Human Rights and Contemporary Slavery

Introduction by Dr. Kevin Bales
Emeritus Professor of Sociology
Roehampton University

The anti-slavery movement will welcome this important compilation of work on debt bondage slavery. In the academic and policy analysis of contemporary slavery, many of the fundamental areas of enslavement are yet to be explored and brought into systematic presentation. This work by the Graduate School of International Studies at the University of Denver helps to build up our understanding of debt bondage, as well as adding to the emerging discipline of contemporary slavery studies. Debt bondage slavery is one of the oldest forms of slavery that continues into the present day. The date of the establishment of hereditary debt bondage in the Indian sub-continent is lost in the pre-history of that region. Untold millions have lived and died under its yoke. In spite of its longevity, the system continues to be under-studied and little understood, which is why this publication is so very welcome. By way of introduction it is helpful to review some of the early definitions of debt bondage, in addition to examining some of the forms it takes.

In the 1956 United Nations Supplementary Convention debt bondage is defined as the "status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined."[1] The 1956 Convention places debt bondage within the category of practices likely to result in a "servile status"[2] and obliges governments to pass laws to abolish it. One of the key areas of misunderstanding of both international instruments and popular perceptions centers on that part of the definition that reads, "the value of those services ... is not applied towards the liquidation of the debt." The confusion arises because this definition explains that the labor power is not applied to the debt, but it does not explain how that labor power is actually viewed and used within the lender-debtor relationship.

There are in fact *two* distinct forms of debt bondage, both of which meet this criterion but in different ways. The most common form of debt bondage in South Asia is hereditary *collateral debt bondage slavery*. In these cases of debt bondage the labor power (and indeed the very lives of the debtor and his/her family) becomes *collateral* held against the debt. This establishes the trap of bondage–since all the labor power of the debtor is the collateral property of the lender until the debt is repaid, the debtor is unable to ever earn enough to repay the debt by their own labor. The other form of debt bondage is *coercive fraudulent debt bondage slavery*. In this form of debt bondage the work of the debtor may ostensibly be applied to the debt, but through false accounting or extortionate interest, repayment remains forever out of reach. In the first form it is the very nature of the agreement that transforms labor power into collateral, which disqualifies the debtor from ever

[1] Supplementary Convention, 226 UNTS 3 (1956), Article 1 (a).
[2] Supplementary Convention, 226 UNTS 3 (1956), Article 7 (b).

repaying their debt. In the second form it is a violation of the agreement, when "the value of those services as reasonably assessed is not applied towards the liquidation of the debt," that traps the debtor. In both types, the enforcement of the agreement is usually backed up by force, bringing an end to the free will of the debtor and crossing the line into enslavement.

The definition of debt bondage in the Supplementary Convention also highlights the important fact that the pledging of a person's services to repay a debt becomes abusive if the terms and conditions of such an arrangement are unregulated. This criterion distinguishes between an acceptable arrangement whereby an individual is working to pay off a debt incurred and the enslavement of debt bondage. In the former, it is legitimate for a worker to accept credit for whatever reason and to repay this amount by working, so long as the repayment terms are fixed and the capital sum borrowed is subject to reasonable interest rates. In contrast, none of these safeguards exist in a situation of debt bondage slavery. The bonded laborer is often at the mercy of his or her employer or creditor and the terms of the loan or advance are either not stipulated or not followed.

The dominant position of the employer or creditor in such instances increases the risk and opportunity of abuse. This is made possible, for example, by allowing the creditor to adjust interest rates or simply to add interest without informing the bonded laborer, imposing high charges for food or tools, and making additional advances on wages resulting in increased debt. Ultimately, these conditions mean that the debtor is unable to repay the loan and remains bonded for an indefinite period, potentially throughout his or her life. In many cases, the obligation to repay the loan is inherited by the victims' children who are born into a life of bonded labor.

In 1924, the Temporary Slavery Commission pointed out that although the contract is made with the consent of the debtor "it often happens that the creditor so arranges that his debtor gets more and more into debt, with the result that what was in the beginning only one apparently equitable contract is transformed finally into enslavement for life."[3] In theory, the laborer is only bonded for a temporary period until the debt has been repaid. In reality, repayment is impossible and the debtor remains enslaved for life.

In some instances, individuals are compelled to place a child or another member of the family in bondage in order to repay a debt or to obtain a loan, as they are unable to complete all of the work to be done. This situation perpetuates the cycle of debt from one generation to the next. The practice of placing a child or other family member in bondage is sometimes identified as "pawning" or "pledging," while the situation of families which remain in debt bondage from one generation to the next is generally referred to as "chronic bondage."

The evidence of debt bondage received by the U.N. Working Group on Contemporary Forms of Slavery has mainly concerned rural areas. Indeed, the problem of bonded labor is viewed internationally as "an economic malady"[4] linked to rural unemployment. The International Commission of Jurists Seminar on "Rural Development and Human Rights in South Asia" held in

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[3] Temporary Slavery Commission Report to the Council, League of Nations Doc.A 17 1924 VI.b at 1 (1924) p.9.
[4] Whittaker, Benjamin. (1982). *Updating of the Report on Slavery Submitted to the Commission in 1966* UN Doc. E/CN.4 Sub.2/1982/20 5 July.

India during December 1982 concluded "landless and bonded laborers are among the weakest and most exploited sectors of the rural communities in South Asia."[5]

However, debt bondage is not exclusive to rural or agricultural laborers, since it also occurs in such industries as construction, quarrying, and brick making. The debt which results in the enslavement of the victim can be incurred in many different ways, notably including travel costs, subsistence and housing, or through the activities of a recruitment agency.[6] The definition of debt bondage in the *Supplementary Convention* is sufficiently wide to cover many migrant workers who either borrow money or unwittingly incur costs that employers or agents subsequently tell them that they must repay. This predicament can affect both migrant workers who leave their own country to seek work abroad, and those workers who leave their own community to seek work elsewhere within their own country. The definition of debt bondage in the *Supplementary Convention* was not drafted to deal specifically with the question of migrant workers, as the large flow of international migrants was not such a common phenomenon at that time.

This more recent manifestation of debt bondage, which affects migrant workers, is similar in its effect to the more traditional practice of bonded laborers who work on their creditor's land. In both instances, the victims cannot terminate the contract until the debt is repaid; they are equally vulnerable to abuse or coercion by their creditors. It has been observed that the connection between trafficking and forced labor practices "is nowhere more clear than in the practice of debt-bondage."[7] The victims are enticed, procured, or kidnapped to their new work place by the agent or trafficker and must, on arrival, repay the travel and subsistence costs incurred. Oftentimes women are pushed into prostitution in order to repay this money. The threat of violence and their total dependence on the creditor/slaveholder in the new environment in many instances forces workers into the sex industry.

Debt bondage or bonded labor today affects millions of adults and children in their own countries, as well as migrant workers throughout the world. It has been suggested that one of the reasons why these practices continue is the economic pressure to retain competitive export prices.[8] As a result, bonded labor systems continue to exist quite openly in many developing countries, despite legislation prohibiting the practice. They also flourish more clandestinely in industrialized countries, affecting migrant workers in general and illegal migrants in particular.

In view of the prevalence of bonded labor among the landless in rural areas, governments may in some instances have to reform the existing land tenure systems in order to comply with their obligations under the *Supplementary Convention* to prevent debt bondage. The U.N.'s Food and Agricultural Organization (FAO) has for many years been assisting in the reform of feudal and semi-

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[5] Report of the Working Group on Contemporary Form of Slavery at the 9th Session UN Doc. E/CN.4/Sub.2/Ac.2/1983/9 Annex II p.2.

[6] Whitaker, Benjamin. (1982). *Updating of the Report on Slavery Submitted to the Commission in 1966* UN Doc E/CN.4 Sub.2/1982/20 5 July, p.21.

[7] Wijers, Marjan and Lin Lap-Chew. (1997). *Trafficking in Women, Forced Labor and Slavery-like Practices in Marriage, Domestic Labor and Prostitution*, Summary April 1997 Utrecht, The Netherlands.

[8] Ehrenberg, Daniel S. (1995). "The Labor Link: Applying the International Trading Systems to Enforce Violations of Forced and Child Labor." *Yale Journal of International Law* (20) 361, 375.

feudal structures of land tenure and the abolition of debt bondage through the development of credit institutions.

Although the practice of debt bondage has in the past been associated mostly with landless laborers, it is now an international phenomenon affecting many trafficked and migrant workers. This means that a process of enslavement into debt bondage can begin in a country like India, but can then be transferred into rich countries of the global north. In the United States, a key mechanism for drawing workers into debt bondage is the H2-A visa for temporary agricultural or other workers. This visa allows workers to be brought into the country, normally through a labor broker, and placed with an employer. The worker is tied to the employer and not allowed to change jobs. While some employers obey the laws concerning treatment of H2-A workers, a lack of oversight or inspection means that those wishing to abuse and exploit workers often do so with impunity. Of the small number of Department of Labor inspectors assigned to H2-A visa recipients, very few have the language skills needed to interview them–although many H2-A workers speak Spanish, others may speak one of several East or South Asian languages. The result is that "contracts," rarely understood by workers, allow labor brokers and employers to charge inflated interest rates and other costs to the worker and thus to both bind them by debt and to dramatically increase the profits made through their exploitation. Skilled workers from India, such as welders and computer programmers, have been trapped in debt bondage in the United States through abuse of the loopholes within the H2-A visa system.

Finally, it is important to emphasize that whatever form it takes debt bondage is fundamentally a mechanism for drawing the vulnerable into slavery. It works on several levels, on one hand justifying and rationalizing enslavement under the cover of debt, and on the other hand pressing the (enslaved) debtor to accept their situation by placing the responsibility for repayment upon them. By manipulating both the external presentation of the crime and the internal understanding of the victim, it is a powerful criminal tool. The eradication of debt bondage requires that scholars, policy makes, and law enforcement come to understand its complexities and to unravel its system of enslavement. This compilation is an important step in that process.

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