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**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**

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**THE RIGHT AGAINST EXPLOITATION: A FAILURE OF IDEALISM OF LAW<sup>1</sup>****ABSTRACT**

Law in society is an essential element to bring social change, perpetuate fundamental human rights and implement them successfully. The laws that govern the Indian state are very noble and idealistic in their approach, but they lack implementation and hence, lose the noble ideals they represent. The fundamental rights of our Constitution provide every citizen of this country with inalienable rights. These rights proclaim all of us to be equal. Still, society cannot reflect this ideal, and it continues to propagate the multiplicities of all manners of inequalities. The focus of this article is one such right guaranteed by the Constitution but lacking in execution, the right against exploitation. This right guaranteed the people of our country freedom from exploitation by way of human trafficking and child labour. However, actuality prevails, and these are realities that continue to exist. The exploitation takes place on such a scale that the researchers have put forth this article to question the state of affairs. Through the course of this article, the intention is to make a concerted effort to explore and analyse the issue, present evidence of its existence and attempt to reach a solution. The article also pinpoints the judgements of cases and how the law analysts themselves find it crucial to highlight the functioning of the laws in a diligent manner in order to uphold the social structure of the community.

**Keywords:** Right against exploitation, Human trafficking, forced commodification of humans, child labour.

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## **INTRODUCTION**

Law, in its definition, is a set of rules and regulations that govern a society, provide punitive measures on the performance of prohibited acts and match the vision of a current society while propagating necessary social change. Its idealism is a theory that all rights conferred and mandated duties exist, and the people responsible must implement them accordingly. This is the stage where a disconnect arises. Laws represent a certain standard that society does not match or necessarily even contests. The researchers explore this disconnect concerning only the right against exploitation in this article.

The Constitution of India guarantees its citizens the right against exploitation. Article 23 holds a firm stance against the barbaric practices of human trafficking and bonded labour. Article 24 puts its stance forward against child labour. Following the theory of idealism of law, the act of writing laws against exploitation should prevent these practices from happening at all. Though written in a supposedly enumerated manner to protect people against exposure to social evils, the law lacks a feature that makes us question its credibility.

However, in reality, these social evils continue to prevail. This article attempts to present evidence of the existence of these evils and their perpetuating widespread prevalence. It is also equally important to present a solution to this issue. The researchers can attempt to solve an issue by thoroughly understanding the matter at hand. This article analyses the issues of human trafficking, forced commodification, bonded and child labour, and other exploitation forms.

This article is mainly to understand the reasons behind the aforementioned disconnect between what should be and what remains. It aims to present evidence of said disconnect and formulate a beneficial solution to the problem at hand.

## **RESEARCH METHODOLOGY**

The classification of research methods depends on several factors. They are the broad category, the study's nature, the study's purpose, and the study's research design. Researchers take facts into consideration in descriptive approaches, and they also conduct surveys and case studies to elucidate the facts. These aid in determining and explaining the facts using examples, and the researchers do not reject these facts. In descriptive research, researchers employ many variables to explain the facts. It is also qualitative and uses the 'doctrinal research' research approach. A doctrinal research strategy, sometimes called armchair research, is a method of gathering information for a subject while sitting in a library or a closed room. This means that the

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information needed for doctrinal research, researchers use books, papers, journals, and other sources such as legal databases either in hard or soft copy. The research is also qualitative as it only emphasizes analysis and derivations obtained from theories and facts stated earlier. Thus, the study of the following topic is analysed using the following research methods and the researchers then elaborately discuss the information gathered from these sources.

### ANALYSIS

The theory of idealisation of law is a school of thought that believes that the rights, duties and punitive measures that law provides should exist in actuality and not just in a theoretical manner<sup>2</sup>. For a legal idealist, it is the rights that formulate the social order of a state<sup>3</sup>. Hence, the theory of idealism attempts to reach specific moral ends by formulating laws that facilitate these ends<sup>4</sup>. The purpose of the law is a subject that many jurists continue to discuss and contend with. Still, in the case of the Indian state, the very Preamble of the Constitution specifies that the law of this country envisions a land of “justice, equality, liberty and fraternity”<sup>5</sup>. Hence, concerning the Indian state, it is clear that legal idealism and the purpose of achieving the noble objectives of the Preamble is essential. The main objective of the structural construction of this very Preamble is to create resurgence and overcome the natural burdens in society. The Indian Constitution further elaborates on fundamental rights and duties that every Indian citizen possesses and must abide by, respectively.

Implementing or failing to implement legal idealism on all fundamental rights is a vast subject. To achieve specificity and reach more insight, this article breaks down Articles 23 and 24, guaranteeing every citizen the right against exploitation, one of the six fundamental rights that the Drafting Committee of the Constitution wrote<sup>6</sup>.

The right against exploitation is chronologically the third fundamental right written in the Constitution. Articles 23 and 24 govern the right against exploitation<sup>7</sup>. Article 23 prohibits the horrendous activities of human trafficking, especially of young women, bonded labour or other forms of forced labour.

#### “Prohibition of traffic in human beings and forced labour

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<sup>2</sup>Attwooll, E.(1998). “Legal idealism”. *The Routledge Encyclopedia of Philosophy*. Taylor and Francis. (2005). 200-205.

<sup>3</sup>Coyle, Sean. “Positivism, Idealism and the Rule of Law.” *Oxford Journal of Legal Studies* 26, no. 2 (2006): 257–88.

<sup>4</sup>*Ibid.*

<sup>5</sup>Ahmad, S. Waseem, and M. Ashraf Ali. “SOCIAL JUSTICE AND THE CONSTITUTION OF INDIA.” *The Indian Journal of Political Science* 67, no. 4 (2006): 767–82.

<sup>6</sup>Dalal, Rajbir Singh. “FUNDAMENTAL RIGHTS ENSHRINED IN INDIAN CONSTITUTION Provisions and Practices.” *The Indian Journal of Political Science* 70, no. 3 (2009): 779–86.

<sup>7</sup>*Ibid.*

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Traffic in human beings and begar and other similar forms of forced labour are prohibited, and any contravention of this provision shall be an offence punishable in accordance with the law.”<sup>8</sup>

Article 24 confers the prohibition of child labour in mines or other hazardous occupations<sup>9</sup>.

“Prohibition of employment of children in factories: No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”<sup>10</sup>

According to the phrasing of these laws, it is clear that the moral ends to these means are to ensure a country where free will prevails with the absence of exploitation. However, this is an objective that society has been unable to achieve. The mode of expression of the social system, its idealism and the inclusion of conscience has led to the failure to implement such laws. To further understand the reasons behind the failure of its implementation, it is imperative to understand what these exploitative purposes are. Prohibition of human trafficking holds a vital position in Article 23. “Human Trafficking is the recruitment, transportation, transfer, harbouring or receipt of people through force, fraud or deception, with the aim of exploiting them for profit. Men, women and children of all ages and from all backgrounds can become victims of this crime, which occurs in every region of the world. The traffickers often use violence or fraudulent employment agencies and fake promises of education and job opportunities to trick and coerce their victims.” The United Nations Office on Drugs and Crime employs this definition.

There are multiple forms of human trafficking and what the victims of this crime undergo. A significant part of the result is the sex trafficking of adults and children alike. Forced commodification and prostitution are rampant even today despite being prohibited. There have also been indications of increased human trafficking incidents in India as a direct consequence of the present laws.

Moreover, other forms of trafficking include forced labour which means involuntary servitude, often without compensation<sup>11</sup>. Slavery constitutes this definition. All of these are evils and barbaric practices that continue to exist and thrive. India has the maximum number of enslaved people worldwide, with estimates ranging from 14 million to 18 million enslaved people.<sup>12</sup> Many individuals, including women and children, serve as enslaved people in India’s brick kiln

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<sup>8</sup>INDIA CONST. art. 23.

<sup>9</sup> Dalal, Rajbir Singh. “FUNDAMENTAL RIGHTS ENSHRINED IN INDIAN CONSTITUTION Provisions and Practices.” *The Indian Journal of Political Science* 70, no. 3 (2009): 779–86.

<sup>10</sup>INDIA CONST. art. 24.

<sup>11</sup> Chamie, Joseph. “Human Trafficking: A Serious Challenge to Humanity.” *Great Decisions*, 2015, 77–88.

<sup>12</sup><https://blogs.wsj.com/indiarealtime/2016/06/02/india-has-the-most-people-living-in-modern-slavery/> (last visited 13<sup>th</sup> March 2022)

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business.<sup>13</sup>

Bonded labour is a practice prevalent but not limited to South Asian countries. It is a phenomenon where people have to work to pay off an outstanding debt. It is highly exploitative, and employers use it to indenture labourers in perpetuity<sup>14</sup>. Bonded labourers lack even the most basic employee rights and work even through serious illnesses. Bonded labourers receive abysmally low wages but need to pay off debts with ridiculously high-interest rates. Even children have to work as bonded labourers and know no life other than that of hard labour and servitude<sup>15</sup>.

Nonetheless, it is apparent why bonded labour is prohibited. However, this practice too continues to exist. In a judgement on a case with bonded labour, the bench put forth the statements as to why the administration is hesitant to acknowledge the existence of bonded labour, because it is the administration's failure to recognise it and take all necessary steps to end the bonded labour system by quickly identifying, releasing, and permanently rehabilitating bonded labourers that is a slur on the administration.<sup>16</sup> Begar was a system of forced labour for the state. This is also an exploitative practice and only employed those from a lower caste, and the state exempted those from upper castes<sup>17</sup>. Fortunately, this was a practice in the past that finds little relevance today. Though politics and dynamics have changed over the years, the crux of exploitation remains the same, and various dominations overshadow the progressive movements.<sup>18</sup>

Article 24 prohibits child labour. This practice includes but is not limited to making children work under hazardous conditions while not providing them with basic amenities and not ensuring their basic safety during the process<sup>19</sup>. Child labour is prevalent due to the vulnerability of children. They are unable to voice their opinions and demand their rights, and employers abuse this inability of children. Employers provide children with little to no wages. This practice even results in the unemployment of adult and able workers. Hence, it is exploitative, inhuman, and restrictive to able unemployed workers and prevents economic

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<sup>13</sup><https://www.antislavery.org/report-slavery-india-brick-kilns/> (last visited 13<sup>th</sup> March 2022)

<sup>14</sup> Tucker, Lee. "Child Slaves in Modern India: The Bonded Labor Problem." *Human Rights Quarterly* 19, no. 3 (1997): 572–629.

<sup>15</sup>*Ibid.*

<sup>16</sup>*Bandhua Mukti Morcha vs Union Of India & Others*, 1984 AIR 802.

<sup>17</sup> P. A. Gavali, *Society and Social Disabilities Under the Peshwas*. National Publishing House. (1988). 136-144.

<sup>18</sup> Baviskar, A. (2004). *In the belly of the river: tribal conflicts over development in the Narmada Valley*. India: Oxford University Press.

<sup>19</sup> López-Calva, Luis F. "Child Labor: Myths, Theories and Facts." *Journal of International Affairs* 55, no. 1 (2001): 59–73.

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development in a society<sup>20</sup>. Child labour denies children their childhood and education, which is detrimental to them, concepts of morality, and society's economic prosperity at large.

Nevertheless, despite all evidence of its harmful effects, child labour continues to prosper. In a case where the judges decide that the stakes of such issues lie on many factors though the law is substantial on its principles. The bench exclaimed that, though child labour can be identified in the organised sector, which accounts for a small percentage of overall child labour, the problem primarily affects the unorganised sector, to which special attention must be paid.<sup>21</sup>

The various situations that put forth the oppressed in a state where other voices or statements cannot be raised or talked about is hugely a negative pole on the magnet of idealism. In the case involving the State of Tamil Nadu, child labour of grade should therefore be outlawed as far as practicable, and child labour employment should be phased out over a period of not more than three years, as determined by the state government and the terms of the 1986 Child Labor Abolition Act should be vigorously enforced.<sup>22</sup>

The fact that people are being exploited on a large scale and without understanding the boundaries of the laws and its idealism is the fact that education and weak labour laws make them prone to such exploitation, and the vulnerability bubble that these people possess makes them be exploited easily and make low wages seem attractive. The direction of labour to only a particular factory or company without providing them knowledge is threatening to their safety and dignity. The judge in the case of Union of India and Others vs People's Union for Democratic Change, it is impossible to think that, despite the Constitution's intent to safeguard types of forced labour, the socially or economically dominant portions of the community would use other forms of forced labour to exploit the poor and weak.<sup>23</sup>

Despite the fact that the Constitution of India was adopted and passed by the people of India and that they are the caretakers of the republic, the inability to fully utilise the law makes it one-sided because the offence is not addressed at its source. Slavery and any act that infringes on a person's dignity and freedom are prohibited under Indian law. The thoughts of some people who view themselves as superior exploit women and children. Though the articles are enshrined in such a manner to prevent such cases, the destitution of hunger pushes them to do such activities though they understand they are undergoing exploitation on a large scale. As a result, "forced labour" referred to more than just physical or legal coercion, but also to "economic

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<sup>20</sup> *Ibid.*

<sup>21</sup> M.C. Mehta vs State Of Tamil Nadu And Others, AIR 1997 SC 699.

<sup>22</sup> Rajangam, Secretary, District ... vs State Of Tamil Nadu And Ors, 1992 SCC (1) 221.

<sup>23</sup> People's Union For Democratic vs Union Of India & Others 1982 AIR 1473

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compulsion.” The Indian Constitution does not regard the current economic structure and arrangements as a “natural” and unchangeable state of affairs with no moral implications for liberty.<sup>24</sup>

The idealism of law being frontier, when fundamental rights of various people belonging to different communities are threatened and made it hard for them to survive, constitutes the fact that them being in a disadvantaged position makes the positive side of the rights below visible. It collapses the central core of the law. The designation to uphold and protect every human’s legal right and promote and vindicate the public interest, which forms the essential and integral part of any democratic form of government, is essential. Despite being a democratic country, India has not been able to completely implement baseline civil liberties requirements that provide all citizens with freedom from exploitation. The realities of rising cases of bonded labour, child labour, prostitution, and beggars support such charges. Considering the theoretical criteria of the development of law, the reality that not all citizens have access to it indicates the facts for better implementation.<sup>25</sup> When certain exploiters deny people their rights because of the fact they belong to the lowest strata of a community or are vulnerable or are just oppressed because of social structures brings down the faith of the existing system and the fact that it can also break their back and sap their moral fibre makes the legal system deprived.

### CONCLUSION

The judiciary has served as a significant guardian of rights since 1950. In many ways, judicial interpretations have broadened the scope of rights. Our country’s government and administration work within this larger framework. Rights impose restrictions on the government’s ability to function and ensure the country’s democratic administration. Cultural, political, and social considerations all play a role in the exploitation of women and children. Because supply and demand work as pioneers, ignoring the victims’ very essence in order to make large profits, the victims have to forge compacts with their very essence in order to survive. Victims of human trafficking are abused and exploited in a variety of ways, which can lead to severe and minor psychological and physical attacks for the short and long term. The sad reality for victims of human trafficking is that their rights remain infringed even after they are free from exploitation. They frequently undergo the process of re-victimisation. Human trafficking laws must be more vital to ensure that they meet all standards for preventing human

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<sup>24</sup>Bhatia, Gautam, “*The Freedom to Work: PU DR vs. Union of India and the Meaning of 'Forced Labour' Under the Indian Constitution*” (2017).

<sup>25</sup>Boruah, Jayanta and Aryan, Sarthak, “Indian Democracy in Promoting Freedom from Exploitation under Article 23 of the Indian Constitution.” *The Legal Vidya*, no. 2, (2021)

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trafficking. Human trafficking and its repercussions must be made known to people living in poverty across the country in order to prevent them from becoming victims. Many national and international seminars and conferences can be held throughout the country to bring the general public and the government together to combat human trafficking. The government must safeguard the most vulnerable members of society so that they do not become victims of human trafficking. Human trafficking victims are exclusively people who live in poverty; hence the authorities can reduce the crime of human trafficking if the government assists the destitute and provides them with proper education and opportunities.<sup>26</sup>

Legal education is also crucial in aiding the solution to this issue. We have to identify vulnerable members of this society and equip them with the knowledge of their rights and the legal provisions available to them. It is essential that they are aware of their rights so that if the situation requires it, they will be able to utilise the knowledge they have received. We as a society must concentrate on the disproportionate law enforcement, which creates a negative shift in the focus away from human rights and the protection of the vulnerable.

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