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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated 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

RIGHT AGAINST EXPLOITATION (ARTICLE 23 AND ARTICLE 24)

AUTHORED BY - INSHA AFREEN

1. Introduction

It is a fact that the weaker segments of society are exploited. Thus, under Articles 23 and 24, the Constitution of India, which is a socialist state, provides the Right Against Exploitation. Human trafficking and the profession of begging are forbidden by Article 23 and are illegal activities that carry legal penalties. Furthermore, the Indian Parliament has created multiple legislation to penalize similar conduct in order to give effect to the article. Article 24 forbade minors under the age of fourteen from laboring in factories, mines, or other dangerous jobs. A lot of laws are passed nowadays to stop child labour in dangerous jobs. The supreme court is also active in providing guidance for the children's well-being.

The use of someone or anything unfairly and selfishly for one's personal benefit or profit is referred to as exploitation. One of the most important aspects of socialism is the Right Against Exploitation, which is expressed in Article 39(f) of the Constitution. It states that states must focus their policies on achieving specific objectives, one of which is to shield childhood and youth from exploitation and from being abandoned both materially and morally, and to give them the tools and opportunity to grow up in a healthy manner, in an atmosphere of freedom and dignity.

Article 23 is a fundamental right which runs as ¹

(1) "Traffic in human beings, 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".

Another part of the article is in clause (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 the grounds only on religion, race, caste or class or any of them".

¹ The Constitution of India, art 23

Article 24 provides “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”.²

The word “beggar” refers to forced labor without compensation. It was a common practice in ancient India. Another issue that persists and poses a severe threat to human freedom and civilization is slavery, which is essentially the practice of exploitation. Additionally, there is the problem of human trafficking. The phrase “trafficking in human beings” refers to the illegality of slavery as well as the trafficking of women and children for unethical and other reasons. Additionally, any kind of forced labor that resembles beggar labor is prohibited by our Constitution.

2. Background of the Provisions

There was practically any practice of forced labor or slavery in any part of India when the constitution was adopted. The National Freedom Movement had been a unifying force against these abuses since the 1920s of this century. Nonetheless, in many regions of the nation, the upper or wealthier classes were abusing untouchables in a number of ways[4]. For example, there was a custom in some areas of Rajasthan, western India, which was a collection of Princely States at the time of independence, that employees of a particular landowner would not leave the property to look for work elsewhere without the proprietor’s consent.

Their lives were full of evil spirits, like the devadasi system that, In some parts of southern and eastern India, devoted women to Hindu deities in the name of worship, gods, worship objects, temples, and other religious structures; under this system, they were victims of immorality and desire instead of living a life of self-renewal, compassion, and devotion.

Since these traditions have no place in the new social and political epoch, the drafters of the constitution were eager to declare war on those who continued to engage in them after independence. Since 1982, the court has been able to significantly improve the appalling state of affairs in the impoverished nation by using articles 23 and 24.

² The Constitution of India, art 24

3. Prohibition of ‘Traffic in Human Beings’ and Forced labour

Human trafficking refers to the men and women for sale and buy as commodities and includes the illicit trafficking of women and children for illicit or other reasons.³ Despite not being specifically defined in Article 23, the term “human trafficking” does entail slavery. Article 35 of the Constitution grants Parliament the authority to enact legislation that penalize actions that are forbidden by this article. The Suppression of Immoral Traffic in Women and Girls Act, 1956 was passed by Parliament in accordance with this Article to penalize actions that lead to human trafficking.

Individuals are protected by Article 23 against both the State and private citizens. It places a proactive duty on the State to eliminate the evils of “traffic in human beings,” forced labor, and other like practices wherever they occur. It should be mentioned that both citizens and non-citizens are covered by this article.

Three types of exploitation are discussed in the article: (a) human trafficking; (b) forced labor; and (c) related forms of forced labor.⁴ Any kind of such practice is illegal and subject to penalties. The phrase “other similar forms of forced labor” would be read ejusdem generis, which would imply that the type of forced labor the author is considering must be related to either human trafficking or begging. The phrase “human trafficking” refers to the purchase and sale of individuals as though they were movable goods. This practice was outlawed under this article.

According to Article 23(2), “the state may impose required service for public purposes, but it may not do so in a way that exclusively discriminates against a person based on their race, religion, caste, class, or any combination of these.” In a previous case in Manipur before the former Court of the Judicial Commissioner, Manipur is a village custom that required every householder to offer a day’s free labor to the village headman. *R.S. Khullakpa vs. R.K. Tangkhul*⁵: 1961 AIR Manipur 1. The Somdal village chief is the respondent. They are both members of the Manipuri Tangkhul tribe. The village had a long-standing tradition. It is customary for every villager to provide the headman with a day’s worth of free labor. In 1939, the Sub-Divisional Officer (SDO) of the subdivision issued an

³ Mahendra Pal Singh, VN Shukla's, Constitution of India 252(Eastern Book Company, Lucknow , 12th edn, 2012)

⁴ Ibid.

⁵ *R.S. Khullakpa vs. R.K. Tangkhul*, AIR 1961 Mani 1

order maintaining the custom and directing that anyone who declined to provide the one-day free service would be required to pay. The appellant contended that the villagers were being forced to perform free labor under the threat of orders from the British regime, and that since the Indian Constitution went into effect, no Indian citizen could be forced to perform such forced labor in light of Article 23 of the Indian Constitution, which forbids it.

Furthermore, it is argued that although the tradition will continue to exist in practice, it will no longer be valid when India became a republic on January 26, 1950, because it violates Article 23 of the Constitution.

The court held that, “In my opinion such demand for labour, even if it is based on immemorial custom will certainly be hit by Article 23(1).”⁶

The Parliament may pass laws to penalize actions that are forbidden under Article 23 under Article 35 of the Constitution. According to Clause 2, conscription to the armed forces and other obligatory activities for public reasons are not unconstitutional. Parliamentary laws enacted in accordance with Article 23:

- The Suppression of Immoral Trafficking in Women and Girls Act of 1956
- The 1976 Bonded Labor System (Abolition) Act

4. Cases related to Article 23

It was held in the case of *S. Vasudevan v. S.D. Mital*, that “the word beggar commonly means forced labour for which no wages are paid or if paid then it is grossly inadequate. It means making a person work against his will and without paying any remuneration.”

In *Kadar v. Muthukoya Thangal*⁷, also known as Kerala Case, where a law made the refusal to perform personal service as agreed upon a penal offence, the High Court struck down the law as being obnoxious to Article 23, coming within the category of ‘forced labour’.

In the case *Ruiweinao Simirei Shailei Khullakpa v. Ruiweinao Kahaosan Thangkul*, the court became aware of an intriguing custom of the state of Manipur. It seems that it was customary for every home in the community to provide the headman with one day of free labor. In that particular

⁶ Id at 253.

⁷ *Kadar v. Muthukoya Thangal*, AIR 1962 Ker 168

case, the appellant declined to provide the free labor and argued that the tradition violated article 23 (1) of the Constitution, which forbids forced labor and beggar labor. According to the court, article 23(1) of the Constitution was broken by the tradition.

The government was ordered by the court to take the appropriate action to penalize private individuals who violate citizens' fundamental rights as protected by Article 23.

In the Gujarat state v. Hon'ble high court case⁸, it was decided that using convicts for labor without paying them a fair wage constitutes forced labor and is against Article 23 of the Constitution. The court has an obligation to uphold the convicts' contention that they should be paid a fair compensation for the labor they were forced to perform.

“When an action is initiated in the court through public interest litigation alleging the existence of bonded labor, the government should welcome it as it may give the government an opportunity to examine whether bonded labor system exists and as well as to take appropriate steps to eradicate that system,” the Supreme Court ruled in Bandhua Mukti murcha VS Union of India⁹. This is the government's fundamental duty under article 23, which forbids any kind of forced labor.”

5. Punishment and offences in relation with trafficking of human beings and labor

Section 370 of the Indian Penal Code (IPC) of 1860 contained a provision. Purchasing or selling someone as a slave has a penalty that carries a maximum sentence of seven years in jail as well as a fine. With effect from February 3, 2013, the Criminal Law Amendment Act has modified Section 370. The header “Trafficking of Person” has been used in place of the previous one.

Under the existing provision, the offence of trafficking is defined as-“Whoever for the purpose of exploitation (a) recruits; (b) transports; (c) harbours; (d)Transfers; or receives, a person or persons by –

- i) Using threats, or
- ii) Using force or any other forms of coercion, or

⁸ Gujarat state v. Hon'ble high court case, AIR 1998 7 SCC 392

⁹ Bandhua Mukti murcha VS Union of India,(1984) 3 SCC 161

- iii) By abduction, or
- iv) By practising fraud or deception, or
- v) By abuse of power, or
- vi) By inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received and such act will be punished in accordance with the law.”

5.1. Offence of Trafficking

Sections 370 and 370A of the Indian Penal Code (IPC) outline steps to combat the threat of human trafficking. The following are the sanctions for human trafficking¹⁰:

Person trafficking is a crime that carries a minimum sentence of seven years in jail, a maximum sentence of ten years, as well as a fine. If multiple people are involved in the trafficking, there is a minimum 10-year prison sentence as punishment. It may result in a fine and life in prison. The specified penalty for minor trafficking is a minimum of ten years in jail, with the possibility of a life sentence and a fine. If more than one kid is trafficked, the penalty consists of a fine and a minimum 14 years in jail, with the possibility of a life sentence. If a person is found guilty of the crime of trafficking in minors more than once, they will be sentenced to life in prison and a fine. The penalty for a public official or police officer found guilty of trafficking in minors is life in prison.

The Indian Penal Code (IPC) punishes the exploitation of a trafficked person with a minimum sentence of three years in jail, a maximum sentence of five years, and a fine. This punishment is outlined in Section 370-A. However, if the case involves the exploitation of a child who has been trafficked, there is a minimum 5-year sentence, a maximum 7-year sentence, and a fine.

There have been many instances of slave trade on a regular basis. Such an act is punishable under Section 371 of the Indian Penal Code (IPC), which states that “Whoever habitually imports, exports, removes, buys, sells or deals in slaves shall be punished with imprisonment for life or with imprisonment of either description for a term not exceeding 10 years and shall also be liable to fine”. According to Sections 372 and 373, selling or purchasing a minor for the purpose of prostitution or

¹⁰ The Indian Penal Code, 1860 (Act 45 of 1860) ss. 370, 370A

engaging in unlawful sexual relations with anyone who is employed for prostitution at any age is punishable by up to ten years in jail and a fine.

A person is considered to have committed the crime of unlawful compulsory labor under Section 374 of the Indian Penal Code (IPC) if they force someone to work against their will. They may be punished with a fine, a year in jail, or both.

Additionally, there is specific legislation against bonded labor and the immoral trafficking of women and girls. A law known as the Suppression of Immoral Traffic in Women and Girls Act, 1956, was passed in order to stop the trafficking of women and girls in immoral activities.

Prior to and during the adoption of the Constitution, child labor pledges were commonplace. Parents and guardians typically pledge their children in order to receive an advance payment; these practices were common throughout the nation. The children are guaranteed by written or verbal agreements in which the parents or guardians agreed to permit their children's services to be used in any employment in exchange for money or other benefits received or to be received.

The children who made this vow lived in subpar circumstances and were being taken advantage of by their employers. The Children (Pledging of Labour) Act, 1933 was passed to forbid the drafting of agreements to pledge children's labor and the employment of children whose labor has been pledged. A number of laws and legal clauses carry out the prohibition against exploitation found in Article 23 of the Constitution. Article 24 also has a unique clause that guarantees children's protection.

6. Prohibition of employment of children in factories

Under Article 24 "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".¹¹

It should be highlighted that this article's ban is strict and does not allow for an exception for hiring a youngster to work in a manufacturing mine or any other dangerous job. A pre-constitutional regulation that is still in effect is the Factories Act, 1948. Section 67 of this Act states that "No child

¹¹ The Constitution of India, art 24

who has not completed his 14 years shall be required or allowed to work in any factory.” There are some clauses that specifically address the wellbeing of the kids. First of all, the Directive Principles of State Policy in Article 45 of the original Constitution made provisions for children. More recently, in 2002, Article 21-A was added, guaranteeing the right to education as a fundamental right and requiring the states to provide free and compulsory education for all children up to the age of 14. Furthermore, Article 24 states unequivocally that the children must be given free primary education up until the age of 14 and cannot work in a mine, factory, or other dangerous job during this time.

Many laws have been implemented to stop child labor in dangerous jobs since the Constitution went into effect and included the protection against exploitation in the list of fundamental rights.

Currently, there are numerous laws that forbid the employment of minors in various professions. A few of these laws are_

- “No child who has not completed his 12th years shall be required or allowed to work in any plantation,” states Section 24 of the Plantation Labour Act, 1951.
- “No child shall be employed in any mine, nor shall any child be allowed to be present in any part of the mine which is below ground or in any (Open Cast Working) in which any mining operation is being carried out,” states Section 45 of the Mines Act, 1952.
- “No child shall be required or allowed to work in any capacity in any motor transport undertaking,” states Section 21 of the Motor Transport Workers Act, 1961.
- Beedi and Cigar Workers (Conditions of Employment) Act, 1996 states that “no child shall be required or allowed to work in any industrial premises” under Section 24.

In the case of *M.C. Mehta v. State of Tamil Nadu*¹², the Supreme Court had the chance to provide detailed instructions regarding child labor. The widespread use of child labor in dangerous jobs was noted by the court. The issue concerned child labor in Sivakashi, Tamil Nadu, firework manufacturing. In order to determine the scope of the issue, the court sent notices to every state and union territory in India. It also issued a number of directives prohibiting the use of child labor in dangerous jobs. Twenty thousand rupees should be deposited into a child labor welfare fund, which will be established, by either the employer or the child laborer. Every child must have an adult family

¹² *M.C. Mehta v. State of Tamil Nadu*, 1987 SCR (1) 819

member employed, the government must provide five thousand rupees, and twenty thousand rupees must be placed in the child's name in a bank account. The child's parents would receive the corpus, or income, each month. The court further ordered that, upon job completion, criminal sanctions be applied to those who were discovered to have used child labor in dangerous occupation.

The Supreme Court concluded the case with the following lines:

“We part with the fond hope that the closing years of the 20th century would see us keeping the promise made to our children by our Constitution about a half century ago. Let the child of the 21st century find himself into that heaven of freedom of which our poet laureate Rabindranath Tagore has spoken in Gitanjali”.

7. Conclusion

The rights to personal liberty and the prohibition against discrimination are guaranteed by the right against exploitation, which is actually an add-on. When it comes to trafficking, begging, and other like forms of forced labor, Article 23 applies to everyone, regardless of ethnicity, religion, caste, or class, or any of them, whether they are adults or children. However, under Article 24, children under the age of 14 are given extra protection. To put these principles into action, countless laws are currently being created. The Supreme Court's judicial activism is also evident in this case, as the Court has issued additional directives about children's health, education, and nutrition. It's also critical to remember that underage labor in dangerous jobs is forbidden. Child labor may not be prohibited if the job is not dangerous as, in a socialist society, having a job is not inherently bad and the freedom to work is equally significant.

Today, children between the ages of six and fourteen are entitled to receive education, which is a fundamental right that needs to be upheld in order to safeguard these rights from exploitation and the outlawing of child labor.