



“Unveiling the Chains: Understanding the Complexities of Human Trafficking and Forced Labor”

DHRITI SINGH KUNDU

School of Law, Sushant University

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ABSTRACT

Forced labor, human trafficking, and slavery persist as critical global issues, with millions of individuals subjected to exploitation and abuse. This research proposal, authored by Dhriti Singh Kundu, a final-semester BALLB (Hons.) student at Sushant University, delves into the multifaceted dimensions of these phenomena. The introduction elucidates forced labor's definition and prevalence, emphasising its presence across various sectors and its impact on vulnerable groups. The research objective hypothesises that the existing legal framework inadequately addresses forced labor and human trafficking due to implementation challenges. The research question seeks to explore the meaning, magnitude, and forms of forced labor and human trafficking. Employing a doctrinal research methodology, the study examines statutes, case laws, and secondary sources to analyse the legal framework and domestic responsibilities in addressing trafficking and forced labor, particularly within the Indian context. The literature review contextualises the persistence of forced labor within broader socio-economic factors, highlighting poverty, discrimination, and weak law enforcement as underlying causes. Furthermore, it elucidates the concept of human trafficking, its various forms, and its intersection with forced labor. The paper also provides relevant case laws, including the People's Union for Democratic Rights v. Union of India, Neerja Chaudhary v. State of Madhya Pradesh, and Budhadev Karmaskar v. State of West Bengal, which underscore the need for robust legal mechanisms and victim rehabilitation. The conclusion emphasises the need for an integrated approach involving governments, civil society, and NGOs to combat forced labor and trafficking effectively. Despite India's extensive legislative framework, enforcement challenges persist, necessitating concerted efforts to protect vulnerable individuals and eradicate these injustices.

INTRODUCTION

Forced labour is any work or service that people are forced to do against their will, usually under threat of punishment. Almost every form of modern slavery includes some element of forced labour. It's the most extreme

way in which people are exploited for some form of gain – including for profit, sexual gratification and/or other things.

The *International Labour Organisation Forced Labour Convention, 1930 (No. 29)* defines forced labour as “Forced or compulsory labour is all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.”¹

Art. 2(1) states, the term forced labour includes slavery and practices similar to slavery as well as bonded labour or debt bondage.

The ILO has developed several elements, which individually or in conjunction, can indicate a forced labour situation such as, threats or actual physical harm, restriction of movement or confinement to the workplace or a limited area, debt bondage, withholding wages or excessive wage reduction that violates previously made agreements, retention of passports and identity document and threat of denunciation to the authorities, when the worker has an irregular immigration status.

Forced labour affects at least 27.6 million people worldwide – with at least 17.3 million people experiencing forced labour exploitation in the private economy, and nearly 4 million people in state-imposed forced labour, and over 6 million people in commercial sexual exploitation. Forced labour exploitation is most often found in industries with informal workers and/or little regulation. These include Agriculture and fishing, services such as hospitality and transport, domestic work, construction, mining, quarrying and brick kilns, manufacturing, processing and packaging, sex work, including sexual exploitation, Market trading and Illicit trades and illegal activities.

Many people associate forced labour and slavery with physical violence, but there are many other insidious ways used to force people to work. Some of these are deeply ingrained in some cultures, including debt bondage or bonded labour implying trapping a person in a debt that they cannot pay off – which affects around one-fifth of all people in forced labour exploitation.

It is often the most vulnerable and excluded groups in a society who become trapped in forced labour, including, children, people living in poverty, unemployed people, or those who cannot find sustained work, people who struggle to access education and people who belong to so-called lower castes – including Dalits in India.

Migrant workers are at much higher risk of forced labour exploitation than other workers. They are often targeted as they may not speak the language, they may have smaller networks to call upon, limited rights and be dependent on their employers for things such as accommodation, food and the legal right to remain in the country. Forced labour is also common in societies where the rule of law is weak, or where corruption is common. It can also be prevalent in any economy that is dependent on cheap labour.

¹ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

Research Objective, Hypothesis, and Question:

This study aims to investigate the meaning, magnitude, and forms of forced labor and human trafficking while evaluating the adequacy of existing legal frameworks. The hypothesis posits that the current legal framework is insufficient to combat forced labor and human trafficking, with the main challenge lying in the implementation of laws. The research methodology employed utilises a doctrinal approach, involving the analysis of statutes, case laws, and secondary information from diverse sources such as books, articles, journals, and websites.

LITERATURE REVIEW

Why does forced labour still exist?

Poverty and discrimination breed the conditions in which forced labour practices persist. Poor people are often in need of cash just for daily survival, which forces them to sell their labour in exchange for a lump sum of money or a loan. They are tricked or trapped into working for very little or no pay, often for long hours and seven days a week. The value of their work is invariably greater than the original sum of money borrowed. Forced labourers are routinely threatened with and subjected to mental and physical violence with women and girls being disproportionately affected by sexual violence.

Forced workers are often subjected to different types of surveillance, including the presence of armed guards. In some cases, entire families are subjected to forced labor, complicating escape efforts for individual family members. Conversely, these forced labor systems perpetuate extreme poverty among marginalised groups, particularly women and children, who have limited opportunities to make independent decisions and break free from the cycle of forced labor.

In most countries, legislation against various forms of forced labour exists. However, law enforcement is weak and corruption is widespread, hence, the vast majority of perpetrators remain unpunished. This helps keep forced labour exploitation a low risk, but highly profitable operation.

What is human trafficking?

Human trafficking, often referred to as trafficking in persons, represents a contemporary manifestation of slavery, encompassing the illicit transportation of individuals through coercion or deceit for the objectives of labor, sexual exploitation, or financial gain for others.

The comprehensive definition of trafficking has been adopted by UN Office of Drugs and Crime in 2000 known as UN Protocol to Prevent, Suppress and Punish Trafficking in persons, Especially Women and Children 2000 under the UN Convention against Transnational Organised Crime (UNTOC): *Article 3* of the convention defines "Trafficking in person" as the "recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other form of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, or practices similar to slavery, servitude or removal of organs."

According to Trafficking in Persons Report (TIP) 2011, India ranked second of three tiers out of 184 countries along with Greece and Guatemala.² Almost 90% of human trafficking in India is involved in exploitation of Indians in forced labour within the country's border. Typically, those trafficked are women and children who are compelled, often through indebtedness and sexual violence, to engage in labor within sectors such as brick kilns, agriculture, and embroidery.

Exploitation is a key element of trafficking. Exploitation shall include sexual exploitation, forced labour, slavery or practices similar to slavery, servitude or the removal of organs. The Government of India has signed the Convention on 12th December 2002³: The protocol defines three basic elements in trafficking which are:

1. The process by which trafficking is done- recruitment, transport, transferred.
2. The means employed during the process- coercion, abduction, fraud, deception.
3. The purpose for which a person is trafficked- sexual exploitation, forced labour, slavery.

The definition clearly says that not only transfer of a person will amount to trafficking but also it involves the receipt or recruitment of child by any person as a part of trafficking process. Trafficking is not limited to sexual exploitation only; it takes place in the form of forced labour also.⁴ The consent of a trafficked person is irrelevant whenever any means are employed.

Forced labour is the outcome of trafficking:

Forced labour is the outcome of human trafficking but forced labour also occurs without human trafficking. It means all human trafficking are in a form of forced labour but all forced labour may not be human trafficking. The human beings (men, women and child) are trafficked for the purpose of sexual or economic exploitation against their will and consent which is one type of forced labour. In trafficking, a human being is transferred, recruited, transported or is received from one place to other place for the purpose of exploitation and the victim is forced to be exploited.

All form of forced labour does not amount to trafficking:

Bonded labour, slavery and other form of forced labour such as working in industries, agriculture and domestic labour are not trafficking because it does not involve transfer, recruit or receipt of human beings from one place to other. Moreover children, men and women due to their family pressure and poverty go for forced labour. Children are forced to go for work due to the debt taken by their parents. Girl child do the household work in others house as domestic workers does not amount to human trafficking but is forced labour if she is not trafficked. In these circumstances, forced labour does not amount to trafficking though there is violation of fundamental right to dignity, health and freedom.

² A global alliance against forced labour, available at <http://www.ilo.org/sapfl/lang--en/index.htm>

³ <http://www.wcd.nic.in/>

⁴ Ibid

Legal Framework and Domestic Responsibility in Addressing Trafficking and Forced Labor: The Indian Context

Regulation Regulating trafficking and forced labor is primarily a national responsibility, with each nation bearing the onus of addressing these issues within its domestic jurisdiction. In India, a significant legal framework exists to combat trafficking and forced labor, encompassing various constitutional provisions and statutes. Article 23 of the Constitution of India guarantees the right against exploitation, prohibiting human trafficking and forced labor and imposing penalties under the law. However, it does not specify the age of trafficked children for labor exploitation, leaving a gap in protection. Article 24 prohibits the employment of children below 14 years in hazardous occupations, yet it doesn't address the situation of children aged 14 to 18 engaged in hazardous work as forced labourers, posing enforcement challenges. Article 39 of the Indian Constitution, part of the Directive Principles of State Policy, mandates securing adequate livelihoods and protecting citizens from economic compulsion into unsuitable occupations. Additionally, it emphasises safeguarding children from exploitation and abandonment, stressing the state's duty to ensure their healthy development. The Indian Penal Code of 1860 includes sections dealing with the procurement and importation of minors and compelling individuals into labor against their will. The Bonded Labour System (Abolition) Act criminalises bonded labor and exploitation of weaker sections, yet implementation hurdles persist due to various factors such as lack of awareness and enforcement. The Child Labour (Prohibition and Regulation) Act of 1986 prohibits hazardous employment for children below 14 years, but questions arise regarding enforcement for older children engaged in hazardous work. Addressing these issues requires not only robust legal frameworks but also effective implementation mechanisms to ensure the protection of vulnerable individuals and the eradication of exploitative practices.

Strengthening Legislation and Enhancing Support Systems to Combat Forced Labour, Human Trafficking, and Slavery

To strengthen legislation aimed at combating forced labour, human trafficking, and slavery, several key measures must be taken. Firstly, ratifying and implementing the ILO Domestic Workers Convention, 2011 (No. 189) is crucial to ensure the protection of domestic workers' rights. Additionally, passing the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill and allocating adequate financial resources for its implementation is essential. This bill should be accompanied by the development of training materials for law enforcement officials to effectively investigate and prosecute trafficking cases. Similarly, the passage of the National Domestic Workers Regulation of Work and Social Security Bill 2016, coupled with adequate financial support and the establishment of a task force, is vital to ensure the effective implementation of regulations safeguarding domestic workers. Moreover, recognising the double victimisation of women from weaker sections, particularly regarding sexual and physical assaults, requires the incorporation of specific provisions within existing legislation to ensure their safety and punish offenders.

In terms of improving victim support, allocating sufficient financial and human resources to local governments to establish units assisting internal migrant workers in accessing essential services such as identification documents, social security benefits, and housing assistance is paramount. Strengthening coordination and transparency in addressing modern slavery necessitates the implementation of a National Action Plan that acknowledges the various contexts of slavery, both cross-border and local. Additionally, empowering the National Human Rights Committee (NHCR) as an independent government body to oversee and coordinate India's response to modern slavery is crucial.

Addressing risk factors associated with forced labour and trafficking requires public encouragement of formal, regulated, and safe channels to assist labour migrants. Furthermore, setting up awareness initiatives at local and national borders that provide migrants with contacts of local support organisations can help prevent exploitation. Moreover, integrating marginalised communities such as SC/ Dalits/ST into civil society is essential for social and political recognition, as they are often vulnerable to exploitation.

To eradicate modern slavery from the economy, companies should be encouraged to fund local initiatives and NGOs combatting modern slavery as part of their Corporate Social Responsibility (CSR) requirements. Mandatory labor inspections should be conducted in high-risk industries within the informal sector, such as brick kilns and textile industries. Additionally, all industries and businesses should be mandated to create credible grievance mechanisms accessible to vulnerable workers. Furthermore, legislation mandating large companies to annually report on steps taken to eliminate modern slavery in their supply chains is imperative for accountability and transparency. These comprehensive measures aim to strengthen legislation, improve victim support, address risk factors, and eradicate modern slavery from India's economy.

RELEVANT CASE LAWS

In the case of *Peoples' Union for Democratic Rights v. Union of India*⁵, after commissioning three social scientists to investigate the working conditions of labourers involved in the Asiad projects, the petitioner forwarded their findings to Justice P.N Bhagwati, prompting the Supreme Court to take notice and issue notices to the Union of India and the State of Delhi. The court ruled that the Union of India, the Delhi Administration, and the Delhi Development Authority must ensure compliance with labor laws by contractors, emphasising potential legal action against them as principal employers for non-compliance. Additionally, the court interpreted the phrase "other similar form of forced bonded labor" in Article 23 of the Indian Constitution broadly to meet Article 23's objectives, equating the treatment of those coerced into bonded labor or paid below the minimum wage.

⁵ AIR 1983 1 SCC 525. <https://indiankanoon.org/doc/496663/>

In the case of *Neerja Chaudhary v. State of Madhya Pradesh*⁶, despite a significant time lapse, numerous labourers rescued from Faridabad quarries allegedly remained unrehabilitated, leading the petitioner to argue that the State Government was obligated to oversee their rehabilitation to ensure their Right to Life as guaranteed under the Indian Constitution. The court emphasised the identification, rescue, and rehabilitation of bonded labourers in accordance with Articles 21 and 23, underscoring the risk of relapse into poverty and substandard conditions without concrete rehabilitation measures, potentially leading individuals back into bonded labor.

In *Budhadev Karmaskar v. State of West Bengal*⁷, the Supreme Court appointed a panel to monitor and propose rehabilitation schemes for trafficked sex workers and victims. While dismissing an appeal by an accused involved in the brutal murder of a sex worker, the Supreme Court advocated for nationwide rehabilitation schemes for physically and sexually abused women, highlighting their right to dignity under Article 21 of the Indian Constitution. Stressing the link between prostitution and abject poverty, the court recommended technical or vocational training as an alternative livelihood, directing Central and State Governments to develop detailed schemes providing such training and facilitating employment opportunities for sex workers and sexually abused women across all cities in India.

CONCLUSION

A combination of many factors have resulted in the proliferation of the bonded labour system in India. Factors like illiteracy, ignorance, corruption, lack of judicial resources, lack of enforcement mechanisms, poverty, child labour, migration of workers etc, all play a role in the growth of such unjust issues and give immoral people to exploit the poor. While a large number of labourers have been rescued and rehabilitated, many might still be suffering.

Though India is having an extensive legislation on child labour and forced labour but problem lies in the enforcement of the law. The machinery of enforcement is inadequate due to socio economic factor prevailing in India. Both parents and children are unaware of their rights for which children becomes the victims of trafficking. Most of the parents they force their child to go for work so that incomes earn by the child can run their family and pay the debts. Their needs an integrated approach from government, civil society and NGOs who can curb the menace of child trafficking and forced labour along with preventive and protective measures.

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⁶ AIR 1984 S.C. 1099. <https://indiankanoon.org/doc/1012224/>

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