

# BONDED LABOUR SYSTEM (ABOLITION) ACT, 1992<sup>1</sup>

[11 March 1992]

*An Act  
to provide for abolition of bonded labour system*

Whereas clause (2) of Article 11 of the Constitution of the Islamic Republic of Pakistan prohibits all forms of forced labour.

And whereas it is necessary to provide for abolition of bonded labour system with a view to preventing the economic and physical exploitation of the labour class in the country and for matters connected therewith or incidental thereto; It is hereby enacted as follows:-

## 1. Short title, extent and commencement.--

- (1) This Act may be called the Bonded Labour System (Abolition) Act, 1992.
- (2) It extends to the whole of Pakistan.
- (3) It shall come into force at once.

## 2. Definitions.--

In this Act, unless there is anything repugnant in the subject or context,--

- (a) "**advance (peshgi)**" means an advance (peshgi) whether in cash or in kind, or partly in cash or partly in kind, made by one person (hereinafter referred to as the creditor) to another person (hereinafter referred to as the debtor);
- (b) "**bonded debt**" means an advance (peshgi) obtained, or presumed to have been obtained, by a bonded labourer under, or in pursuance of, the bonded labour system;

---

<sup>1</sup> Gaz. of Pak., Extr., Pt. I, Mar. 17, 1992, p. 21. For statement of Objects & Reasons, see Gaz. of Pak., Extr., 12 Nov. 1991, p. 1421.  
See also **EASTERN WORKER**, June-July, 1992, Vol. 32, No. 6 and 7, p. 8-13.

- (c) "**bonded labour**" means any labour or service rendered under the bonded labour system;
- (d) "**bonded labourer**" means a labour who incurs, or has, or is presumed to have incurred, a bonded debt;
- (e) "**bonded labour system**" means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered into an agreement with the creditor to the effect 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-

- (1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or
- (2) forfeit the freedom of employment or adopting other means of livelihood 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.

- (f) **"family"** means,--
- (i) in the case of a male bonded labourer, the wife or wives, and in the case of a female bonded labourer, the husband of the bonded labourer; and
  - (ii) the parents, children, minor brother, and unmarried, divorced or widowed sisters of the bonded labourer wholly dependent on him;
- (g) **"nominal wages"** in relation to any labour, means a wage which is less than,--
- (a) the minimum wages fixed by the Government, in relation to the same or similar labour, under any law for the time being in force; and
  - (b) where no such minimum wage has been fixed in relation to any form of labour, the wages that are normally paid, for the same or similar labour, to the labourers working in the same locality; and
- (h) **"prescribed"** means prescribed by rules made under this Act.

### **3. Act to override other laws, etc.--**

The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

### **4. Abolition of bonded labour system.--**

(1) On the commencement of this Act, the bonded labour system shall stand abolished and every bonded labourer shall stand freed and discharged from any obligation to render any bonded labour.

(2) 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.

### **5. Agreement, custom, etc., to be void.--**

Any custom or tradition or practice or any contract, agreement or other instrument, whether entered into or executed before or after the commencement of this Act, by virtue of which any person, or any member

of his family, is required to do any work or render any service as a bonded labourer, shall be void and inoperative.

**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 stand extinguished.

(2) After the commencement of this Act, no suit or other proceeding shall lie in any civil court, tribunal or before any other authority for the recovery of any bonded debt or any part thereof.

(3) Every decree or order for the recovery of bounded debt, passed before the commencement of this Act and not fully satisfied before such commencement, shall be deemed, on such commencement, to have been fully satisfied.

(4) Where, before the commencement of this Act, possession of any property belonging to a bonded labourer or a member of his family was forcibly taken by any creditor for the recovery of any bounded debt, such property shall be restored, within ninety days of such commencement, to the possession of the person from whom it was seized.

(5) Every attachment made before the commencement of this Act for the recovery of any bounded debt shall, on such commencement, stand vacated; and, where, in pursuance of such attachment, any movable property of the bonded labourer was seized and removed from his custody and kept in the custody of any court, tribunal or other authority pending sale thereof such movable property shall be restored, within ninety days of such commencement, to the possession of the bonded labourer;

Provided that, where any attached property was sold before the commencement of this Act, in execution of a decree or order for the recovery of a bonded debt, such sale shall not be affected by any provision of this Act.

(6) Subject to the proviso to sub-section (5), any sale, transfer or assignment of any property of a bonded labourer made in any manner whatsoever before the commencement of this Act for recovery of bonded debt shall not be deemed to have created or transferred any right, or

interest in or encumbrance upon any such property and such property shall be restored, within ninety days of such commencement, to the possession of the bonded labourer.

(7) If restoration of the possession of any property referred to in sub-section (4) or sub-section (5) or sub-section (6) is not made within ninety days from the commencement of this Act, the aggrieved person may, within such time as may be prescribed, apply to the prescribed authority for the restoration of the possession of such property and the prescribed authority may, after giving the creditor a reasonable opportunity of being heard, direct the creditor to restore to the applicant the possession of the said property within such time as may be specified in the order.

(8) An order made by any prescribed authority under sub-section (7) shall be deemed to be an order made by a civil court and may be executed by the court of the lowest pecuniary jurisdiction within the local limits of whose jurisdiction the creditor voluntarily resides or carries on business or personally works for gain.

(9) Where any suit or proceeding for the enforcement of any obligation under the bonded labour system, including a suit or proceeding for the recovery of any advance (peshgi) made to a bonded labourer, is pending at the commencement of this Act, such suit or other proceeding shall, on such commencement, stand dismissed.

(10) On the commencement of this Act, every bonded labourer who has been detained in civil prison, whether before or after judgement, shall be released from detention forthwith.

#### **7. Property of bonded labour to be freed from mortgage, etc.--**

(1) All property vested in a bonded labourer which was, immediately before the commencement of this Act, under any mortgage, charge, lien or other encumbrance in connection with any bonded debt shall, in so far as it is relatable to the bonded debt, stand freed and discharged from such mortgage, charge, lien or other encumbrance; and where any such property was, immediately before the commencement of this Act, in the possession of the mortgage or the holder of the charge, lien, or encumbrance, such property shall, except where it was subject to any other charge, on such commencement, be restored to the possession of the bonded labourer.

(2) If any delay is made in restoring any property referred to in sub-section (1) to the possession of the bonded labourer, such labourer shall be entitled, on and from the date of such commencement, to recover from the mortgage or holder of the lien, charge, or encumbrance, such mesne profits as may be determined by the civil court of the lowest pecuniary jurisdiction within the local limits of whose jurisdiction such property is situated.

**8. Creditor not to accept payment against extinguished debt.--**

(1) No creditor shall accept any payment against any bonded debt which has been extinguished or deemed to have been extinguished or fully satisfied by virtue of the provisions of this Act.

(2) Whoever contravenes the provisions of sub-section (1), shall be punishable with imprisonment for a term which may extend to three years, or with fine which shall not be less than fifteen thousand rupees, or with both.

(3) The court convicting any person under sub-section (2) may, in addition to the penalties which may be imposed under that sub-section, direct such person to deposit, in court, the amount accepted in contravention of the provisions of sub-section (1), within such period as may be specified in the order, for being refunded to the bonded labourer.

**9. Authorities who may be specified for implementing the provisions of this Act.--**

The Provincial Government may confer such powers and impose such duties on a District Magistrate as may be necessary to ensure that the provisions of this Act are properly carried out and the District Magistrate may designate an officer subordinate to him to exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and specify the local limits within which such powers or duties shall be carried out by such officer.

**10. Duty of district Magistrate and other officers designated by him.--**

(1) The District Magistrate authorised by the Provincial Government under section 9, and the officer designated by the District Magistrate under that section, shall as far as practicable, try to promote the welfare of the freed bonded labourer by securing and protecting the economic interests of such bonded labourer so that he may not have any occasion or reason to contract any further bonded debt.

(2) It shall be the duty of every District Magistrate and every officer designated by him under section 9 to inquire whether, after the commencement of this 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 shall forthwith take such action as may be necessary to implement the provisions of this Act.

**11. Punishment for enforcement of bonded labour.--**

Whoever, after the commencement of this Act compels any person to render any bonded labour shall be punishable with imprisonment for a term which shall not be less than two years nor more than five years, or with fine which shall not be less than fifty thousand rupees, or with both.

**12. Punishment for extracting bonded labour under the bonded labour system.--**

Whoever enforces, after the commencement of this Act any custom, tradition, practice, contract, agreement or other instrument, by virtue of which any person or any member of his family is required to render any service under the bonded labour system, shall be punishable with imprisonment for a term which shall not be less than two years nor more than five years or with fine which shall not be less than fifty thousand rupees, or with both; and out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of not less than fifty rupees for each day for which bonded labour was extracted from him.

**13. Punishment for omission or failure to restore possession of property of bonded labour.--**

Whoever, being required by this Act to restore any property to the possession of any bonded labourer, omits or fails to do so, within a period of ninety days from the commencement of this Act shall be punishable with imprisonment for a term which may extend to one, or with fine which may extend to one thousand rupees, or with both; and out of the fine, recovered, payment shall be made to the bonded labourer at the rate of ten rupees for each day during which possession of the property was not restored to him.

**14. Abetment to be an offence.--**

Whoever abets any offence punishable under this Act shall, whether or not the offence abetted is committed, be punishable with the same punishment as is provided for the offence which has been abetted.

*Explanation.--* For the purpose of this section, "abetment" has the same meaning as is assigned to it in the Pakistan Penal Code (XLV of 1860).

**15. Vigilance Committees.--**

(1) Vigilance Committees shall be set up at the District level in the prescribed manner, consisting, of elected representatives of the area, representatives of the District Administration, Bar associations, press, recognized Social Services and Labour Departments of the Federal and Provincial Governments.

(2) The following shall be the functions of the Vigilance Committees, namely:-

- (a) to advise the District Administration on matters relating to the effective implementation of the law and to ensure its implementation in proper manner;
- (b) to help in the rehabilitation of the freed bonded labourer;
- (c) to keep an eye on the working of the law; and
- (d) to provide the bonded labourers such assistance as may be necessary to achieve the objectives of the law.

**16. Offences to be tried by the Magistrate.--**

(1) A Magistrate of the first class empowered in this behalf by the Provincial Government may try any offence under this Act.

(2) An offence under this Act may be tried summarily.

**17. Cognizance of offences.--**

(1) Every offence under this Act shall be cognizable and bailable.

**18. Offences by companies.--**

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be



guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any director, manager or other officer of the company, such director, manager or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.--* For the purposes of this section.--

- (a) "company" means a body corporate, and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm.

**19. Protection of action taken in good faith.--**

No suit, prosecution or other legal proceeding shall lie against Government or any officer of the Government for anything which is in good faith done or intended to be done under this Act.

**20. Jurisdiction of courts barred.--**

Save as otherwise provided in this Act, no court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any court in respect of anything which is done or intended to be done under this Act.

**21. Power to make rules.--**

The Federal Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

**COMMENTARY**

From the beginning, Islam considered some institutions and practices of people to be evil and abhorrent like slavery or any of its forms. But since these practices were so ingrained in the structure and consciousness of the society for ages, Islam instead of eliminating in one stroke took a more practical approach, i.e., its gradual elimination as society becomes enlightened through education and setting higher economic and moral standards which created pre-requisite and conducive conditions. Within a

century considerable progress was made in the Muslim world and within few centuries slavery as an institution became non-existent. The problem, however, like all other social evils and crimes, was marginalised and relegated to the fringes of society.

In the west and the rest of the world, however, no progress was made even at the conceptual level against these social and economic evils since time immemorial until 19th or 20th century. Slavery, forced labour and occupation of other resources and lands was not deterred despite the presence of "democratic" governments in various western countries. The west was practically industrialized on child labour, slave labour, bonded labour and other forms of forced labour. Only when all economic benefits were completely exploited through this practice did the west decided to move to a slightly higher ladder of morality. Laws started emerging to curb these abhorrent practices which killed hundreds of children everyday who were not yet teenagers and their bodies used to disposed off and dumped in wheelbarrows every night in a typical mine. First the laws tried to regulated and minimized the viciousness of these practices and in early 20th century tried to stop it altogether.

Similarly, in British-colonized India, the practice of pledging children for labour against loans was a very old evil which continued even up to the early part of the 20th century. To discourage and eventually eliminate the bonded labour a law *Children (Pledging of Labour) Act, 1933* was enacted which was also adopted by Pakistan after independence. But it did not proved to be deterrent as it lacked enforcement machinery and severe punishment to violators. Hence the practice continued unabated.

In 1988 the Supreme Court took cognizance of the bonded labour as a human right case under Article 184(3) of the Constitution on a telegram sent to the Chief Justice by brick kiln bonded labourers seeking protection and food. The telegram was converted into a constitutional petition and proceedings were initiated under title *Enforcement of Fundamental Rights* resulting in a agreed decision/order (1989 SCMR 139 = PLJ 1989 SC 562). Proceedings were not treated by Supreme Court as having adversary character. The decision abolished the peshgi and Jamadari system. All concerned reached an *interim arrangement* detailed in the Order/decision whose most important points for the eventual elimination of bonded labour from brick kiln industry are as follows:

"All concerned have been heard at considerable length. The following broad agreement has been reached, (if approved) to be made as Order/decision of the Court:--

- (i) Peshgi system to be discontinued forthwith except that upto one week's estimated wages may be paid by the owner to the worker as advance against proper receipt.

- (ii) The payment shall be made to the worker concerned or the head of the household, direct in cash. The receipt shall be issued in duplicate-one to be returned by each.
- (iii) The Institution of 'Jamadar' is finished and he is excluded for all times. No payment for others shall be made to him nor shall it be acknowledged in any form, as due in any form, if claimed to have been made through him.
- (iv) The Institution of 'Jamadari' is likewise finished altogether.
- (v) Every case registered anywhere in Punjab by police, which deals directly or indirectly, any of the constituents of the practice of bonded labour in the brick kiln industry shall be reported to the Advocate-General, with a copy of the F.I.R. within 24 hours. The Advocate-General shall submit a photocopy of the F.I.R. and other documents, if any, with his own comments, within further 24 hours, to the Supreme Court.
- (vi) Post Peshgis, for the time being, shall not be treated as void and unrecoverable. However, they shall not at all recovered in any form through police or through the employment of the so-called 'labour' (...) under the peshgi recovery arrangement" or through any coercive measure; and further orders shall be made by the Court in this behalf including the request for utilisation of the Zakat Fund for the discharge of so called bad debts of peshgi. The question, whether recoveries would be abolished altogether and whether legislation shall be made on the lines as done in India, is deferred for the time being for six months.
- (vii) Filing of Habeas Corpus petitions shall not be stopped. . . . .
- (viii) The owners shall not directly ask or pressurise any labourer for employing the womenfolk or children. . . . .
- (ix) No deductions whatsoever shall be made from wages; . . . .
- (x) Payment made by the owner to the labourer . . . . [in goodwill or as donation shall not be recoverable from the labourer.
- (xi) Other arrangement may be specified at the final stage in the final judgement."

The 1988 *interim Order/decision* was followed next year when Supreme Court initiated proceedings under the title "*Darshan Masih alias Rehmatay and others vs. The State*" which culminated in a judgement

(PLJ 1990 SC 216 = PLD 1990 SC 513). The Judgement incorporated the interim Order/decision and provided a strong judicial mechanism to eliminate this scrooge. The momentum generated by this judgement along with international pressure resulted in enacting of *Bonded Labour System (Abolition) Act, 1992* in March 1992 which provided more severe punishments for violators.

The 1990 Supreme Court judgement dealt with various aspects of the bonded labour allowing and regulating certain practices while declaring others as illegal setting strong punishment as deterrent.

***Peshgi System:***

Peshgis system in future is to be discontinued. *Held:* If a valid agreement on this point is reached between a labourer and an owner, an advance loan not exceeding seven day's wages can be given payment/adjustment whereof will be made to owner in easy instalments as agreed by parties [SC (Original Jurisdiction): *Darshan Masih alias Rehmatay and others vs. The State*; PLD 1990 SC 513 = PLJ 1990 SC 216].

***Past unreturned peshgis:***

Past unreturned peshgis given to labourers by brick-kiln owners still outstanding, the labourers are legally bound to return all such peshgis. *Held:* In case of denial of peaceful return of those peshgis, owners are authorised to recover same by legal means, i.e. court decrees, but they are not authorised to use unlawful means such as coercive methods or use of Police [SC (Original Jurisdiction): *Darshan Masih alias Rehmatay and others vs. The State*; PLD 1990 SC 513 = PLJ 1990 SC 216].

***Jamadar/Jamadarni system:***

*Held:* Existing Jamadar/Jamadarni system is to cease forthwith. *Held further:* All labourers shall have direct dealings with owners and no payment on their behalf shall be made to Jamadars/Jamadarnis [SC (Original Jurisdiction): *Darshan Masih alias Rehmatay and others vs. The State*; PLD 1990 SC 513 = PLJ 1990 SC 216].

***Recovery of past special emergency loans:***

*Held:* A maximum of Rs. 5000/- per household granted in past as formal loans or grants for marriages, religious festivals, medical treatment and death ceremonies by owners, shall not be recoverable and shall be treated as donation to those labourers who return and resume work voluntarily [SC (Original Jurisdiction): *Darshan Masih alias Rehmatay and others vs. The State*; PLJ 1990 SC 216].

***Payment of wages to labourers:***

*Held:* Payment of wages shall have to be made to labourers on daily/weekly/fortnightly/monthly basis as agreed upon between labourers and Bhatta owner. *Held further:* No deductions are to be made from their wages for damage/losses to bricks caused by rain and same shall be borne by Bhatta owners [SC (Original Jurisdiction): *Darshan Masih alias Rehmatay and others vs. The State*; PLD 1990 SC 513 = PLJ 1990 SC 216].

***Return of labourers to work--***

A notice/direction is to be issued to all labourers to come for work and report to their respective Bhatta owners who will give assurance in writing that they will not use any coercive methods or use police to bring them back or retain them. *Held:* A labourer who does not want to come back or having returned, wants to leave work in Bhatta of existing owner or to get job elsewhere or in Bhatta of another owner, shall not be retained forcibly provided he gets a certificate for this purpose from concerned District Judge/Civil Judge 1st Class. *Held further:* Retention shall not be treated as detention and labourers shall not be retained in any manner which is otherwise unlawful [SC (Original Jurisdiction): *Darshan Masih alias Rehmatay and others vs. The State*; PLD 1990 SC 513 = PLJ 1990 SC 216].

***Recovery of loans in form of peshgis:***

Enquiry, though limited, has revealed that individual young people, by selling their properties and/or earnings from abroad through similar labour, advanced loans to Bhatta labour in lacs of rupees. Labourers fled away treating it as their right neither to work nor to return money. Mr. Ihsanullah and his Union insisted till end that it is their right to do so as according to Indian Law, amount could be appropriated on account of what he thought philosophically underlying practice of bonded labour. *Held:* His view, if made a law in Pakistan, an Islamic State, it is likely to fail. *Held further:* Contracts whether of loans or of work should be tested on touchstone of Contract Act which already contains enough strong safeguards against illegal, immoral, unconscionable and other similar contracts and those against public policy [SC (Original Jurisdiction): *Darshan Masih alias Rehmatay and others vs. The State*; PLD 1990 SC 513 = PLJ 1990 SC 216].

***Scope and powers of Supreme Court under Art. 184(3):***

Nature of power and jurisdiction of Supreme Court and orders passed under Art. 184(3) read with Articles 199(1)(c), 187, 189 and 190. Sometimes Supreme Court has to satisfy dictates of "complete justice" as its judgment is subject of ample authority as well as of future application in given cases. *Held:* When this power is exercised, Court

will have necessary additional power to "issue such directions, orders of decrees as may be necessary".

*Held further:* Besides binding effect of judgment/order of Supreme Court on all other courts, question of law or principle of law enunciated by it is a similar command to all executive and judicial authorities throughout Pakistan, hence Supreme Court, in a fit case of enforcement of Fundamental Rights, has jurisdiction, power and competence to pass all proper/necessary orders as facts justify [SC (Original Jurisdiction): *Darshan Masih alias Rehmatay and others vs. The State*; PLD 1990 SC 513 = PLJ 1990 SC 216].

***Telegram to Chief Justice -- can be made basis for action?***

Under Article 184(3), without prejudice to provisions of Art. 199, Supreme Court, in a question of public importance with reference to enforcement of Fundamental Rights, has power to make an order of nature mentioned in said Article. *Held:* Acceptance of a telegram in this case is covered by Miss Benazir Bhutto's case as also by due extension of principles laid therein. *Held further:* Such information through telegrams and letters, even if addressed to individual Judges, has to go to Chief Justice for initiation of proceedings [SC (Original Jurisdiction): *Darshan Masih alias Rehmatay and others vs. The State*; PLD 1990 SC 513 = PLJ 1990 SC 216].

***Definition of Forced labour:***

For purposes of convenience of all concerned, it might be necessary to defined expression "forced labour" with illustrations of its different forms to minimise any confusion about its real purport as also resultant unproductive litigation. For this purpose, other elements in these Fundamental Rights may be collected together and put together in a self contained mode. It might cover all aspects of human dignity, deprivations and misery including those rights in this behalf enshrined in Islam. *Held:* These aspects of enforcement of Fundamental Rights guaranteed in Constitution and other basic human rights ensures by Islam, can, by law, be made also into an independent inalienable right with self operating mechanism for its enforcement as well [SC (Original Jurisdiction): *Darshan Masih alias Rehmatay and others vs. The State*; PLD 1990 SC 513 = PLJ 1990 SC 216].

-----XX-----