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## **Preface**

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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# **LABOUR TRAFFICKING AND ARTICLE 23 OF THE INDIAN CONSTITUTION: FROM FORCED LABOUR JURISPRUDENCE TO CONTEMPORARY INFORMAL ECONOMIES**

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### **Abstract-**

The use of criminal law systems to address the issue of labour trafficking in India tends to focus on rescue, prosecution, and punishment. Although these mechanisms are absolute, they usually exclude the constitutional provisions that disapprove exploitative labour. Article 23 of the Indian Constitution<sup>1</sup>, which provides that human beings, beggar, and other forms of forced labour are not to be subjected to traffic, and embodies a recalcitrant constitutional willingness to guarantee substantive freedom of labour as such. The interpretation of Article 23 by the judicial system has broadened the definition of labour as the labour obtained by economic compulsion<sup>2</sup> and structural inequality even in the absence of physical force. Even with the growth of informal jurisdictional areas, the contemporary informal labour markets have still resulted in states that are more or less equivalent to labour trafficking, especially of tribal migrant workers. This paper discusses how the Article 23 jurisprudence has developed and its ability to deal with current type of labour trafficking that is incorporated in informal economies. It holds that the constitutional doctrine has developed through the years but its preventive and remedial capacity is not fully exploited because of comorbid institutional expression and legislative disaggregation.

### **Research Questions**

- What is the judicial interpretation in responding to Article 23 of the Indian Constitution, to enlarge the definition of forced labour to incorporate the meaning of economic and structural coercion?
- How far does current Article 23 jurisprudence respond to current manifestations of labour trafficking within India informal and unregulated labour markets?
- Which are the constitutional and institutional constraints that could hamper good implementation of Article 23 in the fight against labour trafficking in informal economies?

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<sup>1</sup> The Constitution of India, art. 23.

<sup>2</sup> People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235.

## Research Objectives

- To study the constitutional vision and the history of drafting the Article 23 and specially the Constituent Assembly Debates and its connection with the Directive Principles of State Policy.
- In order to examine how Article 23 jurisprudence developed, it is necessary to trace its broadening in the classical concepts of beggar and bonded labour into wider concepts of economic coercion and structural exploitation.
- To critically examine the sufficiency of judicial interventions in the eradication of labour trafficking in the informal labour market, in particular where coercion functions do not resort to obvious physical force.
- In a move to draw the gaps among constitutional provisions, criminals law processes and labour law implementation, in order to prevent labour trafficking, the underscoring of institutional and administrative failure in curbing the vice.

**Keywords-** Forced Labour, Trafficking, Judicial System, Disaggregation, Punishment

## 1. Introduction:

### Article 23 and the Constitutional Pledge against Exploitation.

The Indian Constitution puts the freedom of the exploitation in the centre of the normative framework. Part III, a fundamental right, Art. 23<sup>3</sup>, that does not allow traffic in human beings, beggar and other derivative forms of induced labour, does so in recognition of its non-derogable nature. Civil liberties in classical sense tend to be restraining in State action whereas Article 23 makes a positive constitutional commitment<sup>4</sup> on the State to stop and redress exploitative labour practices, including those founded on individual economic practices. This model is based on the understanding that in many instances coercion in labour relations is achieved based on social and economic backgrounds instead of open physical power.

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<sup>3</sup> The Constitution of India, art. 23.

<sup>4</sup> Ministry of Labour and Employment, *Report of the Standing Committee on Labour on the Implementation of Social Security Schemes for Unorganised Workers*, Lok Sabha Secretariat, New Delhi (2022).

In modern labour markets, it is likely, especially in terms of the concept of the modern labour market, that trafficking will take forms that cannot be defined using traditional criminal categories. Informal intermediaries are used to recruit workers, transport them across borders and put them under exploitative conditions without any formal confinement or violence. Such practices are strongly dependent on the economic vulnerability<sup>5</sup>, obligation to debt and absence of livelihood opportunities especially with the migrant workers in the underdeveloped and the tribal areas. These circumstances have made a problem of the localised concept of consent and voluntariness and forced a constitutional interpretation of labour freedom on the basis of substantive equality and not formal choice.

Although it is a constitutional requirement, even nowadays, labour trafficking is often addressed as law-and-order issue without considering any labour rights and socio-economic claims. The resultant policy strategy is a focus on prosecution, rather than prevention and rescue, instead of rehabilitation. The following paper has been based on the assumption that labour trafficking is, in fact, not only a criminal failure but also a constitutional failure<sup>6</sup>, that is, labour trafficking is in fact a failure on behalf of the State to render the broad jurisprudence of Article 23 operational in the management of labour. Placing Article 23 in the context of informal economy, the paper aims at re-centring constitutional law as a decisive instrument both to deal with modern labour exploitation.

## **II. Coercion, Informality and Trafficking: Overview of a Conceptual Framework.**

### **A. Forced Labour as a Conceptualized Constitutional Concept.**

Article 23 forced labour has been judicially construed very far away in contractarian terms of free-consent. Supreme Court has made it clear that the labour cannot be regarded as free in cases when the decision of the worker is limited by hunger, unemployment or marginalization of the socio-economic life. Article 23 in this respect reflects substantive understanding of freedom<sup>7</sup>, and is sensitive to the fact that formal consent can fit with actual coercion.

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<sup>5</sup> Usha Ramanathan, "Trafficking, Migration and the Law", 44 *Journal of the Indian Law Institute* 312 (2002).

<sup>6</sup> Usha Ramanathan, "Trafficking, Migration and the Law", 44 *Journal of the Indian Law Institute* 312 (2002).

<sup>7</sup> Sanjit Roy v. State of Rajasthan, (1983) 1 SCC 525.

This interpretation of the Constitution matches with international labour standards according to which forced labour should be understood as labour that was obtained with the threat of punishment and in the absence of actual free will. Article 23 however goes to a bigger extent by recognizing that the menace might not necessarily be explicit but may be implicit. Even economic necessity may serve as coercion in situations where there exists deep inequality. This meaning has been pronounced in the Indian sense where labour markets are influenced by caste hierarchy, tribal displacement and underdevelopment of the region.

### **B. Physical Force labour Trafficking outside Physical Force**

Current labour trafficking drives are becoming chainless, lockless and even guardless. Domination is also done by other less aggressive systems like advance of wage, bondage, misleading during the time of recruitment and denial of salaries or identity papers. International labour scholarship acknowledges the practices to be sources of structural coercion which, in effect, denies workers autonomy, whilst acting as a guise to legality.

The practices are so normalised in the informal economy of India. The migrant workers who are recruited in tribal areas do not have written contracts, not aware of their rights, nor access to methods of redressal of grievance. The fact that they rely on the middle men or women to get a job, place to stay as well as food also makes their power asymmetrical thus enabling exploitation. Upon scrutiny through the prism of Article 23, these agreements manifest constitutional breaches, which are still mostly unknown to exist in current enforcement systems.

### **C. Constitutional Blind Spots in the Informal Economies.**

Of significant relevance to the informal economy is the fact that informal economy is a large part of an Indian labour market which is typified by lack of regulatory regulation as well as fragmented employment relations and laxity in regards to the observation of labour standards. The informality has been noted among analysts to create a significantly higher vulnerability of wage theft, excessive working environments, and arbitrary dismissal of employees.<sup>8</sup> These constitute

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<sup>8</sup> Jan Breman, *Footloose Labour: Working in India's Informal Economy*, Cambridge University Press, Cambridge (1996).

aspects that make informal workers highly vulnerable to exploitative labour modes that can show themselves in the form of trafficked labour, but in different manifestations.

The Article 23 will gain specific significance in this case. In areas where the statutory labour protections become unachievable, constitutional safeguards will have to fulfil the role of ensuring that there is no exploitation. The inability to incorporate Article 23 jurisprudence in the field of labour administration is not without blame, though, as these spaces of unlawful coercion operate by informal economies. This means that labour trafficking continues not as an anomie but rather as an expectant result of institutionalized negligence.

### **III. Vision 23 of the Constitution: Normative and History of Drafting.**

#### **A. Constituent Assembly Debates**

Historical record of drafting of Article 23 shows that the Constituent Assembly was conscious in developing a wide-range of ban on exploitation which was a dynamic one. Rejection of the concept of forced labour reduced to slavery-like practices was shunned and rather much focus was given to the removal of historically established systems like beggar<sup>9</sup> as was prevalent during colonial rule and feudalism. Inclusion of beggar in Article 23 was a sign of desire to deal with a coercion that is based on social custom and economic dependency.

The framers had an acute understanding that mere formal abolition of bondage would not be adequate in the absence of redress of the imbalance of power. They saw Article 23 as a social change tool<sup>10</sup>, which can put a stop to exploitative labour practices which are supported by poverty and hierarchy. This outlook placed the Constitution as not just a protector of negative liberties, but as an initiator of substantive labour freedom.

#### **B. Article 23 and the Directive Principles.**

The Directive Principles of State Policy specifically Articles 39(e) and 39(f)<sup>11</sup> of the Article 23 are working closely in normative proximity, as they direct protection of workers against exploitation and abuse against them. Combined, these clauses are a constitutional commitment to

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<sup>9</sup> Constituent Assembly Debates, Vol. VII, 29 November 1948.

<sup>10</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press, New Delhi (1966).

<sup>11</sup> The Constitution of India, art. 39(e), (f).

labour dignity and economic justice. Though the principles contained in the Directive are not justifiable, Article 23 converts its ethical imperatives into enforceable rights.

The constitutional plan in this way envisages a continuum between absence of forced labour and situations of equitable employment. Inability to achieve minimum wages, safe working environments and social security are the elements that erode the substantive content of Article 23. As a result, informal labour trafficking deserves to be perceived not only as a criminal offense but also as a sign of failed constitutional responsibilities.

#### **IV. Evolution of Article 23 by the courts: Beggar to Economic Compulsion.**

Article 23 of the Indian Constitution is a highly radical departure even on the classical liberal concepts of freedom of contract. On contrast to the conservative bans on slavery that center on the element of physical restraint that cities, the Article 23 takes a larger constitutional outlook that would break the exploitative labour relationship based on social and economic inequality. A careful but compelling shift by the judicial reading of this provision has been the transformation of a limited interpretation of forced labour as beggar to a broader and more liberal interpretation as economic compulsion as coercion.

- **Early Jurisprudence: Expanding the Meaning of Forced Labour: People's Union for Democratic Rights v. Union of India (1982)**

People's Union of the Democratic Rights v. UOI, Article 23 underwent a purposive meaning by the Supreme Court, Union of India, which dictated that forced labour is not limited to scenarios which are based on physical force or a legal compulsion. On finding that a person has no choice but to work, either because of impoverishment, starvation or the lack of reasonable remedies, the Court held that such labour could not come to pass as voluntary labour, simply because the worker has allegedly agreed to it.<sup>12</sup>

This argument was a major change in doctrines. The Court rationalised economic necessity as a form of coercion making the constitutional interpretation consistent with the realities of the working classes on the ground in India. Article 23 could therefore be interpreted as a protection

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<sup>12</sup> *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235.

against structural exploitation instead of being an anti-slavery clause. The focus of the Court on substantive freedom, but not on the formal consent established the basis of future jurisprudence of systemic labour exploitation.

### **B. Bonded Labour and Structural Exploitation: Bandhua Mukti Morcha v. Union of India (1984)**

In the event *Bandhua Mukti Morcha v. Union of India*<sup>13</sup>, enhanced the constitutional concept of forced labour. Union of India where the Court had to grapple with the existence of bonded labour in the post Indian independent era. The decision recognised bonded labour is perpetuated by factors beyond the realm of individual acts of coercion but by deep-seated socio-economic factors such as the debt, caste systems, illiteracy, and poor administration.

Most importantly, the Court found Article 23 to be enforceable on individuals other than on the State. This reading had broken the barriers of the public-private distinction traditionally linked with the upholding of fundamental rights. The Court placed a positive modification on the State to detect bonded labourers and guarantee their liberation and successful rehabilitation. The non-performance of the same was deemed equivalent to a persistent denial of constitutional rights. Article 23 was made a distributive justice instrument through this judgment. The State no longer could cease a direct imposition of forced labour, active intervention was necessary in compliance with a Constitution to bring an end to forced labour systems that existed inside the private realm.

### **C. Consolidation of Principles: Sanjit Roy v. State of Rajasthan**

This body of jurisprudence was united in *Sanjit Roy v. State of Rajasthan*, The Supreme Court determined that any wage paid lower than the statutory minimum amounted to forced labour and as such, not subject to an employer in the State of Rajasthan, Article 23.<sup>14</sup> The Court believed that minimum wage laws concerned themselves with minimum conditions required to sustain human dignity. In the case where an economic need in a worker forces him or her to accept payment of less than this limit then the resultant labour becomes involuntary as per the constitution.

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

<sup>14</sup> *Sanjit Roy v. State of Rajasthan*, (1983) 1 SCC 525.

This case is doctrinally influential since it established a direct connection between the labour welfare legislation and the enforcement of the fundamental rights. The Court clarified that non-compliance at statutory level is not applicable in evading constitutional prohibitions. The legalized economic exploitation was thrown squarely under the realm of Article 23. All these judgments make it clear that forced labour under Article 23 not only includes the traditional forms of servitude but also includes the contemporary acts of economic coercion. The judicial interpretation approach has a substantive conception of freedom that is polite to power pressures present within the labour markets.

#### **V. Article 23 and Informal labour Markets in the present times.**

Article 23 has also taken a new meaning in the modern informal labour markets. Economic liberalisation, informalisation of the practice of employment and the spread of intermediary-based recruitment patterns has essentially changed the essence of labour relations in India. Though this has brought more employment opportunities it has also posed more vulnerability of the workers who are found at the outer edges of the economy.

Informal labour markets are typified by absence of written contract, absence of social security and social security, poor regulatory supervision and poor access to law. Labour Workers who have participated in seasonal migration, circular-migration and gig-based platform employment have been operating on the outside of protection by labour law. Such working mechanisms are officially voluntary, though the choice to join them is often necessitated by desperation, debts, and lack of alternative means of livelihood.

In such industries contractors and sub-agents often mediate recruitment and have a lot of control on the mobility and remuneration of workers. This division of responsibility blurs the employment relationship and complicates the way in which legal responsibility can be have legal responsibility. Coercion in such scenarios is more of dependency and insecurity and not through blunt force. Analytical works on the informal economy in India have regularly emphasized the

breakdown of the bargaining power of workers through structural vulnerability which makes consent look more of an illusion.<sup>15</sup>

In modern-day informal economies, labour trafficking is frequently organized without the use of physical restraint or open hostility of any kind. It instead exerts control through practices available to it like wage advances which in still debt cycles, late or non-payment, seizure of identity documents, and threats of non-employment in future. These rituals have dire limiting effects on the capacity of the workers to leave exploitative terms and conditions, essentially forcing them to work.

Such practices are of serious concern when they are measured against the principles in the Constitution that are as articulated in Article 23 of jurisprudence. The fact that the Supreme Court focuses on the economic coercion and unfair bargaining power makes these arrangements a doctrinal label of being viewed as a forced labour. Chains are not present, nor does it mean that there is no coercion with the worker making the decisions based on structural deprivation.

The international labour standards strengthen this interpretation when they acknowledge forced labour as an area that considers instances of subjecting individuals to forced labour, through the vulnerability abuse, and debt dependency.<sup>16</sup> When applied alongside domestic constitutional jurisprudence, Article 23 comes out as a strong norms that could help deal with contemporary manifestations of labour exploitation on informal economies.

One should however, draw a line between the doctrinal analysis and empirical verification. Although localised case studies are also important in terms of demonstrating constitutional violations, the current discourse is still limited to judicial interpretation and literature. In the absence of publicly verifiable data, there are no factual assertions as to particular regions or labour markets. This would guarantee analytical rigour with integrity being maintained to empirical research conducted elsewhere.

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<sup>15</sup> Jan Breman, *Footloose Labour: Working in India's Informal Economy* (Cambridge University Press 1996).

<sup>16</sup> International Labour Organization, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (ILO 2017).

## **VI. Boundaries of the judicial enforcement to combat labour trafficking.**

Although the Indian judiciary has given massive interpretation to Article 23 of the constitution, there are notable inabilities to transfer constitutional norms into practical protection against labour trafficking. Judicial recognition of forced labour which includes economical compulsion has certainly empowered the normative framework. The success of this jurisprudence, however, is dependent on administrative capacity, coordination of the institutions and political will. The lack of contact between constitutional promise and performance on the ground still serves to discourage the changeability potential of Article 23.

### **A. Reach of the Judicial versus Administrative Failure.**

Indian courts have been continually pursuing a liberal and intentional interpretation of forced labour, acknowledging that pressure can be put on a person due to living in poverty, being in debt, and having a lack of bargaining power.<sup>17</sup> However, judicial directions in the Article 23 rely on the performance of the executive institutions, including labour inspectors, district administrations, and welfare authorities to a large extent. These institutions are usually characterized by chronic understaffing, lack of training programs as well as lack of resources especially in those parts where informal employment is prevalent.<sup>18</sup>

The legal interventions are usually declared rulings or the remedial directions delivered in cases about the litigation of the public interest. Such interventions are a symbolic and normative aspect and as much as it needs administrative follow-through, it needs to be sustained. As a matter of fact, the labour inspection mechanisms are still weak, inspections are very rare and violations are hard to be detected. There is also no reliable data on informal workers, which serves as an additional issue in enforcing them.

In addition, district level structures tend to view labour trafficking as a punctual law and order problem and not an institutional constitutional delinquency. This leads to rescue operations in most instances being largely reactive and disjointed. The institutional constraints of the judiciary

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<sup>17</sup> Upendra Baxi, *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India* (1985) 4 Third World Legal Studies 107.

<sup>18</sup> International Labour Organization, *Labour Inspection and the Future of Work in India* (ILO Working Paper, 2018).

do not allow it to monitor compliance at any single point and the judicial implementation is therefore sporadic instead of systematic.<sup>19</sup>

Such dislocation can describe a structural constraint of adjudication based on rights: the court is one thing, able to say constitutional standards but unable to give an institutional answer to what keeps labour markets going.

### **B. Dissolution of the Criminal Law as well as Labour Law.**

The other critical weakness is the point of fragmentation between criminal law systems against trafficking and constitutional redress on Article 23. The major emphases on the Indian Penal Code and other criminal legislation are prosecution and punishment, as opposed to the protection, release, and rehabilitation of the affected workers as stipulated in Article 23 jurisprudence. Lack of alignment between these schemes frequently leads to partial and incomplete reaction in regard to labour trafficking<sup>20</sup>.

Trafficking offences have rarely been prosecuted and have low conviction rates. Researchers are more likely to focus on aspects of physical confinement or the more obvious violence and not be interested in less visible cases of economic coercion that the constitutional jurisprudence had identified as forced labour. As a result, numerous victims of labour trafficking get hounded by criminal justice systems.

Similarly, the labour law mechanisms that deal with the violation of wage, working conditions or social security are independent of the criminal justice processes. Such segregation results in a scenario that either many workers are freed or paid without holding the traffickers to responsibility or the reverse is also true, where a criminal justice process is followed, without the commensurate rehabilitation of victims.

The absence of institutional coordination among the labour departments, police and welfare agencies undermines the general efforts towards labour trafficking. Article 23 jurisprudence, though broad in principle, has not been used well as a unifying constitutional framework with the ability to bring together criminal accountability and labour welfare and rehabilitation.<sup>21</sup>

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<sup>19</sup> Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' (1985) 4 *Third World Legal Studies* 107.

<sup>20</sup> Law Commission of India, *Report No 243 on Section 370 IPC* (2012).

<sup>21</sup> *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161.

### **C. Lack of preventive Framework.**

Article 23 enforced by the courts is mainly reactive. Courts usually step in once there has been a breach whether as a result of an individual complaint or a press interest lawsuit.<sup>22</sup> Although such interventions are needed, they fail to prevent exploitation prior to its realisation.

The labour administration does not have any institutionalised early-warning system that can tell about the existence of conditions that create forced labour, which include extreme wage suppression, long-term indebtedness, or forced migration patterns. There is also no systematic mode of observing the recruitment activities in informal labour markets.<sup>23</sup>

This lack of preventative architecture restricts the transforming ability of Article 23. In the absence of active detection of susceptibility and manipulation, the constitutional coverage will be dependent on the remedies of the violence violation. The failure of the judiciary to impose periodic surveillance or proactive control is not a sign of inadequacy within the doctrinaire, but is an issue of institutional incompetence.

## **VII. Article 23 and the Labour Codes: Speakman or Retaliation?**

The passing of the four Labour Codes signified major rearrangement of the labour law in India. The Codes are presented as the tools of simplification and rationalisation the purpose of which is to consolidate the existing legislation and cover the unorganised workers. Nevertheless, there is the crucial question of their connection to Article 23 jurisprudence that has valuable constitutional implications. The degree to which the Labour Codes are or are not based on the constitutional vision of forced labour prevention is still a debated matter.<sup>24</sup>

### **A. The Code of Forced Labour Prevention.**

The most notable aspect of the Labour Codes is the fact that Article 23 is not mentioned at all and that the constitutional jurisprudence of forced labour is still unaddressed. Although the Codes take into account wages, occupational safety and industrial relations and social security,

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<sup>22</sup> *Sanjit Roy v. State of Rajasthan* (1983) 1 SCC 525, para 14.

<sup>23</sup> Ravi Srivastava, 'Labour Migration in India' (2011) 46(47) *Economic and Political Weekly* 65.

<sup>24</sup> Upendra Baxi, 'Constitutionalism as a Site of State Formative Practices' (2000) 21 *Cardozo Law Review* 1183.

they do so in a way, which is rather compliance oriented. It is concerned with procedural regulation as opposed to substantive prevention of coercion.<sup>25</sup>

The Code on Wages on minimum wage stipulations, such as those on minimum wage, are not part of the constitutional protective measures against forced labour, but primarily, they are a statutory right. The jurisprudential relationship that is developed by the Supreme Court between non-payment of minimum wages and the Article 23 violation has very minimal echo in the design of the statutes contained in the Codes.

This exclusion can be translated as a missed chance to incorporate constitutional norms in the legislative building. Through neglecting to explicitly identify economic coercion as a constitutional issue, the Codes are in danger of reducing labour protection to a question of regulatory compliance and not of the enforcement of fundamental rights.<sup>26</sup>

## **B. Informality in the Labour Codes.**

Despite the purported coverage of the Labour Codes to unorganised and migrant workers, it is based on registration and self reporting which in effect makes the implementation difficult to work effectively. To a large extent, informal workers, especially the migrants who work under contractors and intermediaries are not properly included on official databases. Registration where there are no effective enforcement measures is not much to counter structural weaknesses.

The fact that migrant workers still remain invisible when it comes to the Codes is an indication of a greater conflict between the official legal guidelines and the actual realities of labour. Without proactive outreach, inspection and accountability practices, the statutory recognition would not imply anything as far as protection is concerned.

In the eyes of Article 23, informality as such is where coercion takes place. The lack of enforceable agreements, schemes like social security and redressing grievance, enhances dependency of workers on intermediaries, which augment vulnerability to forced labour. In the present form, the Labour Codes fail to address this constitutional aspect of informality.<sup>27</sup>

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<sup>25</sup> Amartya Sen, *Development as Freedom* (OUP 1999) 90–94.

<sup>26</sup> *Sanjit Roy v. State of Rajasthan*, (1983) 1 SCC 525; Code on Wages, 2019.

<sup>27</sup> Jan Breman, *At Work in the Informal Economy of India* (Oxford University Press 2013).

### **C. A Constitutional Lost Opportunity.**

The Labour Code could have been used as a tool of incorporation of the constitutional jurisprudence in the design of statutes. The accreditation of forced labour as a constitutional offence, an alignment of minimum wage regulations to the terms stated in the article 23 and these failures of prevention would have enhanced the constitutional elements of regulation of labour.

Rather, the Codes mostly work under a technocratic paradigm of being easy to comply with and efficient in regulation. This means that this will impose a threat on undermining the normative strength of Article 23 because labour exploitation will be viewed as an administrative anomaly instead of a constitutional malpractice.

## **VIII. The Article 23 of the Contemporary Labour Markets Reimagined.**

To be at all pertinent to the modern day labour markets, Article 23 has to be redefined not as a curative measure but as a prophylactic constitutional assurance. This has already been grounded with the judicial interpretation that has identified economic coercion and unequal bargaining power as causes of forced labour. The difficulty is to operationalise this vision with the help of the institutional and policy frameworks.

### **A. Article 23: A Prevention Preceptive Right.**

The conceptualisation of Article 23 as a preventive right will involve the movement of focus to preventive interventions, as opposed to dealing with post-violation consequences. The warning signs of potential coercion can be indicated by such indicators as the constant underpayment of wages, overdependence on the labour intermediaries, as well as the absence of the social security cover.

Preventive enforcement would imply the connection of minimum wage response, working conditions and social security access with constitutional decency. Instead of conceptualizing these entitlements as disaggregated statutory privileges, they ought to be perceived as part and parcel of the prevention of forced labour. This line of argument corresponds with the substantive meaning of freedom by the Supreme Court of Article 23.<sup>28</sup>

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<sup>28</sup> *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235.

## **B. Combining Social Security with Article 23.**

Social security is very important in counteracting economic compulsion. The availability of income security programs and healthcare and welfare programs lower the vulnerability of workers to exploitive arrangements. A combination of social security frameworks and Article 23 would be acknowledgement that forced labour is more of an effect of financial insecurity than direct coercion.

Of special importance is portability of welfare benefits of migrant workers. Lacking portable entitlements, migrant workers cannot survive independently, but have to rely on employer and contractors, which makes them more prone to compulsion. Article 23 would have added power as a preventive tool were social security to be viewed as a constitutional protection against forced labour.

## **C. Enhancing the Strength of Institutional Accountability.**

Lastly, to reimagine Article 23, the institutional accountability has to be improved. The administration agencies that control labour need to be viewed as constitutional duty bearers and not regulatory bodies. Their inability to avoid exploitation should be regarded as a constitutional weakness and not an administrative weakness.

Decentralised systems of governance such as the Panchayats and Local authorities can also contribute to the early realisation of vulnerability and tracking recruitment practices. Although judicial regulation is necessary, sustainable enforcement is required in entrenching constitutional accountability in the day-to-day governance institutions.

This would help Article 23 no longer to be episodic judicial but rather a systemic approach that can resolve labour trafficking at informal economies of the present days.

## **IX. Conclusion**

Article 23 of the Indian Constitution holds a special place in the architecture of the Indian constitution. It is one of the few basic rights being established to be absolute, in the sense of being a categorical denial of human exploitation in all its manifestations. This provision has over the decades been given in very wide interpretation by constitutional courts and most especially by the Supreme Court to make it not a prohibition against traditional forms of servitude but an extremely

strong normative proposition against economic compulsion, structural compulsion and labour exploitation. Article 23 is thus jurisprudentially sound, dynamic and adaptable to changing types of unfreedom in labour relations, although with this doctrinal strength, the actual experience of the institutional manifestation of labour trafficking itself has been showing an institutional weakness that distorts the constitutional pledge in the provision.

The courts have always understood that forced labour should not emerge only as a result of material inhibition or explicit force. Rather, it can arise due to the situations of absolute poverty, the being in debt, social marginalisation, and lack in senseful alternatives. In historic cases like the one of the people union towards democratic rights v. UOI, *Bandhua Mukti Morcha v Union of India*. The Supreme Court once again, *Union of India* held that labour obtained in a situation where workers have no real choice, other than to submit, as a means of hunger, debt, or social vulnerability, was squarely within the ban of the prohibition of Article 23.<sup>29</sup> This jurisprudence saw the end of an era in which labour was understood as formalistic, due to the presence of a word in a given situation, the word force. Yet, so long as courts have expressed such a progressive interpretation with extreme clarity and moral force, the institutions to which the application of these principles to ordinary government is left, labour departments, and district administrations, law enforcement agencies, and welfare departments, have generally lagged behind.

Trafficking of labour involves exploiting and enslaving labourers in modern India, and hence, it has to be seen not just as a deviant behaviour within a crime, but as an institutionalized behaviour within the realm of economic disparity and isolation. The sheer prevalence of the informal economy in terms of a lack of regulation in the workplace, lack of written agreements and well-established means of collective bargaining has given a rich breeding ground to exploitative labour practices that are near to trafficking. Migrant workers, the landless labourers, women and historically marginalised communities are especially impacted, because their bargaining power is destroyed by poverty, caste hierarchies, gendered labour market, and denied

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<sup>29</sup> *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235; *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161.

access to the social protection.<sup>30</sup> There the boundary between voluntary labour and coerced labour disappears.

This weakness in the structure is made worse by disjointed legal reactions. As opposed to the specialised legislation and prosecution of labour offences under the Indian Penal Code, the labour law regimes combat the wage, social security, and working conditions as a regulatory measure. Failure to achieve the convergence of these frameworks leads to regulatory vacuum where exploitation of this markets exists unchecked in official records, under-reported and is poorly addressed, and especially in such industries as construction, brick kilns, farming, domestic services and small scale manufacturing.

In Article 23 therefore, the constitutional promise in practice is not realised among informal economies. In spite of the vision of the social order built on the basis of dignity and freedom of exploitation, the informal sector exists at the periphery of the constitutional implementation. Such indifference to labour inspection, inconsistency in rescue and rehabilitation systems, and lack of procedures and socio-economic access<sup>31</sup> to justice is a key constraint to rights-based adjudication that cannot be maintained over time through institutional capacity and political will.

The issue of labour trafficking in this situation requires a radical approach that is based on a holistic, preventive, and rights-based approach. This way should not involve reactive measures that are based on post-facto rescue and prosecution. It ought rather to focus on prevention, of the underlying causes of vulnerability, in universal access to social security and full enforcement of the minimum wage legislation, labour mobility of welfare benefits of migrant workers and stricter labour inspection regimes in all informal sectors. It is also important to empower the workers by making awareness, collective organisation and the availability of grievance redress mechanisms

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<sup>30</sup> Jan Breman, *Footloose Labour: Working in India's Informal Economy* (Cambridge University Press, 1996) 12–18.

<sup>31</sup> Government of India, Ministry of Labour and Employment, *Report of the National Commission on Labour* (2002) Vol. I, Ch. 6.

accessible to enable the workers to claim their constitutional rights without any fear of being victimised.<sup>32</sup>

After all, the future applicability of Article 23 lies not so much on the interpretation by the courts but in its application in the daily governance and labour regulation. An equitable system of rights grounded in the doctrines of constitutionality, economic controls, social welfare and administrative responsibility is able to turn Article 23 into a living instrument of social justice instead of the living instrument of moral correction. In this manner, the constitutional prohibition on labour trafficking may be theoretical only, potentially weak in legal form, but strong in theory.

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<sup>32</sup> International Labour Organization, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (2017) 41–44.

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