CHAPTER-1

INTRODUCTION

“Bonded Labour” is one of the most debatable, confronted and legally considerable topic of the present world. Generally it means forced labour analogous to slavery. The civilized form of slavery is bonded labour. Justice Krishna Iyer rightly calls bonded labour as quasi slavery. According to the Oxford English Dictionary, ‘bonded’ means, held, pledged or put into bond, and 'bond' means a shackle, chain, fetter or imprisonment, with which a thing is tied down, or restraining force, or uniting tie. An agreement or engagement binding on him who makes it. The Reader Digest Great Illustrated Dictionary States anything that binds, ties or fastens together as a shackle, a fetter, a cord, rope or bond or tie, a link, a binding agreement, a duty, promise or obligation by which one is bound. Any written and sealed obligation, specially one requiring payment of stipulated amount of money on or before a given date, "Labourer", etymologically and in general sense means one who labours or works with either mind or both, one who performs any kind of labour, physical or mental. These "Bonded Labourers" are those persons who are bound to perform certain services. A bond is forged between two persons, one bond master and another bondman. This bond is a force which may be of various types viz. physical, economic, social or psychological. Physical force arises due to terror of bond master, economic force arises due to
pitiable, condition of bonded labour, social force arise due to caste structure in the society and psychological force arising due to brain washing of these bondmen, that they will be answerable for their debt in the next generation. Due to different nature of bond, these bondmen are given different names in different times, but the reason of creation of bond is the same, that is, exploitation by bond master of bondmen. Thus the system of bonded labourers is the system of exploitation of the weak by the powerful. It is the law of nature that powerful animals grab more loot compared to that, of weaker animal. As man is an evoked animal, the same psychology is true in the case of human beings also. It appears from the dawn of the human society that the bonded labourers have been the persons who have been exploited mercilessly and indiscriminately and such exploitation will continue till the human race exists on the earth, only form manner and nomenclature may be different such as slavery, chattel slavery, serfdom, debt bondage, beggar, bonded labour system and forced labour system etc.

The perpetual practice in society of keeping a man by another man is bondage for his/her selfish and personal designs in the type of man's cruelty to man which is not confined to a particular country or a particular region but is found as a global phenomenon for hundreds of year, right from the Biblical days to the present era. The nomenclature of this practice changed from period to period and place to place: slave, serf, villain and bondage. In Indian subcontinent, this type of exploitation of man remained prevalent in the name of Begar, and Ryot for years.
The Vedic period recognized the rights of all human beings throughout the nook and corner of the world irrespective of caste, greed, colour, sex, country or region to have good cultured quality of life free from disease, want degradation tension and worries. Its appeal was Universal because the sages spoke of the property, health and prosperity of not a particular section. But it is really unfortunate that we do not see the fulfillment, of their dream on the national or international level. Today, we find the great part of the world including India in the grip of poverty, illiteracy, backwardness, terrorism, intolerance, fundamentalism, disease and drudgery.

We became independent in 1947 and gave to ourselves a constitution which guaranteed all its citizens justice, social, economic and political. Liberty of thought, expression, belief, faith and worship. Equality of status and of opportunity and promote among them all, irrespective of caste, colour, creed or sex. Fundamental Rights recognized the basic rights of all individuals. After the promulgation of the constitution many amendments were made and many laws enacted to realize the aim and purpose enshrined in it. Despite the abolition of the Zamindar system, land reforms, Bhoodan movement, enactment of Panchayat Raj, interest shown by Social Action Groups, spirited Individuals and even the Supreme Court, we have not been able to eradicate this evil from our society. Lakhs of bonded labourers continue to be exploited and carry the yoke of neglect, suffering and frustration in abject silence, in fact, the system of bonded labour as prevalent in Indian society, a considerable interest has come to be shown in the bonded labour during the past three decades by the social
workers, social scientists and the government because it is considered incompatible with our social ideal of egalitarianism and human rights. The magnitude of bonded labour is just baffling as lakhs of adult males and females as well as children are condemned to be suffering under its yoke. Today, if we review the position of human rights available to the people of India in the light of the direction envisaged by the constitution in 1950 we find the picture as a mix of many successes with occasional failure due to strange condition obtaining in our country.

The vexed practice of Bonded Labour System has a long history in its existence. It was indeed rooted in Harappa Civilization. In Aryan day's society stratified into four varnas of Brahmin, Kshatriya, Vaishjya and Sudra. Every varna had having specific and definite duty. The slaves belonged to the Sudra varna. It was also embedded in Buddhist period. Mahabharata period. Kauhtilya's "Arthasastra" Maury's period. Manusmriti, Harsha's rule. Chola Period, even in Muslim's Period and also in English Period. But no concrete steps had been taken by the Hindu and Muslim rulers to weed out this pernicious practice from the society. After the Muslim's era the East India Company had captured the whole legislative executive and judicial powers in his own hands. The first step to prevent the abuse was initiated by the Britishers though Indian Act of 1843.

In spite of being legally abolished the system prevails unscrupulsly in the society. Its facets agrestic, slave system, slavery, exploitation, forced labour, (begar and other similar form of forced labour) are stigma on the name of our society due to our social constrains like extensive poverty and
resourcelessness along with their ignorance and unawareness. We have taken them to a level where they compelled to abandon all sense of individual dignity and self respect merely to keep their body and soul together. They want to live in bondage instead of dying of starvation because there is no alternative for them. Due to high degree of exploitation in the system of bonded labour, the masters have always considered as their property and regulate their activity in life. The wishes of the superiors, have always mattered. These poor bonded follow to surrender because their compulsions economic, social, mental, physical and political. They remained the victim of all inequalities and exploitation as unprivileged class with no justification. The bonded labourers never had the courage to raise their voice against the hunger, molestation of their wives, daughter's or any other cruelty of the master.

At the international level, the two world war posed a threat to the mankind and consequently league of Nations, United Nations organization were established to protect the human rights of the persons worldwide. Later on, prominent declarations and covenants were adopted i.e.,


b) The Covenant on civil and Political Rights 1966, (came into force on 23rd March 1976 contains bundle of civil and political rights) and

c) The Covenant on economic, social and cultural rights 1966 (came into force on 3rd January 1976 contains bundle of Economic Social and Cultural Rights) and
d) An optional protocol on civil and political rights, 1966 providing effective machinery for complaints from individual which paved the way for revamping the position of International Labour Organization (I.L.O.) worldwide.

The core aim and objectives of all the above institutions and covenants are to have the dignity and worth of the human person. Various declarations, conventions, covenants upto 1966 as approved and enforced by 1976, denounced the slavery and servitude, forced labour and begar throughout the whole world. The United Nations convention on the Rights of Child 1986 and other efforts by the International Organizations clearly indicated about their prime object to abolish the system of Begar worldwide. Till 2008, different institution at the international level have taken constructive indicative for the purpose of amelioration of the working conditions of the human being throughout the whole world. It is high time to explore possibilities for eradication of begar from international arena by analyzing the legal position under international law.

The constitution of India as supreme law of the land has provided the concept of social justice can be described as the cornerstone in the working of welfare government in free India. A historical promise is made by our founding fathers of the constitution of themselves and our democracy has dedicated itself to the idea of socio - economic justice but is also a constitutionally enjoined obligation. The welfare state has to function on three points to achieve the ends of government, namely;
(a) Rejection of present social structure and the social status quo,

(b) A smooth and Rapid "transition from a state of serfdom to one of freedom".

(c) Socio-economic justice envisaged remaking of material conditions.

In the execution of the provisions of the constitution in around six decades a large number of policy and legislative measures have been taken by the planners of the free India. Bonded Labour System (Abolition) Act, 1976, is a notable central legislation to cure the begar system in India. Numerous legislations have been passed with the purpose to provide dignity, liberty, equality and freedom to bonded labourers, so that they may live a life of human being. Several steps have been taken at the Central and State level which influenced and inspired the enactment of the Bonded Labour System (Abolition) Act, 1976.

The constitution of India in its essence ensures the independence of judiciary in a federal polity. Judiciary with the power of judicial review has become the custodian of the rights of civilization. Founding fathers of the constitution with the introduction of the fundamental rights established judicial guardianship for the rights of the citizens. The decisions of the Indian judiciary have binding effect on the lower courts. These are treated as part of law under Art-142 of Indian Constitution. The power of judicial review by the Indian judiciary has been exercised in interpreting various social legislations to provide socio-economic justice to the teeming millions of the country. In the initial stage, emphasis was made by the
courts more on individual rights. It is only in the last three decades or little more, the courts overall decision making attitude have been changed and lay emphasis on the section or class interest. It is only through judicial intervention and awakening has now came towards the liberations and rehabilitation of the class or sections of the bonded labour. It is pertinent to analyze the role of judiciary in India for achieving the socio-economic justice to all, particularly the bonded labours who are still victim of the system standing in the way of socio economic reforms in India.

Bonded labour System, is a black spot on our Indian Society. In the past a large number of laws had been enacted during ancient class for the abolition of bonded labour system, but till 2008, the problems remains as usual. It is the pious obligation of all the organs of government to create congenial atmosphere (Socio economic political) to abolish the pernicious practice of bonded labour system in India. All sort of preferential treatments should be provided to the weaker sections of the society towards the abolition of the begar system so that the aspiration of founding fathers comes true. An in depth study on the causes of continuation of this menace is not only desirable but indispensable for achieving the ends of welfare State in India.

The author/Researcher has adopted the doctrinal method of research methodology of social researches in which the analysis of the provisions with the interpretational calibre of judges to implement the laws is done thoroughly. Therefore, the writer of the thesis has divided the whole project into six parts. First Chapter introduces the problem. The
Second Chapter highlights on historical retrospect of begar system: An analysis on the cause of its continuance. The Third Chapter discusses Bonded Labour System and international law: An Analysis on Human rights perspective. The fourth Chapter analyzed, the legislative efforts to abolish the Begar System in India. The Fifth Chapter describes Judicial efforts towards extinction on this social menace - A critical study of post constitutional period in India. The Sixth Chapter concludes the work with valuable suggestions.