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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **TRAFFICK IN HUMAN BEINGS AND FORCED LABOUR**

AUTHORED BY - GANGADHARAN K

## **ABSTRACT**

One of the most difficult parts of "modern-day slavery" is the trafficking of people for the purpose of labour exploitation. It is difficult for a variety of reasons, including the fact that there are discrepancies in how labour standards are interpreted and applied in practice, that victims prefer not to report abuses or testify because they are frequently dependent on their traffickers for employment and housing, and that preventing trafficking for the purpose of labour exploitation necessitates coordinated efforts from the government, civil society, trade unions, and the private sector. At the time of the events, Greece was not a signatory to the Council of Europe Convention on Action against Trafficking in Human Beings, but this did not prevent the Court from using it to interpret the affirmative responsibilities under Article 4 of the ECHR. The ruling emphasizes in paragraph 104 that the Court "is guided by that Convention and the manner in which it has been interpreted by GRETA," citing GRETA's Fourth and Fifth General Reports as well as first-round evaluation reports on Spain and Italy. It also states that "Article 4 of the Convention must be construed in the light of the Council of Europe's Anti-Trafficking Convention."

**KEY WORDS:** TRAFFICKING, LABOUR EXPLOITATION, COUNCIL OF EUROPE, GRETA, SLAVERY

## **INTRODUCTION:**

Since the dawn of civilization, exploitation has been ingrained in every group. The powerful took advantage of the weaker. Exploitation is a major global problem at the moment. Every nation has passed a number of regulations to shield people against exploitation.

India is the largest democracy in the world. In an attempt to curb such behaviour, our Indian Constitution guarantees fundamental rights that protect every individual from exploitation. There are many different forms of human exploitation, such as forced labour, begging, human trafficking, etc.

Additionally, under Article 23, the Indian Constitution forbids and criminalizes the practice of forced labour and human trafficking.

The primary justification for human exploitation is superiority. primarily a victim of forced labour, which includes both slavery and human trafficking. To regulate forced labour

## **FORCED LABOUR**

Every individual desires the freedom to work or not work. However, a lot of the time people are forced to complete the task due to numerous threats or demands from other people. In human civilization, forced labour is not a recent problem. Every powerful person takes advantage of a weak person in different ways.

Any job that is done against one's will while under duress, threat, or other types of coercion is referred to as forced labour. This is a global problem, with about 27.6 million people facing or being trapped in forced labour according to studies on the global estimate of modern slavery (2022).

The phrase "trafficking for the purpose of labour exploitation" distinguishes between sexual exploitation trafficking and trafficking for exploitative ends in all economic sectors, including the legal and unofficial economy. In the context of human trafficking, the term "labour exploitation" is understood to include, at the very least, forced labour or services, slavery or acts that resemble slavery, and servitude. These ideas are widely recognized in international law, particularly in the European Court of Human Rights' case law pertaining to Article 4 of the European Convention on Human Rights<sup>1</sup> (ECHR), which forbids forced labour and slavery.

## **WHY TRAFFIC IN HUMANS?**

Every person has the right to live their life freely and with dignity, but human trafficking robs them of their freedoms and turns them into prisoners.

Human trafficking is a long-standing issue in our culture. Women and children were once bought and sold for prostitution and slavery. Human trafficking is the sale and purchase of human beings for

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<sup>1</sup> <https://www.echr.coe.int>, (last visited 25 march, 2024)



financial gain from one individual to another or from one nation to another. Exploitation of people is the primary goal of human trafficking (men, women, and children). When someone is trafficked, they are often forced into prostitution, sex work, and servitude against their will. And the individual has no choice but to complete this task.

### **PROHIBITION OF TRAFFICK IN HUMAN BEINGS**

Article 23 of Part III of the Indian Constitution addresses the illegal practices of forced labour and human trafficking, ensuring people's fundamental rights. Article 23 seeks to promote equality and honesty among all citizens while shielding individuals from becoming the victims of acts akin to slavery. It adopts an attitude that values people's inherent worth and liberty in an effort to stop human exploitation. Techniques used in human trafficking may include deception, trickery, or compulsion. Traffickers frequently take advantage of people by promising them a glamorous career with a better life and then ensnaring them in exploitative conditions. They also frequently play on vulnerabilities such as lack of education, immigration status, or financial difficulties.

### **BEGGAR SYSTEM**

People have lives, and they require money to live well. Each participant received payment for their labour. In the Beggar system<sup>2</sup>, labour is not compensated for. It implies that you will labour for free or extremely little money on any future projects. This is a very old human culture custom. Kings, or zamindar, made advantage of this system in the past by making the populace owe them money. The zamindar or monarch treats the individual who is unable to pay their obligation as a beggar and withholds payment for any additional labour they may perform.

### **FORCED LABOUR IMPOSED BY STATE AUTHORITIES**

Forced labour enforced by state authorities is the main focus of the ILO's 1957 adoption of the Abolition of Forced Labour Convention No. 105. It expressly forbids the use of forced labour in the following contexts: as a form of discrimination based on race, religion, or other factors; as a way of maintaining labour discipline; as a means of punishing people for expressing political opinions; or as a means of promoting economic growth.

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<sup>2</sup> <https://www.accurate.in/studentcorner/beggars-and-begging-system>, (last visited 26 march, 2024)

## **THE SCOPE OF ILO INSTRUMENTS ON FORCED LABOUR**

Nearly all nations have ratified both Forced Labour Conventions, making it legally required for them to be followed and for their members to provide frequent reports to the ILO's standards monitoring authorities. Being free from forced labour is a fundamental human right, and all ILO member states, regardless of ratification, are required to uphold this concept.

At the ILO International Labour Conference (ILC) in June 2014, governments, employers, and labourers made the decision to step up efforts to combat forced labour, which includes human trafficking and practices that resemble slavery.

They overwhelmingly approved the Forced Labour Convention, 1930 (No. 29) Supplement and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), which add to the Forced Labour Convention, 1930 (No. 29) and enhance the existing international instruments by offering precise guidelines on the preventive, remedial, and protective measures that should be implemented in order to end all forms of forced labour.

## **THE REALITY OF FORCED LABOUR, TRAFFICKING AND MODERN SLAVERY**

Adults and minors may be subjected to forced labour by the government, commercial companies, or private persons. It is seen in every nation and in every kind of economic activity, including forced begging, sexual exploitation, construction, agriculture, and manufacturing.

## **THE FORCED LABOUR DEFINITION ENCOMPASSES:**

Working circumstances that are inadequate or exploitative are not the same as forced labour. A number of factors, such as limitations on workers' freedom of movement, the withholding of wages or identity papers, physical or sexual assault, threats and intimidation, or fake debt from which workers are unable to escape, can be used to determine when a situation constitutes to forced labour.

Extraction of forced labour is illegal and constitutes a grave violation of both labour and fundamental human rights.

## **IMPORTANT LEGISLATIONS**

### **MINIMUM WAGES ACT, 1948**

A law passed by the Indian Parliament in 1948 called the Minimum Salaries Act<sup>3</sup> establishes the minimum wages that both skilled and unskilled workers must receive. The Minimum Salaries Act granted both the Central and State governments the authority to set wages. The law is statutory but not binding. Forced labour is when wages are paid below the minimum wage rate.

### **THE IMMORAL TRAFFICK(PREVENTION) ACT, 1956**

Immoral traffic in women and girls is prohibited by the Immoral Traffic (Prevention) Act<sup>4</sup>, which was adopted by the Indian Parliament in 1956. Anyone who enters a brothel with the intent to sexually exploit trafficking people is subject to punishment. All of the offences specified in the bill would be prosecuted in secret, which would bar the general public from attending. Prostitution-related trafficking is punishable under this bill.

### **THE TRADE UNIONS ACT, 1926**

The Trade Union Act of 1926 ensures workers receive equitable pay and increases their chances for advancement and training. Protect tenure security and enhance their working circumstances. Boost the living and working environment for employees. Give them access to amenities for recreation, culture, and education.

### **FACTORIES ACT, 1948**

The Factory Act of Great Britain, passed in 1937, was superseded by the more comprehensive Factory Act of 1948, which focuses primarily on health, safety, and the welfare of workers inside factories, as well as working hours, the minimum age to be employed, paid leave, and other issues.

### **PROTECTION OF CHILDREN FROM SEXUAL OFFENSE ACT, 2012**

The "Protection of Children Against Sexual Offences Bill (POCSO), 2011" addressing child sexual abuse was approved by the Indian Parliament on May 22, 2012, becoming an Act to successfully combat the evils of child sexual exploitation and abuse. The main objective of this act is to protect the child from sexual offences.

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<sup>3</sup> <https://clc.gov.in/clc/sites/default/files/minimumwagesact.pdf>, (last visited 29 march, 2024)

<sup>4</sup> [https://www.indiacode.nic.in/bitstream/123456789/15100/1/immoral\\_traffic\\_prevention\\_act\\_\(itpa\)\\_1956.pdf](https://www.indiacode.nic.in/bitstream/123456789/15100/1/immoral_traffic_prevention_act_(itpa)_1956.pdf), (last visited 29 march, 2024)

## **Bonded Labour System (Abolition) Act, 1976**

- The implementing authority to look into prevention and rehabilitation of Bonded labour<sup>5</sup> was vested with the District Magistrate.
- It provided stricter punishment of up to 3 years for people rendering bonded labour.
- It establishes a district-level institutional structure in the shape of Vigilance Committees.
- Vigilance committees assist District Magistrate (DM) on how to appropriately apply the requirements of this legislation.
- For the trial of offences under this Act, the State Governments/UTs may delegate to an Executive Magistrate the powers of a Judicial Magistrate of the first or second class.

## **The Indian Penal Code**

Sections 366(A) and 372 of the IPC<sup>6</sup>, prohibit kidnapping and selling minors into prostitution respectively.

## **IMPACT ON SOCIETY**

An important factor in advancing equality and social justice is Article 23. It guarantees that each and every person is treated with respect and dignity and supports the fundamentals of human rights. It seeks to end exploitation and establish a just society by outlawing forced labour.

Moreover, Article 23 is consistent with India's adherence to international agreements and accords that tackle forced labour and human trafficking. It displays the nation's attempts to address these problems internationally.

## **What are the reasons why traffic in human beings and forced labour are becoming an all-time high?**

Some of the prominent factors behind the menace of human trafficking are-

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<sup>5</sup> <https://www.indiacode.nic.in/bitstream/123456789/1491/1/197619.pdf>, (last visited 29 march, 2024)

<sup>6</sup> [https://www.indiacode.nic.in/handle/123456789/2263?sam\\_handle=123456789/1362](https://www.indiacode.nic.in/handle/123456789/2263?sam_handle=123456789/1362), (last visited 30 march,2024)

1. **Poverty** – Rising Poverty in India is a major factor in human trafficking. It has the potential to lead people to become traffickers, even force parents to sell their children or other family members.
2. **Scarcity of resources:** Human trafficking is prevalent in areas with uneven resource distribution. Therefore when people are in dire need of money, they switch to illegal means of earning money like human trafficking and forced labour.
3. **Social factors**– The disadvantaged sections of society, such as women, children, the illiterate, and the marginalised, are adversely impacted because they are powerless to speak out the against injustice
4. **Inadequate Legislative and Legal Framework**– Existing laws are insufficient to combat human trafficking. The government's failure to raise public awareness and execute the existing laws at the grass-root level contributes to its increasing number of cases.
5. **Lack of sufficient economic prospects** – The situation of massive unemployment also pushes the youth towards unethical ways of earning money. This is why traffickers lure them into forced labour, prostitution, human organs black markets, and other illegal activities by showing the amount of money that they can make in these types of activities.

### LANDMARK JUDGEMENT

#### **People's Union for Democratic Rights v. Union of India (1982)<sup>7</sup>**

In this case, Hon'ble Justice P.N. Bhagwati interpreted the actual intent of Article 23 in this particular case. It was held that this article's scope is quite broad and that it forbids all forms of forced labour. The court made it clear that the term "forced" refers to both the economic conditions that compel someone to perform this type of labour as well as the physical or mental pressure. As forced labour breaches the fundamental rights to life and human dignity, the court ordered the government to enact criminal laws against it. Further on the specific

#### **Sanjit Roy v. State of Rajasthan (1983)<sup>8</sup>**

In this case, the Hon'ble Court held that This means that regardless of whether a person is impacted by drought or scarcity, the state must pay the minimum wage to any worker engaged by it in any famine relief activities. This is crucial to ensure that the state does not exploit the plight of those

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<sup>7</sup> 1983 SCR (1) 456,

<sup>8</sup> (1983) 1 SCWR 346,

affected by famine, drought, etc., and preserves the principle that they must be properly paid for the labour they put forth effort and sweat into, which benefits the state.

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

- Bandhua Mukti Morcha was an organization working towards the eradication of Bonded Labour.
- They sent a letter to Justice Bhagwati and the Court treated it as a Public Interest Litigation and looked at the organization's observations based on a survey it conducted of some stone quarries employing Bonded Labours.
- The Court established rules for determining bonded labourers and stated that it is the state government's responsibility to identify, release, and rehabilitate bonded labourers.

**Dulal Samanta v. D.M., Howrah, AIR 1958 Cal. 365**

- In this case, the petitioner was served with a notice appointing him as a special police officer for three months however he complained that this violated his fundamental right as it results in "forced labour"
- The Court disregarded his appeal and held that conscription for services of police cannot be considered as either beggar, traffic, or forced labour.

**CONCLUSION:**

Human exploitation is a widespread problem that has an immediate impact on society. Children, women, and men are all taken advantage of in different ways for different reasons. Although the government has taken various actions to lessen or eradicate human exploitation, stronger people in society continue to take advantage of the weaker members of society. Furthermore, human exploitation needs to be under government supervision. The Indian constitution protects people from exploitation and establishes legal sanctions for it. As a result, there were fewer instances of human exploitation.