

CONSTITUTIONAL LAW

Right against exploitation

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Article 23- Prohibition of 'Traffic in Human Beings' and Forced Labour

Abstract :

The Fundamental Rights enacted in Part-III includes basic inherent human rights which an individual possesses. These rights operate as limitations on the powers of the State and impose negative obligations on the State not to intrude on individual liberty. But under Part-III there are certain Fundamental Rights bestowed by the Constitution which are enforceable against the entire world and they are found inter alia in Article 17, 23 and 24.1 Article 23 was incorporated in the Constitution to prohibit traffic in human beings and begar and other similar forms of forced labour.

Introduction

India is the largest democracy in the world today. This track of progress and development has a great struggle concealed behind it. India has been a victim of slavery since centuries altogether. It took several centuries to get India free from slavery and finally after the enactment of the Indian Penal Code, 1860, slavery was completely abolished in India. The framers of the Indian Constitution through Article 23 and 24 expunged such practices. The Constitution of India guarantees liberty and dignity to every individual, hence, leaving no scope for exploitation, slavery and ill-treatment.

Keywords : Begar, Forced Labour, Human trafficking, Article 23

Article 23 of the Indian Constitution expressly prohibits human trafficking, forced labour and other similar activities. It also states that any violation of this provision will be considered as an offence and the person acting in contravention of the law will be penalized in accordance with the law.

Features of Article 23

It has certain features which every individual should be aware of –

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- Right against exploitation is prescribed as a fundamental right of the individuals under Article 23 of the Indian Constitution.
- It protects both the citizens and the non-citizens against exploitation.
- It protects individuals against the State as well as private citizens.
- Article 35 authorises Parliament to make laws for punishing the acts which are prohibited under Article 23.

This article imposes a positive obligation on the State to abolish immoral practices of exploitation like human trafficking and other forms of forced labour.

Practices prohibited by Article 23

Article 23 explicitly prohibits the following discussed practices:

- **Begar:** This is a form of forced labour which means involuntary work without any remuneration. In other words, it can be said that a person is compelled to work against his will without being paid for it.
- **Bonded Labour/ Debt Bondage:** Article 23 prohibits bonded labour as it is a form of forced labour as per this article. This is a practice under which a person is forced to work to pay off his debt. The money they get is very little and the work they do gets doubled. Often these debts get passed over to the next generations. Hence, it is known as a form of forced labour.
- **Human trafficking:** It means selling and buying of a human being like goods and includes immoral trafficking of women and children. Although, slavery is not expressly mentioned under Article 23 but it is included within the meaning of 'traffic in human beings'. In pursuance of Article 23, Parliament has passed the Suppression of Immoral Traffic in Women and Girls Act, 1956, for punishing human trafficking.
- **Other forms of forced labour:** Any other practice which comes under Article 23 is also prohibited by this Article.

An Exception to Article 23

Under clause (2) of Article 23, the State is allowed to impose compulsory services for public purposes like national defence, removal of illiteracy and other public utility services (electricity, water, air and rail services, postal services, etc.) provided that in making any such service compulsory for public purposes, the State, however, cannot make discrimination on the basis of religion, race, caste or class or any of them.

1. Traffic in human beings: the term 'human trafficking' generally referred to as slavery means that sex beings are purchased and sold as though they were chattels, and this custom is legally abolished. The term often refers to trafficking in women for unethical reasons

2. **Forced Labour:** Exusdem generis could be translated as “all types of forced labour in a related way” in Article 23(1). The type of “forced labour” discussed in this Report may have something to do with human or beggar trafficking. There is one loophole to the ban against forced labour. The State can enforce a public mandatory service pursuant to Article 23(2).

Article 23 of the Constitution forbids slave labor and requires the crime to be punished in compliance with rule 4 for the violation of that prohibition. Although the prohibition against slavery is total, there is one exception that is made to the prohibition against forced labor; that is, if that service is required for public purposes the State can enforce a mandatory service. After the constitution, the initial draft and the Constituent Assembly, led by Dr. B.R., is regarded as any exception. Throughout the sense of “public intentions,” Ambedkar has followed subclause (2).

In **Bandhua Mukti Morcha v. Union of India**², the Supreme Court observed that the State was in violation of Articles 21 and 23 when it refused to recognize the bonded workmen, free them from slavery or rehabilitation of them as contemplated under the 1976 Bonded Labour System [Abolition] Act.

Article 23 of the Constitution provides for forced labor and requires any violation of such a prohibition to be a criminal crime pursuant to law. Although banning trafficking of human beings is absolute, the prohibition of force-work is subject to one exception, that is to say, if such service is required for a public reason, the State may enforce a compulsory service. In the initial draft and after complete discussion, the Constituent Assembly led by Dr. B. R. was found to be an anomaly to the constitution. Ambedkar accepted clause (2) on “public intentions.”[3]

Article 23 (2)

Clause (2), except clause (1), requires the State to enforce a compulsory public service. The State shall, however, not discriminate on the basis of faith, ethnicity, sex, gender or any other, when enforcing such a compulsory facility.

The word ‘public intent’ encompasses any goal or objective which explicitly and fundamentally concerns the common good and not the specific good of individuals. The priorities set forth in section IV of the Constitution concerning the Regulatory Concepts of Public policy would involve social or economic goals.

M.P. State in Devendra v Nath Gupta³. The Madhya Pradesh High Court ruled that, even though there was no allowance, teachers were expected to provide a service for “public purposes,” including education surveying, family planning, list of electors, general elections, etc. that did not contravene Article 23.

² Case – Bandu Mukthi Morcha v/s Union of India

³ Case – Devendra v/s Nath Gupta

The High Court in Calcutta, **Dulai Shamanta v District Magistrate**⁴, Howrah observed that it was not prohibited for a public benefit, because it was not begar or trafficked by the State or was not enforced by the Constitution of Article 23.

In the same way, *Durbar Goala v Union of India* [6] holds that there is no forced labor, or begar, if a individual willingly decides to do work or to do extra work to gain other return benefits.

In **Raj Bahadur Case**⁵ it was held that Article 23 specifically prohibits traffic in human beings or women for immoral purpose.

Landmark Judgments

Some of the important cases pertaining to Article 23 are briefly discussed as follows –

- In the case of **People's Union for Democratic Rights v. Union of India**⁶ the Supreme Court interpreted the ambit of Article 23. Bhagwati J. held as follows-

“The scope of Article 23 is vast and unlimited. It is not merely ‘begar’ which is prohibited under this Article. This Article strikes at forced labour in whichever form it may exist as it violates human dignity and opposes the basic human values. Hence, every form of forced labour is prohibited by Article 23 without considering whether forced labour is being paid or not. Also, no person shall be forced to provide labour or services against his will even if it is mentioned under a contract of service. The word ‘force’ has a very wide meaning under Article 23. It not only includes physical or legal force but also recognizes economic circumstances which compel a person to work against his will on less than minimum wage. It was directed by the court to Government to take necessary steps punishing the violation of the fundamental rights of the citizens guaranteed under Article 23 by private individuals.”

- In *Sanjit Roy v. State of Rajasthan*⁷, the State employed people for certain work under the Famine Relief Act. The people were badly hit by famine, thus the State employed them. However, these people were paid even below the minimum wages on the ground that the money is given to help them in meeting the famine situation. Bhagwati J. held that-

“The payment of wages lower than the minimum wage to a person employed in Famine Relief Work is violative under Article 23. The State is not allowed to take undue advantage of the helplessness of such people with an excuse of helping them to meet the situation of famine or drought.”

- In **Deena v. Union of India**⁸, it was held by Chandarchud C. J. that-

⁴ Case – Dulai Shamanta v/s District magistrate

⁵ Case- Raj Bahadur Case

⁶ People Unions for Democratic Rights v/s Union of India

⁷ Sanjit Roy v/s State of Rajasthan

⁸ Deena v/s Union of India

“The labours taken from the prisoners without paying remuneration was ‘forced labour’ and violative of Article 23 of the Constitution. The prisoners are entitled to payment of reasonable wages for the work taken from them and the Court is under a duty to enforce their claim.”

Conclusion

The poorer parts of society continue suffering some severe problems under Articles 23 and 24 of this Convention against trade in and child labor. Such actions are constitutionally prohibited by statute, as well as the ground rules and requirements laid down in the Protection to Slavery Legislation, which are also protected by judicial proceedings in Parliament in the context in Slave Labor Emancipation Act of 1976 which Child Labour Act of 1986. They must all be conscious that child trafficking is unethical and this recognition will not only be limited to media commercials. This will be applied to the towns. For poor women and girls, groups of women should be formed. I believe that if we listen, we, the young, will make a huge difference. That is the only way for India to become a nation in which all its citizens live equal lives without fear of exploitation.

I feel that if one's life were subject and at the whim of another individual, the concept of equality before law, fair law rights, and any other basic right in the matter will have little sense. Whilst this constitutional right guarantees the security of the government's people, India also has a long way to go towards zero oppression.

Reference

- [1] AIR 1982 SC 1473
- [2] AIR 1998 SC 3164
- [3] De, D. J. The Constitution of India, 1179
- [4] AIR 1983 MP 172
- [5] AIR 1958 Cal 365
- [6] AIR 1952 Cal 496
- [7] AIR 1953 Cal 496
- [8] legal bites.in
- [9] Fundamental Rights, The Constitution of India- Part III
- [10] Basu, Durga D. Introduction to the Constitution of India, 15th edn. New Delhi:

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