

THE LEGAL VIDYA

Open Access Law Journal

This is an Open Access article distributed under the terms of the Creative Commons Attribution- Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

The Legal Vidya
Volume 2 Issue 1, November 2021, Page Nos. 108 to 114

**INDIAN DEMOCRACY IN PROMOTING FREEDOM FROM EXPLOITATION
UNDER ARTICLE 23 OF THE INDIAN CONSTITUTION****MR. SARTHAK ARYAN***Student, National Law University and Judicial Academy, Assam***MR. JAYANTA BORUAH***Research Scholar, North-Eastern Hill University, Shilong*

Abstract: India is a country with a democratic constitution that speaks for civil liberties for all its citizens. Freedom from exploitation is a basic right for all citizens of a democratic country because, if a citizen is not free from exploitation, then a country cannot be justified as a democratic one. The theoretical parameters of democracy argue for its institutions, via- Legislative, Executive, and Judiciary to adopt a mechanism for excluding all forms of exploitations by ensuring civil liberties to all its citizens. However, India besides being a democratic country has not been fully able to ensure minimum standards of civil liberties providing for freedom from exploitations to all its citizens. Such allegations are proved from the facts of increasing instances of bonded labor, child labor, prostitution, and beggars. This Article will therefore make a brief attempt to highlight the roles played by the Indian Judiciary, Legislative, and Executive in promoting Freedom from Exploitation to the citizens of India on the lines of the provisions of Article 23 of the Indian Constitution.

INTRODUCTION

If one presumes that slavery and bonded labor were practices prevalent in the past then according to the data given by the Global slavery index, on any given day of 2016, 8 million people were living in “modern slavery” in India.¹ Exploitation such as forced labor, trafficking, and beggar is alleged to be a curse on humanity as it violates the basic human rights given to every individual to protect them from forceful mistreatment, inequality, and unfairness. The most disturbing thing is that after so much liberalization, modernization, and the setting up of national and international organizations to protect individual rights, exploitation still exists in our society in different forms under the shroud of prostitution, child labor, and over-exploitation of workers in the unorganized sectors. The framers of the Indian Constitution made their intention clear by including the Freedom from exploitation under Part- III and making it civil liberty as neither the state nor any individual through its arbitrary power can take away such rights. A unique feature of Article 23 is that it can be enforced against the state and also against the private parties. In the *People’s Union for Democratic Rights v. Union of India*,² Bhagwati, J. emphasized this fact that whenever such fundamental rights which can be enforced against private parties are violated then the state is under the constitutional obligation to take necessary steps and to ensure that such rights are not transgressed.³

The current Covid-19 pandemic and the subsequent lockdown have highlighted the issues of exploitation and hardships faced by migrant laborers. Several lacunas need to be filled to eliminate exploitation in every form the society. As there is no clear definition of the term “exploitation” under the Indian Constitution, it leaves the issue of willful exploitation for livelihood and forceful exploitation unclear.⁴ Then, trafficking of human beings is prohibited but prostitution is legal. This leads to the forceful exploitation of women for basic human needs. Also, a child is allowed to work at hotels, restaurants, and other places non-hazardous places but employing a child below 14 years of age at a hazardous job is illegal. They receive a very small amount for their hard work but due to poverty, they are forced to earn money as another option is starvation. Until and unless all forms of exploitation are eliminated from our society, the basic objectives of “Liberty, Equality, and Justice” will never prevail.

¹Ambika Pandit, ‘8 million people live in ‘modern slavery’ in India, says report; govt junks claim’, Times of India, *available at*: <<https://timesofindia.indiatimes.com/india/8-million-people-live-in-modern-slavery-in-india-says-report-govt-junks-claim/articleshow/65060986.cms>> accessed on 20 July 2020.

²*People’s Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473.

³*Ibid* 1.

⁴Nirmalendu Bikash Rakshit, ‘Exploited despite the law’, The Statesman, *available at*: <<https://www.thestatesman.com/supplements/law/exploited-despite-law-1502708216.html>> accessed on 21 July 2020.

CONCEPTUAL FRAMEWORK ON CIVIL LIBERTY, DEMOCRACY, AND FREEDOM FROM EXPLOITATION

Civil liberties that are provided in the Part-III of the Constitution provide freedom from any arbitrary actions be it individual or state and freedom from exploitation is one of the primary civil liberties guaranteed to both citizens and non-citizens under the Indian Constitution.⁵ Now in the theory of rule of law, A.V. Dicey laid a few principles or concepts that are a must for the existence of rule of law.⁶ According to the first principle, Dicey opposes arbitrariness and lays down that no functions of the government should have discretionary power to interfere with the freedom and liberty of an individual as discretion invites arbitrariness. And Article 23 of the Indian Constitution leaves little scope for arbitrariness as it derives its power from Article 13, according to which the state cannot make any law that is in contravention or takes away rights provided in Part- III of the Constitution. Also, in the second principle, Dicey laid few concepts and said that there should be equality before the law, and Article 23 enunciates the principles of Dicey by eliminating unfairness and enhancing the ideals of rule of law. A place where rule of law will exist without any arbitrariness, their democratic government will flourish.

While stating the importance of the freedom from exploitation in the lives of socially and economically weaker sections of the society, Bhagwati, J. in a case,⁷ stated that without this right the powerful sections of the society will exploit the weaker sections. Now to get an understanding of rights that are guaranteed to an individual under Article 23, we need to establish the definition of the different forms of exploitation prohibited under it. In *Vasudevan v. Mittal*,⁸ the Division Bench of Bombay High Court accepted the meaning of the term “Beggar”, the labor or service which is forcefully done by a person without receiving any remuneration.⁹ In another case,¹⁰ Bhagwati, J. gave an expansive interpretation to the word “Forced Labour” under Article 23 and said that such labor or service, which deprives an individual of choice and leaves him with no alternative, which compels the individual to adopt a particular course of action, is termed as forced labor. Then under Article 23 trafficking of a human being is prohibited in India, and there are established definitions to the term trafficking given by international charters and organizations and there are several penal provisions regarding

⁵Jeannette L. Nolen, ‘Civil liberty’, Encyclopaedia Britannica, *available at*: <https://www.britannica.com/topic/civil-liberty>> accessed on 21 July 2020.

⁶ Jeremy Waldron, ‘The Rule of Law’, Stanford Encyclopedia of Philosophy, *available at*: <<https://plato.stanford.edu/entries/rule-of-law/>> accessed on 22 July 2020.

⁷*Supra 1.*

⁸*Vasudevan v. Mittal*, AIR 1962 Bom 53.

⁹*Ibid 4.*

¹⁰*People’s Union for Democratic Rights v. Union of India*, AIR 1982 SC 1491.

the same but all of them lack a thorough definition making it very difficult for implementing the provisions on the elimination of exploitations.

INDIAN JUDICIARY ON RIGHT AGAINST EXPLOITATION

From the beginning, the judiciary has played a pivotal role by giving a wider ambit to different forms of exploitation prohibited under Article 23 and protecting the rights of weaker sections of society. In the series of *Asiad* cases,¹¹ the Supreme court while rejecting the argument to accept a narrower interpretation to the term “Forced Labour”, said that the meaning of the term ‘force’ is not only restricted to legal or physical force but also includes such forces which leaves no choices to an individual like economic conditions. This broader view of the definition includes such workers which are getting remuneration but less than minimum wages. This view was enforced by the Gujarat High Court in *Rohit Vasavacia v. Gen. Man. IFFCO*,¹² where deplorable conditions of contract workers working in a fertilizer factory were highlighted. The Gujarat High Court termed it to be forced labor as economic conditions compelled the workers to work in such inhumane conditions; the court also directed the labor commissioner to enforce the concerned provisions of the Contract Labour Act, 1970.

In cases where state authorities were failing to enforce the beneficial laws which were made in the interest of the poor, the court directed the concerned authorities for enforcement of such laws. The court linked Article 23 and Article 21 and made it an obligation on the state that where legislation has been made, there the state comes under the obligation of implementation of such legislation, and failure in implementation would be presumed as a denial of the right to life under Article 21.¹³ In the case of *Bandhua Mukti Morcha v. Union of India*,¹⁴ a large number of laborers were working in the stone quarries under inhumane and pathetic work conditions. The court by taking cognizance of the matter directed the State of Haryana to release all the bonded laborers. It also directed the state government to make a scheme for the proper rehabilitation of the bonded laborers.

To curb the issue of employing children below 14 years of age in hazardous industries and to protect their rights, the court in several cases has emphasized the need for the abolition of child labor and it also gave detailed directions on the concerned issue. In the case of *M.C. Mehta v. State of Tamil Nadu*,¹⁵ the issue of

¹¹People’s Union for Democratic Rights v. Union of India, AIR 1982 SC 1490.

¹²*Rohit Vasavacia v. Gen. Man. IFFCO*, AIR 1984 Guj 102.

¹³*Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161.

¹⁴*Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

¹⁵*M.C. Mehta v. State of Tamil Nadu*, AIR 1997 SC 699.

employing children in the hazardous match industries Sivakasi, which was the world's largest concentration of child labor,¹⁶ was brought in front of the court. The Court to extirpate the practice of employing children below 14 years of age in the hazardous industries gave a detailed direction regarding the same and asserted on the compliance of the Child Labour Act.¹⁷

ROLE PLAYED BY INDIAN EXECUTIVE AND LEGISLATIVE FOR DEFENDING THE RIGHT AGAINST EXPLOITATION

According to Thomas Hobbes Social contract theory, the stronger group/individual dominates and exploits the weaker ones.¹⁸ Now, to protect the weaker sections of the society, the legislature has made several beneficial laws like the Contract Act, the Minimum Wages Act, Bonded Labour System Act, the Equal Remuneration Act, Child Labour Act, the Employment of Children Act, the Inter-State Migrant Workmen Act and many more.

But despite all these provisions for the benefits of laborers, children, and women, they face different forms of exploitation in society.¹⁹ This reflects the tardiness, inefficiency, and inaction from the executive bodies in the implements of laws made by the legislature. The most contemporary example of the tardy implementation of laws by the authorities can be observed during the Covid-19 Pandemic and subsequent lockdown which forced mass migration of migrant laborers. On March 24 when the complete lockdown was imposed and everyone was directed by the authorities not to venture out and was asked to remain inside, this was the point from which the real hardship started. Migrant laborers who are mostly dependent on their daily earnings to meet their end needs became jobless due to lockdown.²⁰ Due to the poor living conditions with nothing to survive for these laborers started migrating back to their native states which made them more vulnerable to contracting the coronavirus.²¹ This mass reverse migration of laborers carried on for months. Due to lockdown restrictions

¹⁶Smitu Kothari, 'Sivakasi houses world's largest concentration of child labour in its industrial units, India Today', *available at*: <<https://www.indiatoday.in/magazine/special-report/story/19830115-sivakasi-houses-worlds-largest-concentration-of-child-labour-in-its-industrial-units-770353-2013-07-30>> accessed on 22 July 2020..

¹⁷Dhruval, 'M.C. Mehta v. State of Tamil Nadu and Others, 1996 – The Child Labour Case – Case Summary', Law Times Journal, *available at*: <<http://lawtimesjournal.in/m-c-mehta-v-state-of-tamil-nadu-and-others-1996-the-child-labour-case/>> accessed on 22 July 2020.

¹⁸James Fieser, 'The Social Contract', The University of Tennessee, *available at*: <<https://www.utm.edu/staff/jfieser/class/300/socialcont.htm>> accessed on 22 July 2020.

¹⁹'India- Global Slavery Index', Minderoo Foundation, *available at*: <<https://www.globalslaveryindex.org/2018/findings/country-studies/india/>> accessed on 22 July 2020..

²⁰ Nikhil Inamdar, 'Coronavirus lockdown: India jobless numbers cross 120 million in April', BBC News *available at*: <<https://www.bbc.com/news/world-asia-india-52559324>> accessed on 23 July 2020..

²¹Arabinda K. Padhee and Basanta K. Kar, 'The Lockdown Revealed the Extent of Poverty and Misery Faced by Migrant Workers', The Wire, *available at*: <<https://thewire.in/labour/covid-19-poverty-migrant-workers>> accessed on 23 July 2020.

and no transport medium available, these migrants traveled thousands of kilometers hitching rides, cycling, or even walking in many cases.²² The government launched many schemes and benefits for the migrant laborers but they failed to reach them as the Inter-State Migrant Workmen Act has many loopholes like the meaning of migrant laborers under it is very narrow in its sense and so many workers are left out. The level of negligence from the side of the executive can be observed from the fact that there is no data available as to the number of migrant laborers death during the lockdown.²³

The court has time and again took the matters into its own hands and monitored the implementation of laws that are in the interest of the poor and even directed the authorities in several cases to implement such laws. Like in the case of *Bandhua Mukti Morcha v. Union of India*,²⁴ the court found inaction from the side of the state authorities in implementing important laws and directed for the release of all the bonded laborers. The court also directed the state authorities for a planned rehabilitation of these laborers. Also, due to the inaction of law enforcement authorities towards issues of child prostitution, the Supreme Court in the case of *Vishal Jeet v. Union of India*²⁵ directed the state government to take action to protect the rights of children.

LIMITATIONS IN THE INDIAN LEGAL SYSTEM

There some major loopholes and they need to be amended to eliminate different forms of exploitation prevalent. Firstly, as there is no clear definition of the term “exploitation” provided in the Indian Constitution, it raises the issue of willful exploitation for livelihood and forceful exploitation. Willful exploitation is when an individual left with no choices due to forces like economic conditions and others, willfully adopts a particular course of action where they are deemed to be exploited. Like laborers working under pathetic and inhumane conditions for a meager income.

According to the definition of the term “Forced Labour” established by the Supreme Court in a case,²⁶ the definition covers both the willful exploitation for livelihood and forceful exploitation and both are prohibited. Now in India trafficking of human beings is illegal and punishable by law but in the same place, prostitution is not. So, a large number of women due to forces that leave them with no choices than are compelled to sell

²²Tanushree Venkatraman and Saurabh Chauhan, ‘In long walk back home, migrants battle hunger, scourge of Covid-19’, *Hindustan Times* available at: <<https://www.hindustantimes.com/india-news/in-long-walk-back-home-migrants-battle-hunger-scourge-of-disease/story-TizRfUz69osJQ0Uqmm6jZN.html>> accessed on 23 July 2020..

²³ Sunil Prabhu and Anindita Sanyal, ‘No Data On Migrant Deaths, So No Compensation: Government To Parliament’, *NDTV*, available at: <<https://www.ndtv.com/india-news/no-data-on-migrant-deaths-so-no-compensation-government-to-parliament-2295409>> accessed on 23 July 2020.

²⁴Supra 14.

²⁵*Vishal Jeet v. Union of India*, AIR 1990 SC 1412.

²⁶Supra 11.

their bodies for livelihood. This is a very grave concern because a section of society is facing exploitation and there are no clear guidelines regarding the same.

In India employing children below 14 years of age in hazardous workplaces is strictly prohibited but they can be employed in other tedious jobs with long work hours for a little amount. A childhood which meant learning and exploring new things, some children and their parents due to forces which leave them with no alternatives, are forced either by their parents or due to economic conditions to work in a dhaba, hotels or garage. Although India has rectified ILOs²⁷ major Conventions on child labor in 2017²⁸ still child labor exists and it has not been prohibited altogether.

CONCLUSION

Freedom from exploitation is cardinal civil liberty that enhances the taste of democracy. The Constitution of India under Article 23 casts a general duty on the State to take effective measures to combat bagger, trafficking of human beings, and forced labor. Based on this duty, the Supreme Court on several occasions has reiterated the fact that to eradicate and protect the individual rights of people from different forms of exploitation, the law enforcement agencies are required to take severe and strict actions against all erring individuals. Not only the executive but the legislature needs to amend laws and fill up the legislative loopholes, for efficient identification of individuals that are facing exploitation. However, above all the actual need of the hour is to bring comprehensive economic reforms so that economically weaker sections are not forced to join such exploitative professions. Further, the Right to Livelihood shall also be made equally applicable on the beggars of the country and if it is done then there shall be no beggars at all. Education shall be imparted with awareness campaigns so that the future generations of the Nation can be trained with the values for preserving the Rights against Exploitation as a mark of human dignity.

²⁷International Labour Organization, 1919.

²⁸ET Bureau, 'India ratifies two child labour conventions', Economic Times, available at: <<https://economictimes.indiatimes.com/news/economy/policy/india-ratifies-two-child-labour-conventions/articleshow/59134572.cms?from=mdr>> accessed on 24 July 2020.