



A critical analysis on Article 23 of Indian Constitution with major laws on prevention of Human Trafficking

Bhavik Yadav,

Student, Indore Institute of Law (Affiliated to DAVV and BCI)

ABSTRACT

The researcher has researched on the issue of Trafficking in India, which is the biggest crime and rank 3rd in the world after drugs and arms. The number of people who are sold and get stuck in human trafficking is immeasurable. No country is free from human trafficking, the problem cannot be eradicated from its source because it is not at all possible to hold one entity responsible for this act. Every year a large number of people are trafficked in India domestically and internationally as well. While the cross-border was a threat but the inside trafficking is a major problem because no knowledge of the person could be found in this realm of trafficking. To deal with this menace, the Indian Government formed many laws which could prevent it from its root cause, such as Article 23 of Indian Constitution, which states “prohibit traffic in human beings”, and provide a huge responsibility on the states to address the issue of trafficking and provide aid those who suffered a lot from this illegal act. Despite the Article given in the Indian Constitution, people are still getting effected from the Human Trafficking issue for which it is necessary to go through all other acts which provide safety to the citizens of India and also getting a comparative study between the Acts which are made to prevent the Human Trafficking with Article 23 and how much effective is it with major changes which needs to be mentioned for further updates in any form of manner.

Keywords:- Human Trafficking, Article 23, India, Constitution, laws.

INTRODUCTION

The Trafficking in simpler terms means as per black law dictionary is “The carrying on of an illegal commercial activity such as selling drugs or substances that are banned¹”. The same definition when used within the context of Human is called Human Trafficking which means “illegally moving someone from one place to another with or without their consent for illegal work”. The Indian Government has tried a lot to control Human Trafficking in India, the issue of whether exporting of Humans illegally outside India is less than within the borders of our country having major issue of people missing from their own cities and still intact within the boundaries. The Indian government has used the major power of Article 23 of Indian Constitution to make it definite that such fundamental right being infringed by any would not be tolerated within the ambit of country legal system, still the problem is their to be solved for which other major laws were made and helped to maintain Article 23 of Indian Constitution. There is also a comparison made between the acts which are implemented in our society and what has it made a impact in our society after its enactment. The importance of Article 23 with case laws referring to its drawbacks.

1. <https://thelawdictionary.org/trafficking/#:-:text=TRAFFICKING%20Definition%20%26%20Legal%20Meaning&text=The%20carrying%20on%20of%20an,or%20substance%20that%20are%20banned.>

RESEARCH OBJECTIVE

- To Identify which Major Laws have impacted the most with Article 23
- To ascertain all the powers mentioned under constitution for Human Trafficking
- To make a comparison between the major laws for removing Human Trafficking with Article 23 of Indian Constitution

RESEARCH PROBLEM

- How much role Article 23 has played immediately after independence?
- Whether Article 23 alone is enough to tackle the situation of our country?
- Whether Indian Penal Code, 1860 has covered all the aspect for punishment related to trafficking?

HYPOTHESIS OF RESEARCH

The significance of Article 23 with respect to Human trafficking is not for the aspect which was thought it to be covered for, the supreme court during the period of 1951-1985² maximum covered only the part of exploitation to human beings, so immediately after independence the role of Article 23 was not utilized of its full potential. The Article 23 do provide a base for prevention of Human Trafficking but not all goes in the road of punishing those who do so, so major laws are required to see towards it. Indian Penal Code, 1860 did cover up all the aspect of punishment but the harshness of punishment cannot be made lenient for its aggravated form.

METHOD OF RESEARCH

The research is primarily doctrinal research. Here the data collection is necessarily secondary type which is taken up by law journals, commentaries, e-sources for the purpose of study.

CHAPTER 1

The Indian Constitution sets the base for prevention of human trafficking in India, and has also covered its punishment under Indian penal code, 1860 and for special protection of woman and children from human trafficking it is covered under immoral traffic (prevention) act, 1986. The Indian Constitution sets itself for human trafficking under Article 23 and for children under Article 24, the Indian Penal Code, 1860 sets for punishment which as per the code is much severe and harsh so that no evil man thinks of doing an act or else would be punished under section 370³. The Indian penal code, 1860 covers many other aspects as well as for the aspect of minors and women with giving harsh punishment for committing such crime. It has also covered for aiding human trafficking would also give punishment to those who aid in it. There are many factors which need to be seen in India, as punishment is quite harsh covered under Indian penal code, 1860 and also makes sure not to make it happened to be a offence which is done in day to day basis, yet it is seen to be not been opted for a full impact on the society as the crime of it is still on rank 3rd in our country. The Immoral Traffic (Prevention) Act, 1986 did made sure that to punish the offenders for committing crime to woman and children. There is also a special act made for children to be protected from sexual abuse and trauma which is also knows as POCSO, prevention of child from sexual offenses act, 2012. The criminal law (amendment) act, 2013 also brought a huge change in our acts especially in IPC brought 370 and 370A in aspect of human trafficking. The work done by the law makers could never be made to criticize for being bad after their amendment cause it suits for the thinking and nature of the people in the society and with the evolution the laws would change their faces too.

CHAPTER 2

Article 23 of Indian constitution states that “prohibition of traffic in human beings and forced labour” under the heading of right against exploitation and Indian penal code, 1860 covers the margin of punishment for any act done under section 370 and any other which covers the ambit of human trafficking even aiding for human trafficking would cause a severe punishment to the offenders and no chance would be given when found guilty for such act. Article 23 with Indian penal code, 1860 moves hand in hand to provide security to the people in our

country and punishment to those who commits the crime of human trafficking. For the aspect of human trafficking they did not loose their power at a long run inference but for the initial era, it was not smooth for the society to run down the process for eradicating human trafficking but still new problem arose and amendments made sure for the society to run very smoothly without any problem in the error in the process. The later stages of the society did prove it that Indian penal code, 1860 and Indian constitution are moving very much together as one gives power to supreme court and another give power to high court and lower courts to take action immediately for any wrong in the matter of human trafficking. It is further delegation of power under statues and interpretation which made it easy for the society to mould it in with the day to day activities of a normal human being to be free from any danger of any sort of exploitation at a broad aspect. The reality check makes it clear that Indian Constitution with the help of Indian Penal Code, 1860 keep checks and balances not only in human trafficking but for a normal being to move without any such prejudice to harm in its way for one to one run in their day to day lifestyle. The impact further cannot be adhere as Forced labour and human trafficking are both prohibited under Article 23 of the Indian Constitution. It proclaims that certain actions are forbidden and subject to legal sanctions. The fundamental criminal code in India that outlines numerous offence and associated penalties is the Indian Penal Code (IPC), which was adopted in 1860.

Several provisions of the IPC are in line with Article 23's goals. It discusses numerous offence including forced labour, exploitation, and trafficking. The following parts of the IPC are pertinent and add to Article 23. The impact of Article 23 in conjunction with the IPC is that it provides a legal framework to address and punish offenses related to human trafficking, forced labor, and other forms of exploitation. The provisions under the IPC serve as tools for law enforcement agencies and the judiciary to investigate, prosecute, and punish those involved in such offenses.

CHAPTER 3

The Indian penal code, 1860 is much broader than ITPA, 1956 cause Indian penal code covers every type of human trafficking which exist in our country and provided punishment to each type which is quite rigorous and is amended a lot after the Nirbhaya case which made it even more harsher. ITPA act has been amended two times after 1956, I.e., 1978 and 1986⁴ but for the level of punishment it is providing it is to stop brothel and protecting women at large for being the victim of sex scandals and prostitution without their own free will. The main purpose of PITA(prevention of immoral trafficking act) was not to make prostitution illegal but the brothel to be set as an illegal act. The purpose of IPC is much more vast than ITPA, 1956. ITPA was not gender neutral after 1986 it was made gender neutral due to which ITPA is much lesser covering the scope of protecting its people; it only covered the view of children and women but not men who also suffered from human trafficking. For the comparison of ITPA with IPC it is simply a major difference of the scope and for the comparison of it after the ITPA turned to PITA the major difference between PITA and IPC is that IPC covered punishment from every human possibility for human trafficking in India, whereas ITPA did not cover for men and didn't even recognized the problem of human trafficking for men, until the amendments made it gender neutral. The best protection which was given by the PITA to women and children is to remove commercial sexual exploitation⁵.

It was made sure to make it the duty of central and state to see towards the matter for the issue related to children for forced prostitution.

CHAPTER 4

During the period of post independence the main focus of Article 23 was not focused as per the researchers point because in certain cases it could be seen that the matters are revolving around the Article 23 is not as per the definition of black laws dictionary for moving people involuntarily, the major issue here is that it is not that human trafficking during 1950-1985 was not there, it is after independence when India and Pakistan were divided many people were victim of human trafficking, the problem in here is no one was able to recognize the issue during that period and people were busy fighting for their basic rights which were not there between the people. The major focus of Article 23 was on forced labour of people but not on people moving from one place to another without their own free will. In the case of Sanjit Roy vs State of Rajasthan, AIR 1983 SC 328 the problem was that The people employed for the work were paid less than the minimum wage, which was allowed in the Exemption Act, in the end the supreme court made it unconstitutional. In the case of Deena vs union of India, prisoners were made to do forced labour without any remuneration, so it turned out to be violating Article 23.

There are many cases during the period of 1950-1985 revolving around Article 23 but none of them are related to the biggest issue of now which is ranked 3rd in our country which is human trafficking. The problem for the Article 23 was that it was used in the protection for labour forces which is not incorrect but the essence of its making was lost in the cases which are mentioned in here. The forced labour is a form of human trafficking but not termed as similar to what is defined under the black law dictionary. There is no harm in what the cases during the era were stated as they were a big issue during that time and only Article 23 could make sure to solve it in a haste. The era of 1950 is the beginning of a new India which in itself signifies what could be happening in a long terms could have a different impact which even if tried to ascertain would have no response or act. So it is for the benefit of the people to make it ready for an impact which everyone must be prepare to take it on, for an scenario the interpretation of Article 23 in short term i.e., 1950-1985 is different than what it is taken in the scenarios of now.

The only issue arising here is during that period the usage of Article 23 is not as per the aspect of human trafficking's true meaning which is a little illogical to sound but is true. By outlawing actions like begging (a type of bonded labour), forced labour, and human trafficking, Article 23 aims to protect people's rights and dignity. It declared these actions unlawful and rendered them punishable by law. A phrase that permits the state to impose mandatory service for public reasons is also included in the provision. It does stress, however, that such services must not discriminate on the basis of race, caste, or class. India was developing its democratic institutions and tackling social and economic inequality between 1951 and 1985. Fighting exploitation, advancing social justice, and defending people's fundamental rights were all made possible thanks to Article 23.

CHAPTER 5

The period of 1986-2022 people have recognized the problem of human trafficking which is a big issue in our country, there is PITA, 1986 which was made it gender neutral and also made sure to protect every gender to be safe from immoral trafficking. The Article 23 was interpreted as it was made to be interpreted under the definition of black laws dictionary as it is simple to be said that the law makers during that time made sure that in future such problems would definitely be faced in our country and turned out to be true and without any prejudice it is being faced in our country at an extreme level of people suffering from it.

The good part came from it that it made origination of new acts to protect the people from the hazards and also to prevent it in any was possible for the people to live peacefully. The matters discussed here are quite sturdy but with more interpretation and more data it is made easy to ascertain that matters so taken under the correct jurisdiction is giving remedy which is under Article 23 and having issue of human trafficking which is resolved by the apex court if violating the fundamental right to its core sense. The validity of being true to black law dictionary is not correct for problems faced by the people in the society. The wide view of human trafficking is set out by the lawmakers for making it sure no one is set aside to be infringed by their fundamental rights.

The period of 1986 to till now could see a new interpretation which arose with the passage of time, and those sitting above in the chambers could see the new meaning of Article 23 through its interpretation, the upgradation in the judgment by the Supreme Court in its decision as with the cases evolving and not loosing its literal integrity it could be said that the role of Article 23 during new era was much more than in the earlier period with cases being referred in older cases with interpretation on one side with least construct which could be felt when reading the judgment or seeing the cases thoroughly. Article 23 continues to emphasize the prohibition of human trafficking, forced labor, and begar. It recognizes these practices as offenses punishable by law. Additionally, the provision includes the clause allowing the state to impose compulsory service for public purposes. It specifies that such service should not discriminate based on religion, race, caste, or class. Throughout the years, Article 23 has played a crucial role in safeguarding the rights and dignity of individuals, combating exploitative practices, and promoting social justice in India. It remains an essential constitutional provision in the country's legal framework. In its strict sense it could be said Article 23 of the Indian Constitution remained the same during the period of 1985-2023. It deals with the prohibition of human trafficking and forced labor but in the sense of its interpretation we could see many changes in its form and factor.

CHAPTER 6

The complete analysis of Article 23 with major laws on human trafficking made sure that no paradigm is left for the people in our society to be left with the despair of justice as the Indian Constitution's Article 23, which condemns forced labour and human trafficking, serves as an essential framework for addressing this serious problem. However, a rigorous examination indicates that the implementation and enforcement of certain legislation are necessary for Article 23 to be successful in eliminating human trafficking. The Immoral Traffic

(Prevention) Act, the Bonded Labour System (Abolition) Act, the Protection of Children from Sexual Offence Act, and the Criminal Law (Amendment) Act are the main laws on the prevention of human trafficking, and they all play a significant part in preventing various forms of trafficking. These laws seek to deter crime, punish criminals, safeguard victims, and offer opportunities for changes needed per requirement. In spite of these regulatory initiatives, human trafficking is still a concern in India. Effective implementation and enforcement are hampered by issues including scarce resources, corruption, and sociocultural influences. To address the intricacies of trafficking, there is a need for better cooperation among parties, raised awareness, and enhanced training for law enforcement authorities.

Additionally, detractors contend that Article 23 and current regulations need to be updated to better address new types of trafficking and offer all-encompassing solutions. This involves tackling labour exploitation in various industries and making sure survivors are protected and given the chance to rebuild their lives. To combat the complex nature of human trafficking, a comprehensive strategy combining protection, prosecution, rehabilitation, and prevention is required. To summarise, while Article 23 offers a constitutional foundation, combating human trafficking necessitates ongoing examination, refinement, and an integrated approach that tackles systemic concerns and obstacles. To successfully combat this horrible crime and defend the rights and dignity of persons, efforts must focus on strengthening legislation, improving enforcement procedures, and addressing the core causes of trafficking.

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