

**THE CONCEPT OF
HUMAN TRAFFICKING,
FORCED LABOUR AND
EMPLOYMENT OF
CHILDREN IN THE LIGHT
OF CELEBRATED CASES**

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CHAPTER I

I. INTRODUCTION

[Article](#) 23 of Indian [Constitution](#) prohibits the trafficking in human beings and forced labour. And [Article](#) 24 prohibits the employment of children in factories. It says that No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.¹

The Government of India penalizes trafficking for commercial sexual exploitation through the Immoral Trafficking Prevention Act (ITPA). Prescribed penalty under the ITPA ranging from seven years' to life imprisonment are sufficiently stringent and commensurate with those for other grave crimes. India also prohibits bonded and forced labour through the Bonded Labor Abolition Act, the Child Labor Act, and the Juvenile Justice Act.

Indian authorities also use Sections 366(A) and 372 of the Indian Penal Code, prohibiting kidnapping and selling minors into prostitution respectively, to arrest traffickers. Penalties under these provisions are a maximum of ten years' imprisonment and a fine.

Bonded labour and the movement of sex trafficking victims, may occasionally be facilitated by corrupt officials. They protect brothels that exploit victims, and protect traffickers and brothel keepers from arrest and other threats of enforcement.²

The article 23 embodies two declarations, First, that traffic in human beings, begar and other similar forms of forced labour are prohibited. The prohibition applies not only to State but

¹ <http://www.legalservicesindia.com/article/article/child-labour-in-indian-society-257-1.htm>

also to private persons, bodies and organizations. Second, any contravention of the prohibition shall be an offence² punishable in accordance with law. under Article 35 of the constitution laws punishing acts prohibited by this article shall only be made by the Parliament, though existing laws on the subject, until altered or repealed by parliament, are saved.

The general understanding was that right secured by [Article 24](#) will hardly be effective in the absence of legislation prohibiting and penalizing its violation. However, Supreme Court clearly stated that [Article 24](#) “must operate proprio vigore” even if the prohibition lay down in it is not “followed up by appropriate legislation.”³

The State shall, in particular, direct its policy towards securing the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Also the State shall, direct its policy towards securing the given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment to the children.

Traffic in human beings means to deal in men and women like goods, such as to sell or let or otherwise dispose them of. It would include traffic in women and children for immoral or other purposes. The immoral Traffic (Prevention) Act, 1956 is a law made by Parliament

² http://en.wikipedia.org/wiki/Human_trafficking_in_India

³ <http://www.legalservicesindia.com/article/article/child-labour-in-indian-society-257-1.htm>

under Art. 35 of the Constitution for the purpose of punishing acts which results in traffic in human beings.⁴

The expression “traffic in human beings” is evidently a very wide expression including a prohibition of trafficking in women for immoral or other purposes. At the same time, Supreme Court held that it will not be possible or practicable to call for the CBI to make a roving enquiry throughout the country, but issued directions to various State Governments to take speedy action to eradicate child prostitution. Directions was also issued for rehabilitation of young girl rescued from brothels. A law for suppression of such traffic would be valid by reason of the present Article even though it may restrict the freedom of business or profession guaranteed by Art. 19(1) (g).

Though the word ‘slavery’ is not used in thi9s Article, the expression ‘traffic in women beings’ is wide enough to include ‘traffic in slaves’, which expression is used in s. 371 of the I.P.C.

⁴ AIR 1987 MP 126

II.CONSTITUTIONAL PROVISIONS

Right against Exploitation

23. Prohibition of traffic in human beings and forced labour.—(1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

24. Prohibition of employment of children in factories, etc. —No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment⁵

⁵ CONSTITUTION OF INDIA; BARE ACT

III. OTHER CONSTITUTIONS

U.S.A. The Thirteen Amendment (1865) to the Constitution of the United States says:

“(1) Neither Slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the united States, or any place subject to their jurisdiction.”

Art.6 of American Convention of Human Rights read as follows:

“(1) No one shall be subject to slavery or involuntary servitude, which one prohibited in all their forms, as are slave trade and traffic in women.

(2) No one shall be required to perform forced or compulsory labour. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes in deprivation of liberty at forced labour, the carrying out of such sentence imposed by a competent court is prohibited. Forced labour shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.

(3) For the purpose of this Articles, the following do not constitute forced or compulsory labour:

(a) work or service normally required of a person imprisoned in execution of sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any person performing such work shall not be placed at the disposal of any private party, company or judicial person;⁶

⁶ CONSTITUTIONAL LAW OF INDIA, H.M. SEERVAI, 4TH EDITION

(b) military services, and in countries in which conscientious objectors are recognized, national services that the law may provide for in lieu of military service;

© service extracted in time of danger or calamity that threatens the existence or the well-being of the community; or

(d) work or services that form part of normal civic obligation.”

‘Involuntary servitude’ has been interpreted to include any kind of “control by which the personal services of one man is disposed of or served for another’s benefit.” Slavery, it was said by JUSTICE BROWN in *Plessy v. Ferguson*,¹⁶³ US 537: implies involuntary servitude – a state of bondage; the ownership of mankind as a chattel, or at least the control of the labour or services of one man for the benefit of the another, and the absence of a legal right to the disposal of his own person, property or services.

It means the condition of one who is compelled by force, coercion and against his will to work for another with or without remuneration.⁷ But the involuntary servitude that that is forbidden is such as would not be tolerated by the free principles of common law and would not include the following:

- (i) Regulation of services in the domestic relations.
- (ii) A statute requiring seamen to carry out the terms of their agreement, inasmuch as their employment demands, special regulations.
- (iii) Duties of citizenship, such as compulsory military service, compulsory work on the public highway; compulsory jury service.
- (iv) Forced labour as a punishment for crime, or as a part of prison discipline.
- (v) Punishment for or injunction against an illegal strike.

⁷ RAMNATHAIYER’S ADVANCED LAW LEXICON, 3rd Edn. 2005, Book No.2, p.2455

The protection from involuntary servitude is not confined to members of any particular race but extent to any individual.

It follows from the above guarantee that above labourer or worker has the right to quit his work and that he cannot be compelled to work under any employer, even though he may liable in damages for breach of contract.

CL (2) of Thirteen Amendment empowers Congress “to enforce this article by appropriate legislation.” Under the above provision, Congress has prohibited (1867) ‘peonage’ or the voluntary or involuntary service or labour of any person in liquidation of any debt or obligation. *Clyatt v. U.S.*,⁸ The provision of the Thirteen Amendment have, therefore, to be read along with this statute.

Even where there is a voluntary contract to render service in payment of a debt, the State cannot compel the debtor to render that service by punishment or other coercive process, though the debtor may be liable in damages for the breach of the contract. *Clyatt v. U.S.*,⁹ “It may not make failure to labour in discharge of a debt any part of a crime. It may not directly command involuntary servitude, even if it was voluntary contracted for”, and the court would quash a conviction even where the accused pleads guilty to a statute which makes it a crime to refuse to serve under any such contract.

LORD DENNING in his book¹⁰ has explained what is the nature of slavery:

“A man who was a slave was obliged to serve his master for the whole of his life. He received in return food, clothing and shelter, by no remuneration by way of wages. If he did not obey the orders, the master could punish him by whipping or strokes or putting him on short rations. If the slave grew anything or made anything it belonged ti his master. It a

⁸ (CONSTITUTIONAL LAW OF INDIA,H.M. SEERVAI,4TH EDITION

⁹ (ibid

¹⁰ “LANDMARKS IN THE LAW” (pp. 214-19)

women slave bore children of any father- they belonged to her master. The master could sell his slave for money and transfer all his right over the slave to the purchaser. If the slave was ill treated, he had no recourse to the courts of law for redress. He had no right no locus-standi- to sue anyone. He was the property of his master- on the same footing as his horse or his cow or his table or chair.”

IV.INTERNATIONAL CHARTERS

(A) Art. 4 of the Universal Declaration of Human rights says:

“No one shall be held in slavery or servitudes; slavery and the slave trade shall be prohibited in all their forms.”

(B) Art.8 of the covenant on Civil and Political Rights,1966, says:

“1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour.

(b) Paragraph 3(a) shall not held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance for hard labour in oursance of a sentence to such punishment by a competent court.

(c) For the purpose of this paragraph the term ‘forced or compulsory labour’ shall not include:

(i) Any work or service, not referred in sub-paragraph (b) normally required of a person who is under detention in consequence of a lawful

order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligation.

Freedom from slavery is one of the most fundamental human rights and performs an important declaratory function. But the exception to the article does allow particular categories of persons to be compelled to perform particular work. Citizens may be required to perform particular service in states (unlike the U.K.) still so require; prisoners may be expected to work; jury service may be compulsory and community service is a valid method of official punishment.¹¹

The Human Rights Act, 1998, (Art.4) also prohibits slavery and forced or compulsory labour: Slavery and servitude as mentioned in the Universal Declaration, European Convention are different. Slavery denotes total ownership, whereas servitude denotes less for reaching restraints; it is concerned with the labour conditions and inescapable nature of the service.¹²

¹¹ SEE CIVIL LIBERTIES, LEGAL PRINCIPLES AND INDIVIDUAL FREEDOMS BY EDWIN SHORTS and CLAIRE DE THAN, 1998 Edn. At p. 460

¹² SEE CIVIL LIBERTIES by HELEN FENWICK, 1995 Edn, p. 39

INDIA

Exploitation takes place when a woman or a child is subjected to the commercial or immoral purposes of some powerful man or group, taking advantage of the natural disability or helplessness of the victim.¹³ It means the utilization of persons for one's own ends is opposed to the dignity of the individual to which the preamble to our Constitution refers. It is opposed to the directives Principles of State policy, i.e., Art 39(e) and (f).¹⁴

It means the action of exploiting, i.e., making use of meanly or unjustly for one's own advantage.¹⁵ It is wrong against human dignity and is a violation of 'social justice' which is assured by the very Preamble of the Indian Constitution.

¹³ BLACK'S LAW DICTIONARY; WEBSTER'S WORLD DICTIONARY

¹⁴ H.M. SEERVAI ON CONSTITUTIONAL LAW OF INDIA, Vol. II, p.1234, 4th Edition

¹⁵ RAMNATHAIYER'S ADVANCED LAW LEXICO, 3rd Edition 2005, Book 2, p. 1724

CHAPTER II

I.Right against Exploitation

23. Prohibition of traffic in human beings and forced labour.—(1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.¹⁶

¹⁶ CONSTITUTION OF INDIA, BARE ACT

II. Scope of Cl.(1): Prohibition of traffic in human beings

This clause prohibits not only forced labour, but also 'traffic in human beings', which is evidently a very wide expression. It would include not only the prohibition of slavery but also of traffic in women for immoral or other purposes.---Raj Bahadur v. Legal remembrance, Govt. of West Bengal,¹⁷. Trafficking in human beings has been interpreted to include a contract for sale of a woman to a man for marriage or concubinage, though not for prostitution even when such sale is supported by caste custom. The court took the above view taking into consideration Arts.1 and 4 of Universal Declaration and Art.8 of the International Covenant.

Again, while the American Constitution (13th Amendment,). Expressly prohibits slavery or involuntary servitude, that has not been done under the present Article of Indian Constitution presumably because s. 370 of the I.P.C. penalizes the exportation, buying, selling, use and detention of a person 'against his will as a slave'; and kidnapping a person for the purpose of slavery, is an offence under s. 367, I.P.C.

Traffic in women: A new form of Slavery

INTERNATIONAL

While the original form of slavery, that is, purchasing human beings for life-long servitude for labour, has practically disappeared in modern times, it is surprising that it has been replaced by a new form of slavery which is no less injurious for human civilization, viz., the disposal of women for immoral purposes, i.e., a trade in human flesh.

It is an international scourge which operates through markets set up in different countries throughout the world where women were sold to be prostitutes, menials and even brides,¹⁸

¹⁷ AIR 1953 Cal 522

¹⁸ DURGA DAS BASU; Commentary on Constitution of India;8th Edition p.3398

and those markets operate, through various modern devices and cause the transportation of women from one country to another.

(A) TRAFFIC IN HUMAN BEINGS

The expression traffic in human beings, commonly known as slavery, implies the buying and selling of human beings as if they are cattle, and such a practices constitutionally abolished.

Traffic in women for immoral purposes is also covered by this expression¹⁹

1. Central Government laws related to Trafficking

Indian Penal Code sections relating to trafficking in persons

361 Kidnapping from lawful guardianship (of any female minor under age 18 or any male minor under age 16) 362 Abduction

363-A Kidnapping or maiming a minor for purposes of begging

365 Kidnapping or abducting with intent secretly and wrongfully to confine a person

366 Kidnapping, abducting, or inducing a woman to compel her marriage, etc.

366-A Procurement of minor girl

366-B Importation of girl from foreign country

367 Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.

370 Buying or disposing of any person as slave

371 Habitual dealing in slaves

372 Selling minor for purposes of prostitution, etc.

373 Buying minor for purposes of prostitution, etc.

374 Unlawful compulsory labor

375 Rape²⁰

376 Punishment for rape

376-C Intercourse by superintendent of jail, remand home, etc.

377 Unnatural offenses (sexual abuse of a male child)

¹⁹ Indian Constitutional Law, M.P. Jain; 2005 Edn. p.1190

²⁰ <http://www.dol.gov/ilab/reports/child-labor/india.htm>

The Immoral Traffic (Prevention) Act of 1956²¹

This act, known as the ITPA, makes trafficking of children and women for commercial sexual exploitation an offense. It prohibits certain activities of an exploitative nature associated with organized prostitution of women and children.

The Bonded Labor (Abolition) Act of 1976²²

The act, referred to as the BLA, formally abolishes the bonded labor system, including traditional systems of peonage or debt bondage. The legislation specifies the various debts from which bonded laborers are now exempt and outlines punishments and trial procedures for offending users of bonded laborers.

The Child Labor (Prohibition and Regulation) Act of 1986²³

The CLA is the most comprehensive legislation on child employment, consolidating various acts that prohibited or regulated the employment of children below 14 or 15 years in certain industries. These acts included the Children (Pledging of Labour) Act (1933), Employment of Children Act (1938), Factories Act (1948), Minimum Wages Act (1948), Plantation Labour Act (1951), Mines Act (1952), Merchant Shipping Act (1958), Apprentices Act (1961), Beedi and Cigar Workers (Conditions of Employment) Act (1966), and

Contract Labour (Regulations and Abolition) Act (1970).²⁴

²¹ <http://www.dol.gov/ilab/reports/child-labor/india.htm>

²² <http://www.dol.gov/ilab/reports/child-labor/india.htm>

²³ <http://www.dol.gov/ilab/reports/child-labor/india.htm>

²⁴ <http://www.dol.gov/ilab/reports/child-labor/india.htm>

The CLA repeals the Employment of Children Act (1938) and comprehensively prohibits the employment of children below age 14 in hazardous processes and occupations. The CLA provides a schedule of occupations and processes in which employment of children is banned. In employments where children are not prohibited from working, it regulates their working conditions.

The Juvenile Justice (Care and Protection) Act of 2000²⁵

This Act, known as the JJ Act, is an important piece of legislation, making provisions for care, protection and treatment of child victims of trafficking and other crimes. Catering to juveniles' development needs, it calls for adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children. It requires their rehabilitation through various institutions which it establishes. The JJ Act consolidates and amends preceding laws pertaining to juvenile offenders and children in need of care, protection and treatment. It sets a uniform age of 18 years, below which both boys and girls are to be considered children (Chapter 1, Section 2.k).

2. State government laws and administrative orders related to trafficking²⁶

Uttar Pradesh and Bihar, like most other states, do not have state-specific anti-trafficking legislation. To date Goa is the only state that has passed anti-trafficking legislation. The enforcement of Indian anti-trafficking laws enacted through the ITPA, BLC, CLA, and JJ Act is the responsibility of each state. However, there are significant limitations in the Uttar Pradesh government's ability and desire to administer the rescues, prosecution, protection,

²⁵ <http://www.dol.gov/ilab/reports/child-labor/india.htm>

²⁶ <http://www.dol.gov/ilab/reports/child-labor/india.htm>

and rehabilitation measures called for in these laws. Until 2002, there was a Juvenile Justice Court in U.P., but it was abolished that year after new rules (Juvenile Justice Board Rules of 2002) required the state to form a Juvenile Justice Board according to Ch. II, Sec. 4 of the Juvenile Justice Act. At the time of the writing of this report, the U.P. government has not yet constituted such a board at the state or district level, so the state is unable to hear cases involving juveniles. U.P. has also yet to form district Child Welfare Committees to replace Juvenile Welfare Boards as defined in the JJ Act.

BONDED LABOUR

A serious socio-economic problem in India has been that of bonded labour.

Under the bonded system, one person is bonded to provide labour to another for years and years until a debt is supposed to be wiped out. The bonded labour is unconstitutional under Art.23 as it can be regarded as a form of forced labour.

In spite of the constitutional and laeal provisions abolishing bonded labour, the implementation of the law has been very trady at the administrative level as all kind of vested interests make themselves felt in this area. There are many difficult problems involved in eradicating such labour, e.g., problem of indentifying bonded labour, problem of rehabilitation after release from the bondage, etc.

A big problem in India is that even when beneficent laws are passed by the legislature in the interest of the poor, there remains administrative resistance and inertia in implementing such laws, proved the administration to effectively implement such laws and supervise the implementation process.

THE SYSTEM OF BONDED LABOUR

That there was such a practice prevalent in certain parts of India²⁷ after independence, would be evident from the Statement of Objects and Reasons of a Bill brought by the Rajasthan Legislative Assembly to abolish to abolish the system of sagri of hali, as follows:

“The sagri or hali system of advancing loans prevails in some parts of the State. Under this system a creditor gives a loan to a debtor on the condition that until the loan is repaid with interest the debtor or any other member of his family shall render labour or personal service to the creditor or any other person nominated by him. By the practice of this system several families have practically become slaves and Government considers it desirable to abolish this system and penalize those who advance money under it.”²⁸

The sweep of ‘forced labour’ in Art.23(1) is vide than that of s.374, I.P.C., because ‘forced labour’ in Art. 23(1) is to be understood in the context of ‘begar and other similar forms of’ in that Clause. Hence, if a person enters into a contract to serve another person for a nominal remuneration or without remuneration, that may not be ‘unlawful’ under s. 374, I.P.C., but may yet contravene Art. 23 (1). Of course, Art. 23 (1) is not self-executory but requires legislation to implement it.²⁹

Secondly, even where no force or coercion was physically applied, involuntariness or compulsion may be inferred by a court from the circumstances, having regard to the relationship between the parties, e.g., debtor and creditor, and the nature of the services or personal labour stipulated from repayment of the debt.³⁰

In fact even if remuneration is paid, but the labour was forced and not supplied willingly, it would violate Art. 23.

Parliament has enacted the comprehensive Bonded Labour System (Abolition) Act,1976,on these premises. This Act defines [s. 2(g)] the forced, labour under under which

²⁷ Vide Bonded Labour System (Abolition) Act, 1976.

²⁸ Durga Das Basu;8th Edn; pg, 3409 – 3410

²⁹ see the Bonded Labour System (Abolition) Act, 1976.

³⁰ Durga Das Basu;8th Edn; pg. 3410 para 3.

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 obtained by him or any of his ascendants or descendants; or (ii) in pursuance of any customary³¹ or social obligation; or (iii) in pursuance of any obligation devolving on him by succession; (iv) by reason of birth in a particular caste or community; or (v) for any economic consideration received by him or by any of his ascendants or descendants the debtor would be bound to do any of the following acts:

- (a) To render to the creditor, for a specified or unspecified period, labour or service to the creditor, by himself or through any member of the debtor's family without wages or for nominal wages;
- (b) To forfeit his freedom or employment or other means of livelihood;
- (c) To forfeit his right to move freely throughout India;
- (d) To forfeit the right to appropriate or sell a market value any of his property or anything produced by him or his family.

This Act abolishes the bonded labour system and discharges all debts and obligation to render labour, etc., under any such practice, and makes the enforcement of any such contract by a creditor or other person, an offence punishable by an Executive Magistrate, and the jurisdiction of civil courts is excluded.

The Supreme Court has held that, in view of Art. 21, read with Art. 23, it is the constitutional obligation of the State to take necessary measures not only to release³² bonded labourers from their bondage but also to rehabilitate them so that they may enjoy their constitutional right to live with human dignity.

Neeraja v. State of M. P.³³,. It was held that if any advance is paid and amount is due to the kiln-owner, from the workmen, that cannot justify their detention in the premises. They

³¹ Durga Das Basu; 8th Edn; pg. 3410 para 4

³² AIR 1984 SC 802

³³ AIR 1984 SC 1099

must be allowed to live the premises. It was further directed that in case they need any rehabilitation assistance, the District Magistrate will take necessary action. **Ram Pal v. Maishi Raj Kumar**,³⁴.

In **Neeraja Choudhary v. State of M.P.**³⁵

‘Whenever it is found that any workmen is forced to provide labour for no remuneration or nominal remuneration, the presumption would be that is a bounded labour unless the employer or the State Government is in a position to prove otherwise by rebutting such presumptions’

The Court has insisted not only on the release of the bonded labourers, but has also laid stress on their proper rehabilitation. The question of rehabilitation of bonded labourers after heir release from bondage of a crucial importance, for, otherwise, these labourers will again relapse into bondage if not properly rehabilitated. The Court has squarely placed the whole responsibility on the state.

Officially apathy towards rehabilitation pf labourarers after release from bondage in stone quarries under an order of the Supreme Court in **Bandhu Mukti Morcha**.³⁶ .they were not properly rehabilitated and their sad plight after release from bondage was brought to the notice of the Supreme Court by Neeraj Chowdhary, the Civil rights corresponds of the Statesman Daly. It was claimed that it was the obligation of the State Government to provide rehabilitation assistance to these helpless people. The Court squarely placed the responsibility on the State Government and directed it to provide rehabilitation assistance to the people within a month with the following observations:

“ Poverty and destitution are almost perennial features of Indian rural life for large number of unfortunate, ill-starred humans in this country and it would be nothing

³⁴ (1982) 2 SCC 349

³⁵ Constitutional Law of India; H.M. SEERVAI;4th edn p.1241

(84) A.S.C. 1099, (1984) 3 S.C.R. 243

³⁶ AIR 1984 SC 802; (1984) 2 SCR 67

short of cruelty and heartlessness to identify and release bonded labourers merely to throw them at the mercy of the existing social and economic system which denies to them even the basic necessities of life such as food, shelter and clothing..... It is therefore imperative that neither the Government nor the Court should be content with merely securing identification and release of bonded labourers but every effort must be made by them to see that the freed bonded labourers are properly and suitably rehabilitated after identification and release”.

The Court has emphasized that it is the “plainest requirement of Arts. 21 and 23 of the Constitution that bonded labourers must be identified and released and , on release, they must be suitably rehabilitated”.

The Court has emphasized that any failure on the part of the Government in implementing the provisions of the Bonded Labour System (Abolition) Act would be the clearest violation of Art.21 and Art.23. The Court has further emphasized that this Act was enacted by Parliament pursuant to the Directive Principles of State Policy with a view to ensuring basic human dignity to the bonded labourers.

The petitioner, a civil rights correspondent of “The Stateman’, a leading newspaper in India, wrote a letter one of the Sup. Ct. judges in relation to the rehabilitation of 135 freed bonded labourers. The letter was treated as a petition. However, the Court appointed Mr. Mukhti, Adv. To appear on behalf of the petitioner, and the advocate filed a regular Writ Petition in substitution of the letter. The petitioner annexed an article written by her and published in the Stateman in which she set out the grim condition of the freed bonded labourers who had not been rehabilitated as required by s. 14 of the Bonded Labour System (Abolition) Act, 1976 (“Abolition Act”). Bhagwati J., for himself and A. N. Sen, J., referred to the judgment the Bandhu Mukti Morcha Case in which he had held that the Court would presume that a person doing forced labour was a bonded labourer. It is not necessary to go into the detailed

averments made by the State in reply. It is enough to say that Bhagwati J. held that it was the requirement of Arts.21 and 23 of the Constitution that bonded labour must be identified and released, and on release it must be suitably rehabilitated. Accordingly, he gave directions to see that steps were speedily taken to rehabilitate the 135 bonded labours.

In his concerning judgement Sen J. put their legal issue tersely by observing that the real grievance of the petitioner was based on her personal knowledge in relation to the non-implementation of S.14(1) (b) of the Abolition Act, to rehabilitate freed labourers Sen J. observed

“The sad and woeful tale is narrated in the Writ petition about the plight of the bonded labourers set free pursuant to the orders of this Court for not taking effective measures enjoyed by law for their rehabilitation. It becomes the duty of the Court to see that the legislative provisions regarding their rehabilitation are properly implemented and these poor and miserable persons are allowed to enjoy the benefit which the law and the Constitution of the land afford to them.”

It will be seen that the issue was a simple one. The Act imposed a duty on the vigilance Committee to see that a freed bonded labourers were rehabilitated. That duty was not being discharged. A mandamus therefore clearly lay to compel the Vigilance Committee to discharge the duty which was clearly incumbent upon it.

Bandhu Mukti Morcha v. Union of India,³⁷.

The slow implementation of the law banning bonded labour has given rise to several judicial pronouncement by way of public interest litigation.

In *Bandhu Mukti Morcha*--- in an action brought in the Supreme Court by an organization dedicated to the cause of release of bonded labourers, the Supreme Court has characterized

³⁷ AIR 1984 SC 802; (1984) 2 SCR 67

the system of bonded labour under which one person is bonded to provide labour to another for years and years until an alleged debt is supposed to be wiped out which never seems to happen during the life time of the bonded labourer as “ totally incompatible with the new egalitarian socio-economic order which we have promised to build and it is not only an affront to basic human dignity but also constitute gross and revolting violation of constitutional values”.

The Court has linked Arts.23 and 21 in the context of the bonded labour and observed. “It is the Fundamental Right of every one in this country, assured under the interpretation given to Art 21 to live with human dignity, free from exploitation.” where legislation has already been enacted investing the right of the workmen to live with human dignity, with concrete reality and context, “the state can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live wit human dignity enshrined in Art 21”

BHAGWATI.J., speaking on behalf of the Supreme Court, has picturesquely characterized the process of identification and release of bonded labours “as a process of discovery and transformation of non-beings into human beings”. BHAGWATI J., has emphasized that this is a “constitutional imperative” that ‘the bonded labourers must be identified and released from the shackles of bondage so that they can assimilate themselves in the main-stream of civilized human society and realize the dignity, beauty and worth of human existence.”

The factual setting in which the Bandhu Mukti Morcha case arose was as follows: A large number of labourers were working in stone quarries in the state of Haryana under in-human and pathetic condition; no medical aid was provided to them, no safety rules to were observed and they lived in sketchy torn huts without roofs; the state authorities were not properly enforcing the relevant laws. The Supreme Court ordered release of these persons fro bondage.

The Court emphasized upon the importance of rehabilitation of the released bondage labourers otherwise their condition would be much worse than before. In the instant case, the Court directed State government “ to draw up a scheme or programme for a better and more meaningful rehabilitation of the freed labourers”.

The court also took cognizance of certain complaints of the workman at stone quarries, e.g., non-provision of our drinking water, non-provision of conservancy facilities, absence of medical facilities, etc. the Court gave due directions to remove these complaints and provide for necessary facilities to the workmen.

Prohibited:

The first part of the Article is couched in general language. If an individual imposes begar or forced labour upon another, he would be punishable according to law which is contemplated by the second part of the Article. On the other hand, if the State passes a law which, in effect, imposes forced labour or gives its sanction to a contract or forced labour.

Punishable in accordance with law

Existing law.S. 374 of the Indian Penal Code says:

“whoever unlawfully compels any person to labour against the will of that person, shall be punished.....”.

Legislations by Parliament. The Bonded Labour System (Abolition) Act, 1976.³⁸

In **Sanjit Roy v. State of Rajasthan**³⁹ . the petitioner complained of the violation of the Minimum Wages Act, 1948., under the following circumstances: The minimum wage for construction work in Rajasthan was Rs. 7 per day. However, the State of Rajasthan contended that the obligation to pay the minimum wage was excluded by s. 3, Rajasthan Famine Relief Work Employees (Exemption of Labour laws) Act,1964, the (‘[the Exemption Act”). The validity of the Exemption Act was challenged on the ground that it violated Arts. 14 and 23.

³⁸ Ibid;pg.20

³⁹ Constitutional Law of India;H.M. SEERVAI p.1241 (83) A.S.C. 328, (1984) 2 S.C.R. 271

This challenge produced a difference of opinion between Bhagwati J. and Pathak J. who constituted the Bench. Bhajwati J. found that the Exemption Act violated Art. 23, and he found it unnecessary to consider the challenge under Art. 14 pathak J. preferred to rest his judgment on violation of Art. 14. The facts of the case are too complicated to be set out here. It is submitted that the judgment of Pathak J. is to be preferred to that of Bhagwati J. because of the presumption which Bhagwati J. drew in the Bonded Labourers Case cannot reasonably be extended to the facts of the present case.

The bonded labour cases, which were filed as a public interest litigation, and the way in which the Supreme Court dealt with them show the same solicitude to protect life and personal liberty against the hardships inflicted on the helpless people by an abuse of power and by a failure to exercise the power conferred on the state by various statutes.

The decision of the Sup. Ct. in **Shivajirao Nilengaker Patil v. Mahesh Madhav Gosavi**⁴⁰ is important for two reasons. First, because it lays down that in certain situations a litigation begun as a private litigation and the Court must treat it as Such. Secondly, that the Court will take judicial notice of the fact that things happening now were never even anticipated before, and there were glaring instances of misuse of power by men in authority and position.

Finally, Mukharjee J. made the following important observations, the substance of which he was to repeat in **R.S. Das v. Union** .⁴¹

“ This Court cannot be oblivious that there has been a steady decline of public standards or public morals and public morale. It is necessary to cleanse public life in this country, along with or even before cleaning the physical atmosphere. The pollution in our values and standards is an equally grave menace as the pollution of

⁴⁰ (87) A.S.C. 294, (1984) 1 S.C.R. 458

⁴¹ (87) A.S.C. 593 at p. 598

the environment. Where such situations carry out, the Court should not and cannot remain mute and dumb.”⁴².

Dulal Samanta v. Dist. Magistrate, Howrah⁴³: In holding the Chamba Force Paid Labour Act void, as violating Art. 23, the court said that conscription for the defense of the country or for the civil service for public purposes under Art.23. there could not be said to be any imposition of compulsory service for “ the purpose of carrying load of Govt. property” Relying on the above decision, it was held that the words “other similar forms of forced labour” should be construed ejusdem generis and that the kind of forced labour that was contemplated by Art. 23 had to be something in the nature of either traffic in human beings or beggar. The conscription for police service or military service under s. 17, Police Act, did not fall under either. In any event, such conscription would fall under Art. 23(2) as a kind of compulsory service for a public purpose. Accordingly, ss. 17 and 19, Police Act, 1861 were held not to violate Art.23.

As regard traffic in women, it was said in **Shama Bai v. U.P.**⁴⁴ that a mere perusal of ss.3 to 10 and 18, Suppression of punishable under those sections were acts which resulted in traffic in Human beings. Therefore quite apart from any question of reasonable restrictions under Art. 19 (1) (g), those sections had been validly enacted by parliament under Art. 23 read with Art.23, the prohibition must prevail over the fundamental right guaranteed by Art. 19.

Art 24 provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. This prohibition is in line with the policies embodied in the Directives of State Policy which have been referred to earlier. It may be noted that under Art. 45, the State must endeavor to provide, early

⁴² (87) A.S.C. surpa at p. 311

⁴³ Constitutional Law of India;H.M. SEERVAI p.1244 (58) A.Cal. 365,372

⁴⁴ .(59) A.A. 57,62. at p. 598

childhood care and education for all children until they complete the age of 6 years. As to giving Indian Children for adoption, particularly to foreigners.

PROSTITUTES

The expression “traffic in human beings” used in Art.23(1), commonly known as slavery, implies the buying and selling of human beings as if they are chattels, and such a practice is abolished by Art 23(1). But the expression is a very wide one and includes a prohibition of traffic in women for immoral purposes.

Parliament has enacted the Suppression of Immoral traffic in Women and Girls Act,1956 (SITA), with the object of inhibiting or abolishing the immoral traffic in women and girls.

The Act is known as the Immoral Traffic (Prevention) act, 1956. The Act aims at suppressing the evils of prostitution in women and girls and achieving a public purpose, viz, to rescue the fallen women and girls to stamp out the evils of prostitution and also to provide an opportunity to these fallen victims so that they could become decent members of the society.

In spite of this Act and other legal provisions found in the Indian Penal Code, the evil of prostitution still prevails. This malady is not only a social but also a socio-economic problem.

The malady can be eradicated only if the law enforcing authorities take a very severe and speedy action against all erring persons. Accordingly, in **Vishal Jeet v. Union of India**⁴⁵ the Supreme Court has eradicated the State Government to instruct their law enforcing authorities to take action under the law to eradicate child prostitution.

The question of rehabilitation of prostitutes and their children was again brought before the Supreme Court in **Gavray Jain v. Union of India**⁴⁶ through a public interest litigation under Art 32. A two judge bench took cognizance of the matter. The Court issued several directions relating to the rehabilitation of the children of the prostitutes, child prostitutes and establishment of juvenile homes for them.

⁴⁵ AIR 1990 SC 1412; (1990) 3 SCC 318

⁴⁶ AIR 1997 SC 3021; (1997) 8 SCC 114

INDIA

In India, the worst form of trafficking in human being takes place in the form of disposal of females, children and adults for the purpose of prostitution or like immoral purposes.

The Indian Parliament has, in 1956, enacted the Suppression of Immoral Traffic in Women and Girls Act, 1956, in order to suppress this form of violation of the dignity and human rights of women, in pursuance of the International covenant Signed at New York in May, 1956, which has been ratified in India.

This Act defines 'prostitution' as the act of a female offering her body for promiscuous sexual intercourse for hire and 'prostitute' as a person who does such act.

S.3 of this Act prescribe punishment for keeping a brothel or allowing any premises to be used as a brothel.

S.5 prescribes punishment for inducing or taking a woman or girl for the purpose of prostitution. S.6 punishes a person who detains a woman or girl in any premises where prostitution is carried on.

S.9 again, punishes the act of seduction of a woman or girl in custody for the purpose of prostitution.

In this connection, the provisions of Secs.370 and 372 of the Indian Penal Code are to be noted. These sections punish the acts of buying or disposing of any persons as a slave or for the purpose of prostitution.

(B) BEGAR ABOLISHED

The term beggar means compulsory work without any payment. Begar is labour or service which a person is forced to give without receiving any remuneration to it⁴⁷.

The practice was widely prevalent in the erstwhile princely States in India before the advent of the Constitution. It was a great evil and has, therefore, been abolished through Art 23(1)⁴⁸

Withholding of pay of a government employee as a punishment has been held to be invalid in view of Art.23 which prohibits beggar. “To ask a man to work and then not to pay him any salary or wages of beggar. It is a Fundamental Right of a citizen of India not to be compelled to work without wages” .**Suraj v. State of M. P.**,⁴⁹ A village custom requiring every householder to offer a day’s free labour to village head man infringes Art.23(1). **R.K. tangkhul v. R.S. Khullakpa**,⁵⁰

⁴⁷ Indian Constitutional Law;M.P. Jain; 2005 Edn.

⁴⁸ See COMMISSIONER OF SCHEDULE CASTES AND SCHEDULED TRIBES, FIRST REP., 22 – 27 (1952).

⁴⁹ AIR 1960 MP 303.

⁵⁰ AIR 1961 Man 1.

(C) FORCED LABOUR

Forced labour

‘Forced labour’ is a wide expression which may be imputed the same meaning as the American expression ‘involuntary servitude’. It is to be noted that s.374 of the I.P.C. makes it an offence to ‘unlawful compel any person to labour against the will of that person’. It is evident that it would be no offence punishable under this section, where the rendering of service is apparently voluntary and an agreement for this purpose is entered into by a debtor with his creditor, in liquidation of his debt.⁵¹

Forced labour or compulsory labour denotes the following: firstly, that the work or service is performed by the worker against his will and secondly, that the requirement that the work or service be performed is unjust or oppressive or the work or services itself involves avoidable hardship.

Similar is the case of workers working in a fertilizer factory by a co-operative society. The workers were to handle urea manually without adequate safeguards and were not paid proper wages. It was held that economic compulsions, may persuade workmen to work under conditions different from those envisaged in the labour laws and merely because they are working, and not under any physical restraint, will not make it other than “forced labour”.⁵²

‘Similar forms of forced labour’

1. The word ‘similar forms’ indicate that the forced labour, which is prohibited must be similar to beggar. In **Dulal Samanta V. District Magistrate**.⁵³ interpreting the expression ‘other similar forms of forced labour’ as appearing in Art. 23 (1), court held that the expression is to be interpreted ejusdem generis and it has to be something in the nature of either trafficking in human beings or beggar. Conscriptio

⁵¹ DURGA DAS BASU; Commentary on Constitution of India;8th Edition

⁵² pg3408 DURGA DAS BASU; Commentary on Constitution of India;8th Edition

⁵³ AIR 1958 Cal 356

for police service or military service cannot come under either of them. Forced labour as a punishment for a criminal offence is not prohibited.

2. Similarly, there is no beggar or forced labour within the inhibition of Art. 23, where the petitioners had voluntarily agreed to do extra work by entering into a contract for additional remuneration and other benefits. nor is a law which prohibits strikes in essential services within the prohibition of these Clause.
3. Again a Punjab Civil Service Rule which authorized the Government to continue the services of a Government servant even after superannuation, for the purpose of holding an inquiry into charges of misconduct committed by him while in service, does not contravene Art.23⁵⁴, because-
 - (a) During the period of continuance he was kept under suspension and was not forced to do any work.
 - (b) Under Cl. (2) of Art. 23, even compulsory service was not unconstitutional, if it was imposed for 'public purposes'.

The impugned Service Rule was obviously for a public purpose because it was in the interest of the efficiency of public service that it should remain under the control of the Government so long as the departmental inquiry against him on a charge of misconduct was not concluded.⁵⁵

4. But where a contract of personal service is enforceable under a penal law, it is within the prohibition of this Article. The result is the same where the penalty for default in rendering the service is founded on custom or administrative fiat.

⁵⁴ Pratap v.State of Punjab, AIR 1964 SC 72

⁵⁵ Pratap v.State of Punjab, AIR 1964 SC 72

- A. But a law which prohibits a person from refusing to render personal service to another merely on the ground that he belongs to a Schedule Caste does not subject the former to 'forced labour'.⁵⁶
- B. On the other hand, as has been stated at the outset, the word 'similar' makes the sweep of Art. 23 very wide⁵⁷. Thus, the system of 'bonded labour' or the non-payment of minimum wages for any work done by a labourer,⁵⁸ would be condemned as 'forced labour' would be condemned as 'forced labour' under Art.23

The right to minimum wages has thus been promoted from its statutory to constitutional status, through Art.23 read with Art 21. The above principle was not applied in cases where there is no employer-employee relationship and the employment is also not a scheduled employment under the minimum wages Act.

Further, even a contract which compels a person to work for less than minimum wages cannot be enforced through the Court and a writ will issue to cancel such contract even through a respondent is a private person. **Peoples Union for Democratic Right v. Union of India**,⁵⁹ To extract hard labour from convicted prisoners serving rigorous punishment imposed by court is under authority of law and will not amount to forced labour as provided in Art. 23. Such prisoners can be employed to do hard labour irrespective of their consent. Other prisoners such as prisoners undergoing simple imprisonment, under-trial prisoners, etc. can also be permitted by the jail authorities to do any work of their choice on their request. But in such cases, the prisoners are entitled to equitable wages. Even though prisoners convicted of rigorous imprisonment are bound to do hard labour, and consequent to court

⁵⁶ State v. Banwari, AIR 1951 All 515

⁵⁷ Neerja v. State of M.P. AIR 1984 Sc 1099; (1984) 3 SCC 243

⁵⁸ Peoples Union v. Union of India, AIR 1982 Sc 1473 : (1983) 1 SCR 456 (paras. 10- 11)

⁵⁹ AIR 1982 SC 1473 (paras. 10, 11, 15).

orders and also under the provisions of prison Act and Rules, extracting work from them without payment or on payment, but below minimum wages, would amount to violation of Art 23(1). It was held that according to modern thinking, the main objective of punishment is reformation, which is a public purpose, imposition of hard labour on the convicted prisoner or payment of minimum wages serve the public purpose and hence saved under Clause (2). From the wages, a reasonable amount could be deducted towards their food, clothing and other amenities.

State of Gujarat v. Hon'ble High Court of Gujarat⁶⁰ if labour anywhere is forced against the will of a person, then irrespective of the fact whether any wages are paid or not, it would amount to forced labour. But putting a prisoner to hard labour while he is undergoing a sentence of rigorous imprisonment awarded by a court of law cannot be equated to 'begar' or other kinds of forced labour, and there is no violation of Art.23(1). Hence even non-payment of wages would not amount to forced labour or violation of Art.23(1). It was held that "crime does not pay should be maintained and prison cannot be a place where object of punishment is completely lost"

The Supreme Court further ruled that a prisoner sentenced to rigorous imprisonment can be made to do hard labour. But, even then, he should be paid equitable wages for his work. No prisoner can be made to do labour free of wages."It is not only a legal right of a workman to have wages for the work, it is a social imperative and an ethical compulsion. Extracting somebody's work without giving him anything in return is only reminiscent of the period of slavery and the system of Begar".⁶¹

The Court issued certain directions to the State to make law for setting apart a portion of wages earned by the prisoners to be paid as compensation to deserving victims of the offence.

⁶⁰ (1998) 7 SCC 392; AIR 1998 SC 3164

⁶¹ "Article "COMPULSORY HARD PRISON LABOUR AND PRISONER'S RIGHT TO RECEIVE WAGES- CONSTITUTIONAL VIRES AND JUDICIAL VOICES", Journal of Indian Law Institute, Vol.242, p.1.

In **D. Bhuvan Mohan Patnaik v. State of A.P.**,⁶² it was held that prisoners are also entitled to the rights guaranteed under part III of the Constitution and much reliance was placed on the above decision also to hold that convicted persons undergoing rigorous imprisonment are entitled to wages for the work done.

It is also held that any wages less than minimum wages prescribed by Minimum Wages Act 1948 is violative of Art. 23. Rajasthan Famine Relief Works Employees (Exemption from Labour laws) Act, 1964 was held unconstitutional and violative of Art. 23 in so far as it excludes the applicability of Minimum Wages Act. The contention of the State that famine relief was for the benefit of the society and hence lesser wages were being paid was rejected as it had no bearing on the wages to be paid to the workman since there was no reason why the State should pay anything less than the minimum wages to the affected persons.⁶³

It was further declared that payment of wages including overtime wages, etc. should be made directly to the workers in full except with authorized statutory deduction, if any. Payment through contractors was prohibited, even in cases where such workers are engaged through the contractors. If there are any advances repayable by workmen to the contractor, or any messing charge are to be paid, that may be paid by the workmen to the contractor after they receive the full amount due to them.⁶⁴

The word `other similar forms of forced labour` in Art.23(1) are to be interpreted ejusdem generis. The kind of `forced labour` contemplated by the article has to be something in the nature of either traffic in human beings or beggar. Conscription for police service or military service cannot come under either.⁶⁵ The prohibition against forced labour is made subject to

⁶² (1975) 3 SCC 185

⁶³ AIR 1983 SC 928 (DDB) pg. 3409 para 4.

⁶⁴ AIR 1984 SC 177; (DDB) pg. 3408 para 5.

⁶⁵ Indian Constitutional Law, M.P. Jain; 2005 Edn.

exception. Under Art.23(2), the state can impose compulsory service for public purposes, and in imposing such service the state shall not make any discrimination on grounds only of religion, race, caste, or class or any of them. The state may thus exempt women from compulsory service for that will be discrimination on the ground of sex and this has not been forbidden by Art.23(2).

A rule in the Punjab Civil Service Rules provided that a civil servant under suspension on a charge of misconduct would not retire on his reaching the date of retirement but would remain in service until the enquiry into the charges against him concluded and a final order is passed. The Supreme Court held that this rule did not infringe Art.23 as it could not be equated to beggar or forced labour as the servant on suspension did not work. Even if it came within the term beggar or `forced labour`, it was not invalid under Art.23(2), as retention of the servant was for a public purpose, being in the larger interests of the efficiency of the services. A government servant should remain within the control of the government so long as the inquiry against him is not concluded or final orders are not passed.

Pratap Singh v. State of Punjab,⁶⁶ The Supreme Court has given an expansive significance to the term “forced labour” used in Art. 23 (1). In a series of cases beginning with the Asid case in 1982.⁶⁷ the Court insisted that Art.23 is intended to abolish every form of forced labour even if it has origin in a contract. Art 23 strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to the basic human values.

In **Sanjit Roy v. State of Rajasthan**,⁶⁸.payment by the State of wages lower than the minimum wages to persons employed on famine relief work was held invalid under Art. 23. Because of famine conditions in the country side, the Public Work Department of the State of

⁶⁶ AIR 1964 SC 72

⁶⁷ peoples union case

⁶⁸ AIR 1983 SC 328 : (1983) 1 SCC 525

Rajasthan started a road building project as a famine relief measure and a large number of worker employed on this project.

As it transpired, the State was paying to these paying to these workers minimum than the wage fixed for unskilled workers in the State. The State claimed that this was authorized by the Rajasthan Famine Works Employees (Exemption from Labour Laws) Act, 1964. The State thus argued that because of the Exemption Act, the Minimum Wages Act was not applicable to employees engaged on the famine relief work.

Rejecting the arguments, the Supreme Court ruled that even those persons who are employed on famine relief work should be paid the legal minimum wages and not less than that as that would be invalid under Art. 23.

In the words of BHAGWATI, J. : “Where a person provides labour or services to another for remuneration which is less than 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.”

Whenever any labour or service is taken by the State from any person, whether he is affected by drought and scarcity conditions or not, the State must pay, at the least, minimum wage to him on pain of violation of Art. 23.

The State had argued in Sanjit Roy that what it was doing was to provide relief to the person affected by drought and famine, and that its potential to help people would be very much reduced, and it would not be able to render help to maximum number of suffices, if it were to give minimum wages to the workers. The Court rejected the contention saying that though the plea of the State might seem ‘plausible’ but it was ‘unsustainable’. BHAGWATI, J., argued that though the State undertakes famine relief work to provide relief to suffering people, nonetheless, the work done by them ensures for the benefit of the State representing the society. When the affected persons provide labour or service for carrying out that such

work, there is no reason why the State should pay anything less than minimum wage to such persons.

The State is not giving dole or bounty to the affected persons, the work done by them is not worthless or useless to the society as to do so would be sheer waste of human labour or resources which could be usefully diverted to fruitful and productive channels leading to community welfare and creation of national wealth or asset. Therefore, if persons are employed in doing useful work, there can be no justification for the State not to pay them minimum wage. BHAGWATI, J., observed on this point as follows:

“The State cannot be permitted to take advantage of the helpless condition of the affected persons and extract labour or service from them on payment of less than minimum wage. No work of utility and value can be allowed to be constructed on the blood and sweat of persons who are reduce to a state of helplessness on account of drought and scarcity conditions. The State cannot under the guise of helping those affected persons extract work of utility and value from them without paying them the minimum wage. Whenever any labour or service is taken by the State from any person, whether he be affected by drought or scarcity conditions or not, the State must pay at the least, minimum wage to the person on pain of violation of Art. 23 and the Exemption Act insofar as it excludes the applicability of the Minimum Wages Act, 1948 to workmen employed on famine relief work and permits payment of less than the minimum wage to such workmen, must be held to be invalid as offending the provisions of Art. 23”

The expression ‘forced labour’ in Art. 23 is of the ‘widest amplitude’ and on its true interpretation, it covers every possible form of forced labour, begar or otherwise and it makes no difference whether the person forced to give his labour or service to another is remunerated or not. BHAGWATI, J., insisted, after referring to his ruling in ASIAD, that

every person providing labour or service to another is entitled at least to the minimum wage; if less than the minimum wage is paid to him then Art. 23 is infringed.

BHAGWATI, J., emphasized that Art. 23 “is intended to eradicate the pernicious practice of ‘forced labour’ and to wipe it out altogether from the national scene.” Therefore, the Exemption Act which warranted payment of less than minimum wages on famine relief work was held to be unconstitutional. The Court therefore directed the State to pay to those workers the minimum wage and also to pay them the difference between the minimum wage and the actual wage paid for the past service.

The Supreme Court in *Asiad* has taken a very broad view of the term “forced labour”. It does not only mean when a person is forced to do labour for less than a minimum wages, it also means labour which a person is forced to do even though he is being paid his remuneration. It is the element of ‘force’ which makes labour as “forced labour”. Commenting in the ruling in *Asiad*, the Supreme Court, has observed in **State of Gujarat v. Hon’ble High Court of Gujarat**.⁶⁹

“it is thus clear that this Court in unmistakable terms has said that every form of forced labour, *begar* or otherwise is within the inhibition of Art 23 and it makes no difference whether the person who is forced to give his labour or services 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, i.e., labour supplied not willingly but as a result of force or compulsion.”

WADHWA, J., has observed further:

“Thus, this Court has held that under Art 23 no one shall be forced to provide labour or service against his will even though it be under a contract of service. Payment of full wages when labour exacted is forced will attract the prohibition contained in Art. 23.”

⁶⁹ AIR 1998 SC 3186

In **Rohit Vasavada v. Gen. Man., IFFCO**,⁷⁰ the pitiable conditions of contract labour working in a fertilizer factory run by a cooperative society were brought to the notice of the Gujarat High Court. The workers had to handle urea manually without adequate safeguards; they were not free to leave the premises as they desired; their health was in jeopardy and proper wages were not being paid to them. The High Court characterised this form of labour as forced labour prohibited by Art. 23.

Considering the problems of contract labour employed in the fertilizer factory, the Gujarat High Court stated that economic compulsions may persuade workmen to work under conditions different from those envisaged in the labour laws and the mere fact that they are working, not under any apparent physical restraint, does not render the work voluntary.

The Court said that when due to economic compulsions, workmen are forced to work under inhuman or subhuman conditions, without the safeguards, facilities and amenities secured to them under the law being made available to them, irrespective of wages paid to them under their apparent consent, the labour employed will be forced labour contrary to Art. 23. The High Court gave necessary directions to the labour commissioner to take steps to remedy the situation and to enforce the provisions of the Contract Labour (Regulation and Abolition) Act, 1970.

Non-observance of the Equal Remuneration Act, 1976, by Government contractors raises question under Art. 14.⁷¹ The Act has been enacted in pursuance of Art. 39, a Directive Principle.⁷² The Act provides for payment of equal remuneration to men and women workers for the same work, or work of a similar nature and for the prevention of discrimination on grounds of sex. The Act also ensures that there will be no discrimination against recruitment of women and provides for setting up of advisory committees to promote employment

⁷⁰ AIR 1984 Guj 102

⁷¹ supra

⁷² infra

opportunities for women. Provision is made for appointment of officers for hearing and deciding complaints regarding contravention of the provisions of the Act. Inspectors are to be appointed for the purpose of investigating whether the provisions of the Act are being complied with by employers.

The government cannot ignore violation of equality by its own contractors. If any contractor is committing a breach of the Act and thus denying equality before law to the workmen, the government is under obligation to ensure that the contractor observes the Act and does not breach the equality clauses

In **Labour Working on Salal Hydro-Project v. State of Jammu & Kashmir**⁷³ - THE SUPREME Court found that the women employed on the project were being denied the rights and benefits ensured to the workmen under various labour laws.

Similarly, in **Ram Kumar v. State of Bihar**,⁷⁴ the Court directed the state to pay minimum wage to the employees at the ferries at Bhagalpur and Sultanganj which fell under the purview of the Act.

As stated above, Art.23 operates not only against the government but even against private parties. BHAGWATI, J., emphasized in *Asiad* that whenever any fundamental Right which is enforceable against private individuals, such as, Art. 17, 23 or 24, is being violated, the state is under a constitutional obligation to take necessary steps so as to interdict such violation and ensure that the Fundamental Right is observed by the private individual who is transgressing the same.

The person whose Fundamental Right is violated can always approach the court for enforcement of his Fundamental Right. But that does not absolve the state from its constitutional obligation to see that the Fundamental Right of such person is not violated, “particularly when he belongs to the weaker section of humanity and is unable to wage a

⁷³ AIR 1984 SC 177

⁷⁴ AIR 1984 SC 537

legal battle against a strong and powerful opponent who is exploiting him". Thus, in *Asiad*, the Supreme Court ordered the concerned authorities-Central government and Delhi Development authority- responsible for the construction of various *Asiad* projects- to ensure that workers got minimum wages and other labour welfare measures were not flouted to the detriment of the workers. The authorities were required to ensure observance of the various labourers, e.g., the Contract Labour Act, the Minimum Wages Act, the Equal Remuneration Act, the Employment of Children Act and Inter-State Migrant Act.

III. Scope of Cl. (2) : Compulsory service for public purposes

This clause is an exception to the bar imposed by Cl. (1), on the ground of 'public purposes'. Under this clause the State will be free to require compulsory service for public purposes. The latter part of the clause enjoins that while imposing compulsory service for public purposes, the State cannot exempt anybody simply on the ground of race, religion, caste or class, and consequently, no citizen shall be entitled to avoid such service on any of these grounds. Hence, conscription for national defense cannot be avoided on the grounds of religion.⁷⁵

'public purpose'

The expression includes any purpose in which even a fraction of the community may be interested or benefited.

It includes any purpose in which the general interest of the community, as opposed to the particular interest of the individuals is directly and vitally concerned the measures included in the Directive Principles in Part IV, calculated to promote the welfare of the people.

Thus, there will be no contravention of Art. 23(2)-⁷⁶

⁷⁵ DURGA DAS BASU; Commentary on Constitution of India;8th Edition

⁷⁶ DURGA DAS BASU; Commentary on Constitution of India;8th Edition

1. To compel a cultivator to carry food grains to the Government godown, without remuneration for such labour, in a scheme of procurement of food-grains as an essential commodity for the community,. But a Government servant could not, in normal times, be compelled to carry loads outside his official duties.
2. To compel a Government servant to continue in service even after a age of superannuation, pending a conclusion of a departmental inquiry, would be valid under this clause.
3. S.17 of the Police Act which requires the resident of a locality to assist the police to suppress disturbance of the peace in the locality, would not unconstitutional.
4. To compel a person to render social services, e. g., as part of campaign to reduce mass illiteracy, or to render medical or other professional service in remoter parts of the country, as has been provided by enacting the National Service Act, 1972.

Under Indian Constitution, Parliament has, under Entry I of List I, the powers to raise forces by conscription, if necessary, for defense or prosecution of war. There can be no higher public purposes than the defense of the State itself.

Legislation by Parliament :-

Parliament has enacted the National Service Act, 1972, which empowers the Government to call up professionals, such as doctors and engineers below the age of 30, for defense services and national cause such as rural health, family planning, construction of dams, bridges and roads in remote or backward areas, for a specified period.⁷⁷

⁷⁷ DURGA DAS BASU; Commentary on Constitution of India;8th Edition

D.CHILD LABOUR ABOLISHED

A critical human and economic problem is that of child labour. Poor parents seek to augment their meager income through employment of their children. Employers of children also stand to gain financially.

It is realized that a total ban on child labour may not be socially feasible in the socio-economic environment of the country. Accordingly, Art. 24 puts only a partial restriction on employment of child labour.

Art. 24. Prohibition of employment of children in factories, etc. —No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.⁷⁸

Art. 24 prohibits the employment of a child below the age of fourteen years to work in any factory or mine, or in any hazardous employment. The Supreme Court has emphasized in *Asid-Supra* that Art. 24 embodies a Fundamental Right “which is plainly and indubitably enforceable against every one”. By reason of the compulsive mandate in Art.24, no one can employ a child below the age of 14 years in a hazardous employment like construction work. It is also the duty of the Union Government, State Government and other government bodies to ensure that the contractors to whom they have entrusted construction work also obey this obligation.

A vigorous state law: The Goa Children’s Act⁷⁹

In 2003, the state of Goa produced a noteworthy new juvenile protection law, the Goa Children’s Act of 2003. The act defines child trafficking for sexual exploitation and servitude in

⁷⁸ Constitution of india; Bare Act.

⁷⁹ <http://www.dol.gov/ilab/reports/child-labor/india.htm>

accord with the United Nations Trafficking Protocol (2000). The state law helpfully supplements

national trafficking laws, enhancing the prosecution and protection tools available to law enforcement and criminal justice officials. Some notable points of the law include:

Prohibiting all forms of child labor—not only all forms of hazardous employment as defined in the

CLA, but also all forms of non-hazardous employment as defined in the CLA, all forms of domestic employment, and all forms of informal self-employment such as rag picking, running

errands, and street vending.

Government in its notification dated 12th August 2013, clearly made a point that rehabilitation of the child should be made if it finds that child is employed in hazardous employment.

Government had also made out conclusion that rules regarding BBM and PUDR should be followed in a strict manner.

The Court has reiterated this ruling in **Labourers Working on Salal Hydro- Project V. State of Jammu And Kashmir**⁸⁰ Construction work being hazardous employment, children below 14 cannot be employed on any such work because of the constitutional prohibition contained in Art. 24. The Court has directed the Central Government to enforcer this prohibition. It has generally told to Government to persuade the workmen to send their children to school and provide for free education there. The Court realizes that in the prevailing socio-economic development of the Country, prohibition of child labour completely would not be acceptable to large masses of the people because of their poverty.

‘Thus, the Court has observed:

⁸⁰ AIR 1984 SC 177

“We are aware that the problem of child labour is a difficult problem. The possibility of argumenting their meager earning through employment of children is very often the reason why parents do not send their children to school and there are large drop-outs from the school. This is an economic problem and it cannot be solved merely by legislation. So long as there is poverty and destitution in this country, it will be difficult to eradicate child labour. But even so an attempt has to be made to reduce, if not eliminate, the incidence of child labour.”

The question of employment of child labour has been brought to the attention of the Supreme Court in several cases by way of public interest litigation. In **M.C. Mehta v. State of Tamil Nadu**.⁸¹, the Court has considered the constitutional perspectives of the abolition of the child labour in the notorious Sivakasi Match industries. The Court has issued detailed directions to eradicate the practice of employing children below the age of 14 years in this hazardous industry. The Court has insisted that the employers must comply with the provisions of the Child Labour (Prohibition and Regulation) Act. The Court has emphasized that abolition of child labour is definitely a matter of great public concern and significance.

The Court has again reverted to the same theme in **Bandhu Mukti Morcha v. Union of India**.⁸² in this case, the question specifically raised was regarding employment of the children in the Carpet industry in the State of Uttar Pradesh. After referring to Art. 24 and a number of Directive principles, the Supreme Court has observed:

“it would, therefore be incumbent upon the State to provide facilities and opportunities as enjoyed under Art 39(e) and (f) of the Constitution’ and to prevent exploitation of their childhood due to indigence and vagary. As stated earlier, their employment – either forced or voluntary- is occasioned due to economic necessity; exploitation of their childhood due to poverty, in particular, the poor and the deprived

⁸¹ (1996) 6 SCC 756

⁸² AIR 1997 SC 2218;(1997) 10 SCC 549

sections of the society, is detrimental to democracy and social stability, unity and integrity of the nation.”

In **Unnikrishnan**, education up to the age of 14 years has been declared to be a Fundamental Right. Right to health, right to potable water, meaningful right to life- all these rights have been declared to be a Fundamental Rights. The Child is equally entitled to all these Fundamental Rights.

Reading Arts. 15(3), 24 cls. (e) and (f) of Art. 39, the Supreme Court has emphasized in *Lakshmi Kant v. Union of India* upon the great importance of child welfare in the country. Accordingly, the Court has taken opportunity to lay down guidelines for adoption of Indian children by foreign parents as there is no statutory enactment for the purpose.

The Court has emphasized that the primary prpose of giving the child in adoption must be his own welfare, and, therefore, great care must be exercised in permitting the child to be given in adoption to foreign parents.”

In Labour **Labourers Working on Salal Hydro- Project V. State of Jammu And Kashmir**

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In pursuance to the above duty the Employment of Children Act,1938 ad The Child Labour (Prohibition and Regulation) Act,1986, have been enacted. The employment of Children Act,1938, prohibits employment of children below 14 years of age in the railways and other means of transport. The Indian Factories Act and Mines Act,1952, the Merchant Shipping Act, 1951, the Bidi and Cigar Workers (Condition and Employment) Act,1966 and the Apprentices Act, 1961, prohibits employment of child below a certain age.

This Article however, does not prohibits their employment in any innocent or harmless job or work.

⁸³ AIR 1984 SC 177

In a landmark judgment in **M.C. Mehta v. State of Tamil Nadu**,⁸⁴ THE Supreme Court has held that children below the age of 14 years cannot be employed in any hazardous industry, mines or other works and has laid down exhaustive guidelines how the State authorities should protect economic, social and humanitarian rights of millions of children, working illegally in private and public sections. The matter was brought before the Court by a public spirited lawyer Mr. M. C. Mehta by way of public interest litigation under Art. 32 of the Constitution. He told the Court about the plight of the engaged in Sivakasi Cracker Factories. Though the Constitution provides in Art. 24 that the children should not be subjected to exploitation and the law prohibits employment of child labour and it casts a duty on the State to endeavor to provide free and compulsory education to them under Art. 41 yet there are 17 million children working in the organized sector as estimated by Planning Commission. According estimates from various non-government sources, the actual number of working children range from 4 million to 100 millions. Despite the Constitutional provisions and various legislative enactments passed by many States which prohibit employment of child labour the child labour is a big problem and has remained unsolved, even after 50 years of Independence.

The Court directed setting up of Child Labour Rehabilitation Welfare Fund and asked the offending employer to pay each child compensation of Rs.20,000 to be deposited in the Fund and suggested the number of measures to rehabilitate them in the phased manner.

The Court made it clear that their liability of the employer would not cease even if he would desire to disengage the child presently employed and asked the government to ensure that the adult members of the child's family get a job in a factory or anywhere in lieu of the child.

⁸⁴ AIR 1997 SC 699

The Court made it clear that in case of getting employment for an adult, the parent or guardian shall have to withdraw the child from the job. Even if no employment would be provided, the parent shall have to see that his child is spared from the requirement of the job as an alternative source of income – interest income from deposit of Rs. 25,000 – would be available to the child's family till he continues his studies up to the age of 14 years.⁸⁵ To start with, the Court said, work could be taken up regarding hazardous employments and then to be followed by comparatively less hazardous and so on. The Court issued following directions to implement above directions :-

- (1) A survey about the child labour within 6 months.
- (2) The Court identified nine industries first where the work could be taken up namely – the match industry Sivakasi, Tamil Nadu; the Diamond Polishing Industry in Surat, Gujarat; the precious Stone Polishing Industry in Jaipur, Rajasthan; the Glass Industry in Ferozabad, the Brass-ware Industry in Moradabad, the Hand-made Carpet Industry in Mirzapur, Bhodahi and the Lock-making Industry in Aligarh, all in Uttar Pradesh ; the State Industry in Mankapur, Andhra Pradesh; and the State Industry in Mandasaur; Madhya Pradesh for priority action.
- (3) The employment given could be in the industry where the child is employed, a public sector undertaking, and could be manual in nature inasmuch as the child in question must be engaged in doing manual work. The undertaking chosen from employment shall be one which is nearest to the place of residence of the family.
- (4) In those cases where no alternative employment is available, to the adult member of the child's family the parent would be paid income interest of Rs. 25,000 the

⁸⁵ Dr. J. N. Pandey, *The Constitutional Law of India*, pg. 323, Edn. 2011 48th by, CENTRAL LAW AGENCY

employment given or payment made would cease if the child is not sent for education by parents.

- (5) On discontinuance of the employment his education could be ensured until they complete the age of 14 years and shall be free as required by Art. 45 of the Constitution. It would be the duty of the Inspectors to see that this call of the Constitution is carried out.
- (6) For the collection of funds, a district could be the unit of collection so that executive head of the district keeps a watchful eye on the works of the Inspectors. In view of the magnitude of the task a separate cell in the labour department of the concerned government would be created to monitor this work. Overall monitoring by the Ministry of Labour, Government of India would be beneficial and worthwhile.
- (7) The secretary of the Ministry of Labour of the Union of India would apprise the Court within one year about the compliance of the directions of the Court in this regard.
- (8) In so far as the non-hazardous jobs are concerned, the Inspector shall have to see that the working hours of the child are \not are not more than 4 to 6 hours a day and it receives education at least for two hours each day. The cost of education shall be borne by the employer.

CHAPTER III

CONCLUSION

Human beings and children of the nation are supremely important asset. Childrens programs should find a prominent part in our national plans for the development of human resources. So that our children grow up to become robust citizen, physically and mentally fit, and morally healthy; endowed with the skills and motivations needed by the society.

Child labour and trafficking in human beings is a significant problem in India. The prevalence of it is shown by the child work participation rates which are higher in Indian than in other developing countries. Equal opportunities for development to all individual during the period of growth should be our aim. For this purpose even we citizen should join hands with government and other institutions which are set up for this purpose.

Educating the child can be a solution for solving the problem of child labour. To provide compulsory primary education and in order to reduce the burden on parents to meet the expenditure for their children education, while they are struggling for a day meal, our Government had allotted funds. But due to the lack of awareness most of the poor families are not availing these facilities. So, proper steps have to be taken to create awareness.

Child labour and trafficking in human being cannot be eliminated by focusing on one determinant, for example education, or by brute enforcement of child labour laws. The government of India must ensure that the needs of the poor are filled before attacking trafficking in human beings. If poverty is addressed, the need for human trafficking and child labour will automatically diminish. No matter how hard India tries, such exploitation always will exist until the need for it is removed.

The development of India as a nation is being hampered by exploitation of human being, trafficking and child labour. Children are growing up illiterate because they have been working and not attending school. A cycle of poverty is formed and the need for child labour is reborn after every generation. India needs to address the situation by tackling the underlying causes of exploitation in human beings and child labour through governmental policies and the enforcement of these policies. Only then will India succeed in the fight against exploitations.

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