

Art 23 (protection and discrimination)- Indian Constitution

Article 23 of the Indian Constitution: Protection Against Exploitation and Discrimination

Introduction

The Constitution of India, the supreme law of the land, is a comprehensive document that enshrines the fundamental rights of its citizens, reflecting the ideals of justice, liberty, equality, and fraternity. Among these rights, Article 23 of the Indian Constitution plays a pivotal role in protecting individuals from exploitation and ensuring human dignity. Enacted as a part of the Fundamental Rights under Part III of the Constitution, Article 23 aims to abolish practices such as human trafficking, begar (forced labour), and similar forms of servitude which were rampant during colonial and feudal eras.

This essay delves into the scope, relevance, judicial interpretation, and implications of Article 23, with a particular focus on how it safeguards individuals from exploitation and curbs discrimination in Indian society.

Text of Article 23

Article 23 – Prohibition of traffic in human beings and forced labour

- (1) 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 law.
- (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service, the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Understanding the Core Concepts of Article 23

1. Prohibition of Human Trafficking

Human trafficking refers to the illegal trade of human beings for purposes such as forced labour, sexual exploitation, slavery, or servitude. Article 23(1) expressly prohibits this practice, recognizing it as a grave violation of human dignity and personal liberty. It criminalizes all forms of trafficking, encompassing physical and sexual exploitation, bonded labour, and other coercive practices.

2. Abolition of Begar and Similar Forced Labour

"Begar" is a system where a person is forced to render service without any remuneration. Historically, begar was practiced in India under feudal systems where peasants and lower-caste individuals were compelled to work for landlords without pay. Article 23 targets this exploitative structure and extends its reach to cover any form of forced labour, regardless of whether it is traditional begar or modern-day equivalents.

3. State's Right to Impose Compulsory Service

Article 23(2) allows the State to impose compulsory service for public purposes (such as military service, disaster relief, or civic duties). However, it mandates that this imposition must be free from discrimination based on religion, race, caste, or class. This clause ensures that while public service obligations may be necessary, they must be administered equitably.

The Rationale Behind Article 23

The inclusion of Article 23 in the Constitution was driven by the imperative to eradicate the deeply rooted societal evils of bonded labour, trafficking, and exploitation, particularly of vulnerable and marginalized communities. Post-independence India was plagued by widespread poverty, caste-based discrimination, and exploitative labour relations. The Constituent Assembly, led by visionary thinkers like Dr. B.R. Ambedkar, sought to establish a legal framework that not only guaranteed civil liberties but also protected individuals from the harsh socio-economic injustices that were prevalent.

Judicial Interpretation and Landmark Judgements

Over the years, Indian courts have played a crucial role in interpreting Article 23 and expanding its scope to suit evolving socio-legal contexts.

1. People's Union for Democratic Rights v. Union of India (1982)

In this landmark case, also known as the *Asiad Workers Case*, the Supreme Court held that the employment of labourers under exploitative conditions, with remuneration below minimum wage, amounted to forced labour under Article 23. The Court emphasized that even if a person voluntarily accepted low wages due to poverty or helplessness, it would still be considered forced labour if the compensation was below the legally mandated minimum.

2. Sanjit Roy v. State of Rajasthan (1983)

Here, the Supreme Court held that paying less than the minimum wage to workers engaged in relief work during famine amounted to forced labour and violated Article 23. The Court reaffirmed the idea that the right to minimum wage is intrinsic to the right against exploitation.

3. Bandhua Mukti Morcha v. Union of India (1984)

This case brought attention to bonded labourers in stone quarries. The Court, relying on Article 23, declared that bonded labour was unconstitutional and directed the State to take measures to rehabilitate the affected workers. It further established the principle that Article 23 can be enforced through public interest litigation (PIL), broadening access to justice.

Legislative Measures Supporting Article 23

To operationalize the constitutional mandate of Article 23, several legislative instruments have been enacted:

1. The Bonded Labour System (Abolition) Act, 1976

This Act prohibits the practice of bonded labour in all forms and mandates the release and rehabilitation of bonded labourers. It empowers district magistrates to take action and prescribes penalties for those who compel others to work in bonded conditions.

2. The Immoral Traffic (Prevention) Act, 1956

Enacted to address trafficking for commercial sexual exploitation, this Act criminalizes brothel-keeping, pimping, and trafficking for prostitution. It provides for the rescue and rehabilitation of victims.

3. The Child Labour (Prohibition and Regulation) Act, 1986

This Act prohibits the employment of children below the age of 14 in certain hazardous occupations and regulates conditions of work in others. It aligns with the spirit of Article 23 in preventing exploitation of children.

4. Minimum Wages Act, 1948

While not a direct consequence of Article 23, this Act is integral to the prevention of economic exploitation. By ensuring minimum remuneration, it helps uphold the dignity of labour and guards against forced or underpaid work.

Intersection with Discrimination and Social Justice

Article 23 is not merely a prohibition against specific practices; it is a reflection of the constitutional commitment to social justice and equality. The forms of exploitation it targets are often rooted in deep structural inequalities—particularly caste-based hierarchies, economic deprivation, and gender discrimination.

For instance, bonded labour has disproportionately affected Dalits and Adivasis, while human trafficking often victimizes women and children from poor and marginalized communities. By outlawing such practices, Article 23 acts as a powerful instrument for advancing substantive equality and combating systemic discrimination.

Furthermore, Article 23(2)'s explicit bar on discrimination in compulsory public service reinforces the principle that even State-imposed obligations must not be tainted by historical or social prejudices.

Contemporary Challenges and Relevance

Despite constitutional guarantees and legislative safeguards, exploitation in various forms continues in modern India.

1. Human Trafficking

According to reports from the National Crime Records Bureau (NCRB), thousands of cases of human trafficking are reported annually, involving victims of sexual exploitation, forced marriages, organ trade, and bonded labour. Interstate and cross-border trafficking networks operate with impunity in several regions.

2. Bonded and Child Labour

Although outlawed, bonded labour persists in sectors like brick kilns, agriculture, carpet weaving, and mining. Children continue to be employed in informal sectors despite legal prohibitions, often due to poverty, lack of education, and weak enforcement.

3. Migrant Labour Exploitation

The COVID-19 pandemic exposed the precarious conditions of migrant labourers. Many faced wage theft, long working hours, lack of legal protections, and coercive working arrangements—issues that fall squarely within the ambit of Article 23.

Role of Civil Society and Media

Non-governmental organizations (NGOs), human rights activists, and investigative journalists have played a vital role in bringing violations of Article 23 to light. Organizations like Bandhua Mukti Morcha, Bachpan Bachao Andolan, and Prajwala have tirelessly worked to rescue and rehabilitate victims of trafficking and bonded labour. Their efforts, often in collaboration with State agencies, have led to greater awareness and accountability.

Scope for Reform and Recommendations

To make Article 23 more effective in practice, the following steps are recommended:

1. Strengthen Law Enforcement Mechanisms

Many victims of forced labour and trafficking do not receive justice due to corruption, lack of sensitization among police, and delayed trials. Establishing dedicated anti-trafficking units and fast-track courts can improve enforcement.

2. Improve Victim Rehabilitation

Rehabilitation must go beyond rescue. Survivors of exploitation require education, skill development, psychological counselling, and financial support to reintegrate into society.

3. Promote Legal Awareness

Vulnerable communities often remain unaware of their constitutional rights. Grassroots legal literacy campaigns can empower individuals to resist and report exploitation.

4. Update Legal Definitions

As new forms of labour exploitation emerge (e.g., gig economy abuse, forced digital work), laws must be updated to address these challenges within the framework of Article 23.

Article 23 stands as a testament to the Indian Constitution's progressive vision and its commitment to eradicating centuries-old systems of oppression and exploitation. It serves not only as a legal prohibition but also as a moral and ethical mandate to uphold human dignity and equality.

However, the battle against exploitation is far from over. While the Constitution and supportive legislation provide a robust framework, real change depends on consistent enforcement, vigilant civil society, proactive judiciary, and an informed citizenry. As India continues its journey toward inclusive growth and social justice, the spirit of Article 23 must be continually invoked to protect the rights of the weakest and most marginalized members of society.

Advantages of Article 23

1. Protection of Human Dignity

Article 23 prohibits trafficking and forced labour, thereby upholding the fundamental human dignity of every individual. It ensures people are not treated as commodities or coerced into degrading conditions of work.

2. Legal Empowerment of the Vulnerable

The Article empowers marginalized and economically weaker sections (such as bonded labourers, Dalits, tribal populations, and women) by giving them a constitutional shield against systemic exploitation.

3. Broad Judicial Interpretation

Indian courts have interpreted Article 23 expansively. Even indirect or economic coercion (e.g., working for less than minimum wages due to poverty) is treated as forced labour. This allows broader access to justice for victims.

4. Social Justice Framework

Article 23 contributes to the Constitution's commitment to social justice by addressing caste-based oppression and feudal systems. It serves as a foundational pillar in eradicating exploitative practices entrenched in society.

5. Prevents Discrimination in Public Service

Under clause (2), the State can impose compulsory service but must do so without discrimination based on religion, caste, or class—thereby ensuring fairness in civic obligations.

6. Legislative Backing

It has led to the enactment of laws such as the Bonded Labour System (Abolition) Act, Immoral Traffic (Prevention) Act, and others, enabling implementation through a robust legal framework.

Disadvantages of Article 23

1. Implementation Gaps

Despite its strong legal foundation, enforcement is weak in many parts of the country. Trafficking, child labour, and bonded labour continue due to poor policing, low conviction rates, and lack of administrative will.

2. Ambiguity in “Forced Labour”

While courts have expanded its meaning, the term “other similar forms of forced labour” remains open to interpretation. This vagueness sometimes creates difficulty in proving violations in court.

3. Inadequate Victim Rehabilitation

Although the Article ensures protection, it does not directly provide a mechanism for victim compensation or rehabilitation. Many rescued individuals are re-trafficked due to lack of support.

4. Social and Economic Barriers

Structural issues like caste hierarchy, illiteracy, poverty, and gender inequality continue to create conditions conducive to exploitation, limiting the real-world impact of Article 23.

5. Underutilization of Public Awareness

Many people—especially in rural or informal sectors—are unaware of their rights under Article 23. This prevents them from asserting those rights or seeking legal remedies.

6. State’s Power of Compulsory Service

Although clause (2) restricts discrimination, it permits the State to impose compulsory service. This could, in theory, be misused if not properly regulated or monitored.

Understanding the Role of Discrimination in Article 23

1. Prohibitory Nature Against Discriminatory Practices

- **Human trafficking and forced labour** are often rooted in **caste, gender, class, and economic discrimination**. For example:
 - **Dalits and Adivasis** have historically been subjected to bonded labour.
 - **Women and children** are frequently trafficked for sex work and domestic servitude.
- Article 23 directly targets these discriminatory outcomes by criminalizing the exploitative systems that arise from them.

2. Universal Protection – No Discrimination in Beneficiaries

- The protection under Article 23 is available to **both citizens and non-citizens**.
- This ensures **equality before law** in protecting all individuals against forced labour and exploitation—irrespective of nationality, caste, religion, or gender.

3. Clause (2): Compulsory Service Without Discrimination

- Article 23(2) allows the State to require compulsory service for public purposes (e.g., military, community service), but it **explicitly prohibits discrimination** based on religion, race, caste, or class in doing so.

- This ensures that public duties do not become a **pretext for targeted oppression** or **unequal civic burdens**.

Challenges & Concerns: Hidden Discrimination Despite Article 23

1. Structural and Economic Discrimination Persists

- While Article 23 prohibits certain outcomes, **it does not eradicate the systemic causes** of exploitation—such as poverty, illiteracy, and caste hierarchies.
- As a result, **discriminatory patterns** continue, even if the **acts themselves** are illegal.

2. Implementation Bias

- Law enforcement often neglects the plight of the **marginalised**, failing to act on complaints from lower castes or tribal groups.
- This creates **de facto discrimination**, where the **protection exists in law** but **fails in practice**.

3. Gendered Exploitation

- Women and transgender persons face **gender-based discrimination** within the broader context of trafficking and forced labour.
- While Article 23 applies to them, enforcement mechanisms rarely take an **intersectional approach**, leading to gaps in protection.

4. Under-reporting Due to Social Stigma

- Discrimination deters victims—especially women, Dalits, and children—from reporting violations due to fear of social exclusion, further reinforcing cycles of exploitation.

The Way Forward for India on the Ground of Article 23

1. Strengthen Law Enforcement and Accountability

- **Challenge:** Many cases of bonded labour and trafficking go unpunished due to weak investigation and delayed trials.
- **Solution:** Specialized anti-trafficking units, fast-track courts, and regular training for police and judiciary.

2. Enhance Victim Rehabilitation

- **Current Gaps:** Many rescued individuals face re-trafficking due to lack of economic support and psychological aid.
- **Recommendations:**
 - Expand State-sponsored rehabilitation programs.

- Ensure legal aid, housing, education, and vocational training.

3. Address Root Causes: Poverty, Illiteracy, Caste Discrimination

- **Solution:** Integrated efforts through poverty alleviation, education reforms, and Dalit/Adivasi empowerment schemes can reduce vulnerability to exploitation.

4. Digital Monitoring and Grievance Redressal

- Launch digital platforms to:
 - Report bonded labour or trafficking anonymously.
 - Track rehabilitation progress.
 - Map vulnerable areas using AI and data analytics.

5. Legislative Reforms

- Update definitions and include new forms of exploitation (e.g., forced digital labour, gig economy abuses).
- Harmonize all labour laws under a uniform and accessible legal framework.

6. Public Legal Awareness

- **Need:** Most victims are unaware of their rights under Article 23.
- **Strategy:**
 - Nationwide campaigns using local languages.
 - Legal literacy through schools, Panchayats, and community workers.

7. Strengthen Inter-State and Cross-Border Coordination

- **Problem:** Human trafficking often spans states and borders.
- **Solution:** Develop regional anti-trafficking frameworks and sign cross-border cooperation treaties.

Article 23 of the Indian Constitution stands as a robust moral and legal pillar against the deep-rooted evils of human exploitation, particularly in a society historically marred by social inequalities, feudal hierarchies, and systemic poverty. As one of the fundamental rights enshrined in Part III of the Constitution, it plays a critical role in affirming the dignity of the individual and establishing a just social order. It prohibits human trafficking, begar (forced labour), and similar forms of involuntary servitude, thus recognizing exploitation not only in its overtly violent forms but also in its economic and structural dimensions.

What distinguishes Article 23 is its universal applicability. It is not limited to citizens alone, thereby extending its protective ambit to all persons within Indian territory, including vulnerable groups like migrant workers, refugees, and unorganized labourers. This reflects the framers' intent to uphold a broad, inclusive vision of human rights and social justice. The clause also balances this by allowing the

State to impose compulsory service for public purposes, provided it does so without discrimination. This ensures that collective duties do not become tools of oppression.

Over the decades, the judiciary has significantly contributed to breathing life into Article 23 through progressive interpretation. The Supreme Court, through landmark judgments such as *People's Union for Democratic Rights v. Union of India* and *Bandhua Mukti Morcha v. Union of India*, has expanded the meaning of "forced labour" to include economic coercion and non-payment of minimum wages. These interpretations have allowed the Constitution to remain dynamically aligned with the evolving forms of exploitation in modern India. They have also paved the way for the development of complementary legislation like the Bonded Labour System (Abolition) Act, the Immoral Traffic (Prevention) Act, and minimum wage laws that aim to enforce the constitutional guarantee in tangible ways.

Despite its constitutional and judicial backing, the promise of Article 23 remains only partially fulfilled in practice. Human trafficking, bonded labour, and child labour continue to persist across various sectors, particularly in rural and informal economies. These challenges are exacerbated by poverty, lack of education, caste-based discrimination, and weak enforcement of laws. Rehabilitation of victims, though mandated by judicial precedent, is inconsistently implemented. Moreover, emerging forms of digital and economic exploitation, particularly in gig and informal platforms, present new challenges that the current legal framework must evolve to address.

In this context, the way forward lies in a multi-dimensional strategy that integrates robust legal enforcement, proactive social policies, and widespread public awareness. Strengthening institutional mechanisms, empowering grassroots movements, and updating laws to reflect contemporary realities are essential steps. Article 23 must not be seen merely as a prohibition but as an affirmative obligation of the State and society to eliminate the conditions that allow exploitation to thrive.

Ultimately, Article 23 encapsulates the Constitution's promise to transform India into a society where dignity, freedom, and justice are not privileges of a few but entitlements of all. Its true realization demands vigilance, empathy, and continuous commitment to the values it seeks to protect.