention on Civil and Political Rights (ICCPR), the International Convention on Economic, Social and Cultural Rights (ICESCR), the International Labour Organization’s Convention on Abolition of Forced Labour Convention (No. 105) and the UN supplementary Convention on the Abolition of Slavery.

While Pakistan’s slavery abolition laws could be improved and require review, they suffer, in particular, from ineffective implementation. Majority of the bonded labour victims who were freed, has been released under the habeas corpus (unlawful detention) petitions while hardly any convictions have taken place under the Bonded Labour System Abolition Act 1992. District Vigilance Committees (DVCs) formed by the government with a legal mandate to free bonded labourers and work towards their rehabilitation remain dormant and ineffective. A hefty amount of 100 million rupees allocated by the federal government for the rehabilitation of freed bonded labour in 2000 remains unaccounted for to date. With a lack of effective rehabilitation efforts and no available alternative sources of income, it comes as no surprise that numerous freed from bonded labour are forced back into the systemic cycle of bondage.

Apart from legal and institutional implications, the state has also been unable to deal with the underlying socio-economic causes of debt bondage, which is multi-faceted and requires combating growing poverty, increased public spending on social services, and ensuring labour protection.

The continuation of debt bondage in Pakistan demonstrates the lack of political will and the state's failure to protect the rights of bonded labourers. It also indicates the failure to provide alternative income generation mechanisms. The country’s poor socio-economic conditions should not be used as an excuse for the failure to abolish bonded labour, as slavery in its all forms is absolutely prohibited.

The National Commission for Human Rights, keeping in view the legal and institutional implications as well as underlying causes of the issue, recommends the state to; i) bring reforms in bonded labour related policies and laws with a view to ensuring compliance with relevant international standards; ii) make institutional arrangements for freedom and rehabilitation of bonded labourers; iii) take steps to eliminate caste-based discrimination and ensure workers' empowerment. In addition to these, the Commission also recommends the government to address underlying causes of the issue, such as poverty, informalisation and exclusion.
Introduction: Concept and Definition of Bonded Labour

According to the International Labour Organisation (ILO), bonded labour is a form of forced labour and a type of debt bondage, found in South Asia. Bonded labour is defined in broad terms under Pakistani legislation as a system under which a debtor enters an agreement with the creditor to the effect that he would (1) provide his or her own work, or the work of somebody else, to the creditor for a specified or unspecified period of time, either without wages or for less than the minimum wage; (2) forfeit the freedom of changing employment; (3) forfeit the right to move freely; and (4) forfeit the right to sell his or her property or the product of his labour at market value.¹

The ILO’s Convention on Forced Labour (No.29) refers to debt bondage, but not explicitly. However, the ILO’s Committee of Experts on the Application of Conventions and Recommendations has stated repeatedly that debt bondage is a form of forced labour and is covered by the definition.² The ILO’s Convention on Forced Labour defines forced labour as ‘all work or services which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily’ (article 2(1)). The ILO’s Worst Forms of Child Labour Convention (No.182) specifically includes forced labour, debt bondage and serfdom of children in its purview.³

The ILO categorises forced labour into five key areas which include slavery and abduction, misuse of public and prison works, forced recruitment, debt bondage, and domestic workers under forced labour situation.⁴ The issue of bonded labour cannot be seen in isolation. It is closely linked with the state of human rights and labour rights, especially of rural and agricultural workers.⁵

In a broader context, bonded labour is a contemporary form of modern slavery. It refers to situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, deception and/or abuse of power.⁶ The practice of slavery has been universally accepted as a crime against humanity.⁷

Prevalence of Bonded Labour

In the Global Slavery Index (GSI) 2016, Pakistan is ranked sixth among 167 countries in the prevalence of forced or bonded labour, also termed as a modern form of slavery. The number of people living in modern slavery in the country was estimated to be 2,134,900⁸. Pakistan’s GSI ranking in comparison to its neighbours reveals that while prevalence of modern slavery in the country is lower than in India, it is higher than Bangladesh and is equivalent to war-torn Afghanistan. Unfortunately, vulnerability to modern slavery is higher in Pakistan as compared to both India and Bangladesh.

<table>
<thead>
<tr>
<th>Country</th>
<th>Estimated Numbers Living in Modern Slavery</th>
<th>Estimated Percentage of Population Living in Modern Slavery</th>
<th>Vulnerability to modern slavery</th>
<th>Global Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>India</td>
<td>18,354,700</td>
<td>1.4 %</td>
<td>51.35/100</td>
<td>4th</td>
</tr>
<tr>
<td>Pakistan</td>
<td>2,134,900</td>
<td>1.13 %</td>
<td>62.47/100</td>
<td>6th</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>1,531,300</td>
<td>0.95 %</td>
<td>44.12/100</td>
<td>10th</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>367,600</td>
<td>1.13 %</td>
<td>67.06/100</td>
<td>6th</td>
</tr>
</tbody>
</table>

Source: Global Slavery Index

²The ILO Committee of Experts was initially set up in 1926, it provides an impartial and technical evaluation of the state of application of international labour standards in ILO member states. The Committee is composed of 20 eminent jurists appointed by the Governing Body for three-year terms. The Experts come from different geographic regions, legal systems and cultures.

⁴The Convention provides for certain exceptions, such as military service for work of purely military character, normal civic obligations, work as a consequence of a conviction in a court of law and carried out under the control of a public authority, work in emergency, wars or other calamities, and minor communal services (Art. 2.2).
⁵Bonded Labour in India: Its Incidents and Pattern (ILO 2005).
⁷Effectiveness of Interventions for the Release and Rehabilitation of Bonded Labourers in Pakistan (Pakistan Institute of Labour Education and Research, 2008).
⁹Abolishing Slavery and its Contemporary Forms (OHCHR, 2002).
¹⁰http://www.globalslaveryindex.org/country/pakistan/.
Reports


Anecdotes

Existence of Peshgi (advance) is common in carpet weaving sector across the country. Accumulation of debt coupled with weak socio-economic standing increases workers’ vulnerability to exploitation and debt bondage.

Peshgi, provides leverage to the employer to exert control over workers. Caste and social hierarchy of labour market enable employers to enjoy socio-political monopoly over workers and increases workers vulnerability to exploitation and bondedness.

Domestic workers’ vulnerability to coercion or harassment is relatively higher due to their weak social hierarchy and confinement to the employers’ private entities, where labour inspection is not possible. Pakistan’s Labour Force Survey 2014-15 reveals that there are 100,000 domestic workers in Pakistan.

Bonded labour is an instituted system of recruitment in Pakistan’s mining sector. Low, piece-rate wages compel workers to acquire advance (peshgi) that entraps them into bondedness and sometimes forces them to engage their children in mining.

Institute of Labour Education and Research (PILER) in 2000 noted that 1.8 million people were found indebted in agriculture and nearly 0.7 million in brick kilns across the country.

Recent figures suggest that there are 15,000 to 18,000 brick kilns in Pakistan. Each brick kiln hosts 20 or more households consisting of 100 men, women and children. A survey of the Federal Bureau of Statistics in Punjab in 2004 reveals that nearly 90 percent of brick kiln workers were working as bonded labourers. Hence, conservative estimates based on these facts suggest that over 1.3 million persons in the brick kiln sector are working under conditions of debt bondage.

In addition to these figures, ILO’s rapid assessment studies in 2004 confirmed the evidence of the practice of bonded labour in carpet weaving, glass-bangle making, tanneries and construction, domestic work, bagging; and mining. Estimates of bonded labourers in these sectors, although not known, may result in further raising the GSI ranking of Pakistan.

Given the lack of official data or statistics regarding the prevalence of ‘slavery’ in Pakistan, GSI’s ‘conservative’ figures can be referred to the bonded labour estimates in the agriculture and brick kiln sectors alone. A report by the Pakistan Institute of Labour Education and Research (PILER) in 2000 noted that 1.8 million people were found indebted in agriculture and nearly 0.7 million in brick kilns across the country.

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In addition to these figures, ILO’s rapid assessment studies in 2004 confirmed the evidence of the practice of bonded labour in agriculture, brick kiln, and home-based carpet weaving sectors work along with their family members, men and children are compelled to share debt, work, and suffer curtailment of their fundamental rights and freedoms.

PILER’s report illustrates that women workers in bondage face multiple disadvantages and increased vulnerability based on their gender, including often being kidnapped and sexually abused. Women face stressful working conditions both at home and at their workplaces.

A Study of the International Dalit Solidarity Network (IDSN) notes that majority of bonded labour in the agriculture sector in Sindh belongs to the Dalit community - a Hindu scheduled caste who are at the bottom-most of the economic

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12A Rapid Assessment of Bonded Labour in the Carpet Industry of Pakistan (Pakistan Institute of Development Economics, Islamabad, for ILO, 2004).
14Domestic work is another category which can be regarded as highly vulnerable to abuse and coercion. Pakistan’s Labour Force Survey 2014-15 reveals that there are 100,000 ‘live-in’ domestic workers in Pakistan, out of which 73 percent are men and 27 percent are women. 21 percent of the domestic workers in Pakistan are children.
16A Rapid Assessment of Bonded Labour in Pakistan’s Mining Sector (Sustainable Development Policy Institute (SDPI), for ILO, 2004).
17For details: Effectiveness of Interventions for the Release and Rehabilitation of Bonded Labourers in Pakistan (Pakistan Institute of Labour Education and Research, 2008).
18For details: Effectiveness of Interventions for the Release and Rehabilitation of Bonded Labourers in Pakistan (Pakistan Institute of Labour Education and Research, 2008).
system and victims of socio-economic and political exclusion. The study further reveals that majority of bonded labourers in the brick kiln sector in Punjab are Christians, Sheikh Muslims and other lower social castes of Muslims.

Reasons Behind the Prevalence of Bonded Labour

Debt bondage can be attributed to chronic poverty, compromised work conditions, the government’s lack of investment in poverty reduction and public welfare, as well as the growing informalisation of the labour market which is leading to lesser accountability of employers. It is also important to note that workers trapped in, or vulnerable to, bondedness are perpetually disadvantaged due to social and political exclusion. Hence, bonded labourers are often unable to break their chains or assert their fundamental rights and legitimate entitlements.

Economic Factors

Pakistan’s rapid population growth (2% in 2016) is far ahead and beyond the country’s declining economic performance. This gap is resulting in increasing unemployment and labour sector vulnerabilities. Pakistan’s growing unemployment is evident from the jump in the unemployment rate from 5.2 percent in 2004-05 to 5.94 percent in 2014-15. Studies of the IDSN, PILER and Anti-Slavery argue that unemployment trends of labour and forced migration combined with prevalent chronic poverty compels workers, both in agriculture and brick kiln sectors, to enter ‘exploitative’ sharecropping or piece-rate ‘seasonal’ work agreements. Low wages, intervals in work, and a lack of alternate jobs keep them dependent on advances (peshgi) and trapped into bondedness.

Studies argue that informalisation of the labour market can increase the risk of exploitative work conditions which often incorporate fewer rights and labour standards. Around 87.5 percent of the workforce in Pakistan work in the informal economy, where evidence of bonded labour practice exists. Poverty is another key factor behind the prevalence of bonded labour in Pakistan. Recent poverty indices reveal that nearly 39 percent of Pakistan’s population lives in multidimensional poverty (9.4% urban and 54.6% rural). Over 40 percent of Pakistan’s 61.14 million labour force is engaged in the agriculture sector in rural areas where wages are the lowest, and incidences of bondage are high. Agriculture workers are the lowest wage earners of all categories, their monthly earnings (PKR 7,804) stand at half of the national average (PKR 14,971). The fact that children born in poor-income families in Pakistan in 2010-11 are less likely than those born in 1994-95 to break the poverty trap and move to the middle-class category shows that economic factors affect social mobility and play a crucial role in the prevalence of bonded labour.

Debt bondage in the agriculture sector is also associated with the government’s failure to introduce land reforms. Landlessness, compounded by unemployment, makes a significant part of the population vulnerable to selling themselves into ‘exploitative’ debt bondage to meet basic needs. It is noted that two thirds of Pakistan’s rural households are landless. The 16 percent who own land have a small piece of land just up to five acres.

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²⁰Shaikh Muslims are those who converted themselves but are not considered equal by their fellow Muslims. Similarly, poor Christians and other low castes people are treated lower than the other castes (Long Behind Schedule: A Study on the Plight of Schedule Caste Hindus in Pakistan, International Dalit Solidarity Network, 2007).
²³Status of Labour Rights in Pakistan (Pakistan Institute of Labour Education and Research, 2015).
²⁴The term ‘Chronic Poverty’ refers to a combination of material deprivation (for example, income), capability deprivation (for example, ill health, lack of skills, education) and vulnerability (Anti-Slavery International).
²⁷Multidimensional Poverty in Pakistan (Government of Pakistan, 2016).
²⁸Pakistan Institute of Labour Education and Research: Status of Labour Rights in Pakistan 2015.
Pakistan’s land reforms in the 1950s and 1970s only benefitted 3 percent of agricultural households and redistributed just 4 percent of the total agricultural land.32

The Sindh Government under its ‘Land Distribution Programme’ in 2008 planned to distribute 212,864 acres of land between landless peasants, particularly women, in 17 districts of the province. Around 43,000 acres of state land has already been distributed under the first phase of the programme. Civic groups however pointed out serious flaws in the scheme. Much of the distributed land was uncultivable because of salinity, waterlogging, unevenness and multi-ownership claims, led to protracted legal battle. The Second phase of land distribution programme has started and hopes to overcome previous challenges.

(Source: http://www.oxfamblogs.org/asia/pakistan-fighting-for-land-rights-for-the-poor/)

Workers in Pakistan are compelled to accept wages far below the legal minimum, which barely meet their basic subsistence and family emergencies.33 This situation can push even free workers towards debt bondage, particularly if they seek loans for social obligations such as weddings, funeral or medical needs.34 PILER’s study notes that 98 percent of the carpet weaving families were indebted because their earnings were too low and compelled them to take loans for subsistence.35 According to the Pakistan Labour Force Survey (LFS) in 2014-15, the national average wage stands at PKR 14,971. Apart from agriculture sector workers, manufacturing sector workers also earn PKR 13,478, less than the national average. LFS’s 2014-15 estimates also reveal that women workers earn PKR 5,435 per month. Meanwhile, estimates of the Pakistan Workers Federation in 2017 reveal that the minimum monthly cost of a 5-member family stands at PKR 40,519.

The Government's lack of focus on human development is also one of the reasons behind the prevalence of debt bondage. Pakistan’s human development ranking has fallen from rank 146 in 2012 to 147 in 2017. It is the lowest performer in the South Asian Region in human development,36 given that it spent 2.1 and 0.42 of the country’s GDP on education and health in 2015.37 According to the PILER, majority of the population lacks basic amenities in the districts where bonded labour prevails. Anti-Slavery International states that bonded labourers, both urban and rural, lack income, skills, education and face health challenges.

Civil society experts, in a meeting with the NCHR in Lahore stated that the labour force engaged in the sectors having prevalence of bondedness lack access to education and skills. Lacking the means to change their circumstances, they tend to remain trapped in debt bondage for generations. The insufficiency of public spending in these circumstances can be considered as a push factor towards debt bondage, as it amplifies vulnerabilities and deprivation.

Low spending, systematic deficiencies, unawareness, and procedural complexities makes it difficult for vulnerable groups, including

35For details: Effectiveness of Interventions for the Release and Rehabilitation of Bonded Labour in Pakistan (Pakistan Institute of Labour Education and Research (2008).
38Status of Labour Report (Pakistan Institute of Labour Education and Research (PILER), 2015).
39Effectiveness of Interventions for the Release and Rehabilitation of Boded Labours in Pakistan (PILER, 2008).
40Social Protection in Pakistan (Sustainable Development Policy Institute, 2013).
women and informal workers including bonded labourers, to access available social protection benefits⁴¹. Statistics of the Employees Old-age Benefit Institution (EOBI) reveal that the number of workers’ registration with the institution is 7,526,885⁴² out of the total 61.14 million labour force. It accounts for only 12.3 percent of the total labour force, mostly employed in the formal sector.

Mr. Aslam Meraj, a representative of the Labour Qaumi Movement (LQM), informed the NCHR that currently none of the brick kiln workers in Punjab are registered with the Employees Old-age or Social Security scheme. There is also a lack of information regarding other available social protection schemes – such as the Benazir Income Support Programme (BISP).

Social and Political Factors

Caste-based discrimination is one of the key social factors behind the prevalence of bonded labour. According to the IDSN, 84 percent of the freed bonded labourers were from scheduled caste Hindus while the rest 16 percent were socially low caste Muslims⁴³. Similarly, majority of bonded labourers in Punjab are Christians, Shaikh Muslims⁴⁴ and other low caste Muslims⁴⁵.

According to Anti-Slavery International, social hierarchy in South Asia has transformed into an endemic social system⁴⁶. Constrained social mobility and hierarchy of work has been created in conjunction with community divisions (on ethnic and religious grounds in Pakistan) under which labourers and artisans are put at the bottom⁴⁷.

Caste or social grouping, and networks are important features of the labour market in all sectors in Pakistan⁴⁸. Certain groups, due to their ethnic and/or caste identity, are perpetually disadvantaged in their access to the rule of law or labour markets and are vulnerable to coercion⁴⁹. Moreover, workers vulnerability to coercion and abuse is also associated to the employer’s monopoly of socio-political power⁵⁰.

A group of Punjab’s civil society representatives, who are part of the bonded labour abolition struggle in Pakistan, in their meeting with the NCHR, referred to the nexus between the political elite and bonded labour employers. They stated that the political elite supports landlords and brick kiln owners involved in the practice of bonded labour in return for the protection of their interests.

Social discrimination of bonded labour combined with limited economic opportunities results in the deprivation of access to education and health essential for one’s well-being. It serves as another push factor for labour to fall into chronic poverty making them highly susceptible to debt bondage⁵¹.

A PILER study notes that an overwhelming majority of the bonded labourers at brick kilns and the agriculture sector were found to be illiterate and have no concept of proper record-keeping. Majority of these labourers alleged that their employers maintained inaccurate accounting systems, designed to keep labourers in perpetual debt⁵². Workers who challenge the employers’ debt calculation may also face intimidation or harassment directed at themselves or their families⁵³.

Despite its constitutional and legal prohibition in Pakistan, bonded labour exists because employers are able to bribe officials to stop investigations and avoid court proceedings, as well as intimidate labourers from accessing legal means of their release⁵⁴.

⁴¹Social Protection in Pakistan (Sustainable Development Policy Institute, 2013).
⁴⁴Shaikh Muslims are those converted themselves but are not considered equal to their fellow Muslims (Zulfiqar Shah, 2008).
⁴⁸For details: Rapid Assessment of Bonded Labour in Domestic Work and Bagging in Pakistan (Collective for Social Science Research, 2004).
⁵⁰For details: Effectiveness of Interventions for the Release and Rehabilitation of Bonded Labour in Pakistan (Pakistan Institute of Labour Education and Research, 2008).
⁵²The Enslavement of Dalit and indigenous communities in India, Nepal and Pakistan through debt bondage (Anti-Slavery, 2001).
Employers have more control over workers who live on their property, as *haris* (peasants) are often not allowed to search for wage labour outside the property. In addition to the denial of freedom of movement is the denial of freedom to control the produce of one's labour: the landlords handle sales of crops and settle accounts with the *Haris* who are mostly ignorant of input cost and output income⁵⁵.

Trade unions in Pakistan are limited to the formal sector⁵⁶. Denial of the right to association and collective bargaining can also be considered a contributing factor towards the continued prevalence of bonded labour. According to the 2017 International Trade Union Confederation (ITUC) Global Rights Index of the world's worst countries, Pakistan stands at five on a scale of one to five⁵⁷. Workers' rights to association and collective bargaining are practically non-existent, as only 3 percent of Pakistan's total labour force is unionised⁵⁸.

Freed bonded labourers, settled at Azad Nagar, near Hyderabad city in Sindh, told the NCHR that they had no political or social identity as their National Identity Cards (NICs) were always in possession of the landlords they worked for. They further added that landlords used their NICs as a means to favour candidates of their choice during elections. A representative of the Bonded Labour Liberation Front (BLLF), in a meeting with the NCHR, claimed that majority of the brick kiln workers in Punjab are socially and politically disenfranchised, because hardly 40 percent of them possess NICs.

It is quite unlikely that Pakistan's labour force, which makes up nearly one-third of the country's population, has any political representation in the national or provincial policy-making institutions. This absence of political representation results in severe neglect of labour specific issues such as growing inequality and informalisation of the labour market, lack of social protection and prevalence of bondedness etc. An official of the district administration in Hyderabad, during the meeting with the NCHR, candidly admitted that the abolition of bonded labour has never been a priority for the district administration.

99% of the women legislators during their current term in the national assembly⁶⁰ impressively asserted their role in law-making and pushed for important human rights and governance reforms. Similarly, steps taken to empower and ensure workers' representation in policy-making is likely to have a positive impact on Pakistan's labour sector reforms.

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⁵⁵Bonded Labour in Agriculture: A Rapid Assessment in Sindh and Balochistan, Pakistan (Maliha H Hussain, 2004, for ILO).
⁵⁷The 2017 IUTC Global Rights Index.
⁵⁸Status of Labour Rights in Pakistan (Pakistan Institute of Labour Education and Research, 2015).
⁵⁹Status of Labour Rights in Pakistan (Pakistan Institute of Labour Education and Research, 2015).
Pakistan’s Obligations Towards Abolishing Bonded Labour

Vulnerability to modern slavery is affected by a complex interaction of factors related to the presence or absence of protection and respect for rights, physical safety and security, access to necessities of life such as food, water and healthcare, and patterns of migration, displacement and conflict. The abolition of bonded or forced labour and the protection of the labourers economic, social and political rights requires effective enforcement of constitutional provisions, ILO conventions and human rights treaties ratified by Pakistan.

The Constitution of Pakistan accounts for certain prohibitions, while ensuring a range of fundamental rights of which bonded labourers are deprived of. Article 11 of the Constitution of Pakistan prohibits slavery, all forms of forced labour, human trafficking and child labour; article 3 obliges the state to eliminate all forms of exploitation; article 14 provides for respect for human dignity; Articles 15, 17 and 18, respectively, provide for freedom of movement, freedom of association and freedom of entering a lawful profession or occupation.

In addition to these, Article 25 of the Constitution provides for citizens’ equality before the law; Article 27 provides for protection against discrimination in services; Article 37 obliges the state to ensure humane work conditions as well as to ensure that women and children are not employed in unsuitable working environments; Article 33 provides for protection from parochial and racial prejudices; and Article 38 provides for securing the well-being of the people and equal adjustment of rights between employers and employees, and landlords and tenants.

Although bonded labourers in Pakistan are socially and politically disenfranchised, Article 41(2) and 91(3) of the Constitution clearly provide for their right to participate in public affairs, vote and to be elected.

Pakistan is a signatory to the Universal Declaration of Human Rights (UDHR). The UDHR prohibits slavery and servitude (Article 4) and provides for the right to free choice of employment (Article 23(1)). These rights are further elaborated in the International Convention on Civil and Political Rights (ICCPR) and the International Convention on Economic, Social and Cultural Rights (ICESCR).

Pakistan ratified the ICCPR in June 2010 and the ICESCR in April 2008 and in doing so committed to ensure compliance with both these treaties. The ICCPR also provides for freedom of movement (Article 12), freedom of association (Article 22) and the right to participate in public affairs, to vote and to be elected (Article 25), equality before the law and equal protection (Article 14 & 26).

Pakistan being a state party to ICESCR is obliged to take steps to ensure the realisation of citizens’ rights without discrimination (Article 2). It also involves ensuring the right to choose work (Article 6), the right to just and safe working conditions, fair wages, decent living (Article 7), the right to form and join trade unions (Article 8), the right to social security (Article 9), protection of youth and children from economic exploitation and engaging in harmful work (Article 10), and the right to adequate living (Article 11).

In addition, Pakistan is also a state party to the United Nation’s Convention on the Rights of the Child (CRC) since 1990. Article 32 of CRC guarantees children’s protection from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education.

Pakistan has ratified the ILO’s Convention on Forced Labour No. 29 (1930) in 1951 and the Abolition of Forced Labour Convention No. 105 (1957) in 1960. The convention No. 105, specifically, prohibits recourse to forced or compulsory labour in five defined areas;

61https://www.globalslaveryindex.org/findings/.
62ICCPR Article 8 (1) prohibition of slavery and slave-trade; (2) prohibition from servitude; (3) prohibition from forced or compulsory labour.
63ICESCR Article 6(1): The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard this right.
1. As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
2. As a method of mobilising and using labour for purposes of economic development;
3. As a means of labour discipline;
4. As a punishment for having participated in strikes;
5. As a means of racial, social, national or religious discrimination.

Pakistan is also a state party to the ILO’s Worst Forms of Child Labour Convention No. 182 (1999) since 2001. Article 3 of the Convention declares debt bondage as one of the ‘worst forms of child labour.

Furthermore, Pakistan has also ratified the UN supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery (1956) in 1958. It obliges the states parties to “abolish [...] the institutions and practices [...] including debt bondage, [...] the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for debt.”

In addition, the ILO Declaration on Fundamental Principles and Rights at Work (1998) requires the member states to provide the ILO office a status report on the observance of core Conventions including the Convention on Forced Labour. The Philadelphia Declaration adopted by the ILO in 1944 also puts stress on member states to ensure work without exploitation and compulsion.

**Efforts Made for the Abolition of Bonded Labour**

In Pakistan, the issue of bonded labour was highlighted for the first time in 1988 when brick kiln workers wrote a telegram to thenHonourable Chief Justice of the Supreme Court of Pakistan, pleading for help and protection from their owners. The Supreme Court of Pakistan took action for the enforcement of fundamental rights which resulted in the first public interest litigation case (PLD 1990 SC 513) regarding bonded labour practices.

In this case, the Supreme Court of Pakistan declared bonded labour as unconstitutional, and in its decision directed the government to introduce legislation defining ‘forced labour’ with illustrations of its different forms. According to PILER, the Court decision was not in accordance with aspirations of human and labour rights activists, instead it was an agreement between different parties, signed in the shape of Supreme Court order.

The Legislature, in response to the Supreme Court orders and to fulfill constitutional obligations, enacted the Bonded Labour System (Abolition) Act, 1992. The law abolished the bonded labour system throughout Pakistan, discharged bonded labourers from obligation of bondedness, and put an end to outstanding loans. The offence was criminalised, imposing imprisonment of up to 5 years and a fine of up to PKR 50,000, or both, for a person who compels anyone to render bonded labour. The law also made it mandatory for provincial governments to set up District Vigilance Committees (DVCs) for the effective implementation of the law and help rehabilitation of the bonded labour.

The Supreme Court of India, in the case of Bhandua Mukti Morcha verses Union of India and others, determining the scope of debt bondage, stated that whenever it is shown that a labourer is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is therefore a bonded labourer. The Supreme court of India, 1984 AIR 802

While drafting the law, the legislature, prima facie, overlooked observations, recommendations and criteria laid down by the Supreme Court in Darshan Masih Case wherein it was held that;
1. Forms of forced labour are to be defined to minimise confusions;
2. Fundamental rights associated to debt bondage are to be put together;
3. Employers are to be prohibited to settle the issues of outstanding advances by unlawful means;
4. Employees' emergency loans are to be converted into donations;
5. Future loans are to be discontinued and previous loans are to be settled;
6. Coercion and deductions are prohibited to ensure periodic payment of wages;
7. Jamadari system is to be ceased to ensure direct dealing of employers with employees;
8. Employees are to be protected from employers' pressure to bring women and children to work.

The Act however presents the definition of 'forced labour' as having association with debt bondage alone and hence, is very limited in its scope as compared to Article 11 of the Constitution. Contrary to the Supreme Court orders, the law also put together rights such as the right to employment and freedom of movement, however ignored a range of fundamental rights associated with forced labour such as the protection from exploitation, freedom of association and collective bargaining, and humane work conditions. Furthermore, the law does not lay down any mechanism/procedure which facilitates the implementation of the law by the respective governments. Taking plea to this legal lacuna, an official of the Sindh Labour Department, in a meeting with the NCHR, claimed that the abolition of bonded labour is not the sole responsibility of the labour department.

Following the 18th Constitutional Amendment in 2010, Sindh, Punjab and Khyber Pakhtunkhwa provinces adopted the Bonded Labour System (Abolition) Act 2015. Although the law criminalises bonded labour, government and law enforcement agencies have failed to secure a single conviction of bonded labour perpetrators. The government has also failed to take steps against duty bearers who failed to implement the law at the local level.

Most of the bonded labourers freed so far have been done so under the habeas corpus petitions, filed by relatives of the bonded labourers or human rights groups. This situation thus raises questions about the effectiveness and implementation of the Bonded Labour System (Abolition) Act.

Punjab’s civil society experts informed the NCHR that contrary to the Bonded Labour System (Abolition) Act 2012, that prohibited the advance (peshgi) system and terminated outstanding loans, the provincial government legalised advances under the “Punjab Prohibition of Child Labour at Brick Kilns Act 2016”. The Labour Department officials however are of the view that legitimisation of advance under the Act 'in good faith' was aimed to place a ceiling on advance payment and to ease repayment.

Later, the government introduced the Bonded Labour System (Abolition) Rules 1995. The Rules, later adopted by the provinces after the enactment of provincial laws, provided for the establishment of the District Vigilance Committees (DVCs), establishment of an independent fund for the welfare and

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70 The Act defines “bonded labour system” as “the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered into an agreement with the creditor to the effect that......” whereas Article 11 prohibits all forms of forced labour.
71 Universal Periodic Review (UPR) Pakistan 2017: Discrimination against Dalits in Pakistan, joint NGO submission related to the of Pakistan at the 28th Universal Periodic Review Session (Pakistan Dalit Solidarity Network and International Dalit Solidarity Network).
72 Universal Periodic Review (UPR) Pakistan 2017: Discrimination against Dalits in Pakistan, joint NGO submission related to the of Pakistan at the 28th Universal Periodic Review Session (Pakistan Dalit Solidarity Network and International Dalit Solidarity Network).
73 Effectiveness of Interventions for the Release and Rehabilitation of Bonded Labour in Pakistan (Pakistan Institute of Labour Education and Research (2008)).
rehabilitation of the freed bonded labourers. The Rules also laid down responsibilities of various implementing agencies under the DVCs.

HOW CHANGE HAPPENS?
The Chiquitano, group of indigenous people from Bolivia, won legal title to 1-million-hectare indigenous territory of Monteverde on July 3, 2007, after 12 years of struggle. This development was significant given that this fruition of their struggle would have been unimaginable for earlier generations. The Chiquitanos lived in near-feudal conditions, forced to work without wages by local authorities, landowners and were prevented from owning any land and were unaware that they had any rights. They joined the Chiquitano Indigenous Organization (CHI), aiming to promote agrarian reforms. Later they entered into formal politics independently, that resulted in their gains for the Chiquitanos in the 2005 municipal elections.

Along with organized resistance, the Chiquitanos also worked within the legal system by presenting legal demands for title to Monteverde under the “Original Community Territory” concept which was recognized by the parliament a year later.

Local landowners, forestry companies and private sector resisted land reform however were unable to stop the momentum of the Chiquitano struggle. While at the other hand, the International Labour Organisation (ILO) and OXFAM supported indigenous peoples' efforts.

The entire process was led by the Chiquitanos themselves, who took inspiration from other similar movements and got themselves recognized. (source: http://how-change-happens.com/)

An official of the Sindh Labour Department told the NCHR that the department has issued notices to the administrative officials of all the districts in Sindh for the establishment of DVCs. He however admitted that the department has no information regarding the functionality of DVCs in any of the districts in Sindh. An official of the district administration Hyderabad, Sindh, told the NCHR that although a DVC was established almost a year ago, the Committee failed to organise a single meeting. Representatives from civil society, the Sindh Human Rights Commission (SHRC), the Sindh Commission on the Status of Women (SCSW), in a meeting with the NCHR, were of the view that there is no evidence of the activation of a single DVC in any of the districts in Sindh.

The Punjab Labour Department officials, in a meeting with the NCHR, also confirmed that DVCs have been established in all the districts of the province but are active in very few. They also informed the NCHR that activation of these DVCs was only made possible under the Punjab government's special initiative 'Elimination of Bonded Labour at Brick Kilns Project', which initially started in four districts of the province. The project's interventions however are being gradually extended to all districts of the province. The Punjab Labour Department officials, in response to the NCHR query, stated that none of the activated DVCs had freed a single bonded labourer so far. Instead, their focus is confined to petty issues such as the payment of wages and the review of services being provided at brick kilns under the provincial government's 'special initiative'.

According to Anti-Slavery International, human rights organisations have serious concerns over the composition of the DVCs, as they are often comprised of people who benefit from bonded labour. The effectiveness of state interventions, including the functioning of DVCs, are undermined due to the personnel in these committees often themselves having economic interests or businesses and thereby directly benefiting from the system of bonded labour⁷⁴.

According to Punjab Labour Department officials, the provincial government's key interventions under the 'special initiative' include the surveying and registration of brick kilns, incentivisation and enrolment of brick kiln children in schools, non-formal schooling and skill development of adolescents, provision of veterinary services for the livestock of brick kiln workers, and issuance of CNICs to the brick kiln workers.

Punjab's civil society representatives, however, shared their concerns with the NCHR regarding the government's 'Elimination of Bonded Labour Project'. They were of the view that this project has preoccupied the labour department, diverting it away from its primary responsibilities of labour inspection and ensuring implementation of labour laws.

The Pakistan government introduced a National Policy and Plan of Action for the Abolition and Rehabilitation of Bonded Labour in 2001. It outlined long and short-term measures for the

eradication of bonded labour and pledged to adhere to all international instruments, regardless of their ratification, to protect fundamental human rights. The Plan also provided for the creation of a PKR 100 million fund, which received additional grants from provincial governments placing the fund at PKR 125 million—which mostly remained unutilised⁷⁵.

The National Policy and Plan of Action involves the formation of a National Steering Committee for the abolition of bonded labour, as well as the establishment and operationalization of DVCs. However, the Action Plan failed to be implemented in letter and spirit⁷⁶. According to Anti-Slavery International, a total of 8,530 bonded labourers were released in Pakistan between 1989 to 2006, of which, only 563 were directly released by the government. These figures demonstrate the state’s inadequacy to respond to bonded labour⁷⁷.

Despite rehabilitation being a part of the Bonded Labour System (Abolition) Act 1992, no mechanism for it was outlined under the law⁷⁸. The NCHR team during its field visit found that released workers and their families are living in sub-human conditions in Azad Nagar, a settlement of freed bonded labourers near Hyderabad in Sindh. They are deprived of basic amenities including drinking water, public education and health facilities. According to PILER, residents of Azad Nagar cannot avail basic facilities at their doorsteps because they don’t have legal ownership of their housing land⁷⁹.

Anti-Slavery International revealed that rehabilitation attempts of the freed bonded labour have been deeply flawed and the government’s efforts in this regard are undermined by corruption⁸⁰. PILER notes that “those who dared to break the chains of bondage, freedom for them proved to be short-lived, given the absence of rehabilitation efforts which include the provision of alternative sources of livelihoods and improved working conditions.”

### Conclusion

Though the issue of bonded labour has lost traction over the years, the practice and prevalence of it has not been eradicated or even substantially diminished in the country. Despite efforts by the government and civil society, Pakistan remains a country with a large number of its workforce trapped in the systemic cycle of bondage.

In Pakistan forced labour is a characteristic of poverty and exclusion. The state’s inability to act against, and tackle, the continuity of bonded labour and its underlying causes only perpetuates the prevalence of this menace.

The economic and human consequences of the failure to eradicate this form of modern slavery in the country are manifold. Not only does it result in the increased vulnerability and violation of citizens’ fundamental rights, but it also impedes the capacity development of the labour force⁸¹, affecting the country’s overall economic progress.

The continuation of the practice of bonded labour in Pakistan demonstrates a lack of political will and the government’s failure to recognise the social and economic opportunities of doing so. Moreover, it is a denial of citizens’ fundamental rights and freedoms. The situation is intolerable and inexcusable given the country’s capacity to overcome the existing challenges.

Social, political and economic elements acting as “push” and “pull” factors in the practice of bonded labour need to be considered in policy formulation, to provide a holistic plan of action. Sustained efforts towards poverty reduction, steps to end social and political exclusion, and ensuring the implementation of labour standards need to be a provincial and national priority.

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⁷⁷Effectiveness of Interventions for the Release and Rehabilitation of Bonded Labour in Pakistan (Pakistan Institute of Labour Education and Research (2008).

⁷⁸Effectiveness of Interventions for the Release and Rehabilitation of Bonded Labour in Pakistan (Pakistan Institute of Labour Education and Research (2008).


⁸⁰Effectiveness of Interventions for the Release and Rehabilitation of Bonded Labour in Pakistan (Pakistan Institute of Labour Education and Research (2008).


The state's increased attention and acknowledgement of linkages between business and human rights is a positive step, and while the state has primary responsibility, employers too should be made aware of their human rights obligations. The eradication of bonded labour can only come to fruition through collective and sustained efforts, careful and constructive reflection on failures and progress, and instillation of a sense of urgency and priority in reform efforts.

Recommendations

The National Commission for Human Rights (NCHR), taking into account underlying causes of bonded labour, presents the following recommendations to inform efforts of the state, in particular the parliament and the government of Pakistan, to ensure compliance with the country's domestic as well as international obligations. Importantly, these recommendations serve to initiate a coordinated reform process with the aim to eliminate the practice and prevalence of bonded labour:

1. For Poverty Reduction

a. Human Development: The government should ensure appropriate allocation of the GDP ratio for service delivery including education, health, and skill development. This includes ensuring the accessibility of these services, through appropriate institutional arrangements especially for the marginalised and disenfranchised.

b. Social Protection: Pakistan's social protection mechanisms are ineffective due to fragmentation, systematic deficiencies and procedural complexities. This makes it difficult for vulnerable groups including bonded labourers, to access these benefits, particularly during unemployment. Social protection schemes need to be reviewed and a more responsive policy framework needs to be developed to ensure protection mechanisms are in line with universal social protection mechanisms.

c. Freedom from Exploitation: Article 3 of the Constitution of Pakistan clearly states the 'elimination of all forms of exploitation.' However, the changing dynamics of the labour market and the increasing informalisation of labour results in increasing unemployment and labour sector vulnerabilities. These circumstances compel workers to enter exploitative work agreements. In addition, the continued preservation of feudalism further creates an environment of vulnerability for agricultural workers. The state needs to firstly include agricultural workers in the ambit of formal labour where absent, and reform laws to allow for their formal right to form associations. The trend of formalisation in the labour market needs to be assessed in the context of workers' rights. The state needs to introduce measures to diffuse environments which facilitate workers exploitation.

d. Minimum and Living Wage: Discrepancies between the Government's assigned minimum wage rate, the national average wage and the living wage need to be removed. The minimum wage should be aligned with the living wage, and measures should be introduced to ensure workers receive the assigned wages.

e. Subsistence of Agricultural Workers: Exploitation and bondage in the agriculture sector is prevalent primarily due to the workers asset-less state. The introduction of a land distribution policy is therefore imperative to overcome the prevalence of bonded labour in the sector and ensure workers are able to rely on subsistence farming at the very least.

f. Elimination of Caste-Based Discrimination: Social discrimination is a key factor in increasing susceptibility to debt bondage. The state must acknowledge and recognise the existence of caste based social discrimination in the labour market. This effort should be supplemented with state interventions to combat prejudices and introduce a campaign for the promotion of equality.

2. For Workers' Empowerment

a. Right to Association: Workers' deprivation from freedom of association is an underlying cause in deprivation of their legitimate rights and fundamental freedoms. The urgent review of the relevant legal frameworks is required. The introduction of
reforms to legitimise and ensure workers' rights to association and collective bargaining both in formal and informal sectors is also required.

b. Right to Political Participation: The lack of a political and social identity of bonded labourers has provided the employers with a monopoly of socio-political power and makes workers vulnerable to coercion. Political empowerment and access to decision making is imperative for the workforce, which requires proportionate representation of the working class in policy-making institutions. Effective measures should be introduced to ensure workers' representation in politics. More importantly, the state must ensure labourers' access to documentation, such as CNICs, and thereby also facilitate their right to vote.

3. For Freedom and Rehabilitation of Bonded Labour

a. Policy Reforms: The National Policy and Plan of Action for the Abolition and Rehabilitation of Bonded Labour 2001 requires immediate review. The review must examine how far the plan has been successful in implementation and identification of reasons for the failure of its implementation. The plan should then be updated in accordance with the prevailing bonded labour context.

b. Legislative Reforms: The Bonded Labour System (Abolition) Act 1992, later adopted by the provinces with minor changes, requires review. This review should be based on Pakistan's domestic and international obligations and in the purview of the abolition of 'forced labour' and 'modern slavery'. Given that debt bondage is one of the forms of forced labour and falls under the ambit of contemporary forms of modern slavery, legal reforms therefore require:

i. Broadening the scope of legal coverage provided in Section 2 (c) and (e) – from bonded labour to forced labour. Prohibiting coercion in all its forms, including contemporary forms of modern slavery.

ii. Putting together rights associated to forced labour or other contemporary forms of modern slavery. Particularly it may include the right to decent work, right to adequate standard of living, right to education, and others.

iii. Outlining of a well-explained procedure, roles and responsibilities, as well as coordination mechanisms between respective government departments, to ensure the abolition of forced labour and to protect rights associated with forced labour.

iv. Outlining of an accountability mechanism under which the duty bearers can be held accountable for not implementing the law. It may also include an outline of a comprehensive plan ensuring the systematic freedom and rehabilitation of enslaved workers. Specifically legalise civil society's role with regards to provide due assistance and carry out monitoring of the governments' efforts to abolition of bonded labour.

v. Provide for casting responsibility on the Government to provide physical protection to the freed bonded labourers from harassment by the employers.

vi. Section 13 of the Act does not take into account negligence from duty of the respective public servants with regards to identification, freedom and rehabilitation of bonded labourers. Therefore, a provision should be added into the Act proposing punishment for the public servants who wantonly and wilfully neglect the identification, release or rehabilitation of bonded labourers.

vii. With regards to offences given in the Act, the imprisonments and fines stipulated with each offence is very minimal and not severe enough. Hence, the punishment be increased so that it serves as a deterrent.

viii. Section 17 of the Act which deals with cognizance of offences be amended in a way to provide that every offence under the Act should be cognizable and non-
ix. A provision of summary trial with regards to the Act be added with specific time limit for the disposal of case. In this regard, reference can be made to Punjab Rented Premises Act, 2009.

x. The Act must make it mandatory for the District Government to create an independent fund in accordance with the Rules in order to ensure rehabilitation and sustenance of freed bonded labourers.

c. **Identification of Bonded Labour:** A national survey on bonded labour should be conducted. Alternatively, key indicators or determinants of bonded labour can be incorporated into the Labour Force Survey (LFS).

d. **Resource Allocation:** Sufficient budgetary allocations for labour agencies should be made in an effort to empower assigned agencies to ensure the effective implementation of labour standards.

e. **Protection of Informal Workforce:** It is important to note that the informal sector economy is not formally regularised and workers in this sector are out of the ambit of the law in most parts of the country. Given the fact that protection of informal workforce was promised under the Labour Policy 2010 (article 22, 25, 28, 29, 30), it is thus recommended that the state ensures protection of informal workers by aligning reforms with respective legislative frameworks.

**Institutional Reforms:** Labour inspection is key to ensuring compliance with labour standards. Inspection mechanisms and departments must be strengthened in capacity, funding and human resources. The effective performance of labour inspectors should be scrutinised and reviewed.
In Pakistan, the issue of bonded labour was highlighted for the first time in year 1988 when brick kiln workers wrote a telegram to then Honourable Chief Justice of Supreme Court of Pakistan, pleading for help and protection from their owners. Supreme Court of Pakistan took cognizance for the enforcement of fundamental rights which resulted into a first public interest litigation case (cited as PLD 1990 SC 513) regarding bonded labour practices. In this case, the Supreme Court of Pakistan declared bonded labour as unconstitutional with the directive to the Government to fulfill the need for legislation defining 'forced labour' with illustrations of its different forms, in such manner, so as to minimize any confusion about its real purport and putting other important elements in fundamental rights together in a self-contained Code.

Subsequently, in view of the judgment of the Honourable Supreme Court of Pakistan and Article 11 of the Constitution, Parliament enacted 'the Bonded Labour System (Abolition) Act, 1992'.

**Salient Features of the Act:**

'Bonded Labour system' has been defined in the Act as (Section 2(e) of the Act):

> "The system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered into an agreement with the creditor to the effect that; (i) in consideration of an advance (peshgi) obtained by him or by any of the members of his family [whether or not such advance (peshgi) is evidenced by any document] and in consideration of the interest, if any, due on such advance (peshgi), or(ii) in pursuance of any customary or social obligation, or(iii) for any economic consideration received by him or by any of the members of his family;

He would 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, or(3) forfeit the right to move freely from place to place, 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.”

Besides, the Act also defines, inter-alia, the following (Section 2 of the Act):

i. Advance (peshgi)
ii. Bonded debt
iii. Bonded labour
iv. Bonded labourer
v. Family
vi. Nominal wages

The Bonded Labour System (Abolition) Act, 1992 abolished bonded labour across Pakistan from the date of its commencement. Furthermore, the Act provides that any custom, agreement, contract, tradition or practice by virtue of which any person or his family is bound to work or render services as a bonded labourer, entered or executed before or after the enactment of the Act shall be void or inoperative. The obligations of any bonded labourer to repay his debt shall stand extinguished after the commencement of this Act.

According to Section 9 and 10 of the Act, the District Administration has been specified to ensure that the provisions of this Act are properly being carried out.

For a proactive approach to curb bonded labour, the Act provides for the constitution of Vigilance Committees at the District Level with the functions of identification, rehabilitation of freed labourers and advising the District Administration with regards to effective implementation of this Act. The Vigilance Committees comprises of elected
representatives of the area, representatives of the District Administration, Bar Associations, Press, and civil society organizations.

Section 11 of the Act provides for punishment for compelling any person to render any bonded labour with imprisonment of not less than two years nor more than five years or fine of fifty thousand or both.

As per Section 12, punishment for extracting bonded labour under the bonded labour system shall be imprisonment of not less than two years nor more than five years or fine which shall not be less than three hundred and fifty thousand rupees.

The Act also provides punishment for omission or failure to restore possession of property of bonded labourers which shall extend to imprisonment of one year or fine of five thousand rupees.

With regards to an abetment of an offence, Section 14 provides that the person shall be punished with the same punishment as provided for the offence which has been abetted.

According to Section 16(2), there shall be a summary trial of all offences under the Act. The law also bars the jurisdiction of Civil Courts in respect of any matter to which the provisions of the Act are applicable. Section 18 of the Act extends the penalty of offences to the companies involved in such an act.
ANNEXURE-2: LAWS FROM OTHER JURISDICTIONS

India:

In 1976, India enacted the Bonded Labour System (Abolition) Act with the aim to free and discharge any person who was obligated to render bonded service in order to repay his debt and to curb the evil of bonded labour in future. Like Pakistan's Law on Bonded labour, Indian Act provide the definitions, mechanisms and penalties which are similar to the Bonded Labour System (Abolition) Act, 1992 enacted by Parliament of Pakistan.

Nepal:

In Nepal, Bonded Labour (Prohibition) Act, 2002 was enacted with an aim to put a ban on bonded labour, to rehabilitate the freed bonded labourers and to uplift their livelihood from the perspectives of social justice. The law defines bonded labour and bonded debt as:

"Bonded labour (Kamaya shram)" means the labour or service to be rendered for a creditor for the following reasons without wages or with nominal wages.

1. To pay back the debt obtained by him/her or family and to pay the interest thereof.
2. To pay back the debt obtained by his/her ascendant and to pay back the interest thereof.
3. To pay back the bonded debt of bonded labourer by a person who has given a guarantee before the creditor on behalf of a bonded labourer.

“Bonded debt" means the cash, commodity or kind obtained by the bonded labourer from a creditor and this expression also includes Sauki or other debt.

Chapter 2 of the Act deals with provision relating to prohibition on bonded labour whereas the Chapter 3 of the Act contains provision relating to bonded debt which further provides Deed (instrument) or agreement concluded between the creditor and bonded labourer to be void and the obligation on the creditor to refund the property taken as mortgage or guarantee.

Section 8 of the Act, deal with the constitution of Freed Bonded Labourer Rehabilitation and Monitoring Committee in each District of Nepal. Following are duties and functions of the Committee as laid down in Section 9 of the Act;

- To cause to prepare the up-to-date record of the freed bonded labourers.
- To make necessary arrangement for the rehabilitation of the freed bonded labourers.
- To implement the programme approved by the Government of Nepal for the rehabilitation of the freed bonded labourers.
- To monitor as to whether anyone has employed as a bonded labourer or not.
- To recommend the Government of Nepal, Bank or financial institution for providing required loan to the freed bonded labourers to carry out the business relating to income generation.
- To keep co-ordination with various bodies or institutions in respect of the residence, education or employment-oriented skill development training for the freed bonded labourers.
- To perform necessary functions to protect the right and interest of the freed bonded labourers.
- To perform other functions as prescribed.

The law also provides designation of Welfare Officer who shall be responsible for the following to maintain the record of the freed bonded labourers;

- To perform the work as directed or assigned by the Committee in respect of the right and interest of the freed bonded labourer,
- To implement or cause to implement the decision made by the Committee.
- To perform other functions as prescribed.

According to Section 13 of the Act, it is the duty of the Government of Nepal to determine the rate of minimum wage for agro-labourer. Also, the Government of Nepal shall provide the facility of settlement, employment and income generation...
for the freed bonded labourers. Chapter 6 of the Act deals with complaints redressal and penalties. According to Section 17, Adjudicating Authority for the purposes of this Act shall be Chief District Officer. Following are the offences and penalties provided under the Act;

- Employment of any one as bonded labour in violation of Section 4 of the Act.
  - Penalty: not less than fifteen thousand rupees and not exceeding twenty-five thousand rupees. Also, two-fold amount of minimum wage as determined pursuant to this Act for each day of employment to the victim.
- Failure to refund the property taken as mortgage and guarantee.
  - Penalty: not less than ten thousand rupees and not exceeding fifteen thousand rupees and shall also refund the property.
- Employment of a person without minimum wage or lower wage than the minimum rate.
- Penalty: not less than one thousand rupees and not exceeding three thousand rupees and shall also provide two-fold amount of the minimum wage for each day of employment to the victim.
- Causing obstruction or hindering to anyone in the course of investigation of any act committed contrary to this Act.
  - Penalty: fine not less than three thousand rupees and not exceeding ten thousand rupees
- Commits an act in contravention of this Act and rules framed hereunder
  - Penalty: fine not less than one thousand rupees and not exceeding three thousand rupees.
ANNEXURE-3: LEGAL ANALYSIS

Before analysing the Bonded labour Act in view of the constitutional provisions, international standards and laws from other jurisdictions, it is imperative to note that Article 11 of the Constitution prohibits all forms of forced labour and in the past the Honourable Courts dealt with the said Article in the following ways:

In **1997 PLC(CS) 662**, the Hon’ble Lahore High Court held that: “Question as to whether appointment of civil servant was in accordance with Rules would pale into insignificance inasmuch as, under the Constitution it was bounden duty of those for whose benefit services were rendered, to pay emoluments due, for otherwise that would amount to slavery and forced labour which was prohibited by Art. 11 of the Constitution”

According to **1996 CLC 472**, an employee was made to work without payment of salary for more than two years. Honourable Lahore High Court held that: "Such concept was against Islam which envisages payment of wages before sweat of toil is dried up. Performance of duties under such circumstances, would amount to forced labour which is forbidden under Art.11 of the Constitution, whereby all forms of forced labour and traffic in human beings are prohibited.

Similarly, in **2006 PLC(CS) 301**, Petitioners, who were dismissed or removed from service, were reinstated and were performing their duties, but their salaries were withheld on the ground that their reinstatement orders were illegal. High Court held that salaries of petitioners could not be withheld on the ground that their reinstatement orders were illegal. Making petitioners to work without payment of salaries, was against Islamic Law which had envisaged payment of wages before sweat of toil was dried up. Performance of duties under said circumstances, could also amount to forced labour which was forbidden by Art. 11 of the Constitution.

In **2010 CLC 1383**, Honourable Karachi High Court declared that: “No one, much less the State functionaries, can be allowed to take beggar work from citizens and every employee who works has inherent right to receive his wages”.

Indian Supreme Court has dealt with the problems of human trafficking, forced labour and bonded labour in its interpretation of Article 23 of the Constitution.

Similarly, in India, Article 23 of the Constitution deals with prohibition of traffic in human beings and forced labour. Article 23 provides: Prohibition of traffic in human beings and forced labour; (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) Nothing in this Article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

According to the Indian Supreme Court in People’s Union For Democratic Rights and Others Vs. Union of India etc. cited as 1982 AIR 1473, “the reach and content of Article 23 much wider than that of Article 4 of the Universal Declaration of Human Rights as it banned ‘traffic in human beings which is an expression of much larger amplitude than "slave trade" and they also interdicted "begar" and other similar forms of forced labour”."...This Article strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values.

The aforesaid judgment also refers to ILO’s Convention No. 29 and No. 105, European Convention of Human Rights’ Article No. 4, and ICCPR’s Article No. 8 to reiterate the point that scope of the Article 23 of the Indian Constitution contains the prohibitory elements against bonded or forced labour as included in the above quoted conventions.

Furthermore, Indian Supreme Court while interpreting Article 23 have also held that a person working for less than the minimum wage is also covered in the definition of “forced labour”. Reference can be further made to the following concluding observations of the Indian Supreme Court with regards to issue of minimum wages and violation of Article 23 of Indian Constitution:

“We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum
wage, the labour or service provided by him clearly falls within the scope and ambit of the words ‘forced labour’ under Article 23. Such a person would be entitled to come to the court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be ‘forced labour’ and the breach of Article 23 is remedied.

While dealing with the issue of bonded labour, the Supreme Court of Pakistan also laid down the criteria and recommendations for the legislation keeping in view the Indian law and its issues already raised by the Indian Courts in different judgments.

As referred above, in the aftermath of Darshan Masih Case, the Legislature enacted the Bonded Labour System (Abolition) Act, 1992 in order to fulfil the constitutional obligations enunciated in Article 11 of the Constitution and the direction of Supreme Court of Pakistan. After the 18th Amendment to the Constitution, the said law was adopted by all the provinces, except Balochistan, with minor amendments.

However, while drafting the law, the legislature prima facie did not take into account the observations, recommendations and criteria laid down by the Honourable Supreme Court of Pakistan in Darshan Masih Case wherein it was held that: “for the purposes of convenience of all concerned, it might be necessary to define the expression ‘forced labour’ with illustrations of its different forms; in such a manner, so as to minimize any confusion about its real purport as also the resultant unproductive litigation. For the same purpose the other important elements in these Fundamental Rights, may be collected together and put in a self-contained Code.”

While dealing with the issue of definition of ‘Bonded labour system’, the Supreme Court of Pakistan observed that: “The last question needing some comment relates to the definitions in the ”Bonded Labour System“ and its various aspects including the prohibition of future loans in the form of Pesghis and recovery of the past ones. We have the example and experience made in India in this behalf. In my view it will not meet the expected success in Pakistan. A law which does not take care of all elements of justice in the problem it deals with, does not command acceptability.”

The aforesaid observations of Supreme Court have not been addressed in Bonded Labour System (Abolition) Act, 1992, which is basically a facsimile of Indian Bonded Labour System (Abolition) Act, 1976.

In essence, the definition provided for Bonded Labour System under the Act is very limited in scope as compared to the Article 11 of the Constitution. The Act defines “bonded labour system” as “the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered into an agreement with the creditor to the effect that…” whereas Article 11 prohibits all forms of forced labour.

To understand the legal significance of definitional issues in bonded or forced labour, reference can also be made to the Bandhua Mukti Morcha vs Union Of India & Others cited as 1984 AIR 802 wherein the Indian Supreme Court dealt with the dispute between the definition of Bonded labour System provided under the 1976 Act and Article 23 of the Indian Constitution which provides prohibition of ‘begar’ and other similar forms of forced labour. In the said case, State of Haryana argued that in the stone quarries and stone crushers there might be forced labourers but they were not bonded labourers within the meaning of that expression as used in the Act, since a labourer would be a bonded labourer only if he has or is presumed to have incurred a bonded debt and there was nothing in the present case to show that the workmen employed in the stone quarries and stone crushers had incurred or could be presumed to have incurred any bonded debt. It was not enough, the petitioner merely to show that the workmen were providing forced labour in that they were not allowed to leave the premises of the establishment, but it was further necessary to show that they were working under the bonded labour system. The Respondent Government also submitted that in any event, even if the workmen filed affidavits to the effect that they had taken advances from thekedar or jamadar and or mine lessees and/or stone crusher owners and they were not allowed to leave the premises of the establishment until the advances were paid off, that would not be
enough evidence for the Court to hold that they were bonded labourers, because the mine-lessees and stone crusher owners had no opportunity to cross-examine the workmen making such affidavits.

However, the Indian Supreme Court in response to the argument laid by State of Haryana held that:

“If the workmen were not bonded labourers in the strict sense of the term but were merely forced to provide labour, should the State Government not accept liability for freeing and rehabilitating them, particularly in view of the Directive Principles of State Policy.”

In the said judgment, Indian Supreme Court explained that the strict definitional requirements of “advance” and “force” for a “bonded labourer” have been wrongly relied upon by State of Haryana in its arguments that: “if the workmen employed in the stone quarries and stone crushers were not bonded labourers, since it has not shown by them or by the petitioner that they were doing so in consideration of an advance or other economic consideration received from the mine-lessees and owners of stone crushers. Now if this contention of the learned Additional Solicitor General were well-founded, it would become almost impossible to enforce the provisions of the Bonded Labour System (Abolition) Act 1976 because […] the employer would immediately, without any hesitation, disown having given any advance or economic consideration to the bonded labourers. It is indeed difficult to understand how the State Government which is constitutionally mandated to bring about change in the life conditions of the poor and the down-trodden and to ensure social jusce to them, could possibly take up the stand that the labourers must prove that they are made to provide forced labour in consideration of an advance or other economic consideration received from the employer and are therefore bonded labourers. It is indeed a matter of regret that the State Government should have insisted on a formal, rigid and legalistic approach in the matter of a statute which is one of the most important measures for ensuring human dignity to these unfortunate specimens of humanity who are exiles of civilization and who are leading a life of abject misery and destitution. […] Therefore, whenever it is shown that a labourer is made to provide forced labour, the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is therefore a bonded labourer. This presumption may be rebutted by the employer and also by the State Government if it so chooses but unless and until satisfactory material is produced for rebutting this presumption, the Court must proceed on the basis that the labourer is a bonded labourer entitled to the benefit of the provisions of the Act.

In Pakistan, Section 4 of the Act deals with the abolition of bonded labour system from the date of commencement of this Act but it does not lay down any mechanism/procedure through which it will be executed by the respective Governments.

With regards to minimum wages for the labourers, the Act is silent, whereas, this law should have made it binding over the Employer to ensure the minimum wages of the labourers, as elucidated by the Indian Supreme Court’s judgment referred above. It is pertinent to mention here that the Honourable Supreme Court of Pakistan while rendering the judgment, laid down the following salient features which should have been taken into consideration when the Bonded Labour System (Abolition) Act, 1992 was being drafted:

"a. Past Peshgis:

(i) It is to be made clear that past un returned Peshgis given to the laborers by brick kiln industry owners are still outstanding against the labourers. The labourers are legally bound to return all such outstanding peshgis to the respective kiln industry owners. However, in case of denial of peaceful return of these Peshgis, the owners are authorised to recover the same by legal means i.e. through Court decrees -- cases to be decided expeditiously with effective notices to the labourers; but 'they are not authorised to use unlawful means for the recoveries of such Peshgis, such as coercive methods or use of police.

(ii) Past Special Emergency Loans. A maximum of Rs. 5,000 per household granted to that labourers in the past, in the form of formal loans or grants for: marriages, religious festivals, medicine/treatment and death ceremonies, by
the owners, (to the labourers) shall not be recoverable from them and shall be treated as donation. This concession shall only be available to those labourers who return and resume their work voluntarily.

b. Future Pesligis. Peshgis system in future is to be discontinued. Although in proper cases if a valid agreement on this point is reached between a labourer and a brick kiln owner, the latter shall give to the former an advance loan, which shall not be in any case more than seven days wages, against a proper receipt in duplicate, copy of which shall be retained by both the parties. The payments/adjustments of which shall be made to the owners in easy instalments as agreed by the parties. However, if a loan in this behalf is not settled/adjusted, no additional loan is to be advanced by the owner and if given that would be against the spirit of the agreement and would, be at the risk of the owner.

c. Return to work. A notice/direction is to be issued to all the labourers to come for work and report to their respective Bhatta owners; who will give them assurance in writing that they will not use any coercive methods or use of police force to bring them back or to retain them. However, in case a labourer does not want to come back or having returned, wants to leave his work in the Bhatta of an existing owner, or to get job elsewhere, or in the Bhatta of another owner, he shall not be retained forcibly provided he on application to be made to the concerned District Judge/Civil Judge 1st Class, gets a certificate for the purpose.

d. Payment of Wages. Payment of wages shall have to be made to the labourers on a weekly/fortnightly/monthly basis as agreed upon between the labourer and Bhatta owner, regularly. No deductions are to be made from their wages; for the damage/losses to bricks caused on account of rain and it shall be borne by the Bhatta owners.

e. Jamadar/Jamadarni System. The existing Jamadar/Jamadarni system is to cease forthwith. All the labourers shall have direct dealings with their respective owners. No payments on behalf of the labourers shall be made to them nor recoverable/adjustable.

f. The owners shall not directly or indirectly ask or pressurise any labourer for employing the womenfolk or children. However, if the latter do so at their own risk and responsibility, no complaint shall then be made against the Bhatta owners in this behalf. The head of the household who employs any of their womenfolk against her wishes and/or children, might in proper cases, be proceeded against."

The Act is silent about the deductions from the wages of bonded labourers also the provisions regarding minimum wages of labourers.

Besides above, the Honourable Supreme Court of Pakistan categorically stated in the judgment that it is necessary to keep in view the conditions in Pakistan, in particular the people and their ethos, which are different here than in the neighbouring country. For example, our Government in this case has shown sympathy with the labourers while the State Governments in India do not show any such sentiments. For example, the cases of Neeraja Choudhary and 'Bandhua Mukti Morcha v. Union of India and others (AIR 1984 SC (India) 1099 and 802). The same cases have shown more weaknesses in the Bonded labour law and the entrustment of some important functions to the District Administration had also proved unproductive. Therefore, Pakistan’s Supreme Court had directed that “Care should be taken not to commit same mistakes here”. The involvement of the Bar Councils, the Local Bar Associations, the Press bodies and recognised Social Services; together with the labour departments both at Centre and Provincial levels was supposed to help in avoiding the pitfalls experienced by India.

But still, the Legislature of Pakistan in 1992 and the Provincial Legislatures after the 18th amendment while adopting the 1992 Act, prima facie failed to take into consideration the observations of the Supreme Court of Pakistan. Federal and Provincial laws still entrust the District Administration for the implementation of the law in as much as the Sindh Labour Department clearly said that the bonded labour doesn’t come under the ambit of Labour Department instead it is the duty on the part of District Administration. According to the law, the Vigilance Committees which have to implement the Act and resolve the issues for both the labourers and employers are being headed by the District Administrator of every District. Also, the
law does not contain any schedule in which sectors should have been identified where a bonded labour exists or being carry out. There must have been a criterion by virtue of which any formal/informal sectors could have been brought under the ambit of this Act.

In 1995, Rules were made to carry out the purposes of the Act. According to the Bonded Labour System (Abolition) Rules 1995, there shall be established an independent fund for the welfare and rehabilitation of the freed bonded labourers. Rules also provide the responsibilities of the District Administrator i.e. Deputy Commissioner and Vigilance Committees. The said Rules were later adopted by the Provincial legislature after the enactment provincial bonded labour laws.

The blind imitation of the Indian law and ignorance of the ground realities of bonded and forced labour has led to disappointing results in elimination of bonded and forced labour. Contrarily, the prevalence of modern slavery has increased in Pakistan, particularly in various informal industries, domestic servitude and begging.

The enactment of self-contradictory and ineffective legislation has still not stopped in Pakistan. In 2016, Province of Punjab enacted Punjab Prohibition of Child Labour at Brick Kilns Act, 2016 for the purposes of prohibition of child labour and regulation of labour at the brick kilns in the Punjab. Section 4 of the said Act allows the occupier to give advance to the worker engaged by him of the amount which shall not exceed fifty thousand rupees. In such circumstances, the essence of Bonded Labour System (Abolition) Act, 1992 contradicts with Section 4 of Child Labour Act as the 1992 Act provides that “No person shall make any advance under, or in pursuance of, the bonded labour system or compel any person to render any bonded labour or other form of forced, labour”. Not only the Section 4 of the Child Labour Act is in contradiction with 1992 Act, it also contradicts with the observations of the Supreme Court of Pakistan laid down in Darshan Masih Case. Provincial Legislature failed to take into account the 1992 Act as well as Darshan Masih’s case.

With regards to rehabilitation of bonded labourers, the 1992 Act only provides that one of the functions of Vigilance Committees is to provide help in the rehabilitation of bonded labourer. Apart from that, neither the Act nor the Rules made thereunder lay down any mechanism with regards to rehabilitation of bonded labourer. This is one of the aspects which has been ignored in Pakistan since Darshan Masih when this issue was highlighted for the first time till now. If we take into account the law of Nepal on bonded labour as mentioned above, it can be seen that Nepal’s law has formulated a committee for the rehabilitation along with specific functions as mentioned in Section 9 of the Act. Such practice if provided in Pakistan’s law will ultimately be very beneficial for the freed labourers.

At the end, it is noteworthy to state here that like Article 11 of our Constitution, the ILO Conventions to which Pakistan is a state party, provides elimination of all forms of forced labour. Forced labour has been defined in the Convention as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. Bonded labour is just one of the sub sets of Forced labour. While dealing with this issue, emphasis be supplied to cater all forms of forced labour in our future policies and legislations as it is the responsibility of the State of Pakistan in view of the Constitutional as well as international obligations. The above quoted extracts from the judgments of Supreme Courts of Pakistan and India should be able to provide the guiding framework for effective legislation which comprehensively deals with the problem of modern slavery in every manifestation.