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Article 23 - Protection against Discrimination

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Article 23 of the Indian Constitution lists the Right against Exploitation as a Fundamental Right. It suggests that child labour and other forms of human exploitation, such as human trafficking, slavery, forced labour, beggary, and bonded labour are forbidden under Indian law. In India, these types of human exploitation have long been a common practice. Any efforts to remove it by law enforcement authorities have been met with challenges. Laws and other measures were put in place to combat such evil deeds and help people who are coerced into engaging in these sorts of human exploitation. Article 23 will be fundamental in putting a stop to these activities in India. This article will go through how Article 23 of the Indian Constitution, which is pertinent to the Indian Constitution's "Protection against discrimination" about employment and labour dignity, helped to put an end to any such hideous practices in the country.

Keywords: *article 23, bonded labour, discrimination.*

INTRODUCTION

In this article, the author has discussed what is Article 23 and how is it allied with 'Protection against discrimination' concerning employment and dignity of labour under the Indian Constitution. Slavery and any other activity that infringes upon a person's freedom and dignity are prohibited by Indian law. Our country India has a responsibility to uphold the dignity of labour, and it must be in our nature. Our society's employees and labourers play a crucial role in implementing bright ideas created by intellectuals into practice. Such intellectuals are

frequently given more recognition, status, and financial rewards in our society. But the people who perform background tasks to make these intellectuals successful are frequently overlooked.¹

ARTICLE 23 - FORCED LABOUR AND HUMAN TRAFFICKING ARE PROHIBITED

Everyone has the right to work, to get a job better of their choice, to get fair and benign working conditions, and most importantly protection against unemployment. Also, everyone has the right to equal remuneration for equal effort without any form of discrimination. Whosoever works have a right to fair compensation that guarantees them and their families a life worthy of human dignity and is supported, when needed, by other forms of social security. The basic needs of a human person for survival – their rights, dignity, the standard of life, and even a better working environment – are frequently disregarded. On the other hand, some people still think they are better than other people. Numerous people become victims of forced and unwilful labour. Especially women and children become victims of human trafficking as a result, and they are made to work against their will for pitiful wages.

WHAT DO ARTICLES 23 (1) AND ARTICLE 23(2) OF THE INDIAN CONSTITUTION MENTION ABOUT FORCED LABOUR AND HUMAN TRAFFICKING?

Human trafficking, beggary, and other related types of forced labour are all prohibited by 'Article 23'. This right applies to both citizens and non-citizens of India.²

Article 23(1):³ Trafficking in human beings, soliciting for money, and other similar types of forced labour are forbidden as per the rules, and any violation of this rule is a crime subject to legal sanctions.

¹ Shrishti Kaushal, 'Right against Exploitation (Articles 23-24) Under Indian Constitution' (*iPleaders*, 4 January 2020) <<https://blog.iplayers.in/right-exploitation-articles-23-24-indian-constitution/>> accessed 10 November 2022

² 'Rights against exploitation under Articles 23-24 - Indian Polity' (*Byjus*) <<https://byjus.com/free-ias-prep/right-against-exploitation-articles-23-24/>> accessed 20 November 2022

³ Constitution of India 1950, art. 23(1)

Article 23(2): Nothing in this article prohibits the State from imposing mandatory service for public reasons, and when doing so, the State shall not discriminate solely based on religion, race, caste, class, or any combination of these factors.

According to the Global Slavery Index, 18.3 million Indians were estimated to be a victim of modern slavery in 2016. According to the 2018 Global Slavery Survey report, child labour and forced sexual exploitation have increased in the nation.

WHAT IS THE EXPLOITATION OF LABOUR UNDER ARTICLE 23?

Any kind of exploitation is prohibited by Article 23. In India, numerous underprivileged groups were compelled to perform manual and agricultural labour without receiving any compensation. The utilization of another person's services through coercion or unpaid labour is referred to as exploitation. There are many different forms of unpaid or forced work, including the following.

Human trafficking: the most widely spread form of forced labour, this is the term used to describe the buying and selling of people, typically for forced labour, forced prostitution, or sexual enslavement.

Beggary: Another major aspect of unpaid labour is also referred to as being a beggar. Begging is one of the most severe forms of forced labour. Particularly, children and youngsters are coerced into begging; they are illegally kidnapped and forced into it. In India, we can find beggars in every nook and corner. At times, children are coerced into begging by their parents, or they are sporadically abducted by human traffickers and made to perform unlawful labour.

Bounded Labourers: When someone is coerced into providing services to pay off an unrepayable loan or obligation, this is known as bonded labour. This is another forced and unpaid form of labour, which is unconstitutional under the provisions of article 23.⁴

⁴ Shrishti Kaushal (n 1)

Other types of forced labour: This contains additional forms of forced labour where the worker is paid less than the minimum wage. This includes enforced labour, where a person is required to work in exchange for meagre pay to pay off a debt, forced labour in jail when inmates who have been sentenced to hard labour are required to work for nothing, etc. Although the Constitution does not expressly forbid "slavery," because the terms "forced labour" and "trade" are there, Article 23⁵ has a broad definition.

LAWS PASSED BY PARLIAMENT IN PURSUANCE OF ARTICLE 23

Suppression of Immoral Traffic in Women and Girls Act of 1956, and The 1976 Bonded Labour System (Abolition) Act are the laws established by the Parliament under Article 23.

Suppression of Immoral Traffic in Women and Girls Act of 1956: The All India Suppression of Immoral Traffic Act (SITA), as it was formerly known, was amended in 1986 and the Immoral Traffic Prevention Act was passed. The Immoral Traffic (Prevention) Act, known as the ITPA, is a 1986 revision to legislation passed in 1956 as a response to India's signing of the United Nations' proclamation on the eradication of trafficking in persons in 1950 in New York.

The rules were designed to gradually criminalize various types of sex work to restrict and finally outlaw prostitution in India. According to this law, anyone who enters a brothel intending to sexually abuse trafficked victims is punished. The public would not be permitted to attend any of the offences included in Bill's list since they would all be tried on camera. Trafficking for prostitution is punishable under this bill. Anyone who participates in any chain acts, such as soliciting, transferring, housing, or receiving people for prostitution to get money, is severely punishable. Especially, if someone is found guilty of engaging a child in any such activity, they may face legal consequences and up to seven years in prison. Henceforth, the forced or illegal transfer of people for labour and earning money from such illegal activities is called human trafficking. Under Article 23(1)⁶ 'The Immoral Traffic (Prevention) Act, 1956 (ITPA)' of the Indian Constitution, human trafficking is prohibited in India.

⁵ Constitution of India 1950, art. 23

⁶ Constitution of India 1950, art. 23(1)

THE 1976 BONDED LABOUR SYSTEM (ABOLITION) ACT

What is Bonded labour? Bonded labour, often known as debt bondage, is a long-standing kind of slavery. The majority of the labourers are forced to work for the longest possible periods for the lowest possible wages, making it the worst type of modern slavery and lucrative industry. It also includes being required to work for free for a set period by an employer, frequently to pay off debt. When one's labour is required as a form of loan payback, one becomes a bonded worker. Although not all forced labour is bonded labour, the majority of it is, whether it involves adults or children. In short, when someone is coerced into providing services to pay off an unrepayable loan or obligation, this is known as bonded labour.

Example for Bonded labour: Mr. Ramasamy, a landowner from Hubli, Karnataka, is the owner of the ancestral home and the farmland there. They have been making loans to the residents of the village at a very high-interest rate from the time of their ancestors. If the villagers are unable to pay the debt, they will be required to repay it by providing Mr. Ramasamy and his family with a variety of other services.

Mr. Ramaswamy, a former landlord who is now a businessman in Bangalore, brings Mrs. Lakshmi under duress from Hubli, Karnataka, to perform household duties for his family. He expects Mrs. Lakshmi to work from 5:00 am to 11:00 pm every day, and on occasion, he will ask her to remain up late to take care of his ill kids and elderly parents. For her efforts, he merely pays her money each month. Mr. Ramasamy has violated the law and spirit of the Indian Constitution under the Bonded Labour Act and the Code on Wages.

In India, bond labour has been prohibited since 1976. Thus, it is now against the law to withhold anyone for receiving forced labour from them by paying no wages or very meagre wages. As a result, the Article 23⁷ provision declares "bound labour" unconstitutional. Recent studies show that bonded labour is still common in India even though the system has been technically banned and criminalized. According to a 2016 survey, 351 of the 743 spinning mills in the Tamil Nadu state employ certain schemes, such as **Sumangali schemes** for bonded labour. In these schemes,

⁷ Constitution of India 1950, art. 23

it has been reported that dishonest recruiters prey on families in economically underprivileged rural areas of India and convince the parents to send their daughters to spinning mills by promising them good working conditions and a lump sum payment, especially at the time of their marriage after the end of their contract, which could help cover dowry expenses for the girls.

In these mills, young women are subjected to abusive working conditions, which include movement restrictions, the confiscation of mobile phones, and the withholding of salary and other payments in exchange for the promise of a one-time payment. They are forced and obligated to accept overtime and work a total of 60 hours per week throughout the year. Consequently, these women employees are compelled to stay with their respective employers, because in case if they would leave in between the contract, they would be losing the lump payment that had been promised to them by their employers. Sadly, many of these women employees employed under these deceptive schemes quit their jobs early, usually due to illness caused by long working hours, henceforth they never receive the promised lump sum payout. In the same way, bounded labour practices are followed to a large extent in granite quarries. In these quarries, to trap labour, wage advances and loans with high rates of interest are provided.⁸The interest rates will range anything between 24 to 36%, and the poor labourers will not be able to pay back, hence they will have to bind to the work.

A study on bonded labour practices at Rajasthani sandstone quarries was conducted. In this study, it was found that workers who owe a certain sum of money to their employers or contractors are forced to work for little to no pay until these debts are cleared. In this way, they are trapped in lifelong debt bondage. The worst part of this is that many times if the labourer retires due to old age or occupational ailments, his/her immediate kin has to replace him and take their debt. Sometimes this may lead to an intergenerational transfer of debt.

Thus, To eradicate bonded labour, The 1976 Bonded Labour System (Abolition) Act was commenced with the following characteristics; Development of district-level committees and

⁸ N.S.Tanvi, 'The Face of Exploitation' (*The Hindu*, 11 May 2020) <<https://www.thehindu.com/opinion/op-ed/the-face-of-exploitation/article31551780.ece>> accessed 11 November 2022

plans; Penalties of up to three years and a fine; Release and discharge of any property attached to the bonded debt as of the date the Act came into effect; Employer cannot evict the bonded labourers from the housing provided; and Identification and rehabilitation of bonded labour.

STATUTORY PROVISIONS AGAINST BONDED LABOUR

Section 370⁹ of the Indian Penal Code. After the Criminal Law (Amendment) Act 2013 went into effect, Section 370 of the Indian Penal Code was replaced with Section 370 and 370A IPC. Anyone who does any of the following actions: imports, exports, confiscates, purchases, sells, or disposes of any person as a slave; accepts, receives, or holds a person as a slave against his will; or detains a person as a slave against his will; will be punished with imprisonment for a term not less than three years and may be extended to seven years; and will also be subjected to a penalty/fine. Additionally, this provision declares "bound labour" unconstitutional.

DIFFERENCE BETWEEN 'FORCED LABOURERS' AND 'BONDED LABOURERS' UNDER ARTICLE 23 OF THE INDIAN CONSTITUTION

In Bonded labour, people are made to work to pay off debts. They are deceived into working for little or no payment of wages because they are helpless to pay off their debt. In this case, if a person is bound by debt, and tries to escape, they will likely face coercion, assault, and intimidation. On the other hand, Forced labour means compelling people to work against their will by the use of violence or threats, as well as more furtive methods like accumulating debt, keeping their identification documents, or threatening to report the workers to immigration officials in case of illegal immigrant workers. For instance, many Bangladeshi and Nepali migrants are subjected to forced labour in several industries in India, such as brick kilns, zari works, carpet weaving, etc.

In India, both local and migrant domestic workers are pushed into forced labour. They are obligated to carry out intense physical jobs and failing to do so results in circumstances of bad conduct and confinement. In most cases, forced labourers are employed in private homes or

⁹ Indian Penal Code 1860, s 370

petty businesses and rely on their employers to provide them with their necessities, including food and shelter.

Case Study: It was recently brought to light by the instance of a Bangladeshi migrant domestic worker who was held captive and subjected to physical abuse by a family in Noida, Uttar Pradesh. The family not only manhandled and abused the women worker, but they even demanded payment for her unpaid salary. The majority of female domestic workers move from India's least developed regions, such as Jharkhand, West Bengal, Haryana, Gulbarga, and Assam to urban areas where burgeoning middle-class families have an increased demand for domestic help.

OTHER TYPES OF FORCED LABOURERS SUCH AS;

Forced marriages:¹⁰ In India female foeticide is a widespread practice that has contributed to a shortage of women, as is shown in the state of Haryana, where there are only 830 females for every 1,000 males. As a result, they obtain brides from the impoverished eastern and southern regions of the nation, where the ratio of girls to boys is far higher. Families will sell young girls into marriage for a pitiful sum, which results in horrific physical abuse, rape, exploitation, and forced labour on the side of the so-called husband who has purchased the bride in exchange for money.

Organ Trafficking: In India, people are in severe need of organ donors since kidney and liver disorders are becoming more common. However, finding donors is a difficult and expensive task. Moreover, there is a growing imbalance between the supply and demand for organs. Because only an immediate relative can be a living donor under the 2011 Transplantation of Human Organs (Amendment) Act. So, Instead of using legal means in obtaining organs, many have turned to organ trafficking, which involves secretly removing organs from other victims (including, poor people, abducted children, migrant workers, etc) and selling them. Organ

¹⁰ Abhishek Sahu, 'As PM Modi encourages WFH ecosystem, here's what law has to say' (*Money Control*, 01 September 2021) <<https://www.moneycontrol.com/news/business/as-pm-modi-encourages-wfh-ecosystem-heres-what-law-has-to-say-9118101.html>> accessed 12November 2022

traffickers are increasingly using unlawful methods and fabricating documentation to represent donors and receivers as family. This is a problem that is getting worse.

CONCLUSION

From the very beginning of time, stronger and more influential people have always abused the poor and helpless. Exploitation is a widespread practice in almost every nook and corner of our country. In many parts of the nation, the upper castes and wealthier classes take advantage of the poor in various ways. This is evident in the way that employers enlist them through fraud and debt servitude. Such exploitation needs an end. And it is high time to stop these hideous practices and punish the culprits, because if not these disgusting practices will destabilize both the well-being and growth of the entire country.