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Case Laws

Trafficking for Labour and Bonded Labour

S. SHANMUGAM, B.A.B.L.,
Director of Prosecution
Government of Tamilnadu

Bonded Labour and Trafficking for Labour are pervasive issues in India.

The legal framework against bonded labour is provided in the Bonded Labour System (Abolition) Act, 1976. However, despite this prohibition, debt bondage remains, partly due to the fact that the prosecution rate for these crimes remains extremely low.

Having gone through this booklet, which is a compilation of key High Court and Supreme Court cases on Trafficking for Labour and Bonded Labour, I strongly recommend its use by practicing lawyers, judges and other legal experts.

I congratulate International Justice Mission for their initiative in coming up with this booklet.

S.SHANMUGAM

01 Bonded labour is rampant and illegal, but continues in many industries today.

02 Bonded labour is a form of forced labour.

03 Persons working for less than minimum wage are presumed to be forced labourers.

04 Bonded labour inquiries are not adversarial inquiries, and the procedures for criminal trials do not apply.

05 The labourer does not need to prove the existence of an advance.

06 The Supreme Court has held that the creditor has the burden of proving that a claimed bonded debt is not, in fact, a bonded debt.

07 The Bonded Labour System (Abolition) Act, 1976 (BLSA) defines "agreement" broadly to include both verbal and written agreements, and customary forms of forced labour.

08 The owner should never be present while the labourers are being inquired.

09 Under the Minimum Wages (Central) Rules and many state rules, advances in excess of two months' wages are illegal, and monthly deductions for an advance cannot exceed one-fourth of the monthly wage due.

10 An advance can never be a reason or excuse for forced labour.

11 'Deceit' means misleading or cheating, and applies to the use of advances to recruit labourers.

12 The term 'slavery' includes modern situations where a person is denied freedom of movement and paid less than minimum wage.

13 The District Magistrate is obligated to investigate and eradicate bonded labour.

14 NGOs/CSOs should be involved in identifying bonded labourers, and the government should accept their assistance.

15 The government shall conduct a bonded labour investigation when an NGO reports a case of bonded labour, and include that NGO in the rescue and investigation.

16 Bonded labourers must be issued release certificates simultaneously at the time of their release, and each bonded labourer shall be issued an individual release certificate.

17 States are obligated to rehabilitate former bonded labourers.

18 The Centrally Sponsored Scheme for Rehabilitation.

19 NGOs can and ideally will be partners in the rehabilitation of former bonded labourers.

20 States should create and implement plans for the rehabilitation of former bonded labourers.

21 States should criminally prosecute those who exploit bonded labourers and perpetuate bonded labour systems.

22 Fines alone are insufficient and inappropriate punishment for bonded labour violations.

23 Section 6 of the BLSA extinguishes every obligation of bonded labour.

24 Registration of FIR is mandatory under Section 154, if the information discloses commission of a cognizable offence, and no preliminary inquiry is permissible in such a situation.

25 Genuineness of information can be considered only after registration of case.

26 An FIR can and should be registered for an offense under The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act), even though the complaint did not disclose whether the accused was or was not a member of a Scheduled Caste or Tribe.

27 Cases under 370 IPC and Labour Laws.

28 Decisions of High Courts striking down Section 21 of the BLSA.

BONDED LABOUR IS RAMPANT AND ILLEGAL, BUT CONTINUES IN MANY INDUSTRIES TODAY.

01

Public Union for Civil Liberties v. State of Tamil Nadu (2013) 1 SCC 585 at 595 (para. 16.3): "Bonded labour, it may be noticed, is rampant in brick kilns, stone quarries, crushing mines, beedi manufacturing, carpet weaving, construction industries, agriculture, in rural and urban unorganized and informal sector, power looms and cotton handlooms, fish processing etc."

BONDED LABOUR IS A FORM OF FORCED LABOUR.

02

The Supreme Court has held that wherever it is shown that a labourer is made to provide forced labour, the court will rebuttably presume 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.

Bandhua Mukti Morcha v. Union of India (1984) 3 SCC 160 at 206 (para. 24): "Now it is clear that bonded labour is a form of forced labour." at 207 (para. 24): "... Ordinary course of human affairs would show, indeed judicial notice can be taken of it, that there would be no occasion for a labourer to be placed in a situation where he is required to supply forced labour for no wage or for nominal wage, unless he has received some advance or other economic consideration from the employer and under the pretext of not having returned such advance or other economic consideration, he is required to render service to the employer or is deprived of his freedom of employment or of the right to move freely wherever he wants."

"... Whenever it is shown that 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."

The Supreme Court has also stated that the Constitution's prohibition of forms of forced labour, in Article 23's protection of fundamental rights, should be interpreted broadly. Article 23's prohibition of forced labour applies to circumstances where labourers are paid a nominal rate, and does not require that the labourers receive no remuneration at all.

People's Union for Democratic Rights v. Union of India (1982) 3 SCC 235 at 256 (para. 13): "Every form of forced labour, 'begar' or otherwise, is within the inhibition of Article 23 and it makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by this Article if it is forced labour, that is, labour supplied not willingly but as a result of force or compulsion."

Many migrant labourers are also bonded labourers who have been trafficked from a source where they were recruited, to a destination where they are exploited.

PERSONS WORKING FOR LESS THAN MINIMUM WAGE ARE PRESUMED TO BE FORCED LABOURERS.

03

The Supreme Court has held that forced labour must be presumed if a person works for below minimum wage, and that forced labour (as per Article 23) includes labour forced by physical or legal force, as well as force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage.

People's Union for Democratic Rights v. Union of India (1982) 3 SCC 235 at 259-260 (para. 14): "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." at 259 (para. 14): defining "forced labour" to include the acceptance of work for "remuneration. . . less than minimum wage" as compelled by economic circumstances including "hunger or starvation" and "utter grinding poverty": "Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and if labour or service is compelled as a result of such 'force', it would be 'forced labour'".

Sanjit Roy v. State of Rajasthan (1983) 1 SCC 525 at 532-533 (para. 3): noting that the Court must "... hold consistently" with its previous decisions "... 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 meaning of the words 'forced labour' and attracts the condemnation of Article 23. Every person who provides labour or service to another is entitled at the least to the minimum wage and if anything less than the minimum wage is paid to him, he can complain of violation of his fundamental right under Article 23 and ask the Court to direct payment of the minimum wage to him so that the breach of Article 23 may be abated."

Neeraja Chaudhary v. State of Madhya Pradesh (1984) 3 SCC 242 at 251 (para. 3): "... Whenever it is found that any workman is forced to provide labour for no remuneration or nominal remuneration, the presumption would be that he is a bonded labourer unless the employer or the State Government is in a position to prove otherwise by rebutting such presumption."

BONDED LABOUR INQUIRIES ARE NOT ADVERSARIAL INQUIRIES, AND THE PROCEDURES FOR CRIMINAL TRIALS DO NOT APPLY.

04

The Supreme Court has emphasised that a bonded labour inquiry is not an adversary system, and the evidentiary and procedural requirements for criminal trials do not apply.

Bandhua Mukti Morcha v. Union of India (1984) 3 SCC 160 at 207 (para. 24): "It would be cruel to insist that a bonded labourer, in order to derive the benefits of this social welfare legislation, should have to go through a formal process of trial with the normal procedure for recording of evidence. That would be a totally futile process because it is obvious that a bonded labourer can never stand up to the rigidity and formalism of the legal process due to his poverty, illiteracy and social and economic backwardness and if such a procedure were required to be followed, the State Government might as well obliterate this Act from the statute book." At 211 (para. 28): directing that the purpose of bonded labour inquiries was "... not to fasten any liability on the [owners]... but to secure the release and repatriation of those labourers who claim to be bonded labourers and who want to leave the employment and go somewhere else."

THE LABOURER DOES NOT NEED TO PROVE THE EXISTENCE OF AN ADVANCE.

05

Section 15 of the BLSA specifically states that when a bonded labourer claims to have a bonded debt, the burden of proof shifts to the creditor, to prove the contrary.

15. "Burden of proof. — Whenever any debt is claimed by a bonded labourer, or a Vigilance Committee, to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor."

THE SUPREME COURT HAS HELD THAT THE CREDITOR HAS THE BURDEN OF PROVING THAT A CLAIMED BONDED DEBT IS NOT, IN FACT, A BONDED DEBT.

06

Bandhua Mukti Morcha v. Union of India (1984) 3 SCC 160 at 204 (para. 21): "... Then comes Section 15 which lays down that whenever any debt is claimed by any labourer or a Vigilance Committee to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor." At 206 (para. 24): noting that if the burden of proof lay on the labourer, it would be "... extremely difficult, if not impossible, for the labourers to establish that they are bonded labourers because they would have no evidence at all to prove that any advance or economic consideration was provided to them by the employer and since employment of bonded labourers is a penal offence under the Act, the employer would immediately, without any hesitation, disown having given any advance or economic consideration to the bonded labourers."

THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976 (BLSA) DEFINES "AGREEMENT" BROADLY TO INCLUDE BOTH VERBAL AND WRITTEN AGREEMENTS, AND CUSTOMARY FORMS OF FORCED LABOUR.

07

Section 2(b) of the BLSA defines "agreement" as follows:

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

As the Allahabad High Court has emphasised, no documentary proof of the agreement is required. The agreement may be presumed from the situation.

THE OWNER SHOULD NEVER BE PRESENT WHILE THE LABOURERS ARE BEING INQUIRED.

08

Bandhua Mukti Morcha v. Union of India (1984) 3 SCC 160 at 210 (para. 28): deputising an experienced official from the Ministry of Labour to inquire stone cutters in Faridabad District, Haryana, to determine whether those labourers are bonded labourers, and directing, as a best practice, that the official must ensure "... that when he interviews the labourers either individually or collectively, neither the mine lessees or owners of stone crushers nor the thekedar of [sic] jamadar nor anyone else is present."

Neeraja Chaudhary v. State of Madhya Pradesh (1984) 3 SCC 242 at 252 (para. 4): objecting to the futility of the government's inquiry of labourers, who "... obviously inhibited and terrified by the presence of the landlords, said that they were not bonded but they were working freely and voluntarily."

UNDER THE MINIMUM WAGES (CENTRAL) RULES AND MANY STATE RULES, ADVANCES IN EXCESS OF TWO MONTHS' WAGES ARE ILLEGAL, AND MONTHLY DEDUCTIONS FOR AN ADVANCE CANNOT EXCEED ONE-FOURTH OF THE MONTHLY WAGE DUE.

09

Two separate laws—the Minimum Wages Act, 1948, and the Payment of Wages Act, 1936—restrict the ability of employers to offer advances, and to take deductions from wages.

The Minimum Wages (Central) Rules, 1950 specifically cap a maximum allowable advance at 2 months' wages, and cap monthly deductions for an advance at one-fourth of the total monthly wage.

21. Time and conditions of payment of wages and the deductions permissible from wages (2) Deductions from the wages of a person employed in a scheduled employment shall be of one or more of the following kinds, namely, - (vi) deductions for recovery of advances or for adjustment of over payment of wages:

The Payment of Wages Act, 1936 allows deductions to be made for 22 enumerated reasons, including repayment of an advance, but (1) mandates that the deductions in any wage-period may not exceed fifty per cent of wages (see PWA s. 7(3)(ii)), and (2) limits the amounts and methods by which employers may deduct pay in order to avoid arbitrary or capricious deductions (see PWA ss. 7-10). The PWA also allows states to pass their own rules regarding advances and deductions for advances (see PWA s. 12 (aa)-(b)).

AN ADVANCE CAN NEVER BE A REASON OR EXCUSE FOR FORCED LABOUR.

10

An advance does not give the right to force a labourer to work. The Workmen's Breach of Contract (Repealing) Act, 1925 abolished the notion of forced contractual labour. The proper method to recover the advance is to sue.

People's Union for Democratic Rights v. Union of India (1982) 3 SCC 235 at 256 (para. 13): "... [S]pecific performance of a contract of service cannot be enforced against an employee and the employee cannot be forced by compulsion of law to continue to serve the employer. Of course, if there is a breach of the contract of service, the employee would be liable to pay damages to the employer but he cannot be forced to continue to serve the employer without breaching the injunction of Article 23." At 258 (para. 13): "It is therefore clear that even if a person has contracted with another to perform service and there is consideration for such service in the shape of liquidation of debt or even remuneration, he cannot be forced by compulsion of law or otherwise, to continue to perform such service, as that would be forced labour within the inhibition of Article 23... Article 23 therefore says that no one shall be forced to provide labour or service against his will, even though it be under a contract of service."

'DECEIT' MEANS MISLEADING OR CHEATING, AND APPLIES TO THE USE OF ADVANCES TO RECRUIT LABOURERS.

11

Dhanurjaya Putel v. State of Orissa 2002 (II) OLR 412 (at para. 6): defining deceit, in a case alleging abduction in order to subject a person to slavery per IPC Section 367, as follows: "'Deceit' means cheating or misleading and one of the ingredients of cheating, as in Section 415 IPC is intentionally inducing a person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. . . . In other words, as per the above noted allegation when the inducement is made by making payment of money in advance to a needy person and exploiting him in the aforesaid manner with the thrust of compulsion to leave his home and to go outside the State in the alleged manner for making bricks, this Court finds that a prima facie case for abduction, as defined in Section 362 IPC is made out."

THE TERM 'SLAVERY' INCLUDES MODERN SITUATIONS WHERE A PERSON IS DENIED FREEDOM OF MOVEMENT AND PAID LESS THAN MINIMUM WAGE.

12

Dhanurjaya Putel v. State of Orissa 2002 (II) OLR 412 (at para. 8): "It appears from all the aforesaid meaning attributed to the term 'slave' and 'slavery' that deprivation of the freedom of movement and right of expression with respect to person or property can be connoted as the meaning to the term 'slave' or 'slavery'. In this case, as per the prosecution allegation, when a person is allowed to put a labour of about 18 hours a day for a paltry sum of Rs. 30/- may be with the assistance of his family members and yet he shall not have the freedom of expressing his grievance against the exploitation and meagre payment, this Court finds no better example of satisfying the requirement of the term 'slavery' in the context of the present day scenario and the prevailing law. Therefore, the allegation available from the Case Diary makes out a prima facie case satisfying the requirement of the terms 'slave' and 'slavery' too."

THE DISTRICT MAGISTRATE IS OBLIGATED TO INVESTIGATE AND ERADICATE BONDED LABOUR.

13

Bandhua Mukti Morcha v. Union of India (1984) 3 SCC 160 at 204 (para. 21): "Sections 10 to 12 impose a duty on every District Magistrate and every officer to whom power may be delegated by him, to inquire whether, after the commencement of the Act, any bonded labour system or any other form of forced labour is being enforced by or on behalf of, any person resident within the local limits of his jurisdiction and if, as a result of such inquiry, any person is found to be enforcing the bonded labour system or any other system of forced labour, he is required forthwith to take the necessary action to eradicate the enforcement of such forced labour."

Public Union for Civil Liberties v. State of Tamil Nadu (2013) 1 SCC 585 at 595 (para. 16.7): directing "The District Magistrates are directed to effectively implement Sections 10, 11 and 12 of the Act and we expect them to discharge their functions with due diligence, with empathy and sensitivity, taking note of the fact that the Act is a welfare legislation."

NGOS/CSOS SHOULD BE INVOLVED IN IDENTIFYING BONDED LABOURERS, AND THE GOVERNMENT SHOULD ACCEPT THEIR ASSISTANCE.

14

Bandhua Mukti Morcha v. Union of India (1984) 3 SCC 160 at 208 (para. 25): "... More importantly nonpolitical social action groups and voluntary agencies and particularly those with a record of honest and competent service for Scheduled Castes and Scheduled Tribes, agricultural labourers and other unorganised workmen should be involved in the task of identification and release of bonded labourers, for it is primarily through such social action groups and voluntary agencies alone that it will be possible to eradicate the bonded labour system, because social action groups and voluntary agencies comprising men and women dedicated to the cause of emancipation of bonded labour will be able to penetrate through the secrecy under which very often bonded labourers are required to work and discover the existence of bonded labour and help to identify and release bonded labourers. We would therefore direct the Vigilance Committees as also the District Magistrates to take the assistance of nonpolitical social action groups and voluntary agencies for the purpose of ensuring implementation of the provisions of the Bonded Labour System (Abolition) Act 1976."

Neeraja Chaudhary v. State of Madhya Pradesh (1984) 3 SCC 242 at 251–252 (para. 4): "... What is really necessary is to involve social action groups operating at the grass roots level in the task of identification and release of bonded labourers. . . . It is only through social action groups working amongst the poor that we shall be able to discover the existence of bonded labour and we shall be able to identify and release them. . . . [and] the State Government should start taking their assistance instead of looking at them askance and distrusting them."

THE GOVERNMENT SHALL CONDUCT A BONDED LABOUR INVESTIGATION WHEN AN NGO REPORTS A CASE OF BONDED LABOUR, AND INCLUDE THAT NGO IN THE RESCUE AND INVESTIGATION.

15

Neeraja Chaudhary v. State of Madhya Pradesh (1984) 3 SCC 242 at 253 (para. 4): "... We would also direct the State Government to take immediate action for identification and release of bonded labourers, whenever any representative of these social action groups, whether on the Vigilance Committee or not, points out to the Collector District Magistrate or the Deputy Collector that there is existence of bonded labour at a particular place and whenever any officer of the District Administration goes to such place for identification and release of bonded labour on the basis of the information given by such representative of the social action group, he shall take such representative with him and a copy of the report made by him shall be handed over immediately to such representative of the social action group."

BONDED LABOURERS MUST BE ISSUED RELEASE CERTIFICATES SIMULTANEOUSLY AT THE TIME OF THEIR RELEASE, AND EACH BONDED LABOURER SHALL BE ISSUED AN INDIVIDUAL RELEASE CERTIFICATE.

16

Santhal Pargana Antyodaya Ashram v. State of Bihar 1987 Supp (1) SCC 141 at 141-142 (para. 1): directing, in the case before the Court, that "All the labourers who have been found to be bonded by the Saxena Committee may be directed to be released . . . and on their being released the concerned Collector will issue forthwith a certificate to each of them certifying that he or she is a bonded labourer and has been released from bondage. These certificates shall be issued by the concerned Collector and handed over to the bonded labourers simultaneously with their release."

STATES ARE OBLIGATED TO REHABILITATE FORMER BONDED LABOURERS.

17

Public Union for Civil Liberties v. State of Tamil Nadu (1994) 5 SCC 116 at 116 (para. 1): directing state governments, through their administrative processes, "(6) To provide adequate shelter, food, education to the children of the bonded labourers and medical facilities to the bonded labourers and their families as part of a rehabilitation package," and additionally setting forth steps for identifying and surveying bonded labourers, requiring the prosecution of bonded labour offences, and ordering reports to the Supreme Court on compliance with these directives.

Bandhua Mukti Morcha v. Union of India (1984) 3 SCC 160 at 209 (para. 26): "... The State Governments must therefore concentrate on rehabilitation of bonded labour and evolve effective programmes for this purpose. Indeed they are under an obligation to do so under the provisions of the Bonded Labour System (Abolition) Act 1976."

Neeraja Chaudhary v. State of Madhya Pradesh (1984) 3 SCC 242 at 255 (para. 5): "... It is the plainest requirement of Articles 21 and 23 of the Constitution that bonded labourers must be identified and released and on release, they must be suitably rehabilitated. The Bonded Labour System (Abolition) Act, 1976 has been enacted pursuant to the Directive principles of State Policy with a view to ensuring basic human dignity to the bonded labourers and any failure of action on the part of the State Government in implementing the provisions of this legislation would be the clearest violation of Article 21 apart from Article 23 of the Constitution."

Upendra v. State of Madhya Pradesh 1986 Supp SC 558 at 559 (para. 1): "... We wish to emphasise what we have been saying time and again that it is no use identifying and releasing bonded labourers unless provisions are also made for their rehabilitation as otherwise we would be driving them to starvation. It is therefore necessary that as soon as the bonded labourers are identified and released the State Government should be in a position to rehabilitate them and there is no reason why the State Government should not be in position to do so particularly with regard to the various schemes sponsored by the Central Government as also the subsidies given by the Central Government for this purpose."

18 THE CENTRALLY SPONSORED SCHEME FOR REHABILITATION.

Public Union for Civil Liberties v. State of Tamil Nadu (2004) 12 SCC 381 at 383 (para. 3): "Under the modified Centrally Sponsored Scheme for rehabilitation of bonded labour effective from May 2000 the rehabilitation assistance to the extent of Rs. 20,000/- per bonded labour is provided for his/ her rehabilitation. . . . Migrant bonded labourers, as per guidelines, are to be rehabilitated at the place of his/her choice. And under this scheme, the State Governments shall provide Rs. 1000/- as substance allowance to a bonded labour immediately on his/her identification."

Public Union for Civil Liberties v. State of Tamil Nadu (2013) 1 SCC 585 at 595 (para. 16.6): directing that "All the States/UTs should calculate firm requirements of fund for rehabilitation of freed bonded labourers and steps be taken to enhance the rehabilitation package from the present limit of Rs.20,000."

CENTRAL SECTOR SCHEME:

In May 2016, the Government of India introduced the Central Sector Scheme (CSS) for the rehabilitation of bonded labourers, which replaced the existing rehabilitation scheme. As per the new scheme, the rehabilitation package is Rs. 1,00,000 per adult male beneficiary, Rs. 2,00,000 per special category beneficiaries namely women and children and Rs. 3,00,00 in case of extreme deprivation or marginalization involving trans-genders or women or children.

As per the new scheme, the initial rehabilitation amount, which is given on the day of release, is Rs. 20,000/- per bonded labourer.

NGOS CAN AND IDEALLY WILL BE PARTNERS IN THE REHABILITATION OF FORMER BONDED LABOURERS.

19

P. Sivaswamy v. State of Andhra Pradesh (1988) 4 SCC 466 at 472 (para. 3): suggesting that "... whatever rehabilitation is provided to the freed bonded labourers must be provided in the presence of a representative of such social action groups or voluntary agencies so as to ensure that rehabilitation provisions actually reach the hands of such labourers."

Public Union for Civil Liberties v. State of Tamil Nadu (2004) 12 SCC 381 at 384 (para. 5): observing that "... The services of philanthropic organizations or NGOs could very well be utilised for rehabilitating released bonded labourers. State could give necessary financial assistance under proper supervision."

STATES SHOULD CREATE AND IMPLEMENT PLANS FOR THE REHABILITATION OF FORMER BONDED LABOURERS.

20

Public Union for Civil Liberties v. State of Tamil Nadu (2004) 12 SCC 381 at 384-385 (para. 6): directing that states create plans to identify bonded labourers and the employers who exploit them; to eradicate any bonded debts; to appoint an independent, non-governmental representative (e.g., an NGO) to survey the prevalence of bonded labour; to provide employment and/or agricultural land to bonded labourers; to provide a comprehensive rehabilitation package that includes shelter, food, medical facilities, and childhood education; to ensure oversight and inspection by Labour Commissioners, Vigilance Committees, and District Magistrates; and to criminally prosecute employees who employ bonded labour, employ children below age 14 in hazardous employments, fail to pay minimum wage, or provide compensation through Khesri dal that causes permanent disability.

STATES SHOULD CRIMINALLY PROSECUTE THOSE WHO EXPLOIT BONDED LABOURERS AND PERPETUATE BONDED LABOUR SYSTEMS.

21

Public Union for Civil Liberties v. State of Tamil Nadu (1994) 5 SCC 116 at 116 (para. 1): directing State Governments, through their administrative processes, "(2) to identify the employers exploiting the bonded labourers and to initiate appropriate criminal proceedings against such employers," and additionally setting forth steps for identifying and surveying bonded labourers, providing rehabilitation to bonded labourers, and reporting to the Supreme Court on compliance with these directives

FINES ALONE ARE INSUFFICIENT AND INAPPROPRIATE PUNISHMENT FOR BONDED LABOUR VIOLATIONS.

22

People's Union for Democratic Rights v. Union of India (1982) 3 SCC 235 at 247-248 (para. 7): "... [The Magistrates] seem to overlook the fact that labour laws are enacted for improving the conditions of workers and the employers cannot be allowed to buy off immunity against violations of labour laws by paying a paltry fine which they would not mind paying, because by violating the labour laws they would be making profit which would far exceed the amount of the fine. . . . We would like to impress upon the Magistrates and Judges in the country that violations of labour laws must be viewed with strictness and whenever any violations of labour laws are established before them, they should punish the errant employers by imposing adequate punishment."

Bandhua Mukti Morcha v. Union of India (1984) 3 SCC 160 at 218 (para. 38): ". . . the Magistrates and Judicial Officers are not sufficiently sensitised to the importance of observance of labour laws with the result that the labour laws are allowed to be ignored and breached with utter callousness and indifference and the workmen begin to feel that the defaulting employers can, by paying a fine which hardly touches their pocket, escape from the arm of law and the labour laws supposedly enacted for their benefit are not meant to be observed but are merely decorative appendages intended to assuage the conscience of the workmen. We would therefore strongly impress upon the Magistrates and Judicial Officers to take a strict view of violation of labour laws and to impose adequate punishment on the erring employers so that they may realise that it does not pay to commit a breach of such laws and to deny the benefit of such laws to the workmen."

SECTION 6 OF THE BLSA EXTINGUISHES EVERY OBLIGATION OF BONDED LABOUR.

23

Bonded Labour (Abolition) Act, 1976, Section 6: 6. Liability to repay bonded debt to stand extinguished.-(1) On the commencement of this Act every obligation of a bonded labourer to repay any bonded debt or such part of any bonded debt as remains unsatisfied immediately before such commencement, shall be deemed to have been extinguished.

T. Chakkalackal v. State of Bihar and Ors. 1993 Supp (4) SCC 211

REGISTRATION OF FIR IS MANDATORY UNDER SECTION 154, IF THE INFORMATION DISCLOSES COMMISSION OF A COGNIZABLE OFFENCE, AND NO PRELIMINARY INQUIRY IS PERMISSIBLE IN SUCH A SITUATION.

24

Superintendent of Police, C.B.I. v. Tapan Kr. Singh (2003) 6 SCC 175 at 183-184 (para. 20): "... An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose in great detail all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law."

The Supreme Court, in a decision issued by a full bench of five in November 2013, reiterated the general rule that an FIR must be lodged immediately without a preliminary inquiry in cases of cognizable offenses.

Lalita Kumari v. Government of Uttar Pradesh (2014) 2 SCC 1 at 61 (para. 120): (1) "Registration of FIR is mandatory under Section 154 of the CrPC. If the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation." . . . (4) "The police officer cannot avoid his duty of registering the FIR if a cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence." (5) "The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence."

GENUINENESS OF INFORMATION CAN BE CONSIDERED ONLY AFTER REGISTRATION OF CASE.

25

Ramesh Kumari v. State (N.C.T. of Delhi) (2006) 2 SCC 677 at 679 (para. 3): "... Genuineness or otherwise of the information can only be considered after registration of the case. Genuineness or credibility of the information is not a condition precedent for registration of the case."

AN FIR CAN AND SHOULD BE REGISTERED FOR AN OFFENSE UNDER THE SC/ST ACT, EVEN THOUGH THE COMPLAINT DID NOT DISCLOSE WHETHER THE ACCUSED WAS OR WAS NOT A MEMBER OF A SCHEDULED CASTE OR TRIBE.

26

The police must record and register an FIR upon sufficient receipt of information (e.g., a complaint letter, or oral report) to suspect that a cognizable offense has been committed.

Ashabai Machindra Adhagale v. State of Maharashtra (2009) 3 SCC 789 at 796 (para. 10): holding that an FIR can and should be registered for an offense under the SC/ST Act, even though the complaint did not disclose whether the accused was or was not a member of a Scheduled Caste or Tribe (i.e., did not state all elements necessary to satisfy proof of an offence). The Supreme Court emphasised "It needs no reiteration that the FIR is not expected to be an encyclopaedia. As rightly contended by learned counsel for the appellant whether the accused belongs to Scheduled Caste or Scheduled Tribe can be gone into when the matter is being investigated."

CASES UNDER 370 IPC AND LABOUR LAWS.

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There are a number of cases, currently at the pre-trial stage, where an FIR has been recorded under both IPC Section 370 as well as under other laws, including the BLSA, CLA, JJA, ITPA, and POSCO.

Kumara s/o Madegowda v. State of Karnataka by Harohalli Police 2014 (5) KarLJ 345 (Karnataka High Court, 21 July 2014): denying bail, in a case of bonded labour at a brick factory, where an FIR had been recorded under IPC Section 370, BLSA Sections 16, 17, 18; JJA Sections 23, 26.

Saraswati v. Inspector of Police MANU/TN/2985/2014, Crl. O.P. No. 19596/2013 (Madras High Court,10 Dec. 2014): cancelling bail, in a case involving bonded labour at a brick kiln, where an FIR had been recorded under IPC Sections 341, 370(3)(4), 374; BLSA Sections 9, 16, 17, 18; CLA Section 14.

DECISIONS OF HIGH COURTS STRIKING DOWN SECTION 21 OF THE BLSA.

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Section 21 of the BLSA is the section that both allows offences under the BLSA to be tried by Executive Magistrate, and allows summary trials of offences under the BLSA. To be precise, Executive Magistrates have concurrent jurisdiction alongside Judicial Magistrates to try cases under the BLSA.

OFFENCES TO BE TRIED BY EXECUTIVE MAGISTRATES

1) The State Government may confer, on an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the second class for the trial of offences under this Act. . . .

2) An offence under this Act may be tried summarily by a Magistrate.

The High Courts of Madhya Pradesh and Madras have both struck down BLSA Section 21 as violative of Article 21 of the Constitution. The decision of the full bench of the Madhya Pradesh High Court (Jabalpur Bench) emphasised the fact that many Executive Magistrates are not trained in law, that many also serve on Vigilance Committees, and that the authority to hold trials granted to them failed to also confer authority to conduct pre-trial inquiries necessary in warrant cases.

Hanumantsing Kubersing v. State of Madhya Pradesh 1996 MPLJ 389 (Madhya Pradesh High Court) (para. 15): The Madhya Pradesh High Court emphasised that cases under the BLSA are warrant cases, and the procedures allowing a Magistrate to conduct an inquiry and frame charges should apply, but under the BLSA, "power is conferred only for trial of the offences under the Act." (para. 20): "As a result of the aforesaid discussion, we declare that the enabling provision contained in Section 21 of the Act violates Articles 21, 14 and 50 of the Constitution."

The Madras High Court, in a decision heavily citing the Madhya Pradesh High Court, found persuasive the argument that Executive Magistrates should not be entrusted with hearing cases under the BLSA, and also struck down section of the BLSA.

Ganjendran v. Tahsildar/Sub-Divisional Executive Magistrate, Tiruvallur W.P. 7650 of 2013 and M.P. Nos. 1 & 2 of 2013 (Madras High Court, 3 June 2014). (para. 9): "The Full Bench of the Madhya Pradesh High Court (Jabalpur Bench) has extensively and

exhaustively dealt with the very same issue and held that as the power is conferred only for trial of offences under the said Act, it is difficult to hold that the Executive Magistrate can exercise powers."

Based on this judgement, the Government of Tamil Nadu, Adi Dravidar and Tribal Welfare Department passed G.O (D). No.44 directing the Jurisdictional Revenue Divisional Officers to transfer the criminal cases, along with the relevant records to the file of the respective Chief Judicial Magistrates and they in turn, were directed to transfer the cases to the respective Judicial Magistrates.

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