

Expanding Horizons of Modern Slavery

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Abstract

Modern slavery finds its basis on the commodification of human beings, wherein the human status of a person is snatched away and he/she is forced to deliver services without attributing any agency to the victim. Needless to state that the colossal economic gain from this business is the major reason as to why modern slavery is flourishing by leaps and bounds.¹

Slavery involves the questions of human dignity, value of a human being and human rights. It is the situation where a human being is reduced to mere property, possession or a subject of control by another. It is a state where a human being is denied true political and social agency. The sophisticated ways through which these practices are carried out and the globalization has accentuated such abhorrent practices across the borders, which makes the task of putting a stop on such acts even more difficult.

Introduction

The international law does not expressly define the term “modern slavery” anywhere in any of its frameworks. However, slavery is defined as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”.² It could be deemed as a blanket term which covers several kinds of exploitation and is understood to exist where a human being is made or obliged to work by “fraud” “force” or “coercion”.³ The most rampant and evident forms of modern slavery include “forced labor”, “bonded labor”, “involuntary servitude”, “human (sex) trafficking”, and “forced marriage”, and the list is not exhaustible by any means.⁴

Reports estimate that around 50 million people are enslaved worldwide, suffering in various forms of modern slavery. Of these, around 28 million are trapped in the web human trafficking wherein they are forced to do laborious work or engage in prostitution. Further, a report by ILO has estimated that almost 22 million are enslaved in forced marriage. The alarming part of the whole scenario is that, even with the advent of technology, huge awareness on modern slavery and numerous political discussions and endeavors on the matter, the numbers

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¹ UK Finance, available at: <https://www.ukfinance.org.uk/news-and-insight/blogs/now-time-tackle-modern-slavery-your-organisation>

² UN Slavery Convention, art. 1(1)

³ International Labor Organization (ILO). 2016. ILO standards on forced labor: The new protocol and recommendation at a glance. Geneva: ILO.

⁴ International Labor Organization (ILO) et al. 2017. Global estimates of modern slavery: Forced labor and forced marriage. Geneva: ILO.

have increased by 10 million in the last 5 years and have badly engulfed the women and children.⁵ In 2013⁶, around 29 million were trapped in the clutches of modern slavery whereas in 2017⁷, the number grew to around 40 million. The numbers seem baffling because today's slave would not be found shackled in chains, albeit, they live right in front of our eyes and still we fail to spot them. They may not be in chains or shackles and may not get sold like commodities in the open, but they are very much present among us. One could find them in domestic setups or brick kilns of India or blanket industry of Bangladesh or the cannabis industry of South America or the manufacturing industries of China. One could draw parallels between the slavery of 19th century and the contemporary narrative "modern slavery" and won't find their attempt going wayward at all.

By adopting the Sustainable Development Goals (SDGs), the United Nations has resolved to abolish slavery and other slave like practices by 2030 and has even a more ambitious target of ending child labor by 2025.⁸ However, these numbers highlight the magnitude of the task in front of the global community. To reach these highly ambitious targets, nothing less than a war level effort would do.

Evolution (of the concept) of slavery

Even though slavery has been abolished for almost a century now, it still prevails in the form of modern slavery. One of the major reasons that modern slavery exists is the complex nature of its genesis. In earlier times, slavery and slaves could easily be identified because they were literally sold as commodities and were legally owned by the people who bought them. That means the factor of "ownership" played a pivotal role in describing a slave and hence, it was easy to identify the practice of slavery. However, today, when the legal "ownership" of a person over another has been abolished, identification of modern slavery has also become difficult. Because, ownership of a slave might have been abolished under international laws, yet, a person could be enslaved under a contract, thereby, giving the employer almost every control that the slave owners of the 19th and 20th centuries used to enjoy. Factors such as poverty, migration, illiteracy augment the problem and leaves the disadvantaged section more vulnerable to slavery. Hence, it becomes difficult for the law enforcement agencies to identify such practices, thereby asking for more analysis on the concept.

Abolishing slavery: The beginning

History

The first attempt to abolish slavery was made in 1807 by the implementation of the British Abolition of Slavery Act. The Act abolished all forms of slavery in Great Britain and its colonies. Hence, it abolished the ownership

⁵ Annie Kelly, the Guardian, at: <https://www.theguardian.com/global-development/2022/sep/12/ten-million-more-people-now-trapped-in-slavery-report-says> (visited on Dec 10, 2022)

⁶ Kevin Bales et al. The Global Slavery Index. Report. Walk Free Foundation, 2013.

⁷ Jan Vann Dijk, Fiona David and Kevin Bales. The Global Slavery Index. Report. Walk Free Foundation, 2017

⁸ United Nations <https://www.ohchr.org/en/stories/2019/09/10000-people-day-must-be-freed-end-slavery-2030>

of one person over the other, thereby ending the commodification of a human being. The United States made its first move in 1863 with the passing of the Emancipation Proclamation, which ultimately freed 3 million slaves.

These individual steps by the nations led to the universal recognition of the concept which resulted in slavery getting addressed by The League of Nations in 1919. The move saw progress in 1924 and the Temporary Slave Commission was formed. The Commission would explore and analyze the practice of slavery and slave like practices around the world and would also formulate laws for the abolition of the same. The recommendations suggested by the Temporary Slave Commission paved the way for the creation of the League of Nations' Slavery Convention of 1926.⁹

*1926 Slavery Convention*¹⁰

The Convention was the first attempt to define slavery and it ultimately served as the foundation of the concept of slavery as the 1926 definition was widely accepted and has been used in almost every forum since then, with little or no modifications.

The 1926 Convention, defined slavery as

*“the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”*¹¹

Though, the 1926 definition did provide a solid base for the matter to be discussed and for the action to be taken, yet it was found to be left wanting by many.

Suzanne Miers wrote that the definition provided in the Convention did not have any bite and that the mandate of the Commission was far beyond than what actually got produced. She further states that many forms of slavery were not specifically included in the definition and that all it got was a vague definition which lingered on in the future too.¹²

The reason for the such reaction was that the definition which found its way in the Article 1 (1) of the 1926 Slavery Convention was different from the one that was formulated in the British Draft Convention. Actually, the draft submitted by the Chair of the Temporary Slavery Commission, Albrecht Gohr, initially read:

*“Slavery is the status of a person over whom another person or group of persons exercises the power attaching to ownership [proprietorship]; or is the possession [holding] of a pledge or who is compelled to serve such other person or group for an undetermined period [time].”*¹³

⁹Jean Allain, “The International Legal Regime of Slavery and Human Exploitation and its Obfuscation by the Term of Art: “Slavery-like Practice”” 10 Cahiers de la recherche sur les droits fondamentaux 27-42 (2012)

¹⁰ Convention to Suppress the Slave Trade and Slavery (Signed at Geneva on 25 September 1926)

¹¹ Slavery Convention 1926, article 1(1)

¹²Suzanne Miers, “Contemporary Forms of Slavery.” Vol 34(3) Canadian Journal of African Studies, pp. 714–47 (2000)

¹³ Jean Allain and Robin Hickey. “Property and the Definition of Slavery.” 61(4) The International and Comparative Law Quarterly, 915-38 (2012)

In his discussion on the “Legal Parameters of Modern Manifestations of Slavery” Prof. Jean Allain has observed that the 1926 Convention started with the novel idea of including every slave like and coercive practice to be included under the umbrella term of slavery. That would have included practices such as domestic servitude and forced marriage as well into the definition. But, owing to protests and objections from certain participating parties, especially the Union of South Africa, the ambit of the definition was ultimately restricted.¹⁴

Ultimately, it shifted the whole focus on the interpretation of the word “ownership” rather than the exploitation meted out to the victim, because now, the person could only be liable if there was an owner-slave relationship between the two. That if the element of “ownership” is found, then, the act would fall within the ambit of the definition provided in Article 1 (1). This brings a lot of force to the claim of Miers that the 1926 definition was vague, since a lot is left to the interpretation of the actors.

It could also be noticed that the 1926 definition of slavery revolves around ownership. What complicates the process is that there is no contextual clarity in terms of ownership. To some extent, this lack of clarity has allowed trafficking and exploitation to be included in the same definition as that of slavery of the modern era.

This problem is still seen in today’s times as well. For instance, Ann-Christin Zuntz tells that, due to the restricted definition of forced labor adopted by the ILO, it is virtually impossible for the cases of Syrian workers to be included under the definition of forced labor. Because, ILO deems extreme acts of exploitation as forced labor but excludes indirect coercion or factors such as poverty, which ultimately forces a person to engage in such work.¹⁵

The 1956 Supplementary Convention

ECOSOC actually showed concern on the pervasive problem of slavery which led to the creation of Ad Hoc Committee of Experts. The task of the committee was to study practices related to slavery, determine the extent of such issues and finally providing workable solutions to curb the same. Also, the adequacy of the 1926 Convention definition was supposed to be put under light. The 1926 definition of slavery got a bit of modification as well as a bit of enlargement in the 1956 Convention, although, the definition remained more or less the same. What got added to the 1956 Convention were four different forms of servitude, which were sought to be brought under the purview of Article 1(1) of the 1926 Convention.¹⁶

¹⁴ Jean Allain, “The Definition of ‘Slavery’ in General International Law and the Crime of Enslavement within the Rome Statute” at the Guest Lecture Series of the Office of the Prosecutor (2007)

¹⁵ Ann-Christin Zuntz et. Al. ‘Syrians’ Only Option, *Journal of Modern Slavery* 7, no. 1 (2022)

¹⁶ Jean Allain, “The International Legal Regime of Slavery and Human Exploitation and its Obfuscation by the Term of Art: “Slavery-like Practice”” 10 *Cahiers de la recherche sur les droits fondamentaux* 27-42 (2012)

The Preamble to 1956 Convention states, “no one shall be held in slavery or **servitude**”. Hence, the word “servitude” got introduced in the legal framework on slavery.

The 1956 Convention covered three major subjects-

- Institutions and practices similar to slavery such as **debt bondage, serfdom**, rights of women over a property, rights of women w.r.t marriage and rights of children.
- The **slave trade**
- Certain practices which accompany **both slavery and institutions similar to slavery**¹⁷

It could be inferred that although the 1926 definition has been granted a lot of authority in the 1956 Convention, still, a need was felt to add servitude or servile status to the list of practices. Further, The Supplementary Convention did try to expand the ambit of the phenomenon of slavery by adding terms such as “servile status” and “servitude”, since these terms have been deemed to be almost same as slavery.

Moreover, there are certain other internationally recognized resolutions which talk freedom to work and protection from slavery.

Article 4 The Universal Declaration of Human Rights, states that “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” However, the phenomenon of modern slavery is a flagrant violation of the same.¹⁸ Article 6.1 of the International Covenant on Economic, Social and Cultural Rights provides the right to choose his/her own occupation freely as part of right to work. Article 8 of The International Covenant on Civil and Political Rights protects a person from forced labor, slavery and forced servitude. Slavery has been portrayed as a crime against humanity under Article 7(2)(c) of the Rome Statute of the International Criminal Court, 1998.¹⁹

The International Labor Organization’s Forced Labor Convention of 1930 and the Abolition of Forced Labor Convention of 1957 also aim to protect human beings from forced labor irrespective of the industry that they are working in.²⁰ In fact, the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children has gone ahead to criminalize trafficking in persons. It was (enacted to accentuate the UN Convention Against Transnational Organized Crime.²¹

¹⁷ Supplementary Convention on the Abolition of Slavery convened by ECOSOC resolution 608(XXI) 30 April 1956

¹⁸United Nations, Universal Declaration of Human Rights. At https://nhrc.nic.in/sites/default/files/UDHR_Eng_0.pdf

¹⁹United Nations, Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/supplementary-convention-abolition-slavery-slave-trade-and>

²⁰ “Eradication of Forced Labor.” ILO: Promoting Decent Work for All. International Labor Organization, (February 2007)

²¹ The Trafficking Protocol “for the purpose of exploitation” including, “at a minimum, the exploitation of the prostitution of others, or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.” Available at: <http://humanrightscommitments.ca/wp-content/uploads/2015/11/Slavery-Convention.pdf>

Indian Position

Even though, there are laws on the matter, domestic as well as international, however, things do not seem to improve. For instance, India enacted the “Bonded Labor System Act in 1976 which abolished all forms of “bonded labor” in India, but still, there are millions of people in India that continue to suffer in bonded labor or under similar practices.²² That is a clear indication of the inefficacy of the laws in place.

The Government of India has not ratified ILO Convention No.189 on Decent Work for Domestic Workers.²³ The Unorganized Workers' Social Security Act 2008 also ran into issues such as wages, grievance redressal and could not even guarantee decent working conditions for the workers.²⁴ A Domestic workers Welfare and Social Security Act was also proposed in 2010. It aimed to empower the domestic workers and called for collective bargaining as well as collective security for the domestic workers. It would have empowered the workers to negotiate the working conditions and wages in a better and empowered manner, but the proposal still remains in a limbo.

The Code on Social Security 2020 was enacted in September 2020, which consolidated major legislations on social security and also classified workers on the basis of work sector and the duration of the jobs. However, major concepts such as self-employment and dependent employment were not given due regard in the legislation which further blurred the lines making it difficult to include the precarious labour under the code.²⁵

In 2016, the Indian Parliament amended the Child Labour Protection Act, 1986 and titled the amended Act as The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986²⁶. The legislation sought complete ban on employing adolescents in hazardous industries. However, numerous industries such as textile, brick kilns, pharmaceutical labour employs adolescents in one role or the other. Moreover, since, the number of working hours have not been designated in the Act, even the entertainment industry could arguably be included in the list. Hence, even with the amendments, lot of loopholes, both, literature wise and implementation wise could be seen in the legislation. As per the mandate of Articles 21 and 23 of the Indian Constitution, bonded labour stands banned in India since 1976, still, numerous people in India are exploited in a way that their condition is no better than the yesteryear slaves.

The Indian judiciary has been proactive on the issue and has pronounced landmark judgments on the matter of exploitative practices.

²² Kovasevic, Natasa, “Child Slavery: India's Self-Perpetuating Dilemma.” *Harvard International Review* 29 (2) 36-39 (2007)

²³ P. Samuel Jonathan GUNTUR, “Comprehensive Law for Domestic Workers Needed,” *The Hindu*. Available at: <https://www.thehindu.com/news/national/andhra-pradesh/comprehensive-law-for-domestic-workers-needed/article24256720.ece>.

²⁴ Goswami, Paromita. 2009. A Critique of the Unorganized Workers' Social Security Act. March 14. Available at: <https://www.epw.in/journal/2009/11/commentary/critique-unorganised-workers-social-security-act.html>.

²⁵ PTI, 23rd September 2020, Available at: <https://www.thehindu.com/news/national/over-1-crore-migrant-labourers-return-to-home-states-onfoot-during-mar-jun-govt/article32674884.ece>.

²⁶ The Child Labour Protection Act, 1986, https://labour.gov.in/sites/default/files/act_3.pdf. (Annexure 1 Pg. - 09)

In the matter of People's Union for Democratic Rights v. Union of India²⁷, it was found that the laborers were paid less than the designated minimum wages. The Hon'ble Supreme Court of India, correlated Article 23 of the Indian Constitution to the ILO Convention 29, the European Convention on Human Rights and the ICCPR and finally noted that as its western counterparts, Article 23 strikes on forced labour and that paying less than the legal minimum wages would deem to be a case of forced labour. Further, it was noted that "forced" does not only mean physical forces, albeit, it could also be forced circumstances arising out of economic hardship which leaves a man with no alternatives than to consent to exploitation.

In Bandhua Mukti Morcha v. Union of India²⁸, it was found that in the stone quarries of state of Haryana, a large number of workers were employed as bonded laborers. They were not allowed to leave the quarries, had no access to clean drinking water or healthy food and were made to live in deplorable conditions. In addition to that, they were paid less than minimum wages by the contractors. It was argued by the state of Haryana that the conditions could meet the criteria of "forced labour", but it certainly did not come under the purview of "bonded labour". The Hon'ble Court, then came up with the doctrine of rebuttable presumption of forced labour. The apex Court first observed that the Bonded Labour System (Abolition) Act was enacted to further the mandate by Article 23 which prohibits trafficking in human beings, beggars and other forms of forced labor. It was further observed that there is a huge possibility that the labourer might be illiterate and would have no documentary evidence of any economic considerations paid to him by the employer. Hence, it was finally held that if a case of "forced labor" is made, then, the Court shall proceed under the presumption that the labourer was working as a bonded labour. This presumption could be rebutted by the defendant, but, if no satisfactory evidence could be produced by the defence, then the Court will invoke the provisions of the Bonded Labour System (Abolition) Act and provide rehabilitation to the victims.

It shows that even if the State finds its hands tied in dealing with the complex matters of modern slavery, the judiciary in India has a wide ambit to deal with such cases and could identify exploitative practices and provide relief to the victims

The way forward

With the discussion above, it could be inferred that even though modern slavery has been recognized internationally and there is a presence of legislative will to eradicate the same, still, there are major roadblocks in achieving complete eradication. The most evident of the hurdles that come in the way of ending modern slavery are:

²⁷ A.I.R. 1982 S.C. 1473

²⁸ A.I.R. 1984, S.C. 820

- **Awareness**

The first and foremost factor that needs to be discussed is the awareness of the concept at the root level i.e., the consumer. For instance, one would not even realize that a major component of the battery of an iPhone is mined cobalt, extracted from the mines of Democratic Republic of Congo, which is essentially a hub of modern slavery. People work in inhumane conditions and even children are employed in such practices. They are not provided with basic amenities or any protective gear. This all constitutes slavery in the modern connotation. In the same way, workers in Bangladesh are made to stitch clothes for the MNCs and are made to work overtime in stringent conditions and yet are paid a meagre sum in comparison to the amount of toiling. This is not just a case with the developing or third world countries. Modern Slavery has seeped in much affluent nations as well. The US health, hospitality and manufacturing industries are a hub of modern slavery and so as the agricultural and dairy industries of Europe.²⁹

- **Administrative Inefficacy**

There is a need to enact sanctions if the companies “fail to prevent” modern slavery. Stringent sanctions on such failure to prevent modern slavery would keep the administration on their toes and would place the onus on the directors to check such practices rather than the government.

- **Definitional conundrum**

A problem gets easier to solve if it could be described properly. It has also been seen that the 1926 Convention’s definition of slavery is not really adept to handle the current situation, as it gets limited to ownership only. Therefore, there is a need to give this definition an overhaul. The term modern slavery should not be limited to just “ownership”. Rather, multiple factors must be discussed on identification of modern slave practices, such as:

- Economic background of a worker
- Relationship between employer and worker, which means identifying the rights of worker.
- Wages in comparison to the work output
- Working conditions
- Possibility of debt under which a worker or his/her family might be working
- Is there any hint of commodification of the human beings working at a particular industry or place?

The list is not exhaustive, but these are indication which must be examined before giving the definition of slavery a more definite shape. This would help the government and private agencies to identify the practices in a better way and that would pave way for the rescue and rehabilitation of the victims of modern slavery.

²⁹ Christina Stringer and Snejina Michailova, AIB:INSIGHTS (2018)

As per the United Nations Office on Drugs and Crime (UNODC), the term “modern day slavery” could be used as an umbrella term so as to create awareness among the masses but there is no internationally agreed definition on the matter.³⁰

The term definitely includes an element of continuum of exploitation, but there needs to better clarity on the matter since it includes various factors such as trafficking, forced labour, ownership, prostitution under its garb.

Conclusion

This study has attempted to analyze the definition of modern slavery along with the efficacy of the legislative efforts taken up till date to deal with and eradicate the scourge of modern slavery. It could be inferred that the fight against modern slavery would require a multi-pronged effort which would require the participation from every section of the society including the government, private companies and the people themselves. There is a need for more clarity on the definition and description of modern slavery accompanied by the stricter implementation of the laws. In addition to that and even more importantly, further research needs to be conducted in order to identify the stage at which modern slavery begins to occur, i.e., it needs to be seen whether modern slavery begins right at the beginning of the employment or even at the latter stages. The journey is long drawn; however, it could be covered little by little with a detailed and focus plan along with a conjoined effort from the society.

³⁰Parliament of Australia, Available at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Final_report/section?id=committees%2Freportjnt%2F024102%2F25035