
INTERNATIONAL CONVENTIONS ON INHUMAN ACTS: AN INDIAN PERSPECTIVE ON FORCED LABOUR, HUMAN TRAFFICKING, RACIAL DISCRIMINATION, AND TORTURE

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ABSTRACT

India's relationship with international conventions addressing inhuman conduct is best understood as one of selective engagement – formal ratification in some areas, prolonged abstention in others, and a persistent reliance on judicial interpretation to bridge the gap between treaty obligation and domestic reality. This paper examines four instruments that collectively define the international community's minimum standards for human dignity: the International Labour Organisation's Forced Labour Convention, 1930 (No. 29), and Abolition of Forced Labour Convention, 1957 (No. 105); the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). For each instrument, the paper maps the content of the international obligation against the constitutional provisions, statutes, and judicial decisions through which the underlying norm has found or failed to find expression in Indian law. India has ratified the ILO forced labour conventions and ICERD, and acceded to the Palermo Protocol, yet has remained outside CAT for nearly three decades since signing it. Even where ratification exists, implementation is partial: caste discrimination remains a contested category under ICERD, comprehensive trafficking legislation has repeatedly lapsed in Parliament, and no standalone anti-torture statute has been enacted. The Supreme Court has compensated through purposive readings of Articles 21 and 23 of the Constitution, extending protections functionally equivalent to those the conventions require, but this judicial substitute carries structural limitations that treaty ratification and comprehensive legislation alone can overcome.

Keywords: Forced Labour; Human Trafficking; Racial Discrimination; Torture; India; International Human Rights Law

I. INTRODUCTION

Among the branches of international human rights law, those directed at inherently inhuman conduct occupy a foundational position. Forced labour, human trafficking, racial and caste discrimination, and torture are not merely violations of specific rights; they represent assaults on the premise that every human being possesses a dignity that law is obligated to protect. The international community has responded to each of these categories of conduct with a dedicated treaty framework, and a substantial supervisory jurisprudence has accumulated around each instrument over the decades since their adoption.

India's position in relation to these frameworks is neither one of comprehensive adherence nor systematic rejection. It is characterised instead by a constitutionally mediated form of engagement in which the judiciary has borne primary responsibility for translating international norms into domestic protection, often in advance of the legislative or executive action that ratification and implementation would ordinarily presuppose. The Constitution of India, particularly through Articles 21 and 23, has proven capacious enough to accommodate most of the substantive content of the relevant conventions, and the Supreme Court has exploited that constitutional space with considerable creativity. What has been more elusive is the conversion of constitutional recognition into binding treaty commitment and coherent statutory implementation.

This paper examines India's engagement with four convention regimes in turn, analysing each at the three levels of treaty ratification, legislative implementation, and judicial interpretation, before drawing together the structural themes that connect them. The argument advanced is that India's pattern of partial compliance reflects the characteristic tensions of a dualist legal system in which an expansive constitutional jurisprudence has outpaced the political will to translate that jurisprudence into formal international obligation.

II. FORCED LABOUR: ILO CONVENTIONS AND INDIA'S CONSTITUTIONAL RESPONSE

A. The International Standard

The ILO's Forced Labour Convention, 1930 imposes on ratifying States an obligation to suppress compulsory labour in all its forms, defining the prohibited conduct as work or service

exacted under the menace of a penalty to which the worker has not freely consented.¹ The Abolition of Forced Labour Convention, 1957 targets specific residual manifestations that survived the earlier instrument, particularly forced labour as a tool of political coercion, racial subordination, or imposed economic development.² India is a party to both Conventions, which together constitute part of the ILO's eight fundamental Conventions carrying the organisation's highest normative weight.³

B. Constitutional Prohibition and Judicial Development

The Indian Constitution addresses forced labour through Article 23, which prohibits traffic in human beings, begar, and other analogous forms of compelled service, rendering any contravention a punishable offence.⁴ The Bonded Labour System (Abolition) Act, 1976 gives statutory content to this prohibition by extinguishing debts that form the basis of bondage and rendering unenforceable any obligation arising from the bonded labour relationship.⁵

The Supreme Court has substantially expanded the reach of Article 23 through purposive interpretation. In *People's Union for Democratic Rights v. Union of India*, it held that payment of wages below the statutory minimum itself constitutes the 'force' that renders labour compulsory within the meaning of Article 23, so that nominal consent given by a worker accepting sub-minimum wages does not satisfy the requirement of voluntariness.⁶ In *Bandhua Mukti Morcha v. Union of India*, the Court located freedom from bonded labour within the guarantee of human dignity under Article 21 and issued continuing supervisory directions for the identification, release, and rehabilitation of bonded labourers transforming constitutional litigation into a mechanism for ongoing administrative oversight and extending the reach of the prohibition well beyond what the legislative framework alone would have achieved.⁷

III. HUMAN TRAFFICKING: THE PALERMO PROTOCOL AND INDIA'S LEGISLATIVE DEFICIT

A. The International Framework

¹Forced Labour Convention (No. 29) art. 2(1), June 28, 1930, 39 U.N.T.S. 55.

²Abolition of Forced Labour Convention (No. 105), June 25, 1957, 320 U.N.T.S. 291.

³International Labour Organisation, Ratifications for India, NORMLEX. Available at: https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102691.

⁴Constitution of India art. 23.

⁵Bonded Labour System (Abolition) Act, 1976, No. 19, Acts of Parliament, 1976 (India).

⁶*People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235.

⁷*Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161.

The 2000 Palermo Protocol, supplementing the United Nations Convention against Transnational Organized Crime, provides the primary global framework for addressing trafficking in persons.⁸ Its definition of trafficking encompasses the recruitment, transfer, harbouring, or receipt of persons through coercion, deception, abduction, abuse of power, or financial inducement, for the purpose of exploitation in any of its forms.⁹ A central provision of the Protocol is the irrelevance of victim consent where any of the prohibited means have been employed, addressing the evidentiary difficulties that arise when traffickers secure apparent acquiescence through manipulation or economic vulnerability. India acceded to both the parent Convention and the Protocol in 2011.¹⁰

B. Domestic Law: Constitutional Foundation and Legislative Incompleteness

Article 23 of the Constitution independently prohibits traffic in human beings as a fundamental rights violation, and is notable for applying directly against private actors as well as the State.¹¹ The principal pre-existing statute, the Immoral Traffic (Prevention) Act, 1956, was confined to trafficking for commercial sexual exploitation and did not adopt a comprehensive definition aligned with the Protocol.¹² Following the Justice Verma Committee's recommendations in the wake of the December 2012 Delhi gang-rape case, the Criminal Law (Amendment) Act, 2013 inserted a new Section 370 into the Indian Penal Code substantially aligned with the Protocol's definition. That provision has since been carried forward as Section 143 of the Bharatiya Nyaya Sanhita, 2023.¹³

Despite these incremental reforms, India lacks a comprehensive anti-trafficking statute integrating prevention, victim protection, and rehabilitation. The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 passed the Lok Sabha but lapsed upon dissolution of the Sixteenth Lok Sabha without Senate approval, leaving the legislative

⁸United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319.

⁹Id. art. 3(a).

¹⁰United Nations Treaty Collection, Status of the United Nations Convention against Transnational Organized Crime and its Protocols (recording India's accession in 2011). Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18.

¹¹Constitution of India art. 23.

¹²Immoral Traffic (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 (India); Report of the Committee on Amendments to Criminal Law (Justice J.S. Verma Committee, Jan. 2013).

¹³Criminal Law (Amendment) Act, 2013, No. 13, Acts of Parliament, 2013 (India) (inserting s. 370 into the Indian Penal Code, 1860); Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India), s. 143.

framework fragmented across several partially applicable instruments.¹⁴ The Supreme Court has used its writ jurisdiction to direct protective measures in the interim: in *Vishal Jeet v. Union of India*, it issued directions for the rescue and care of trafficked persons, illustrating both the judiciary's willingness to occupy legislative space and the inherent limitations of doing so as a substitute for systematic statutory action.¹⁵

IV. RACIAL DISCRIMINATION: ICERD AND THE UNRESOLVED CASTE QUESTION

A. The Convention

ICERD, adopted in 1965, defines racial discrimination as any distinction, exclusion, restriction, or preference founded on race, colour, descent, or national or ethnic origin that has the purpose or effect of nullifying or impairing the equal enjoyment of human rights.¹⁶ The reference to descent was deliberately included to extend the Convention's scope beyond biological conceptions of race to inherited social hierarchies. India signed ICERD in 1967 and ratified it in 1968, entering a declaration preserving consent to ICJ jurisdiction under Article 22.¹⁷

B. The Caste Controversy and Domestic Anti-Discrimination Law

India has consistently maintained before the Committee on the Elimination of Racial Discrimination that caste-based discrimination falls outside the Convention's scope, characterising caste as a social institution rooted in religious practice rather than a category of racial or ethnic identity.¹⁸ The Committee has rejected this reading comprehensively: General Recommendation No. 29 of 2002 clarified that the term 'descent' in Article 1 encompasses discrimination against persons in systems of inherited hierarchy such as caste, irrespective of whether those systems carry any connotation of racial difference.¹⁹ This interpretive divergence

¹⁴Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018, Bill No. 247 of 2018 (India) (lapsed on dissolution of the Sixteenth Lok Sabha).

¹⁵*Vishal Jeet v. Union of India*, (1990) 3 SCC 318.

¹⁶International Convention on the Elimination of All Forms of Racial Discrimination art. 1, Dec. 21, 1965, 660 U.N.T.S. 195.

¹⁷Permanent Mission of India to the United Nations, Geneva, Human Rights Instruments to which India is a Party: ICERD (recording ratification on Dec. 3, 1968, with a declaration on art. 22). Available at: <https://pmindiaun.gov.in/pageinfo/ODY5>.

¹⁸Comm. on the Elimination of Racial Discrimination, Concluding Observations: India, U.N. Doc. A/51/18, paras. 339-373 (Sept. 30, 1996).

¹⁹Comm. on the Elimination of Racial Discrimination, General Recommendation No. 29 on Article 1, Paragraph 1, of the Convention (Descent), U.N. Doc. A/57/18, Annex V (2002).

between India's official position and the Committee's authoritative reading has not been formally resolved and continues to generate friction in India's periodic review process.

Domestically, Articles 15 and 17 of the Constitution prohibit State discrimination on grounds of caste and race and abolish untouchability, respectively.²⁰ The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 gives statutory effect to Article 17's mandate by criminalising specific acts of violence, humiliation, and exclusion directed against scheduled communities. These provisions address the most severe forms of caste-based conduct rather than providing a general anti-discrimination framework. Racial discrimination against communities from North-Eastern India attracted separate attention through the M.P. Bezbaruah Committee, constituted in 2014 following the killing of a student from Arunachal Pradesh in New Delhi; its recommendations for new criminal provisions targeting racially motivated insult and assault have not been enacted.²¹ The absence of comprehensive anti-discrimination legislation applicable horizontally in the private sphere leaves significant categories of victims without a dedicated statutory remedy.

V. TORTURE: CAT AND INDIA'S PROLONGED ABSTENTION

A. *The Convention against Torture*

CAT, adopted in 1984, defines torture as the deliberate infliction of severe pain or suffering, physical or mental, by or with the acquiescence of a public official, for purposes including the extraction of information or confessions, punishment, intimidation, or discrimination.²² States parties must criminalise the conduct, establish near-universal jurisdiction over alleged perpetrators, and provide victims with enforceable rights to redress and compensation. India signed the Convention in October 1997 but has not ratified it, attributing non-ratification across successive administrations to the absence of adequate domestic implementing legislation rather than any substantive disagreement with the Convention's content.²³

²⁰Constitution of India arts. 15, 17; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, No. 33, Acts of Parliament, 1989 (India).

²¹Ministry of Home Affairs, Government of India, Report of the M.P. Bezbaruah Committee (2014). Available at: https://www.mha.gov.in/sites/default/files/filefield_paths/ReportOfMPBezbaruahCommittee.PDF.

²²Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment arts. 1, 2, 4, 14, Dec. 10, 1984, 1465 U.N.T.S. 85.

²³United Nations Treaty Collection, Status of the Convention against Torture (recording India's signature in October 1997). Available at: https://treaties.un.org/pages/viewdetails.aspx?mtmsg_no=iv-9&chapter=4&clang=_en.

B. Constitutional Protection in the Absence of Treaty Ratification

Judicial interpretation of Article 21 of the Constitution has partially filled the gap left by non-ratification. The foundational shift came in *Maneka Gandhi v. Union of India*, where the Supreme Court held that any procedure authorising deprivation of life or liberty must meet a substantive standard of fairness and reasonableness a standard broad enough to encompass a right not to be subjected to custodial cruelty or degradation.²⁴

D.K. Basu v. State of West Bengal gave operational content to this principle: confronted with a pattern of custodial deaths, the Court articulated binding procedural requirements governing every arrest the preparation of an arrest memo witnessed by a family member, medical examination of the arrestee, maintenance of a detention register, and prompt notification to a relative or friend.²⁵ *Nilabati Behera v. State of Orissa* extended the remedial framework by holding that constitutional courts may award compensation directly under Articles 32 and 226 for custodial death, as a public law remedy independent of any civil action in tort.²⁶

Notwithstanding these judicial developments, the Law Commission of India in its 273rd Report (2017) reiterated that judicial remedies are structurally insufficient substitutes for the CAT framework, which requires not only criminalisation but also a systematic prevention infrastructure, monitoring mechanisms, and internationally supervised accountability.²⁷ The Commission recommended both ratification and the enactment of a standalone anti-torture statute; neither recommendation has been implemented.

VI. THE STRUCTURAL GAP: CONSTITUTIONAL ASPIRATION AND TREATY COMMITMENT

A consistent pattern runs across each of the four convention areas examined above. India's constitutional text, through Articles 14, 15, 17, 21, 22, and 23, provides a normative foundation that overlaps substantially with the content of each instrument examined, and the Supreme Court has mobilised that constitutional foundation to extend protections that approximate and in some respects surpass what the relevant treaties require.²⁸ What the constitutional

²⁴Constitution of India art. 21; *Maneka Gandhi v. Union of India*, AIR 1978 SC 597, (1978) 1 SCC 248.

²⁵*D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

²⁶*Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.

²⁷Law Commission of India, Report No. 273, Implementation of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment through Legislation (2017).

²⁸M.P. Jain, *Indian Constitutional Law* 1058-1062 (8th ed. 2018).

framework does not supply is the institutional dimension of treaty compliance: the periodic reporting obligations, independent monitoring bodies, individual complaint mechanisms, and systematised preventive infrastructure that ratification activates.

India's dualist approach to international law provides part of the explanation. Treaties do not automatically form part of domestic law; they require legislative implementation, ordinarily pursuant to Article 253 of the Constitution, before domestic courts will treat them as binding.²⁹ The Supreme Court has treated ratified conventions as persuasive guides to constitutional interpretation but has consistently declined to treat unimplemented treaties as directly enforceable. This doctrinal posture places the burden of compliance on the legislature and executive rather than the judiciary, and neither branch has consistently risen to that burden.

Three structural consequences follow from reliance on judicial interpretation as a substitute for treaty ratification and legislative implementation. First, the protection it offers is reactive and case-dependent: it reaches those able to litigate to the Supreme Court but does not generate the systemic prevention mechanisms that treaty implementation demands. Second, it forecloses engagement with international monitoring procedures that serve an accountability function that domestic courts, operating within the same constitutional system they are asked to police, cannot fully replicate. Third, it exposes the underlying protections to greater inconsistency in application across different levels of the judicial and administrative hierarchy than a comprehensive statute would permit.

VII. CONCLUSION

India's engagement with international conventions addressing inhuman conduct is neither one of principled commitment across the board nor one of systematic avoidance. It is an engagement characterised by selective ratification, creative constitutional jurisprudence, and incomplete legislative follow-through a pattern that reflects the structural features of a dualist legal system governed by an unusually active apex court operating within a political environment in which treaty ratification and comprehensive legislation have not consistently been treated as priorities.

In each of the four areas examined, the Supreme Court has demonstrated a capacity to derive from Articles 21 and 23 protections that approximate the substantive requirements of the

²⁹Constitution of India art. 253; *Jolly George Varghese v. Bank of Cochin*, (1980) 2 SCC 360.

relevant international instrument. That judicial achievement is significant and should not be minimised. It has provided real protection to bonded labourers, custodial detainees, and trafficked persons who would otherwise have had no legal remedy. What it has not provided, and cannot provide, is the systematic preventive and accountability framework that treaty ratification and comprehensive statutory implementation are designed to generate.

The path to fuller alignment with international standards requires ratification of the Convention against Torture accompanied by implementing legislation, enactment of a standalone anti-trafficking statute, and a direct engagement with the Committee on the Elimination of Racial Discrimination on the caste-descent question. None of these steps would require constitutional amendment or fundamental changes to India's legal framework; the constitutional architecture is already largely in place. What is required is the political decision to convert that architecture into formal international commitment and, through that commitment, into the institutional infrastructure that effective protection of persons against inhuman conduct ultimately demands.

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