CHAPTER 4

Forced Labour and Institutional Change in Contemporary India*

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Introduction

Article 23 of the Indian Constitution of 1950 prohibits the practice of *begar*, the Hindi word for forced labour or *corvée*, and similar forms of forced labor. Forced labor or slavery in India most commonly refers to debt bondage or bonded labor. In 1976 the Indian Parliament adopted the first state-wide law banning bonded labor with the Bonded Labour System (Abolition) Act (BLSA). In the subsequent years, both governmental and non-governmental actors became proactive in implementing these newly developed laws. The *First Agricultural Labour Enquiry*, conducted from 1950–51 by the Government of India, and the *Summary of the Report on Forced Labour* of 1956, revealed the gap between the legal norm of freedom from enslavement and the reality of many agricultural labourers, tribal people and lower caste members in India. The effective implementation of bonded labor laws remains a pressing issue in India today. The Government of India identified about six million individuals as bonded labourers between 1977 and 2008,1 and the Walk Free Foundation estimated that about 14.28 million people worked as slaves in India in 2013.2

Regarding this implementation gap, Kara claimed that reports on bonded labor in India demonstrated the “utter contempt and disregard for justice for bonded labourers across the nation.”3 The United States Department of State Trafficking in Persons (TIP) report on Indian labor and anti-forced labor laws concluded: “[L]aws were ineffectively enforced, and their prescribed penalties– a maximum of three years in prison – are not sufficiently stringent.”4

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With the institutional outcome as the dependent variable, these versions of “misery research” focused on the failure and malfunctions of institutions, as researchers attempted to explain the continuation of bonded labor, the relatively small number of liberated bonded labourers and the even smaller number of prosecutions. Focusing on policy implementation and the “connection between the expression of governmental intention and actual results” the above mentioned studies reveal that implementation is, to this day “the classic Achilles’ heel of developing countries.”

On the other side, Thelen and Mahoney explain that rules, such as the Constitution of India or the BLSA, “are subject to varying interpretations and levels of enforcement.” These rules, according to them, “exhibit ambiguities that provide space for interested agents to exploit in their effort to alter them.” Reports from the early 1950s pointed out the legal and administrative need for the state of India to become active in the area of labor and in the abolition of bonded labor. Furthermore, the Indian states showed varying degrees of enforcement, ranging from enacting their own state legislation to denying their bonded labor problem completely. But even though reports demonstrated the failure of the Indian state to implement the constitutional prohibition of forced labor, twenty-six years passed between the coming into force of the Indian Constitution in 1950 and the eventual creation of the BLSA in 1976. If this variation and also the problem of compliance play into the institutional change, I ask why the government of India did not pass a law earlier, and why did the government adopt the BLSA in 1976 during Indira Gandhi’s emergency rule?

The BLSA did not explicitly address the Supreme Court and the National Human Rights Commission of India (NHRC), yet they still became involved in the implementation process of abolition. How can we understand the involvement of these actors? I argue that this case of abolition as an institution in India is an example of how “problems of rule interpretation and enforcement

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5 Rothstein, Just Institutions Matter, p. 62.
6 During the period from 1977 to 2008 the Indian State prosecuted 5,893 cases of bonded labor, 1,289 of those cases lead to a conviction of the perpetrator. International Labor Conference, Cost of Coercion, p. 39.
8 Mitra and Singh, When Rebels become Stakeholders, p. 186.
9 Mahoney and Thelen, “Preface,” p. xi.
10 Ibid.